

(McKesson Information Solutions, Inc. v. Bridge Medical, Inc.)



1986. 1 - 1991. 7
 87. 2. - 87. 8
 1994. 7 - 1995. 7 Dickstein, Shapiro&Morin
 1995. 7 - 1997. 5 Keck, Mahin&Cate
 1997. 5 - 2004. 8 Jacobson, Price, Holman&Stern
 2004. 8 - 2004. 12 Piper Rudnick
 2005. 1 - 2007. 1 Mayer, Brown, Rowe&Maw
 2007. 2 - Lowe, Hauptman, Ham&Berner /

McKesson Information Solutions, Inc. 對 Bridge Medical, Inc.⁽²⁾ (CAFC⁽¹⁾가, 5 18 “McKesson”)

(unenforceable)

, McKesson

1. (Duty to disclose information material to patentability)

37 C.F.R. §.56

가 ,

가 (3). (prior public use), 가 (prior sales or offers to sell), 가 (enablement)

(1) 가 (Claim)

가; (2) 가; (3) 가, 가 (cumulative)

(讓受人)

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(2) 가

(reasonable examiner)”

(information material to patentability)” (4). “ ”

1) :U.S. Court of Appeals for the Federal Circuit, 1 (Federal District Court) Washington, D.C.

2) McKesson Information Solutions, Inc. v. Bridge Medical, Inc., 487 F.3d 897(2007)

3) Title 37 - Code of Federal Regulations, § 1.56 Duty to disclose information material to patentability, (“ ... Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section....”).

4) Akron Polymer Container Corp. v. Exxel Container, Inc., 148 F.3d 1380, 1382 (Fed. Cir. 1998) (“ Materiality instead embraces ‘ any information that a reasonable examiner would substantially likely consider important in deciding whether to allow an application to issue as a patent. ’”(emphasis in original)).

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가 , 1 OA

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(Double Patenting) \$180 가 RCE

(Terminal Disclaimer) (5)

← A → ← B → ← C → ← D → ← E → ← F →

3 1 OA Final OA/ Notice of Allowance

(5)

(Continuation-in-part)

가

(A) 3

3 , PCT National stage

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가 (7)

(6) (Information Disclosure Statement, “IDS”)

가 PTO (PTO-1449A/B:

(Request for Continued Examination, PTO/SB/08a/b)

“RCE”) (Petition to Withdraw from Issuance) 가

5) Dayco Products Inc. v. Total Containment Inc., 329 F.3d 1358 (Fed. Cir. 2003) (‘ In order to overcome a double patenting rejection using a terminal disclaimer, the applicant must also include in the disclaimer ‘ a provision that any patent granted on that application... shall be enforceable only for and during such period that said patent is commonly owned with the application or patent which formed the basis for the rejection. ’ 37 C.F.R. § 1.321(c)(3) (2002)(emphasis in original)).

6) Title 37 - Code of Federal Regulations, § 1.56 Duty to disclose information material to patentability, (‘ The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned ’).

7) Title 37 - Code of Federal Regulations, § 1.97 Filing of information disclosure statement, (‘ (b) An information disclosure statement shall be considered by the Office if filed by the applicant within any one of the following time periods:(1) Within three months of the filing date of a national application other than a continued prosecution application under § 1.53(d); (2) Within three months of the date of entry of the national stage as set forth in § 1.491 in an international application;...’).

(Abstract) , IDS (10)

(B) 3 1 OA
 1 OA , , RCE (D) Final OA Notice of Allowance

1 OA (8) Foreign Search Report
 IDS

PTO-1449, , 3 \$180
 (11), IDS, PTO-1449
 , Notice of Allowance

(C) 1 OA Final OA / Notice of Allowance 3
 Final OA Notice of Allowance Foreign Search
 Report, International Search Report(ISR), International
 Preliminary Examining Report(IPER), ,
 OA IDS

PTO-1449 , 3 IDS ,
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 (9), 가
 가 IDS 3
 OA ,
 RCE (Continuation)
 , RCE

