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EXAMINER	
ENGLISH, PETER C	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

PANDUIT CORPORATION
Requester and Cross-Appellant

v.

Patent of ADC TELECOMMUNICATIONS
Patent Owner and Respondent

Appeal 2011-003296
Reexamination Control 95/000,413
Patent 7,167,625 B2
Technology Center 3900

Before RICHARD E. SCHAFER, ROMULO H. DELMENDO, and RICHARD M. LEBOVITZ, *Administrative Patent Judges*.

LEBOVITZ, *Administrative Patent Judge*.

DECISION ON REHEARING

Panduit, who is the Requester and Cross-Appellant, requests rehearing pursuant to 37 C.F.R. § 41.52 ("Req. Reh'g") of the Decision mailed June 22, 2011 ("Dec.") in which we affirmed the Examiner's final decision

involving the patentability of claims in U.S. Patent No. 7,167,625 B2, which issued January 23, 2007. ADC is the Patent Owner. Panduit makes the following arguments in Sections II-III of the request.

II. *Allowed Claim 9 only recites features that the Board has already determined to be unpatentable*

III. *The Only Features of claims 10 and 12 that the Board found lacking in the prior art are clearly disclosed by Long*

Panduit contends that we erred in not reversing the Examiner's decision not to adopt the rejections of claims 9, 10, and 12 because we affirmed the Examiner's decision to reject claims in the related reexaminations of US 6,597,854 (Reexamination Control 95/000,411; Appeal 2011-003896) and US 6,868,220 B2 (Reexamination Control 95/000,412; Appeal 2011-003295) having the same limitations.

In our original Decision, we concluded that we did not have jurisdiction over the cross-appeal by Panduit of claims 9, 10, and because Panduit did not propose a rejection of these claims in a timely manner (Dec. 23-35). Although ADC added the claims by amendment on March 12, 2009, Panduit did not expressly propose a rejection of these claims in its subsequent reply (Dec. 23-24). Section 1.947 of 37 C.F.R. permits such a response. The Examiner did not reject the claims. Nor did the Examiner include these claims in the statement of the non-adopted rejections in the Right of Appeal Notice (Dec. 323) because no rejection of them had been proposed. Because this was procedural issue involving the Examiner's

actions, we noted that Panduit's remedy was by way of a timely-filed petition (Dec. 25).

Panduit contends that "[p]rocedural technicalities – if present – should never trump . . . [the] most basic duty" [of the Board's "obligation to the public to ensure that parties who are undeserving of a limited right to exclude do not unfairly obtain such a right."] (Req. Reh'g 2). However, the parties who appear before the agency are subject to the rules of practice. . Panduit was not denied the opportunity to timely propose the rejections. Panduit was also not denied the opportunity to pursue a remedy by filing a petition to cure the Examiner's action. Panduit apparently chose not to seek the remedies available to it under the rules. To the extent that the Requester asks us to enter a new ground of rejection at this late stage of the proceeding, which must be conducted with "special dispatch," we decline to examine the record on our own to determine whether a new ground of rejection is appropriate. 37 C.F.R. § 41.77(b) provides that the Board "may" enter a new ground of rejection in those situations where it has "knowledge" that such a ground is warranted.

REHEARING DENIED

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