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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* LAURENT MOLINS

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Appeal 2015-004738  
Application 13/003,784  
Technology Center 1700

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Before MICHAEL P. COLAIANNI, GEORGE C. BEST, and  
MONTÉ T. SQUIRE, *Administrative Patent Judges*.

BEST, *Administrative Patent Judge*.

DECISION ON APPEAL

The Examiner finally rejected claim 26 under 35 U.S.C. § 112 as lacking written description support and as indefinite; claims 1–7 under 35 U.S.C. § 102(b) as anticipated; and claims 1–5, 7, 8, 13–16, 18–21, and 24–29 under 35 U.S.C. § 103(a) as obvious. Final Act. (July 23, 2014). Appellant<sup>1</sup> seeks reversal of these rejections pursuant to 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C. § 6.

For the reasons set forth below, we AFFIRM. Our affirmance relies upon findings of fact and reasoning that differ from the Examiner. Thus, we

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<sup>1</sup> Saint-Gobain Quartz S.A.S. is identified as the real party in interest. Br. 2.

designate this affirmance as setting forth NEW GROUNDS OF REJECTION.

### BACKGROUND

The '784 Application describes a particulate filter comprising a cartridge and a filter media. Spec. 1. The filter media comprises mineral fibers and is substantially free of organic material. *Id.* at 2. This is alleged to be advantageous because organic matter contained in prior art filter media is attacked by oxidizing agents such as ozone, thereby creating toxic volatile organic compounds such as formaldehyde. *Id.* at 1–2.

Claims 1 and 27 are representative of the '784 Application's claims and are reproduced below:

1. A particulate filter comprising a cartridge and a filter media positioned in the cartridge in the prefiltering position to retain solid and/or liquid particulates suspended in air, wherein the filter media is essentially mineral.

Br. 30 (Claims App.).

27. A particulate filter, consisting essentially of a cartridge, a filter media positioned in the cartridge in the prefiltering position to retain solid and/or liquid particulates suspended in air, wherein the filter media consist of silica fibers that are entangled with no binder and including no organic matter, a second filter media having a photocatalytic action positioned after the prefiltering position, and a UV source to activate the photocatalytic action.

Br. 32 (Claims App.).

## REJECTIONS

On appeal, the Examiner maintains<sup>2</sup> the following rejections:

1. Claim 26 is rejected under 35 U.S.C. § 112, ¶ 2 as indefinite. Final Act. 4.
2. Claims 1–7 are rejected under 35 U.S.C. § 102(b) as anticipated by Sakata.<sup>3</sup> Final Act. 4.
3. Claims 8 and 13 are rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Sakata and Aikawa.<sup>4</sup> Final Act. 6.
4. Claims 14 and 15 are rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Sakata and Snyder.<sup>5</sup> Final Act. 7.
5. Claims 1–5, 7, 15, 16, 18–21, and 24–29 are rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Dunn<sup>6</sup> and Fujihara.<sup>7</sup> Final Act. 7.

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<sup>2</sup> The Examiner has withdrawn the rejection of claim 26 under 35 U.S.C. § 112, ¶ 1 as failing to comply with the written description requirement. Answer 2.

<sup>3</sup> US 6,146,451, issued November 14, 2000.

<sup>4</sup> US 6,284,680 B1, issued September 4, 2001.

<sup>5</sup> US 2005/0238551A1, published October 27, 2005.

<sup>6</sup> US 2008/0112845 A1, published May 15, 2008.

<sup>7</sup> US 5,910,727, issued June 8, 1999. In the Final Action and the Answer, the Examiner erroneously refers to this as the Fugihara reference. *See, e.g.*, Final Act. 7–8.

## DISCUSSION

**Rejection 1.** During prosecution, a claim is examined for compliance with 35 U.S.C. § 112, ¶ 2 by determining whether the claim meets threshold requirements of clarity and precision. *In re Skvorecz*, 580 F.3d 1262, 1268 (Fed. Cir. 2009) (quoting MPEP § 2173.02). A claim is not indefinite merely because more suitable language or modes of expression are available. *Id.* In determining whether a particular claim is definite, the claim’s language must be analyzed in light of the content of the particular application, the prior art’s teaching, and the interpretation that would be given to the claim’s language by a person of ordinary skill in the art at the time the invention was made. *Id.*

In this case, the Examiner rejected claim 26 as indefinite because the limitation “the ambient air” has insufficient antecedent basis. Final Act. 4; *see also* Answer 3. Claim 26 reads:

26. The particulate filter as claimed in claim 1, wherein the cartridge and the filter media positioned in the cartridge in the prefiltering position receives [sic, receive] all the ambient air coming from outside the particulate filter.

