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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* XU WANG, XIAOGUANG CHANG, and  
CHUAN HE<sup>1</sup>

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Appeal 2018-006161  
Application 14/330,458  
Technology Center 2800

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Before JEFFREY T. SMITH, BEVERLY A. FRANKLIN, and  
LILAN REN, *Administrative Patent Judges*.

SMITH, *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF CASE

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner’s decision to reject claims 1–3, 5–9, and 18 under 35 U.S.C. § 101, as claiming ineligible subject matter.<sup>2</sup> *See* Examiner’s Final Office Action, dated November 2, 2017 (“Final Act.”); Examiner’s Answer, dated April 6, 2018 (“Ans.”). We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRMED–IN–PART and enter a new ground of rejection.

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<sup>1</sup> The Appellant/Applicant in this case is the real party in interest Ford Global Technologies LLC. *See* Appellant’s Appeal Brief 1, filed December 5, 2017 (“App. Br.”).

<sup>2</sup> The Examiner has expressly stated that the claims distinguish over the closest prior art of record. Final Act. 6–7.

Appellant's claimed invention is directed to a method of estimating a battery state of charge (SOC) in an electric vehicle comprising determining the battery cell voltage relaxation time, employing temperature and cell usage history; and a Battery Energy Control Module (BECM) comprising a battery relaxed time lookup table (LUT) wherein the BECM monitors power up and power down events and estimates battery capacity in accordance with a state of charge. (Claims 1 and 6). Independent claims 1 and 6 are exemplary of the subject matter on appeal and are reproduced below:

1. A method of estimating battery state of charge (SOC) in an electric vehicle, comprising:
  - measuring a battery temperature;
  - measuring battery currents between a first and second time;
  - calculating a mean current based the measured battery currents between the first and second time;
  - determining an estimated battery relaxation time based on the mean current and temperature; and
  - measuring battery open circuit voltage after the relaxation time for calculating the SOC.
  
6. A Battery Energy Control Module (BECM) comprising:
  - a relax time look up table (LUT) of battery relaxation time based on predetermined root mean square (RMS) current and temperature,
  - wherein the LUT provides a set of relaxation time values corresponding to RMS current and temperature,
  - wherein the BECM monitors power up and power down events and estimates battery capacity in accordance with a state of charge (SOC) estimation based on an open circuit voltage (OCV), the BECM being further configured to generate an output based on the estimated battery capacity at power up if an elapsed time is greater than the relaxation time provided in the relax time LUT for a measured RMS current and measured temperature.

App. Br. Claim App'x.

Independent claims 1 and 18 are directed to a method of estimating battery state of charge in an electric vehicle. Independent claim 6 is directed to a BECM comprising a relax time look up table (LUT) of battery relaxation time.

The following rejections are presented for our review:

I. Claims 1–3, 5–9, and 18 are rejected under 35 U.S.C. §101 because the claimed invention is directed to nonstatutory subject matter.

II. Claims 1–3 and 5–9 are rejected under 35 U.S.C. §103(a) as unpatentable over Tsuchiya (US 8,274,291 B1, issued Sep. 25, 2002) in view of Connolly (US 2011/0048823 A1, published Mar. 3, 2011).

The complete statement of the rejections on Appeal appear in the Final Action. (Final Act. 2–8).

## II. DISCUSSION

### Claims 6–9

For the reasons set forth below, we are unable to ascertain the metes and bounds of the claimed subject matter, we procedurally reverse the rejection of claims 6–9 under 35 U.S.C. § 101 and 35 U.S.C. § 103(a), and enter a new ground of rejection of claims 6–9 under 35 U.S.C. § 112(b).

Independent claim 6 dependent claims 7–9 are rejected under 35 U.S.C. § 112, second paragraph, as indefinite for failing to particularly point out and distinctly claim the subject matter which the inventor or a joint inventor regards as the invention.

Our evaluation of a claims begin with understanding the meaning of the claims. Our reviewing court has instructed that “[i]t is the applicants’ burden to precisely define the invention, not the PTO’s. *See* 35 U.S.C. § 112 ¶ 2 . . . . [T]his section puts the burden of precise claim drafting squarely on the applicant.” *In re Morris*, 127 F.3d 1048, 1056 (Fed. Cir. 1997).

