

Patent Owner's Demonstratives

LIFESCAN, INC. v. FACET TECHNOLOGIES, LLC

CASE NO. IPR2023-00712

REDACTED

Demonstrative Exhibit – Not Evidence

The '635 patent

The Challenged Claims are Patentable

Over Saikley alone or in view of Stout (Grounds 1-3)

Over Iio alone or in view of Peckham (Grounds 4-6)

Objective Evidence of Non-obviousness

Copying

Commercial Success

Long-Felt Need

The '635 patent

The Challenged Claims are Patentable

Over Saikley alone or in view of Stout (Grounds 1-3)

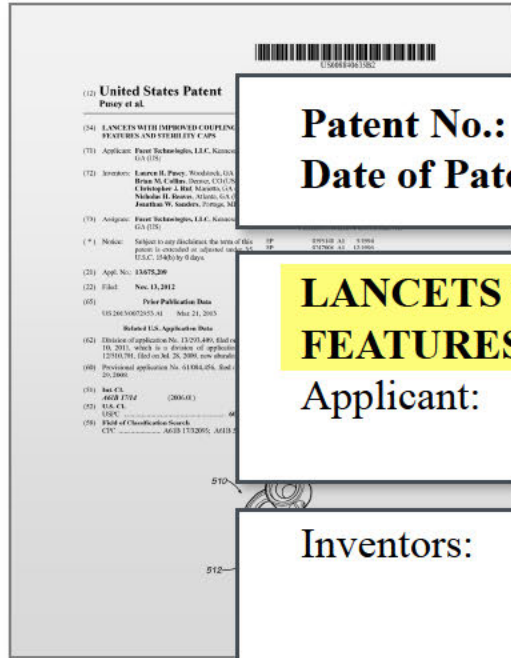
Over Iio alone or in view of Peckham (Grounds 4-6)

Objective Evidence of Non-obviousness

Copying

Commercial Success

Long-Felt Need



Patent No.: US 8,840,635
Date of Patent: Sep. 23, 2014

LANCETS WITH IMPROVED COUPLING FEATURES AND STERILITY CAPS

Applicant: **Facet Technologies, LLC, Kennesaw, GA (US)**

Inventors: **Lauren R. Pusey, Woodstock, GA (US);**
Brian M. Collins, Denver, CO (US);
Christopher J. Ruf, Marietta, GA (US);
Nicholas H. Reaves, Atlanta, GA (US);
Jonathan W. Sanders, Portage, MI (US)

Division of application No. 13/293,409, filed on Nov. 10, 2011, which is a division of application No. 12/510,701, filed on Jul. 28, 2009, now abandoned.

Provisional application No. 61/084,456, filed on Jul. 29, 2008.

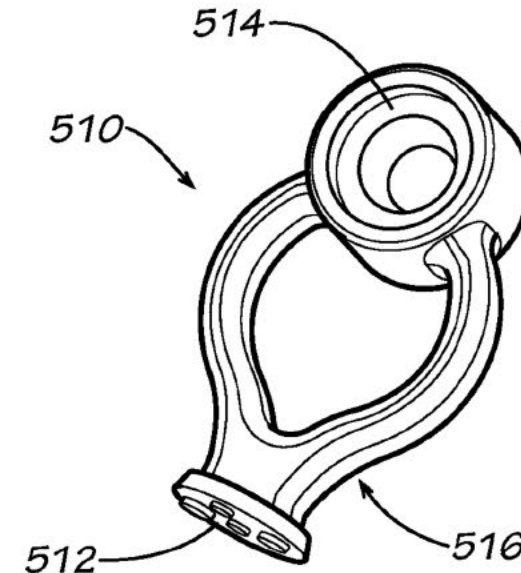


FIG. 5A

1. A protective sterility cap for a lancet, said sterility cap comprising a primary sheath for initial embedment of a sharp lancing tip of an unused lancet therein, a secondary sheath for receiving the sharp lancing tip of a used lancet, and a gripping handle portion extending between the primary sheath and the secondary sheath, with the primary sheath attached at a first end of the gripping handle portion and the secondary sheath attached at a second end of the gripping handle portion when the protective sterility cap is removed from the lancet.

'635 Patent, claim 1

6. The protective sterility cap of claim 1, in combination with a lancet having a lancet body defining a lancet thickness, and a sharp lancet tip initially embedded in the primary sheath, wherein the gripping handle portion defines a lateral span of at least 1.5 times the lancet thickness.

7. The protective sterility cap of claim 6, wherein the gripping handle portion defines a length at least equal to its lateral span.

8. The protective sterility cap of claim 6, wherein the gripping handle portion defines a length at least equal to the lancet thickness.

14. A protective sterility cap for a lancet, said sterility cap comprising a primary sheath for initial embedment of a sharp lancing tip of an unused lancet therein, a secondary sheath for

16. The protective sterility cap of claim 14, further comprising at least one flat display surface for placement of branding indicia thereon.

'635 Patent, claim 6-8, 14, 16 (claims 17-18 mirror claims 7-8)

The '635 patent

The Challenged Claims are Patentable

Over Saikley alone or in view of Stout (Grounds 1-3)

Over Iio alone or in view of Peckham (Grounds 4-6)

Objective Evidence of Non-obviousness

Copying

Commercial Success

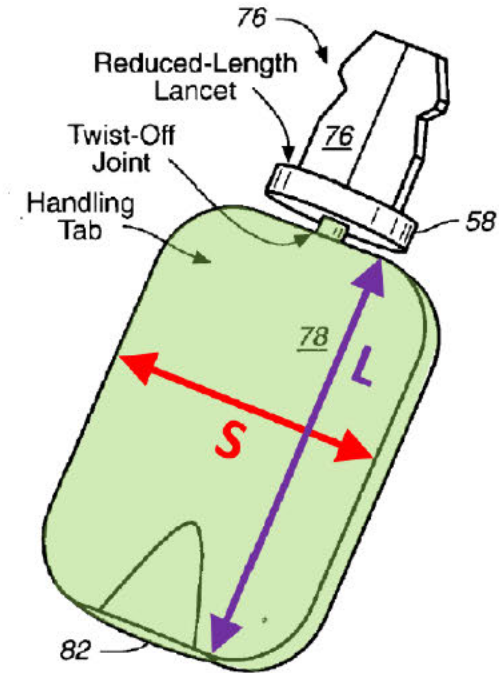
Long-Felt Need

Petitioner maps handling tab 78 as “gripping handle portion”



Saikley therefore discloses “a gripping handle portion [i.e., handling tab] extending between the primary sheath [i.e., twist-off joint] and the secondary sheath” [i.e., hollow cup or pin-cushion type area 82].” Ex.1002, ¶¶73-82.

Pet. 26



Pet. 41

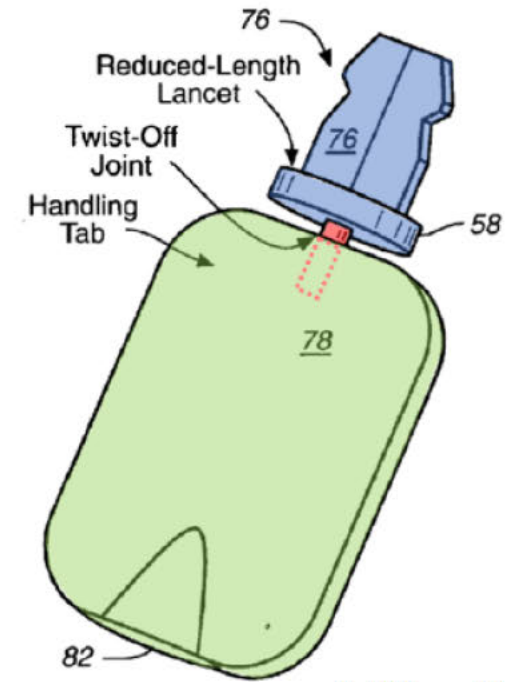
Petitioner identifies cap/handling tab 78 as the gripping handle portion

Petitioner maps portion of handling tab 78 as “primary sheath”



Saikley's protective cap 78 includes a primary sheath—namely, the “twist off joint” [colored red in Fig. 7a below] and the adjoining portion of the “handling tab” [red dashed lines] that “covers the lancet sharp 50” of the “shortened lancet 76” [blue] prior to use. Ex.1005, ¶¶[0037], [0050-52], [0065]; Ex.1002, ¶58..

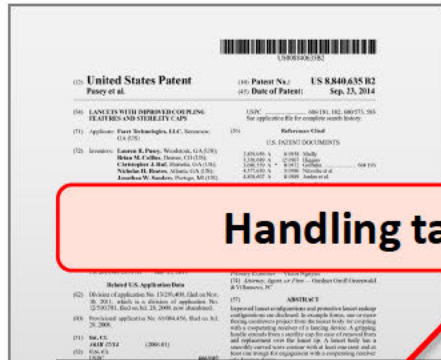
Petition, 11



Petition, 11

Petitioner identifies primary sheath as including portion of handling tab

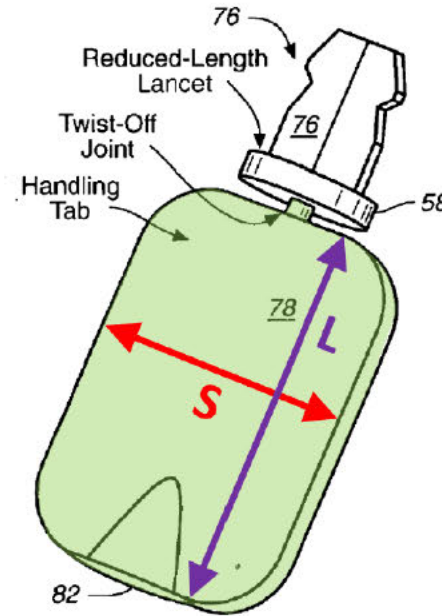
The handling tab 78 cannot meet the claim limitations



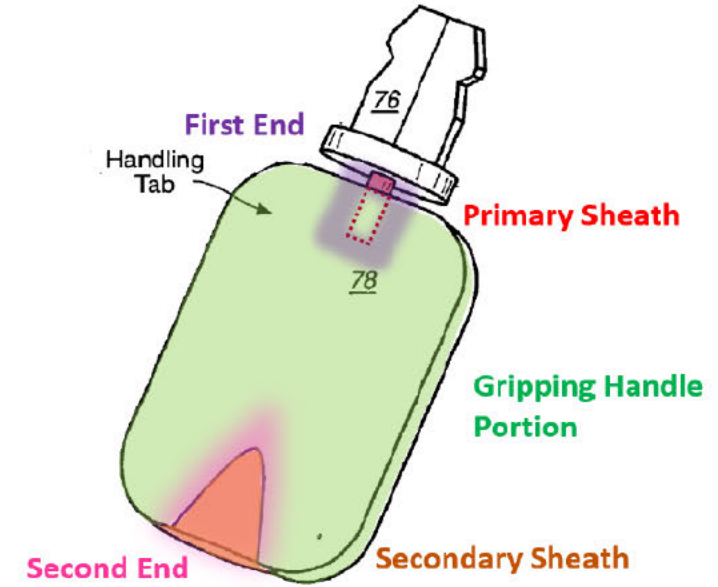
Handling tab 78 identified as both

1. A protective sterility cap for a lancet, said sterility cap comprising a primary sheath for initial embedment of a sharp lancing tip of an unused lancet therein, a secondary sheath for receiving the sharp lancing tip of a used lancet, and a gripping handle portion extending between the primary sheath and the secondary sheath, with the primary sheath attached at a first end of the gripping handle portion and the secondary sheath attached at a second end of the gripping handle portion when the protective sterility cap is removed from the lancet.

'635 Patent, claim 1



Pet. 41



Pet. 27

Handling tab 78 is not between alleged sheaths and alleged sheaths are not attached at end of handling tab 78

Petitioner's varying mapping of primary sheath

UNITED STATES
BEFORE

Saikley's protective cap 78 includes a primary sheath—namely, the “twist off joint” [colored red in Fig. 7a below] and the adjoining portion of the “handling tab” [red dashed lines] that “covers the lancet sharp 50” of the “shortened lancet 76” [blue] prior to use. Ex.1005, ¶¶[0037], [0050-52], [0065]; Ex.1002, ¶58..

