

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ALERE INC.
Petitioner

v.

REMBRANDT DIAGNOSTICS, LP
Patent Owner
U.S. Patent No. 6,548,019

Case No. IPR2016-01502

**PETITIONER'S REPLY TO PATENT OWNER'S
RESPONSE TO PETITION**

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
I. INTRODUCTION	1
II. CLAIM CONSTRUCTION	3
A. “A device for collecting and assaying a sample of biological fluid”	3
1. The Preamble Is Not Limiting	3
2. If Construed At All, “A Device” Should Be Construed As “One Or More Devices”	9
B. “wherein the flow control channel is disposed inside the sample fluid container . . . so that the assay sample fluid, when added to the container, is delivered to the . . . assay test strip”	11
III. CLAIMS 2-5 ARE INVALID	17
A. Anticipation By MacKay (Claim 2)	17
B. Obviousness Based on MacKay in View of Cipkowski (Claims 3-5)	20
IV. CONCLUSION.....	24

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>01 Communique Lab, Inc. v. LogMeIn, Inc.</i> , 687 F.3d 1292 (Fed. Cir. 2012)	9
<i>Aircraft Technical Publishers v. Avantext, Inc.</i> , 2009 WL 3817944 (N.D. Cal. Nov. 10, 2009)	9
<i>Catalina Marketing Int’l v. Coolsavings.com, Inc.</i> , 289 F.3d 801 (Fed. Cir. 2002)	3, 4, 5, 8
<i>CreAgri, Inc. v. Pinnaclife Inc.</i> , 2013 WL 1663611 (N.D. Cal. April 16, 2013).....	5, 8
<i>Cuozzo Speed Techs., LLC v. Lee</i> , 136 S. Ct. 2131 (2016).....	3
<i>Deere & Co. v. Bush Hog, LLC</i> , 703 F.3d 1349 (Fed. Cir. 2012)	8
<i>e.Digital Corp. v. Futurewei Tech., Inc.</i> , 772 F.3d 723 (Fed. Cir. 2014)	11
<i>Hewlett-Packard Co. v. Bausch & Lomb Inc.</i> , 909 F.2d 1464 (Fed. Cir. 1990)	11
<i>IMS Tech. Inc. v. Haas Automation, Inc.</i> , 206 F.3d 1422 (Fed. Cir. 2000)	4
<i>Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.</i> , 381 F.3d 1111 (Fed. Cir. 2004)	13
<i>Intel Corp. v. U.S. Int’l Trade Commission</i> , 946 F.2d 821 (Fed. Cir. 1991)	15
<i>IPXL Holdings, LLC v. Amazon.com, Inc.</i> , 430 F.3d 1377 (Fed. Cir. 2005)	11

<i>K-2 Corp. v. Salomon S.A.</i> , 191 F.3d 1356 (Fed. Cir. 1999)	16
<i>Laitram Corp. v. Cambridge Wire Cloth Co.</i> , 863 F.2d 855 (Fed. Cir. 1988)	16, 17
<i>Liebel-Flarsheim Co. v. Medrad, Inc.</i> , 358 F.3d 898 (Fed. Cir. 2004)	12
<i>MBO Labs., Inc. v. Becton, Dickinson & Co.</i> , 474 F.3d 1323 (Fed. Cir. 2007)	9
<i>Poly-America, L.P. v GSE Lining Tech., Inc.</i> , 383 F.3d 1303 (Fed. Cir. 2004)	9
<i>Revolution Eyewear, Inc. v. Aspex Eyewear, Inc.</i> , 563 F.3d 1358 (Fed. Cir. 2009)	16
<i>Shinn Fu Company of America, Inc. v. The Tire Hanger Corp.</i> , 2017 WL 2838342 (Fed. Cir. July 3, 2017).....	21
<i>In re Taylor</i> , 2012 WL 2149776 (Fed. Cir. 2012)	3
<i>Unwired Planet LLC v. Google Inc.</i> , 2015 WL 3378476 (D. Nev. 2015).....	5
<i>Weiland Sliding Doors and Windows, Inc. v. Panda Windows and Doors, LLC</i> , 2011 WL 3490481 (S.D. Cal. Aug. 10, 2011).....	8
Other Authorities	
U.S. Patent No. 5,403,551.....	10
U.S. Patent No. 5,656,502.....	2
U.S. Patent No. 5,976,895.....	2
U.S. Patent No. 6,548,019.....	<i>passim</i>

I. INTRODUCTION

Underscoring the lack of novelty of its purported invention, Patent Owner disclaimed sole independent claim 1 of U.S. Patent No. 6,548,019 (“the ’019 patent”) (Ex. 1001), along with six dependent claims (9, 11-15) after the Board instituted an *inter partes* review of these challenged claims. Only four dependent claims (2-5) remain at issue in this IPR.¹

Patent Owner’s arguments hinge on challenging the Board’s claim constructions. But under the broadest reasonable construction standard that must be applied in an IPR, the Board correctly found that the preamble term “a device for collecting and assaying a sample of biological fluid” is not limiting because the body of the claims recite structurally complete invention(s), and nothing in the specification or prosecution history requires a narrower construction. Patent Owner’s preamble arguments rely exclusively on cases that apply a narrower district court claim construction standard that is inapplicable here.²

Patent Owner also challenges the Board’s interpretation of the phrase

¹ Claims 6 and 10, along with the claims from which they depend, are the subject of IPR2017-1130.

² If the preamble were nonetheless found limiting, the broadest reasonable construction of “a device” would be “one or more devices,” consistent with Federal Circuit precedent.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.