

HFC need be added constitutes a new ground of rejection because the explanation presents a new interpretation of the Takigawa reference (Request 1, 4-5, 7). Our discussion in the Decision of Takigawa's column 8 disclosure cited by the Examiner merely explained the Examiner's position on page 5 of the Answer and responded to Appellants' argument. The Examiner plainly states that Takigawa's column 8 disclosure means that "*no other alkyl fluoride at all* need be mixed with the tetrafluoroethane and/or pentafluoroethane" such that the simplest binary mixture includes a 40% or more tetrafluoroethane and 40% or more pentafluoroethane blend (Ans. 5). Citing to portions of a reference (e.g., Takigawa's claim 1) to explain why Appellants' arguments are ineffective to overcome a rejection does not constitute a new ground of rejection. *In re Noznick*, 391 F.2d 946, 949 (CCPA 1968).

Furthermore, our citation to claim 1 to underscore the Examiner's finding that the simplest binary refrigerant composition is a blend of HFC-134a and HFC-125 merely elaborates on Takigawa's teachings relied upon by the Examiner and thus does not constitute a new ground of rejection. *In re DBC*, 545 F.3d 1373, 1382 n. 5 (Fed. Cir. 2009) (Board's reliance on an example in an English translation did not constitute a new ground of rejection because it merely elaborated on a teaching in the abstract, which was relied upon by the Examiner).

The thrust of the Examiner's rejection remains the same in the Board's Decision and Appellants do not complain that the Examiner's interpretation of Takigawa's column 8 disclosure on page 5 of the Answer constitutes a new ground of rejection in the Reply Brief. In other words,

Appellants had a full and fair opportunity to respond to the Examiner's stated case. *In re Kronig*, 539 F.2d 1300, 1303 (CCPA 1976).

Appellants allege that the Board's determination that Takigawa would have suggested at least two of the end points of Appellants' claimed range (i.e., 40% HFC-134a and 60% HFC-125), is new to the proceedings and thus constitutes a new ground of rejection (Request 1, 7). However, this position is not new to the proceedings. Rather, the Examiner finds that Takigawa's teachings indicate that the simplest binary mixture includes HFC-134a in an amount of 40 wt.% more and HFC-125 in an amount of 40 wt.% or more (Ans. 3, 5-6). As the simplest binary mixture, when 40 wt.% of HFC-134a is used in the blend, the balance must be 60 wt.% HFC-125 as the Examiner finds (Ans. 3). Accordingly, our discussion on pages 5-6 of the Decision merely explained the Examiner's stated position that Takigawa's disclosure that 40 wt.% or more of HFC-134a and HFC-125 in the simplest binary composition would have suggested a blend falling within the claimed refrigerant ranges.

Because our Decision does not enter any new grounds of rejection, we deny Appellants' request to reopen prosecution and we will treat Appellants' request as a request for rehearing. As such, Appellants' newly submitted Second Declaration of Kenneth M. Ponder has not been considered. 37 CFR 41.52(a)(1)(2007).

Regarding the Request for Rehearing, Appellants argue that the Decision's reliance on routine experimentation overlooks "the Examiner's admission 'that different blends of pentafluoroethane and tetrafluoroethane will have very different properties and that one such composition would not render another such composition obvious'" (Request 9) (citing Ans. 7).

Appellants contend that this concession indicates that any refrigerant composition not anticipated by Takigawa would not have been rendered obvious by Takigawa (Request 9).

Appellants argue that the Examiner's concession that one refrigerant would not have rendered obvious another refrigerant contravenes the Board's holding that determining acceptable refrigerant compositions would have been a matter of routine experimentation (Request 9). Appellants argue that there can be no reasonable expectation of success by such purported experimentation and the results from such experimentation would not have been predictable (*id.*).

While the Examiner concedes that different blends of tetrafluoroethane and pentafluoroethane have different properties such that one refrigerant composition would not have rendered another such composition obvious (Ans. 7), the Examiner's concession is made regarding the Gbur Declaration's comparison of various refrigerants, none of which are similar to Takigawa's simplest binary composition. The Examiner correctly explains that Takigawa would have rendered the R-421A refrigerant composition (i.e., the claimed refrigerant) obvious. In other words, the Examiner's stated case is based on the teachings of the prior art (i.e., Takigawa) and what those teachings would have suggested to one of ordinary skill in the art, and not based on whether a particular refrigerant from Appellants' ASHRAE list would have rendered another refrigerant composition obvious.