Petition, 11

U.S. Patent No. 8,840,615

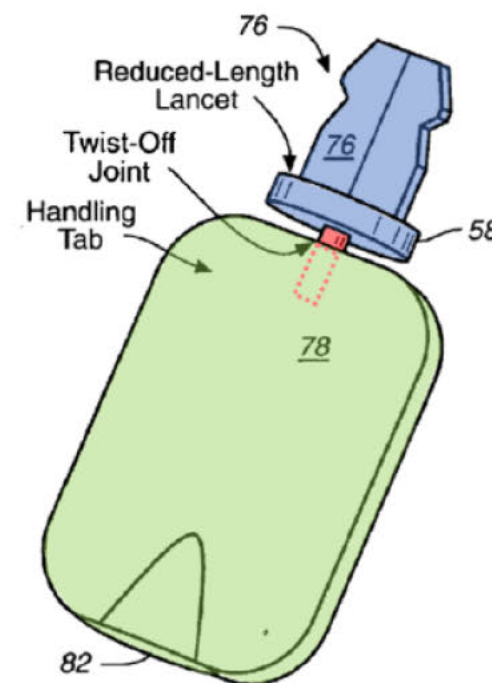
PETITIONER'S
ALL

Saikley therefore discloses “a gripping handle portion [i.e., handling tab] extending between the primary sheath [i.e., twist-off joint] and the secondary sheath” [i.e., hollow cup or pin-cushion type area 82].” Ex.1002, ¶¶73-82.

Petition, 26

shortened lancet 76 is embedded in the twist-off joint and adjoining portion of the protective sterility cap 78 because Saikley describes the cap as an “integrally molded, pull-off tab” and teaches that it must be “twisted” (not pulled) off the lancet body to avoid bending or damaging the lancet. Ex.1002, ¶60 (citing Ex.1019, [00027]).

Petition, 13



Petition, 11

Petitioner identifies primary sheath as including portion of handling tab

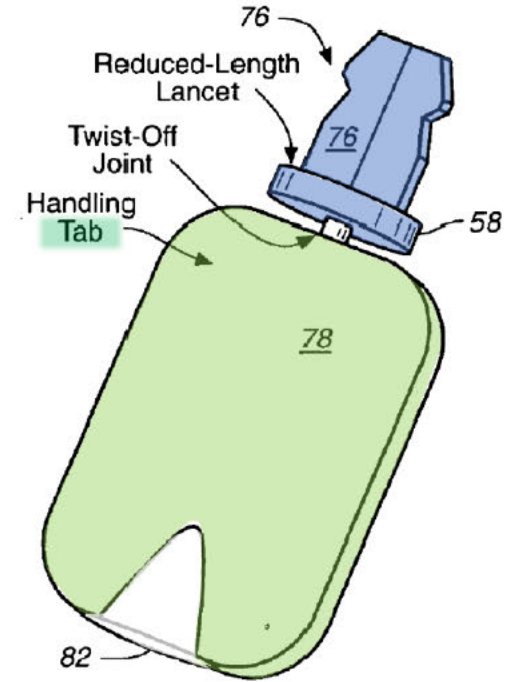
UNITED STATES PATENT AND TRADEMARK OFFICE

As was explained above, a PHOSITA would have understood Saikley’s Figure 7A (in conjunction with the textual descriptions concerning larger lancet caps for handling) to plainly depict a gripping handle portion (cap 78) that is much larger than 1.5 times the lancet thickness. Because Saikley’s Figure 7A also shows

Petition, 40

shown in FIG. 7A” because a PHOSITA would know that “the needle tip is embedded in [a] removable protective cap integrally molded with the plastic body to form a single integral unit prior to use.” See, *supra*, Section VIII.A.2 (citing Ex. 1002, ¶¶59-65). *Adasa*, 55 F.4th at 910 (“[An anticipatory prior art] reference need

Petition, 45



Petitioner identifies portion of handling tab as primary sheath

Petitioner's varying mapping of gripping handle portion

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

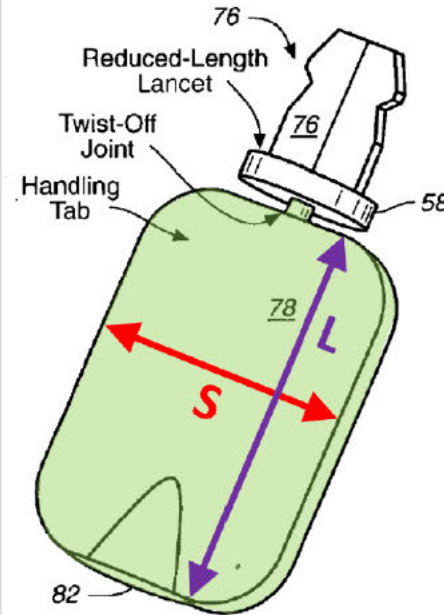
LIFESCAN, INC.
Petitioner,

Saikley therefore discloses “a gripping handle portion [i.e., handling tab] extending between the primary sheath [i.e., twist-off joint] and the secondary sheath” [i.e., hollow cup or pin-cushion type area 82].” Ex.1002, ¶¶73-82.

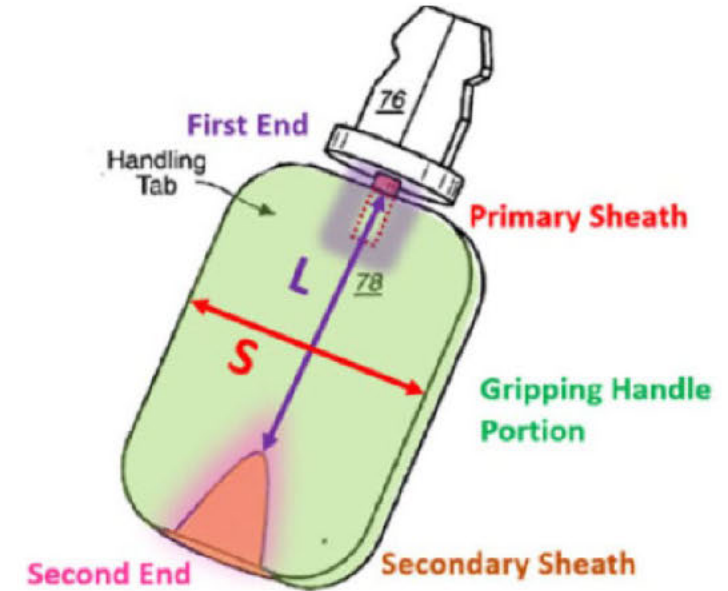
Petition 26

As was explained above, a PHOSITA would have understood Saikley's Figure 7A (in conjunction with the textual descriptions concerning larger lancet caps for handling) to plainly depict a gripping handle portion (cap 78) that is much larger than 1.5 times the lancet thickness. Because Saikley's Figure 7A also shows

Petition, 40



Pet. 41; Ex.1002 76

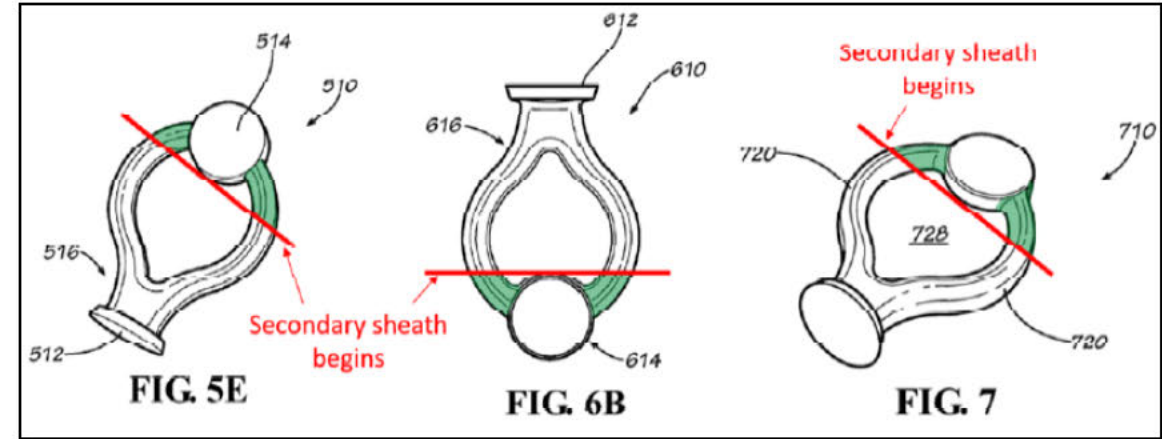


Reply 22; Ex.1034 21

Petitioner's Reply changes length defined by alleged “gripping handle portion”

Second, PO’s overly narrow interpretation of gripping handle portion excludes every cap embodiment in the ’635 Patent. The arms of the gripping handle portion in Figures 5, 6, and 7 not only extend between the sheaths, but also extend around parts of the secondary sheath:

Reply 10



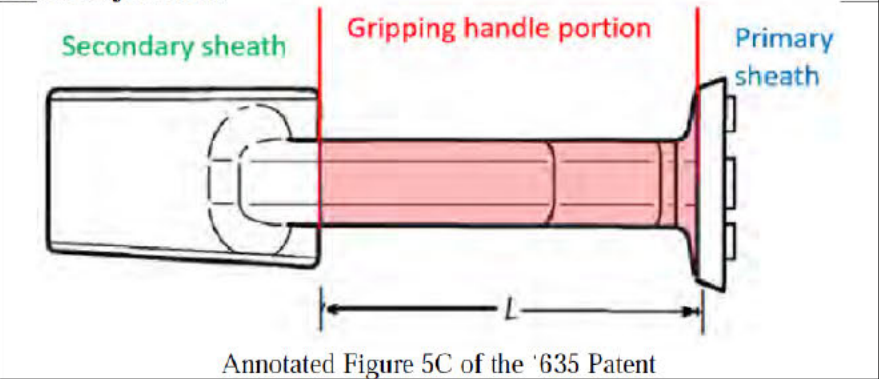
Reply 11

Mr. Hatch:



According to Mr. Hatch, “the gripping handle is distinct from the primary sheath and starts where the sheath ends.” Ex.1045 ¶176.³ In support of his opinion, Mr. Hatch annotated Figure 5C of the ’635 patent as shown below.

Table 11: The length “L” terminates where it meets the primary and secondary sheaths.



Ex.1045 ¶139

Petitioner’s expert disagrees with its claim construction arguments

Saikley does not disclose the dimensional limitations

*“[A]rguments based on drawings not explicitly made to scale in issued patents are **unavailing**.”*

Nystrom v. Trex Co., 424 F.3d 1136, 1148-49 (Fed. Cir. 2005)

*“**Patent drawings** do not define the precise proportions of the elements and **may not be relied on to show particular sizes** if the specification is completely silent on the issue.”*

Hockerson-Halberstadt, Inc. v. Avia Grp. Int’l, Inc., 222 F.3d 951, 956 (Fed. Cir. 2000)

*“Absent any written description in the specification of quantitative values, **arguments based on measurement of a drawing are of little value**.”*

