



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/188,240	07/21/2011	Stephan Kreuzer	10901/238	7762
26646	7590	11/01/2016	EXAMINER	
ANDREWS KURTH KENYON LLP			MYERS, PAUL R	
ONE BROADWAY			ART UNIT	PAPER NUMBER
NEW YORK, NY 10004			2185	
			NOTIFICATION DATE	DELIVERY MODE
			11/01/2016	ELECTRONIC

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.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspto@kenyon.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte STEPHAN KREUZER, ELMAR MAYER,
and UDO OLLERT

Appeal 2014-007169
Application 13/188,240
Technology Center 2100

Before JOHN F. HORVATH, KEVIN C. TROCK, and ADAM J. PYONIN,
Administrative Patent Judges.

PYONIN, *Administrative Patent Judge.*

DECISION ON REQUEST FOR REHEARING

Appellants request rehearing of the Decision on Appeal mailed June 23, 2016 (the “Decision”), in which we affirmed the Examiner’s rejections of claims 1–12. *See* Request for Rehearing filed Aug. 23, 2016 (the “Req. Reh’g”). We have reconsidered the Decision in light of Appellants’ arguments; however, we are not persuaded of any error therein.

DISCUSSION

Appellants contend “the Patent Trial and Appeal Board misapprehended or overlooked Appellant[s’] arguments,” particularly in relation to the claim 1 limitation “adapted to choose, based on manipulation rules and information received with the at least one protocol-relevant interface signal, whether the at least one manipulation unit outputs the corresponding data input signal or the substitute-data signal as an data-output signal.” Req. Reh’g. 1.

First, Appellants argue we erred in finding the signal modification in Egeland is tantamount to the claimed chosen signal output (Decision 3), as Egeland’s mere “mention in paragraph [0057] of ‘replacing input signals’ does not cure Egeland et al.’s failure to disclose or suggest outputting the simulated failures and disturbances 18 by the input signal modifier 9.” Req. Reh’g 1–2.

Appellants, however, do not persuasively distinguish Egeland’s signal modification from the claimed selection of a signal output from among two input signals. *See id.*; *see also* Decision 3; Egeland Fig. 3b. Particularly, Appellants’ bare assertion—that Egeland’s disclosure of “replacing input signals” does not suggest outputting the simulated failures and disturbances signal—does not persuade us we misapprehended or overlooked any points in rendering our decision. Req. Reh’g. 2. We agree with the Examiner that Egeland discloses receiving input “simulator sensor” signals (i.e., the “data-input signal” as claimed) and signal modifications in the form of a “simulated failures and disturbances” signal from the input signal modifier (i.e., the “substitute-data signal” as claimed), and choosing which signal to output as the modified sensor signals. *See* Ans. 8–9; Egeland ¶¶ 45, 50, 51.

Egeland further discloses the outputted modified sensor signals can be replaced input signals based on the signal modifications (i.e., based on the substitute-data signals). Egeland ¶¶ 53, 57. Said differently, we agree with the Examiner that Egeland’s “simulated failures and disturbances” signals include replacement signals for the “simulator sensor” signals. Thus, Egeland’s disclosure of “modifying” the “simulator sensor” input signals includes replacing the “simulator sensor” input signals with “simulated failures and disturbances” input signals. As a result, Egeland’s outputted “modified sensor” signals (i.e., data-output signal) are selected from one of two input signals as claimed, namely, the “simulator sensor” input signals (i.e., data-input signal) or the “simulated failures and disturbances” input signals (i.e., substitute-data signal). Thus, Appellants’ arguments do not persuade us we erred in sustaining the Examiner’s rejection on these grounds. *See* Decision 3–4.

Second, Appellants contend we erred in finding the claim encompasses Egeland’s outputting of certain signals in an un-modified form (*see* Decision 4), because Egeland discloses “all of the modified signals and remaining nonmodified signals may be furnished to the petroleum process plant subsystem simulator, not that a choice is made as to which non-modified signal is furnished to the petroleum process plant subsystem simulator.” Req. Reh’g 2 (referring to Egeland ¶ 31). Particularly, Appellants argue Egeland does not *choose* an output, nor does Egeland “describe that a choice is based on manipulation rules and information received with at least one protocol-relevant interface signal.” *Id.*

Appellants do not persuade us we misapprehended or overlooked their arguments with respect to the limitation “adapted to choose . . . outputs”

recited in claim 1. As we stated in our Decision, the open-ended claim does not prohibit outputting additional signals (Decision 4), and Appellants provide insufficient evidence or reasoning to support their assertion that Egeland’s selective modification is not a choice, within the meaning of the claim. *See* Req. Reh’g 2–3. Additionally, Appellants have not shown the Examiner erred in finding Egeland chooses the output signals based on manipulation rules and received information. *See* Decision 5; Advisory Act. 2 (finding Egeland “disclose[s] only certain input/control signal are actually modified [and] . . . the modifications are based on mathematical models); Ans. 9. Appellants did not challenge this finding in the Appeal Brief, and Appellant’s Request for Rehearing is not the proper vehicle to raise this challenge in the first instance. *See Cooper v. Goldfarb*, 154 F.3d 1321, 1331 (Fed. Cir. 1998) (citing *Moller v. Harding*, 214 USPQ 730, 731 (BPAI 1982), *aff’d*, 714 F.2d 160 (Fed. Cir. 1983) (table) (“A party cannot wait until after the Board has rendered an adverse decision and then present new arguments in a request for reconsideration.”)).

Accordingly, we do not find we misapprehended or overlooked any points in rendering our Decision. *See* 37 C.F.R. § 41.52(a)(1).

DECISION

We have granted Appellants’ request to the extent that we have reconsidered our Decision, but we deny the request with respect to making any changes therein.

DENIED