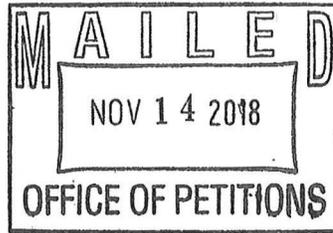




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METROLEXIS LAW GROUP, PLLC
900 17th Street, NW
Suite 320
Washington, DC 20006

In re Application of:	:	
Usda, et al.	:	
Application No. 11/662,902	:	DECISION ON PETITION
PCT No.: PCT/JP2005/17604	:	
International Filing Date: September 15, 2005	:	
Attorney Docket No.: MIY.001.0180.PC	:	
For: Mobile Communication System, Wireless	:	
Control Station, Wireless Base Station, Mobile	:	
Station, and Mobil Communication Method	:	
	:	

This is a decision on petition filed on August 29, 2018, which is being treated as a petition under 37 CFR 1.181 requesting that the Director exercise supervisory authority and overturn the decision of July 31, 2018, by the Director of Technology Center 2600 (Technology Center Director), which Technology Center decision refused to grant petitioners' request to reassign the application to another examiner and Supervisory Patent Examiner.

The petition to direct the Technology Center Director to assign the application to a new examiner and Supervisory Patent Examiner is **DENIED**.

RELEVANT BACKGROUND

The above-identified application was filed as a Patent Cooperation Treaty (PCT) international application on September 15, 2005.

On September 12, 2007, the United States Designated/Elected Office (DO/EO/US) issued a NOTICE OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. § 371 and 37 CFR 1.495 (Form PCT/DO/EO/903) reflecting a 35 U.S.C. § 371(c)(1), (c)(2), and (c)(4) date of April 26, 2007.

A non-final Office action was issued on December 10, 2009. The Office action of December 10, 2009 included, *inter alia*: (1) a rejection of claims 1 through 3, 6 through 8, 10, 12, 13, and 15

under 35 U.S.C. 102(b)¹ as being anticipated by Blanc et al. (EP1033849); and (2) a rejection of claim 5 under 35 U.S.C. 103(a) as being unpatentable over Blanc et al. in view of Tamio (Patent Abstracts of Japan Publication Number 02-295239).

A reply to the Office action of December 10, 2009 was filed on March 10, 2010. The reply of March 10, 2010, included an amendment to the claims. The amendment of March 10, 2010: (1) amended claims 1, 5, 6, 9 through 12, and 15; (2) cancelled claims 2, 3, 7, 8, and 13; and (3) added new claims 16 through 21.

A non-final Office action was issued on September 2, 2010. The Office action of September 2, 2010 included, *inter alia*: (1) a rejection of claims 1, 4, 6, 9, and 16 through 18 under 35 U.S.C. 103(a) as being unpatentable over AAPA (Applicant's Admitted Prior Art) in view of Blanc et al.; (2) a rejection of claims 10 through 12, 14, and 20 under 35 U.S.C. 102(a) as being anticipated by Blanc et al.; and (3) an objection to claims 5, 19, and 21 as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form.

A reply to the Office action of September 2, 2010 was filed on December 2, 2010. The reply of December 2, 2010, included an amendment to the claims. The amendment of December 2, 2010 amended claims 1, 6, 10, 12, and 15.

A final Office action was issued on February 17, 2011. The Office action of February 17, 2011 included, *inter alia*: (1) a rejection of claims 1, 4, 6, 9, and 16 through 18 under 35 U.S.C. 103(a) as being unpatentable over AAPA in view of Blanc et al.; (2) a rejection of claims 10 through 12, 14, and 20 under 35 U.S.C. 102(a) as being anticipated by Blanc et al.; and (3) an objection to claims 5, 19, and 21 as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form.

A reply to the Office action of February 17, 2011 was filed on May 17, 2011. The reply of May 17, 2011, included a request for continued examination, along with the request for continued examination fee of \$810 set forth in § 1.17(e), and a submission under 37 CFR 1.114 in the form of an amendment amending claims 1, 6, 10, 12, and 15. An information disclosure statement was also filed on June 29, 2011. A supplemental reply including an amendment, amending claims 1, 6, 10, 12, and 15 for clarification purposes, were filed on February 23, 2012.

