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Byrne Poh LLP/Google LLC
400 Rella Blvd
Ste 165, #106
Suffern, NY 10901

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ALMANI, MOHSEN	

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte EILEEN MARGARET PETERS LONG, JONATHAN FRANKLE, WILL CHAMBERS, JIA WU, CHARLES THOMAS CURRY, MATTHIAS HEILER, RUBEN SIPOS, CHRISTOPHER KENNETH HAULK, ANGELA YU-YUN YEUNG, and INGRID KARIN VON GLEHN

Appeal 2020-001978
Application 14/628,093
Technology Center 2100

Before MICHAEL J. STRAUSS, JAMES B. ARPIN, and MICHAEL J. ENGLE, *Administrative Patent Judges*.

STRAUSS, *Administrative Patent Judge*.

DECISION ON REMAND FROM
THE U.S. COURT OF APPEALS FOR THE FEDERAL CIRCUIT[1]

The Board issued a decision, mailed August 3, 2021, affirming the Examiner's decision rejecting all of the pending claims under 35 U.S.C.

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[1] In this Decision, we refer to Appellant's Appeal Brief ("Appeal Br.," filed August 26, 2019); the Final Office Action ("Final Act.," mailed March 14, 2019), the Examiner's Answer ("Ans.," mailed November 7, 2019); and the Specification ("Spec.," filed February 20, 2015); our earlier decision mailed August 3, 2021, 2021 WL 3466217 ("Decision"); the Opening Brief of Appellant Google LLC, *In re Google LLC*, No. 2022-1012 (Fed. Cir. Mar. 2, 2023), ECF No. 12 ("Brief to Fed. Cir."); and the Decision of the Court, *In*

§ 103. Decision 9. On appeal, the Federal Circuit "conclude[d] that the Board's expressed reasoning cannot sustain its rejection . . . and therefore vacate[d] the Board's decision . . . [and] remand[ed] for further proceedings consistent with [its] opinion." *Google*, 56 F.4th at 1369.

We procedurally reverse the Examiner's decision and enter a new ground of rejection pursuant to our authority under 37 C.F.R. § 41.50(b).

CLAIMED SUBJECT MATTER

The claimed subject matter "relates to methods, systems, and media for presenting search results." Spec. ¶ 1; *see* Brief to the Fed. Cir. 2–4.

Claim 1 is reproduced below with a disputed limitation emphasized.

1. A method for presenting search results, comprising:

receiving text corresponding to a search query entered on a user device;

determining whether a content rating score associated with the search query is below a predetermined threshold value, *wherein the predetermined threshold value is determined based on a number of words included in the search query* and wherein the score is calculated by:

identifying a first plurality of search results retrieved using the search query, wherein each search result in the first plurality of search results is associated with one of a plurality of content ratings classes;

determining, for each search result in the first plurality of search results, a weight, wherein the weight is determined based on a popularity of the search result; and

calculating the content rating score that is a proportion of search results associated with at least one of the content ratings classes among the first plurality of search results,

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re Google LLC, 56 F.4th 1363 (Fed. Cir. 2023). Appellant identifies the real party in interest as Google LLC. Appeal Br. 3.

> wherein the proportion of search results associated with at least one of the content ratings classes is calculated using the weight associated with each search result;
>
> in response to determining that the content rating score is below the predetermined threshold value, identifying a second plurality of search results to be presented based on the search query; and
>
> causing the second plurality of search results to be presented on the user device.

Appeal Br. 15 (Claims App.) (emphasis added). Each of independent claims 10 and 19 recites a limitation corresponding to the disputed limitation of claim 1. *Id.* at 17–18, 20.

