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Mitchell Robert Swartz
16 Pembroke Road
Weston, MA 02493

EXAMINER	
WILKINS III, HARRY D	

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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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In re Application of	:	
Swartz, Mitchell R.	:	
Application No. 16/501,293	:	
Filed: 20 Mar 2019	:	DECISION ON PETITION
For: Machine and process to preload,	:	
acitivate, rejuvenate, and evaluate energy	:	
production from a nanostructured material	:	

This is a decision on the petition under 37 CFR 1.181, filed on November 08, 2024, and supplemented on November 20, 2024, November 22, 2024, and November 29, 2024, requesting that the Director exercise supervisory authority and overturn the decision of October 25, 2024, by the Director of Technology Center 1700 (Technology Center Director), which Technology Center Director decision refused to reinstate appeal proceedings and correct the advisory action issued on June 18, 2024. Specifically, the instant petition requests: (1) correction of alleged false statements made in the advisory action of June 18, 2024; (2) recognition and reinstatement of appeal proceedings; (3) consideration of evidence allegedly ignored; (4) recognition of the instant application as a continuation; and a (5) a review of alleged criminal misconduct by Office personnel during the prosecution of the instant application.

The petition to overturn the Technology Center Director's decision of October 25, 2024, reinstate appeal proceedings, and correct the June 18, 2024, advisory action is **DENIED**.[1]

RELEVANT BACKGROUND

The instant application was filed on March 20, 2019.

Prosecution of the application led to a final Office action being issued on August 15, 2023.

A notice of appeal was filed on November 09, 2023, and supplemented on November 13, 2023. The notice of appeal fee as set forth in 37 CFR 41.20(b)(1) was paid on November 13, 2023.

An appeal brief was filed on December 28, 2023.

[1] The petitions filed on November 22, 2024, and November 29, 2024, also request withdrawal of the holding of abandonment issued on November 12, 2024. A decision on the petition to withdraw the holding of abandonment will be issued separately in due course.

In response to the December 28, 2023, appeal brief, a final Office action was issued on April 01, 2024, reopening prosecution. The final Office action of April 01, 2024, stated, *inter alia*, that: (1) prosecution had been reopened in view of the December 28, 2023, appeal brief; (2) in order to avoid abandonment of the instant application, petitioner must either file a reply under 37 CFR 1.113 or initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37; (3) the previously paid notice of appeal fee and appeal brief fee could be applied to the new appeal; and (4) if the appeal fees set forth in 37 CFR 41.20 had been increased since they were previously paid, then petitioner had to pay the difference between the increased fees and the amount previously paid.

A paper titled "Reply Brief" was filed on May 28, 2024, and supplemented on June 03, 2024.[2] The appeal forwarding fee as set forth in 37 CFR 41.20(b)(4) was paid on June 03, 2024.

An advisory action was issued on June 18, 2024, in response to the May 28, 2024, submission.[3] The advisory action of June 18, 2024, stated, *inter alia*, that: (1) the request for reconsideration filed on May 28, 2024, had been considered but failed to place the instant application in condition for allowance; (2) petitioner had been notified in the April 01, 2024, final Office action that they must either file a reply under 37 CFR 1.113 or initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37; and (3) petitioner's response of May 28, 2024, had been treated as a reply under 37 CFR 1.113 because the reply did not correspond to the initiation of a new appeal and the prior Office action of April 01, 2024, was a final Office action and not an examiner's answer.

A petition was filed on June 27, 2024, which was treated as a petition under 37 CFR 1.181 requesting review of the propriety of, and correction of the advisory action of June 18, 2024.

The petition filed on June 27, 2024, was dismissed by the Technology Center Director in a decision issued on October 25, 2024.[4]

The instant petition was filed on November 08, 2024, and supplemented on November 20, 2024, November 22, 2024, and November 29, 2024, under 37 CFR 1.181, seeking review of the Technology Center Director's decision issued on October 25, 2024.[5]

A notice of abandonment was issued on November 12, 2024, for failure to timely file a proper reply to the final Office action of April 01, 2024. The November 12, 2024, notice indicated that a

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[2] The submission of June 03, 2024, was not scanned into the file wrapper of the instant application until June 24, 2024.

[3] *Id.*

[4] The decision of October 25, 2024, also considered arguments presented in the "motion for sanctions" filed on July 09, 2024, and supplemented on July 12, 2024, to the extent that they addressed the requests raised in the June 27, 2024, petition.

