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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* JOHANN HESSE, THOMAS KOLLMAR,  
BRUNO EMERICH, ROLAND HECK,  
PAUL GEISTDORFER, and THOMAS ZIEGLER

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Appeal 2014-005478  
Application 13/242,152  
Technology Center 3700

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Before MICHAEL L. HOELTER, LYNNE H. BROWNE, and  
ERIC C. JESCHKE, *Administrative Patent Judges*.

HOELTER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is a decision on appeal, under 35 U.S.C. § 134(a), from the Examiner's final rejection of claims 1–4, 6–8, 10–20, 26, 39, and 41–46. App. Br. 1–11. Appellants' counsel provided oral argument on October 25, 2016. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM, and we designate one of the rejections, in part, a NEW GROUND OF REJECTION pursuant to our authority under 37 C.F.R. § 41.50(b).

THE CLAIMED SUBJECT MATTER

The disclosed subject matter “relates to a manufacturing method and a manufacturing apparatus for components, in particular body components.”

Spec. ¶ 2. Claims 1 and 42 are independent. Claim 1 is illustrative of the claims on appeal and is reproduced below:

1. A manufacturing apparatus for components, the apparatus comprising:

a rotatable loading station comprising a tool magazine, said loading station comprising a plurality of reception points with a plurality of different tools for different types of components, said rotatable loading station comprising at least one machining station or machining point arranged thereon;

a loading means for at least providing one or more of said components to said rotatable loading station, said loading means being arranged adjacent to a periphery of said rotatable loading station, wherein said loading means is located at a position outside of said rotatable loading station, said loading means being associated with one of said plurality of different tools;

a handling means for at least removing said one or more of said components from said rotatable loading station, said handling means being associated with another one of said plurality of different tools, said another one of said plurality of different tools being different from said one of said plurality of different tools, said handling means being arranged adjacent to said periphery of said rotatable loading, wherein said handling means is located at another position outside of said rotatable loading station, said handling means being located at a spaced location from said loading means; and

a machining means associated with said at least one machining station or machining point for machining one or more said components on said rotatable loading station, said handling means being arranged adjacent to said machining means.

REFERENCES RELIED ON BY THE EXAMINER

Ueda	US 4,829,716	May 16, 1989
Suzuki	US 5,376,061	Dec. 27, 1994

THE REJECTIONS ON APPEAL

Claims 17, 39, and 46 are rejected under 35 § U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

Claims 1–4, 6–8, 10–20, 26, 39, and 41–46 (i.e., all the claims on appeal) are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1–4, 7, 8, 10–20, 39, 41, 42, and 46 are rejected under 35 U.S.C. § 102(b) as anticipated by Ueda.

Claims 6 and 43–45 are rejected under 35 U.S.C. § 103(a) as obvious over Ueda.

Claim 26 is rejected under 35 U.S.C. § 103(a) as obvious over Ueda and Suzuki.

ANALYSIS

*The rejection of claims 17, 39, and 46  
as failing to comply with the written description requirement*

Claim 17

The Examiner addresses the limitation recited in claim 17 of “wherein said rotatable loading station is connected to at least one said tool

magazine.”<sup>1</sup> Final Act. 15–16; Ans. 21. Regarding the claim term “connected,” Appellants reference “Paragraph [0007] of Appellant’s originally filed specification” as support. App. Br. 11–12. We agree with Appellants that this paragraph discusses the ability to increase the capacity of the loading station “by means of one or more connected additional tool magazines.” Spec. ¶ 7. Regarding the claim term “at least one said tool magazine,” the Examiner states that this recitation “introduces a range” “anywhere from one up to an infinite number of said tool magazines” and that this is “open-ended language.” Final Act. 15; *see also* Ans. 21. The Examiner finds that Appellants’ Specification “does not appear to teach a range including up to an infinite number of tool magazines” “that are ‘connected to’ the rotatable loading station.” Final Act. 16; *see also* Ans. 21–22. Appellants reference above paragraph 7, along with paragraphs 11, 13, 30, 45, and 59 of Appellants’ Specification as support for this “at least one [said] tool magazine” being so connected. App. Br. 11–12; Reply Br. 1. A review of these paragraphs supports Appellants’ position that the limitation of claim 17 “is fully supported by Appellant’s disclosure.” App. Br. 11, 12. We reverse the Examiner’s written description rejection of claim 17.

