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12/536,777	08/06/2009	Robert H. Scheer	31083.05US6	4019
34018	7590	12/19/2019	EXAMINER	
Greenberg Traurig, LLP 77 W. Wacker Drive Suite 3100 CHICAGO, IL 60601-1732			BUCHANAN, CHRISTOPHER R	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROBERT H. SCHEER¹

Appeal 2018-001114
Application 12/536,777
Technology Center 3600

Before MURRIEL E. CRAWFORD, ANTON W. FETTING, and BIBHU R. MOHANTY, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

This is a decision on rehearing in Appeal Number 2018-001114. We have jurisdiction under 35 U.S.C. § 6(b).

Requests for Rehearing are limited to matters misapprehended or overlooked by the Board in rendering the original decision, or to responses to a new ground of rejection designated pursuant to § 41.50(b). 37 C.F.R. § 41.52. Appellant may also present a new argument based upon a recent

¹ We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as W.W. Grainger, Inc. (Appeal Br. 2).

relevant decision of either the Board or a Federal Court. 37 C.F.R. § 41.52
(a)(2).

ANALYSIS

The Appellant requests rehearing first on the grounds that Decision mailed September 20, 2019 did not rely on the same factual underpinnings in the rejection (Request, 1). The Appellant argues secondly that the reference cited for the first time in the Decision does not have a date of publication and thus has not been shown to be a reference to show that the argued claim limitations were “well understood, routine, and conventional” to a skilled artisan at the time priority date² (Request, 2).

After consideration of Appellant’s Request for Rehearing, the request is granted. The Appeal Brief set forth that the subject matter in the claims “improves the functioning of technology” by reciting:

the use of an ontology, in which frames acting as nodes in a semantic network define attributes indicative of restrictions and allowable locations within the supply chain for the item, to determine a shipping method for replenishing the item at each of the plurality of geographically distinct distribution points in the supply chain

(Appeal Br. 5, emphasis in original).

In response to the above assertion, the Examiner’s Answer at page 3 asserted that the above recited feature was well-known, but did not provide specific evidence of this. The Decision mailed September 20, 2019 did provide a citation (FF2) to show that frame nodes are a known tool for collecting related nodes, but that citation did lack a date to show it was

² The Application contains continuing data to 09/867,200 filed 05/29/2001, which claims benefit of 60/263,317 filed Jan. 22, 2001.

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conventional at the time of the priority date cited which was in the year 2001. In light of the Appellant's remarks we are persuaded that the cited claim limitation in the context of the claim was based on a new factual underpinning and has not been established to be well-understood, routine, or conventional on the record that was before us in the rejection of record or in the citation that was used in the Decision.

Accordingly, the request for rehearing is granted, and the rejection of claims 7-13 under 35 U.S.C. § 101 is not sustained.

DECISION

Outcome of Decision on Rehearing:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Denied	Granted
7-13	101	Eligibility		7-13

Final Outcome of Appeal after Rehearing:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
7-13	101	Eligibility		7-13

REHEARING GRANTED