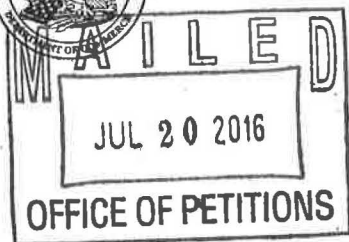




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Sheng Tai (Ted) Tsao
3906 Borgo Common.
Fremont CA 94538

In re Application of
Sheng Tai (Ted) Tsao
Application No. 13/282,445
Filed: October 26, 2011
Attorney Docket No.:
For: METHOD AND APPARATUS FOR
INFORMATION EXCHANGE OVER
A WEB BASED ENVIRONMENT

DECISION ON PETITION

This is a decision on the petition filed May 3, 2016, which is being treated as a petition under 37 CFR 1.181 to exercise supervisory review over the decision of the Director of Technology Center 2400 dated April 26, 2016, and to direct that the above-identified application be reassigned to a new examiner.

The petition to direct that the above-identified application be reassigned to a new examiner is **DENIED**.

BACKGROUND

A petition was filed on July 2, 2014. The petition of July 2, 2014 asserted that the rejections throughout the examination of the above-identified application were inappropriate and requested that the above-identified application be allowed. A Workgroup Quality Assurance Specialist of Technology Center 2400 dismissed the petition in a decision mailed on August 5, 2014.

A further petition was filed on March 28, 2016 requesting reconsideration of the petition decision mailed on August 5, 2014 and to reassign the above-identified application to a new examiner. The Technology Center Director of 2400 denied this petition in a decision mailed on April 26, 2016.

A final Office action was mailed on December 16, 2015. The final Office action mailed on December 16, 2015 included rejections of Claims 1, 5, 6, 15, 21, 22, 24, and 26-38 under 35 U.S.C. § 103(a) as unpatentable over Hwang, Qu et al., Decouchant, and Bertram.

The petition of March 28, 2016 asserted that the rejections of Claims 1, 5, 6, 15, 21, 22, 24, and 26-38 under 35 U.S.C. § 103(a) in the Office action of December 16, 2015 were inappropriate and requested that the above-identified application be reassigned to a new examiner. The Technology Center Director of 2400 denied the petition in a decision mailed April 26, 2016.

The present petition was filed requesting supervisory review of the decision of the Director of Technology Center 2400 mailed April 26, 2016.

OPINION

Petitioner argues that the rejections under 35 U.S.C. § 103(a) made throughout the prosecution of the present application are improper, contending that they result from the examiner's lack of understanding and misinterpretation of the references relied upon in making the rejections. Applicant also requests that a new examiner be assigned to the present application, contending that the examiner lacks knowledge of the art and has a bias against the applicant for being a pro se applicant. Petitioner's arguments have been considered, but they are not deemed to be persuasive for the reasons that follow.

Section 1201 of the Manual of Patent Examining Procedure (MPEP) provides that—

The United States Patent and Trademark Office (Office) in administering the Patent Laws makes many decisions of a substantive nature which the applicant may feel deny him or her the patent protection to which he or she is entitled. The differences of opinion on such matters can be justly resolved only by prescribing and following judicial procedures. Where the differences of opinion concern the denial of patent claims because of prior art or other patentability issues, the questions thereby raised are said to relate to the merits, and appeal procedure within the Office and to the courts has long been provided by statute (35 U.S.C. § 134).

See MPEP 1201.

Under 35 U.S.C. § 132(a), the refusal to grant claims because the subject matter as claimed is considered unpatentable is considered a "rejection". Any 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 not by way of petition. See *Boundy v. U.S. Patent & Trademark Office*, 73 USPQ2d 1468, 1472 (E.D. Va. 2004). Accordingly, 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). 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, 133 USPQ 39, 43 (CCPA 1962); see also MPEP 1201 ("The line of demarcation between appealable matters for the Board and petitionable matters for the Director of the U.S. Patent and Trademark Office (Director) should be carefully observed. 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."). Therefore, a rejection set forth in an Office action, such as the rejections of Claims 1, 5, 6, 15, 21, 22, 24, and 26-38 under 35 U.S.C. § 103(a) as unpatentable over Hwang, Qu et al., Decouchant, and Bertram in the final Office action of December 16, 2015, is not a matter that is properly reviewable via petition.

Furthermore, a mere difference of opinion between the examiner and the applicant as to the patentability of one or more claims does not evidence bias, abuse, or a lack of understanding on the part of the examiner, much less that the examiner's replacement is justified. As discussed in *In re Ovshinsky*, 24 USPQ2d 1241, 1251-1252 (Comm'r Pats. 1992), the standard is not whether the perception of an applicant regarding alleged bias is reasonable; rather, the issue is whether an applicant has demonstrated improper conduct, including bias or the appearance of bias, on the part of the examiner.

In the present case, petitioner has not demonstrated improper conduct, including bias or the appearance of bias, on the part of the examiner. In the final Office action mailed December 16, 2015, the examiner thoroughly explained the basis for his decision to reject Claims 1, 5, 6, 15, 21, 22, 24, and 26-38 under 35 U.S.C. § 103(a) as unpatentable over Hwang, Qu et al., Decouchant, and Bertram. A close review of the Office action of December 16, 2015 reveals nothing more than the explanation that is typically provided to an applicant when the examiner has reached the decision that one or more of the applicant's claims are not patentable. The Office action of December 16, 2015 does not reveal any evidence of bias, appearance of bias, or any other improper conduct. Differences in opinion between the examiner and applicant is not evidence of improper conduct or bias on the part of the examiner.

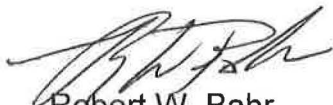
DECISION

The instant petition is granted to the extent that the action of the Technology Center Director has been reviewed, but is **denied** with respect to overruling the Technology Center Director's decision that the merits of a rejection are not properly reviewable via petition, and that there is no evidence of bias or improper conduct on the part of the examiner that would warrant assigning the above-identified application to a new examiner.

It is brought to petitioner's attention that the above-identified application has become abandoned for failure to reply within the meaning of 37 CFR 1.113 to the final Office action mailed on December 16, 2015. See 37 CFR 1.113(c) ("[r]eply to a final rejection or action must include cancellation of, or appeal from the rejection of, each rejected claim"). Revival of the application is a necessary pre-requisite action to any further proceedings related to this application in the USPTO.

This decision is final agency action within the meaning of 5 U.S.C. § 704 for purposes of seeking judicial review. *See* MPEP 1002.02.

Telephone inquiries concerning this decision may be directed to Vanitha Elgart at 571.272.7395.



Robert W. Bahr
Deputy Commissioner for
Patent Examination Policy