#### Claims 39 and 46

The Examiner initially addresses the recitation to “a rotatable axis” found in each claim, stating “it does not appear that the specification as originally filed teaches that the rotation axis 12 is itself ‘rotatable’ . . . (i.e.,

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<sup>1</sup> Appellants’ Specification states that as shown in Figure 2, “one or more tool magazines (31) may also be connected to the” loading station 20. Spec. ¶ 45.

rotatable about a ‘rotatable’ axis, as opposed to being rotatable about a rotation axis).” Final Act. 16. There is no dispute that Appellants’ Specification describes turntable axis 12 about which rotation occurs. *See* Spec. ¶¶ 30, 32, 35, 36, and 58; *see also* Figs. 1–7. Appellants state, “The rotatable axis of claim 39 merely refers to the axis about which the rotatable loading station rotates. Claim 39 does not imply that the axis itself rotates.” Reply Br. 2. The same can also be said of claim 46. Although, perhaps, Appellants’ usage of the term “rotatable axis” instead of, say, “rotation axis,” might give some pause, Appellants may, nevertheless be their own lexicographer and we are not persuaded that one skilled in the art, reading Appellants’ Specification, would fail to find a description of this axis therein or understand what is meant (i.e., an axis about which rotation occurs).

The Examiner also addresses the claim limitation “each of said tools being substantially perpendicular to said rotatable axis” found in both claims 39 and 46.<sup>2</sup> Final Act. 16; *see also* Ans. 22, 23. The Examiner finds that this “substantially perpendicular” claim language “encompasses a range” and that “The specification as originally filed appears to be silent as to any angle or range of angles” the tools may make with respect to axis 12. Final Act. 16; *see also id.* at 17 and Ans. 22, 24. Appellants state “Figures 7 and 8 clearly show the tools being substantially orthogonal to the rotatable axis of the rotatable loading station as claimed.”<sup>3</sup> App. Br. 12; *see also id.* at 13.

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<sup>2</sup> Note that the claim term “tools” is identified in Appellants’ Specification as items 4–8. *See e.g.*, Spec. ¶¶ 28, 33–35, 40, 44, 48, 49, 55 and 59.

<sup>3</sup> Appellants also reference paragraph 35 of Appellants’ Specification, which states, “The guide rail portions (15, 26), for example, all lie at the same height or in the same plane perpendicularly to the turntable axis (12).” Reply Br. 2, 3.

The Examiner indicates that this “substantially perpendicular” claim language “cannot be determined from top views Figures 7 and 8 alone” and that even if side views were available, “such would not be sufficient to provide original support for a range as is claimed in claims 39 and 46.” Final Act. 16–17; *see also* Ans. 22–23. Appellants reply, “The features of the manufacturing apparatus shown in Figures 7 and 8 cannot be examined in a vacuum as proposed by the final rejection. Appellants’ disclosure must be given a fair reading for what it teaches and suggests.” App. Br. 13. We agree with Appellants that one skilled in the art, upon a review of Figures 7 and 8, would be informed that the tools depicted therein are arranged in a manner as to be “substantially perpendicular” (i.e., a range) to axis 12. App. Br. 13. We reverse the Examiner’s written description rejection of claims 39 and 46.

*The rejection of all the claims as being indefinite*

The Examiner addresses independent claim 1 separate from independent claim 42. Final Act. 18–19, 23; Ans. 24–26. So do Appellants. App. Br. 14–15, 23–24; Reply Br. 4–5. We address each independent claim separately.

Claim 1

The Examiner provides several reasons why claim 1 is indefinite. Final Act. 18–19; Ans. 24–26. We do not disagree with the Examiner’s conclusion, but we rely on a rationale that may have only been indirectly or tangentially addressed by the Examiner. Accordingly, we designate our affirmance of the rejection of claim 1 as a New Ground of Rejection so as to provide Appellants with a fair opportunity to respond.