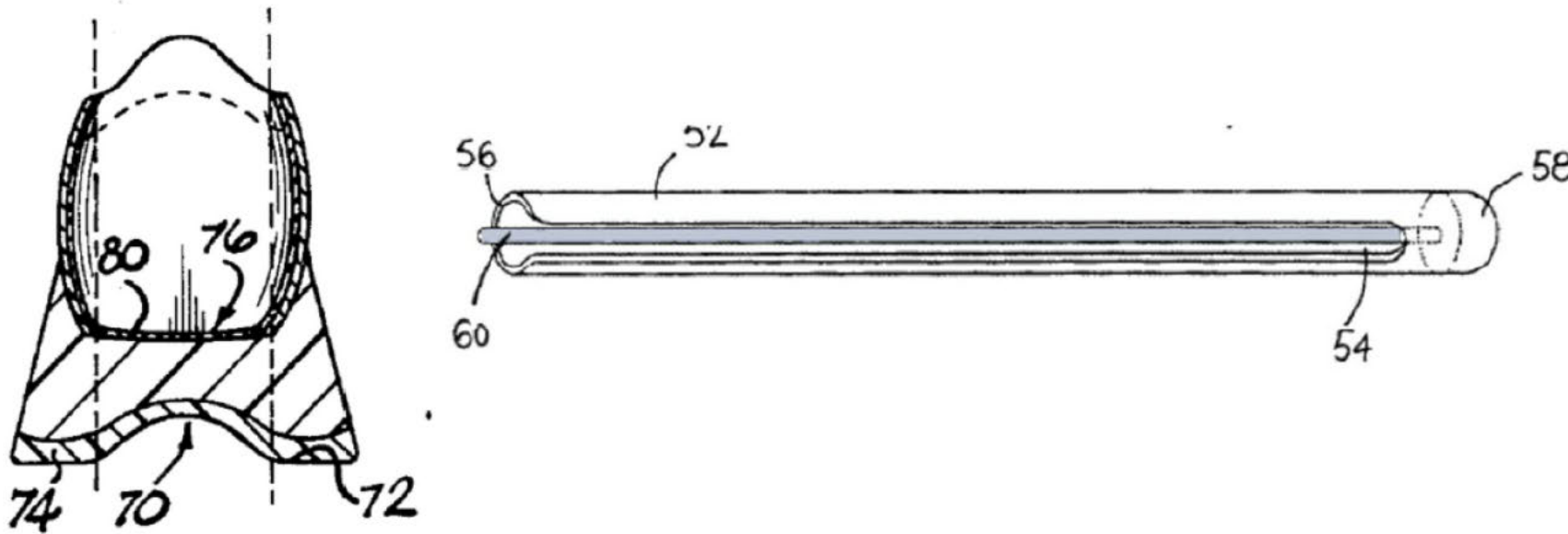
Plantronics, Inc. v. Aliph, Inc., 727 F.3d 1343, 1351 (Fed. Cir. 2013)
(quoting *In re Wright*, 569 F.2d 1124, 1127 (C.C.P.A. 1977))



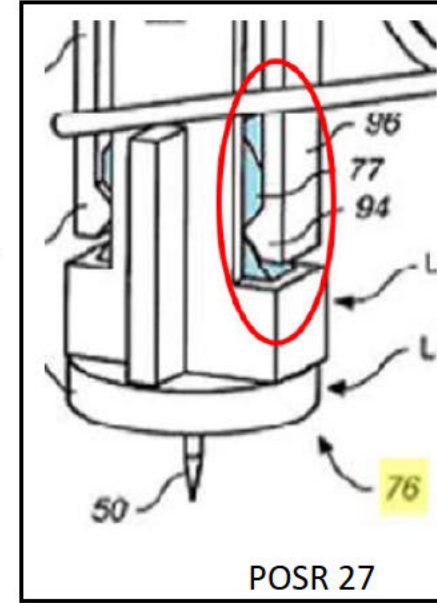
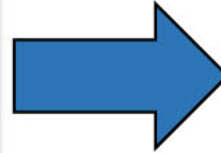
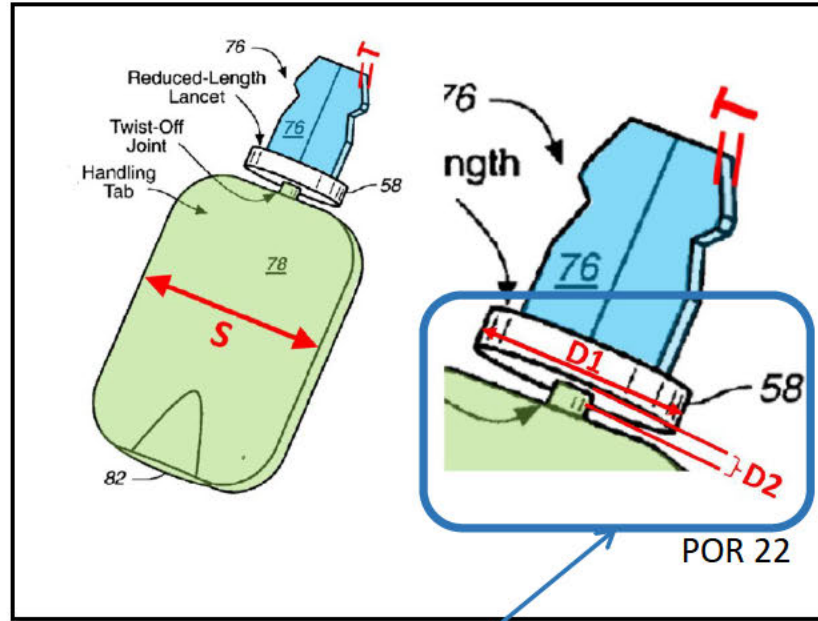
Patent drawings cannot be used to determine dimensions

“*Patent drawings* do not define the precise proportions of the elements and *may not be relied on to show particular sizes* if the specification is completely silent on the issue.”

Source *Vagabond Sys. Ltd. v. Hydrapak, Inc.*, 753 F.3d 1291, 1300 (Fed. Cir. 2014)
(quoting *Hockerson-Halberstadt, Inc. v. Avia Grp. Int'l, Inc.*, 222 F.3d 951, 956 (Fed. Cir. 2000))



Saikley's figures are not reliable disclosures of dimensions



Saikley's lancet body is not drawn consistently

Mr. Delman: $D2=D1$

Ex.2028 17-23

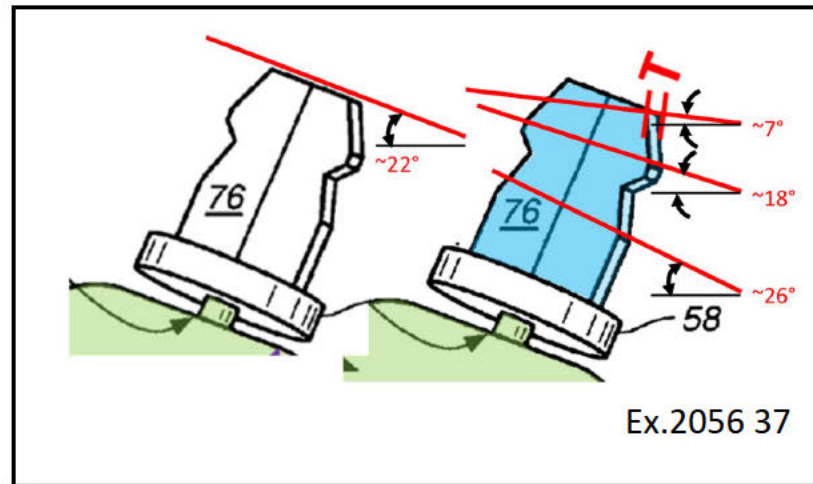
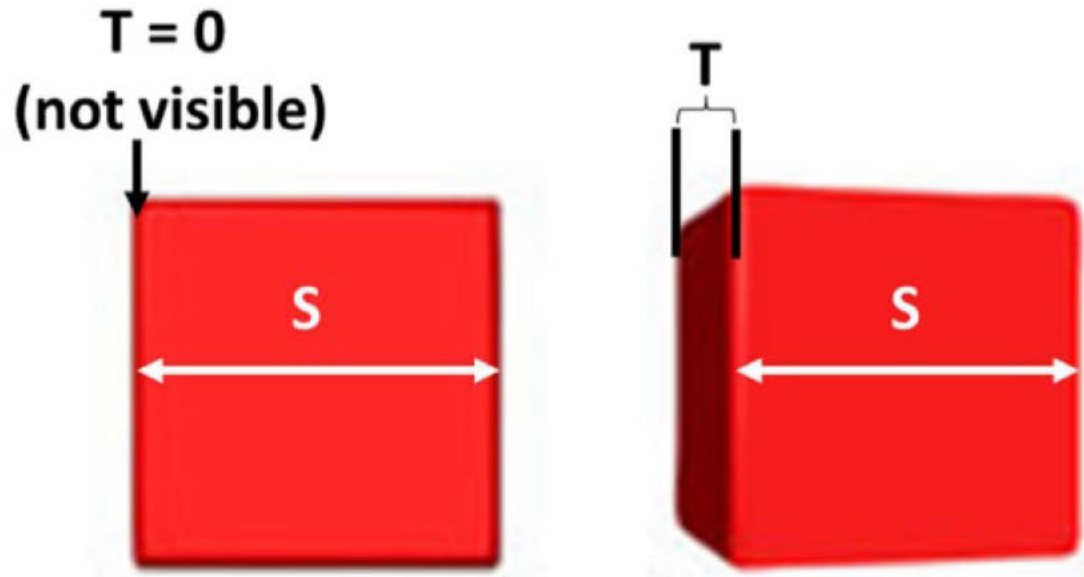
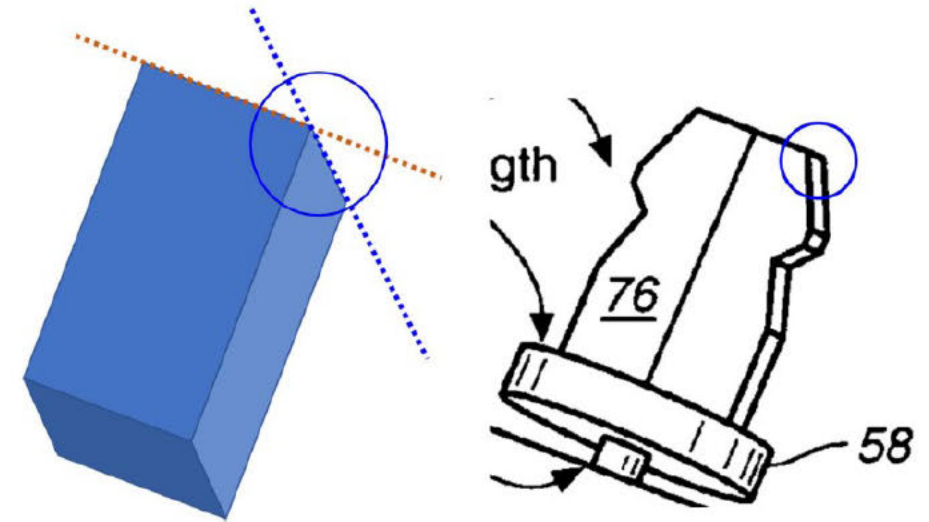


Figure 7A is neither isometric nor properly perspective

Saikley's figures are not reliable disclosures of dimensions



**Rotation of objects affects
dimensional measurements**



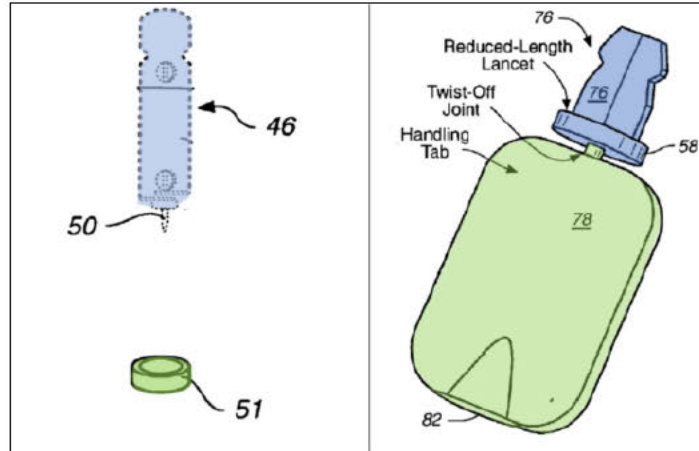
**Saikley's figures are not
rotated reliably**

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIFESCAN, INC.
Petitioner,

Saikley emphasizes the size of the handling tab relative to the lancet by describing cap 78 as a “large lancet cap for handling” (Ex.1005, [0049]) and noting that it is “made much larger than usual to aid handling.” *Id.*, [0050]. Saikley also makes clear that the lancet is smaller than the easily handled tab of cap 78, observing that the “short length [lancet] might make the lancet difficult for the user to handle and install.” *Id.* In view of these textual descriptions and the depiction



Petition 38-39

Ex.1002 ¶76

Mr. Delman:



Q Well, not to put -- to put too much of a fine point on it, what is the usual size for a protective cap in the context of Saikley and this paragraph?