Br. 32.

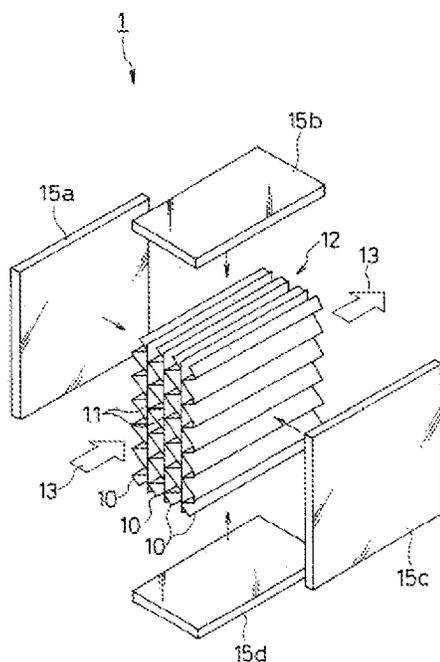
We conclude that the Examiner erred in rejecting claim 26 as indefinite. Read in the full context of the claim, the phrase “all the ambient air” is sufficiently precise to apprise a person having ordinary skill in the art of what is claimed and what is still open to the public. This is all that is required by § 112, ¶ 2. *See Nautilus, Inc. v. Biosig Instruments, Inc.*, 134 S. Ct. 2120, 2129 (2014).

**Rejection 2.** The Examiner rejected claims 1–7 as anticipated by Sakata. Final Act. 4. Appellant first argues for reversal of this rejection with respect to all of the claims based upon the limitations of claim 1. *See*

Br. 10–15. Appellant then presents separate arguments for patentability of each of the dependent claims. *See id.* at 15–19. We address each set of arguments in turn.

*Claims 1–7.* Appellant argues that the Examiner erred by finding that Sakata describes a particulate filter as required in claim 1. *Id.* at 10–15.

The Examiner found that Sakata’s Figure 3 depicts a particulate filter that is within the scope of claim 1. Final Act. 4–5. Figure 3 is reproduced below:



Sakata Figure 3 is a schematic exploded view of a filter. Sakata col. 12, line 51. The filter 1 comprises honeycomb structure 12 that supports adsorbents. *Id.* col. 15, ll. 1–13. Honeycomb structure 12 is surrounded by an aluminum frame comprised of frame members 15a, 15b, 15c, and 15d. *Id.* In Figure 3, the airflow direction is shown by arrows 13. *Id.*

Appellant argues that honeycomb 12 is not a particulate filter. *See* AB 11–15. The Examiner responds:

The gas filter of Sakata is made of porous filter material (10) through which air can pass (column 9, line 52 through

column 10, line 42 and column 16, line 49—column 17, line 33). As the filter media is a porous substance through which air passes through and around, small particles would become trapped by the pores as this is the basic principle underlying how a filter functions. Furthermore, some particles may become entrapped by simply being pressed against a leading edge of the filter material by the air flow.

Answer 3.

The Examiner's argument is not persuasive. As shown in Sakata's Figure 3, there primarily flows through this filter in a direction parallel to the openings in the honeycomb structure. Thus, the honeycomb structure is unlikely to remove a substantial amount of particulate matter from the air passing through the filter. We, therefore, cannot affirm the rejection of claims 1–7 on the basis of the Examiner's findings of fact and reasoning.

Our analysis, however, does not end there. In addition to describing the use of honeycomb material as a support, Sakata states that "the term 'supporter' is not limited to the honeycomb structure but may be a three dimensional mesh structure like rock wool." Sakata col. 7, ll. 18–20. Sakata, therefore, describes or suggests a filter such as that shown in Figure 3 in which the honeycomb is replaced by rock wool or some other three dimensional mesh. Rock wool is capable of acting as a particulate filter.

