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

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In re Application of :
Ramos de Miguel SR. Ángel et al. :
Application No. 17/942,553 : **DECISION ON PETITION**
Filed: 12 Sep 2022 :
For: ADVANCED ELECTRODE ARRAY :
INSERTION WITH CONDITIONING :

This is a decision on the petition filed August 28, 2024, pursuant to 37 CFR 1.181, requesting supervisory review and reconsideration of a decision issued on June 28, 2024, by the Director of Technology Center 3700 (hereinafter “Technology Center Director”), which decision refused to withdraw the finality of the Office action issued February 26, 2024.

The petition to overturn the decision issued on June 28, 2024, by the Technology Center Director and withdraw the finality of the Office action issued February 26, 2024, is **DENIED**.

BACKGROUND

The instant application was filed on September 12, 2022, as a division of application 15/707,197, now U.S. Patent No. 11,439,811.

A restriction requirement was issued on March 14, 2023, that identified three inventions: claims 1 through 12 (Group I); claims 13 through 22 (Group II); and claims 23 through 32 (Group III). A response was filed on May 15, 2023, wherein the invention of Group I was elected with traverse.

A nonfinal Office action was issued on June 22, 2023 (hereinafter “nonfinal”), that included, *inter alia*, (1) making the restriction requirement final and identifying claims 13 through 32 as withdrawn being directed to non-elected inventions; (2) a rejection of claims 4, 6, 7, and 9 under 35 U.S.C. 112(b)¹; (3) a rejection of claims 1, 3 through 6, and 8 through 12 under 35 U.S.C.

¹ 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 Leahy-Smith America Invents Act (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.

102(a)(1) as being anticipated by Kabot et al. (US 2015/0314122) (hereinafter “Kabot”); and (4) a rejection of claims 2 and 7 under 35 U.S.C. 103 as being unpatentable over Kabot in view of Spitzer et al. (US 2009/0125081) (hereinafter “Spitzer”).

Petitioners filed a reply to the nonfinal on October 23, 2023, that included, *inter alia*, the addition of claims 33 through 42 and cancelation of claims 14, 15, 17, 18, 20, 21, 22 and 26 through 32, along with arguments that: (1) a vast majority of petitioners’ arguments traversing the restriction requirement have not been addressed; (2) traversing the rejection of claims 4, 6, 7, and 9 under 35 U.S.C. 112(b); and (3) arguments traversing the rejections of claims 1, 3 through 6, and 8 through 12 under 35 U.S.C. 102(a)(1) as anticipated by Kabot and claims 2 and 7 under 35 U.S.C. 103 as being unpatentable over Kabot in view of Spitzer.

On February 26, 2024, a final Office action (hereinafter “final”) was issued, that included a response to arguments section; a rejection of claims 40 through 42 under 35 U.S.C. 112(d); a rejection of claims 1, 3 through 6, and 8 through 12 under 35 U.S.C. 102(a)(1) as anticipated by Kabot; a rejection of claims 2 and 7 under 35 U.S.C. 103 as being unpatentable over Kabot in view of Spitzer; a rejection of newly added claims 33 through 39 under 35 U.S.C. 103 as being unpatentable over Kabot in view of Haller et al. (US 2010/0114288) (hereinafter “Haller”); a rejection of newly added claim 40 under 35 U.S.C. 103 as being unpatentable over Kabot in view of Carter (US 2012/0316454) (hereinafter “Carter”); and a rejection of newly added claims 41 and 42 under 35 U.S.C. 103 as being unpatentable over Kabot in view of Carter, as applied to claim 40, and further in view of Mauch et al. (US 2012/0300953) (hereinafter “Mauch”).

A response to the final was filed on April 26, 2024, that included, *inter alia*, changing the status of claims 23 through 25 by identifying claims 23 through 25 as withdrawn along with arguments related to the restriction requirement and claim rejections in the final. Additional amendments to the claims were not made.

A petition was filed on April 26, 2024, under 37 CFR 1.181 to the Technology Center Director requesting withdrawal of the finality of the Office action of February 26, 2024.

The petition was dismissed by the Technology Center Director in a decision issued on June 28, 2024 (hereinafter “the Decision”).

