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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
95/001,555	02/23/2011	6418752	6017-04	7309

15933 7590 02/26/2019

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EXAMINER
SPAHN, GAY

ART UNIT	PAPER NUMBER
3993	

MAIL DATE	DELIVERY MODE
02/26/2019	PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AIRBUS S.A.S.
Requester and Respondent

v.

FIREPASS CORPORATION
Patent Owner and Appellant

Appeal 2018-004837
Reexamination Control No. 95/001,555
Patent US 6,418,752 B2
Technology Center 3900

Before JOHN C. KERINS, JEFFREY B. ROBERTSON, and DANIEL S. SONG, *Administrative Patent Judges*.

SONG, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

The Requester requests reconsideration (hereinafter "Req.") under 37 C.F.R. § 41.79 of our Decision mailed September 4, 2018 (hereinafter "the '4837 Decision) reversing the Examiner's Final rejection of the appealed claims. The Requester asserts that in the '4837 Decision, we misapprehended or overlooked various issues, and requests the modification thereof. We grant the Request to the extent that we consider the Requester's arguments *infra*, but DENY the request to modify the '4837 Decision.

ANALYSIS

In the '4837 Decision, the Board reversed the Examiner's decision to reject claims 91–94 as being obvious based on US Patent 5,799,652 to Kotliar (Sept. 1, 1998), in combination with other secondary references. '4837 Decision 14. The Board agreed with the Patent Owner that a proper rejection has not been set forth by the Examiner because Kotliar is not analogous art as it is directed to a "Hypoxic Room System and Equipment for Hypoxic Training and Therapy at Standard Atmospheric Pressure" (Kotliar, Title), while the claimed invention is directed to "Hypoxic Fire Prevention and Fire Suppression System and Breathable Fire Extinguishing Composition for Human Occupied Environments" (Title). *Id.* at 7.

In the Request for Rehearing, the Requester argues that the Patent Owner has waived its principal argument that Kotliar is non-analogous because it failed to present this argument to the Examiner previously during the reexamination, and only raised the argument during the present appeal after the appointment of a new counsel. Req. Rehr'g 15. The Requester asserts that the Board overlooked the Patent Owner's waiver in the Board's '4837 Decision. Req. Rehr'g 15–16.

Conversely, the Patent Owner argues that some of the issues raised by the Requester have already been addressed by the Board in the '4837 Decision, and that the remaining issues raised have been waived because they are newly raised in the Request for Rehearing. PO Comm. 2–3. The Patent Owner also argues that the Requester waived any objections as to the timeliness of the Patent Owner's non-analogous argument because the Requester failed to raise it earlier. PO Comm. 9.

The present appeal stems from the Federal Circuit's decision vacating and remanding the Board's Decision in Appeal 2013-008166 as to the Requester's Cross-Appeal. '4837 Decision 2–3. Upon receipt of the court's decision, the Board remanded the reexamination back to the Examiner. Order Remanding to Examiner (Aug. 25, 2015). During the subsequent reexamination after the Board's remand, the Examiner adopted specific rejections proposed by the Requester as to claims 91–94, which are now the subject of present Appeal No. 2018-004837. The Patent Owner, as the appellant, appealed the Examiner's rejection to the Board, which then reversed the rejection. '4837 Decision 14.

The Requester appears to be correct that the Patent Owner's principal argument to the effect that Kotliar is non-analogous art was not explicitly presented to the Examiner during this, or the prior appeal, but instead, was raised in its Appeal Brief.[1] However, it is not apparent how submission of

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[1] We note that the Patent Owner did argue that:

> Kotliar '652 describes providing hypoxic air inside a training or therapy room. Kotliar '652, 2:5-10. One of ordinary skill in the art would not

such a previously unpresented argument is precluded by our rules under 37 C.F.R. § 41.67, and the Requester points to no authority holding that waiver applies in such a situation. In that regard, we observe that the Examiner actually had an opportunity to address this argument in the Examiner's Answer, but did not do so.

In contrast, the Requester's Respondent Brief filed in response to the Patent Owner's Appeal Brief did address the Patent Owner's non-analogous argument, but did so based on an erroneous understanding of *KSR*, which the Board rejected. '4837 Decision 8–11. The Requester's Respondent Brief did not mention, much less object to, the fact that the Appellant's principal non-analogous art argument was not previously presented to the Examiner. The prior Appeal 2013-008166 does not support the Requester either, in that the Examiner declined to adopt the proposed rejections of the present claims, determining that the proposed rejections failed to raise a substantial new question of patentability.

