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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* KENNETH JAMES MILLER,  
DOUGLAS RAYMOND MARTIN, WILLIAM PAUL PERKINS,  
and STEPHEN LI-CHUN SHEN

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Appeal 2019-005358  
Application 14/628,754  
Technology Center 3600

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Before STEFAN STAICOVICI, WILLIAM A. CAPP, and  
BRANDON J. WARNER, *Administrative Patent Judges*.

CAPP, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

STATEMENT OF THE CASE

Appellant<sup>1</sup> on June 1, 2020, filed a Request for Rehearing (“Request”) in response to our Decision dated March 30, 2020 (“Decision”). In the Decision, we affirmed the Examiner’s rejections of claims 1, 3–9, 11–14, and 18–20 under 35 U.S.C. § 103 as unpatentable over combinations based on Tate (US 2012/0158227 A1, pub. June 21, 2012).

After consideration of Appellant’s Request, we do not modify our Decision.

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<sup>1</sup> We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies Ford Global Technologies, LLC as the applicant and real party in interest. Appeal Br. 2.

### APPELLANT’S ASSERTIONS

Appellant asserts that we failed to properly account for the fact that Tate’s engine may be running during a period of time or distance and, therefore, “does not equate to an expected time duration of electric-only operation.” Request 2.

### ANALYSIS

Requests for Rehearing are limited to matters overlooked or misapprehended by the Board in rendering the original decision. *See* 37 C.F.R. § 41.52. A request for rehearing “‘must state with particularity the points believed to have been misapprehended or overlooked by the Board’” and “‘must specifically recite ‘the points of law or fact which appellant feels were overlooked or misapprehended by the Board.’” *Ex parte Quist*, 95 USPQ2d 1140, 1141 (BPAI 2010) (precedential) (quoting MPEP § 1214.03).

A request for rehearing may not rehash arguments originally made in the briefs. A request for rehearing is not an opportunity to merely express disagreement with a decision. The proper course for an applicant 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.

With respect to the Tate reference, Appellant argues that “as pointed out” in the Reply Brief, the amount of electricity predicted to be consumed over a specified period of time and/or distance is made regardless of whether the vehicle is in electric-only mode or not. Reply Br. 2. Appellant, again, refers to its Reply Brief as previously arguing that:

Tate is concerned with the electricity consumed to travel some distance to a next charge station—not an expected time duration of electric-only operation. An expected time duration of electric-operation would serve no purpose within the context of Tate, and therefore is not suggested by Tate.

*Id.* In reaching our Decision, we considered these arguments from Appellant’s Reply Brief. Appellant does not explain how we “misapprehended” either the facts or law apart from reaching an outcome with which Appellant disagrees. *Id.*

In reaching our Decision, we found that Tate is directed to a system for maximizing the electric-only range of a hybrid vehicle. Decision 9, citing Tate, Abstract, ¶ 13. We also quoted Tate as teaching a system “configured to maximize the electric-only driving range” of the vehicle. Decision 9, quoting Tate ¶ 14. We also noted, approvingly, that the Examiner considers converting statistics from distance into time as obvious and trivial to one of ordinary skill in the art. Decision 8–9, citing Ans. 11.

Tate monitors the state of charge (“SOC”) of a vehicle battery and charges the battery sufficiently to reach a charging station using electric-only operation. Tate ¶¶ 4–5. Tate discloses using electronic computing and storage to manipulate and store vehicle performance values and other operating data. Tate ¶ 21. Such data includes driver behavior, vehicle speed history, HVAC usage history, location history, dates and time of day when the vehicle is operated, odometer readings, and historical fuel consumption. *Id.* ¶¶ 22–24. In our Decision, we found that Tate’s system predicts the amount of electricity that would likely be consumed over a specified period of time. Decision 9, citing Tate ¶ 25.

Rudimentary algebra informs us that if a Tate vehicle traveling at 60 miles per hour needs to reach a charging station located 60 miles away and,

therefore, increases its SOC range to 60 miles, Tate can calculate an SOC duration of one hour. Logic, experience, and common sense informs us that a vehicle operator could benefit from knowing how much time is required to reach a charging station just as much as knowing how much distance must be traveled to get there. With this in mind, we find unpersuasive Appellant's argument that an expected time duration of electric-only operation "would serve no purpose" in Tate. Request 2.

In reaching our Decision, we were not persuaded by Appellant's arguments that the invention of claim 1 amounts to a patentable improvement over the applied art. We remain of similar mind after reviewing Appellant's Request, the Tate reference, and reconsidering our Decision.

In conclusion, Appellant's Request does not persuade us that this panel's Decision overlooked or misapprehended any matter or that we erred in affirming the Examiner's rejection of claims 1, 3-9, 11-14, and 18-20 under 35 U.S.C. § 103.

#### DECISION

Appellant's Request has been granted to the extent that we have reconsidered our Decision in light of the arguments in the Request, but is denied with respect to our making any modification to the Decision. Upon reconsideration, the outcome of our Decision remains unchanged and is summarized in the following table showing the final outcome of the appeal after Rehearing.

CONCLUSION

<b>Claims Rejected</b>	<b>§</b>	<b>Reference(s)/Basis</b>	<b>Aff'd</b>	<b>Rev'd</b>
1, 3-9, 11-14, 18-20	112	Written Description		1, 3-9, 11-14, 18-20
11, 14, 19	112	Indefiniteness		11, 14, 19
1	103	Tate, Saitou	1	
3-5, 8	103	Tate, Saitou, Heap	3-5, 8	
6, 9	103	Tate, Saitou, Heap, Dufford	6, 9	
7	103	Tate, Saitou, Heap, Thai-Tang	7	
11	103	Tate, Saitou, Tsuchikawa	11	
12, 13	103	Tate	12	
14	103	Tate, Tsuchikawa	14	
15	103	Tate, Tsuchikawa, Rosen	15	
18, 20	103	Tate, Heap	18, 20	
19	103	Tate, Heap, Tsuchikawa	19	
<b>Overall Outcome</b>			1, 3-9, 11-14, 18-20	

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

DENIED