In response to the petitioners’ reply filed April 26, 2024, the examiner issued an advisory action on July 11, 2024, maintaining the rejections and response to arguments set forth in the final and further noting that petitioners’ reply did not include specific and new arguments.

A Notice of appeal along with a Pre-Appeal Brief Conference Request were filed on August 12, 2024.

The instant petition under 37 CFR 1.181 was filed on August 28, 2024, requesting a reconsideration of the Decision and withdrawal of the finality of the Office action of February 26, 2024.

A panel decision on the pre-appeal brief request was issued on November 25, 2024, recommending that the appeal should proceed to the Patent Trial and Appeal Board (Board).

STATUTES AND REGULATIONS

35 U.S.C. § 132(a) states:

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.

35 U.S.C. § 134(a) states:

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 Board of Patent Appeals and Interferences, having once paid the fee for such appeal.

37 CFR 1.2 provides that:

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

37 CFR 1.104 provides, in part, that:

(a) *Examiner's action.*

(1) On taking up an application for examination or a patent in a reexamination proceeding, the examiner shall make a thorough study thereof and shall make a thorough investigation of the available prior art relating to the subject matter of the claimed invention. The examination shall be complete with respect both to compliance of the application or patent under reexamination with the applicable statutes and rules and to the patentability of the invention as claimed, as well as with respect to matters of form, unless otherwise indicated.

(2) The applicant, or in the case of a reexamination proceeding, both the patent owner and the requester, will be notified of the examiner's action.

The reasons for any adverse action or any objection or requirement will be stated in an Office action and such information or references will be given as may be useful in aiding the applicant, or in the case of a reexamination proceeding the patent owner, to judge the propriety of continuing the prosecution.

(b) *Completeness of examiner's action.* The examiner's action will be complete as to all matters, except that in appropriate circumstances, such as misjoinder of invention, fundamental defects in the application, and the like, the action of the examiner may be limited to such matters before further action is made. However, matters of form need not be raised by the examiner until a claim is found allowable.

(c) *Rejection of claims.*

(1) If the invention is not considered patentable, or not considered patentable as claimed, the claims, or those considered unpatentable will be rejected.

(2) In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified.

(3) In rejecting claims the examiner may rely upon admissions by the applicant, or the patent owner in a reexamination proceeding, as to any matter affecting patentability and, insofar as rejections in applications are concerned, may also rely upon facts within his or her knowledge pursuant to paragraph (d)(2) of this section.

37 CFR 1.113 provides that:

(a) On the second or any subsequent examination or consideration by the examiner the rejection or other action may be made final, whereupon applicant's, or for ex parte reexaminations filed under § 1.510, patent owner's reply is limited to appeal in the case of rejection of any claim (§ 41.31 of this title), or to amendment as specified in § 1.114 or § 1.116. Petition may be taken to the Director in the case of objections or requirements not involved in the rejection of any claim (§ 1.181). Reply to a final rejection or action must comply with § 1.114 or paragraph (c) of this section. For final actions in an inter partes reexamination filed under § 1.913, see § 1.953.

(b) In making such final rejection, the examiner shall repeat or state all grounds of rejection then considered applicable to the claims in the application, clearly stating the reasons in support thereof.

(c) Reply to a final rejection or action must include cancellation of, or appeal from the rejection of, each rejected claim. If any claim stands allowed, the reply to a final rejection or action must comply with any requirements or objections as to form.

37 CFR 1.181 provides, in part, 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.

(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.

(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.

37 CFR 1.191 provides that:

Appeals to the Patent Trial and Appeal Board under 35 U.S.C. 134(a) and (b) are conducted according to part 41 of this title.

37 CFR 41.31 provides, in part, that:

(a) *Who may appeal and how to file an appeal.* An appeal is taken to the Board by filing a notice of appeal.

(1) Every applicant, any of whose claims has been twice rejected, may appeal from the decision of the examiner to the Board by filing a notice of appeal accompanied by the fee set forth in § 41.20(b)(1) within the time period provided under § 1.134 of this title for reply.

(c) An appeal, when taken, is presumed to be taken from the rejection of all claims under rejection unless cancelled by an amendment filed by the applicant and entered by the Office. Questions relating to matters not affecting the merits of the invention may be required to be settled before an appeal can be considered.

