

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.: 50095-00009IP1
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

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	12
III.	LEVEL OF ORDINARY SKILL IN THE ART	13
IV.	LEGAL STANDARDS	14
A.	Terminology	14
B.	Legal Standards for Anticipation.....	15
C.	Legal Standards for Obviousness.....	15
V.	HISTORICAL AND TECHNICAL OVERVIEW.....	20
VI.	THE '708 patent	21
A.	Overview of the '708 patent	21
VII.	SUMMARY OF THE PRIOR ART.....	26
A.	Overview of Aizawa.....	26
B.	Overview of Inokawa	29
C.	Overview of Ohsaki.....	33
D.	Overview of Mendelson-1988	35
E.	Overview of Mendelson-2006	37
F.	Overview of Beyer, Jr.....	41
VIII.	GROUND 1A – Claims 1-4, 6-11, 13-15, 19-22, and 24-27 Are Rendered Obvious by Aizawa in view of Inokawa.....	42
A.	Claim 1	42
B.	Claim 2	54
C.	Claim 3	56
D.	Claim 4	56
E.	Claim 5	57
F.	Claim 6	58
G.	Claim 7	60
H.	Claim 8	61
I.	Claim 9	63
J.	Claim 11	65

K. Claim 13	65
L. Claim 14	66
M. Claim 15	67
N. Claim 19	68
O. Claim 20	71
P. Claim 21	71
Q. Claim 22	72
R. Claim 24	72
S. Claim 25	72
T. Claim 26	73
U. Claim 27	74
 IX. GROUND 1B –Claims 1-4, 6-11, 13-15, 19-22, and 24-27 Are Rendered Obvious by Aizawa in view of Inokawa and Ohsaki	74
A. Claims 1-4, 6-11, 13-15, 19-22, and 24-27	74
 X. GROUND 1C – Claims 16, 27, and 28 Are Rendered Obvious by Aizawa in view of Inokawa and Mendelson-2006.....	77
A. Claim 16	77
B. Claim 27	81
C. Claim 28	82
 XI. GROUND 1D – Claims 17, 18, and 29 Are Rendered Obvious by Aizawa in view of Inokawa, Mendelson-2006, and Beyer, Jr.	82
A. Claim 17	82
B. Claim 18	85
C. Claim 29	86
 XII. GROUND 1E – Claims 16-18 and 27-29 Are Rendered Obvious by Aizawa in view of Inokawa, Goldsmith, and Lo	87
A. The Aizawa-Inokawa-Goldsmith-Lo Combination	87
B. Claim 16	91
C. Claim 17	91
D. Claim 18	92
E. Claim 27	93

F. Claim 28	93
G. Claim 29	94
XIII. GROUND 1F – Claim 10 Is Rendered Obvious by Aizawa in view of Inokawa, and Al-Ali.....	95
A. Claim 10	95
XIV. GROUND 2A – Claims 1-4, 6-15, and 19-26 Are Rendered Obvious by Mendelson-1988 in View of Inokawa	97
A. Claim 1	98
B. Claim 2	110
C. Claim 3	111
D. Claim 4	113
E. Claim 5	113
F. Claim 6	114
G. Claim 7	115
H. Claim 8	116
I. Claim 9	117
J. Claim 11	118
K. Claim 12	118
L. Claim 13	119
M. Claim 14	120
N. Claim 15	121
O. Claim 19	122
P. Claim 20	125
Q. Claim 21	125
R. Claim 22	125
S. Claim 23	126
T. Claim 24	126
U. Claim 25	126
XV. GROUND 2B – Claims 16, 27, and 28 Are Rendered Obvious by Mendelson-1988 in view of Inokawa and Mendelson-2006.....	128
A. The Mendelson-1988-Inokawa-Mendelson-2006 Combination	128

B. Claim 16	129
C. Claim 27	130
D. Claim 28	131
XVI. GROUND 2C – Claims 17, 18, and 29 Are Rendered Obvious by Mendelson-1988 in view of Inokawa, Mendelson-2006, and Beyer, Jr.	131
A. Claim 17	131
B. Claim 18	135
C. Claim 29	135
XVII. CONCLUSION	136

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.

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.