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EXAMINER	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CRAIG SCHULZ

Appeal 2018-003122
Application 13/622,994
Technology Center 3600

Before MAHSHID D. SAADAT, ALLEN R. MacDONALD, and JOHN P. PINKERTON, *Administrative Patent Judges*.

MacDONALD, *Administrative Patent Judge*.

DECISION ON SECOND REQUEST FOR REHEARING

This is a decision on Appellant's Second Request for Rehearing ("Second Request").[1] Appellant's Second Request is filed under 37 C.F.R. § 41.50(a)(1) in response to our Decision on Request for Rehearing of July 30, 2019 ("Decision"), which is deemed to incorporate our original Decision of May 2, 2019 ("Original Decision"), wherein, *inter alia*, we affirmed the Examiner's rejection of claims 1–4, 6, 8–11, 13, 15–17, and

[1] "The 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).

20–23 under 35 U.S.C. § 103(a).[2] In its Second Request, Appellant requests that we reconsider our Decision. We have reconsidered our Decision in light of Appellant's comments in the Second Request, and have found no errors.

Appellant's request is denied.

DISCUSSION

A

Pursuant to 37 C.F.R. § 41.52(a)(1), Appellant argues the Board misapprehended or overlooked the nature of the disclosure of Holden, and, thus, erred in affirming the Examiner's finding that the combination of Holden and Xu teaches or suggests "receiving a respective damage severity level input from the user device for each of the grid segments encompassing damage," as recited in claim 1. *See* Second Request 3–6.

However, Appellant merely reiterates arguments already made in its Appeal Brief at pages 16–17 and in its First Request for Rehearing ("First Request") at pages 4–5, which were considered and deemed not persuasive. More specifically, we considered Appellant's argument that Holden discloses a specific way to utilize grid segments to determine damage repair estimates, and does not broadly disclose "[identifying a damage severity level] for each of the grid segments encompassing damage." *See* Second Request 3–5 (emphasis omitted). We disagreed with Appellant's characterization of Holden's disclosure, and, thus, we agreed with the Examiner's finding that the combination of Holden and Xu teaches or

[2] "The decision on the request for rehearing is deemed to incorporate the earlier opinion reflecting its decision for appeal, except for those portions specifically withdrawn on rehearing." 37 C.F.R. § 41.52(a)(1).

suggests "receiving a respective damage severity level input from the user device for each of the grid segments encompassing damage," as recited in claim 1. *See* Decision 6–7; *see also* Original Decision 17–18.

Thus, Appellant's argument does not identify "points believed to have been misapprehended or overlooked by the Board" as required by 37 C.F.R. § 41.52(a)(1). Therefore, this portion of Appellant's request is denied.

B

Pursuant to 37 C.F.R. § 41.52(a)(1), Appellant also argues the Board misapprehended or overlooked the point that the claimed "predefined damage severity indicators," recited in claim 1, do not meet the threshold requirement for material to be considered non-functional descriptive material. *See* Second Request 7–9.

However, Appellant again merely reiterates arguments already made in its Appeal Brief at pages 18–19 and in its First Request at pages 9–11, which we considered and deemed not persuasive. More specifically, we considered Appellant's argument that the claimed "predefined damage severity indicators" are functionally related to the claimed process because these indicators are used to make the damage severity level inputs. *See* Second Request 7. Again, we disagreed with Appellant's argument because we agreed with the Examiner's finding that the claimed "predefined damage severity indicators" recite the display and appearance of the input data, and, thus, do not change the functional steps of the claim language. *See* Decision 7; *see also* Original Decision 19.

Again, Appellant's argument does not identify "points believed to have been misapprehended or overlooked by the Board" as required by 37 C.F.R. § 41.52(a)(1). Therefore, this portion of Appellant's request is also denied.

DECISION

Based on the record before us now and in the original appeal, we deny Appellant's request to make any changes in our Decision. We determine Appellant has not identified any points the Board has misapprehended or overlooked.

The request for rehearing is denied.

Summary of Original Decision:

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
1–6, 8–13, 15–18, 20–23	101	Eligibility		1–6, 8–13, 15–18, 20–23
1, 2, 4–6, 8–13, 15–18, 20–23	103(a)	Holden, Xu	1, 2, 4, 6, 8–11, 13, 15–17, 20–23	5, 12, 18
3	103(a)	Holden, Xu, Edmunds	3	
Overall Outcome			1–4, 6, 8–11, 13, 15–17, 20–23	5, 12, 18

Final Outcome of Appeal after Second Rehearing:

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
1–6, 8–13, 15–18, 20–23	101	Eligibility		1–6, 8–13, 15–18, 20–23
1, 2, 4–6, 8–13, 15–18, 20–23	103(a)	Holden, Xu	1, 2, 4, 6, 8–11, 13, 15–17, 20–23	5, 12, 18
3	103(a)	Holden, Xu, Edmunds	3	
Overall Outcome			1–4, 6, 8–11, 13, 15–17, 20–23	5, 12, 18

DENIED