

UTILITY PATENT APPLICATION TRANSMITTAL

(Only for new nonprovisional applications under 37 CFR 1.53(b))

Attorney Docket No.	ACE-134U1
First Inventor	Xiaobo Wang
Title	Label-Free Monitoring of Excitation
Express Mail Label No.	

APPLICATION ELEMENTS

See MPEP chapter 600 concerning utility patent application contents.

1. ☒ **Fee Transmittal Form** (e.g., PTO/SB/17)
2. ☒ **Applicant claims small entity status.**
See 37 CFR 1.27.
3. ☒ **Specification** [Total Pages 79]
Both the claims and abstract must start on a new page
(For information on the preferred arrangement, see MPEP 608.01(a))
4. ☒ **Drawing(s)** (35 U.S.C. 113) [Total Sheets 42]
5. **Oath or Declaration** [Total Sheets 5]
 - a. ☒ Newly executed (original or copy)
 - b. ☐ A copy from a prior application (37 CFR 1.63(d))
(for continuation/divisional with Box 18 completed)
 - i. ☐ **DELETION OF INVENTOR(S)**
Signed statement attached deleting inventor(s)
name in the prior application, see 37 CFR
1.63(d)(2) and 1.33(b).
6. ☐ **Application Data Sheet.** See 37 CFR 1.76
7. ☐ **CD-ROM or CD-R** in duplicate, large table or
Computer Program (Appendix)
☐ Landscape Table on CD
8. **Nucleotide and/or Amino Acid Sequence Submission**
(if applicable, items a - c. are required)
 - a. ☐ Computer Readable Form (CRF)
 - b. ☐ Specification Sequence Listing on:
 - i. ☐ CD-ROM or CD-R (2 copies); or
 - ii. ☐ Paper
 - c. ☐ Statements verifying identity of above copies

ADDRESS TO:

Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

ACCOMPANYING APPLICATION PARTS

9. ☐ **Assignment Papers** (cover sheet & document(s))
Name of Assignee _____
10. ☐ **37 CFR 3.73(b) Statement** ☐ **Power of Attorney**
(when there is an assignee)
11. ☐ **English Translation Document** (if applicable)
12. ☐ **Information Disclosure Statement** (PTO/SB/08 or PTO-1449)
☐ Copies of citations attached
13. ☐ **Preliminary Amendment**
14. ☐ **Return Receipt Postcard** (MPEP 503)
(Should be specifically itemized)
15. ☐ **Certified Copy of Priority Document(s)**
(if foreign priority is claimed)
16. ☐ **Nonpublication Request** under 35 U.S.C. 122(b)(2)(B)(i).
Applicant must attach form PTO/SB/35 or equivalent.
17. ☐ Other: _____

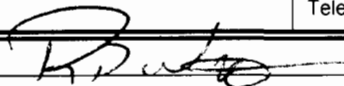
18. If a CONTINUING APPLICATION, check appropriate box, and supply the requisite information below and in the first sentence of the specification following the title, or in an Application Data Sheet under 37 CFR 1.76:

☐ Continuation ☐ Divisional ☐ Continuation-in-part (CIP) of prior application No.: _____
Prior application information: Examiner _____ Art Unit: _____

19. CORRESPONDENCE ADDRESS

☒ The address associated with Customer Number: 59538 OR ☐ Correspondence address below

Name	Biotech Beach Law Group PC				
Address	625 Broadway, Ste 1210				
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Signature		Date	5/4/2009
Name (Print/Type)	Raymond Wagenknecht	Registration No. (Attorney/Agent)	50948

This collection of information is required by 37 CFR 1.53(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

DECLARATION FOR UTILITY OR DESIGN PATENT APPLICATION (37 CFR 1.63)	Attorney Docket Number:	ACE-134U1
	First Named Inventor:	Xiaobo Wang
	COMPLETE IF KNOWN	
	Application Number:	to be determined
	Filing Date:	herewith
[x] Declaration Submitted with Initial Filing, OR	Group Art Unit:	to be determined
[] Declaration Submitted after Initial Filing (surcharge (37 CFR 1.16(e) required)	Examiner:	To be determined

As a below named inventor, I hereby declare that:

My residence, post office address, and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

LABEL-FREE MONITORING OF EXCITATION-CONTRACTION COUPLING AND EXCITABLE CELLS
USING IMPEDANCE BASED SYSTEMS WITH MILLISECOND TIME RESOLUTION

the specification and preliminary amendment of which

[X] is attached hereto

OR

[] was filed on _____ as United States Application Number or PCT International Application Number _____ and was amended _____ (if applicable).

I hereby state that I have reviewed and understand the contents of the above- identified specification, including the claims, as amended by any amendment specifically referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56

I hereby claim foreign priority benefits under 35 U.S.C. 119(a)-(d) or 365(b) of any foreign application(s) for patent or inventor's certificate, or 365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below, by checking the box, any foreign application for patent or inventor's certificate, or of any PCT international application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application Number(s)	Country	Foreign Filing Date	Priority Not Claimed	Certified Copy Attached?	
				YES	NO

[] Additional foreign application numbers are listed on a supplemental priority data sheet PTO/SB/02B attached hereto:

I hereby claim the benefit under 35 U.S.C. 119(e) of any United States provisional application(s) listed below:		
Application Number(s)	Filing Date	[] Additional provisional application numbers are listed on a supplemental priority data sheet PTO/SB/02B attached hereto
61/191,684	September 11, 2008	
61/126,533	May 5, 2008	

I hereby claim the benefit under 35 U.S.C. 120 of any United States application(s), or 365(c) of any PCT international application designating the United States of America, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT International application in the manner provided by the first paragraph of 35 U.S.C. 112, I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR. 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application		
U.S. Parent Application or PCT Parent Number	Parent Filing Date	Parent Patent Number (if applicable)
[] Additional U.S. or PCT international application numbers are listed on a supplemental priority data sheet PTO/SB/02B		

As a named inventor, I hereby appoint the following registered practitioner(s) to prosecute this application and to transact all business in the United States Patent and Trademark Office connected herewith:			
☒ Customer Number 59538 [Customer Number Bar Code Label] OR [] Registered practitioner(s) name/registration number listed below:			
Name	Registration Number	Name	Registration Number
Raymond Wagenknecht	50,948		
[] Additional registered practitioner(s) named on supplemental Registered Practitioner Information sheet PTO/SB/02C attached hereto.			

Direct all correspondence to: ☒ Customer Number 59538 or Bar Code Label ☐ [Attached Bar Code Label] OR ☐ Correspondence address below:					
Name	Biotech Beach Law Group PC				
Address	625 Broadway, Ste 1210				
Address					
City	San Diego	State	California	Zip Code	92101
Country	USA	Telephone	619-238-1179	Facsimile	619-374-2089

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.							
NAME OF SOLE OR FIRST INVENTOR				☐ A petition has been filed for this unsigned inventor			
Given Name (first and middle, if any)				Family Name or Surname			
Xiaobo				Wang			
Inventor's Signature						Date	
Residence: City	San Diego	State	California	Country	US	Citizenship	US
Post Office Address	ACEA Biosciences, Inc. 6779 Mesa Ridge Rd. Ste. 100 San Diego, CA 92121						

DECLARATION ADDITIONAL INVENTOR(S) SUPPLEMENTAL SHEET PAGE <u>1</u> OF <u>2</u>
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NAME OF ADDITIONAL INVENTOR					☐ A petition has been filed for this unsigned inventor		
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Inventor's Signature						Date	
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City	San Diego	State	CA	Zip Code	92121	Country	US

Given Name (first and middle, if any)					Family Name or Surname		
Wen Fu					Zhang		
Inventor's Signature						Date	
Residence: City	San Diego	State	CA	Country	USA	Citizenship	CA Canada
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City	San Diego	State	CA	Zip Code	92121	Country	US

DECLARATION ADDITIONAL INVENTOR(S) SUPPLEMENTAL SHEET PAGE <u>2</u> OF <u>2</u>
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NAME OF ADDITIONAL INVENTOR					[] A petition has been filed for this unsigned inventor		
Given Name (first and middle, if any)					Family Name or Surname		
Xiao					Xu		
Inventor's Signature						Date	
Residence: City	San Diego	State	CA	Country	US	Citizenship	US
Post Office Address	ACEA Biosciences, Inc. 6779 Mesa Ridge Rd. Ste. 100 San Diego, CA 92121						
City	San Diego	State	CA	Zip Code	92121	Country	US

Electronic Patent Application Fee Transmittal

Application Number:				
Filing Date:				
Title of Invention:	Lable-Free Monitoring of Excitation-Contraction Coupling and Excitable Cells Using Impedance Based Systems with Millisecond Time Resolution			
First Named Inventor/Applicant Name:	Xiaobo Wang			
Filer:	Raymond C. Wagenknecht			
Attorney Docket Number:	ACE-134U1			
Filed as Small Entity				
Utility under 35 USC 111(a) Filing Fees				
Description	Fee Code	Quantity	Amount	Sub-Total in USD(\$)
Basic Filing:				
Utility filing Fee (Electronic filing)	4011	1	82	82
Utility Search Fee	2111	1	270	270
Utility Examination Fee	2311	1	110	110
Pages:				
Claims:				
Claims in excess of 20	2202	19	26	494
Miscellaneous-Filing:				
Petition:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD(\$)
Patent-Appeals-and-Interference:				
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				
Miscellaneous:				
Total in USD (\$)				956

Electronic Acknowledgement Receipt

EFS ID:	5277667
Application Number:	12435569
International Application Number:	
Confirmation Number:	3664
Title of Invention:	Lable-Free Monitoring of Excitation-Contraction Coupling and Excitable Cells Using Impedance Based Systems with Millisecond Time Resolution
First Named Inventor/Applicant Name:	Xiaobo Wang
Customer Number:	59538
Filer:	Raymond C. Wagenknecht
Filer Authorized By:	
Attorney Docket Number:	ACE-134U1
Receipt Date:	05-MAY-2009
Filing Date:	
Time Stamp:	13:57:32
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	Credit Card
Payment was successfully received in RAM	\$956
RAM confirmation Number	131
Deposit Account	504352
Authorized User	WAGENKNECHT,RAYMOND

The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows:

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Axion Exhibit 1014

Axion v. Agilent

Page 9

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File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Specification	Specification-pgs-1-28.PDF	1922042	no	28
			22de8f175894cd8bce2047096e5aac234e4e1bb8		

Warnings:

Information:

2	Specification	Specification-pgs-29-58.PDF	2172555	no	30
			63d36452f082d085636360be59177971a4accfad		

Warnings:

Information:

3		Specification-pgs-59-79.PDF	1102823	yes	21
			9137a5dae3e129d2ec87bfbe91c67e995560984b		

Multipart Description/PDF files in .zip description

	Document Description	Start	End
	Specification	1	13
	Claims	14	20
	Abstract	21	21

Warnings:

Information:

4	Drawings-only black and white line drawings	Drawings.PDF	1692822	no	42
			96ec26b8175c87900bc89e155ac45ff6b6fe5e9f		

Warnings:

Information:

5		Filing-Documents.PDF	360094	yes	8
			22fe1dcfe0e61b697887d776d51f127dfd32f2b0		

Multipart Description/PDF files in .zip description

	Document Description	Start	End
	Miscellaneous Incoming Letter	1	2
	Transmittal of New Application	3	3

	Oath or Declaration filed	4	8				
Warnings:							
Information:							
6	Fee Worksheet (PTO-875)	fee-info.pdf	<table border="1"> <tr> <td>36727</td><td rowspan="2">no</td><td rowspan="2">2</td></tr> <tr> <td>36ec5e848894cd8e726110009bea3f70d1eacec4</td></tr> </table>	36727	no	2	36ec5e848894cd8e726110009bea3f70d1eacec4
36727	no	2					
36ec5e848894cd8e726110009bea3f70d1eacec4							
Warnings:							
Information:							
Total Files Size (in bytes):		7287063					
This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503. <u>New Applications Under 35 U.S.C. 111</u> If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application. <u>National Stage of an International Application under 35 U.S.C. 371</u> If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course. <u>New International Application Filed with the USPTO as a Receiving Office</u> If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.							

Electronic Acknowledgement Receipt

EFS ID:	5277667
Application Number:	12435569
International Application Number:	
Confirmation Number:	3664
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First Named Inventor/Applicant Name:	Xiaobo Wang
Customer Number:	59538
Filer:	Raymond C. Wagenknecht
Filer Authorized By:	
Attorney Docket Number:	ACE-134U1
Receipt Date:	05-MAY-2009
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Submitted with Payment	yes
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Authorized User	WAGENKNECHT,RAYMOND

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Charge any Additional Fees required under 37 C.F.R. Section 1.19 (Document supply fees)

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Warnings:

Information:

2	Specification	Specification-pgs-29-58.PDF	2172555	no	30
			63d36452f082d085636360be59177971a4accfad		

Warnings:

Information:

3		Specification-pgs-59-79.PDF	1102823	yes	21
			9137a5dae3e129d2ec87bfbe91c67e995560984b		

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			22fe1dcfe0e61b697887d776d51f127dfd32f2b0		

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	Document Description	Start	End
	Miscellaneous Incoming Letter	1	2
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	Oath or Declaration filed	4	8				
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6	Fee Worksheet (PTO-875)	fee-info.pdf	<table border="1"> <tr> <td>36727</td><td rowspan="2">no</td><td rowspan="2">2</td></tr> <tr> <td>36ec5e848894cd8e726110009bea3f70d1eacec4</td></tr> </table>	36727	no	2	36ec5e848894cd8e726110009bea3f70d1eacec4
36727	no	2					
36ec5e848894cd8e726110009bea3f70d1eacec4							
Warnings:							
Information:							
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LABEL-FREE MONITORING OF EXCITATION-CONTRACTION COUPLING AND EXCITABLE CELLS USING IMPEDANCE BASED SYSTEMS WITH MILLISECOND TIME RESOLUTION

CROSS-REFERENCE TO RELATED APPLICATIONS

[0001] This application claims benefit of priority to U.S. provisional patent application serial no. 61/191,684, filed on September 11, 2008, and U.S. provisional patent application serial no. 61/126,533, filed on May 5, 2008, the contents of both are herein incorporated by reference in their entirety.

FIELD OF THE INVENTION

[0002] The present invention relates generally to impedance based monitoring of cells and more particularly to systems and methods for monitoring excitation-contraction coupling and excitable cells using impedance based systems with millisecond time resolution.

BACKGROUND OF THE INVENTION

[0003] Excitation-contraction coupling (ECC) is a term used to describe the physiological process of converting an electrical stimulus to a mechanical response. The process is fundamental to muscle physiology, wherein the electrical stimulus may be an action potential and the mechanical response is contraction. Although ECC has been known generally over half a century, it is still an active area of biomedical research.

[0004] Cardiomyocytes are specialized muscle cells of the myocardium that are capable of excitation-contraction coupling. Cardiomyocytes are commonly used in biomedical research to assess the cardiotoxicity of potential drugs or treatments. Two conventional approaches to assess cardiotoxicity are primarily used. A first approach

involves isolation of cardiomyocytes directly from a mammalian species such as rats and dogs followed by electrophysiological studies on the isolated cardiomyocytes. However, this approach suffers from being extremely labor-intensive, time consuming and costly and at the same time not very amenable to the high throughput demands of pharmaceutical industry. An alternative approach utilizes cell-based assay models, which heterologously express specific ion channels such as hERG channels or voltage-gated calcium channels. These cardiac ion channels have been envisioned as possible molecular targets through which drugs could induce cytotoxicity. These cell-based systems allow assessment of drug-channel interaction by monitoring the effect of the drug on currents produced by different channels in cultured cells using a technique known as “patch clamping.” Patch clamping isolates regions of the cell membrane containing channel proteins and measures changes in electrical potential difference. However, use of this method in high throughput requires automation of patch clamping in an array format, which even though is becoming increasingly available, is not yet widespread. In addition, cardiac toxicity may occur by other mechanisms that may be missed by this type of targeted approach.

[0005] An alternative to in vitro ion-channel recording assays as well as the labor-intensive isolation of primary tissue is the differentiation of embryonic stem (ES) cells into cardiomyocytes. The utility of ES cells as a treatment for various chronic diseases has received much attention in recent years. Mammalian ES cells are self-renewing cells derived from the inner cell mass of a blastocyst stage embryo which can be differentiated into multiple different cell types. It has been demonstrated that the mouse ES cells as well as human ES cells can be differentiated into cardiomyocytes which retain the ability to beat in culture. Differentiation of ES cells first involves an intermediate in vitro developmental stage in which ES cells form compact cell structures known as embryoid bodies. These embryoid bodies can induce the developmental program of ES cell differentiation into multiple cell types including cardiomyocytes, which are distinguished in culture by their ability to undergo spontaneous beating. These ES-derived in vitro differentiated cardiomyocytes recapitulate the normal development of cardiomyocytes as evidenced by the stage-specific expression of cardiomyocyte-specific genes. All the

known transcription factors, ion channels and structural proteins that are part of normal heart development and function *in vivo* are also expressed in ES-derived cardiomyocytes.

[0006] Even though high throughput to medium throughput systems have been developed for functional characterization of cell lines heterologously expressing the gene for specific ion channels, high throughput techniques for functional characterization of more complex systems such as cardiomyocytes have been limited. Technologies designed to assess cardiomyocyte behaviour and function and the effect of drugs and other manipulations *in vitro* can be divided into two different approaches. One approach involves long term assessment of cardiomyocyte viability for example in response to certain compounds. Such assays are typically end point assays designed to measure a cellular component such as ATP which correlates with the degree of viability of the cells. The other approach involves studying short term effect of drugs and compounds on beating function of cardiomyocytes. High throughput techniques for short term functional characterization of ion channels and other targets in cardiomyocytes has been rather challenging and limited. The available systems typically only monitor a single cardiomyocyte or a small number of cardiomyocytes at a time and with very limited throughput.

SUMMARY OF THE INVENTION

[0007] The present invention addresses the need to provide systems and methods for improved monitoring of excitation-contraction coupling and excitable cells and provides related benefits. Specifically, embodiments of the invention describe label-free methods for monitoring excitable cells, such as cardiomyocytes, *in vitro*. The system is capable of continuously monitoring excitation-contraction coupling in a relatively high-throughput manner. The systems and methods can be used for pharmacological safety assessment, screening for novel compounds which modulate cardiomyocyte function in a specific manner, and assessment of genes involved or potentially involved in cardiac function. In addition the system and methods may study the role of different genes and

proteins in cardiac function and development through the use of embryonic stem (ES) derived cardiomyocytes.

[0008] In one aspect of the present invention a system for monitoring impedance of excitable cells in vitro is provided including a device for monitoring cell-substrate impedance, an impedance analyzer capable of impedance measurements at millisecond time resolution, electronic circuitry that can engage the device and selectively connect two or more electrode arrays of the device to the impedance analyzer and a software program that controls the electronic circuitry and records and analyzes data obtained from the impedance analyzer. Embodiments of the device for monitoring substrate impedance include a nonconductive substrate having one or more individually addressable electrode arrays fabricated thereon and one or more wells. Preferably, each of the one or more arrays is associated with one of the one or more wells and each electrode array is individually addressable. In further embodiments, a surface of the substrate is suitable for cell attachment, wherein cell attachment results in a detectable change in impedance between electrodes within the array. Attachment or growth along the surface may be enhanced by applying a precoat having one or more compounds that improve attachment. In embodiments where the device includes multiple wells, the impedance analyzer has the capability to allow impedance measurements for each and every well at millisecond time resolution. That is to say, for a selected time period, the impedance data for each and every well of the system is measured at millisecond time resolution. Further, when groups of wells are monitored, the groups are monitored at millisecond time resolution.

[0009] Embodiments of the system include electrode arrays having two electrode structures that have substantially the same surface area. The electrodes themselves may be formed from suitable electrically conductive materials such as metal, gold, platinum, titanium, chromium and the like. The electrode arrays may be organized in a variety of configurations, including interdigitated, circle-on-line, diamond-on-line, concentric, sinusoidal, and castellated. The widths of the electrode structures may be between 20 microns and 500 microns or 5 microns and 100 microns.

[0010] Embodiments of the invention include impedance monitoring using millisecond time resolution. Millisecond time resolution allows monitoring of at least two consecutive impedance measurements with an excitation cycle of excitable cells, which are introduced into the well. Further, millisecond time resolution enhances measurement such that excitation-contraction coupling of excitable cells may be effectively monitored. In some embodiments the excitation cycle is a beating cycle, such as a beating cycle of a cardiomyocyte. In some embodiments at least two consecutive impedance measurements are performed in less than 100 milliseconds. In other embodiments at least two consecutive impedance measurements are performed in less than 40 milliseconds. In still further embodiments at least two consecutive impedance measurements are performed in less than 20 milliseconds. In still further embodiments the at least two consecutive impedance measurements are performed in less 10 milliseconds.

[0011] In some embodiments the device is provided as a multiwell device or a multiwell plate. In some embodiments, the multiwell device or multiwell plate may including 6 wells, 8 wells, 16 wells, 32 wells, 96 wells, 384 wells or any number therebetween. Throughout the present application where the device includes multiple wells each of which is associated with an electrode array, millisecond time resolution refers to that for any selected time period, the impedance measurement for each and every well can be performed with two consecutive measurements separated with millisecond resolution. Further, when groups of wells, such as subsets of all wells of a device, are monitored a group of wells may be monitored using millisecond time resolution.

[0012] Embodiments of the present invention provide impedance-based monitoring with millisecond time resolution in combination with longer term monitoring of cells. By combining millisecond time resolution technology with impedance monitoring having longer time periods, both short term and long term effects on excitable cells can be evaluated. In some embodiments impedance readouts can be used to monitor both short term beating and long term viability status of cardiomyocytes in the same well or the same population. Such monitoring addresses needs where certain manipulations

such as drug treatment may not manifest its effect on cardiomyocyte beating and/or viability until a later time period.

[0013] In some embodiments methods for assessing and quantifying excitable cells in vitro include providing the impedance-based system with millisecond time resolution; adding excitable cells to one or more wells; monitoring impedance of the one or more wells over a first time period, which is characterized as a longer time period, such as seconds, minutes, hours or days; monitoring impedance of the one or more wells over a second time period in millisecond time resolution; determining a characteristic, such as cell attachment, cell growth and cell viability from monitoring over the first time period; and resolving individual cycles of the excitable cells from monitoring over the second time period. In such embodiments, monitoring impedance over the second time period may be performed at regular or irregular time intervals within monitoring impedance over the first time period.

[0014] Among the benefits, embodiments of the invention permit impedance readouts to monitor the morphological or differentiative behavior of cardiomyocytes in vitro. Certain treatments can induce changes in morphological behavior of cardiomyocytes, such as inducing hypertrophy which is associated with cardiomyocyte elongation and expansion. Because impedance monitoring can detect changes in cell morphology, it can be used to for detection of hypertrophy in cardiomyocytes.

[0015] In another aspect of the present invention a method for assessing or quantifying excitable cells in vitro is provided. An exemplary method includes providing the impedance based system having millisecond time resolution, adding excitable cells to the one or more wells, monitoring impedance of the one or more wells, and resolving individual cycles of the excitable cells. The method has particular utility with cells that are known or suspected to be capable of or undergo excitation-contraction coupling, such as cardiomyocytes. The method may also be useful for monitoring neurological cells or neurological systems. Impedance measurements may be performed in millisecond time resolution. In some embodiments, two consecutive impedance measurements for each and every well of the system are performed less than 300 milliseconds apart. In further embodiments, at least two consecutive impedance measurements for each and every well

of the system are performed less than 100 milliseconds apart. In further embodiments, at least two consecutive impedance measurements for each and every well of the system are performed less than 40 milliseconds apart. In further embodiments, at least two consecutive impedance measurements for each and every well of the system are less than 10 milliseconds apart.

[0016] In some embodiments methods of determining whether a compound modulates a beating cycle of an excitable cell is provided. An exemplary method includes providing the impedance based system having millisecond time resolution, wherein the system includes at least two wells; adding excitable cells to the at least two wells; monitoring impedance of the at least two wells; adding a compound suspected of modulation of the beating cycle to a first of the at least two wells to provide a test well, wherein a second well lacking compound or having a control compound is provided as a control well; resolving the beating cycle of both test well and control well; and comparing the beating cycles between the test well and control well, wherein a difference in beating cycles indicates the compound modulates the beating cycle of the excitable cell. In some embodiments, beating cycles are compared to identify changes in beating magnitude or amplitude. In other embodiments, beating cycles are compared to identify changes in beating frequency, which may be regular changes or irregular changes. In further embodiments the method includes determining a cell index for each of the test well and control well such that the step of comparing the beating cycles includes comparing the cell indices between test well and control well. Peak magnitude or amplitude and/or frequency may be compared. The method may also include monitoring impedance over longer time periods of time. Such embodiments may provide long term impedance monitoring with intermittent monitoring using millisecond resolution. Thus short term and long term monitoring may be performed.

[0017] In another exemplary methods include providing a device for measuring cell-substrate impedance operably connected to an impedance analyzer, wherein the device includes at least two wells; adding ES cells, adult stem-cell derived cardiomyocytes or primary cardiomyocytes to at least two wells; monitoring impedance of the at least two wells at different or similar time intervals over a period of time and optionally determining cell indices from impedance values; generating an impedance-

based curve or optionally a cell index curve for each of the at least one known biologically active agent and the control; comparing the impedance-based curves or optionally the cell index curves between the at least one known biologically active agent well and the control well. The impedance-based curves may be direct measurement of cardiomyocyte excitation-contraction coupling and if significantly different, concluding that the biologically active agent modulates cardiomyocyte function. Optionally, impedance-based curves or optionally cell index curves are used to calculate average rate of beats of cardiomyocytes per unit time, average amplitude intensity in a unit time as well as the average length of time between the beats, comparison of these optionally derived parameters is made between the at least one known biologically active agent well and the control well, and if significant differences exist, one may optionally conclude that the biologically active agents modulate cardiomyocyte functions.

[0018] In other embodiments of the present invention, a method of characterizing rhythmic beating of a cardiomyocyte is provided. An exemplary method includes providing the impedance based system with millisecond time resolution; adding excitable cells to the one or more wells; monitoring impedance of the one or more wells in millisecond time resolution; determining a plurality of beating cycle peaks; and comparing magnitude or amplitude or frequency of the peaks over a time unit. Various methods can be used for determining beating cycle peaks. For example, time dependent impedance values or cell index values for a well are analyzed by deriving their first order derivatives and second order derivatives using numerical methods. The beating cycle peaks are those data points where the first order derivatives of impedance values or cell index values are zero or close to zero in its absolute value. If the beating cycle peak is a positive peak (i.e. peak corresponds to a maximum value in measured impedance or cell index over the beating cycle), then the peak would correspond to the data points where the second order derivatives of the impedance values or cell index values is negative and where the first order derivatives of the impedance values or cell index values is zero or close to zero in its absolute value. If the beating cycle peak is a negative peak (i.e. peak corresponds to a minimum value in measured impedance or cell index over the beating cycle), then the peak would correspond to the data points where the second order derivatives of the impedance values or cell index values is positive and where the first

order derivatives of the impedance values or cell index values is zero or close to zero in its absolute value. The step of determining a plurality of beating cycle peaks may include determining a rise in impedance and a decay in impedance and extrapolating a peak from each rise and decay. The method may further include determining a cell index for each of the one or more wells, which may allow improved comparison of beating cycles. Further, beating cycle peaks may be determined by identifying frequency components having largest magnitude in Fourier transformed impedance data. The method may also include monitoring impedance over longer time periods of time. Such embodiments may provide long term impedance monitoring with intermittent monitoring using millisecond resolution.

[0019] A variety of agents and compounds may be tested for modulation of excitable cells and for modulation of rhythmic beating of cardiomyocytes. Examples include compounds, peptides, proteins, antibodies or antibody fragments, siRNA, shRNA, lipid or any combination of thereof.

[0020] In another aspect of the present invention a method of assessing genetic manipulation of an embryonic stem cell is provided including providing the impedance based system having millisecond time resolution, mutating embryonic stem cells to include a genetic mutation; adding mutated embryonic stem cells to a first well of at least two wells to form a test well and control embryonic stem cells to a second of at least two wells to form a control well; monitoring impedance of the at least two wells in millisecond time resolution; resolving the beating cycles of both test well and control well, if any; and comparing the beating cycles between the test well and control well, wherein a difference in beating cycles indicates the genetic mutation modulates embryonic stem cell differentiation. In some embodiments the embryonic stem cell differentiation is differentiation into a cardiomyocyte. In some embodiments the genetic mutation is selected from the group consisting of a genetic knock out, a knock down and an inserted transgene. The method may also include monitoring impedance over longer time periods of time. Such embodiments may provide long term impedance monitoring with intermittent monitoring using millisecond resolution. Thus short term and long term monitoring may be performed.

BRIEF DESCRIPTION OF THE DRAWNGS

[0021] Those skilled in the art will recognize that the drawings described below are for illustrative purposes only. The drawings are not intended to limit the scope of the invention but to provide exemplary embodiments.

[0022] **FIG.1** depicts schematic drawings of one design of a cell-substrate impedance measurement device of the present invention. **FIG. 1A** shows a nonconductive substrate (**101**) shown with 16 electrode arrays fabricated on the substrate. Each electrode array (**102**) comprises two electrode structures (shown in detail in **FIG. 1B**). Each electrode structure comprises multiple electrode elements. Each electrode array connects to two electrical traces (**103**), with each of the two traces connected one of the two electrode structures. These electrical connection traces (**103**) from the electrode array (**102**) are connected to the connection pads (**104**) at the edges of the substrate (**101**). As shown in **FIG. 1A**, each the four electrode arrays in each of four quarters on the substrate (**101**) have one of their electrical connection traces (**103**) connected to a common connection pad (**104**). Thus, for the entire device there are four common connection pads (**104**), one for each quarter of the device. In addition, each electrode array has a separate electrical connection trace (**103**), connecting to an independent connection pad (**104**). Thus, there are total 20 connection pads (**104**) at the edges of the substrate (**101**). In **FIG. 1B** a single exemplary electrode array is shown. The electrode array has two electrode structures, where each electrode structure comprises multiple electrode elements (**105**) shown here having a circle-on-line geometry. In this electrode array structure, electrode elements (**105**) of one electrode structure of the array alternate with electrode elements (**105**) of the other electrode structure of the array. Each of the electrode structures is independently connected to its electrode bus (**106**), in this case, by means of direct connection of the electrode elements (**105**) to the electrode bus (**106**). Each electrode bus (**106**) forms an arc around the perimeter of the array, where the two buses of the array do not abut or overlap. The electrically conductive connection traces (**103** in **FIG. 1A**) connect each bus with a connection pad (**104** in **FIG. 1A**) on the edge of the substrate (**101** in **FIG. 1A**).

[0023] **FIG. 2A** is a schematic representation of a device **100** with two electrode structures of same or similar areas deposited on a substrate. First electrode structure has electrode elements **110a**, **110b**, **110c** and second electrode structure has electrode elements **120a**, **120b**, **120c** and **120d**. Electrode elements within an electrode structure are connected to each other by arc-shaped connection electrode bus **125**. Like the electrode elements, such connection-buses (**125**) are also made of electrically-conductive material (e.g. gold film, platinum film, gold film over a chromium or titanium film). These electrically-conductive connection-paths or connection buses (**125**) may have an insulating coating. Electrode elements **110a-110c** and **120a-120d** comprise electrode lines with connected circles added on the line. The overall area of electrode elements and gaps between electrode elements may correspond to, or may be slightly larger than, or may be slightly smaller than, the bottom of a well (e.g., a cylinder shaped well, a conical shaped well, or a cubic shaped well), for example, a 24 well-plate, a 96-well plate, or 384 well plate that are commonly used. The whole surfaces of the wells may be covered with electrodes to ensure that the cell attachment at nearly any locations of the bottom surface of the well can contribute to the impedance change. This arrangement has an advantage that non-uniform landing and attachment of cells on the bottom surface of the different wells would result in only a small variation in the impedance measured between electrode structures **110** and **120**. **150** are connection pads that can be connected to an external impedance measurement circuit. **130** is the electrical connection traces that connects the connection pad to the electrode structures **110** and **120**. Such connection traces can extend in any direction in the plane of the electrodes. **FIG. 2B** is a schematic representation of a device **200** with two electrode structures of similar areas deposited on a substrate. Electrode structures **210** and **220** comprise multiple interconnected electrode elements. Electrode elements (**210a-210c**, **220a-220d**) are rectangular lines and together form an interdigitated electrode structure unit. Similar to **FIG. 2A**, the electrode elements (**210a-210c**, **220a-220d**) within each electrode structure are connected through arc-shaped, electrically conductive paths or electrode buses (**225**). Connection pads **250** are connected to electrode structures through the electrical connection traces **230**. **FIG. 2C** is a schematic representation of a device **300** with two electrode structures of similar areas deposited on a substrate. Electrode structures **310** and **320** comprise multiple

interconnected electrode elements (**310a-310f, 320a-320f**). Electrode elements (**310a-310c, 320a-320d**) are rectangular lines and together form an interdigitated electrode structure unit. Different from **FIG. 2A** and **FIG. 2B**, the electrode structures having electrode elements **310a-310c** and **320a-320c** are connected to connection pads **350**.

[0024] **FIG. 3** shows the cell index curves measured on RT-CES system for 4 different seeding densities (3750, 7500, 15,000 and 30,000 cells per well) of mouse ES-derived cardiomyocytes. In this example, the impedance measurement was taken with a time resolution of 1 hour between any two consecutive data points for each well.

[0025] **FIG. 4A** provides a plot of normalized cell index values for cells in different wells treated with different concentrations of sodium dichromate dehydrate (SDD). **FIG. 4B** provides the corresponding sigmoidal curve for deriving the IC-50 of the compound.

[0026] **FIG. 5A** provides a graph of normalized impedance data over time showing shifts in morphology in response to isoproteranol, a β_2 adrenergic receptor agonist. **FIG. 5B** shows a plot of the normalized cell indices against the log of the corresponding isoproteranol concentrations to calculate the EC-50.

[0027] **FIG. 6** shows the cell index curves measured on RT-CES system for 4 individual wells, with cell culture medium as background starting from cell seeding to about 86 hrs after cell seeding. For such long term measurement, cell electrode impedance and corresponding cell indices were measured at about 15 minute intervals. Thus for each well, the impedance measurement was performed with a time resolution of 15 minutes.

[0028] **FIGS. 7A-D** provides a series of graphs showing cardiomyocyte beating throughout attachment and growth phases.

[0029] **FIG. 8A** and **FIG. 8B** are a pair of cell index curves and the corresponding beat rate derived from Fourier transformation of impedance values

[0030] **FIGS. 9A-D** show cardiomyocyte beating data from mouse cardiomyocytes treated with sotalolol. In **FIGS. 9C** and **9D**, the time resolution between

two adjacent points is 40 milliseconds. In other words, a second in **FIGS. 7C** and **7D** is equivalent to 40 milliseconds.

[0031] **FIG 10A** depicts graphs of agents which slow down heart rate and cardiomyocyte beating. **FIG. 10B** depicts graphs of agents which increase heart rate and cardiomyocyte beating.

[0032] **FIGS. 11A-S** depict impedance data of cardiomyocyte patterns associated with testing of a variety of known compounds, which are further described in **Table II**.

[0033] **FIG. 12** depicts impedance based cardiotoxic patterns from known compounds.

[0034] **FIG. 13** shows an example of dose dependent effects of Astemizole on cardiomyocytes beating at different concentrations.

[0035] **FIGS. 14A - H** are graphical depictions of real time impedance-based millisecond time resolution of cardiomyocyte beating in response to Haloperidol treatment. The Y-axis is the cell index value.

[0036] **FIGS. 15A-H** depict graphical analysis of the impedance beating frequency from impedance plots (cell index plots) shown in **FIGS. 14A – H**.

[0037] **FIGS. 16A-H** depict additional graphical analysis of the magnitude or amplitude of the beating cycle peaks from impedance plots (cell index plots) shown in **FIGS. 14A–H**.

[0038] **FIGS. 17A-I** are graphical depictions of real time impedance-based millisecond time resolution of cardiomyocyte beating in response to Erythromycin treatment. The Y-axis is the cell index value.

[0039] **FIGS. 18A-I** depict graphical analysis of the impedance beating frequency from impedance plots (cell index plots) shown in **FIGS. 17A – I**.

[0040] **FIGS. 19A-I** depict additional graphical analysis of beating magnitude or amplitude of the beating cycle peaks shown from impedance plots (cell index plots) shown in **FIGS. 17A – I**.

DETAILED DESCRIPTION OF THE INVENTION

[0041] Detailed descriptions of preferred embodiments of the provided herein. It is to be understood; however, that the present invention may be embodied in various forms. Therefore specific reference to various forms are provided as a basis for the claims and for teaching one skilled in the present art to employ the present invention in appropriate system, structure or manner.

A. Definitions

[0042] Unless defined otherwise, all technical and scientific terms used herein have the same meaning as is commonly understood by one of ordinary skill in the art to which this invention belongs. All patents, applications, published applications and other publications referred to herein are incorporated by reference in their entirety. If a definition set forth in this section is contrary to or otherwise inconsistent with a definition set forth in the patents, applications, published applications and other publications that are herein incorporated by reference, the definition set forth in this section prevails over the definition that is incorporated herein by reference.

[0043] As used herein, “a” or “an” means “at least one” or “one or more.”

[0044] As used herein, “membrane” is a sheet of material.

[0045] As used herein, “biocompatible polymer” means a polymeric material that does not have deleterious effects on cells, including the viability, attachment, spreading, motility, growth, or cell division.

[0046] As used herein, “suitable for attachment” refers to structural features that permit attachment of cells thereto. A surface is “suitable for cell attachment” when a significant percentage of the cells attach or adhere to the surface within twelve hours. Preferably, at least 50% of the cells are adhered to the surface within twelve hours. More preferably, at least 70% of the cells are adhered to the surface within twelve hours of plating (i.e., adding cells to the well or fluid container). Even more preferably, the surface properties of a surface that is suitable for cell attachment results in at least 90% of

the cells adhering to the surface within twelve hours of plating. Most preferably, the surface properties of a surface that is suitable for cell attachment results in at least 90% of the cells adhering to the surface within eight, six, four, two hours of plating. To have desired surface properties for cell attachment, the surface may need to be chemically-treated (e.g. treatment with an acid and/or with a base), and/or physically treated (e.g. treatment with plasma), and/or biochemically treated (e.g. coated with one or more molecules or biomolecules that promotes cell attachment).

[0047] As used herein, “impedance measurement at millisecond time resolution” refers to the ability to perform a series of at least two consecutive impedance measurements within milliseconds of one another for each and every well of the system where each well is associated with an electrode array for impedance measurement. In each instance the time between two consecutive impedance measurements are less than 300 milliseconds from one another. Preferably, consecutive impedance measurements are less than 200 milliseconds from one another. More preferably impedance measurements are less than 100 milliseconds from one another. For example, the time between two consecutive impedance measurements are 40 milliseconds from one another for each and every well of the system. To be clear, that is to say, in a time period of 40 milliseconds, the system has the ability to measure two impedance data points for each and every well of the system.

[0048] As used herein, “excitable cells” refers to a cell population that is capable of propagation and spreading action potentials to surrounding cells. These cells are able to produce and respond to electrical signals. Some excitable cells are capable of excitation-contraction coupling. Examples of “excitable cells” include cardiomyocytes, cells that beat, some skeletal muscle cells, some smooth muscle cells and some neural cells. Identification of excitable cells may be found in cell biology literature.

[0049] As used herein, “excitation-contraction coupling” refers to the physiological process of converting an electrical stimulus to mechanical response. This process is fundamental to muscle physiology, whereby the electrical stimulus is usually an action potential and the mechanical response is contraction. EC coupling can be dysregulated in many disease conditions.

[0050] As used herein, “beating cycle” refers the time between which a cardiomyocyte sequentially beats. The “beating cycle” may vary depending on organism and developmental stage of the cardiomyocyte. A beating cycle may be as short as between 100 and 200 milliseconds, translating to a beating rate of 600 to 300 beats per minute. A beating cycle may be as long as between 1000 milliseconds and 10,000 milliseconds, translating to a beating rate of 60 to 6 beats per minute.

[0051] As used herein, “biomolecular coating” or “coated with a biomolecule” refers to is a coating on a surface that comprises a molecule that is a naturally occurring biomolecule or biochemical, or a biochemical derived from or based on one or more naturally occurring biomolecules or biochemicals. For example, a biomolecular coating can comprise an extracellular matrix component (e.g., fibronectin, collagens), or a derivative thereof, or can comprise a biochemical such as polylysine or polyornithine, which are polymeric molecules based on the naturally occurring biochemicals lysine and ornithine. Polymeric molecules based on naturally occurring biochemicals such as amino acids can use isomers or enantiomers of the naturally-occurring biochemicals.

[0052] As used herein, “extracellular matrix component” refers to a molecule that occurs in the extracellular matrix of an animal. It can be a component of an extracellular matrix from any species and from any tissue type. Nonlimiting examples of extracellular matrix components include laminins, collagens fibronectins, other glycoproteins, peptides, glycosaminoglycans, proteoglycans, etc. Extracellular matrix components can also include growth factors.

[0053] As used herein, “electrode” refers to a structure having a high electrical conductivity, that is, an electrical conductivity much higher than the electrical conductivity of the surrounding materials.

[0054] As used herein “electrode structure” refers to a single electrode, particularly one with a complex structure (as, for example, a spiral electrode structure), or a collection of at least two electrode elements that are electrically connected together. All the electrode elements within an “electrode structure” are electrically connected.

[0055] As used herein, “electrode element” refers to a single structural feature of an electrode structure, such as, for example, a fingerlike or branched projection of an interdigitated electrode structure.

[0056] As used herein “electrode structure unit” refers to two or more electrode structures that are constructed to have dimensions and spacing such that they can, when connected to a signal source, operate as a unit to generate an electrical field in the region of spaces around the electrode structures. Preferred electrode structure units of the present invention can measure impedance changes due to cell attachment to an electrode surface. Non-limiting examples of electrode structure units are interdigitated electrode structure units and concentric electrode structure units.

[0057] As used herein, “electrode traces” refer to electrically conductive paths that extend from electrodes or electrode elements or electrode structures toward one end or boundary of a device or apparatus for connecting the electrodes or electrode elements or electrode structures to an impedance analyzer. The end or boundary of a device may correspond to the connection pads on the device or apparatus.

[0058] As used herein, “connection pad” refers to an area on an apparatus or a device of the present invention which is electrically connected to at least one electrode or all electrode elements within at least one electrode structure on an apparatus or a device and which can be operatively connected to external electrical circuits (e.g., an impedance measurement circuit or a signal source). The electrical connection between a connection pad and an impedance measurement circuit or a signal source can be direct or indirect, through any appropriate electrical conduction means such as leads or wires. Such electrical conduction means may also go through electrode or electrical conduction paths located on other regions of the apparatus or device.

[0059] As used herein, “interdigitated” refers to having projections coming from one direction that interlace with projections coming from a different direction in the manner of the fingers of folded hands (with the caveat that interdigitated electrode elements preferably do not contact one another).

[0060] As used herein, “high probability of contacting an electrode element” refers to if a cell is randomly positioned within the sensor area of a device or apparatus of

the present invention, the probability of a cell (or particle) contacting on an electrode element, calculated from the average diameter of a cell used on or in a device or apparatus of the present invention, the sizes of the electrode elements, and the size of the gaps between electrode elements, is greater than about 50%, more preferably greater than about 60%, yet more preferably greater than about 70%, and even more preferably greater than about 80%, greater than about 90%, or greater than about 95%.

[0061] As used herein, “at least two electrodes fabricated on said substrate” refers to at least two electrodes are fabricated or made or produced on the substrate. The at least two electrodes can be on the same side of the substrate or on the different side of the substrate. The substrate may have multiple layers, the at least two electrodes can be either on the same or on the different layers of the substrate.

[0062] As used herein, “at least two electrodes fabricated to a same side of said substrate” refers to at least two electrodes are fabricated on the same side of the substrate.

[0063] As used herein, “at least two electrodes fabricated to a same plane of said substrate” refers to, if the nonconducting substrate has multiple layers, the at least two electrodes are fabricated to the same layer of the substrate.

[0064] As used herein, “electrodes have substantially same surface area” refers to the surface areas of the electrodes referred to are not substantially different from each other, so that the impedance change due to cell attachment or growth on any one of the electrodes referred to will contribute to the overall detectable change in impedance to a same or similar degree as the impedance change due to cell attachment or growth on any other of the electrodes referred to. In other words, where electrodes have substantially the same surface area, any one of the electrodes can contribute to overall change in impedance upon cell attachment or growth on the electrode. In most cases, the ratio of surface area between the largest electrode and the smallest electrode that have “substantially the same surface area” is less than 10. Preferably, the ratio of surface area between the largest electrode and the smallest electrode of an electrode structure is less than 5, 4, 3, 2, 1.5, 1.2 or 1.1. More preferably, the at least two electrodes of an electrode structure have nearly identical or identical surface area.

[0065] As used herein, “said device has a surface suitable for cell attachment or growth” refers to the electrode and/or non-electrode area of the apparatus has appropriate physical, chemical or biological properties such that cells of interest can viably attach on the surface and new cells can continue to attach, while the cell culture grows, on the surface of the apparatus. However, it is not necessary that the device, or the surface thereof, contain substances necessary for cell viability or growth. These necessary substances, e.g., nutrients or growth factors, can be supplied in a medium. Preferably, when a suspension of viable, unimpaired, excitable cells is added to the “surface suitable for cell attachment” at least 50% of the cells adhere to the surface within twelve hours. More preferably, a surface that is suitable for cell attachment has surface properties so that at least 70% of the cells are adhering to the surface within twelve hours of plating (i.e., adding cells to the chamber or well that comprises the said device). Even more preferably, the surface properties of a surface that is suitable for cell attachment results in at least 90% of the cells adhering to the surface within twelve hours of plating. Most preferably, the surface properties of a surface that is suitable for cell attachment results in at least 90% of the cells adhering to the surface within eight, six, four, two hours of plating.

[0066] As used herein, “detectable change in impedance between or among the electrodes” refers to the impedance between or among the electrodes would have a significant change that can be detected by an impedance analyzer or impedance measurement circuit when molecule binding reaction or cell attachment or cell adhesion or cell presence occurs on the electrode surfaces. The impedance change refers to the difference in impedance values when cell attachment or cell adhesion or cell presence or molecule binding reaction occurs on the electrode surface of the apparatus and when no molecular reaction occurs on the electrode surface or no cell is present on the electrode surface. The impedance change may occur upon the presence or decay of a beat from a cardiomyocyte. Alternatively, the impedance change refers to the difference in impedance values when cells are attached to the electrode surface and when cells are not attached to the electrode surface, or when the number, type, activity, or morphology of cells attached to the electrode-comprising surface of the apparatus changes. In most cases, the change in impedance is larger than 0.1% to be detectable. Preferably, the

detectable change in impedance is larger than 1%, 2%, 5%, or 8%. More preferably, the detectable change in impedance is larger than 10%. Impedance between or among electrodes is typically a function of the frequency of the applied electric field for measurement. "Detectable change in impedance between or among the electrodes" does not require the impedance change at all frequencies being detectable. "Detectable change in impedance between or among the electrodes" only requires a detectable change in impedance at any single frequency (or multiple frequencies). In addition, impedance has two components, resistance and reactance (reactance can be divided into two categories, capacitive reactance and inductive reactance). "Detectable change in impedance between or among the electrodes" requires only that either one of resistance and reactance has a detectable change at any single frequency or multiple frequencies. In the present application, impedance is the electrical or electronic impedance. The method for the measurement of such impedance is achieved by, (1) applying a voltage between or among the electrodes at a given frequency (or multiple frequencies, or having specific voltage waveform) and monitoring the electrical current through the electrodes at the frequency (or multiple frequencies, or having specific waveform), dividing the voltage amplitude value by the current amplitude value to derive the impedance value; (2) applying an electric current of a single frequency component (or multiple frequencies or having specific current wave form) through said electrodes and monitoring the voltage resulted between or among the electrodes at the frequency (or multiple frequencies, or having specific waveform), dividing the voltage amplitude value by the current amplitude value to derive the impedance value; (3) other methods that can measure or determine electric impedance. Note that in the description above of "dividing the voltage amplitude value by the current amplitude value to derive the impedance value", the "division" is done for the values of current amplitude and voltage amplitude at same frequencies. Measurement of such electric impedance is an electronic or electrical process that does not involve the use of any reagents.

[0067] As used herein, "multiple pairs of electrodes or electrode structures spatially arranged according to wells of a multi-well microplate" refers to multiple pairs of electrodes or electrode structures of a device or apparatus are spatially arranged to match the spatial configuration of wells of a multi-well microplate so that, when

desirable, the device can be inserted into, joined with, or attached to a multiwell plate (for example, a bottomless multiwell plate) such that multiple wells of the multi-well microplate will comprise electrodes or electrode structures.

[0068] As used herein, “arranged in a row-column configuration” refers to that, in terms of electric connection, the position of an electrode, an electrode array or a switching circuit is identified by both a row position number and a column position number.

[0069] As used herein, “each well contains substantially same number . . . of cells” refers to the lowest number of cells in a well is at least 50% of the highest number of cells in a well. Preferably, the lowest number of cells in a well is at least 60%, 70%, 80%, 90%, 95% or 99% of the highest number of cells in a well. More preferably, each well contains an identical number of cells.

[0070] As used herein, “each well contains . . . same type of cells” means that, for the intended purpose, each well contains same type of cells; it is not necessary that each well contains exactly identical type of cells. For example, if the intended purpose is that each well contains mammalian cells, it is permissible if each well contains same type of mammalian cells, *e.g.*, human cells, or different mammalian cells, *e.g.*, human cells as well as other non-human mammalian cells such as mice, goat or monkey cells, etc. In some instances the “same type of cells” may initially refer to embryonic stem cells; however, the stage of differentiation into cardiomyocytes may be differ.

[0071] As used herein, “each well contains . . . serially different concentration of a test compound” means that each well contains a test compound with a serially diluted concentrations, *e.g.*, an one-tenth serially diluted concentrations of 1 M, 0.1 M, 0.01 M, etc.

[0072] As used herein, “dose-response curve” means the dependent relationship of response of cells on the dose concentration of a test compound. The response of cells can be measured by many different parameters. For example, a test compound is suspected to be cardiotoxic if it impairs cardiomyocyte beating, whether magnitude or amplitude or frequency, or if it causes cell death. Then the response of

cells can be measured by percentage of non-viable (or viable) cardiac cells after the cells are treated by the test compound.

[0073] As used herein, “microelectrode strip or electrode strip” refers to a non-conducting substrate strip on which electrodes or electrode structure units are fabricated or incorporated. The non-limiting examples of the non-conducting substrate strips include polymer membrane, glass, plastic sheets, ceramics, insulator-on-semiconductor, fiber glass (like those for manufacturing printed-circuits-board). Electrode structure units having different geometries can be fabricated or made on the substrate strip by any suitable microfabrication, micromachining, or other methods. Non-limiting examples of electrode geometries include interdigitated electrodes, circle-on-line electrodes, diamond-on-line electrodes, castellated electrodes, or sinusoidal electrodes. Characteristic dimensions of these electrode geometries may vary from as small as less than 5 micron, or less than 10 micron, to as large as over 200 micron, over 500 micron, over 1 mm. The characteristic dimensions of the electrode geometries refer to the smallest width of the electrode elements, or smallest gaps between the adjacent electrode elements, or size of a repeating feature on the electrode geometries. The microelectrode strip can be of any geometry for the present invention. One exemplary geometry for the microelectrode strips is rectangular shape – having the width of the strip between less than 50 micron to over 10 mm, and having the length of the strip between less than 60 micron to over 15 mm. An exemplary geometry of the microelectrode strips may have a geometry having a width of 200 micron and a length of 20 mm. A single microelectrode strip may have two electrodes serving as a measurement unit, or multiple such two-electrodes serving as multiple measurement units, or a single electrode structure unit as a measurement unit, or multiple electrode structure units serving as multiple electrode structure units. In one exemplary embodiment, when multiple electrode structure units are fabricated on a single microelectrode strip, these electrode structure units are positioned along the length direction of the strip. The electrode structure units may be of squared-shape, or rectangular-shape, or circle shapes. Each of electrode structure units may occupy size from less than 50 micron by 50 micron, to larger than 2 mm x 2mm.

[0074] A “compound” or “test compound” is any compound whose activity or direct or indirect effect or effects on cells is investigated in any assay. A test compound

can be any compound, including, but not limited to, a small molecule, a large molecule, a molecular complex, an organic molecule, an inorganic molecule, a biomolecule or biological molecule such as but not limited to a lipid, a steroid, a carbohydrate, a fatty acid, an amino acid, a peptide, a protein, a nucleic acid, or any combination thereof. A test compound can be a synthetic compound, a naturally occurring compound, a derivative of a naturally-occurring compound, etc. The structure of a test compound can be known or unknown. In one application of the present invention, a compound is capable of, or is suspected of, modulating the beating cycle of a cardiomyocyte cell population, whether by beating amplitude or frequency. In still another application, a compound is capable of, or is suspected of, interacting with cells (for example, binding to cell surface receptor, or inhibiting certain intracellular signal transduction pathway, or activating cells).

[0075] A "known compound" is a compound for which at least one activity is known. In the present invention, a known compound preferably is a compound for which one or more direct or indirect effects on cells is known. Preferably, the structure of a known compound is known, but this need not be the case. Preferably, the mechanism of action of a known compound on cells is known, for example, the effect or effects of a known compound on cells can be, as nonlimiting examples, effects on cardiotoxicity or embryonic stem cell development, etc.

[0076] An "impedance value" is the impedance measured for electrodes in a well with or without cell present. Impedance is generally a function of the frequency, i.e., impedance values depend on frequencies at which the measurement was conducted. For the present application, impedance value refers to impedance measured at either single frequency or multiple frequencies. Furthermore, impedance has two components, one resistance component and one reactance component. Impedance value in the present application refers to resistance component, or reactance component, or both resistance and reactance component. Thus, when "impedance value" was measured or monitored, we are referring to that, resistance, or reactance, or both resistance and reactance were measured or monitored. In many embodiments of the methods of the present application, impedance values also refer to parameter values that are derived from raw, measured

impedance data. For example, cell index, or normalized cell index, or delta cell index could be used to represent impedance values.

[0077] A "Cell Index" or "CI" is a parameter that can be derived from measured impedance values and that can be used to reflect the change in impedance values. There are a number of methods to derive or calculate Cell Index.

[0078] A "Normalized Cell Index" at a given time point is calculated by dividing the Cell Index at the time point by the Cell Index at a reference time point. Thus, the Normalized Cell Index is 1 at the reference time point.

[0079] A "delta cell index" at a given time point is calculated by subtracting the cell index at a standard time point from the cell index at the given time point. Thus, the delta cell index is the absolute change in the cell index from an initial time (the standard time point) to the measurement time.

[0080] A "Cell Change Index" or "CCI" is a parameter derived from Cell Index and "CCI" at a time point is equal to the 1st order derivative of the Cell Index with respect to time, divided by the Cell Index at the time point. In other words, CCI is calculated as

$$CCI(t) = \frac{dCI(t)}{CI(t) \cdot dt}.$$

[0081] As used herein, "primary cell" or "primary cells" refers to any non-immortalized cell that has been derived from various tissues and organs of a patient or an animal.

