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Dinsmore & Shohl LLP 801 Pennsylvania Avenue, N.W. Suite 610 Washington, DC 20004			CAMPBELL, JOSHUA D	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte NABIL NASR and MICHAEL THURSTON

Appeal 2020-003631
Application 13/861,000
Patent 7,925,472 B2
Technology Center 3900

Before ALLEN R. MacDONALD, JOHN A. JEFFERY, and
MICHAEL J. ENGLE, *Administrative Patent Judges*.

ENGLE, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Appellant requested rehearing of the decision entered June 22, 2020 (“Decision”), which affirmed the Examiner’s rejections of claims 1–10, 12–26, 28–42, 44–73, and 75 under 35 U.S.C. § 251 for new matter and § 112, first paragraph for lack of written description. *See* 37 C.F.R. § 41.52(a). We have reconsidered our Decision in light of Appellant’s request, and we are not persuaded that our Decision misapprehended or overlooked any point raised by Appellant. Therefore, the request is denied.

DISCUSSION

New Matter (§ 251)

Reissue claim 1 is representative and recites:

a plurality of probabilities relating to a plurality of characteristics . . . of the at least one of the components completing a second operational duration relating to one of the characteristics *after* completing a first operational duration relating to another of the characteristics based on each operational duration of each component having an associated probability of completion.

The Decision held that the claim does not require merely “a probability of completion” in which “the second duration is longer than the first duration,” but rather required “a probability of completing ‘after completing’ the other duration.” Decision 5–6. For example, suppose a rechargeable battery has a 25% chance of being a dud that can never hold a charge even on its first day and a 75% chance of lasting exactly one year. The probability of a battery lasting six months is 75%. But the probability of the battery lasting six months *after* the battery is still chargeable one week later is 100%. Those are different probabilities, and based on the limited examples provided in the Specification, we determined the claims here are analogous to the latter.

In the Request, Appellant argues that “the claim language does not require” “a determination of the probability that the second operational duration will complete after completion of the first operational duration” but “is instead directed towards the probability (Y%) of completion of the second operational duration (relating to a characteristic), in which the second operational duration completes *after* completion of the first operational

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duration (relating to a different characteristic) having a different (X%) probability of completion.” Request 4.

By regulation, “[t]he 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). A request for rehearing is not an opportunity to reargue points merely because Appellant does not agree with the result of the Board’s Decision. Here, the Decision expressly rejected Appellant’s construction that the claims merely required “the second duration is longer than the first duration.” Decision 5–6. And under a proper construction, the example in the Specification relied upon by Appellant (7:36–49) teaches two independent probabilities for two characteristics and two durations, but fails to teach the claimed “after” limitation, as we held in our Decision.

Therefore, Appellant fails to persuade us that we misapprehended or overlooked any point in affirming the Examiner’s rejection under § 251 for new matter.

Written Description
(§ 112, first paragraph)

Appellant makes the same arguments for written description under § 112, first paragraph as for new matter under § 251 and as the Appeal Brief. *See* Request 4–5. We are not persuaded for the same reasons.

CONCLUSION

The following table summarizes the outcome of the request for rehearing:

Claims Rejected	35 U.S.C. §	Basis	Denied	Granted
1-10, 12-26, 28-42, 44-73, 75	§ 251	New matter in reissue	1-10, 12-26, 28-42, 44-73, 75	
1-10, 12-26, 28-42, 44-73, 75	§ 112, 1st para.	Written description	1-10, 12-26, 28-42, 44-73, 75	
Overall Outcome			1-10, 12-26, 28-42, 44-73, 75	

Final Outcome of Appeal after Rehearing:

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
1-10, 12-26, 28-42, 44-73, 75	§ 251	New matter in reissue	1-10, 12-26, 28-42, 44-73, 75	
1-10, 12-26, 28-42, 44-73, 75	§ 112, 1st para.	Written description	1-10, 12-26, 28-42, 44-73, 75	
75	§ 112, 2nd para.	Definiteness		75
Overall Outcome			1-10, 12-26, 28-42, 44-73, 75	

DENIED