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FENNEMORE CRAIG, P.C. 1700 Lincoln Street Suite 2400 DENVER, CO 80203			YI, ALEXANDER J.	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte NEIL L. MCCLURE and RALPH DAVID WIELAND

Appeal 2018-005806
Application 14/738,800
Technology Center 2600

Before ALLEN R. MacDONALD, ADAM J. PYONIN, and
PHILLIP A. BENNETT, *Administrative Patent Judges*.

MacDONALD, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

This is a decision on Appellant's Request for Rehearing.¹ Appellant has filed a paper under 37 C.F.R. § 41.52(a) requesting that we reconsider our Decision of September 19, 2019, wherein we affirmed the Examiner's rejections of claims 1–64. We have reconsidered our Decision in light

¹ “The request for rehearing must state with particularity the points believed to have been misapprehended or overlooked by the Board. Arguments not raised, and Evidence not previously relied upon, pursuant to §§ 41.37, 41.41, or 41.47 are not permitted in the request for rehearing except as permitted by paragraphs (a)(2) through (a)(4) of this section.” 37 C.F.R. § 41.52(a)(1).

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of Appellant's comments in the request, and we have found no errors.
We, therefore, decline to change the Decision.

Appellant's request is denied.

Appellant's Contentions²

I. Appellant contends that as to the Board Decision, the Board erred because:

The Examiner's rationale to combine, and that adopted by the Board, merely suggests that the mobile device needs to communicate with the docking station because the mobile device is undocked. That being the case, channel B of the MODIFICATION figure, *supra*, should not exist because the rationale to combine suggests that *the channel C is sufficient*. Thus, the rationale does not support the separate communications path of channel B. The rationale in no way suggests why the mobile device would itself need to communicate with the monitor.

Req. Reh'g 2 (emphasis added).

II. Also, Appellant contends that as to the Board Decision, the Board erred because:

In the last full paragraph on page 6 of the Reply Brief, Appellant urged the Board to consider what happens if the modification proceeds according to the Examiner's rationale of using paragraph 72 to support the proposed modification to show the communications channel B. This consideration, however, did not make it into the Decision on Appeal, which is therefore incomplete. Appellant argued on page 6 of the Reply Brief:

Consider what happens if that modification proceeds. Ballantyne still does not teach what is claimed. Paragraph 551 of Ballantyne reports that when the watchdog 1310 (the Examiner's alert

² Appellant designates the sections of their Request for Rehearing as I and II. To avoid confusion, we follow Appellant's designations.

device) “determines that an error has occurred in the patient care device 1318 [the Examiner's monitor]” this may “cause the dock 1304 and/or the monitoring client 1302 [the Examiner’s mobile device] to audibly and visually alarm and sent [send] a notification to a nursing station and/or a remote communicator [11], e.g., . . . a Smartphone, a laptop, computer, another patient-care device, and the like.” ***Under the proposed modification, Paragraph 551 then has the inconsistent context of the mobile device sending a notification to itself to alarm.*** Ballantyne clearly intended the use of different devices because the context of Paragraph 551 has the monitoring client notifying a separate mobile device [Ballantyne’s remote communicator 11].

This shows that paragraph 72 of Ballantyne is being misapplied. To the extent that the claimed mobile device is Ballantyne’s monitoring client, it would not need to notify itself of a problem, especially in context of the notification being sent to a separate mobile device that is a “remote communicator.” Thus, the rejection fails where, in context of the embodiment of Ballantyne’s Fig. 18, ***it would be futile and serve no purpose for the monitoring client/mobile device to treat itself as a “remote communicator”*** and so also use wireless communications to notify itself of a problem.

Req. Reh’g 3, 4 (footnote omitted)(emphasis added).

ANALYSIS

I.

As to Appellant’s above contention I, the essence of Appellant’s argument is that the reference teaches away from using the channel B option because “channel C is sufficient.” We disagree. We find Appellant’s teach away conclusion unpersuasive. As the United States Court of Appeals for the Federal Circuit has counseled:

A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant. . . . [I]n general, a reference will teach away if it suggests that the line of development flowing from the reference's disclosure is unlikely to be productive of the result sought by the applicant.

In re Gurley, 27 F.3d 551, 553 (Fed. Cir. 1994). “A reference does not teach away, however, if it merely expresses a general preference for an alternative invention but does not criticize, discredit, or otherwise discourage investigation into the invention claimed.” *DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 567 F.3d 1314, 1327 (Fed. Cir. 2009) (quotation omitted). We do not find (nor does Appellant point out) where the cited reference criticizes, discredits, or otherwise discourages investigation into the invention claimed.

II.

As to Appellant's above contention II, we disagree. The Panel did not overlook Appellant's “sending a notification to *itself* to alarm” argument. Reply Br. 6.

There is no requirement that this Board catalog and discuss every argument that an Appellant makes to support their contention of error in the rejection. This is particularly so where the logic of a Reply Brief argument is insufficient and unclear.

To show error in the Examiner's rejection, Appellant's Reply Brief sets forth a premise that it is a requirement (under the Examiner's proposed modification) that the “mobile device send[] a notification to *itself* to alarm.” Reply Br. 6. However, Appellant uses this premise without laying a sufficient and clear foundation for it. It is not the role of the Board to

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untangle Appellant's reasoning so as to provide a foundation for this premise, so that there is then the needed analysis in support of Appellant's contention that the Examiner has erred.

DECISION

Based on the record before us, we have granted Appellant's request to the extent that we have reconsidered our Decision, but we deny Appellant's request to make any changes in our Decision. Appellant has not identified any points the Board has misapprehended or overlooked.

The request for rehearing is denied.

Original summary of Decision now on Rehearing:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1-8, 12, 13, 15-24, 28-40, 44-56, 60-64	103	Ballantyne	1-8, 12, 13, 15-24, 28-40, 44-56, 60-64	
9-11, 14, 25-27, 41-43, 57-59	103	Ballantyne, Bos, Rader, Back, Wondka	9-11, 14, 25-27, 41-43, 57-59	
Overall Outcome			1-64	

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Final Outcome of Appeal after Rehearing:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1-8, 12, 13, 15-24, 28-40, 44-56, 60-64	103	Ballantyne	1-8, 12, 13, 15-24, 28-40, 44-56, 60-64	
9-11, 14, 25-27, 41-43, 57-59	103	Ballantyne, Bos, Rader, Back, Wondka	9-11, 14, 25-27, 41-43, 57-59	
Overall Outcome			1-64	

TIME PERIOD FOR RESPONSE

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