

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

JUBILANT DRAXIMAGE INC.,
Petitioner,

v.

BRACCO DIAGNOSTICS INC.,
Patent Owner.

Case IPR2018-01449
Patent 9,229,467

Patent Owner Response

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<i>Nuna Baby Essentials, Inc. v. Britax Child Safety, Inc.</i> , IPR2018-01683, Paper 11 (PTAB Dec. 18, 2018)	21
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<i>Transocean Offshore Deepwater Drilling, Inc. v. Maersk Contractors USA, Inc.</i> , 617 F.3d 1296 (Fed. Cir. 2010)	12
<i>Verdegaal Bros., Inc. v. Union Oil Co. of California</i> , 814 F.2d 628 (Fed. Cir. 1987)	13
Other Authorities	
37 C.F.R. § 42.64	20
37 C.F.R. § 42.5(c)(3)	21

EXHIBIT LIST

Exhibit	Description
2001	U.S. Patent Application Publication No. 2011/0178359, filed December 28, 2007
2002	[RESERVED]
2003	Declaration of Dr. Norbert Pelc
2004	ITC Deposition of Dr. Robert Stone, October 9, 2018 (Redacted)
2005	ITC Deposition of Dr. Robert Stone, October 10, 2018 (Redacted)
2006	ITC Trial Testimony of Dr. Robert Stone, April 15, 2019 (Public Version)
2007	ITC Trial Testimony of Dr. Robert Stone, April 16, 2019 (Public Version)
2008	Errata of Dr. Robert Stone regarding Ex. 1015 of IPRs 2018-01448, -01449, and -01450
2009	Exhibit from Deposition of Dr. Robert Stone in IPRs 2018-01448, -01449, and -01450
2010	Deposition testimony of Dr. Robert Stone in IPRs 2018-01448, -01449, and -01450
2011	ITC Corrected Expert Report of Dr. Norbert Pelc (Redacted)
2012	ITC Trial Testimony of Dr. Norbert Pelc (Public Version)
2013	ITC Trial Exhibits of Dr. Norbert Pelc (Redacted)
2014	CAPINTEC CRC-15R User Manual, Nov. 2004
2015	CAPINTEC CRC-15R User Manual, July 2007
2016	Deposition testimony of Dr. Venkatesh Murthy in IPRs 2018-01448, -01449, and -01450
2017	Exhibit 1001 from Dr. Murthy's Deposition (corrections to Ex. 1017)

U.S. Patent No. 9,299,467

I. INTRODUCTION

Patent Owner Bracco Diagnostics Inc. (“Patent Owner”) submits the following Patent Owner Response (“POR”) to the Institution Decision of February 8, 2019 (“Decision”) and the Petition of August 22, 2018 (“Petition”). The Petition requested cancellation of claims 1-4, 6-16, and 18-22 (the “Challenged Claims”) of U.S. Patent No. 9,299,467 (“the ’467 patent”) based on three grounds, all of which require a finding that the primary reference of Klein (Ex. 1014) discloses a computer “configured to prevent a patient infusion procedure if a breakthrough test result exceeds an allowable limit” (claim 1) or that prevents “a patient infusion procedure if a breakthrough test result exceeds an allowable limit” (claim 13). The Decision instituted trial after finding that Petitioner had established a likelihood of prevailing with respect to at least one challenged claims. (Decision at 13.) The evidence now of record compels a different conclusion.

Klein does not disclose a computer that prevents patient infusion procedures based on the results of breakthrough testing. While Klein has a computer, and Klein’s computer does communicate with the dose calibrator, Klein’s computer *does not* prevent patient infusion procedures if a strontium breakthrough test result exceeds an allowable limit. Rather, the decision whether to go forward with patient infusions is left up to the operator, as explained below.

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