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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* BRIAN JOSEPH ROBERT

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Appeal 2017-001592  
Application 13/940,836  
Technology Center 2800

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Before ADRIENE LEPIANE HANLON, JAMES C. HOUSEL, and  
AVELYN M. ROSS, *Administrative Patent Judges*.

HOUSEL, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner's decision to reject claims 1–15 and 21–25. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM, and enter a new ground of rejection.<sup>2</sup>

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<sup>1</sup> Appellant is the Applicant, Ford Global Technologies, LLC, which, according to the Brief, is the real party in interest (App. Br. 1).

<sup>2</sup> Our Decision refers to the Specification (Spec.) filed July 12, 2013, the Examiner's Final Office Action (Final) dated December 23, 2015,

## STATEMENT OF THE CASE

The invention relates to “a highly integrated power electronic module assembly [(PEMA)] that employs a vapor chamber” (Spec. ¶ 1). The Inventors disclose that the PEMA includes a semiconductor device for processing power thereby creating heat (*id.* ¶ 44). The vapor chamber, according to the Inventors, is a passive, high-efficiency heat spreader for dissipating this heat (*id.* ¶ 45). In one embodiment, the Inventors disclose that the vapor chamber relies on thermal conductivity and phase transition to thermally manage the heat generated by the semiconductor device (*id.*).

Independent claims 1, 11, and 25, reproduced below from the Claims Appendix to the Appeal Brief, are illustrative of the subject matter on appeal. Limitations at issue are italicized.

1. A power electronic module assembly, comprising:
  - a vapor chamber;
  - a substrate *integrated with a top surface* of said vapor chamber; and
  - at least one cooling feature *integrated with a bottom surface* of said vapor chamber.
  
11. A vehicle, comprising:
  - a controller; and
  - a power electronic module assembly *housed inside said controller*, said power electronic module assembly having a

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Appellant’s Appeal Brief (App. Br.) filed May 23, 2016, the Examiner’s Answer (Ans.) dated September 9, 2016, and Appellant’s Reply Brief (Reply Br.) filed November 09, 2016.

vapor chamber and a substrate *integrated with* said vapor chamber.

25. A power electronic module assembly, comprising:  
a vapor chamber housing a heat transfer medium;  
an insulated metal *substrate integrated with a top face*  
of said vapor chamber;  
a plurality of pins or fins *integrated with a bottom face*  
of said vapor chamber;  
a heat source on said insulated metal substrate; and  
wherein said vapor chamber is configured to dissipate  
heat from said heat source by effectuating a phase change of  
said heat transfer medium.

### REJECTIONS

The Examiner maintains, and Appellant requests our review of, the following grounds of rejection (Final :

1. Claims 1, 2, 6, and 10–15 under 35 U.S.C. § 102(a)(1) as anticipated by Suzuki (US 2012/0050993 A1, published Mar. 1, 2012);
2. Claim 25 under 35 U.S.C. § 102(a)(1) as anticipated by Weiss (US 2008/0266801 A1, published Oct. 30, 2008);
3. Claims 3, 4, and 9 under 35 U.S.C. § 103 as unpatentable over Suzuki in view of Beaupre (US 2010/0277868 A1, published November 4, 2010);
4. Claims 21 and 24 under 35 U.S.C. § 103 as unpatentable over Suzuki in view of Weiss; and
5. Claims 22 and 23 under 35 U.S.C. § 103 as unpatentable over Suzuki in view of Holland (US 2009/0145581 A1, published Jun. 11, 2009).

## ANALYSIS

### *Rejection 1: Anticipation by Suzuki*

With regard to claim 1, the Examiner finds Suzuki discloses a PEMA comprising vapor chamber 1, substrate 14 integrated with a first surface of the vapor chamber, and at least one cooling feature integrated with a second surface of the vapor chamber (Final 2). The Examiner construes the term, “integrated,” to mean “to unite or combine” without describing how or the details of the structure to integrate (*id.*).

Appellant argues that Suzuki fails to teach or suggest a substrate integrated with a top surface of a vapor chamber and a cooling feature integrated with a bottom surface of the vapor chamber (App. Br. 3). Instead, Appellant urges that Suzuki teaches the opposite arrangement — substrate 14 is attached to the bottom of, and cooling system 20 is attached to the top of, vapor chamber 1 (*id.*). Appellant does not challenge the Examiner’s construction of the term, “integrated” (*id.* at 3–4).