(d) The time periods set forth in paragraphs (a)(1) through (a)(3) of this section are extendable under the provisions of § 1.136 of this title for patent applications and § 1.550(c) of this title for ex parte reexamination proceedings

OPINION

In requesting a withdrawal of the finality of the Office action of February 26, 2024, in the instant petition, petitioners have repeated the issues raised in the petition to the Technology Center Director about the alleged new grounds of rejection in the final not necessitated by claim amendment or filing of an IDS. Petitioners argue that claims 1, 3, 5, and 6 were not amended in response to the nonfinal, but the facts and/or rationales of the rejections of these claims were newly presented by the examiner in the Response to Arguments Section of the final.

Specifically, petitioners argue that new grounds of rejection were presented in the final:

- I.** Regarding claim 1, that new grounds of rejection were presented in the final. Specifically, that the response to the traversal of the rejection which includes citations to Kabot's paragraphs [0011], [0024], [0026], [0027], [0029], [0030], [0031], [0037], [0040], [0042], and [0043], where only one of these paragraphs was cited in the nonfinal;
- II.** Regarding claim 3, the response to the traversal of the rejection sets forth a new assertion that the claim does not limit "local position";
- III.** Regarding claim 5, the response to the traversal of the rejection presents a new fact and rationale by referring to paragraph [0123] in the specification; and
- IV.** Regarding claim 6, where the response to the traversal of the rejection sets forth a new assertion that the limitations "at least one read electrode" and "other read electrode" are not required, to be distinct and different.

In determining whether a ground of rejection is new, *The Manual of Patent Examining Procedure* (MPEP) § 1207.03(III) specifically provides:

A position or rationale that changes the “basic thrust of the rejection” will also give rise to a new ground of rejection. *In re Kronig*, 539 F.2d 1300, 1303, 190 USPQ 425 (CCPA 1976). However, the examiner need not use identical language in both the examiner’s answer and the Office action from which the appeal is taken to avoid triggering a new ground of rejection. It is not a new ground of rejection, for example, if the examiner’s answer responds to appellant’s arguments using different language, or restates the reasoning of the rejection in a different way, so long as the “basic thrust of the rejection” is the same. *In re Kronig*, 539 F.2d at 1303; see also *In re Jung*, 637 F.3d 1356, 1364–65 (Fed. Cir. 2001) (additional explanation responding to arguments offered for the first time “did not change the rejection” and appellant had fair opportunity to respond); *In re Noznick*, 391 F.2d 946, 949 (CCPA 1968) (no new ground of rejection made when “explaining to appellants why their arguments were ineffective to overcome the rejection made by the examiner”); *In re Krammes*, 314 F.2d 813, 817 (CCPA 1963) (“It is well established that mere difference in form of expression of the reasons for finding claims unpatentable or unobvious over the references does not amount to reliance on a different ground of rejection.” (citations omitted)) *In re Cowles*, 156 F.2d 551, 1241 (CCPA 1946) (holding that the use of “different language” does not necessarily trigger a new ground of rejection).

I. Regarding claim 1

Petitioners argue that new grounds of rejection were presented in the final Office action where the response to the traversal of the rejection of claim 1 includes citations to a number of Kabot’s paragraphs, whereas only one of these paragraphs was cited in the nonfinal.

In citing these paragraphs, the examiner is responding to petitioners’ argument that “Kabot does not disclose a method” and only states “means for determining.” In the rejection of claim 1, the examiner states that “Kabot discloses a method (abstract, para [0008], [0024] “method”).” The identification of these paragraphs in question from Kabot, as related to air bubbles disclosed in Kabot, is not accompanied by any new material facts and/or rationales applicable to the rejection, but rather is directed towards explaining that Kabot discloses a method and system to include “determining presence of air bubbles associated with an inserted electrode.” As such, the consistent reliance by the examiner on Kabot’s disclosure related to the subject of air bubbles from the nonfinal to the final does not constitute a new ground of rejection. As to whether Kabot discloses a method as claimed in the instant invention is, however, not a petitionable matter, but rather an appealable matter.