B. Introduction to Impedance-Based Systems and Methods having Millisecond Time Resolution

[0082] The impedance-based system and methods of the present invention fill a major technological gap in monitoring of excitation-contraction coupling and excitable cells, such as cardiomyocytes, in vitro. This is accomplished, in part, from the development of an impedance-based system and monitoring method that employs millisecond time resolution. Millisecond timer resolution permits effective monitoring of

excitable cells for short durations, such as less than about 100 milliseconds. Further by coupling millisecond time resolution with longer duration time periods, both short term and long term effects of drugs, such as cell viability, changes in morphology and adhesion can also be assessed. These combination studies permit further data collection with respect to compounds such as β -2 adrenergic receptor agonists, well known and characterized modulators of heart function in vivo and in vitro, which can induce long term hypertrophic responses in cardiomyocytes, which is associated with elongated morphology of the cells. When combining long term monitoring and short term monitoring it may be desirable to provide long term monitoring coupled to intermittent short term monitoring periods.

[0083] The devices, systems and methods provided permit impedance-based monitoring of excitable cells using millisecond time resolution. It has been discovered that by developing enhanced impedance based systems, detailed analysis of excitable cells, the excitation cycle of cells and potential modulators of excitable cells can be performed. Further, by studying the excitation cycle with increased resolution embodiments of the invention permit the effective evaluation of factors that may alter normal or abnormal cycling. Without millisecond time resolution, it would not be possible to perform detailed analysis of the beating cycle of the excitable cells. For example, for cardiomyocytes, if the impedance is measured at seconds time-resolution such as a ten-second or even one-second resolution, it would not be possible to observe beating of the cardiomyocytes or resolve a beating cycle of the cardiomyocytes with an impedance measurement. The cardiomyocytes-beating-resulted impedance change would be shown as “noise” on the impedance curves measured at seconds or minutes time-resolution. Indeed, it was a surprise that the beating of the cardiomyocytes on the electrode surfaces would result in periodic change in impedance and even more surprise that the impedance measurement, when performed at appropriate time resolution of milliseconds, could resolve such beating cycles. After we discovered that cardiomyocyte beating, when cultured on electrode surfaces, can be monitored via impedance measurement, we interpreted that such dynamic monitoring of cardiomyocyte beating is based on quantification in real time of the rhythmic changes in cardiomyocyte morphology and/or attachment as a result of the excitation contraction coupling of the

electrically excitable cardiomyocytes growing on microelectrodes' surface in E-PLATES (ACEA Biosciences, San Diego, CA). The quantification of the rhythmic changes in cardiomyocyte morphology and/or attachment is achieved via the fast (millisecond resolution) and continuous measurement of electrode impedance. The method essentially provides a cellular cardio-gram which can provide incisive information about the status of cardiomyocytes especially upon treatment with pharmacological agents.

[0084] When combining long term impedance monitoring and short term monitoring it may be desirable to provide long term monitoring coupled to intermittent short term monitoring. In other words, while long term impedance monitoring is able to identify long term effects on excitable cells, short term impedance monitoring, such as at millisecond time resolution may be employed at particular time points to assess short term effects. In some instances, impedance monitoring with millisecond time resolution is performed at regular or irregular time intervals. In these instances, time intervals may be preprogrammed in the system or may be initiated by the user. In some instances intermittent measuring at millisecond time resolution is initiated upon the occurrence of an event, such as an event detected or determined while long term monitoring of impedance. Such events may be changes in measured impedance data, changes in optical property and the like. Monitoring at millisecond time resolution may continue until a programmed event occurs, such as expiration of a time period. After or during which, long term impedance monitoring may continue.

[0085] In some embodiments, long term and short term monitoring of excitation-contraction coupling or excitable cells is provided in combination. Exemplary methods include providing the impedance-based system with millisecond time resolution; adding excitable cells or cells suspected of excitation-contraction coupling to one or more wells; monitoring impedance of the one or more wells over a first time period, which is characterized as a longer time period, such as seconds, minutes, hours or days; monitoring impedance of the one or more wells over a second time period in millisecond time resolution; determining a characteristic, such as cell attachment, cell growth and cell viability from monitoring over the first time period; and resolving individual cycles of the excitable cells from monitoring over the second time period. In such embodiments, monitoring impedance over the second time period may be performed at regular or

irregular time intervals within monitoring impedance over the first time period. Further, test agents may be added to assess their short term effects and long term effects on the cells.

[0086] Impedance monitoring using, at least in part, millisecond time resolution will be useful in the testing of compounds such as drugs for the treatment or prevention of various medical conditions or their safety. In some embodiments the systems and methods are used to test or evaluate potential compounds, drugs or treatments for cardiotoxicity data. In some embodiments potential compounds, drugs or treatments are tested for cardioprotective data. In some embodiments potential compounds, drugs or treatments are tested for potential applicability for cardiovascular treatments, including hypertension or congestive heart failure. In some embodiments potential compounds, drugs or treatments are tested for modulation of embryonic stem cell development, such as development into cardiomyocytes. In other embodiments the systems and methods are used to test or assess potential drugs or treatments for neurological data, such as beneficial or deleterious neurological effects. As will be understood by those skilled in the present art, the impedance based system and methods including millisecond time resolution permits evaluation across multiple cell populations or systems that including excitation-contraction coupling.

[0087] One skilled in the art will understand embodiments of the present invention may be used for studying a variety of excitable cells or effects thereon. As nonlimiting examples cells may be cardiac muscle cells, neurological cells, differentiating stem cells, embryonic stem cells, adult stem cells and the like. Smooth muscle cells and skeletal muscle cells that undergo excitation-contraction coupling may also be studied.

[0088] In some embodiments of the present invention the excitation cycle or beating of cardiomyocytes is studied. Cardiomyocytes are specialized muscle cells, which make up the majority of the volume of the myocardium. The myocardium also includes epithelial cells and fibroblasts. Cardiomyocytes are arranged largely in a circumferential and spiral orientation around the left ventricle, the chamber that pumps blood to the systemic circulation. Atrial myocytes, also cardiomyocytes, are smaller in

diameter and less structured than their ventricular counterparts. Cardiomyocytes have five major components: cell membrane (sarcolemma) and T-tubules, for impulse conduction; sarcoplasmic reticulum, a calcium reservoir needed for contraction; contractile elements; mitochondria; and nucleus. Cellularly, cardiomyocytes may be identified by the presence of cardiac troponin T (TnT) and atrial natriuretic peptide (ANP).

[0089] The functional intracellular contractile unit of cardiac muscle (like skeletal muscle) is the sarcomere, an orderly arrangement of thick filaments composed principally of myosin, and thin filaments containing actin. Contraction of cardiac muscle occurs by the cumulative effort of sliding of the actin filaments between the myosin filaments toward the center of each sarcomere.

[0090] Cardiomyocytes may be obtained or isolated from cardiac tissue directly, may be cultured from cardiomyocyte cells or may be differentiated from stem cells, such as embryonic stem cells. In some embodiments embryonic or adult stem cells are used. Methods for obtaining or isolating cardiomyocytes from cardiac tissue may be found in the literature.

[0091] Since embryonic stem (ES) cells are self renewing cells in culture they can serve as an excellent source for continuous production of cardiomyocytes. These derived cardiomyocytes, which behave in every way like normal cardiomyocytes isolated from the heart tissue itself, addresses the ever important supply problem and for the first time allows for assessment of cardiac function and its modulation by lead candidate drugs and compounds in relatively large scale. Furthermore, because the technology exists to selectively knockout or express trans-genes in ES cells, it provides an excellent model system to study the role of certain genes in cardiac development and function without concern of adverse affects on overall embryonic development in transgenic animals. Further, the ability to express transgenes in ES cells has been utilized as a way to enrich for preparation of cardiomyocytes that are 100% pure. For example, the gene encoding GFP has been cloned downstream of a cardiac-specific promoter and then introduced into ES cells. Embryoid cells which ultimately differentiate into cardiomyocytes express the GFP transgenes and can be easily identified and isolated by cell sorting techniques and therefore an enriched cardiomyocyte population can be obtained.

C. Impedance-Based Systems Having Millisecond Time Resolution

[0092] In preferred embodiments the system for monitoring impedance of excitable cells in vitro includes a device for monitoring cell-substrate impedance, an impedance analyzer capable of impedance measurements at millisecond time resolution, electronic circuitry that can engage the device and selectively connect two or more electrode arrays of the device to the impedance analyzer and a software program that controls the electronic circuitry and records and analyzes data obtained from the impedance analyzer. By providing the impedance based system with millisecond time resolution, excitation-contraction coupling cells can be efficiently monitored and studied. Accordingly, the systems provided herein are able to identify and evaluate changes in excitation-contraction events, which may be used for high throughput analysis of potential therapeutics. Millisecond time resolution measurements may be coupled with longer term impedance monitoring, such as longer than seconds, hours or days. In some embodiments, long term impedance monitoring is performed with intermittent periods of impedance monitoring at millisecond time resolution.

[0093] Embodiments of the device for monitoring substrate impedance include a nonconductive substrate having one or more individually addressable electrode arrays fabricated thereon and one or more wells. A surface of the substrate may be suitable for cell attachment, wherein the cell attachment results in a detectable change in impedance between electrodes within the array. Preferably, the nonconducting substrate is planar, and is flat or approximately flat. The substrates may be constructed from a variety of nonconductive materials known in the present art, including, but not limited to, silicon dioxide on silicon, silicon-on-insulator (SOI) wafer, glass (e.g., quartz glass, lead glass or borosilicate glass), sapphire, ceramics, polymer, fiber glass, plastics, e.g., polyimide (e.g. Kapton, polyimide film supplied by DuPont), polystyrene, polycarbonate, polyvinyl chloride, polyester, polypropylene and urea resin. Preferably, the substrate is biocompatible with excitable cells; however, materials that are not biocompatible can be made biocompatible by coating with a suitable material, such as a biocompatible polymer or coating. Further, attachment or growth along the substrate or electrodes may be

enhanced by precoating the substrate with a protein or compound that facilitates attachment or growth. Such compounds may be chosen according to techniques known in the cellular biology arts; however, in some embodiments fibronectin is effective. Alternatively, the substrate may be chemically modified to display reactive groups that enhance cell attachment, particularly ES cells or cardiomyocytes.

[0094] Each electrode array includes two or more electrode structures that are constructed to have dimensions and spacing such that they can, when connected to a signal source, operate as a unit to generate an electrical field in the region of spaces around the electrode structures. Preferably the electric field is substantially uniform across the array. An electrode structure refers to a single electrode, particularly one with a complex structure. Specifically, an electrode array includes two electrode structures, each of which includes multiple electrode elements, or substructures, which branch from the electrode structure. In preferred embodiments, the electrode structures of each of the two or more electrode arrays of a device have substantially the same surface area.

[0095] Each of the two electrode structures of an electrode array is connected to a separate connection pad that is preferably located at the edge of the substrate. Specifically, for each of the two or more electrode arrays of the device, preferably the first of the two electrode structures is connected to one of the two or more connection pads, and the second of the two electrode structures is connected to another of the two or more connection pads. Preferably, each array of a device is individually addressed, meaning that the electrical traces and connection pads of the arrays are configured such that an array can be connected to an impedance analyzer in such a way that a measuring voltage can be applied across a single array at a given time by using switches (such as electronic switches).

[0096] Preferably, each electrode array of the device has an approximately uniform electrode resistance distribution across the entire array. By "uniform resistance distribution across the array" is meant that when a measurement voltage is applied across the electrode structures of the array, the electrode resistance at any given location of the array is approximately equal to the electrode resistance at any other location on the array. Preferably, the electrode resistance at a first location on an array of the device and the

electrode resistance at a second location on the same array does not differ by more than 30%. More preferably, the electrode resistance at a first location on an array of the device and the electrode resistance at a second location on the same array does not differ by more than 15%. Even more preferably, the electrode resistance at a first location on an array of the device and a second location on the same array does not differ by more than 5%. More preferably yet, the electrode resistance at a first location on an array of the device and a second location on the same array does not differ by more than 2%.

[0097] Preferred arrangements for electrode elements and gaps between the electrodes and electrode buses in a given electrode array are used to allow all cells, no matter where they land and attach to the electrode surfaces and to contribute similarly to the total impedance change measured for the electrode array. Thus, it is desirable to have similar electric field strengths at any two locations within any given array of the device when a measurement voltage is applied to the electrode array. At any given location of the array, the field strength is related to the potential difference between the nearest point on a first electrode structure of the array and the nearest point on a second electrode structure of the array. It is therefore desirable to have similar electric potential drops across the electrode elements and across the electrode buses of a given array. Based on this requirement, it is preferred to have an approximately uniform electrode resistance distribution across the whole array where the electrode resistance at a location of interest is equal to the sum of the electrode resistance between the nearest point on a first electrode structure (that is the point on the first electrode structure nearest the location of interest) and a first connection pad connected to the first electrode structure and the electrode resistance between the nearest point on a second electrode structure (that is the point on the first electrode structure nearest the location of interest) and a second connection pad connected to the second electrode structure.

[0098] Preferably, devices of the present invention are designed such that the arrays of the device have an approximately uniform distribution across the whole array. This can be achieved, for example, by having electrode structures and electrode buses of particular spacing and dimensions (lengths, widths, thicknesses and geometrical shapes) such that the resistance at any single location on the array is approximately equal to the resistance at any single other location on the array. In most embodiments, the electrode

elements (or electrode structures) of a given array will have even spacing and be of similar thicknesses and widths, the electrode buses of a given array will be of similar thicknesses and widths, and the electrode traces leading from a given array to a connection pad will be of closely similar thicknesses and widths. Thus, in these preferred embodiments, an array is designed such that the lengths and geometrical shapes of electrode elements or structures, the lengths and geometrical shapes of electrode traces, and the lengths and geometrical shapes of buses allow for approximately uniform electrode resistance distribution across the array.

[0099] In some preferred embodiments of impedance measurement devices, electrode structures comprise multiple electrode elements, and each electrode element connects directly to an electrode bus. Electrode elements of a first electrode structure connect to a first electrode bus, and electrode elements of a second electrode structure connect to a second electrode bus. In these embodiments, each of the two electrode buses connects to a separate connection pad via an electrical trace. Although the resistances of the traces contribute to the resistance at a location on the array, for any two locations on the array the trace connections from the first bus to a first connection pad and from the second bus to a second connection pad are identical. Thus, in these preferred embodiments trace resistances do not need to be taken into account in designing the geometry of the array to provide for uniform resistances across the array.

[00100] In preferred embodiments of the present invention, a device for monitoring cell-substrate impedance has two or more electrode arrays that share a connection pad. Preferably one of the electrode structures of at least one of the electrode arrays of the device is connected to a connection pad that also connects to an electrode structure of at least one other of the electrode arrays of the device. Preferably for at least two arrays of the device, each of the two or more arrays has a first electrode structure connected to a connection pad that connects with an electrode structure of at least one other electrode array, and each of the two or more arrays has a second electrode structure that connects to a connection pad that does not connect with any other electrode structures or arrays of the device. Thus, in preferred designs of a device there are at least two electrode arrays each of which has a first electrode structure that is connected to a

common connection pad and a second electrode structure that is connected to an independent connection pad.

[00101] In some preferred embodiments of the present invention, each of the electrode structures of an array is connected to an electrode bus that is connected to one of the two or more connection pads of the device via an electrically conductive trace. In preferred embodiments, each of the two electrode structures is connected to a single bus, such that each array connects to two buses, one for each electrode structure. In this arrangement, each of the two buses connects to a separate connection pad of the substrate.

[00102] The electrically conductive traces that connect a bus with a connection can be fabricated of any electrically conductive material. The traces can be localized to the surface of the substrate, and can be optionally covered with an insulating layer. Alternatively the traces can be disposed in a second plane of the substrate. Description of arrangements and design of electrically conductive traces on impedance measurement devices can be found in U.S. Patent No. 7,470,533, herein incorporated by reference for all disclosure on fabrication and design of electrically conductive trace on substrates.

[00103] Appropriate electronic connection means such as metal clips engaged onto the connection pads on the substrate and connected printed-circuit-boards can be used for leading the electronic connections from the connection pads on the devices to external electronic circuitry (e.g. an impedance analyzer). Description of the design of cell-substrate impedance devices and their manufacture can be found in U.S. Patent 7,470,533, herein incorporated by reference for all description and disclosure of the design, features, and manufacture of impedance device comprising electrode arrays.

[00104] Descriptions of electrode arrays used for impedance measurement that apply to the devices of the present invention are described in U.S. Patent No. 7,470,533, herein incorporated by reference for all disclosure relating to electrode arrays (or structural units), electrode structures, electrode materials, electrode dimensions, and methods of manufacturing electrodes on substrates.

[00105] Preferred electrode arrays for devices of the present invention include arrays comprising two electrode structures, such as, for example, spiral electrode arrays and interdigitated arrays. In some preferred devices of the present invention, electrode arrays are fabricated on a substrate, in which the arrays comprises two electrode structures, each of which comprises multiple circle-on-line electrode elements, in which the electrode elements of one structure alternate with the electrode elements of the opposite electrode structure. Electrode arrays may be provided in configurations, such as interdigitated, circle-on-line, diamond-on-line, concentric, sinusoidal and castellated.

[00106] Preferably, the electrode elements (or electrode structures) of an array of the present device of the present invention are of approximately equal widths. Preferably the electrode elements (or electrode structures) of an array of the present device of the present invention are greater than 20 microns and less than 500 microns in width, more preferably from about 50 to about 300 microns in width.

[00107] Preferably, the electrode elements (or electrode structures) of an array of the present device of the present invention are approximately evenly spaced. Preferably, the gap between electrode elements (or electrode structures) of an array of the present device of the present invention is less than 100 microns and more than 5 microns in width, more preferably from about 10 to about 80 microns in width.

[00108] A device of the present invention can include one or more fluid-impermeable receptacles which serve as fluid containers or wells. Such receptacles may be reversibly or irreversibly attached to or formed within the substrate or portions thereof (such as, for example, wells formed as in a microtiter plate). In another example, the device of the present invention includes microelectrode strips reversibly or irreversibly attached to plastic housings that have openings that correspond to electrode structure units located on the microelectrode strips. Suitable fluid container materials comprise plastic, glass, or plastic coated materials such as a ceramic, glass, metal, etc. Descriptions and disclosure of devices that comprise fluid containers can be found in U.S. Patent Application No. 7,470,533, herein incorporated by reference for all disclosure of fluid containers and fluid container structures that can engage a substrate comprising

electrodes for impedance measurements, including their dimensions, design, composition, and methods of manufacture.

[00109] In preferred embodiments, each electrode array on the substrate of a device of the present invention is associated with a fluid-impermeable container or receptacle, such as, for example, a well. Preferably, the device of the present invention is assembled to a bottomless, multiwell plastic plate or strip with a fluid tight seal. The device is assembled such that a single array of the substrate is at the bottom of a receptacle or well. Preferably, each array of a device is associated with a well of a multiwell plate. In some preferred embodiments, a multiwell device for cell-substrate impedance measurement has "non-array" wells that are attached to the substrate but not associated with arrays. Such wells can optionally be used for performing non-impedance based assays, or for viewing cells microscopically.

[00110] The design and assembly of multiwell impedance measurement devices is described in U.S. Patent No. 7,470,533, and also in U.S. Patent No. 7,192,752, both herein incorporated by reference for disclosure of multiwell impedance measurement devices, including their design, composition, and manufacture. A device of the present invention preferably has between 2 and 1,536 wells and more preferably between 4 and 384 wells. In some embodiments the device includes 6 wells, 16 wells, 32 wells, 96 wells or 386 wells.

[00111] In some preferred embodiments, commercial tissue culture plates can be adapted to fit a device of the present invention. Bottomless plates may also be custom-made to preferred dimensions. Preferably, well diameters are from about 1 millimeter to about 20 millimeters, more preferably from about 2 millimeters to about 8 millimeters at the bottom of the well (the end disposed on the substrate). The wells can have a uniform diameter or can taper toward the bottom so that the diameter of the container at the end in contact with the substrate is smaller than the diameter of the opposing end.

[00112] In the system for monitoring impedance of excitable cells the impedance analyzer engages connection pads of one or more multi-well devices to measure impedance. In one embodiment of the above system, the impedance analyzer is

capable of measuring impedance between 0.1 ohm and 10^5 ohm in frequency range of 1 Hz to 1 MHz. The impedance analyzer is preferably capable of measuring both resistance and reactance (capacitive reactance and inductive reactance) components of the impedance. In a preferred embodiment of the above system, the impedance analyzer is capable of measuring impedance between 1 ohm and 10^3 ohm in frequency range of 1.00 Hz to 300 kHz.

[00113] In preferred embodiments the impedance analyzer is capable of impedance measurements at millisecond time resolution. The required or desired time resolution may vary depending on the excitation cycle of the excitable cell. Excitable cells having shorter excitation cycles would tend to require faster time resolution. In some embodiments 500 millisecond time resolution is sufficient, such that at least two consecutive impedance measurements are between about 300 milliseconds and about 500 milliseconds apart. In preferred embodiments, impedance measurement at millisecond time resolution includes at least two consecutive impedance measurements less than 100 milliseconds apart. In some instances the at least two consecutive impedance measurements are less than 50 milliseconds or less than 40 milliseconds apart. In some instances the at least two consecutive impedance measurements are less than 20 milliseconds apart. In some instances at least two consecutive impedance measurements are less than 10 milliseconds apart. In some instances millisecond time resolution includes two consecutive impedance measurements between 1 millisecond and 5 milliseconds, between 5 milliseconds and 10 milliseconds, between 10 milliseconds and 20 milliseconds, between 20 milliseconds and 40 milliseconds, or between 40 milliseconds and 50 milliseconds apart. In some instances millisecond time resolution includes at least two consecutive impedance measurements between 50 milliseconds and 100 milliseconds apart. In some instances millisecond time resolution includes at least two consecutive impedance measurements between 100 milliseconds and 150 milliseconds or between 150 and 300 milliseconds apart.

[00114] Millisecond time resolution of impedance-based devices provides a significant technical step over traditional impedance measuring devices, which are typically limited to second or minute resolution. That is, substantial reconfiguration of a traditional impedance-based system is required to obtain millisecond time resolution.

Advances in multiple steps are required to achieve millisecond time resolution, including the impedance measurement circuitry together with electronic switching circuitry. Technological advances are further required when performing millisecond time resolution over multiple wells, such as 4 wells, 8 wells, 16 wells or 96 wells. For example, if the system comprises a device having 96 wells, the system hardware and software should be capable of, for a given time period, measuring the impedances of all 96 wells with millisecond time resolution between two adjacent or consecutive impedance measurement points for each and every well. Thus, comparing two impedance analyzers, one for impedance measurement of 96 wells with millisecond resolution and another for impedance measurement of a single well with millisecond time resolution, the one for 96 well measurement is effectively 96-times faster than one for a single well measurement since it is required to have a capability for performing impedance measurement for all 96 wells with millisecond time resolution. Similarly, if a 96 well device is provided, a group of wells, such as a group of 2, 4, 6, 12, 24 or 48 wells, may be measured in millisecond time resolution. Preferably, the time difference between two adjacent measurement points for each and every given well is less than 500 milliseconds. More preferably, the time difference between two adjacent measurement points for each and every given well is less than 300 milliseconds. Still more preferably, the time difference between two adjacent measurement points for each and every given well is less than 100 milliseconds. Still more preferably, the time difference between two adjacent measurement points for each and every given well is less than 40 milliseconds. Still more preferably, the time difference between two adjacent measurement points for each and every given well is less than 20 milliseconds. Still more preferably, the time difference between two adjacent measurement points for each and every given well is less than 10 milliseconds.

[00115] A number of improvements in the impedance measurement circuitry, electronic switching circuitry, communication between impedance measurement circuitry and software can be used to achieve such millisecond time resolution. For instance, improvement likely requires the use of fast processing electronic chips for analogue-to-digital conversion, for parallel digital signal processing and data calculation with field-programmable gate array (FPGA) and for fast

communication between the impedance measurement circuitry and software. Another example of improvements includes the use of multiple analogue-to-digital (AD) conversion channels so that analog electronic signals from multiple channels can be converted to digital signals simultaneously. Such parallel AD conversion is important, particular for the system having multiple wells, each of which's measurement time resolution is required to be in the millisecond resolution. And, a very important is to replace previous working mode of "measurement of one-well's impedance at a time" with a mode of "measurement of multiple-wells' impedances at a time". In "one-well at a time" mode, when the software issue a command for measuring one well's impedance, the measurement circuitry would perform the measurement for one well including signal generation to the well, converting the voltage signal and the electric current signal for the well to digital signal, digitally processing the signals to do impedance calculation and sending the well's impedance data to the computer over the communication line between the impedance measurement circuitry and the computer. The system will not perform any measurement for another well until the completion of the measurement of this well and until receiving another command for the measurement of another well. In "multiple-wells at a time" mode, the software would issue a command for measuring multiple wells' impedances. The measurement circuitry would simultaneously or nearly simultaneously perform signal conversion, signal processing and impedance calculation for multiple wells. The multiple impedance data for the multiple wells would be sent over the communication lines to the computer sequentially with one well's data at the same time or simultaneously with more than one well's data being sent at a time. In this "measurement of multiple-wells' impedances at a time" mode, the system may be performing multiple tasks simultaneously, for example, while one well's impedance data is being measured and calculated, another well's impedance data may be communicated and sent over the communication lines to the computer.

[00116] With millisecond time resolution for impedance measurement, it becomes possible to resolve individual beating cycles of cardiomyocytes cultured on electrodes. Whilst theoretically one needs at least two data points for each beating cycle, in practice more than 2 data points are needed for each beating cycle. For example, if cells have a beating rate of 60 beats per minute, i.e. one beat per second. It would be

preferred to have a time resolution of at least 200 milliseconds so that each beating cycle consists of 5 data points. More preferably, the measurement time resolution is 100 milliseconds. Still more preferably, the time resolution is 50 milliseconds or less.

[00117] One skilled in the art will understand that the cell-substrate impedance measurement or monitoring system with millisecond time resolution can be used to efficiently and simultaneously perform multiple assays by using circuitry of the device station to digitally switch from recording from measuring impedance over an array in one well to measuring impedance over an array in another well. Similarly, groups of wells may be monitored simultaneously and switching between occur between designated groups. In one embodiment of the above system, the system under software control is capable of completing an impedance measurement for an individual well at a single frequency within milliseconds, such as less than 100 milliseconds, less than 40 milliseconds, less than 20 milliseconds, less than 10 milliseconds or between 1 millisecond and 40 milliseconds. In some embodiments the user may choose the frequency of measurement for millisecond time resolution.

[00118] A multiple-well cell-substrate impedance measuring device in a system of the present invention can be any multiple-well cell-substrate impedance measuring device in which at least two of the multiple wells comprise an electrode array at the bottom of the well, and in which at least two of the multiple wells comprise an electrode array are individually addressed. In one embodiment of the above system, the multi-well device takes the form of a specialized microtiter plate which has microelectronic sensor arrays integrated into the bottom of the wells.

[00119] A device used in a system of the present invention, when connected to an impedance analyzer, can measure differences in impedance values that relate to cell behavior. For example, a cell-substrate impedance measuring device used in a system of the present invention can measure differences in impedance values when cells are attached to the electrode array and when cells are not attached to the electrode array, or can detect differences in impedance values when the number, type, activity, adhesiveness, or morphology of cells attached to the electrode-comprising surface of the apparatus changes. Further, by using millisecond time resolution differences in

impedance may be detected or monitored that relate to excitation-contraction coupling, including the beating of cardiomyocytes or stem cells differentiating into cardiomyocytes, and the signaling between neurological cells. Impedance monitoring of the excitation cycle of excitable cells may be determined and monitored before, during or after adding a test compound, which is suspected of affecting the excitation cycle. Thus, by monitoring the excitation cycle of the excitable cell before, during or after adding a test compound the system provides data corresponding to the potential affect of the compound on the cardiovascular system, the heart, the nervous system, and the like. In some embodiments monitoring the excitation cycle of the cell before, during or after adding a compound provides cardiotoxicity data useful in drug screening.

[00120] In some embodiments a device station or electromechanical apparatus or assembly capable of interfacing multiwell devices can include one or more platforms or one or more slots for positioning one or more multiwell devices. The one or more platforms or one or more slots can comprise sockets, pins or other devices for electrically connecting the device to the device station. The device station or electromechanical apparatus or assembly capable of interfacing multiwell devices preferably can be positioned in a tissue culture incubator during cell impedance measurement assays. It can be electrically connected to an impedance analyzer and computer that are preferably located outside the tissue culture incubator.

[00121] The device station or electromechanical apparatus or assembly capable of interfacing multiwell devices includes electronic circuitry that can connect to the impedance monitoring device and an impedance analyzer and electronic switches that can switch on and off connections to each of the two or more electrode arrays of the multiwell devices used in the system. The switches of the device station or electromechanical apparatus or assembly capable of interfacing multiwell devices are controlled by a software program, each of which has been improved to provide millisecond time resolution. The software program directs the device station to connect arrays of the device to an impedance analyzer and monitor impedance from one or more of the electrode arrays. During impedance monitoring, the impedance analyzer can monitor impedance at one frequency or at more than one frequency. Preferably, impedance monitoring is performed at more than one time point for a given assay, and

preferably, impedance is monitored using at least two time points. The device station can connect individual arrays of a device to an impedance analyzer to monitor one, some, or all of the arrays of a device for a measurement time point. In some preferred embodiments of the present invention, the device station software is programmable to direct impedance monitoring of any of the wells of the device that comprise arrays at chosen time intervals.

[00122] The software of the impedance monitoring system can also store and display data. Data can be displayed on a screen, as printed data, or both. Preferably the software can allow entry and display of experimental parameters, such as descriptive information including cells types, compound concentrations, time intervals monitored, etc.

[00123] Preferably, the software can also analyze impedance data. In preferred embodiments, the software can calculate a cell index (CI) for one or more time points for one or more wells of the multiwell device. In some preferred embodiments, the software can calculate a cell change index (CCI) from impedance measurements of one or more wells of the multiwell device. The software can preferably generate plots of impedance data and impedance values, such as but not limited to CI or CCI, with respect to time. The software may perform other analysis as well, such as calculate cell number from CI, generate dose-response curves based on impedance data, calculate IC values based on impedance values, and calculate kinetic parameters of the excitation cycle cell based on impedance values and impedance value curves. In some embodiments the beating cycle of a cardiomyocyte population is determined, which may include initiation and decay of individual beats. Peaks may be derived from the detection of vectors associated with initiation of beating or beating decay. Peaks may be derived with other methods. In further embodiments the change in beating cycle of a cardiomyocyte population is determined in response to a stimulus such as a pharmacological agent. The software of the impedance monitoring system can also store and display analyses of the data, such as calculated impedance values and kinetic parameters derived therefrom. Data can be displayed on a screen, as printed data, or both. Data may be stored on a hard drive for exportation into compatible programs for further analysis or data storage

[00124] Further information regarding how to calculate a cell index, cell change index, normalized cell index, and delta cell index may be found in US patent application no. 11/235,938, and U.S. Patent No. 7,470,533, the contents of which are herein incorporated by reference with respect to the cell index, cell index number, cell change index, and cell change index number. However each is briefly summarized.

[00125] The cell index obtained for a given well reflects: 1) how many cells are attached to the electrode surfaces in this well, 2) how well cells are attached to the electrode surfaces in the well. In this case, a zero or near-zero “cell index or cell number index” indicates that no cells or very small number of cells are present on or attached to the electrode surfaces. In other words, if no cells are present on the electrodes, or if the cells are not well-attached onto the electrodes cell index = 0. A higher value of “cell number index” indicates that, for same type of the cells and cells under similar physiological conditions, more cells are attached to the electrode surfaces. Thus Cell Index is a quantitative measure of cell number present in a well. A higher value of “cell index” may also indicate that, for same type of the cells and same number of the cells, cells are attached better (for example, cells spread out more, or cell adhesion to the electrode surfaces is stronger) on the electrode surfaces.

[00126] A “Normalized Cell Index” at a given time point is calculated by dividing the Cell Index at the time point by the Cell Index at a reference time point. Thus, the Normalized Cell Index is 1 at the reference time point. Normalized cell index is cell index normalized against cell index at a particular time point. In most cases in the present applications, normalized cell index is derived as normalized relative to the time point immediately before a compound addition or treatment. Thus, normalized cell index at such time point (immediately before compound addition) is always unit one for all wells. One possible benefit for using such normalized cell index is to remove the effect from difference in cell number in different wells. A well having more cells may produce a larger impedance response following compound treatment. Using normalized cell index, it helps to remove such variations caused by different cell numbers.

[00127] A “delta cell index” at a given time point is calculated by subtracting the cell index at a standard time point from the cell index at the given time

point. Thus, the delta cell index is the absolute change in the cell index from an initial time (the standard time point) to the measurement time.

[00128] The time-dependent cellular response (including cardiotoxicity response) may be analyzed by deriving parameters that directly reflect the changes in cell status. For example, time dependent cellular response may be analyzed by calculating the slope of change in the measured impedance responses (that is equivalent to the first order derivative of the impedance response with respect to time, impedance response here can be measured impedance data or derived values such as cell index, normalized cell index or delta cell index). In another example, the time-dependent cellular responses (including cardiotoxic responses) may be analyzed for their higher order derivatives with respect to time. Such high order derivatives may provide additional information as for how cells responding to different compounds and as for the mechanisms of compound action.

[00129] Thus CCI is the normalized rate of change in cell index. CCI values can be used to quantify the cell status change. For cells in an exponential growth under regular cell culture condition, the cell index determined by a cell-substrate impedance monitoring system described herein is expected to be a proportionate measure of the cell number in the well since the cell morphology and average extent of cell adhesion to the electrode surfaces among the whole cell population do not exhibit significant changes over time.

[00130] After measuring and recording time dependent impedance data for excitable cells cultured on electrodes, various methods can be used for determining beating cycle peaks. For example, time dependent impedance values or cell index values for a well are analyzed by deriving their first order derivatives and second order derivatives using numerical methods. The beating cycle peaks are those data points where the first order derivatives of impedance values or cell index values are zero or close to zero in its absolute value. If the beating cycle peak is a positive peak (i.e. peak corresponds to a maximum value in measured impedance or cell index over the beating cycle), then the peak would correspond to the data points where the second order derivatives of the impedance values or cell index values is negative and where the first

order derivatives of the impedance values or cell index values is zero or close to zero in its absolute value. If the beating cycle peak is a negative peak (i.e. peak corresponds to a minimum value in measured impedance or cell index over the beating cycle), then the peak would correspond to the data points where the second order derivatives of the impedance values or cell index values is positive and where the first order derivatives of the impedance values or cell index values is zero or close to zero in its absolute value. In another example, the method of determining a beating cycle peak is to search for the data point where the trend of the data changes direction from “increasing” to “decreasing” with time (for a positive peak), or from “decreasing” to “increasing” (for a negative peak). After the identification of the beating cycle peaks, the impedance or cell index values at such peak time points are the magnitude or amplitude of the beating cycle peaks.

[00131] After determining the beating cycle peaks, various methods can be used to calculate the beating rate. The beating rate can be determined by dividing a unit time (e.g., 1 minute) by the time period between two adjacent peaks. For example, if two adjacent peaks are separated by 500 milliseconds, then the beating rate for this 500 milliseconds can be determined as 120 beats per minute. Another method is simply to count how many peaks in a unit time by software. For example, if there are 2 peaks in one second interval, then the beating rate should be 2 beats per second, or 120 beats per minute.

D. Assessing or Quantifying Excitable Cells, Excitation Contraction-Coupling and Cardiomyocytes In Vitro

[00132] In another aspect of the present invention a method for assessing or quantifying excitable cells in vitro is provided. The methods including detecting or monitoring excitable cells using impedance monitoring with millisecond time resolution. In preferred embodiments, the method includes providing the impedance based system having millisecond time resolution system, adding excitable cells to one or more wells of the device, monitoring impedance of the one or more wells with millisecond time

resolution, and resolving individual cycles of the excitable cells. In some embodiments monitoring impedance further includes determining cell indices from impedance values, calculating average rate of excitation events per unit time (such as beats per unit time when using cardiomyocytes), determining amplitude intensity or average amplitude intensity in a unit time, and/or determining the length of time between excitation cycles (or beating cycles). These additional determinations may be compared to further assess excitable cells.

[00133] The methods have particular utility with cells that are known or suspected to be capable of or undergo excitation-contraction coupling, such as cardiomyocytes. Thus the methods may monitor, detect or determine excitation contraction-coupling of excitable cells. Further, even minor variations in excitation-contraction coupling may be detected.

[00134] Preferably impedance measurements are performed with millisecond time resolution. In some embodiments, two consecutive impedance measurements are performed at less than 300 milliseconds apart. In further embodiments, at least two consecutive impedance measurements are performed less than 100 seconds apart. In further embodiments, at least two consecutive impedance measurements are performed less than 40 milliseconds apart. In further embodiments, at least two consecutive impedance measurements are performed less than 10 milliseconds apart. In some embodiments at least two impedance measurements are between 1 millisecond and 50 milliseconds apart.

[00135] Cardiomyocytes are a subset of cells that are involved in excitation-contraction coupling. Embodiments of the present invention include applications for studying cardiomyocyte activity, function and its modulation. By monitoring the continuous rhythmic beating of cardiomyocytes, methods of the present invention allow the study of cardiomyocytes themselves as well as screening for pharmacological agents which may alter cardiomyocyte rhythmic beating. Thus the methods permit screening of compounds or conditions that affect cardiomyocyte function or induce cardiotoxicity. Specifically, methods may assess or quantify cardiomyocyte beating in vitro using impedance-based technology having millisecond time resolution.

In preferred embodiments, the methods are based on quantification in real time of the rhythmic changes in cardiomyocyte morphology as a result of the excitation contraction coupling of the electrically excitable cardiomyocytes growing on microelectrodes' surface in E-PLATES (ACEA Biosciences, Inc. San Diego, CA). Thus quantification of the rhythmic changes in cardiomyocyte morphology is achieved via the measurement of electrode impedance, which may be performed with millisecond time resolution. In summary, some methods provide a cellular cardio-gram, which can provide incisive information about the status of cardiomyocytes especially upon treatment with pharmacological agents.

[00136] Cardiomyocytes used in the present invention may be any known or experimental cardiomyocyte population. Human cardiomyocytes will be particularly desirable when studying the effect of pharmacological agents for human use; however, cardiomyocytes may also be murine or mouse, rat, rabbit, dog, and the like. Further, the cardiomyocytes may be primary cardiomyocytes isolated from cardiac tissue or may be cultured cardiomyocytes, which are cultured over time. In some embodiments, ES cells destined to differentiate into cardiomyocytes are used. Isolated primary cardiomyocytes as well as ES-derived cardiomyocytes retain the ability to beat in culture. Thus, these cells provide a desirable model system to study cardiomyocyte function in vitro.

[00137] Cardiomyocytes have an innate ability to undergo mechanotransduction. In other words, the spontaneous force generated from the beating cardiomyocyte is translated to intracellular biochemical signals. Membrane receptors such as integrins, ion channels and other proteins have been shown to play a crucial role in cardiac mechanotransduction and lead to a continuous and rhythmic dynamics of the cardiac actin cytoskeleton and morphology. Because the impedance-based system can sensitively and precisely detect transient changes in morphology and adhesive capacity of the cells, it can be used to monitor cardiac function in vitro. Further, the development of millisecond time resolution permits impedance monitoring of the cardiomyocyte beating cycle as well as fluctuations, even minor alterations, in response to external stimuli.

[00138] Exemplary steps involved in using an impedance-measurement system for measurement of cardiomyocyte function include: providing a system for

monitoring impedance of excitable cells. in vitro, which is capable of millisecond time resolution, optionally coating wells of the device with either fibronectin or other matrix proteins; seeding either embryonic stem cells (ES cells) of mammalian origin or primary cardiomyocytes at sufficient seeding densities into the wells of the device; allowing the cells to attach and spread; after a period of time unique to ES-derived cardiomyocytes or primary cardiomyocytes, monitoring cardiomyocyte beating using the impedance-monitoring system to monitor electrode impedance by using millisecond kinetic readout to resolve the individual beat cycles of the cells.

[00139] The millisecond kinetic readout requires the impedance measurement system be capable of obtaining impedance measurement data at millisecond time resolution. Preferably, the time difference between two consecutive impedance measurements for a well is within the range of milliseconds (e.g., less than 300 millisecond, less than 100 milliseconds, less than 50 milliseconds, less than 20 milliseconds, less than 10 milliseconds, or less than or about 1 millisecond). Due to the fast nature of beating cycles of cells, millisecond kinetic readout is required for proper resolution. Thus, the time resolution for the impedance measurement should allow the system to perform measurement using at least two time points for each beat cycle, or at more than two points for each beating cycle. In some embodiments, three, four, five or even ten, or fifteen or twenty or more time points within each beating cycle are obtained.

[00140] Embodiments of the present invention include methods of assessing or quantifying cardiomyocytes include providing the system for monitoring impedance of excitable cells in vitro, which includes millisecond time resolution, adding cardiomyocytes to one or more wells, monitoring impedance of the one or more wells, such as using millisecond time resolution, and resolving excitation cycle or beating cycle of the cardiomyocytes. In further embodiments, the method also includes determining cell indices from impedance values, optionally calculating average rate of beats per unit time, average amplitude intensity in a unit time as well as the average length of time between the beats. In preferred embodiments, millisecond time resolution permits measurement of at least two consecutive impedance measurements within a beating cycle. In some embodiments at least three consecutive impedance measurements are performed with millisecond time resolution.

[00141] Isolated primary cardiomyocytes as well as ES-derived cardiomyocytes retain the ability to beat in culture. These cells provide an excellent model system to study cardiomyocyte function in vitro, especially with regards to cardiotoxicity. A number of cardiotoxic drugs are known to affect certain heart channels, such as the ERG channels, that are involved in excitation-contraction coupling of cardiomyocytes. Cardiomyocytes have an innate ability to undergo mechanotransduction, that is that the spontaneous force generation of the beating cardiomyocyte is translated to intracellular biochemical signals. Membrane receptors such as integrins, ion channels and other proteins have been shown to play a crucial role in cardiac mechanotransduction and lead to a continuous and rhythmic dynamics of the cardiac actin cytoskeleton and morphology. Because the impedance-based system can sensitively and precisely detect transient changes in morphology and adhesive capacity of the cells, the it can be used to monitor cardiomyocyte beating in vitro.

[00142] Another exemplary method for impedance based measurement of cardiomyocyte beating includes: providing a single-well or multi-well device that comprise microelectrode arrays in well(s) of the device, which can be used for monitoring cell-substrate impedance; optionally coating wells of the device with either fibronectin or other matrix proteins; seeding either embryonic stem cells (ES cells) of mammalian origin or primary cardiomyocytes at specific seeding densities to the wells of the device; allowing the cells to attach and spread; after a specified period of time unique to ES-derived cardiomyocytes or primary cardiomyocytes, monitoring cardiomyocyte beating using the impedance-monitoring system to monitor electrode impedance by using millisecond kinetic readout to resolve the individual beat cycles of the cells.

[00143] In another exemplary embodiment for measurement of cardiomyocyte function the method includes: optionally coating E-PLATES with either fibronectin or other matrix proteins; seeding either ES cells of mammalian origin or primary cardiomyocytes at specific seeding densities; allowing the cells to attach and spread; after a specified period of time unique to ES-derived cardiomyocytes or primary cardiomyocytes, monitoring cardiomyocyte beating using an impedance-based system by using millisecond kinetic readout to resolve the individual beat cycles of the cells.

[00144] Dynamic monitoring of cardiomyocyte beating is based on quantification in real time of the rhythmic changes in cardiomyocyte morphology as a result of the excitation contraction coupling of the electrically excitable cardiomyocytes growing on microelectrodes' surface of E-PLATES. The quantification of the rhythmic changes in cardiomyocyte morphology is achieved via the fast, millisecond resolution and continuous measurement of electrode impedance. The method essentially provides a cellular cardio-gram which can provide incisive information about the status of cardiomyocytes especially upon treatment with pharmacological agents. An exemplary method includes providing a device for measuring cell-substrate impedance operably connected to an impedance analyzer, wherein the device includes at least one well optionally coated with fibronectin to expedite attachment; adding cells to the at least one well, where the cells can be mouse or human or other mammalian ES cells or adult stem cells destined to differentiate into cardiomyocytes or primary cardiomyocytes isolated directly from the heart of an experimental system including mice, rats, rabbits or dog; monitoring impedance of the at least one well at time intervals over a period of time and optionally determining cell indices from impedance values; optionally calculating average rate of beats per unit time, average amplitude intensity in a unit time as well as the average length of time between the beats.

[00145] Certain cardiotoxic drugs can illicit their effect by affecting the morphological aspects of cardiomyocyte morphology. For example, it is well known that compounds such as β -2 adrenergic receptor agonists can induce morphological changes resulting in an elongated cardiomyocyte morphology, otherwise known as hypertrophy. Morphological changes can occur immediately in the order of minutes as with certain GPCR agonists or can be of longer duration detectable over several days. The time resolution of the impedance-based system can be used to distinguish between different kinds of morphological effects. The steps involved in using an impedance-monitoring system for measurement of morphological modulation of cardiomyocytes may include: optionally coating E-PLATES with either fibronectin or other matrix proteins; seeding either embryonic stem cells (ES cells) of mammalian origin, mammalian adult stem cell-derived cardiomyocytes or primary cardiomyocytes isolated directly from mammalian heart tissue at specific seeding densities to the wells of the device; allowing the cells to

attach and spread; monitoring cardiomyocyte viability over time using the impedance-monitoring system at prespecified intervals of time for 12, 24, 48, 72 hours or longer; at certain times after cell seeding, treat the cell with agents that may cause morphology changes at one or more concentration; using the vehicle that the agent is dissolved in as a control; continuing to monitoring the cardiomyocytes at 1 minute intervals for at least 1-2 hours to capture any immediate morphological changes and continue to monitor at 30 minutes intervals of time for additional 12, 24, 48, 72 hours or longer to detect long term morphological changes; and quantifying the extent of morphological change by normalizing the cell index values immediately prior to agent addition and determine the normalized cell index at a given time point after agent addition. The extent of morphological change can be expressed as EC-50 value which quantifies the activity of the agent with respect to the cardiomyocyte shape changes.

[00146] Once regular cardiomyocyte beating can be effectively monitored compounds may be added to the wells to assess whether or not beating frequency is altered, beating amplitude is altered and the like. Thus, compounds that adversely affect the normal cardiomyocyte beating are suspected of being cardiotoxic. However, cardioprotective agents can also be assessed by adding an agent suspected of being cardioprotective to the well and inducing a cardiotoxic response.

[00147] Accordingly, methods of identifying or screening for potential agents that modulate ES- derived cardiomyocyte beating or primary cardiomyocyte beating by monitoring and measuring the excitation-contraction coupling of cardiomyocytes upon treatment with pharmacological agents are also provided. The methods may include providing the system for monitoring impedance at millisecond resolution of excitable cells in vitro, adding ES cells or primary cardiomyocytes to two or more wells, adding a test agent suspected of modulating ES-derived or primary cardiomyocyte beating to a first well to provide a test well and either no agent or a control agent to a second well to form a control well, monitoring impedance of the two or more wells at different or similar time intervals using millisecond time resolution at least in part, and optionally determining cell indices from impedance values, generating an impedance-based curve or optionally a cell index curve for each of the test well and control well, and comparing the impedance-based curves or optionally the cell index

curves between the test well and the control well. If significantly different, the test agent is concluded to modulate cardiomyocyte function. In preferred embodiments, the impedance-based curves may be direct measurement of cardiomyocyte excitation-contraction coupling; however, the methods may also include long term monitoring of the viability and or morphology of the cardiomyocytes. The methods may show whether the test agent increases cardiomyocyte beating, which is indicative of increased heart rate, or whether the cardiomyocyte beating is slowed, which is indicative of lowered heart rate.

[00148] In another exemplary embodiment a method for screening for modulators of cardiomyocyte beating using an impedance-measurement system in vitro may include: providing a single-well or multi-well device that comprise microelectrode arrays in well(s) of the device, which can be used for monitoring cell-substrate impedance; optionally coating wells of the device with either fibronectin or other matrix proteins; seeding either embryonic stem cells (ES cells) of mammalian origin, mammalian adult stem cell-derived cardiomyocytes or primary cardiomyocytes at specific seeding densities to the wells of the device; allowing the cells to attach and spread; after a specified period of time unique to ES-derived cardiomyocytes or primary cardiomyocytes, monitoring cardiomyocyte beating using the impedance-monitoring system to monitor electrode impedance by using millisecond kinetic readout to resolve the individual beat cycles of the cells; and adding the pharmacological agents at one or more doses and continue monitoring the cardiomyocyte beating frequency. Preferably, the step of monitoring impedance of beating is performed immediately prior to addition of pharmacological agent, in order to obtain a baseline of the cardiomyocyte beating frequency using fast measurement software and hardware to ensure milli-second kinetic readout signals.

[00149] In another exemplary embodiment, a method of screening for modulators of cardiomyocyte beating using an impedance-based system in vitro includes seeding cardiomyocytes, in E-PLATES exactly as described in the previous exemplary embodiment; however, prior to addition of pharmacological agent, obtaining a baseline of the cardiomyocyte beating frequency using the impedance measurement system with millisecond time resolution; and adding the pharmacological agents at one or more doses and continue monitoring the cardiomyocyte beating frequency.

[00150] It is well established that certain pharmacological treatments and disease conditions can result in cardiac hypertrophy or atrophy culminating in changes in the morphology of cardiomyocyte. Cell substrate impedance can be used to precisely measure and quantify these changes in cell morphology and shape. Certain treatments can also affect the differentiative process of ES cells to cardiomyocytes which may involve specific morphological and adhesive changes. In some embodiments the present invention is directed to a method to screen for potential agents that may modulate the morphology of ES- derived cardiomyocyte, adult stem cell-derived cardiomyocyte or primary cardiomyocyte or its differentiation. The agent may include but is not limited to compounds, drugs, peptides, proteins, antibodies, siRNA, shRNA, miRNA, cDNA, lipids and any combination thereof. The method includes providing a device for measuring cell-substrate impedance operably connected to an impedance analyzer, wherein the device includes at least two wells; adding ES cells, adult stem-cell derived cardiomyocytes or primary cardiomyocytes to at least two wells; monitoring impedance of the at least two wells at different or similar time intervals over a period of time and optionally determining cell indices from impedance values; generating an impedance-based curve or optionally a cell index curve for each of the at least one known factor and the control; comparing the impedance-based curves or optionally the cell index curves between the at least one known biologically active agent well and the control well; the impedance-based curves could be direct measurement of changes in cell morphology and if significantly different, concluding that the biologically active agent modulates cardiomyocyte function. Optionally, impedance-based curves or optionally cell index curves are used to calculate the compound dose-dependent changes in cardiomyocyte morphology and generate an EC-50 value for the potency of the compound.

[00151] The method of the present invention is to devise a label-free cell-based assay system for continuous monitoring of cardiomyocyte viability, the rhythmic beating of cardiomyocytes and cardiomyocyte morphology and differentiation and to screen for pharmacological agents which may modulate these processes and induce cardiotoxicity. In some embodiments, viability is monitored based on long term impedance monitoring of cardiomyocytes seeded in microelectronic plates (E-Plates). Viable cells will continue to generate impedance signal and any changes in viability,

especially due to cytotoxic or cardiotoxic drugs will be reflected by changes in impedance. In one respect, the method includes providing a device for measuring cell-substrate impedance operably connected to an impedance analyzer, wherein the device includes at least one well optionally coated with fibronectin to expedite attachment; adding cells to the at least one well, where the cells can be mouse or human or other mammalian ES cells or adult stem cells destined to differentiate into cardiomyocytes or primary cardiomyocytes isolated directly from the heart of an experimental system including mice, rats, rabbits or dog; monitoring impedance of the at least one well over a period of time and optionally determining cell index from impedance values; In another aspect, the method includes providing a device for measuring cell-substrate impedance operably connected to an impedance analyzer, wherein the device includes at least two wells optionally coated with fibronectin to expedite attachment; adding cells to the at least two wells, where the cells can be mouse or human or other mammalian ES cells or adult stem cells destined to differentiate into cardiomyocytes or primary cardiomyocytes isolated directly from the heart of an experimental system including mice, rats, rabbits or dog; monitoring impedance of the at least two wells over a period of time and optionally determining cell index from impedance values. Treating at least one well with an agent; where the agent could include but is not limited to a compound, peptide, protein, antibody, siRNA, shRNA, lipid or any combination of thereof and the other well is treated with an appropriate control; continue monitoring of control and treated well over a period of time preoptimized for the experiment of interest; concluding that the factor may affect cell viability if the impedance or alternatively the cell index of the treated well is significantly different than the impedance or cell index of the treated well.

[00152] In other preferred embodiments short term measurement using millisecond time resolution is combined with longer term impedance monitoring, such as over seconds, hours, days and the like. Certain cardiotoxic drugs can directly affect the viability of cardiomyocytes. Thus, long term impedance monitoring may be used to assess loss of viability of cardiomyocytes. An exemplary long term method to assess loss of viability includes: optionally coating E-PLATES with either fibronectin or other matrix proteins; seeding either embryonic stem cells (ES cells) of mammalian origin, mammalian adult stem cell-derived cardiomyocytes or primary cardiomyocytes isolated

directly from mammalian heart tissue at seeding densities to the wells of the device; allowing the cells to attach and spread; monitoring cardiomyocyte viability over time using the impedance-monitoring system to monitor electrode impedance at pre-specified intervals of time for specified length of time such as 12, 24, 37, 48, 72 hours or longer; at certain time after cell seeding, treating the cell with a cytotoxic agent at one or more concentration; using the vehicle that the agent is dissolved in as a control; continue monitoring the cardiomyocytes at pre-specified intervals of time for specified length of time such as additional 12, 24, 48, 72 hours or longer, quantify the extent of cardiotoxicity by normalizing the cell index values immediately prior to agent addition and determining the normalized cell index at a given time point after agent addition; alternatively the rate of cytotoxicity can also be quantified for a given time period after compound addition for a given agent concentration or a group of concentrations. The extent of cytotoxicity can be expressed as IC-50 value which quantifies the activity of the agent with respect to the cardiomyocytes.

[00153] In another aspect of the present invention, direct optical monitoring of cardiomyocytes is used to quantify and measure the beating of cardiomyocytes. The method includes providing a device for optically monitoring cells and monitoring cell morphology operably connected to an optical measurement system, where the device includes at least two wells optionally coated with fibronectin to expedite attachment; adding cells to the at least two wells, where the cells can be mouse or human or other mammalian ES cells destined to differentiate into cardiomyocytes or primary cardiomyocytes isolated directly from the heart of an experimental system including mice, rats, rabbits or dog; optically monitoring the cells of at least two wells at time intervals over a period of time via the optical measurement system; optionally calculating average rate of beats per unit time, average amplitude intensity in a unit time as well as the average length of time between the beats. The device for such optical measurement of cells may include microtiter plates. The optical system may include optical magnification instrument such as microscope, optical CCD camera, optical-signal processing algorithm to quantify cell beating and to derive cell-beating parameters (such as calculating average rate of beats per unit time, average amplitude intensity in a unit

time as well as the average length of time between the beats) based on cell morphology images.

