Office Action Summary	Application No.	Applicant(s)
	10/469,063	ZHEN-MAN, LIN
	Examiner	Art Unit
	JOHN PAK	1616

-- 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 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, 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 _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ 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

4)☒ Claim(s) 1-4 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-4 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ 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).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

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).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ 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) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Notice of References Cited	Application/Control No. 10/469,063	Applicant(s)/Patent Under Reexamination ZHEN-MAN, LIN	
	Examiner JOHN PAK	Art Unit 1616	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-			
	B	US-			
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N	03/082392	10-2003	WO	Exponential Biotherapies	
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

An examination of this application reveals that applicant is unfamiliar with patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skilled preparation and prosecution. The Office cannot aid in selecting an attorney or agent.

A listing of registered patent attorneys and agents is available on the USPTO Internet web site http://www.uspto.gov in the Site Index under "Attorney and Agent Roster." Applicants may also obtain a list of registered patent attorneys and agents located in their area by writing to the Mail Stop OED, Director of the U. S. Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313-1450

Applicant has already received two Notices from the U.S. Patent Office, which informed applicant that the amendments of record are NOT in proper form. This Office action is applicant's THIRD Notice to that effect – applicant's amendments of 7/26/2005 are again NON-COMPLIANT. It is clear that applicant simply does not comprehend how to amend the specification, abstract, and claims in a U.S. patent application. See the first two paragraphs on this page. U.S. Rules for amending a patent applicant are set forth in 37 CFR 1.121.

Specification

EACH TIME applicant amends, or resubmits an amendment, applicant must follow all the rules. For example, applicant cannot send in a marked-up copy of the specification in one mailing, and then follow that up with a separate mailing of a clean copy of the specification. Hence, the substitute specification of 7/26/2005 is non-compliant because it did not include an accompanying marked-up copy of *that* substitute specification. Also, a substitute specification MUST be filed with a statement by applicant that it CONTAINS NO NEW MATTER. The net result of applicant's non-compliance of the rules is that no substitute specifications that applicant had previously filed could be entered. The specification that is presently of record is the specification that applicant originally filed on 8/13/2003.

An observation is in order with regard to new matter. It is plainly apparent to the Examiner that applicant does not understand that he cannot add new matter. Once applicant has been granted a filing date or 371 date, applicant is locked in to the disclosure made at that time (within the metes and bounds of 35 USC 112, first paragraph, new matter prohibition). The benefit of being granted a filing date means applicant is not free to add additional disclosures, such as additional observations, additional features, additional insights, website addresses, etc. The concept of what is or is not new matter is extremely complicated, but it is safe to say that most of what applicant attempted to add in the proposed substitute specifications qualifies as new

matter. New matter cannot be added anywhere in a patent application, not in the specification, not in the abstract, not in the drawings, and not in the claims.

Abstract

An amendment to the abstract is treated like an amendment to the specification. If the changes are minor in nature, applicant can submit a replacement abstract WITH MARKINGS to show all changes relative to the immediate prior version (that was entered and is of record). If the abstract is being substantially rewritten, applicant should submit a new abstract in clean text (no markings) accompanied by (1) an instruction for the cancellation of the previous abstract, and (2) a marked-up version. Any new or replacement abstract must be submitted on a separate sheet, in one paragraph (total). Drawings are not permitted in the abstract. Because the substitute abstracts of 2/9/2004 and 12/14/2004 were non-compliant, they were not entered. The abstract that is presently of record is the abstract that applicant originally filed on 8/13/2003.

Claims

First, there cannot be two claim sets. Applicant should never submit two claim sets. That only leads to more non-compliant notices. In all future replies, applicant should submit only one claim set. All references to another, alternative claim set must be eliminated.

Second, each claim must be identified.

Example[1]:

Claim 1 (canceled).

Claim 2 (previously presented) The formal name for the medicine of sterilizing liquid is Per Fluoro Chemicals (PFC) adding ozone forming a medicine.

Claim 3 (Currently amended). [Including any other lung diseases and SARS inflammation] The medicine of claim 2, further comprising an antibacterial agent.

Claim 4 (Canceled).

Claim 5 (New). The medicine of claim 2, further comprising an antibiotic.

