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15/015,746	02/04/2016	Michael Graham	209.042	6526
30236	7590	10/02/2020	EXAMINER	
Houtteman Law LLC PO Box 370 Merrifield, VA 22116-0370			PRONE, CHRISTOPHER D	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL GRAHAM

Appeal 2019-005329
Application 15/015,746
Technology Center 3700

Before PHILLIP J. KAUFFMAN, TARAL. HUTCHINGS, and
ALYSSA A. FINAMORE, *Administrative Patent Judges*.

FINAMORE, *Administrative Patent Judge*.

DECISION ON REHEARING

STATEMENT OF THE CASE

Pursuant to 37 C.F.R. § 41.52, Appellant filed a Request for Rehearing on July 28, 2020 (“Req. Reh’g”) seeking reconsideration of our Decision on Appeal mailed May 28, 2020 (“Dec.”). We have jurisdiction over the Request for Rehearing under 35 U.S.C. § 6(b). Except for any portion specifically withdrawn on rehearing, this Decision on Rehearing incorporates the Decision on Appeal, including any abbreviations defined therein for citations to the record, in accordance with 37 C.F.R. § 41.52(a)(1).

ANALYSIS

Pursuant to 37 C.F.R. § 41.52(a)(4), Appellant argues that the Decision on Appeal includes undesignated new grounds of rejection, and requests: (1) the Board remand the case to the Examiner to give Appellant a chance to narrow the claims; and (2) the Board inform the Examiner whether the claims, as narrowed, would be allowable. Req. Reh’g 1–2. According to Appellant, the Examiner construes the “plurality of grooves” recited in independent claim 1 as “continuous grooves that travel, uninterrupted, around the circumference of the cylindrical side surface,” whereas the Board more broadly construed the claim term to encompass discontinuous grooves. *Id.* at 2–3 (citing Dec. 7–8).

We appreciate that Appellant may have had several interactions with the Examiner on which Appellant’s understanding of the Examiner’s claim construction is based. *See* Req. Reh’g 2 (“The Examiner construed ‘plurality of grooves’ to be *continuous* grooves that travel, uninterrupted, around the circumference of the cylindrical side surface. Appellant, who has had several interactions with Examiner Prone during this prosecution, is sure of this.”). The record before us on appeal, however, does not support Appellant’s understanding. To the contrary, the record suggests that the Examiner construed the recited “plurality of grooves” to include discontinuous grooves, as the Examiner relies upon Zang’s tines 46A–46F, which do not extend continuously around the circumference of shaft portion 44, to teach the recited “plurality of grooves.” Final Act. 5; Ans. 6–7. Thus, the Board did not provide a new construction of the claim term “plurality of grooves,” but instead made explicit that which is implicit in the Examiner’s rejection.

As our construction of the recited “plurality of grooves” does not differ from that of the Examiner, Appellant has not persuaded us that our affirmance constitutes new grounds of rejection. We, therefore, deny Appellant’s request to modify the outcome of the Decision on Appeal to remand the case to the Examiner. Furthermore, given that the claims do not require continuous grooves, we also deny Appellant’s request for an indication of allowability of claims that are not currently being considered by the Examiner and before us on appeal.

CONCLUSION

Outcome of Decision on Rehearing:

Claim(s) Rejected	35 U.S.C. §	References/Basis	Denied	Granted
1–3, 9–13	103	Graham, Zang	1–3, 9–13	
4	103	Graham, Zang, Rappaport	4	
6, 8	103	Graham, Zang, Zang ’165	6, 8	
7	103	Graham, Zang, Zang ’165, Rappaport	7	
Overall Outcome			1–13	

Final Outcome of Appeal after Rehearing:

Claim(s) Rejected	35 U.S.C. §	References/Basis	Affirmed	Reversed
1–3, 9–13	103	Graham, Zang	1–3, 9–13	
4	103	Graham, Zang, Rappaport	4	
6, 8	103	Graham, Zang, Zang ’165	6, 8	

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7	103	Graham, Zang, Zang '165, Rappaport	7	
Overall Outcome			1-13	

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).

DENIED