

Filed: November 15, 2016

Filed on behalf of:

Patent Owner Rembrandt Diagnostics, LP

By: Joseph F. Jennings (Reg. No. 40,664)

Jared C. Bunker (Reg. No. 58,474)

KNOBBE, MARTENS, OLSON & BEAR, LLP

2040 Main Street, Fourteenth Floor

Irvine, CA 92614

Tel.: (949) 760-0404

Fax: (949) 760-9502

E-mail: BoxREMPIL.001LP2@knobbe.com

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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**ALERE, INC.**

Petitioner,

v.

**REMBRANDT DIAGNOSTICS, LP**

Patent Owner.

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Case IPR2016-01498

Patent 8,623,291

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**PATENT OWNER'S PRELIMINARY RESPONSE TO PETITION  
FOR *INTER PARTES* REVIEW**

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**EXHIBIT LIST**

<b>Exhibit No.</b>	<b>Description</b>
2001	Annotated Version of Exhibit 1003, Showing in Highlighting the Text that Matches the Text In Alere's Petition

## **I. INTRODUCTION AND SUMMARY OF THE ARGUMENT**

The challenged U.S. Patent No. 8,623,291 relates to a multi-strip holder with a removable cap (“the ’291 patent”). Despite asserting multiple prior-art combinations, Alere fails to demonstrate a reasonable likelihood of proving any challenged claim unpatentable. None of Alere’s cited prior art teaches a critical claim limitation: a cap enclosing the ends of multiple test strips.

Alere contends that it would have been obvious to a POSITA to modify certain prior-art holders to include the claimed cap. Some of Alere’s cited references, however, undercut Alere’s contention that a POSITA would have been motivated to do so. Moreover, Alere’s main prior art and arguments were thoroughly considered and rejected by the Office during prosecution, justifying rejection under 35 U.S.C. § 325(d). Indeed, the Office addressed Alere’s primary reference DE and Alere’s obviousness argument on appeal to the Board and on remand back to the Examiner. After thoroughly considering the prior art and arguments, the Office concluded the ’291 patent claims were patentable. Alere’s remaining prior art and arguments are substantially the same as those already presented to the Office, and should also be rejected.

Rembrandt respectfully submits that the Board should decline institution on all of Alere’s Grounds.

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