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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID BRETT CURRIN, C. CLARK EASTER,
BRENDAN MARSH, EDMUND BENNETT RICHARDS, and
ROGELIO FERNANDO CASTILLO AQUEVEQUE

Appeal 2018-008460
Application 14/793,652
Technology Center 2100

Before ROBERT E. NAPPI, BETH Z. SHAW, and
JOYCE CRAIG, *Administrative Patent Judges*.

SHAW, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Appellant requests rehearing under 37 C.F.R. § 47.52(a)(1) (2013) (“Request”) for reconsideration of our Decision on Appeal mailed October 3, 2019 (“Decision”).¹ The Decision affirmed the decision of the Examiner rejecting claims 1–20 under 35 U.S.C. § 103.

We reconsider our decision in light of Appellant’s Request for Rehearing, but we decline to change the decision.

¹ This appeal is related to Appeal No. 2018-004665 for related Application No. 14/476,696.

CONTENTIONS AND ANALYSIS

By regulation, “[t]he 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). We are not persuaded that we overlooked or misapprehended any arguments in the Appeal Brief or Reply Brief. Rather, the Decision specifically addressed the arguments in Appellant’s Appeal Brief and Reply Brief. Decision 2–4.

Argument 1

In the Request, Appellant argues that we misstated Appellant’s position with respect to “rubber-sheeting.” Request 2 (citing Decision 3). In particular, Appellant states that Appellant has never argued that the claims require rubber-sheeting. Request 2. Rather, “if anything, Appellant has argued the exact opposite.” *Id.* Appellant argues “the Examiner is asserting *both that the claims encompass rubber-sheeting*, in order to reject the claims, *and that the claims do not encompass rubber-sheeting*, in order to disregard Appellant’s arguments regarding the inherency relied upon by the Examiner to reject the claims.” *Id.*

Appellant’s Specification states that “[t]here is a current industry practice, known as rubber-sheeting, in which a few control points (e.g., a curb, fire hydrant, tree, etc.) with known latitude and longitude coordinates are manually dragged to the correct location on an aerial image or map. Such changes cannot be undone with any accuracy.” Spec. ¶ 65.

Appellant argues:

- (1) Examiner argued that rubber-sheeting discloses elements of the claims, and that Peterson, inherently discloses rubber-sheeting, and therefore, that Peterson discloses elements of the

claims (*see* final Office Action, dated February 23, 2017, p. 10);

(2) Appellant has countered that the Examiner has not satisfied the high-bar required to establish inherency in Peterson (Appeal Brief, pp. 6-8); and

(3) Examiner concluded that the claims do not require rubber-sheeting, and therefore, Appellant's inherency arguments fail (Examiner's Answer, p. 5).

Request 2.

The Examiner explained in the Answer (Ans. 5), and we reiterated in the Decision (Decision 3), that the claim only requires “a connection” between the pipe and the manhole, and adjusting both the pipe and the manhole. Decision 3. The Examiner explained in the Answer, and we explained in the Decision, that the claim does not require “rubber-sheeting.” Ans. 5; Decision 3 (“We agree with the Examiner that the claim does not recite ‘rubber-sheeting’.”). The Examiner found, and we agree, that Halfawy teaches the claimed “connection.” *Id.* (“The claim does not require ‘rubber-sheeting’ only ‘a connection’ (singular noun: with connectivity/relationship) between the pipe [**singular**] and manhole [**also singular**] and adjusting both of them. Halfawy teaches ‘a connection’ (connectivity/relationship) between the pipe [singular] and manhole [singular] using GIS interface in Halfawy and in Peterson with Halfawy, showing adjustment to pipe and manhole.”) (footnotes omitted)). Thus, we did not misapprehend or overlook Appellant’s argument regarding rubber-sheeting in the Appeal Brief, but rather, considered and rejected Appellant’s argument regarding rubber-sheeting as unavailing.

Argument 2

Appellant also argues in the Request that Peterson states that “extra steps were required to move the *structures* to their correct locations.”

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Request 3 (citing Peterson, p. 5). “Thus, according to Peterson, plural structures were moved individually using plural ‘*steps*,’ rather than in unison in a single step, as asserted by the Examiner and the Board.” *Id.* Appellant contends:

a single step (i.e., reception of the pair of asset identifier and geospatial coordinates) is required to move plural structures (i.e., *both* the manhole *and* pipe segment) to their correct locations. This is in contrast to Peterson which discloses that *plural steps* were required to move plural structures.

Id. First, we did not misapprehend or overlook this argument, because it was not presented in the Appeal Brief.

Nonetheless, we are not persuaded that language of claim 1 limits the claim to only a “single step” to “move plural structures,” i.e., both the manhole and pipe segment. Moreover, the preceding two sentences from Appellant’s quote of Peterson state:

Occasionally, the data would be collected in the wrong coordinate system, or lacking a coordinate system altogether. When this happened the data did not overlay properly in ArcGIS since the lack of a coordinate system shifted the structures approximately six feet from their actual location.

Peterson, p. 5 (emphasis added). The Examiner underlined this sentence in the Answer. Ans. 10. As stated in the Decision, “[w]e agree with the Examiner (Ans. 10) that the use of plural ‘structures’ in Peterson teaches that structures are moved in unison, and not merely moved individually.” Dec. 4.

Accordingly, Appellant has not persuaded us that our Decision misapprehended or overlooked any point in the Briefs.

CONCLUSION

We have reconsidered our Decision in light of Appellant’s arguments in the Request. We have granted Appellant’s Request for Rehearing to the extent that we have reviewed our Decision and considered the arguments made in the Request. We are not persuaded of error in our previous Decision.

SUMMARY

Outcome of Decision on Rehearing:

Claims	35 U.S.C §	Reference(s)/Basis	Denied	Granted
1–8, 10, 13–16, 19, 20	103	Halfawy, Peterson, ESRI	1–8, 10, 13–16, 19, 20	
9, 11, 12, 17, 18	103	Halfawy, Peterson, ESRI, Halfawy2	9, 11, 12, 17, 18	
Overall Outcome			1–20	

DECISION

The Request for Rehearing is denied.

DENIED