

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CAREFUSION CORPORATION,
Petitioner,

v.

BAXTER INTERNATIONAL, INC.,
Patent Owner.

Case IPR2016-01460 (Patent 5,764,034)
Case IPR2016-01463 (Patent 6,231,560 B1)

Record of Oral Hearing
Held: October 17, 2017

Before ROBERT J. WEINSCHENK, TIMOTHY J. GOODSON, and
AMANDA F. WIEKER, *Administrative Patent Judges*.

Case IPR2016-01460 (Patent 5,764,034)
Case IPR2016-01463 (Patent 6,231,560 B1)

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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ON BEHALF OF PATENT OWNER:

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The above-entitled matter came on for hearing on Tuesday, October 17, 2017, commencing at 1:00 p.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

P R O C E E D I N G S

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JUDGE WIEKER: Please be seated. This is the oral hearing for Case Numbers IPR2016-01460 and IPR2016-01463, CareFusion Corporation vs. Baxter International, concerning U.S. Patent Numbers 5,764,034 and 6,231,560, respectively.

I am Judge Wieker, and with me are Judge Weinschenk and Judge Goodson, who's appearing remotely. Counsel for parties, please introduce yourselves for the record, starting with Petitioner.

MR. STEINERT: Adam Steinert, Fredrikson & Byron, on behalf of Petitioner. With me is Karina Marciana from CareFusion's parent, Becton Dickinson.

JUDGE WIEKER: Thank you.

Patent Owner?

MR. SULLIVAN: Good morning. Denis Sullivan with the law firm of Barclay Damon in Syracuse, New York, representing the Patent Owner, Baxter International. I will be presenting on the '034 patent today. With me at counsel's table is Thomas Hoehner, also with Barclay Damon in Syracuse, New York. He will be presenting for the '560 patent. Here in the room as well is my partner John Gutkoski from our Boston office, along with Joseph Reagen, chief IP counsel for Baxter, and Austin Foley, senior patent counsel.

JUDGE WIEKER: Thank you, all, and welcome to the Board. Today we will hear argument in two separate proceedings before the Board. Per our October 2nd order, the hearings in these two cases will

1 be conducted serially, with each party accorded an hour and a half to
2 address both proceedings.

3 We will begin first with the 1460 IPR. Petitioner will argue
4 first and may reserve rebuttal time. Next, Patent Owner will respond
5 but may not reserve rebuttal time. Petitioner will then respond with any
6 reserved rebuttal time. We will then follow the same procedure in the
7 1463 IPR.

8 I'd like to remind the parties that Petitioner bears the burden of
9 proving any proposition of unpatentability by a preponderance of the
10 evidence. Also, this is a reminder that the hearing is open to the public,
11 and a full transcript will be part of the record when it's available.

12 Finally, please bear in mind that Judge Goodson is attending
13 remotely. Please identify clearly and specifically each demonstrative
14 exhibit, for example, by slide number or screen number, to ensure
15 clarity of the record and to ensure Judge Goodson can follow your
16 presentation remotely.

17 With that, we will begin with the hearing for IPR2016-01460.
18 Mr. Steinert, how much time would you like to reserve for your
19 argument in the 1463 IPR?

20 MR. STEINERT: I would like to reserve a total of 45 minutes
21 for the 1463 IPR.

22 JUDGE WIEKER: Okay.

23 MR. STEINERT: If this IPR occupies less than the 45
24 minutes, I'm happy to put that extra time onto 1463.

1 JUDGE WIEKER: Okay. And would you like to reserve any
2 of the 1460 time for rebuttal?

3 MR. STEINERT: Yes, ten minutes. So no more than 35
4 minutes for my opening, Your Honors.

5 JUDGE WIEKER: Okay. All right, you may proceed when
6 you are ready.

7 MR. STEINERT: Thank you, Your Honors.

8 United States Patent Number 5,764,034 relates to a battery
9 monitor for an infusion pump. Referring to Demonstrative Slide
10 Number 2, which has the text of Claim 1 of the '034 patent, the claim
11 requires an infusion pump with a pump mechanism; a battery; a circuit
12 which monitors the voltage and current; a circuit responsive to that
13 monitoring circuit that determines the remaining time of charge in the
14 battery; an alarm when the remaining time of charge falls below a
15 predetermined level; and an alert when the remaining time of charge
16 falls below a different predetermined level that's higher than that first
17 predetermined level; and display means for displaying the remaining
18 time of charge in the battery. That's it.

19 The crux of this IPR is that that really didn't add anything to
20 the existing technology for monitoring batteries, not only in general, but
21 also in an infusion pump. During prosecution -- and I think the parties
22 are in full agreement on this -- the entire reason that the claims were
23 allowed was because of the idea of triggering alerts and alarms based on
24 the remaining time of charge in the battery, rather than the voltage of

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