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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GÖRAN BJÖRN, MARCUS ANDERSSON, and
STEFAN MAGNANDER

Appeal 2017-001856
Application 13/451,171¹
Technology Center 3700

Before STEFAN STAICOVICI, WILLIAM V. SAINDON, and
BRANDON J. WARNER, *Administrative Patent Judges*.

SAINDON, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

¹ In this Decision we also reference the Appeal Brief filed February 8, 2016 (“Appeal Br.”) and the Examiner’s Answer dated September 14, 2016 (“Ans.”). According to Appellant, the real party in interest is Cochlear Limited, the assignee of this application. Appeal Br. 2.

Appellant filed a Request for Rehearing on July 22, 2019 (hereinafter “Request for Rehearing” or “Req. Reh’g”) under 37 C.F.R. § 41.52, seeking rehearing of our Decision dated May 22, 2019 (hereinafter “Decision” or “Dec.”). In our Decision, we affirmed the Examiner’s rejection of claims 1, 3, 6–13, 15, 20–24, and 26–33; we reversed the Examiner’s rejection of claims 4 and 16; and we entered new grounds of rejection for claims 1, 3, 4, 6–13, 16, 21–24, 26–31, and 33. Dec. 19. We have considered Appellant’s arguments but do not modify our Decision.

Preliminarily, we note that, under 37 C.F.R. § 41.50(b), in response to a new ground of rejection, an appellant may either (1) reopen prosecution by submitting an amendment or new evidence, or (2) request rehearing pursuant to 37 C.F.R. § 41.52. Dec. 20. If rehearing is requested, arguments not raised, and evidence not previously relied upon, are not permitted. *Cf.* 37 C.F.R. § 41.52(a) (allowing an appellant to present new *argument* responding to a new ground of rejection, or present new arguments that the Board’s decision contains an undesignated new ground of rejection). In this case, Appellant submitted *argument* and new *evidence*. Although submission of new evidence may be considered a request to reopen prosecution, this does not appear to be Appellant’s intent. *See, e.g.*, Req. Reh’g 1 (stating both “[w]e request rehearing” and “we prove this with evidence”); Exhibits A–D, F–G, I–L; Req. Reh’g 16–29, 34–38, 40–41, 43–

53, 55–58 (making arguments based on the “Exhibits”).² Accordingly, we treat Appellant’s Request for Rehearing as such, but do not enter the new evidence. The new evidence must be re-submitted to the Examiner in a proper manner in the event further prosecution occurs.

I. CLAIMED SUBJECT MATTER

The claims are directed to a hearing prosthesis, comprising a transcutaneous bone conduction device, wherein an external vibrator generates vibrations that are transmitted through the skull bone to the cochlea to aid auditory perception. Spec. ¶¶ 6–8, 21. Claims 1, 15, and 21 are independent, and are reproduced below:

1. An implantable component of a hearing prosthesis, comprising:
an implantable bone fixture; and
one or more magnets disposed in an implantable housing coupled to the bone fixture via a bridge extending from the housing to the bone fixture between the housing and bone fixture, wherein the one or more magnets are configured to magnetically couple to an external component of the prosthesis.

15. An implantable component of a hearing prosthesis, comprising:
an implantable bone fixture; and
an implantable magnetic assembly removably attached to the implantable bone fixture and including at least one magnet

² The MPEP states that a request for rehearing accompanied by new evidence does not constitute a proper request for rehearing under 37 C.F.R. § 41.50(b)(2) and will be treated as a submission reopening prosecution before the examiner, under 37 C.F.R. § 41.50(b)(1). *See* MPEP § 1214.01(II). We exercise our discretion to address Appellant’s arguments on rehearing because Appellant does not appear to be seeking to reopen prosecution.

coupled to and laterally offset from a longitudinal axis of the bone fixture, wherein all boundaries of the at least one magnet are located within an angle about a longitudinal axis of the bone fixture that is less than 360 degrees, and wherein the at least one magnet is configured to magnetically couple to an external component of the prosthesis, wherein the implantable component of the hearing prosthesis is configured such that the implantable magnetic assembly is both attachable and removable from the implantable bone fixture while the implantable bone fixture is osseointegrated to a skull bone of a recipient of the implantable component.

21. An implantable component of a hearing prosthesis, comprising:
at least one magnet; and
an implantable bone fixture, wherein
the at least one magnet is disposed in an implantable housing,
and
the housing is flexibly coupled to the bone fixture.