For the reasons set forth above, we affirm the rejection of claim 1 as anticipated by Sakata. Our affirmance relies upon findings of fact and reasoning that differ from those expressed by the Examiner. Thus, we designate our affirmance as constituting a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). In the alternative, we newly reject claim 1 pursuant to 35 U.S.C. § 103(a) as unpatentable over Sakata because it would have been obvious to a person of ordinary skill in the art at the time of the

invention to substitute rock wool for the honeycomb supporter shown in Figure 3.

*Claims 2 and 3.* Claims 2 and 3 further specify the properties of the filter media recited in claim 1. In particular, claim 2 requires that “the filter media has a loss on ignition of less than 0.1 % by weight,” and claim 3 requires that “the filter media has a loss on ignition of less than 0.01% by weight.” Br. 30 (Claims App.).

Appellant argues that the rejection of claims 2 and 3 should be reversed because they depend from claim 1. Br. 10–15. For the reasons discussed above, we are not persuaded by this argument.

Appellant further argues that the rejection of claims 2 and 3 should be reversed because Sakata does not describe the limitations added by these claims. Br. 15–16. In particular, Appellant argues that the Examiner erred by finding that Sakata’s filter media would inherently possess the properties set forth in claims 2 and 3. *Id.* Appellant also argues that “the [E]xaminer has the initial duty of supplying the requisite factual basis” for the rejection and that the Examiner has failed to meet this burden with respect to claims 2 and 3. *Id.*

We are not persuaded by Appellant’s arguments. As the Examiner found, Sakata describes making its honeycomb support in a manner that removes all organic material from the honeycomb. Final Act. 5 (citing Sakata col. 16, line 49–col. 17, line 3). As discussed above, the Examiner’s reliance upon Sakata’s honeycomb support as the basis for rejecting claims 1–7 is misplaced. Sakata, however, teaches that rock wool may be used as the filter media. Rock wool is manufactured by melting basalt rock and steel

mill slag and are then spun into a fibrous material.<sup>8</sup> This manufacturing process results in a product that contains no organic material. In view of these findings of fact, Appellant has the burden of demonstrating that rock wool would not meet the limitations set forth in claim 2 or 3. *See In re King*, 801 F.2d 1324, 1327 (Fed. Cir. 1986).

As discussed above, we have designated our affirmance of the rejection of claim 1 as anticipated by Sakata as comprising a new ground of rejection. In the alternative, we have newly rejected claim 1 as obvious in view of Sakata. Furthermore, our affirmance of the rejection of claims 2 and 3 as unpatentable in view of Sakata also contains findings of fact and reasoning not relied upon by the Examiner. Thus, we designate our affirmance of the rejection of claims 2 and 3 as comprising new grounds of rejection.

In sum, claims 2 and 3 are rejected as either anticipated by or unpatentably obvious in view of Sakata. These are new grounds of rejection pursuant to 37 C.F.R. § 41.50(b).

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<sup>8</sup> We find that a person of ordinary skill in the art would have a rudimentary knowledge of the rock wool manufacturing process. In the alternative, the details of this process are widely available. *See, e.g., Mineral Wool*, [https://en.wikipedia.org/wiki/Mineral\\_wool](https://en.wikipedia.org/wiki/Mineral_wool) (“Stone wool is a furnace product of molten rock at a temperature of about 1600 °C, through which a stream of air or steam is blown. . . . The final product is a mass of fine, intertwined fibres with a typical diameter of 2 to 6 micrometers.”). Although mineral wool may contain a binder, *see id.*, a person of ordinary skill in the art would understand that Sakata as suggesting that organic materials not be included in the filter material.

*Claim 4.* Claim 4 depends from claim 1 and further specifies that “the filter media is a felt of mineral fibers comprising no organic binder.” Br. 30 (Claims App.).

Appellant argues that the rejection of claim 4 should be reversed because it depends from claim 1. Br. 10–15. For the reasons discussed above, we are not persuaded by this argument.

As discussed above, Sakata describes the use of a three dimensional mesh such as rock wool as an alternative support material. Furthermore, because Sakata describes methods of manufacturing the honeycomb filter material that remove all organic material, a person of ordinary skill in the art would understand that organic material should not be included in a rock wool filter.

We have designated our affirmance of the rejection of claim 1 as anticipated by Sakata as comprising a new ground of rejection. In the alternative, we have newly rejected claim 1 as obvious in view of Sakata. Furthermore, our affirmance of the rejection of claim 4 as unpatentable in view of Sakata also contains findings of fact and reasoning not relied upon by the Examiner. Thus, we designate our affirmance of the rejection of claim 4 as comprising new grounds of rejection.