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- 8) Title 37 - Code of Federal Regulations, §1.97 Filing of information disclosure statement, (" (b) An information disclosure statement shall be considered by the Office if filed by the applicant within any one of the following time periods: ... (3) Before the mailing of a first Office action on the merits; or (4) Before the mailing of a first Office action after the filing of a request for continued examination under §1.114.")
 - 9) Title 37 - Code of Federal Regulations, §1.97 Filing of information disclosure statement, (" (c) An information disclosure statement shall be considered by the Office if filed after the period specified in paragraph (b) of this section, provided that the information disclosure statement is filed before the mailing date of any of a final action under §1.113, a notice of allowance under §1.311, or an action that otherwise closes prosecution in the application, and it is accompanied by one of: (1) The statement specified in paragraph (e) of this section; or (2) The fee set forth in §1.17(p)").
 - 10) Title 37 - Code of Federal Regulations, §1.97 Filing of information disclosure statement, (" (e) A statement under this section must state either: (1) That each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the information disclosure statement; or (2) That no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing the certification after making reasonable inquiry, no item of information contained in the information disclosure statement was known to any individual designated in §1.56(c) more than three months prior to the filing of the information disclosure statement.
 - 11) Title 37 - Code of Federal Regulations, §1.97 Filing of information disclosure statement, (" (d) An information disclosure statement shall be considered by the Office if filed by the applicant after the period specified in paragraph (c) of this section, provided that the information disclosure statement is filed on or before payment of the issue fee and is accompanied by: (1) The statement specified in paragraph (e) of this section; and (2) The fee set forth in §1.17(p)").

2. McKesson

(E) , McKesson

(D)

IDS

McKesson Information Solutions California Bridge Medical

(Petition to withdraw

McKesson 가 4,857,716 (' 716) Bar Code

from issuance) RCE 가

System

Computer; Modem System Computer Base Station; , Base Station

(F)

Portable Handheld Patient Terminal(Bar Code Reader) " 3-node "

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Portable Terminal Programmable Unique Identifier ' 716

37 C.F.R. 1.501

Citation of Prior Art

CIP

4,835,372(' 372) Trafton

' 716 4,850,009

Reissue(2) ('009)

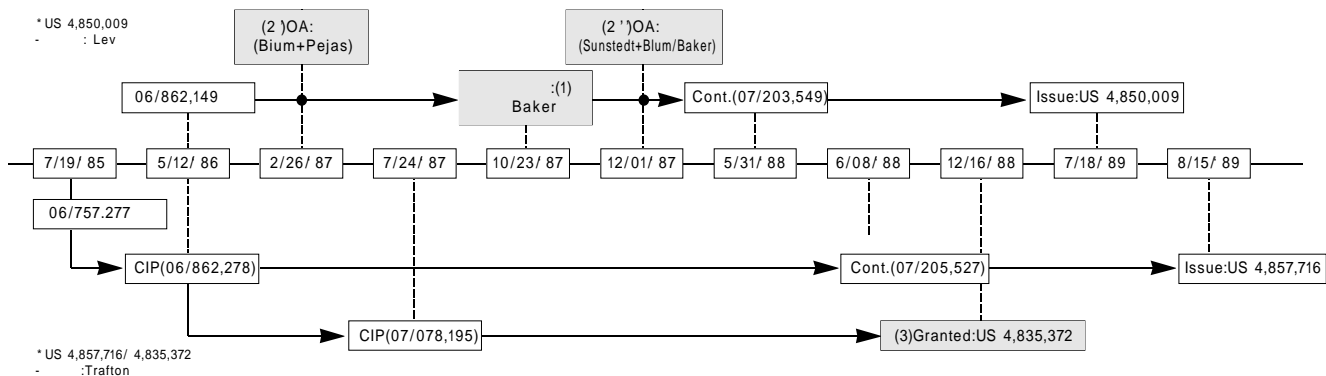
Portable Terminal

Reexamination

'716

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Schumann



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 Lev , Schuman California Baker 가
 Schumann Baker
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 ' 372 ' 716 Trafton 가
 CAFC 가 (2)
 가
 (1) Baker “
 ' 009 Lev 1987 10 23 ” 2003 CAFC Dayco (12)
 Schumann Baker (' ,009 Lev 1987 2 26
 4,456,793) ' 716 15-16 Blum Pejas
 가 1987 12 1 15-16, 19,
 가 21-23 Sunstedt Blum Baker
 (Materiality) (Intent)가 ' 716
 , Baker
 Central Controller, Subsystem Controller Portable “,
 Telephone Handset 3-node McKesson
 Subsystem Unique Code
 California Schumann
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 ” Baker
 가 ' 3-node ” (3)
 ; 009 ' 716 1988 12 16 가 ' 372 3-node
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12) Dayco, 329 F.3d at 1368.

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3. McKesson

McKesson

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(4) CAFC McKesson

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