Third, because all of applicant's previous amendments are non-compliant, applicant's originally filed claims (claims 1-4) are still officially of record in this application.

This application will be examined herein accordingly.

Applicant is hereby advised of the proper content and arrangement of the specification, abstract, and claims. At the present time, it is noted that application failed to provide a Brief Description of the Drawings section, as well as many other . The specification is thereby objected to for failing to provide a required specification sections

[1] This Example in no way is intended to convey anything other than proper procedure for identifying a claim in accordance with proper amendment practice. Claim 2 was not amended in order to show

(if a section is not relevant to applicant's case, then it can be absent; but if applicant has disclosure which belongs in a section heading, such section heading should be included).

Content of Specification

(a) Title of the Invention: See 37 CFR 1.72(a) and MPEP § 606. The title of the invention should be placed at the top of the first page of the specification unless the title is provided in an application data sheet. The title of the invention should be brief but technically accurate and descriptive, preferably from two to seven words may not contain more than 500 characters.

(b) Cross-References to Related Applications: See 37 CFR 1.78 and MPEP § 201.11.

(c) Statement Regarding Federally Sponsored Research and Development: See MPEP § 310.

(d) The Names Of The Parties To A Joint Research Agreement: See 37 CFR 1.71(g).

(e) Incorporation-By-Reference Of Material Submitted On a Compact Disc: The specification is required to include an incorporation-by-reference of electronic documents that are to become part of the permanent United States Patent and Trademark Office records in the file of a patent application. See 37 CFR 1.52(e) and MPEP § 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text were permitted as electronic documents on compact discs beginning on September 8, 2000.

Or alternatively, Reference to a "Microfiche Appendix": See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.

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applicant how to identify an unchanged claim in an amendment. Claim 2 could be problematic in many other respects, including on substantive merits.

(f) Background of the Invention: See MPEP § 608.01(c). The specification should set forth the Background of the Invention in two parts:

(1) Field of the Invention: A statement of the field of art to which the invention pertains. This statement may include a paraphrasing of the applicable U.S. patent classification definitions of the subject matter of the claimed invention. This item may also be titled "Technical Field."

(2) Description of the Related Art including information disclosed under 37 CFR 1.97 and 37 CFR 1.98: A description of the related art known to the applicant and including, if applicable, references to specific related art and problems involved in the prior art which are solved by the applicant's invention. This item may also be titled "Background Art."

(g) Brief Summary of the Invention: See MPEP § 608.01(d). A brief summary or general statement of the invention as set forth in 37 CFR 1.73. The summary is separate and distinct from the abstract and is directed toward the invention rather than the disclosure as a whole. The summary may point out the advantages of the invention or how it solves problems previously existent in the prior art (and preferably indicated in the Background of the Invention). In chemical cases it should point out in general terms the utility of the invention. If possible, the nature and gist of the invention or the inventive concept should be set forth. Objects of the invention should be treated briefly and only to the extent that they contribute to an understanding of the invention.

(h) Brief Description of the Drawing(s): See MPEP § 608.01(f). A reference to and brief description of the drawing(s) as set forth in 37 CFR 1.74.

(i) Detailed Description of the Invention: See MPEP § 608.01(g). A description of the preferred embodiment(s) of the invention as required in 37 CFR 1.71. The description should be as short and specific as is necessary to describe the invention adequately and accurately. Where elements or groups of elements, compounds, and processes, which are conventional and generally widely known in the field of the invention described and their exact nature or type is not necessary for an understanding and use of the invention by a person skilled in the art, they should not be described in detail. However, where particularly

complicated subject matter is involved or where the elements, compounds, or processes may not be commonly or widely known in the field, the specification should refer to another patent or readily available publication which adequately describes the subject matter.

(j) Claim or Claims: See 37 CFR 1.75 and MPEP § 608.01(m). The claim or claims must commence on separate sheet or electronic page (37 CFR 1.52(b)(3)). Where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation. There may be plural indentations to further segregate subcombinations or related steps. See 37 CFR 1.75 and MPEP § 608.01(i)-(p).