Appeal Br. 56–58 (Claims Appendix).

II. SUMMARY OF THE DECISION ON REHEARING

In our Decision, we sustained the Examiner’s rejection of:

Claims 1, 3, 6–11, 21, 22, 26–28, 31, and 33 as being anticipated under pre-AIA 35 U.S.C. § 102(a) by Ball (US 2012/0029267 A1, published Feb. 2, 2012);

Claim 12 as being obvious under pre-AIA 35 U.S.C. § 103(a) over Ball in view of Parker (US 2009/0247811 A1, published Oct. 1, 2009);

Claims 13 and 29 as being obvious under pre-AIA 35 U.S.C. § 103(a) over Ball in view of Berrang (US 6,648,914 B2, issued Nov. 18, 2003);

Claims 15, 20, and 32 as being obvious under pre-AIA 35 U.S.C. § 103(a) over Ball in view of Westerkull (US 2007/0053536 A1, published Mar. 8, 2007), as evidenced by Asnes (US 2010/0209873 A1, published Aug. 19, 2010);

Claim 23 as being obvious under pre-AIA 35 U.S.C. § 103(a) over Ball in view of Parker (US 2009/0245554 A1, published Oct. 1, 2009) (“Parker II”); and

Claims 24 and 30 as being obvious under pre-AIA 35 U.S.C. § 103(a) over Ball in view of Westerkull (US 7,160,244 B2, published Jan. 9, 2007) (“Westerkull II”). *See generally* Dec. 19.

We did not sustain the rejection of claim 4 as being obvious under pre-AIA 35 U.S.C. § 103(a) over Ball, or the rejection of claim 16 as being obvious under pre-AIA 35 U.S.C. § 103(a) over Ball in view of Westerkull II. *See* Dec. 7–8, 15–16.

In our above-noted affirmance of the Examiner’s rejections of claims 1, 3, 4, 6–13, 16, 21–24, 26–31, and 33, we designated new grounds of rejection. *See generally* Dec. 19. In particular, we designated a new ground of rejection for claims 1 and 21 as being anticipated by, or obvious over, Ball. *Id.* at 10–14. Because claims 3, 6–13, 22–24, 26–31, and 33 depend from a claim for which we entered a new ground of rejection, we *pro forma* entered a new ground of rejection for those claims. *Id.* at 14–15, 17–18. We entered a separate new ground of rejection of claim 4 as being obvious over Ball. *Id.* at 15–16. Further, we entered a new ground of rejection for claim 16 as being obvious over Ball in view of Westerkull, as evidenced by Asnes. *Id.* at 7–8.

Appellant only requests rehearing on claims 1, 8, 11, 16, 21, and 31–33 based on the following rejections: claims 1, 8, 11, 21, 31, and 33 as being anticipated, and obvious, over Ball; and claims 16 and 32 as being obvious over Ball in view of Westerkull, as evidenced by Asnes. Thus, we do not reconsider our Decision on claims 3, 4, 6, 7, 9, 10, 12, 13, 15, 20, 22–24, and 26–30.

On rehearing, our review is limited to matters misapprehended or overlooked by the Board in rendering the original decision. 37 C.F.R. § 41.52. We have considered Appellant’s arguments but do not modify our Decision.

III. ANALYSIS

First, we address arguments as to the obviousness rejection of claims 16 and 32 over Ball in view of Westerkull, as evidenced by Asnes. Then, we address Appellant’s arguments as to the anticipation and obviousness rejections of claims 1, 8, 11, 21, 31, and 33 over Ball. Lastly, we address Appellant’s arguments regarding the Administrative Procedure Act.

A. Obviousness in View of Ball and Westerkull as Evidenced by Asnes (Claims 16 and 32)

1. Dependent Claim 32

Claim 32 recites that the implantable component of independent claim 15 is a component of “a passive transcutaneous bone conduction device.” Appeal Br. 59 (Claims App.). In our Decision, we agreed with the Examiner that Ball discloses an implantable component that is part of a passive transcutaneous bone conduction device. Dec. 8–9. Specifically, we agreed that Ball’s implantable component is passive because the drive coil that

provides the audio signal to the implantable component is located externally. *Id.* (citing Ball ¶¶ 15–17, Fig. 2).