[5] The petitions filed on November 22, 2024, and November 29, 2024, also request withdrawal of the holding of abandonment issued on November 12, 2024. A decision on the petition to withdraw the holding of abandonment will be issued separately in due course.

proposed reply received on May 28, 2024, did not constitute a proper reply under 37 CFR 1.113 to the final Office action of April 01, 2024.

STATUTE AND REGULATIONS

35 U.S.C. § 120 states:

> An application for patent for an invention disclosed in the manner provided by section 112(a) (other than the requirement to disclose the best mode) in an application previously filed in the United States, or as provided by section 363 or 385 which names an inventor or joint inventor in the previously filed application shall have the same effect, as to such invention, as though filed on the date of the prior application, if filed before the patenting or abandonment of or termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the earlier filed application. No application shall be entitled to the benefit of an earlier filed application under this section unless an amendment containing the specific reference to the earlier filed application is submitted at such time during the pendency of the application as required by the Director. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this section. The Director may establish procedures, including the requirement for payment of the fee specified in section 41(a)(7), to accept an unintentionally delayed submission of an amendment under this section.

35 U.S.C. § 134 states:

> (a) PATENT APPLICANT.— An applicant for a patent, any of whose claims has been twice rejected, may appeal from the decision of the primary examiner to the Patent Trial and Appeal Board, having once paid the fee for such appeal.
>
> (b) PATENT OWNER.— A patent owner in a reexamination may appeal from the final rejection of any claim by the primary examiner to the Patent Trial and Appeal Board, having once paid the fee for such appeal.

37 CFR 1.26 provides in part that:

> (a) The Director may refund any fee paid by mistake or in excess of that required. A change of purpose after the payment of a fee, such as when a party desires to withdraw a patent filing for which the fee was paid, including an application, an appeal, or a request for an oral hearing, will not entitle a party to a refund of such fee. The Office will not refund amounts of twenty-five dollars or less unless a refund is specifically requested, and will not notify the payor of such amounts. If a party paying a fee or requesting a refund does not provide the banking information necessary for making refunds by electronic funds transfer (31 U.S.C. 3332 and 31

CFR part 208), or instruct the Office that refunds are to be credited to a deposit account, the Director may require such information, or use the banking information on the payment instrument to make a refund. Any refund of a fee paid by credit card will be by a credit to the credit card account to which the fee was charged.

(b) Any request for refund must be filed within two years from the date the fee was paid, except as otherwise provided in this paragraph or in § 1.28(a). If the Office charges a deposit account by an amount other than an amount specifically indicated in an authorization (§ 1.25(b)), any request for refund based upon such charge must be filed within two years from the date of the deposit account statement indicating such charge, and include a copy of that deposit account statement. The time periods set forth in this paragraph are not extendable.

37 CFR 1.78(d) provides in part that:

(a) *Claims under 35 U.S.C. 120, 121, 365(c), or 386(c) for the benefit of a prior-filed nonprovisional application, international application, or international design application*. An applicant in a nonprovisional application (including a nonprovisional application resulting from an international application or international design application), an international application designating the United States, or an international design application designating the United States may claim the benefit of one or more prior-filed copending nonprovisional applications, international applications designating the United States, or international design applications designating the United States under the conditions set forth in 35 U.S.C. 120, 121, 365(c), or 386(c) and this section.

(1) Each prior-filed application must name the inventor or a joint inventor named in the later-filed application as the inventor or a joint inventor. In addition, each prior-filed application must either be:

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(iii) A nonprovisional application under 35 U.S.C. 111(a) that is entitled to a filing date as set forth in § 1.53(b) or (d) for which the basic filing fee set forth in § 1.16 has been paid within the pendency of the application.

(2) Except for a continued prosecution application filed under § 1.53(d), any nonprovisional application, international application designating the United States, or international design application designating the United States that claims the benefit of one or more prior-filed nonprovisional applications, international applications designating the United States, or international design applications designating the United States must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number), international application number and international filing date, or international registration number and filing date under § 1.1023. If the later-filed application is a nonprovisional application, the reference required by

this paragraph must be included in an application data sheet (§ 1.76(b)(5)). The reference also must identify the relationship of the applications, namely, whether the later-filed application is a continuation, divisional, or continuation-in-part of the prior-filed nonprovisional application, international application, or international design application.

(3)

(i) The reference required by 35 U.S.C. 120 and paragraph (d)(2) of this section must be submitted during the pendency of the later-filed application.

