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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* PAUL V. MORINVILLE

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Appeal 2018-002602  
Application 13/244,613  
Technology Center 3600

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Before THU A. DANG, ELENI MANTIS MERCADER, and  
MATTHEW J. McNEILL, *Administrative Patent Judges*.

DANG, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

I. STATEMENT OF THE CASE

On September 20, 2019, Appellant filed a Request for Rehearing under 37 C.F.R. § 41.52 (hereinafter “Request”) for reconsideration of our affirmance of the Examiner’s rejections of all pending claims under 35 U.S.C. § 101 and 35 U.S.C. § 103(a) in a Decision mailed July 24, 2019 (hereinafter “Decision”). *See* Req. Reh’g 2. The Decision affirmed the Examiner’s rejections of claims 1–14, 17, and 19–22, which are all pending claims, under 35 U.S.C. § 101, 35 U.S.C. § 112(b), and 35 U.S.C. § 103(a). *See* Decision 16.

We have reconsidered our Decision in light of Appellant’s comments in the Request. Req. Reh’g 2–12. We DENY the request to modify our Decision. We incorporate our earlier Decision herein by reference. *See* 37 C.F.R. § 41.52(a)(1).

## II. ISSUES

The issues we address in this Request are whether Appellant has persuasively identified that the Board *misapplied the relevant law or misapprehended Appellant’s arguments* set forth in the Appeal Brief in affirming the Examiner’s findings and conclusions that:

1) the claims recite an abstract idea and do not amount to significantly more than the abstract idea; and

2) Goodall teaches and suggests a “business process . . . including first and secondary events,” wherein “while both the first event and the first one of the secondary events are pending, . . . the first one of the secondary events beginning processing [a] portion of information prior to completion of the first event.” Claim 1.

## III. ANALYSIS

A 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); *see Ex parte Quist*, 95 USPQ2d 1140, 1141 (BPAI 2010) (precedential). A request for rehearing is not an opportunity to express disagreement with a Board decision or rehash arguments previously presented. *See* 37 C.F.R. § 41.52(a)(1). The proper course for an Appellant dissatisfied with a Board decision is to seek judicial review, not to file a

request for rehearing to reargue issues that have already been decided. *See* 35U.S.C. §§ 141, 145.

1. *Rejection under 35 U.S.C. § 101*

In the Request, Appellant contends that “[t]he Board and the Examiner’s characterization of the claims reveal a misapprehension of the claims.” Req. Reh’g 2. In particular, Appellant contends that the Examiner’s 101 analysis “does not address any of the specific limitation recited in the claims.” *Id.* at 6. According to Appellant, “the Board did not adopt the Examiner’s analysis, but rather his findings because there was no analysis of the claims.” *Id.* at 7.

However, as set forth in our Decision, we did adopt the Examiner’s analysis that “*the claims recite* a certain method of organizing human activity.” Dec. 8 (emphasis added). In particular, in the Final Office Action, the Examiner utilized the two-step analysis to determine subject matter eligibility of the claims (Final Act. 4–11), and indicated that the claims are directed to the abstract idea of “organizing human activities.” Final Act. 10. Accordingly, we agreed and adopted the Examiner’s analysis of the claims and the Examiner’s conclusion that the claims are directed to “[o]rganizing or manipulating data or information or management of a workflow,” which is similar to *SmartGene* (“comparing new and stored information and using rules to **identify** list of **options**”). *See* Dec. 8 (citing Final Act. 10 (citing *SmartGene, Inc. v. Advanced Biological Labs., SA*, 555 F. App’x 950 (Fed. Cir. 2014) (emphasis in original); also *Cyberfone Systems, LLC v. CNN Interactive Group, Inc.*, 558 Fed. Appx. 988, 993 (Fed. Cir. 2014) (“using **categories** to organize, store and transmit information”))). Thus, in our Decision, we concluded that the claims “reciting a ‘business process’ that

initiates ‘the first event,’ . . . recite[] an abstract idea, and in particular, a certain method of organizing human activity (commercial or legal interaction).” Dec. 8.

Accordingly, although Appellant contends the Board fails to adopt Examiner’s 101 analysis because the analysis “does not address any of the specific limitation recited in the claims” (Req. Reh’g 6), the Examiner did analyze the claims and concluded that the claims are directed to “[o]rganizing or manipulating data or information or management of a workflow.” Final Act. 10. Thus, contrary to Appellant’s contention (Req. Reh’g 6), we did adopt the Examiner’s analysis of the claims in the Decision. Dec. 8 (“[w]e adopt the Examiner’s findings that the claims recite a certain method of organizing human activity . . . (commercial or legal interaction)”).

As we specifically addressed in our Decision:

the claim language reciting a "business process" that initiates "the first event," initiates "a first one of the secondary events," makes "at least a portion of information processed by the first event available to the first one of the secondary events," and completes "one or more of the first event and the first one of the secondary events" (*see generally* claims 1, 3 and 12) represents a commercial or legal interaction, an abstract idea.

Dec. 8.

