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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/034,934	02/21/2008	Earl David Forrest	60,137-546; 445-3381-U	9035
82074	7590	11/28/2016	EXAMINER	
Carlson, Gaskey & Olds/Masco Corporation 400 West Maple Road Suite 350 Birmingham, MI 48009			CRANE, LAUREN ASHLEY	
			ART UNIT	PAPER NUMBER
			3754	
			NOTIFICATION DATE	DELIVERY MODE
			11/28/2016	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte EARL DAVID FORREST,
ANDREW JAMES GRAFF,
and JEFFREY ALLEN DEBOER

Appeal 2015-000232
Application 12/034,934¹
Technology Center 3700

Before JILL D. HILL, JASON W. MELVIN, and GORDON D. KINDER,
Administrative Patent Judges.

MELVIN, *Administrative Patent Judge.*

DECISION ON APPEAL

This appeal arises under 35 U.S.C. § 134(a), from a rejection of claims 1–29. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part and designate our affirmances as new grounds of rejection pursuant to 37 C.F.R. § 41.50(b).

¹ Appellants identify Liberty Hardware Manufacturing Corp. as the real party in interest. Appeal Br. 1.

BACKGROUND

The claims are directed to a bathroom grab bar with a removable decorative insert. Spec. ¶¶ 1, 5. Claim 1, reproduced below, is illustrative:

1. A bathroom grab bar comprising:
 - a body member having a front facing side and a wall facing side opposite from said front facing side; and
 - a removable decorative insert supported by said front facing side, said removable decorative insert having a front face that forms a decorative outer surface of the bathroom grab bar.

REJECTIONS

Appellants seek review of the following rejections:

1. Claims 13 and 25 stand rejected under 35 U.S.C. § 112, second paragraph, as indefinite for failing to particularly point out and distinctly claim the subject matter applicant regards as the invention. Final Act. 2–3.
2. Claims 1–3, 13, 14, 16, 26, and 28 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Olivier (U.S. Pat. Pub. 2006/0012189 A1, pub. Jan. 19, 2006) and Brach (U.S. Pat. No. 5,487,203, iss. Jan. 30, 1996). Final Act. 3–4.
3. Claims 4–6, 17, 20, 21, 24, and 25 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Olivier, Brach, and Cobb (U.S. Pat. No. 7,143,535 B1, iss. Dec. 5, 2006). Final Act. 4–6.
4. Claim 15 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Olivier, Brach, and Forrest (U.S. Pat. Pub. 2004/0078933 A1, pub. Apr. 29, 2004). Final Act. 6.

5. Claims 19 and 23 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Olivier, Brach, and Arendt (U.S. Pat. No. 5,810,372, iss. Sep. 22, 1998). Final Act. 7–8.
6. Claims 7, 18, and 22 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Olivier, Brach, Cobb, and Forrest. Final Act. 8–9.
7. Claim 10 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Olivier, Brach, Arendt, and Warner (U.S. Pat. No. 5,826,847, iss. Oct. 27, 1998). Final Act. 9.
8. Claims 8 and 9 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Olivier, Brach, Arendt, and Lachance (U.S. Pat. No. 2,962,827, iss. Dec. 6, 1960). Final Act. 9–10.
9. Claims 11, 12, 26, 27, and 29 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Olivier, Brach, Arendt, Warner, Lachance, and Ouyoung (U.S. Pat. No. 6,817,044 B1, iss. Nov. 16, 2004). Final Act. 10–11.

DISCUSSION

Indefiniteness

The Examiner concludes that claim 25 is indefinite because it recites that “the removable decorative insert is solely retained to said body member with a resilient retaining member,” but Figure 2 “shows the decorative insert[] also resting on a second wall surface (54).” Final Act. 2. Appellants argue that the Examiner lacks a basis on which to conclude that the wall surface contributes to retention of the removable insert. Appeal Br. 8–9. We agree. Regardless of whether the insert makes contact with the wall, the

claim requires that the insert is retained by the resilient member and nothing about Figure 2 calls into question such a limitation. Thus, we do not sustain the rejection of claim 25 as indefinite.