[00154] One skilled in the art will recognize that any agent may be tested. The agent may be a biologically active agent. Exemplary test agents include compounds, drugs, peptides, proteins, antibodies, antibody fragments, siRNA, shRNA, miRNA, cDNA, lipids and any combination thereof. Optionally, impedance-based curves or optionally cell index curves are used to calculate average rate of beats of cardiomyocytes per unit time, average amplitude intensity in a unit time as well as the average length of time between beats, comparison of these optionally derived parameters is made between the test well and the control well, and if significant differences exist, one may optionally conclude that the test agent modulates cardiomyocyte functions.

[00155] The study of cardiomyocyte function and modulation has particular utility in the biomedical arts. For example, the methods of the present invention may be used to assess whether a potential agent is cardiotoxic, cardioprotective and the like. If normal cardiomyocyte beating is altered, the result likely demonstrates the potential agent is cardiotoxic. Such information would permit effective screening prior to testing in live animals or in humans. Further, by coupling millisecond time resolution over extended time periods, the methods may assess short term and long term effects on cardiomyocytes. Since it is well established that certain pharmacological treatments and disease conditions can result in cardiac hypertrophy or atrophy culminating in changes in the morphology of cardiomyocyte, the systems and methods are able to precisely measure and quantify these changes in cell morphology and shape. Thus the methods and systems have particular utility in the areas of biomedical research.

[00156] In some embodiments, potential agents are tested to assess whether they are cardioprotective, or protect against adverse affects. In such embodiments the agent suspected of being cardioprotective is added to the cardiomyocytes prior to, simultaneously or after adding a cardiotoxic agent or a cardiotoxic event. Thus, a cardioprotective agent may prevent abnormal shifts in beating cycle, which would naturally occur in the presence of a cardiotoxic agent. In further embodiments, cardiomyocytes having abnormal beating cycles are treated with potential agents to

assess whether normal beating may be induced, such as through administration of a cardioprotective pharmacological agent.

[00157] Certain treatments can also affect the differentiative process of ES cells to cardiomyocytes which may involve specific morphological and adhesive changes. In another aspect of the present invention a method is provide to screen or potential agents that may modulate the morphology of ES- derived cardiomyocyte, adult stem cell-derived cardiomyocyte or primary cardiomyocyte or its differentiation.

[00158] Impedance-based curves and optionally cell index curves may be used to calculate average rate of beats per unit time, average amplitude intensity in a unit time as well as the average length of time between the beats. Significant difference between measurements or data of a test well and a control well support a finding that the biologically active agent within the test well modulates cardiomyocyte function.

E. Assessing the Developmental or Functional Consequence of Gene Knockout and Transgene Expression in Embryonic Stem Cell-Derived Cardiomyocytes

[00159] Embodiments of the present invention also include assessing the developmental consequence of genetically manipulated ES cells or their derived cardiomyocytes. ES cells offer a suitable experimental model system that is amenable to genetic manipulation. Therefore, specific genes can be targeted in knockout experiment as well as genes can be expressed in a developmental or stage specific manner under the control of special promoters. The impedance-based measurement system with millisecond time resolution can be used to evaluate the role of these genes in cardiac development and or function.

[00160] Steps involved in assessing the developmental and functional effect of gene knockout or transgene expression may include: obtaining ES cells harboring specific knockout of genes or which expresses a particular transgene; provide the system for monitoring impedance of excitable cells having millisecond time

resolution; optionally coating wells of the device with either fibronectin or other matrix proteins; seeding the embryonic stem cells (ES cells) of mammalian origin at desired seeding densities into the wells of the device; allowing the cells to attach and spread; after a time period unique to ES-derived cardiomyocytes or primary cardiomyocytes, and monitoring cardiomyocyte beating using the impedance-monitoring system using millisecond kinetic readout to resolve the individual beat cycles of the cells. If a particular gene is required for development of cardiomyocytes from ES cells, it is likely that the knockout of that gene will either block or delay the differentiation of ES cells to cardiomyocytes. Since the impedance-based measurement system is capable of functional monitoring of cardiomyocyte, it can be used as a specific way to monitor the effect of either gene knockout or transgene expression on cardiomyocyte function. In alternative embodiments, the ES cells can be transfected with specific siRNA to “knockdown” the product of a particular transcript and then monitor cardiomyocyte differentiation and function in vitro using the impedance-based measurement system with millisecond time resolution.

[00161] In other exemplary embodiments an impedance-based measurement system is used to evaluate the role of genes in cardiac viability, morphology, development and or beating function. The steps involved in assessing the developmental and functional effect of gene knockout or transgene expression may include: obtaining ES cells harboring specific knockout of genes or which expresses a particular transgene; providing a single-well or multi-well device that comprise microelectrode arrays in well(s) of the device, which can be used for monitoring cell-substrate impedance; optionally coat wells of the device with either fibronectin or other matrix proteins; seeding the embryonic stem cells (ES cells) of mammalian origin or adult stem cells of mammalian origin at specific seeding densities to the wells of the device; allowing the cells to attach and spread and monitor the growth and viability of the cells using the impedance-based system; after a specified period of time unique to ES-derived cardiomyocytes or primary cardiomyocytes, monitoring cardiomyocyte beating using the impedance-monitoring system to monitor electrode impedance by using millisecond kinetic readout to resolve the individual beat cycles of the cells. If a particular gene is required for development of cardiomyocytes from ES cells, it is likely that the

knockout of that gene will either affect the viability of the cells or block or delay the differentiation of ES cells to cardiomyocytes. Since the impedance-based measurement system is capable of functional monitoring of cardiomyocyte both in long term assays and short term assays, it can be used as a specific way to monitor the effect of either gene knockout or transgene expression on cardiomyocyte function. In related embodiments, the ES cells can be transfected with specific siRNA to “knockdown” the product of a particular transcript and then monitor cardiomyocyte viability, differentiation and function in vitro using the impedance-based measurement system.

[00162] In another exemplary embodiment, steps involved in assessing the developmental and functional effect of gene knockout or transgene expression using an impedance-based system in vitro are provided, which include: obtaining ES cells harboring specific knockout of genes or which expresses a particular transgene; optionally coating E-PLATES with either fibronectin or other matrix proteins; seeding either ES cells of mammalian origin or primary cardiomyocytes at specific seeding densities; allowing the cells to attach and spread; and after a specified period of time unique to ES-derived cardiomyocytes or primary cardiomyocytes, monitoring cardiomyocyte beating using the impedance-based system by using millisecond kinetic readout to resolve the individual beat cycles of the cells. If a particular gene is required for development of cardiomyocytes from ES cells, it is likely that the knockout of that gene will either block or delay the differentiation of ES cells to cardiomyocytes. Since the impedance-based system is capable of functional monitoring of cardiomyocyte, it can be used as a specific way to monitor the effect of either gene knockout or transgene expression on cardiomyocyte function. Alternatively, the ES cells can be transfected with specific siRNA to “knockdown” the product of a particular transcript and then monitor cardiomyocyte differentiation and function in vitro using the impedance-based system.

[00163] In another aspect, the present invention is directed to method to establish an assay to assess the effect of gene knockout or transgene expression in ES cells differentiated to cardiomyocytes and functionally monitored by the impedance-based system. The method includes providing a device for measuring cell-substrate impedance operably connected to an impedance analyzer, wherein the device includes at least two wells; adding wildtype ES cells as control to at least 1 well and ES cells with a

gene knockout or a transgene in at least 1 other well; monitoring impedance of the at least two wells at time intervals over a period of time and optionally determining cell indices from impedance values; comparing the impedance-based curves or optionally the cell index curves between the control well and the well containing the ES cells harboring a knockout of a specific gene or expressing a specific transgene; and if significantly different, concluding that the gene knockout or the transgene can affect either cardiomyocyte viability, morphology from ES cells or cardiomyocyte function as monitored by observing the excitation-contraction coupling.

[00164] As above, in preferred embodiments, the time difference between two consecutive impedance measurement for a well is in the range of milliseconds (e.g., less than 500 milliseconds, less than 300 milliseconds, less than 100 milliseconds, less than 10 milliseconds, or less than about 1 millisecond or faster). The millisecond kinetic readout is required to resolve the individual beat cycles of the cells. Thus, the time resolution for the impedance measurement should allow the system to perform measurement using at least two time points for each beat cycle. In some embodiments more than two time points are resolved for each beating cycle.

EXAMPLES

Example 1

Impedance Monitoring of Attachment, Growth and Viability of Mouse ES Cell-Derived Cardiomyocytes

[00165] Since isolated primary cardiomyocytes, ES-derived cardiomyocytes and adult stem cell-derived cardiomyocytes can be maintained in culture, these cells provide a desirable model system to study cardiomyocytes as well as cardiomyocyte modulation. The present example demonstrates the use of the ACEA RT-CES system to measure and monitor the attachment, growth and viability of mouse ES-derived cardiomyocytes which were seeded at different seeding densities.

[00166] Mouse ES cells were seeded at a density ranging from 3000 cells to 50,000 cells per well in E-PLATES (Acea Biosciences, San Diego, CA) precoated with fibronectin. The attachment, growth and viability of the cells were monitored on RT-CES system measuring impedance signal in the form of cell index every 30 minute for 48 hours. At about 48 hrs after cell seeding, the growth of the cells had ceased and the appearance of beating cardiomyocytes were evident as judged by looking at the cells inside the E-PLATE under the microscope.

[00167] **FIG. 3** shows the cell index curves measured on RT-CES system for 4 different seeding densities (3750, 7500, 15,000 and 30,000 cells per well) of mouse ES-derived cardiomyocytes. For such long term measurement, cell electrode impedance and corresponding cell indices were measured at about 15 minute intervals. Based on the cell index growth and viability curves, it is evident that the extent of the impedance signal correlates well with the seeding density of viable ES-derived cardiomyocytes.

Example 2

Detection of Cardiotoxic Effects Using Real Time Impedance Monitoring

[00168] As an example, we describe here the use of the ACEA RT-CES system to measure and monitor the attachment and growth of mouse ES cells derived cardiomyocytes and subsequently treated with a cytotoxic agent (**FIG. 4**).

[00169] Mouse ES-derived cardiomyocytes were seeded at a density of 25,000 cells per well in E-PLATES precoated with fibronectin. The attachment and growth of cells were monitored on RT-CES system for 72 hours and then treated with increasing doses of the compound of sodium dichromate dehydrate which is known to induce cytotoxicity. According to **FIG. 4A** the plot of normalized cell index for cells in different wells treated with different concentrations of sodium dichromate dehydrate (SDD), SDD causes a concentration dependent decrease in viability of ES-derived cardiomyocytes. To quantify the extent of sodium dichromate dehydrate activity against the cardiomyocytes, the normalized cell indices at 24 hrs after compound treatment were

plotted against the log of the corresponding sodium dichromate dehydrate concentrations. From the sigmoidal curve, shown in **FIG. 4B**, half maximal activity or IC-50 value of 1.48 uM was derived for the compound.

Example 3

Real time Monitoring of Mouse ES Cell-Derived Cardiomyocytes and Inducing Hypertrophy

[00170] As an example, we describe here the use of the ACEA RT-CES system to measure and monitor the attachment and growth of mouse ES cells derived cardiomyocytes and subsequently treated with isoproteranol, a β_2 adrenergic receptor agonist known to induce hypertrophy (**FIG. 5A**).

[00171] Mouse ES-derived cardiomyocytes were seeded at a density of 25,000 cells per well in E-PLATES precoated with fibronectin. The attachment and growth of the cells were monitored on RT-CES system for 72 hours and then treated with increasing doses of the compound isoproteranol. According to **FIG. 5A**, isoproteranol causes a concentration dependent change in cell index readings. The timing of the cell index change is consistent with a change in the morphology of the cells which we have shown previously for other GPCR agonists in primary cells (Yu et al (2006): Real-time monitoring of morphological changes in living cells by electronic cell sensor arrays: an approach to study G protein-coupled receptors; Analytical Chemistry, Vol 78, pages 35-43). To quantify the extent of isoproteranol-induced morphological changes in mouse ES-derived cardiomyocytes, the normalized cell indices were plotted against the log of the corresponding isoproteranol concentrations (**FIG. 5B**). From the sigmoidal curve generated a half maximal activity or IC-50 value of 3.1 nM was derived for the compound.

Example 4

Real Time Impedance Monitoring with Millisecond Resolution of Beating Cardiomyocytes

[00172] As an example, we describe here the use of an improved impedance-based system with millisecond time resolution to measure and monitor the beating of cardiomyocytes using fast kinetic software.

[00173] Mouse ES cells were seeded at a density of between 3,000 to 50,000 cells per well in E-PLATES precoated with fibronectin. The attachment and growth of the cells were monitored on RT-CES system. **FIG. 6** shows the cell index curves measured on RT-CES system for 4 individual wells, with cell culture medium as background starting from cell seeding to about 86 hrs after cell seeding. For such long term measurement, cell electrode impedance and corresponding cell indices were measured at about 15 minute intervals. As evidenced on these plots, the cell index curves were rather smooth up to about 44-48 hrs, after which there were “noises” or “small-spikes” on the cell index curves. Such spikes were most evident after about 60 hrs. We now understand the origins of such “small-spikes” and interpret that such spikes in the impedance or cell index readout are associated with the beating of the cells. During the synchronized beating of the cells, the cell morphology and cell adhesion/attachment to the electrodes change regularly in synchrony with the cell beating. Such regular or periodic changes in cell morphology and cell adhesion/attachment are then reflected in the changes in cell-electrode or cell-substrate impedances.

[00174] In order to monitor beating of cardiomyocytes, a specially designed software and measurement circuit hardware that are capable of millisecond impedance data acquisition (e.g., typically with time resolution between consecutive impedance measurement for a same well being less than 40 milliseconds) was used to monitor the quick rhythmic beating of the cardiomyocytes. For such measurement, the background electrode impedance is measured with the cells inside the wells (note, this is in contrast with **FIGS. 3** and **6**, where the background measurement is performed using cell culture media). The software was used to measure cardiomyocyte beating at distinct

stages throughout its attachment and growth phases (**FIG. 7**). For a baseline reference, the impedance measurement was done on the ES cells at 24 hours where the cells had not fully spread and formed a tight monolayer and even though the cells appear to beat when visualized under a microscope, they do so asynchronously and as a result no net beating signal is detected (**FIG. 7A**). For plot, impedance readout has been converted into dimensionless cell indices. **FIGS. 7B** and **7C** shows that ES cells that had fully spread and formed tight junctions with neighboring cells at 48 hours and 72 hours respectively, show regular impedance-spikes which correlate with the beating frequency of cardiomyocytes as judged by microscopic observation .

[00175] To use the measured cell index curves, it is important to further derive various physiologically relevant parameters. Several important parameters may include, the beating rate of the cardiomyocytes (i.e., how many times the cells beat within a unit of time for example, a minute), the beating amplitude (i.e. the magnitude of the beating of cells in terms of impedance change) the average amplitude intensity in a unit time as well as the average length of time between the beats, time of rise for a beat, time of decay for a beat. Because of the unique and complex nature of the impedance readout signals (smaller signal amplitude, sampling time resolution may be limited by the hardware and the software used), appropriate methods or techniques are required for analyzing cell index curves to derive the above mentioned parameters.

[00176] For deriving the beating rates of cardiomyocytes, one method may be by counting how many peaks there are within a given time frame (for example, one minute). For this approach to work, the sampling time resolution has to be sufficiently high so that the each beat of the cells does show a peak on the recorded cell index curves. In addition, determining a peak “automatically” also require some algorithm. For example, each peak would have to have one “rise” in cell index and also one “decay” in cell decay. Each “rise”-and-“decay” pair forms a single peak. The algorithm needs to determine such “rise” and “decay” portions of the curves and then counts a peak.

[00177] Another method to derive or count the beating rates of cardiomyocytes is to perform a detailed signal analysis to derive the frequency components of the cell index curves and to derive the magnitude of each frequency

components. One method of signal analysis is Fourier transform of the cell index curve (of the time domain). Like above method, the sampling time-resolution needs to be sufficiently high so that each beat of the cells has at least three time points being measured. After performing Fourier transform, we would look for the frequency components having the largest magnitude and such frequency would correspond to, or be very close to, the beating frequency. In addition, for such analysis, giving a fixed sampling time resolution, the more time points sampled for analysis, the more accurate it is for the analyzed beating frequency. **FIG. 8A** and **FIG. 8B** shows a pair of cell index curves and the corresponding beat rate based the above described Fourier transform. In **FIG. 8B**, the cell index curves last from time zero to time 42 seconds. In **FIG. 8B**, the beating frequency for the traces in **FIG. 8A** is analyzed using the method described here, i.e., Fourier transform followed by picking up the highest-magnitude frequency component. For each derived frequency data at one time moment in **FIG. 8B**, cell index data from multiple time points (starting from previous 98 time points plus the time moment of interest) is used for analysis. Thus, the time axis in **FIG. 8B** starts from about 20 seconds to 42 seconds.

[00178] Another method deriving the beating rates of cardiomyocytes is to first determine the time length (ΔT in seconds) between two consecutive peaks and then calculate the beating rate according to the formula of “beats per minute = $60 / \Delta T$ ”. Thus for each two-consecutive peaks, one can calculate one beating rate. Furthermore, one can plot this beating rate as a function of the time (of the first of the two consecutive peaks) to obtain the time dependency of the beating rates. **FIG. 9A** shows an example of the time-dependent beat rates derived using this method, for mouse ES-derived cardiomyocytes treated with compound sotalol at a concentration of 4.4 μM . Corresponding cell index data is shown in **FIGS. 9C** and **9D**, where the time resolution between two adjacent points is 40 milliseconds. In other words, a second in **FIGS. 9C** and **9D** is equivalent to 40-milliseconds.

[00179] For deriving the amplitude of the beating of the cardiomyocytes, there may also be different methods. One method is to analyze each peak and finding the peak maximum and the peak minimum. The amplitude is calculated by subtracting peak maximum by the peak minimum. Then, one can plot the peak amplitude as a function of

the time of the peak to obtain the time dependency of the peak amplitude. **FIG. 9B** shows an example of the time-dependent peak amplitudes derived using this method, for mouse ES-derived cardiomyocytes treated with compound sotalol at a concentration of 4.4 uM. Another approach may also be to use Fourier transform described above. Then based on derived Fourier coefficients, one can re-simulate time domain cell index curves and look for the peak magnitude from the simulated curves.

[00180] For deriving the averaged length of time between the beats, there may also be different methods. For each identified peak, one can first determine a starting point of the peak. Then the time difference between two consecutive peaks at the two starting points of the peak can be used for the length of time between the beats.

[00181] With the method of determining each peak, one can also calculate the time-of-rise of the peak and the time-decay-of the peak.

Example 5

Identifying Modulators of Cardiac Function Using Real Time Impedance Monitoring with Millisecond Resolution

[00182] Similar to Example 4, the millisecond kinetic readout requires that the impedance measurement system can provide impedance measurement data at millisecond time resolution. In other words, the time difference between two consecutive impedance measurement for a well shall be in the range of milliseconds (e.g., less than 500 millisecond, less than 300 millisecond, less than 100 millisecond, less than 10 millisecond, or less than 1 millisecond or faster). The millisecond kinetic readout is required to resolve the individual beat cycles of the cells. Thus, the time resolution for the impedance measurement should allow the system to perform measurement at least two time points for each beat cycle, or at more than two points for each beat cycle.

[00183] In order to demonstrate the utility of the millisecond kinetic impedance-measurements, we first used two pharmacological agents, one known to suppress the heart rate and consequently cardiomyocyte beating and the other known to

increase the heart rate and consequently the rate of cardiomyocyte beating. As Mouse ES cells were seeded in FN-coated E-PLATES and monitored for about 72 hours when the cells differentiated into beating cardiomyocytes, as described in Section 4. A baseline of the cardiomyocyte was taken for approximately 40 seconds using the specially designed fast kinetic data acquisition hardware and software which is capable of millisecond data acquisition and display. An agonist of muscarinic receptors, carbachol, which is known to slow down the heart rate was added to one well at a final concentration of 333 nM and cardiomyocyte beating was monitored for 10 minutes (**FIG. 10A**). The data clearly shows that carbachol significantly slows down the rate of cardiomyocyte beating from ~ 80 beats/min prior to carbachol addition to ~ 60 beats/min after carbachol addition (Table I). Alternatively, addition of isoproteranol at a final concentration of 4.4 uM significantly increased the rate of cardiomyocyte beating from ~ 65 beats/min to 115-135 beats/min (**FIG. 10B** and **Table I**). These data clearly show that the readout system and the fast kinetic software are sufficiently robust and sensitive to detect these changes in rate of cardiomyocyte beating even at very low compound concentrations. Similar to the cell index plot shown in **FIGS. 9C** and **9D**, the time resolution between two adjacent points in **FIGS. 10A** and **10B** is 40 milliseconds. In other words, a second in **FIGS. 10A** and **10B** is equivalent to 40 millisecond.

Table I.

Compound	Mechanism	Concentration	Beat Rate	Amplitude	Pattern Change
Carbachol	Muscarnic receptor agonist	333 nM	From ~ 80 to ~ 60	From 0.07 to 0.06	Beating rate decreased
Isoproteranol	b2 Adrenergic receptor agonist	4.4 uM	From ~ 65 to 115-136	From 0.19 to 0.16	Beating rate increased

[00184] To further demonstrate the capabilities of the improved impedance-based monitoring of cardiomyocyte beating in detecting drugs which may adversely affect heart function, a number of drugs which have been pulled out of the market due to cardiotoxic side effects such as ERG channel inhibition and QT elongation were compiled and tested in a dose-dependent manner. The list of these compounds, their

mechanism and adverse side effects are shown in **Table II**. For these tests, mouse ES derived cardiomyocytes were seeded at a final density of 25,000 cells in ACEA E-Plates and continually monitored by the RT-CES system. Approximately, 72 hours after cell seeding the improved, impedance-measurement system with millisecond time resolution was used to establish a baseline reading of cardiomyocyte beating for each well for about 40 seconds. Subsequently, the cells in each well were treated with the indicated drug and dose shown in **FIG. 11**. Similar to the cell index plot shown in **FIGS. 9C** and **9D**, the time resolution between two adjacent points in all the figures in **FIG. 9** is 40 milliseconds. In other words, a second in **FIG. 9** is equivalent to 40-milliseconds.

[00185] **Table II** shows a summary of the results, clearly demonstrating that compounds which have been shown to affect ERG channels do affect various aspects of cardiomyocyte beating and function such as frequency of beating, magnitude of beating. Furthermore, as shown in **FIG. 12** some of these compounds can lead to qualitatively different or similar patterns. For example, the compounds E4031, Atezimole and dofetilide which are ERG channel inhibitors do contain patterns with similar features. In summary these results clearly indicate that using the impedance-measurement system with millisecond time resolution do lead to a sensitive and robust readout for cardiomyocyte beating that can also detect drugs which are known to be cardiotoxic. Similar to the cell index plot shown in **FIGS. 9C** and **9D**, the time resolution between two adjacent points in all the figures in **FIG. 10** is 40 milliseconds. In other words, a second in a figure in **FIG. 10** is equivalent to 40-millisecond.

Table II.

Compound	Mechanism	Concentration	Beat Rate	Amplitude	Pattern Change
Astemizole	anti-histamine	400 nM	0	<0.01	From 68-72 bpm to irregular beating to beating stopped
Terfenadine	anti-histamine	200 nM	0	<0.01	From 71-78 bpm to irregular beating to beating stopped
Erythromycin	anti-biotic	13.3 uM	From ~ 60 to ~ 80	0.09 to 0.07	No pattern change
Moxifloxacin	anti-biotic	20 uM	From ~ 80 to ~73	From 0.055 to 0.060	No pattern change
Pentamidine	anti-infective	20 uM	From 71~78 to ~71	From 0.24 to 0.21	No pattern change
Amitriptyline	Serotonergic Inhibitor	4.4 uM	From ~70 to ~ 90	From 0.22 to 0.17	No pattern change
Verpamil	Ca channel blocker	130 nM	From ~ 65 to 0	From 0.13 to 0.06	From ~ 65 bpm to only occasional single beating.
Rosglitazone	PPAR agonist	13.3 uM	From ~79 to ~ 75	From 0.22 to 0.17	No pattern change
Dofetilite		500 nM	From ~ 80 to ~ 180	From 0.09 to 0.02	Pattern changed, much faster
Rofecoxib	COX-2 Inhibitor	13.3 uM	From ~ 68 to ~ 60	From 0.2 to 0.19	No pattern change
Rofecoxib	COX-2 Inhibitor	40 uM	From ~ 62 to ~ 60	From 0.16 to 0.10	Pattern change, no beating after initial treatment, then recovers
Celecoxib	COX-2 Inhibitor	4.4 uM	From ~ 60 to (~20 - ~ 50)	From ~0.2 to ~0.12	Pattern change
Doxirubicin	Anthracycline	40 uM	~ 70	~ 0.16	No pattern change (initially). Beating pattern changes after 2 hrs.
Cyclosporin A	Calcineurin inhibitor	13.3 uM	From ~70 to ~ 80	From 0.18 to 0.15	No pattern change
Propalanol	β 2-adrenergic receptor antagonist	4.4 uM	From ~70 to over 150	From 0.25 to 0.025	Pattern changed, much faster and irregular
Sotalol	K channel inhibitor	13.3 uM	From ~ 80 to ~ 160	From 0.27 to 0.07	Much faster, pattern changed
E4031		120 nM	From 80 to 160	From 0.09 to 0.03	Pattern changed, much faster
DDT		8 uM	From 80 to 140, then to ~ 80	From 0.25 to 0.02	Initially become faster, later irregular beating
PCB		8 uM	From ~ 65 to 0	From 0.2 to 0	Beating stopped
Endosulfan		8 uM	From ~ 75 to 0	From 0.2 to 0	Beating stopped

[00186] To further demonstrate the capabilities of the fast impedance-measurement-system-based monitoring of cardiomyocyte beating in detecting drugs which may adversely affect heart function, compounds at different concentrations were tested to demonstrate the dose-dependent effects of these compounds on cardiomyocytes. Approximately, 72 hours after cell seeding the impedance-measurement system with millisecond time resolution was used to establish a baseline reading of cardiomyocyte beating for each well for about 40 seconds. Subsequently, the cells in each well were treated with drugs at different dose concentrations. **FIG. 13** shows an example of dose dependent effects of Astemizole on cardiomyocytes beating at different concentrations. At high concentration of 400 nM, Astemizole had such a strong effect on the beating of cardiomyocytes that the beating almost stopped. The effect of Astemizole on the beating of the cardiomyocytes is clearly dose-dependent. At low concentration of 40 pM, its effect on the beating of the cardiomyocytes is small that the cardiomyocyte beating rate was not affected. Similar to the cell index plot shown in **FIGS. 9C** and **9D**, the time resolution between two adjacent points in all the figures in **FIG. 11** is 40 milliseconds. In other words, a second in **FIG. 13** is equivalent to 40 milliseconds.

Example 6

Modulation of Cardiomyocyte Beating In Response to Haloperidol Treatment Using Millisecond Time Resolution

[00187] To further demonstrate the capabilities of the improved impedance measurement system for monitoring of cardiomyocyte beating in detecting drugs which may adversely affect heart function, 500nM Haloperidol was tested to demonstrate its time-dependent effects on cardiomyocytes. Approximately, 72 hours after cell seeding the improved impedance system was used to establish a baseline reading of cardiomyocyte beating for each well for about 16 seconds (**FIG. 14A**). Note that in **FIG. 14A**, each minute showed on the x-axis of **FIG. 14A** corresponds to one second in real measurement. Subsequently, the cells in the well treated with 500 nM Haloperidol.

FIGS. 14B, C, D, E, F, G and H show the impedance-based monitoring of beating of the cardiomyocytes at time points of first 30 seconds, about 1 minute, about 2 minutes, about 4 minutes, about 5.5 minutes, about 1 hour and about 21 hours after the compound treatment. In **FIGS. 14B** through **14H**, each minute showed on the x-axis corresponds to one second in real measurement. It is clear that within 1 hr of compound treatment, the cardiomyocytes exhibit significant, time-dependent change in their impedance responses. Even at ~ 21 hrs after compound treatment, the impedance pattern did not restore and the beating frequency (50 ~ 60 beats per minute) appeared to become about half of that before compound treatment (90 ~ 100 beats per minute before treatment). Yet the amplitude of the impedance response spikes nearly doubled compared with that before compound treatment. **FIG. 15** and **FIG. 16** show the analysis results of the impedance beating pattern of **FIGS. 14** in terms of the beating frequency (beats per minute) and the beating magnitude. For **FIG. 15** and **FIG. 16**, each unit (1) on the x-axis corresponds to 0.016 second (16 milliseconds) in real measurement.

Example 7

Modulation of Cardiomyocyte Beating In Response to Erythromycin Treatment Using Millisecond Time Resolution

[00188] To further demonstrate the capabilities of the improved impedance measurement system for monitoring of cardiomyocyte beating in detecting drugs which may adversely affect heart function, 300 uM erythromycin was tested to demonstrate its time-dependent effects on cardiomyocytes. Approximately, 72 hours after cell seeding the improved impedance system was used to establish a baseline reading of cardiomyocyte beating for each well for about 15 seconds (**FIG. 17A**). Note that in **FIG. 17A**, each minute showed on the x-axis of **FIG. 17A** corresponds to one second in real measurement. Subsequently, the cells in the well treated with 300 uM erythromycin. **FIGS. 17B-I** show the impedance-based monitoring of beating of the cardiomyocytes at time points of first 30 seconds, about 1 minute, about 2 minutes, about 4 minutes, about 5.5 minutes, about 1 hour, about 3hr and about 21 hours after the compound treatment.

In **FIGS. 17B-H**, each minute showed on the x-axis corresponds to one second in real measurement. It is clear that within 3 hr of compound treatment, the cardiomyocytes exhibit significant, time-dependent change in their impedance responses. For example, at about 1 hr after the treatment, the frequency of the impedance-based beating spikes is much higher than that for the cardiomyocytes before treatment, yet the magnitude is much smaller. On the other hand, at about 3 hr after treatment, the impedance-based beating pattern becomes rather irregular whilst the magnitude of the beating pattern has somewhat restored. Still, even at ~ 21 hrs after compound treatment, the impedance pattern did not restore and the beating frequency appeared to about 70% (at 50 ~ 60 beats per minute) of that before compound treatment (at 80 ~ 90 beats per minute). Yet the amplitude of the impedance response spikes increased by about 50% compared with that before compound treatment. **FIG. 18** and **FIG. 19** show the analysis results of the impedance beating pattern of **FIGS. 17** in terms of the beating frequency (beats per minute) and the beating magnitude. For **FIG. 18** and **FIG. 19**, each unit (1) on the x-axis corresponds to 0.016 second (16 milli-seconds) in real measurement.

CLAIMS

What is claimed is:

1. A system for monitoring impedance of excitable cells in vitro, comprising:
 - a) a device for monitoring cell-substrate impedance, comprising
 - i) a nonconductive substrate;
 - ii) one or more electrode arrays fabricated on said substrate;
 - iii) one or more wells on said substrate, wherein each of said one or more arrays is associated with one of said one or more wells; wherein each electrode array is individually addressable, further wherein said substrate has a surface suitable for cell attachment, wherein said cell attachment on said substrate can result in a detectable change in impedance between electrodes within each electrode array;
 - b) an impedance analyzer capable of impedance measurement at millisecond time resolution;
 - c) electronic circuitry that can engage said device and selectively connect said two or more electrode arrays of said device to said impedance analyzer; and
 - d) a software program that controls said electronic circuitry and records and analyzes data obtained from said impedance analyzer.
2. The system according to claim 1, wherein each of said electrode arrays comprises two electrode structures having substantially a same surface area.
3. The system according to claim 2, wherein said electrode structures are each constructed from a material selected from the group consisting of metal, gold, platinum, titanium and chromium.

4. The system according to claim 2, wherein said electrode structures have a width between 20 microns and 500 microns.
5. The system according to claim 2, wherein a gap between electrode structures within each electrode array is between 5 microns and 100 microns.
6. The system according to claim 1, wherein each electrode array is organized in a configuration selected from the group consisting of interdigitated, circle-on-line, diamond-on-line, concentric, sinusoidal, and castellated.
7. The system according to claim 1, wherein said millisecond time resolution allows for impedance measurements at more than two time points within each excitation cycle of excitable cells introduced to wells.
8. The system according to claim 7, wherein said excitation cycle is a cell beating cell.
9. The system according to claim 8, wherein said excitable cells are cardiomyocytes.
10. The system according to claim 7, wherein said excitable cells are excitation-contraction coupling cells.
11. The system according to claim 1, wherein said impedance measurement at millisecond time resolution comprises at least two consecutive impedance measurements are less than 100 milliseconds apart.
12. The system according to claim 11, wherein said at least two consecutive impedance measurements are less than 40 milliseconds apart.

13. The system according to claim 12, wherein said at least two consecutive impedance measurements are less than 20 milliseconds apart.

14. The system according to claim 13, wherein said at least two consecutive impedance measurements are less than 10 milliseconds apart.

15. The system according to claim 1, wherein said one or more wells is selected from a group of 6 wells, 8 wells, 16 wells, 32 wells, 96 wells and 384 wells.

16. A method for assessing and quantifying excitable cells in vitro, comprising

- a) providing the system according to Claim 1;
- b) adding excitable cells to said one or more wells;
- c) monitoring impedance of said one or more wells using millisecond time resolution; and
- d) resolving individual cycles of said excitable cells.

17. The method according to claim 16, wherein said excitable cells are cells undergo excitation-contraction coupling.

18. The method according to claim 17, wherein said excitable cells are cardiomyocytes.

19. The method according to claim 16, wherein the step of monitoring impedance comprises performing impedance measurements at millisecond time resolution simultaneously across all wells.

20. The method according to claim 19, wherein said impedance measurements at millisecond time resolution comprises at least two consecutive impedance measurements at less than 300 milliseconds apart.

21. The method according to claim 20, wherein said at least two consecutive impedance measurements are less than 100 milliseconds apart.

22. The method according to claim 21, wherein said at least two consecutive impedance measurements are less than 40 milliseconds apart

23. The method according to claim 22, wherein said at least two consecutive impedance measurements are less than 10 milliseconds apart.

24. A method of determining whether a compound modulates a beating cycle of an excitable cell, comprising:

- a) providing the system according to claim 1, wherein said system comprises at least two wells;
- b) adding excitable cells to said at least two wells;
- c) monitoring impedance of said at least two wells using millisecond time resolution;
- d) adding a compound suspected of modulation of the beating cycle to a first of said at least two wells to provide a test well, wherein a second well lacking compound is provided as a control well;
- e) resolving the beating cycles of both test well and control well; and
- d) comparing said beating cycles between said test well and control well, wherein a difference in beating cycles indicates said compound modulates the beating cycle of the excitable cell.

25. The method according to claim 24, wherein the excitable cells are cardiomyocytes or embryonic stem cell derived cardiomyocytes.

26. The method according to claim 24, wherein said beating cycles are compared to identify changes in beating amplitude.

27. The method according to claim 24, wherein said beating cycles are compared to identify changes in beating frequency.

28. The method according to claim 27, wherein said changes in beating frequency are regular changes or irregular changes.

29. The method according to claim 24, further comprising determining a cell index for each of said test well and control well, wherein the step of comparing said beating cycles comprises comparing said cell indexes between test well and control well.

30. A method of characterizing rhythmic beating of a cardiomyocyte comprising:

- a) providing the system according to claim 1;
- b) adding excitable cells to said one or more wells;
- c) monitoring impedance of said one or more wells in millisecond time resolution; and
- d) determining a plurality of beating cycle peaks in a time unit; and
- e) comparing amplitude or frequency of said peaks over said time unit.

31. The method according to claim 30, wherein the step of determining a plurality of beating cycle peaks comprises determining a rise in impedance and a decay in impedance and extrapolating a peak from each rise and decay.

32. The method according to claim 30, further comprising determining a cell index for each of said one or more wells, wherein the step of determining a plurality of beating cycle peaks comprises for each cycle determining a rise in cell index, a decay in cell index and extrapolating each peak from each rise and decay.

33. The method according to claim 30, wherein beating cycle peaks are determined by identifying impedance data points at which the first order derivative to time is zero or close to zero.

34. The method according to claim 30, further comprising monitoring impedance of said one or more wells over seconds, minutes or hours, optionally wherein said monitoring of impedance in millisecond time resolution is performed within said monitoring over seconds, minutes or hours.

35. A method of assessing genetic manipulation of an embryonic stem cell, comprising:

- a) providing the system according to claim 1, wherein said device comprises at least two wells;
- b) mutating embryonic stem cells to comprise a genetic mutation;
- c) adding said mutated embryonic stem cells to a first well of said at least two wells to form a test well and control embryonic stem cells to a second of said at least two wells to form a control well;
- c) monitoring impedance of said at least two wells in millisecond time resolution; and
- e) resolving the beating cycles of both test well and control well, if any; and
- d) comparing said beating cycles between said test well and control well, wherein a difference in beating cycles indicates said genetic mutation modulates embryonic stem cell differentiation.

36. The method according to claim 35, wherein said embryonic stem cell differentiation is differentiation into a cardiomyocyte.

37. The method according to claim 35, wherein said genetic mutation is selected from the group consisting of a genetic knock out, a knock down and an inserted transgene.

38. A method for assessing and quantifying excitable cells in vitro, comprising

- a) providing the system according to claim 1;
- b) adding excitable cells to said one or more wells;
- c) monitoring impedance of said one or more wells over a first time period, which is characterized as a longer time period comprising seconds, minutes or hours;
- d) monitoring impedance of said one or more wells over a second time period in millisecond time resolution;
- e) determining a characteristic selected from the group consisting of cell attachment, cell growth and cell viability from monitoring over said first time period; and
- f) resolving individual cycles of said excitable cells from monitoring over said second time period.

39. The method according to claim 38, wherein monitoring impedance over said second time period is performed at regular or irregular time intervals within monitoring impedance over said first time period.

ABSTRACT

Systems and methods for improved monitoring of excitation-contraction coupling and excitable cells are provided, which provide millisecond time resolution. The system is capable of continuously monitoring excitation-contraction coupling in a relatively high-throughput manner. The system includes a device for monitoring cell-substrate impedance, an impedance analyzer capable of impedance measurements at millisecond time resolution, electronic circuitry that can engage the device and selectively connect two or more electrode arrays of the device to the impedance analyzer and a software program that controls the electronic circuitry and records and analyzes data obtained from the impedance analyzer.

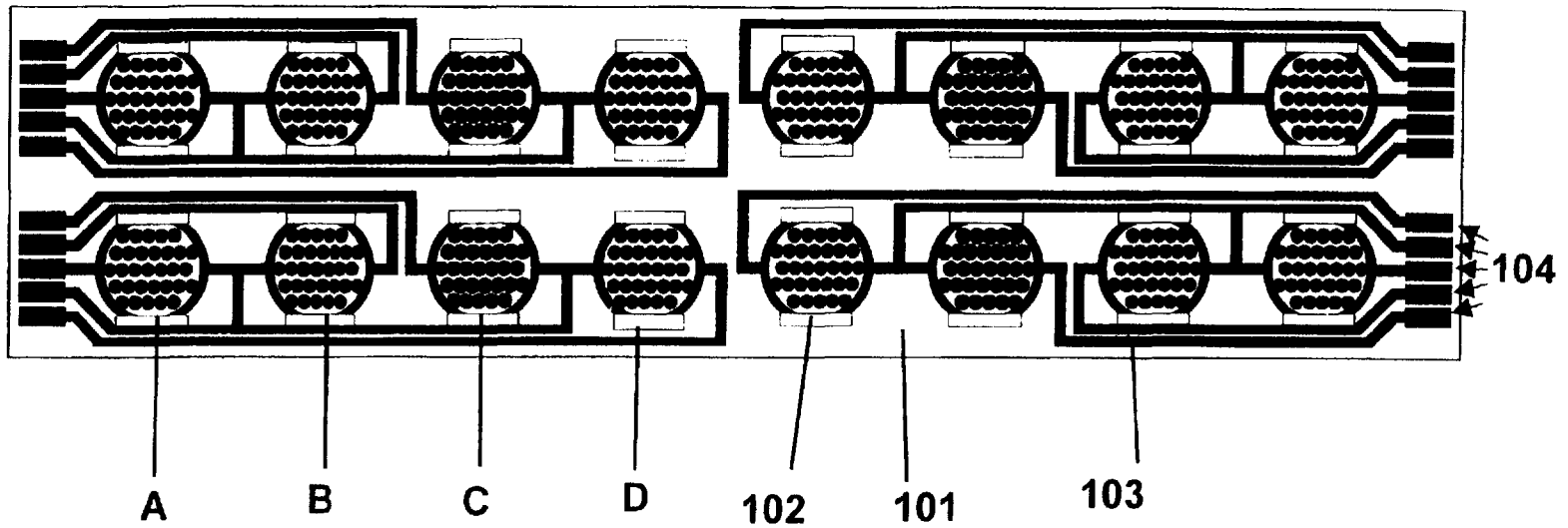


FIG. 1A

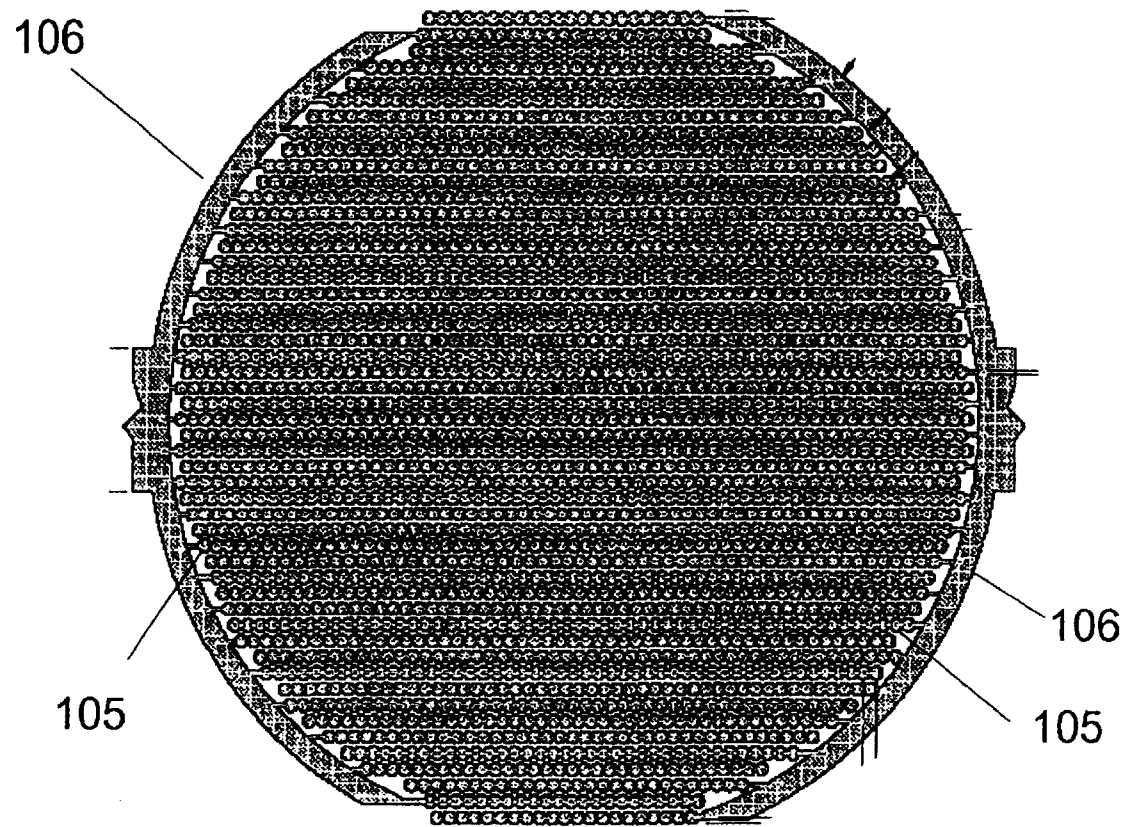


FIG. 1B

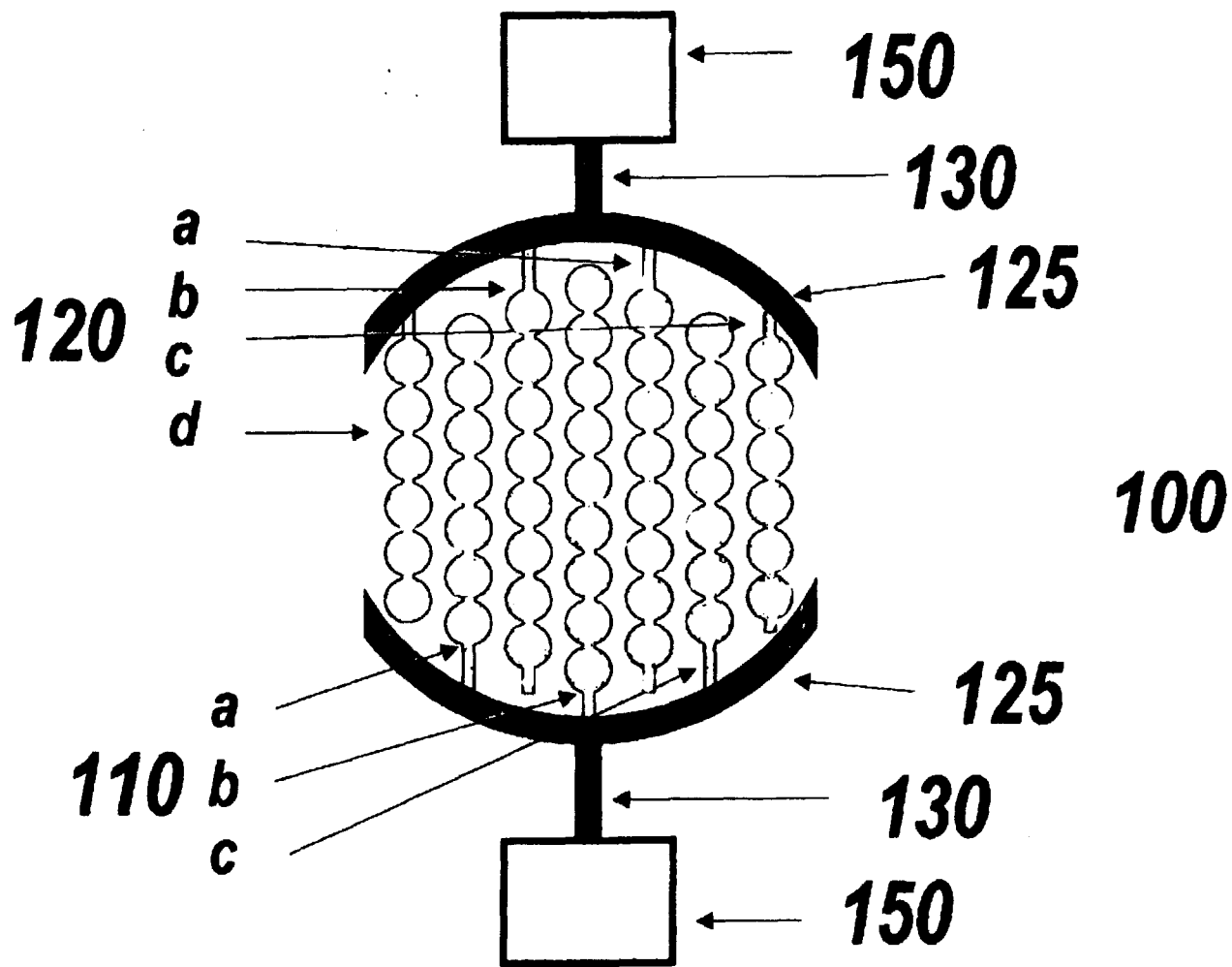


FIG. 2A

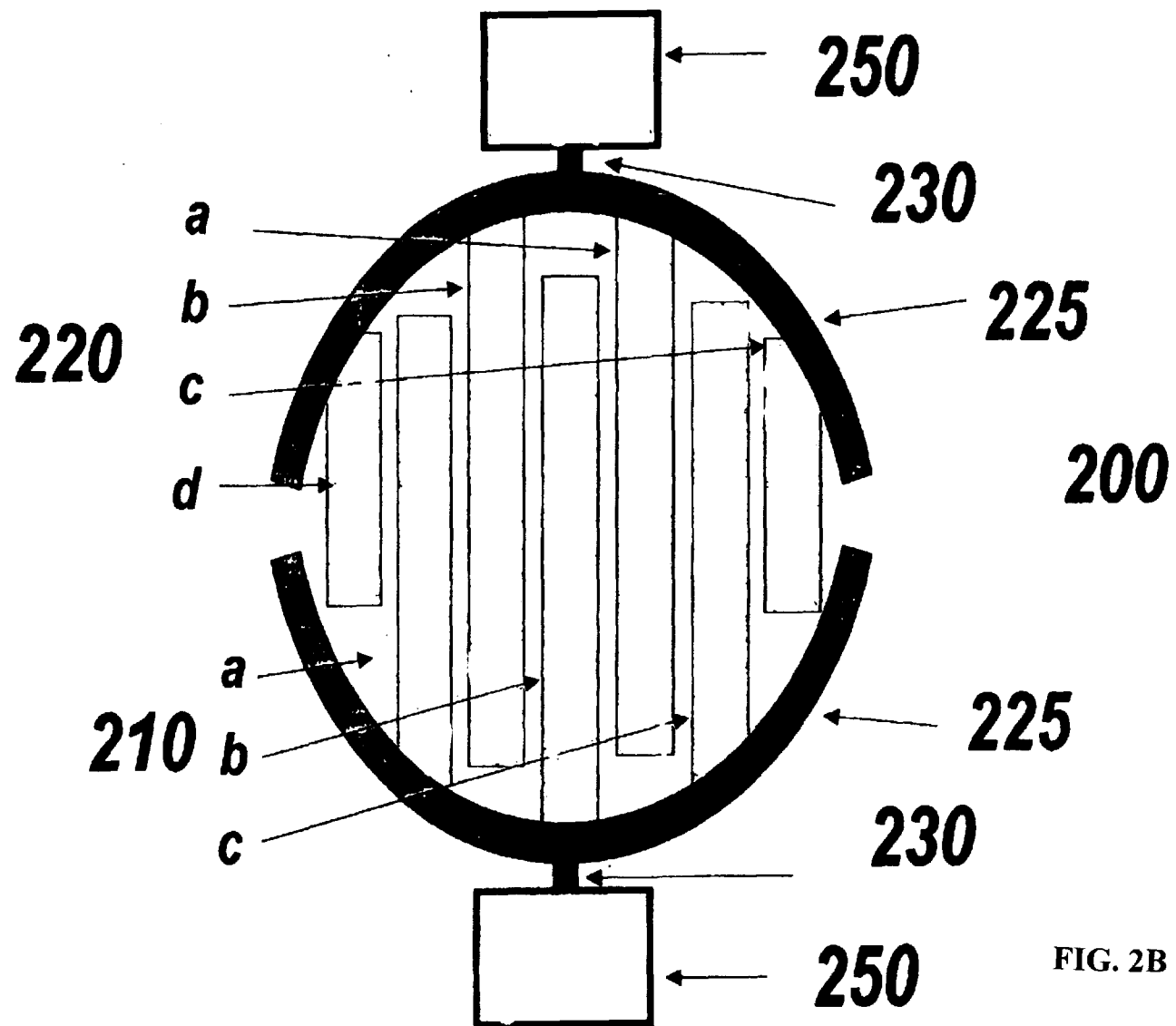


FIG. 2B

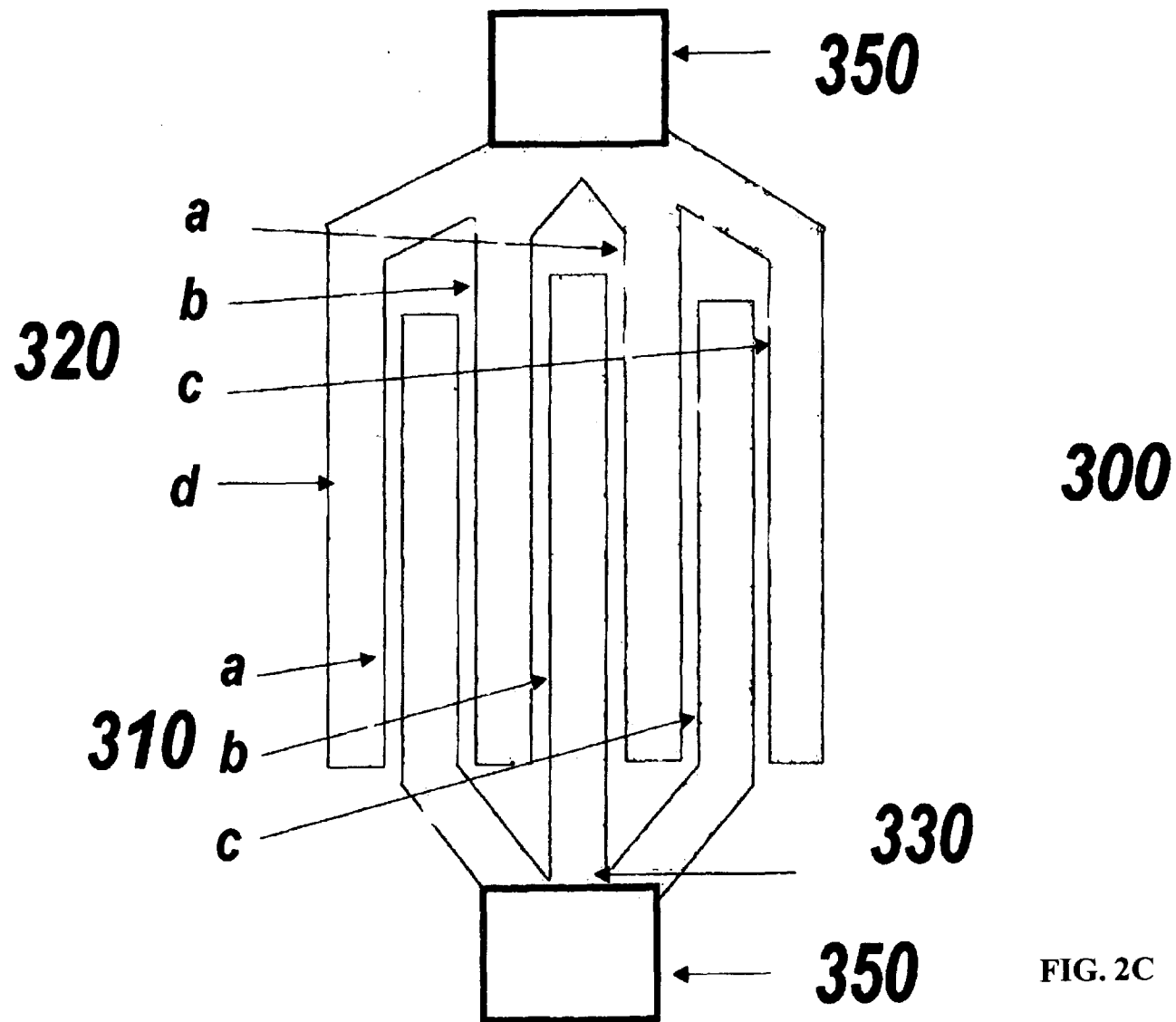


FIG. 2C

FIG. 3

Titration of ES-derived cardiomyocytes using the ACEA RT-CES system

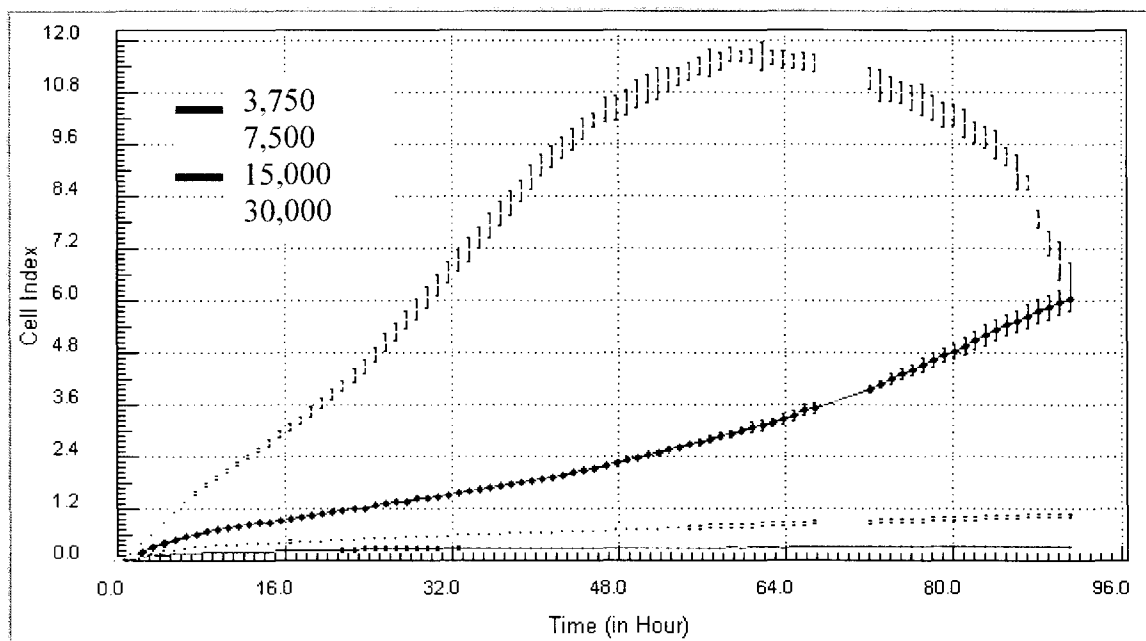


FIG. 4 Treatment of ES-derived cardiomyocytes with a cytotoxic compound of Sodium dichromate dehydrate.

