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Kulangara Sivadas
50 Tavella Place
Foothill CA 92610

In re Application of	:	
Kulangara Sivadas	:	
Application No.: 12/931,101	:	DECISION ON PETITION
Filed: January 24, 2011	:	
For: MIND STRENGTH TRAINER	:	

This is a decision on the petition under 37 CFR 1.181 filed April 4, 2018 requesting that the Office of Petitions: (1) review¹ the petition filed May 15, 2017² to excuse petitioner from having to respond to the final Office action of April 25, 2017; (2) annul the final Office action and re-issue the final Office action in response to the arguments from the petitioner; and (3) direct the Technology Center to which the above-identified application is assigned (Technology Center) “to objectively answer the questions listed on the agenda presented for the meeting on October 18, 2017.”

The petition to excuse petitioner from having to respond to the final Office action of April 25, 2017, annul the final Office action and re-issue the final Office action in response to the arguments from the petitioner, and direct the Technology Center to address the questions listed on the agenda presented for the meeting on October 18, 2017 in the manner requested by petitioner is **DENIED**.

BACKGROUND

The above-identified application was filed on January 24, 2011.

¹ The requested relief in the instant petition was also requested in earlier petitions that were directed to and duly reviewed by the Director of Technology Center 3700 (Technology Center Director). An applicant dissatisfied with the decision of a Technology Center Director on a matter that is subject to petition under 37 CFR 1.181 may seek higher level review of that matter by the Deputy Commissioner for Patent Examination Policy. Therefore, the instant petition is being treated as a petition under 37 CFR 1.181 seeking higher level review of the Technology Center Director decision refusing petitioner’s requests in the petition filed May 15, 2017.

² The petition in question was filed by the petitioner via Office’s Electronic Filing System (EFS) on May 15, 2017 and accordingly the petition is regarded as having a filing date of May 15, 2017, although the petition may have been prepared by the petitioner on May 13, 2017.

Prosecution of the above-identified application resulted in a non-final Office action being issued on November 29, 2016. The Office action of November 29, 2016 included, *inter alia*: (1) a requirement for a substitute specification; (2) an objection to claim 130; (3) a rejection of claims 123 through 131 under 35 U.S.C. §112 ¶1³ for failure to comply with its written description requirement; (4) a rejection of claims 123 through 131 under 35 U.S.C. §112 ¶1 for failure to comply with its enablement requirement; (5) a rejection of claims 123 through 131 under 35 U.S.C. §112 ¶2 for being indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention; (6) a rejection of claims 123 through 131 under 35 U.S.C. §101 as not being directed to patent eligible subject matter; (7) a rejection of claims 123 through 128 under 35 U.S.C. §103(a) as being unpatentable over Kishi (US 5,311,877) in view of Greene (US 2008/0319335); (8) a rejection of claims 129 and 130 under 35 U.S.C. §103(a) as being unpatentable over Kishi and Greene, and further in view of Le et al. (US 2007/0173733); and (9) a rejection of claim 131 under 35 U.S.C. §103(a) as being unpatentable over Kishi and Greene, and further in view of Levin (6,167,298).

A reply to the November 29, 2016 non-final Office action was filed on January 31, 2017. The January 31, 2017 reply included an amendment amending claims 126 and 129, cancelling claims 130 and 131, and adding claims 132 and 133. A substitute specification was not provided with the January 31, 2017 response.

A notice of non-compliance was issued on February 21, 2017, in which the examiner reminded petitioner of the need for a substitute specification, as required in the November 29, 2016 Office action.

On March 16, 2017, petitioner submitted a substitute specification to amend the specification.

On April 25, 2017, the examiner promulgated a final Office action. The April 25, 2017 Office action included, *inter alia*: (1) an objection to the substitute specification filed March 16, 2017 under 35 U.S.C. § 132(a) for introducing new matter into the disclosure; (2) an objection of claims 126 and 129 for improper amendment markings; (3) a rejection of claims 123 through 129, 132, and 133 under 35 U.S.C. § 112 ¶1 for failing to comply with the written description requirement; (4) a rejection of claims 123 through 129, 132, and 133 under 35 U.S.C. § 112 ¶1 for failing to provide enablement commensurate with the scope of the claims; (5) a rejection of claims 123 through 129, 132, and 133 under 35 U.S.C. § 112 ¶2 for being indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention (the phrase “including but not limited to”); (6) a rejection of claims 123 through 129, 132, and 133 under 35 U.S.C. § 101 as not being directed to patent eligible subject matter; (7) a rejection of claims 123