In response, the Examiner interprets the second surface of Suzuki’s vapor chamber as the bottom surface thereof and the first surface as the top surface thereof (Ans. 3). In doing so, the Examiner explains that substrate 14 is integrated with the surface of vapor chamber 1 facing power module 11 (*id.*). In addition, the Examiner explains that the at least one cooling

feature corresponds to the structure of cooling system 20 as shown in the Examiner's annotated Figure 3 of Suzuki (*id.* at 4; Final 3).

Appellant contends that the Examiner's "position is untenable because it is the opposite of how these terms would commonly be understood" (Reply Br. 2). According to Appellant, the Examiner has relied on the broadest possible interpretation of the terms, "top surface" and "bottom surface," rather than a reasonable interpretation consistent with the Specification that those skilled in the art would reach (*id.*). Appellant also asserts that the Examiner's interpretation conflicts with the manner in which Suzuki describes itself, noting that Suzuki indicates that the cooling system faces the "upper surface" of vapor chamber 1 (*id.*, citing Suzuki ¶ 40).

We begin, appropriately, with the claim's words. *See Amazon.com, Inc. v. Barnesandnoble.com, Inc.*, 239 F.3d 1343, 1351 (Fed. Cir. 2001) ("Only when a claim is properly understood can a determination be made . . . whether the prior art anticipates and/or renders obvious the claimed invention."). During examination, claim terms are given their broadest reasonable construction consistent with the specification. In general, words used in a claim are accorded their ordinary and customary meaning. *Honeywell Int'l Inc. v. Universal Avionics Sys. Corp.*, 488 F.3d 982, 992 (Fed. Cir. 2007). Under a broadest reasonable interpretation, words of the claim must be given their plain

meaning, unless such meaning is inconsistent with the specification. The plain meaning of a term means the ordinary and customary meaning given to the term by those of ordinary skill in the art at the time of the invention. The ordinary and customary meaning of a term may be evidenced by a variety of sources, including the words of the claims themselves, the specification, drawings, and prior art.

Here, Appellant concedes that the Examiner's interpretation is possible, but is nonetheless inconsistent with the Specification and the prior art teaching. Although Appellant argues that the Examiner's interpretation is inconsistent with the Specification, Appellant fails to direct our attention to any disclosure of the Specification which limits the meaning of "top surface" and "bottom surface" with respect to the Examiner's "broadest possible interpretation," nor do we find any. Moreover, although Appellant asserts that the Examiner's interpretation is inconsistent with how these terms would be interpreted by the ordinary artisan, the only evidence Appellant relies on in support of this assertion is Suzuki. However, although Appellant notes that Suzuki refers to an "upper surface" of vapor chamber 1, Appellant fails to establish that this recitation limits the meaning of "top surface" and "bottom surface" or otherwise establishes how the ordinary artisan would have interpreted these terms in claim 1.

In this regard, we remain cognizant of the adage that “the name of the game is the claim.” *In re Hiniker Co.*, 150 F.3d 1362, 1369 (Fed. Cir. 1998) (quoting Giles Sutherland Rich, *Extent of Protection and Interpretation of Claims—American Perspectives*, 21 Int’l Rev. Indus. Prop. & Copyright L. 497, 499 (1990)). Claim 1, however, fails to recite any particular structure for the vapor chamber to provide context for its top and bottom surfaces.<sup>3</sup> As such, the substrate in Suzuki may be interpreted to be the upper wall of the vapor chamber because the substrate is integrated with a top surface, and at least partially inside, of the vapor chamber. Similarly, the cooling feature in Suzuki may be interpreted to be the lower wall of the vapor chamber because the lower wall is integrated with a bottom surface of the vapor chamber and, being cooled by the liquid in the vapor chamber, acts to dissipate heat away from power device 11.