We seek to construe the term claim language “wherein the BECM monitors power up and power down events and estimates battery capacity in accordance with a state of charge (SOC) estimation based on an open circuit voltage (OCV), the BECM being further configured to generate an output based on the estimated battery capacity at power up if an elapsed time is greater than the relaxation time provided in the relax time LUT for a measured RMS current and measured temperature.” (App. Br. 10). The Specification teaches

In a Battery Energy Control Module (BECM), cell SOC-OCV curves can be saved as a look up table (LUT) of temperature, SOC, and cell voltage. For example, within typical PHEV battery SOC operation range (e.g. PHEV 100% SOC to 10% SOC), about 3m V cell voltage corresponds to 1 % SOC. The preferred criterion for sufficient cell voltage relaxation is when cell voltage relaxes to within 3m V of its steady state value.  
(Spec. 4).

We determine independent claim 6 invokes 35 U.S.C. § 112(f). Where, as here, the limitations at issue do not recite the word “means,” there is a rebuttable presumption that § 112(f) does not apply. *See Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1348–49 (Fed. Cir. 2015) (*en banc*). This presumption can be overcome if “the claim terms fails to ‘recite[] sufficiently definite structure’ or else recites ‘function without reciting sufficient structure for performing that function.’” *Id.* at 1348 (alteration in

original) (quoting *Watts v. XL Sys., Inc.*, 232 F.3d 877, 880 (Fed. Cir. 2000)). The relevant question is “not merely the presence or absence of the word ‘means’ but whether the words of the claim are understood by persons of ordinary skill in the art to have a sufficiently definite meaning as the name for structure.” *Id.* Although the claims at issue do not recite the words “means for,” the claims do invoke § 112(f). For example, claim 6 recites the BECM monitors (1) power up and power down events; (2) estimates battery capacity in accordance with a state of charge (SOC) estimation based on an open circuit voltage (OCV), and (3) generate an output based on the estimated battery capacity at power up utilizing a look up table (LUT). The claim describes the functions the “BECM” performs without reciting any structure for doing so. The Specification fails to provide written description of the structures that perform these claimed functions. The original Specification simply either repeat the claim language or describe generic computers or devices.

Further, the Specification fails to provide sufficient corresponding structure and thus claims 6–9 are indefinite. As the Federal Circuit has explained:

[I]f one employs means-plus-function language in a claim, one must set forth in the specification an adequate disclosure showing what is meant by that language. If an applicant fails to set forth an adequate disclosure, the applicant has in effect failed to particularly point out and distinctly claim the invention as required by the second paragraph of section 112.

*In re Donaldson Co.*, 16 F.3d 1189, 1195 (Fed. Cir. 1994) (*en banc*); *see also Aristocrat Techs. Australia Pty Ltd. v. Int’l Game Tech.*, 521 F.3d 1328, 1333 (Fed. Cir. 2008).

When a claim invokes § 112(f), the associated written description must disclose adequate corresponding structure to perform the claimed function. *See Williamson*, 792 F.3d at 1351. If the written description fails to do so, the claims are indefinite. *See id.* at 1351–52. For a computer-implemented means-plus-function claim limitation invoking 35 U.S.C.

§ 112(f), the corresponding structure for performing a *specific function* must be more than simply a general purpose computer or microprocessor. *See In re Katz Interactive Call Processing Patent Litigation*, 639 F.3d 1303, 1316 (Fed. Cir. 2011). A computer-implemented means-plus-function term is limited to the corresponding structure disclosed in the specification and equivalents thereof, and the corresponding structure is the algorithm. *See Aristocrat Techs. Australia Pty Ltd. v. Int’l Game Tech.*, 521 F.3d 1328, 1333 (Fed. Cir. 2008).

During prosecution, a claim is examined for compliance with 35 U.S.C. § 112(b) 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 should be rejected as indefinite when it is amenable to two or more plausible claim constructions. *Ex Parte Miyazaki*, 89 USPQ2d 1207, 1211 (BPAI 2008); *In re Packard*, 751 F.3d 1307, 1324 (Fed. Cir. 2014) (“There are good reasons why unnecessary incoherence and ambiguity in claim constructions should be disapproved”). Here, the limitation “wherein the BECM monitors power up and power down events and estimates battery capacity in accordance with a state of charge estimation based on an open circuit voltage, the BECM being further configured to generate an output based on the estimated battery capacity at power up if an elapsed time is greater than the relaxation time

provided in the relax time LUT for a measured RMS and temperature” does not meet the threshold requirements of clarity and precision. Accordingly, we enter a new ground of rejection under 35 U.S.C. § 112(b).