Therefore, we find Appellants' arguments that the claimed refrigerant composition would not have been obvious to be without merit. As correctly found by the Examiner (Ans. 3), Takigawa teaches a binary refrigerant

composition that may include 40 wt.% HFC-134a at a minimum; the balance (i.e., 60 wt.%) being HFC-125. Based upon Takigawa's teachings, one of ordinary skill in the art would have had a reasonable expectation of achieving the claimed composition by routine experimentation as determined by the Examiner.

Appellants contend that results from such experimentation would not be sufficiently predictable to support the holding of "routine experimentation" (Request 9). However, such an argument overlooks that Takigawa teaches a refrigerant composition that includes as the simplest binary mixture a combination of 40 wt.% HFC-134a; balance (i.e., 60 wt.%) being HFC-125. Accordingly, the experimentation required would be targeted per Takigawa's teachings such that a composition falling within the claimed ranges having similar properties would have predictably resulted.

Appellants contend that the Board mischaracterizes Appellants' argument regarding Appellants' own US patent 7,320,763, which Appellants contend should have been obvious if only routine experimentation is required to determine acceptable refrigerant compositions, as stated in the Decision at page 6 and the Examiner's Answer (Request 10). Appellants' argument, however, mischaracterizes the Board's determinations.

On page 6 of the Decision, we stated that "we agree with the Examiner that given the guidance provided by Takigawa, determining acceptable refrigerant gas concentration ranges would have been a matter of routine experimentation." Appellants omitted the first portion of the citation that our determination is based on "the guidance provided by Takigawa." Accordingly, the fact that Appellants were granted a patent for an 85/15 refrigerant blend, does not undermine our determination based on the facts

of the present appeal that Takigawa's teachings would have guided one of ordinary skill to the claimed compositions through routine experimentation.

Appellants further argue that the Decision lacks articulated reasoning with some rational underpinning to support a conclusion of obviousness of the pending claims based on routine experimentation (Request 10).

Appellants contend that the Board's reliance on routine experimentation is merely conclusory and the Board failed to identify what guidance in Takigawa would have suggested that the experimentation would have been routine (Request 11). Appellants contend that Takigawa would not direct one skilled in the art to determine acceptable refrigerant concentrations and Takigawa's teaching that there is "no restriction" as to the kind of HFC means that there is no limit on the amount of refrigerant to be mixed (*id.*). Appellants contend that the teachings of Takigawa contradict the Board's determination that Takigawa teaches the exclusion of all HFCs other than HFC-134a and HFC-125b (*id.* at 12 n.2).

Appellants' arguments mischaracterize and quote out of context our Decision. Our determination that the claimed refrigerant composition would have resulted from routine experimentation is based upon the guidance provided by Takigawa as correctly stated by Appellants; not a mere conclusory statement. However, contrary to Appellants' argument, we cite the portions of Takigawa we rely on as providing such guidance. The sentences preceding our conclusion on page 6 of the Decision explain that the Examiner correctly finds that Takigawa teaches the simplest binary refrigerant composition includes HFC-134a and HFC-125 in amounts that include 40 wt.% HFC-134a with the balance (i.e., 60 wt.%) being HFC-125 (Decision 5-6).

Appellants' argument that Takigawa's teaching that there is "no restriction" to the kind of HFC to be mixed means that there is no limit on the *amount* of HFC is contrary to the teaching of Takigawa. As noted *supra*, Takigawa teaches particular weight percentages for the HFCs of the composition. In particular HFC-134a is present in an amount from 40 wt.% or more and HFC-125 is preferably present in an amount from 40 wt.% or more (Decision 7). So, Takigawa plainly limits the amounts of the HFC's. The "no restriction" language in Takigawa is directed to the "kind" of HFC.

Contrary to Appellants' arguments, we did not construe Takigawa's disclosure as excluding all HFCs other than HFC-134a and HFC-125b. Rather, we agreed with the Examiner's interpretation of Takigawa's unrestricted disclosure of the HFCs to be added to the blend means that additional amounts of HFC-134a or HFC-125 may reasonably constitute the added HFCs (Decision 5).

Appellants argue for the first time the features of claims 3, 4, 9, 8, 23, and 25 (Request 12; 20). Because these claims were either not argued at all (i.e., claims 3, 8, and 23) or not substantively argued in the Appeal Brief other than merely stating the subject matter of claims 4, 9, and 25, we shall not consider arguments regarding these claims in this request for rehearing. 37 CFR § 41.52(a)(1)(2009).

