

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIFECORE FITNESS, LLC d/b/a ASSAULT FITNESS,
Petitioner,

v.

WOODWAY USA, INC.,
Patent Owner.

IPR2023-00836
Patent 9,039,580 B1

Before MEREDITH C. PETRAVICK, NEIL T. POWELL, and
FREDERICK C. LANEY, *Administrative Patent Judges*.

PETRAVICK, *Administrative Patent Judge*.

DECISION

Denying Petitioner's Request for Rehearing of Final Written Decision
37 C.F.R. § 42.71(d)(2)

INTRODUCTION

LifeCore Fitness, LLC d/b/a Assault Fitness (“Petitioner”) timely filed a Request for Rehearing (Paper 47, “Request” or “Req. Reh’g”) under 37 C.F.R. § 42.71(d) on November 21, 2024. Petitioner’s Request for Rehearing seeks reconsideration of our Final Written Decision (Paper 44, “Decision” or “Dec.”) entered on October 22, 2024. Subsequently, on December 23, 2024, Petitioner filed a Notice of Appeal (Paper 49) to the U.S. Court of Appeals for the Federal Circuit (“the Federal Circuit”) from the Decision, and on January 6, 2025, Woodway USA, Inc. (“Patent Owner”) filed a Notice of Cross-Appeal (Paper 50) to the Federal Circuit from the Decision.

On March 7, 2025, the Federal Circuit ordered a limited remand of the case to the Board to allow the Board to decide Petitioner’s pending Request for Rehearing in this proceeding. *See* Paper 52.

In our Decision, we determined that Petitioner had shown by a preponderance of the evidence that claims 1–12, 14, and 18 of U.S. Patent No. 9,039,580 B1 (Ex. 1001, “the ’580 patent”) are unpatentable under 35 U.S.C. § 103 as being obvious over prior art and had not shown such for claims 15 and 25. Dec. 58–59. Petitioner’s Request is limited to the portion of our Final Written Decision that found Petitioner failed to show by a preponderance of the evidence that claim 25 is unpatentable. Req. Reh’g 1–13.

For the reasons detailed in our Decision and below, we do not find the Request persuasive. Petitioner’s Request is *denied*.

STANDARD

A party requesting rehearing bears the burden of showing that a decision should be modified. 37 C.F.R. § 42.71(d). The party must identify all matters it believes the Board misapprehended or overlooked, and the place where each matter was addressed previously in a motion, an opposition, or a reply. *Id.* A request for rehearing is not an opportunity to present new arguments or evidence or merely to disagree with the panel's assessment of the arguments or weighing of the evidence.

When rehearing a decision, we review the decision for an abuse of discretion. *See generally* 37 C.F.R. § 42.71(b)–(d). An abuse of discretion occurs when a “decision was based on an erroneous conclusion of law or clearly erroneous factual findings, or . . . a clear error of judgment.” *PPG Indus. Inc. v. Celanese Polymer Specialties Co.*, 840 F.2d 1565, 1567 (Fed. Cir. 1988) (citations omitted).

DISCUSSION

Claim 25 of the '580 patent is reproduced below.

25. A method, comprising:

providing a manually powered treadmill, the manually powered treadmill having a frame with a front end and rear end;

providing a first bearing rail and a second bearing rail, the first and second bearing rails each comprising a plurality of bearings and extending longitudinally on the frame, *wherein the first and second bearing rails define a curved top profile*;

disposing a running belt on the plurality of bearings of the first bearing rail and the second bearing rail such that the running belt follows a top curved running surface corresponding to the curved top profile of the first and second bearing rails;

permitting movement of the running belt in a first direction; and
substantially preventing movement of the running belt in a
second direction opposite the first direction.

Ex. 1001, 36:1–18 (emphasis added).

In the Request for Rehearing, Petitioner:

A. asserts that we misapprehended claim 25 to implicitly construe the phrase “wherein the first and second bearing rails define a curved top profile” to exclude linear bearing rails (Req. Reh’g 1–7); and

B. asserts that we misapprehended claim 25 to implicitly construe the phrase “disposing a running belt on the plurality of bearings” to require the running belt to be positioned vertically above the plurality of bearings (Req. Reh’g 7–13).

We address these arguments, in turn.

A.

