



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
**United States Patent and Trademark Office**  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/346,782	05/19/2014	Joachim Bamberg	6570-P50131	9515
13897	7590	03/03/2020	EXAMINER	
Abel Schillinger, LLP 8911 N. Capital of Texas Hwy Bldg 4, Suite 4200 Austin, TX 78759			MINSKEY, JACOB T	
			ART UNIT	PAPER NUMBER
			1748	
			NOTIFICATION DATE	DELIVERY MODE
			03/03/2020	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.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

hmuensterer@abel-ip.com  
mail@Abel-IP.com

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

*Ex parte* JOACHIM BAMBERG, ERWIN BAYER,  
ABDREAS JAKIMOV, HERBERT HANRIEDER,  
BERTRAM KOPPERGER, WILHELM SATZGER, THOMAS HESS,  
KARL-HEINZ DUSEL, and STEFAN SCHNEIDERBANGER

---

Appeal 2019-001116  
Application 14/346,782  
Technology Center 1700

---

Before BEVERLY A. FRANKLIN, MICHAEL G. McMANUS, and  
JANE E. INGLESE, *Administrative Patent Judges*.

McMANUS, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

This is a decision on rehearing in Appeal Number 2019-001116.  
Appellant's Request for Rehearing is filed under 37 C.F.R. § 41.52(a)(1)  
requesting that we reconsider our Decision of December 12, 2019, wherein  
we affirmed the Examiner's rejection of claims 11–28, 31, and 32 under 35  
U.S.C. § 103(a).

Requests for Rehearing are limited to matters misapprehended or overlooked by the Board in rendering the original decision, or to responses to a new ground of rejection designated pursuant to § 41.50(b). 37 C.F.R. § 41.52. Appellant<sup>1</sup> may also present a new argument based upon a recent relevant decision of either the Board or a Federal Court. 37 C.F.R. § 41.52(a)(2).

Rehearing is granted-in-part.

### ANALYSIS

The Appellant requests rehearing on two bases. Request for Rehearing dated Feb. 11, 2020 (“Request”) 1–4. First, Appellant argues that the Panel overlooked the failure of the Examiner to address dependent claims 14, 15, 17, 19, 20, 22, 24, 26, and 28 in the Final Action. *Id.* at 1–3.

In the Final Action, the Examiner does not explicitly address the claims in question. Final Action dated Jan 4, 2018 (“Final Act.”) 4–6. Similarly, the Examiner does not explicitly address such claims in the Advisory Action issued subsequent to the Final Rejection. Advisory Action dated March 21, 2018.

In its opening brief, Appellant primarily directed its argument toward the subject matter of independent claim 11 but additionally included the following:

Appellants note that the January 4, 2018 Final Office Action does not address any specific claim. Even if one were to take the position that some of the allegations set forth in the

---

<sup>1</sup> We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as MTU Aero Engines AG of Munich, Germany. Appeal Br. 3.

Office Action are (apparently) targeted toward a specific claim or claims it is not seen that any of these allegations refers to any one of dependent claims 14, 15, 17, 19, 20, 22, 24, 26 and 28. This is an additional reason (i.e., in addition to the reasons set forth above) why the Examiner has failed to establish a prima facie case of obviousness of these claims.

Appeal Brief dated May 30, 2018 (“Appeal Br.”) 12.

In the Answer, the Examiner does not explicitly address the subject claims but determines that “[t]he previously applied rejections address all of the claimed limitations of multiple coils and overlapping ranges to simultaneously overlap to control the temperature in the claimed manner. The stated rejections address all the claims with the combination of references.” Examiner’s Answer dated Sept. 21, 2018.

In our earlier decision, we determined that Appellant failed to identify any specific deficiency in the rejection of any particular dependent claim. Decision dated Dec. 12, 2019 (“Decision”) 8. As a consequence, we determined that Appellant had not shown error with regard to such claims.  
*Id.*

The Federal Circuit has offered guidance as follows regarding establishing a prima facie case:

[T]he PTO carries its procedural burden of establishing a prima facie case when its rejection satisfies 35 U.S.C. § 132, in “notify[ing] the applicant . . . by stating the reasons for [its] rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of [the] application.”

*In re Jung*, 637 F.3d 1356, 1362 (Fed. Cir. 2011) (quoting 35 U.S.C. § 132).  
“It is well-established that the Board is free to affirm an examiner’s rejection

so long as ‘appellants have had a fair opportunity to react to the thrust of the rejection.’” *In re Jung*, 637 F.3d at 1365.

Here, the Examiner has not clearly notified the applicant of the basis for the rejection of claims 14, 15, 17, 19, 20, 22, 24, 26, and 28. Nor is such basis apparent from review of the record. While Appellant’s argument set forth in its Appeal Brief is terse, given the nature of the rejection, it appears to meet the minimum threshold required by Board rules to state an issue for appeal. *See* 37 CFR § 41.37(c)(1)(iv). Accordingly, we grant Appellant’s request for rehearing as to claims 14, 15, 17, 19, 20, 22, 24, 26, and 28. We further reverse the Examiner’s rejection of claims 14, 15, 17, 19, 20, 22, 24, 26, and 28.

As its second basis for rehearing, Appellant argues that the Board erred in determining that the Examiner “does not find that Manetsberger teaches a radiant heater.” Request 4.

In this regard, the Examiner determines as follows:

the Examiner has previously stated that Manetsberger teaches the claimed limitations except for the claimed heating means. This is the reason for the inclusion of a secondary references. Wh[e]ther the primary reference teaches a radiant heater or a collection of heating rings is irrelevant. The point is that the references fail[ ] to teach the specifically claimed heating method and is the reasoning for the inclusion of the secondary reference. This argument is not persuasive as it is not directed to the actual rejection of the combination of references utilized in the rejection.

Answer 3.

We adopt the foregoing analysis. As a result, we deny the request for rehearing as to claims 11–13, 16, 18, 21, 23, 25, 27, 31, and 32.

In view of all of the foregoing, we grant the request for rehearing as to claims 14, 15, 17, 19, 20, 22, 24, 26, and 28 and deny the request for rehearing as to claims 11–13, 16, 18, 21, 23, 25, 27, 31, and 32.

**DECISION**

Outcome of Decision on Rehearing:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference/Basis</b>	<b>Denied</b>	<b>Granted</b>
11–28, 31, 32	103(a)	Manetsberger, Fishman	11–13, 16, 18, 21, 23, 25, 27, 31, 32	14, 15, 17, 19, 20, 22, 24, 26, 28

Final Outcome of Appeal after Rehearing:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
11–28, 31, 32	103(a)	Manetsberger, Fishman	11–13, 16, 18, 21, 23, 25, 27, 31, 32	14, 15, 17, 19, 20, 22, 24, 26, 28

REHEARING GRANTED-IN-PART