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EXAMINER

KIRSCH, ANDREW THOMAS

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte TERRY J. WICKLAND, DAROLD M. POPISH,
MICHAEL DEAN PETERSON, and LUKE ANDERSON

Appeal 2014-008210
Application 11/705,028¹
Technology Center 3700

Before LYNNE H. BROWNE, JEREMY M. PLENZLER, and
THOMAS F. SMEGAL, *Administrative Patent Judges*.

PLENZLER, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

STATEMENT OF THE CASE

Appellants filed a Request for Rehearing under 35 U.S.C. § 41.52 (hereinafter “Request” or “Req.”) of our Decision mailed July 25, 2016 (hereinafter “Decision” or “Dec.”). In the Decision, we affirmed the Examiner’s rejection of claims 1–21 and 25–39 under 35 U.S.C. § 103(a). Dec. 8. The Request seeks reconsideration of the rejection of claims 1–8, 10–15, 17–19, 25–32, and 34–39 under § 103(a) as being unpatentable over

¹ Appellants identify Nuclear Filter Technology, Inc. as the real party in interest. App. Br. 1.

Wickland (US 5,911,332, iss. June 15, 1999) and Maccise (US 4,474,303, iss. Oct. 2, 1984). Req. 1.

DISCUSSION

A request for rehearing is limited to matters overlooked or misapprehended by the Panel in rendering the original decision. *See* 37 C.F.R. § 41.52.

Initially, we note Appellants' request to expunge from our Decision "any referral to the evidence not of record (Exhibits 1 and 2 of the Declaration under 37 CFR § 1.132 of Terry Wickland and Luke Anderson)."² Req. 1. Rehearing is not the appropriate place for this request, as it fails to apprise us of anything that has been overlooked or misapprehended. Furthermore, we note that the only reference to that evidence in our Decision was noting "the evidence . . . is not before us." Dec. 6.³

With respect to affirming the Examiner's rejections, Appellants contend that we failed to consider the preamble of claims 1 and 27, but do not point to anything in its briefs that we misapprehended or overlooked. *See* Req. 2–4. Rather, Appellants appear to simply disagree with our Decision. Disagreement with our Decision is not a proper basis for rehearing. Appellants further contentions that "[i]f the preamble[s] of claims 1 and 27 [are] improperly ignored and the claims are misinterpreted to define general use containers, the art relevant to such subject matter is so

² Appellants additionally note that a petition has been filed with the same request. Req. 1.

³ The Decision also references the evidence on page 7, but that is simply in quotations reproduced from Appellants' briefs.

broad, it is impossible to accurately define its scope” and “[t]here is no motivation in the art to select the containers of Wickland . . . and Maccise . . . from the millions of general use containers known in the art and combine their features” also do not identify an issue that was overlooked or misapprehended. *See id.* at 4. Rather, those contentions appear to be mere disagreement with our Decision and/or new argument.

Appellants’ contentions with respect to whether Maccise teaches a “retaining ring” also do not show that we overlooked or misapprehended any issue. *See id.* at 4–5. Appellants quote our Decision (*id.* at 5), which stated that

[a]lthough Appellants note that “Maccise discloses a full upper external cover that fits over the lid and not a ring” ([App. Br.] 7–8), that single sentence is the extent of Appellants’ explanation in its Appeal Brief regarding the “retaining ring.” For example, Appellants offer no persuasive explanation as to why the ring-shaped structure at the perimeter of Maccise’s cover 14 fails to meet the “retaining ring” limitation. *See Ans. 23.*

Dec. 4. Although Appellants proceed to contend that they “clearly argued that the alleged ‘retaining ring’ is actually explicitly taught by Maccise to be a full upper external cover that fits over the lid, and not a ring” (Req. 5), it is clear from page 4 of our Decision, which is reproduced in the Request, that we considered that argument and found it unpersuasive. Appellants again appear to simply disagree with our Decision, rather than pointing out anything that we misapprehended or overlooked. As for the additional contentions related to dependent claims 5 and 30 noted by Appellants, those contentions ultimately rely on Maccise’s alleged failure to teach a “retaining ring” and, therefore, do not demonstrate that we overlooked or misapprehended anything. *Id.* at 5.

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DECISION

We grant the Request to the extent that we have considered the arguments pertaining to matters allegedly overlooked or misapprehended, but otherwise deny the Request.

DENIED