(ii) The later-filed application is a nonprovisional application entering the national stage from an international application under 35 U.S.C. 371, this reference must also be submitted within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) (§ 1.491(a)), four months from the date of the initial submission under35 U.S.C. 371 to enter the national stage, or sixteen months from the filing date of the prior-filed application.

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(iii) Except as provided in paragraph (e) of this section, failure to timely submit the reference required by 35 U.S.C. 120 and paragraph (d)(2) of this section is considered a waiver of any benefit under 35 U.S.C. 120, 121, 365(c), or 386(c) to the prior-filed application.

37 CFR 1.113 provides that:

(a) On the second or any subsequent examination or consideration by the examiner the rejection or other action may be made final, whereupon applicant's, or for ex parte reexaminations filed under § 1.510, patent owner's reply is limited to appeal in the case of rejection of any claim (§ 41.31 of this title), or to amendment as specified in § 1.114 or § 1.116. Petition may be taken to the Director in the case of objections or requirements not involved in the rejection of any claim (§ 1.181). Reply to a final rejection or action must comply with § 1.114 or paragraph (c) of this section. For final actions in an inter partes reexamination filed under § 1.913, see § 1.953.

(b) In making such final rejection, the examiner shall repeat or state all grounds of rejection then considered applicable to the claims in the application, clearly stating the reasons in support thereof.

(c) Reply to a final rejection or action must include cancellation of, or appeal from the rejection of, each rejected claim. If any claim stands allowed, the reply to a final rejection or action must comply with any requirements or objections as to form.

37 CFR 1.181 provides in part that:

> (a) Petition may be taken to the Director:
>
> > (1) From any action or requirement of any examiner in the *ex parte* prosecution of an application, or in *ex parte* or *inter partes* prosecution of a reexamination proceeding which is not subject to appeal to the Patent Trial and Appeal Board or to the court;
> >
> > (2) In cases in which a statute or the rules specify that the matter is to be determined directly by or reviewed by the Director; and
> >
> > (3) To invoke the supervisory authority of the Director in appropriate circumstances. For petitions involving action of the Patent Trial and Appeal Board, see § 41.3 of this title.
>
> ****
>
> (c) When a petition is taken from an action or requirement of an examiner in the ex parte prosecution of an application, or in the ex parte or inter partes prosecution of a reexamination proceeding, it may be required that there have been a proper request for reconsideration (§ 1.111) and a repeated action by the examiner. The examiner may be directed by the Director to furnish a written statement, within a specified time, setting forth the reasons for his or her decision upon the matters averred in the petition, supplying a copy to the petitioner.

37 CFR 41.31 provides in part that:

> (a) *Who may appeal and how to file an appeal.* An appeal is taken to the Board by filing a notice of appeal.
>
> > (1) Every applicant, any of whose claims has been twice rejected, may appeal from the decision of the examiner to the Board by filing a notice of appeal accompanied by the fee set forth in § 41.20(b)(1) within the time period provided under § 1.134 of this title for reply.
>
> ****
>
> (c) An appeal, when taken, is presumed to be taken from the rejection of all claims under rejection unless cancelled by an amendment filed by the applicant and entered by the Office. Questions relating to matters not affecting the merits of the invention may be required to be settled before an appeal can be considered.
>
> (d) The time periods set forth in paragraphs (a)(1) through (a)(3) of this section are extendable under the provisions of § 1.136 of this title for patent applications and § 1.550(c) of this title for ex parte reexamination proceedings.

37 CFR 41.37 provides in part that:

(a) *Timing*. Appellant must file a brief under this section within two months from the date of filing the notice of appeal under § 41.31. The appeal brief fee in an application or ex parte reexamination proceeding is $0.00, but if the appeal results in an examiner's answer, the appeal forwarding fee set forth in § 41.20(b)(4) must be paid within the time period specified in § 41.45 to avoid dismissal of an appeal.

(b) *Failure to file a brief*. On failure to file the brief within the period specified in paragraph (a) of this section, the appeal will stand dismissed.

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(e) *Extensions of time*. The time periods set forth in this section are extendable under the provisions of § 1.136 of this title for patent applications and § 1.550(c) of this title for ex parte reexamination proceedings.