The first limitation of claim 1 (“a rotatable loading station”) recites that this loading station comprises “a plurality of reception points with a plurality of different tools.” The Examiner addressed this limitation, asking “whether this is intended to set forth a plurality of reception points each with a plurality of different tools,” or something else. Final Act. 18; Ans. 24. Appellants unambiguously replied that this limitation “may be that each reception point has a tool or more than one tool or that one reception point has a tool or tools and another reception point has no tools.” Reply Br. 4; *see also* App. Br. 14. Hence, it is clear that one reception point may have one or more tools while another reception point may have no tools, one tool, or more than one tool.

The second limitation of claim 1 (“a loading means”) recites that it is “associated with *one* of said plurality of different tools.” The third limitation of claim 1 (“a handling means”) recites that it is “associated with *another one* of said plurality of different tools” and that this “*another one* of said plurality of different tools being different from said *one* of said plurality of different tools.” Emphasis added. Hence, these second and third limitations are directed to multiple pluralities of different tools, i.e., *one* and *another one* of said plurality of different tools. This recitation directed to multiple pluralities of different tools is in conflict with the first limitation discussed *supra* wherein we were informed by Appellants of the possibility (a) “that one reception point has a tool or tools and another reception point has no tools” (Reply Br. 4) and also, (b) “that one reception point may have one tool and another reception point may have a different tool” (App. Br. 14). In other words, Appellants are asserting that claim 1 is written such that two reception points can have as few as one tool between them (or a tool apiece),

yet this precludes the ability to also have both *one* and *another one* of said plurality of different tools. It is suspected that Appellants may mean *one* and *another one* of said tools of said plurality of different tools (but even this poses problems when there is only a single tool between plural reception points as well as the situation where two reception points each have only a single tool apiece and hence only a single plurality of tools between them). Accordingly, we affirm the Examiner’s rejection of claim 1 (and its dependent claims 2–4, 6–8, 10–20, 26, 39, and 41) as being indefinite. However, because our rationale may differ from that relied on by the Examiner, we designate our affirmance of the rejection of these claims as a new ground of rejection to afford Appellants a full and fair opportunity to react to the thrust of the rejection. *See In re Kronig*, 539 F.2d 1300, 1302 (CCPA 1976) (“[T]he ultimate criterion of whether a rejection is considered ‘new’ in a decision by the board is whether appellants have had [a] fair opportunity to react to the thrust of the rejection.”).

Furthermore, regarding claim 1, we specifically agree with the Examiner’s finding of indefiniteness in view of the Examiner “noting that ‘said rotatable loading’ in claim 1, line 16 (previously ‘rotatable loading station’) lacked sufficient antecedent basis.” Ans. 26.

Additionally, claim 9 has been canceled and the Examiner notes that claims 11–13 depend from canceled claim 9. App. Br. 52 (Claims Appendix); Final Act. 29, 31, 32. Appellants contend, “A person of ordinary skill in the art would also understand that claim 11 depends upon claim 1 as a claim cannot depend upon a canceled claim.” App. Br. 18; *see also id* at 19. Appellants are silent on this point regarding claims 12 and 13. Although we agree with Appellants that a claim cannot depend upon a

canceled claim, we are not in agreement that the default position is that the claim then depends from claim 1. *See also* Ans. 29–30.

Based on the above, we sustain the rejection of independent claim 1 and dependent claims 2–4, 6–8, 10–20, 26, 39, and 41 as being indefinite but we render this rejection a New Ground of Rejection.

#### Claim 42

The Examiner addresses the limitation directed to “a rotatable loading station comprising a first tool and a second tool, said first tool and said second tool receiving at least one component.” Final Act. 23; Ans. 38. The Examiner states that “It is not clear whether this limitation is intended to require that the first and second tools each receive at least one component, or whether collectively, the first and second tool receiving at least one component.” Final Act. 23; Ans. 38. Appellants seek to clarify that “Claim 42 provides that *each* of the first tool and the second tool receives at least one component.” App. Br. 23–24 (emphasis added); *see also* Reply Br. 10. Claim 42 lacks this “each” term and, as such, we agree with the Examiner that claim 42, in its present form (along with dependent claims 43–46), is unclear. *See* Final Act. 23; *see also* Ans. 38. We sustain the Examiner’s rejection of claim 42 and its dependent claims 43–46.