A Well, I think that this paragraph implies that the usual size is smaller than the one that they're describing. I don't think it gives dimensions. In fact, I'm sure it does not give dimensions. It is -- it is talking about this in a general sense, that for this certain reason that they provide, because it might otherwise make it difficult for the user to handle and install, the

Ex.2028 60:11-22

Mr. Delman could not identify what's “usual” for a cap

Ex.2028 61:12-63:4

Lifescan

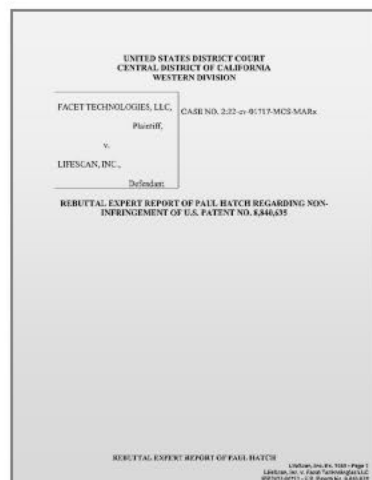
Mr. Delman:

A POSITA would make caps ***bigger***

Lifescan

Mr. Hatch:

A POSITA would make caps ***smaller***



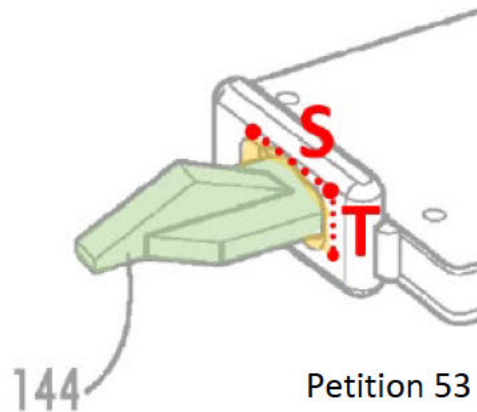
169. However, the POSITA would understand that an extended length of the cap could have adverse effects on the needle. Specifically, if the cap is overly long the user is more likely to accidentally apply a leverage force on the cap thus bending the end of the needle. The POSITA would understand that a shorter cap would reduce the risk of this accidental leverage and bending of the lancet needle.

Ex. 1045 at Par. 169

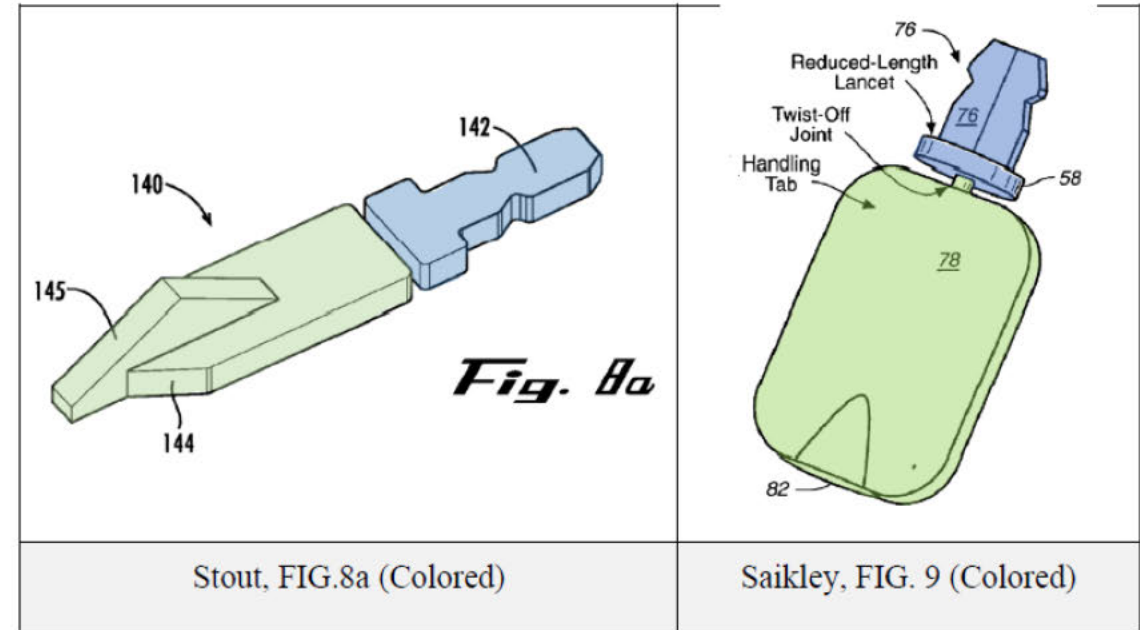
No Motivation to Apply Stout's Cap Dimensions to Saikley

To the extent that these dimensional limitations were not obvious to try, they would be rendered obvious by Saikley in view of Stout, which teaches that “the slotted opening 32 [of the lancing device]”—which lancet must pass through—“has a [lateral span] *considerably greater* than its [lancet thickness], most preferably having a [lateral span] at *least twice* its [lancet thickness].” Ex.1018, [0032]; *see also id.*, [0035]. Ex.1002, ¶128.

Petition 53



Petition 53

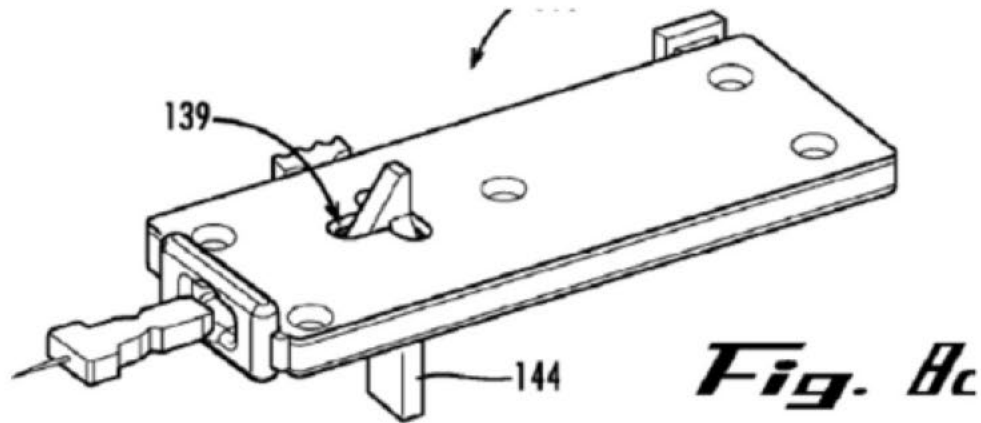


Petition 46

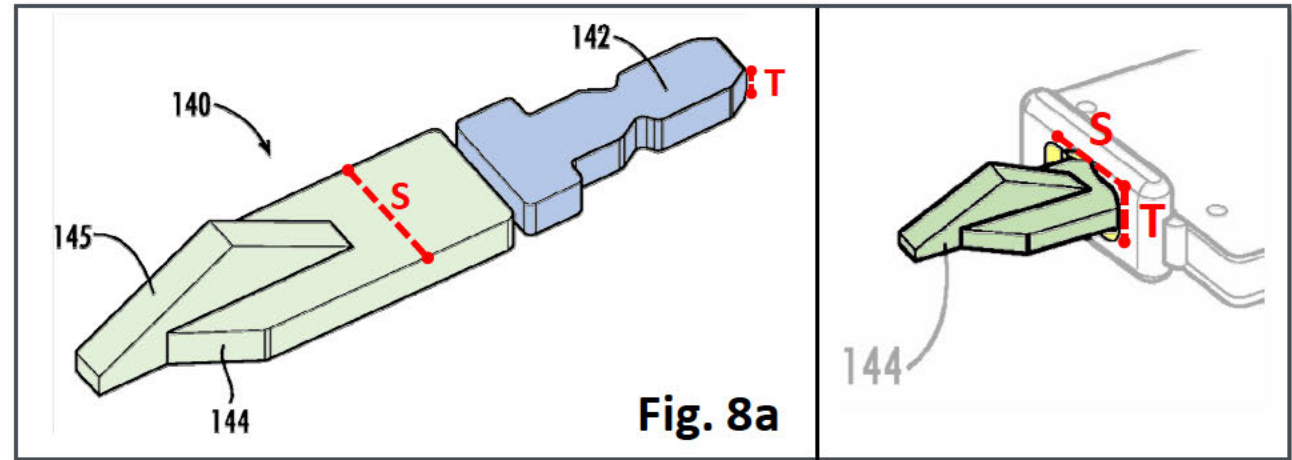
No motivation to apply Stout's cap dimensions to Saikley's cap

- Stout's cap has functions that Saikley's cap doesn't have

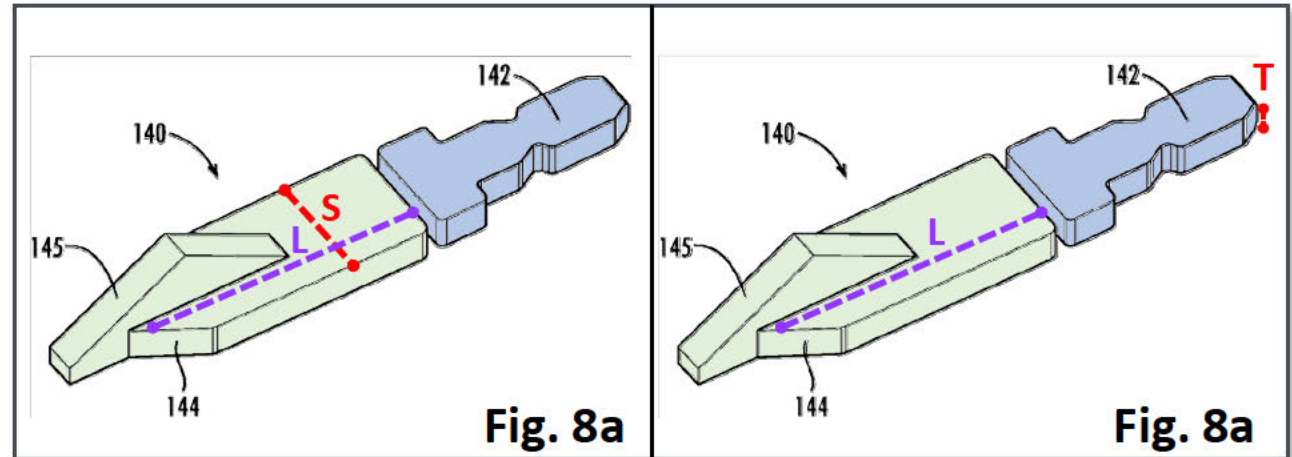
- Inserting into device
- Prying open “forks”



POR 43



Stout, Figs. 8a and 8b (Colored and Annotated)



Stout, Figs. 8a (Colored and Annotated)

REDACTED PUBLIC VERSION

UNITED STATES PATENT AND TRADEMARK OFFICE

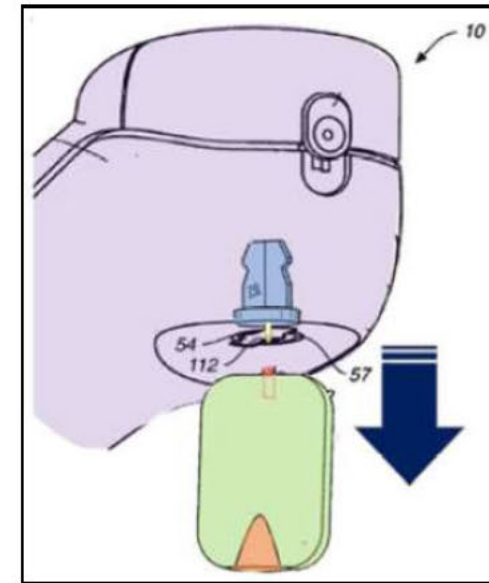
BEFORE THE PATENT TRIAL AND APPEAL BOARD

Petition, 24. The Petition never proposed inserting Saikley's handling tab into the lancing device, it instead proposed backwards-compatibility with Saikley's system and modifying Saikley's handling tab in view of Stout's dimensions.