REFERENCES AND REJECTIONS

The Examiner relies upon the following references:

Name[2]	Reference	Published	Filed
Rose	US 5,870,740	Feb. 9, 1999	Sept. 30, 1996
Dutta	US 2002/0078045 Al	June 20, 2002	Dec. 14, 2000
Parthasarathy	US 2012/0150850 Al	June 14, 2012	Dec. 8, 2010
Johnson	US 2016/0110460 Al	Apr. 21, 2016	Oct. 21, 2014

The Examiner rejects:

a. claims 1, 3–8, 10, 12–17, 19, and 21–26 under 35 U.S.C. § 103 as obvious over the combined teachings of Parthasarathy, Rose, and Dutta (Final Act. 4–9); and

b. claims 9, 18, and 27 under 35 U.S.C. § 103 as obvious over the combined teachings of Parthasarathy, Rose, Dutta, and Johnson (*id.* at 9–12).

[2] All reference citations are to the first named inventor only.

BACKGROUND

As noted above, the Examiner rejects claim 1 as obvious over the combined teachings of Parthasarathy, Rose, and Dutta. Final Act. 4–9. In particular, the Examiner finds Parthasarathy teaches or suggests the majority of the limitations recited in claim 1. *Id.* at 4–6 (citing Parthasarathy ¶¶ 19–21, 24, 35, 40, 42, 43, 50, Fig. 3B (item 380)). The Examiner finds, however, that "Parthasarathy does not specifically disclose the predetermined threshold is based on a number of words included in the search query," as recited in claim 1. *Id.* at 6 (emphasis omitted).

Nevertheless, the Examiner finds Rose teaches or suggests this missing limitation, i.e., the disputed limitation. *Id.* (citing Rose, 4:28–54). The Examiner further finds:

> Parthasarathy, ¶ 2 discloses that "when determining whether a search query is intended to produce adult content, the search query may be analyzed to determine whether the search query is associated with adult content"; it would have been obvious before the effective filing date of the claimed invention to a person having ordinary skill in the art to combine the applied references for disclosing the predetermined threshold is based on a number of words included in the search query because *analyzing a query for determining the query length and using the query length as a threshold is very well known in the art and doing so would further provide for assigning weight to a long or a short query for retrieving relevant documents* (Rose, col. 4, ll. 28- 54.).

Id. (emphasis added, bolding omitted).

Acknowledging the combination of Parthasarathy and Rose still is deficient in that it "does not specifically disclose the weight is determined based on a popularity of the search result," the Examiner finds Dutta teaches or suggests this missing, but non-disputed, limitation. *Id.* (citing Dutta ¶ 55

(emphasis omitted)). The Examiner finds one of ordinary skill in the relevant art would have had reason to modify Parthasarathy to include Dutta's weighting factor "because doing so would provide for a well-known alternative which depends on a design choice for ranking the search result and selecting from the ranked search result for further processing." *Id.* at 6–7. Therefore, the Examiner finds that a person of ordinary skill in the relevant art would have had reason to combine the teachings of Parthasarathy, Rose, and Dutta to achieve the methods recited in claim 1. *Id.*

In its appeal to the Board, Appellant contends the Examiner fails to show that, when properly interpreted, Rose teaches the disputed limitation of determining whether a content rating score associated with the search query is below a predetermined threshold value, *wherein the predetermined threshold value is determined based on a number of words included in the search query*. Appeal Br. 11. Rose describes an information retrieval system wherein a ranking *score* of a document is increased based on a query length, "such that 'the contribution of coordination to the relevance-ranking score is greater for short queries than for long queries.'" *Id.* at 12 (quoting Rose 4:28–39). According to Appellant, Rose's *score* is not a *threshold* value. Appellant contends:

> **[T]he Examiner is improperly interpreting the "predetermined threshold value" recited in Appellant's claim 1 as a mere score**. In particular, . . . a threshold value, as clearly indicated in Appellant's claim 1, is a value to which **a different score is compared** ("in response to determining that **the content rating score is below the predetermined threshold value**," as recited in Appellant's claim 1) **to determine if a particular action is to occur** ("identifying a second plurality of search results to be presented based on the search query," as recited in Appellant's claim 1). Therefore, . . .

> the score described in Rose is **simply not "a threshold value**," as recited in Appellant's claim 1, because the score described in Rose **is not a value to which a different score is compared**.

Appeal Br. 12–13. Thus, according to Appellant, "at most, the combination of Parthasarathy and Rose describe[s] increasing a score by an amount dependent on a query length, not determining whether a score is below a value, where the value itself is determined based on a number of words included in the search query." *Id.* at 13 (emphasis omitted).