Appellant argues that the location of the transducer makes Ball’s implant an active device, not a passive device. *See* Req. Reh’g 14–83. Appellant alleges that an actuator is an example of a transducer, and that the location of the transducer is what categorizes a device as passive or active. *Id.* at 23–29, 72–77. Appellant argues that Ball is an active transcutaneous bone conduction device because Ball’s implant vibrates. *Id.* at 29–83.

Appellant’s arguments do not persuade us that we misapprehended or overlooked anything in our Decision. Appellant conflates “actuator” and “transducer.” Req. Reh’g 14 (arguing, “Ball discloses that transduction to generate vibrations. . . . That makes the implant a vibrating actuator.”), 15 (“transducer – a generic term for an actuator”). While some things may be both an actuator and a transducer, actuators and transducers are not one and the same. *Accord id.* at 24 (discussing the terms in a general sense). For the type of bone conduction system relevant to the case at hand, vibrations are initiated by a device, and those vibrations are propagated in a series of vibrations until they reach the relevant biological structures in the ear. Spec. ¶ 5. Thus, knowing what is vibrating is not the end of the analysis—there is a cascading series of vibrations. Accordingly, Appellant’s arguments that Ball’s implant vibrates cannot itself establish that Ball’s device is either active or passive. *See, e.g.,* Req. Reh’g 30, 34–35.

Appellant argues that Ball’s implant is “active” because “the transducer is located in the implant.” *See, e.g.,* Req. Reh’g 30–33. As we stated in our Decision, “[w]hether some component is a transducer is irrelevant.” Dec. 9. Instead, the relevant inquiry is the location of the

actuator—i.e., the structure that *causes* the series of vibrations. Dec. 9; Spec. ¶¶ 24–26. Ball’s actuator is external to the body. Dec. at 9 (explaining, “the external component in Ball converts electrical energy into an electromagnetic signal using a drive coil (i.e., an actuator)” (citing Ball ¶¶ 15, 16, 18)); *see also* Req. Reh’g 34. Ball’s implantable component does not contain the actuator; instead, Ball’s implant vibrates only because it is vibrated *by* the external component. Dec. 9. Because Ball’s implant can only react to the vibrations that are delivered to it, Ball’s implant is passive. *Id.*

This understanding of “active” and “passive,” espoused in our Decision and reiterated here, is entirely consistent with the Specification. Our analysis closely hews to the Specification’s explanation of how to know which component is the “active” and “passive” component:

External component 140 also comprises a sound processor (not shown), an actuator (also not shown) and/or various other functional components. In operation, sound input device 126 converts received sound into electrical signals. These electrical signals are processed by the sound processor to generate control signals that cause the actuator to vibrate. The actuator converts the electrical signals into mechanical vibrations for delivery to internal component 150.

Spec. ¶ 24. This paragraph explains that the external component contains the actuator, which takes the electrical input signal and converts this into mechanical vibrations (like Ball’s external component). The external structure causes the vibrations which are transferred to the internal component and the skull. The Specification next explains:

Internal component 150 comprises a bone fixture 162 such as a bone screw to secure an implantable magnetic component 164 to skull 136. Typically, bone fixture 162 is configured to osseointegrate into skull 136. Magnetic component 164 forms a

magnetic coupling with one or more magnets disposed in external component 140 sufficient to permit effective transfer of the mechanical vibrations to internal component 150, which are then transferred to the skull.

Spec. ¶ 25. This paragraph explains that the internal component transfers the vibrations created by the externally-located actuator to the skull (like Ball's internal component). Next:

The exemplary transcutaneous bone conduction device illustrated in FIG. 1 has all active components, such as the actuator, located externally. As such, the device illustrated in FIG. 1 is commonly referred to as a passive transcutaneous bone conduction device.

Spec. ¶ 26. This paragraph confirms that the external component, which has the actuator that causes the vibrations, is active, and that the internal component, which has no actuator and is vibrated by the external component, is passive (like Ball).

Accordingly, our affirmation of the Examiner's finding that Ball's implant is a passive device was supported by the record. We do not modify our Decision as to the rejection of claim 32.³

³ Appellant submitted new evidence in support of its arguments regarding active and passive, which we did not enter. *See, e.g.*, Appellant's Exhibits A–D, F–G, I–L (not entered). The active vs. passive issue was squarely before the Examiner, who found in the Final Rejection of April 29, 2015, that “Ball teaches the implantable component is . . . passive,” by pointing out Ball's “external signal drive coil.” Final Act. 12. Thus, Appellant could have submitted this evidence to the Examiner but chose not to.

