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14/760,287	07/10/2015	Hilmar Fickert	40047-244US1	6402
69713	7590	11/03/2017	EXAMINER	
OCCHIUTI & ROHLICEK LLP 321 Summer St. Boston, MA 02210			CARRILLO, BIBI SHARIDAN	
			ART UNIT	PAPER NUMBER
			1711	
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Mailed: 11/3/2017

In re application of	:	
FICKERT, HILMAR	:	
Serial No.: 14/760,287	:	DECISION ON
Filed: July 10, 2015	:	PETITION
For: METHOD AND SYSTEM FOR	:	
TREATING KEGS	:	

This is a decision on the PETITION UNDER 37 CFR 1.181 to withdraw the lack of unity requirement mailed June 15, 2016.

On June 15, 2016, the Examiner determined the application contains claims directed to inventions or groups of inventions that are not so linked as to form a single general inventive concept under PCT Rule 13.1 as follows:

Group I, claim(s) 15-25, drawn to an apparatus, classified in 134/94.1; H01L21/67051; and

Group II, claim(s) 26-33, drawn to a method, classified in 134/22.18; B08B9/0804.

The Examiner found that the common technical feature does not define a "special technical feature," since the claimed features does not define a contribution over the prior art, as evidenced by U.S. Patent 4,461,653 by Ruppell.

On August 15, 2016, in response to the written requirement, the Petitioner elected Group II, method claims 26-33. In the response, the Petitioner states "[t]he election is made without traverse." Additionally, in conjuncture with such a filing, the Petitioner filed an amendment to the apparatus claims and requested reconsideration of the restriction requirement in view of the amended claims.

In response to Petitioner's filed response and amendment, the Examiner in the Non-final office action dated October 6, 2016, acknowledged the election of method claims 26-33 without traverse. The Examiner found the additional arguments unpersuasive due to the election without traverse. In addition, the Examiner noted the intended use of the apparatus claims as amended is not given patentable weight and maintained the lack of unity requirement for the reasons set forth in the lack of unity requirement mailed June 15, 2016.



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On January 6, 2017, Petitioner responded to the examiner's position, stating the lack of unity requirement was not applicable to the amended claims and the election without traversal was directed towards claims prior to amendment. It is the Petitioner's position that in view of the amendment the lack of unity requirement is moot because the lack of unity requirement is not related to the claims pending on August 15, 2016. The Petitioners additionally argue the lack of unity is not permanent but it is possible to fix it by amendment.

On March 31, 2017, the Examiner mailed a Final Office action and maintained the lack of unity requirement for the same reasons as set forth on October 6, 2016, specifically, that the additional arguments unpersuasive due to the election without traverse and the presence of intended use in the apparatus claims.

On May 31, 2017, Petitioner timely filed the instant petition under 37 CFR 1.181 to formally request withdraw of the lack of unity requirement, arguing that the restriction requirement be withdrawn on the grounds that an amendment to the claims has obviated the basis for the restriction requirement mailed on June 15, 2016.

DECISION

The MPEP states:

823 Unity of Invention Under the Patent Cooperation Treaty

[T]he guidance set forth in this chapter with regard to other substantive and procedural matters (e.g., double patenting rejections (MPEP § 804), election and reply by applicant (MPEP § 818), and rejoinder of nonelected inventions (MPEP § 821.04) generally applies to national stage applications submitted under 35 U.S.C. 371.

818.01 Election in Reply to a Restriction Requirement: Express

A traverse is a request for reconsideration of a requirement to restrict that must include a written statement of the reasons for traverse, distinctly and specifically pointing out the supposed errors upon which the applicant relies for his or her conclusion that the requirement is in error. The absence of any statement indicating whether the requirement to restrict is traversed or the failure to provide reasons for traverse will be treated as an election without traverse.

818.01(c) Traverse is Required To Preserve Right of Petition

To preserve the right to petition from the requirement for restriction, all errors to be relied upon in the petition must be distinctly and specifically pointed out in a timely filed traverse by the applicant. The petition may be deferred until after final action on or allowance of the claims to the elected invention. In any event, the petition must not be filed later than the filing date of the notice of appeal.



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1893.03(d) Unity of Invention

The sections of the MPEP relating to double patenting rejections (MPEP § 804), election and reply by applicant (MPEP § 818), and rejoinder of nonelected inventions (MPEP § 821.04) generally also apply to national stage applications submitted under 35 U.S.C. 371. See MPEP § 823.

An apparatus or means is specifically designed for carrying out the process when the apparatus or means is suitable for carrying out the process with the technical relationship being present between the claimed apparatus or means and the claimed process. The expression specifically designed does not imply that the apparatus or means could not be used for carrying out another process, nor does it imply that the process could not be carried out using an alternative apparatus or means.

Petitioner argues that 1) the examiner's reliance on the intended-use rationale is misplaced and 2) traversal of the restriction requirement was never made to the instant claims because the examiner never advanced any reasons for a lack of unity for the claims as amended.

The Petitioner's election of Group II was accompanied by an amendment to the apparatus claims to include the method claim requirements. Additionally, the Petitioner's amendment noted the apparatus was specifically designed for carrying out the elected process in conformance with the unity of invention requirements as set forth by MPEP 1893.03(d). Finally, the Petitioner included a request for consideration that included a concise statement that distinctly and specifically pointed out the supposed errors in the lack of unity requirement as to the amended claims.

As set forth in MPEP 818.01, a traversal is a request for reconsideration of the unity of invention requirement that includes a written statement that distinctly and specifically pointing out the supposed errors upon which the Petitioner relies for his or her conclusion that the requirement is in error. Here, while the Petitioner noted the "election is made without traverse," the Petitioner concurrently filed amendments to the claims and argued that the amended claims contained unity of invention as process claims and apparatus specifically designed to carry out that process. Therefore, in accordance with MPEP 818.01, by distinctly and specifically pointing out the errors in the lack of unity requirement in a written statement, the Petitioner reasonably traversed the requirement as to the amended claims.

In response to this request for reconsideration, the Examiner determined the Petitioner's election was "made without traverse" and never fully considered the Petitioner's traversal as to the Petitioner's amended claims nor did the Examiner make the restriction requirement final.



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Accordingly, the petition for withdrawal of the lack of unity requirement is **GRANTED**. The application is being forwarded to the examiner to consider and address the arguments of traversal towards the amended claims and the issuance of a new office action. It is noted that the examiner may still determine a new lack of unity to be appropriate and this decision does not preclude such a finding.

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