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Row 1: 14/533,743, 11/05/2014, Christian A. Le Cocq, 20140281-01, 3213
Row 2: 22878, 7590, 01/27/2020, Agilent Technologies, Inc., Global IP Operations, 5301 Stevens Creek Blvd, Santa Clara, CA 95051, EXAMINER WOITACH, JOSEPH T
Row 3: ART UNIT 1631, PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CHRISTIAN A. LE COCQ, MAGNUS ISAKSSON,
ASHUTOSH, and LINUS FORSMARK

Appeal 2019-004221
Application 14/533,743
Technology Center 1600

Before ERIC B. GRIMES, RICHARD M. LEOVITZ, and
JOHN E. SCHNEIDER, *Administrative Patent Judges*.

GRIMES, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Appellant requests rehearing, with respect to claim 8, of the decision entered October 25, 2019 (“Decision”). The request for rehearing is denied.

Appellant argues that “[t]he Decision fails to recognize that claim 8 is eligible subject matter because it recites a data structure used in a method that results in an improvement in computer technology.” Req. Reh’g 2. Appellant argues that “the Board overlooked and misapprehended the relevant holdings of *Enfish*[, *LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016)] and the significance of the claimed improvement.” *Id.*

Appellant argues:

The Decision attempts to distinguish claim 8 from *Enfish* on the ground that *Enfish*'s claims "were directed to improvements in the way computers and networks carry out their basic functioning . . .," quoting from *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1163 (Fed. Cir. 2018).

But this overlooks that the claimed methods employ additional information available from the design of the target enrichment panel used to produce the sequence reads thereby improving computer function. (See specification, page 25, lines 17 to 21). "[T]he computing time of the genomic location tagging may be reduced by about a factor of 10, and tagging to locations that are incompatible with the experimental design, which may otherwise occur to 2-3% of the sequence reads, is avoided." (Id.)

Id. at 2–3.

Appellant also argues that the Decision misinterprets *Enfish* and *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299 (Fed. Cir. 2016), and argues that these cases were not correctly applied to the facts of the present appeal. *Id.* at 3–6.

The Decision, however, acknowledged and addressed Appellant's argument with respect to claim 8 and the reliance of that argument on *Enfish*. See Decision 14–16. While Appellant disagrees with our interpretation of *Enfish* and *McRO*, and our decision as to claim 8 on appeal, a request for rehearing must do more than dispute issues that have already been decided. A "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).

As to Appellant's argument that the method of claim 8 improves computer function because it reduces the computing time for genomic

tagging by a factor of ten, that argument was not made in the Appeal Brief or Reply Brief. Appellant argued only that the generic data structure required by claim 8 is akin to the self-referential table of *Enfish*, not that the generic data structure decreases the computing time required for genomic tagging. *See* Reply Br. 7–8. New arguments are not permitted in a request for rehearing. 37 C.F.R. § 41.52(a)(1).¹

In summary, because Appellant has pointed to no issue of fact or law that we overlooked or misunderstood in the Decision, the Request for Rehearing is denied.

DECISION SUMMARY

Outcome of Decision on Rehearing:

Claims	35 U.S.C. §	Reference(s)/Basis	Denied	Granted
1–20	101	Eligibility	1–20	

Final Outcome of Appeal after Rehearing:

Claims	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–20	101	Eligibility	1–20	

¹ The exceptions noted in 37 C.F.R. § 41.52(a)(1) are not applicable here.

Appeal 2019-004221
Application 14/533,743

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).

REHEARING DENIED