Appellant also contends that “the claim recites additional elements that integrate the exception into practical application” (Req. Reh’g 9). Although Appellant does not identify the “additional elements,” Appellant contends that, under step 2A of the two-prong test, Examiners should “ensure that **they give weight to all additional elements**, whether or not they are conventional, when evaluating whether a judicial exception has

been integrated into a practical application.” *Id.* at 10. According to Appellant, “[w]hen tasked with a Step 2A analysis to consider the claims as to the whole elements, the Examiner cited none.” *Id.* Appellant then contends that “the Examiner . . . does not indicate the features claimed were well-understood, routine, conventional activity.” *Id.* at 11.

We note that Appellant’s contentions are directed to the Examiner’s analysis, but do not identify how the Board misapplied the relevant law or misapprehended Appellant’s arguments. Req. Reh’g 9–11. Nevertheless, we do not find Appellant’s contentions regarding the Examiner’s analysis persuasive.

In particular, as set forth in the Final Office Action, the Examiner concluded that “steps 1-6 are well-known business process management that monitors events and process exceptions to complete the process using a computer,” wherein “[t]he additional limitations . . . appear to improve the business process management in general but not in a significant way.” Final Act. 12. According to the Examiner, the claims include “recitation of generic computer structure that serves to perform generic computer functions.” *Id.* Contrary to Appellant’s contention that “the Examiner . . . does not indicate the features claimed were well-understood, routine, conventional activity” (Req. Reh’g 11), the Examiner did indeed conclude that the claimed generic computer structure’s functions “are well-understood, routine, and conventional activities previously known to the pertinent industries.” Final Act. 13. That is, the Examiner considered the claims as to the whole elements, giving weight to all elements, and concluded the steps to be “well-known business process management,”

wherein the additional limitations do not improve the process in a “significant way.” *Id.* 12–13.

Thus, as set forth in our Decision, we agreed with the Examiner and concluded that the claims “recite a broadly defined ‘business process’ to manage completion of first and second events,” wherein “[t]he provision of interaction between business processes . . . does not in and of itself improve a computer facilitating the business processes or improve the technological field related to the business processes.” Dec. 10. Further, we agreed that the additional recitation of “‘a computer’ does not integrate the abstract idea into a practical application.” *Id.*

Accordingly, as set forth in our Decision, we agreed with the Examiner that the claims are directed to patent-ineligible subject matter.

## 2. *Rejection under 35 U.S.C. § 103*

Appellant contends that “the Examiner did not create a prima facie case of obviousness” because “the Examiner either was pointing to Figure 1 of Goodall” or “pointing to his own figure, which wasn’t prior art and can’t be relied upon.” (Req. Reh’g 11–12). Appellant then contends that “[t]he Board doesn’t clarify which argument of Examiner’s it adopted.” *Id.* at 12. Although Appellant concedes that “the Board points to two purported events in Goodall,” Appellant contends that “the claims also require a particular connectedness between such events.” *Id.*

However, as set forth in our Decision, we agreed with the Examiner’s finding (to which Appellant does not contest) that “Goodall teaches an order-to-delivery event for a prescription and a label printing event that occurs between the ordering and the delivery of the prescription.” Dec. 15. Thus, contrary to Appellant’s contention that “[t]he Board doesn’t clarify

which argument of Examiner's it adopted" (Req. Reh'g 12), the Decision was clear as to which of the Examiner's findings we agreed with and adopted. Dec. 15. In fact, Appellant concedes that we pointed to particular "events in Goodall" relied on by the Examiner. Req. Reh'g 12.

Furthermore, we are unpersuaded by Appellant's contention that the Examiner erred in relying on Goodall to teach and suggest the claimed "events" which "require a particular connectedness between such events." Req. Reh'g 12. As set forth in our Decision, we found no error with the Examiner's finding that "Goodall teaches an order-to-delivery event [(i.e., "first event,")] for a prescription and a label printing event [, i.e., "secondary event,"] that occurs between the ordering and the delivery of the prescription." Dec. 15. That is, Goodall's "first event" and "second event" have a particular connectedness therebetween. *Id.*

Accordingly, as set forth in our Decision, we agreed with the Examiner that Goodall teaches and/or suggests the contested limitations of the claims. *Id.*

As set forth above, Appellant's Request does not persuade us of any points we misapprehended or overlooked in the Decision, or that we misapplied the relevant law. We therefore maintain our affirmance of the Examiner's rejections of claims 1–14, 17, and 19–22 under 35 U.S.C. § 101, 35 U.S.C. § 112(b), and 35 U.S.C. § 103(a).

#### IV. CONCLUSION AND DECISION

We have considered the arguments raised by Appellants in the Request for Rehearing. Although we have considered our prior Decision in

light of the Request for Rehearing, we decline to modify our prior Decision in any respect.

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Denied</b>	<b>Granted</b>
1-14, 17, 19-22	101	Eligibility	1-14, 17, 19-22	
1-14, 17, 19-22	112(b)	indefinite	1-14, 17, 19-22	
1-14, 17, 19-22	103(a)	Goodall	1-14, 17, 19-22	
<b>Overall Outcome</b>			1-14, 17, 19-22	

Final outcome of Appeal after Rehearing:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1-14, 17, 19-22	101	Eligibility	1-14, 17, 19-22	
1-14, 17, 19-22	112(b)	indefinite	1-14, 17, 19-22	
1-14, 17, 19-22	103(a)	Goodall	1-14, 17, 19-22	
<b>Overall Outcome</b>			1-14, 17, 19-22	

REHEARING DENIED