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Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO. Includes details for application 16/402,253 and 117525 7590, inventor Hannah M. Tien, examiner PAPCIAK, SHARON M, art unit 1651, and notification date 05/11/2021.

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

htien9777@yahoo.com
patent01092015@gmail.com

Office Action Summary

Application No.

16/402,253

Applicant(s)

Wei et al.

Examiner

SHARON M PAPCIAK

Art Unit

1651

AIA (FITF) Status

Yes

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTHS FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 05 February 2021.
 A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on ____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims*

- 5) Claim(s) 10-15 is/are pending in the application.
5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) Claim(s) ____ is/are allowed.
- 7) Claim(s) 10-15 is/are rejected.
- 8) Claim(s) ____ is/are objected to.
- 9) Claim(s) ____ are subject to restriction and/or election requirement

* If any claims have been determined allowable, you may be eligible to benefit from the **Patent Prosecution Highway** program at a participating intellectual property office for the corresponding application. For more information, please see http://www.uspto.gov/patents/init_events/pph/index.jsp or send an inquiry to PPHfeedback@uspto.gov.

Application Papers

- 10) The specification is objected to by the Examiner.
- 11) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

Certified copies:

- a) All b) Some** c) None of the:
- Certified copies of the priority documents have been received.
 - Certified copies of the priority documents have been received in Application No. ____.
 - Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

** See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Information Disclosure Statement(s) (PTO/SB/08a and/or PTO/SB/08b)
Paper No(s)/Mail Date _____
- 3) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 4) Other: _____

Notice of Pre-AIA or AIA Status

The present application, filed on or after March 16, 2013, is being examined under the first inventor to file provisions of the AIA.

DETAILED ACTION

Action Is Final, Necessitated by Amendment

Applicants' response to the Non-Final Office Action mailed 07 October 2020, has been entered and the Remarks therein, filed 05 February 2021, are fully considered here.

This action is a Final Office Action, based on new grounds under 35 U.S.C. §103 over Entani et al., Huynh et al., and Devi et al., necessitated by Applicants' amendment received 05 February 2021, specifically, canceled claims 1-9 and new claims 13-15. See MPEP 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

It is noted that Applicant filed a Response to Election/Restriction document (Doc Code: ELC) on 05 February 2021. However, the Office did not mail a Requirement for Election/Restriction Office Action to Applicant. Therefore, the document type is assumed to be incorrect, especially in view of the fact that the content of said document is not related to an Election/Restriction.

Status of Claims

Claims 10-15 are pending.

Claims 10-15 are rejected.

Claim Rejections - 35 U.S.C. § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112(a):

(a) IN GENERAL.—The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor or joint inventor of carrying out the invention.

The following is a quotation of the first paragraph of pre-AIA 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 10-15 are rejected under 35 U.S.C. 112(a) or 35 U.S.C. 112 (pre-AIA), first paragraph, as failing to comply with the enablement requirement. The claims contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The invention employs the specific strain of *Lactobacillus acetotolerans* LE3. It is not clear if the written description is sufficiently repeatable to avoid the need for a deposit. Further it is unclear if the starting materials were readily available to the public at the time of invention.

It appears that a deposit was made in this application as filed, as noted on pp. 9 thru 10, para. [0018] of the clean copy specification filed 18 February 2020. However, it does not appear that the deposit meets all of the criteria set forth in 37 CFR 1.801-

1.809. Applicant or applicant's representative may provide assurance of compliance with the requirements of 35 U.S.C § 112(a) or 35 U.S.C. §112 (pre-AIA), first paragraph, in the following manner.

SUGGESTION FOR DEPOSIT OF BIOLOGICAL MATERIAL

A declaration by applicant, assignee, or applicant's agent identifying a deposit of biological material and averring the following may be sufficient to overcome an objection and rejection based on a lack of availability of biological material.

1. Identifies declarant.
- 2. States that a deposit of the material has been made in a depository affording permanence of the deposit and ready accessibility thereto by the public if a patent is granted.** The depository is to be identified by name and address.
3. States that the deposited material has been accorded a specific (recited) accession number.
- 4. States that all restriction on the availability to the public of the material so deposited will be irrevocably removed upon the granting of a patent.**
- 5. States that the material has been deposited under conditions that access to the material will be available during the pendency of the patent application to one determined by the Commissioner to be entitled thereto under 37 CFR 1.14 and 35 U.S.C § 122.**

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