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28661	7590	11/06/2015	EXAMINER	
Lewis Roca Rothgerber LLP 4300 Bohannon Drive Suite 230 Menlo Park, CA 94025			MAI, HAO D	
			ART UNIT	PAPER NUMBER
			3732	
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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.

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ipdockets@lrrlaw.com
KHo@LRRLaw.com

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DETAILED ACTION

Notice of Pre-AIA or AIA Status

1. The present application is being examined under the pre-AIA first to invent provisions.

Specification

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

3. The abstract of the disclosure is objected to because it currently contains legal phraseologies, e.g. "comprising". Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 102

4. 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 –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. **Claim 1-2, 5-6, 8-12, 14, 16-22 are rejected under pre-AIA 35 U.S.C. 102(b) as anticipated by Rhoades (4,802,851).**

Regarding claim 1, Rhoades discloses a dental mouthpiece 50 comprising a main body portion 50 comprising a defined pocket (i.e. interior of 50) having an anterior wall 52 having an exterior edge, a posterior wall 52 having an exterior edge that corresponds to the exterior edge of the anterior wall. The posterior wall 52 comprises studs 140 which are considered to be

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equivalent to the claimed bridge structure comprising a plurality of protrusions protruding from an interior surface of the posterior wall. The main body portion 50 further comprises a side wall 58, 60 connecting the exterior edge of the anterior wall to the corresponding exterior edge of the posterior wall.

As to claim 2, note that the studs 140 being considered as equivalent to the claimed bridge structure protruding from an interior surface of the posterior wall having a plurality of contact points (i.e. pair of studs 140 are spaced apart), capable of keeping the anterior and posterior walls separated during suction. As to claims 5-6, note a suction connector portion 62 capable of connecting the interior portion of the main body to a vacuum suction source (Fig. 1; column 3 lines 35-37, 48-50). As to claim 8, the shape formed by the bridge correspond to the shape of the anterior wall and/or posterior wall, since the bridge is protruding from the interior of the pocket 50. As to claim 9, note the perforations 54. As to claim 10, note the slit/channel (best pointed to by reference numeral 58 in Fig. 4) formed on anterior wall. Alternatively, the device has scallops, wherein the troughs between the scallops are considered to be the slits as claimed. As to claim 11, Rhoades discloses the mouthpiece 50 being formed of resilient elastomeric material (column 6 lines 21-27); therefore there is a resilience of such material which is capable of causing the cheek retractor portion (side scallops 56) to retract a cheek of the patient away from the teeth of the patient. As to claim 12, the bulb 144 is considered to be equivalent to the claimed stability bar.

As to claim 14, note that the claim language "by injection-molded" is a product-by-process recitation in a product claim. Even though product-by-process recitation is limited by and defined by the recited process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is

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unpatentable even though the prior product was made by a different process. *In re Thorpe*, 777 F.2d 695, 227 USPQ 964 (Fed. Cir. 1985). In this case, Rhoades discloses the end product and the structures thereof as claimed as detailed above; the device shown comprised of the main body, cheek retractor portion, and suction connection portion, all of which are essential portions forming the device as one piece. The burden is shifted to applicant to show an unobvious difference between Rhoades' device and the invention that would have resulted from the injection molding process. As to claim 16, the scallops 56 formed thereon the anterior and posterior walls make the walls having different thicknesses (Fig. 1). As to claim 17-22, note the detachable mouth prop 68 having a mouth prop 68 and a strap portion 73 comprising an opening 70 corresponding to a plug 62 connected to the main body 50 (Fig. 1).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. **Claims 3-4 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Rhoades in view of Black (2009/0274991).** Rhoades discloses the invention substantially as claimed except for wave-shaped bridge structure. Black et al. discloses an intraoral suction device comprising a wave-shaped bridge structure 48c having formed therein the interior wall of the device 40 (Fig. 3B; paragraph 80). Note that the troughs between bridges/transverse walls 48c allow for communication with the suction source. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Rhoades by forming

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such bridge/transverse walls therein the interior of the intraoral device as taught by Black et al. in order to reinforce the device while still allowing effective suction.

8. **Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rhoades in view of Sclafani (5,890,899).** Rhoades discloses the invention substantially as claimed including the material used to form the device being flexible, translucent, high heat-resistant, as evidenced by disclosure of sterilization for reuse (column 5 lines 20-21; column 6 lines 21-27). However, Rhoades fails to disclose the material being silicone-base. Sclafani discloses a dental suction isolator device formed of silicone-based material (Figs. 1-9, column 8 lines 10-15). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make Rhoades' device from silicone-based material as taught by Sclafani to be a known alternative suitable known material while yielding the same and/or predictable results.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Hao D. Mai whose telephone number is (571) 270-3002. The examiner can normally be reached on Monday-Friday 8:00AM – 4:30PM. If attempts to reach the examiner by telephone are unsuccessful, please contact the examiner's supervisor, Cris Rodriguez, at (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

10. 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

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PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hao D Mai/
Examiner, Art Unit 3732