

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

OMNI MEDSCI, INC.,
Patent Owner.

Case IPR2019-00916
Patent 9,651,533 B2

Before GRACE KARAFFA OBERMANN, JOHN F. HORVATH, and
SHARON FENICK, *Administrative Patent Judges*.

HORVATH, *Administrative Patent Judge*.

DECISION
Granting Institution of *Inter Partes* Review
35 U.S.C. § 314(a)

I. INTRODUCTION

A. Background

Apple Inc. (“Petitioner”) filed a Petition requesting *inter partes* review of claims 5, 7–10, 13, and 15–17 (“the challenged claims”) of U.S. Patent No. 9,651,533 B2 (Ex. 1001, “the ’533 patent”). Paper 1 (“Pet.”), 3. Omni MedSci Inc. (“Patent Owner”), filed a Preliminary Response. Paper 10 (“Prelim. Resp.”). We have jurisdiction under 35 U.S.C. § 314.

Upon consideration of the Petition and Preliminary Response we are persuaded that Petitioner has demonstrated a reasonable likelihood that it would prevail in showing the unpatentability of at least one challenged claim of the ’533 patent. Accordingly, we institute *inter partes* review of all challenged claims on all grounds raised.

B. Related Matters

Petitioner and Patent Owner identify the following as matters that can affect or be affected by this proceeding: pending U.S. Patent Application Nos. 10/188,299, 10/172,523, 15/594,053, 16/015,737, and 16/241,628; *Apple Inc. v. Omni MedSci Inc.*, IPR2019-00913 (PTAB); and *Omni MedSci Inc. v. Apple Inc.*, 2-18-cv-00134-RWD (E.D. Tex.).¹ See Pet. x; Paper 7, 1–2.

¹ This case was transferred to the Northern District of California, however, that Court has not yet provided a new case number. See Paper 11, 1; Paper 13, 1; Ex. 1058, 9.

C. Evidence Relied Upon²

Reference		Date	Exhibit
Mannheimer	U.S. 5,746,206	May 5, 1998	1008
Carlson	U.S. 2005/0049468 A1	Mar. 3, 2005	1009
Lisogurski	U.S. 9,241,676 B2	May 31, 2012 ³	1011

D. Asserted Grounds of Unpatentability

Claims Challenged	Basis	References
5, 7–10, 13, and 15–17	§ 103(a)	Lisogurski and Carlson
8, 9, 16, and 17	§ 103(a)	Lisogurski, Carlson, and Mannheimer

II. ANALYSIS

A. The '533 Patent

The '533 patent was filed on October 6, 2015, and claims priority to a utility application filed on December 17, 2013 and a provisional application filed on December 31, 2012. Ex. 1001 codes (22), (60), (63), 1:10–14. The '533 patent is directed toward a wearable physiological measurement system. *Id.* code (57). The system is depicted in Figure 24 of the '533 patent, which is reproduced below.

² Petitioner also relies upon the Declaration of Brian Anthony, Ph.D., (Ex. 1003).

³ Petitioner relies on the filing date of Lisogurski to establish its status as prior art. *See* Pet. 21.