For the foregoing reasons, the scope of the claimed invention cannot be determined.

Accordingly, on this record, claims 6–9 are indefinite for the reasons given above.<sup>3</sup>

Having determined that the subject matter claims 6–9 is indefinite, we are unable to determine the propriety of the under 35 U.S.C. § 101 and 35 U.S.C. § 103(a). The review of these rejections would require considerable speculation as to the scope of the claims. Such speculation would not be appropriate. *See In re Steele*, 305 F.2d 859, 862 (CCPA 1962). We, therefore, procedurally reverse the rejections of claims 6–9 under 35 U.S.C. § 101 and 35 U.S.C. § 103(a). We emphasize that this is a technical reversal of the under 35 U.S.C. § 101 and 35 U.S.C. § 103(a), and not a reversal based upon the merits of the rejections.

#### *REJECTION UNDER § 101*

The Examiner rejects claims 1–3, 5, and 18 under 35 U.S.C. § 101 as being directed to a judicial exception, namely an abstract idea of data processing information, organizing information, and comparison analysis, without significantly more. (Final Act. 2).

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<sup>3</sup> The pending claims 7–9 fail to remedy the deficiency of independent claim 6.

An invention is patent eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. However, the Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g.*, *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Id.* at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with that framework, we first determine what concept the claim is “directed to.” *See Alice*, 573 U.S. at 219 (“On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.”); *see also Bilski v. Kappas*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk.”).

Concepts determined to be abstract ideas, and thus patent ineligible, include certain methods of organizing human activities, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611); mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 69 (1972)). Concepts determined to be patent eligible include physical and chemical processes, such as “molding rubber products” (*Diamond v. Diehr*, 450 U.S. 175, 191 (1981)); “tanning, dyeing, making water-proof cloth, vulcanizing India rubber, smelting ores” (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S.

252, 267–68 (1854)); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

In *Diehr*, the claim at issue recited a mathematical formula, but the Supreme Court held that “[a] claim drawn to subject matter otherwise statutory does not become nonstatutory simply because it uses a mathematical formula.” *Diehr*, 450 U.S. at 176; *see also id.* at 191 (“We view respondents’ claims as nothing more than a process for molding rubber products and not as an attempt to patent a mathematical formula.”). Having said that, the Supreme Court also indicated that a claim “seeking patent protection for that formula in the abstract . . . is not accorded the protection of our patent laws, ... and this principle cannot be circumvented by attempting to limit the use of the formula to a particular technological environment.” *Id.* (citing *Benson* and *Flook*); *see, e.g., id.* at 187 (“It is now commonplace that an *application* of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.”).

If the claim is “directed to” an abstract idea, we turn to the second step of the *Alice* and *Mayo* framework, where “we must examine the elements of the claim to determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent eligible application.” *Alice*, 573 U.S. at 221 (quotation marks omitted). “A claim that recites an abstract idea must include ‘additional features’ to ensure ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” *Id.* (quoting *Mayo*, 566 U.S. at 77). “[M]erely requir[ing] generic computer implementation[] fail[ s] to transform that abstract idea into a patent-eligible invention.” *Id.*

The PTO recently published revised guidance on the application of § 101. USPTO’s January 7, 2019, Memorandum, *2019 Revised Patent Subject Matter Eligibility Guidance* (“Memorandum”). Under that guidance, we first look to whether the claim recites:

- (1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activities such as a fundamental economic practice, or mental processes); and
- (2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h)).

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then look to whether the claim:

- (3) adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)); or
- (4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

*See* Memorandum.

We have considered the Examiner’s findings and the Appellant’s arguments and are not persuaded the Examiner erred in rejection the claims under 35 U.S.C. § 101.

Under the guidance, in the first step (1) of our analysis, we consider whether the Examiner erred in determining that the claims recite a judicial exception. The Examiner finds claims 1–3, 5, and 18 are

directed to a series of steps for *calculating a mean current based on the measured battery currents between the first and second time, determining an estimated battery relaxation time (claim 1), ... and calculating a mean current based on the measured battery currents between the first and second time, determining an estimated battery relaxation time (claim 18) which all fall under data processing information, organizing information, and comparison analysis.*

(Final. Act. 2–3 citing *Diehr*, 450 U.S. at 188 (1981), *In re Grams*, 888 F.2d 835 (Fed. Cir. 1989), *Digitech Image Tech., LLC v. Electronics for Imaging, Inc.* (758 F.3d 1344) (Fed. Cir. 2014), and *Electric Power Group, LLC v. Alstom, S.A.*, 830 F.3d 1350, 1351–52 (Fed. Cir. 2016)).