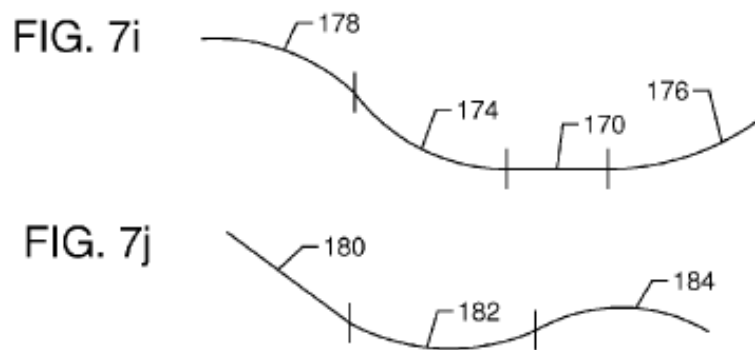
Claim 25 recites “wherein the first and second bearing rails define a curved top profile.” Ex. 1001, 36:8–9. At the trial, the parties disputed on whether Chickering¹ discloses the claimed bearing rails defining a curved top profile as required by claim 25. *See* Dec. 31 (citing Pet. 31–32; PO Resp. 13–16). In the Decision,² we found that “Chickering discloses that the

¹ U.S. Patent No. 3,637,206, issued Jan. 25, 1972 (Ex. 1013). *See also* Dec. 9.

² In the Decision, “claim terms are generally given their plain and ordinary meaning as would have been understood by a person of ordinary skill in the art at the time of the invention and in the context of the entire patent disclosure.” Dec. 13 (citing *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005) (en banc)). Other than the term “safety device,” we did not construe explicitly any other terms to reach our decision. *Id.* at 13–14.

rollers 29 of support arms 14 and 19 lie in a plane” and agreed with Patent Owner that “Chickering does not disclose support arms 14 and 19 (i.e., the claimed bearing rails) defining or having a curved top profile, as required by claim 25.” *Id.* (citing Ex. 1013, 3:4–5, claim 6, Fig. 3); *see also* PO Resp. 13–16 (citing Ex. 1013, 3:4–5, claim 6, Fig. 3).

In the Request, Petitioner argues that we misapprehended claim 25 to implicitly construe the phrase “wherein the first and second bearing rails define a curved top profile” to exclude linear bearing rails. Req. Reh’g 1–7. Petitioner argues that the ’580 patent specification does not limit the “bearing rails” to being formed in a curved shape. *Id.* at 3–5. Petitioner points to Figures 7i and 7j of the ’580 patent, which are reproduced below, and its reply argument that “[t]he ’580 Patent discloses, with reference to Figures 7b–7j, curved running surfaces that are “collectively” defined by “concave, convex, or linear” portions’—the latter being portions 170 and 180.” *Id.* at 3–4 (quoting Pet. Reply 9–10; Ex. 1001, 9:26–32) (emphasis in original).



Id. at 4 (reproducing Ex. 1001, Figs. 7i and 7j). Petitioner also points to the ’580 patent specification’s description that “multiple linear portions may be

included in a profile of a non-planar surface.” *Id.* (quoting Ex. 1001, 10:33–35) (emphasis in original) (internal quotation marks omitted). Petitioner asserts that ““the ’580 patent does disclose a profile made up of only linear portions.”” *Id.* (quoting Paper 43, 118:16–17, and citing Ex. 1001, 10:33–35). As such, Petitioner argues, “Chickering’s support arms 14, 19 (*first and second bearing rails*’), despite being formed straight or linear, collectively define a curved top profile as defined by the ’580 Patent.” *Id.* at 7 (citing Pet. 30–31; Ex. 1013, 1:74–2:4, Fig. 1; Ex. 1003 ¶¶ 221–225).

We determine that Petitioner identifies no reversible error in our exclusion of linear bearing rails, as taught by Chickering, from the claimed bearing rails defining a curved top profile. Dec. 31. In practical effect, Petitioner asks us on rehearing to read out unambiguous claim term “curved,” expressly requiring the bearing rails to define a *curved or linear* top profile, based on the ’580 patent specification’s mention of “linear” in the description of portions that collectively define a non-planar, contoured running surfaces that, in Petitioner’s view, does not support that plain language.

