

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.

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

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

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

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

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

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

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

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