The Examiner holds that claim 13 is indefinite because it recites that the “body member comprises an extruded component having a generally uniform wall thickness” but “is not limited to the manipulations of the recited steps, only the structure implied by the steps.” Final Act. 2. Appellants argue that regardless of whether claim 13 recites product-by-process language, the Examiner has failed to identify language rendering the claim indefinite. Appeal Br. 9. We agree. Although the claimed “extruded component” has structural limitations that are not limited to structures produced by an extrusion process, such limitations do not render the claim indefinite. Thus, we do not sustain the rejection of claim 13 as indefinite. We construe the limitation in claim 13 such that the body member has generally uniform wall thickness along its length (not necessarily uniform at all places in a cross section), as is characteristic of extruded parts. *See Spec.* ¶ 19.

Obviousness

Claims 1–3, 14–16

The Examiner finds that Olivier substantially teaches the limitations of claim 1 but does not teach “the decorative insert forming a decorative outer surface.” Final Act. 4. For the claimed decorative insert, the Examiner relies on Brach, reasoning that a person of ordinary skill in the art at the time would have used the “decorative outer surface as taught by Brach because it would help extend the display area of the decorative insert (Brach column 1 lines 27-32).” *Id.*

Appellants argue that the Examiner's combination fails to teach a "bathroom grab bar" as claimed. Appeal Br. 9–10; *accord id.* at 12, 14, 15–16, 17. Appellants assert that Olivier does not "indicate that the door entryway handle 11 is structurally capable of serving as a bathroom grab bar" because of the "stringent structural standards" that apply to grab bars. Appeal Br. 9. Claim 1 recites no such structural standards or performance characteristics for the claimed structure. Thus, Appellants argument is not commensurate with the scope of the claims. *See In re Self*, 671 F.2d 1344, 1348 (CCPA 1982) (rejecting arguments "not based on limitations appearing in the claims").

Appellants further argue that a person of skill "would not look to the window squeegee stick of Brach to improve upon a bathroom grab bar structure." Appeal Br. 10. To the extent that argument asserts that Brach is not analogous art, it does not apprise us of error. Prior art is analogous and therefore available in an obviousness combination if it "is from the same field of endeavor, regardless of the problem addressed" or "is reasonably pertinent to the particular problem with which the inventor is involved." *In re Clay*, 966 F.2d 656, 658–59 (Fed. Cir. 1992). Here, because Brach teaches methods for providing interchangeable display surfaces in handles directly gripped by people, Brach is reasonably pertinent to the problem addressed in the present application. We also agree with the Examiner that both Brach and Olivier teach methods of advertising. *See* Ans. 12.

Regarding the reason a person of skill would have looked to Brach, Appellants also argue that using Brach's design would not in fact "extend" the display area because Olivier "already teaches having display advertising

on the door handle.” Appeal Br. 10. We understand that argument to challenge whether the Examiner has provided “articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). The Examiner responds that “[t]he addition of Brach would allow the decorative insert to be extended.” Ans. 12. It is important in this regard to consider that the Examiner relies on Brach only for the teaching of making the decorative insert a “decorative outer surface.” Final Act. 4. The Examiner proposes to replace Olivier’s outer transparent sheet with the arrangement in Brach. *See, e.g.*, Olivier ¶ 51, Fig. 6. Thus, in our view, a person of ordinary skill in the art would have looked to Brach to reduce the need for an additional component. Brach teaches a technique of creating display area, and a person of skill in the art at the time would understand Brach’s technique “would improve similar devices in the same way.” *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007). We recognize that our reasoning departs to a certain degree from that provided by the Examiner. We therefore designate our affirmances in this decision as new grounds of rejection, as designated at the end of this decision.

Accordingly, we conclude that the Examiner has shown the subject matter of claim 1 would have been obvious to a person of ordinary skill in the art at the time of invention. Thus, we sustain the rejection of claim 1. For claims 2, 3, 14, and 16, Appellants rely on the arguments made for claim 1 (Appeal Br. 11), thus, we also sustain the rejection of those claims. *See* 37 C.F.R. § 41.37(c)(iv) (“When multiple claims subject to the same ground of rejection are argued as a group or subgroup by appellant, the Board may select a single claim from the group or subgroup and may decide the appeal

as to the ground of rejection with respect to the group or subgroup on the basis of the selected claim alone.”).

