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Barnes & Thornburg LLP (ABB) 11 S. Meridian Street Indianapolis, IN 46204			STEWART, CRYSTOL	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CARSTEN FRANKE, IIRO HARJUNKOSKI,
and SLEMAN SALIBA

Appeal 2018-002489
Application 14/136,454
Technology Center 3600

Before JOSEPH A. FISCHETTI, NINA L. MEDLOCK, and
KENNETH G. SCHOPFER, *Administrative Patent Judges*.

MEDLOCK, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

STATEMENT OF THE CASE

Appellant¹ filed a Request for Rehearing (“Req. Reh’g”), pursuant to 37 C.F.R. § 41.52, on December 3, 2019, seeking reconsideration of our Decision on Appeal mailed October 9, 2019 (“Decision”), in which we affirmed the Examiner’s rejection of claims 1–17 under 35 U.S.C. § 101 as

¹ We use the term “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Our decision references Appellant’s Appeal Brief (“Appeal Br.,” filed August 1, 2017) and Reply Brief (“Reply Br.,” filed January 3, 2018).

directed to patent-ineligible subject matter.² We have jurisdiction over the Request under 35 U.S.C. § 6(b).

DISCUSSION

Appellant alleges in the Request that, in applying Step 2A, Prong Two and Step 2B of the patent eligibility test set forth in the U.S. Patent and Trademark Office’s (the “USPTO’s”) 2019 REVISED PATENT SUBJECT MATTER ELIGIBILITY GUIDANCE, 84 Fed. Reg. 50, 57 (Jan. 7, 2019) (the “2019 Revised Guidance”), the Board “did not fully consider the specification’s teachings regarding the *technological improvement* provided by the claimed invention” (Req. Reh’g 2 (citing Appeal Br. 6–7, Reply Br. 2–3)). Appellant charges that “rather than merely ‘adapting the generation of schedules based on real-time information,’ as characterized by the Board,” the claimed invention has “*a special architecture in which the second processing unit adapts real time data from multiple sources and multiple formats into a fixed format usable by the first processing unit, which performs the resource allocation operations*” (*id.* at 3). Appellant argues that this special architecture “improves the responsiveness of the system and eliminates the need to adapt the first processing unit and its algorithms to be able to use multiple sources of real-time information that may be in different formats” (*id.*), and that it also allows the first processing unit to deliver an updated schedule faster than would otherwise be possible (*id.* at 4) — features that, according to Appellant, reflect an improvement in computer functionality (*id.*).

² We reversed the Examiner’s rejections of claims 1–17 under 35 U.S.C. § 103.

Appellant asserts that the Board misapprehended or overlooked this argument in applying Step 2A, Prong Two of the 2019 Revised Guidance, and that the Board also overlooked Appellant’s argument that “the *combination* of the first data processing unit *and* the second data processing unit in the pending claims provides an arrangement of pieces that is non-conventional and non-generic, thus providing the inventive concept under Step 2B” (*id.* at 6). Yet, the Board could not have misapprehended or overlooked these arguments because they are new arguments presented for the first time in this Request for Rehearing.

Appellant argued in the Appeal Brief that claims 1–17 represent an improvement to the “technological field of automated allocation of mobile resources (e.g., technicians) to the locations of tasks (e.g., maintenance tasks) based on changing, dynamic data from various sources” and that the claims, in particular, are directed to “improving the technological process by enabling a first data processing unit that is configured to efficiently generate schedules (e.g., allocations of the mobile resources to tasks) . . . to adapt the generation of the schedules based on dynamic data [sic] real-time data” (Appeal Br. 6–7). Appellant also repeated this argument in its Reply Brief, characterizing the claimed invention (and more particularly, the two processing unit architecture, as it had in the Appeal Brief) as providing, through the use of real-time data, a “more robust and precise allocation of the mobile resources to tasks” (Reply Br. 2–3; *see also* Appeal Br. 7). Appellant, thus, previously plainly characterized the “technical improvement” as related to adapting the generation of schedules, i.e., the allocation of mobile resources to tasks, based on real-time data — a characterization also consistent with the written disclosure (*see, e.g.,* Spec.

¶ 18 (describing that “embodiments of the present disclosure provide an improved system and method for automatic allocation of mobile resources to tasks so that the practicability and reliability of the generated schedules are increased in order to be able to react more precisely to real-time events”).

Appellant ostensibly maintains otherwise; but Appellant did not previously argue (whether in the Appeal Brief or in its Reply Brief), as it does now, that the claimed invention reflects an improvement in computer functionality. Nor did Appellant previously argue that the combination of the first and second data processing units is a non-conventional and non-generic arrangement of known conventional pieces. Instead, Appellant merely noted the Federal Circuit’s holding in *BASCOM Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016) that an inventive concept can be found in the non-conventional and non-generic arrangement of known, conventional pieces, without any explanation as to how *BASCOM* impacts the patent eligibility of the pending claims (Appeal Br. 7; *see also* Reply Br. 2).

A request for rehearing is properly limited to previously addressed matters that were misapprehended or overlooked. *See* 37 C.F.R. § 41.52(a). It is not an opportunity to further develop the record through the introduction of either new evidence and/or arguments.

Appellant argues that the § 101 rejection is improper because the pending claims reflect an improvement in computer functionality and further ostensibly because the pending claims are analogous to the claims held

patent eligible in *BASCOM*. But, these arguments, which are presented for the first time in this Request, are not a proper basis for rehearing.³

We are not persuaded that we overlooked or misapprehended any point of law or fact in rendering our Decision. Therefore, we decline to modify our original Decision.

Appellant’s Request has been granted to the extent that we have reconsidered our Decision in light of Appellant’s Request, but is denied in all other respects.

CONCLUSION

Outcome of Decision on Rehearing:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Denied	Granted
1–17	101	Eligibility		1–17

Final Outcome of Appeal After Rehearing:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–17	101	Eligibility	1–17	

³ Under 37 C.F.R. § 41.52(a)(1), “[a]rguments not raised, and Evidence not previously relied upon . . . are not permitted in the request for rehearing except as permitted by paragraphs (a)(2) through (a)(4) of this section.” Appellant may present a new argument based on a recent relevant decision of either the Board or a federal court; new arguments responding to a new ground of rejection designated as such under § 41.50(b), and new arguments that the Board decision contains an undesignated new ground of rejection also are permitted. § 41.52(a)(2)–(a)(4).

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

DENIED