¹ Section 4 of the Leahy-Smith America Invents Act (AIA) designated 35 U.S.C. § 112, ¶¶ 1 through 6, as 35 U.S.C. §§ 112(a) through (f), effective as to applications filed on or after September 16, 2012. See Pub. L. No. 112-29, § 4, 125 Stat. 284, 293-97 (2011). Section 3 of the AIA revised 35 U.S.C. §§ 102 and 103, effective as to applications ever having a claim with an effective filing date on or after March 16, 2013, or ever having a reference under 35 U.S.C. §§ 120, 121, or 365(c) to any patent or application that ever contained such a claim with an effective filing date on or after March 16, 2013. See Pub. L. No. 112-29, § 3, 125 Stat. at 285-293. The above-identified application was filed as a PCT application on September 15, 2005. Therefore, this decision refers to the pre-AIA versions of 35 U.S.C. §§ 102, 103, and 112.

A non-final Office action was issued on March 13, 2013. The Office action of March 13, 2013 included, *inter alia*: (1) a rejection of claims 1, 4, 6, 9, and 16 through 18 under 35 U.S.C. 103(a) as being unpatentable over AAPA in view of Blanc et al. and Sebire et al. (US Patent Application Publication Number US20040120302A1); (2) a rejection of claims 10 through 12, 14, and 15, and 20 under 35 U.S.C. 103(a) as being unpatentable over Blanc et al. in view of Sebire et al.; and (3) an objection to claims 5, 19, and 21 as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form.

A reply to the Office action of March 13, 2013 in the form of a notice of appeal and a request for pre-appeal brief review was filed on June 11, 2013.

A Notice of Panel Decision from Pre-Appeal Brief Conference Request was issued on July 3, 2013, indicating the application remains under appeal and that petitioners must submit an appeal brief in accordance with the provisions of 37 CFR 41.37.

A request for continued examination, including a request for continued examination fee of \$1,700 set forth in § 1.17(e) and a submission under 37 CFR 1.114 in the form of an amendment were submitted on August 9, 2013.

A non-final Office action was issued on September 11, 2013. The Office action of September 11, 2013 included, *inter alia*: (1) a rejection of claims 1, 4, 6, 9 through 12, 14 through 18, and 20 as being unpatentable over Blanc et al. in view of Vasudevan et al. (US Patent Application Publication Number US20050030953A1) and (2) an objection to claims 5, 19, and 21 as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form.

A reply to the Office action of March 13, 2013, in the form of a notice of appeal and a request for pre-appeal brief review, was filed on December 11, 2013.

A Notice of Panel Decision from Pre-Appeal Brief Conference Request was issued on January 13, 2014, indicating the application remains under appeal and that petitioners must submit an appeal brief in accordance with the provisions of 37 CFR 41.37.

An appeal brief was filed on February 13, 2014. A Notification of Non-Compliant Appeal Brief was issued on March 14, 2014, because the appeal brief filed on February 13, 2014, was defective for failing to comply with 37 CFR 41.37(c)(1)(v). A supplemental appeal brief was filed on April 8, 2014.

An examiner's answer in response the appeal brief on February 13, 2014 and April 8, 2014 was issued on October 6, 2014. The examiner's answer of October 6, 2014, *inter alia*, maintained the rejection of claims 1, 4, 6, 9 through 12, 14 through 18 and 20.

A Request for Oral Hearing was filed on December 3, 2014. An oral hearing was conducted on January 9, 2017, before the Patent Trial and Appeal with appellant in attendance.

The Patent Trial and Appeal Board issued a Decision on Appeal on January 25, 2017. The Decision on Appeal affirmed the examiner's rejection of claims 1, 4, 6, 9 through 12, and 14 through 18, and 20.

A request for continued examination, along with the request for continued examination fee of \$1,700 set forth in § 1.17(e), and a submission under 37 CFR 1.114 in the form of an amendment to the claims and an information disclosure statement were filed on March 22, 2017.

A non-final Office action was issued on April 7, 2017. The Office action of April 7, 2017 included, *inter alia*: (1) a rejection of claims 1, 4, 6, 9 through 12, 14 through 18, and 20 as being unpatentable over Blanc et al (EP1033849A1) in view of Lee et al. (US Patent Application Publication Number US2050025100A1) and Kanterakis (US Patent Application Publication Number US2004/0131106A1) and (2) an objection to claims 5, 19, and 21 as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

A reply to the Office action of April 7, 2017 was filed on September 7, 2017. The reply of September 7, 2017, included an amendment to the claims. The amendment of September 7, 2017 amended claims 1, 6, 10, 12, 15.