PETITIONER'S REPLY TO
PATENT OWNER'S RESPONSE TO PETITION

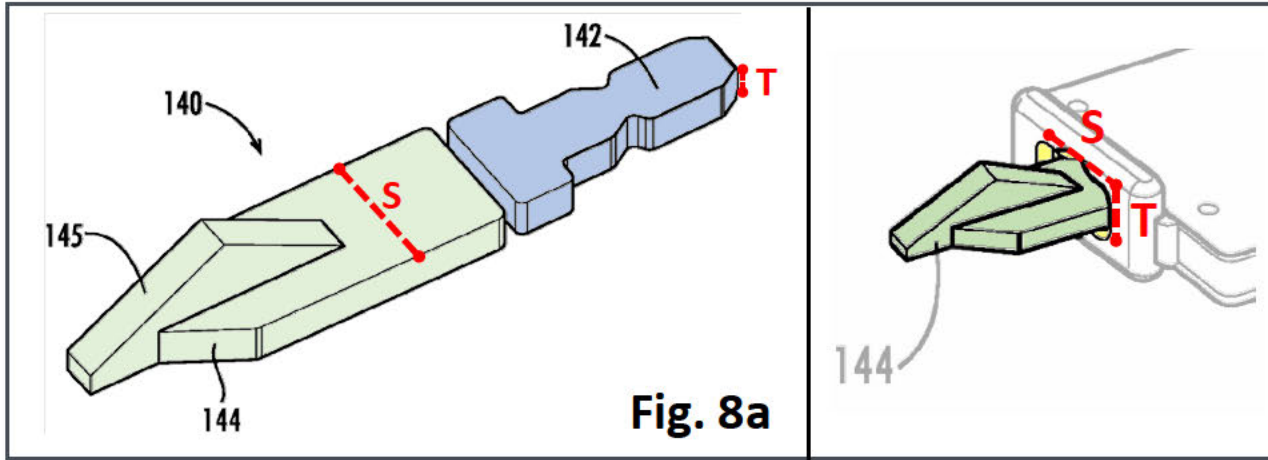
1

Reply 25

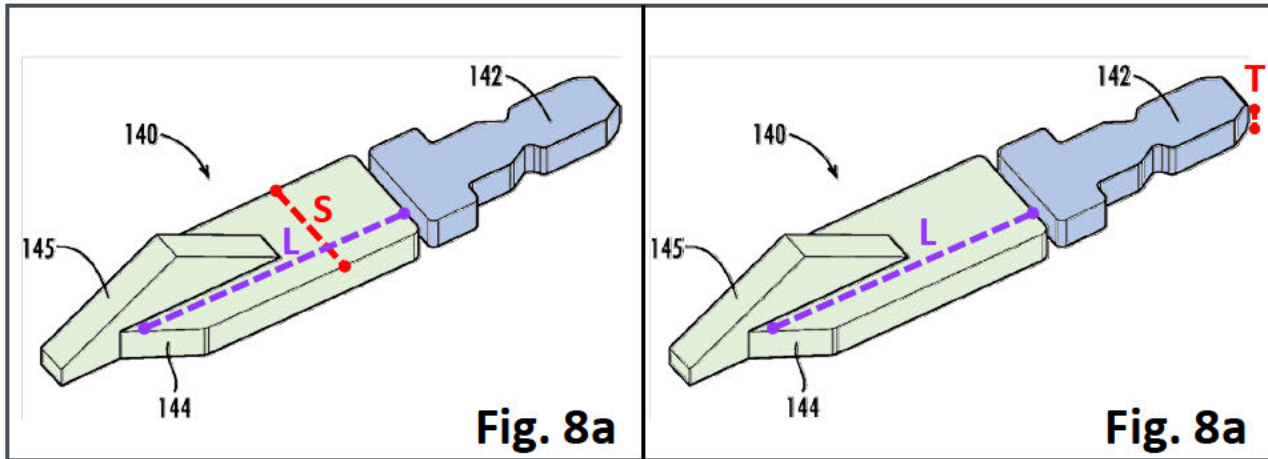


Reply 25

Saikley's cap is already compatible with Saikley's lancing system

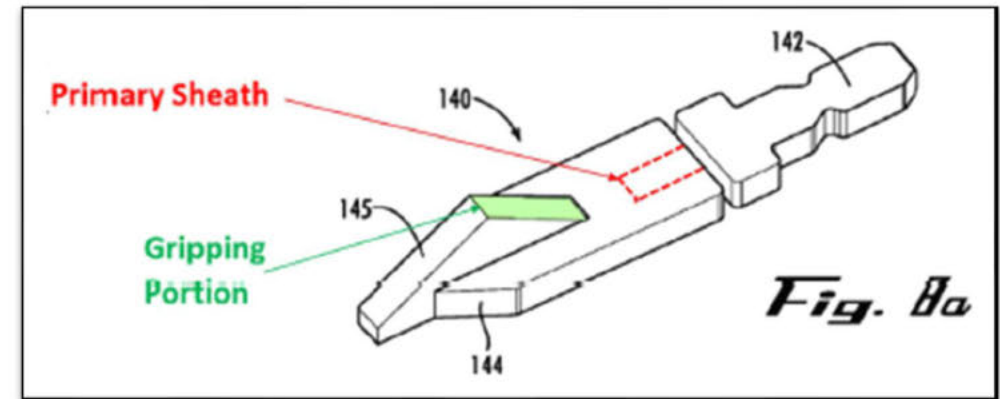


Stout, Figs. 8a and 8b (Colored and Annotated)



Stout, Figs. 8a (Colored and Annotated)

Stout does not teach the claimed dimensions of a gripping handle portion



POR 45

The '635 patent

The Challenged Claims are Patentable

Over Saikley alone or in view of Stout (Grounds 1-3)

Over Iio alone or in view of Peckham (Grounds 4-6)

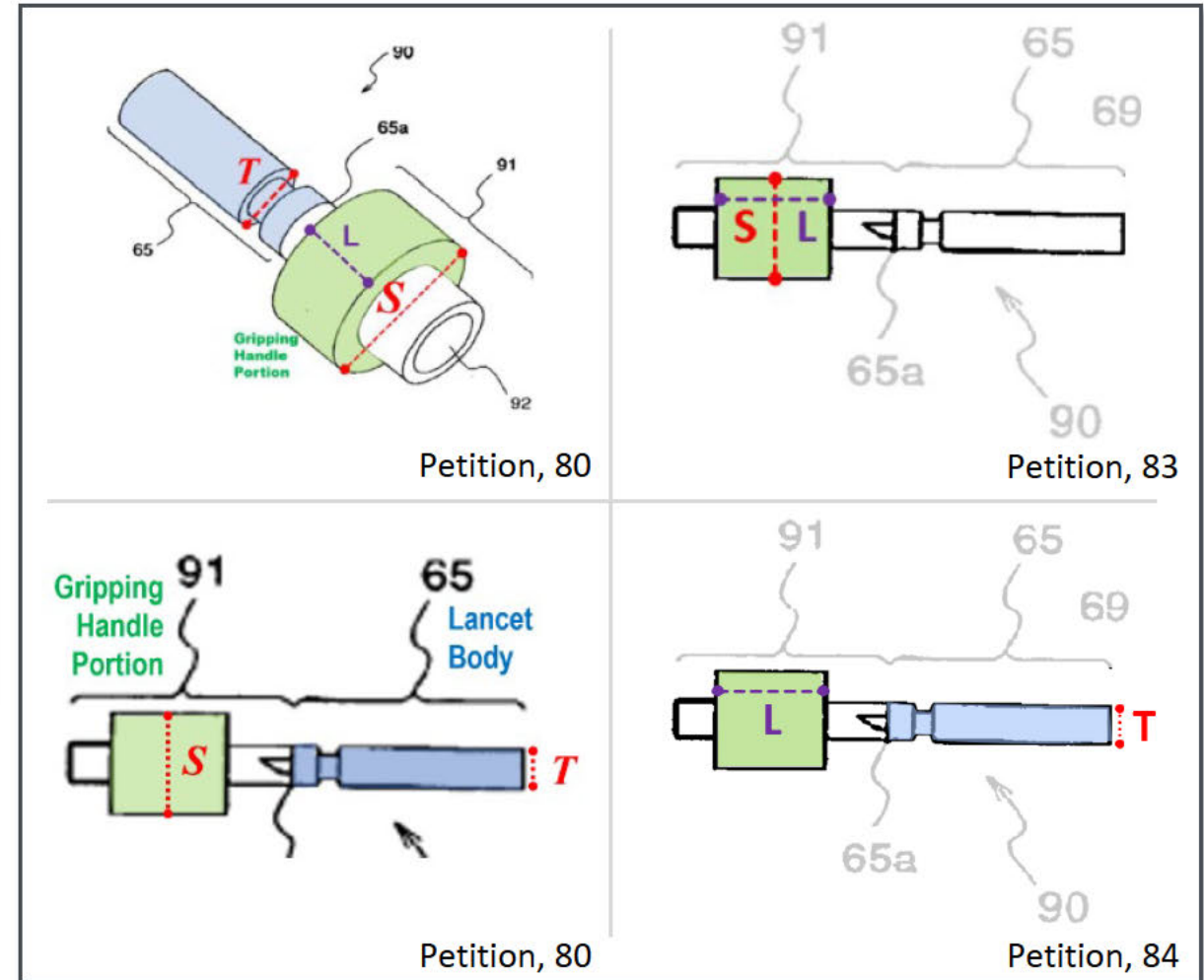
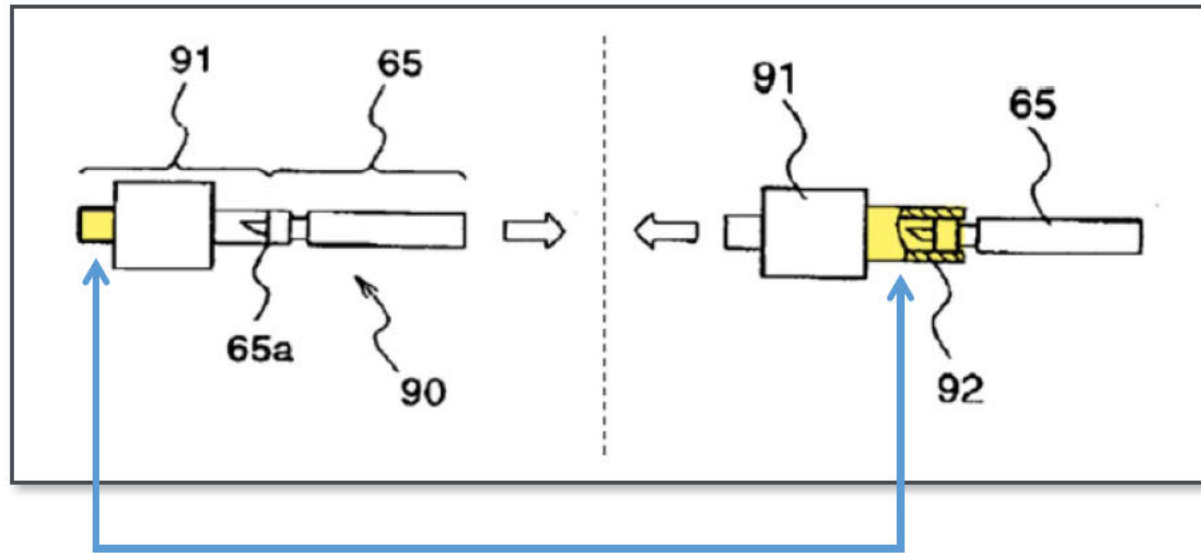
Objective Evidence of Non-obviousness

Copying

Commercial Success

Long-Felt Need

lio's figures are not to scale and show variable dimensions



UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Beyond this, Iio textually describes a specific thickness for “a thin plastic film having a thickness of 0.1 mm or less in the puncture needle separation groove.” Ex.1006, [0104]. Knowing this dimension, a PHOSITA could visually

PETITIONER
ALL CLAIMS

'635 Petition at 82

Trials@uspto.gov
571-272-7822

Paper No. 13
Date: September 1, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIFESCAN, INC.,
Petitioner,

LLC,

L., and DAVID COTTA,

es Review

¶ 129). In regard to the particular thickness of the thin film of Iio relied on by Petitioner, on the current record, Patent Owner's arguments appear to have merit as Petitioner has not identified a persuasive basis to correlate the precise thickness of the film to other elements illustrated in Iio.

'635 Institution Decision at 41-42

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIFESCAN, INC.
Petitioner,

v.

FACET TECHNOLOGIES, LLC
Patent Owner.