The Examiner answers,

> a configurable threshold value in Parthasarathy influences a selection of the same document in response to a query; the value that is calculated based on a number of words included in the search query in Rose also influences a selection of the same document based on the query length/a number of words included in the search query: col. 6, ll. 45–47, "If the query length is short, and the coordination level is high, then the boost to the relevance-ranking score is high", col. 6, ll. 54–56, "If the query length is long, and the coordination level is high, then the boost to the relevance-ranking score is low". *It would have been obvious to a person having ordinary skill in the art to use the technique of calculating a value based on the number of words in a query and use the value as the configurable threshold to which a different score is compared in Parthasarathy to achieve the predictable result of influencing the selection of a document in search results for presentation.*

Ans. 6–7 (emphasis added).

In our earlier Decision, we agreed with the Examiner's findings regarding reasons to modify Parthasarathy's teachings with Rose's teachings. Decision 7–8. In particular, we determined:

> Although Rose discloses increasing a search result score based on query length, rather than decreasing a threshold value to which the score is compared; we agree with the Examiner that, in view of Parthasarathy's thresholds, one skilled in the art would

> have had reason *to modify* Parthasarathy's threshold values to take into account query length as taught by Rose.

Id. at 8 (emphasis added).

On appeal to the Federal Circuit, Appellant argued, "there is no evidence of record indicating that one could *incorporate* Rose's calculations based on query length into a determination of Parthasarathy's threshold values." Brief to Fed. Cir. 22–23 (emphasis added). The Federal Circuit noted that "although the Board purported to 'agree' with the examiner that it would have been obvious *to modify* Parthasarathy's threshold using Rose,[] we see no such statement in the examiner's analysis and thus no basis for the Board's conclusion." *Google*, 56 F.4th at 1368 (emphasis added). In particular, the court stated:

> Read in its entirety, the record suggests the examiner and Board did not rely on Rose to *modify* Parthasarathy's threshold at all, but instead understood Rose's score to disclose a query-length-dependent value that could be directly *substituted* for Parthasarathy's user-selected threshold. The examiner was quite clear in this respect.

Id. Consequently, the court agreed with Appellant, determining the record failed to provide "any explanation of how query length could be *used as, or to modify*, Parthasarathy's threshold" and "to the extent the Board found that Rose's score could be *substituted* for Parthasarathy's threshold to achieve the disputed limitation of claim 1, that finding is not supported by substantial evidence." *Google*, 56 F.4th at 1369. (emphases added). The court then vacated the Board's decision and remanded for further proceedings consistent with its opinion. *Id.*

We address the deficiencies found by the court as follows.

ANALYSIS

The following is not disputed:

i) Parthasarathy discloses:

(a) "[A]nalyzing . . . search results for their relevance to [a] search query." (Brief to Fed. Cir. 7);

(b) "[Analyzing a search] query . . . to produce a 'query-intent score . . . by providing the search query to a 'query answering service,' which analyzes the query to determine whether the user intends the search query to return adult content." (*id.*);

(c) "[S]afety settings" that "affect both whether the search query as a whole is deemed to be intended to result in adult content, as well as which of the query results are shown to the user." (*id.*);

(d) "[H]ow the 'safety settings' . . . may interact with the analysis of search results. . . . For instance, . . . [a]t a 'moderate' safety setting, the threshold for a high adult-content score may be 30%, and the user may see only those results that are not associated with adult content. And at a 'strict' safety setting, the threshold may be just 10%, and the search may be blocked entirely if the threshold is exceeded." (*id.* at 8–9).

ii) Rose teaches:

(a) "a relevance-ranking scoring system that detects whether the query is relatively short and, if so, assigns higher scores to those results that contain all of the words in the query" scoring algorithm for queries with fewer words. (Brief to Fed. Cir. 10).