A final Office action was issued on December 18, 2017. The Office action of December 18, 2017 included, *inter alia*: (1) a rejection of claims 1, 4, 6, 9 through 12, 14 through 18, and 20 as being unpatentable over Kwak et al. (US Patent Application Publication Number US2004/0198369A1) in view of Terry et al. (US Patent Application Publication Number US2005/0249133A1) and (2) an objection to claims 5, 19, and 21 as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

A reply to the Office action of December 18, 2017 was filed on March 19, 2018. The reply of March 19, 2018, included a request for continued examination, along with the request for continued examination fee of \$1,900 set forth in § 1.17(e), and a submission under 37 CFR 1.114 in the form of an amendment amending claims 1, 6, 10, 12, and 15.

A non-final Office action was issued on April 12, 2018. The Office action of April 12, 2018 included, *inter alia*: (1) a rejection of claims 1, 6, 10, 12, and 15 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement; (2) a rejection of claims 1, 4, 6, 9 through 12, 14 through 18, and 20 under 35 U.S.C. 103(a) as being unpatentable over Kwak et al. (US Patent Application Publication Number US2004/0198369A1) in view of Terry et al. (US Patent Application Publication Number US2005/0249133A1) and Chen et al. (US Patent Application Publication Number US2003/0139140A1); and, (3) an objection to claims 5, 19, and 21 as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

A reply to the Office action of April 12, 2018 was filed on July 12, 2018.

A petition under 37 CFR 1.182 was also filed on July 12, 2018, requesting that the Director transfer the above-identified application for examination under a new examiner and Supervisory Patent Examiner. The Technology Center Director treated the petition of July 12, 2018, under 37 CFR 1.181 and issued a decision denying the petition on July 31, 2018.

A petition to the Director was filed on August 29, 2018, seeking supervisory review of the decision of July 31, 2018 and on the petition filed July 12, 2018.

A final Office action was issued on September 10, 2018 (prior to a decision on the petition of August 29, 2018). The Office action of September 10, 2018 included, *inter alia*: (1) a rejection of claims 1, 6, 10, 12, and 15 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement; (2) a rejection of claims 1, 4, 6, 9 through 12, 14 through 18, and 20 under 35 U.S.C. 103(a) as being unpatentable over Kwak et al. (US patent Application Publication Number US2004/0198369A1) in view of Terry et al. (US Patent Application Publication US2005/0249133A1) and Chen et al. (US Patent Application Publication Number US2003/0139140A1); and, (3) an objection of claims 5, 19, and 21 as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

STATUTE AND REGULATION

35 U.S.C. § 131 states:

The Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor.

35 U.S.C. § 132 provides that:

(a) Whenever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application; and if after receiving such notice, the applicant persists in his claim for a patent, with or without amendment, the application shall be reexamined. No amendment shall introduce new matter into the disclosure of the invention.

(b) The Director shall prescribe regulations to provide for the continued examination of applications for patent at the request of the applicant. The Director may establish appropriate fees for such continued examination and shall provide a 50 percent reduction in such fees for small entities that qualify for reduced fees under section 41(h)(1).

35 U.S.C. § 134 provides that:

(a) PATENT APPLICANT.— An applicant for a patent, any of whose claims has been twice rejected, may appeal from the decision of the primary examiner to the Patent Trial and Appeal Board, having once paid the fee for such appeal.

(b) PATENT OWNER.— A patent owner in a reexamination may appeal from the final rejection of any claim by the primary examiner to the Patent Trial and Appeal Board, having once paid the fee for such appeal.

37 CFR 1.181 provides that:

(a) Petition may be taken to the Director:

(1) From any action or requirement of any examiner in the *ex parte* prosecution of an application, or in *ex parte* or *inter partes* prosecution of a reexamination proceeding which is not subject to appeal to the Patent Trial Appeal Board or to the court:

(2) In cases in which a statute or the rules specify that the matter is to be determined directly by or reviewed by the Director; and

(3) To invoke the supervisory authority of the Director in appropriate circumstances. For petitions involving action of the Patent Trial and Appeal Board, see § 41.3 of this title.

