

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

OMNI MEDSCI, INC.,
Patent Owner.

U.S. Patent No. 9,651,533

Case No.: IPR2019-00916

**PATENT OWNER'S SUR-REPLY TO PETITION
FOR *INTER PARTES* REVIEW UNDER 37 C.F.R. § 42.220**

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A. Introduction

Apple’s Reply rewrites the challenged claims, mischaracterizes the testimony of Omni MedSci’s expert, misconstrues the teachings of Lisogurski and Carlson, and improperly relies on obviousness arguments Apple did not make in its Petition. Separately and combined, Lisogurski and Carlson fail to disclose or render obvious “a light source *configured to increase signal-to-noise ratio* [“SNR”] . . . by increasing a pulse rate of at least one of the plurality of semiconductor sources.” (Ex. 1001 29:51-11.)^{1, 2}

In its Institution Decision (“ID”), the Board correctly determined that Lisogurski’s system varies an LED’s pulse rate but not to increase SNR. (Paper No. 16, ID at 31.) Apple’s response is, if a pulse rate increases, SNR may (or may not) increase and that hit-or-miss result is “configured to increase signal-to-noise ratio.” It is not.

Lisogurski discloses two forms of light source modulation, neither of which is configured to increase SNR by increasing a pulse rate as claimed. **First**, Lisogurski discloses “cardiac cycle modulation” which is “aligned with pulses of the

¹ Throughout this Sur-reply, all emphasis added unless otherwise noted.

² Omni MedSci’s focus on the “pulse rate” limitation is not an admission that the references disclose the other limitations of the challenged claims.

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