


IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of: Poeze et al.
U.S. Patent No.: 10,299,708 Attorney Docket No.: 50095-0009IP1
Issue Date: May 28, 2019
Appl. Serial No.: 16/261,366
Filing Date: May 10, 2019
Title: MULTI-STREAM DATA COLLECTION SYSTEM
FOR NONINVASIVE MEASUREMENT OF
BLOOD CONSTITUENTS

SECOND DECLARATION OF DR. THOMAS W. KENNY

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

Dated: November 19, 2021

By:  _____

Thomas W. Kenny, Ph.D.

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I. Introduction

1. I have been retained on behalf of Apple Inc. to offer technical opinions relating to U.S. Patent No. 10,299,708 (“the ’708 Patent”) in the present case (IPR2021-00193). In this Second Declaration, I provide opinions related to Patent Owner’s Response (Paper 14) and Dr. Madisetti’s supporting declaration (Ex. 2004).

2. In addition to the materials listed in my First Declaration (APPLE-1003), I have reviewed several additional documents and references including:

- Paper 7: Institution Decision;
- Paper 14: Patent Owner’s Response (“POR”);
- Ex. 2004: Declaration of Dr. Madisetti;
- Ex. 2006-2009: Transcripts of my prior depositions;
- APPLE-1034: Deposition Transcript of Dr. Vijay Madisetti in IPR2020- 01520, IPR2020-01537, IPR2020-01539, Day 1 (August 1, 2021);
- APPLE-1035: Deposition Transcript of Dr. Vijay Madisetti in IPR2020- 01520, IPR2020-01537, IPR2020-01539, Day 2 (August 2, 2021);
- APPLE-1036: Deposition Transcript of Dr. Vijay Madisetti in IPR2020- 01536, IPR2020-01538 (August 3, 2021);
- APPLE-1044: “Refractive Indices of Human Skin Tissues at Eight Wavelengths and Estimated Dispersion Relations between 300 and

1600 nm,” H. Ding, et al.; Phys. Med. Biol. 51 (2006); pp. 1479-1489 (“Ding”);

- APPLE-1045: “Analysis of the Dispersion of Optical Plastic Materials,” S. Kasarova, et al.; Optical Materials 29 (2007); pp. 1481-1490 (“Kasarova”);
- APPLE-1046; “Noninvasive Pulse Oximetry Utilizing Skin Reflectance Photoplethysmography,” Y. Mendelson, et al.; IEEE Transactions on Biomedical Engineering, Vol. 35, No. 10, October 1988; pp. 798-805 (“Mendelson-IEEE-1988”);
- APPLE-1049: Eugene Hecht, Optics (4th Ed. 2002);
- APPLE-1050: Excerpt from Merriam-Webster Dictionary
- APPLE-1051: Design of Pulse Oximeters, J.G. Webster; Institution of Physics Publishing, 1997 (“Webster”); and
- APPLE-1052: Eugene Hecht, Optics (2nd Ed. 1990).

3. Counsel has informed me that I should consider these materials through the lens of a person of ordinary skill in the art (POSITA) related to the '708 Patent at the time of the earliest possible priority date of the '708 Patent (July 3, 2008, hereinafter the “Critical Date”) and I have done so during my review of these materials. I have applied the same level of ordinary skill in the art described in my prior declaration, which I have been informed was also adopted by the Board in the Institution Decision.

APPLE-1003, [0021]-[0022]; Institution Decision, 12-13.

4. I have no financial interest in the party or in the outcome of this proceeding. I am being compensated for my work as an expert on an hourly basis. My compensation is not dependent on the outcome of these proceedings or the content of my opinions.

5. In writing this declaration, I have considered the following: my own knowledge and experience, including my work experience in the fields of mechanical engineering, computer science, biomedical engineering, and electrical engineer; my experience in teaching those subjects; and my experience in working with others involved in those fields. In addition, I have analyzed various publications and materials, in addition to other materials I cite in my declaration.

6. My opinions, as explained below, are based on my education, experience, and expertise in the fields relating to the '708 Patent. Unless otherwise stated, my testimony below refers to the knowledge of one of ordinary skill in the fields as of the Critical Date, or before.

II. Ground 1 Establishes Obviousness

A. Inokawa's lens enhances the light-gathering ability of Aizawa

7. As I previously explained in the Original Declaration, Inokawa *very generally* describes a “lens [that] makes it possible to increase the light-gathering ability” of a reflectance type pulse sensor, APPLE-1008, [0015], [0058], FIG. 2, and, based on this disclosure, a POSITA would have been motivated to incorporate “an Inokawa-like lens into the cover of Aizawa to increase the light collection efficiency....”

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