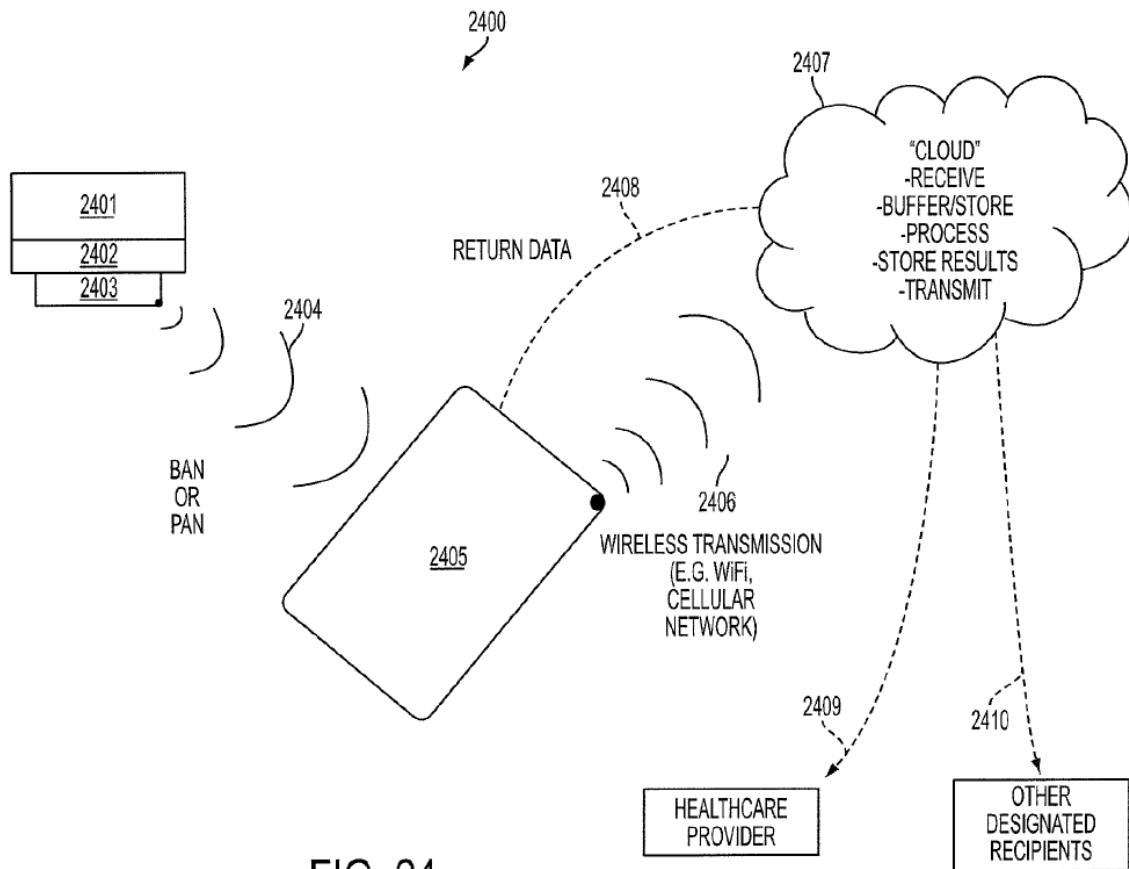


FIG. 24

Figure 24 is a schematic illustration of a physiological measurement system. *Id.* at 7:7–10. The system includes wearable measurement device 2401, personal device 2405, and cloud based server 2407. *Id.* at 26:49–27:20.

The “wearable measurement device [is] for measuring one or more physiological parameters.” *Id.* at 5:35–37. A schematic illustration of such a measurement device is shown in Figure 18 of the ’533 patent, which is reproduced below.

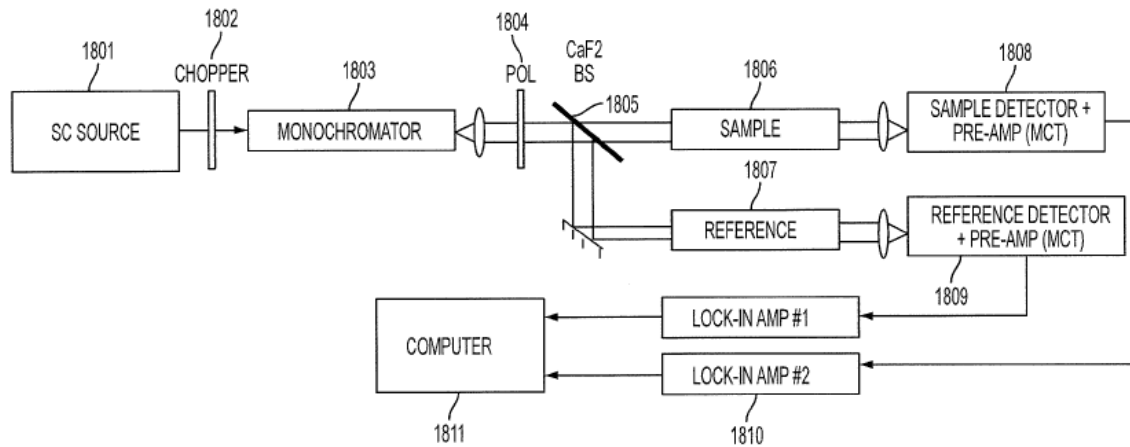


FIG. 18

Figure 18 is a schematic diagram of a device for measuring physiological parameters that may be used to “subtract out (or at least minimize the adverse effects of) light source fluctuations.” *Id.* at 18:43–46.

Wearable measurement device 2401 includes light source 1801 made from a plurality of light emitting diodes that generate an output optical beam at one or more optical wavelengths, wherein at least one of the optical wavelengths is between 700 and 2500 nanometers. *Id.* at 5:37–43, 18:46–48. The light source can increase a signal-to-noise ratio by increasing either the LED intensity or pulse rate. *Id.* at 5:43–47. Wearable measurement device 2401 also includes a plurality of lenses that receive a portion of the output optical beam from the light source and deliver an analysis beam to a sample. *Id.* at 5:47–50. Lastly, wearable measurement device 2401 includes a receiver that receives at least a portion of the analysis beam that has been reflected from or transmitted through the sample, and processes that signal to generate an output signal. *Id.* at 5:51–54.

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