Accordingly, in view of the above considerations, we decline to find waiver with respect to the Patent Owner's arguments submitted in its Appeal Brief.

> understand Kotliar '652's discussion of a hypoxic training or therapy room to teach providing a hypoxic environment . . . that requires a fire safe environment. *See* June 20, 2011 Decl. of John Brooks, ¶ 13.

Response to Action Closing Prosecution 16 (filed May 27, 2016).

The Patent Owner is also correct that in the Request for Rehearing, the Requester has raised various new points and issues. PO Comm. 2–3. In particular, the Requester's certain arguments directed to whether Kotliar is analogous, and relevance of *KSR* have been addressed. '4837 Decision 7–11. The remaining arguments in support of the Examiner's rejection (including other bases for finding that Kotliar is analogous, alleged admission by the Patent Owner, original prosecution, Board's prior affirmance, and expanded interpretation of *KSR*) are all new points and issues that the Requester raises for the first time in its Request for Rehearing.

However, the pertinent rules are clear that "[t]he request for rehearing must state with particularity the points believed to have been misapprehended or overlooked in rendering the Board's opinion reflecting its decision. Arguments not raised in the briefs before the Board and evidence not previously relied upon in the briefs are not permitted in the request." 37 C.F.R. § 41.79(b)(1). While the Requester states in its Request for Rehearing (Req. Rehr'g 3–5) that the Board misapprehended or overlooked various points in the '4837 Decision, it is not apparent how the Board misapprehended or overlooked these new points, arguments, and evidence that were not previously relied upon in the briefs. Indeed, the Request for Rehearing does not point us to where the various points, arguments, and evidence now relied upon were previously relied upon in its briefs so as to be brought to the attention of the Board.

Therefore, the Request for Rehearing is improper and hereby:

DENIED

Nevertheless, we are mindful of the "long and tortured procedural history" of the present *inter partes* reexamination, which arose from a request filed eight years ago on February 23, 2011 by the Requester. PO Comm. 1–2; *see also* Rehr'g Req. 1–2; '4837 Decision 2. In that regard, we are also mindful that "[a]ll *inter partes* reexamination proceedings, including any appeals . . . will be conducted with special dispatch within the Office." 37 C.F.R. § 1.937(a). As noted, the present appeal stems from the Federal Circuit's decision vacating and remanding the Board's Decision in Appeal 2013-008166 as to the Requester's Cross-Appeal, the court disagreeing with the Board's understanding of the statute and the rules governing *inter partes* reexaminations, and cross-appeals in particular. *Airbus S.A.S. v. Firepass Corp.*, 793 F.3d 1376, 1379–80 (Fed. Cir. 2015).

Therefore, in the event that there is an appeal of the present decision to the Federal Circuit, and the court determines that we improperly denied the Request for Rehearing as belatedly relying on new points, arguments, and evidence in violation of the rules, we address the substantive arguments of the Requester below for the purpose of having a more complete record for appeal and to facilitate ultimate disposition by the court.

Issue 1: Field of Endeavor

The Requester initially argues that the Board did not employ a proper analysis in finding that Kotliar is not within the field of endeavor of the '752 Patent. Req. Rehr'g 5–6. The Requester maintains that Kotliar is within the same field of endeavor of the '752 Patent because "the field of endeavor is not fire prevention and suppression generally" (Req. Rehr'g 7), but instead:

> (1) the specification and claims of the '752 patent demonstrate that the field of endeavor of the '752 patent is the production of breathable hypoxic air that is fire-preventive and fire-suppressive; and (2) Kotliar is within this field because it discloses embodiments with "essentially the same function and structure," including, in particular, a nitrogen generator that produces breathable hypoxic air that one of ordinary skill would have known is fire-preventive and fire-suppressive.

Req. Rehr'g 6; *see also id.* at 7.

The Requester cites to numerous passages in the '752 Patent in support of its argument. Req. Rehr'g 6. According to the Requester, "[t]his knowledge of one of ordinary skill [that breathable hypoxic air is fire-preventive and fire-suppressive] is demonstrated by several undisputed findings by the [E]xaminer" as to four references that "teach that a breathable hypoxic environment is fire-preventive and fire-suppressive." Req. Rehr'g 8, 9.