Appellant contends claims 1–3, 5, and 18 are directed to a method which is within the statutory categories of invention. (App. Br. 3). Appellant contends the claimed method is not judicially recognized abstract ideas, such as a mathematical formula, a fundamental economic concept, or a method of organizing human activities. (App. Br. 4). Appellant specifically states:

The claimed method is not abstract because it does not broadly encompass all methods for estimating battery state of charge. Instead, the method covers a particular way of determining an adequate wait time (i.e., relaxation time) needed in order to be able to rely on a State of Charge (SOC) value that can be obtained when the vehicle powers-up. The presence of a lookup table or a programmable controller do not detract from the well-defined and structured definition of the invention.  
(App. Br. 4).

We agree with the Examiner that the claims recite an abstract idea, specifically the claimed invention is directed to mental processes. Claims 1 and 18 recite various measuring steps, determining steps, and calculating steps. Under their broadest reasonable interpretation, these steps, as drafted,

are processes that cover performance of the limitations in the mind but for the recitation of generic computing device. That is, other than the devices required for the various measuring steps, nothing in the claims precludes the determining steps, and calculating steps from practically being performed in the human mind. For example, the claims encompass the user manually “calculating a mean current based the measured battery currents between the first and second time;” “determining an estimated battery relaxation time based on the mean current and temperature”; and “calculating the SOC.”; (claims 1 and 18). The devices required for measuring the temperature and current do not take the claim limitations out of the mental processes grouping. Under the Guidance, claims 1 and 18 are best described as being directed to mental processes given that they do not explicitly recite a mathematical concept.

Thus, claims 1 and 18 recite a mental process. Therefore, we agree with the Examiner’s overall determination that claims 1 and 18 are directed to an abstract idea. Ans. 3–4.

We understand that the Examiner evaluated independent claims 1 and 18 as broadly encompassing the abstract idea of a mathematical concept in view of the calculating a mean current based the measured battery currents. However, under the Guidance, claims 1 and 18 are best described as being directed to mental processes given that they do not explicitly recite a mathematical concept.

We next turn to the second step (2) of determining whether additional elements that integrate the judicial exception into a practical application.

The additional elements of claims 1 and 18, namely the steps of measuring battery temperature, current and open circuit voltage —and

recording the estimated battery relaxation time of claim 18— are not directed to using a judicial exception in some meaningful way beyond linking the exception to a particular technological environment such that the claim as a whole is more than a drafting effort to monopolize the judicial exception.

Appellant argues the estimating battery state of charge in claims 1 and 18 is not merely directed to the abstract idea of estimating SOC because they involve “a sequence of concrete ordered steps wherein certain timed measurements are used in a calculation that determines a relaxation time, and then after that time passes then performing another measurement to obtain the SOC.” (Reply Br. 1–2). Appellant argues that the method covers a particular way of determining an adequate wait time (i.e., relaxation time) needed in order to be able to rely on a State of Charge (SOC) value that can be obtained when the vehicle powers-up.” (App. Br. 4).

In order to show that the invention is an improvement in estimating a battery State of Charge (SOC), the disclosure must provide sufficient details such that one of ordinary skill in the art would recognize the claimed invention as providing an improvement. *Compare McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314–16 (Fed. Cir. 2016) (the specification explained how the particular rules recited in the claim enabled the automation of specific animation tasks), *with Affinity Labs of Tex. v. DirecTV, LLC*, 838 F.3d 1253, 1264–65 (Fed. Cir. 2016) (the specification failed to provide details regarding the manner in which the invention accomplished the alleged improvement); *see* MPEP § 2016.05(a).

The Specification lacks any description or evidence as to how the battery State of Charge (SOC) determination is improved, or even

necessarily controlled, based on the battery power estimation. Rather, the Specification describes estimating a battery cell voltage relaxation time, employing temperature and cell usage history to achieve increased accuracy only in a general non-specific way. (Spec. 10, ll. 17–22). The Specification lacks sufficient detail for the criteria required to determine the appropriate relationship between relaxed time, battery temperature and battery usage for determining the improved SOC as argued by Appellant.