³ Section 4 of the Leahy-Smith America Invents Act (AIA) designated pre-AIA 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 prior to September 16, 2012. Therefore, this decision refers to the pre-AIA version of 35 U.S.C. §§ 102, 103, and 112.

through 128 under 35 U.S.C. § 103(a) as being unpatentable over Kishi (US 5,311,877) in view of Greene (US 2008/0319335); (8) a rejection of claims 129 and 132 under 35 U.S.C. § 103(a) as being unpatentable over Kishi in view of Greene and further in view of Le et al. (US 2007/0173733); and (9) a rejection of claim 133 under 35 U.S.C. § 103(a) as being unpatentable over Kishi in view of Greene and further in view of Levin (US 6,167,298).

On May 15, 2017, petitioner filed a petition under 37 CFR 1.181 to the Technology Center Director. The May 15, 2017 petition requested reversal of the examiner's objections to the March 16, 2017 substitute specification under 35 U.S.C. § 132(a) for introducing new matter into the specification and review of the claim rejections in the April 25, 2017 final Office action.

On June 8, 2017, the Technology Center dismissed the May 15, 2017 petition. The June 8, 2017 petition decision explained that the relief requested by the petitioner was not the type of relief that may be obtained by petition, as the issues were directed to appealable matter.

Petitioner filed a renewed petition on July 2, 2017, requesting reconsideration of the arguments set forth in the June 8, 2017 petition and the Office address every request for relief sought by the petitioner.

On September 1, 2017, the Technology Center dismissed the July 2, 2017 petition. The September 1, 2017 petition decision responded to the arguments regarding the objection to the specification under 35 U.S.C. § 132(a) and rejections under 35 U.S.C. § 112 ¶1, § 101, and § 103(a). The petition decision further stated that arguments related to the rejections made in the April 25, 2017 Office action were directed to appealable matter.

On October 18, 2017, an interview was held at petitioner's request with the Technology Center Director, supervisory patent examiner (SPE) Mallari, examiner Weston, and the petitioner. The petitioner provided an agenda prior to the interview, which was related to the response set forth in the September 1, 2017 Technology Center Director decision. The Technology Center Director indicated that the examiner's rejections were reasonable and valid, the most efficient way to move forward would be for the petitioner to amend the claims to overcome the applied prior art, and suggested that examiner Weston and SPE Mallari could assist the petitioner to re-draft claims to capture allowable subject matter.

Petitioner filed a request for continued examination under 35 U.S.C. § 132(b) and 37 CFR 1.114 along with amended claims on October 24, 2017.

From November 7, 2017 through December 13, 2017, a series of emails were exchanged between the petitioner and examiner Weston. An examiner-initiated interview was conducted on December 1, 2017. In the interview summary of January 22, 2018, copies of the email correspondence between the examiner and the petitioner were made of record.

The Office issued non-final Office action on January 22, 2018. The January 22, 2018 Office action included, *inter alia*, (1) an objection to the substitute specification filed March 16, 2017 under 35 U.S.C. § 132(a) for introducing new matter into the disclosure; (2) an objection of claim 140 for improper amendment markings; (3) a rejection of claims 134 through 142 under 35 U.S.C. § 112 ¶1 for failing to comply with the written description requirement; (4) a rejection of claims 134 through 142 under 35 U.S.C. § 112 ¶1 for failing to provide enablement

commensurate with the scope of the claims; (5) a rejection of claims 140 through 142 under 35 U.S.C. § 112 ¶2 for being indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention (the phrase “including but not limited to”); (6) a rejection of claims 134 through 142 under 35 U.S.C. § 101 as not being directed to patent eligible subject matter; (7) a rejection of claims 134 through 139 under 35 U.S.C. § 103(a) as being unpatentable over Kishi (US 5,311,877) in view of Greene (US 2008/0319335); (8) a rejection of claims 140 and 141 under 35 U.S.C. § 103(a) as being unpatentable over Kishi in view of Greene and further in view of Le et al. (US 2007/0173733); and (9) a rejection of claim 142 under 35 U.S.C. § 103(a) as being unpatentable over Kishi in view of Greene and further in view of Levin (US 6,167,298).

Petitioner filed the instant petition on April 4, 2018, requesting that the Office of Petitions: (1) review the petition filed May 15, 2017 to excuse the petitioner from having to respond to the final Office action of April 25, 2017; (2) annul the final Office action and re-issue the final Office action in response to the arguments from the petitioner; and (3) direct the Technology Center “to objectively answer the questions listed on the agenda presented for the meeting on October 18, 2017.”