This issue of whether Kotliar is within the same field of endeavor has been addressed, and the Board has considered the scope of disclosure of the '752 Patent. '4837 Decision 7–8. Indeed, each of the passages of the '752 Patent noted by the Requester in its Request for Rehearing focuses on a system that prevents or suppresses fire, thereby undermining the Requester's own argument.

We also find unpersuasive, the Requester's assertion that Kotliar is within the same field of endeavor because it includes "a nitrogen generator that produces breathable hypoxic air that one of ordinary skill would have known is fire-preventive and fire-suppressive." Req. Rehr'g 6. The Requester, while referring to a person of ordinary skill throughout the Request for Rehearing, omits that such a person is of ordinary skill *in an art*.

As is clear from the evidence, and as already discussed in the '4837 Decision, the field of endeavor, that is, the art in which the hypothetical person would have been of ordinary skill, is that of fire prevention and fire suppression. The rejection proposed by the Requester and adopted by the Examiner does not establish that a person of ordinary skill in the field of hypoxic training or therapy disclosed in Kotliar has the asserted knowledge pertaining to fire prevention and suppression.

The Requester's position is that the field of endeavor is "the production of breathable hypoxic air that is fire-preventive and fire-suppressive." Req. Rehr'g 7. We do not understand where the record supports that the rejections proposed and adopted are premised on, or adequately establishes the existence of, such a field of endeavor. The actual rejection that was proposed and adopted, which is the subject of the present appeal, is that a person of ordinary skill in the art would begin with the hypoxic training room of Kotliar, and apply the teachings regarding a filter and reduced humidity disclosed in AFWAL 2060 ('4837 Decision 6; RAN 2–3[2]).

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[2] The principal rejection is:

> 2. **Ground #34** The proposed rejection of claims 91-93 as being obvious over the Kotliar '652 Patent in view of AFWAL 2060 is adopted.
>
> Kotliar '652 patent discloses a "nitrogen generator." Specifically, Kotliar '652 patent discloses an array of different permeable membrane and molecular sieve units, including various types of materials that can be used. See col. 6, line 8 - col. 7, line 32. Kotliar '652 patent explains the operation of a membrane unit:

"The inlet of the separation unit receives compressed air from conduit 52, and separates the air across the membrane and delivers the oxygen-depleted gas through the outlet to conduit 55." See col. 6, lines 11-13. Kotliar '652 patent also provides an extensive disclosure of the operation of a "molecular sieve" unit. See col. 6, line 56 - col. 7, line 32. Kotliar '652 patent also discloses "computer control for regulating the oxygen content in said internal environment." Specifically, Kotliar '652 patent states, "the hypoxic room must be equipped with an oxygen-content sensor 22 and an oxygen-depletion alarm 21 ... The oxygen-content sensor constantly measures the oxygen content in the room and transmits the data to a computerized control unit (not shown) which controls the performance of the hypoxicator 45 to achieve and maintain desired air parameters in accordance to training or therapy protocol." See col. 4, lines 9-19.

The claimed invention differs only in the inclusion of a "filter" and an intake gas mixture with "reduced humidity".

AFWAL 2060 discloses a nitrogen generator with a "filter" and a "water extractor," which de-humidifies incoming air prior to separation. Figure 3 demonstrates these elements. AFWAL 2060 states, "Referring to Figure 3, the inlet air (simulated air cycle machine outlet) first flows through a water extractor which is required to remove liquid water under certain high dew point conditions. Next is a particulate filter to prevent clogging of the ASM's." AFWAL 2060, Vol. III, Part I, pg. 5; see also Vol. III, Part III, pgs. 24-27 (Figs. 4, 5).

It would have been obvious to one of ordinary skill in the art to have included a filter and dehumidifier in the method and system of Kotliar '652 in view of the teaching of AFWAL 2060 so as to dry and clean the air within the enclosed space.

RAN 2–3 (mailed March 31, 2017).

The Requester's argument changes the actual rejection to be initially based on some knowledge of "one of ordinary skill" in a purported field of endeavor of "production of breathable hypoxic air that is fire-preventive and fire-suppressive" so as to assert that Kotliar is within the same field of endeavor. That is not the rejection proposed, adopted, or reviewed on appeal. In that regard, this rephrasing or restructuring of the rejection places the solution first, and equates that to the field of endeavor and/or derives the field of endeavor based on hindsight reasoning.

