

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PHILIP MORRIS PRODUCTS, S.A.,
Petitioner

v.

RAI STRATEGIC HOLDINGS, INC.,
Patent Owner

Patent No. 9,901,123

Case No. IPR2020-01602

DECLARATION OF CHARLES E. CLEMENS

RAI Strategic Holdings, Inc.
Exhibit 2010

Philip Morris Products, S.A. v. RAI Strategic Holdings, Inc.
IPR2020-01602

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. PROFESSIONAL QUALIFICATIONS	2
III. RELEVANT LEGAL STANDARDS	5
IV. THE '123 PATENT	8
A. Technology Background	8
B. Summary of the '123 Patent	9
C. Prosecution History of the '123 Patent	14
V. CLAIM CONSTRUCTION	15
VI. LEVEL OF ORDINARY SKILL IN THE ART	17
VII. OVERVIEW OF THE CITED REFERENCES	18
A. Hon (Ex. 1005)	18
B. Brooks (Ex. 1006)	21
C. Whittemore (Ex. 1007)	23
D. Susa (Ex. 1008)	24
E. Ray (Ex. 1009)	24
VIII. PETITIONER'S ASSERTED GROUNDS DO NOT RENDER CLAIMS 1-7, 9, 11-19, 21, AND 23-26 OBVIOUS	25
A. Claims 1 and 15: "wicked into contact" limitation	25
1. Hon does not teach or suggest that "the mixture ... can be wicked into contact with the electrical resistance heater and volatilized."	25
2. A POSA would not have been motivated to modify Hon's device with Whittemore's wick/heater.	32
B. Claims 1 and 15: "puff-actuated controller ..." limitation	39
1. Hon does not teach or suggest "a puff-actuated controller within the tubular outer housing and adapted for regulating current flow through the electrical resistance heater during draw"	39

TABLE OF CONTENTS
(continued)

	Page
2. A POSA would not have found it obvious to modify Hon's device with the control circuitry from Brooks.....	43
C. Selected dependent claims would not have been obvious for additional reasons.....	51
1. Claims 11 and 23: "the cartridge is electrically conductive"	51
2. Claims 14 and 24: "wherein the absorbent fibrous material is in contact with the electrical resistance heater"	52

I, Charles E. Clemens, do hereby declare:

I. INTRODUCTION

1. I am making this declaration at the request of RAI Strategic Holdings, Inc. (“Patent Owner” or “RAI”) in the matter of the Inter Partes Review (“IPR”) of U.S. Patent No. 9,901,123 (“the ’123 patent”).

2. I am being compensated for my work in this matter at my standard hourly rate of \$585 for such consulting services. My compensation in no way depends on the outcome of this proceeding.

3. In preparing this Declaration, I considered the following materials:

- a. The ’123 patent (Ex. 1001) and its file history (Ex. 1002);
- b. Petition for Inter Partes Review of U.S. Patent No. 9,901,123, IPR2020-01602 (Paper 2);
- c. Declaration of Mr. Stewart Fox (Ex. 1003);
- d. Chinese Patent CN2719043Y to Hon, including an English translation (Ex. 1005) (“Hon”);
- e. U.S. Patent No. 4,947,874 to Brooks et al. (Ex. 1006) (“Brooks”);
- f. U.S. Patent No. 2,057,353 to Whittemore, Jr. (Ex. 1007) (“Whittemore”);
- g. European Patent EP 0845220 B1 to Susa et al. (Ex. 1008) (“Susa”);

- h. U.S. Patent No. 4,284,089 to Ray (Ex. 1009) (“Ray”);
- i. PMUSA teardown report on Ruyan device (Exs. 1019, 1020);
- j. RJR teardown report on Ruyan device (Ex. 1023);
- k. U.S. Patent No. 6,095,153 to Kessler et al. (Ex. 1030) (“Kessler”);
- l. Decision – Institution of Inter Partes Review (Paper 9); and
- m. Any other materials referenced herein.

II. PROFESSIONAL QUALIFICATIONS

4. My professional background and technical qualifications are reflected in my curriculum vitae, which is attached as Appendix A.

5. I have over 40 years of experience as an engineer, executive, and consultant in the medical device industry.

6. In 1979, I obtained a Bachelor of Science degree in Mechanical Engineering from San Diego State University.

7. From 1981 to 1995, I worked at IVAC Corporation (now CareFusion, a subsidiary of Becton Dickinson), a company that pioneered intravenous medication delivery systems. During my time at IVAC, I worked in multiple roles, including as a product designer, engineering manager, and technical director for the largest medication delivery system program the company had ever attempted, which resulted in launching the product in both the US and European markets. My work at IVAC involved design, development, marketing, launch, and manufacturing of numerous

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.