*The rejection of (a) claims 1–4, 7, 8, 10–20, 39, 41, 42, and 46 as anticipated by Ueda; (b) claim 6 as obvious over Ueda; and, (c) claim 26 as obvious over Ueda and Suzuki*

Regarding claims 1–4, 6–8, 10–20, 26, 39, and 41, we cannot address the rejection of these claims under 35 U.S.C. §§ 102(b) or 103(a) because to do so would require speculation as to the scope of parent claim 1. *See supra*; *see also In re Aoyama*, 656 F.3d 1293, 1300 (Fed. Cir. 2011) (holding that the Board erred in affirming an anticipation rejection of indefinite

claims); *In re Steele*, 305 F.2d 859, 862–63 (CCPA 1962) (holding that the Board erred in affirming a rejection of indefinite claims under 35 U.S.C. § 103(a)).

Regarding claims 42 and 46, the speculative nature of these claims does not affect their analysis under § 102. Appellants address each claim separately (App. Br. 41–44), and so do we.

#### Claim 42

Appellants contend, “the suction head 15 of Ueda et al. is not a loading robot and the suction head 16 of Ueda et al. is not a handling robot *as featured in the present invention.*” App. Br. 41 (emphasis added); *see also* Final Act. 29. To the extent Appellants are seeking to import limitations from the specification into the claims, this is not permitted.<sup>4</sup>

Regarding the recitation to a “loading robot” and a “handling robot,” the Examiner has provided a definition of “robot” as being “a mechanism guided by automatic controls.” Ans. 63–64 (referencing “‘Merriam-Webster’s Collegiate Dictionary, 10th ed.’ (cited on the PT0-892 mailed 8/5/2013)”). Appellants do not explain how Ueda’s suction heads 15 and 16 are not mechanisms guided by automatic controls such that they cannot be considered a “robot” as this term is understood.

Appellants also contend that “transfer device 14 of Ueda et al, which includes the suction heads 15 and 16, forms a single transfer device” and

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<sup>4</sup> Our reviewing court has repeatedly “cautioned against limiting the claimed invention to preferred embodiments or specific examples in the specification.” *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1346–47 (Fed. Cir. 2015) (quoting *Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1328 (Fed. Cir. 2002)). *See also In re Am. Acad. of Science Tech Ctr.*, 367 F.3d 1359, 1369 (Fed. Cir. 2004).

that interpreting these different portions (15 and 16) of this single device (14) “violates the all elements rules since two portions of a single device cannot define two separate devices as featured in the present invention.” App. Br. 41; *see also* Ans. 63. Although Ueda discloses that suction heads 15 and 16 are connected to the same transfer device 14, each suction head is separate from each other and each performs a different function. *See e.g.*, Ueda 5:59–68 and Figs. 1–2. Accordingly, Appellants’ contention that the Examiner violated the “all elements rule” because different suction heads that perform different functions are part of a larger entity is not persuasive of Examiner error. *See also* Ans. 63.

Appellants further contend that Ueda’s suction heads are not “associated with” different portions of Ueda’s loading station 17 as claimed. App. Br. 42. However, as per the Examiner, “Appellant may be reading more into the broad term ‘associated with’ than the term actually says.” Ans. 64. We agree with the Examiner in that, for example, Appellants may be interpreting “associated with” to mean associated with at the same time rather than there being an association in general. The Examiner explains that loading robot 15 is associated with a “first portion” of station 17, “for example, such as tool 18.” Final Act. 29; *see also* Ans. 64. The Examiner further explains that handling robot 16 is associated with a “second portion” of station 17, “such as, for example, tools 19 and 20 when 20 is located at station A and 19 is located at station C.” Final Act. 29; *see also* Ans. 65. Those portions of station 17 containing tools 18, 19, and 20 are also at a “spaced location” from each other. *See* Ueda Figs. 1, 2. Appellants state that suction heads 15 and 16 “are associated with the same portion of the rotary indexing table 17.” App. Br. 42. This might be the case if there were

only one tool portion on table 17, or if “associated with” is interpreted to have a time element, but that is not the case here. For example, suction head 15 can be said to be associated with one portion of station 17 (e.g., that portion containing tool 18), and suction head 16 (along with the corresponding machining robot<sup>5</sup>) can be said to be associated with another, different, and spaced portion of station 17 (e.g., that portion containing tools 19 and 20). *See* Final Act. 29; Ans. 65. Accordingly, Appellants’ contention regarding the limitation of “associated with” is not persuasive that the Examiner’s findings are in error.

