



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.
12/104,220	04/16/2008	Soren Erik WESTERMANN	Q107148	3477
23373	7590	11/02/2016	EXAMINER	
SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			MCCARTY, TAUNYA A	
			ART UNIT	PAPER NUMBER
			2651	
			NOTIFICATION DATE	DELIVERY MODE
			11/02/2016	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):

PPROCESSING@SUGHRUE.COM
sughrue@sughrue.com
USPTO@sughrue.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SOREN ERIK WESTERMANN and
HENRIK HEILE CHRISTENSEN

Appeal 2015-001853
Application 12/104,220
Technology Center 2600

Before ST. JOHN COURTENAY III, NORMAN H. BEAMER,
and MATTHEW J. McNEILL, *Administrative Patent Judges*.

BEAMER, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

STATEMENT OF THE CASE

On October 17, 2016, Appellants filed a Request for Rehearing (hereinafter “Req. Reh’g”) under 37 C.F.R. § 41.52 from the Decision on Appeal (Decision) of the Patent Trial and Appeal Board (Board), mailed August 15, 2016.¹ In the Decision, we affirmed the Examiner’s Final Rejection of claims 1–11.

We deny the Request for Rehearing.

¹ “The request for rehearing must state with particularity the points believed to have been misapprehended or overlooked by the Board.”
37 C.F.R. § 41.52(a)(1).

In their request, Appellants repeat the arguments made in their previous briefs, and assert that the Board unreasonably broadened the teachings of the cited references, did not properly consider the obviousness of the proposed combination, and did not explain the modifications of the combination that would be required to render obvious the subject matter of the claims. (Req. Reh'g 2.)

The arguments raised by Appellants have already been considered and found unpersuasive in our Decision. In particular, we are not persuaded by Appellants' contention that the combination of Carlson with Fretz is not obvious because the "types" of devices considered by Carlson are purportedly different in kind from the types of hearing aid components that the claimed invention accommodates. (Req. Reh'g 3–4.) To the contrary, we agree with the Examiner that one of ordinary skill would adapt the pertinent teachings of Carlson to the hearing aid apparatus of Fretz and not be dissuaded by the fact that Fretz specifically deals with accommodating variations in non-hearing aid devices. (Decision 4–5.) Thus, for example, Appellants' argument that the Carlson arrangement is not capable of indicating whether the earplug is closed or open unduly narrows the combined teachings and suggestions of Carlson and Fretz. (Req. Reh'g 4.) To one of ordinary skill in the art, the combination would not be limited to merely detecting the type of sound tube, but not the type of earplug, any more than would be the case for the preferred embodiment disclosed in the Specification.

In summary, having fully considered the arguments in the Request for Rehearing, on this record, we are not persuaded that we have misapprehended or overlooked any points raised by Appellants. We find

Appeal 2015-001853
Application 12/104,220

none of Appellants' arguments are persuasive that our Decision was in error.
We have reconsidered our Decision, but decline to grant the relief requested.

Appeal 2015-001853
Application 12/104,220

DECISION

In view of the foregoing discussion, we have granted Appellants' Request to the extent that we have reconsidered the original Decision but have denied it with respect to making any changes to 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).

REHEARING DENIED