UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE, INC.,

Petitioner,

v.

OMNI MEDSCI, INC.,

Patent Owner.

IPR2020-00175
Patent 10,188,299 B2

Record of Oral Hearing
Held: March 25, 2021

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

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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ON BEHALF OF THE PATENT OWNER:

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The above-entitled matter came on for hearing on Thursday, March 25, 2021, commencing at 1:06 p.m., EDT, at the U.S. Patent and Trademark Office, by video/by telephone.

while in the '533 the claim specifies a light source configured to increase signal-to-noise ratio.

While the claim language is different the Lisogurski reference is not and the Board's findings about what Lisogurski teaches are applicable here because it's the same record, the same reference, the same -- argues the same basic evidence.

If you go to slide 10, there is no, excuse me. If you go to slide 10 there is no dispute that Lisogurski's device is configured to increase the LED firing rate in some circumstances. If you go to the top Dr. MacFarlane, Omni's expert, has admitted this. That Lisogurski describes a device that is configured to increase the emitter firing rate. And there also should be no dispute that doing so will sometimes increase the signal-to-noise ratio. If you look at the bottom quote Dr. MacFarlane admitted that increasing the firing rate generally will increase signal-to-noise ratio and as we looked at on some slides earlier, Omni has admitted that tracking heart rate can increase signal-to-noise ratio by increasing the LED pulse rate. Thus the evidence including Lisogurski's disclosure and Omni's admissions show that cardiac cycle modulation is configured to increase signal-to-noise ratio by increasing the LED firing rate. However, even if Lisogurski alone does not teach something configured to increase signal-to-noise ratio, by increasing the pulse rate of an LED Lisogurski and Carlson do.

JUDGE FENICK: Sorry, Mr. Broughan. This is Judge

Fenick. Before we move on to Lisogurski and Carlson, on your slide, the slide that you just showed slide 10 at the bottom says that in general if you increase the pulse rate you'll increase the signal-to-noise ratio. It sounds to me like this isn't what Lisogurski discusses when it discusses cardiac cycle modulation. So this portion of the witness's statement, was this describing Lisogurski's cardiac cycle modulation or Lisogurski in general? It sounds like you want us to take this as the witness admitting that this is true in general which is -- is it directed towards Lisogurski's cardiac cycle modulation?

MR. BROUGHAN: No. This was a question answered about increasing the pulse rate of an LED generally, not about Lisogurski specifically. But the general comment would apply to the more specific here, that when you're increasing the pulse rate, that will increase signal-to-noise ratio.

JUDGE FENICK: My understanding of the cardiac cycle modulation is it tracks the cardiac cycle of the wearer and so if that cardiac cycle decreases you would need to decrease the pulse rate to increase the signal-to-noise ratio. So this doesn't seem to be, this general description doesn't seem to be describing the cardiac cycle modulation.

MR. BROUGHAN: That's correct, Your Honor. It is not specifically describing cardiac cycle modulation but still the general principle behind it I believe is true which is that if you're increasing the pulse rate, as a general matter that will increase