Appellants also contend that “Ueda et al. does not teach or suggest a handling robot that is arranged adjacent to a machining robot as claimed.” App. Br. 43; *see also* Reply Br. 21–22. However, Appellants do not clarify how close or how far two components must be so as to be “adjacent” when this claim term is “broadly claimed.” Ans. 66. Lacking any reference,<sup>6</sup> Appellants do not explain how the Examiner erred in finding that Ueda’s handling robot 16 is “arranged adjacent to said machining robot” (i.e., Ueda grinding stones 21 and 24) as claimed. We affirm the Examiner’s rejection of claim 42 as being anticipated by Ueda.

#### Claim 46

Claim 46 depends from claim 42 and includes the additional limitation of “said handling robot being located between said machining robot and said another machining robot.” Appellants contend that this positional

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<sup>5</sup> It is understood that the Examiner correlates Ueda’s rough grinding tool 21/22 and precision grinding tool 24/25 to the recited machining robot. Final Act. 24, 29; *see also* Ueda Fig. 1.

<sup>6</sup> Appellants simply compare Ueda with their device. App. Br. 43.

relationship between the handling unit and the machining robots is not disclosed in Ueda. App. Br. 43. More specifically, Appellants contend that Ueda's "suction head 16 is not arranged between the diamond stones 21 and 24." App. Br. 44. The Examiner disagrees. Final Act. 29; Ans. 67.

Appellants' Specification does not define the claim term "between," but a review of Appellants' Specification indicates that it employs this term in a broad sense.<sup>7</sup> See Spec. ¶¶ 3 ("the components are transported between the stations by means of traveling robots"), 25 ("between the manufacturing apparatuses"), 30, and 44. One of the dictionary definitions of this term is "in intermediate relation to."<sup>8</sup> Looking at Ueda's figures, one machining tool is located to the left of suction head 16 and the other is located to the right of suction head 16. See also Examiner's annotation of Ueda's Figs. 1 and 2 at Ans. 67–68. Appellants do not explain how this location of suction head/handling robot 16 disclosed in Ueda is not "in intermediate relation to" or "between" Ueda's corresponding machining robots 21/22 and 24/25. Accordingly, Appellants' contention is not persuasive the Examiner erred in finding that Ueda's "handling means 16 is located between the machining stations/points at which 21/22 and 24/25 are located, as shown in Figure 1." Final Act. 29; see also Ans. 67.

Claim 46 also includes the limitation "each of said tools being substantially perpendicular to said rotatable axis." Appellants contend that Ueda's tools are not so arranged while the Examiner finds that they are.

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<sup>7</sup> In the Reply Brief, Appellants state, "the ordinary meaning of the term between is defined as being in the space that separates two things." Reply Br. 22. However, this is not the only definition of "between" that is compatible with how this term is used in Appellants' Specification.

<sup>8</sup> See <http://www.merriam-webster.com/dictionary/between>.

App. Br. 44; Final Act. 29. As indicated *supra*, the “tools” of Appellants’ device are items 4–8, and the Examiner correlates Ueda’s items 18–20 to this claim term. Both sets are depicted in their respective drawings as arranged about their respective turntable 20/17. Each turntable also rotates about a central axis. Addressing Ueda, the Examiner finds that Ueda’s tools “are provided on a top planar horizontal surface of the rotatable loading station 17.” Final Act. 29; *see also* Ans. 68. Accordingly, the Examiner concludes that this horizontal surface is “thus perpendicular to the vertical rotation axis of 17.” Final Act. 29. Appellants do not inform us of error in the Examiner’s analysis or how it is that Ueda’s tools are not “substantially perpendicular to said rotatable axis” as claimed. *See* Ans. 68.