37 CFR 41.41 provides in part that:

(a) *Timing*. Appellant may file only a single reply brief to an examiner's answer within the later of two months from the date of either the examiner's answer, or a decision refusing to grant a petition under § 1.181 of this title to designate a new ground of rejection in an examiner's answer

37 CFR 41.66 provides that:

(a) An appellant's brief must be filed no later than two months from the latest filing date of the last-filed notice of appeal or cross appeal or, if any party to the proceeding is entitled to file an appeal or cross appeal but fails to timely do so, no later than two months from the expiration of the time for filing (by the last party entitled to do so) such notice of appeal or cross appeal. The time for filing an appellant's brief or an amended appellant's brief may not be extended.

(b) Once an appellant's brief has been properly filed, any brief must be filed by respondent within one month from the date of service of the appellant's brief. The time for filing a respondent's brief or an amended respondent's brief may not be extended.

(c) The examiner will consider both the appellant's and respondent's briefs and may prepare an examiner's answer under § 41.69.

(d) Any appellant may file a rebuttal brief under § 41.71 within one month of the date of the examiner's answer. The time for filing a rebuttal brief or an amended rebuttal brief may not be extended.

(e) No further submission will be considered and any such submission will be treated in accordance with § 1.939 of this title.

37 CFR 41.71 provides that:

> (a) Within one month of the examiner's answer, any appellant may once file a rebuttal brief.

OPINION

The instant petition requests: (1) correction of alleged false statements made in the advisory action of June 18, 2024; (2) recognition and reinstatement of appeal proceedings; (3) consideration of evidence allegedly ignored; (4) recognition of the instant application as a continuation; and a (5) a review of alleged criminal misconduct by Office personnel during the prosecution of the instant application.

Petitioner characterizes the October 25, 2024 petition decision as a "flawed Advisory Action." Petitioner argues that: (1) the June 18, 2024, advisory action was flawed and contained false statements; (2) the Office has failed to recognize that a notice of appeal was filed and the appropriate fee was timely submitted and collected, that the appeal brief was filed, that a reply brief was filed, and that the appropriate appeal forwarding fee was submitted and deposited; (3) the Office has ignored timely-submitted evidence demonstrating utility and operability; (4) the Office has ignored that the instant application is a valid continuation; and (5) Office personnel have knowingly engaged in conspiracy and/or criminal misconduct.

I. The June 18, 2024, advisory action was proper.

The record shows that the June 18, 2024, advisory action was properly issued and contained accurate information.

While petitioner's response of May 28, 2024, was titled a reply brief, the prior Office action of April 01, 2024, was a final Office action and not an examiner's answer. Unlike an appeal brief, a reply to a final Office action does not have specific heading requirements. An appeal brief is required to have specific content, as specified in 37 CFR 41.37. Petitioner had been notified in the April 01, 2024, final Office action that they must either file a reply under 37 CFR 1.113 or initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37.[6] Since the reply filed on May 28, 2024, did not correspond to the initiation of a new appeal, it was properly treated as a reply under 37 CFR 1.113. Finally, the June 18, 2024, advisory action accurately checked box (1) on form PTOL-303, as opposed to box (2), because no notice of appeal had been filed following the April 01, 2024, final Office action and the May 28, 2024, reply had been treated as a reply under 37 CFR 1.113.

For the foregoing reasons, the petition to correct alleged false statements made in the advisory action of June 18, 2024, will not be granted.

II. The Office has recognized and considered the appeal proceedings on the record.

[6] Final Office action issued on April 01, 2024, p. 2.

The *Manual of Patent Examining Procedure* (MPEP) § 1207.04 states in part that "[T]he examiner may, with approval from the supervisory patent examiner, reopen prosecution to enter a new ground of rejection in response to appellant's brief."

The record shows that, in response to the December 28, 2023, appeal brief, a final Office action was issued on April 01, 2024, reopening prosecution. The final Office action of April 01, 2024, stated that prosecution had been reopened in view of the December 28, 2023, appeal brief and that, in order to avoid abandonment of the instant application, petitioner had to either file a reply under 37 CFR 1.113 or initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37.[7] Therefore, the final Office action of April 01, 2024, recognized and acknowledged the appeal brief of December 28, 2023.

With respect to the notice of appeal fee, the final Office action of April 01, 2024, stated that the previously paid notice of appeal fee and appeal brief fee could be applied to the new appeal and that if the appeal fees set forth in 37 CFR 41.20 had been increased since they were previously paid, then petitioner had to pay the difference between the increased fees and the amount previously paid.[8] Therefore, payment of the notice of appeal fee as set forth in 37 CFR 41.20(b)(1) on November 13, 2023, was acknowledged and petitioner was provided with guidance on the required steps in order to apply such payment to a new appeal if desired.

