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13/157,533	06/10/2011	Anthony Mark Phillips	83185722 (FMC 3244 PUSP)	7414
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BROOKS KUSHMAN P.C./FGTL 1000 TOWN CENTER 22ND FLOOR SOUTHFIELD, MI 48075-1238			SMITH, ISAAC G	
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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* ANTHONY MARK PHILLIPS,  
GEORGIA-EVANGELIA KATSARGYRI, MING LANG KUANG,  
ILYA VLADIMIR KOLMANOVSKY, JOHN OTTAVIO MICHELINI,  
MUNTHER ABDULLAH DAHLEH, and MICHAEL DAVID RINEHART

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Appeal 2018-008927  
Application 13/157,533  
Technology Center 3600

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Before JOHN C. KERINS, AMANDA F. WIEKER, and  
SEAN P. O'HANLON, *Administrative Patent Judges*.

O'HANLON, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

In reply to the Decision on Appeal mailed March 26, 2020,  
("Decision" or "Dec."), Appellant<sup>1</sup> filed a Request for Rehearing pursuant to  
37 C.F.R. § 41.52, on June 1, 2020 ("Request" or "Req. Reh'g"), requesting

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<sup>1</sup> We use the word "Appellant" to refer to "applicant" as defined in  
37 C.F.R. § 1.42. Appellant identifies Ford Global Technologies, LLC as  
the real party in interest. Appeal Br. 2.

that we reconsider our Decision affirming the rejections of claims 1, 4, 5, 9, 11, 14, 15, and 19. Along with the Request, Appellant filed a statement asserting that the delay in filing the Request was due to the COVID-19 outbreak.

#### SUMMARY OF THE DECISION

In the Decision, we did not sustain a rejection of claims 1, 4, 5, 9, 11, 14, 15, and 19 under 35 U.S.C. § 112, second paragraph, as being indefinite. Dec. 4–7. However, we sustained rejections of claims 1, 4, 5, 9, 11, 14, 15, and 19 under 35 U.S.C. § 103(a) as being obvious over Soma alone or in combination with Li or Tryon. *Id.* at 7–10.

#### PRINCIPLES OF LAW

Requests for Rehearing are limited to matters misapprehended or overlooked by the Panel in rendering the original decision. *See* 37 C.F.R. § 41.52 (2019). A request for rehearing “‘must state with particularity the points believed to have been misapprehended or overlooked by the Board’” and “‘must specifically recite ‘the points of law or fact which appellant feels were overlooked or misapprehended by the Board.’” *Ex parte Quist*, Appeal No. 2008-001183, at 2 (BPAI June 2, 2010) (designated precedential) (quoting 37 C.F.R. § 41.52(a)(1); MPEP § 1214.03).

A request for rehearing may not rehash arguments originally made in the Brief. A request for rehearing is not an opportunity to merely express disagreement with a decision. The proper course for an applicant 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* 35 U.S.C. §§ 141, 145 (2018).

## ANALYSIS

Independent claim 1 recites a method comprising, in relevant part, “segmenting a route into segments corresponding to a change in vehicle speed or road grade, each segment having a constant vehicle speed and road grade” and “segmenting further at least one of the segments into smaller segments of equal length.” Appeal Br., Claims App. 1. In the Decision, we noted that the Specification explains that a route is initially decomposed into a series of route segments according to a policy such that the beginning of each segment coincides with a significant change of the vehicle speed or road grade. Dec. 9 (quoting Spec. ¶¶ 33, 60). We further noted that “the Specification explains that long route segments should be further divided into shorter segments to ensure battery state-of-charge control occurs with sufficient frequency.” *Id.* (citing Spec. ¶ 61). Although the Specification states that, as an example, the shorter segments can have an equal length, we found that

the Specification does not ascribe any importance to such shorter segments being of equal length. To the contrary, by describing shorter segments of equal distance as an “example,” a person having ordinary skill in the art would infer that the Specification considers that shorter segments of unequal length would also allow for sufficient battery state-of-charge control.