(b) Any such petition must contain a statement of the facts involved and the point or points to be reviewed and the action requested. Briefs or memoranda, if any, in support thereof should accompany or be embodied in the petition; and where facts are to be proven, the proof in the form of affidavits or declarations (and exhibits, if any) must accompany the petition.

(c) When a petition is taken from an action or requirement of an examiner in the *ex parte* prosecution of an application, or in an *ex parte* or *inter partes* prosecution of a reexamination proceeding, it may be required that there have been a proper request for reconsideration (§ 1.111) and a repeated action by the examiner. The examiner may be directed by the Director to furnish a written statement, within a specified time, setting forth the reasons for his or her decision upon the matters averred in the petition, supplying a copy to the petitioner.

(d) Where a fee is required for a petition to the Director the appropriate section of this part will so indicate. If any required fee does not accompany the petition, the petition will be dismissed.

(e) Oral hearing will not be granted except when considered necessary by the Director.

(f) The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable.

(g) The Director may delegate to appropriate Patent and Trademark Office officials the determination of petitions.

37 CFR 1.182 provides that:

All situations not specifically provided for in the regulations of this part will be decided in accordance with the merits of each situation by or under the authority of the Director, subject to such other requirements as may be imposed, and such decision will be communicated to the interested parties in writing. Any petition seeking a decision under this section must be accompanied by the petition fee set forth in § 1.17(f).

OPINION

Petitioners initially argue that the Technology Center Director lacked properly delegated authority to decide the petition of July 12, 2018, which was originally filed under 37 CFR 1.182, but treated under 37 CFR 1.181. Petitioners assert that decision issued by Technology Center Director on July 31, 2018, is improper and *ultra vires* because the authority to decide petitions under 37 CFR 1.182 is delegated the Deputy Commissioner for Patent Examination Policy. Petitioners further argue that the examiner acted improperly and with bias against the petitioners when he included the statement “[i]t was unclear if Mr. Scott would present the examiner’s suggestion to the applicant or not” in the interview summary dated March 2, 2018, and that the Technology Center Director unilaterally and improperly expunged this statement from the record without the request of petitioners contrary to 37 CFR 1.59(a) and (b) in an attempt to delete evidence of hostility exhibited by the examiner. Petitioners argue that these actions on the part of the examiner and Technology Center Director, as well as the extraordinary duration of the pendency of the application, and the examiner’s failure to provide an examination that is in compliance with 35 U.S.C. § 132(a), evidence bias on the part of the examiner. Petitioners request that: (1) the Director in his authority, or the delegated official, the Office for the Deputy Commissioner for Patent Examination Policy, conduct a *de novo* review the petition of July 12, 2018; (2) the decision of July 31, 2018, be deemed improperly rendered and without legal effect by being improperly decided by a Technology Center Director without proper delegated authority; (3) the decision of July 31, 2018 be deemed improperly decided on the merits (notwithstanding the lack of delegated authority to the Technology Center Director); and (4) the action in the decision of July 31, 2018, unilaterally expunging information from the record in contravention to 37 CFR 1.59 be deemed improper and without legal effect and the original information be restored to the record.

With respect to petitioners’ argument that the Technology Center Director lacks the delegated authority to decide the petition filed on July 12, 2018, 37 CFR 1.181(g) provides that the Director may delegate the determination of petitions to appropriate Patent and Trademark Office officials. Questions properly handled under 37 CFR 1.182 are “[a]ll situations not specifically provided for in the regulations”. However, supervisory authority to review any action or requirement of any examiner in the *ex parte* prosecution of an application, or in *ex parte* or *inter*

partes prosecution of a reexamination proceeding, which is not subject to appeal to the Patent Trial and Appeal Board or to the court, is provided for in the regulations under 37 CFR 1.181.

In the petition of July 12, 2018, petitioners specifically requested the Director to invoke supervisory authority to review various alleged actions by the examiner and transfer the application to a new examiner and Supervisory Patent Examiner. MPEP § 1002.02(c) 3. indicates that the Technology Center Director has been delegated the authority to act on petitions “invoking the supervisory authority of the Director of the USPTO under 37 CFR 1.181 involving any *ex parte* action or requirement in a patent application by the examiner which is not subject to appeal (37 CFR 1.191) and not otherwise provided for”. Therefore, the petition of July 12, 2018 was appropriately decided by the Technology Center Director as a petition under 37 CFR 1.181 through the authority delegated by the Director of the USPTO. Nonetheless, the undersigned has given *de novo* review to the issues and arguments raised in the petitions of August 29, 2018 and July 12, 2018.