Appellants argue that the Board's statement that the reason for modifying Takigawa need not be the same as Appellants' reason for making the modification overlooks that the Examiner has not provided any reason for modifying Takigawa to arrive at the claimed invention (Request 12). We disagree.

The Examiner's stated case is based on Takigawa's teachings to use the two claimed refrigerants (HFC-134a and HFC-125) in amounts (i.e., 40% or more) that overlap the claimed ranges (i.e., about 40 to about 45% tetrafluoroethane and about 55% to about 60% pentafluoroethane) (Ans. 3-4). The Examiner's reason for modifying is based on the overlap between the claimed ranges and Takigawa's ranges. Indeed, the Examiner further properly finds that Takigawa's teaching to use 40% or more HFC-134a (i.e., tetrafluoroethane) in the simplest binary mixture with HFC-125 (i.e., pentafluoroethane) would require the amount of HFC-125 to be 60% by weight (Ans. 3, 5). Accordingly, it would appear the only modification of Takigawa required would have been to select the amount of HFC-134a to be 40%, which is explicitly taught by Takigawa. Once that selection is made, the balance of the binary mixture of HFC-134a and HFC-125 would be 60%, which falls within Takigawa's preferred range disclosed for HFC-125 (i.e., 40% or more).

Contrary to Appellants' argument, the guidance for determining acceptable refrigerant ranges is not extrinsic to the Takigawa reference (Request 12-13). As explained above, Takigawa provides the guidance for determining an acceptable refrigerant composition.

Appellants argue that the Board overlooked that refrigerants having different compositions have vastly different properties as evidenced by the ASHRAE evidence and the Ponder and Gbur Declarations, such that a 40% HFC-134a and 60% HFC-125 refrigerant could not be expected to be used in place of a 60% HFC-134a and 40% HFC-125 refrigerant blend (Request 13-14). Appellants further argue that the Board overlooked that Takigawa does not recognize that different ratios of pentafluoroethane and tetrafluoroethane

can result in refrigerant gas compositions for different temperature applications such that there is no showing of how Takigawa would use routine experimentation to arrive at the claimed refrigerant (Request 13). Appellants contend that without providing a reason to modify Takigawa to arrive at the claimed invention, the Examiner's position regarding routine experimentation amounts to taking Official Notice (Request 14).

All of these arguments are unpersuasive because we have considered the evidence presented in the Ponder and Gbur Declarations, but we do not find that evidence relevant to whether the claimed composition would have been obvious over Takigawa's disclosures. Even if different refrigerants have different properties, such does not address what Takigawa's teachings would have suggested. As discussed above, we agree with the Examiner that Takigawa's disclosures would have directed one of ordinary skill in the art to the claimed composition. As the Examiner finds, Takigawa discloses a binary mixture of HFC-134a and HFC-125. Takigawa further teaches that the amount of HFC-134a may be 40% or more. Accordingly, one of ordinary skill would have been directed to 40% by weight of HFC-134a as the starting point for the refrigerant composition. The balance of such a binary composition would have been 60% by weight HFC-125 as found by the Examiner (Ans. 3). The Examiner's findings are based on the teachings of the reference, not Official Notice or some other theory argued by Appellants.

Appellants' argument regarding the "level of skill" in the *Graham v. John Deere* inquiries with regard to routine experimentation was not raised in the Brief (Request 15). As acknowledged by Appellants, the Examiner raised the routine experimentation rationale in the Answer (*id.*), however,

Appellants did not make this argument in the Reply Brief. Therefore, this new argument shall not be considered in this request for rehearing. 37 CFR § 41.52(a)(1)(2009).

Appellants argue that the Board overlooked and failed to address the underlying analysis and facts presented in the Ponder and Gbur Declarations (Request 15). Appellants argue that the Board mischaracterized declarant Ponder's statement in the declaration, which, when fully considered, states that Takigawa does not teach or suggest a refrigerant composition composed of tetrafluoroethane and pentafluoroethane to the exclusion of other refrigerant gases *"having a temperature/pressure profile that provides superior properties for use in high and medium temperature applications"* (Request 16). Appellants contend that the Ponder declaration controverts the Board's holding that determining acceptable refrigerant concentrations would have been a matter of routine experimentation (Request 16).