In any event, if we did consider the newly submitted evidence, it is not persuasive. In comparing a prior art reference to the claimed invention, the important comparison is the scope of the claim, under its broadest reasonable interpretation in light of the Specification, with the disclosure of the prior art reference. The non-entered evidence cannot unteach what is

2. *Dependent Claim 16*

Claim 16 depends from claim 15 and recites that “the angle about the longitudinal axis is less than 90 degrees.” Appeal Br. 58 (Claims App.). We found that the Examiner had misconstrued the claim but was nevertheless correct that the prior art described the limitation, so we entered a new ground of rejection for claim 16. Dec. 7–8. We explained that the “angle” described in the claim is the angle defined by the boundaries of the magnets *around* the longitudinal axis of the bone fixture. *Id.* at 7. Figure 4A of Appellant’s drawings illustrates the angle as item 402, which is defined by the boundaries of housing 353A relative to longitudinal axis 401. *Id.* We concluded that Figure 4 of Ball discloses the claimed angle, even taking into account that patent drawings are not necessarily drawn precisely to scale. *Id.* at 8 (“things shown clearly in drawings cannot be disregarded”) (citing *In re Mraz*, 455 F.2d 1069, 1072 (CCPA 1972)).

Appellant argues that Ball’s figures do not show the claimed angle. *See* Req. Reh’g 98–102. Appellant argues that Ball does not indicate that the drawings are to scale, and that the MPEP states that “[w]hen the reference does not disclose that the drawings are to scale and is silent as to dimensions, arguments based on measurement of the drawing features are of little value.” *Id.* at 99 (quoting MPEP § 2125(II)). Appellant further alleges that the drawings in Ball are “lousy drawing[s].” *Id.* at 100–102 (citing to *PlaSmart, Inc. v. Wang*, No. 2010-011455, 2011 WL 486182, at *5 (BPAI

taught in Ball, nor does it shed new light on how a person of ordinary skill in the art would interpret the scope of the claims. Thus, even if we were to consider the new evidence, we find nothing that shows we misapprehended or overlooked anything in our Decision.

Feb. 9, 2011) and *PlaSmart, Inc. v. Kappos*, 482 F. App'x 568 (Fed. Cir. 2012)).

As an initial matter, MPEP § 2125(II), quoted by Appellant, further states:

However, the description of the article pictured can be relied on, in combination with the drawings, for what they would reasonably teach one of ordinary skill in the art. In re Wright, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977) (“We disagree with the Solicitor’s conclusion, reached by a comparison of the relative dimensions of appellant’s and Bauer’s drawing figures, that Bauer ‘clearly points to the use of a chime length of roughly 1/2 to 1 inch for a whiskey barrel.’ This ignores the fact that Bauer does not disclose that his drawings are to scale. ... However, we agree with the Solicitor that Bauer’s teaching that whiskey losses are influenced by the distance the liquor needs to ‘traverse the pores of the wood’ (albeit in reference to the thickness of the barrelhead)” would have suggested the desirability of an increased chime length to one of ordinary skill in the art bent on further reducing whiskey losses.” 569 F.2d at 1127, 193 USPQ at 335-36.).

MPEP § 2125(II) (emphasis added). In other words, even when a drawing is not to scale, the drawing can be used for what it would reasonably teach one of ordinary skill in the art.

In any event, we did not rely on Ball’s drawings for precise measurements or for the exact proportions of the device shown therein. Instead, we focused on the broader picture of what a person of ordinary skill in the art would have understood given what was shown. As explained in our Decision, regardless of precision, the combination of the drawings with Ball’s disclosure describes the claimed limitation. Dec. 7–8; *Mraz*, 455 F.2d 1072 (“[W]e did not mean that things patent drawings show are to be disregarded. . . . [T]eachings of patent drawings, even as to features

unexplained by the specification, [may] prove[] dispositive.”). We reviewed Figures 2 and 4 with Ball’s specification and found that one of ordinary skill in the art would conclude that Ball teaches the claimed angle. Dec. 7–8. Regardless of the scale or the precision of Ball’s drawings, a person of ordinary skill in the art would understand by virtue of their own appreciation of what is being described, that the angle in Figure 4 would be less than 90 degrees about the longitudinal axis in the lowermost flange 401 with respect to the boundaries of magnet 202, given the divergent proportions of the two structures. *Id.* Thus, we are not apprised of error in our Decision to enter a new ground of rejection for claim 16 in view of Ball, Westerkull, and Asnes.

