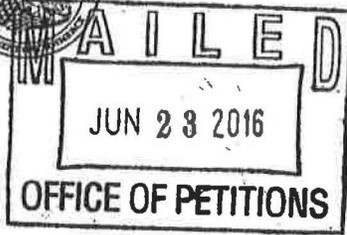




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Sheng Tai (Ted) Tsao
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Fremont CA 94538

In re Application of
Sheng Tai (Ted) Tsao
Application No. 13/470,696
Filed: May 14, 2012
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 11, 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 2100 dated May 3, 2016, and to direct that the above-identified application be allowed or reassigned to a new examiner.

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

BACKGROUND

A petition was filed on March 11, 2015. The petition of March 11, 2015 asserted that the rejections throughout the examination of the above-identified application were inappropriate and requested that the above-identified application be allowed. The Technology Center Director of 2100 dismissed the petition in a decision mailed April 9, 2015.

Further petitions were filed on April 29, 2015 and May 14, 2015 requesting reconsideration of the petition decision mailed April 9, 2015. The Technology Center Director of 2100 denied these petitions in a decision mailed June 12, 2015.

A final Office action was mailed on December 18, 2015. The final Office action mailed on December 18, 2015 included rejections of claims 1, 10, and 19 through 36 under 35 U.S.C. § 103(a) as unpatentable over Beck et al., Spataro et al., Chen et al., and Shappell et al.

A petition was filed on February 17, 2016. The petition of February 17, 2016 asserted that the rejections of claims 1, 10, and 19 through 36 under 35 U.S.C. § 103(a) in the Office action of December 18, 2015 were inappropriate and requested that the above-identified application be allowed or reassigned to a new examiner. The Technology Center Director of 2100 denied the petition in a decision mailed May 3, 2016.

Petitioner filed the present petition requesting supervisory review of the decision of the Director of Technology Center 2100 mailed May 3, 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. Petitioner 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 petitioner 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, 10, and 19 through 36 under 35 U.S.C. § 103(a) as unpatentable over Beck et al., Spataro et al., Chen et al., and Shappell et al. in the final Office action of December 18, 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 18, 2015, the examiner thoroughly explained the basis for his/her decision to reject claims 1, 10, and 19 through 36 under 35 U.S.C. § 103(a) as unpatentable over Beck et al., Spataro et al., Chen et al., and Shappell et al. A close review of the Office action of December 18, 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 18, 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.

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