Moreover, Parthasarathy discloses threshold values 370, 470 (Parthasarathy, Figs. 3B, 4B) with a low threshold used for non-adults (*id.*

¶¶ 21, 40–42, 44). Thus, as recited in the claimed methods, Parthasarathy also recognizes adjusting a threshold based on the age of the user. Appellant further appears to acknowledge that Parthasarathy's safety settings are thresholds. Brief to Fed. Cir. 9; *see also supra* bullet point i)(d).

Although, as argued by Appellant, Parthasarathy may not be explicit about how the thresholds are chosen, Parthasarathy discloses the thresholds function as safety settings for safety scores with non-adults more closely protected from adult content by using a lower threshold. Brief to Fed. Cir. 9 (citing Parthasarathy ¶ 40). Furthermore, Parthasarathy discloses the thresholds are compared to a search-query-intent (i.e., a safety score). *See, e.g.*, Parthasarathy Claims 5, 9, 11.

As described above, Rose discloses calculating a document score wherein a relevance-ranking score *decreases* based on *increasing* query length (i.e., number of words), or vice versa. Rose, 4:37–39, 6:46–47. The score is a measure of how well a document satisfies a user's request. *Id.* at 2:35–37. Rose discloses displaying documents with the top ten relevance scores. *Id.* at 3:26–28, claim 2. That is, Rose teaches or suggests identification of search results based, at least in part, on a length of a search query. As Appellant explains, "the purpose of the Rose algorithm is to adjust the ordering of search results based on query length." Brief to Fed. Cir. 21.

As the Office argued before the Federal Circuit,

> *there are only two ways to predictably modify Parthasarathy's threshold to incorporate query length as taught by Rose, and both would have been obvious to try.* Specifically, [the Office] asserts a skilled artisan would have recognized that Rose's adjusted relevance score could be used to modify either Parthasarathy's search-query-intent score or its threshold and that either modification would predictably result in a threshold

> based on the number of words in a query. According to the [Office], because Parthasarathy teaches a simple comparison of its score and threshold, "the result of the comparison would be exactly the same" regardless of whether the score is raised or the threshold is decreased. And, in this way, Rose's query-length-dependent algorithm could be used to modify Parthasarathy's threshold to achieve the threshold described by claim 1.

Google, 56 F.4th at 1367 (emphasis added). The court found, "the [Office's] arguments cannot sustain the Board's decision . . . because they do not reflect the reasoning or findings the Board actually invoked." *Id.* (citation omitted). We invoke this reasoning and findings now in the new ground of rejection.

Because both Parthasarathy and Rose concern the problem of determining the relevance of search results with respect to a search query and Rose presents a known technique for addressing that problem,[3] one of ordinary skill in the relevant art would have had reason *to modify* Parthasarathy's teachings of methods of analyzing search results for their relevance to a search query in view of Rose's teachings of a relevance-ranking score based on query length. In particular, *modifying* Parthasarathy's search in view of Rose's teachings regarding query-length weighting would

[3] *See Intel Corp. v. PACT XPP Schweiz AG*, 61 F.4th 1373, 1380 (Fed. Cir. 2023) (Under the "known-technique" rationale, "if there's a known technique to address a known problem using 'prior art elements according to their established functions,' then there is a motivation to combine. And we specify *address* a known problem because '[i]t's not necessary to show that a combination is the *best* option, only that it be a *suitable* option.'" (citation omitted)); *see also KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007) ("[I]f a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.").

address the "short query problem" (*see* Rose, 4:24–26, 4:55–56) and, thereby, enhance retrieval of relevant documents and selection of documents for presentation to a user.

Although Rose teaches or suggests compensating for query length by adjusting a relevance-ranking score to provide age-appropriate content, Parthasarathy's age-adjustable threshold values teach or suggest that adjusting age-based search result selection criteria can be accomplished by adjusting a threshold parameter (e.g., Parthasarathy's safety settings). Thus, given Parthasarathy's teachings of adjusting a threshold value to provide age-appropriate content and Rose's teachings of enhancing search result selection by adjusting for query length, it would have been obvious to a person of ordinary skill in the art to adjust a threshold value based on query length.