The Requester also argues that "Kotliar is within this field of endeavor because it discloses embodiments that have the 'essentially the same function and structure' as the embodiments of the '752 [P]atent, including the system recited in claim 91." Req. Rehr'g 7 (citing *In re Deminski*, 796 F.2d 436, 442 (Fed. Cir. 1986) ("cited pumps and compressors have essentially the same function and structure: they move fluids by means of a double-acting piston, a cylinder, and valves.[] Consequently, the field of endeavor is the same for an inventor of either a pump or a compressor of the double-acting piston type.")). However, in our view, *Deminski* is distinguishable from the present case in that, in *Deminski*, the similarity in the function of the references applied in the rejection was clear, i.e., pumps and compressors, by their very nature and definition, are devices that move fluids. In contrast, the presently applied rejection does not establish that the function of a room for training athletes and therapy is similar to the function of a room that prevents/suppresses fire, or that such rooms innately require the function of generating a hypoxic air that is also fire-preventive or fire-suppressive, as well as being breathable.

The Requester also cites to other cases for support. Req. Rehr'g 5–6 (citing *In re Bigio*, 381 F.3d 1320, 1326 (Fed. Cir. 2004); *In re Ellis*, 476 F.2d 1370 (C.C.P.A. 1973). In *Bigio*, the majority of the court agreed with the Board that the invention related to the "field of hand-held brushes having a handle segment and a bristle substrate segment." 381 F.3d at 1325. The majority of the court found that because of the structural similarities between a toothbrush and a hairbrush, there was substantial evidence to support the Board's finding that a toothbrush was within the same field of endeavor as hairbrushes because a toothbrush can function to brush facial hair. *Id.* However, the functional similarities between a hand-held toothbrush and a facial hairbrush are, in our view, much closer than any functional similarity between an athletic training/therapy room and a fire preventive/suppressive room.

Finally, *Ellis* appears to be less relevant. In *Ellis*, the invention was directed to a floor grating, and the court found that "the structural similarities and the functional overlap between pedestrian gratings and shoe scrapers of type shown by Trixner are readily apparent. We conclude that, at the very least, the arts to which Schulz and Trixner patents belong are *reasonably pertinent* to the art with which appellant's invention deals." 476 F2.d. at 1372. Accordingly, *Ellis* appears to have relied principally on the second prong of the test for analogousness to conclude that Trixner was analogous art, whereas Requester's arguments citing this decision are directed to the first prong.

The Requester also cites *Randall Mfg. v. Rea*, 733 F.3d 1355 (Fed. Cir. 2013), in asserting that the Board erred in not considering four references not relied upon in the pertinent rejections of claims 91–94. As

noted, the Requester asserts that these four references establish that "one of ordinary skill would have known that [] breathable hypoxic air is fire-preventive and fire-suppressive." Req. Rehr'g 8, 9. However, *Randall* is distinguishable in that there was no dispute or issue as to whether the main reference applied was in the same field of endeavor (i.e., bulkhead stowage), or whether the various references not relied on were within the same field of endeavor or reasonably pertinent to a person of ordinary skill in that art. Such is not the case here, and the Requester's assertions as to some "one of ordinary skill" is unpersuasive as discussed above.[3]

We agree with the Patent Owner that the "Requester now offers a new analysis of how it wished it had made its initial rejection seven years, two appeals, one trip to the Federal Circuit and countless amendments and arguments ago. However, the actual rejection on appeal is what must be evaluated." PO Comm. 7. As already explained,

> this is an *inter partes* proceeding, and the rejection at issue was proposed by the Requester, and adopted by the Examiner. RAN 2. Under such circumstances, we agree with Patent Owner that "[t]he issue before the Board [] is the sufficiency of the rejections found in the RAN" (PO Reb. Br. 2), and we decline to determine obviousness of claim 91 based in part on references not cited or applied in the proposed rejection, and consequently, not fully addressed by the Examiner or the Patent Owner as to their relevancy, or lack thereof, as to claim 91.

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[3] We further note that subsequent to the remand by the court in *Randall*, the Board entered a new ground of rejection specifically relying on the pertinent references previously not relied on to reject the claims. *See* Decision After Remand, Appeal 2012-005371, pgs. 15–16 (mailed August 8, 2014).

'4837 Decision 12.

In view of the above, we maintain the finding that Kotliar is not within the same field of endeavor as the '752 Patent, and accordingly, the Examiner has not set forth an adequate *prima facie* case of obviousness.