As noted in the Decision, “this curved top profile [is] recited separately from the curved running surface of the running belt.” Dec. 31. Moreover, as shown in Figures 7i and 7j of the ’580 patent reproduced above and as described by the ’580 patent specification cited above, while “[e]ach portion has a particular geometric configuration that is concave, convex, or linear,” “*collectively*, the portions define the non-planar running surface.” Ex. 1001, 9:29–32 (emphasis added). In other words, according to the ’580 patent specification cited by Petitioner, a profile of a non-planar

surface may include a linear portion, or even multiple linear portions, so long as the linear portions and concave/convex portions *collectively* define a curved surface as shown, for example, in Figures 7i and 7j reproduced above.

Even though the '580 patent specification does not state that *all* portions of a *curved* profile may be linear, that is what Petitioner argues based on the '580 patent specification's description that "'a linear portion may replace **all** or a portion of the curve.'" Req. Reh'g 4 (quoting Ex.1001, 10:32–33) (emphasis in original). Petitioner argues that we misapprehended claim 25 by overlooking this '580 patent disclosure. *Id.* at 1. But this merely describes an embodiment where a linear portion replaces a curve in its entirety. This does not mean that the '580 patent specification defines a linear portion as a curved one, contrary to its plain and ordinary meaning. As such, Petitioner's reliance on the '580 patent specification is misplaced and Petitioner's arguments are unavailing to show an overlooked point.

In the Request, Petitioner also argues that other claim limitation in claim 25, i.e., "the curved top profile of the first and second bearing rails," does not limit the "bearing rails" to being formed in a curved shape; it requires "only that they '*define a curved top profile*.'" Req. Reh'g 5. Because Petitioner does not identify the place in the record where it previously raised and addressed this argument, we determine that it is raised improperly for the first time in the Request. *See* 37 C.F.R. § 42.71(d). In any event, for the same reasons discussed above, Petitioner's argument is unavailing to show an overlooked point.

For the foregoing reasons, Petitioner fails to persuade us that we misapprehended or overlooked any of the arguments presented regarding the “wherein the first and second bearing rails define a curved top profile” limitation of claim 25. Req. Reh’g 1–7. Rather, we addressed the issue at least on page 31 of the Decision and found that Chickering does not teach what Petitioner asserts that it teaches. The fact that Petitioner disagrees with our resolution of this issue is not grounds for rehearing.

B.

Claim 25 recites “disposing a running belt on the plurality of bearings of the first bearing rail and the second bearing rail.” Ex. 1001, 36:10–11. During trial, the parties disputed whether Socwell³ discloses a running belt disposed on a plurality of bearings as required by claim 25. *See* Dec. 46 (citing Pet. 73–75; PO Resp. 26–28). In the Decision, we determined that Petitioner did not show by a preponderance of the evidence that Socwell discloses the plurality of bearings on which a running belt is disposed as recited in claim 25. *Id.* We found that “[a]t most, Socwell’s belt 16 is disposed on one bearing, deck 56, and not a plurality of bearings.” *Id.* (citing Ex. 1011, 10:17–26, Fig. 5).

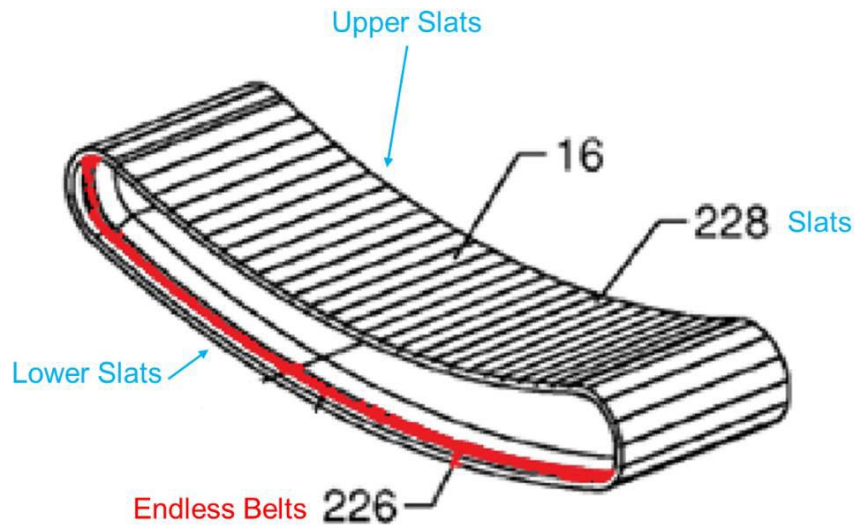
In the Request, Petitioner argues that we “misapprehended claim 25 to implicitly construe the phrase ‘*disposing a running belt on the plurality of bearings*’ to require the running belt to be positioned above all bearings and to exclude bearings positioned above the running belt—overlooking the ’580 Patent disclosure of a running belt with an endless belt *disposed on* the belt