In sum, claim 4 is rejected as either anticipated by or unpatentably obvious in view of Sakata. These are new grounds of rejection pursuant to 37 C.F.R. § 41.50(b).

*Claim 5.* Claim 5 further requires that the mineral fibers recited in claim 4 consist of silica fibers. Br. 30. We find that rock wool is composed of mineral fibers that consist of silica fibers.

Appellant argues that the rejection of claim 5 should be reversed because it depends from claim 1. Br. 10–15. For the reasons discussed above, we are not persuaded by this argument.

Appellant's additional arguments are directed to the Examiner's reliance upon the honeycomb support material described in Sakata. Because our new grounds of rejection are based upon Sakata's description of using rock wool as a filter media, we need not address these arguments.

We have designated our affirmance of the rejection of claim 1 as anticipated by Sakata as comprising a new ground of rejection. In the alternative, we have newly rejected claim 1 as obvious in view of Sakata. Furthermore, our affirmance of the rejection of claim 5 as unpatentable in view of Sakata also contains findings of fact and reasoning not relied upon by the Examiner. Thus, we designate our affirmance of the rejection of claim 5 as comprising new grounds of rejection.

In sum, claim 5 is rejected as either anticipated by or unpatentably obvious in view of Sakata. These are new grounds of rejection pursuant to 37 C.F.R. § 41.50(b).

*Claim 6.* Claim 6 reads:

6. The particulate filter as claimed in claim 1, wherein the filter media also has a photocatalytic action.

Br. 30. The Examiner found that Sakata describes filter media with a photocatalytic action. Final Act. 6. We further find that it would have been obvious to a person of ordinary skill in the art to provide a rock wool filter media with the photocatalytic action described in Sakata.

Appellant argues that the rejection of claim 6 should be reversed because it depends from claim 1. Br. 10–15. For the reasons discussed above, we are not persuaded by this argument. Appellant's additional

arguments for patentability of claim 6 are based upon the Examiner's reliance upon a honeycomb support. Because the new ground of rejection set forth in this Opinion does not rely upon a honeycomb support, we do not address this argument.

We have designated our affirmance of the rejection of claim 1 as anticipated by Sakata as comprising a new ground of rejection. In the alternative, we have newly rejected claim 1 as obvious in view of Sakata. Furthermore, our affirmance of the rejection of claim 6 as unpatentable in view of Sakata also contains findings of fact and reasoning not relied upon by the Examiner. Thus, we designate our affirmance of the rejection of claim 6 as comprising new grounds of rejection.

In sum, claim 6 is rejected as either anticipated by or unpatentably obvious in view of Sakata. These are new grounds of rejection pursuant to 37 C.F.R. § 41.50(b).

*Claim 7.* Claim's 7 reads:

7. The particulate filter as claimed in claim 1, further comprising a second filter media having a photocatalytic action positioned after the prefiltering position.

Br. 30. The Examiner found that Sakata describes a filter comprising a second filter media having a photocatalytic action positioned after the prefiltering position. Final Act. 6.

Appellant argues that the rejection of claim 7 should be reversed because it depends from claim 1. Br. 10–15. For the reasons discussed above, we are not persuaded by this argument. Appellant's additional arguments for reversal of the rejection of claim 7 are based upon the Examiner's reliance upon a honeycomb structure as the first filter media. As

discussed above, the rejection of claim 7 now relies upon a rock wool filter media. Thus, we need not address Appellant's additional arguments.

We have designated our affirmance of the rejection of claim 1 as anticipated by Sakata as comprising a new ground of rejection. In the alternative, we have newly rejected claim 1 as obvious in view of Sakata. Furthermore, our affirmance of the rejection of claim 7 as unpatentable in view of Sakata also contains findings of fact and reasoning not relied upon by the Examiner. Thus, we designate our affirmance of the rejection of claim 7 as comprising new grounds of rejection.

In sum, claim 7 is rejected as either anticipated by or unpatentably obvious in view of Sakata. These are new grounds of rejection pursuant to 37 C.F.R. § 41.50(b).

