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14/423,062	02/20/2015	Kalle Günther	770025.464USPC	2467
500	7590	06/11/2020	EXAMINER	
SEED INTELLECTUAL PROPERTY LAW GROUP LLP			CROW, ROBERT THOMAS	
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SUITE 5400			PAPER NUMBER	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KALLE GÜNTHER, RALF WYRICH, and
UWE OELMÜLLER

Appeal 2019-006621
Application 14/423,062
Technology Center 1600

Before DONALD E. ADAMS, ULRIKE W. JENKS, and
ELIZABETH A. LAVIER, *Administrative Patent Judges*.

ADAMS, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Appellant requests rehearing of the Decision mailed March 20, 2020 (“Decision”) affirming the rejections under 35 U.S.C. § 103. We have jurisdiction over this Request under 35 U.S.C. § 6(b).

ANALYSIS

Appellant contends that “[b]ecause newly cited references were not included in the rejections in the [F]inal Office Action but relied on in the Decision on Appeal, the Decision on Appeal includes new grounds of rejection, rather than a mere affirmance of the Examiner’s rejections” (Req. Reh’g 2; *see also id.* at 3 (Appellant contends that “the Board cites (1) the PAXgene Blood RNA Kit Handbook, (2) US 7,270,953, (3) US 7,682,790,

and (4) US 5,010,183”); *see generally id.* at 3–4). Appellant, therefore, “requests that new grounds of rejection be designated to afford Appellant an opportunity to respond to them” (*id.* at 2).

Upon review of the record, we grant Appellant’s request, and designate the affirmance of each ground of rejection in the Decision a new ground of rejection.

DECISION SUMMARY

Outcome of Decision on Rehearing:

Claims	35 U.S.C. §	Reference(s)/Basis	Denied	Granted
1–18, 20	103	Ryan, Weisburg		1–18, 20
19	103	Ryan, Weisburg, Fernando		19
21, 22	103	Ryan, Weisburg, Kappel		21, 22
1–14, 16–18, 21, 22	103	Ryan, Kappel		1–14, 16– 18, 21, 22
15, 20	103	Ryan, Kappel, Weisburg		15, 20
19	103	Ryan, Kappel, Fernando		19
Overall Outcome				1–22

Final Outcome of Appeal after Rehearing:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–18, 20	103	Ryan, Weisburg	1–18, 20	
19	103	Ryan, Weisburg, Fernando	19	
21, 22	103	Ryan, Weisburg, Kappel	21, 22	
1–14,	103	Ryan, Kappel	1–14,	

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
16–18, 21, 22			16–18, 21, 22	
15, 20	103	Ryan, Kappel, Weisburg	15, 20	
19	103	Ryan, Kappel, Fernando	19	
Overall Outcome			1–22	

TIME PERIOD FOR RESPONSE

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b) (effective September 13, 2004, 69 Fed. Reg. 49960 (August 12, 2004), 1286 Off. Gaz. Pat. Office 21 (September 7, 2004)). 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.”

37 C.F.R. § 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 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).

GRANTED; 37 C.F.R. § 41.50(b)