³ U.S. Patent No. 5,897,461, issued Apr. 27, 1999 (Ex. 1011). *See also* Dec. 9.

slats by being disposed above and below the belt slats.” Req. Reh’g 1 (emphasis in original).⁴ Petitioner asserts that “[t]he ’580 Patent uses the phrase ‘disposed on’ to refer to arrangements where one component ‘disposed on’ another is not on top of or in a weight-bearing relationship with the other component.” *Id.* at 8.

In particular, Petitioner relies on the following portion of the ’580 patent specification for support: “The endless belts 226 are shown disposed on opposite sides of the running belt 16, generally interior to the outer, lateral edge of the slats 228.” Req. Reh’g 8 (quoting Ex. 1001, 14:6–9, and citing Pet. Reply 5; Ex. 1036 ¶ 44) (emphasis in original) (internal quotation marks omitted). Petitioner also points to an annotated excerpt from Figure 6 of the ’580 patent, which is reproduced below.

⁴ Petitioner also asserts that we implicitly construed this phrase “to require the running belt to be positioned *vertically above* the plurality of bearings.” Req. Reh’g 7 (in the heading for § II.B of the Request) (bold removed and emphasis added). Petitioner does not elaborate on whether our alleged implicit construction requires the running belt to be positioned *above* or *vertically above* the plurality of bearings.



Id. at 9 (reproducing annotated excerpt from Ex. 1001, Figure 6). Petitioner asserts that “[t]he endless belt 226 extends in a continuous loop about the running belt 16 such that it is necessarily positioned above the lower slats 228 (as annotated in red in the above figure) and **below the upper slats 228.**” *Id.* (citing Pet. Reply 6; Ex. 1036 ¶ 45) (emphasis in original). As such, Petitioner argues, we overlooked “the ’580 Patent’s use of the phrase ‘disposed on’ to describe above and below arrangements.” *Id.* Notably, Petitioner does not provide any evidence as to what one of ordinary skill in the art would consider to be the plain and ordinary meaning of “disposed on.”

Petitioner asks us on rehearing to consider that claim 25’s specific claim language that *disposes* a running belt *on* the bearings such that the running belt follows a top curved running surface corresponding to the curved top profile to have multiple meanings. In practical effect, Petitioner asks us to read out unambiguous claim language, i.e., “disposing . . . on . . .,” expressly requiring the running belt to be disposed *above or below* the

bearings, based on the '580 patent specification's use of "disposed on" in the description of the running belt 16 relative to the endless belts 226 that, in Petitioner's view, does not support that plain language. Reh'g Req. 8–9. We note that Petitioner's excerpt of Figure 6 does not show the location of the bearings. Figure 6 of the '580 patent is reproduced below in its entirety.

