


IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of: Poeze et al.
U.S. Patent No.: 10,258,265 Attorney Docket No.: 50095-00006IP1
Issue Date: April 16, 2019
Appl. Serial No.: 16/212,440
Filing Date: December 6, 2018
Title: MULTI-STREAM DATA COLLECTION SYSTEM FOR
NONINVASIVE MEASUREMENT OF BLOOD
CONSTITUENTS

DECLARATION OF DR. THOMAS W. KENNY

Declaration

I declare that all statements made herein on my own knowledge are true and that all statements made on information and belief are believed to be true, and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable under Section 1001 of Title 18 of the United States Code.

By:  _____

Thomas W. Kenny, Ph.D.

Contents

I. QUALIFICATIONS AND BACKGROUND INFORMATION.....	5
II. OVERVIEW OF CONCLUSIONS FORMED	11
III. LEVEL OF ORDINARY SKILL IN THE ART	13
IV. LEGAL STANDARDS	14
A. Terminology	14
B. Legal Standards for Anticipation.....	14
C. Legal Standards for Obviousness	15
V. HISTORICAL AND TECHNICAL OVERVIEW.....	20
VI. THE '265 patent	20
A. Overview of the '265 patent.....	20
VII. SUMMARY OF THE PRIOR ART.....	25
A. Overview of Aizawa.....	25
B. Overview of Inokawa	28
C. Overview of Ohsaki.....	32
D. Overview of Mendelson-1988.....	34
E. Overview of Mendelson-2006.....	36
F. Overview of Beyer, Jr.....	40
VIII. GROUND 1A – Claims 1-4, 6-14, 16, 17, 19-23, and 26-29 Are Rendered Obvious by Aizawa in view of Inokawa.....	41
A. Claim 1	41
B. Claim 2	58
C. Claim 3	59
D. Claim 4	60
E. Claim 6	63
F. Claim 7	63
G. Claim 8	64
H. Claim 9	65
I. Claim 10	67
J. Claim 11	68

K. Claim 12	69
L. Claim 13	71
M. Claim 14	71
N. Claim 16	72
O. Claim 17	72
P. Claim 19	73
Q. Claim 20	73
R. Claim 21	74
S. Claim 22	75
T. Claim 23	76
U. Claim 26	77
V. Claim 27	79
W. Claim 28	80
X. Claim 29	81
IX. GROUND 1B –Claims 1-4, 6-14, 16, 17, 19-23, and 26-29 Are Rendered Obvious by Aizawa in view of Inokawa and Ohsaki	81
A. Claims 1-4, 6-14, 16, 17, 19-23, and 26-29	81
X. GROUND 1C – Claims 23-24 Are Rendered Obvious by Aizawa in view of Inokawa and Mendelson-2006.....	84
A. Claim 23	84
B. Claim 24	88
XI. GROUND 1D – Claims 23-24 Are Rendered Obvious by Aizawa in view of Inokawa, Goldsmith, and Lo.....	89
A. Claim 23	89
B. Claim 24	93
XII. GROUND 1E – Claim 25 Is Rendered Obvious by Aizawa in view of Inokawa, Mendelson-2006, and Beyer, Jr.	93
A. Claim 25	93
XIII. GROUND 2A – Claims 1-4, 6-14, 16-22, and 26-30 Are Rendered Obvious by Mendelson-1988 in View of Inokawa	96
A. Claim 1	97
B. Claim 2	108

C. Claim 3	109
D. Claim 4	110
E. Claim 6	111
F. Claim 7	111
G. Claim 8	112
H. Claim 9	113
I. Claim 10	113
J. Claim 11	114
K. Claim 12	115
L. Claim 13	117
M. Claim 14	118
N. Claim 16	118
O. Claim 17	118
P. Claim 18	119
Q. Claim 19	119
R. Claim 20	120
S. Claim 21	121
T. Claim 22	122
U. Claim 26	123
V. Claim 27	126
W. Claim 28	127
X. Claim 29	130
Y. Claim 30	130
XIV. GROUND 2B – Claims 23-24 Are Rendered Obvious by Mendelson-1988 in view of Inokawa and Mendelson-2006.....	131
A. Claim 23	131
B. Claim 24	133
XV. GROUND 2C – Claim 25 Is Rendered Obvious by Mendelson-1988 in view of Inokawa, Mendelson-2006, and Beyer, Jr.	134
A. Claim 25	134
XVI. CONCLUSION.....	138

I. QUALIFICATIONS AND BACKGROUND INFORMATION

1. My education and experience are described more fully in the attached curriculum vitae (APPLE-1004). For ease of reference, I have highlighted certain information below.

2. My academic and professional background is in Physics, Mechanical Engineering, Sensing, and Robotics, with a research specialization focused on microfabricated physical sensors, and I have been working in those fields since the completion of my Ph.D. more than 30 years ago. The details of my background and education and a listing of all publications I have authored in the past 35 years are provided in my curriculum vitae, attached as Exhibit A. Below I provide a short summary of my education and experience which I believe to be most pertinent to the opinions that I express here.

3. I received a B.S. in Physics from University of Minnesota, Minneapolis in 1983, and a Ph.D. in Physics from University of California at Berkeley in 1989. I was educated as a Physicist specializing in sensors and measurement. My Physics Ph.D. thesis involved measurements of the heat capacity of monolayers of atoms on surfaces, and relied on precision measurements of temperature and power using time-varying electrical signals, and also on the design and construction of miniature sensor components and associated electrical circuits for conditioning and conversion to digital format.

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.