

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CORPAK MEDSYSTEMS, INC. and HALYARD HEALTH, INC,
Petitioners

v.

KIRN MEDICAL DESIGN, L.L.C. and APPLIED MEDICAL TECHNOLOGY,
INC.,
Patent Owner

Inter Partes Review No. IPR2017-01990
Patent 6,631,715

EXCLUSIVE LICENSEE APPLIED MEDICAL TECHNOLOGY, INC.'S
PRELIMINARY RESPONSE UNDER 37 C.F.R. § 42.107

TABLE OF CONTENTS

I.	Introduction	1
II.	The Follow-On Petition in this Case Should Be Denied Because Petitioners Have Failed to Adequately Explain, or Even Address, Why Their Follow-On Petition Should Be Instituted in View of the Unreasonable Deficiency of Their Previous Petition and Their Delay in Filing Their Follow On Petition	5
III.	The Person of Ordinary Skill in the Art	12
IV.	Claim Construction.....	13
	A. “Securing at Least One Tube Through a Nose into a Patient”	14
	a. The Phrase “Securing at Least One Tube Through a Nose into a Patient” Is a Limitation of the Claim	14
	b. The Phrase “Securing at Least One Tube Through a Nose into a Patient” Means “Attaching the Tube to the Patient, in a Generally Fixed Position, Through the Nose of the Patient, in a Manner that Prevents Dislodgement of the Tube during Use”	15
	B. “Snapping the at Least One Tube into a Channel Formed in a Receiver”	18
	a. The Phrase “Snapping the at Least One Tube into a Channel Formed in a Receiver” Means that Snapping Occurs With Respect to a Tube and a Channel	19
	b. The Term “Snapping” Is Used According to Its Ordinary and Customary Meaning of Joining of Two Parts Based on a Brief Deformation of One or Both Parts Being Joined	21
	c. “Snapping the at Least One Tube into a Channel Formed in a Receiver” Thus Means “Joining of a Tube and a Receiver, at a Channel Formed in the Receiver, Based on a Brief Deformation of the Tube and/or the Receiver, at an Opening into the Channel”	28

V. The Petition Fails to Show a Reasonable Likelihood that Any Claim of the '715 Patent is Unpatentable.....28

A. Ground 1: Claim 18 Is Not Obvious over Ballantyne, in View of Simmons, Because Modifying Ballantyne as Urged by Petitioners Would Have Rendered Ballantyne’s Apparatus and Method Unsatisfactory for Their Intended Purpose29

B. Ground 2: Claim 18 Is Not Obvious Over Ballantyne, in View of Izumi, Because Modifying Ballantyne as Urged by Petitioners Again Would Have Rendered Ballantyne’s Apparatus and Method Unsatisfactory for Their Intended Purpose43

C. Ground 3: Claim 18 Is Not Obvious Over Ballantyne, in view of Simmons and Bierman, Because Modifying Ballantyne as Urged by Petitioners Again Would Have Rendered Ballantyne’s Apparatus and Method Unsatisfactory for Their Intended Purpose.....50

VI. Objective Evidence of Nonobviousness.....61

VII. Conclusion61

TABLE OF AUTHORITIES

Cases

Apple Inc. v. Immersion Corp., Case IPR2017-00887,
(P.T.A.B. August 25, 2017) (Paper 7).....7, 8

Applied Medical Technology, Inc. v. Corpak Medsystems, Inc.,
1:16-cv-02190 (N.D. Ohio)9

Corpak Medsystems, Inc. v. Kirn Medical Design, L.L.C., Case IPR2017-00646,
(P.T.A.B. July 26, 2017) (Paper 9).....1, 8, 9, 11, 19, 34

Cuozzo Speed Techs., LLC v. Lee,
136 S. Ct. 2131 (2016).....13

D’Agostino v. Mastercard Int’l, Inc.,
No. 2016-1592 (Fed. Cir. Dec. 22, 2016).....13

General Plastic Industrial Co. v. Canon Kabushiki Kaisha, Case IPR2016-01357,
(P.T.A.B. Sept. 6, 2017) (Paper 19) (Section II.B.4.i designated
precedential)5, 6, 7

In re Cruciferous Sprout Litigation,
301 F.3d 1343 (Fed. Cir. 2002)14

In re Gordon,
733 F.2d 900 (Fed. Cir. 1984)31

In re Translogic Tech., Inc.,
504 F.3d 1249 (Fed. Cir. 2007)13

InTouch Techs., Inc. v. VGO Commc’ns, Inc.,
751 F.3d 1327 (Fed. Cir. 2014)31

KSR Int’l Co. v. Teleflex Inc.,
550 U.S. 398 (2007).....30

Nautilus Hyosung Inc. v. Diebold, Inc., Case IPR2017-00426,
(P.T.A.B. June 22, 2017) (Paper 17)7

Statutes

35 U.S.C. § 312(a)4
35 U.S.C. § 314(a)2, 3, 5

Other Authorities

37 C.F.R. § 42.100(b)13
37 C.F.R. § 42.104(b)(4)4, 5
37 C.F.R. § 42.108(a)2, 5

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.