**Rejection 3.** The Examiner rejected claims 8 and 13 as unpatentable over the combination of Sakata and Aikawa. Final Act. 6–7. Appellant argues that this rejection should be reversed because the Examiner has not provided sufficient explanation for why a person having ordinary skill in the art would have combined Sakata and Aikawa. Br. 19–20.

In the Examiner's Answer, the Examiner explains:

The issue of Sakata's filter being a particulate filter is addressed above. Regardless of what the intended function of Sakata's filter is, the filter of Sakata and Aikawa are both used to filter air streams and are non-woven fiber filters. Since Aikawa teaches a mass per unit area for a non-woven fiber air filter, it can be concluded that in order to make a non-woven fiber filter a person having ordinary skill in the art would have to determine a mass per unit area of the filter. Sakata does not provide any guidance in this regard. Thus a person having ordinary skill in the art would have to look to the prior art for a teaching of a known mass per unit area of a non-woven fiber filter for use in filtering air streams. It is obvious for such a person to do so as mass per unit area is a known design

parameter in filter design. Aikawa's teachings apply to a filter of any shape as Aikawa contemplates that the filter can take on any shape (column 8, lines 63–65). A reasonable expectation of success is supported by the facts that both filters are non-woven fiber filters capable of filtering air and that Aikawa teaches that the taught mass per unit area is applicable to filter media formed into any shape. A person having ordinary skill in the art would thus have been motivated to combine the references as previously presented in the prior office action based on a need to determine a known filter design parameter and a reasonable expectation that the taught filter mass per unit area would result in a successful non-woven fiber air filter.

Answer 7.

Appellant did not file a Reply Brief to respond to the Examiner. Thus, we affirm the rejection of claims 8 and 13. Because these claims depend from claim 1, we designate our affirmance as comprising a new ground of rejection under 37 CFR § 41.50(b).

**Rejection 4.** Claims 14 and 15 are directed to embodiments of a particulate filter that comprise a UV source to activate the photocatalytic action. The Examiner rejected claims 14 and 15 as unpatentable over the combination of Sakata and Snyder. Final Act. 7. In particular, the Examiner found that Snyder describes an air purifier in which a UV light source and radiates the manganese dioxide photo catalyst to cause breakdown of VOCs in the air. *Id.*

Appellant argues that this rejection should be reversed because Sakata teaches that manganese dioxide is included to remove sulfurous acid gases. Br. 21–23 (quoting Sakata col. 5, ll. 54–59; col. 7, line 24–col. 8, line 34).

This argument is not persuasive. Snyder describes the use of photo activated manganese dioxide to remove VOCs. Because Sakata already includes manganese dioxide in its filter media, the Examiner correctly

concluded that it would have been obvious to a person having ordinary skill in the art to include a UV light source so that the manganese dioxide could serve two roles. Answer 7–8.

Because these claims depend from claim 1, we designate our affirmance as comprising a new ground of rejection under 37 C.F.R. § 41.50(b).

**Rejection 5.** The Examiner rejected claims 1–5, 7, 15, 16, 18–21, and 24–29 as unpatentable over the combination of Dunn and Fujihara. Final Act. 7–11. In making this rejection, the Examiner found that Dunn describes a particulate filter that includes a HEPA filter that includes a polyethylene/polypropylene fiber. *Id.* at 7–8. In the rejection, the Examiner proposes replacing Dunn’s HEPA filter with a HEPA filter made of silicon dioxide as described in Fujihara. *Id.*

Appellant argues for the reversal of this rejection with respect to six different groups of claims. Br. 23–28. We address each group of claims separately.

*Claim 1.* Appellant argues that the rejection of claim 1 is improper because the Examiner has not provided any explanation as to why a person of ordinary skill in the art would have replaced one filter media with a second filter media. Br. 23–25. In particular, Appellant points out that Dunn describes the use of a filter comprising mineral fibers as an order reducing medium. *Id.* at 24–25. Appellant argues that “[t]he Examiner has not reasonably established that one of ordinary skill reading this disclosure would have sought to change one media (designated as 200 for removing particles) with another media (designated as 400 for odor reduction) for any purpose and with a reasonable expectation of success.” *Id.* at 25.

