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Paper 11
Entered: August 15, 2013

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PHARMATECH SOLUTIONS, INC.
Petitioner

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.*

KAMHOLZ, *Administrative Patent Judge*.

DECISION
Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

A. Background

Pharmatech Solutions, Inc. ("Pharmatech") filed a petition (Paper 1, "Pet.") requesting an *inter partes* review of claims 1-3 (the "challenged claims") of U.S. Patent 7,250,105 (Ex. 1001, "the '105 patent"). Patent Owner LifeScan Scotland Ltd. ("LifeScan") filed a preliminary response (Paper 10, "Prelim. Resp."). The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides as follows:

> THRESHOLD.—The Director may not authorize an inter partes review to be instituted unless the Director determines that the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.

Upon consideration of the petition and patent owner preliminary response, we conclude that Pharmatech has established a reasonable likelihood that it would prevail with respect to claims 1-3 of the '105 patent. Accordingly, we grant the petition and institute an *inter partes* review of claims 1-3 of the '105 patent.

B. Related Proceedings

Pharmatech indicates that the '105 patent is involved in a civil action captioned *LifeScan, Inc. v. Shasta Techs., LLC*, No. 5:11-CV-04494-EJD (N.D.Cal). Pet. 2. Pharmatech is a co-defendant in that action. *Id.* LifeScan indicates that a preliminary injunction, issued in that action, has been stayed pending Pharmatech's appeal to the U.S. Court of Appeals for the Federal Circuit, where the case is now under consideration. Prelim. Resp. 10-11.

C. The '105 Patent

The '105 patent relates to monitoring the level of a substance in a liquid, particularly the level of glucose in blood. Ex. 1002, 1:7-10. A glucose assay is performed by inserting a test strip into a meter and then applying a drop of blood to the test strip. *Id.* 5:14-25. The test strip is made from layers of various materials, built up on a plastic base and capped with a cover. *Id.* 4:35-5:14. Figure 2 is reproduced below:

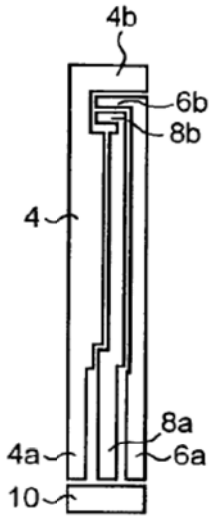

FIG. 2

Figure 2 illustrates one layer of the test strip, in which a pattern of carbon ink is screen-printed onto the test strip base. *Id.* 4:23-24. The carbon ink forms three tracks 4, 6 (not labeled), and 8 (not labeled), along the strip, as well as a connecting bridge 10. *Id.* 4:44-51. Each track has a connecting terminal 4*a*, 6*a*, 8*a* at one end of the strip and an electrode 4*b*, 6*b*, 8*b* at the other end. *Id.* A layer of glucose oxidase ("GOx") is printed on the electrodes. *Id.* 4:65-66. Various other layers are deposited to define the rest of the structure, such as the precise sizes of the electrodes and a flow path for the blood. *Id.* 4:54–5:14.

A user begins a glucose measurement by inserting the terminal end of the test strip into a meter device; the connecting bridge completes a circuit upon insertion to turn on the device. *Id.* 5:16-18. The device applies a voltage between the reference terminal 4*a* and terminal 6*a*, and also between the reference terminal 4*a* and terminal 8*a*. *Id.* 5:19-22. A drop of blood is deposited at the distal end of the strip, and the blood is drawn over electrodes 4*b*, 6*b*, and 8*b* by capillary action. *Id.* 5:23-26. The blood thereby comes into contact with the GOx printed on the electrodes, and the GOx reacts with glucose in the blood to release electrons. The resulting electric currents through carbon tracks 4 and 6 are proportional to both the surface area of the electrode covered by GOx and the amount of glucose in the blood sample. *Id.* 1:27-38. Because the GOx surface area is known, the electric current is indicative directly of the amount of glucose in the blood. *Id.* The currents are measured by the meter device after a predetermined time. *Id.* 5:26-27. The current measurements are compared to one another, and if they differ by more than 10%, an error message is displayed so that the user will know to repeat the test. *Id.* 5:27-30. If they are within 10% of each other, the measured currents are summed and converted into a glucose level, which is then displayed. *Id*. 5:30-33.

The challenged claims are reproduced below:

> 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.

2. The method as claimed in claim 1 comprising measuring the current at each working sensor part after a predetermined time following application of the sample.

3. The method as claimed in claim 1 wherein the substance to be measured is glucose, and each of the working sensor parts generates charge carriers in

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