Case No. IPR2023-00712
U.S. Patent No. 8,840,635

REBUTTAL DECLARATION OF JOEL DELMAN

LifeScan, Inc. Ex. 1034
LifeScan, Inc. v. Facet Technologies LLC
IPR2023-00712 - U.S. Patent No. 8,840,635

when designing a product like a lancet. For instance, the process to determine handling and control size for a medical device balances a number of factors including anthropometric guidelines, user feedback, and critical hand dimensions. Ex. 1057, 36. Assessing hand dimensions, such as the breadths of human fingers, grip span limits, or hand breadth, is important to ensure a design is appropriate for its intended users. *Id.* To do so, a PHOSITA would also reference statistical

Ex. 1034 at Par. 40

Mr. Delman does not identify a “known and finite” number of possible solutions.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

41. For lancet users, like diabetic patients with poor dexterity, a PHOSITA who would like to improve the Iio lancet for “excellent useability and handleability” would adjust the lateral span of the lancet and take into account variations in pinch grip, hand and fingertip size, and other guidelines to understand the bounds and range of interactions lancet users would have with the product. Such adjustments would, of necessity, fall far short of the “infinite” ratios Dr. Collins suggests.

lifeScan, Inc. Ex. 1034
lifeScan, Inc. v. Facet Technologies LLC
IPR2023-00712 - U.S. Patent No. 8,549,635

Ex.1034 ¶41

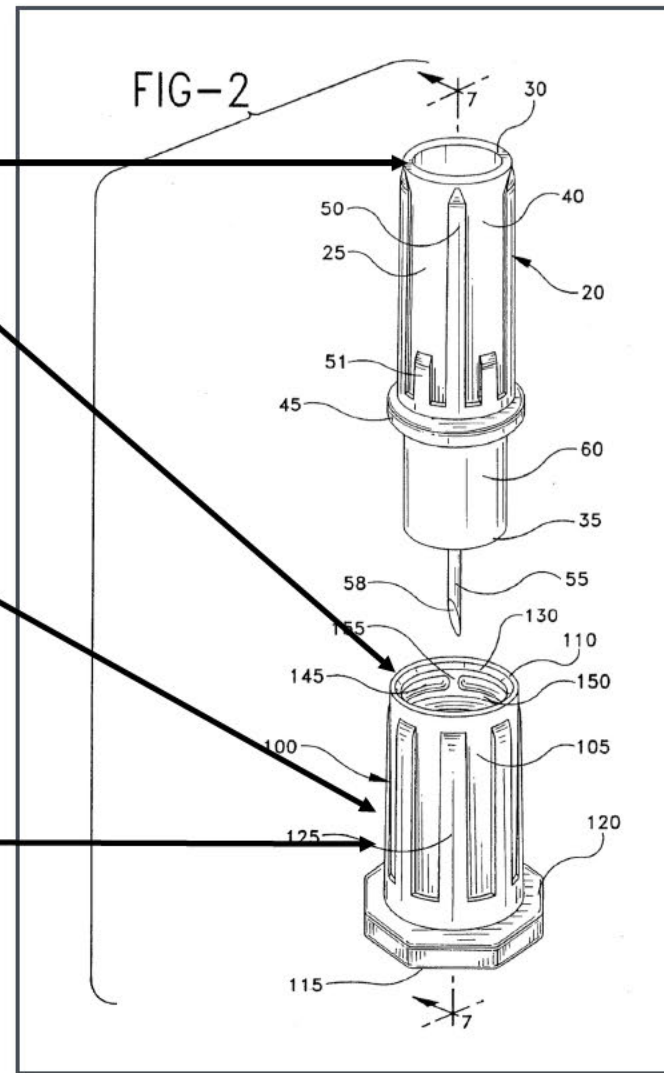
Ex. 1040, Table 6.1								
Dimension	Men				Women			
	5th %ile	50th %ile	95th %ile	SD	5th %ile	50th %ile	95th %ile	SD
1. Hand length	173	189	205	10	159	174	189	9
2. Palm length	98	107	116	6	89	97	105	5
3. Thumb length	44	51	58	4	40	47	53	4
4. Index finger length	64	72	79	5	60	67	74	4
5. Middle finger length	76	83	90	5	69	77	84	5
6. Ring finger length	65	72	80	4	59	66	73	4
7. Little finger length	48	55	63	4	43	50	57	4
8. Thumb breadth (IPJ) ^a	20	23	26	2	17	19	21	2
9. Thumb thickness (IPJ)	19	22	24	2	15	18	20	2
10. Index finger breadth (PIPJ) ^b	19	21	23	1	16	18	20	1
11. Index finger thickness (PIPJ)	17	19	21	1	14	16	18	1
12. Hand breadth (metacarpal)	78	87	95	5	69	76	83	4
13. Hand breadth (across thumb)	97	105	114	5	84	92	99	5
14. Hand breadth (minimum) ^c	71	81	91	6	63	71	79	5
15. Hand thickness (metacarpal)	27	33	38	3	24	28	33	3
16. Hand thickness (including thumb)	44	51	58	4	40	45	50	3
17. Maximum grip diameter ^d	45	52	59	4	43	48	53	3
18. Maximum spread	178	206	234	17	165	190	215	15
19. Maximum functional spread ^e	122	142	162	12	109	127	145	11

Peckham does not remedy Iio's deficiencies

Peckham's cap/lancet
diameters are substantially
the same

No reason Peckham's ridges
would make up difference in
dimensions

Improved grip mitigates any
need to enlarge cap

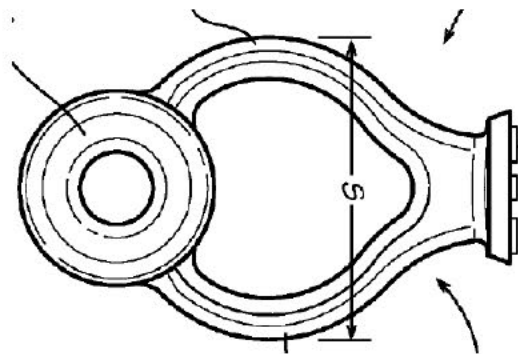
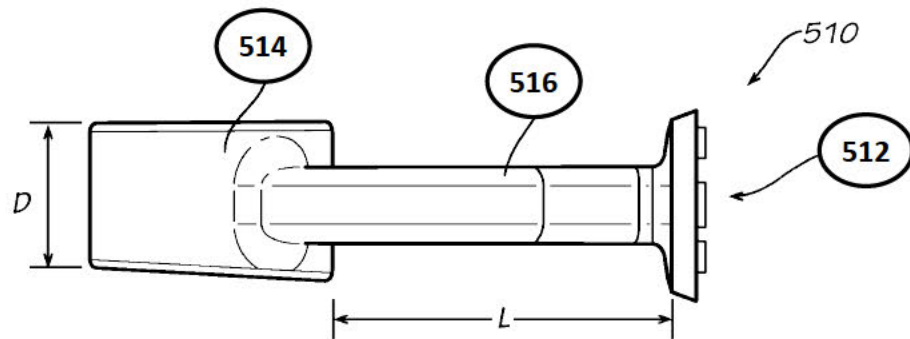


Ex. 1008 Fig. 2



Ex. 2026

Claim 6 uses “span” and “thickness”—two different words



'635 Patent, Figs. 5C & 5D

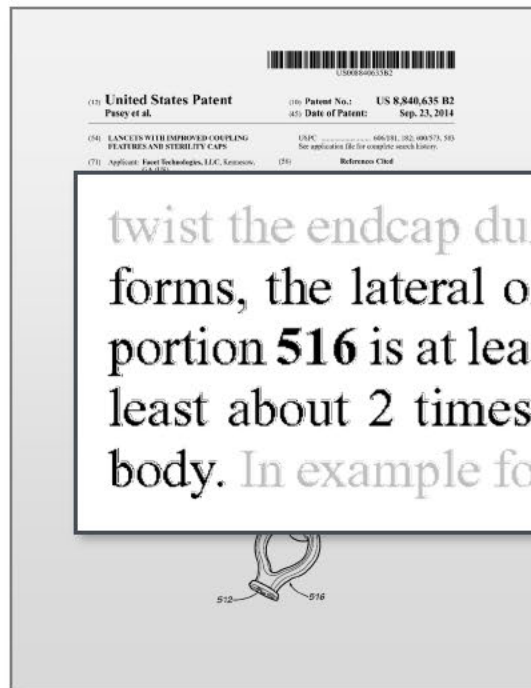
6. The protective sterility cap of claim 1, in combination with a lancet having a lancet body defining a lancet thickness, and a sharp lancet tip initially embedded in the primary sheath, wherein the gripping handle portion defines a lateral span of at least 1.5 times the lancet thickness.

'635 Patent, claim 6

the claim language precludes both of these readings. Lateral means “side-to-side.”¹¹ Span clearly refers to a maximum distance.¹² Accordingly, “lateral span” can only mean the maximum side-to-side (or horizontal) distance separating the gripping handle portion. A POSITA would understand that this is the meaning of “lateral span.” Reference to FIG. 5D would immediately confirm that understanding. *See* '635 Patent

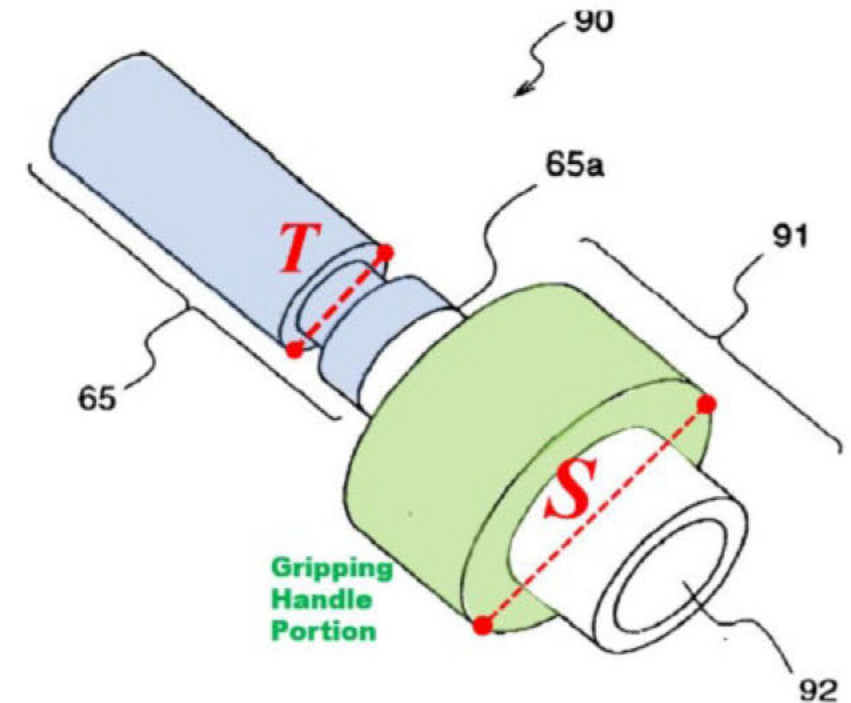
Ex. 1004 at 25

Petitioner reads the diameter onto both “lateral span” and “thickness”



twist the endcap during removal from the lancet. In example forms, the lateral or transverse span **S** of the forked handle portion **516** is at least about 1.5 times, and more preferably at least about 2 times the diameter or thickness of the lancet body. In example forms, the length **L** of the handle portion is

Ex. 1001, 6:54-58



Pet. 80

The '635 patent

The Challenged Claims are Patentable

Over Saikley alone or in view of Stout (Grounds 1-3)

Over Iio alone or in view of Peckham (Grounds 4-6)