The Examiner rejects claim 15, which depends from claim 14, based on a combination of Olivier, Brach, and Forrest. Final Act. 6. The Examiner applies Olivier and Brach as described above and further relies on Forrest as teaching an opening that may be used to push the decorative insert out of the recess. Final Act. 6. Appellants argue that “[n]one of these references disclose[s] or teach[es] providing removable and interchangeable decorative inserts as defined in claim 15.” Appeal Br. 14. This argument fails to apprise us of error in the rejection because it does not consider the combination as applied by the Examiner. *See In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (“Non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references.”).

Claim 13

In addition to the argument applicable to claim 1, Appellants argue that Olivier lacks a “generally uniform wall thickness” as claimed. Appeal Br. 11. As explained above, we construe “extruded component having a generally uniform wall thickness” as “a structure with wall thickness that is generally uniform along its length.” *See Spec.* ¶ 19. Under this construction, we agree with the Examiner that Olivier teaches the limitation as claimed, because Figure 6 of Olivier shows that the component applied by the Examiner as the claimed body member, reference numeral 21, is a component with generally uniform wall thickness along its length. Olivier Fig. 6; *see also* Final Act. 3–4. Accordingly, we sustain the rejection of claim 13.

Claims 26 and 28

Claim 26 depends from claim 1 and recites that the “decorative outer surface comprises a direct gripping surface for a user.” Appeal Br. 27 (Claims App.). The Examiner finds that it would have been obvious to use Brach, with the decorative insert forming a direct gripping surface, for the same reason set forth regarding claim 1. Final Act. 4.

Appellants argue that the decorative insert 7 of Brach does not “comprise[] a direct gripping surface for a user” as claimed. Appeal Br. 11. However, in the combination applied by the Examiner, once the decorative insert of Brach is used in the structure of Olivier, it would comprise a direct gripping surface for a user, as claimed. Thus, we agree with the Examiner that it would have been obvious to a person of ordinary skill in the art at the time to use the decorative insert as a direct gripping surface for a use.

Accordingly, we sustain the rejection of claim 26, and of claim 28, which depends from independent claim 14 and contains the same limitation as claim 26.

Claims 4, 17, 20, and 24

Claim 4 depends indirectly from claim 1 and recites that a recess in the body member contains a “groove receiving a resilient member to securely hold said removable decorative insert within said recess.” Appeal Br. 22 (Claims App.). Claim 17 depends indirectly from claim 14 and recites “resiliently retaining the removable decorative insert within the recess.” *Id.* at 24. Claim 20 depends indirectly from claim 14 and recites the step of “installing at least one resilient member in the body member to resiliently grip the removable decorative insert substantially along at least one of the longitudinal side edges.” *Id.* at 25. Claim 24 depends from claim

1 and recites a “resilient member installed within said body member to resiliently grip said removable decorative insert substantially along at least one of said longitudinal side edges.” *Id.* at 26.

The Examiner finds that Cobb teaches these limitations and that it would have been obvious to use the “resilient member as taught by Cobb because it would ensure the decorative insert was securely inserted into the recess.” Final Act. 4–6.

Appellants first argue that the front panel in Cobb does not correspond to the claimed decorative insert. Appeal Br. 12. This argument does not apprise us of error in the rejection because it amounts to arguing the references individually; the Examiner does not rely on Cobb as teaching the claimed decorative insert—the Examiner relies on Olivier and Brach as in claim 1. Final Act. 4; *Merck*, 800 F.2d at 1097 (“Non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references.”).

Appellants also argue that the “resilient member 64” in Cobb does not securely hold the decorative insert because it merely “is used to urge the front panel 44 toward the bottom of the recess 40.” Appeal Br. 12 (citing Cobb, 5:18–20). Appellants further assert that “filler 64 has no interaction with the sign display sheet 66.” *Id.* In the Examiner’s combination, the resilient member of Cobb would bear on Brach’s decorative insert as used in Olivier’s body member, just as it bears on the front panel of Cobb. Because Cobb teaches that the “resilient member” identified by Examiner—the filler 64—is “adapted to urge front panel 44 toward the bottom of second recess 40,” we agree with the Examiner that the subject matter of claims 4, 17, 20, and 24 would have been obvious. *See* Cobb 5:18–21; *accord* Cobb 7:3–7

(“Filler 64 may be made from any suitable elastomeric material adapted to provide a resilient force to the front panel to urge it in the direction of second recess 40 in the second side frame portion.”); Final Act. 4–6.