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<sup>3</sup> Notably, the Specification discloses that a substrate is integrated with a first surface of the vapor chamber and at least one cooling feature is integrated with a second surface of the vapor chamber. Spec. ¶ 4. The Specification discloses that in a *non-limiting embodiment*, the first surface is a top surface of the vapor chamber and the second surface is a bottom surface of the vapor chamber. Spec. ¶ 8. In that regard, the Specification discloses that the first and second surfaces, and thus the substrate and the cooling feature, may be disposed elsewhere on the chamber (Spec. ¶ 46), indicating that the “top surface” and the “bottom surface” are not critical designations.

Accordingly, Appellant has failed to identify reversible error in the Examiner's rejection of claim 1. Appellant does not argue claims 2, 6, and 10 separately from claim 1. Pursuant to the provisions of 37 C.F.R. § 41.37(c)(1)(iv) (2015), claims 2, 6, and 10 fall with claim 1. To the extent that our interpretation of claim 1 is not coincident with the Examiner's interpretation, we designate our affirmance of the rejection of claims 1, 2, 6, and 10 as a new ground under 37 C.F.R. § 41.50(b).

With regard to claim 11, the Examiner finds Suzuki discloses a vehicle comprising a PEMA housed inside controller 400, wherein the PEMA includes vapor chamber 1 and substrate 14 integrated with the vapor chamber (Final 5; citing Suzuki, Figs. 1, 8). Appellant argues that Suzuki's PEMA lacks a vapor chamber and substrate housed inside controller 10 (App. Br. 5). In response, the Examiner reiterates the finding that the PEMA includes a vapor chamber and substrate housed inside controller 400 (Ans. 5). Appellant acknowledges that Suzuki's entire system is inside casing 400 (App. Br. 5), but argues that casing 400 is not a controller (Reply Br. 2).

Appellant's argument is not persuasive of reversible error. Claim 11 fails to recite any particular structure for the controller. Appellant also does not direct our attention to any disclosure which limits the controller to any particular structure, nor do we find any. As indicated above, Appellant concedes that Suzuki's

entire system, which includes the PEMA having the vapor chamber and substrate, is housed inside casing 400. Appellant also concedes that Suzuki's system includes a controller housed inside casing 400. Therefore, we are unable to say that casing 400, which houses Suzuki's system with controller, is not the controller housing.

Accordingly, Appellant has failed to identify reversible error in the Examiner's rejection of claim 11. Appellant does not argue claims 12–15 separately from claim 11. Pursuant to the provisions of 37 C.F.R. § 41.37(c)(1)(iv) (2015), claims 12–15 fall with claim 11.

*Rejection 2: Anticipation by Weiss*

With regard to claim 25, the Examiner finds Weiss discloses a PEMA comprising vapor chamber 94, 124 housing heat transfer medium 138, an insulated metal substrate 116, 118 integrated with a top wall of the vapor chamber, a plurality of fins 100 integrated with a bottom wall of the vapor chamber, and heat source 26 on the substrate, wherein the vapor chamber is configured to dissipate heat from the heat source by effectuating a phase change of the heat transfer medium (Final 6).

Appellant argues that Weiss fails to teach or suggest an insulated metal substrate integrated with a top face of the vapor chamber and a plurality of fins integrated with a bottom face of

the vapor chamber (App. Br. 5). Appellant urges that the term “integrated” is defined in the Specification to denote an interface between adjacent components that “excludes bonding or interface layers such as solder, adhesive, thermal grease, thermal tapes or the like” (*id.* at 6 (emphasis omitted)). Appellant contends Weiss fails to meet this definition because Weiss provides solder layer 122 between substrate 116, 118 and heat spreader 94 and also provides thermal grease 96 between heat sink 98 and heat spreader 94 (*id.*).

In response, the Examiner finds Weiss teaches that the device may be mounted on heat sink 98 by means of a thermal bond, which the Examiner interprets to mean “bonding without any additional layer” (Ans. 8). In addition, the Examiner finds Weiss teaches that the heat spreader may be designed as an add-on device or may be integrated into the design of one of the components, e.g., as a support or substrate (*id.*). Similarly, the Examiner finds Weiss teaches the fins may be integral to the heat spreader such as with the condenser plate thereof (*id.*).<sup>4</sup>

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<sup>4</sup> The Examiner also argues that Appellant has not clearly defined the term “integrated” in the Specification (Ans. 7). However, as Appellant asserts (Reply Br. 3), the Specification, paragraph 48, defined “integrated” as “an interface between adjacent components of the power electronic module assembly 60 that excludes bonding or interface layers such as solder, thermal grease, or other layers.” The Examiner does not explain why this definition is not specific.