*B. Anticipation and Obviousness over Ball
(Claims 1, 8, 11, 21, 31, and 33)*

1. Independent Claims 1 and 21

Independent claims 1 and 21 recite an implantable component of a hearing prosthesis that has an implantable bone fixture and one or more magnets disposed in a housing and coupled to the fixture with a bridge. Appeal Br. 56, 58 (Claims App.). Claim 21 further recites that the housing is flexibly coupled to the bone fixture. *Id.* In our Decision, we concluded that the membrane in Ball (as relied on in the Examiner’s rejection) was not a housing, but one of ordinary skill would understand that Ball contains a housing flexibly coupled to the bone fixture as claimed. Dec. 10–14. Thus, we concluded that claims 1 and 21 were anticipated by, or obvious in view of, Ball. *Id.*

Appellant argues that the Decision does not sufficiently establish that there is a housing in Ball or that one of ordinary skill in the art would place a housing in Ball. Req. Reh’g 110–112. Although acknowledging that the

Decision does state that the internal magnets are encased, Appellant argues that there is no evidence that a person of ordinary skill in the art would recognize any of the findings made in the Decision. *Id.* Appellant further argues that the figures relied upon are “lousy drawings.” *Id.* In regards to claim 21, Appellant separately argues that the Decision does not discuss the flexibility recitation of the claim. *Id.* at 103.

Appellant’s arguments are not persuasive. As explained in our Decision, a person of ordinary skill in the art would consider Ball’s device to have a housing even when Ball does not explicitly state the implanted component has a housing. Dec. 11–14 (citing *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1384 (Fed. Cir. 1986) (citing *Lindemann Maschinenfabrik GMBH v. Am. Hoist & Derrick Co.*, 730 F.2d 1452, 1463 (Fed. Cir. 1984))). We explained that, practically speaking, “[i]t makes little sense to the skilled artisan to screw a flexible membrane sack full of magnets to a person’s skull.” Dec. 11; *see also id.* at 13 (“there would be little purpose for bone screws 215 and connector 216 if the magnets just floated inside the body”); *In re Sovish*, 769 F.2d 738, 743 (Fed. Cir. 1985) (admonishing that obviousness requires “consideration of the ordinary skill of the art,” with an emphasis on “skill” rather than “stupidity”). Further, we explained how Ball’s explicit disclosures would further suggest to such a skilled artisan that Ball uses a housing. Dec. 12–13 (citing Ball ¶¶ 16, 19 and Figs. 2, 4). Lastly, we explained how similar prior art structures used housings. *Id.* at 13 (citing Parker ¶ 57 and Berrang, Abstract); *see also id.* at 12 (“the prior need not teach, and preferably omits, what is well known in the art” (quoting *Hybritech*, 802 F.2d at 1384)).

Given all of the above, we determine that we did not misapprehend or overlook any matter when we entered a new ground of rejection that claims 1 and 21 are anticipated by Ball, or would have been obvious in view of Ball.

2. *Dependent Claim 8*

Claim 8 depends from claim 1 and states that the implantable component further comprises at least two magnets, the at least two magnets being disposed in respective housings coupled to the bone fixture via respective structures that extend from the respective housings to the bone fixture. Appeal Br. 56–57 (Claims App.). Appellant did not previously argue claim 8 separately from independent claim 1. However, we entered a new ground of rejection on claim 1, necessitating a *pro forma* new ground of rejection of claim 8. Dec. 14.

Appellant now takes issue with Ball meeting the claim language. Req. Reh’g 104–105. Appellant argues that Figure 4 of Ball does not show what is claimed and that the screws shown in Figure 2 of Ball would be incompatible with the flanges shown as 401 in Figure 4. *Id.* at 104. Appellant argues that we may not rely on the figures in Ball to show the claimed language. *Id.* at 105.