*Id.*

Appellant takes issue with our analysis, arguing that we erred in “not hav[ing] considered the entire Specification regarding the importance ascribed to the shorter segments being of equal length.” Req. Reh’g 2. According to Appellant, “[t]he Specification describes that a route is normally divided into segments of equal length.” *Id.* (citing Spec. ¶¶ 7, 55, 60).

Independent claim 1 initially utilizes a segmentation policy different than the normal segmentation policy (i.e., segmentation based on change in vehicle speed or road grade instead of segmentation into equal lengths) and subsequently reverts to the normal segmentation policy (i.e., segmentation into equal lengths) for at least one of the segments (such as long route segments having a constant vehicle speed and road grade (Specification paragraph [0061])).

*Id.* at 3. “Consequently, the importance ascribed by the Specification to shorter segments being of equal length is that equal length shorter segments pertain to the normal segmentation policy.” *Id.*

Initially, we do not agree with Appellant’s contention that the Specification sets forth a “normal segmentation policy” under which a route is broken into segments of equal length. *See* Req. Reh’g 2–3 (citing Spec. ¶¶ 7, 55, 60). Notably, each of the paragraphs cited by Appellant explain that a route is *not* broken into segments of equal length: “[t]he route segmentation is *not* based on route segments of equal length” (Spec. ¶ 7 (emphasis added)); “the route segmentation in accordance with embodiments of the present invention is *not* based on route segments of equal length” (*id.* ¶ 55 (emphasis added)); “the resulting segments likely *will not have the same length*” (*id.* ¶ 60 (emphasis added)).

Moreover, even if the Specification disclosed such a “normal segmentation policy” as suggested by Appellant, Appellant has not identified any error in our analysis that choosing the length of the smaller segments would have been an obvious design choice. As we explained,

the Specification explains that long route segments should be further divided into shorter segments to ensure battery state-of-charge control occurs with sufficient frequency, but the Specification does not ascribe any importance to such shorter segments being of equal length. To the contrary, *by describing*

*shorter segments of equal distance as an “example,” a person having ordinary skill in the art would infer that the Specification considers that shorter segments of unequal length would also allow for sufficient battery state-of-charge control.*

Dec. 9 (emphasis added). Appellant’s assertion that smaller segments of equal length comport with a “normal segmentation policy” does not address our findings as set forth in the Decision and, thus, does not apprise us that we overlooked or misapprehended any matter. Nor does Appellant identify sufficiently any benefit that would be realized by further segmenting a long route segment according to a “normal segmentation policy” as opposed to dividing a long segment into smaller segments of unequal length.

Appellant also argues that, “A reading of Specification paragraph [0061] may be that this ‘example’ pertains to all of the long route segments being further segmented as opposed to just one or a few of these long route segments being further segmented.” Req. Reh’g 3. Appellant fails to explain with sufficient specificity how this assertion affects our analysis in the Decision. Accordingly, this argument fails to apprise us that we overlooked or misapprehended any matter.

### CONCLUSION

We have granted Appellant’s Request to the extent that we have reconsidered our Decision, but we deny the Request with respect to making any changes thereto.

Outcome of Decision on Rehearing:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)</b>	<b>Denied</b>	<b>Granted</b>
1, 5, 11, 15	103(a)	Soma	1, 5, 11, 15	

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)</b>	<b>Denied</b>	<b>Granted</b>
4, 14	103(a)	Soma, Li	4, 14	
9, 19	103(a)	Soma, Tryon	9, 19	
<b>Overall Outcome</b>			1, 4, 5, 9, 11, 14, 15, 19	

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, 4, 5, 9, 11, 14, 15, 19	112, second paragraph	Indefiniteness		1, 4, 5, 9, 11, 14, 15, 19
1, 5, 11, 15	103(a)	Soma	1, 5, 11, 15	
4, 14	103(a)	Soma, Li	4, 14	
9, 19	103(a)	Soma, Tryon	9, 19	
<b>Overall Outcome</b>			1, 4, 5, 9, 11, 14, 15, 19	

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

DENIED