The line of demarcation between appealable matters and petitionable matters for the Director is carefully observed. The 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, 37 CFR 1.191, and 37 CFR 41.31, and not by way of a petition under 37 CFR 1.181, even if a petitioner 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). 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 which relate, at least

indirectly, to matters involving the rejection of claims. See *In re Hengehold*, 440 F.2d 1395, 1404 (CCPA 1971). 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). 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 Dickinson*, 299 F.2d 954, 49 CCPA 951, 133 USPQ 39 (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 in a matter appealable to the Board). See also MPEP §1201. 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).

Petitioners' reference to the court decision in *Net Moneyln, Inc. v. Verisign, Inc.*, 545 F.3d 1359, 1369, 88 USPQ2d 175, (Fed. Cir. 2008), has been noted. However, as stated above, the examiner is not relying on any newly listed paragraphs to advance a new basis of anticipation, is instead relying on these paragraphs to respond to petitioners' argument.

II. Regarding claim 3

Petitioners argue that the final includes an assertion in the response to arguments section that claim 3 does not limit "local position," which was not presented in the nonfinal. This argument that a new ground of rejection was made in the final is not persuasive. In maintaining the rejection made in the nonfinal, the final explains that "the claim does not provide any limitation or directions towards what the term 'local position' is or is intended to be." For guidance, the final explains that the rejection turns to the petitioners' specification to help determine the broadest reasonable interpretation of the claim limitation. This analysis is consistent with MPEP § 2111, where the scope of claims is determined by giving claims their broadest reasonable construction "in light of the specification as it would be interpreted by one of ordinary skill in the art." *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364, 70 USPQ2d 1827, 1830 (Fed. Cir. 2004). During patent examination, the pending claims must be "given their broadest reasonable interpretation consistent with the specification." The Federal Circuit's en banc decision in *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316, 75 USPQ2d 1321, 1329 (Fed. Cir. 2005) expressly recognized that the USPTO employs the "broadest reasonable interpretation" standard. In other words, the discussion in the response to arguments section of the final explains the examiner's interpretation of claim 3, under the broadest reasonable interpretation standard, that was applied in the rejection of claim 3 in the nonfinal, where the same rejection of claim 3 was maintained in the final. As such, this explanation of the rejection made in the nonfinal and maintained in the final does not constitute a new ground of rejection.

III. Regarding claim 5

Petitioners argue the final presents a new fact and rationale that petitioners had no reason to believe is that on which the rejection of claim 5 is based. The discussion provided in the final is a response to petitioners' argument that Kabot does not disclose the limitations of claim 5. The

discussion in the final cites to paragraph [0123] in petitioners' specification to explain the broadest reasonable interpretation of the limitations, and maintains that Kabot provides a similar determination, (i.e., comparing the EIV of the electrode contact to a threshold), which was presented in the nonfinal. This explanation of how petitioners' own specification supports the position taken in the nonfinal, and maintained in the final, does not change the thrust of the rejection. The nonfinal and final both rely on the same Kabot disclosure to teach the claimed limitations.

IV. Regarding claim 6

Petitioners argue that new assertions were made in the final that were the basis of the rejection of claim 6, but were not made of record in the nonfinal. This argument that new grounds of rejection were made in the final is not persuasive. The discussion in the final explaining examiner's position in the nonfinal concerning interpretation of the claim limitations "at least one read electrode" and "other read electrode" as not distinct and different, is consistent with the rejection in the nonfinal. This discussion amounts to additional explanation which addresses petitioners' traversal of the rejection of claim 6 made in the nonfinal, and explains why the rejection is maintained in the final. This additional explanation does not rely on any new material facts, and the rejection of claim 6 in the nonfinal and in the final relies on a consistent position that Kabot discloses all limitations of claim 6. The propriety of examiner's interpretation of the claim limitation in question is, however, not petitionable, but instead is an appealable matter, as noted above.

V. On the finality of the Office action of February 26, 2024

Petitioners' argument is that because the final includes new grounds of rejection not necessitated by an amendment or the filing of an IDS, the finality of the Office action of February 26, 2024, must be withdrawn and "prosecution be reopened to afford [a]pplicant an opportunity to amend the claims."