FIG. 4A

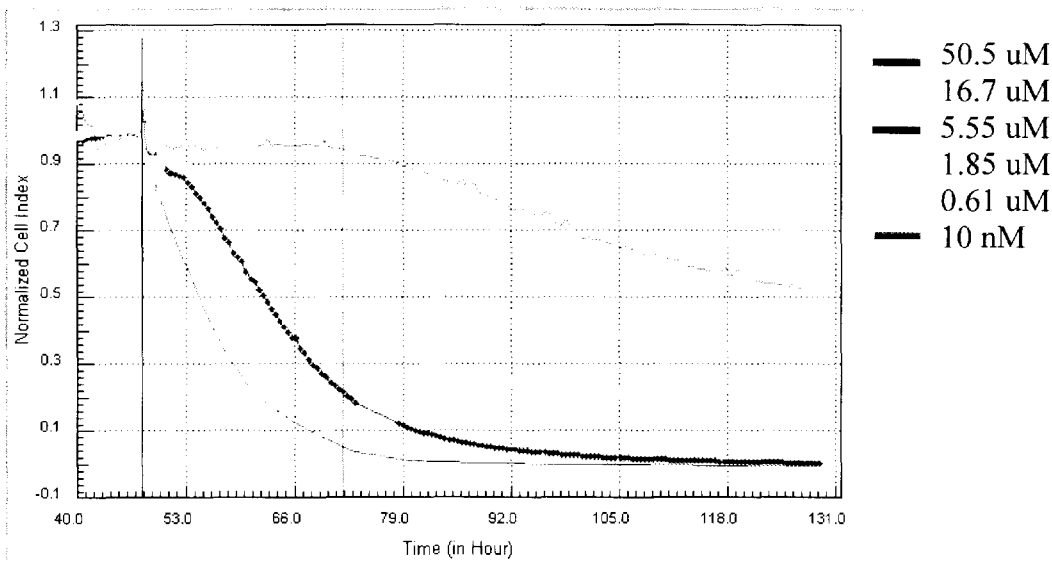


FIG. 4B

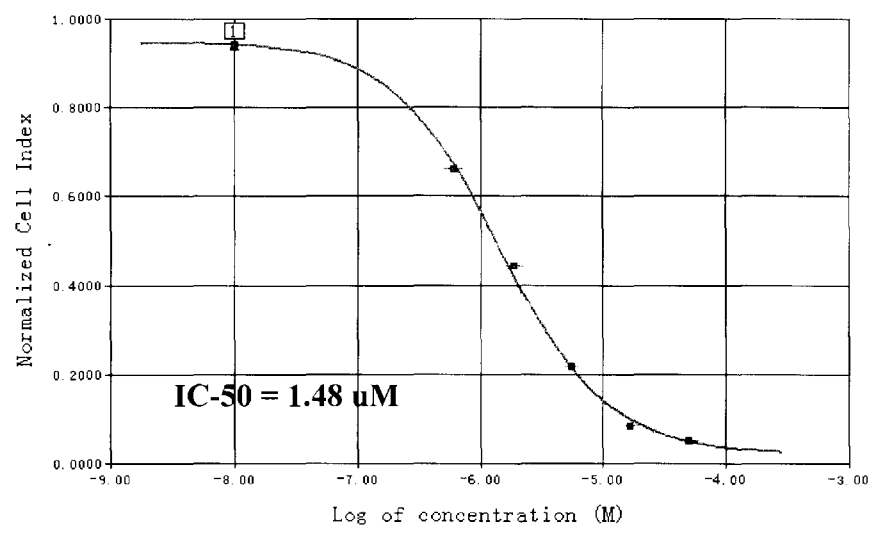


FIG. 5. Detection of morphological changes associated with ES-derived cardiomyocytes induced by isoproterenol, a β_2 adrenergic receptor agonist, using the RT-CES system

Fig. 5A.

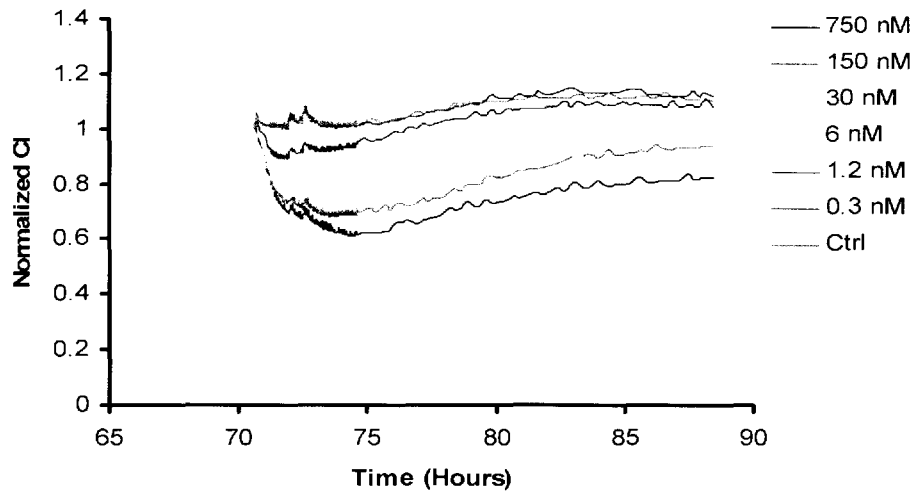


Fig. 5B.

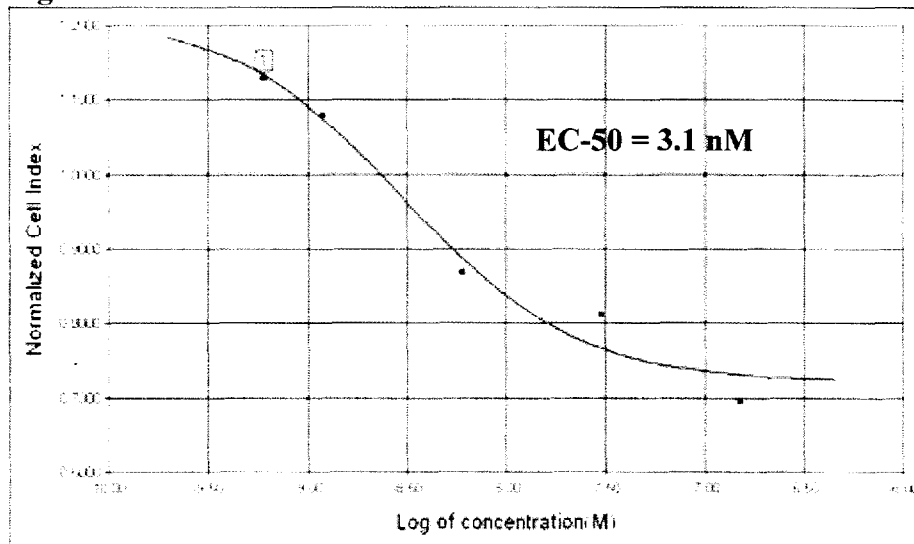


FIG. 6

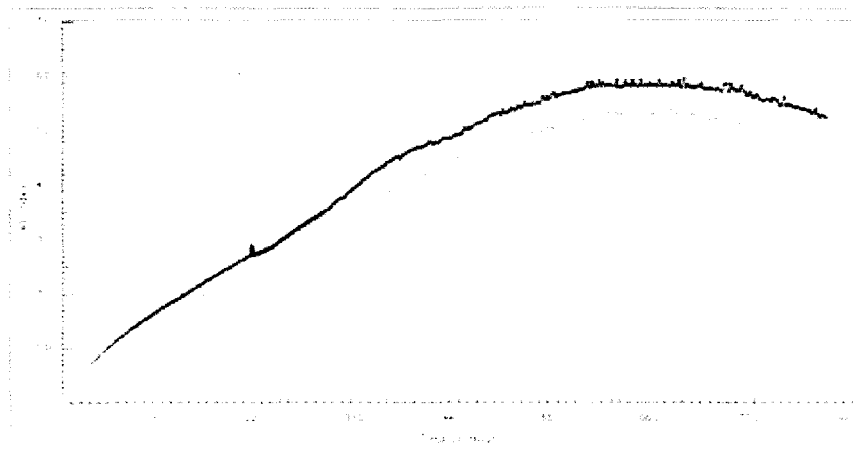
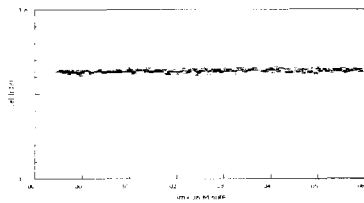


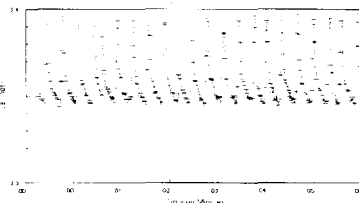
FIG. 7

Detection of cardiomyocyte beating using the ACEA RT-CES system at different time periods along the growth and differentiative curve of ES-derived cardiomyocytes seeded in ACEA E-Plates. The time resolution between adjacent points in Figures 7A, 7B and 7C is about 40 milliseconds. In other words, a second shown in Figures 7A, 7B and 7C is equivalent to 40 milliseconds.

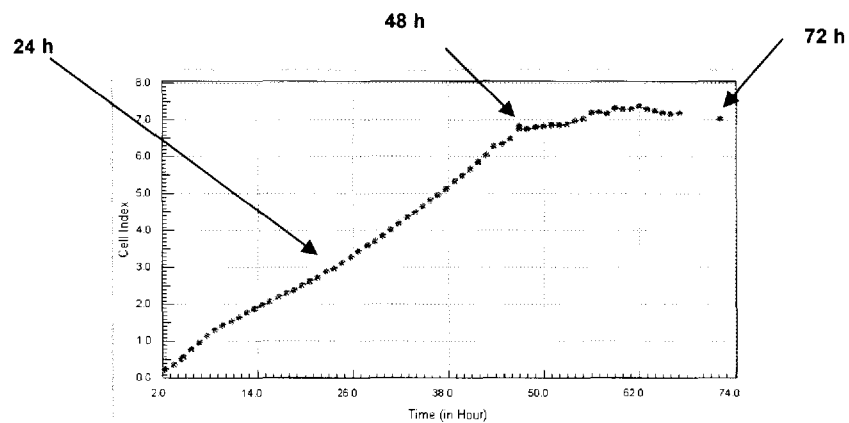
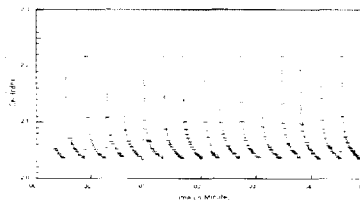
7A



7B



7C



7D

FIG. 8A

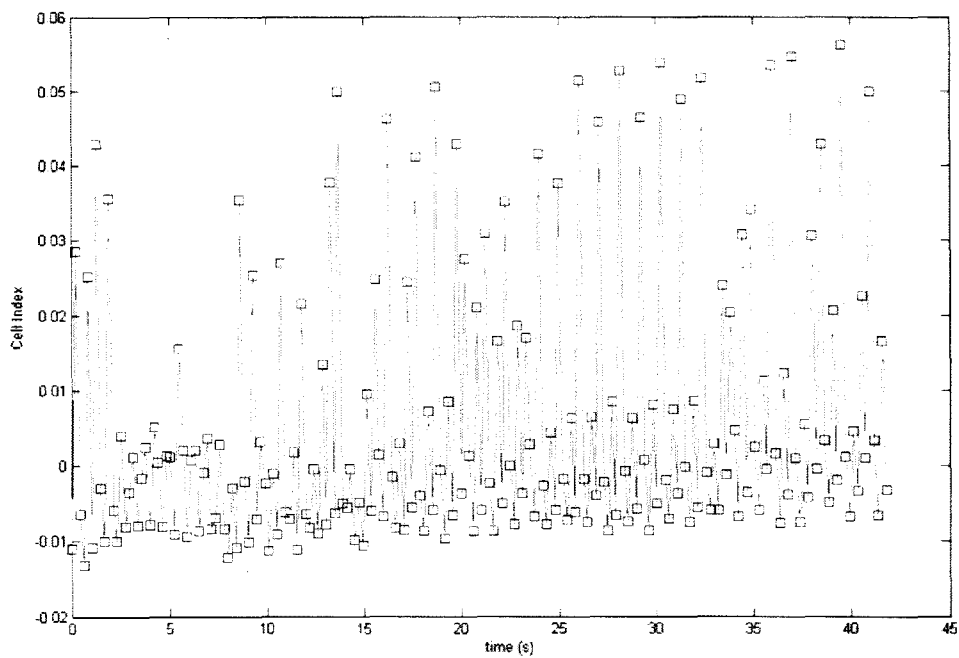


FIG. 8B

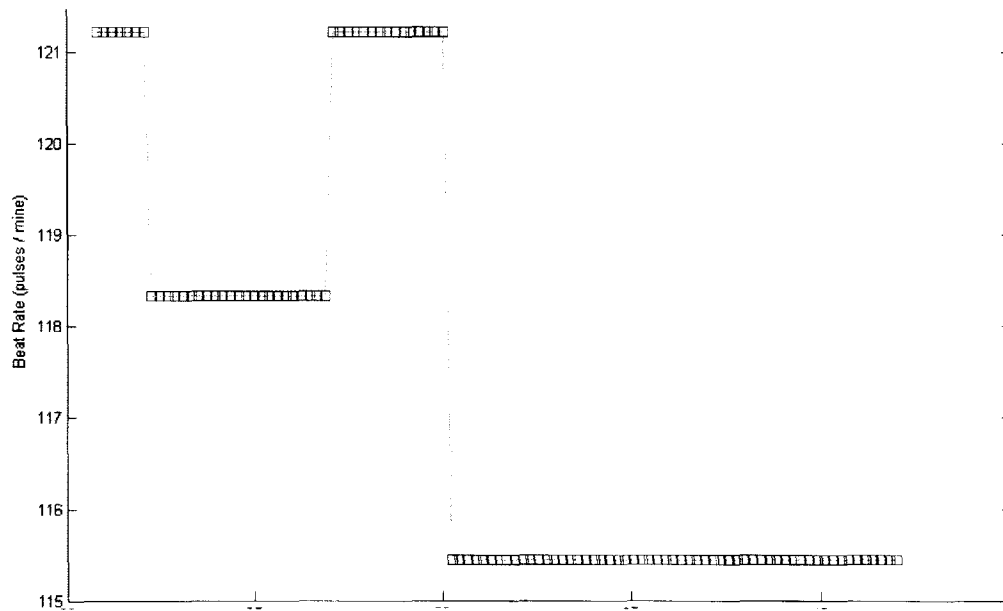


FIG. 9 Detection of cardiomyocyte beating using the ACEA RT-CES system for the mouse cardiomyocytes treated with 4.4 μM sotalol. In Figures 9C and 9D, the time resolution between two adjacent points is 40 milliseconds. In other words, a second in Figures 9C and 9D is equivalent to 40-millisecond.

FIG. 9A

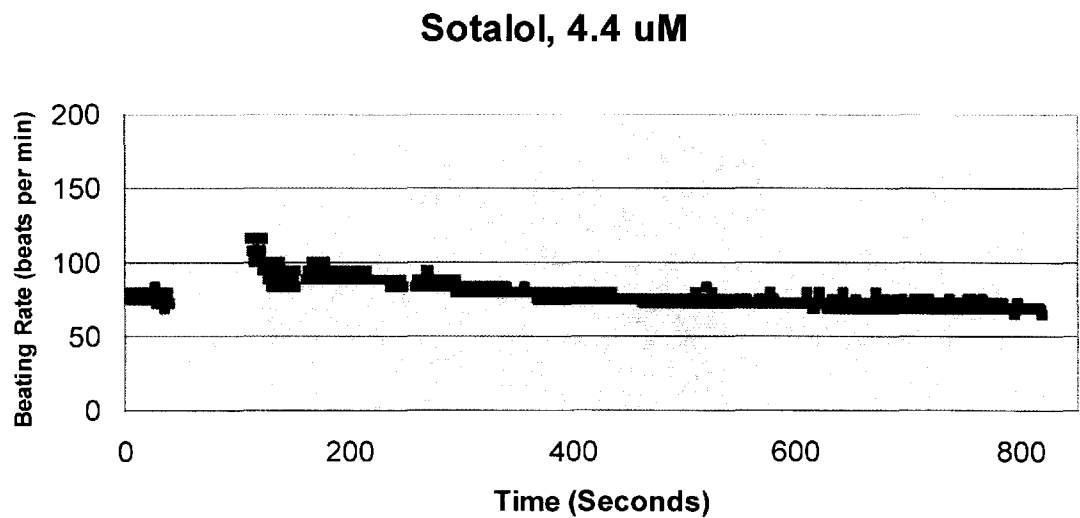


FIG. 9B

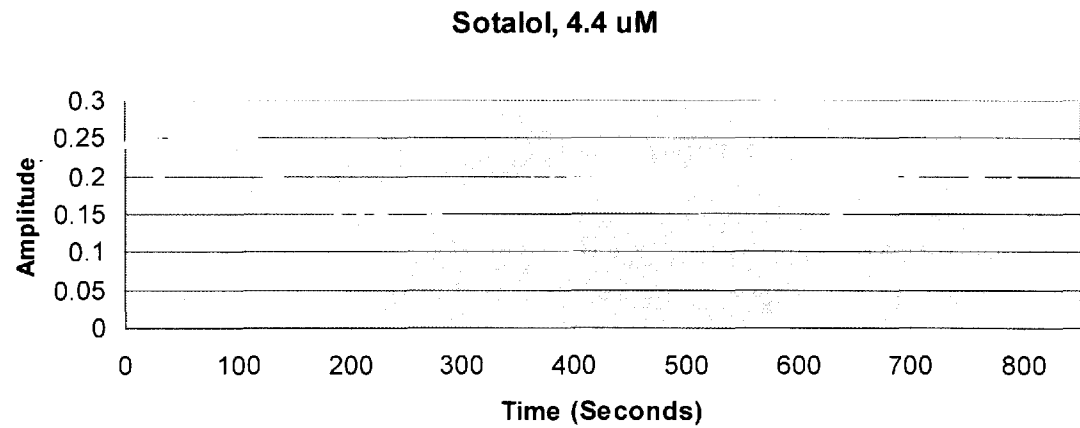


FIG. 9C

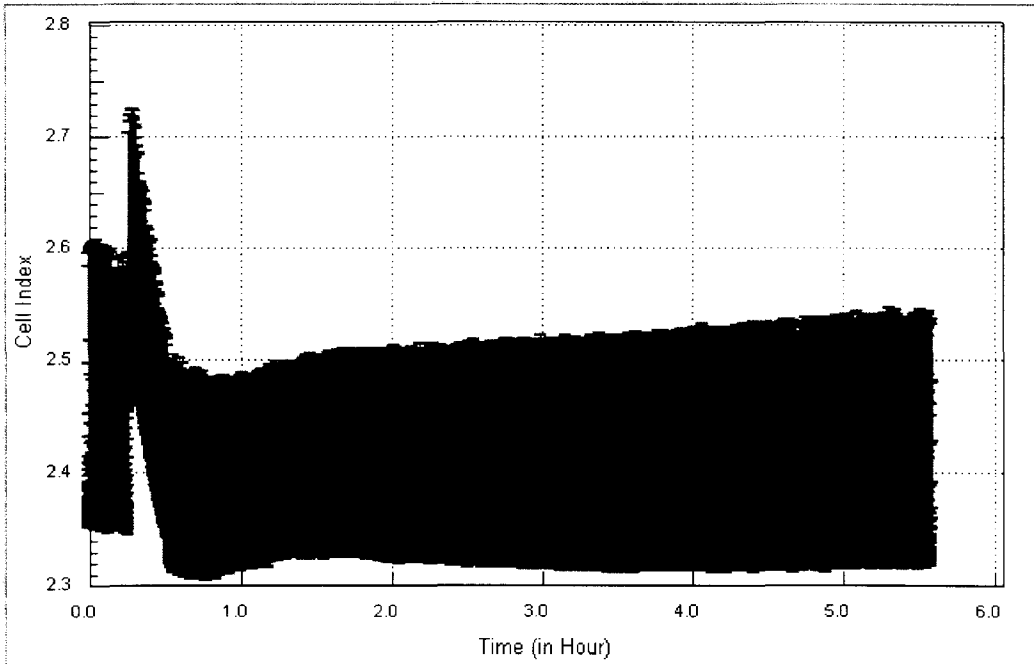


FIG. 9D

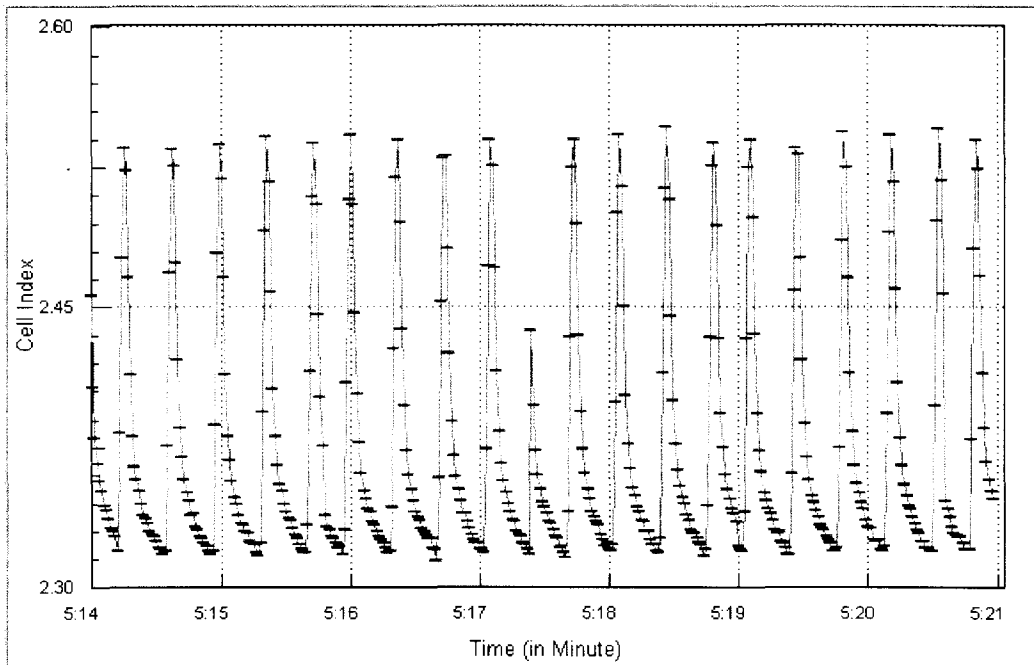


FIG. 10A

Assessment of agents which slow down heart rate and cardiomyocyte beating

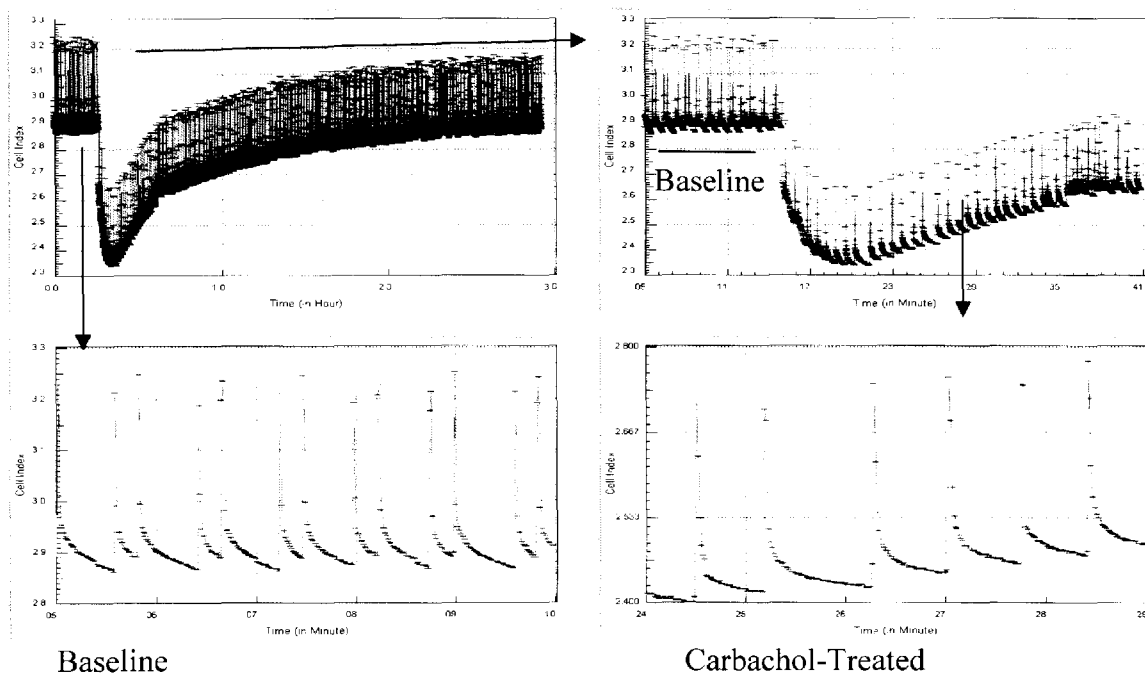
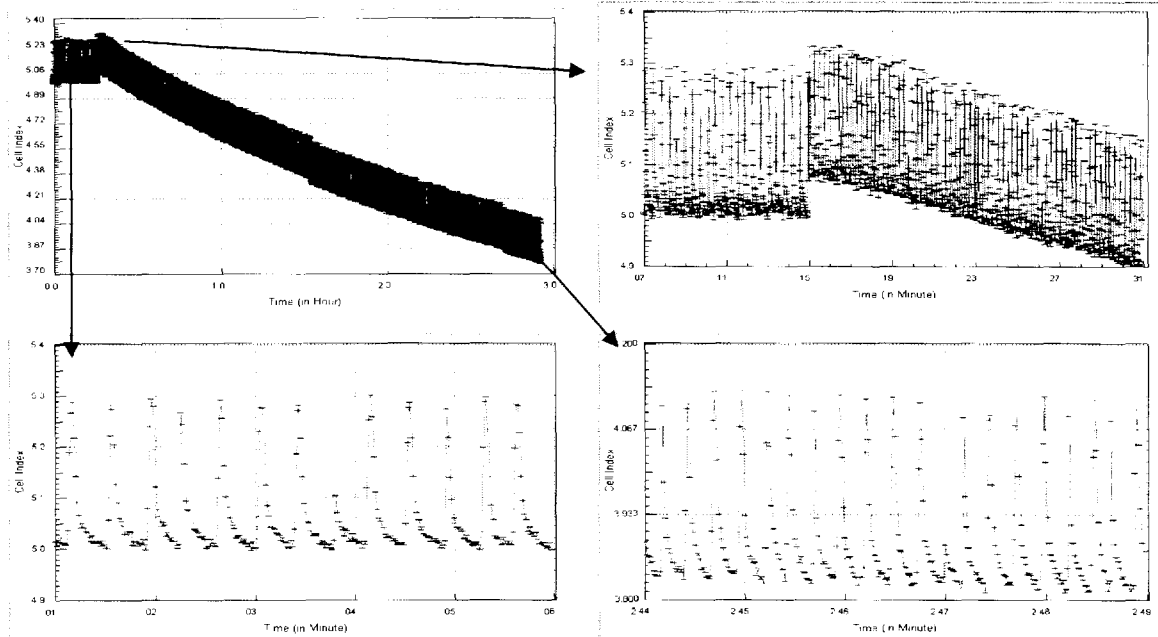


FIG. 10B

Analysis of drugs which increase heart rate and cardiomyocyte beating



Baseline

Isoproteranol-treated

FIG. 11A

Sotalolol 33.3 μ M (0.033% DMSO)

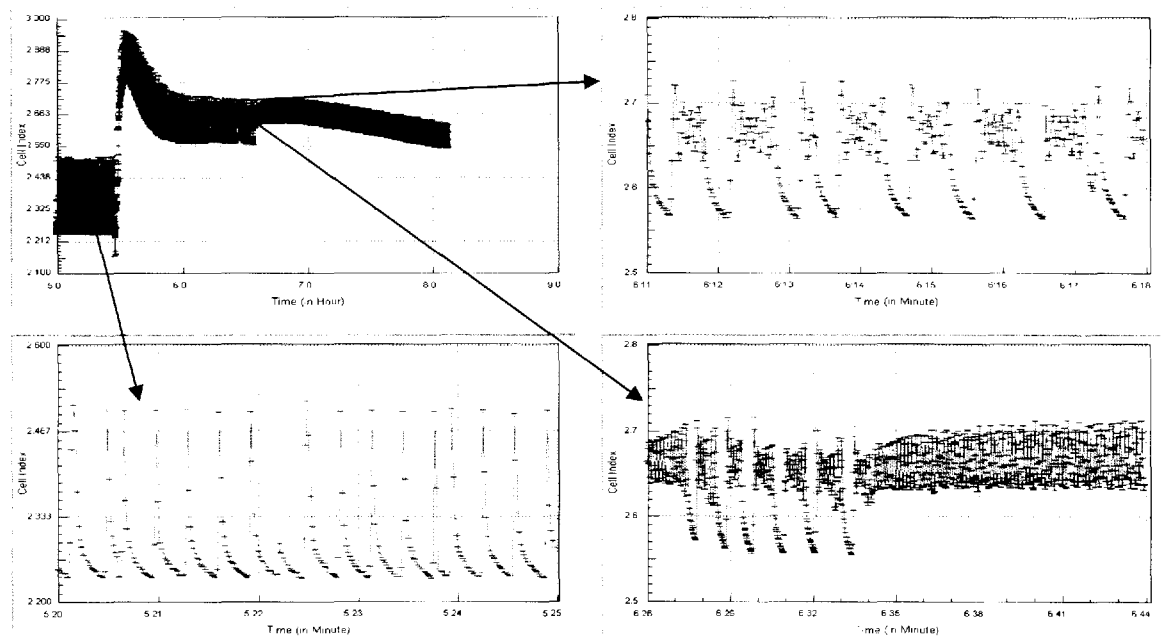


FIG. 11B

Astemizole 400 nM (0.004% DMSO)

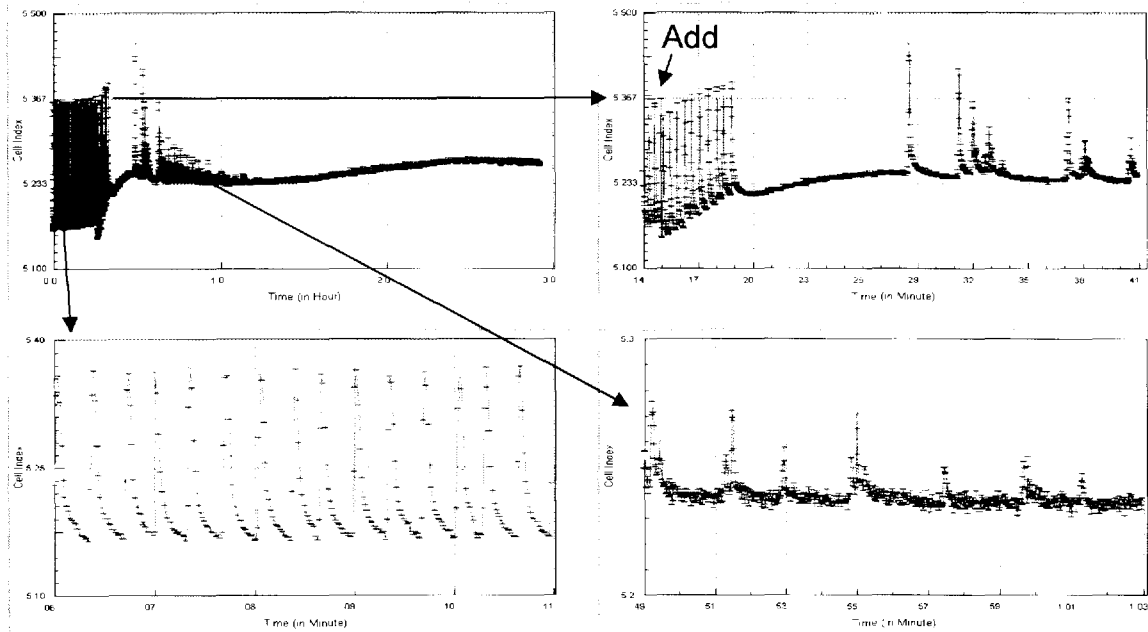


FIG. 11C

Terfenadine 200 nM (0.065%DMSO)

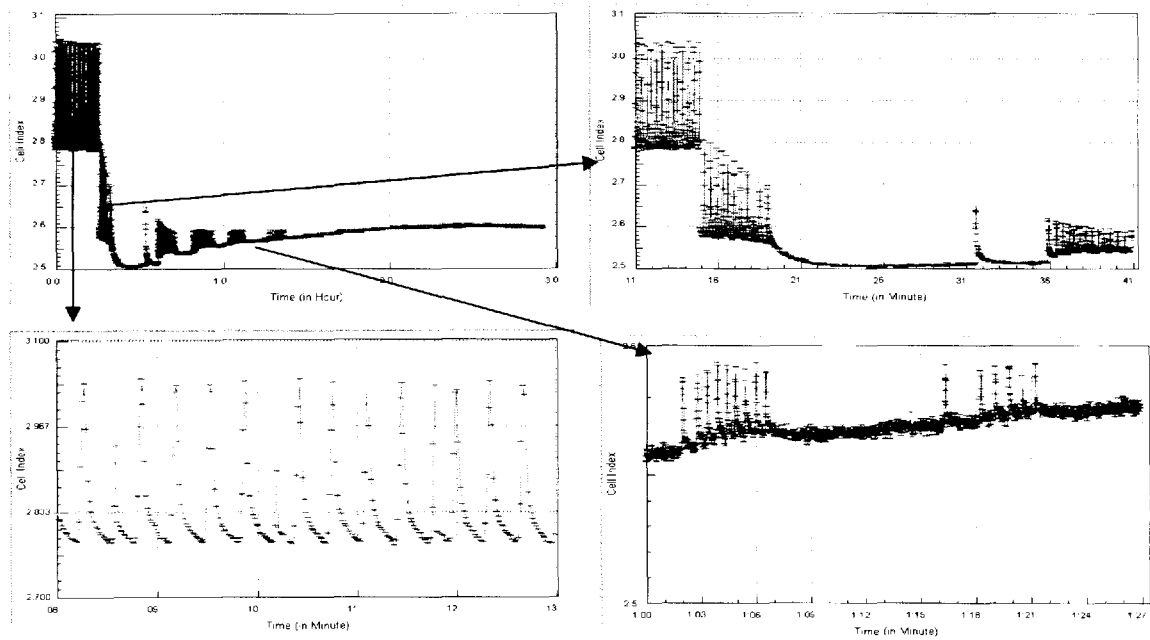


FIG. 11D

Erythromycin 13.3 uM (0.13% DMSO)

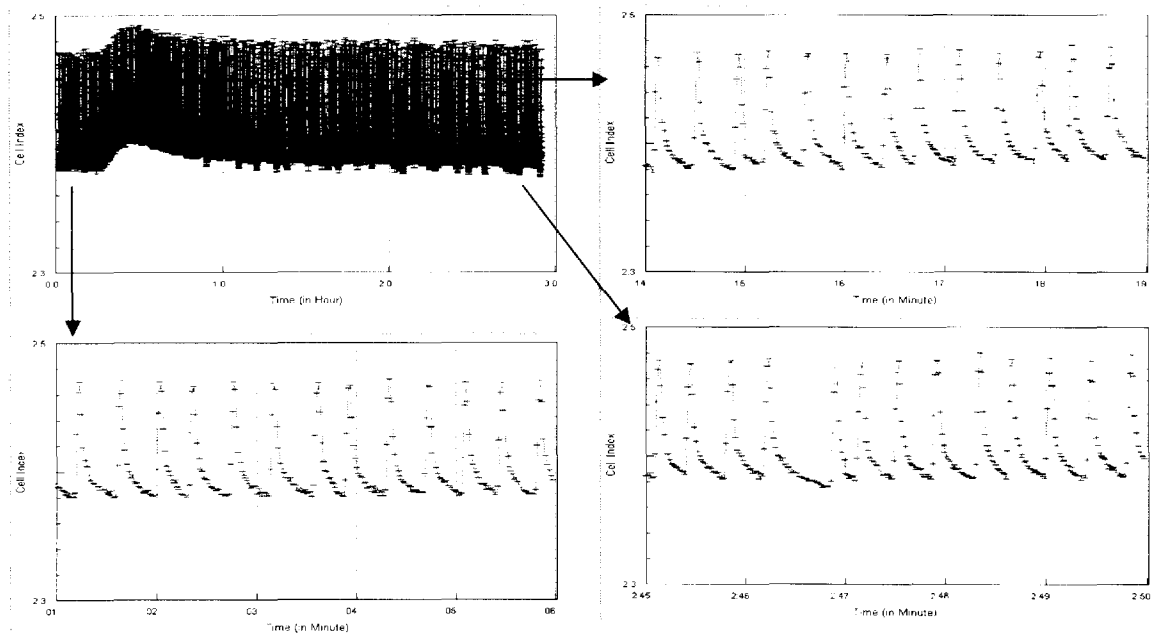


FIG. 11E

Moxifloxacin 20 uM (0.3% DMSO)

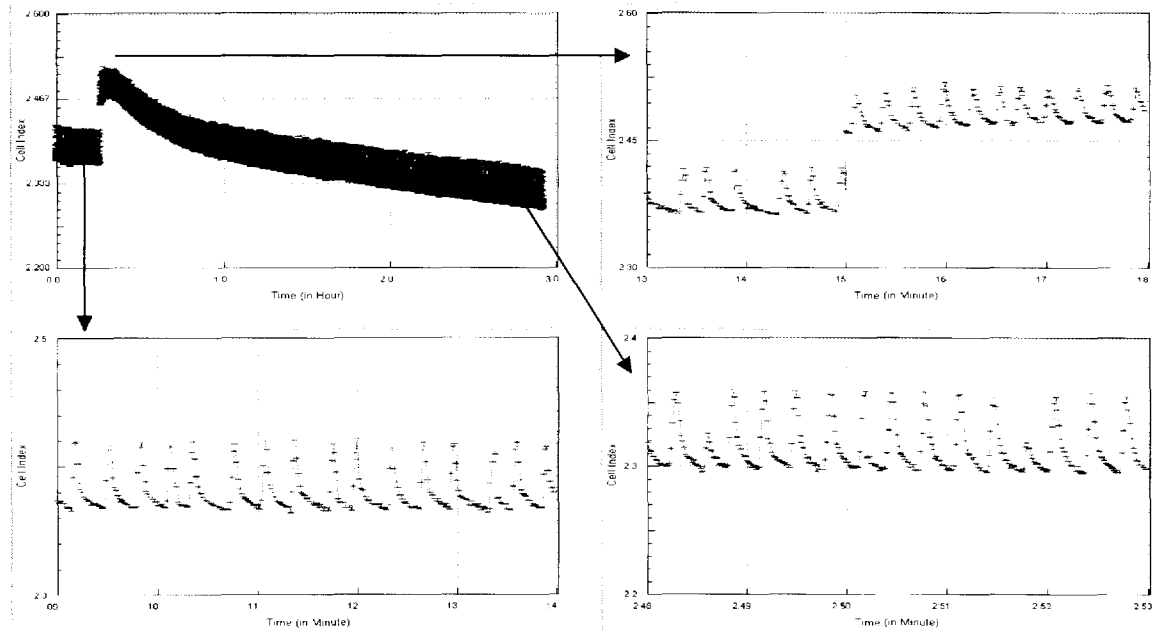


FIG. 11F

Pentamidine 20uM (0.2%DMSO)

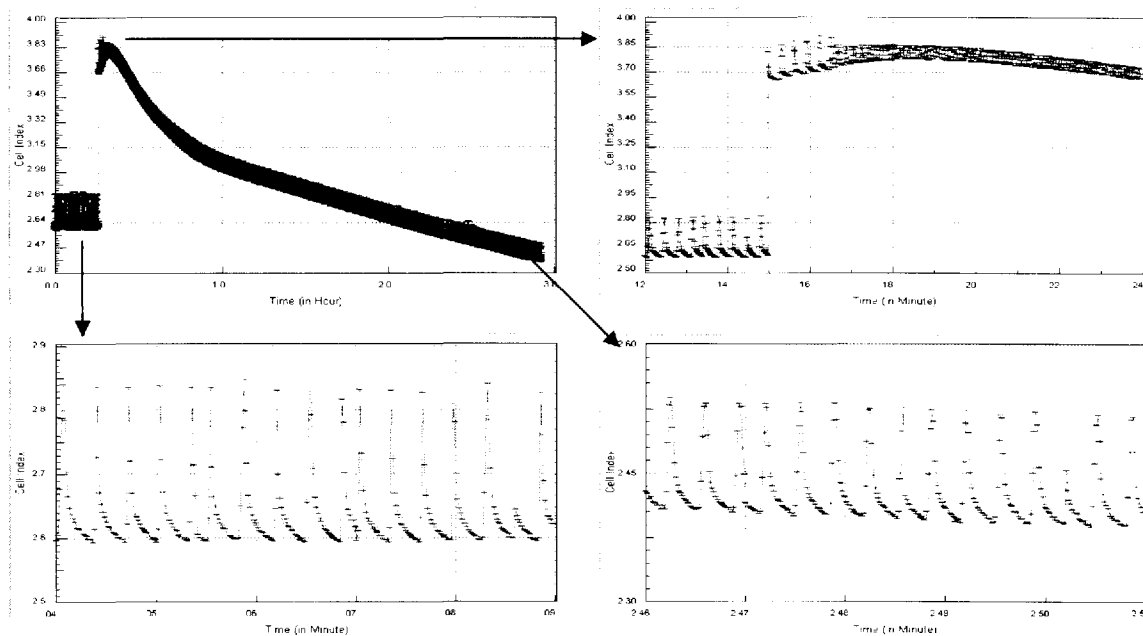


FIG. 11G

Amitriptyline 4.4uM(0.04 % DMSO)

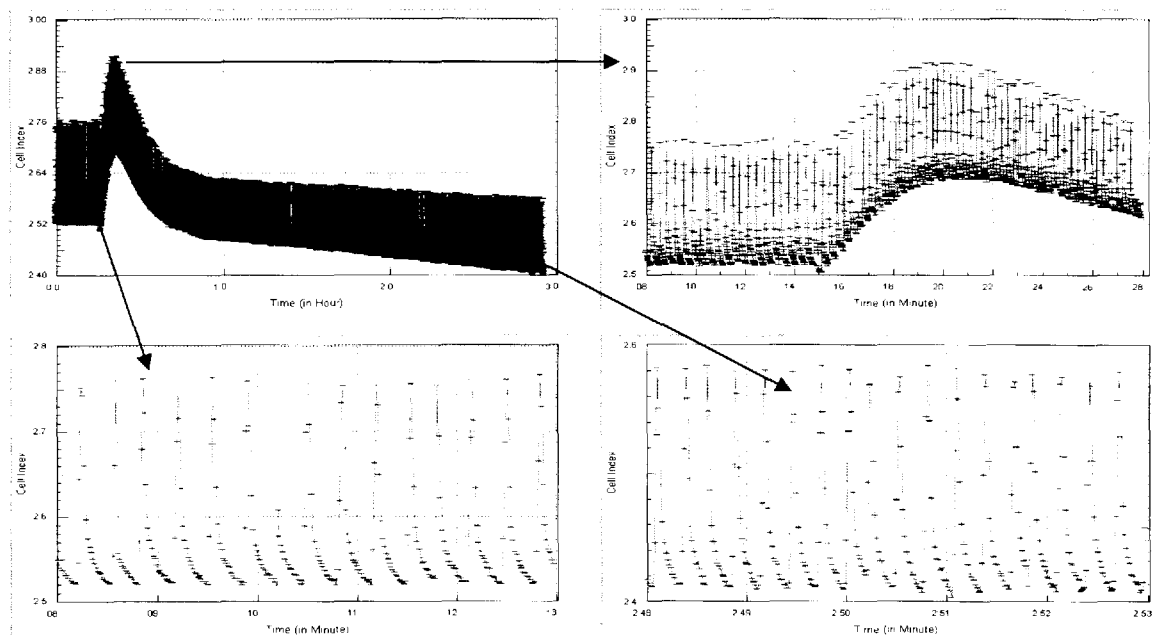


FIG. 11H

Verapamil 130 nM (0.0013% DMSO)

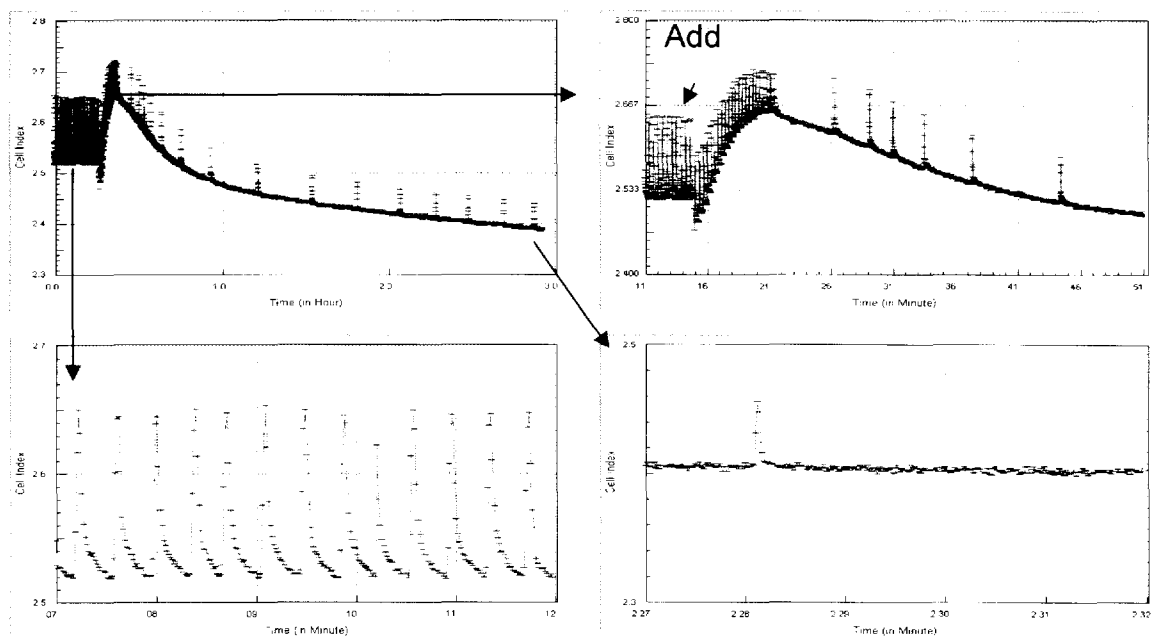


FIG. 11I

Rosiglitazone 13.3 uM (0.13% DMSO)

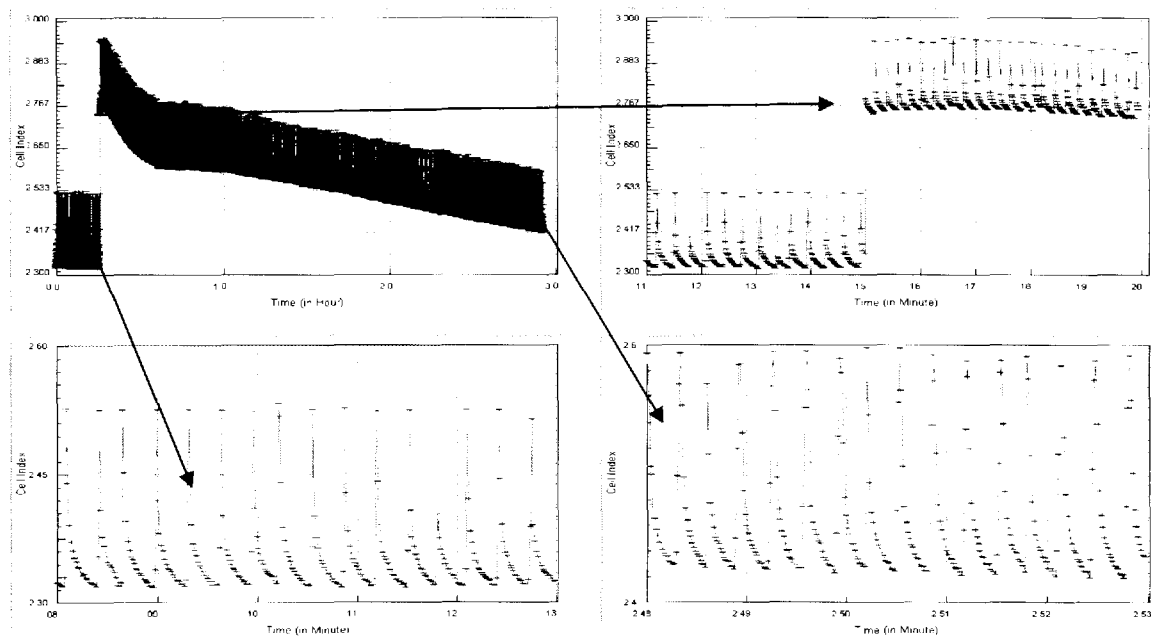


FIG. 11J

Rofecoxib 13.3 μ M

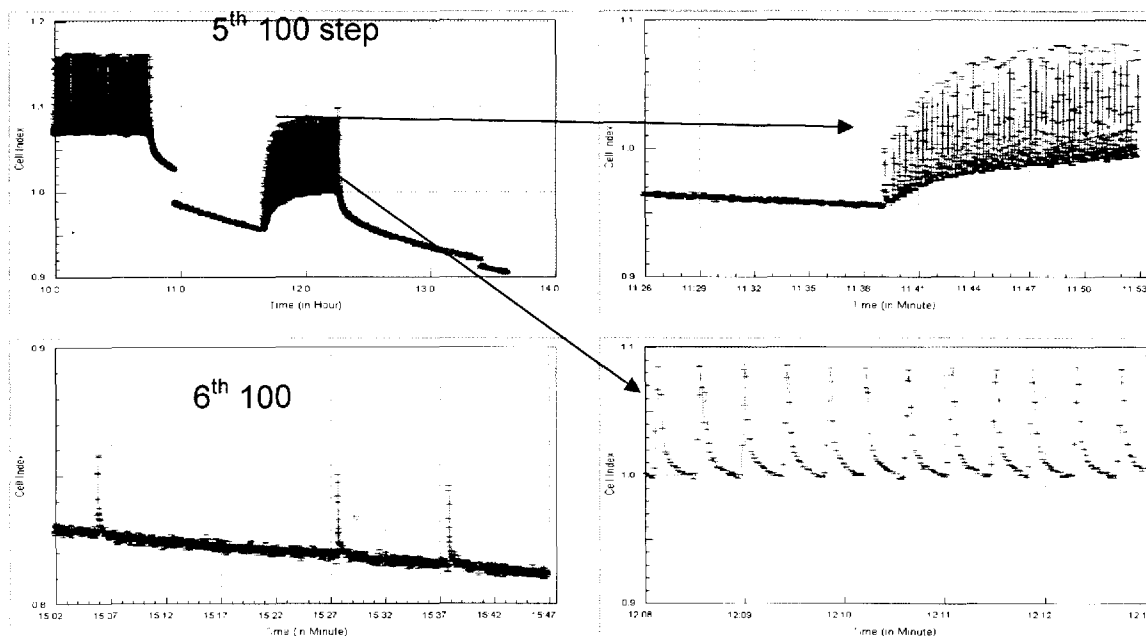
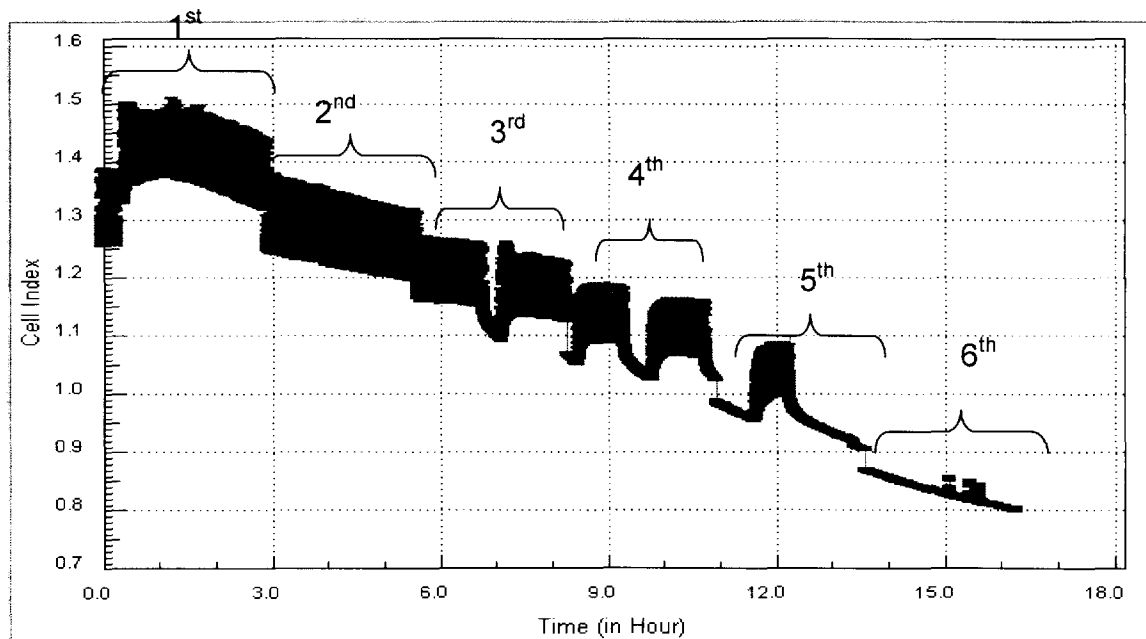