Appellant does not rebut or otherwise address these findings. In addition, Weiss supports these findings. In particular, Weiss teaches “the cooling devices may be integrated directly into the modular circuitry” (Weiss ¶ 34), “a cooling device is integrated directly into the assembly itself” (*id.*), “the phase change heat spreader may be an integral support or may be thermally coupled to a support” (*id.* ¶ 38), “the phase change heat spreader . . . may be integrated into the design of one of the components” (*id.* ¶ 42), “the fins on the various structures described herein may be integral to the heat spreader” (*id.*), “the cooling device 164 is integrated into the bus structure itself” (*id.* ¶ 46), “the cooling devices are integrated directly as a substrate or base of a power electronics module” (*id.*). Therefore, a preponderance of the evidence supports the Examiner’s findings.

Although the Examiner only finds that Weiss anticipates claim 25, we herein find that Weiss also anticipates claims 1–4, 6, 9, 10, and 21. With regard to claim 1, Weiss teaches a PEMA comprising vapor chamber 134 defined by evaporator plate 128, condenser plate 130, and side walls 132, substrate 126 integrated with a top surface 128 of vapor chamber 134, and at least one cooling feature 98 including fins 100 integrated with a bottom surface 130 of vapor chamber 134 (Weiss, Figs. 5, 7–9). As indicated above, Weiss supports integration of the substrate and the cooling feature into the vapor chamber. Such integration

would necessarily exclude bonding or interface layers between the vapor chamber and each of the substrate and the cooling feature (claim 2). Further, because Weiss teaches that vapor chamber may be an integral support for the power modules, in which the support may include a mechanical layer on which the circuitry to be cooled is mounted, formed, or packaged (Weiss ¶ 38), Weiss inherently teaches a substrate integrated at least partially inside the vapor chamber (claim 9).

Further, the Examiner finds, without challenge, that Weiss teaches an insulated metal substrate (claim 3) (*see* Final 6). Weiss teaches this substrate includes at least one metal layer and at least one dielectric layer (claim 4) (Weiss ¶ 36). Weiss teaches a heat source mounted to the substrate (claim 6) (Weiss, Figs. 5, 7–9; ¶ 29). The Examiner also finds, without challenge, that Weiss teaches that the at least one cooling feature includes fins (claim 10) and that the vapor chamber includes wick 138 configured to exert capillary pressure on a heat transfer medium contained therein (claim 21) (*see* Final 6).

Accordingly, we sustain the Examiner's rejection of claim 25 under 35 U.S.C. § 102(a)(1) as anticipated by Weiss, but extend this rejection to include claims 1–4, 6, 9, 10, and 21 for the reasons given above. As the application of Weiss to these additional claims is new, we designate our rejection of claims 1–4, 6, 9, 10, and 21 as a new ground in accordance with 37 C.F.R. § 41.50(b).

*Rejection 3: Obviousness over Suzuki in view of Beaupre*

The Examiner rejects claims 3, 4, and 9 under 35 U.S.C. § 103 as unpatentable over Suzuki in view of Beaupre (Final 7–8). Appellant confines their challenge to this rejection to claim 9 only (App. Br. 7). Accordingly, we sustain the Examiner’s rejection of claims 3 and 4. *See Ex parte Frye*, 2010 WL 889747, \*4 (BPAI 2010) (“Filing a Board appeal does not, unto itself, entitle an appellant to *de novo* review of all aspects of a rejection. If an appellant fails to present arguments on a particular issue — or, more broadly, on a particular rejection — the Board will not, as a general matter, unilaterally review those uncontested aspects of the rejection.”) (*cited with approval in In re Jung*, 637 F.3d 1356, 1365 (Fed. Cir. 2011) (“it has long been the Board’s practice to require an applicant to identify the alleged error in the examiner’s rejections”)).

Claim 9 depends from claim 1 and further requires the substrate is integrated at least partially inside of the vapor chamber. Although, the Examiner finds Suzuki fails to teach this feature (Final 7), as we indicated earlier based on our interpretation of claim 1, we find Suzuki’s upper wall of the vapor chamber to be the substrate because the upper wall is integrated with a top surface, and at least partially inside, of the vapor

chamber. Therefore, we sustain the Examiner's rejection of claim 9 without reliance on Beaupre.

