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Dinsmore & Shohl LLP
255 E. Fifth Street
Suite 1900
Cincinnati, OH 45202

EXAMINER
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CHRISTOPHER L. HOLT

Appeal 2017-008341
Application 11/823,557
Technology Center 2100

Before ERIC B. CHEN, JEREMY J. CURCURI, and
KARA L. SZPONDOWSKI, *Administrative Patent Judges*.

CHEN, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Appellant requests rehearing under 37 C.F.R. § 41.52 of our Decision on Appeal entered May 31, 2019 ("Decision" or "Dec."), in which we affirmed the Examiner's non-final rejection of claims 1–10, 12, 14–16, 18, 20, and 21.

The Request for Rehearing is *denied*.

ANALYSIS

Appellant argues the following:

> the Board misapprehended or overlooked the evidentiary requirement established by the Berkheimer Memo. Appellant asserts that the lack of any specific evidence required under the Berkheimer Memo, yet absent from the Decision on Appeal, is wholly inconsistent with other decisions on appeal rendered by other panels of the Board.

(Req. for Reh'g 2 (emphases omitted).)[1] Similarly, Appellant argues that "this is an insufficient showing for a preponderance of the evidence that the claims fail to recite significantly more than abstract idea under Step 2B of the *Alice* framework." (*Id.* at 3.)

Contrary to Appellant's arguments, our Decision states the following:

> With respect to the claimed hardware components, Appellant's Specification discloses the following:
>
> > FIG. 1 shows that Examiner information accessing system 102 includes a data search system 118 and data aggregation system 122. The query 116 is provided to data search system 118 which, in turn, executes the query against aggregated Examiner data 106 . . . . The data search system 118 may illustratively be a conventional search engine or another type of searching system that searches through aggregated Examiner data 106. In any case, data search system 118 generates results 120 that are provided, through search user interface system 108, and through the search UI 110 generated by system 108, to a user over network 114. *The query 116 and results 120 can contain any of a wide variety of different information, depending on what the user 112 desires, and depending on the type of*

[1] Footnote 36 of the 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) incorporates by reference the the *Berkheimer* Memorandum.

> *data aggregated in aggregated Examiner data store 106*.
>
> (¶ 18 (emphasis added).) Appellant's Specification is silent with respect to the terms "computer processor" or "computing device."
>
> The generalized functional terms by which the computer components are described reasonably indicate that Appellant's Specification discloses conventional data store 106 which interacts with a conventional "computer processor" as component in a conventional "computing device."

(Dec. 14–15.)

As articulated by the Federal Circuit, "[w]hether something is well-understood, routine, and conventional to a skilled artisan at the time of the patent is a factual determination." *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1369 (Fed. Cir. 2018). Moreover, such factual determination can based upon disclosures in the Specification. *Id.* ("The improvements in the specification, to the extent they are captured in the claims, create a factual dispute regarding whether the invention describes well-understood, routine, and conventional activities, so we must analyze the asserted claims and determine whether they capture these improvements (citations omitted)."). Contrary to Appellant's arguments, our Decision cited to paragraph 18 of Appellant's Specification as evidence that the claimed hardware is "well-understood, routine, and conventional," pursuant to the *Berkheimer*. Other than providing conclusory statements that our Decision "lack[s] of any specific evidence" and "this is an insufficient showing for a preponderance of the evidence that the claims fail to recite significantly more than abstract idea," Appellant has not provided any persuasive arguments or evidence as to why the findings in our Decision were improper.

CONCLUSIONS

The Request for Rehearing has been considered and is *denied*.

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