

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of: Gliner, et al.

U.S. Patent No.: 5,749,905

Attorney Docket No.: 38855-0003IP1

Issue Date: May 12, 1998

Appl. Serial No.: 08/691,755

Filing Date: August 2, 1996

Title: ELECTROTHERAPY METHOD UTILIZING PATIENT-DEPENDENT  
ELECTRICAL PARAMETERS

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**PETITION FOR *INTER PARTES* REVIEW OF UNITED STATES PATENT NO. 5,749,905  
PURSUANT TO 35 U.S.C. §§ 311-319, 37 C.F.R. § 42**

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## EXHIBITS

LIFECOR905-1001	U.S. Patent No. 5,749,905 to Bradford E. Gliner, et al. (“’904 Patent”)
LIFECOR905-1002	Prosecution History of the ‘905 Patent
LIFECOR905-1003	Declaration of Dr. Wayne McDaniel
LIFECOR905-1004	U.S. Patent No. 3,862,636 to Bell (“Bell”)
LIFECOR905-1005	U.S. Patent No. 4,850,357 to Bach (“Bach”)
LIFECOR905-1006	U.S. Patent 5,749,904 to Bradford E. Gliner, et al. (“Gliner ‘904 Patent”)
LIFECOR905-1007	U.S. Patent No. 5,352,239 to Pless (“Pless”)
LIFECOR905-1008	U.S. Patent No. 3,886,950 to Ukkestad (“Ukkestad”)
LIFECOR905-1009	J.C. Schuder, et al., “Transthoracic Defibrillation of 100 KG Calves with Bidirectional Truncated Exponential Shocks,” <i>Trans Am Soc. Artif. Intern. Organs</i> , Vol. XXX (1984) (“Schuder”)
LIFECOR905-1010	U.S. Patent No. 5,607,454 to Cameron et al. (“Cameron ‘454”)
LIFECOR905-1011	<i>Koninklijke Philips Electronics NV v. Defibtech LLC</i> , Case No. C03-1322JLR, Order dated Dec. 21, 2005
LIFECOR905-1012	<i>Koninklijke Philips Electronics NV v. Cardiac Science, Inc.</i> , Civil No. 03-1064, Memorandum Opinion and Order dated Apr. 20, 2006
LIFECOR905-1013	American Heritage Dictionary (3d ed. 1992), p. 1167

## I. INTRODUCTION

Petitioner ZOLL Lifecor Corporation (“Petitioner” or “Lifecor”) petitions for *Inter Partes* Review (“IPR”) under 35 U.S.C. §§ 311–319 and 37 C.F.R. § 42 of claims 1-11 (“the IPR Claims”) of U.S. Patent No. 5,749,905 (“’905 Patent”) of Bradford E. Gliner, et al. (“Patent-ee” or “Gliner, et al.”). As explained in this petition, there exists a reasonable likelihood that Lifecor will prevail with respect to at least one claim challenged in this petition.

The ‘905 Patent claims methods for delivering electrotherapy to a patient using a simple technique in which energy delivered to the heart is controlled based on a monitored patient-dependent electrical parameter (e.g., combinations of voltage, current, and charge over time). But the patent was improvidently granted without full consideration to the wide body of applicable prior art, such as that relied on in this petition. For example, both U.S. Patent 3,782,389 (“Bell”; LIFECOR905-1004) and U.S. Patent 5,352,239 (“Pless”; LIFECOR905-1007) expressly disclose the feature that was asserted during prosecution to distinguish over the cited art, namely, “adjust[ing] energy delivered to the patient based on a value of an electrical parameter monitored *during* discharge.” (LIFECOR905-1002, Amendment filed 3/31/97 at 2; emphasis in original.) And the other claim limitations are taught either by Bell or Pless and/or another reference presented in this petition. Moreover, at least one of the claims in the ‘905 patent is invalid for obviousness-type double patenting over one or more other patents in the same family. Petitioner respectfully submits *Inter Partes* Review should be instituted, and the challenged claims be canceled as unpatentable.

**II. MANDATORY NOTICES UNDER 37 C.F.R § 42.8(a)(1)**

**A. Real Party-In-Interest Under 37 C.F.R. § 42.8(b)(1)**

Petitioner, ZOLL Lifecor Corporation, is the real party-in-interest.

**B. Related Matters Under 37 C.F.R. § 42.8(b)(2)**

Petitioner is not aware of any disclaimers or reexamination certificates for the '905 Patent. Petitioner has been named as a defendant in a litigation concerning the '905 Patent, *Koninklijke Philips N.V. and Philips Electronics North America Corp. v. ZOLL Lifecor Corp.*, Civil No. 12-1369 (W.D.PA.). Lifecor has also petitioned—on this same day—for *In-ter Partes* Review of other patents in that litigation, U.S. Patent Nos. 5,735,879 (“the ‘879 Patent”); 5,749,904 (“the ‘904 Patent”); 6,047,212 (“the ‘212 Patent”); 5,607,454 (“the ‘454 Patent”); 5,836,978 (“the ‘978 Patent”); 5,803,927 (“the ‘927 Patent”); and 5,593,427 (“the ‘427 Patent”) (collectively, “the Philips Waveform Patents,” all of which are owned by Koninklijke Philips N.V. and/or Philips Electronics N. Am. Corp. (“Patent Owner” or “Philips”)).

**C. Lead And Back-Up Counsel Under 37 C.F.R. § 42.8(b)(3)**

Petitioner provides the following designation of counsel:

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