Nonetheless, the Examiner finds Beaupre discloses a power module with a substrate integrated at least partially inside of the vapor chamber (*id.*, *citing* Beaupre ¶ 32). Therefore, the Examiner concludes it would have been obvious to incorporate a substrate as taught by Beaupre into Suzuki's PEMA to further improve heat dissipation (*id.* at 7–8; *see also* Ans. 9).

Appellant argues that neither Suzuki nor Beaupre teaches or suggests the recitation of claim 9 (App. Br. 7). Appellant contends the Examiner's reliance on Beaupre is misplaced because Beaupre fails to teach a vapor chamber (*id.*).

Appellant's argument is not persuasive of reversible error. Appellant's contention that the Examiner's reliance on Beaupre is misplaced because Beaupre fails to teach a vapor chamber fails to address the basis on which the Examiner relies on Beaupre. Specifically, the Examiner finds Beaupre teaches a substrate integrated at least partially inside a vapor chamber (Final 7; Ans. 9). As we indicated above, claim 1 fails to recite any structure for the vapor chamber, and claim 9 likewise adds nothing to the vapor chamber structure other than that the substrate is integrated at least partially inside it. Appellant's contention that Beaupre fails to teach a vapor chamber fails to address the Examiner's finding that Beaupre's cooling fluid channels 40 provide a vapor chamber

and that Beaupre's baseplate 36 (substrate) is integrated into cooling fluid channels 40 (vapor chamber) (Beaupre ¶ 32). Merely arguing that a recited feature is not taught in the applied references is insufficient to identify reversible error. *See* 37 C.F.R. § 41.37(c)(1)(iv) ("A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim."); *see also In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011) (holding that "the Board reasonably interpreted Rule 41.37 to require more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that the corresponding elements were not found in the prior art"); *see also In re Keller*, 642 F.2d 413, 426 (CCPA 1981).

Accordingly, we also sustain the Examiner's obviousness rejection over the combination of Suzuki and Beaupre.

*Rejection 5: Obviousness over Suzuki in view of Weiss*

Claim 21 depends from claim 1 and further requires that the vapor chamber include a wick configured to exert capillary pressure on a heat transfer medium contained within the chamber. Claim 24 depends from claim 15 (which depends from independent claim 11) and further requires that the substrate protrude from a top face of the vapor chamber and the cooling feature protrudes from a bottom face of the vapor chamber.

With regard to claim 21, the Examiner finds that although Suzuki fails to teach a wick and heat transfer medium, Weiss discloses these elements within a vapor chamber to cool a PEMA (Final 8). With regard to claim 24, the Examiner finds that although Suzuki fails to disclose the features of this claim, Weiss teaches a PEMA having a substrate protruding from a top face of a vapor chamber and a cooling feature protruding from a bottom face of the chamber (*id.* at 9). The Examiner finds that both Suzuki and Weiss are from the same field and have the same purpose of cooling heat generating electronic components (Ans. 10). The Examiner concludes it would have been obvious to modify or replace Suzuki's vapor chamber with one containing wick structures and by attaching a substrate to the top face and the cooling feature to the bottom face thereof as taught in Weiss for cooling Suzuki's PEMA and render such more isothermal (Final 8-9).

Appellant argues that modifying Suzuki to include a wick arrangement as in Weiss would improperly require a substantial reconstruction and redesign, as well as change the basic principal of operation, of Suzuki's cooling system 9 (App. Br. 8). Appellant contends Suzuki would not work as intended if it were modified as the Examiner's proposes (*id.*). Appellant similarly argues that modifying Suzuki's vapor chamber such that the substrate protrudes from the top face and the cooling feature protrudes from

the bottom face thereof would render Suzuki unsatisfactory for its intended purpose (*id.*). Appellant asserts Suzuki is specifically designed for a front machinery compartment of a vehicle (*id.*) and moving the cooling system to the bottom surface of the vapor chamber would render Suzuki ineffective for removing heat (*id.* at 8–9).