With respect to the reply filed on May 28, 2024, and as stated above, while petitioner's submission may have been titled "Reply Brief," a reply brief may only be filed in response to an examiner's answer. *See* 37 CFR 41.41 and MPEP § 1208. In this case, the prior Office action of April 01, 2024, was a final Office action and not an examiner's answer. Petitioner had been notified in the April 01, 2024, final Office action that they had to either file a reply under 37 CFR 1.113 or initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37.[9] Since the reply filed on May 28, 2024, did not correspond to the initiation of a new appeal in response to the April 01, 2024, Office action, it was properly treated as a reply under 37 CFR 1.113 and an advisory action was issued in response thereto on June 18, 2024. Therefore, the submission of May 28, 2024, was properly acknowledged.

With respect to the appeal forwarding fee, MPEP § 1208.01 states in part that the appeal forwarding fee is premature if the fee is filed prior to the mailing of the examiner's answer. The record shows that the appeal forwarding fee as set forth in 37 CFR 41.20(b)(4) was paid on June 03, 2024. Since the Office action of April 01, 2024, was a final Office action that reopened prosecution after the appeal brief filed on December 28, 2023, and not an examiner's answer, payment of the appeal forwarding fee on June 03, 2024, is considered premature. Accordingly, the appeal forwarding fee is considered to be paid by mistake or in excess of that required. *See* 37 CFR 1.26(a). Petitioner may file a refund request in the amount of $944.00 for the appeal forwarding fee submitted on June 03, 2024.

MPEP § 1204.01 provides in part that:

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[7] *Id.*
[8] *Id.*
[9] *Id.*

> When prosecution is reopened after the filing of a notice of appeal and prior to a written decision by the Patent Trial and Appeal Board, appellant must file a new notice of appeal in compliance with 37 CFR 41.31 and a complete new appeal brief in compliance with 37 CFR 41.37 in order to reinstate the appeal. Any previously paid appeal fees set forth in 37 CFR 41.20 for filing a notice of appeal, filing an appeal brief (if any), requesting an oral hearing and/or forwarding the appeal to the Board will not be required to be paid again except if a final Board decision has been made on the first appeal.
>
> If the appeal fees have increased since they were previously paid, then appellant must pay the difference between the current fee(s) and the amount previously paid. Appellant must file a complete new appeal brief in compliance with the format and content requirements of 37 CFR 41.37(c) within two months from the date of filing the new notice of appeal. See MPEP § 1205. This time period is extendible as provided in MPEP § 1205.01.

The record does not show that a new notice of appeal in compliance with 37 CFR 41.31 was ever filed by applicant after prosecution was reopened with the final Office action of April 01, 2024.

For the foregoing reasons, the petition to reinstate appeal proceedings will not be granted.

III. The record shows that evidence noted by petitioner has been considered.

The instant petition appears to point to reports identified as DTRA, DARPA, US Navy, and NASA as those allegedly ignored by the Office. The final Office actions of August 15, 2023, and April 01, 2024, both acknowledged petitioner's arguments with respect to the above-identified reports and stated that such references were absent from the file wrapper of the instant application.[10]

The August 15, 2023, and April 01, 2024, final Office actions also stated that a reference identified as DTRA found in the file wrapper of U.S. Application No. 13/544,381 may be the one referred to by petitioner.[11] However, the final Office actions of August 15, 2023, and April 01, 2024, both noted that a disclaimer found in such DTRA reference explicitly states that the publication of such document did not indicate endorsement by the Department of Defense, nor should the contents be construed as reflecting the official position of the sponsoring agency.[12] In view of the above-identified disclaimer, the final Office actions of August 15, 2023, and April 01, 2024, both conclude that none of the above-identified references contain unequivocal evidence regarding operability of the claimed invention.[13]

Therefore, the record shows that the reports purportedly ignored by the Office have been considered to the extent permissible by the file wrapper of the instant application.

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[10] Final Office action issued on August 15, 2023, p. 6 and final Office action issued on April 01, 2024, p. 7.
[11] Final Office action issued on August 15, 2023, p. 7 and final Office action issued on April 01, 2024, p. 7.
[12] *Id.*
[13] *Id.*

For the foregoing reasons, the petition to consider evidence allegedly ignored by the Office will not be granted.