Issue 2: Reasonably Pertinent to Problem Addressed

The Requester also argues that under the second prong of the analogous art test, Kotliar is reasonably pertinent to the problem addressed by the '752 Patent. Req. Rehr'g 10–11. Specifically, the Requester argues that the '752 Patent addresses three problems to which Kotliar is reasonably pertinent. In addition to the general problem of fire prevention and suppression (Req. Rehr'g 11[4]), the Requester asserts that the '752 Patent also addresses the problem of "(a) producing breathable hypoxic air that is fire-preventive and fire-suppressive; and (b) what oxygen depletion equipment to use to produce breathable hypoxic air that is fire-preventive and fire-suppressive." Req. Rehr'g 12–13. In that regard, the Requester argues that "[o]ne of ordinary skill, seeking to solve either or both of these problems, and knowing that breathable hypoxic air is fire-preventive and fire-suppressive, would have considered prior art that discloses oxygen depletion equipment that produces breathable hypoxic air to be reasonably

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[4] The Requester characterizes the '4837 Decision as stating that inherency is irrelevant to obviousness. Req. Rehr'g. 11. However, the Board made no such finding, but merely highlighted the fact that the rejections at issue are based on obviousness, and that it is aware that under anticipation, analogousness of a reference is immaterial. '4837 Decision 13 fn3.

pertinent to these problems," and further points to numerous passages in the '752 Patent for support. Req. Rehr'g 12–13.

These arguments of the Requester are essentially similar to those addressed above in that they are not based on the actual rejection applied, and are principally based on hindsight that begins with the inventor's solution to the problem confronting the inventor. The actual rejection applied by the Examiner as reproduced above begins with "Kotliar '652 patent discloses a 'nitrogen generator,'" and proceeds to find that the nitrogen generator discloses various limitations of claim 91. RAN 2–3. However, it is unclear upon what basis the Examiner begins the rejection analysis with a "nitrogen generator." Without the hindsight benefit of the Patent Owner's disclosure and solution, Requestor fails to show how a "nitrogen generator" is reasonably pertinent to the problem of fire prevention and fire suppression. As explained,

> we agree with the Patent Owner that "[t]he claimed invention, however, is not a nitrogen generator. It is a system for preventing and suppressing fires in a human occupied space, which system *includes* a nitrogen generator." App. Br. 13; *see also* PO Reb. Br. 4. In asserting that the problem addressed by the '752 Patent is "the nature of the device to use for producing a reduced oxygen gas for transmission into the enclosure," the Requester couches the problem in the context of the implemented solution for the actual problem confronting the inventor (namely fire suppression/prevention), which is improper, and, at its core, is derived from impermissible hindsight.

'4837 Decision 13–14.

As already explained, "the rejection at hand does not provide or explain the requisite correlation between the fire prevention/suppression problem and

Kotliar, which pertains to human therapy, wellness, and physical training." '4837 Decision 8. *See In re Natural Alternatives, LLC*, 659 Fed.Appx. 608, 614 (Fed. Cir. 2016) ("the examiner and the Board both sought to rely on Daly without explaining how the objective of balancing and stabilizing tires using tire ballast would be reasonably pertinent to the objective of deicing and preventing ice formation on road surfaces.").

The Requester's assertion of additional problems being addressed is similarly unpersuasive and appears to be contrived based on hindsight. In that regard, as to the portions of the '752 Patent cited by the Requester, we agree with the Patent Owner that "the passages cited by Requester clearly couch their explanation of these Objects and Description in the context of explaining the 'invention', i.e., the ***solution*** to the problem of creating an improved fire preventive/suppressive environment. They do not support the conclusion that they state the ***problem*** that the inventor attempted to solve." PO Comm. 8. In summary, we fail to see how Kotliar is pertinent *to the problem* being confronted by the inventor as required under the second prong of the analogous art analysis. In our view, the Requester's analysis as to what is reasonably pertinent begins with the inventor's solution in order to assert that Kotliar is analogous art, an analysis which is fundamentally based on improper hindsight reasoning.

Issue 3: Admission

The Requester argues that "the inventor admitted that Kotliar is pertinent prior art in the '752 patent specification, which precludes Patent Owner from arguing that Kotliar is not analogous art in this appeal." Rehr'g Req. 13–14 (citing *In re Schreiber*, 128 F.3d 1473, 1479 (Fed. Cir. 1997)

("we note that Schreiber acknowledges in the specification that the prior art pertinent to his invention includes patents relating to dispensing fluids.")).