(k) Abstract of the Disclosure: See MPEP § 608.01(f). A brief narrative of the disclosure as a whole in a single paragraph of 150 words or less commencing on a separate sheet following the claims. In an international application which has entered the national stage (37 CFR 1.491(b)), the applicant need not submit an abstract commencing on a separate sheet if an abstract was published with the international application under PCT Article 21. The abstract that appears on the cover page of the pamphlet published by the International Bureau (IB) of the World Intellectual Property Organization (WIPO) is the abstract that will be used by the USPTO. See MPEP § 1893.03(e).

(l) Sequence Listing, See 37 CFR 1.821-1.825 and MPEP §§ 2421-2431. The requirement for a sequence listing applies to all sequences disclosed in a given application, whether the sequences are claimed or not. See MPEP § 2421.02.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-4 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language.

(1) Quotation marks are not permitted in a patent claim in the absence of evidence that a clear and definite meaning cannot be provided without the quotation marks.

(2) Claim 2 merely discusses in narrative form a formal name. A claim must be directed to a composition, process, machine, or article or manufacture (this comment applies all claims). A claim cannot be directed to a "formal name."

Further, the phrase "Per Fluoro Chemicals (PFC) adding ozone forming a medicine" is grammatically in correct.

(3) Claim 3 is a sentence fragment. A claim sentence must consist of a grammatically correct complete sentence.

(4) Claim 4 is also a sentence fragment.

(5) Applicant is advised that the present claims 1-4 read like a composition invention, so that is how the claims will be interpreted and examined herein. In this regard, applicant's substitute new claim 3 (which depends on claim 1), filed on 7/13/2005, *though not entered*, is evidence that a composition (i.e. a medicine or formulation) is being claimed in claim 1.

Applicant is further advised that should applicant amend the claims so that the claimed invention is directed to a method of treating SARS, such amended claims will

be held as being directed to an invention that lacks unity of invention from the originally presented composition invention. In other words, a method invention lacks unity of invention from the composition invention, and the method invention would be restricted and withdrawn from further consideration and examination on the merits in this application until an appropriate rejoinder becomes necessary.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4 are rejected under 35 U.S.C. 102(e) as being anticipated by WO 03/082392.

WO 03/082392 explicitly discloses a therapeutic formulation of an oxygen-carrying agent such as perfluorocarbons and oxygen generating agent such as ozone (page 9, lines 12 and 23; page 12, line 17 to page 13, line 2; page 15, line 22; claims 1, 6 and 10-12, 16). In conjunction with an antimicrobial agent, the formulation is for locally treating microbial infections such as viral infections (page 6, lines 12-13 and 19-21; claims 45, 50). Increasing the pO_2 levels in an infection site can increase the

efficacy of antimicrobial agents and/or enhance the host's own defenses against the microbes that have invaded the site (sentence bridging pages 8 and 9). Treatment of viral infections of the respiratory tract is disclosed (page 17, lines 18-20). Infections of the lung are disclosed (sentence bridging pages 22 and 23). Treatment of viral infections is reiterated (claims 32-33; page 27, lines 7-10; page 30, table II), along with the use of antiviral coadministration (page 28, line 4). Direct injection is disclosed (claims 28-29; page 22, lines 10-14; see also lines 15-19). A microbe that is "generally recognized as being difficult to treat" is treated (claims 33, 36).

As discussed earlier in this Office action, applicant's claims are interpreted as being directed to a composition. The cited reference explicitly discloses every *composition feature* required in applicant's claims. Use for SARS treatment is an intended use for a composition, and it is sufficient for examination of the composition invention that the same exact composition for similar utility is found in the prior art. A composition and its properties are inseparable, so the prior art composition must necessarily possess the properties now claimed by applicant, particularly since the prior art composition is known to be used to treat difficult to treat microbial infections such as difficult to treat viral infections. MPEP 2112, 2112.01. The claims are thereby anticipated.

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because it does not identify the citizenship of each inventor.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to JOHN PAK whose telephone number is **(571)272-0620.** The Examiner can normally be reached on Monday to Friday from 8 AM to 4:30 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's SPE, Gary Kunz, can be reached on **(571)272-0887**.

The fax phone number for the organization where this application or proceeding is assigned is **(571)273-8300**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571)272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JOHN PAK
PRIMARY EXAMINER
GROUP 1610