Initially, we note that Appellant waived any argument of this issue when it chose not to argue claim 8 in the original appeal. The same argument Appellant now makes could have been made then. Our *pro forma* designation of a new ground for claim 8 did not “open the door” to previously waived arguments, because it did not modify the substance of the Examiner’s rejection of claim 8. *See* 37 C.F.R. § 41.52(a) (“Arguments not raised, and Evidence not previously relied upon, pursuant to §§ 41.37, 41.41,

or 41.47 are not permitted in the request for rehearing.”). For this reason, we are not apprised of any matter misapprehended or overlooked in our Decision.

In any event, even if we were to review the Examiner’s rejection of claim 8 for the first time, Appellant’s argument would not be persuasive. As shown in Figure 2 of Ball, there are two magnets (202 and 203) in their respective housings (e.g., the “conspicuous box-like shape,” Dec. 13) that are coupled to the bone fixture (215) via the connector member (216). The location of the screws in Figure 2 does not alter the fact that the two magnets are connected by a connector member. We have addressed Appellant’s disagreement of using the figures in Ball in our discussion of claim 16. Accordingly, even if the waived argument would have been timely raised, we would not have found it persuasive.

3. *Dependent Claim 11*

Claim 11 depends from claim 1 and states that at least a portion of the bridge of the implantable component extends from the housing towards the bone fixture in a “compound direction.” Appeal Br. 57 (Claims App.). We entered a new ground of rejection of claim 1, necessitating a *pro forma* new ground of rejection on claim 11. Dec. 14. Appellant did not previously argue claim 11 separately from independent claim 1.

Appellant now takes issue with Ball meeting the compound direction limitation. Req. Reh’g 106–108. Appellant argues that Figure 4 of Ball does not show where the screws would go as pictured in Figure 2. *Id.* at 106–107 (“because the screws shown in figure 2 would be incompatible with element 216.”). Appellant points to their Specification and Figure 6 for a

description of “arms having compound extension directions.” *Id.* at 107–108.

As we explained above with respect to claim 8, Appellant could have made this exact argument before, but waived the argument. Because Appellant never argued claim 11, we could not have misapprehended or overlooked any matter regarding claim 11 in our Decision. *See* 37 C.F.R. § 41.52(a) (“Arguments not raised, and Evidence not previously relied upon, pursuant to §§ 41.37, 41.41, or 41.47 are not permitted in the request for rehearing.”).

In any event, even if we were to review the Examiner’s rejection of claim 11 for the first time, Appellant’s argument would not be persuasive. The Examiner rejected claim 11 by citing to Figure 2 of Ball and explaining that, “the angle between the longitudinal axis of (215) and the housings (202) and (203),” is approximately 90 degrees. Final Act. 6–7; Ans. 4–5. Reviewing Ball’s Figure 2, we understand that the Examiner’s finding is that the bridge of the implantable component is bent to accommodate the shape of the skull. *See* Ball Fig. 2. Although Ball’s specification does not explicitly state the angle to which the bridge is bent, a person of ordinary skill in the art reviewing the combination of the specification and the drawings would understand that the implanted component attached to the underlying skull bone would not be straight. *See* Ball ¶¶ 7–8, 16, 19. It is shown as bent in the figure, and would be understood as being bent because the device is shaped to conform to a generally round surface (the skull). Thus, we agree with the Examiner that the angle between the longitudinal axis of bone fixture (215) and the housings (202 and 203) meets the claim language by the bridge extending in a compound direction in order to be

fixed to the skull bone. Accordingly, even if the waived argument would have been timely raised, we would not have found it persuasive.

4. *Dependent Claim 31*

Claim 31 recites that the implantable component of independent claim 21 is a component of “a passive transcutaneous bone conduction device.” Appeal Br. 59 (Claims App.). We have addressed already Appellant’s arguments on this topic above in our discussion of claim 32. For similar reasons, we do not modify our Decision as to the rejection of claim 31.

5. *Dependent Claim 33*

Claim 33 depends from claim 21 and states that the implantable magnetic assembly comprises a monolithic structure and includes at least one housing and an arm extending between the housing and the fixture. Appeal Br. 59 (Claims App.). In our Decision, we sustained the Examiner’s rejection but *pro forma* designated it as a new ground of rejection due to claim 33’s dependence from claim 21, for which we designated a new ground of rejection. Dec. 15. We held that the Examiner had adequately explained that Ball discloses a signal transducer 203 and a connector member 216. *Id.* (citing Ans. 6). For the reasons we expressed with respect to claims 1 and 21, we found that Ball’s signal transducer magnet 203 is enclosed in a housing. *See* Dec. 10–14; *see also supra*. We also found that the claimed arm is the connector member in Ball. Dec. 15.

