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WHIRLPOOL CORPORATION - MD 0750 500 RENAISSANCE DRIVE - SUITE 102 ST. JOSEPH, MI 49085			ROHRHOFF, DANIEL J	
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* MICHAEL C. SIMMONS and THOMAS J. WUESTEFELD

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Appeal 2010-010498  
Application 11/501,003  
Technology Center 3600

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Before KEN B. BARRETT, PATRICK R. SCANLON, and  
JILL D. HILL, *Administrative Patent Judges*.

HILL, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

STATEMENT OF THE CASE

Appellants filed a request for rehearing, received Feb. 4, 2013 (hereinafter “Request” or “Req.”), in response to our decision mailed Dec. 4, 2012 (hereinafter “Decision” or “Dec.”). In the Decision, we affirmed the Examiner’s rejection of claims 1-5, 9, and 10 under 35 U.S.C. § 103(a) as unpatentable over Nakano, Vinet, and Dierbeck.

Claim 1, reproduced below, is illustrative of the claimed subject matter.

A dishwasher comprising:  
an outer housing having at least a top portion and one side wall portion;  
a tub having front, bottom and opposing side walls that collectively define a washing chamber; and  
a glide assembly for mounting the tub for sliding movement into and out of the outer housing including:  
a mounting bracket having a top edge portion, a bottom edge portion and side edge portions that collectively define first and second opposing surfaces, said mounting bracket including at least one hook member projecting laterally outward from the second surface; and  
a drawer glide unit including a first rail member interconnected with a second rail member, said first rail member being positioned upon the mounting bracket and secured to the first surface with said second rail member being connected to one of the opposing side walls of the tub and slidably interconnected to the first rail member, said mounting bracket being connected to the at least one side wall portion through the at least one hook member in order to shiftably mount the tub to the outer housing.

The Examiner relied upon the following prior art references:

Nakano	US 2004/0085005 A1	May 6, 2004
Vinet	US 5,671,986	Sep. 30, 1997
Dierbeck	US 2001/0035704 A1	Nov. 1, 2001

### ISSUES RAISED ON REQUEST FOR REHEARING

1. Was the Decision mistakenly based on a position that the Examiner found that Nakano discloses a mounting bracket?
2. Did the Decision mistakenly indicate that the Examiner responded to Appellants' arguments?

### ANALYSIS

#### 1.

In the Decision, we stated:

The Examiner, at pages 3-6 and 11-13 of the Answer, adequately set forth his reasoning and responded to Appellants' arguments, and we adopt the Examiner's reasoning as the basis of our decision to affirm the rejection of claim 1 under 35 U.S.C. § 103(a). We note that the Examiner indeed found, on page 3 of the Final Rejection, that Nakano discloses a mounting bracket, albeit a mounting bracket without all of the claimed attributes (e.g., a hook member that projects laterally outwardly from the second surface).

Dec. 3.

Appellants allege that the discussion of Nakano on page 3 of the Final Rejection provides no support for this statement. Req. 3. As noted by Appellants, page 3 of the Final Rejection states that "Nakano does not disclose a mounting bracket with top, bottom, and side edge portions which define opposing surfaces, and a hook member which projects laterally outward from the second surface." *Id.* Appellants read this sentence as

stating that Nakano does not teach a mounting bracket. Req. 4. We read this sentence as stating that Nakano discloses a mounting bracket, albeit a mounting bracket without all of the claimed attributes. Looking at paragraphs 6, 8, 9, 11, and 15 of the Final Rejection, which discuss modifying the bracket of Nakano, it becomes clear that the Examiner found that Nakano teaches a mounting bracket. Otherwise, paragraphs 6, 8, 9, and 11 would not be concluding that it would have been obvious to modify the bracket of Nakano. Also, consistent without our reading of the sentence, paragraph 15 of the Final Rejection states that Nakano “teaches a dishwasher wherein the mounting bracket (44) is secured to the outer housing.” Furthermore, as Appellants recognize (Req. 4), the Examiner responded to Appellants’ arguments by explicitly finding in the Answer that Nakano teaches a bracket, thereby removing any purported ambiguity in the Examiner’s basis for the rejection.

Therefore, the Decision was not mistakenly based on a position that the Examiner found that Nakano discloses a mounting bracket. We stand behind the Examiner’s finding that Nakano teaches a bracket.

2.

Appellants allege that the Examiner failed to address all of their arguments (Req. 5), and therefore that the Board cannot adopt the Examiner’s arguments because the arguments have not been presented (Req. 6). Appellants allege that the Examiner first references Nakano’s bracket 44 in the Response to Arguments section of the Examiner’s Answer, and therefore that the Examiner never addressed Appellants’ arguments in the Reply Brief that the finding regarding Nakano’s bracket 44 is new and contrary.

We disagree. As explained above, the Examiner found that Nakano teaches a bracket. The bracket was identified as element 44 of Nakano in paragraph 15 of the Final Rejection. Thus, bracket 44 of Nakano was not first referenced in the Examiner's Answer, and we are affirming the Examiner's correct and consistent position that Nakano teaches a bracket.

#### CONCLUSION

The arguments in Appellants' Request have not convinced us that we erred in the Decision.

#### DECISION

Appellants' Request is granted to the extent that we have reconsidered our Decision in light of the arguments in Appellants' Request. Appellants' Request is denied to the extent that we do not modify the outcome of the Decision.

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

DENIED

Klh