Appellant further argues that "there is no recognition in Takigawa of any need or desire to address the issue of a refrigerant composition having a temperature-pressure profile that provides superior properties for use in high and medium temperature applications for the replacement of R-22" (Request 16).

With regard to the Gbur Declaration, Appellants contend the Board misapprehended the contents of the declaration (Request 17). Appellants contend that the Board mischaracterized the Gbur Declaration in that declarant Gbur does not rest his conclusion on Takigawa's failure to exemplify a blend of only HFC-134a and HFC-125 as stated in the Decision (Request 17 and 18). Appellants contend that declarant Gbur draws upon his

experience and knowledge to determine that Takigawa would not have rendered obvious the claimed composition (Request 18).

We have fully considered and analyzed the evidence provided in the Ponder and Gbur Declarations as is evident from pages 7-8 of the Decision and we adhere to our positions and statements contained therein. Contrary to Appellants' arguments regarding the Ponder Declaration, we did not mischaracterize declarant Ponder's opinion evidence. Rather, based on our consideration of the evidence, we stated that both declarant Ponder and declarant Gbur state that the claimed refrigerant would not have been obvious from Takigawa (Decision 7). While Appellants argue that the Ponder declaration evinces that more than routine experimentation would be required to achieve the claimed invention having the superior high and medium temperature properties, we note that these properties are not claimed.

Moreover, we addressed this refrigerant property issue in the paragraph bridging pages 6-7 of the Decision. We stated that Takigawa's teachings would have suggested a refrigerant having the claimed concentrations of HFC-134a and HFC-125, such that Appellants' disclosed high and medium temperature properties would naturally flow from Takigawa's composition. Accordingly, we are not persuaded by Appellants' evidence that our decision based upon the Examiner's findings regarding Takigawa is in error.

As with the Ponder Declaration, we are unpersuaded by Appellants' arguments regarding the Gbur Declaration. We fully appreciate declarant Gbur's experience and knowledge in the refrigerant field and have fully considered the evidence provided in the Gbur Declaration. However, based

upon the facts presented on this record, we conclude that Takigawa would have rendered obvious the claimed refrigerant composition for the reasons discussed *supra*.

Appellants contend that the Board overlooked the ASHRAE evidence included in Appendix C, which Appellants contend shows that blends with different amounts of the same compounds have different properties (Request 18-19). We have fully considered the ASHRAE evidence as discussed by Appellants on pages 12-14 of the Appeal Brief (Decision 7). Even though blends having the same compounds in different amounts have different properties, we remain of the view that the Takigawa's teachings discussed earlier would have rendered obvious the claimed composition having the claimed HFC-134a and HFC-125 in the claimed amounts.

Appellants argue that the Board overlooked the genus-species argument where Appellants contend that Takigawa's disclosure does not restrict the type or amount of hydrofluorocarbon (HFC) to be mixed with HFC-134a and HFC-125 such that the possible combinations are in the hundreds or thousands and Takigawa does not direct one of ordinary skill to any particular specie within the genus (Request 19).

Contrary to Appellants' argument, we considered and addressed the genus-species argument made by Appellants in the Appeal Brief. Appellants' genus-specie argument in the Appeal Brief concerned the selection of Appellants' ranges for the tetrafluoroethane and pentafluoroethane (App. Br. 9-10). Though Appellants cite *In re Baird*, 16 F.3d 380 (Fed. Cir. 1994) as part of the argument, this citation was provided to analogize between selecting a narrower range (i.e., a specie) from a larger range (i.e., a genus) (App. Br. 10) and did not appear to be made regarding

the perceived breadth of Takigawa's disclosure of compounds. In any event, Appellants do raise the issue of the breadth of Takigawa's disclosure on page 4 of the Reply Brief.

Regardless, we addressed either interpretation of Appellants' genus-specie argument (Decision 5-6). With regard to the breadth of compounds disclosed argument, we noted that the Examiner correctly finds that the simplest binary composition taught by Takigawa is a blend of HFC-134a and HFC-125, which is simply underscored by Takigawa's claim 1.

Accordingly, Takigawa's selection of a narrower range from a broader range likewise would have been suggested by Takigawa's disclosure of a binary blend of 40 wt.% or more HFC-134a and preferably 40 wt.% or more HFC-125. Therefore, as found by the Examiner (Ans. 3), selecting 40 wt.% as the concentration of HFC-134a in Takigawa's blend would require the balance of HFC-125 to be 60 wt.%, which are concentrations falling within the claimed ranges. In other words, narrower ranges emerge from Takigawa's teachings.