FIG. 11K

Celecoxib 4.4 uM

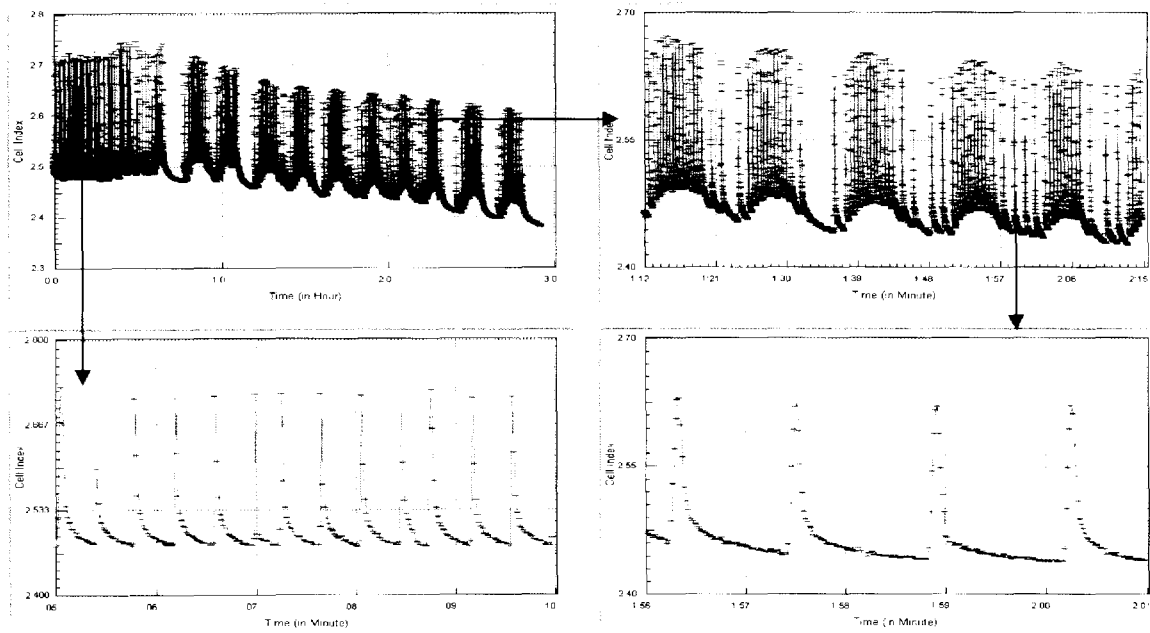


FIG. 11L

Doxirubicin 40 uM (0.4% DMSO)
(measurement after 2h treatment)

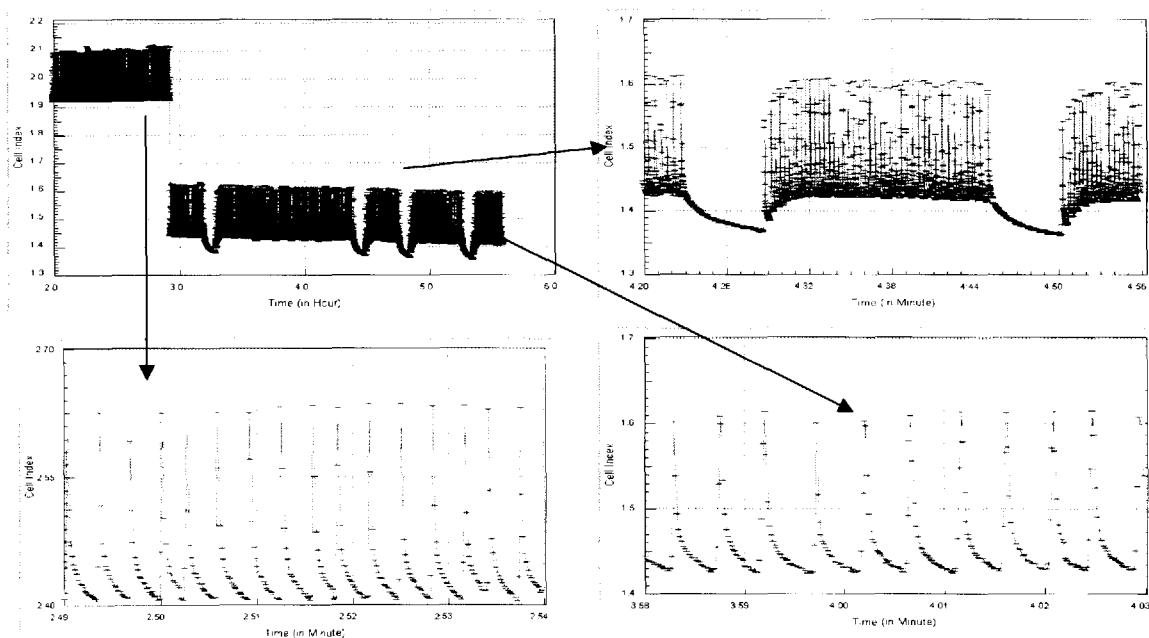


FIG. 11M

Cyclosporine A 13.3uM (0.13% DMSO)

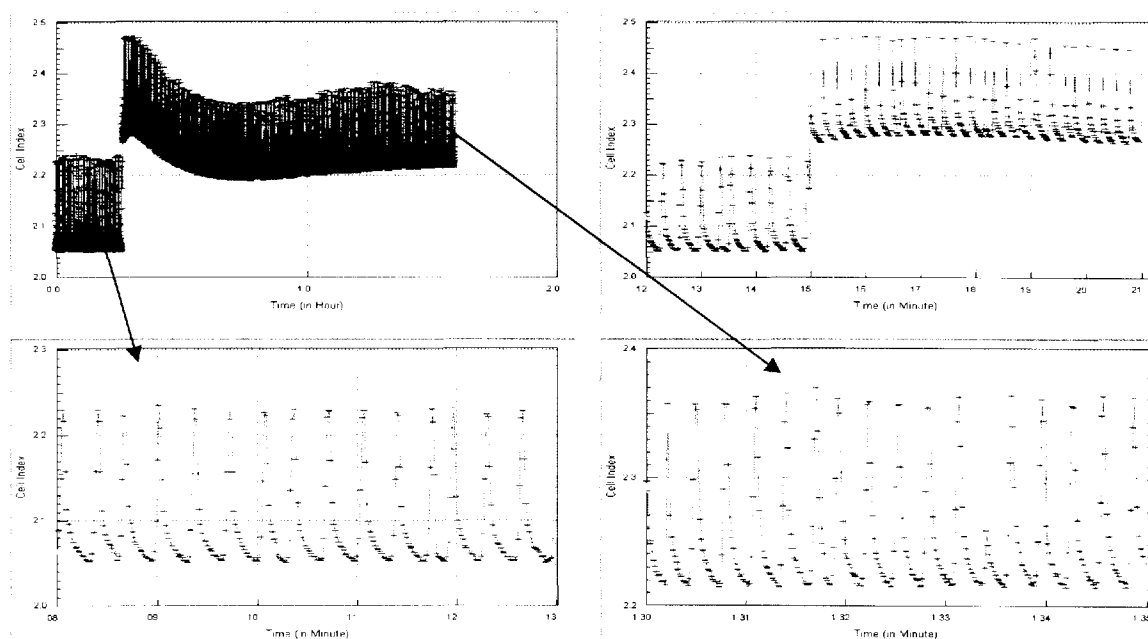


FIG. 11N

Propranolol 4.4uM (0.04% DMSO)

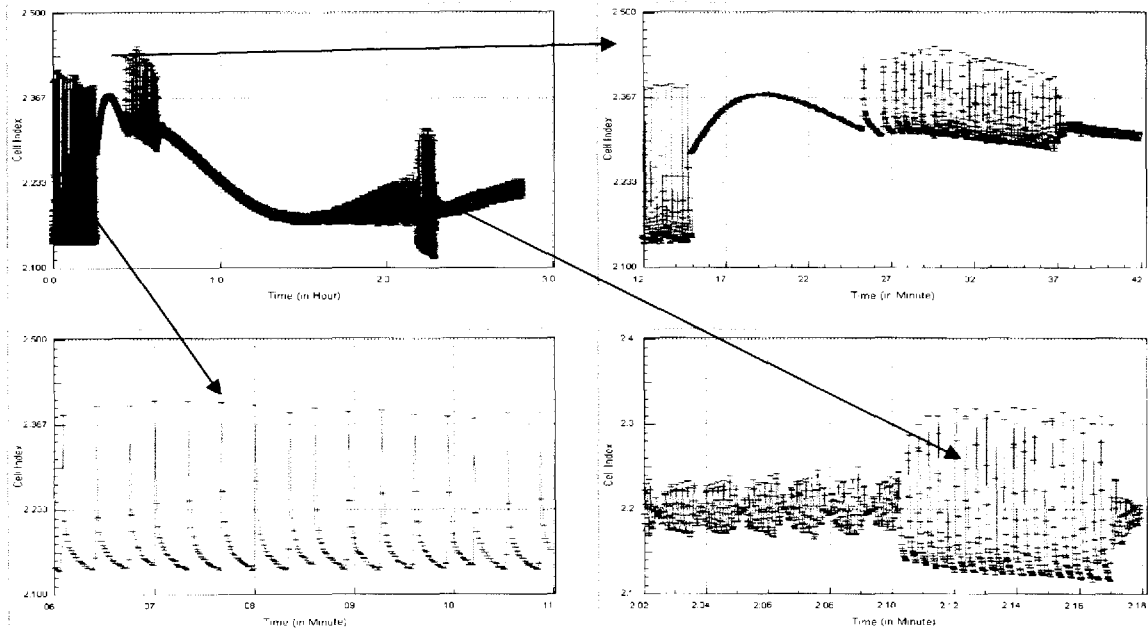


FIG. 110

E4031 9.1 nM

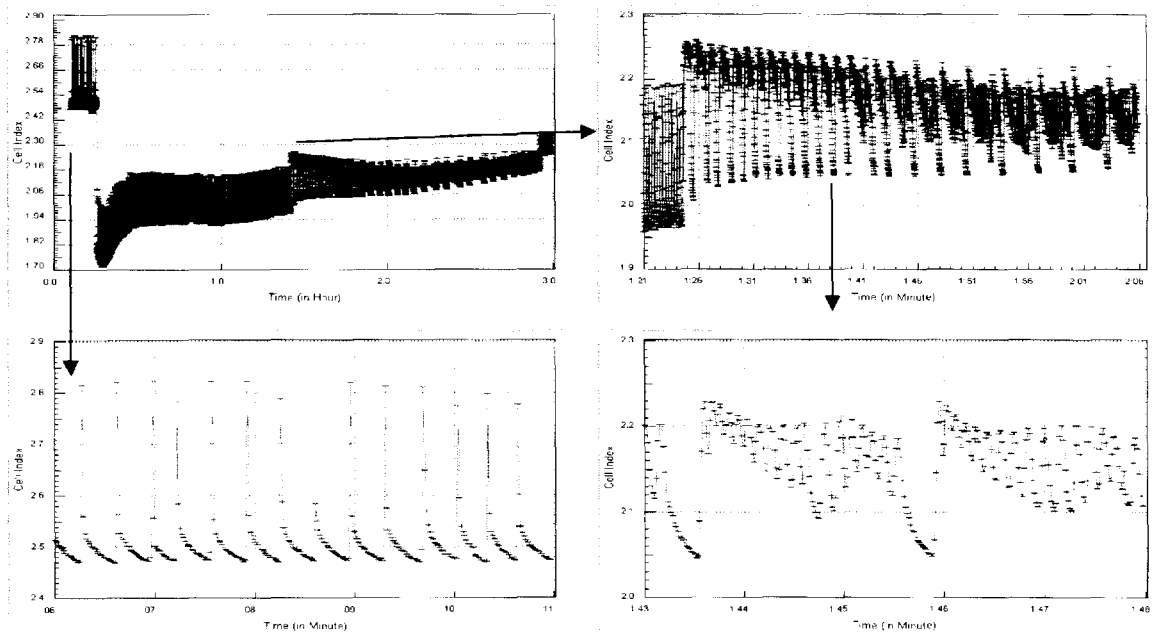


FIG. 11P

DDT 8uM (0.08% DMSO)

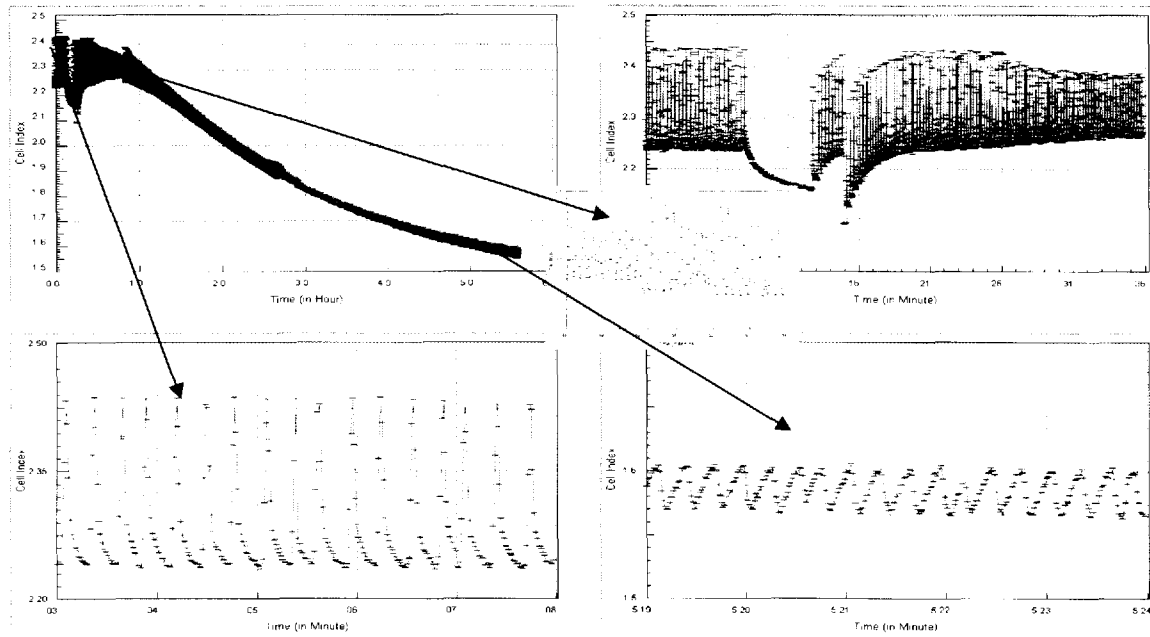


FIG. 11Q

PCB 8uM (DMSO 0.08%)

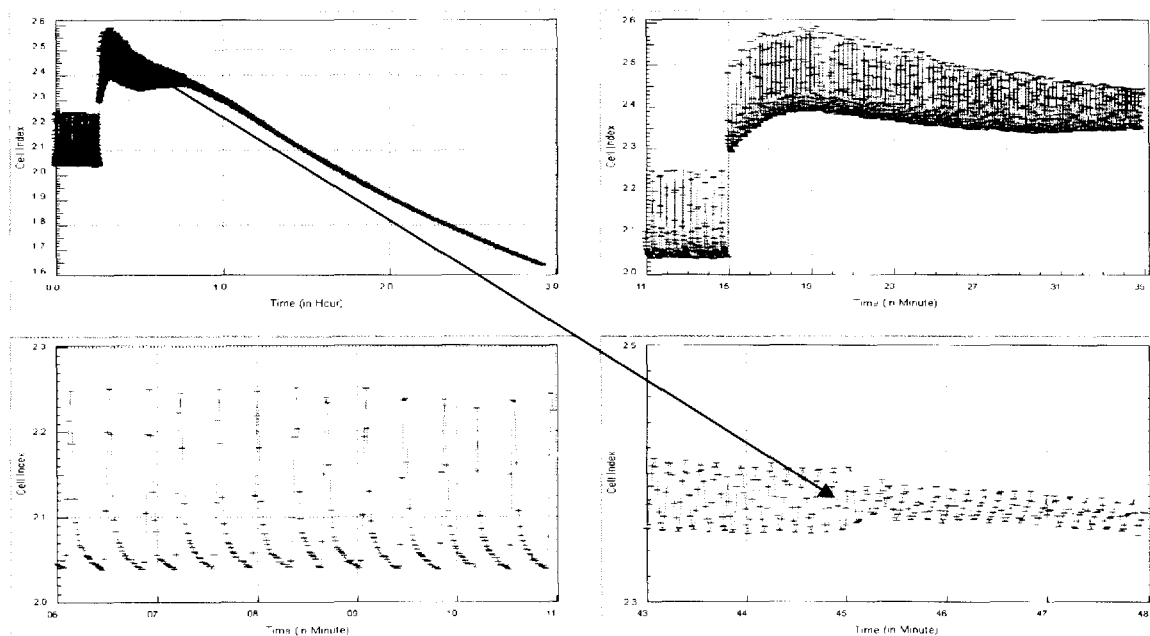


FIG. 11R

Endosulfan 8uM (0.08% DMSO)

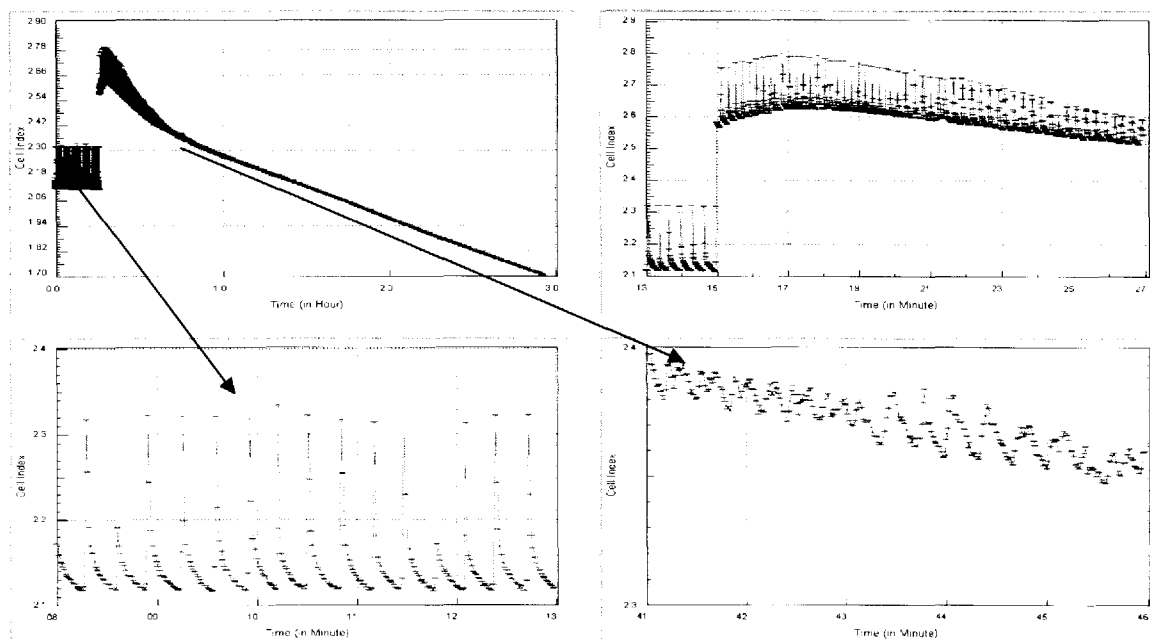


FIG. 11S

DMSO 0.13%

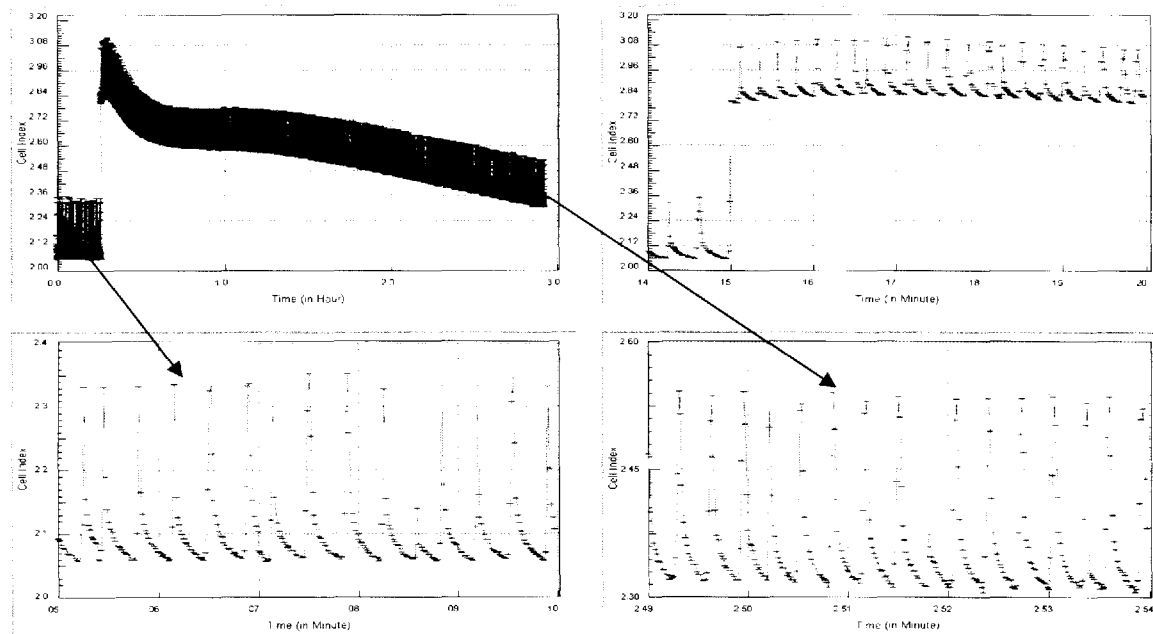


FIG. 12

Cardiotoxic Patterns

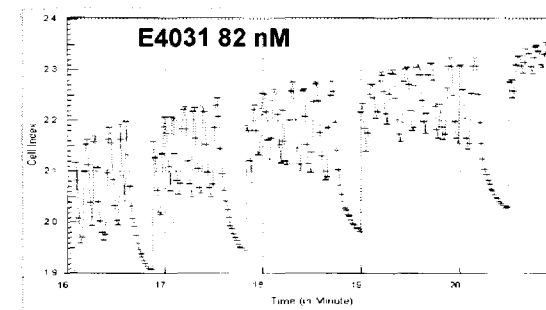
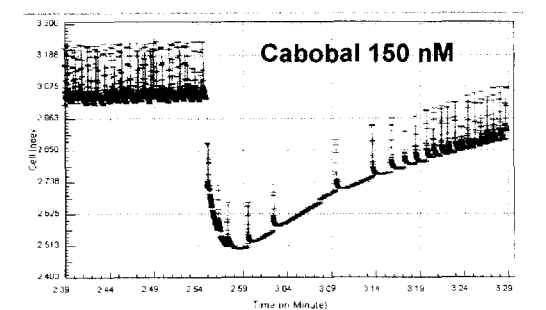
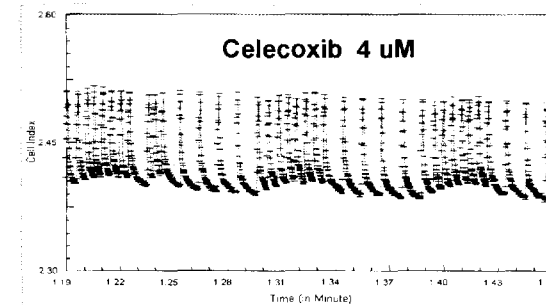
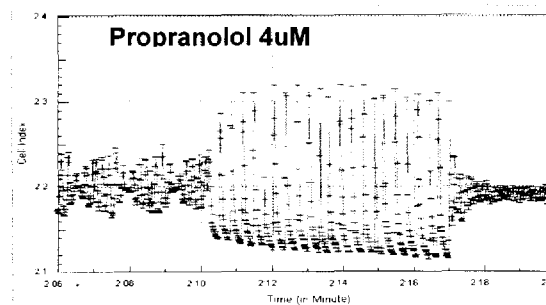
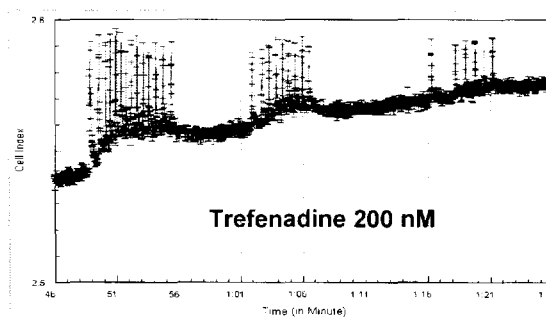
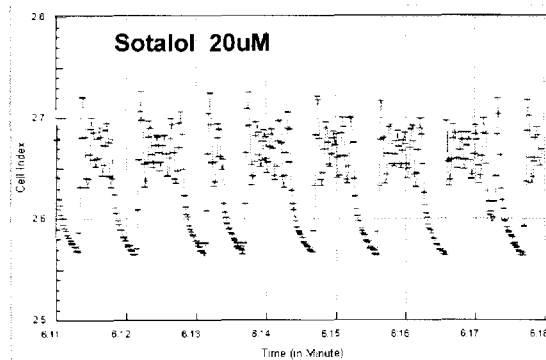
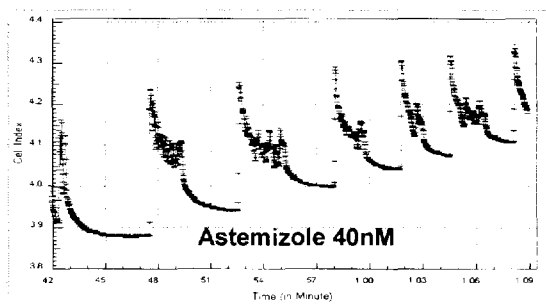
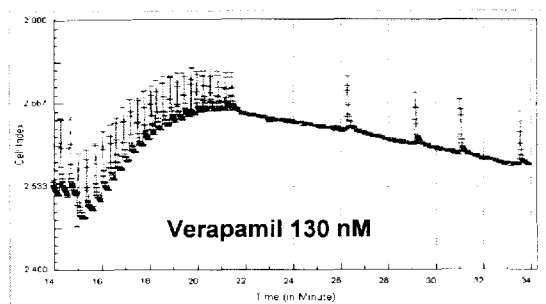


FIG. 13

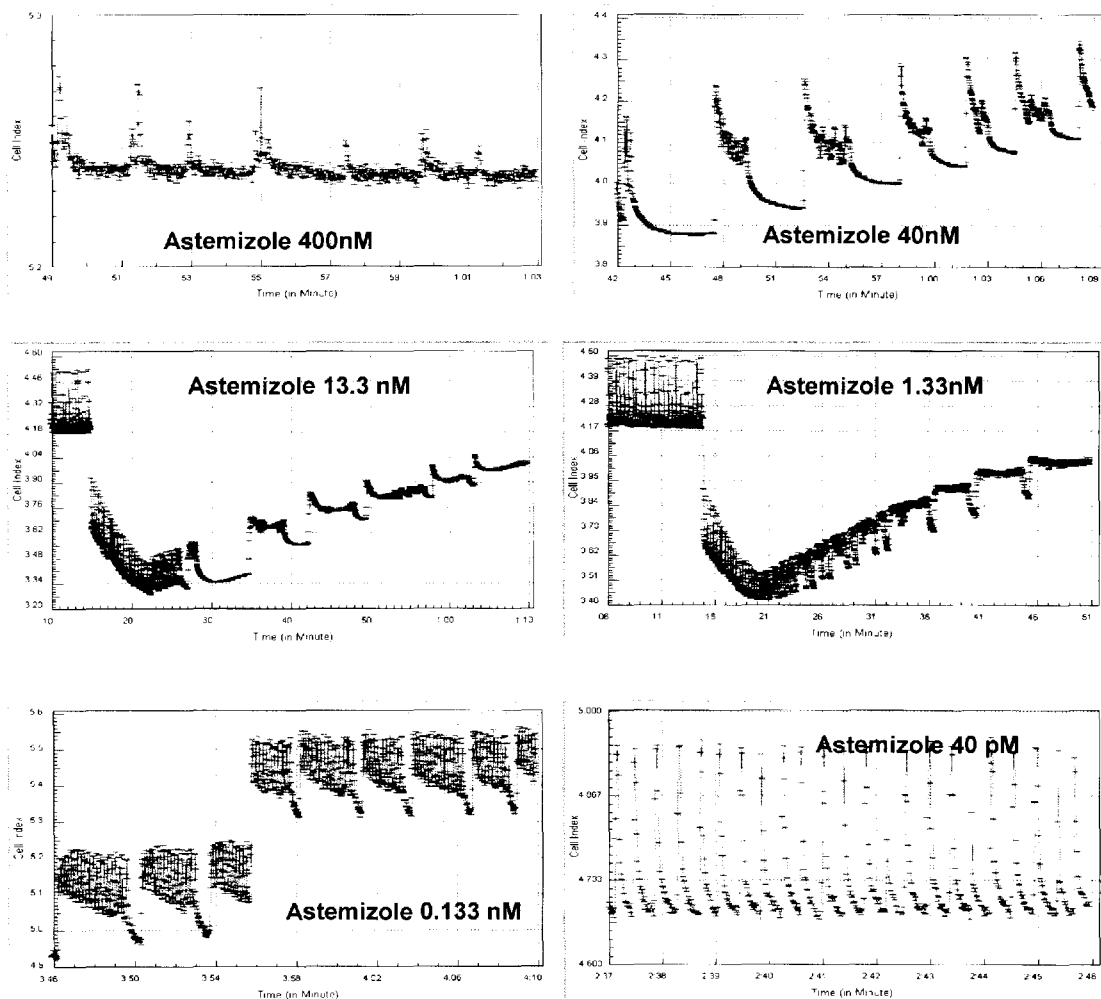


FIG. 14

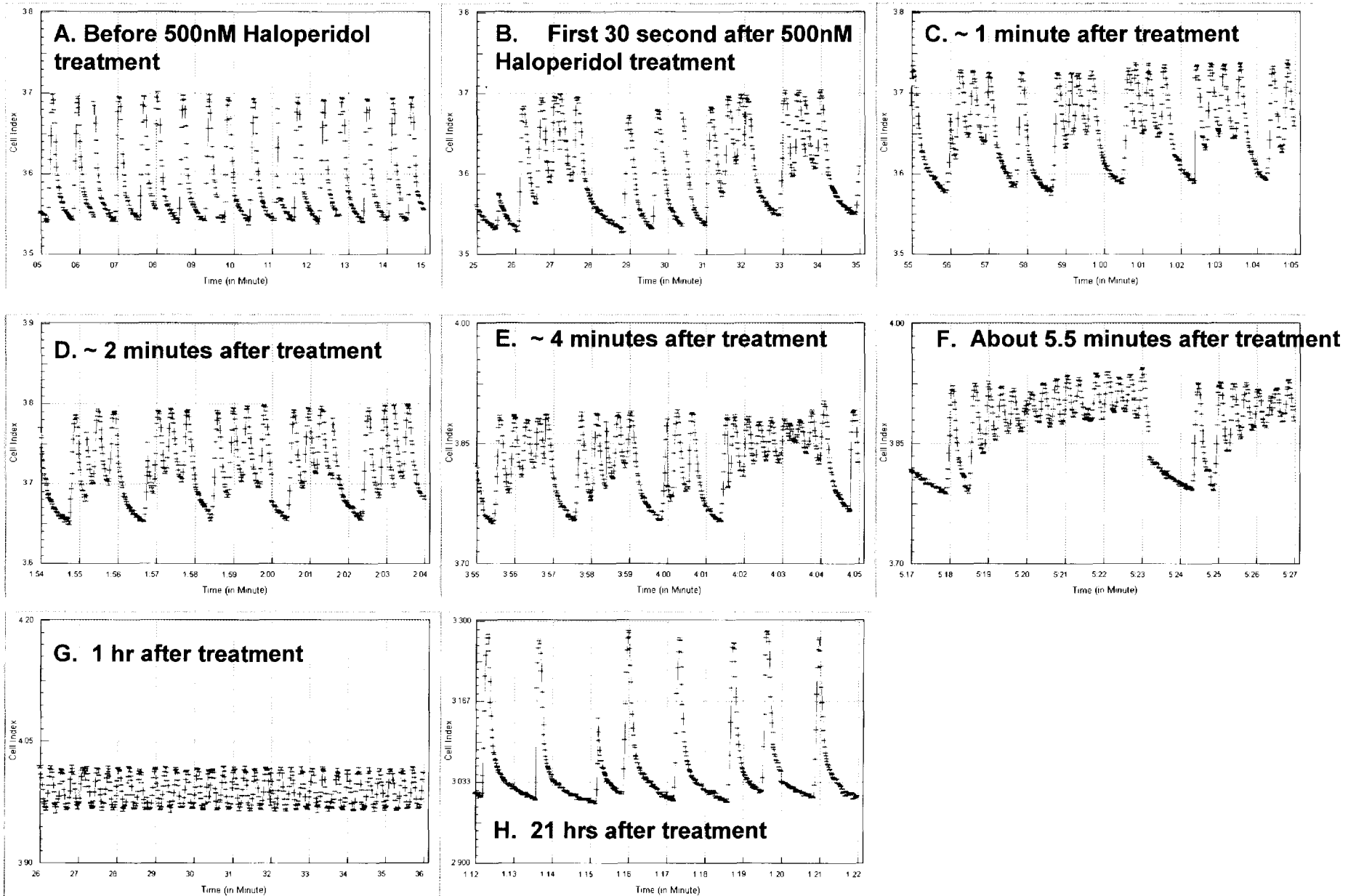


FIG. 15

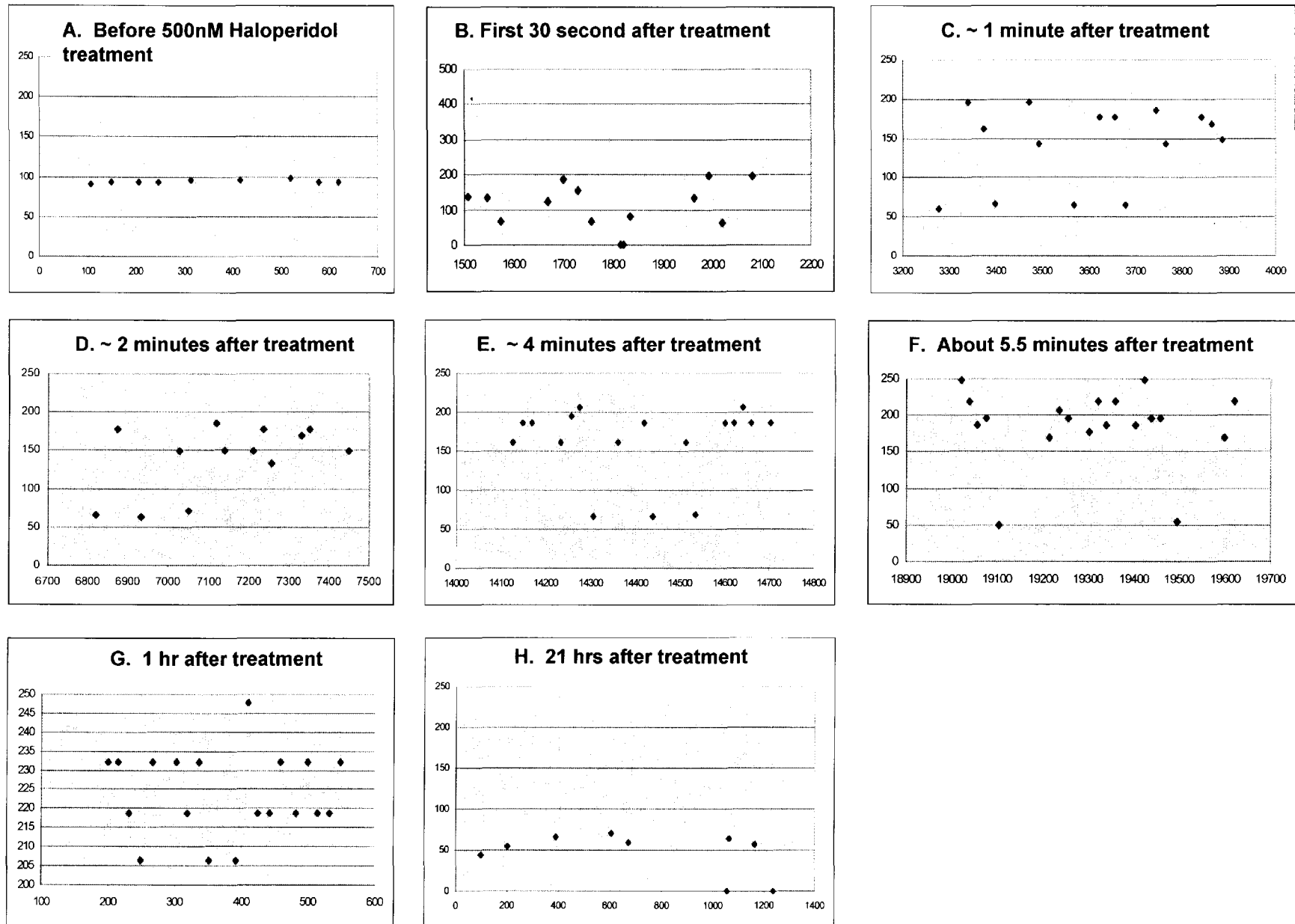


FIG. 16

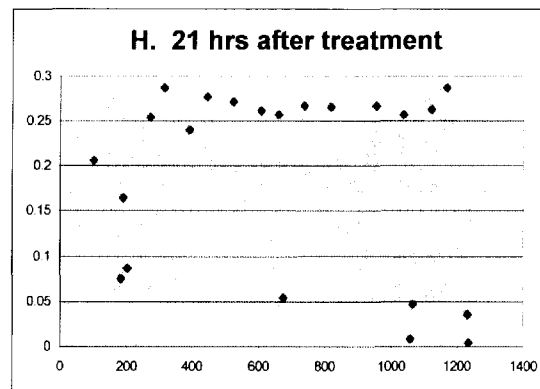
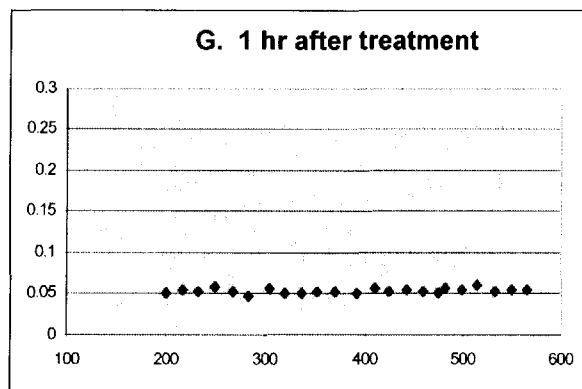
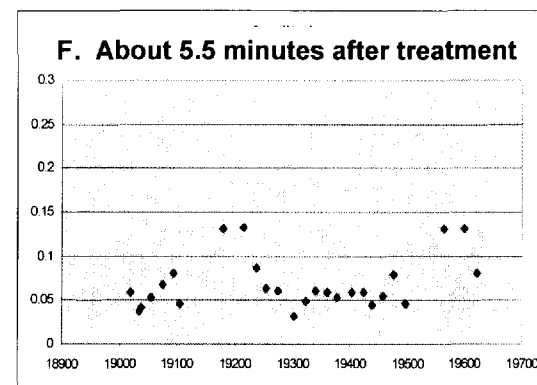
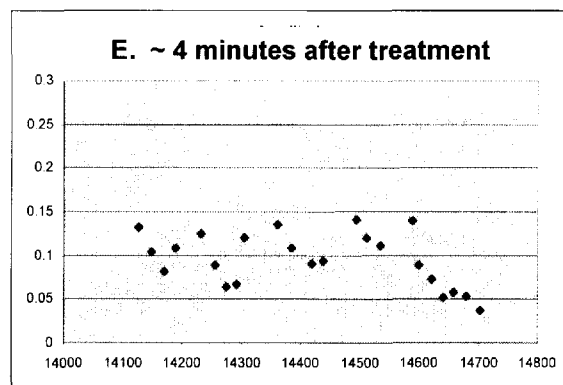
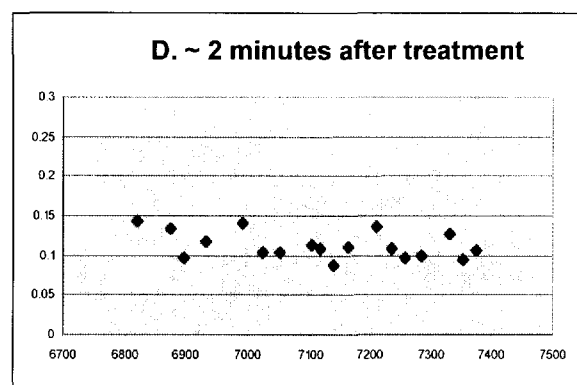
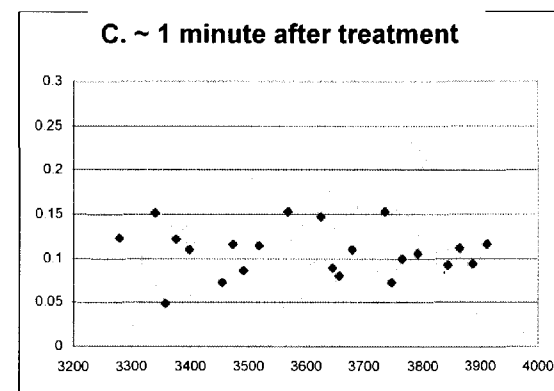
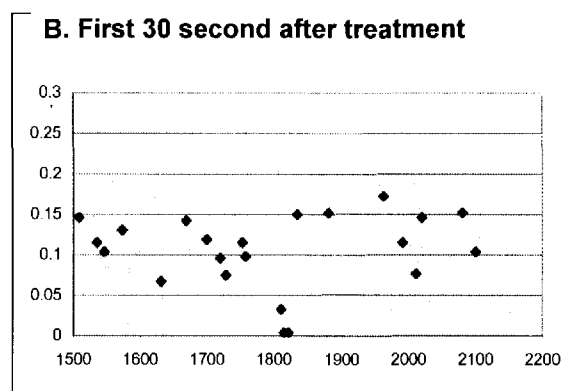
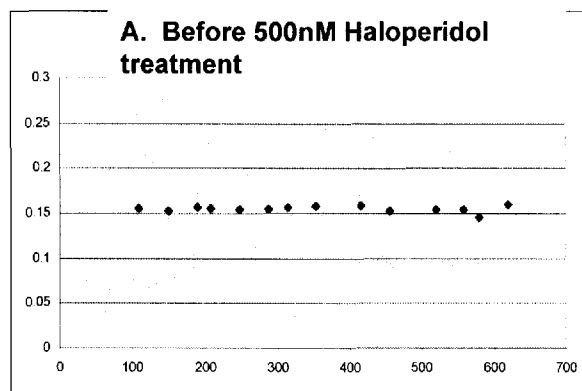


FIG. 17

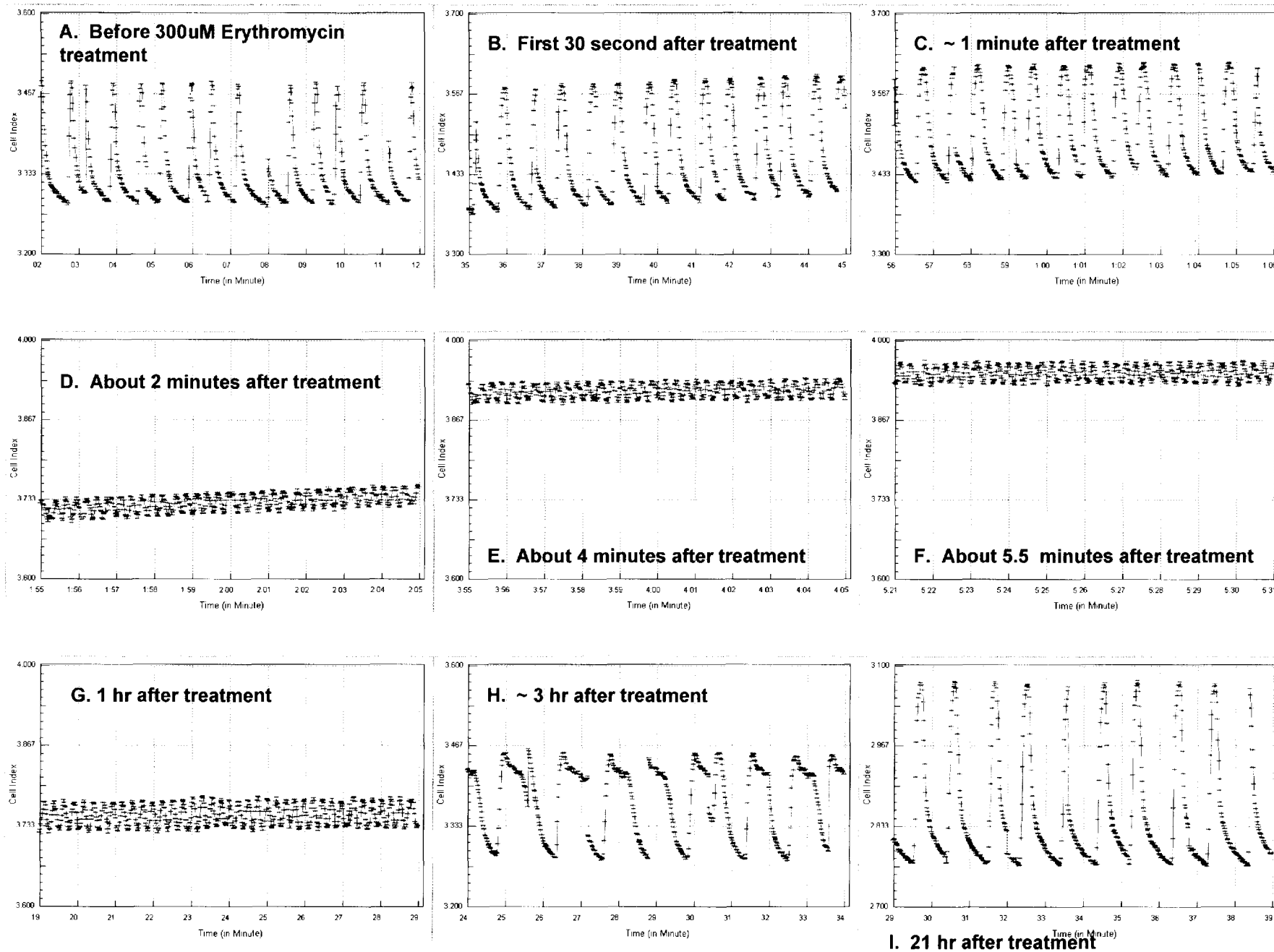


FIG. 18

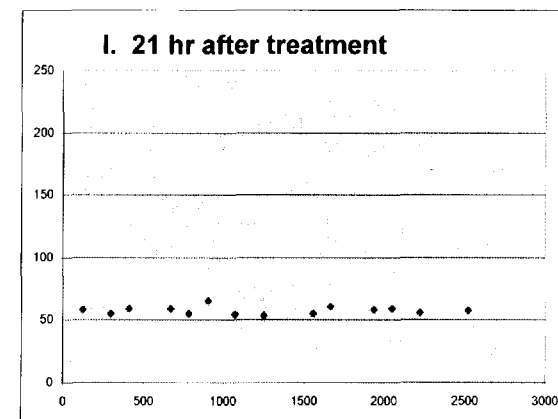
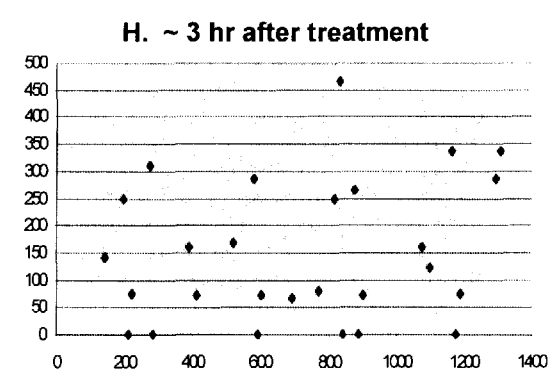
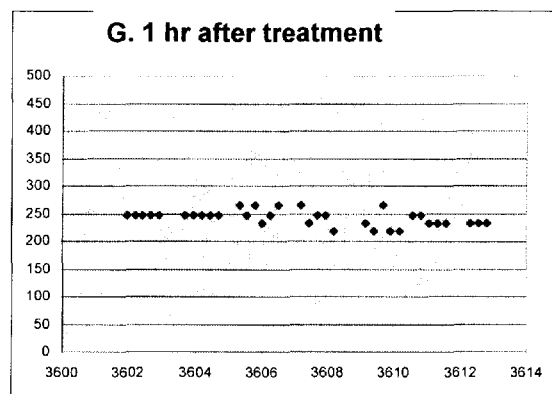
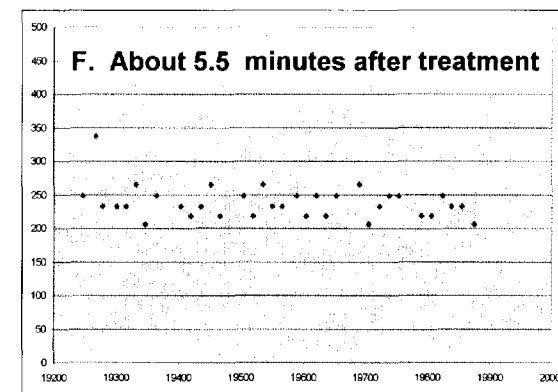
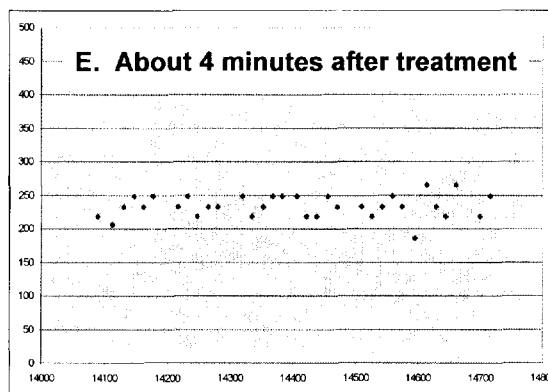
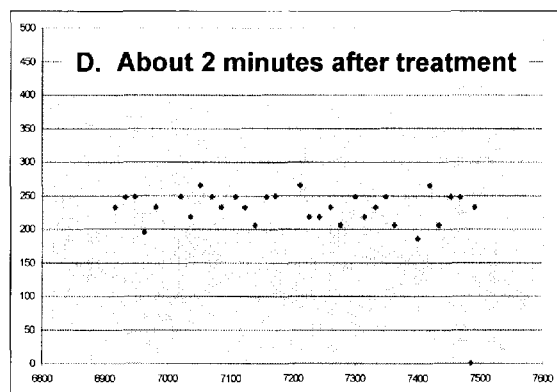
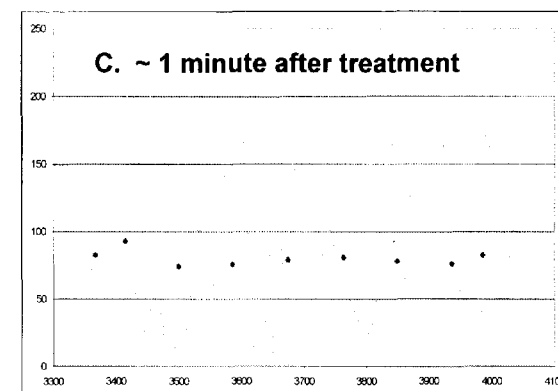
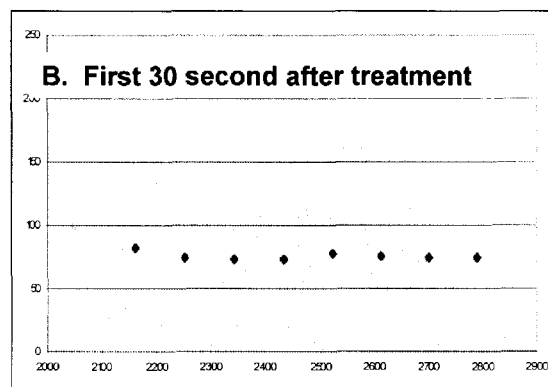
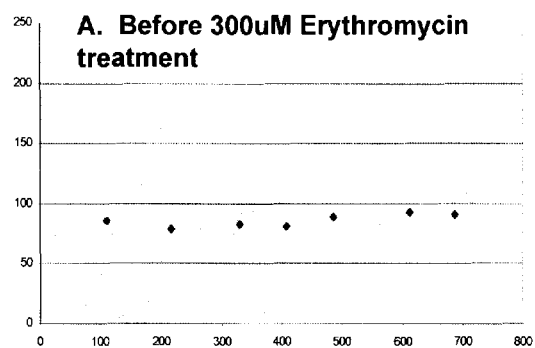
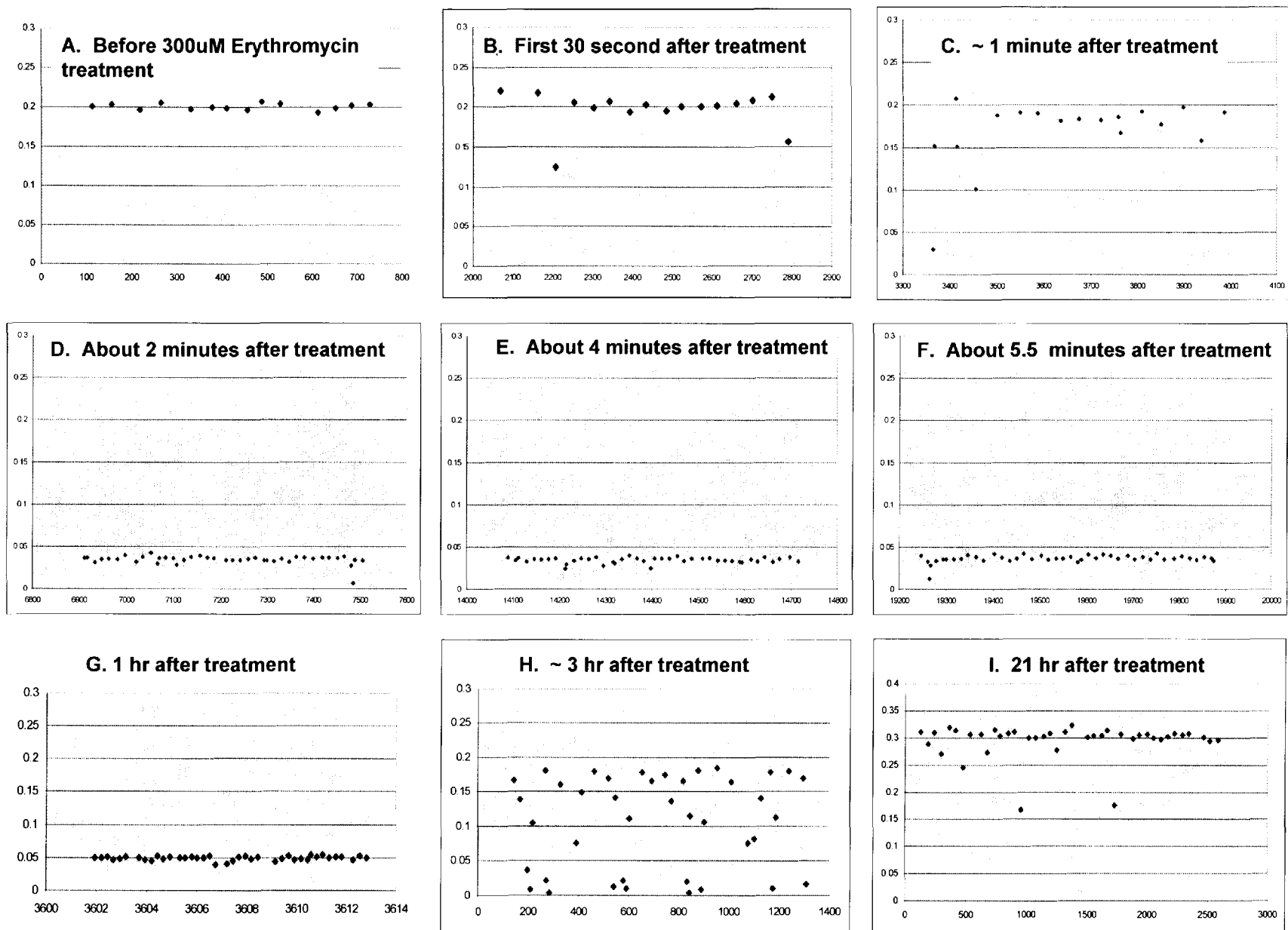


FIG. 19





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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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05/05/2009

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SAN DIEGO, CA 92121

EXAMINER

JANSSEN, SHANNON L

ART UNIT

PAPER NUMBER

1636

MAIL DATE

DELIVERY MODE

09/27/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	12/435,569	WANG ET AL.	
	Examiner	Art Unit	
	SHANNON JANSSEN	1636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 1-39 is/are pending in the application.
- 5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☐ Claim(s) ____ is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☒ Claim(s) 1-39 are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) ☐ Notice of References Cited (PTO-892) | 4) ☐ Interview Summary (PTO-413) |
| 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) ☐ Information Disclosure Statement(s) (PTO/SB/08) | 5) ☐ Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) ☐ Other: ____. |

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DETAILED ACTION

Claims 1-39 are currently pending.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-15, drawn to a system, classified in class 435, subclass 288.3. Note: it is unclear if instant claims 1-15 are directed to an apparatus or a product and have been interpreted as an apparatus. Clarification is requested.
- II. Claims 17-23, drawn to a method for assessing and quantifying excitable cells, classified in class 436, subclass 2.
- III. Claims 24-29, drawn to a method for determining whether a compound modulates a beating cycle, classified in class 424, subclass 93.1.
- IV. Claims 30-34, drawn to a method of characterizing rhythmic beating, classified in class 435, subclass 174.
- V. Claims 35-37, drawn to a method of assessing genetic manipulation, classified in class 506, subclass 7.
- VI. Claims 38-39, drawn to a method comprising determining a characteristic such as cell attachment and cell growth, classified in class 324, subclass 600.

