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14/758,654	06/30/2015	Samuel Robinson	VWS-707US	5466
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Wood, Herron & Evans, LLP (Vestas Wind Systems) 441 Vine Street 2700 Carew Tower Cincinnati, OH 45202			PAGE, HANA C	
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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* SAMUEL ROBINSON

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Appeal 2019-004237  
Application 14/758,654  
Technology Center 1700

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Before BEVERLY A. FRANKLIN, LINDA M. GAUDETTE, and  
LILAN REN, *Administrative Patent Judges*.

GAUDETTE, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

The Appellant requests reconsideration of the Board’s Decision<sup>1</sup> affirming the Examiner’s rejection of claims 1–5 under 35 U.S.C. § 103(a) as unpatentable over Frederiksen (US 2010/0304170 A1; published Dec. 2, 2010) in view of Neuleib (US 2002/0046543 A1; published Apr. 25, 2002). Request for Rehearing filed June 24, 2020 (“Req. Reh’g”).

The Appellant contends that the affirmance was based on a misapprehension of Frederiksen’s disclosure. Req. Reh’g 1. More specifically, the Appellant argues that

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<sup>1</sup> Decision on Appeal entered April 24, 2020 (“Dec.”).

the Board's obviousness analysis relied heavily on a single, incomplete passage from Frederiksen, plucked from the specification, taken out of context from the remainder of the disclosure, and incorrectly cited as the reason to combine Frederiksen with the Neuleib reference, which is directed to a ladder. The cited passage reads: "*In this case*, it may be necessary for workers to climb into the blade in order to install mould parts in the interior of the shell members and to carry out the necessary finishing of the blade. Frederiksen, ¶ 0055 (emphasis added).

Req. Reh'g 1–2. The Appellant argues that the Board ignored the phrase “in this case” in the above-quoted sentence from Frederiksen paragraph 55 and, in so doing, “incorrectly inferred from the cited passage a broader meaning than it actually has.” *Id.* at 2 (noting that the Decision omits “in this case” when quoting Frederiksen paragraph 55). According to the Appellant, “Frederiksen . . . makes no reference or suggestion to climb up the inclined surface of the inner walls of a blade mould during the manufacture of the mould itself as claimed in the present application.” *Id.* at 7. Rather, “the cited passage pertains to a narrow circumstance presented within [Frederiksen's] disclosure, that being when a blade is formed and ‘closed’ prior to transport to the erection site.” *Id.* The Appellant argues that, properly interpreted, Frederiksen paragraph 55 does not support the Board's determination that the ordinary artisan would have had a reason to modify Frederiksen to include Neuleib's step system. Req. Reh'g 2–3; *see* Dec. 3.

In rejecting the claims, the Examiner found that “Frederiksen teaches a method of producing a wind turbine blade . . . wherein . . . workers climb into the blade in order to install mold parts into the interior of the shell members and to carry out the necessary finishing of the blade.” Final Office

Action dated May 17, 2018 (“Final”), 3 (citing Frederiksen ¶ 55). The Examiner determined that

[i]t would have been obvious to one of ordinary skill in the art at the time of the invention to use [the] step system of Neuleib to allow workers to climb into the cavity of the mold and supply fiber layers to the inner surface of the mold as desired by Frederickson using an easily operated tool as taught by Neuleib.

*Id.* at 4.

The Board’s affirmance was based on the Examiner’s above-quoted fact finding and reasoning. *See* Dec. 3 (citing Final 3–4). The Board did not rely on newly cited disclosure in Frederickson or rely on fact finding and reasoning relative to Frederiksen’s disclosure that differed from the Examiner’s. *Compare* Dec. 3–5, *with* Final 3–4. In other words, the Appellant had an opportunity in its Appeal Brief to raise the arguments now advanced in its Request for Rehearing, but failed to do so. *Compare* Appeal Br. 5 (acknowledging the Examiner’s finding that “[i]t would have been obvious to one of ordinary skill in the art at the time of the invention to use step system [sic] of Neuleib to allow workers to climb into the cavity of the mold and supply fiber layers to the inner surface of the mold as desired by Frederickson [sic] using an easily operated tool as taught by Neuleib[,]’ Office Action, p. 4”), *with* Appeal Br. 4–11 (arguing that the ordinary artisan would not have modified Frederiksen’s method to include Neuleib’s step system because such modification would have compromised the structural integrity of a blade produced by the method).

37 C.F.R. § 41.52(a)(1) provides that “[a]rguments not raised in the briefs before the Board and evidence not previously relied upon in the brief and any reply brief(s) are not permitted in the request for rehearing.” An argument presented for the first time in a request for rehearing, but not advanced in the appeal brief or appropriately furnished in a reply brief (when one has been submitted), is not properly before the Board because the Examiner was not afforded a timely opportunity to respond and the Board is deprived of any such response that may have been supplied by the Examiner to the belatedly presented new argument. *See In re Kroekel*, 803 F.2d 705, 709 (Fed. Cir. 1986).

Because the Appellant failed to comply with the requirements of 37 C.F.R. § 41.52(a)(1), the Appellant’s Request for Rehearing is denied.

OUTCOME OF DECISION ON REHEARING

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Denied</b>	<b>Granted</b>
1–5	103(a)	Frederiksen, Neuleib	1–5	

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>
1–5	103(a)	Frederiksen, Neuleib	1–5	

DENIED