Appellant's argument is not persuasive. In this rejection, the Examiner is merely suggesting the replacement of a HEPA filter made of one type of material with HEPA filter made of a second material. *See* Final Act. 8. As the Supreme Court has explained, "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 416 (2007). Furthermore, an "[e]xpress suggestion to substitute one equivalent for another need not be present [in the prior art] to render such substitution obvious." *In re Fout*, 675 F.2d 297, 301 (CCPA 1982).

Thus, we affirm the rejection of claim 1 as unpatentable over the combination of Dunn and Fujihara.

*Claims 2–5, 18, 21, 24, 25, and 29.* Appellant's arguments for reversal of the rejections of claims 2–5, 18, 21, 24, 25, and 29 are substantively identical to the arguments already presented with respect to independent claim 1. *See* Br. 25–26. We, therefore, also affirm the rejections of these claims as unpatentable over the combination of Dunn and Fujihara.

*Claims 7 and 15.* Appellant contends that the rejection of these claims should be reversed:

The Examiner argues that Dunn teaches a second filter media having a photocatalytic action positioned after the prefiltering position as required in Claim 7. Page 8 of the Final Rejection relying on paragraphs [0056] and [0119]–[0120].

However, the teachings in Dunn to include an odor reducing medium (400) and a uv lamp disclosed in these paragraphs (see also FIG. 8) are positioned after the organic material as the filter media that includes polyethylene/propylene fiber. Thus, Dunn, considered by itself or combined with Fugihara, does not teach all of the limitations of Claim 7, by

virtue of its dependence on Claim 1 and in turn the dependence on Claim 15 on Claim 7.

Br. 26–27.

Appellant’s argument is not persuasive. Indeed, it fails to take into account the Examiner’s finding that it would have been obvious to replace the polyethylene/polypropylene HEPA filter described in Dunn with a HEPA filter made from mineral fiber. Thus, we affirm the Examiner’s rejection of claims 7 and 15 as unpatentable over the combination of Dunn and Fujihara.

*Claims 16, 19, 20, and 24.* Appellant argues:

While Dunn does teach the possibility of using a HEPA filter, that HEPA filter must be considered in the context of Dunn’s teachings to use organic material as the filter media that includes polyethylene/propylene fiber, HEPA being the abbreviation of high-efficiency particulate air and simply defines the minimum performance. Yet that teaching does not preclude Dunn’s teachings that lead away from using a HEPA filter that include filter media that is “essentially mineral” as is required in each of these claims.

Br. 27.

This argument is not persuasive. As discussed above, we agree with the Examiner’s conclusion that it would have been obvious to a person of ordinary skill in the art to replace Dunn’s organic polymer HEPA filter with a mineral fiber HEPA filter. Furthermore, Appellant’s assertion that Dunn teaches away from using a mineral fiber-based HEPA filter is not supported with any citations to the record. Such unsupported attorney argument is persuasive only in the very rarest of circumstances. This is not such an occasion.

*Claim 26.* Appellant’s argument for reversal of the rejection of claim 26 is premised upon the contention that the Examiner erred in concluding

that it would of been obvious to replace Dunn's organic HEPA filter with a mineral fiber-based HEPA filter. *See* Br. 27–28. As discussed above, we disagree with this contention. Thus, we also affirm the rejection of claim 26 as unpatentable over the combination of Dunn and Fujihara.

*Claims 27 and 28.* Appellant's argument for reversal of the rejection of claims 27 and 28 is premised upon the contention that the Examiner erred in concluding that it would of been obvious to replace Dunn's organic HEPA filter with a mineral fiber-based HEPA filter. *See* Br. 28. As discussed above, we disagree with this contention. Thus, we also affirm the rejections of claims 27 and 28 as unpatentable over the combination of Dunn and Fujihara.

#### CONCLUSION

For the reasons set forth above, we reverse the rejection of claim 26 as indefinite. We, however, affirm the rejections of claims 1–8, 13–16, 18–21, and 24–29 as unpatentable over Sakata, either alone or in combination either with Aikawa or with Snyder. As explained above, we designate our affirmance of these rejections as setting forth new grounds of rejection. We also affirm the rejections of claims 1–5, 7, 15, 16, 18–21, and 24–29 as unpatentable over the combination of Dunn and Fujihara.

This Decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b), which provides that “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.” Section 41.50(b) also provides that the Appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two

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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 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. . . .

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

AFFIRMED; NEW GROUNDS OF REJECTION  
PURSUANT TO 37 C.F.R. § 41.50(b)