

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PHARMATECH SOLUTIONS, INC.

Petitioners

v.

LIFESCAN SCOTLAND LTD.

Patent Owner

Case IPR2013-00247

Patent 7,250,105

Before SALLY C. MEDLEY, SCOTT R. BOALICK, and SCOTT E. KAMHOLZ,
Administrative Patent Judges.

ORAL HEARING

Petitioner's Demonstratives

Claims 1-3 are invalid under § 103(a)
as obvious over Nankai and Schulman

Claims 1-3 are invalid under § 103(a)
as obvious over Winarta and Schulman

LifeScan does not address claims 2 & 3 with
separate specific arguments

1. A method of measuring the concentration of a substance in a sample liquid comprising the steps of:
providing a measuring device said device comprising:

a first working sensor part for generating charge carriers in proportion to the concentration of said substance in the sample liquid;

a second working sensor part downstream from said first working sensor part also for generating charge carriers in proportion to the concentration of said substance in the sample liquid wherein said first and second working sensor parts are arranged such that, in the absence of an error condition, the quantity of said charge carriers generated by said first working sensors part are substantially identical to the quantity of said charge carriers generated by said second working sensor part; and

a reference sensor part upstream from said first and second working sensor parts which reference sensor part is a common reference for both the first and second working sensor parts, said reference sensor part and said first and second working sensor parts being arranged such that the sample liquid is constrained to flow substantially unidirectionally across said reference sensor part and said first and second working sensor parts; wherein said first and second working sensor parts and said reference sensor part are provided on a disposable test strip;

applying the sample liquid to said measuring device;

measuring an electric current at each working sensor part proportional to the concentration of said substance in the sample liquid;

comparing the electric current from each of the working sensor parts to establish a difference parameter; and

giving an indication of an error if said difference parameter is greater than a predetermined threshold.

**LifeScan repeatedly tried
— and failed —
to patent the test strip disclosed and claimed in the '105 Patent**

Parent Patent 6,733,655

- claim 23 (pending 4/22/2002) was substantially identical to strip
- rejected as anticipated
- withdrawn 5/6/2003

Application for '105 Patent

- claim 17 (pending 6/9/2006) was substantially identical to strip
- rejected as anticipated
- withdrawn 1/10/2007

Child Application 11/772,714

- claim 17 (pending 7/2/2007) was substantially identical to strip
- rejected as anticipated by Winarta
- rejected as obvious in view of Nankai
- application abandoned 4/2/2010

Collateral estoppel

LifeScan argued to the District Court and to the Federal Circuit that:

“[E]xhaustion is inapplicable [to transfers of the meter alone]... because the meters do not embody the essential features of the ‘105 Patent.”

-LifeScan Scotland Ltd. v. Shasta Technologies LLC, 734 F.3d 1361, 1377 (Fed. Cir. 2013)

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