Appellant argues that two separate components cannot collectively be monolithic. *See* Req. Reh’g 84–97. Appellant points to the Specification and Figures 4B and 7 to show that the housing appears without any seams or joints in the arms. *Id.* at 86 (quoting Spec. ¶ 41). Appellant argues that the Decision does not explain a monolithic structure explicitly or inherently in

Ball and that we may not rely on Ball's figures because they are not drawn to scale. *Id.* at 92–96.

We are not persuaded we misapprehended or overlooked any matter in finding that Ball teaches the claimed monolithic structure. Ball discloses a housing, as explained *supra* in regards to claims 1 and 21. Ball further discloses a monolithic structure encompassed of an arm and a housing, consistent with Appellant's Specification describing that "portions of the housings (e.g., the portions facing the skin of the recipient) *may be part of the same component* as arm structure 351." Spec. ¶ 45 (emphasis added). Ball's housings and arm structure are part of the same component because they are connected to connector member 216. Dec. 15. We have addressed Appellant's arguments regarding Ball's figures above in our discussion of claim 16. In view of the above, we are not persuaded we misapprehended or overlooked any matter in our affirmance (*pro forma* designated a new ground) of the Examiner's rejection of claim 33.

C. Administrative Procedure Act

Appellant argues that reconsideration is appropriate because our Decision violated the Administrative Procedure Act ("APA"). *See, e.g.*, Req. Reh'g 82, 93, 99–100. Appellant argues that the broadest reasonable interpretation of certain claim phrases were not developed on the record and such determinations are material. *Id.* at 82, 93 (citing *Dickinson v. Zurko*, 527 U.S. 150, 165 (1999)). Further, Appellant argues that the Board has not followed the rules of patent examination procedure promulgated in the MPEP and that all parties to the examination must be put on notice that "proportions of features and drawings are not evidence." *Id.* at 99–100.

Appellant’s arguments are unavailing. It is unclear which sections of the APA were allegedly violated by the Decision. However, it appears that Appellant merely disagrees with the Board’s determination that Ball meets the challenged claim language and structures their argument that the broadest reasonable interpretation of the challenged claim language was not developed on the record to support the rejections. We have provided our analysis on the record. *See, e.g.*, Dec. 8–9. Mere disagreement with the Board’s Decision is not a proper basis for rehearing nor a showing that the Decision violated the APA.

IV. CONCLUSION

Claims 1, 8, 11, 16, 21, and 31–33 are before us on Appellant’s Request for Rehearing. For the reasons set forth above, Appellant’s Request for Rehearing is denied.

Outcome of Decision on Rehearing:

Claims	35 U.S.C. §	Reference(s)/Basis	Denied	Granted
1, 8, 11, 21, 31, 33	102(a)	Ball	1, 8, 11, 21, 31, 33	
1, 8, 11, 21, 31, 33	103(a)	Ball	1, 8, 11, 21, 31, 33	
16, 32	103(a)	Ball, Westerkull	16, 32	
Overall Outcome			1, 8, 11, 16, 21, 31–33	

Final Outcome of Appeal after Rehearing:

Claims	35 U.S.C. §	Reference(s)/ Basis	Affirmed	Reversed	New Ground
1, 3, 6–11, 21, 22, 26–28, 31, 33	102(a)	Ball	1, 3, 6–11, 21, 22, 26–28, 31, 33		1, 3, 6–11, 21, 22, 26– 28, 31, 33
1, 3, 4, 6– 11, 21, 22, 26–28, 31, 33	103(a)	Ball		4	1, 3, 4, 6– 11, 21, 22, 26–28, 31, 33
12	103(a)	Ball, Parker	12		12
13, 29	103(a)	Ball, Berrang	13, 29		13, 29
15, 16, 20, 32	103(a)	Ball, Westerkull	15, 20, 32	16	16
23	103(a)	Ball, Parker II	23		23
24, 30	103(a)	Ball, Westerkull II	24, 30		24, 30
Overall Outcome			1, 3, 6–13, 15, 20–24, 26–33	4, 16	1, 3, 4, 6– 13, 16, 21– 24, 26–31, 33

V. DECISION

Appellant’s Request for Rehearing is denied.