

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SANDBOX MEDICAL, LLC,
Petitioner,

v.

NEOTECH PRODUCTS, INC.,
Patent Owner.

Case IPR2019-00246
Patent 6,958,050 B1

Before BENJAMIN D. M. WOOD, RICHARD H. MARSCHALL,
and JASON W. MELVIN, *Administrative Patent Judges*.

WOOD, Administrative Patent Judge.

DECISION
Institution of *Inter Partes* Review
35 U.S.C. § 314

I. INTRODUCTION

A. *Background*

Sandbox Medical, LLC (“Petitioner”) filed a Petition (Paper 3, “Pet.”) requesting *inter partes* review of claims 1–10 of U.S. Patent No. 6,958,050 (Ex. 1001, “the ’050 patent”). Neotech Products, Inc. (“Patent Owner”) did not file a Preliminary Response.

We have authority under 35 U.S.C. § 314, which provides that an *inter partes* review may not be instituted “unless . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a). A decision to institute under 35 U.S.C. § 314 may not institute on fewer than all claims challenged in the petition. *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1359–60 (2018).

Upon considering the Petition and the evidence currently of record, we determine that Petitioner has shown a reasonable likelihood that it would prevail in showing the unpatentability of at least one of the challenged claims. Accordingly, we grant the Petition.

B. *Related Proceedings*

Petitioner states that Patent Owner filed a patent infringement action asserting the ’050 patent against Petitioner in the Central District of California, but voluntarily dismissed the action prior to service. Pet. 4 (citing Ex. 1012 ¶ 8). According to Petitioner, Patent Owner filed a new action in the District of Delaware, which was transferred to the District of Massachusetts. *Id.* (citing Ex. 1012 ¶ 8). Petitioner disputes that it has been

served, but states that Patent Owner alleges that it effected service on November 14, 2017. *Id.* (citing Ex. 1012 ¶ 8).

C. *The '050 Patent*

The '050 patent issued October 25, 2005 from an application filed June 18, 2002, and is titled “Nasal/Oral Aspiration Device.” Ex. 1001, [45], [22]. Figure 1, reproduced below, depicts a side elevation view of a preferred embodiment:

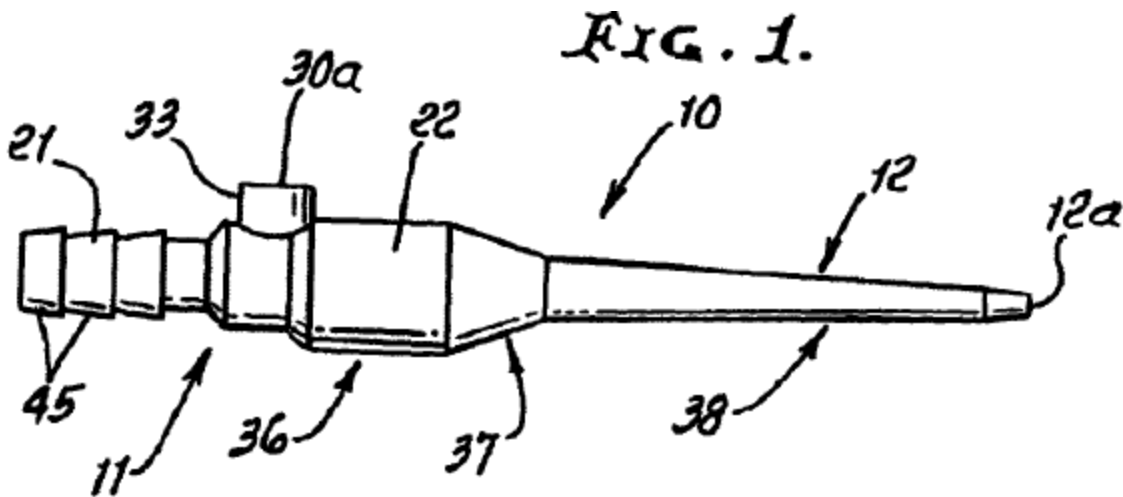


Figure 1, reproduced above, depicts two-part suctioning device 10 comprising first tubular body portion 11 connected end-to-end with second tubular portion 12. *Id.* at 2:31–34. First portion 11 is made from a “relatively hard non-deformable plastic material,” whereas second portion 12 is “flexibly and resiliently yieldably deformable, sidewardly.” *Id.* at 2:45–48. Flexible tapered tip 12a, located at the end of second portion 12, “flexes easily and helps provide better access to nasal and oral cavities.” *Id.* at 2:38–40, Fig. 4.

D. The Challenged Claims

Petitioner challenges claims 1–10. Pet. 1. Claim 1 is the sole independent claim, and is reproduced below:

1. A multi-purpose medical suctioning device, comprising:
 - a) a one piece first tubular body portion,
 - b) a one piece second tubular portion operatively connected to said first tubular body portion,
 - c) said second tubular portion having a flexible tip portion which is relatively soft and pliable and has an entrance of reduced area, said second tubular portion being easily maneuverable as by bending,
 - d) there being a side inlet associated with at least one of said first and second portions, to be manually blocked and unblocked to control suctioning of fluid from said tip portion entrance and through said second and first tubular portions,
 - e) and wherein said first tubular body portion consists of relatively hard plastic material, and said second tubular portion consists of relatively soft plastic material, the tip being maneuverable as by one hand of the user, while the user's other hand controls said side inlet,
 - f) said second tubular portion having primary secondary and tertiary [sic] lengthwise extending sections, said primary section fitting telescopically to said first tubular body portion, and with friction, said tertiary section being flexible and tapering toward said tip at a relatively lesser taper angle, and said secondary section extending between said primary and tertiary section, at a relatively greater taper angle, said primary section fitting over said first tubular body portion to define a device maximum diameter proximate the entrance of said side inlet and between said inlet and said flexible tip portion, for finger control of the device including finger control of said inlet and control of said primary section to control tip portion bending,

- g) said secondary and tertiary sections having respective lengths L_2 , [sic] and L_3 where L_3 is elongated and $L_3 \gg L_2$, flexibility of said tertiary section thereby being enabled along its major elongated length, to facilitate suctioning usage of the tertiary section as the tertiary section is easily bent in response to engagement with tissue of a patient,
- h) and wherein said device is characterized by one of the following:
 - i) said body portions are transparent
 - ii) said body portions are translucent
 - iii) at least one of said body portions is transparent
 - iv) at least one of said body portions is translucent.

E. Asserted Grounds of Unpatentability

Petitioner contends that the challenged claims are unpatentable based on the following specific grounds (Pet. 3):

No.	Reference[s]	Basis	Claim[s] Challenged
1	Jackson, ¹ Kerwin, ² Behrstock, ³ Penny, ⁴ and Halligan ⁵	§ 103	1–6 and 8–10
2	Jackson, Kerwin, Behrstock, Penny, Halligan, and Shedlock ⁶	§ 103	7

¹ U.S. Pat. No. 3,595,234 (iss. Jul. 27, 1971) (Ex. 1003).

² U.S. Pat. No. 4,813,926 (iss. Mar. 21, 1989) (Ex. 1004).

³ U.S. Pat. No. 4,699,138 (iss. Oct. 13, 1987) (Ex. 1006).

⁴ U.S. Pat. No. 3,965,901 (iss. Jun. 29, 1976) (Ex. 1009).

⁵ U.S. Pat. No. 3,319,628 (iss. May 16, 1967) (Ex. 1005).

⁶ U.S. Pat. No. 5,114,415 (iss. May 19, 1992) (Ex. 1007).

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