Objective Evidence of Non-obviousness

Copying

Commercial Success

Long-Felt Need



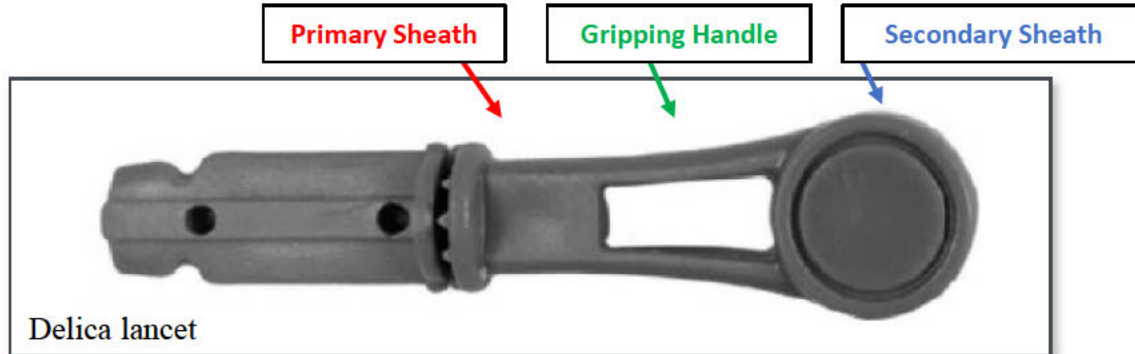
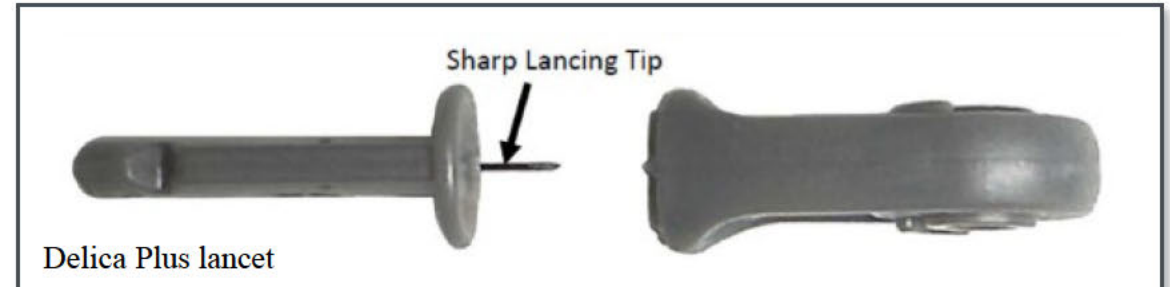
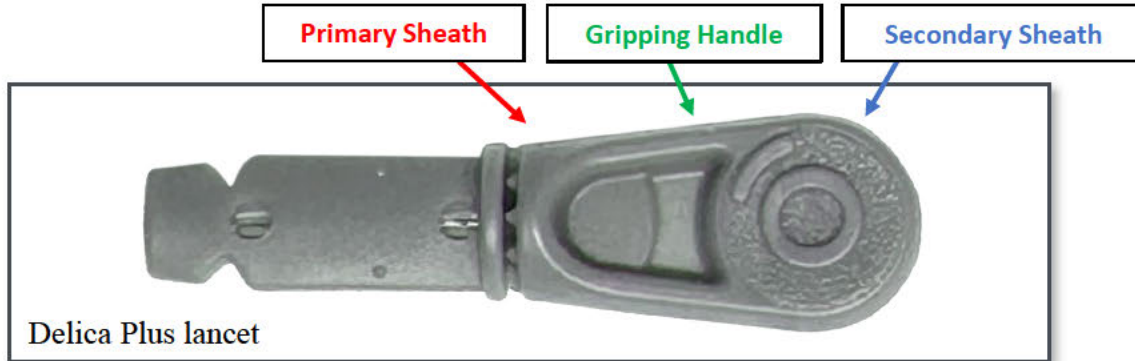
Delica Plus lancet



Delica lancet

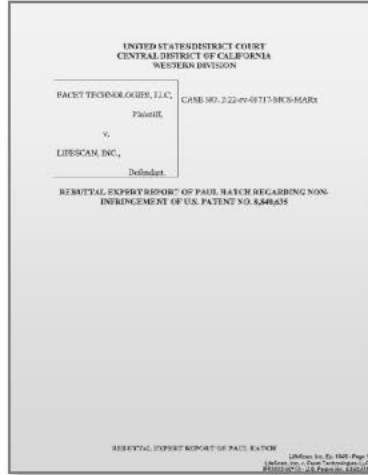
Undisputed

Both have primary/secondary sheaths and sharp lancing tip



Dimensional Limitations

	Lancet Thickness	Gripping Handle Lateral Span
Delica	2.73 mm	5.74 mm
Delica Plus	1.77 mm	6.87 mm



207. As discussed in section VII.H.1 above, touchpoints or handles are designed to (i) physically fit or accommodate the users' hand and or fingers, and (ii) to provide a physical advantage to use. These physical attributes are also usually visibly communicated to the user, that is their shape, color or details provide visual cues that they are a touchpoint or handle.

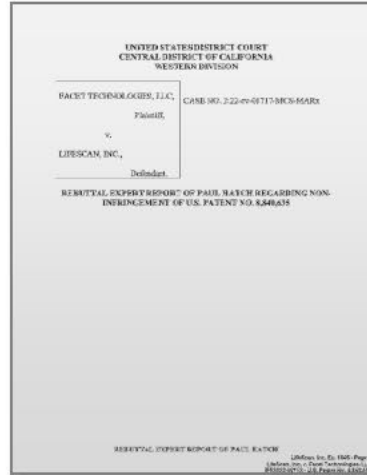
Ex. 1045 Par. 207

Q. Are these two requirements listed in Paragraph 207 required for a gripping handle portion as recited in the claims of the '635 patent?

A. The claims of the '635 patent talk about a gripping handle portion. My understanding of that in its claim construction is that it should be from its plain and ordinary meaning, which I explain also in Section 7, 7H, how a POSITA would understand that plain and ordinary meaning to be, and generally of a gripping handle portion. And that handle, a POSITA would understand handles of this kind would be designed to physically fit or accommodate the user's handle fingers and provide a physical advantage to do so.

...

Ex. 2065 28:17-31:6



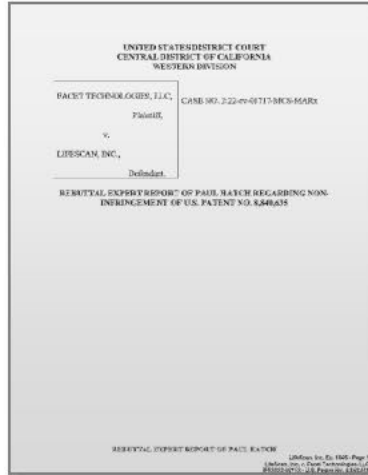
207. As discussed in section VII.H.1 above, touchpoints or handles are designed to (i) physically fit or accommodate the users' hand and or fingers, and (ii) to provide a physical advantage to use. These physical attributes are also usually visibly communicated to the user, that is their shape, color or details provide visual cues that they are a touchpoint or handle.

Ex. 1045 Par. 207

- Q. So when you say "handles of this kind," you're referring to the claimed gripping handle portion?
- A. Yes, that's part of my understanding of what a gripping handle portion of the patent would be.
- Q. So just to be clear, because, you know, it's important that we understand how you're interpreting the claims. So it is your opinion that a POSITA would understand that the claimed gripping handle portion would need to be designed to physically fit or accommodate the user's hand or fingers. Is that right?
- A. The POSITA would understand that -- yes, that it -- to be a gripping handle portion, it would be designed for at least these two attributes.

...

Ex. 2065 28:17-31:6



207. As discussed in section VII.H.1 above, touchpoints or handles are designed to (i) physically fit or accommodate the users' hand and or fingers, and (ii) to provide a physical advantage to use. These physical attributes are also usually visibly communicated to the user, that is their shape, color or details provide visual cues that they are a touchpoint or handle.

Ex. 1045 Par. 207

Q. Does the gripping handle portion as claimed require these two attributes to be visibly communicated to the user?

A. I'm sorry, repeat that?

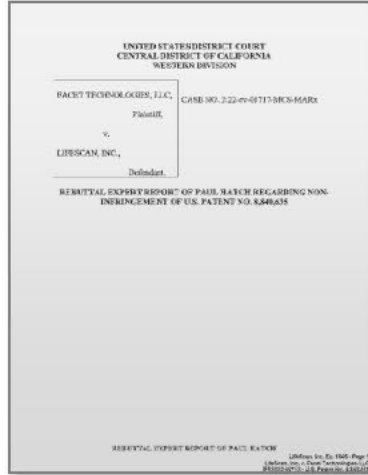
Q. Yeah. Let me step back.

The second sentence of 207 you say, "These physical attributes are also usually visibly communicated to the user." So my question is, does the gripping handle portion in the claims of the '635 patent require those physical attributes to be visibly communicated to the user?

A. The claims don't directly require that, but they are referring to a gripping handle. And so a POSITA's understanding of a gripping handle would include some visual communication, so that a user would know where to grasp it.

...

Ex. 2065 28:17-31:6



207. As discussed in section VII.H.1 above, touchpoints or handles are designed to (i) physically fit or accommodate the users' hand and or fingers, and (ii) to provide a physical advantage to use. These physical attributes are also usually visibly communicated to the user, that is their shape, color or details provide visual cues that they are a touchpoint or handle.

Ex. 1045 Par. 207

Q. So a gripping handle portion does need to have visible communication of those physical attributes?

A. A POSITA would understand that a gripping handle portion would have some -- would have some visual communication.

Ex. 2065 28:17-31:6

Mr. Hatch contradicts himself about gripping the lancets

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

FACET TECHNOLOGIES, LLC. CASE NO. 2:22-cv-01717-MCB-MAR

REBUTTAL EXPERT REPORT OF PAUL HATCH

Exhibit 1045-1, Ex. 1045-2, Page 1
Lancet, Inc. v. Facet Technologies, LLC
08/01/2024, U.S. District Court, Central District of California

170. I also note that an instructional video on how to handle the Delica Lancet echoed this observation: “You don’t want to hold it up here [on the secondary sheath] because the lancets [needle] so fine you can bend it so it’s best you just hold it in the middle and push.”

Ex. 1045 Par. 170

UNITED STATES PATENT AND TRADEMARK OFFICE

REBUTTAL EXPERT REPORT OF PAUL HATCH

DECLARATION

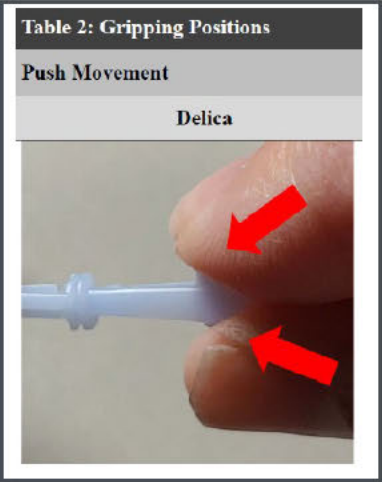
16. As discussed throughout my Rebuttal Report, I conducted a handleability assessment of the Delica Plus protective cap and confirmed that the secondary sheath is the only structure that physically accommodates the human finger while providing advantages when handling the lancet during normal use. For purposes of preparing this declaration, I also conducted a similar handleability analysis the Delica protective cap and reached the same conclusions. To support my opinions, I took the following photographs of my fingers handling the Delica and Delica Plus lancets in “push” and “twist” positions to illustrate how both lancets do not practice the claims of the ’635 Patent.

Ex. 1044 Par. 16



Ex. 1045 ¶ 170

CONTRADICTS



214. Second, the secondary sheath provides outwardly oriented surfaces against which the user can push, when inserting the lancet into the device. It also provides the widest part of the product, thus providing the best point from which to twist. The two major faces of the secondary sheath also include raised ribs that provide tactility, thus improving grip.

