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| Rao DeBoer Osterrieder, PLLC<br>1334 Brittmoore Road<br>Suite 2401<br>Houston, TX 77043 |             |                      | KRUER, KEVIN R      |                  |
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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* MASSIMO PIGNATELLI and STEPHANE PIRE

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Appeal 2019-001171  
Application 13/144,211  
Technology Center 3600

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Before DANIEL S. SONG, STEFAN STAICOVICI, and LEE L. STEPINA,  
*Administrative Patent Judges.*

STEPINA, *Administrative Patent Judge.*

DECISION ON REQUEST FOR REHEARING

STATEMENT OF THE CASE

Appellant filed a Request for Rehearing (“Req. Reh’g” or “Request”) dated February 22, 2020, of the Decision on Appeal mailed December 23, 2019 (“Decision”). This Decision affirmed the Examiner’s rejections of claims 1–8, 10–13, 15–21. *See* Decision 12. Appellant asserts that the Board misapprehended or overlooked certain points in Appellant’s arguments. Req. Reh’g 1.

Upon consideration of Appellant’s Request, we do not modify our opinion.

## A REQUEST FOR REHEARING

A request for rehearing “must state with particularity the points believed to have been misapprehended or overlooked by the [Patent Trial and Appeal Board, hereinafter “Board”].” *See* 37 C.F.R. § 41.52(a)(1). This section also states that arguments not raised in the briefs before the Board and evidence not previously relied upon in the briefs “are not permitted in the request for rehearing except as permitted by paragraphs (a)(2) through (a)(4) of this section.” In addition, a request for rehearing is not an opportunity to express disagreement with a decision without setting forth points believed to have been misapprehended or overlooked by the Board in rendering its Decision. 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* 35 U.S.C. §§ 141, 145.

## ANALYSIS

Appellant first argues:

Appellant respectfully contends that the Board misapprehended or overlooked that the teachings of Peet would lead an ordinarily skilled artisan to modify Touhsaent with Peet’s fluoropolymer teachings in the analysis that rendered Appellant’s claims obvious. *Contrary to the Board’s summary conclusion, Peet’s use of fluoropolymer to provide uniformity in die flow is unlike Appellant’s use of fluoropolymer to allow trim recycling and/or improve the metal appearance in the metallization by reducing die lines and scratches.* That is, Peet’s “gauge (i.e., thickness) uniformity” use of fluoropolymer for a better interfacial relationship has zero bearing on Appellant’s trim recycling and/or metal appearance use, and that is one reason why there is no suggestion to combine Peet’s fluoropolymer teachings to modify Touhsaent in the alleged obviousness determination.

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Req. Reh’g 3 (emphasis added) (citing Specification ¶ 4). Thus, Appellant appears to disagree with the discussion of the Examiner’s rationale on page 7 of the Decision, which states, “[w]e also agree with the Examiner that the benefit disclosed in Peet, namely, to ‘provide[] a more uniform distribution of polymer flow through a die,’ is not unlike the benefit Appellant discloses related to the addition of fluoropolymer.” Appellant’s assertion does not apprise us of any argument misapprehended or overlooked by the Decision. Rather, Appellant’s argument merely disputes the outcome of the Decision. The appropriate process for making additional arguments when dissatisfied with a Board decision is to seek judicial review, not to file a request for rehearing. *See* 35 U.S.C. §§ 141, 145.

Appellant next argues,

Peet only claims and discusses using fluoropolymer in the base layer, although, once, it does broadly state, “the fluoropolymer may be added to at least the base layer. Preferably, the fluoropolymer is included in the base layer.” Appellant respectfully contends that reading this quoted passage as support for adding fluoropolymer to the skin layer of undisclosed composition is dubious and non-enabling.

Req. Reh’g 3 (quoting Peet 3:40–41). This portion of the Request appears to address pages 7–8 of the Decision, which indicate the Board’s determination that the Examiner’s reasoning is supported by rational underpinnings. Again, Appellant’s discussion contests the outcome of the Decision without identifying any of the arguments in the Appeal Brief misapprehended or overlooked by the Board.

Next, the Request quotes Peet’s Abstract and concludes:

Peet does not state here or elsewhere that use of fluoropolymer is for an “attempt to reduce surface imperfections.” And, Appellant further contends that reading Pete to teach or suggest

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an EVOH skin layer having fluoropolymer is dubious and non-enabling. Nevertheless and again, the combination of Peet with Touhsent is not supported by rationale underpinnings.

Req. Reh'g 4.

Appellant's contentions do not identify any previous argument misapprehended or overlooked by the Board, and, instead, contest the outcome of the Decision, in particular, a portion of the discussion on pages 7–8 of the Decision. Accordingly, we do not modify our Decision.

### CONCLUSION

Outcome of Decision on Rehearing:

| <b>Claims Rejected</b> | <b>35 U.S.C. §</b> | <b>Basis</b>                         | <b>Denied</b>          | <b>Granted</b> |
|------------------------|--------------------|--------------------------------------|------------------------|----------------|
| 1–8, 10–13, 15, 19, 20 | 103(a)             | Touhsaent, Peet, Korowicki           | 1–8, 10–13, 15, 19, 20 |                |
| 16–18                  | 103(a)             | Touhsaent, Peet, Korowicki, Amos     | 16–18                  |                |
| 21                     | 103(a)             | Touhsaent, Peet, Korowicki, Blemberg | 21                     |                |
| <b>Overall Outcome</b> |                    |                                      | 1–8, 10–13, 15–21      |                |

Final Outcome on Appeal after Rehearing:

| <b>Claims Rejected</b> | <b>35 U.S.C. §</b> | <b>Basis</b>                         | <b>Affirmed</b>        | <b>Reversed</b> |
|------------------------|--------------------|--------------------------------------|------------------------|-----------------|
| 1-8, 10-13, 15, 19, 20 | 103(a)             | Touhsaent, Peet, Korowicki           | 1-8, 10-13, 15, 19, 20 |                 |
| 16-18                  | 103(a)             | Touhsaent, Peet, Korowicki, Amos     | 16-18                  |                 |
| 21                     | 103(a)             | Touhsaent, Peet, Korowicki, Blemberg | 21                     |                 |
| <b>Overall Outcome</b> |                    |                                      | 1-8, 10-13, 15-21      |                 |

DENIED