Having found the claims to be directed to the identified abstract idea, we turn to the issue of whether a claim element or combination of elements is well-understood, routine, and conventional to a skilled artisan in the relevant field is a question of fact. Appellants’ inventive concept is directed to obtaining the SOC through the claimed data gathering, analysis, and reporting steps. The monitoring a battery comprising the measuring the battery temperature, current and voltage is a conventional activity. (See Tsuchiya). We, thus, find nothing in the claims which goes beyond the abstract idea to transform the claim into eligible subject matter. Therefore, the additional elements recited in independent claims 1 and 18 do not provide “significantly more” than the recited judicial exception.

Appellant does not present separate arguments for claims 2, 3, and 5 all ultimately dependent from claim 1. *See generally* App. Br. These claims do not add any limitations that would take them out of the mental processes grouping or add additional elements that integrate the mental process into a practical application or provide an inventive concept for the reasons given above.

*REJECTION UNDER § 103(a)*

The Examiner rejects claims 1–3 and 5 under 35 U.S.C. § 103(a) as unpatentable over Tsuchiya in view of Connolly.

The Examiner found Tsuchiya discloses a method of estimating battery state of charge (SOC) in an electric vehicle comprising measuring a battery temperature, measuring battery currents between a first and second time calculating an current based the measured battery currents and determining an estimated battery relaxation time based on the current and temperature and measuring battery open circuit voltage after the relaxation time for calculating the SOC. (Final Act. 4; Tsuchiya, col 8, ll. 64–67, col 10, ll. 14–67). The Examiner found Tsuchiya does not disclose calculating a mean current wherein the mean current is a root mean square (RMS) current.

The Examiner found Connolly teaches a hybrid electric vehicle battery thermal management system for calculating a root mean square current flowing through a battery. (Final Act. 5; Connolly ¶¶ 13, 16). The Examiner concluded:

It would have been obvious to one of ordinary skilled in the art before the effective filing date of the claimed invention to modify the teachings of Tsuchiya to further include calculating a mean current based on the measured current between the first and second time as taught by Connolly because as Connolly shows, incorporating the calculated root mean square current, average power of the battery and the thermal energy associated with the current flow (para [0016]-[0021]) one can obtain an more accurate representation of the battery condition while taking into consideration the thermal effects on the battery; thereby improving battery longevity (para [0004]-[0005]). (Final Act. 5).

Appellant argues nothing in Tsuchiya discloses or suggests any dependency of the relaxation time on current, and Tsuchiya nowhere discloses the mean or any other average of the battery current. (App. Br. 5–6). Appellant also argues Connelly discloses an RMS current determination, but fails to suggest any use in connection with determining a battery relaxation time. (App. Br. 6).

Appellant’s arguments are not persuasive of reversible error. We agree with the Examiner’s responses to Appellant’s arguments. (Ans. 5–7). Tsuchiya teaches relaxation time is determined based on the current and temperature. Connelly discloses RMS current determinations are known by persons of ordinary skill in the art. A person of ordinary skill in the art would have sufficient skill to recognize the battery charge status varies based on the frequency of the operating cycle. (Conley ¶ 4). A person of ordinary skill in the art would have recognized the need for stabilization of the battery for determining the state of charge. Appellant has not directed us to evidence that the claimed method incorporating relaxation time determinations exhibits unexpected results.

For the foregoing reasons and those presented by the Examiner we sustain the rejection of claims 1–3 and 5 under 35 U.S.C. § 103(a) over the combination of Tsuchiya and Connolly.

#### IV. CONCLUSION

On the record before us and for the reasons discussed above, we:  
sustain the rejection of claims 1–3 and 5 under 35 U.S.C. § 101 for claiming ineligible subject matter;  
sustain the rejection of claims 1–3 and 5 under 35 U.S.C. § 103(a);

procedurally reverse the rejection of claims 6–9 under 35 U.S.C. § 101 and 35 U.S.C. § 103(a); and

enter a new ground of rejection of claims 6–9 under 35 U.S.C. § 112(b).

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). 37 C.F.R. § 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.

Appeal 2018-006161  
Application 14/330,458

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

NEW GROUND OF REJECTION (37 C.F.R. § 41.50(b))