Accordingly, we sustain the rejection of claims 4, 17, 20, and 24.

Claims 5 and 6

Claim 5 depends from claim 4 and further recites that the “resilient member comprises a resilient tube.” The Examiner finds that Cobb teaches this limitation. Final Act. 5; Ans. 5. Cobb’s Figure 2, however, does not depict “filler 64” as a tube, but rather as a component with a solid, rectangular cross section. Cobb Fig. 2. In our view, even the broadest reasonable interpretation of “tube” must be hollow. Thus, we agree with Appellants that the Examiner has not adequately shown the prior art teaches the limitations of claim 5, or of claim 6, which depends from claim 5. *See* Appeal Br. 12–13.

Accordingly, we do not sustain the rejection of claims 5 or 6.

Claims 21 and 25

Claim 21 depends from independent claim 14 and recites “solely retaining the removable decorative insert within the body member via a resilient retaining member.” Appeal Br. 25 (Claims App.). Claim 25 depends from independent claim 1 and recites that the decorative insert “is solely retained to said body member with a resilient retaining member.” *Id.* at 26.

Appellants argue that, in Cobb, “component 64 does not solely retain front panel 44 or sign display sheet 66 in the frame.” Appeal Br. 14. We agree. Figure 2 of Cobb depicts that the front panel is retained by a combination of the filler 64 (the “resilient member”) along with recesses, 42

and 40, in the side frame portions, 22 and 24, respectively. Cobb Fig. 2, 6:41–56, 7:1–7. Thus, the Examiner has not shown by a preponderance of the evidence that the combination of Olivier, Brach, and Cobb teaches the limitations of claims 21 or 25.

Accordingly, we do not sustain the rejection of claims 21 or 25.

Claims 19 and 23

Claim 23 depends from claim 1 and recites, *inter alia*, that the “removable decorative insert is positioned . . . within said first and second ends caps such that an outwardly facing surface of said removable decorative insert presents an outermost surface that extends uninterrupted from one end of said removable decorative insert to an opposite end of said removable decorative insert.” Appeal Br. 26 (Claims App.). Claim 19 depends from claim 14 and recites a similar limitation. *Id.* at 25.

The Examiner finds that Arendt teaches these additional limitations. Final Act. 7–8. Specifically, the Examiner finds that “Arendt has ends caps (18) that are hollow that receive a portion of handle” and that “[t]he handle includes the decorative insert therefore the end caps receive the decorative insert.” Ans. 15.

Appellants argue that the end caps of Arendt “receive a portion of the decorative insert 48” and therefore “cover this portion of the decorative insert.” Appeal Br. 15 (citing Arendt Fig. 2). We agree with Appellants that the coverage of Arendt’s end caps prevents the outermost surface of the decorative insert in the Examiner’s combination from extending uninterrupted from end-to-end of the decorative insert as claimed. *See* Arendt Fig. 2, 4:30–32 (“If the cover is to be replaced by snapping the cover

in place, it would be necessary to re-engage the end cover 72 over the cover 42.”).

Accordingly, we do not sustain the rejection of claim 19 or 23.

Claims 7, 18, and 22

Claim 7 depends indirectly from claim 1 and recites that the wall-facing side of the body member includes an opening and “a fastener installed within said opening” that is “movable to contact a rear side” of the decorative insert to push it out of the recess. Appeal Br. 23 (Claims App.).

The Examiner finds that:

Forrest teaches a piece of hardware that includes interchangeable decorative fascia. The hardware includes a recess (20). An opening (36) is located within the wall facing side of the body member (14). A fastener (40) may be installed or inserted in the opening. The fastener may be moved in order to contact the rear side of the removable decorative insert (26) in order to push the decorative insert out of the recess so another decorative insert can be replaced (paragraph 19 lines 1-5).

