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HILL-ROM SERVICES, INC.  
Legal Dept., Mail Code K04  
1069 State Road 46 East  
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EXAMINER
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POLITO, NICHOLAS F

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PAPER

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* CHARLES A. LACHENBRUCH and RACHEL WILLIAMSON

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Appeal 2014-007744  
Application 13/039,409  
Technology Center 3600

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Before JOHN C. KERINS, GEORGE R. HOSKINS, and  
AMANDA F. WIEKER, *Administrative Patent Judges*.

HOSKINS, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Charles A. Lachenbruch and Rachel Williamson (“Appellants”) have filed a Request for Rehearing (“Request”) of the Decision on Appeal entered August 30, 2016 (“Decision”) in this application. The Request seeks reconsideration of our affirmance of the rejection of claims 23, 29, and 30 as anticipated by Schaller, and the rejection of claim 24 as unpatentable over Schaller and Graebe, and asks us to reverse those rejections. Request 14.

The Request asserts the Schaller disclosure at column 6, line 63 through column 7, line 43—which formed the principal basis for the Decision—“does not contain a clear and unambiguous disclosure that the change in the patient’s location or coordinates is caused by . . . the inflatable chambers.” Request 2–3 (discussing Schaller 7:11–13), 8–14 (discussing Schaller 6:63–7:43); Decision 5–6, 8–9. Our Rules provide:

The request for rehearing must state with particularity the points believed to have been misapprehended or overlooked by the Board. Arguments not raised . . . pursuant to §§ 41.37 [“Appeal brief”], 41.41 [“Reply brief”], or 41.47 [“Oral hearing”] are not permitted in the request for rehearing except as permitted by paragraphs (a)(2) through (a)(4) of this section.

37 C.F.R. § 41.52(a)(1).<sup>1</sup> Appellants do not cite to where they discussed the Schaller disclosure at column 6, line 63 through column 7, line 43, in either the Appeal Brief or the Reply Brief, despite that disclosure having been cited by the Examiner. *See* Final Act. 3 (citing Schaller, 7:1–17), 6 (citing Schaller, 7:18–24); Ans. 2 (citing Schaller, 7:37–43). The only potentially pertinent discussion we can find is the statement that Schaller, at column 7, lines 25 and 37, is not “definite about what bed components, if any, effect the repositioning.” Appeal Br. 10. That brief statement is not sufficiently detailed for us to have misapprehended or overlooked the arguments now being presented in the Request. Prescience is not a required characteristic of the Board. *Cf. Keebler Co. v. Murray Baking Prods.*, 866 F.2d 1386, 1388 (Fed. Cir. 1989). Thus, we conclude the discussions at pages 2–3 and 8–14 of the Request concerning the Schaller disclosure at column 6, line 63 through column 7, line 43, are entirely new arguments that have not been previously raised, which the Examiner therefore has not had an opportunity to address, and which are not proper subject matter for rehearing.

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<sup>1</sup> Sub-paragraphs (a)(2)–(a)(4) permit new arguments “based upon a recent relevant decision of either the Board or a Federal Court,” or “responding to a new ground of rejection designated pursuant to § 41.50(b),” or asserting “the Board’s decision contains an undesignated new ground of rejection.” 37 C.F.R. § 41.52(a)(2)–(4). None of those exceptions applies here.

The Request also discusses Schaller's claims 1 and 17–19. Request 5–8. Appellants do not cite to where they discussed Schaller's claims in either the Appeal Brief or the Reply Brief, and we are unable to find any such discussion presented there. Thus, we conclude the discussion at pages 5–8 of the Request concerning Schaller's claims 1 and 17–19 is an entirely new argument that has not been previously raised, which the Examiner therefore has not had an opportunity to address, and which is not proper subject matter for rehearing.

The remainder of the Request discusses the Schaller disclosure at column 2, lines 25–54. Request 3–5. We have considered this discussion from Schaller's "Summary of the Invention," but it does not persuade us of having erred in deciding the detailed Schaller disclosure at column 6, line 63 through column 7, line 43, provides a preponderance of evidence to support the Examiner's finding that Schaller discloses using bladders to establish an elevation gradient to move a patient laterally and/or longitudinally across a support surface. *See* Decision 5–6.

Although we have considered Appellants' Request for Rehearing, as set forth above, we decline to grant the relief requested. The Decision on Appeal entered August 30, 2016 is maintained. 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