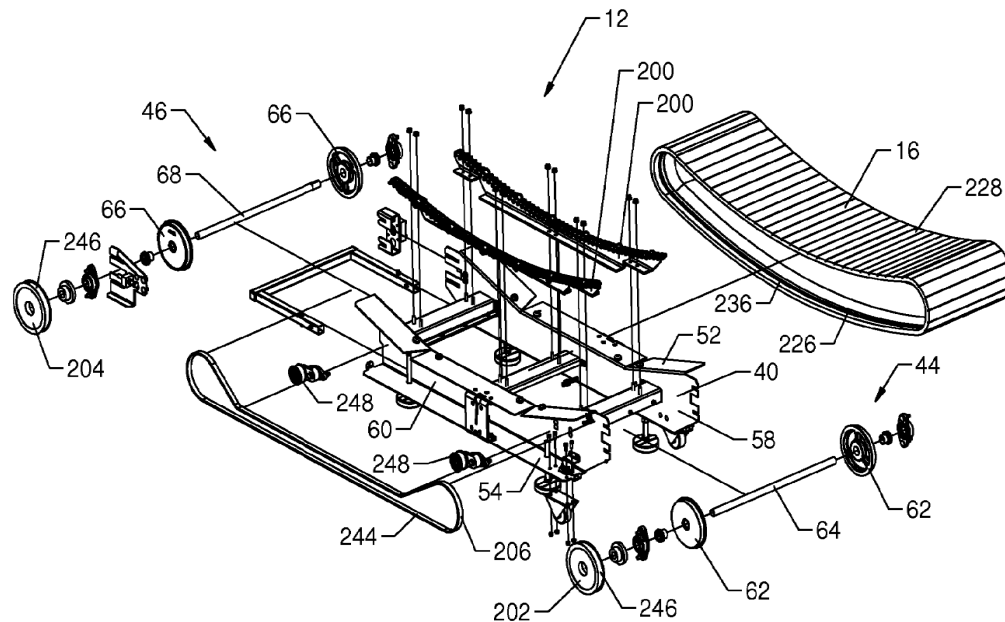


FIG. 6

Figure 6 “is an exploded view of a portion of the manual treadmill of FIG. 1 having the side panels and handrail removed.” Ex. 1001, 3:52–54. As shown in Figure 6, bearing rails 200 include bearings with a curved top profile. *Id.* at 11:41–44. The '580 patent describes that “[t]he at least somewhat flexible running belt 16 substantially assumes the shape of top profile 210 of the bearing rails 200 by being maintained substantially thereagainst,” so that “the running surface 70 has a shape that substantially corresponds to the shape of the top profile 210 of the bearing rails 200.” *Id.* at 11:66–12:5. The '580 patent does provide that “endless belts 226 are

shown disposed on opposite sides of the running belt 16, generally interior to the outer, lateral edges of the slat 228.” *Id.* at 14:6–9 (emphasis added). Petitioner’s reliance on Figure 6 is misplaced because, the quoted recitation of “disposed on” is used in reference to the sides of running belt 16 rather than whether the belt is above or below slats 228. *Id.*

As such, Petitioner’s arguments are unavailing to show an overlooked point. That Petitioner disagrees with the Board’s findings is not a basis for granting the Rehearing Request. *See Voice Tech Corp. v. Unified Patents, LLC*, 110 F.4th 1331, 1339 (Fed. Cir. 2024) (“The language in the regulation specifying that a party identify only matters it believed the Board ‘misapprehended or overlooked’ is narrower in scope than the set of all matters in a Board’s final decision that a party may disagree with.”).

In the Request, Petitioner also argues that the limitation immediately following “disposing a running belt on the plurality of bearings of the first bearing rail and the second bearing rail,” i.e., “such that the running belt follows a top curved running surface” (the “such that” limitation), does not limit the running belt to be positioned vertically above the bearings. Req. Reh’g 9–11; Ex. 1001, 36:10–12. Petitioner argues that claim 25 requires that the bearings define the curved running surface because the curved running surface is disposed on the bearings. Req. Reh’g 9. Relying on the Federal Circuit’s discussion of construction of a term “disposed over” in *Weber, Inc. v. Provisur Techs., Inc.*, 92 F.4th 1059 (Fed. Cir. 2024), Petitioner argues that “[l]ike the claims in *Weber*, claim 25 contains no restrictions that would require direct alignment of the running belt above the bearings.” Req. Reh’g 11. Petitioner further asserts that “the ‘*such that*’

limitation of claim 25 suggests something more, e.g., arranging bearings above the running belt, ‘***such that the running belt follows a top curved running surface.***’” *Id.* (emphasis in original).

Because Petitioner does not identify the place in the record where it previously raised and addressed this argument, we determine that it is raised improperly for the first time in the Request. *See* 37 C.F.R. § 42.71(d) (a request for rehearing must specifically identify, for each matter the party believes the Board misapprehended or overlooked, the place in the record where that matter previously was addressed in the party’s submissions).