Appellant further contends that the Board's position that Takigawa teaches at least two end points of Appellants' claimed ranges (i.e., 40% HFC-134a and 60% HFC-125) is contravened by the Examiner's concession on page 5 of the Answer that the rejection is under § 103 not § 102 (Request 20).

The Examiner's statement referenced on page 5 is in rebuttal to Appellants' argument that the composition limited by the transitional phrase "consisting of" is not taught or suggested by Takigawa (Ans. 5). However, the Examiner continues in the same paragraph by determining that Takigawa's simplest binary composition contains most preferably 40% or

more tetrafluoroethane and 40% or more pentafluoroethane (Ans. 5). In other words, the Examiner's finding and our adoption of it, is not contravened by conceding that the rejection is under § 103. To the contrary, as noted throughout our Decision and this Decision on rehearing, Takigawa teaches the binary composition and provides guidance for selecting the values within the claimed ranges within the meaning of § 103.

For the above reasons, the Request for Reopening Prosecution and the Request for Rehearing are denied.

DENIED

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**Form 5. Petition for Review or Notice of Appeal of an Order or Decision of an
AGENCY, BOARD, COMMISSION, OFFICE OR BUREAU.**

United States Court of Appeals for the Federal Circuit

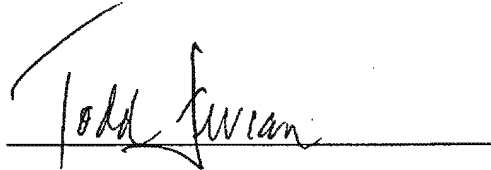
Kenneth M. Ponder, and Steffan Thomas, Jr., Petitioners or Appellants,

v.

PETITION FOR REVIEW

United States Patent and Trademark Office,
Board of Patent Appeals and Interferences, Respondent or Appellee.

Kenneth M. Ponder, and Steffan Thomas, Jr. (name all parties* bringing the petition or appeal) hereby petition/appeal the court for review of the Decision on Request for Rehearing/ Request for Reopening Prosecution dated October 4, 2010, upholding the Decision on Appeal dated April 29, 2010 (Appeal No. 2009-012229)(describe the order or decision and include decision number) of the United States Patent and Trademark Office, Board of Patent Appeals and Interferences (name the agency, board, office or bureau) entered on October 4, 2010(date), copies of which are attached hereto. The order or decision was received on October 7, 2010.



(Signature of petitioner, appellant or attorney)

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appellant or attorney)

* See Fed. R. App. P. 15 for permissible ways of identifying petitioners.

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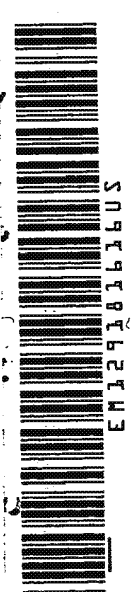
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/937,736

09/08/2004

Kenneth M. Ponder

821920-1030

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EXAMINER

HARDEE, JOHN R

ART UNIT

PAPER NUMBER

1761

MAIL DATE

DELIVERY MODE

12/09/2010

PAPER

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 Abandonment

Application No.

10/937,736

Examiner

JOHN R. HARDEE

Applicant(s)

PONDER ET AL.

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☐ Applicant's failure to timely file a proper reply to the Office letter mailed on _____.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☐ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☒ The decision by the Board of Patent Appeals and Interference rendered on 04 October 2010 and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

/John R. Hardee/
Primary Examiner, Art Unit 1761

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.



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JOHN R.. HARDEE

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Commissioner for Patents

/John R. Hardee/
Primary Examiner, Art Unit 1761

Art Unit: 1761

DETAILED ACTION

1. The Notice of Abandonment mailed December 9, 2010 is WITHDRAWN.

/John R. Hardee/
Primary Examiner
December 16, 2010



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09/08/2004

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08/08/2011

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Notice of Abandonment

Application No.

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Applicant(s)

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Examiner

JOHN HARDEE

Art Unit

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 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☐ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☒ The decision by the Board of Patent Appeals and Interference rendered on 29 April 2010 and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

/John R. Hardee/
Primary Examiner, Art Unit 1761

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.