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13/868,318	04/23/2013	ZHIFENG SUI	16486USA	3532
55649	7590	12/18/2019	EXAMINER	
Moser Taboada / Applied Materials, Inc. 1030 Broad Street Suite 203 Shrewsbury, NJ 07702			PHAM, THOMAS T	
			ART UNIT	PAPER NUMBER
			1713	
			NOTIFICATION DATE	DELIVERY MODE
			12/18/2019	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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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* ZHIFENG SUI, MICHAEL D. ARMACOST, PHILLIP STOUT,  
LEI LIAN, and RYAN PATZ<sup>1</sup>

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Appeal 2018-006502  
Application 13/868,318  
Technology Center 1700

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Before BEVERLY A. FRANKLIN, N. WHITNEY WILSON, and LILAN  
REN, *Administrative Patent Judges*.

FRANKLIN, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING  
AND ORDER REMANDING TO THE EXAMINER

Appellant requests rehearing of our Decision of August 2, 2019. We have reconsidered our Decision of August 2, 2019, in light of Appellant's comments in the Request for Rehearing, and have concluded that further consideration of a rejection is needed from the Examiner based upon certain points made by Appellant, discussed, *infra*. Accordingly, we remand this application to the Examiner, via the Office of Director of the

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<sup>1</sup> We use the word "Appellant" to refer to "[A]pplicant" as defined in 37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as Applied Materials, Inc. Appeal Br. 3.

involved technology center, to consider the following, and to take action not inconsistent with the views expressed herein.

Appellant submits that the Examiner withdrew the rejection of claim 21 under 35 U.S.C. § 112(a), first paragraph (written description), and refers to page 10 of the Answer in this regard, wherein the Examiner states:

[t]he rejection of claim 21 under 35 U.S.C. 112 (pre-AIA), first paragraph, as described in item 5, page 5 of the Office action filed 6/12/2017 is withdrawn. However, this is moot because claim 21 is also rejected under 35 U.S.C. 112 (pre-AIA), first paragraph, based on a separate issue, as shown in item 4, page 4 of the same Office action, and is summarized as above.

Req. for Rehrq. 2. Because of this belief, Appellant did not address the written description rejection. Req. for Rehrq. 4.

We, on the other hand, viewed the Answer as indicating that this rejection was not withdrawn because the Examiner sets forth this rejection (written description rejection) on page 3 of the Answer. Because this rejection was set forth on page 3 of the Answer, we believed the Examiner's reference to items 4 and 5 discussed on page 10 of the Answer was an inadvertent mix-up regarding items 4 and 5.<sup>2</sup>

However, based upon Appellant's concerns, we are persuaded that the existing contradiction in the Answer (discussed above) warrants correction to avoid any potential denial of an opportunity to address pending rejections

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<sup>2</sup> Item 4 on page 4 of the Final Office Action involves a rejection of claim 21 under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. Item 5 on pages 5–6 of the Final Office Action involves a rejection of claim 21 under 35 U.S.C. 112(a) or 35 U.S.C. 112 (pre-AIA), first paragraph, as failing to comply with the written description requirement.

in the record by Appellant. Therefore, we have decided to remand this case to the Examiner for correction/clarification regarding which rejections remain pending in this application, by way of a substitute examiner's answer, in response to this remand. MPEP § 1207.05.

In reply to the substitute examiner's answer in response to a remand by the Board for further consideration of a rejection pursuant to 37 CFR 41.50(a)(2), Appellant must, within two months of the date of the substitute examiner's answer, exercise one of the following two options to avoid sua sponte dismissal of the appeal as to the claims subject to the rejection for which the Board has remanded the proceeding:

(i) Reopen prosecution. Request that prosecution be reopened before the examiner by filing a reply under 37 CFR 1.111 with or without amendment or submission of affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence. Any amendment or submission of affidavits or other evidence must be relevant to the issues set forth in the remand or raised in the substitute examiner's answer. A request that complies with 37 CFR 41.50(a)(2)(i) will be entered and the application or the patent under ex parte reexamination will be reconsidered by the examiner under the provisions of 37 CFR 1.112. Any request that prosecution be reopened under 37 CFR 41.50(a)(2)(i) will be treated as a request to withdraw the appeal.

(ii) Maintain appeal. Request that the appeal be maintained by filing a reply brief as provided in 37 CFR 41.41. If such a reply brief is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the examiner under 37 CFR 41.50(a)(2)(i).

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The two month time period for reply is not extendable under 37 CFR 1.136(a), but is extendable under 37 CFR 1.136(b) for patent applications and 37 CFR 1.550(c) for ex parte reexamination proceedings.

In view of the above, Appellant's Request for Rehearing is granted, and this application is remanded to the Examiner for the reasons given above.

#### CONCLUSION

Appellant's Request for Rehearing is granted to the extent that this application is remanded to the Examiner to take action not inconsistent with the views expressed above.

This Remand to the Examiner pursuant to 37 C.F.R. § 41.50(a)(2) is made for further consideration of a rejection. Accordingly, 37 C.F.R. § 41.50(a)(2) applies when a Substitute Examiner's Answer is written in response to this Remand by the Board.

REQUEST FOR REHEARING GRANTED  
AND  
REMANDED