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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/257,777	04/21/2014	Larry Drake Hansen		8207

121620 7590 12/31/2019
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EXAMINER

ARYANPOUR, MITRA

ART UNIT	PAPER NUMBER
3711	

MAIL DATE	DELIVERY MODE
12/31/2019	PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte LARRY DRAKE HANSEN

Appeal 2019-002252
Application 14/257,777
Technology Center 3700

Before DANIEL S. SONG, MICHAEL L. HOELTER, AND
BRETT C. MARTIN, *Administrative Patent Judges*.

MARTIN, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

STATEMENT OF THE CASE

Appellant filed his REQUEST FOR REHEARING on September 30, 2019 (hereinafter “Request for Rehearing” or “Req. Reh’g.”) under 37 C.F.R. § 41.52, seeking rehearing of our Decision mailed July 31, 2019 (hereinafter “Decision” or “Dec.”), which reversed the Examiner’s anticipation rejection and affirmed the indefiniteness rejection. We grant the Request for Rehearing to the extent that we consider the Appellant’s arguments, but DENY the request to modify the Decision.

A Rehearing Request under 37 C.F.R. § 41.52 has the very specific requirements that the party seeking rehearing allege that the Board

misapprehended or overlooked something in rendering the original decision. Here, the Requester has done neither. *See* Reh’g. Req. 1–5. Appellant first argues that the Examiner’s statement of the rejection was inexplicably vague so as not to allow a meaningful response. Reh’g. Req. 3. Appellant raises this argument for the first time and as such we need not address this new argument. *See* 37 C.F.R. § 41.52(a)(1). Nonetheless, we note that the Examiner specifically pointed to the lack of “active, positive steps delimiting how the use is actually practiced.” Ans. 5. The Examiner also highlighted the phrase “not necessarily limited to” in conjunction with “any type” as a basis for indefiniteness, with which we agreed. *Id.*, *see also* Dec. 3. Each of these is a specific, valid basis for indefiniteness originally identified by the Examiner and not overcome in the Appeal by Appellant in its Appeal Brief.

Appellant also argues for the first time that the simplicity of the invention does not require more than what is identified in the claim as well as raising rebuttals to issues of enablement, which is not a basis of rejection in this Appeal. Reh’g. Req. 4. As noted above, we do not address arguments not previously presented and raised for the first time upon rehearing. Additionally, regardless of simplicity of the invention, the claim must still comply with the rules of claim drafting, which require a clear recitation of process steps, such steps being missing in Appellant’s claim. Simplicity does not relieve Appellant of the duty to draft claims that satisfy the statutory requirements.

Appellant also takes issue with our identification of “wherein comprising of” as a basis for indefiniteness. Reh’g. Req. 3. Although this was first identified in the Decision and not specifically noted by the Examiner, it does not represent the basis for holding that the claim is indefinite. We simply attempted to provide Appellant with additional

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notification of errors that should be corrected in any further prosecution beyond what was also specifically identified by the Examiner. As such, there was no need to identify this as a new ground of rejection as the bases presented by the Examiner were sufficient to uphold the rejection. Accordingly, we are not persuaded of any basis for granting the Request for Rehearing.

DECISION

While we have considered the Decision in light of the Request for Rehearing, we decline to modify it in any respect.

Pursuant to 37 C.F.R. § 41.52, this decision is final for the purpose of judicial review. A party seeking judicial review must timely serve notice on the Director of the United States Patent and Trademark Office. *See* 37 C.F.R. §§ 90.1 and 1.983.

DENIED