To the extent Parthasarathy teaches or suggests two mechanisms for effectuating search result selection, i.e., (i) adjusting a score (Parthasarathy's search-query-intent score[4]) and (ii) adjusting a threshold (Parthasarathy's threshold value to which the search-query-intent score is compared[5]), the selection mechanism of adjusting *a score* versus adjusting *a threshold* merely constitutes a design choice of known functionalities based on the balancing of the known considerations. In *KSR*, the U.S. Supreme Court

[4] *See, e.g.*, Parthasarathy ¶ 58 ("[A] search-query-intent score is determined based on the query-intent score of the search query, the adult-content score of each of the one or more plurality of search results, and the ranking of each of the one or more plurality of search results.").

[5] *See, e.g.*, Parthasarathy ¶¶ 33 ("[A] user may input . . . safety threshold settings."), 40, 44 (low, moderate, and strict safety thresholds result in corresponding higher degrees of filtering of adult-content search results).

describes such modification of a known technique in view of another such technique, as follows:

> When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill [in the art] has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense.

KSR, 550 U.S. at 421. As such, selecting the particular mechanism to modify a known search query merely constitutes combining known techniques according to known methods to yield predictable results and would have been obvious to a person of ordinary skill in the relevant art. *Id.*; *see In re Gartside*, 203 F.3d 1305, 1316 (Fed. Cir. 2000) ("The presence or absence of a motivation to combine references in an obviousness determination is a pure question of fact.").

Moreover, Parthasarathy teaches or suggests the equivalence of using either mechanism. In particular, Parthasarathy discloses (i) adjusting a safety threshold setting to which a search-query-intent score is compared to identify an objectionable level of search results (i.e., results potentially having adult content) (*see* Parthasarathy ¶¶ 24 ("[D]etermining that the search-query-intent score meets a threshold safety score."), 40 (Fig. 3B comprises safety settings 360 and threshold 370 associated with each safety setting 360.)) and (ii) basing "[t]he search-query-intent score . . . on safety settings that are associated with the search query intent" (Parthasarathy ¶ 39). As recognized by Appellant, the safety settings are threshold values. Brief to Fed. Cir. 9. By disclosing that a search-query-intent score (i.e., a search safety value) may itself be "based on safety settings" (e.g., the same "safety settings" with which the safety threshold is "associated" (*see*

Parthasarathy ¶ 40)), Parthasarathy teaches or suggests that variables or parameters used to establish a threshold instead may be used as a basis for the score values that are to be evaluated or tested against the threshold. Thus, in teaching using criteria to establish a query score that is compared to a threshold, Parthasarathy also teaches or suggests the converse, i.e., accounting for criteria used to establish a score by instead using the criteria to adjust a threshold to which a query score is compared.

Moreover, a person of ordinary skill in the relevant art would have understood that when comparing a score against a threshold, *increasing the score* is mathematically indistinguishable from *decreasing the threshold*. That is, in this case, (i) adjusting the score based on query length and (ii) adjusting the threshold value based on query length are two interchangeable ways of achieving the same result. Thus, there is no patentable difference in whether a parameter on which a decision is based, such as query length, is used to modify a value to be tested (i.e., Parthasarathy's search-query-intent score) or modify a value to which it is compared (i.e., Parthasarathy's safety settings). For example, checking whether X+1 (i.e., an increased score) is greater than Y (i.e., a threshold) is mathematically indistinguishable from checking whether X (i.e., a score) is greater than Y-1 (i.e., a decreased threshold). Mathematically, this is known as the Addition Property of Inequalities. *See, e.g.*, Concise Dictionary of Mathematics, V&S Publishers (2015).[6]

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[6] This point is demonstrated by relatively basic math principles. **Addition (and Subtraction) Property for Inequality**

For all numbers a, b, and c, the following are true:

1. If a>b, then a+c>b+c and a-c>b-c
2. If a<b, then a+c<b+c and a-c<b-c

As a further example of this known concept, if a teacher finds student letter grades based on numeric test scores are unusually low, the teacher may decide to impose a grading "curve" either (i) by increasing the students' scores, e.g., adding points to each student's score, and using the usual letter grade thresholds, e.g., a letter grade of "A" requiring a numeric test score of at least 90 percent, ***or*** (ii) by decreasing the letter grade thresholds, e.g., modifying the requirement for a letter grade of "A" by lowering it to 80 percent and applying the students' original test scores to the lowered threshold. Either approach yields substantially the same result. *See, e.g.*, ehow, *Math Lessons & Study Tips : How Does a Grading Curve Work?* (Jan. 23, 2009), https://www.youtube.com/watch?v=o2zBh0_CyHM.