With respect to the finality of an Office action, MPEP § 706.07(a) specifically sets forth the Office's practice on when a second Office action can be properly made final and provides, in part, that:

Second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims, nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p). Where information is submitted in an information disclosure statement during the period set forth in 37 CFR 1.97(c) with a fee, the examiner may use the information submitted, e.g., a printed publication or evidence of public use, and make the next Office action final whether or not the claims have been amended, provided that no other new ground of rejection which was not necessitated by amendment to the claims is introduced by the examiner. *See* MPEP § 609.04(b). Furthermore, a second or any subsequent action on the

merits in any application will not be made final if it includes a rejection on newly cited art other than information submitted in an information disclosure statement filed under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p), of any claim not amended by applicant or patent owner in spite of the fact that other claims may have been amended to require newly cited art. Where information is submitted in a reply to a requirement under 37 CFR 1.105, the examiner may NOT make the next Office action relying on that art final unless all instances of the application of such art are necessitated by amendment.

A review of the prosecution history shows that the examiner repeated the rejection of claims 1, 3 through 6, and 8 through 12 under 35 U.S.C. 102(a)(1) as anticipated by Kabot and the rejection of claims 2 and 7 under 35 U.S.C. 103 as being unpatentable over Kabot in view of Spitzer, in both the nonfinal and final Office actions. The newly added claims 33 through 42 were rejected in the final as set forth above. The record reflects that the examiner did not introduce a new ground of rejection in the text of the rejections set forth in the final Office action of February 26, 2024. Newly added claims presented after the nonfinal Office action were rejected in the final Office action as set forth above. In addition, a review of the final Office action of February 26, 2024, reveals that it contains sufficient information to place petitioners on notice as to the basis for the rejection of claims 1 through 12 and newly added claims 33 through 42 and that the examiner clearly took note of and responded to petitioners' arguments. Accordingly, petitioners had a fair opportunity to respond to the thrust of the rejections.

Whether there is a new ground of rejection depends upon whether the basic thrust of a rejection has remained the same. See *In re Kronig*, 539 F.2d 1300, 190 U.S.P.Q. 425 (C.C.P.A. 1976). A new ground of rejection may be present when a rejection relies upon new facts or a new rationale not previously raised by the applicant. *In re Biedermann*, 733 F.3d, 329, 337 (Fed. Cir. 2013) (quoting *In re Liethem*, 661 F.3d 1316 1319 (Fed. Cir. 2011)). The prior rejection, however, need not be repeated in *haec verba* to avoid being considered a new ground of rejection. See *id.* In addition, further explanations and elaboration upon a rejection, and thoroughness in responding to an applicant's arguments, are not considered a new ground of rejection. See *In re Jung*, 637 F.3d 1356, 1364-65 (Fed. Cir. 2011).

In regard to the petitioners' argument that the examiner included new grounds of rejection and rationales in responding to petitioners' arguments, as discussed above, the examiner's response to petitioners' arguments does not rely on new facts and/or new rationales to support the rejections made in the nonfinal, but rather provides explanations as to why petitioners' attempts at traversal of the rejections made in the nonfinal were not persuasive to withdraw the rejections. The explanations provided in the final discuss support in Kabot and claim interpretations for the original rejections made in the nonfinal and maintained in the final, and thus are not new grounds of rejection. Accordingly, the Office action of February 26, 2024, was properly made final.

VI. On the request for an in-person meeting

Petitioners request that, “[i]f this Petition is to be denied, we request an in-person meeting with the deciders.” The rules of practice (37 CFR 1.181(e)) provide that an oral hearing, i.e., an in-person meeting will not be granted except when considered necessary by the Director. The USPTO has a well-established policy of deciding petitions solely on the basis of the written record. Since there is nothing that can be brought to the attention of the USPTO during an interview or hearing that is not more properly brought to the attention of the USPTO in writing in this situation, pursuant to 37 CFR 1.2, the circumstances at issue do not present a circumstance necessitating an in-person meeting. Indeed, a review of the petition indicates that there is nothing so unusual or extraordinary in this case warranting an in-person meeting.

DECISION

For the reasons stated above, the petition to withdraw the finality of the Office action issued on February 26, 2024, and the request for in-person meeting are both **DENIED**. As such, the Decision will not be disturbed.

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 decision is being forwarded to Technology Center 3700 to await petitioner’s response to the panel decision on the pre-appeal brief request issued on November 25, 2024, that recommended that the appeal should proceed to the Board.

/Charles Kim/
Deputy Commissioner
for Patents