IV. Petitioner has not complied with the requirements for establishing the instant application as a continuation.

While arguing that the Office has failed to recognize the instant application as a continuation, the instant petition fails to specify any parent application for which a benefit claim is sought. However, a review of the record shows that the non-final Office action of August 26, 2022, recognized that the instant application appeared to make reference to or claim subject matter disclosed in U.S. Application No. 07/339,976, U.S. Application No. 12/802,165, and U.S. Application No. 13/544,381.[14] The August 26, 2022, non-final Office action also indicated that the benefit claim to the above-identified applications had not been made in compliance with the Office's rules and regulations.[15]

Similarly, the final Office actions of August 15, 2023, and April 01, 2024, both indicated that the instant application appeared to replicate a substantial portion of the disclosure of U.S. Application No. 13/544,381 and supplement such with additional disclosure.[16] The record also shows that petitioner was once again informed that the benefit claim to the above-identified application had not been made in compliance with the Office's rules and regulations.[17]

In order to gain the benefit of the earlier filing date of previously-filed applications pursuant to 35 U.S.C. § 120, petitioner was required to file the instant application before the patenting or abandonment of or termination of proceedings of the application for which benefit is being claimed. *See* 35 U.S.C. § 120. With respect to U.S. Application No. 07/339, 976, the record shows that a notice of abandonment was issued on March 26, 2008. With respect to U.S. Application No. 12/802,165, the record shows that a notice of abandonment was issued on July 09, 2012. The instant application was filed on March 20, 2019. Petitioner did not file the instant application before the patenting or abandonment of or termination of proceedings of U.S. Patent Application No. 07/339,976 or U.S. Application No. 12/802,165, and is therefore not entitled to claim the benefit of the earlier filing date of either U.S. Patent Application No. 07/339,976 or U.S. Application No. 12/802,165 pursuant to 35 U.S.C. § 120.

Furthermore, with respect to the claim of benefit to U.S. Application No. 07/339,976, U.S. Application No. 12/802,165, and U.S. Application No. 13/544,381, petitioner has not complied with the requirement that the instant application "contains or is amended to contain a specific reference to the earlier filed application... submitted at such time during the pendency of the application as required by the Director." *See* 35 U.S.C. § 120. The procedures for making such an amendment are outlined in 37 CFR 1.78(d) and MPEP § 210. Specifically, the instant application must contain a reference to the prior-filed application, identifying it by application

[14] Non-final Office action issued on August 26, 2022, pp. 4-5.
[15] *Id.*
[16] Final Office action issued on August 15, 2023, pp. 13-14 and final Office action issued on April 01, 2024, pp. 14-15.
[17] *Id.*

number (consisting of the series code and serial number), and the reference must be included in an application data sheet in compliance with 37 CFR 1.76. *See* 37 CFR 1.78(d)(2). Further, this reference must also be submitted within the later of four months from the actual filing date of the later-filed application or sixteen months from the filing date of the prior-filed application. Petitioner has not submitted an application data sheet with the instant application and has not submitted the required reference to the prior-filed applications.

For the foregoing reasons, the petition to recognize the instant application as a continuation will not be granted.

V. Allegations of conspiracy and/or criminal misconduct are not the proper subject of a petition.

With respect to the allegations of conspiracy and/or criminal misconduct by Office personnel, these are not the proper subject of a petition. Therefore, no relief is available under the provisions of 37 CFR 1.181.

DECISION

For the reasons stated above, the petition filed on November 08, 2024, and supplemented on November 20, 2024, November 22, 2024, and November 29, 2024, to overturn the Technology Center Director's decision of October 25, 2024, reinstate appeal proceedings, and correct the June 18, 2024, advisory action is **DENIED**. Accordingly, the advisory action of June 18, 2024, in the instant application will not be disturbed.

This constitutes a final decision on this petition. No further requests for reconsideration will be entertained. Judicial review of this petition decision may be available upon entry of a final Agency action adverse to the petitioner in the instant application (*e.g.*, a final decision by the Patent Trial and Appeal Board). *See* MPEP § 1002.02.

Petitioner is reminded that the mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings (*see* 37 CFR 1.181(f)). A notice of abandonment was issued on November 12, 2024. Therefore, the instant application is currently in an abandoned status.[18]

/Charles Kim/
Deputy Commissioner
for Patents

[18] As previously noted, a decision on the petition to withdraw the holding of abandonment will be issued separately in due course.