Petitioner filed a response to the non-final Office action on April 10, 2018.

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. § 133 provides that:

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Director in such action, the application shall be regarded as abandoned by the parties thereto.

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 1.135 provides that (in part):

(a) If an applicant of a patent application fails to reply within the time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise.

(b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require. The admission of, or refusal to admit, any amendment after final rejection or any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment.

37 CFR 1.181(a) 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 and 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 the 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.

OPINION

Petitioner requests that the petition of May 13, 2017 be reevaluated by the Office of Petitions, and that the Technology Center be directed to objectively answer the questions listed on the agenda for the October 18, 2017 meeting. Petitioner specifically asserts, *inter alia*, that the examiner and/or Technology Center: (1) refuses to follow the agenda set by the petitioner, in which petitioner had raised questions regarding the decision of September 1, 2017; (2) has not responded to questions raised on the agenda of the meeting (interview) of October 18, 2017; (3) has issued a new Office action that repeats the examiner's prior rejections and arguments, and petitioner is not able to respond to this Office action.

As an initial matter, the instant petition was filed on April 4, 2018, more than two (2) months after the Technology Center Director's decision of September 1, 2017, which decision clearly indicated to the applicant that any request for reconsideration of the decision must be filed within two months of the mail date thereof.⁴ 37 CFR 1.181(f) provides, in part, that "[a]ny 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." The petition of May 13, 2017 was treated by the Technology Center Director in the decision dated June 8, 2017, and petition of July 2, 2017

⁴ The Technology Center Director's decision of September 1, 2017 specifically states that: "Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision, 37 C.F.R. § 1.181(f). No extension of time under 37 C.F.R. § 1.136(a) is permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181" and directed to the Office of the Deputy Commissioner for Patent Examination Policy at Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450." See decision of September 1, 2017 at page 14.

was treated by the Technology Center Director in the decision dated September 1, 2017. Any request for higher level review of the Technology Center Director decision of September 1, 2017 must have been submitted no later than November 1, 2017 (two months from September 1, 2017). *See* 37 CFR 1.181(f). Any request for administrative review of the examiner's treatment of the agenda proffered by petitioner for the meeting (interview) of October 18, 2017 is appropriately raised in a petition under 37 CFR 1.181 submitted no later than December 18, 2017 (two months from the date of the interview summary of October 30, 2017). *See id.* Accordingly, to the extent that the instant petition seeks administrative review of the Technology Center Director's decision of September 1, 2017, or that the Technology Center be directed to objectively answer the questions listed on the agenda for the October 18, 2017 meeting, the petition is **DENIED AS UNTIMELY**. *See* 37 CFR 1.181(f).

To annul the final Office action and re-issue the same in response to the arguments from the petitioner

This request by the petitioner is being considered as seeking a withdrawal of the finality of the Office action issued April 25, 2017. Petitioner lists the following as bases for the request: (1) the Office failed to respond to petitioner's traversals and (2) the new matter objection to the definition of "Mantra" is improper. Petitioner lists a number of items of traversal in the original petition that can be generally grouped into traversals of the objections to the specification and traversals of the rejections.

With respect to the traversals of the objections to the specification, the substitute specification filed by petitioner on March 16, 2017, is considered to be entered at this time. Thus, new matter objections to the specification are based on a comparison of the March 16, 2017 substitute specification with the specification originally filed on January 24, 2011. *See* MPEP § 608.04. As to the new matter objection to the definition of "mantra," the substitute specification includes the following new sentence regarding the term "mantra":

*An optimal stimuli (also known as a mantra in this context) is a stimuli that (a) can alter the mental process of (or in other words: capture the attention of, or distract, or surprise) a subject in a pleasant way and (b) **maintains its distractive power satisfactorily over multiple repetitions** (emphases added).*

Petitioner argues that the "Examiner overstepped her prosecution authority by, a) questioning the veracity and authenticity of evidence (observational data) produced by petitioner and b) accusing petitioner of lying." There is no evidence in the record for either of these statements. The examiner has provided a specific rebuttal to petitioner's arguments on pages 3 and 4 of the final Office action issued April 25, 2017 and again on pages 4 and 5 of the Office action issued January 22, 2018. In the January 22, 2018 Office action, the examiner stated that:

A new definition of 'mantra' was included in the material. This language has no support from Figure 7 or the paragraphs cited by Applicant. The word 'mantra' itself has not been identified as the new matter as contended by Applicant. How 'mantra' has been now defined is considered the new matter. In particular the language, "maintains its distractive power satisfactorily even after multiple repetitions" is not a definition that has explicit, implicit, or inherent support in the original disclosure. The new definition of 'mantra' is not an inherent definition, as

mantra as defined by Merriam-Webster is: a sound, word or phrase that is repeated by someone who is praying or meditating. Applicant appears to be creating a special definition, thus anything added with respect to that definition is not inherent.” As also noted in the decision by the Technology Center Director mailed September 1, 2017, “the question of new matter is not one of whether petitioner is able to authenticate evidence, but rather whether the specification as originally filed contains the amended material.” Here, the originally filed specification did not include the language “maintains its distractive power satisfactorily even after multiple repetitions.

Accordingly, as this language pertaining to the definition of “mantra” appears only in the specification and not in the currently pending claims, the objection thereto by the examiner under the provisions of 35 U.S.C. § 132(a) is proper. Accordingly, the request to deem this objection to be improper is **DENIED**. Petitioner can overcome this objection by cancelling the new matter.

With respect to the remaining objections to the inclusion of new matter in the March 16, 2017 substitute specification, as set forth in the April 25, 2017 final Office action, these objections pertain to instances of new matter that are also included in the currently pending claims. Ordinarily, an objection is petitionable, and a rejection is appealable, but when the objection is “determinative of the rejection” the matter may be addressed by the Board. See *In re Hengehold*, 440 F.2d 1395, 1403, 169 USPQ 473, 479 (CCPA 1971) and *Ex parte Frye*, 94 USPQ2d 1072, 1078 (Bd. Pat. App. & Int. 2010)(precedential). It is a long-standing practice of the Office that if both the claims and specification contain new matter either directly or indirectly, and there has been both a rejection and objection by the examiner, the issue becomes appealable and should not be decided by petition. See MPEP § 2163.06 (II).

As to the argument that the Office failed to respond to petitioner’s traversals, it is noted that the examiner has given a detailed response to the petitioner’s traversals of the objections on pages 2 through 7 of the April 25, 2017 final Office action. This response is sufficient to answer the specific rebuttals as presented by petitioner, as it fully complies with MPEP § 707.07(f) and answers the substance of the argument regarding the additions to the specification.

As for the traversals related to the claim rejections, these have been responded to in detail by the examiner, in the April 25, 2017 final Office action, on pages 7 through 12 pertaining to the rejection under 35 U.S.C. § 112 ¶1 for lack of written description, on pages 12 through 15 pertaining to the scope of enablement under the provisions of 35 U.S.C. § 112 (a) or 35 U.S.C. § 112 ¶1 (pre-AIA), on pages 17 through 21 for rejections under the provisions of 35 U.S.C. § 101 for claims directed to an abstract idea or non-statutory subject matter, and on pages 28 through 30 for rebuttals concerning the rejections based on 35 U.S.C. § 103(a).

As noted in the Technology Center Director petition decision issued on September 1, 2017, contrary to petitioner’s assertions, the examiner clearly sets forth the rejection of the claims and responds specifically to the substance of all of the petitioner’s arguments. MPEP § 707.07(f) states that (emphasis added) “where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant’s argument and **answer the substance of it.**” Accordingly, for an examiner’s response to be completely responsive, it is not required for the examiner to explicitly respond to every sentence of petitioner’s rebuttal as long as the substance of all questioned claim limitations are addressed.

The remaining arguments listed in the May 15, 2017 petition pertain to rejections of the claims rendering the underlying issue of appealable rejections. Petitioner should note that any substantive issues raised in the petitions filed May 15, 2017, July 2, 2017 and April 4, 2018 respectively, relate to the sufficiency of the rejections made by the examiner. With respect to the sufficiency of the examiner's response to petitioner's traversal of the rejections, the correctness and underlying reasoning of an examiner's consideration of an applicant's traversal goes directly to a rejection of the pending claims and is appropriate for the applicant's substantive challenge to the rejection. *In re Jung*, 637 F.3d 1356 (Fed. Cir. 2011), *See Jung*, 637 F.3d at 1363. Petitioner is reminded that (in the event petitioner is unable to persuade the examiner to withdraw the rejections in the above-identified application) 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 41.31, and not by way of petition under 37 CFR 1.181, even if an applicant frames the issues as concerning procedure versus the merits. *See Boundy v. U.S. 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 (PTAB). *See* 37 CFR 43.31(a)(l). 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.