The inventions are independent or distinct, each from the other because:

Inventions I and II-VI are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced

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by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed can be used to practice another and materially different process. For example, the apparatus as claimed could be used in any of the methods of Groups II-VI or as a biosensor for detection of a particular molecule, such as a protein or antibody, in a solution.

Claim 16 link(s) inventions II-VI. The restriction requirement between the linked inventions is **subject to** the nonallowance of the linking claim(s), claim 16. Upon the indication of allowability of the linking claim(s), the restriction requirement as to the linked inventions **shall** be withdrawn and any claim(s) depending from or otherwise requiring all the limitations of the allowable linking claim(s) will be rejoined and fully examined for patentability in accordance with 37 CFR 1.104 **Claims that require all the limitations of an allowable linking claim** will be entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier. Amendments submitted after final rejection are governed by 37 CFR 1.116; amendments submitted after allowance are governed by 37 CFR 1.312.

Applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, the allowable linking claim, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Where a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Inventions II-VI are directed to related Methods. The related inventions are distinct if: (1) the inventions as claimed are either not capable of use together or can have a materially different

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design, mode of operation, function, or effect; (2) the inventions do not overlap in scope, i.e., are mutually exclusive; and (3) the inventions as claimed are not obvious variants. See MPEP § 806.05(j). In the instant case, the inventions as claimed have a materially different design, mode of operation, function, or effect. For example, the methods of Group II require impedance measurements at less than 300, 100, 40, or 10 milliseconds apart, which the methods of Groups III-VI do not require. The methods of Group III require adding a compound suspected of modulation of the beating cycle to a first of two wells to provide a test well, which the methods of Groups II and IV-VI do not require. The methods of Group IV require determining a plurality of beating cycle peaks in a time unit by determining a rise in impedance and a decay in impedance and extrapolating a peak from each rise and decay, which are not required by the methods of Groups II-III and V-VI. The methods of Group V require adding mutated embryonic stem cells to a first well of at least two wells to form a test well, which the methods of Groups II-IV and VI do not require. The methods of Group VI require monitoring impedance of one or more wells over a first time period, which is characterized as a longer time period comprising seconds, minutes, or hours, which the methods of Groups II-V do not require. Furthermore, the inventions as claimed do not encompass overlapping subject matter and there is nothing of record to show them to be obvious variants.

Restriction for examination purposes as indicated is proper because all these inventions listed in this action are independent or distinct for the reasons given above and there would be a serious search and examination burden if restriction were not required because one or more of the following reasons apply:

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- (a) the inventions have acquired a separate status in the art in view of their different classification;
- (b) the inventions have acquired a separate status in the art due to their recognized divergent subject matter;
- (c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries);
- (d) the prior art applicable to one invention would not likely be applicable to another invention;
- (e) the inventions are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention.

If claims are added after the election, applicant must indicate which of these claims are readable upon the elected invention.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Potential Rejoinder

The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be

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amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Future Communication

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHANNON JANSSEN whose telephone number is (571)270-1303. The examiner can normally be reached on Monday-Friday 10:00AM-7:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel can be reached on (571) 272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Shannon L Janssen
SLJ

/CHRISTOPHER M GROSS/
Primary Examiner, Art Unit 1636

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	)	
	)	
Wang et al	)	Examiner: Shannon Janssen
	)	
Application Number: 12/435,569	)	
	)	Group Art Unit: 1636
Filed: May 5, 2009	)	
	)	
For: LABEL-FREE MONITORING OF	)	
EXCITATION-CONTRACTION	)	
COUPLING AND EXCITABLE CELLS	)	
USING IMPEDANCE BASED SYSTEMS	)	
WITH MILLISECOND TIME	)	
<u>RESOLUTION</u>	)	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Response to Restriction Requirement

Sir:

Applicant is responding to the Office Action mailed September 27, 2011. A shortened statutory period for reply is set to expire 1 month from the mailing date of the Office Action. Applicants are responding within five months of the mailing date. Thus, a request for a four month extension of time is provided herewith under 37 CFR 1.136(a).

Amendments to the claims begin on page 2 of this paper.

Remarks / Arguments begin on page 10 of this paper.

Amendments to the Claims

Changes to the claims are provided in the below listing of the claims for the convenience of the examiner.

Listing of Claims

1. (Original) A system for monitoring impedance of excitable cells in vitro, comprising:
 - a) a device for monitoring cell-substrate impedance, comprising
 - i) a nonconductive substrate;
 - ii) one or more electrode arrays fabricated on said substrate;
 - iii) one or more wells on said substrate, wherein each of said one or more arrays is associated with one of said one or more wells; wherein each electrode array is individually addressable, further wherein said substrate has a surface suitable for cell attachment, wherein said cell attachment on said substrate can result in a detectable change in impedance between electrodes within each electrode array;
 - b) an impedance analyzer capable of impedance measurement at millisecond time resolution;
 - c) electronic circuitry that can engage said device and selectively connect said two or more electrode arrays of said device to said impedance analyzer; and
 - d) a software program that controls said electronic circuitry and records and analyzes data obtained from said impedance analyzer.
2. (Original) The system according to claim 1, wherein each of said electrode arrays comprises two electrode structures having substantially a same surface area.

3. (Original) The system according to claim 2, wherein said electrode structures are each constructed from a material selected from the group consisting of metal, gold, platinum, titanium and chromium.

4. (Original) The system according to claim 2, wherein said electrode structures have a width between 20 microns and 500 microns.

5. (Original) The system according to claim 2, wherein a gap between electrode structures within each electrode array is between 5 microns and 100 microns.

6. (Original) The system according to claim 1, wherein each electrode array is organized in a configuration selected from the group consisting of interdigitated, circle-on-line, diamond-on-line, concentric, sinusoidal, and castellated.

7. (Canceled)

8. (Canceled)

9. (Canceled)

10. (Canceled)

11. (Original) The system according to claim 1, wherein said impedance measurement at millisecond time resolution comprises at least two consecutive impedance measurements are less than 100 milliseconds apart.

12. (Original) The system according to claim 11, wherein said at least two consecutive impedance measurements are less than 40 milliseconds apart.

13. (Original) The system according to claim 12, wherein said at least two consecutive impedance measurements are less than 20 milliseconds apart.

14. (Original) The system according to claim 13, wherein said at least two consecutive impedance measurements are less than 10 milliseconds apart.

15. (Canceled)

16. (Original) A method for assessing and quantifying excitable cells in vitro, comprising

- a) providing the system according to Claim 1;
- b) adding excitable cells to said one or more wells;
- c) monitoring impedance of said one or more wells using millisecond time resolution; and
- d) resolving individual cycles of said excitable cells.

17. (Original) The method according to claim 16, wherein said excitable cells are cells undergo excitation-contraction coupling.

18. (Original) The method according to claim 17, wherein said excitable cells are cardiomyocytes.

19. (Original) The method according to claim 16, wherein the step of monitoring impedance comprises performing impedance measurements at millisecond time resolution simultaneously across all wells.

20. (Original) The method according to claim 19, wherein said impedance measurements at millisecond time resolution comprises at least two consecutive impedance measurements at less than 300 milliseconds apart.

21. (Original) The method according to claim 20, wherein said at least two consecutive impedance measurements are less than 100 milliseconds apart.

22. (Original) The method according to claim 21, wherein said at least two consecutive impedance measurements are less than 40 milliseconds apart

23. (Original) The method according to claim 22, wherein said at least two consecutive impedance measurements are less than 10 milliseconds apart.

24. (Currently amended) A method of determining whether a compound modulates a beating cycle of an excitable cell, comprising:

- a) providing the system according to claim 1, wherein said system comprises at least two wells;
- b) adding excitable cells to said at least two wells;
- c) monitoring impedance of said at least two wells using millisecond time resolution;
- d) adding a compound suspected of modulation of the beating cycle to a first of said at least two wells to provide a test well, wherein a second well lacking a compound that modulates the beating cycle is provided as a control well;
- e) resolving the beating cycles of both test well and control well; and
- d) comparing said beating cycles between said test well and control well, wherein a difference in beating cycles indicates said compound modulates the beating cycle of the excitable cell.

25. The method according to claim 24, wherein the excitable cells are cardiomyocytes or embryonic stem cell derived cardiomyocytes.

26. (Original) The method according to claim 24, wherein said beating cycles are compared to identify changes in beating amplitude.

27. (Original) The method according to claim 24, wherein said beating cycles are compared to identify changes in beating frequency.

28. (Original) The method according to claim 27, wherein said changes in beating frequency are regular changes or irregular changes.

29. (Original) The method according to claim 24, further comprising determining a cell index for each of said test well and control well, wherein the step of comparing said beating cycles comprises comparing said cell indexes between test well and control well.

30. (Original) A method of characterizing rhythmic beating of a cardiomyocyte comprising:

- a) providing the system according to claim 1;
- b) adding excitable cells to said one or more wells;
- c) monitoring impedance of said one or more wells in millisecond time resolution; and
- d) determining a plurality of beating cycle peaks in a time unit; and
- e) comparing amplitude or frequency of said peaks over said time unit.

31. (Original) The method according to claim 30, wherein the step of determining a plurality of beating cycle peaks comprises determining a rise in impedance and a decay in impedance and extrapolating a peak from each rise and decay.

32. (Original) The method according to claim 30, further comprising determining a cell index for each of said one or more wells, wherein the step of determining a plurality of beating cycle peaks comprises for each cycle determining a rise in cell index, a decay in cell index and extrapolating each peak from each rise and decay.

33. (Original) The method according to claim 30, wherein beating cycle peaks are determined by identifying impedance data points at which the first order derivative to time is zero or close to zero.

34. (Original) The method according to claim 30, further comprising monitoring impedance of said one or more wells over seconds, minutes or hours, optionally wherein said monitoring of impedance in millisecond time resolution is performed within said monitoring over seconds, minutes or hours.

35. (Original) A method of assessing genetic manipulation of an embryonic stem cell, comprising:

- a) providing the system according to claim 1, wherein said device comprises at least two wells;
- b) mutating embryonic stem cells to comprise a genetic mutation;
- c) adding said mutated embryonic stem cells to a first well of said at least two wells to form a test well and control embryonic stem cells to a second of said at least two wells to form a control well;
- c) monitoring impedance of said at least two wells in millisecond time resolution; and
- e) resolving the beating cycles of both test well and control well, if any; and
- d) comparing said beating cycles between said test well and control well, wherein a difference in beating cycles indicates said genetic mutation modulates embryonic stem cell differentiation.

36. (Original) The method according to claim 35, wherein said embryonic stem cell differentiation is differentiation into a cardiomyocyte.

37. (Original) The method according to claim 35, wherein said genetic mutation is selected from the group consisting of a genetic knock out, a knock down and an inserted transgene.

38. (Original) A method for assessing and quantifying excitable cells in vitro, comprising

- a) providing the system according to claim 1;
- b) adding excitable cells to said one or more wells;
- c) monitoring impedance of said one or more wells over a first time period, which is characterized as a longer time period comprising seconds, minutes or hours;
- d) monitoring impedance of said one or more wells over a second time period in millisecond time resolution;
- e) determining a characteristic selected from the group consisting of cell attachment, cell growth and cell viability from monitoring over said first time period; and
- f) resolving individual cycles of said excitable cells from monitoring over said second time period.

39. (Original) The method according to claim 38, wherein monitoring impedance over said second time period is performed at regular or irregular time intervals within monitoring impedance over said first time period.

40. (New) The method according to claim 24, wherein the step of monitoring impedance using millisecond time resolution comprises obtaining at least two consecutive impedance measurements at less than 300 milliseconds apart.

41. (New) The method according to claim 40, wherein said at least two consecutive impedance measurements are less than 100 milliseconds apart.

42. (New) The method according to claim 41, wherein said at least two consecutive impedance measurements are less than 40 milliseconds apart

43. (New) The method according to claim 42, wherein said at least two consecutive impedance measurements are less than 10 milliseconds apart.

44. (New) The method according to claim 24, wherein the step of resolving the beating cycles comprises determining a rise in impedance and a decay in impedance, and extrapolating a peak from each rise and decay.

45. (New) The method according to claim 24, wherein the step of resolving cell beating cycles comprises determining beating cycle peaks by identifying impedance data points at which the first order derivative to time is zero or about zero.

Remarks/Arguments

Claims 7-10 and 15 are canceled, claim 24 is amended and claims 40-45 are newly added. Claims 1-6, 11-14 and 16-45 are pending upon entry of this amendment.

Support for amendments

Changes to the claims are supported throughout the application as originally filed. Specific support is provided for each amendment for the convenience of the examiner.

Claim 24 is amended to provide that the second well lacks a compound that modulates the beating cycle is provided as a control well. Support may be found at paragraph [0016], which provides, “[A] second well lacking compound or having a control compound is provided as a control well[.]”

Claim 40 is newly added, depends from claim 24 and adds that the step of monitoring impedance using millisecond time resolution comprises obtaining at least two consecutive impedance measurements at less than 300 milliseconds apart. Support may be found in paragraph [0015], which provides, “In some embodiments, two consecutive impedance measurements for each and every well of the system are performed less than 300 milliseconds apart.”

Claim 41 is newly added, depends from claim 40 and adds that the at least two consecutive impedance measurements are less than 100 milliseconds apart. Support may be found in paragraph [0015], which provides, “In further embodiments, at least two consecutive impedance measurements for each and every well of the system are performed less than 100 milliseconds apart.”

Claim 42 is newly added, depends from claim 41 and adds that the at least two consecutive impedance measurements are less than 40 milliseconds apart. Support may be found in paragraph [0015], which provides, “In further embodiments, at least two

consecutive impedance measurements for each and every well of the system are performed less than 40 milliseconds apart.”

Claim 43 is newly added, depends from claim 42, and adds that the at least two consecutive impedance measurements are less than 10 milliseconds apart. Support may be found in paragraph [0015], which provides, “In further embodiments, at least two consecutive impedance measurements for each and every well of the system are less than 10 milliseconds apart.”

Claim 44 is newly added, depends from claim 24 and adds that the step of resolving the beating cycles comprises determining a rise in impedance and a decay in impedance, and extrapolating a peak from each rise and decay. Support for the amendment may be found at paragraph [0018], which provides, “The step of determining a plurality of beating cycle peaks may include determining a rise in impedance and a decay in impedance and extrapolating a peak from each rise and decay.”

Claim 45 is newly added, depends from claim 24 and adds that the step of resolving cell beating cycles comprises determining beating cycle peaks by identifying impedance data points at which the first order derivative to time is zero or about zero. Support may be found at paragraph [0018]:

Various methods can be used for determining beating cycle peaks. For example, time dependent impedance values or cell index values for a well are analyzed by deriving their first order derivatives and second order derivatives using numerical methods. The beating cycle peaks are those data points where the first order derivatives of impedance values or cell index values are zero or close to zero in its absolute value.

Election of Group III (claims 24-29) with Traverse

The claims have been examined for restriction purposes only. The examiner has identified the following six groups of inventions and requires the election of a single group:

- Group I: Claims 1-15 drawn to a system, classified in class 435, subclass 288.3;
- Group II: Claims 17-23 drawn to a method for assessing and quantifying excitable cells;
- Group III: Claims 24-29, drawn to a method for determining whether a compound modulates a beating cycle;
- Group IV: Claims 30-34, drawn to a method of characterizing rhythmic beating, classified in class 435, subclass 174;
- Group V: Claims 35-37, drawn to a method of assessing genetic manipulation, classified in subclass 506, subclass 7; and
- Group VI: Claims 38-39, drawn to a method comprising determining a characteristic such as cell attachment and cell growth, classified in class 324, subclass 600.

Applicants elect Group III, which includes claims 24-29 and new claims 40-45 for examination. This election is made with traverse. For completeness, the examiner identifies claim 16 as a linking claim and thus indicates upon its allowance, Groups II-VI can be rejoined.

The examiner argues the inventions are independent and distinct and that search and examination of all claims would be a burden on the office.

Applicants respectfully request Group I be added to Group III for examination. Group I is an apparatus and Group III provides a use of the apparatus. The examiner argues that the apparatus of Group I could be used to practice a materially different process, such as for detecting a particular molecule, such as a protein or antibody, in solution.

While the examiner suggests that the apparatus of Group I could be used to detect a molecule, claim 1 specifically provides that the system is for monitoring excitable cells and the device is for monitoring cell-substrate impedance. Cell substrate impedance detects changes in the interface between cell and substrate/electrodes. Thus, the device does not directly detect changes in solution but instead the cell-substrate interface. For completeness, adding a molecule to a cell can ultimately change cell-substrate impedance and thus the device can be used to detect changes in the cell-substrate interface caused by the addition of compounds into the surrounding medium. In fact, this technical approach is conducted in Group III. A compound suspected of modulating a beating cycle of an excitable cell is added to the cell and a change in beating through millisecond time resolution is detected.

Further, whether or not Group I is rejoined it will still be examined since the method of Group III has been elected and central to the method is the use of the system (apparatus) set forth in claim 1. That is, the method of claim 24 requires the system of claim 1 to permit millisecond time resolution of beating cycles. Since the examination of claim 24 requires the examination of claim 1, added search and examination burden of Group I would be minimal. Thus, principles of efficiency would support the rejoining of Group I.

In regards to Group II, Applicants acknowledge that claims 17-23 do not require the addition of a suspected modulator of a beating cycle; however, the invention set forth in Group III emphasizes further improvements for resolving a beating cycle in millisecond

time resolution in new claims 40-43, which are similar to those provided in Group II. Accordingly, the subject matter set forth in Group II will also be examined during examination of Group III. As such, the added search and examination burden of Group II would be minimal. Thus, principles of efficiency would support the rejoining of Group II.

In regards to Group IV, Applicants acknowledge that claims 30-34 do not require the addition of a suspected modulator of a beating cycle; however, when examining how beating cycles are compared in Group III, the examiner will also look to methods of comparison including comparing amplitude or frequency similar to those set forth in claims 26 and 27. As such, the search and examination burden of Group IV would be minimal. Thus, principles of efficiency would support the rejoining of Group IV.

In regards to Group V, Applicants acknowledge that claims 35-37 do not require the addition of a suspected modulator of a beating cycle and that Group III does not require a genetically manipulated cell; however, both use the impedance system of claim 1, both resolve beating cycles and both compare beating cycles. Thus, the Groups share numerous features. As such, the search and examination burden of Group V would be minimal. Thus, principles of efficiency would support the rejoining of Group V.

In regards to Group VI, Applicants acknowledge that claims 38-39 do not require the addition of a suspected modulator of a beating cycle and that Group III does not require determining a characteristic of cell attachment, cell growth or cell viability; however, these characteristics are determined through impedance measurement since they involve changes in the cell-substrate interface. Thus, the claim elements will require similar search and examination. As such, the search and examination burden of Group VI would be minimal. Accordingly, principles of efficiency would support the rejoining of Group VI.

Conclusion

Applicants respectfully submit the claims are in condition for allowance.

Respectfully submitted,

2/27/2012
Date

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Raymond Wagenknecht
Reg. No. 50948



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www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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12/435,569

05/05/2009

Xiaobo Wang

ACE-134U1

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59538 7590 06/15/2012
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EXAMINER

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ART UNIT

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DELIVERY MODE

06/15/2012

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 12/435,569	Applicant(s) WANG ET AL.	
	Examiner SHANNON JANSSEN	Art Unit 1653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2012.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 1-6, 11-14 and 16-45 is/are pending in the application.
- 5a) Of the above claim(s) 1-6, 11-14 and 30-39 is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 16-29 and 40-45 is/are rejected.
- 8) ☒ Claim(s) 16, 17, 24, 44 and 45 is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) ☒ Notice of References Cited (PTO-892) | 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) ☐ Notice of Informal Patent Application |
| 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>4/26/12</u> . | 6) ☐ Other: ____. |

DETAILED ACTION

Claims 1-6, 11-14 and 16-45 are currently pending. Claims 1-6, 11-14 and 30-39 have been withdrawn and claims 16-29 and 40-45 are currently under consideration.

Election/Restrictions

Applicant's election with traverse of Group III, claims 24-29 and newly added claims 40-45 in the reply filed on February 27, 2012 is acknowledged. The traversal is on the ground(s) that the system/apparatus of claim 1 is required for Group III and therefore would not constitute a search burden, that the subject matter of Group II would be examined as part of Group III, and that Groups IV-VI share numerous features and there would not be a search burden. This is found persuasive, in part, and Group II has been rejoined to Group III. This is not found persuasive in regards to Groups I and IV-VI for the reasons of record. In addition, Group IV requires determining a rise in cell index, a decay in cell index, and extrapolating each peak from each rise and decay and monitoring impedance over seconds, minutes, or hours, which is not required by Groups III and V-VI. Further, although applicants assert that the apparatus is used for monitoring excitable cells, this does not exclude other methods of using the apparatus, such as for use as a biosensor for a specific antibody or protein.

Claims 1-6, 11-14 and 30-39 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Inventions, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on February 27, 2012. However, claim 16 links inventions III-VI and upon indication of allowability, the restriction requirement between the linked inventions shall be withdrawn and

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any claims depending from or otherwise requiring all the limitations of the allowable linking claim will be rejoined.

Priority

The present application claims priority based on U.S. Provisional Application Nos. 61/191,684, filed on September 11, 2008 and 61/126,533, filed on May 5, 2008.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on April 26, 2012 is being considered by the examiner.

Claim Objections

Claims 16 and 24 are objected to for containing non-elected subject matter (i.e.: claim 1). Applicant is required to cancel the claim or rewrite the claim in independent form. Applicant may add in structural requirements that the method of claim 1 would impart.

Claim 17 is objected to because of the following informalities: claim 17 recites “wherein said excitable cells are cells undergo” in line 2 which appears to be missing a restrictive clause (e.g.: such as “that,” between “cells” and “undergo”) and appears to be a typographical error. Appropriate correction is required.

Claim 44 is objected to because of the following informalities: “peek” in line 3 appears to be a typographical error. Appropriate correction is required.

Claim 45 recites the limitation "resolving cell beating cycles" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

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Invention as Claimed

One embodiment of the present invention is drawn to a method comprising a) providing the system; b) adding excitable cells to said one or more wells; c) monitoring impedance of said one or more wells using millisecond time resolution; and d) resolving individual cycles of said excitable cells.

Another embodiment of the present invention is drawn to a method of determining whether a compound modulates a beating cycle of an excitable cell, comprising: a) providing the system according to claim 1, wherein said system comprises at least two wells; b) adding excitable cells to said at least two wells; c) monitoring impedance of said at least two wells using millisecond time resolution; d) adding a compound suspected of modulation of the beating cycle to a first of said at least two wells to provide a test well, wherein a second well lacking compound is provided as a control well; e) resolving the beating cycles of both test well and control well; and d) comparing said beating cycles between said test well and control well, wherein a difference in beating cycles indicates said compound modulates the beating cycle of the excitable cell.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 16 recites a method for assessing and quantifying excitable cells in vitro. However, the positive method steps of instant claim 16 do not recite a step of quantifying excitable cells, which results in a nexus issue. This issue renders the claim unclear as to whether there is or is not a step of quantifying the cells. Claims 17-23 fail to clarify this and are similarly rejected.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 16 is rejected under 35 U.S.C. 102(b) as being anticipated by Cantor (U.S. Patent No. 6,852,525, granted February 8, 2005).

Regarding present **claim 16**, Cantor teaches a method comprising a) providing a system comprising microelectrodes on a substrate, such as a glass substrate (i.e.: nonconductive), for monitoring impedance of cells and further comprising a plurality of cloning cylinders bonded to the substrate to define wells for holding the cells (see col 3, lns 29-53, col 4, lns 4-15, col 9, lns 35-37, Figs. 7 and 9, for example) and a signal monitoring and processing means such as a computer (see col 5, lns 60+, col 6, lns 1-12); b) adding excitable cells, such as neuronal cells, to said one or more wells; c) monitoring impedance of said one or more wells using millisecond time resolution (since it monitors the opening and closing of ion channels which occurs in less than a millisecond; see col 2, lns 39+); and d) resolving individual cycles (e.g.: of ion channels opening, closing, and the cell returning to a resting state) of said excitable cells (see entire

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document, particularly col 2, lns 39+, col 3, lns 14-27, col 4, lns 26-46, col 5, lns 1-35, col 8, lns 14-44). Cantor further states:

“For example, voltage-gated Na^+ channels (among other ion channels) help make nerve cells electrically excitable and enable them to conduct action potentials. When the membrane of a cell with many Na^+ channels is partially depolarized by a momentary stimulus, some of the channels promptly open, allowing Na^+ ions to enter the cell. The influx of positive charge depolarizes the membrane further, thereby opening more channels, which admit more Na^+ , causing still further depolarization. This process continues in a self-amplifying fashion until the membrane potential has shifted from its resting value of about -70 mV all the way to the Na^+ equilibrium potential of about +50 mV. At that point, where the net electrochemical driving force for the flow of Na^+ is zero, the cell would come to a new resting state with all its Na^+ channels permanently open, if the open channel conformation were stable. The cell is saved from such a permanent electrical tetanus by the automatic inactivation of the Na^+ channels, which now gradually close and stay closed until the membrane potential has returned to its initial negative resting value. The whole cycle, from initial stimulus to return to the original resting state, takes a few milliseconds or less.” See col 2, lns 46+.

“Examining the membrane potential relative to time, an action potential exhibits various characteristics or parameters, including action potential rate (if cells spontaneously depolarize), action potential amplitude, and action potential shape, among others. Action potential rate refers to the frequency with which a cell produces an action potential (rapid depolarization). Action potential amplitude refers to the height of the peak depolarization that occurs in the course of the action potential. Action potential shape refers to the time course of the depolarization and repolarization.” See col 3, lns 14-24.

“The present invention permits detection and monitoring of membrane, chemical, and electrical characteristics of a cell. As noted at the outset, these characteristics include cell impedance (cell membrane capacitance and conductance), action potential parameters, cell membrane capacitance, cell membrane conductance, neuronal action potential, cellular metabolic products (hormones, neurotransmitters, waste products, etc.), and cell/substrate seal resistance. These electrical characteristics, in turn, correlate well with the metabolic state of the cell. The present invention, thus, provides an apparatus and method for monitoring cells and for monitoring the impact that an analyte has upon the metabolism of a cell. It is to be appreciated that such analytes include pharmaceutical agents, drugs, environmental factors, toxins, chemical agents, biological agents, viruses, and cellular adhesion promoters.” See Col 4, lns 25-45.

Therefore, the teachings of Cantor anticipate the presently claimed invention.

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 16-29 and 40-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Xu et al. (U.S. Patent Application Publication No. 2005/0153425, published July 14, 2005), Banach et al. (Development of electrical activity in cardiac myocyte aggregates derived from mouse embryonic stem cells, Am. J. Physiol. Heart Circ. Physiol., 2003, Vol 284, pp H2114-H2123) as evidenced by Hescheler et al. (Determination of electrical properties of ES cell-

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derived cardiomyocytes using MEAs, 2004, Journal of Electrocardiology, Vol 37, pp 110-116), Cantor (U.S. Patent No. 6,852,525, granted February 8, 2005), and Schechter (U.S. Patent Application Publication No. 2005/0182447, published August 18, 2005).

Regarding present **claims 16 and 24**, Xu et al. teach a method for performing real-time cell-based assays investigating the effects of one or more compound on cells comprising providing a system for monitoring cell-substrate impedance comprising a nonconducting substrate, two or more electrode arrays fabricated on the substrate, where each of the two or more electrode arrays comprises two electrode structures, and at least two connection pads, each of which is located on an edge of the substrate, at least one multiple-well device monitoring cell-substrate impedance, in which at least two of the multiple wells each comprise an electrode array at the bottom of the well which are independently addressable, an impedance analyzer, a device station capable of engaging the one or more multiple-well devices and capable of selecting and electrically connecting electrode arrays within any of the multiple wells in to the impedance analyzer, and a software program to control the device station and perform data acquisition and data analysis on impedance values measured by the impedance analyzer, depositing cells on at least one of the two or more arrays of the device, adding one or more compounds to the one or more wells, providing at least one control well lacking compound, and monitoring cell-substrate impedance at regular or irregular time intervals on one or more arrays of the device to ascertain if the compound modulates the cell (see [0018-0020, 0023, 0024, 0029, 0031, 0032, 0036, 0130, 0131, 0134, 0244, 0246], for example).

Regarding present **claim 29**, Xu et al. provides methods for calculating a Cell Index for quantifying and comparing cell-substrate impedance (see [0021, 0140+], for example).

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Regarding present **claim 45**, Xu et al. teach setting the first order derivatives to zero (see [0209], for example).

While Xu et al. teach a method for performing real-time cell-based assays investigating the effects of one or more compound on cells, Xu et al. do not teach excitable cells which undergo excitation-contraction coupling or cardiomyocytes as recited in instant **claims 16-18, 24 and 25**, resolving individual cycles or beating cycles as recited in instant **claims 16 and 24**, at least 2 consecutive impedance measurements at millisecond (ms) time resolution as recited in instant **claims 19-23 and 40-43**, or identifying changes in beating amplitude or beating frequency as recited in instant **claims 26-29 and 45**.

However, **Banach** et al. teach a microelectrode array for monitoring the beating cycle of cardiomyocytes and further teach monitoring electrical activity from multiple electrodes simultaneously and continuously with ms time resolution and resolving signal delays of less than 10 ms (e.g.: at least two consecutive measurements less than 10 milliseconds apart since it is continuously measured and this could be broadly and reasonably interpreted as consecutive measurements; see entire document, particularly p H2115, cols 1-2, Figs. 1, 3, and 4, for example). Banach et al. teach monitoring the interspike interval to determine the beating frequency and measuring peak amplitude (e.g.: would be regular or irregular changes; see p 2115, col 1, para 2, p H2116, col 1, para 1). Banach et al. teach measuring the effect of different compounds on beating frequency and action potential in the form of FP_{MIN} to FP_{MAX} (e.g.: amplitude; see p H2115, col 2, para 1, p H2118, col 2, para 2, p H2119, p H2120, col 1, para 1, col 2, para 4, Figs. 4, 6, and 7). Banach et al. further state:

“In the present study, we analyzed the developmental changes of spontaneous electrical activity with repeated multielectrode recordings using substrate-integrated

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microelectrode arrays (MEAs). This technique allows not only the long-term culture of the preparation but also the analysis of the spatial electrophysiological differences within the preparation. In the present study, we analyzed different field potential (FP) parameters to characterize the development of the spontaneous electrical activity of multicellular aggregates of ESCs and their electrophysiological properties. Furthermore, the use of an ES cell line deficient in the expression of connexin43 (Cx43^{-/-}), the major cardiac gap junction protein, enabled us to distinguish developmental changes of the active, voltage-dependent membrane properties from changing passive components like the intercellular resistance.” See p H2114, col 2, Para 1.

In addition, Hescheler, which cites to the microelectrode array system taught by Banach et al. (see p 113, Fig. 3) and, regarding the arrays, state:

“It may provide a new experimental model to study the impact of cell-cell-interactions and growth factors as well as of extracellular matrix proteins. In addition, the cellular system described, may be useful as an in vitro assay for pharmacological investigations of chronotropic drugs and as a cellular system for studying cardiotoxic effects during embryogenesis in vitro.” See p 115, cols 1-2, bridging para.

Further, **Cantor** teaches a method comprising a) providing a system comprising microelectrodes on a substrate, such as a glass substrate (i.e.: nonconductive), for monitoring impedance of cells and further comprising a plurality of cloning cylinders bonded to the substrate to define wells for holding the cells (see col 3, lns 29-53, col 4, lns 4-15, col 9, lns 35-37, Figs. 7 and 9, for example) and a signal monitoring and processing means such as a computer (see col 5, lns 60+, col 6, lns 1-12); b) adding excitable cells, such as neuronal cells, to said one or more wells; c) monitoring impedance of said one or more wells using millisecond time resolution (since it monitors the opening and closing of ion channels which occurs in less than a millisecond; see col 2, lns 39+; and d) resolving individual cycles (e.g.: of ion channels opening, closing, and the cell returning to a resting state) of said excitable cells (e.g.: measuring impedance peaks in millisecond time resolution; see entire document, particularly col 2, lns 39+, col 3, lns 14-27, col 4, lns 26-46, col 5, lns 1-35, col 8, lns 14-44). Cantor further states:

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“For example, voltage-gated Na^+ channels (among other ion channels) help make nerve cells electrically excitable and enable them to conduct action potentials. When the membrane of a cell with many Na^+ channels is partially depolarized by a momentary stimulus, some of the channels promptly open, allowing Na^+ ions to enter the cell. The influx of positive charge depolarizes the membrane further, thereby opening more channels, which admit more Na^+ , causing still further depolarization. This process continues in a self-amplifying fashion until the membrane potential has shifted from its resting value of about -70 mV all the way to the Na^+ equilibrium potential of about +50 mV. At that point, where the net electrochemical driving force for the flow of Na^+ is zero, the cell would come to a new resting state with all its Na^+ channels permanently open, if the open channel conformation were stable. The cell is saved from such a permanent electrical tetanus by the automatic inactivation of the Na^+ channels, which now gradually close and stay closed until the membrane potential has returned to its initial negative resting value. The whole cycle, from initial stimulus to return to the original resting state, takes a few milliseconds or less.” See col 2, lns 46+.

“Examining the membrane potential relative to time, an action potential exhibits various characteristics or parameters, including action potential rate (if cells spontaneously depolarize), action potential amplitude, and action potential shape, among others. Action potential rate refers to the frequency with which a cell produces an action potential (rapid depolarization). Action potential amplitude refers to the height of the peak depolarization that occurs in the course of the action potential. Action potential shape refers to the time course of the depolarization and repolarization.” See col 3, lns 14-24.

“The present invention permits detection and monitoring of membrane, chemical, and electrical characteristics of a cell. As noted at the outset, these characteristics include cell impedance (cell membrane capacitance and conductance), action potential parameters, cell membrane capacitance, cell membrane conductance, neuronal action potential, cellular metabolic products (hormones, neurotransmitters, waste products, etc.), and cell/substrate seal resistance. These electrical characteristics, in turn, correlate well with the metabolic state of the cell. The present invention, thus, provides an apparatus and method for monitoring cells and for monitoring the impact that an analyte has upon the metabolism of a cell. It is to be appreciated that such analytes include pharmaceutical agents, drugs, environmental factors, toxins, chemical agents, biological agents, viruses, and cellular adhesion promoters.” See Col 4, lns 25-45.

While Xu et al., Banach et al., and Cantor teach a method for performing real-time cell-based assays investigating the effects of one or more compound on cells and measuring beating frequency and amplitude, Xu et al., Banach et al., and Cantor do not *specifically* teach determining a rise in impedance and a decay in impedance and extrapolating a peak from each

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rise and decay as recited in instant **claim 44** or identifying impedance data points at which the first order derivative to time is zero or about zero as recited in instant **claim 45**.

However, **Schecter** teaches a method of monitoring beating cycle of the heart using impedance measurements and further teach calculating the derivative of impedance to time at 0 and the peak and delays in time to peak incidence and changes in the impedance waveform (e.g. time to onset of positive dZ/dt , time to peak Z , time to peak dZ/dt , which can be broadly and reasonably interpreted as rise in impedance and decay in impedance and determining a peak) and/or reductions in the quantity of the integral of Z or changes in the morphology of $Z(t)dt$ (see entire document, particularly [0048, 0049, 0060, 0077, 0086-0090, 0100-0101, 0118, 0136], Figs. 5, 6, 8-10, 12). Schecter further state:

“Derivation of impedance waveforms using implanted lead systems is well known in the art and has been described in the literature. Data acquisition can be accomplished, for example, by delivering pulses of 200 μA , 30 μs pulse width at a frequency of 128 Hz applied to two electrodes positioned along one vector (electrode pairs) and measuring the resulting voltage between electrodes located along the same vector. These pulses will not depolarize myocardium, cause only limited battery drain and have a frequency with an acceptable signal to noise ratio. The resultant time dependent impedance, $Z(t)$ peaks when there is maximal systolic ventricular wall thickness and minimal intracardiac blood volume.” See [0048].

“The time dependent impedance signals or waveforms derived in this fashion relate to intrinsic myocardial properties. If signals are acquired between specific electrode pairs, the regional myocardial properties can be derived. The integrity of these waveforms may be subject to significant noise (poor signal to noise ratio) and inferior signal quality may result. This is especially true if data sampling occurs in a vector where there is impairment in myocardial contractile properties. Derivation of specific characteristics of these waveforms may suffice, even though overall signal quality is poor. Measurement of peak impedance and first and second order derivatives of impedance waveforms will relate to myocardial contractility. Assessment of the time required for a waveform to reach peak impedance will relate to myocardial synchrony if comparisons can be made to waveforms derived in alternate regions (e.g. right and left ventricular vectors).” See [0049].

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Therefore it would have been obvious to one of skill in the art at the time of the instant invention to measure the beating cycle of excitable cells such as cardiomyocytes at millisecond time resolution, to record multiple measurements over time in millisecond time resolution, to characterize the beating cycle of the cardiomyocytes and identify changes in beating amplitude and frequency by using a cell index, extrapolating a peak, and/or identifying data points where the first order derivative to time is zero.

One would have been motivated to characterize the beating cycle and to examine various parameters of the beating cycle, such as beating frequency and amplitude, or the beating frequency and amplitude relative to the number of cells (e.g.: cell index), in order to characterize the culture of beating cardiomyocytes *in vitro* as taught by Banach et al. (e.g.: for use as a model; see p H2114, col 2, para 1, for example) and to utilize the culture to characterize cardiotoxic effects of drugs as taught by Hescheler et al. (see above). In light of the fact that measuring the various peaks and rise and decay of a cardiac cycle will detail the condition of the heart, or in this case, the culture representing the heart, it would have been obvious to one of ordinary skill in the art to measure the peaks comprising the rise and decay of the cardiac cycle to gain a better determining of the state of the heart. Further, due to the inherent property of signals and peaks, it is well known that for a signal that has a rise and fall (e.g.: a peak), the first derivative yields a signal that crosses zero at the maximum peak height of the original signal. One would have been motivated to utilize impedance measurements because Xu et al. teach that the impedance system can be used for real-time cell-based assays in high throughput, e.g., rather than just an end-point assay which limits the time resolution and number of time points for large library screening (see [0014, 0016, 0024, 0025, 0031, 0032], for example) and Cantor teaches the need for electrodes

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which can monitor cellular changes including ion channel conductance (e.g.: which are responsible for the action potentials that cause cell beating; see above and col 2, lns 31-40).

One would have had a reasonable expectation for success because Banach et al. teach successfully establishing cultures of beating cardiomyocytes and measuring electrical properties of the cultures to establish beating cycle parameters and beating frequency, including changes in the parameters after administration of drugs, Cantor teaches that electrode arrays can be used to measure cell impedance, secretion of cellular products, monitoring of ion channels and action potentials, and monitoring of compounds which affect those parameters in millisecond time resolution (see above and cols 1-2), Xu et al. teach successfully using impedance to characterize cellular properties (see [0428], for example), and Schechter teach that it is routine and known to derive impedance waveforms (see *supra*).

Therefore the teachings of Xu et al., Banach et al. as evidenced by Hescheler et al., Cantor, and Schechter render the present invention *prima facie* obvious.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference

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claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 16-19, 24-29, and 44 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-15 of copending Application No. 13/109809. Although the conflicting claims are not identical, they are not patentably distinct from each other because both are directed to methods of monitoring a beating cycle of cardiomyocytes comprising monitoring impedance changes in multiple wells in millisecond time resolution, adding a test compound to the wells, and monitoring changes in beating parameters for the test compound compared to a control, wherein the beating parameters are cell index, beating rate, beating amplitude, rising time, falling time, beating period, rising slope, and falling slope.

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This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 16-19 and 24-29 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 12-41 of copending Application No. 12/774709. Although the conflicting claims are not identical, they are not patentably distinct from each other because both are directed to methods of monitoring a beating cycle of cardiomyocytes comprising monitoring impedance changes in multiple wells in millisecond time resolution, adding a test compound to the wells, and monitoring changes in beating cycle for the test compound compared to a control and calculating a cell index.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Future Communication

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHANNON JANSSEN whose telephone number is (571)270-1303. The examiner can normally be reached on Generally M-F 10:00AM-7:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Landau can be reached on (571) 272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Shannon L Janssen
SLJ

/Amber D. Steele/

Primary Examiner, Art Unit 1654

Notice of References Cited	Application/Control No. 12/435,569		Applicant(s)/Patent Under Reexamination WANG ET AL.	
	Examiner SHANNON JANSSEN		Art Unit 1653	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-2005/0153425	07-2005	Xu et al.	435/287.1
*	B	US-6,852,525	02-2005	Cantor, Hal C.	435/288.3
*	C	US-2005/0182447	08-2005	Schechter, Stuart O.	607/002
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	Banach et al. (Development of electrical activity in cardiac myocyte aggregates derived from mouse embryonic stem cells, Am. J. Physiol. Heart Circ. Physiol., 2003, Vol 284, pp H2114-H2123)
	V	Hescheler et al. (Determination of electrical properties of ES cell-derived cardiomyocytes using MEAs, 2004, Journal of Electrocardiology, Vol 37, pp 110-116)
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	)	
	)	
WANG et al.	)	
	)	Examiner: Shannon Janssen
Application Number: 12/435,569	)	Group Art Unit: 1636
	)	
Filed: May 5, 2009	)	
	)	
For: LABEL-FREE MONITORING OF	)	
EXCITATION-CONTRACTION	)	
COUPLING AND EXCITABLE	)	
CELLS USING IMPEDANCE	)	
BASED SYSTEMS WITH	)	
MILLISECOND TIME	)	
RESOLUTION	)	
Commissioner for Patents		
P. O. Box 1450		
Alexandria, VA 22313-1450		

**Response to Office Action 2
(Non-Final Action)**

Sir:

Applicants are responding to the Office Action mailed June 15, 2012 which provides a three month period for reply. This response is filed within six months and is therefore accompanied with a request for a three month extension of time.

Amendments to the Claims begin on page 2 of this paper.

Remarks / Arguments begin on page 12 of this paper.

Amendments to the Claims

Changes to the claims are provided in the below listing of claims for the convenience of the examiner.

Listing of Claims

1-15. (Cancelled)

16. (Currently amended) A method for assessing and quantifying excitable cells in vitro, comprising

a) ~~providing the system according to Claim 1; a system for~~
monitoring impedance of excitable cells in vitro, comprising:

i) a device for monitoring cell-substrate impedance,
comprising:

a) a nonconductive substrate,

b) one or more electrode arrays fabricated on said
substrate,

c) one or more wells on said substrate, wherein each of
said one or more arrays is associated with one of said one or more
wells, wherein each electrode array is individually addressable,
further wherein said substrate has a surface suitable for cell
attachment, wherein said cell attachment on said substrate can
result in a detectable change in impedance between electrodes
within each electrode array,

ii) an impedance analyzer capable of impedance measurement
at millisecond time resolution,

iii) electronic circuitry that can engage said device and selectively connect said two or more electrode arrays of said device to said impedance analyzer, and

iv) a software program that controls said electronic circuitry and records and analyzes data obtained from said impedance analyzer;

b) adding excitable cells to said one or more wells;

c) monitoring cell-substrate impedance of said one or more wells using millisecond time resolution to detect changes in cell morphology or cell attachment to said substrate; and

d) resolving individual cycles of said excitable cells.

17. (Currently amended) The method according to claim 16, wherein said excitable cells are cells that undergo excitation-contraction coupling.

18. (Original) The method according to claim 17, wherein said excitable cells are cardiomyocytes.

19. (Original) The method according to claim 16, wherein the step of monitoring impedance comprises performing impedance measurements at millisecond time resolution simultaneously across all wells.

20. (Original) The method according to claim 19, wherein said impedance measurements at millisecond time resolution comprises at least two consecutive impedance measurements at less than 300 milliseconds apart.

21. (Original) The method according to claim 20, wherein said at least two consecutive impedance measurements are less than 100 milliseconds apart.

22. (Original) The method according to claim 21, wherein said at least two consecutive impedance measurements are less than 40 milliseconds apart.

23. (Original) The method according to claim 22, wherein said at least two consecutive impedance measurements are less than 10 milliseconds apart.

24. (Currently amended) A method of determining whether a compound modulates a beating cycle of an excitable cell, comprising:

a) ~~providing the system according to claim 1, wherein said system comprises at least two wells; a system for monitoring impedance of excitable cells in vitro, comprising:~~

i) ~~a device for monitoring cell-substrate impedance, comprising:~~

a) ~~a nonconductive substrate,~~

b) ~~one or more electrode arrays fabricated on said substrate,~~

c) ~~at least two wells on said substrate, wherein each of said one or more arrays is associated with each of said at least two wells, wherein each electrode array is individually addressable, further wherein said substrate has a surface suitable for cell attachment, wherein said cell attachment on said substrate can result in a detectable change in impedance between electrodes within each electrode array,~~

ii) ~~an impedance analyzer capable of impedance measurement at millisecond time resolution,~~

iii) ~~electronic circuitry that can engage said device and selectively connect said two or more electrode arrays of said device to said impedance analyzer, and~~

(iv) ~~a software program that controls said electronic circuitry and records and analyzes data obtained from said impedance analyzer;~~

- b) adding excitable cells to said at least two wells;
- c) monitoring cell-substrate impedance of said at least two wells using millisecond time resolution to detect changes in cell morphology or cell attachment to said substrate;
- d) adding a compound suspected of modulation of the beating cycle to a first of said at least two wells to provide a test well, wherein a second well lacking a compound that modulates the beating cycle is provided as a control well;
- e) resolving the beating cycles of both test well and control well; and
- d) comparing said beating cycles between said test well and control well, wherein a difference in beating cycles indicates said compound modulates the beating cycle of the excitable cell.

25. (Original) The method according to claim 24, wherein the excitable cells are cardiomyocytes or embryonic stem cell derived cardiomyocytes.

26. (Original) The method according to claim 24, wherein said beating cycles are compared to identify changes in beating amplitude.

27. (Original) The method according to claim 24, wherein said beating cycles are compared to identify changes in beating frequency.

28. (Original) The method according to claim 27, wherein said changes in beating frequency are regular changes or irregular changes.

29. (Original) The method according to claim 24, further comprising determining a cell index for each of said test well and control well, wherein the step of comparing said beating cycles comprises comparing said cell indexes between test well and control well.

30. (Withdrawn-Currently amended) A method of characterizing rhythmic beating of a cardiomyocyte comprising:

a) ~~providing the system according to claim 1;~~ a system for monitoring impedance of excitable cells in vitro, comprising:

i) a device for monitoring cell-substrate impedance, comprising:

a) a nonconductive substrate,

b) one or more electrode arrays fabricated on said substrate,

c) one or more wells on said substrate, wherein each of said one or more arrays is associated with each of said one or more wells, wherein each electrode array is individually addressable, further wherein said substrate has a surface suitable for cell attachment, wherein said cell attachment on said substrate can result in a detectable change in impedance between electrodes within each electrode array,

ii) an impedance analyzer capable of impedance measurement at millisecond time resolution,

iii) electronic circuitry that can engage said device and selectively connect said two or more electrode arrays of said device to said impedance analyzer, and

(iv) a software program that controls said electronic circuitry and records and analyzes data obtained from said impedance analyzer;

- b) adding excitable cells to said one or more wells;
- c) monitoring cell-substrate impedance of said one or more wells in millisecond time resolution to detect changes in cell morphology or cell attachment to said substrate; and
- d) determining a plurality of beating cycle peaks in a time unit; and
- e) comparing amplitude or frequency of said peaks over said time unit.

31. (Withdrawn) The method according to claim 30, wherein the step of determining a plurality of beating cycle peaks comprises determining a rise in impedance and a decay in impedance and extrapolating a peak from each rise and decay.

32. (Withdrawn) The method according to claim 30, further comprising determining a cell index for each of said one or more wells, wherein the step of determining a plurality of beating cycle peaks comprises for each cycle determining a rise in cell index, a decay in cell index and extrapolating each peak from each rise and decay.

33. (Withdrawn) The method according to claim 30, wherein beating cycle peaks are determined by identifying impedance data points at which the first order derivative to time is zero or close to zero.

34. (Withdrawn) The method according to claim 30, further comprising monitoring impedance of said one or more wells over seconds, minutes or hours, optionally wherein said monitoring of impedance in millisecond time resolution is performed within said monitoring over seconds, minutes or hours.

35. (Withdrawn-Currently amended) A method of assessing genetic manipulation of an embryonic stem cell, comprising:

a) ~~providing the system according to claim 1, wherein said device comprises at least two wells; a system for monitoring impedance of excitable cells in vitro, comprising:~~

i) a device for monitoring cell-substrate impedance, comprising:

a) a nonconductive substrate,

b) one or more electrode arrays fabricated on said substrate,

c) at least two wells on said substrate, wherein each of said one or more arrays is associated with each of said at least two wells, wherein each electrode array is individually addressable, further wherein said substrate has a surface suitable for cell attachment, wherein said cell attachment on said substrate can result in a detectable change in impedance between electrodes within each electrode array,

ii) an impedance analyzer capable of impedance measurement at millisecond time resolution,

iii) electronic circuitry that can engage said device and selectively connect said two or more electrode arrays of said device to said impedance analyzer, and

(iv) a software program that controls said electronic circuitry and records and analyzes data obtained from said impedance analyzer;

b) mutating embryonic stem cells to comprise a genetic mutation;

c) adding said mutated embryonic stem cells to a first well of said at least two wells to form a test well and control embryonic stem cells to a second of said at least two wells to form a control well;

c) monitoring cell-substrate impedance of said at least two wells in millisecond time resolution to detect changes in cell morphology or cell attachment to said substrate; and

e) resolving the beating cycles of both test well and control well, if any; and

d) comparing said beating cycles between said test well and control well, wherein a difference in beating cycles indicates said genetic mutation modulates embryonic stem cell differentiation.

36. (Withdrawn) The method according to claim 35, wherein said embryonic stem cell differentiation is differentiation into a cardiomyocyte.

37. (Withdrawn) The method according to claim 35, wherein said genetic mutation is selected from the group consisting of a genetic knock out, a knock down and an inserted transgene.

38. (Withdrawn-Currently amended) A method for assessing and quantifying excitable cells in vitro, comprising

a) ~~providing the system according to claim 1;~~ a system for monitoring impedance of excitable cells in vitro, comprising:

i) a device for monitoring cell-substrate impedance, comprising:

a) a nonconductive substrate,

b) one or more electrode arrays fabricated on said substrate,

c) one or more wells on said substrate, wherein each of said one or more arrays is associated with one of said one or more

wells, wherein each electrode array is individually addressable,
further wherein said substrate has a surface suitable for cell
attachment, wherein said cell attachment on said substrate can
result in a detectable change in impedance between electrodes
within each electrode array,

ii) an impedance analyzer capable of impedance measurement
at millisecond time resolution,

iii) electronic circuitry that can engage said device and
selectively connect said two or more electrode arrays of said device to said
impedance analyzer, and

(iv) a software program that controls said electronic circuitry
and records and analyzes data obtained from said impedance analyzer;

b) adding excitable cells to said one or more wells;

c) monitoring cell-substrate impedance of said one or more wells
over a first time period, which is characterized as a longer time period comprising
seconds, minutes or hours;

d) monitoring cell-substrate impedance of said one or more wells
over a second time period in millisecond time resolution to detect changes in cell
morphology or attachment;

e) determining a characteristic selected from the group consisting of
cell attachment, cell growth and cell viability from monitoring over said first time
period; and

f) resolving individual cycles of said excitable cells from monitoring
over said second time period.

39. (Withdrawn) The method according to claim 38, wherein monitoring impedance over said second time period is performed at regular or irregular time intervals within monitoring impedance over said first time period.

40. (Previously presented) The method according to claim 24, wherein the step of monitoring impedance using millisecond time resolution comprises obtaining at least two consecutive impedance measurements at less than 300 milliseconds apart.

41. (Previously presented) The method according to claim 40, wherein said at least two consecutive impedance measurements are less than 100 milliseconds apart.

42. (Previously presented) The method according to claim 41, wherein said at least two consecutive impedance measurements are less than 40 milliseconds apart.

43. (Previously presented) The method according to claim 42, wherein said at least two consecutive impedance measurements are less than 10 milliseconds apart.

44. (Previously presented) The method according to claim 24, wherein the step of resolving the beating cycles comprises determining a rise in impedance and a decay in impedance, and extrapolating a peak from each rise and decay.

