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12/179,166	07/24/2008	Robert T. Sawchuk	P0023178.01/1111-017US01	7662
27581	7590	11/02/2016	EXAMINER	
Medtronic, Inc. (CRDM) 710 MEDTRONIC PARKWAY NE MS: LC340 Legal Patents MINNEAPOLIS, MN 55432-9924			PATEL, NATASHA	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROBERT J. SAWCHUK

Appeal 2013-004419
Application 12/179,166
Technology Center 3700

Before JOHN C. KERINS, JAMES P. CALVE, and
RICHARD H. MARSCHALL, *Administrative Patent Judges*.

KERINS, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

STATEMENT OF THE CASE

Robert T. Sawchuk (Appellant) has filed a Request for Rehearing (“Request”) under 37 C.F.R. 41.52. The Request seeks a designation of our affirmance of rejections under 35 U.S.C. §§ 102 and 103 in the Decision on Appeal (“Decision”), dated August 9, 2016, as new grounds of rejection under 37 C.F.R. § 41.50(b). We have jurisdiction under 35 U.S.C. § 6(b).

Appellant cites to several portions of the Decision that contain analysis not present in the Final Action or the Examiner’s Answer. Request 2–6. Upon careful consideration of Appellant’s position, we believe that those portions of the analysis merely more clearly explain the basis for the

Examiner's rejections involving the Sawchuk¹ reference, and that the Examiner's articulated reasoning and factual underpinnings are sufficient to sustain the rejections. In particular, all or nearly all of the additional analysis cited by Appellant is directed to explaining why the Examiner's reliance on Sawchuk for its teaching of evaluating the integrity of the sensing process is appropriate, notwithstanding that Sawchuk additionally discloses selection of an optimal sensing vector from among a plurality of such vectors. Nonetheless, out of an abundance of fairness, we believe that Appellant should be afforded the opportunity to exercise an option afforded by 37 C.F.R. § 41.50(b) relative to the additional explanatory portions in the Decision.²

In view of the foregoing, the Request to designate the affirmed rejections as new grounds of rejection under 37 C.F.R. § 41.50(b) is granted. The affirmance of the rejections on appeal otherwise remains as set forth in 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).

REQUEST GRANTED; 37 C.F.R. §41.50(b)

¹ US 2004/0088018 A1, published May 6, 2004. We note that Appellant is listed as a co-inventor on this published application.

² We note that Appellant presented only arguments directed to claim 1, and did not present any arguments for the separate patentability of any other claim on appeal. Any such arguments pertaining to the Examiner's rejection are therefore waived.