Based on the record presented, we sustain the Examiner’s anticipation rejection of claim 46.

*The rejection of claims 43–45 as obvious over Ueda*

Appellants only present an argument with respect to claim 43. App. Br. 45–46. Appellants do not present separate arguments for claims 44 or 45, nor do Appellants argue the rejection of claims 44 and 45 in conjunction with parent claim 42. We address claim 43, and sustain the Examiner’s rejection of claims 44 and 45 as being obvious over Ueda.

Claim 43 includes the limitation, “said machining robot being fixed to a floor” and Appellants contend that Ueda is “void as to any disclosure as to the rotary spindles 22, 25 being fixed to a floor.”<sup>9</sup> App. Br. 45–46. The Examiner disagrees, stating, “that machining means 21/22 and 24/25 are

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<sup>9</sup> Appellants further state, “There is no teaching or suggestion in Ueda et al. that would direct a person of ordinary skill in the art toward the advantages of fixing a machining means to the floor as claimed.” Reply Br. 24.

arranged adjacent to the rotatable loading station 17 (see Figure 1), and are supported on the floor via the machine base 35 being supported on the floor via a plurality of feet shown in Figure 1.” Final Act. 30. There is no dispute that Ueda’s rough and precision grinding stones 21, 24 (and their respective spindles 22, 25) are ultimately mounted upon machine body base 35, and that there are “feet” underneath this base 35. Ueda Fig. 1. The Examiner further finds, “that fixing the base of a large piece of manufacturing equipment, such as a machine tool, to the floor, is extremely well-known and widespread in manufacturing.” Ans. 70. Appellants do not explain how it is not well-known to affix a tool to a floor and Ueda’s silence on this point is not persuasive that one skilled in the art would have found affixing a grinding machine to a floor to be non-obvious. *See also* Ans. 71. We sustain the Examiner’s rejection of claim 43 as being obvious over Ueda.

#### DECISION

The Examiner’s rejection of claims 17, 39, and 46 under 35 § U.S.C. 112, first paragraph, as failing to comply with the written description requirement is reversed.

The Examiner’s rejection of claims 1–4, 6–8, 10–20, 26, 39, and 41–46 (i.e., all the claims on appeal) under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention is affirmed, but see *infra*.

The Examiner’s rejection of claims 1–4, 7, 8, 10–20, 39, and 41 under 35 U.S.C. § 102(b) as anticipated by Ueda is not addressed.

The Examiner’s rejection of claims 42 and 46 under 35 U.S.C. § 102(b) as anticipated by Ueda is affirmed.

The Examiner's rejection of claim 6 under 35 U.S.C. § 103(a) as obvious over Ueda is not addressed.

The Examiner's rejection of claims 43–45 rejected under 35 U.S.C. § 103(a) as obvious over Ueda is affirmed.

The Examiner's rejection of claim 26 under 35 U.S.C. § 103(a) as obvious over Ueda and Suzuki is not addressed.

We also enter a NEW GROUND of rejection regarding claims 1–4, 6–8, 10–20, 26, 39, and 41 under 35 U.S.C. § 103(a). This New Ground of Rejection is entered because it relies on reasons different from and/or additional to those stated by the Examiner and also to provide Appellants a fair opportunity to respond.

Further, 37 C.F.R. § 41.50(b) provides that, “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.” 37 C.F.R. § 41.50(b) also provides that Appellants must, WITHIN TWO MONTHS, exercise one of the following options:

(1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. . . .

(2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same record. . . .

Should Appellants elect to prosecute further before the Examiner pursuant to 37 C.F.R. § 41.50(b)(1), in order to preserve the right to seek review under 35 U.S.C. §§ 141 or 145 with respect to the affirmed rejection, the effective date of the affirmance is deferred until conclusion of the prosecution before the Examiner unless the affirmed rejection is overcome.

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If Appellants elect prosecution before the Examiner and this does not result in allowance of the application, abandonment or a second appeal, this case should be returned to the Patent Trial and Appeal Board for final action on the affirmed rejection, including any timely request for rehearing thereof.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED; 37 C.F.R. § 41.50(b)