Alternatively, even if we overlook the fact that Petitioner’s argument is untimely new argument, we deny the Request because Petitioner’s argument is not persuasive in demonstrating that we reversibly erred in the Decision. First, Petitioner’s reliance on *Weber* is misplaced because our case is factually different from that of *Weber*. At issue in *Weber* was the Board’s construction of “the term ‘disposed over’ to require that the ‘feed apparatus and its conveyor belts and grippers are ‘positioned above and in vertical and lateral alignment with’ the food article loading apparatus and its lift tray assembly.”” *Weber*, 92 F.4th at 1069; *see also* Req. Reh’g 11 (discussing *Weber*). The Federal Circuit reversed the Board’s construction in *Weber* because “[t]he plain language of the claims, read in view of the specification, requires only that the feed apparatus be generally positioned above the loading apparatus.” *Weber*, 92 F.4th at 1070. Noting that “[t]he parties’ experts generally agreed that the plain claim language did not contain additional alignment requirement,” the Federal Circuit stated “[o]ur case law does ‘not support prescribing a more particularized meaning unless

a narrower construction is required by the specification or prosecution history.” *Id.* at 1069 (quoting *3M Innovative Props. Co. v. Tredegar Corp.*, 725 F.3d 1315, 1329 (Fed. Cir. 2013)).

Unlike the rejected construction in *Weber*, our allegedly implicit construction of “*disposing* a running belt *on* the plurality of bearings” as the belt being *above* the plurality of bearings is based on the plain and ordinary meaning of disposing on and does not prescribe a more particularized meaning, such as “direct alignment of the running belt above the bearings” as alleged by Petitioner. Req. Reh’g 11.

Moreover, Petitioner cites no evidence to support its claim construction argument that the “such that” limitation of claim 25 “suggests something more, e.g., arranging bearings above the running belt.” Req. Reh’g 11. Nevertheless, Petitioner argues, in effect, that because Socwell’s belt 16, deck 56, and rollers 98 satisfy the “such that” limitation of claim 25 and because claim 25 requires that this is a result of being *disposed on* the bearings, Socwell’s belt 16 must be *disposed on* rollers 98, even though they are *above* the belt 16. *See id.* at 9–11; *see also* Pet. 73–75. We are not persuaded by Petitioner’s unsupported, circular argument.

For the reasons discussed above, Petitioner fails to persuade us that we misapprehended or overlooked any of the arguments presented regarding the “disposing a running belt on the plurality of bearings” limitation of claim 25. Req. Reh’g 7–13. Rather, we addressed the issue at least on page 46 of the Decision and found that Socwell does not teach what Petitioner asserts that it teaches. The fact that Petitioner disagrees with our resolution of this issue is not grounds for rehearing.

CONCLUSION

For the foregoing reasons, we determine that Petitioner has not met its burden to show that, in the Decision, the panel misapprehended or overlooked any matter or abused its discretion. Accordingly, Petitioner's Request for Rehearing is *denied*. In summary:

Outcome of Decision on Rehearing:

| Claim(s) | 35 U.S.C § | Reference(s)/Basis | Denied | Granted |
|------------------------|------------|----------------------------|--------|---------|
| 25 | 103 | Chickering, Magid | 25 | |
| 25 | 103 | Socwell, Magid | 25 | |
| 25 | 103 | Socwell, Magid, Sclater | 25 | |
| Overall Outcome | | | 25 | |

Final Outcome after Rehearing:

| Claim(s) | 35 U.S.C. § | Reference(s)/Basis | Claim(s) Shown Unpatentable | Claim(s) Not Shown Unpatentable |
|-----------------------------------|-------------|-------------------------------|-----------------------------------|---------------------------------------|
| 1–5, 10, 11, 14, 18, 25 | 103 | Chickering, Magid | 1–5, 10, 11, 14, 18 | 25 |
| 6–9, 12 | 103 | Chickering, Magid, Sclater | 6–9, 12 | |
| 1–12, 14, 18 | 103 | Chickering, Magid, Sclater | 1–12, 14, 18 | |
| 1–5, 10, 11, 14, 15, 18, 25 | 103 | Socwell, Magid | | 1–5, 10, 11, 14, 15, 18, 25 |
| 6–9, 12 | 103 | Socwell, Magid, Sclater | | 6–9, 12 |
| 1–12, 14, 15, 18, 25 | 103 | Socwell, Magid, Sclater | | 1–12, 14, 15, 18, 25 |
| Overall Outcome | | | 1–12, 14, 18 | 15, 25 |

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ORDER

Accordingly, it is:

ORDERED that Petitioner's Request for Rehearing is *denied*.

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