45. (Currently amended) The method according to claim 24, wherein the step of resolving the cell beating cycles comprises determining beating cycle peaks by identifying impedance data points at which the first order derivative to time is zero or about zero.

Remarks / Arguments

Claims 16, 17, 24, 30, 35, 38, 44 and 45 are amended and claims 1-6 and 11-14 are canceled. Claims 16-45 remain pending with claims 30-39 remaining withdrawn.

I. Support for Amendments

Claims 16, 24, 30, 35 and 38 are amended to include the limitations of claim 1 and thus are rewritten in independent form. These claims are also amended to provide the step of monitoring cell-substrate impedance to detect changes in cell morphology or cell attachment to the substrate. Support for the amendment may be found in claim 1, which originally presented a system for monitoring impedance of excitable cells in vitro including a device for monitoring cell-substrate impedance. Further support can be found in paragraph [00173], "Such regular or periodic changes in cell morphology and cell adhesion/attachment are then reflected in the changes in cell-electrode or cell-substrate impedances." Still further support may be found in paragraph [00137]:

Because the impedance-based system can sensitively and precisely detect transient changes in morphology and adhesive capacity of the cells, it can be used to monitor cardiac function in vitro. Further, the development of millisecond time resolution permits impedance monitoring of the cardiomyocyte beating cycle as well as fluctuations, even minor alterations, in response to external stimuli.

Claim 17 is amended to correct a grammatical error.

Claim 44 is amended to correct a typographical error.

Claim 45 is amended to correct antecedent basis.

II. Amendment to Withdrawn claims

Claims 30, 35 and 38 are amended consistent with the amendment to claim 16 and thus upon allowance of claim 16, Applicants respectfully request the rejoining of claims 30, 35 and 38.

III. Response to Claim Objections

Claims 16 and 24 are objected to for containing nonelected subject matter. Specifically, claims 16 and 24 depend from claim 1, which was subject to a restriction requirement. Claims 16 and 24 are rewritten in independent form including the limitations of claim 1. For completeness, claim 1 is cancelled herein.

Claim 17 is objected to as having a grammatical error in the use of the term “undergo”. The grammatical error is corrected to “that undergo.”

Claim 44 is objected to as having a typographical error, namely “peek”. The typographical error in “peak” is corrected.

Claim 45 is objected to as lacking insufficient antecedent basis for “resolving cell beating cycles.” Claim 45 is amended to recite, “resolving the beating cycles.”

In view of the above remarks, Applicants respectfully request the objections be withdrawn.

IV. Response to Claim Rejections Under 35 U.S.C. §112

Claim 16 is rejected under 35 U.S.C. §112, second paragraph as being indefinite. Specifically, the examiner is confused as what elements support the term “quantifying” in the preamble. To avoid confusion the preamble is amended to delete the term “quantifying.”

V.

**Response to Claim Rejections Under 35 U.S.C. 102
(Anticipation)**

Claim 16 is rejected under 35 U.S.C. §102(b) as being anticipated by US 6,852,525 issued to Cantor. Specifically, Cantor is cited as teaching a method including providing a glass substrate with a plurality of cloning cylinders with microelectrodes and a computer for signal monitoring and processing; adding neuronal cells to the one or more wells, monitoring the opening and closing of ion channels (which occurs in less than a millisecond) and resolving the opening and closing cycle of the neurons.

Anticipation requires a single prior art reference disclose each and every element of the claim under consideration.” *W.L. Gore & Assocs. V. Garlock, Inc.*, 220 USPQ 303, 313 (Fed. Cir.1983). However, it is not enough that the reference discloses all of the claimed elements in isolation. Rather, as stated by the Federal Circuit, the prior art reference must disclose each and every element of the claimed invention “arranged as in the claim.” *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir.1984). Further, the prior art must be such that a person of ordinary skill in the art would consider there to be no difference between the claimed invention and the referenced disclosure. *In re Gurley*, 31 USPQ2d 1130, 1132 (Fed Cir. 1994). Applicants respectfully request reconsideration of the rejection in view of the following remarks.

Claim 16 is amended to clarify that the method includes monitoring cell-substrate impedance of the one or more wells using millisecond time resolution to detect changes in cell morphology or cell attachment to the substrate. Cantor does not teach this element nor this technical approach.

Cantor provides a mammalian cell culture chamber having a cover for allowing for transfer of gasses and a sensor array. Col. 3, ll.29-33. Cantor’s system provides an approach for screening and assaying broad classes of materials for their impact on cellular metabolism. Col. 5, ll. 1-3. In regards to the sensor array, Cantor utilizes a small microelectrode/ large reference electrode approach where measurement occurs solely at

the small microelectrode. Col. 5, ll. 4-36. Cantor alleges that the small microelectrodes can be used to monitor the impedance of the individual cell, action potential parameters of the individual cell, the cell membrane capacitance, the cell membrane conductance, and the cell/substrate seal resistance, and cell membrane potential. Col. 5, ll. 13-22. Specifically, Cantor utilizes the cell culture chamber to monitor changes in membrane potential in response to the opening of ion channels. Col. 10, ll.22-37. The opening and closing of voltage-gated Na⁺ channels takes only a few milliseconds. Col. 2, ll. 46-67.

In view of the above, while Cantor proposes a system for measuring changes in cell membrane potential characterized by ion channels opening and closing, the approach does not teach monitoring cell-substrate impedance of one or more wells using millisecond time resolution to detect changes in cell morphology or cell attachment to the substrate. That is, while Cantor measures cell membrane potential, which is an electrical property, the present invention monitors cell-substrate impedance, which involves the interaction between cell and substrate. Accordingly, whether or not Cantor can resolve cycles of opening and closing of ion channels, Cantor does not utilize the cell-substrate impedance approach as claimed and thus does not teach each element “as arranged in the claims.”

As such, Applicants respectfully request the rejection be withdrawn and the claim allowed.

VI.

Response to Claim Rejections Under 35 U.S.C. §§103 (Obviousness)

Claims 16-29 and 40-45 are rejected under 35 U.S.C. §103(a) as being obvious over US 2005/0153425 published by Xu et al. (Xu), Am. J. Physiol. Heart Circ. Physiol. 2003;H2114-23 by Banach et al. (Banach), as evidenced by Journal of Electrocardiology 37:110-16 published by Hescheler et al. (Hescheler), US 6,852,525 issued to Cantor, and US 2005/0182447 published by Schechter.

Specifically, Xu is cited as teaching methods for performing real-time cell-based assays investigating the effects of one or more compounds using an impedance-based system. The examiner indicates that Xu does not teach the measurement of excitable cells

that undergo excitation-contraction coupling or cardiomyocytes, resolving individual cycles or beating cycles at millisecond time resolution or identifying changes in beating amplitude or beating frequency. However, Banach is cited as teaching a microelectrode array for monitoring the beating cycle of cardiomyocytes and monitoring electrical activity from multiple electrodes simultaneously and continuously with millisecond time resolution and resolving signal delays of less than 10 milliseconds. Hescheler is cited as incorporating the microelectrode array of Banach and adding that the system may provide a new experimental model to study the impact of cell-cell interactions, growth factors, extracellular matrix proteins pharmacological investigations or chronic drugs and cardiotoxic effects during embryogenesis in vitro. Cantor is reintroduced as providing a system that monitors neuronal cells, such as through ion channel measurements. Schechter is cited as teaching a method of monitoring the beating cycle of a heart using impedance measurements and calculating the derivative of impedance to time at 0 and the peak and delays in time to peak incidence and changes in the impedance waveform. The examiner concludes that it would have been obvious to one skilled in the art to measure the beating cycle of excitable cells, such as cardiomyocytes at millisecond time resolution, to record multiple measurements over time in millisecond time resolution, to characterize the beating cycle of the cardiomyocytes and identify changes in beating amplitude and frequency by using a cell index, extrapolating a peak, and/or data points where the first order derivative to time is zero.

A proper obviousness rejection requires consideration of the factual inquiries provided in *Graham v. John Deere Co.*, 38 U.S. 1, 148 USPQ 459 (1966), including: 1) determining the scope and contents of the prior art; 2) ascertaining the differences between the prior art and the claims at issue; 3) resolving the level of ordinary skill in the pertinent art; and 4) considering the objective evidence present in the application indicating obviousness or nonobviousness. Although *Graham v. John Deere* requires that certain factual inquiries be conducted to support a determination of the issue of obviousness, the actual determination of the issue requires an elevation in light of the findings in those inquiries as to the obviousness *of the claimed invention as a whole*, not merely the differences between the claimed invention and the prior art. *Lear Siegeler*,

Inc. v. Aeroquip Corp., 221 USPQ 1025, 1033 (Fed. Cir. 1984). Applicants respectfully request reconsideration of the rejections in view of the following remarks

Claim 16 provides a method, which includes providing a device for monitoring cell-substrate impedance, monitoring cell-substrate impedance of the wells using millisecond time resolution to detect changes in cell morphology or cell attachment to the substrate; and resolving individual cycles of the excitable cells. Claim 24 provides a method, which includes monitoring cell-substrate impedance of at least two wells using millisecond time resolution to detect changes in cell morphology or cell attachment to the substrate; resolving the beating cycles of both test well and control well; and comparing the beating cycles between the test well and control well. These methods reveal the development of an approach of resolving beating cycles of excitable cells through the use of millisecond time resolution of cell-substrate impedance monitoring.

It is acknowledged that Xu provides an impedance-based system for monitoring cell-substrate impedance; however, as indicated by the examiner the methods in Xu do not achieve millisecond time resolution of impedance-based measurement nor teach or suggest the use of such an approach to resolve the beating of cycle of excitable cells. That is, while Xu does monitor changes that occur over longer periods of time, such as cytotoxicity, Xu does not teach or suggest to one skilled in the art that further advances in impedance-based monitoring to achieve millisecond time resolution could be achieved or such an achievement would be useful in a method to resolve the individual cycle or beating cycle of excitable cells. The addition of Banach, Hescheler, Cantor and Schecter does not correct the deficiency of this absence.

Banach analyzed the developmental changes of spontaneous electrical activity of multicellular aggregates of embryonic stem cells (ESCs) by measuring field potential parameters using substrate integrated microelectrode arrays (MEAs). Pg. H2114, right col., Para 1. That is, Banach analyzed changes in electrical activity of the ESC aggregates by measuring the membrane potential of the cells. Thus, while Banach is cited as resolving signal delays of less than 10 milliseconds, the technology is directed towards measurement of membrane potential, which provides a different technical approach compared to that of claims 16 and 24. That is, Banach does not teach the development of cell-substrate impedance measurements at millisecond time resolution.

Further, Banach does not teach or suggest to one skilled in the art that further advances in impedance-based monitoring to achieve millisecond time resolution would be useful in a method to resolve the individual cycle or the beating cycle of excitable cells. As such, Banach would not apply to the invention as set forth in the claims and would not contribute to its obviousness.

Hescheler provides an overview of the use of extracellular recording of embryonic stem cell-derived cardiomyocytes using microelectrode arrays (MEAs). Abstract. As with Banach, Hescheler confirms at page 112, right col. that the measurement used in the extracellular recording approach involves measuring the membrane potential:

Although the signal recording with an extracellular electrode reflects local changes of the membrane potential, currents generated in the electrically connected neighboring tissue influence it.

Since the object of Hescheler is to provide an overview of a technical approach that records changes in cell membrane potential, the approach would not apply to a method that involves the resolution of individual cycles or beating cycles of excitable cells through measuring cell-substrate impedance. That is, measuring cell membrane potential provides a different technical approach than measuring cell-substrate impedance. As such, Hescheler would not apply to the invention as set forth in the claims and would not contribute to its obviousness.

Cantor is discussed above. Since Cantor measures cell membrane potential, Cantor does not teach the achievement of cell-substrate impedance measurements at millisecond time resolution nor does Cantor teach or suggest to one skilled in the art that further advances in impedance-based monitoring to achieve millisecond time resolution would be useful in a method to resolve the individual cycle or beating cycle of excitable cells. That is, Cantor uses a different technical approach, which would not apply to the present invention and would not contribute to its obviousness.

Schecter provides a method of optimizing acquisition of impedance signals between electrodes present on implanted lead systems, and automatically determining

which electrodes or electrode combinations acquire impedance waveforms that have the best signal to noise ratio and characterize data most representative of dysynchronous electromechanical events. Abstract. Schechter's technical approach is to utilize impedance waveforms and corresponding impedance data to direct the programming of a cardiac resynchronization therapy (CRT). Para [0046]. That is, the impedance data is from an implanted pacemaker or defibrillator. Abstract. Since Schechter utilizes impedance signals from an patient's organ and not from a cell-substrate impedance device as claimed Schechter would not apply to the invention set forth in claims 16 or 24. That is, Schechter does not teach the technical achievement of cell-substrate impedance measurements at millisecond time resolution nor does Schechter teach or suggest to one skilled in the art that further advances in impedance-based monitoring to achieve millisecond time resolution would be useful in a method to resolve the individual cycle or the beating cycle of excitable cells. Thus, Schechter would not apply to the invention set forth in claims 16 or 24.

Accordingly, Applicants respectfully request the rejections be withdrawn.

VII.

Response to Provisional Double Patenting Rejections

Claims 16-19, 24-29 and 44 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting over claims 1-15 of copending Application No. 13/109,809. Provided herewith Applicants provide a terminal disclaimer

Claims 16-19 and 24-29 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting over claims 12-41 of copending Application No. 12/774,709. Provided herewith Applicants provide a terminal disclaimer.

Accordingly, Applicants respectfully request the rejections be withdrawn.

VIII.
Conclusion

In view of the above remarks, Applicants respectfully submit the claims are in condition for allowance.

Respectfully submitted,

12/13/2012
Date


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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

JANSSEN, SHANNON L

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Art Unit: 1653

DETAILED ACTION

Claims 16-45 are currently pending. Claims 16, 17, 24, 30, 35, 38, and 45 have been amended and claims 1-6 and 11-14 have been cancelled as filed on December 13, 2012. Claims 30-39 have been withdrawn and claims 16-29 and 40-45 are currently under consideration.

Election/Restrictions

Applicants elected Group III, claims 24-29 and newly added claims 40-45 with traverse in the reply filed on February 27, 2012.

Claims 1-6, 11-14 and 30-39 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Inventions, there being no allowable generic or linking claim. However, claim 16 links inventions III-VI and upon indication of allowability, the restriction requirement between the linked inventions shall be withdrawn and any claims depending from or otherwise requiring all the limitations of the allowable linking claim will be rejoined.

Priority

The present application claims priority based on U.S. Provisional Application Nos. 61/191,684, filed on September 11, 2008 and 61/126,533, filed on May 5, 2008.

Withdrawn Objection(s)/Rejection(s)

Any objection or rejection presented in the Office Action mailed June 15, 2012 and not reiterated below is hereby withdrawn.

Maintained Objection

Claim Objections

Claim 44 is objected to because of the following informalities: “peek” in line 3 appears to be a typographical error. Appropriate correction is required.

Response to Arguments

Applicant's arguments filed December 13, 2012 have been fully considered but they are not persuasive for the following reasons. Applicants' arguments are presented in Italics.

Applicants assert that the claim has been amended to correct the typographical error (Response, p 13).

However, the claim has not been amended. Therefore the objection is maintained.

Invention as Claimed

One embodiment of the present invention is drawn to a method comprising a) providing a system for monitoring impedance of excitable cells in vitro comprising: i) a device for monitoring cell-substrate impedance comprising: a) a nonconductive substrate, b) one or more electrode arrays fabricated on said substrate, c) one or more wells on said substrate, wherein each of said one or more arrays is associated with one of said one or more wells, wherein each electrode array is individually addressable, further wherein said substrate has a surface suitable for cell attachment, wherein said cell attachment on said substrate can result in a detectable change in impedance between electrodes within each electrode array, ii) an impedance analyzer capable of impedance measurement at millisecond time resolution, iii) electronic circuitry that can engage said device and selectively connect said two or more electrode arrays of said device

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to said impedance analyzer, and iv) a software program that controls said electronic circuitry and records and analyzes data obtained from said impedance analyzer; b) adding excitable cells to said one or more wells; c) monitoring cell-substrate impedance of said one or more wells using millisecond time resolution to detect changes in cell morphology or cell attachment to said substrate; and d) resolving individual cycles of said excitable cells.

Another embodiment of the present invention is drawn to a method of determining whether a compound modulates a beating cycle of an excitable cell, comprising: a) providing a system for monitoring impedance of excitable cells in vitro comprising: i) a device for monitoring cell-substrate impedance comprising: a) a nonconductive substrate, b) one or more electrode arrays fabricated on said substrate, c) at least two wells on said substrate, wherein each of said one or more arrays is associated with each of said at least two wells, wherein each electrode array is individually addressable, further wherein said substrate has a surface suitable for cell attachment, wherein said cell attachment on said substrate can result in a detectable change in impedance between electrodes within each electrode array, ii) an impedance analyzer capable of impedance measurement at millisecond time resolution, iii) electronic circuitry that can engage said device and selectively connect said two or more electrode arrays of said device to said impedance analyzer, and iv) a software program that controls said electronic circuitry and records and analyzes data obtained from said impedance analyzer; b) adding excitable cells to said at least two wells; c) monitoring cell-substrate impedance of said at least two wells using millisecond time resolution to detect changes in cell morphology or cell attachment to said substrate; d) adding a compound suspected of modulation of the beating cycle to a first of said at least two wells to provide a test well, wherein a second well lacking compound is provided as a

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control well; e) resolving the beating cycles of both test well and control well; and d) comparing said beating cycles between said test well and control well, wherein a difference in beating cycles indicates said compound modulates the beating cycle of the excitable cell.

Maintained Rejections

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

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invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 16-29 and 40-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Xu et al. (U.S. Patent Application Publication No. 2005/0153425, published July 14, 2005), Banach et al. (Development of electrical activity in cardiac myocyte aggregates derived from mouse embryonic stem cells, Am. J. Physiol. Heart Circ. Physiol., 2003, Vol 284, pp H2114-H2123) as evidenced by Hescheler et al. (Determination of electrical properties of ES cell-derived cardiomyocytes using MEAs, 2004, Journal of Electrocardiology, Vol 37, pp 110-116), Cantor (U.S. Patent No. 6,852,525, granted February 8, 2005), and Schecter (U.S. Patent Application Publication No. 2005/0182447, published August 18, 2005). Modifications to this rejection were necessitated by the claim amendments.

Regarding present **claims 16 and 24**, Xu et al. teach a method for performing real-time cell-based assays investigating the effects of one or more compound on cells comprising providing a system for monitoring cell-substrate impedance comprising a nonconducting substrate, two or more electrode arrays fabricated on the substrate, where each of the two or more electrode arrays comprises two electrode structures, and at least two connection pads, each of which is located on an edge of the substrate, at least one multiple-well device monitoring cell-substrate impedance, in which at least two of the multiple wells each comprise an electrode array at the bottom of the well which are independently addressable, an impedance analyzer, a device station capable of engaging the one or more multiple-well devices and capable of selecting and electrically connecting electrode arrays within any of the multiple wells in to the impedance analyzer, and a software program to control the device station and perform data acquisition and

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data analysis on impedance values measured by the impedance analyzer, depositing cells on at least one of the two or more arrays of the device, adding one or more compounds to the one or more wells, providing at least one control well lacking compound, and monitoring cell-substrate impedance at regular or irregular time intervals on one or more arrays of the device to ascertain if the compound modulates the cell (see [0018-0020, 0023, 0024, 0029, 0031, 0032, 0036, 0130, 0131, 0134, 0244, 0246], for example). Xu et al. further teach wherein the system monitors cell attachment, morphology, degree of adhesion (e.g.: how well the cells area attached to the electrodes), and wherein measurements can be taken in timeframes of less than a second (see [0125, 0250, 0255, 0259], for example).

Regarding present **claim 29**, Xu et al. provides methods for calculating a Cell Index for quantifying and comparing cell-substrate impedance (see [0021, 0140+], for example).

Regarding present **claim 45**, Xu et al. teach setting the first order derivatives to zero (see [0209], for example).

While Xu et al. teach a method for performing real-time cell-based assays investigating the effects of one or more compound on cells, Xu et al. do not teach excitable cells which undergo excitation-contraction coupling or cardiomyocytes as recited in instant **claims 16-18, 24 and 25**, resolving individual cycles or beating cycles as recited in instant **claims 16 and 24**, at least 2 consecutive impedance measurements at millisecond (ms) time resolution as recited in instant **claims 19-23 and 40-43**, or identifying changes in beating amplitude or beating frequency as recited in instant **claims 26-29 and 45**.

However, **Banach** et al. teach a microelectrode array for monitoring the beating cycle of cardiomyocytes and further teach monitoring electrical activity from multiple electrodes

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simultaneously and continuously with ms time resolution and resolving signal delays of less than 10 ms (e.g.: at least two consecutive measurements less than 10 milliseconds apart since it is continuously measured and this could be broadly and reasonably interpreted as consecutive measurements; see entire document, particularly p H2115, cols 1-2, Figs. 1, 3, and 4, for example). Banach et al. teach monitoring the interspike interval to determine the beating frequency and measuring peak amplitude (e.g.: would be regular or irregular changes; see p 2115, col 1, para 2, p H2116, col 1, para 1). Banach et al. teach measuring the effect of different compounds on beating frequency and action potential in the form of FP_{MIN} to FP_{MAX} (e.g.: amplitude; see p H2115, col 2, para 1, p H2118, col 2, para 2, p H2119, p H2120, col 1, para 1, col 2, para 4, Figs. 4, 6, and 7). Banach et al. further state:

“In the present study, we analyzed the developmental changes of spontaneous electrical activity with repeated multielectrode recordings using substrate-integrated microelectrode arrays (MEAs). This technique allows not only the long-term culture of the preparation but also the analysis of the spatial electrophysiological differences within the preparation. In the present study, we analyzed different field potential (FP) parameters to characterize the development of the spontaneous electrical activity of multicellular aggregates of ESCs and their electrophysiological properties. Furthermore, the use of an ES cell line deficient in the expression of connexin43 ($Cx43^{-/-}$), the major cardiac gap junction protein, enabled us to distinguish developmental changes of the active, voltage-dependent membrane properties from changing passive components like the intercellular resistance.” See p H2114, col 2, Para 1.

In addition, Hescheler, which cites to the microelectrode array system taught by Banach et al. (see p 113, Fig. 3) and, regarding the arrays, state:

“It may provide a new experimental model to study the impact of cell-cell-interactions and growth factors as well as of extracellular matrix proteins. In addition, the cellular system described, may be useful as an in vitro assay for pharmacological investigations of chronotropic drugs and as a cellular system for studying cardiotoxic effects during embryogenesis in vitro.” See p 115, cols 1-2, bridging para.

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Further, **Cantor** teaches a method comprising a) providing a system comprising microelectrodes on a substrate, such as a glass substrate (i.e.: nonconductive), for monitoring impedance of cells and further comprising a plurality of cloning cylinders bonded to the substrate to define wells for holding the cells (see col 3, lns 29-53, col 4, lns 4-15, col 9, lns 35-37, Figs. 7 and 9, for example) and a signal monitoring and processing means such as a computer (see col 5, lns 60+, col 6, lns 1-12); b) adding excitable cells, such as neuronal cells, to said one or more wells; c) monitoring impedance of said one or more wells using millisecond time resolution (since it monitors the opening and closing of ion channels which occurs in less than a millisecond; see col 2, lns 39+; and d) resolving individual cycles (e.g.: of ion channels opening, closing, and the cell returning to a resting state) of said excitable cells (e.g.: measuring impedance peaks in millisecond time resolution; see entire document, particularly col 2, lns 39+, col 3, lns 14-27, col 4, lns 26-46, col 5, lns 1-35, col 8, lns 14-44). Cantor further states:

“For example, voltage-gated Na^+ channels (among other ion channels) help make nerve cells electrically excitable and enable them to conduct action potentials. When the membrane of a cell with many Na^+ channels is partially depolarized by a momentary stimulus, some of the channels promptly open, allowing Na^+ ions to enter the cell. The influx of positive charge depolarizes the membrane further, thereby opening more channels, which admit more Na^+ , causing still further depolarization. This process continues in a self-amplifying fashion until the membrane potential has shifted from its resting value of about -70 mV all the way to the Na^+ equilibrium potential of about +50 mV. At that point, where the net electrochemical driving force for the flow of Na^+ is zero, the cell would come to a new resting state with all its Na^+ channels permanently open, if the open channel conformation were stable. The cell is saved from such a permanent electrical tetanus by the automatic inactivation of the Na^+ channels, which now gradually close and stay closed until the membrane potential has returned to its initial negative resting value. The whole cycle, from initial stimulus to return to the original resting state, takes a few milliseconds or less.” See col 2, lns 46+.

“Examining the membrane potential relative to time, an action potential exhibits various characteristics or parameters, including action potential rate (if cells spontaneously depolarize), action potential amplitude, and action potential shape, among others. Action potential rate refers to the frequency with which a cell produces an action

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potential (rapid depolarization). Action potential amplitude refers to the height of the peak depolarization that occurs in the course of the action potential. Action potential shape refers to the time course of the depolarization and repolarization.” See col 3, lns 14-24.

“The present invention permits detection and monitoring of membrane, chemical, and electrical characteristics of a cell. As noted at the outset, these characteristics include cell impedance (cell membrane capacitance and conductance), action potential parameters, cell membrane capacitance, cell membrane conductance, neuronal action potential, cellular metabolic products (hormones, neurotransmitters, waste products, etc.), and cell/substrate seal resistance. These electrical characteristics, in turn, correlate well with the metabolic state of the cell. The present invention, thus, provides an apparatus and method for monitoring cells and for monitoring the impact that an analyte has upon the metabolism of a cell. It is to be appreciated that such analytes include pharmaceutical agents, drugs, environmental factors, toxins, chemical agents, biological agents, viruses, and cellular adhesion promoters.” See Col 4, lns 25-45.

While Xu et al., Banach et al., and Cantor teach a method for performing real-time cell-based assays investigating the effects of one or more compound on cells and measuring beating frequency and amplitude, Xu et al., Banach et al., and Cantor do not *specifically* teach determining a rise in impedance and a decay in impedance and extrapolating a peak from each rise and decay as recited in instant **claim 44** or identifying impedance data points at which the first order derivative to time is zero or about zero as recited in instant **claim 45**.

However, **Schechter** teaches a method of monitoring beating cycle of the heart using impedance measurements and further teach calculating the derivative of impedance to time at 0 and the peak and delays in time to peak incidence and changes in the impedance waveform (e.g. time to onset of positive dZ/dt , time to peak Z , time to peak dZ/dt , which can be broadly and reasonably interpreted as rise in impedance and decay in impedance and determining a peak) and/or reductions in the quantity of the integral of Z or changes in the morphology of $Z(t)dt$ (see entire document, particularly [0048, 0049, 0060, 0077, 0086-0090, 0100-0101, 0118, 0136], Figs. 5, 6, 8-10, 12). Schechter further state:

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“Derivation of impedance waveforms using implanted lead systems is well known in the art and has been described in the literature. Data acquisition can be accomplished, for example, by delivering pulses of 200 uA, 30 us pulse width at a frequency of 128 Hz applied to two electrodes positioned along one vector (electrode pairs) and measuring the resulting voltage between electrodes located along the same vector. These pulses will not depolarize myocardium, cause only limited battery drain and have a frequency with an acceptable signal to noise ratio. The resultant time dependent impedance, $Z(t)$ peaks when there is maximal systolic ventricular wall thickness and minimal intracardiac blood volume.” See [0048].

“The time dependent impedance signals or waveforms derived in this fashion relate to intrinsic myocardial properties. If signals are acquired between specific electrode pairs, the regional myocardial properties can be derived. The integrity of these waveforms may be subject to significant noise (poor signal to noise ratio) and inferior signal quality may result. This is especially true if data sampling occurs in a vector where there is impairment in myocardial contractile properties. Derivation of specific characteristics of these waveforms may suffice, even though overall signal quality is poor. Measurement of peak impedance and first and second order derivatives of impedance waveforms will relate to myocardial contractility. Assessment of the time required for a waveform to reach peak impedance will relate to myocardial synchrony if comparisons can be made to waveforms derived in alternate regions (e.g. right and left ventricular vectors).” See [0049].

Therefore it would have been obvious to one of skill in the art at the time of the instant invention to measure the beating cycle of excitable cells such as cardiomyocytes at millisecond time resolution, to record multiple measurements over time in millisecond time resolution, to characterize the beating cycle of the cardiomyocytes and identify changes in beating amplitude and frequency by using a cell index, extrapolating a peak, and/or identifying data points where the first order derivative to time is zero.

One would have been motivated to characterize the beating cycle and to examine various parameters of the beating cycle, such as beating frequency and amplitude, or the beating frequency and amplitude relative to the number of cells (e.g.: cell index), in order to characterize the culture of beating cardiomyocytes *in vitro* as taught by Banach et al. (e.g.: for use as a model; see p H2114, col 2, para 1, for example) and to utilize the culture to characterize cardiotoxic

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effects of drugs as taught by Hescheler et al. (see above). In light of the fact that measuring the various peaks and rise and decay of a cardiac cycle will detail the condition of the heart, or in this case, the culture representing the heart, it would have been obvious to one of ordinary skill in the art to measure the peaks comprising the rise and decay of the cardiac cycle to gain a better determining of the state of the heart. Further, due to the inherent property of signals and peaks, it is well known that for a signal that has a rise and fall (e.g.: a peak), the first derivative yields a signal that crosses zero at the maximum peak height of the original signal. One would have been motivated to utilize impedance measurements because Xu et al. teach that the impedance system can be used for real-time cell-based assays in high throughput, e.g., rather than just an end-point assay which limits the time resolution and number of time points for large library screening (see [0014, 0016, 0024, 0025, 0031, 0032], for example) and Cantor teaches the need for electrodes which can monitor cellular changes including ion channel conductance (e.g.: which are responsible for the action potentials that cause cell beating; see above and col 2, lns 31-40).

One would have had a reasonable expectation for success because Banach et al. teach successfully establishing cultures of beating cardiomyocytes and measuring electrical properties of the cultures to establish beating cycle parameters and beating frequency, including changes in the parameters after administration of drugs, Cantor teaches that electrode arrays can be used to measure cell impedance, secretion of cellular products, monitoring of ion channels and action potentials, and monitoring of compounds which affect those parameters in millisecond time resolution (see above and cols 1-2), Xu et al. teach successfully using impedance to characterize cellular properties (see [0428], for example), and Schechter teach that it is routine and known to derive impedance waveforms (see supra).

Therefore the teachings of Xu et al., Banach et al. as evidenced by Hescheler et al., Cantor, and Schechter render the present invention *prima facie* obvious.

Response to Arguments

Applicant's arguments filed December 13, 2012 have been fully considered but they are not persuasive for the following reasons. Applicants' arguments are presented in Italics.

Applicants assert that Xu et al. does not teach millisecond time resolution and that the other references do not cure these deficiencies and do not teach measuring cell-substrate impedance and rather teach measuring membrane potential (Response, pp 15+).

In response, it is noted that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In the instant case, it is unclear how the references do not teach measuring cell-substrate impedance. It is held that measuring the impedance using the electrodes integrated into the substrate would constitute measuring the cell-substrate impedance. Further, Xu et al. teach measuring cell substrate impedance. It would have been obvious to measure the impedance in ms time resolution as taught by the other cited references in order to measure the effects of compounds on the beating cycle of cardiomyocytes (e.g.: which occurs in ms time resolution), as discussed supra. Further, Xu et al. teach wherein each measurement can take place over a narrow time frame such as "less than one second" (i.e.: less than one second would be ms; see [0125]). Given the combined teachings of all the cited references, it would have been obvious to one of

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skill in the art to conduct measurements in ms time resolution in order to measure the beating cycle of cardiomyocytes. Further, the instant claims recite measuring a change in morphology. It is respectfully held that measuring the beating cycle of the cardiomyocyte inherently measures a change in morphology since the morphology of the cell changes during the beating cycle. Therefore the rejection is maintained.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Future Communication

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHANNON JANSSEN whose telephone number is (571)270-1303. The examiner can normally be reached on Monday-Friday 10:00AM-2:00PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Landau can be reached on (571) 272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Shannon L Janssen

SLJ

/SHARMILA G. LANDAU/

Supervisory Patent Examiner, Art Unit 1653

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: WANG et al.	)	Application No.: 12/435,569
	)	
Filed: 5 May 2009	)	Examiner: Shannon Janssen
	)	
Docket No.: ACE-134U1	)	Group Art Unit: 1653
	)	
Title: LABEL-FREE MONITORING OF EXCITATION-CONTRACTION	)	Confirmation No.: 3664
COUPLING AND EXCITABLE CELLS USING IMPEDANCE BASED	)	
SYSTEMS WITH MILLISECOND TIME RESOLUTION	)	Customer No.: 59538
	)	

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

**RESPONSE TO OFFICE ACTION 3 WITH
REQUEST FOR CONTINUED EXAMINATION (RCE)**

Sir:

Applicants are responding to the Office Action mailed November 4, 2013 which provides a three month period for reply. This response is filed within six months and is therefore accompanied with a request for a three month extension of time.

AMENDMENTS TO THE CLAIMS begin on page 2 of this paper.

REMARKS / ARGUMENTS begin on page 13 of this paper.

AMENDMENTS TO THE CLAIMS

Changes to the claims are provided in the below listing of claims for the convenience of the examiner.

Listing of Claims

1-15. (Cancelled)

16. (Previously presented) A method for assessing excitable cells in vitro, comprising

a) providing a system for monitoring impedance of excitable cells in vitro, comprising:

i) a device for monitoring cell-substrate impedance, comprising:

a) a nonconductive substrate,

b) one or more electrode arrays fabricated on said substrate,

c) one or more wells on said substrate, wherein each of said one or more arrays is associated with one of said one or more wells, wherein each electrode array is individually addressable, further wherein said substrate has a surface suitable for cell attachment, wherein said cell attachment on said substrate can result in a detectable change in impedance between electrodes within each electrode array,

ii) an impedance analyzer capable of impedance measurement at millisecond time resolution,

iii) electronic circuitry that can engage said device and selectively connect said two or more electrode arrays of said device to said impedance analyzer, and

(iv) a software program that controls said electronic circuitry and records and analyzes data obtained from said impedance analyzer;

b) adding excitable cells to said one or more wells;

c) monitoring cell-substrate impedance of said one or more wells using millisecond time resolution to detect changes in cell morphology or cell attachment to said substrate; and

d) resolving individual cycles of said excitable cells.

17. (Previously presented) The method according to claim 16, wherein said excitable cells are cells that undergo excitation-contraction coupling.

18. (Original) The method according to claim 17, wherein said excitable cells are cardiomyocytes.

19. (Original) The method according to claim 16, wherein the step of monitoring impedance comprises performing impedance measurements at millisecond time resolution simultaneously across all wells.

20. (Original) The method according to claim 19, wherein said impedance measurements at millisecond time resolution comprises at least two consecutive impedance measurements at less than 300 milliseconds apart.

21. (Original) The method according to claim 20, wherein said at least two consecutive impedance measurements are less than 100 milliseconds apart.

22. (Original) The method according to claim 21, wherein said at least two consecutive impedance measurements are less than 40 milliseconds apart.

23. (Original) The method according to claim 22, wherein said at least two consecutive impedance measurements are less than 10 milliseconds apart.

24. (Previously presented) A method of determining whether a compound modulates a beating cycle of an excitable cell, comprising:

a) providing a system for monitoring impedance of excitable cells in vitro, comprising:

i) a device for monitoring cell-substrate impedance, comprising:

a) a nonconductive substrate,

b) one or more electrode arrays fabricated on said substrate,

c) at least two wells on said substrate, wherein each of said one or more arrays is associated with each of said at least two wells, wherein each electrode array is individually addressable, further wherein said substrate has a surface suitable for cell attachment, wherein said cell attachment on said substrate can result in a detectable change in impedance between electrodes within each electrode array,

ii) an impedance analyzer capable of impedance measurement at millisecond time resolution,

iii) electronic circuitry that can engage said device and selectively connect said two or more electrode arrays of said device to said impedance analyzer, and

(iv) a software program that controls said electronic circuitry and records and analyzes data obtained from said impedance analyzer;

b) adding excitable cells to said at least two wells;

c) monitoring cell-substrate impedance of said at least two wells using millisecond time resolution to detect changes in cell morphology or cell attachment to said substrate;

d) adding a compound suspected of modulation of the beating cycle to a first of said at least two wells to provide a test well, wherein a second well lacking a compound that modulates the beating cycle is provided as a control well;

e) resolving the beating cycles of both test well and control well; and

d) comparing said beating cycles between said test well and control well, wherein a difference in beating cycles indicates said compound modulates the beating cycle of the excitable cell.

25. (Original) The method according to claim 24, wherein the excitable cells are cardiomyocytes or embryonic stem cell derived cardiomyocytes.

26. (Original) The method according to claim 24, wherein said beating cycles are compared to identify changes in beating amplitude.

27. (Original) The method according to claim 24, wherein said beating cycles are compared to identify changes in beating frequency.

28. (Original) The method according to claim 27, wherein said changes in beating frequency are regular changes or irregular changes.

29. (Original) The method according to claim 24, further comprising determining a cell index for each of said test well and control well, wherein the step of comparing said beating cycles comprises comparing said cell indexes between test well and control well.

30. (Withdrawn) A method of characterizing rhythmic beating of a cardiomyocyte comprising:

a) providing a system for monitoring impedance of excitable cells in vitro, comprising:

i) a device for monitoring cell-substrate impedance, comprising:

a) a nonconductive substrate,

b) one or more electrode arrays fabricated on said substrate,

c) one or more wells on said substrate, wherein each of said one or more arrays is associated with each of said one or more wells, wherein each electrode array is individually addressable, further wherein said substrate has a surface suitable for cell attachment, wherein said cell attachment on said substrate can result in a detectable change in impedance between electrodes within each electrode array,

ii) an impedance analyzer capable of impedance measurement at millisecond time resolution,

iii) electronic circuitry that can engage said device and selectively connect said two or more electrode arrays of said device to said impedance analyzer, and

(iv) a software program that controls said electronic circuitry and records and analyzes data obtained from said impedance analyzer;

b) adding excitable cells to said one or more wells;

c) monitoring cell-substrate impedance of said one or more wells in millisecond time resolution to detect changes in cell morphology or cell attachment to said substrate; and

d) determining a plurality of beating cycle peaks in a time unit; and

e) comparing amplitude or frequency of said peaks over said time unit.

31. (Withdrawn) The method according to claim 30, wherein the step of determining a plurality of beating cycle peaks comprises determining a rise in impedance and a decay in impedance and extrapolating a peak from each rise and decay.

32. (Withdrawn) The method according to claim 30, further comprising determining a cell index for each of said one or more wells, wherein the step of determining a plurality of beating cycle peaks comprises for each cycle determining a rise in cell index, a decay in cell index and extrapolating each peak from each rise and decay.

33. (Withdrawn) The method according to claim 30, wherein beating cycle peaks are determined by identifying impedance data points at which the first order derivative to time is zero or close to zero.

34. (Withdrawn) The method according to claim 30, further comprising monitoring impedance of said one or more wells over seconds, minutes or hours, optionally wherein said monitoring of impedance in millisecond time resolution is performed within said monitoring over seconds, minutes or hours.

35. (Withdrawn) A method of assessing genetic manipulation of an embryonic stem cell, comprising:

a) providing a system for monitoring impedance of excitable cells in vitro, comprising:

i) a device for monitoring cell-substrate impedance, comprising:

a) a nonconductive substrate,

b) one or more electrode arrays fabricated on said substrate,

c) at least two wells on said substrate, wherein each of said one or more arrays is associated with each of said at least two wells, wherein each electrode array is individually addressable, further wherein said substrate has a surface suitable for cell attachment, wherein said cell attachment on said substrate can result in a detectable change in impedance between electrodes within each electrode array,

ii) an impedance analyzer capable of impedance measurement at millisecond time resolution,

iii) electronic circuitry that can engage said device and selectively connect said two or more electrode arrays of said device to said impedance analyzer, and

(iv) a software program that controls said electronic circuitry and records and analyzes data obtained from said impedance analyzer;

b) mutating embryonic stem cells to comprise a genetic mutation;

c) adding said mutated embryonic stem cells to a first well of said at least two wells to form a test well and control embryonic stem cells to a second of said at least two wells to form a control well;

c) monitoring cell-substrate impedance of said at least two wells in millisecond time resolution to detect changes in cell morphology or cell attachment to said substrate; and

e) resolving the beating cycles of both test well and control well, if any; and

d) comparing said beating cycles between said test well and control well, wherein a difference in beating cycles indicates said genetic mutation modulates embryonic stem cell differentiation.

36. (Withdrawn) The method according to claim 35, wherein said embryonic stem cell differentiation is differentiation into a cardiomyocyte.

37. (Withdrawn) The method according to claim 35, wherein said genetic mutation is selected from the group consisting of a genetic knock out, a knock down and an inserted transgene.

38. (Withdrawn) A method for assessing and quantifying excitable cells in vitro, comprising

a) providing a system for monitoring impedance of excitable cells in vitro, comprising:

i) a device for monitoring cell-substrate impedance, comprising:

a) a nonconductive substrate,

- b) one or more electrode arrays fabricated on said substrate,
 - c) one or more wells on said substrate, wherein each of said one or more arrays is associated with one of said one or more wells, wherein each electrode array is individually addressable, further wherein said substrate has a surface suitable for cell attachment, wherein said cell attachment on said substrate can result in a detectable change in impedance between electrodes within each electrode array,
- ii) an impedance analyzer capable of impedance measurement at millisecond time resolution,
 - iii) electronic circuitry that can engage said device and selectively connect said two or more electrode arrays of said device to said impedance analyzer, and
 - (iv) a software program that controls said electronic circuitry and records and analyzes data obtained from said impedance analyzer;
- b) adding excitable cells to said one or more wells;
 - c) monitoring cell-substrate impedance of said one or more wells over a first time period, which is characterized as a longer time period comprising seconds, minutes or hours;
 - d) monitoring cell-substrate impedance of said one or more wells over a second time period in millisecond time resolution to detect changes in cell morphology or attachment;

e) determining a characteristic selected from the group consisting of cell attachment, cell growth and cell viability from monitoring over said first time period; and

f) resolving individual cycles of said excitable cells from monitoring over said second time period.

39. (Withdrawn) The method according to claim 38, wherein monitoring impedance over said second time period is performed at regular or irregular time intervals within monitoring impedance over said first time period.

40. (Previously presented) The method according to claim 24, wherein the step of monitoring impedance using millisecond time resolution comprises obtaining at least two consecutive impedance measurements at less than 300 milliseconds apart.

41. (Previously presented) The method according to claim 40, wherein said at least two consecutive impedance measurements are less than 100 milliseconds apart.

42. (Previously presented) The method according to claim 41, wherein said at least two consecutive impedance measurements are less than 40 milliseconds apart

43. (Previously presented) The method according to claim 42, wherein said at least two consecutive impedance measurements are less than 10 milliseconds apart.

44. (Currently amended) The method according to claim 24, wherein the step of resolving the beating cycles comprises determining a rise in impedance and a decay in impedance, and extrapolating a ~~peek~~ peak from each rise and decay.

45. (Previously presented) The method according to claim 24, wherein the step of resolving the beating cycles comprises determining beating cycle peaks by identifying impedance data points at which the first order derivative to time is zero or about zero.

REMARKS /ARGUMENTS

Claim 44 is amended. Claims 16-45 are pending and claims 30-39 remain withdrawn.

I. Support for Amendments

Claim 44 is amended to correct a typographical error.

II. Response to Claim Objections

Claim 44 is objected to as having a typographical error. Specifically, “peak” is misspelled as “peek”. The typographical error is corrected.

III. Response to Rejections under 35 USC §103

Claims 16-29 and 40-45 are rejected under 35 U.S.C. §103(a) as being obvious over US 2005/0153425 published by Xu et al. (Xu), in view of Am. J. Physiol. Heart Circ. Physiol., 2003, Vol. 284, pp. H2114-23 published by Banach et al. (Banach) as evidenced by Journal of Electrocardiology, Vol. 37, pp 110-116 published by Hescheler et al. (Hescheler), US 6,852,525 by Cantor, and US 2005/0182447 by Schechter.

Specifically, Xu is cited as teaching methods for performing real-time cell-based assays for investigating the effects of one or more compounds using an impedance-based system. Xu is also cited as teaching such a system monitors cell attachment, morphology, degree of adhesion and at time frames of less than a second.

The examiner acknowledges that Xu does not teach the measurement of excitable cells that undergo excitation-contraction coupling or cardiomyocytes, resolving

individual cycles or beating cycles at millisecond time resolution or identifying changes in beating amplitude or beating frequency.

Banach is cited as teaching a microelectrode array for monitoring the beating cycle of cardiomyocytes, monitoring electrical activity from multiple electrodes simultaneously and continuously with millisecond time resolution, and resolving signal delays of less than 10 milliseconds. Banach is also cited as teaching monitoring an interspike interval to determine a beating frequency, measuring peak amplitude, and measuring the effect of different compounds on beating frequency and action potential in the form of $FP_{\min}$ to $FP_{\max}$.

Hescheler is cited as a further reference suggesting that the microelectrode array of Banach may provide a new experimental model to study a cellular system for studying cardiotoxic effects during embryogenesis in vitro.

Cantor is cited as teaching a method including a microelectrode system for monitoring impedance of cells, and monitoring impedance of the opening and closing of ion channels, which occurs in less than a millisecond, and resolving individual opening and closing cycles of excitable cells.

The examiner acknowledges that Xu, Banach and Cantor do not specifically teach determining a rise in impedance and a decay in impedance and extrapolating a peak from the rise and decay; however, Schechter is cited as teaching a method of monitoring a beating cycle of the heart using impedance measurements and calculating the derivative of impedance to time at 0, peak and delays in time to peak incidence, and changes in the impedance waveform and/or reductions in the quantity of the integral of Z or changes in the morphology of $Z(t)(Dt)$.

Applicant respectfully requests reconsideration of the rejection in view of the following remarks. A proper obviousness rejection requires the cited references teach or suggest all of limitations in the claim.¹ In addition, there must also be an objective

¹ *Ex parte Wada and Murphy*, Appeal 2007-3733, Slip Opinion at 7, BPAI January 14, 2008 (“When determining whether a claim is obvious, an examiner must make “a searching comparison of the claimed invention – including all its limitations – with the teaching of the prior art.” *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995) (emphasis added). Thus, “obviousness requires a suggestion of all limitations in a claim.” *CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) (citing *In re Royka*, 490 F.2d 981, 985 (C.C.P.A. 1974)”); see also MPEP 2143.03.

reasoning for combining the teachings in the references cited.² Accordingly, the mere fact that certain teachings in cited references can be combined or that modifications of the prior art were within the ability of one of ordinary skill in the art does not itself render a claimed invention obvious.³

It is not disputed that Xu provides a cell-substrate impedance monitoring system and methods for investigating effects of one or more compounds. However, Xu indicates that cell-substrate impedance is primarily influenced by three main parameters: the number of cells seeded on the microelectronic sensor arrays, the shape of the cell, and the strength of cell adhesion to the electrode surface. Para. [0430]. Thus, changes in cell-substrate impedance occur from differences in attachment or spreading of cells on the device. However, as indicated by the examiner the methods in Xu do not monitor cell-substrate impedance at millisecond time resolution, do not monitor excitable cells that undergo excitation contraction coupling or cardiomyocytes, and do not resolve the individual or beating cycle of excitable cells. That is, while Xu does monitor changes in cell-substrate impedance that occur over longer periods of time, such as in case of cytotoxicity (e.g. cells detaching from electrodes during death), Xu does not teach or suggest conducting measurements in millisecond time resolution or that the individual or beating cycle of excitable cells can be resolved through cell-substrate impedance monitoring. The addition of Banach, Hescheler, Cantor and Schechter does not correct the deficiency of this absence.

Banach analyzed the developmental changes of spontaneous *electrical activity* of multicellular aggregates of embryonic stem cells (ESCs) by extracellular recording of *field potential* using substrate integrated microelectrode arrays (MEAs). Pg. H2114, right col., Para 1. That is, Banach analyzed changes in electrical activity of ESC aggregates by measuring the membrane potential across the membrane channels of the cells. By

² *KSR International Co. v. Teleflex Inc. et al.* 127 S. Ct. 1727, 1741 (2007) (an obvious analysis must determine “whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue”) citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (“Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”).

³ MPEP 2143.01, III and IV; see also *KSR, supra* at 1740-1741; *Ex parte Levengood*, 28 U.S.P.Q.2d 1300 (BPAI 1993).

recording changes in field potential an interspike interval (ISI) was determined and associated with the beating frequency. Pg. H2115, right col.

Compared to claims 16 and 24, Banach's recording of *field potential*, to determine a beating frequency through an interspike interval (ISI) does not teach or suggest that *cell-substrate impedance* can be used to resolve the individual or beating cycle of excitable cells. That is, the skilled artisan would appreciate that recording field potential and monitoring cell-substrate impedance are significantly different measurements. Specifically, field potential refers to a current sink or source that fluctuates when positive charges enter or leave a group of cells through membrane channels. In contrast, cell-substrate impedance refers to an impedance measurement that assesses the attachment or spreading of cells over a substrate/electrode. Since recording of field potential and cell-substrate impedance monitoring are significantly different, the ability to determine an interspike interval (ISI) through recording of field potential would not teach or suggest that cell-substrate impedance monitoring could be used to resolve the individual or beating cycle of an excitable cell. In addition, whether or not extracellular recording of field potential can be accomplished in millisecond time resolution is not material as to whether one could successfully achieve cell-substrate impedance monitoring at millisecond time resolution. Again, they are different measurements.

Hescheler provides an overview of the use of extracellular recording of embryonic stem cell-derived cardiomyocytes using microelectrode arrays (MEAs). Abstract. As with Banach, Hescheler confirms at page 112, right col. that the signal in the extracellular recording approach involves recording *membrane potential*:

Although the signal recording with an extracellular electrode reflects local changes of the *membrane potential*, currents generated in the electrically connected neighboring tissue influence it. (emphasis added)

Thus, like Banach the teaching of Hescheler is limited to technologies that record membrane potential. Such approaches do not teach or suggest that cell-substrate impedance can be used to resolve the individual or beating cycle of excitable cells, such as cardiomyocytes. In addition, Hescheler does not teach one skilled in the art how to

achieve *cell-substrate impedance* monitoring at millisecond time resolution as claimed since each is a significantly different measurement.

Cantor provides a mammalian cell culture chamber having a cover for allowing for transfer of gasses and a sensor array. Col. 3, ll.29-33. Cantor's system provides an approach for screening and assaying broad classes of materials for their impact on cellular metabolism. Col. 5, ll. 1-3. In regards to the sensor array, Cantor utilizes a small microelectrode/ large reference electrode approach where measurement occurs solely at the small microelectrode. Col. 5, ll. 4-36. Cantor suggests that the small microelectrodes can be used to monitor the impedance of the individual cell, action potential parameters of the individual cell, the cell membrane capacitance, the cell membrane conductance, and the cell/substrate seal resistance, and cell membrane potential. Col. 5, ll. 13-22. Specifically, Cantor utilizes the cell culture chamber to detect changes in *membrane potential* in response to the opening of ion channels. Col. 10, ll.22-37. The opening and closing of voltage-gated Na⁺ channels takes only a few milliseconds. Col. 2, ll. 46-67.

For completeness, the examiner cites Cantor as measuring impedance peaks in millisecond time resolution (citing col. 2, l.39+, col. 3, ll.14-27, col. 5, ll. 1-35, col. 8, ll. 14-44.) Office Action at pg. 9. Although Cantor does indicate that the device can measure impedance and that depolarization and repolarization of Na⁺ channels takes a few milliseconds or less, Cantor clarifies at Col. 3, ll. 14-23, that examining *membrane potential* is used to assess the opening and closing of these membrane channels since action potential amplitude corresponds to the height of peak depolarization and action potential shape corresponds to the time course of depolarization and repolarization. In other words, Cantor does not teach or suggest the use of *cell-substrate impedance* at millisecond time resolution to resolve the individual or beating cycle of excitable cells. Instead, like Banach and Heschler Cantor measures cell *membrane potential* relative to time. Col. 3, l. 14. Again, cell membrane potential is an electrical property regarding the passage of ions through channels in the cell membrane, whereas the present invention monitors cell-substrate impedance, which is an impedance measurement directed towards the physical interaction between cell and substrate/electrode. That is, cell-substrate impedance is not a membrane potential measurement. Therefore obtaining peaks associated with *membrane potential* does not teach or suggest resolving the individual or

beating cycle of cardiomyocytes through *cell-substrate impedance* monitoring or achieving *cell-substrate impedance* monitoring at millisecond time resolution as claimed.

The object of Schechter is to utilize impedance waveforms and corresponding impedance data to direct the programming of a cardiac resynchronization therapy (CRT). Para [0046]. That is, the impedance data is from an implanted pacemaker or defibrillator. Abstract. Schechter's methods involve optimizing acquisition of impedance signals between electrodes present on implanted lead systems, automatically determining which electrodes or electrode combinations acquire impedance waveforms that have the best signal to noise ratio, and characterizing data most representative of dysynchronous electromechanical events. Abstract. Since Schechter utilizes impedance signals from a patient's implant and not from a cell-substrate impedance device as claimed Schechter would not apply to the invention set forth in claims 16 or 24.

In addition to the above distinctions, Applicants respectfully disagree with the analysis by the examiner in determining likelihood of success of combining the references in the Office Action at pg. 12 for the following reasons.

In regards to Banach, the examiner argues that Banach teaches successfully establishing cultures of beating cardiomyocytes and measuring electrical properties of the cultures to establish beating cycle parameters and beating frequency. While Banach does establish cultures of cardiomyocytes, Banach uses a different technical approach to measurement. Banach records changes in field potential, which is an electrical property resulting from changes in membrane potential. The ability to record field potential from a population of cardiomyocytes and to determine a beating frequency through interspike intervals (ISI) would not support a reasonable expectation of success of using cell-substrate impedance monitoring of a cardiomyocyte population to resolve an individual or beating cycle of a cardiomyocyte population. As discussed above, each is a significantly different measurement and thus success of one is not a predictor of success of the other. In other words, cell-substrate impedance does not measure depolarization/repolarization of cells.

In regards to Cantor, the examiner argues that Cantor teaches that electrode arrays can be used to measure cell impedance, secretion of cellular products, monitoring of ion channels and action potentials, and monitoring of compounds which affect those

parameters in millisecond time resolution. While Cantor suggests that different parameters can be measured, the only effect referencing a millisecond time period would be the depolarization/repolarization of Na⁺ channels. Cantor indicates this is measured by recording membrane potential. An expectation of success in recording membrane potential would not support a reasonable expectation of success of cell-substrate impedance monitoring of a cardiomyocyte population to resolve an individual or beating cycle of a cardiomyocyte population. As discussed above, each is a significantly different measurement and thus success of one is not a predictor of success of the other.

In regards to Xu, the examiner argues that Xu teaches successfully using impedance to characterize cellular properties (citing para. [0428]). It is agreed Xu was able to assess mast cell activation through the use of cell-substrate impedance monitoring as discussed in para. [0428], but this does not teach millisecond time resolution and does not teach resolving the individual or beating cycle of an excitable cell through the use of cell-substrate impedance technology.