Accordingly, the request in the petition to annul the final Office action and re-issue the same in response to the arguments from the petitioner is **DENIED**.

To excuse the petitioner from having to respond to the final Office action of April 25, 2017

Petitioner contends, in the May 15, 2017 petition, that the final Office action issued April 25, 2017 is "incomplete and invalid" because "these improprieties amount to a failure to articulate a *prima facie* case of unpatentability, the burden to rebut these 'rejections and objections' has not yet shifted to the petitioner according to MPEP § 706.07(a).⁵"

The April 25, 2017 final Office action set a shortened statutory period of three months from its mail date to respond. Extensions of time were available under 37 CFR 1.136. As the final Office action was neither vacated nor withdrawn, the applicant was required to respond within the specified time period to preserve the pendency of the application (see 37 CFR 1.135 and 35 U.S.C. § 133), regardless of whether a *prima facie* case of unpatentability of the claims has been established by the examiner.

Petitioner appears to be referencing an incorrect section of MPEP, as MPEP § 706.07(a) is pertinent to whether a final rejection is proper on second or subsequent action on the merits and not to the issue of allocation of the burden in each step of the prosecution process. *See*, for example, MPEP § 2142. With respect to petitioner's *prima facie* case requirement arguments, as discussed previously, 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 41.31, and not by way of petition under 37 CFR 1.181, even if a petitioner frames the issues as concerning procedure

⁵ See items 3 and 4 on page 10 of the petition filed May 15, 2017.

versus the merits. An applicant dissatisfied with an examiner's decision in the second or subsequent rejection may appeal to the Patent Trial and Appeal Board. *See* 37 CFR 41.31(a)(1).

The file record indicates that the petitioner filed a timely reply to the April 25, 2017 final Office action on October 24, 2017. Accordingly, the request to excuse the petitioner from having to respond to the final Office action of April 25, 2017 is **DENIED**.

Directing the Technology Center prosecuting his application to objectively answer the questions listed on the agenda presented for the meeting on October 18, 2017

An interview was conducted, at petitioner's request, on October 18, 2017, with the Technology Center Director, SPE Mallari, examiner Weston and the petitioner. Prior to the interview, petitioner submitted an agenda related to the decision by the Technology Center Director that was issued on September 1, 2017. The agenda⁶ captioned as "Petitioner's perception of Director Lorengo's denial dated 09/01/2017," lists nine items wherein petitioner identifies his interpretation of Technology Center Director decision and was seeking "only a consensus among all parties, on the inferences (interpretive of Director Lorengo's denial rulings) listed on the agenda." The Technology Center Director decision of September 1, 2017 gave a detailed reply to the issues raised by the petitioner in both his original and renewed petitions. Furthermore, the examiner has provided a detailed discussion of the action on the claims in both the April 25, 2017 final Office action and in the January 22, 2018 non-final Office action. The Office actions in the above-identified application have been reviewed and are consistent with Office actions in which there is disagreement between petitioner and the examiner on the patentability of the claims. Accordingly, as the Office's position on the application has been clearly set forth, the request to direct the Technology Center to objectively answer the questions listed on the agenda presented for the meeting on October 18, 2017, is **DENIED**.

DECISION

A review of the record, including a review of the petitions filed May 15, 2017 and July 2, 2017, indicates that the Technology Center Director did not abuse his discretion or act in an arbitrary and capricious manner in the petition decisions of June 8, 2017 and September 1, 2017. The record establishes that the Technology Center Director had a reasonable basis to support his findings and conclusion. The petition is granted to the extent that the decisions of the Technology Center Director of June 8, 2017 and September 1, 2017 have been reviewed, but is **DENIED** with respect to excusing petitioner from having to respond to the final Office action of April 25, 2017, annulling the final Office action or re-issuing the final Office action in response to the arguments from the petitioner, or directing the Technology Center to address the questions listed on the agenda presented for the meeting on October 18, 2017 in the manner requested by petitioner.

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 petitioner in the instant application (e.g., a final decision by the Patent Trial and Appeal Board). *See* MPEP § 1002.02.

⁶ Agenda is listed in the Image File Wrapper as Office Action Appendix with a file date of April 3, 2018.

The application is being forwarded to the Technology Center 3700 for action on the reply filed April 10, 2018 to the non-final Office action of January 22, 2018.

A handwritten signature in dark ink, appearing to read 'RWB', is positioned above the printed name.

Robert W. Bahr
Deputy Commissioner for
Patent Examination Policy