Final Act. 8. The Examiner reasons that a person of skill would have modified Olivier to include the fastener taught by Forrest to “push the decorative insert out of the recess” because it would “allow another decorative insert to be easily inserted.” Final Act. 8–9 (citing Forrest ¶ 19, ll. 1–5).

Appellants argue that there was no reason to modify Olivier in the manner proposed by the Examiner, because the decorative insert of Olivier “can already be removed from the door handle 11 without requiring an additional fastener.” Appeal Br. 16. Notwithstanding that factual assertion regarding Olivier, however, the Examiner provides sufficient reason that a person of skill would have looked to the mechanism taught by Forrest. In

our view, the modification in view of Forrest described above, to allow easier replacement of the decorative insert, is based on “articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Kahn*, 441 at 988. Accordingly, Appellants’ argument does not apprise us of error.

Appellants also argue that Forrest does not disclose a fastener that “installed” in the opening but rather only discloses a tool inserted into the opening of the recess and thus lacks the benefit of not having to search for the tool when needed. Appeal Br. 16. We understand Appellants to seek a construction of “fastener” limited to fasteners that can remain in the opening unaided. The Specification discloses a threaded nylon machine screw as “one example” of a suitable fastener but then states that “other types of hole and fastener configurations could also be used.” Spec. ¶ 27. The claimed “fastener” need not fasten two objects together—indeed, the Specification describes no such “fastener.” Rather, it describes a structure that can be used to push the decorative insert out of the recess. *Id.* Although the Examiner reasons that Forrest’s “tool (40) is installed into the opening when the decorative insert is required to be changed” (Ans. 15), that finding does not address the plain claim language, which still requires a “fastener.” Based on that plain language, we agree with Appellants argument to the extent that the term “fastener” requires a structure that is capable of remaining in the opening unaided. Thus, we do not sustain the Examiner’s rejection of claim 7.

We find, however, that a person of skill in the art at the time had reason to modify Forrest’s tool to provide an element that remained in the opening unaided. A skilled practitioner had reason to make such a

modification because doing so would eliminate the need to separately store the tool of Forrest and so there would be no need to search for the tool when needed. Such a modification is a matter of common sense. We are cognizant that invoking common sense and the general knowledge of a skilled practitioner requires care, particularly when supplying a limitation missing from the prior art. *See Arendi S.A.R.L. v. Apple Inc.*, 832 F.3d 1355, 1363 (Fed. Cir. 2016). The modification we rely on, however, is a relatively minor change to Forrest's tool and we view it as well within the ordinary skill of the ordinary artisan, a mechanical designer. Moreover, we do not understand the claimed fastener to be "an important structural limitation that is not evidently and indisputably within the common knowledge of those skilled in the art." *Id.* (quoting *K/S HIMPP v. Hear-Wear Techs., LLC*, 751 F.3d 1362, 1365 (Fed. Cir. 2014)). Rather, the fastener is a peripheral limitation drawing from the well of common knowledge in the mechanical arts. We conclude that it would have been obvious at the time of invention to use the grab bar resulting from a combination of Olivier and Brach (as applied to claim 1 above) with a fastener, rather than Forrest's tool. A person of skill would have found it obvious to modify Forrest's tool such that a fastener performed the same insert-removal function as the tool. This conclusion is a new ground of rejection subject to the procedural options described below.

Claim 18 depends from independent claim 14 and does not recite the "fastener" of claim 7 but instead recites, *inter alia*, the step of "removing the removable decorative insert from the body member by overcoming the resilient retaining force without having to initiate detachment of the body member from the bathroom wall structure." Appeal Br. 25 (Claims App.).

Claim 22 depends from claim 1 and recites a limitation similar to that in claim 18. *Id.* at 26. Appellants argue that the Examiner has not shown that the prior art teaches the limitations of claims 18 or 22 because “the filler 64 does not interact with the sign insert 66 of Cobb.” Appeal Br. 16. As discussed above, we do not agree with that argument because Cobb teaches that the resilient member 64 urges the front panel. Cobb 5:18–21. Thus, Appellants have not shown us the Examiner erred in rejecting claims 18 or 22.

Accordingly, we reverse the Examiner’s rejection of claim 7 and enter a new ground of rejection. We sustain the rejection of claims 18 and 22.