In regards to Schechter, the examiner argues that it is routine and known in the art to derive impedance waveforms. Whether or not changes in impedance waveforms can be determined does not demonstrate millisecond time resolution of cell-substrate impedance monitoring of a cardiomyocyte population.

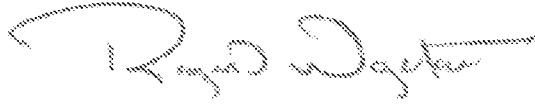
Accordingly, Applicant respectfully requests the rejection of independent claims 16, 24 and dependent claims 17-23, 25-29, and 40-45 be withdrawn.

IV. Conclusion

Applicants believe that the application as currently presented is in a condition for allowance and such favorable action is respectfully requested. If the Examiner desires, Applicant welcomes a telephone interview to expedite prosecution and is available at the telephone number below.

Respectfully submitted,

BIOTECH BEACH LAW GROUP PC



May 5, 2014

Date

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/435,569	05/05/2009	Xiaobo Wang	ACEA134U1	3664

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EXAMINER

JANSSEN, SHANNON L

ART UNIT	PAPER NUMBER
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1653

MAIL DATE	DELIVERY MODE
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12/16/2015

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	12/435,569	WANG ET AL.	
	Examiner	Art Unit	
	SHANNON JANSSEN	1653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2014.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 16-45 is/are pending in the application.
- 5a) Of the above claim(s) 30-39 is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 16-29 and 40-45 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) ☐ Notice of References Cited (PTO-892) | 4) ☐ Interview Summary (PTO-413) |
| 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) ☒ Information Disclosure Statement(s) (PTO/SB/08) | 5) ☐ Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/25/13</u> . | 6) ☐ Other: ____. |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 5, 2014 has been entered.

Claim Status

Claims 16-45 are currently pending. Claims 30-39 have been withdrawn and claims 16-29 and 40-45 are currently under consideration. The present application is being examined under the pre-AIA first to invent provisions.

Election/Restrictions

Applicants elected Group III, claims 24-29 and newly added claims 40-45 with traverse in the reply filed on February 27, 2012.

Claims 1-6, 11-14 and 30-39 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Inventions, there being no allowable generic or linking claim. However, claim 16 links inventions III-VI and upon indication of allowability, the restriction requirement between the linked inventions shall be withdrawn and any claims depending from or otherwise requiring all the limitations of the allowable linking claim will be rejoined.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on November 25, 2013 is being considered by the examiner.

Priority

The present application claims priority based on U.S. Provisional Application Nos. 61/191,684, filed on September 11, 2008 and 61/126,533, filed on May 5, 2008.

Withdrawn Objection(s)/Rejection(s)

Any objection or rejection presented in the Office Action mailed November 4, 2013 and not reiterated below is hereby withdrawn.

Invention as Claimed

One embodiment of the present invention is drawn to a method comprising a) providing a system for monitoring impedance of excitable cells in vitro comprising: i) a device for monitoring cell-substrate impedance comprising: a) a nonconductive substrate, b) one or more electrode arrays fabricated on said substrate, c) one or more wells on said substrate, wherein each of said one or more arrays is associated with one of said one or more wells, wherein each electrode array is individually addressable, further wherein said substrate has a surface suitable for cell attachment, wherein said cell attachment on said substrate can result in a detectable change in impedance between electrodes within each electrode array, ii) an impedance analyzer capable of impedance measurement at millisecond time resolution, iii) electronic circuitry that can engage said device and selectively connect said two or more electrode arrays of said device

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to said impedance analyzer, and iv) a software program that controls said electronic circuitry and records and analyzes data obtained from said impedance analyzer; b) adding excitable cells to said one or more wells; c) monitoring cell-substrate impedance of said one or more wells using millisecond time resolution to detect changes in cell morphology or cell attachment to said substrate; and d) resolving individual cycles of said excitable cells.

Another embodiment of the present invention is drawn to a method of determining whether a compound modulates a beating cycle of an excitable cell, comprising: a) providing a system for monitoring impedance of excitable cells in vitro comprising: i) a device for monitoring cell-substrate impedance comprising: a) a nonconductive substrate, b) one or more electrode arrays fabricated on said substrate, c) at least two wells on said substrate, wherein each of said one or more arrays is associated with each of said at least two wells, wherein each electrode array is individually addressable, further wherein said substrate has a surface suitable for cell attachment, wherein said cell attachment on said substrate can result in a detectable change in impedance between electrodes within each electrode array, ii) an impedance analyzer capable of impedance measurement at millisecond time resolution, iii) electronic circuitry that can engage said device and selectively connect said two or more electrode arrays of said device to said impedance analyzer, and iv) a software program that controls said electronic circuitry and records and analyzes data obtained from said impedance analyzer; b) adding excitable cells to said at least two wells; c) monitoring cell-substrate impedance of said at least two wells using millisecond time resolution to detect changes in cell morphology or cell attachment to said substrate; d) adding a compound suspected of modulation of the beating cycle to a first of said at least two wells to provide a test well, wherein a second well lacking compound is provided as a

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control well; e) resolving the beating cycles of both test well and control well; and d) comparing said beating cycles between said test well and control well, wherein a difference in beating cycles indicates said compound modulates the beating cycle of the excitable cell.

New Rejection(s)

Claim Rejections - 35 USC § 103

The following is a quotation of pre-AIA 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under pre-AIA 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

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invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 16-29 and 40-43 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Xu et al. (U.S. Patent Application Publication No. 2005/0153425, published July 14, 2005, previously cited), Yu et al. (Real-time monitoring of morphological changes in living cells by electronic cell sensor arrays: an approach to study G protein-coupled receptors, 2006, Anal. Chem., Vol 78, pp 35-43; cited by applicants in IDS), Banach et al. (Development of electrical activity in cardiac myocyte aggregates derived from mouse embryonic stem cells, Am. J. Physiol. Heart Circ. Physiol., 2003, Vol 284, pp H2114-H2123; previously cited) as evidenced by Hescheler et al. (Determination of electrical properties of ES cell-derived cardiomyocytes using MEAs, 2004, Journal of Electrophysiology, Vol 37, pp 110-116; previously cited), and Cantor (U.S. Patent No. 6,852,525, granted February 8, 2005; previously cited).

Regarding present **claims 16 and 24**, Xu et al. teach a method for performing real-time cell-based assays investigating the effects of one or more compounds on cells comprising providing a system for monitoring cell-substrate impedance comprising a nonconducting substrate, two or more electrode arrays fabricated on the substrate, where each of the two or more electrode arrays comprises two electrode structures, and at least two connection pads, each of which is located on an edge of the substrate, at least one multiple-well device monitoring cell-substrate impedance, in which at least two of the multiple wells each comprise an electrode array at the bottom of the well which are independently addressable, an impedance analyzer, a device station capable of engaging the one or more multiple-well devices and capable of selecting and electrically connecting electrode arrays within any of the multiple wells in to the impedance

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analyzer, and a software program to control the device station and perform data acquisition and data analysis on impedance values measured by the impedance analyzer, depositing cells on at least one of the two or more arrays of the device, adding one or more compounds to the one or more wells, providing at least one control well lacking compound, and monitoring cell-substrate impedance at regular or irregular time intervals on one or more arrays of the device to ascertain if the compound modulates the cell (see [0018-0020, 0023, 0024, 0029, 0031, 0032, 0036, 0130, 0131, 0134, 0244, 0246], for example). Xu et al. further teach wherein the system monitors cell attachment, morphology, degree of adhesion (e.g.: how well the cells are attached to the electrodes), and wherein measurements can be taken in timeframes of less than a second (i.e.: milliseconds; see [0125, 0250, 0255, 0259], for example).

Regarding present **claim 29**, Xu et al. provides methods for calculating a Cell Index for quantifying and comparing cell-substrate impedance (see [0021, 0140+], for example).

In addition, **Yu** et al. teach an impedance device for cellular assays, such as measuring changes in cell morphology, capable of millisecond time resolution and collecting measurements at 50 ms/well (see entire document, particularly p 37, col 2, para 4, Figure 1). Yu et al. also teach calculating a cell index based upon impedance measurements (see Materials and Methods, Impedance and Cell Index Measurements section).

While Xu et al. teach a method for performing real-time cell-based assays investigating the effects of one or more compound on cells, Xu et al. do not teach excitable cells which undergo excitation-contraction coupling or cardiomyocytes as recited in instant **claims 16-18, 24 and 25**, resolving individual cycles or beating cycles as recited in instant **claims 16 and 24**, at least 2 consecutive impedance measurements at millisecond (ms) time resolution as recited in

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instant **claims 19-23 and 40-43**, or identifying changes in beating amplitude or beating frequency as recited in instant **claims 26-29**.

However, **Banach** et al. teach a microelectrode array for monitoring the beating cycle of cardiomyocytes and further teach monitoring electrical activity from multiple electrodes simultaneously and continuously with ms time resolution and resolving signal delays of less than 10 ms (e.g.: at least two consecutive measurements less than 10 milliseconds apart since it is continuously measured and this could be broadly and reasonably interpreted as consecutive measurements; see entire document, particularly p H2115, cols 1-2, Figs. 1, 3, and 4, for example). Banach et al. teach monitoring the interspike interval to determine the beating frequency and measuring peak amplitude (e.g.: would be regular or irregular changes; see p 2115, col 1, para 2, p H2116, col 1, para 1). Banach et al. teach measuring the effect of different compounds on beating frequency and action potential in the form of FP_{MIN} to FP_{MAX} (e.g.: amplitude; see p H2115, col 2, para 1, p H2118, col 2, para 2, p H2119, p H2120, col 1, para 1, col 2, para 4, Figs. 4, 6, and 7). Banach et al. further state:

“In the present study, we analyzed the developmental changes of spontaneous electrical activity with repeated multielectrode recordings using substrate-integrated microelectrode arrays (MEAs). This technique allows not only the long-term culture of the preparation but also the analysis of the spatial electrophysiological differences within the preparation. In the present study, we analyzed different field potential (FP) parameters to characterize the development of the spontaneous electrical activity of multicellular aggregates of ESCs and their electrophysiological properties. Furthermore, the use of an ES cell line deficient in the expression of connexin43 ($Cx43^{-/-}$), the major cardiac gap junction protein, enabled us to distinguish developmental changes of the active, voltage-dependent membrane properties from changing passive components like the intercellular resistance.” See p H2114, col 2, Para 1.

In addition, Hescheler, which cites to the microelectrode array system taught by Banach et al. (see p 113, Fig. 3) and, regarding the arrays, state:

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“It may provide a new experimental model to study the impact of cell-cell-interactions and growth factors as well as of extracellular matrix proteins. In addition, the cellular system described, may be useful as an in vitro assay for pharmacological investigations of chronotropic drugs and as a cellular system for studying cardiotoxic effects during embryogenesis in vitro.” See p 115, cols 1-2, bridging para.

Further, **Cantor** teaches a method comprising a) providing a system comprising microelectrodes on a substrate, such as a glass substrate (i.e.: nonconductive), for monitoring impedance of cells and further comprising a plurality of cloning cylinders bonded to the substrate to define wells for holding the cells (see col 3, lns 29-53, col 4, lns 4-15, col 9, lns 35-37, Figs. 7 and 9, for example) and a signal monitoring and processing means such as a computer (see col 5, lns 60+, col 6, lns 1-12); b) adding excitable cells, such as neuronal cells, to said one or more wells; c) monitoring impedance of said one or more wells using millisecond time resolution (since it monitors the opening and closing of ion channels which occurs in less than a millisecond; see col 2, lns 39+; and d) resolving individual cycles (e.g.: of ion channels opening, closing, and the cell returning to a resting state) of said excitable cells (e.g.: measuring impedance peaks in millisecond time resolution; see entire document, particularly col 2, lns 39+, col 3, lns 14-27, col 4, lns 26-46, col 5, lns 1-35, col 8, lns 14-44). Cantor further states:

“For example, voltage-gated Na^+ channels (among other ion channels) help make nerve cells electrically excitable and enable them to conduct action potentials. When the membrane of a cell with many Na^+ channels is partially depolarized by a momentary stimulus, some of the channels promptly open, allowing Na^+ ions to enter the cell. The influx of positive charge depolarizes the membrane further, thereby opening more channels, which admit more Na^+ , causing still further depolarization. This process continues in a self-amplifying fashion until the membrane potential has shifted from its resting value of about -70 mV all the way to the Na^+ equilibrium potential of about +50 mV. At that point, where the net electrochemical driving force for the flow of Na^+ is zero, the cell would come to a new resting state with all its Na^+ channels permanently open, if the open channel conformation were stable. The cell is saved from such a permanent electrical tetanus by the automatic inactivation of the Na^+ channels, which now gradually close and stay closed until the membrane potential has returned to its initial negative

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resting value. The whole cycle, from initial stimulus to return to the original resting state, takes a few milliseconds or less.” See col 2, lns 46+.

“Examining the membrane potential relative to time, an action potential exhibits various characteristics or parameters, including action potential rate (if cells spontaneously depolarize), action potential amplitude, and action potential shape, among others. Action potential rate refers to the frequency with which a cell produces an action potential (rapid depolarization). Action potential amplitude refers to the height of the peak depolarization that occurs in the course of the action potential. Action potential shape refers to the time course of the depolarization and repolarization.” See col 3, lns 14-24.

“The present invention permits detection and monitoring of membrane, chemical, and electrical characteristics of a cell. As noted at the outset, these characteristics include cell impedance (cell membrane capacitance and conductance), action potential parameters, cell membrane capacitance, cell membrane conductance, neuronal action potential, cellular metabolic products (hormones, neurotransmitters, waste products, etc.), and cell/substrate seal resistance. These electrical characteristics, in turn, correlate well with the metabolic state of the cell. The present invention, thus, provides an apparatus and method for monitoring cells and for monitoring the impact that an analyte has upon the metabolism of a cell. It is to be appreciated that such analytes include pharmaceutical agents, drugs, environmental factors, toxins, chemical agents, biological agents, viruses, and cellular adhesion promoters.” See Col 4, lns 25-45.

Therefore it would have been obvious to one of skill in the art at the time of the instant invention to measure the beating cycle of excitable cells such as cardiomyocytes at millisecond time resolution, to record multiple measurements over time in millisecond time resolution, to characterize the beating cycle of the cardiomyocytes and identify changes in beating amplitude and frequency by using a cell index, extrapolating a peak, and/or identifying data points where the first order derivative to time is zero.

One would have been motivated to characterize the beating cycle and to examine various parameters of the beating cycle, such as beating frequency and amplitude, or the beating frequency and amplitude relative to the number of cells (e.g.: cell index), in order to characterize the culture of beating cardiomyocytes *in vitro* as taught by Banach et al. (e.g.: for use as a model;

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see p H2114, col 2, para 1, for example) and to utilize the culture to characterize cardiotoxic effects of drugs as taught by Hescheler et al. (see above). In light of the fact that measuring the various peaks and rise and decay of a cardiac cycle will detail the condition of the heart, or in this case, the culture representing the heart, it would have been obvious to one of ordinary skill in the art to measure the peaks comprising the rise and decay of the cardiac cycle to gain a better determining of the state of the heart. Further, due to the inherent property of signals and peaks, it is well known that for a signal that has a rise and fall (e.g.: a peak), the first derivative yields a signal that crosses zero at the maximum peak height of the original signal. One would have been motivated to utilize impedance measurements because Xu et al. and Yu et al. teach that the impedance system can be used for real-time cell-based assays in high throughput, e.g., rather than just an end-point assay which limits the time resolution and number of time points for large library screening (see Xu et al. [0014, 0016, 0024, 0025, 0031, 0032], for example, and Yu et al. Abstract, p 36, col 1, para 2, for example) and Cantor teaches the need for electrodes which can monitor cellular changes including ion channel conductance (e.g.: which are responsible for the action potentials that cause cell beating; see above and col 2, lns 31-40).

One would have had a reasonable expectation for success because Banach et al. teach successfully establishing cultures of beating cardiomyocytes and measuring electrical properties of the cultures to establish beating cycle parameters and beating frequency, including changes in the parameters after administration of drugs, Cantor teaches that electrode arrays can be used to measure cell impedance, secretion of cellular products, monitoring of ion channels and action potentials, and monitoring of compounds which affect those parameters in millisecond time resolution (see above and cols 1-2), Xu et al. teach successfully using impedance to characterize

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cellular properties (see [0428], for example), and Yu et al. teach monitoring changes in cell morphology resulting from addition of ligands to the cells and that the impedance measurements were capable of ms time resolution.

Therefore the teachings of Xu et al., Yu et al., Banach et al. as evidenced by Hescheler et al., and Cantor render the present invention *prima facie* obvious.

Response to Arguments

Applicant's arguments filed May 5, 2014 have been fully considered but they are not persuasive for the following reasons. Applicants' arguments are presented in Italics.

Applicants assert that Xu et al. do not teach millisecond time resolution and that the other references do not cure these deficiencies and do not teach measuring cell-substrate impedance and rather teach measuring membrane potential (Response, pp 15+).

In response, it is noted that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

It is also noted that newly cited Yu et al. does teach millisecond time resolution and measuring changes in morphology, as discussed supra. Since the beating of cardiomyocytes results in changes in cellular morphology and Yu et al. teach millisecond time resolution, it would be expected to be capable of measuring the beating cycle of cardiomyocytes.

Further, in the instant case, it is unclear how the references do not teach measuring cell-substrate impedance. It is held that measuring the impedance using the electrodes integrated into

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the substrate would constitute measuring the cell-substrate impedance. In addition, Xu et al. teach measuring cell substrate impedance. It would have been obvious to measure the impedance in ms time resolution as taught by the other cited references in order to measure the effects of compounds on the beating cycle of cardiomyocytes (e.g.: which occurs in ms time resolution), as discussed supra, particularly in view of Yu et al. Further, Xu et al. teach wherein each measurement can take place over a narrow time frame such as "less than one second" (i.e.: less than one second would be ms; see [0125]). Given the combined teachings of all the cited references, it would have been obvious to one of skill in the art to conduct measurements in ms time resolution in order to measure the beating cycle of cardiomyocytes. Further, the instant claims recite measuring a change in morphology. It is respectfully held that measuring the beating cycle of the cardiomyocyte inherently measures a change in morphology since the morphology of the cell changes during the beating cycle. Since Yu et al. teach measuring changes in cell morphology and ms time resolution, the combination of this teaching with the cited references would result in measuring the beating cycle in cardiomyocytes by measuring changes in cellular morphology in addition to changes in membrane potential. Therefore it is respectfully held that one would have had a reasonable expectation for success at arriving at the presently claimed invention.

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Claims 16-29 and 40-45 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Xu et al. (U.S. Patent Application Publication No. 2005/0153425, published July 14, 2005, previously cited), Yu et al. (Real-time monitoring of morphological changes in living cells by electronic cell sensor arrays: an approach to study G protein-coupled receptors, 2006, Anal. Chem., Vol 78, pp 35-43; cited by applicants in IDS), Banach et al. (Development of electrical activity in cardiac myocyte aggregates derived from mouse embryonic stem cells, Am. J. Physiol. Heart Circ. Physiol., 2003, Vol 284, pp H2114-H2123; previously cited) as evidenced by Hescheler et al. (Determination of electrical properties of ES cell-derived cardiomyocytes using MEAs, 2004, Journal of Electrocardiology, Vol 37, pp 110-116; previously cited), and Cantor (U.S. Patent No. 6,852,525, granted February 8, 2005; previously cited) as applied to claims 16-29 and 40-43 above, and further in view of Schecter (U.S. Patent Application Publication No. 2005/0182447, published August 18, 2005; previously cited).

The teachings of Xu et al., Yu et al., Banach et al., and Cantor et al. are discussed supra and are herein incorporated by reference.

Regarding present **claim 45**, Xu et al. teach setting the first order derivatives to zero (see [0209], for example).

While Xu et al., Yu et al., Banach et al., and Cantor teach a method for performing real-time cell-based assays investigating the effects of one or more compound on cells and measuring beating frequency and amplitude, Xu et al., Banach et al., and Cantor do not *specifically* teach determining a rise in impedance and a decay in impedance and extrapolating a peak from each rise and decay as recited in instant **claim 44** or identifying impedance data points at which the first order derivative to time is zero or about zero as recited in instant **claim 45**.

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However, **Schecter** teaches a method of monitoring beating cycle of the heart using impedance measurements and further teach calculating the derivative of impedance to time at 0 and the peak and delays in time to peak incidence and changes in the impedance waveform (e.g. time to onset of positive dZ/dt , time to peak Z , time to peak dZ/dt , which can be broadly and reasonably interpreted as rise in impedance and decay in impedance and determining a peak) and/or reductions in the quantity of the integral of Z or changes in the morphology of $Z(t)dt$ (see entire document, particularly [0048, 0049, 0060, 0077, 0086-0090, 0100-0101, 0118, 0136], Figs. 5, 6, 8-10, 12). Schecter further state:

“Derivation of impedance waveforms using implanted lead systems is well known in the art and has been described in the literature. Data acquisition can be accomplished, for example, by delivering pulses of 200 uA, 30 us pulse width at a frequency of 128 Hz applied to two electrodes positioned along one vector (electrode pairs) and measuring the resulting voltage between electrodes located along the same vector. These pulses will not depolarize myocardium, cause only limited battery drain and have a frequency with an acceptable signal to noise ratio. The resultant time dependent impedance, $Z(t)$ peaks when there is maximal systolic ventricular wall thickness and minimal intracardiac blood volume.” See [0048].

“The time dependent impedance signals or waveforms derived in this fashion relate to intrinsic myocardial properties. If signals are acquired between specific electrode pairs, the regional myocardial properties can be derived. The integrity of these waveforms may be subject to significant noise (poor signal to noise ratio) and inferior signal quality may result. This is especially true if data sampling occurs in a vector where there is impairment in myocardial contractile properties. Derivation of specific characteristics of these waveforms may suffice, even though overall signal quality is poor. Measurement of peak impedance and first and second order derivatives of impedance waveforms will relate to myocardial contractility. Assessment of the time required for a waveform to reach peak impedance will relate to myocardial synchrony if comparisons can be made to waveforms derived in alternate regions (e.g. right and left ventricular vectors).” See [0049].

Therefore it would have been obvious to one of skill in the art at the time of the instant invention to characterize the beating cycle of the cardiomyocytes and identify changes in beating

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amplitude and frequency by using a cell index, extrapolating a peak, and/or identifying data points where the first order derivative to time is zero.

One would have been motivated to characterize the beating cycle and to examine various parameters of the beating cycle, such as beating frequency and amplitude, or the beating frequency and amplitude relative to the number of cells (e.g.: cell index), in order to characterize the culture of beating cardiomyocytes *in vitro* as taught by Banach et al. (e.g.: for use as a model; see p H2114, col 2, para 1, for example) and to utilize the culture to characterize cardiotoxic effects of drugs as taught by Hescheler et al. (see above). In light of the fact that measuring the various peaks and rise and decay of a cardiac cycle will detail the condition of the heart, or in this case, the culture representing the heart, it would have been obvious to one of ordinary skill in the art to measure the peaks comprising the rise and decay of the cardiac cycle to gain a better determining of the state of the heart. Further, due to the inherent property of signals and peaks, it is well known that for a signal that has a rise and fall (e.g.: a peak), the first derivative yields a signal that crosses zero at the maximum peak height of the original signal. One would have been motivated to utilize impedance measurements because Xu et al. teach that the impedance system can be used for real-time cell-based assays in high throughput, e.g., rather than just an end-point assay which limits the time resolution and number of time points for large library screening (see [0014, 0016, 0024, 0025, 0031, 0032], for example) and Cantor teaches the need for electrodes which can monitor cellular changes including ion channel conductance (e.g.: which are responsible for the action potentials that cause cell beating; see above and col 2, lns 31-40).

One would have had a reasonable expectation for success because Schecter teach that it is routine and known to derive impedance waveforms (see *supra*).

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Therefore the teachings of Xu et al., Yu et al., Banach et al. as evidenced by Hescheler et al., Cantor, and Schechter render the present invention *prima facie* obvious.

Response to Arguments

Applicant's arguments filed December 13, 2012 have been fully considered but they are not persuasive for the following reasons. Applicants' arguments are presented in Italics.

Applicants appear to assert that Schechter is not relevant to the instant invention (Response, p 18).

In response, it is noted that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In the instant case, Schechter et al. was merely relied on to demonstrate that it was routine and known to derive impedance waveforms (e.g.: whether the impedance results from the beating of a heart or from the beating cycle of cardiomyocyte culture representing the heart. It is respectfully submitted that it is merely a matter of data analysis and that the result would be the same regardless of where the measurement was taken (e.g.: it is a mathematical calculation).

Future Communication

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHANNON JANSSEN whose telephone number is (571)270-1303. The examiner can normally be reached on Monday-Friday 10:00AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Landau can be reached on (571) 272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Shannon L Janssen
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Supervisory Patent Examiner, Art Unit 1653

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: WANG et al.	)	Application No.: 12/435,569
	)	
Filed: 5 May 2009	)	Examiner: Shannon Janssen
	)	
Docket No.: 10101-100108 (ACEA134U1)	)	Group Art Unit: 1653
	)	
Title: LABEL-FREE MONITORING OF EXCITATION-CONTRACTION	)	Confirmation No.: 3664
COUPLING AND EXCITABLE CELLS USING IMPEDANCE BASED	)	
SYSTEMS WITH MILLISECOND TIME RESOLUTION	)	Customer No.: 59538
	)	

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO NONFINAL OFFICE ACTION

Sir:

Applicant is responding to the Office Action mailed December 16, 2015 which provides a three month period for reply. This response is filed within six months and is therefore accompanied with a request for a three month extension of time.

AMENDMENTS TO THE CLAIMS begin on page 2 of this paper.

REMARKS / ARGUMENTS begin on page 12 of this paper.

AMENDMENTS TO THE CLAIMS

Changes to the claims are provided in the below listing of claims for the convenience of the examiner.

Listing of Claims

1-15. (Cancelled)

16. (Currently Amended) A method for assessing excitable cells in vitro, comprising

a) providing a system for monitoring impedance of excitable cells in vitro, comprising:

i) a device for monitoring cell-substrate impedance, comprising:

a) a nonconductive substrate,

b) one or more electrode arrays fabricated on said substrate,

c) one or more wells on said substrate, wherein each of said one or more arrays is associated with one of said one or more wells, wherein each electrode array is individually addressable, further wherein said substrate has a surface suitable for cell attachment, wherein said cell attachment on said substrate can result in a detectable change in impedance between electrodes within each electrode array,

ii) an impedance analyzer capable of impedance measurement at millisecond time resolution,

iii) electronic circuitry that can engage said device and selectively connect said two or more electrode arrays of said device to said impedance analyzer, and

(iv) a software program that controls said electronic circuitry and records and analyzes data obtained from said impedance analyzer;

b) adding excitable cells to said one or more wells;

c) monitoring cell-substrate impedance of said one or more wells using millisecond time resolution to detect changes in cell morphology or cell attachment to said substrate, wherein the millisecond time resolution comprises at least two consecutive impedance measurements less than 20 milliseconds apart; and

d) resolving individual cycles of said excitable cells.

17. (Previously presented) The method according to claim 16, wherein said excitable cells are cells that undergo excitation-contraction coupling.

18. (Original) The method according to claim 17, wherein said excitable cells are cardiomyocytes.

19. (Original) The method according to claim 16, wherein the step of monitoring impedance comprises performing impedance measurements at millisecond time resolution simultaneously across all wells.

20-22 (Cancelled)

23. (Currently Amended) The method according to claim [[22]]_1, wherein said at least two consecutive impedance measurements are less than 10 milliseconds apart.

24. (Currently Amended) A method of determining whether a compound modulates a beating cycle of an excitable cell, comprising:

a) providing a system for monitoring impedance of excitable cells in vitro, comprising:

i) a device for monitoring cell-substrate impedance, comprising:

a) a nonconductive substrate,

b) one or more electrode arrays fabricated on said substrate,

c) at least two wells on said substrate, wherein each of said one or more arrays is associated with each of said at least two wells, wherein each electrode array is individually addressable, further wherein said substrate has a surface suitable for cell attachment, wherein said cell attachment on said substrate can result in a detectable change in impedance between electrodes within each electrode array,

ii) an impedance analyzer capable of impedance measurement at millisecond time resolution,

iii) electronic circuitry that can engage said device and selectively connect said two or more electrode arrays of said device to said impedance analyzer, and

(iv) a software program that controls said electronic circuitry and records and analyzes data obtained from said impedance analyzer;

b) adding excitable cells to said at least two wells;

c) monitoring cell-substrate impedance of said at least two wells using millisecond time resolution to detect changes in cell morphology or cell attachment to said substrate, wherein the millisecond time resolution comprises at least two consecutive impedance measurements less than 20 milliseconds apart;

d) adding a compound suspected of modulation of the beating cycle to a first of said at least two wells to provide a test well, wherein a second well lacking a compound that modulates the beating cycle is provided as a control well;

e) resolving the beating cycles of both test well and control well; and

d) comparing said beating cycles between said test well and control well, wherein a difference in beating cycles indicates said compound modulates the beating cycle of the excitable cell.

25. (Original) The method according to claim 24, wherein the excitable cells are cardiomyocytes or embryonic stem cell derived cardiomyocytes.

26. (Original) The method according to claim 24, wherein said beating cycles are compared to identify changes in beating amplitude.

27. (Original) The method according to claim 24, wherein said beating cycles are compared to identify changes in beating frequency.

28. (Original) The method according to claim 27, wherein said changes in beating frequency are regular changes or irregular changes.

29. (Original) The method according to claim 24, further comprising determining a cell index for each of said test well and control well, wherein the step of

comparing said beating cycles comprises comparing said cell indexes between test well and control well.

30. (Withdrawn-Currently Amended) A method of characterizing rhythmic beating of a cardiomyocyte comprising:

a) providing a system for monitoring impedance of excitable cells in vitro, comprising:

i) a device for monitoring cell-substrate impedance, comprising:

a) a nonconductive substrate,

b) one or more electrode arrays fabricated on said substrate,

c) one or more wells on said substrate, wherein each of said one or more arrays is associated with each of said one or more wells, wherein each electrode array is individually addressable, further wherein said substrate has a surface suitable for cell attachment, wherein said cell attachment on said substrate can result in a detectable change in impedance between electrodes within each electrode array,

ii) an impedance analyzer capable of impedance measurement at millisecond time resolution,

iii) electronic circuitry that can engage said device and selectively connect said two or more electrode arrays of said device to said impedance analyzer, and

(iv) a software program that controls said electronic circuitry and records and analyzes data obtained from said impedance analyzer;

- b) adding excitable cells to said one or more wells;
- c) monitoring cell-substrate impedance of said one or more wells in millisecond time resolution to detect changes in cell morphology or cell attachment to said substrate, wherein the millisecond time resolution comprises at least two consecutive impedance measurements less than 20 milliseconds apart;
~~and~~
- d) determining a plurality of beating cycle peaks in a time unit; and
- e) comparing amplitude or frequency of said peaks over said time unit.

31. (Withdrawn) The method according to claim 30, wherein the step of determining a plurality of beating cycle peaks comprises determining a rise in impedance and a decay in impedance and extrapolating a peak from each rise and decay.

32. (Withdrawn) The method according to claim 30, further comprising determining a cell index for each of said one or more wells, wherein the step of determining a plurality of beating cycle peaks comprises for each cycle determining a rise in cell index, a decay in cell index and extrapolating each peak from each rise and decay.

33. (Withdrawn) The method according to claim 30, wherein beating cycle peaks are determined by identifying impedance data points at which the first order derivative to time is zero or close to zero.

34. (Withdrawn) The method according to claim 30, further comprising monitoring impedance of said one or more wells over seconds, minutes or hours, optionally wherein said monitoring of impedance in millisecond time resolution is performed within said monitoring over seconds, minutes or hours.

35. (Withdrawn - Currently Amended) A method of assessing genetic manipulation of an embryonic stem cell, comprising:

a) providing a system for monitoring impedance of excitable cells in vitro, comprising:

i) a device for monitoring cell-substrate impedance, comprising:

a) a nonconductive substrate,

b) one or more electrode arrays fabricated on said substrate,

c) at least two wells on said substrate, wherein each of said one or more arrays is associated with each of said at least two wells, wherein each electrode array is individually addressable, further wherein said substrate has a surface suitable for cell attachment, wherein said cell attachment on said substrate can result in a detectable change in impedance between electrodes within each electrode array,

ii) an impedance analyzer capable of impedance measurement at millisecond time resolution,

iii) electronic circuitry that can engage said device and selectively connect said two or more electrode arrays of said device to said impedance analyzer, and

(iv) a software program that controls said electronic circuitry and records and analyzes data obtained from said impedance analyzer;

b) mutating embryonic stem cells to comprise a genetic mutation;

c) adding said mutated embryonic stem cells to a first well of said at least two wells to form a test well and control embryonic stem cells to a second of said at least two wells to form a control well;

c) monitoring cell-substrate impedance of said at least two wells in millisecond time resolution to detect changes in cell morphology or cell attachment to said substrate, wherein the millisecond time resolution comprises at least two consecutive impedance measurements less than 20 milliseconds apart; and

e) resolving the beating cycles of both test well and control well, if any; and

d) comparing said beating cycles between said test well and control well, wherein a difference in beating cycles indicates said genetic mutation modulates embryonic stem cell differentiation.

36. (Withdrawn) The method according to claim 35, wherein said embryonic stem cell differentiation is differentiation into a cardiomyocyte.

37. (Withdrawn) The method according to claim 35, wherein said genetic mutation is selected from the group consisting of a genetic knock out, a knock down and an inserted transgene.

38. (Withdrawn-Currently Amended) A method for assessing and quantifying excitable cells in vitro, comprising

a) providing a system for monitoring impedance of excitable cells in vitro, comprising:

i) a device for monitoring cell-substrate impedance, comprising:

- a) a nonconductive substrate,
- b) one or more electrode arrays fabricated on said substrate,
- c) one or more wells on said substrate, wherein each of said one or more arrays is associated with one of said one or more wells, wherein each electrode array is individually addressable, further wherein said substrate has a surface suitable for cell attachment, wherein said cell attachment on said substrate can result in a detectable change in impedance between electrodes within each electrode array,

ii) an impedance analyzer capable of impedance measurement at millisecond time resolution,

iii) electronic circuitry that can engage said device and selectively connect said two or more electrode arrays of said device to said impedance analyzer, and

(iv) a software program that controls said electronic circuitry and records and analyzes data obtained from said impedance analyzer;

b) adding excitable cells to said one or more wells;

c) monitoring cell-substrate impedance of said one or more wells over a first time period, which is characterized as a longer time period comprising seconds, minutes or hours;

d) monitoring cell-substrate impedance of said one or more wells over a second time period in millisecond time resolution to detect changes in cell

morphology or attachment, wherein the millisecond time resolution comprises at least two consecutive impedance measurements less than 20 milliseconds apart;

e) determining a characteristic selected from the group consisting of cell attachment, cell growth and cell viability from monitoring over said first time period; and

f) resolving individual cycles of said excitable cells from monitoring over said second time period.

39. (Withdrawn) The method according to claim 38, wherein monitoring impedance over said second time period is performed at regular or irregular time intervals within monitoring impedance over said first time period.

40-42 (Cancelled)

43. (Currently Amended) The method according to claim ~~[[42]]~~ 24, wherein said at least two consecutive impedance measurements are less than 10 milliseconds apart.

44. (Currently amended) The method according to claim 24, wherein the step of resolving the beating cycles comprises determining a rise in impedance and a decay in impedance, and extrapolating a ~~peak~~ peak from each rise and decay.

45. (Previously presented) The method according to claim 24, wherein the step of resolving the beating cycles comprises determining beating cycle peaks by identifying impedance data points at which the first order derivative to time is zero or about zero.

REMARKS /ARGUMENTS

Claims 16, 23, 24, 30, 35, 38, 43, and 44 are amended; and claims 20-22 and 40-42 are cancelled. Claims 16-19, 23-39, and 43-45 remain pending.

I Support for Amendments

Claims 16, 24, 30, 35, and 38 are amended to characterize millisecond time resolution as at least two consecutive impedance measurements less than 20 milliseconds apart. Support for the amendment may be found in para. [00113],

In some instances the at least two consecutive impedance measurements are less than 20 milliseconds apart.

Claims 23 and 43 are amended to update dependency in view of the above amendment.

Claim 44 is amended to correct a typographical error.

II Response to Rejections under 35 USC §103

In order to establish a *prima facie* case of obviousness, the Examiner must show a combination of references that teach or suggest all of the claim limitations.¹ In addition,

¹ *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995) (emphasis added). “[O]bviousness requires a suggestion of *all limitations* in a claim.” *CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) (citing *In re Royka*, 490 F.2d 981, 985 (C.C.P.A. 1974) (“to establish *prima facie* obviousness of a claimed invention, all the claim features must be taught or suggested by the prior art”)); *see also* MPEP 2143.03.

there must be objective reasoning for combining the teachings in the cited references.² The mere fact that certain teachings in cited references can be combined or that modifications of the prior art were within the ability of one of ordinary skill the art does not render a claimed invention obvious.³ A factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon ex post reasoning.⁴ One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.⁵ If a *prima facie* case is made in the first instance, and if the applicant comes forward with reasonable rebuttal, whether buttressed by experiment, prior art references, or argument, the entire merits of the matter are to be reweighed.⁶

A. Claims 16-29 and 40-43 are not obvious over Xu in view of Yu, and further in view of Banach as evidenced Hescheler and Cantor

Claims 16-29 and 40-43 are rejected under 35 U.S.C. §103(a) as being obvious over US 2005/0153425 published by Xu et al. (Xu), in view of 2006, Anal Chem (78):35-43 published by Yu et al (Yu), and in further in view of Am. J. Physiol. Heart Circ. Physiol., 2003, Vol. 284, pp. H2114-23 published by Banach et al. (Banach) as evidenced by Journal of Electrocardiology, Vol. 37, pp 110-116 published by Hescheler et al. (Hescheler) and US 6,852,525 by Cantor.

Specifically, Xu is cited as teaching methods for performing real-time cell-based assays for investigating the effects of one or more compounds using an impedance-based system. Xu is also cited as teaching such a system monitors cell attachment, morphology,

² *KSR International Co. v. Teleflex Inc. et al.* 127 S. Ct. 1727, 1741 (2007) (an obvious analysis must determine “whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue”) citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (“Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”).

³ MPEP 2143.01, III and IV; *see also KSR, supra* at 1740-1741; *Ex parte Levengood*, 28 U.S.P.Q.2d 1300 (BPAI 1993).

⁴ *KSR International Co. v. Teleflex, Inc.* 550 U.S. 398, 421 (2007)

⁵ *In re Fine*, 837 F.2d 1071, 1075 (Fed. Cir. 1988)

⁶ *In re Hedges*, 783 F.2d 1038, 1039 (Fed. Cir. 1986)

degree of adhesion and at time frames of less than a second (citing paras. [0125], [0250], [0255], and [0259]). Xu is also cited as teaching methods for calculating Cell Index.

In addition, the Examiner adds that Yu also teaches an impedance device for cellular assays that collects measurements at 50 ms/well and calculates a cell index from impedance measurements.

The Examiner acknowledges that Xu does not teach the measurement of excitable cells that undergo excitation-contraction coupling nor cardiomyocytes, resolving individual cycles or beating cycles at millisecond time resolution or identifying changes in beating amplitude or beating frequency.

Banach is cited as teaching a microelectrode array for monitoring the beating cycle of cardiomyocytes, monitoring electrical activity from multiple electrodes simultaneously and continuously with millisecond time resolution, and resolving signal delays of less than 10 milliseconds. Banach is also cited as teaching monitoring an interspike interval to determine a beating frequency, measuring peak amplitude, and measuring the effect of different compounds on beating frequency and action potential in the form of $FP_{\min}$ to $FP_{\max}$.

Hescheler is cited as a further reference suggesting that the microelectrode array of Banach may provide a new experimental model to study a cellular system for studying cardiotoxic effects during embryogenesis in vitro.

Cantor is cited as teaching a method including a microelectrode system for monitoring impedance of cells, and monitoring impedance of the opening and closing of ion channels, which occurs in less than a millisecond, and resolving individual opening and closing cycles of excitable cells.

Applicant respectfully requests reconsideration of the rejection in view of the following remarks.

Claims 16 and 24 are amended to further define the impedance resolution as at least two consecutive impedance measurements less than 20 milliseconds apart. Thus, the rejection is addressed compared to cell-substrate impedance monitoring at 20 millisecond resolution.

It is not disputed that Xu provides a cell-substrate impedance monitoring system and methods for investigating effects of one or more compounds. However, Xu indicates

that cell-substrate impedance is primarily influenced by three main parameters: the number of cells seeded on the microelectronic sensor arrays, the shape of the cell, and the strength of cell adhesion to the electrode surface. Para. [0430]. Thus, changes in cell-substrate impedance occur from differences in attachment or spreading of cells on the device. Indeed, cell-substrate impedance measures the insulating effect of cells on electrodes, which changes in response to cell attachment/detachment or spreading on electrodes.

Compared to independent claims 16 and 24, while Xu does monitor changes in cell-substrate impedance that occur over longer periods of time, such as in case of cytotoxicity (e.g. cells detaching from electrodes after cell death), Xu does not teach or suggest conducting measurements at *20 millisecond time resolution*. Further, Xu does not teach that the individual or beating cycle of excitable cells can be resolved through cell-substrate impedance monitoring. The addition of Yu, Banach, Hescheler, and Cantor does not correct the deficiency of the rejection.

Yu provides an approach to measuring changes in cell morphology as a result of ligand-dependent GPCR activation. Abstract. Yu indicates the readout could be sampled in “as little as 50 ms/well.” Pg. 37, col. 2, para. 4.

Compared to claims 16 and 24, Yu does not teach millisecond resolution, characterized by *at least two consecutive impedance measurements less than 20 milliseconds apart*. Instead, Yu indicates the readout can be *as little as 50 ms/well*. That is, Yu confirms the cell substrate measurement cannot exceed 50 millisecond resolution; whereas Applicant more than doubles this resolution.

Banach analyzed the developmental changes of spontaneous *electrical activity* of multicellular aggregates of embryonic stem cells (ESCs) by extracellular recording of *field potential* using substrate integrated microelectrode arrays (MEAs). Pg. H2114, right col., Para 1. That is, Banach analyzed changes in electrical activity of ESC aggregates by measuring the membrane potential across the membrane channels of the cells. By recording changes in field potential an interspike interval (ISI) was determined and associated with the beating frequency. Pg. H2115, right col.

Compared to claims 16 and 24, Banach’s recording of *field potential*, to determine a beating frequency through an interspike interval (ISI) does not teach or suggest that

cell-substrate impedance can be used to resolve the individual or beating cycle of excitable cells. That is, the skilled artisan would appreciate that recording field potential and monitoring cell-substrate impedance are significantly different measurements. Specifically, field potential refers to a current sink or source that fluctuates when positive charges enter or leave a group of cells through membrane channels. In other words, it measures the electric potential between the interior of a cell and the exterior of a cell. In contrast, cell-substrate impedance assesses the insulating effect of a cell on electrodes through attachment or spreading of cells over a substrate/electrode. Since field potential recording and cell-substrate impedance monitoring are significantly different measurements, the ability to determine an interspike interval (ISI) through recording of field potential would not teach or suggest that cell-substrate impedance monitoring can resolve the individual or beating cycle of an excitable cell. That is, defining a beating cycle using membrane potential does not suggest a beating cycle can be resolved using cell-substrate impedance. Cell-substrate impedance does not measure electric potential across a membrane.

In addition, whether or not extracellular recording of field potential can be accomplished in millisecond time resolution is not material as to whether one could reasonably expect to achieve cell-substrate impedance monitoring at 20 millisecond time resolution. Again, they are different measurements. In furtherance of this, Yu indicated that in cell substrate impedance the readout could be sampled in “*as little as 50 ms/well*.” Pg. 37, col. 2, para. 4. In forming the rejection, one cannot merely pick the sensitivity of one assay and apply it to an entirely different assay that measures a different cell property. This would deprecate the claimed invention as discussed in *In re Fine*.⁷

Hescheler provides an overview of the use of extracellular recording of embryonic stem cell-derived cardiomyocytes using microelectrode arrays (MEAs). Abstract. As with Banach, Hescheler confirms at page 112, right col. that the signal in the extracellular recording approach involves recording *membrane potential*:

⁷ *In re Fine*, 837 F.2d 1071, 1075 (Fed. Cir. 1988)

Although the signal recording with an extracellular electrode reflects local changes of the *membrane potential*, currents generated in the electrically connected neighboring tissue influence it. (emphasis added)

Thus, like Banach the teaching of Hescheler is limited to technologies that record membrane potential. Such approaches do not teach or suggest that cell-substrate impedance can be used to resolve the individual or beating cycle of excitable cells, such as cardiomyocytes.

Cantor provides a mammalian cell culture chamber having a cover for allowing for transfer of gasses and a sensor array. Col. 3, ll.29-33. Cantor's system provides an approach for screening and assaying broad classes of materials for their impact on cellular metabolism. Col. 5, ll. 1-3. In regards to the sensor array, Cantor utilizes a small microelectrode/ large reference electrode approach where measurement occurs solely at the small microelectrode. Col. 5, ll. 4-36. Cantor suggests that the small microelectrodes can be used to monitor the impedance of the individual cell, action potential parameters of the individual cell, the cell membrane capacitance, the cell membrane conductance, and the cell/substrate seal resistance, and cell membrane potential. Col. 5, ll. 13-22. Specifically, Cantor utilizes the cell culture chamber to detect changes in *membrane potential* in response to the opening of ion channels. Col. 10, ll.22-37. The opening and closing of voltage-gated Na⁺ channels takes only a few milliseconds. Col. 2, ll. 46-67.

For completeness, the Examiner cites Cantor as measuring impedance peaks in millisecond time resolution (citing col. 2, l.39+, col. 3, ll.14-27, col. 5, ll. 1-35, col. 8, ll. 14-44.) Office Action at pg. 9. Although Cantor does indicate that the device can measure impedance and that depolarization and repolarization of Na⁺ channels takes a few milliseconds or less, Cantor clarifies at Col. 3, ll. 14-23, that examining *membrane potential* is used to assess the opening and closing of these membrane channels since action potential amplitude corresponds to the height of peak depolarization and action potential shape corresponds to the time course of depolarization and repolarization. In other words, Cantor does not teach or suggest the use of *cell-substrate impedance at 20 millisecond time resolution* to resolve the individual or beating cycle of excitable cells. Instead, like Banach and Heschler, Cantor measures cell *membrane potential* relative to

time. Col. 3, l. 14. Again, cell membrane potential is an electrical property regarding the passage of ions through channels in the cell membrane, whereas the present invention monitors cell-substrate impedance, which is an impedance measurement directed towards the physical interaction between cell and substrate/electrode. That is, they are different measurements and measure different cellular effects. Therefore obtaining peaks associated with *membrane potential* does not teach or suggest resolving the individual or beating cycle of cardiomyocytes through *cell-substrate impedance* monitoring or achieving *cell-substrate impedance* monitoring at 20 millisecond time resolution as claimed.

As to the motivation to combine the references, the Examiner argues that one would have been motivated to use impedance measurements to characterize the beating cycle to examine various parameters because Xu and Yu teach the impedance system can be used for real-time cell-based assays in high throughput and Cantor teaches the need for electrodes which can monitor changes including ion channel conductance. Office Action at pg. 11. However, there is no reasonable basis for asserting the use of cell-substrate impedance for monitoring a cell beating cycle. The entire basis of all cardiac cell measurement taught in the references involves field potential. In particular the polarization/depolarization of the cells during the beating cycle. However, cell-substrate impedance does not measure field potential. Thus, whether or not cell-substrate impedance can be measured in real time and at high throughput does not change the basis of its measurement. The art does not show cell-substrate impedance measurement of a beating cell. Further, measuring ion channel conductance (Cantor) is not a cell-substrate impedance measurement.

Still further while the Examiner argues one would have been motivated to use cell-substrate impedance monitoring of a cell beating cycle, this would involve abandoning the technical approach of each reference relied upon that actual measured a beating cell for a technology that has not been demonstrated to successfully measure a beating cell.

In addition to the above distinctions, Applicant respectfully disagrees with the analysis by the Examiner in determining a reasonable expectation of success of combining the references in the Office Action at pg. 12 for the following reasons.

In regards to Banach, the Examiner argues that Banach teaches successfully establishing cultures of beating cardiomyocytes and measuring electrical properties of the cultures to establish beating cycle parameters and beating frequency. However, the entire basis for parameter measurement operates on a different principle. Banach measures membrane potential, but membrane potential is not measured by cell substrate impedance. Cell-substrate impedance measures the insulating effect of cells on electrodes not the electric potential between the interior and the exterior of a cell. They are entirely different measurements. Thus, whether or not Banach establishes a culture of beating cardiomyocytes it does not suggest one would expect to resolve beating cycles using cell-substrate impedance.

In regards to Cantor, the Examiner argues that Cantor teaches that electrode arrays can be used to measure cell impedance, secretion of cellular products, monitoring of ion channels and action potentials, and monitoring of compounds which affect those parameters in millisecond time resolution. While Cantor suggests that different parameters can be measured, the only effect referencing a millisecond time period would be the depolarization/repolarization of Na⁺ channels. Cantor indicates this is measured by recording membrane potential.

An expectation of success in recording membrane potential would not support a reasonable expectation of success of cell-substrate impedance monitoring of a cardiomyocyte population to resolve an individual or beating cycle of a cardiomyocyte population. As discussed above, each is a significantly different measurement and thus success of one is not a predictor of success of the other.

In regards to Xu, the Examiner argues that Xu teaches successfully using impedance to characterize cellular properties (citing para. [0428]). It is agreed Xu was able to assess mast cell activation through the use of cell-substrate impedance monitoring as discussed in para. [0428], but this does not teach 20 millisecond time resolution and does not teach resolving the individual or beating cycle of an excitable cell through the use of cell-substrate impedance technology. Whether or not some morphological change could be detected by applying Xu, does not suggest a beating cycle could be resolved.

In regards to Yu, the Examiner argues that Yu teaches monitoring changes in cell morphology resulting from addition of ligands to the cells and that impedance

measurements were capable of millisecond time resolution, but the addition of ligands to a cell does not cause cell beating. Further, Yu confirms the highest resolution is 50 milliseconds, which is 2.5 times slower than that claimed.

Accordingly, Applicant respectfully requests the rejection of independent claims 16, 24 and dependent claims 17-23, 25-29, and 40-45 be withdrawn.

Response to Response to Arguments

In responding to Applicants previously submitted arguments, Applicant agrees that the test for obviousness is what the combined teachings of the references would have suggested to those of ordinary skill in the art (citing *In re Keller*).

First, the Examiner argues that it would have been expected that Yu would have been capable of measuring the beating cycle of cardiomyocytes because the beating of cardiomyocytes results in changes in morphology and that Yu teaches millisecond resolution.

Whether or not there is a morphological change during beating, does not teach or suggest to one that a cell beating cycle can be resolved using cell-substrate impedance. In Yu, changes in morphology were identified in response to ligand binding. In ligand binding, the cell morphology does not cycle within milliseconds.

Nonetheless, to expedite an allowance, the independent claims are amended to characterize millisecond time resolution as at least two consecutive impedance measurements less than 20 milliseconds apart. Yu indicates the readout could be sampled in “as little as 50 ms/well.” Since Yu could only achieve 50 ms resolution it would not have been obvious to achieve 20 millisecond resolution.

At the paragraph bridging pgs. 12 and 13, the Examiner argues that it is held that measuring impedance using the electrodes integrated into the substrate would constitute measuring cell substrate impedance. It is presumed this is to mean that cell-substrate impedance is interpreted as being an impedance measurement taken from an electrode at the substrate since the Examiner’s proposed interpretation is not well known and thus would not be appropriate for judicial notice.

For completeness, cell-substrate impedance would not be measured whenever an electrode is positioned on the substrate. Cell-substrate impedance requires interaction between the cell and electrode. In some technologies impedance electrodes are used to monitor cell metabolism by detecting changes in the conductivity of a solution in response to the release of metabolites. In other technologies, impedance is used to confirm sealing of a cell against a pore. Both of these have electrodes on a substrate but neither are cell-substrate impedance measurements as used in the art to which the invention belongs.

As to Xu, Xu does measure cell-substrate impedance but detecting cell death from detachment or detecting morphological changes would not have suggested to one of ordinary skill in the art that a cell beating cycle could be resolved at 20 ms resolution. Further, teaching a measurement of less than 1 second does not teach or suggest 20 ms resolution.

As to the Examiner holding that measuring the beating cycle of the cardiomyocyte inherently measures a change in morphology, whether or not excitation and contraction of a beating cell changes its morphology, the only technology used to resolve cell beating prior to Applicant involves cell membrane potential measurement, which is an entirely different measurement than cell-substrate impedance.

B. Claims 16-29 and 40-43 are not obvious over Xu in view of Yu, and further in view of Banach as evidenced Hescheler and Cantor, and further in view of Schecter

Claims 16-29 and 40-43 are rejected under 35 U.S.C. §103(a) as being obvious over US 2005/0153425 published by Xu et al. (Xu), in view of 2006, Anal Chem (78):35-43 published by Yu et al (Yu), in further in view of Am. J. Physiol. Heart Circ. Physiol., 2003, Vol. 284, pp. H2114-23 published by Banach et al. (Banach) as evidenced by Journal of Electrocardiology, Vol. 37, pp 110-116 published by Hescheler et al. (Hescheler) and US 6,852,525 by Cantor, and US 2005/0182447 by Schecter.

Specifically, the Examiner incorporates the arguments as to Xu, Yu, Banach and Cantor, but acknowledges the combination of references fails to teach determining a rise in impedance and a decay in impedance and extrapolating a peak from each rise and decay or identifying impedance data points at which the first order derivative to time is zero or about zero.

However, Schecter is cited as teaching a method of monitoring a beating cycle of the heart using impedance measurements and calculating the derivative of impedance to time at 0, peak and delays in time to peak incidence, and changes in the impedance waveform and/or reductions in the quantity of the integral of Z or changes in the morphology of $Z(t)(Dt)$.

The object of Schecter is to utilize impedance waveforms and corresponding impedance data to direct the programming of a cardiac resynchronization therapy (CRT). Para [0046]. That is, the impedance data is from an implanted pacemaker or defibrillator. Abstract. Schecter's methods involve optimizing acquisition of impedance signals between electrodes present on implanted lead systems, automatically determining which electrodes or electrode combinations acquire impedance waveforms that have the best signal to noise ratio, and characterizing data most representative of dysynchronous electromechanical events. Abstract. Since Schecter utilizes impedance signals from a patient's implant and not from a cell-substrate impedance device as claimed Schecter would not apply to the invention set forth in claims 16 or 24.

Accordingly, Applicant respectfully requests the rejection of independent claims 16, 24 and dependent claims 17-23, 25-29, and 40-45 be withdrawn.

III

Conclusion

Applicant believes that the application as currently presented is in a condition for allowance and such favorable action is respectfully requested. If the Examiner desires, Applicant welcomes a telephone interview to expedite prosecution and is available at the telephone number below. Recognizing that Internet communications are not secure, we

also authorize the USPTO to communicate with us concerning any subject matter of this application by electronic mail. I understand that a copy of these communications will be made of record in the application file.

The Commissioner is hereby authorized to deduct the fee, any deficiency or credit any overpayment to Deposit Account No. 504352 for entry of this response.

Respectfully submitted,

WAGENKNECHT IP LAW GROUP, PC

Dated: June 16, 2016

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