With respect to the petitioners’ objection to the actions taken by the Technology Center Director in the decision issued July 31, 2018, to expunge the interview summary issued March 2, 2018 and to enter an updated interview summary, the Office may remove statements from the record found to be “of such a character as to warrant striking them”. See *Strickland v. Glasser*, 214 USPQ 549, 551 (Comm’r. Pats. 1980). For instance, the Office will electronically remove documents from the Official file found to not comply with 37 CFR 1.3. See *Notification of the United States Patent and Trademark office Patent Application Records being Stored and Processed in Electronic Form*, 1271 Off. Gaz. Pat. Office 100 (June 17, 2003). In response to an indication made in the petition dated July 12, 2018 that the petitioners felt the statement was hostile, the Technology Center Director removed the interview summary issued March 2, 2018 and replaced it with an identical interview summary removing the statement in question. While the statement in question was not particularly objectionable, the Technology Center Director indicated that it was being removed on the basis that it was not germane to the merits of the application. As discussed previously, the Office may remove papers from the record when warranted and thus the Technology Center Director’s decision to expunge the interview summary issued March 2, 2018 (and replaced it with an interview summary removing the statement in question) was not *ultra vires*. Nonetheless, as petitioners have reintroduced the interview summary issued on March 2, 2018, to the record as part of exhibit C of the petition dated August 29, 2018, the interview summary issued on March 2, 2018 will now remain in the Official file of the above-identified application (as the statement in question is not offensive).

With respect to petitioners’ request for a new examiner, a petitioner is not entitled to choose his or her examiner, Supervisory Patent Examiner, or other deciding official. See *In re Arnott*, 19 USPQ2d 1049, 1052 (Comm’r Pat. 1991). A Technology Center Director has considerable latitude as part of his or her day-to-day management of a Technology Center or Group Art Unit (respectively) in deciding the assignment of applications to examiners and the transfer of applications between examiners. A petitioner seeking to invoke the Director’s supervisory authority to overrule the Technology Center Director and direct the Technology Center Director to assign an application to a new examiner (or Supervisory Patent Examiner) must demonstrate improper conduct amounting to bias or the appearance of bias on the part of the examiner (or

Supervisory Patent Examiner). *See In re Ovshinsky*, 24 USPQ2d 1241, 1251-52 (Comm'r Pats. 1992). The record of the instant application, including the statement made by the examiner in the interview summary issued March 2, 2018, simply do not indicate improper conduct amounting to bias or the appearance of bias on the part of the examiner or the Supervisory Patent Examiner so as to warrant directing the Technology Center Director to transfer the above-identified application to a new examiner and Supervisory Patent Examiner.

Further, a close review of the Office actions issued in the above-identified application reveal nothing more than explanations typically provided to an applicant when the examiner has reached the decision that the applicant's claims are not patentable. The specific statement in the interview summary dated March 2, 2018 that "[i]t was unclear if Mr. Scott would present the examiner's suggestion to the applicant or not" is not evidence of bias, hostility, or improper conduct on the part of the examiner, as it simply reflects the examiner's perception of petitioners' representative's reaction to the examiner's suggestion. Put simply, Office actions containing indications of allowable subject matter and interviews in which the examiner is making suggestions as to how an applicant may overcome the applied prior art, however acceptable to an applicant, are not the hallmark of bias or hostility on the part of an examiner. The Office actions issued in the above-identified application simply do not reveal any evidence of bias, appearance of bias, or any other improper conduct. A difference of opinion between the examiner and the applicant as to the patentability of one or more claims does not evidence bias, abuse, or any other improper conduct on the part of the examiner, much less that the examiner's replacement is justified. The decision to find a claim patentable or unpatentable is ultimately a judgment call over which reasonable people can disagree. *See Lear, Inc. v. Adkins*, 395 U.S. 653, 670 (1969).

