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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/009,375	12/31/2008	6202649	004859.00063	9970

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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 03/10/2011

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



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(THIRD PARTY REQUESTER'S CORRESPONDENCE ADDRESS)

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EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

REEXAMINATION CONTROL NO. 90/009,375.

PATENT NO. 6202649.

ART UNIT 3991.

Enclosed is a copy of the latest communication from the United States Patent and Trademark Office in the above identified *ex parte* reexamination proceeding (37 CFR 1.550(f)).

Where this copy is supplied after the reply by requester, 37 CFR 1.535, or the time for filing a reply has passed, no submission on behalf of the *ex parte* reexamination requester will be acknowledged or considered (37 CFR 1.550(g)).

**Notice of Intent to Issue
Ex Parte Reexamination Certificate**


Control No. 90/009,375	Patent Under Reexamination 6202649	
Examiner BRENDA BRUMBACK	Art Unit 3991	

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

1. Prosecution on the merits is (or remains) closed in this *ex parte* reexamination proceeding. This proceeding is subject to reopening at the initiative of the Office or upon petition. Cf. 37 CFR 1.313(a). A Certificate will be issued in view of
- (a) Patent owner's communication(s) filed: 11/10/09 & 10/25/10.
 - (b) Patent owner's late response filed: _____.
 - (c) Patent owner's failure to file an appropriate response to the Office action mailed: _____.
 - (d) Patent owner's failure to timely file an Appeal Brief (37 CFR 41.31).
 - (e) Other: _____.
- Status of *Ex Parte* Reexamination:
- (f) Change in the Specification: Yes No
 - (g) Change in the Drawing(s): Yes No
 - (h) Status of the Claim(s):
 - (1) Patent claim(s) confirmed: 4, 12 and 20.
 - (2) Patent claim(s) amended (including dependent on amended claim(s)): _____
 - (3) Patent claim(s) canceled: _____.
 - (4) Newly presented claim(s) patentable: _____.
 - (5) Newly presented canceled claims: _____.
 - (6) Patent claim(s) previously currently disclaimed: _____
 - (7) Patent claim(s) not subject to reexamination: 1-3,5-11,13-19,21 and 22.
2. Note the attached statement of reasons for patentability and/or confirmation. Any comments considered necessary by patent owner regarding reasons for patentability and/or confirmation must be submitted promptly to avoid processing delays. Such submission(s) should be labeled: "Comments On Statement of Reasons for Patentability and/or Confirmation."
3. Note attached NOTICE OF REFERENCES CITED (PTO-892).
4. Note attached LIST OF REFERENCES CITED (PTO/SB/08 or PTO/SB/08 substitute).
5. The drawing correction request filed on _____ is: approved disapproved.
6. Acknowledgment is made of the priority claim under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some* c) None of the certified copies have
 been received.
 not been received.
 been filed in Application No. _____.
 been filed in reexamination Control No. _____.
 been received by the International Bureau in PCT Application No. _____.
- * Certified copies not received: _____.
7. Note attached Examiner's Amendment.
8. Note attached Interview Summary (PTO-474).
9. Other: _____.


PADMASHRI PONNALURI
PRIMARY EXAMINER

/BRENDA BRUMBACK/
Primary Examiner, Art Unit 3991


Deborah D. Jones
Supervisory Patent Examiner
CRU - Art Unit 3991

cc: Requester (if third party requester)

U.S. Patent and Trademark Office
PTOL-469 (Rev. 05-10)

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Part of Paper No 20110222

***Ex Parte* Reexamination**

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STATEMENT OF REASONS FOR PATENTABILITY AND/OR CONFIRMATION

The following is an examiner's statement of reasons for patentability and/or confirmation of claims 4, 12, and 20 of US Patent 6,202,649 to Williams.

Patented claims 4, 12, and 20 are drawn to a process for substantially preventing the formation of at least one nitrosamine in a harvested tobacco plant comprising drying the plant in a controlled environment free of combustion exhaust gases with an airflow sufficient to substantially prevent an anaerobic condition, wherein the controlled environment is provided by controlling at least one of humidity, temperature and airflow. The '649 patent specification describes substantial prevention of nitrosamines as achieving levels typically less than about 0.16 µg/ml (equivalent to 0.16 ppm) combined tobacco-specific nitrosamines (TSNAs) (see the '649 patent specification at column 15, line 64, through column 16, line 3).

Peele teaches a process for providing tobaccos of low TSNAs by avoiding exhaust gases in the environment and by oxygenating the environment during the curing process. Peel describes his process as producing tobaccos possessing total TSNA levels less than 2 parts per million (ppm), typically less than 1.5 ppm, frequently less than 1 ppm, and preferably less than 0.5 ppm, based on the dry weight of the cured tobacco (see Peele at column 7, line 59 through column 8, line 1). While the curing process described by Peele provides reduced levels of TSNAs in tobaccos, it does not substantially prevent formation of TSNAs, which is set forth in the '649 specification as levels lower than 0.16 ppm. Furthermore, Patent owner's arguments directed to priority to Provisional application 60/100,372, filed with the Response of 11/10/09, are persuasive. The present claims are entitled to the filing date of the Provisional application, which was filed 09/15/98. Peele, which has an effective filing date of 04/26/99, is subsequently removed as prior art.

Tohno teaches a process for curing domestic tobacco by an indirect heating method which excludes exhaust gases and incorporates warm, moist air. Tohno is silent as to formation of TSNA's. As is evidenced by the Lee Declaration, the curing

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conditions described in Tohno actually favor the formation of TSNAs. Therefore, the process described by Tohno is distinct from and does not inherently anticipate the process of the patented claims.

Azumano teaches a process for curing tobacco by controlling airflow circulation. Azumano is silent as to formation of TSNAs. Like Tohno, the process described by Azumano is a high humidity process which does not substantially prevent the formation of TSNAs.

Wiernik teaches that TSNAs are formed in the reaction of secondary and tertiary amines found in tobacco leaves and postulates that bacteria are involved in the process. Wiernik does not teach controlling the formation of TSNAs by controlling the environment in which the tobacco is cured.

Scanlan teaches that nitrosamines are formed during direct-fire drying in production of nonfat dry milk due to the reaction of secondary and tertiary amines with oxides of nitrogen produced by the combustion process. Scanlan teaches inhibition of their formation by using an indirect-fire process. Scanlan does not teach substantial prevention of nitrosamines by controlling humidity, temperature, and/or airflow.

The prior art of record does not teach or render obvious the claimed process for substantial prevention of TSNAs by preventing the introduction of exhaust gases and by controlling at least one of humidity, temperature, and airflow so as to prevent an anaerobic condition.

Conclusion


Claims 4, 12, and 20 are confirmed.

Claims 1-3, 5-11, 13-19, and 21-22 are not under reexamination.

Any comments considered necessary by PATENT OWNER regarding the above statement of reasons for patentability and/or confirmation must be submitted promptly to avoid processing delays. Such submission by the patent owner should be labeled: "Comments on Statement of Reasons for patentability and/or Confirmation" and will be placed in the reexamination file.

Signed:

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