For the reasons discussed above we determine that, based on Rose's teaching of selecting documents by comparing a query-length adjusted document score to a fixed threshold and the Addition Property of Inequalities, a person of ordinary skill in the relevant art would have found it obvious to select documents by comparing a document score to a query-length adjusted threshold because the two methods are mathematically equivalent. Further, based on Rose's teaching of selecting documents based on query-length, a person skilled in the relevant art would have found it obvious to modify Parthasarathy's method of selecting documents using an adjustable threshold by making the threshold a function of query length, as this would amount to no more than (a) combining familiar elements

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Applying those rules in this case, then, the query length can be subtracted from both sides of the inequality such that if *(score + length) > threshold*, then it must also be true that *score > (threshold – length)*.

according to known methods to achieve a predictable result or (b) using a technique used to improve one method (Rose) to improve a similar method (Parthasarathy) in the same way. *KSR.*, 550 U.S. at 418. Therefore, we procedurally reverse the Examiner's rejection of claim 1 under 35 U.S.C. § 103 as obvious over the combined teachings of Parthasarathy, Rose, and Dutta; and pursuant to 37 C.F.R. § 41.50(b), we enter a *new* ground of rejection under 35 U.S.C. § 103 based on the same combination of references because our findings and reasoning differ from the Examiner's (*see Intel Corp.*, 56 F.4th at 1367–68 (quoted and discussed above)). Appellant does not separately challenge the obviousness rejections of independent claims 10 and 19 or of dependent claims 3–9, 12–18, or 21–27. *See* Appeal Br. 13. Thus, we also reject those claims, again based on the new ground of rejection and the Examiner's findings regarding the differences between those claims and claim 1 as set forth in the Final Office Action, including any teachings needed from Johnson.

DECISION

1. We procedurally reverse the Examiner's rejections of
    a. claims 1, 3–8, 10, 12–17, 19, and 21–26 as obvious over the combined teachings of Parthasarathy, Rose, and Dutta; and
    b. claims 9, 18, and 27 as obvious over the combined teachings of Parthasarathy, Rose, Dutta, and Johnson.
2. Pursuant to our authority under 37 C.F.R. § 41.50(b), we reject in a new ground of rejection:
    a. claims 1, 3–8, 10, 12–17, 19, and 21–26 under 35 U.S.C. § 103 as obvious over the combined teachings of Parthasarathy, Rose, and Dutta; and

b. claims 9, 18, and 27 under 35 U.S.C. § 103 as obvious over the combined teachings of Parthasarathy, Rose, Dutta, and Johnson.

3. Thus, on this record, we determine claims 1, 3–10, 12–19, and 21–27 are unpatentable.

CONCLUSION

We procedurally reverse the Examiner's rejections of the pending claims and enter a new ground of rejection with respect to claims 1, 3–10, 12–19, and 21–27.

DECISION SUMMARY

In summary:

Claim(s) Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed	New Ground
1, 3–8, 10, 12–17, 19, 21–26	103	Parthasarathy, Rose, Dutta	1, 3–8, 10, 12–17, 19, 21–26		1, 3–8, 10, 12–17, 19, 21–26
9, 18, 27	103	Parthasarathy, Rose, Dutta, Johnson	9, 18, 27		9, 18, 27
Overall Outcome			1, 3–10, 12–19, 21–27		1, 3–10, 12–19, 21–27

TIME PERIOD FOR RESPONSE

This Decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). 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 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 prosecution 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. . . .

Further guidance on responding to a new ground of rejection can be found in the MPEP § 1214.01.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

PROCEDURALLY REVERSED;
37 C.F.R. § 41.50(b)