In addition, the timeliness and nature of the Office actions issued in the instant application do not appear to be extraordinary. That is, to the extent that the duration of the pendency of the above-identified application is atypical, it does not appear to be caused by actions on the part of the examiner to extend prosecution purposefully (*e.g.*, repeated second action non-final Office actions or repeated *sua sponte* reopening of prosecution after final Office action or after appeal). As discussed previously, the examiner indicated allowable subject matter early in prosecution.

To the extent that petitioners are raising the issue of compliance of the Office actions in the above-identified applications with the notice requirement of 35 U.S.C. § 132(a): that section "merely ensures that an applicant 'at least be informed of the broad statutory basis for [the rejection of] his claims, so that he may determine what the issues are on which he can or should produce evidence[,]'" and "is violated when a rejection is so uninformative that it prevents the applicant from recognizing and seeking to counter the grounds for rejection. *See Chester v. Miller*, 906 F.2d 1574, 1578 (1990) (citations omitted). The Office actions in the above-identified application are sufficiently informative as to place petitioners on notice of the bases for the rejection of claims not indicated as allowable as to allow petitioners to recognize and counter the rejection(s).

Review of the propriety of a rejection *per se* (and its underlying reasoning) is by way of an appeal as provided by 35 U.S.C. § 134 and 37 CFR 1.191, and not by way of petition, even if the

petitioner frames the issues as concerning procedure versus the merits. *See Boundy v. US Patent & Trademark Office*, 73 USPQ2d 1468, 1472 (E.D. Va. 2004). An applicant dissatisfied with an examiner's decision in the second or subsequent rejection may appeal to the Patent Trial and Appeal Board (formerly the Board of Patent Appeals and Interferences). *See* 37 CFR 43.31(a)(1). As stated by the Court of Customs and Patent Appeals (a predecessor of the U.S. Court of Appeals for the Federal Circuit), the adverse decisions of examiners, which are reviewable by the Board, are those that relate, at least indirectly, to matters involving the rejection of claims. *See In re Hengehold*, 440 F.2d 1395, 1404 (CCPA 1971). It is well settled that the Director will not, on petition, usurp the functions or impinge upon the jurisdiction of the Patent Trial and Appeal Board. *See In re Dickerson*, 299 F.2d 954, 958 (CCPA 1962) (The Board will not ordinarily hear a question that should be decided by the Director on petition and the Director will not ordinarily entertain a petition where the question presented is a matter appealable to the Board). *See also* MPEP § 1201.

With respect to the sufficiency of the examiner's response to petitioners' arguments and exhibits, the correctness and underlying reasoning of an examiner's consideration of an applicant's arguments, exhibits, or evidence goes directly to a rejection of the pending claims under 35 U.S.C. § 103 and is appropriate for the applicant's substantive challenge to the rejection. *See In re Jung*, 637 F.3d 1356, 1363 (Fed. Cir. 2011). Since the correctness and underlying reasoning of the examiner's consideration of petitioners' arguments and exhibits goes directly to the rejections of the pending claims under 35 U.S.C. § 103, any review of the correctness and underlying reasoning of the examiner's consideration of petitioners' arguments and exhibits is by way of an appeal as provided by 35 U.S.C. § 134 and 37 CFR 1.191, and not by way of petition.

In view of the above, petitioners have not demonstrated improper actions amounting to bias or the appearance of bias on the part of the examiner or the Supervisory Patent Examiner involved with the prosecution of the instant application.

DECISION

For the above-stated reasons, the petition is granted to the extent that the Technology Center Director decision of July 31, 2018 has been reviewed and that the issues and arguments raised in the petitions of August 29, 2018 and July 12, 2018 have been given *de novo* review, but the petition is **DENIED** with respect to directing the Technology Center Director to transfer the above-identified application to a new supervisory patent examiner and examiner.

This constitutes a final decision on this petition. No further requests for reconsideration will be entertained. Judicial review of this petition decision may be available upon entry of a final agency action adverse to the petitioners in the instant application (e.g., a final decision by the Patent Trial and Appeal Board). *See* MPEP § 1002.02.

The application is being forwarded to the Technology Center 2600 to await a response by applicant to the outstanding final Office action issued on September 10, 2018.

A handwritten signature in black ink, appearing to read 'R. W. Bahr', written in a cursive style.

Robert W. Bahr
Deputy Commissioner for
Patent Examination Policy