However, we agree with the Patent Owner that the inventor's statement that Kotliar is "related in part" to the invention of the '752 Patent is not dispositive because it "does not constitute an admission that Kotliar falls in an art analogous to that of the '752 Patent as would be understood by one of ***ordinary*** skill in the art of fire prevention and suppression." PO Comm. 9–10. While Kotliar may be considered by the inventor to be related to the solution devised by the inventor, that does not mean that the Patent Owner admitted that Kotliar is analogous art.

The Requester also relies on dicta in *Schreiber*. 128 F.3d at 1479 (declining to consider the argument that secondary reference is non-analogous art, and stating "[e]ven if we were to consider that argument . . ."). In addition, while the nature of Schreiber's acknowledgment in the specification was sufficient for the court to have concluded that Schreiber "acknowledge[d] in the specification that the prior art pertinent to his invention includes patents relating to dispensing fluids" (*id.*), it is not entirely clear what Schreiber actually acknowledged in its specification. Accordingly, we do not view *Schreiber* to be dispositive.

Issue 4: Original Prosecution

The Requester also argues that "the [E]xaminer found that Kotliar is pertinent prior art during the original prosecution, [which] the applicant never disputed." Req. Rehr'g 14. However, as pointed out by the Requester itself, the Examiner stated that Kotliar was "not relied upon." Req. Rehr'g 14. Accordingly, we agree with the Patent Owner that "[s]ince Kotliar was

not applied during the original prosecution, the applicant had no reason to say anything about it." PO Comm. 10–11.

Issue 5: Board's Prior Affirmance

The Requester argues that "[w]hen the Board affirmed the obviousness rejections of claims 45-50 based on Kotliar in the first appeal, the Board implicitly found that Kotliar is analogous art to the '752 patent; otherwise, the Board would not have affirmed the rejections." Req. Rehr'g 15. The Requester's reads too much into the Board's earlier decision, and overlooks the fact that the Board decision is based on, and relies on, the arguments submitted by the parties. *See* 37 C.F.R. § 41.67(c)(1)(vii) ("Any arguments or authorities not included in the brief permitted under this section or §§ 41.68 and 41.71 will be refused consideration by the Board, unless good cause is shown."); *see also In re Jung*, 637 F.3d 1356, 1365 (Fed. Cir. 2011) ("it has long been the Board's practice to require an applicant to identify the alleged error in the examiner's rejections"); *Ex Parte Frye*, 94 USPQ2d 1072, 1075–76 (BPAI 2010, precedential)("The panel then reviews the obviousness rejection for error based upon the issues identified by appellant, and in light of the arguments and evidence produced thereon."). The Requester's assertion of an implicit finding as to Kotliar is not well founded.

Issue 6: Waiver

The Requester argues that the Patent Owner waived its argument that Kotliar is non-analogous because it failed to present this argument

previously. Req. Rehr'g 15. This argument has already been addressed *supra*. The Requester also requests that if the Board does not find waiver, "it should withdraw its reversal of the rejections and remand to the [E]xaminer so that the parties and the [E]xaminer can address this new analogous art argument for the first time." Req. Rehr'g 16. However, as discussed *supra*, the Examiner, in fact, did have the opportunity to address such arguments in the Examiner's Answer. Moreover, the Requester did address the non-analogous argument in its Respondent Brief. Under such circumstances, we decline to remand the case to the Examiner.

Issue 7: Expansion of *KSR*

The Requester argues that "the principles that govern whether one of ordinary skill would combine prior art set forth in *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398 (2007), should apply to the closely related issue of whether one of ordinary skill would find prior art to be pertinent." Req. Rehr'g 5, 16–18. The Requester's prior arguments based on *KSR* have already been addressed. '4837 Decision 8–11. We further view the Requester's argument as urging us to expand the scope of *KSR*'s holding, and we decline to do so.

In view of the above, we DENY the Request to modify our original Decision.

DENIED

Appeal 2018-004837
Reexamination Control No. 95/001,555
Patent US 6,418,752 B2

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Notice of Appeal, including Exhibits A and B, is being served on counsel for Patent Owner-Appellee Firepass Corporation via First Class Mail at the following address on the date indicated below:

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Additionally, the undersigned hereby certifies that a copy of the foregoing Notice of Appeal, including Exhibits A and B, is being served on the Director of the U.S. Patent and Trademark Office via First Class Mail at the following address on the date indicated below:

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