In addition, Appellant urges that merely because references are within the same field of endeavor and can be combined does not alone render their combination obvious (Reply Br. 3). According to Appellant, “the rationale provided by the Examiner [for the proposed combination] is not articulated reasoning with some rationale [sic] underpinning because it would change how Suzuki operates and would render Suzuki unsatisfactory for removing heat from the coolant within a front compartment of a vehicle” (*id.* at 3–4).

Appellant’s arguments fail to identify reversible error in the Examiner’s rejection of claims 21 and 24. In addition to both Suzuki and Weiss being from the same field of endeavor and having the same purpose of cooling heat generating electronic devices, both references disclose doing so using a combination of a phase change heat transfer medium and a cooling feature that pulls heat from a vapor phase of the medium to condense it. Indeed, the only difference between the operations of Suzuki and Weiss is that Suzuki’s vapor is cooled by moving up toward the

cooling feature whereas Weiss' vapor is cooled by moving down toward the cooling feature. The ordinary artisan would have recognized that this difference is possible due to the wick arrangement of Weiss which is not used in Suzuki. As such, the cooling systems of Suzuki and Weiss are clearly functional equivalents to each other. Further, any redesign of Suzuki as proposed by the Examiner would follow the design of Weiss and would have been within the ordinary skill in the art.

Appellant also fails to establish by persuasive technical reasoning or evidentiary showing that modifying Suzuki in view of Weiss would render Suzuki unsatisfactory for its intended purpose. Appellant has not shown that Weiss would not work in a front machinery compartment of a vehicle. Moreover, although Suzuki teaches use of the PEMA in a front machinery compartment of a vehicle (Suzuki, Fig. 1), Suzuki does not limit the PEMA to only this location (*see id.* at Fig. 8).

Accordingly, we sustain the Examiner's rejection of both claims 21 and 24.

*Rejection 6: Obviousness over Suzuki and Holland*

Appellant does not address with any particularity the Examiner's proposed combination of Suzuki and Holland. Instead,

Appellant merely argues that Suzuki fails to teach or suggest every feature of the claim from which claims 22 and 23 depend, and that Holland fails to cure these deficiencies (App. Br. 9). Skeletal arguments or arguments merely amounting to assertions that the references do not disclose or suggest certain claim limitations are not arguments for separate patentability within the meaning of 37 C.F.R. § 41.37(c)(1)(iv). *See Lovin*, 652 F.3d at 1356–57. In addition, there are no deficiencies in Suzuki with regard to claim 1 as discussed above that require curing by Holland.

Accordingly, we sustain the Examiner’s rejection of claims 22 and 23.

### CONCLUSION

In summary:

Claims Rejected	Basis	Reference(s)	Affirmed	Reversed
1, 2, 6, 10–15	§102(a)(1) <sup>5</sup>	Suzuki	1, 2, 6, 10–15	
25	§102(a)(1)	Weiss	25	
3, 4, 9	§ 103	Suzuki, Beaupre	3, 4, 9	
21, 24	§ 103	Suzuki, Weiss	21, 24	
22, 23	§ 103	Suzuki, Holland	22, 23	

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<sup>5</sup> The rejection of claims 1, 2, 6, and 10 has been designated as a New Ground of Rejection, 37 C.F.R. § 41.50(b).

Claims Rejected	Basis	Reference(s)	Affirmed	Reversed
1-4, 6, 9, 10, 21	§102(a)(1) <sup>6</sup>	Weiss	1-4, 6, 9, 10, 21	
<b>Summary</b>			1-4, 6, 9-15, 21-25	

### DECISION

Upon consideration of the record, and for the reasons given above and in the Final Office Action and the Examiner’s Answer, the decision of the Examiner rejecting claims 1-4, 6, 9-15, and 21-25 is *affirmed*.

This decision contains a new ground of rejection pursuant to 37 CFR § 41.50(b) (effective September 13, 2004, 69 Fed. Reg. 49960 (August 12, 2004), 1286 Off. Gaz. Pat. Office 21 (September 7, 2004)). 37 CFR § 41.50(b) provides “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.”

37 CFR § 41.50(b) also provides that 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

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<sup>6</sup> New Ground of Rejection, 37 C.F.R. § 41.50(b).

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 . . . .

#### TIME PERIOD FOR RESPONSE

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).

AFFIRMED;  
37 C.F.R. 41.50(b)