Ex. 1045 Par. 214

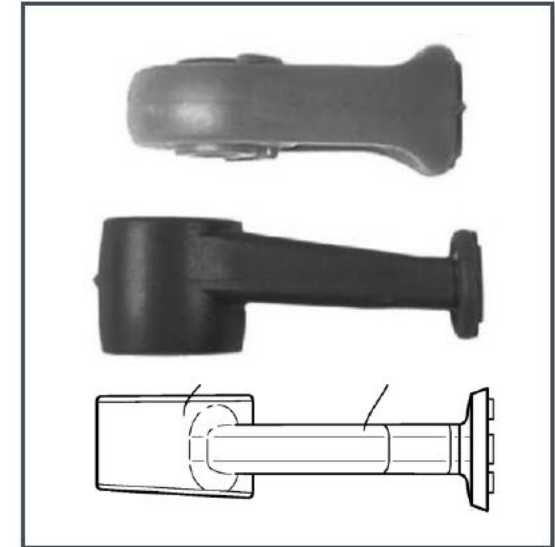
Strong evidence of direct copying in confidential Exhibits

- 2024 (e.g., 159:23-161:9; 164:13-165:19)
- 2044
- 2050
- 2051



CONFIDENTIAL

See designated demonstratives

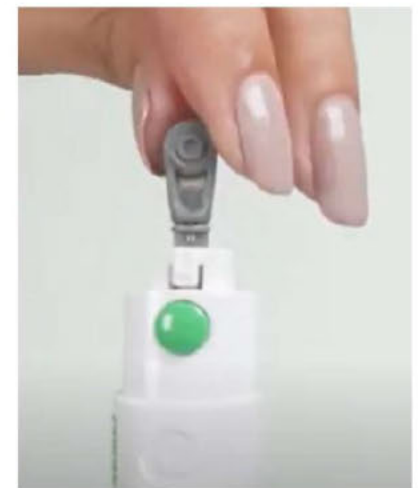


Mr. Hatch:



Delica/Delica Plus don't have gripping handle portion due to same "neck" design

Ex.1044 ¶10



Alternative designs further demonstrate copying

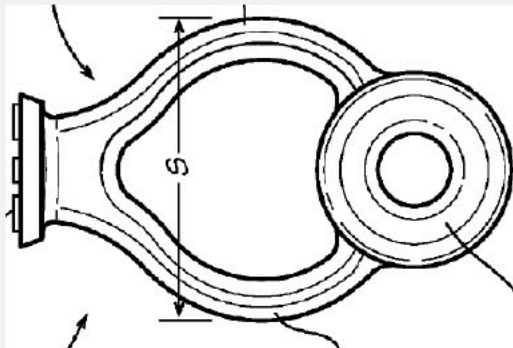
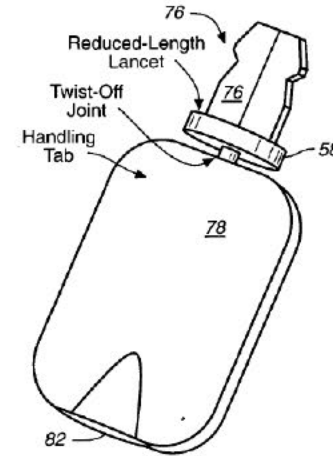
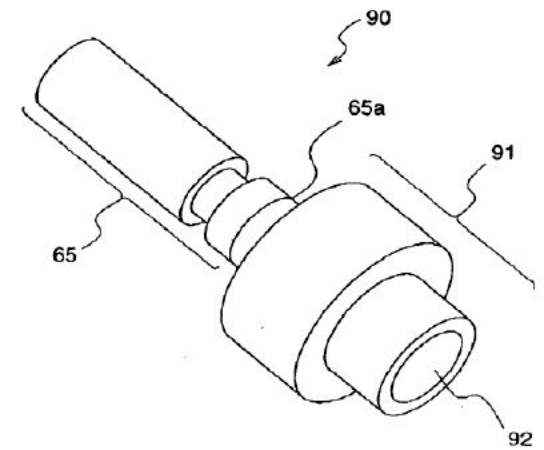


FIG. 7A

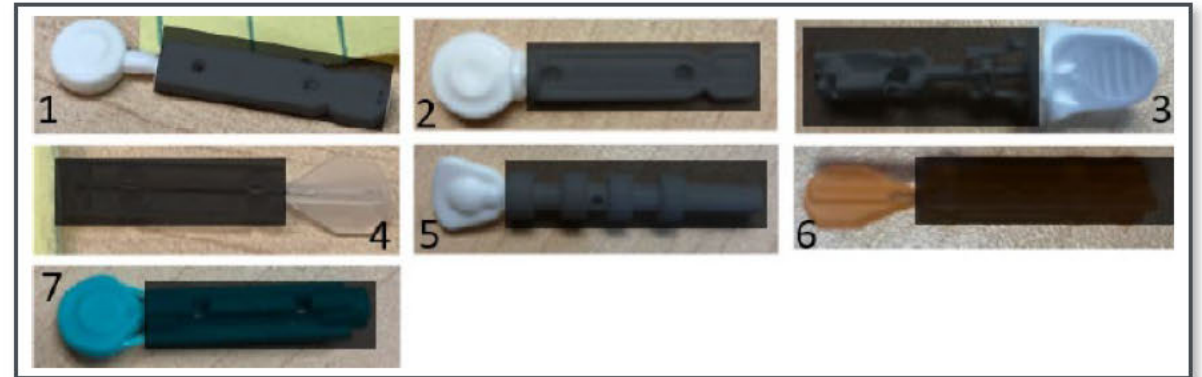


Saikley, Ex. 1005

FIG. 8



lio, Ex. 1006



POSR 3, Reply 47

The lancet is the relevant product, not the device

Product	P&L
Delica Plus Lancet	
Delica Plus Lancet	
Delica Plus Lancet	
Delica Plus Lancet	
Delica Plus Lancing Device	
Delica Plus Lancing Device	
Delica Plus Lancing Device	
Delica Plus Lancing Device	
Total Delica Plus	
Total Delica Plus	
Total Delica Plus	
Total Delica Plus	

Ex. 2040

Design of lancet body to fit into device is not critical

71. Under this framework, it is my opinion that neither these lancets nor the overall lancing systems in which they are installed is coextensive with the claimed invention of the '635 Patent. The Delica/Delica Plus lancets are installed into a lancing device and this overall lancing system is then used to puncture the skin of a user to draw an adequate sample of blood. The protective cap claimed in the '635 Patent is not coextensive with this lancing operation because the protective cap is not even connected to or a part of the lancing system when the puncture operation is performed. The same analysis applies if a user elected to use only the lancet (without the lancing device) to puncture his or her skin. The protective cap claimed in the '635 Patent is not coextensive with this lancing operation either because the protective cap must be twisted off the lancet body before the skin can be manually punctured.

Ex. 1034 Par. 71

Facet's marking practices do not rebut co-extensiveness

A. I go on to state that I've not reviewed those particular additional patents and understood them in the context of the lancets to understand how they may or may not specifically support what I just stated, but it provides evidence that it's not co-extensive.

That's my answer today, and that was my answer during this prior deposition.

Ex. 2064 52:12-19

This page is intended to serve as notice under 35 U.S.C. § 287(a). The following U.S. patents may apply to Facet products. Each product may also be covered by one or more foreign patents, and additional patent application(s) may be pending.

Product Brand	U.S. Patent(s)
FMT Lancet	8,652,159; 8,840,635; 9,095,293; D621,044; D621,045
FMT Lancing Device	8,398,664; 9,095,293; 9,095,294; D621,042; D628,695

Petitioner's Reply at 41

Undisputed

Delica and Delica Plus have been commercially successful

- Petitioner has not rebutted the presumption of nexus for commercial success
 - Mr. Rosenfarb's confidential testimony is not entitled to any weight
 - Petitioner's confidential argument about sales has no legal basis and does not diminish nexus



CONFIDENTIAL

See designated demonstratives

Filed on behalf of: Facet Technologies, LLC

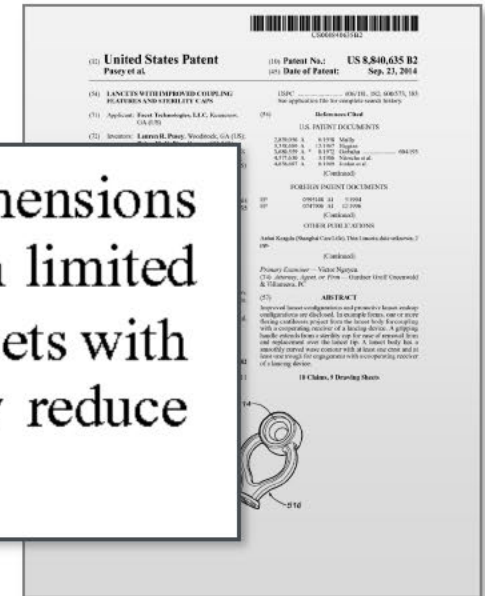
UNITED STATES PATENT AND TRADEMARK OFFICE

152. Prior to the invention of the '635 Patent, in my opinion, there was a long-felt need for lancing systems that provide increased safety and usability, including preventing accidental needle sticks.

Ex. 2056 Par. 152

dental needle sticks. Additionally, the expanded dimensions of the endcap allow for easier use by persons with limited dexterity or vision, and permit the use of smaller lancets with lower mass and/or finer gauge needles, which may reduce pain.

Ex. 1001 6:66-7:3



CONFIDENTIAL SLIDES

LIFESCAN, INC. v. FACET TECHNOLOGIES, LLC

CASE NO. IPR2023-00712

REDACTED

REDACTED

Ex.2044-003

REDACTED

REDACTED

Ex.2044-001

REDACTED

REDACTED

REDACTED

REDACTED

Ex.2044-002



REDACTED

Reply 43

REDACTED

Ex.1046 ¶128

REDACTED

REDACTED

The Board should exclude Petitioner's hearsay

REDACTED

Parroted by Mr. Rosenfarb for the truth of the matter

REDACTED

through reasonable efforts.” Fed. R. Evid. § 807. Here, more probative evidence could have provided by Patent Owner, for instance, by declarations submitted in this proceeding that could have been subject to cross-examination.

The Data Company Techs., Inc. v. Bright Data Ltd.,
IPR2022-00135, Paper 51 at 83 (May 31, 2023)

The Board should not exclude evidence of LifeScan's copying
or Dr. Collins's mapping of Delica/Delica Plus

REDACTED

“[W]here there is evidence of actual copying efforts, that evidence is always relevant.”

Liqwd, Inc. v. L’Oreal USA, Inc., 941 F.3d 1133, 1139 (Fed. Cir. 2019)



REDACTED

REDACTED

REDACTED

Trials@uspto.gov
571-272-7822

PUBLIC VERSION – REDACTED

Paper 65
Entered: April 3, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WEATHERFORD INTERNATIONAL, LLC,
WEATHERFORD /LAMB, INC., WEATHERFORD US, LP, and
WEATHERFORD ARTIFICIAL LIFT SYSTEMS, LLC,
Petitioner,

v.

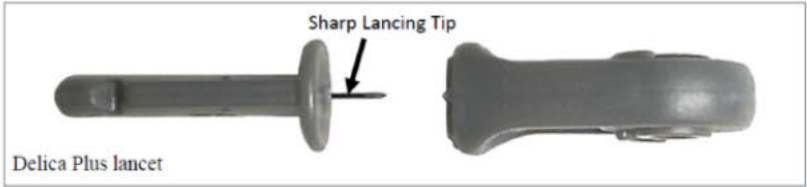
PACKERS PLUS ENERGY SERVICES, INC.,
Patent Owner.

Case IPR2016-01514
Patent 7,543,634 B2

34. Again, to the extent there are statements in these documents, the documents are not hearsay as the documents are used for purposes of comparison, to allege copying, not for the truth of the matter, statements or otherwise, depicted in the documents themselves. This same analysis applies to the video comparison provided by Patent Owner in Exhibits 2058–2059, as well as the marketing and slide show documents in Exhibits 2018 and 2019. *See* PO Resp. 35–36. This is not hearsay under FRE 802.

PUBLIC VERSION – REDACTED

142. I confirmed through my physical inspection of the Delica Plus and Delica lancets that both lancets include a sharp lancet tip and that the sharp lanceting tip in initially embedded in the primary sheath.



DECLARATION OF JOHN COLLINS IN SUPPORT OF
PATENT OWNER'S RESPONSES

Ex.2056 ¶142

Facet Technologies, LLC
Exhibit 2056
Life Scan v. Facet
IPR2023-00712
Ex. 2056

Trials@uspto.gov
571-272-7822

Paper 29
Entered: September 15, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

TREND MICRO INC.,
Petitioner,

v.

CUPP COMPUTING AS,
Patent Owner.

IPR2019-00803
Patent 8,789,202 B2

We are not persuaded by any of Patent Owner's other arguments to exclude the supplemental declaration. At best, they go to the weight of Dr. Jakobsson's testimony, not its admissibility. Patent Owner does not object to Dr. Jakobsson's qualifications, and has cross-examined him "at length" on the supplemental declaration. Opp. 13. With respect to the

ORDER
Denying Patent Owner's Motion to Exclude
37 C.F.R. § 42.64(c)

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 21st day of May, 2024, a true and correct copy of the foregoing **Patent Owner's Demonstratives** was served by electronic mail on Petitioner's lead and backup counsel at the following email address:

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Alexander B. Stein (Reg. No. 71,397)
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Facet Technologies, LLC*