Claim 8

Claim 8 depends from claim 2 and recites that the claimed grab bar includes:

first and second end caps that are attached to said first and second ends, respectively, said first and second end caps each including an end cap recess that is aligned with said recess in said body member, and wherein said end cap recesses each receive an end portion of said removable decorative insert such that the front face of the decorative insert that forms the decorative outer surface of the bathroom grab bar also extends over an outwardly facing surface of the first and second end caps.

Id. at 23.

The Examiner finds that “Lachance shows end caps (18) that include a recess (14)” and that “[t]he decorative insert (34) extends over the end caps.” Ans. 16; *accord* Final Act. 9–10. Appellants challenge these findings. Appeal Br. 17–18. We agree with Appellants. Reference numeral 14 in Lachance refers to a portion of wire member 10 that holds Lachance’s handle. Lachance 1:67–71. The Examiner has not shown that Lachance

teaches end caps with a recess. Additionally, “decorative insert (34)” identified by the Examiner in Lachance does not appear to extend over the end caps (18). *See* Lachance Fig. 2. Rather, the tube 34, extends over a washer 26 and then abuts a washer 24. *Id.*

Accordingly, we do not sustain the rejection of claim 8, or claims 9–12, which depend from claim 8.

Claims 27 and 29

Claim 27 depends from claim 1 and recites “at least one base flange and post assembly configured to attach said body member to a bathroom wall structure such that said body member can be gripped by a user.” Appeal Br. 27 (Claims App.). Claim 20 depends from independent claim 14 and recites a similar limitation. *Id.*

The Examiner finds that Ouyoung teaches these additional limitations and concludes that it would have been obvious to a person of ordinary skill in the art “to have included a post with a knurled surface as taught by Ouyoung in order to easily install the grab bar on the wall surface.” Final Act. 11.

Appellants challenge the Examiner’s reasoning as lacking rational underpinning. Appeal Br. 20. We do not agree. The Examiner explains a rational reason that a person of skill would have found the claimed subject matter obvious. Although “Olivier already includes a mount structure to attach the handle to a door” as Appellants argue (*id.*), that does not take away from the benefit brought by Ouyoung’s approach. Indeed, Ouyoung teaches “a technique . . . used to improve one device” and a person of ordinary skill in the art would “recognize that it would improve similar devices in the same way.” *See KSR*, 550 U.S. at 417.

Accordingly, we sustain the rejection of claims 27 and 29.

NEW GROUNDS OF REJECTION

As our affirmances discussed above are based on a statement of the reason that a person of skill would have looked to Brach that differs somewhat from the Examiner's statement, we designate our affirmances as new grounds of rejection under 37 C.F.R. § 41.50(b) to provide Appellants with a full and fair opportunity to respond. As described above, we also designate our finding regarding the modification in claim 7 as a new ground of rejection.

DECISION

For the above reasons, the Examiner's rejection of claims 1–29 is affirmed-in-part. We reverse the rejections of claims 5, 6, 7–12, 19, 21, 23, 25. We affirm and designate as new grounds of rejection, pursuant to 37 C.F.R. § 41.50(b), the rejections of claims 1–4, 13–18, 20, 22, 24, and 26–29. We apply a new ground of rejection also to claim 7.

Section 41.50(b) provides “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.” Section 41.50(b) also provides:

When the Board enters such a non-final decision, the appellant, within two months from the date of the decision, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(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 prosecution will be remanded to the

examiner. The new ground of rejection is binding upon the examiner unless an amendment or new Evidence not previously of Record is made which, in the opinion of the examiner, overcomes the new ground of rejection designated in the decision. Should the examiner reject the claims, appellant may again appeal to the Board pursuant to this subpart.

(2) Request rehearing. Request that the proceeding be reheard under § 41.52 by the Board upon the same Record. The request for rehearing must address any new ground of rejection and state with particularity the points believed to have been misapprehended or overlooked in entering the new ground of rejection and also state all other grounds upon which rehearing is sought.

Further guidance on responding to a new ground of rejection can be found in the Manual of Patent Examining Procedure § 1214.01.

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-IN-PART; 37 C.F.R. 41.50(b)