IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JINHAIGU INTERNATIONAL TRADING CO. LTD. d/b/a ALECAREMED, *Plaintiff,* v. BEIJING CHOICE ELECTRONIC TECHNOLOGY CO. LTD., *Defendant*.	Civil Action No. 3:24-cv-3038 JURY DEMAND

ORIGINAL COMPLAINT

Plaintiff Jinhaigu International Trading Co. Ltd. d/b/a Alecaremed ("Plaintiff" or "JIT") seeks a declaratory judgment of patent non-infringement of certain fingertip pulse oximeter, as defined herein ("Accused Product"), and invalidity against United States Patent No. 8,639,308 ("Patent").

INTRODUCTION

1. Over the past twenty years, online retailing has revolutionized how foreign companies reach American consumers. The rise of electronic marketplaces combined with a dramatic increase in transport speed and improved logistic networks has allowed even relatively small companies to compete globally. These developments have generally increased competition and lowered prices.

2. The web domain "Amazon.com" hosts the Amazon Marketplace and its millions of product listings; it is United States specific and targets American consumers. For an online retailer to effectively compete in the United States, it must sell on the Amazon Marketplace. According to bigcommerce.com, "Each month more than 197 million people around the world get on their

devices and visit Amazon.com. That's more than the entire population of Russia. In 2018, Amazon's share of the US e-commerce market hit 49%... that is more than Amazon's top three competitors combined, with eBay coming in at 6.6%, Apple at 3% and Walmart at 3.7%."

3. Nine out of ten American consumers use Amazon to price check products they find elsewhere, and roughly 95 million people have Amazon Prime memberships in the United States. Facing the considerable challenges of managing this sprawling hive of commercial activity, Amazon, Inc. established intellectual property complaint and enforcement systems for Amazon.com primarily designed to protect itself from contributory infringement liability. These include a patent infringement reporting mechanism and a binding pseudo-arbitration evaluation procedure currently known as the Amazon Patent Evaluation Express ("APEX").

4. In sum, after Amazon receives a patent infringement complaint, it contacts the accused sellers and urges them to negotiate with the patent owner. If the patent owner initiates an APEX proceeding, the seller may opt not to participate, but that refusal means Amazon will remove, *i.e.*, de-list, the accused product from the Amazon Marketplace.

5. An Amazon APEX is decided by a single neutral evaluator chosen by Amazon. Once begun, the process lasts only a few weeks. The evaluator is paid a fixed fee for the APEX, borne by the losing side. The patent owner identifies the accused products by ASIN No. and a single claim of one patent allegedly infringed. Each side is permitted one brief on infringement. The evaluator may not consider validity unless the asserted patent claim has already been ruled invalid by a court or by the USPTO, making the procedure exceedingly patent owner friendly.

6. Amazon's procedures require the evaluator to determine whether the patent owner is "likely to be able to prove" the accused products infringe the asserted claim. The evaluator does not explain their reasoning if they find for the patent owner but must provide a brief explanation

if they rule against the patent owner. If the patent owner wins, Amazon de-lists the accused products until the parties notify Amazon that the dispute has been resolved and the infringement complaint withdrawn. There is no appeal.

7. Amazon APEX proceedings are heavily weighted in favor of patent owners. They are not suited to evaluating complex technical issues, and the speed, limited scope, high stakes, and inability to appeal all place tremendous pressure on accused sellers to capitulate, particularly online retailers deriving most of their revenue from Amazon sales.

8. It is against this backdrop that Defendant Beijing Choice Electronic Technology Co. Ltd. ("Defendant" or "Beijing Choice") reported to Amazon meritless "Intellectual Property Violations" against the Accused Product, specifically alleging infringement of the Patent, and resulting in the potential delisting of the Accused Product.

NATURE OF THE ACTION

9. This is an action for Declaratory Judgment of patent non-infringement and invalidity arising under the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., and the United States Patent Laws, 35 U.S.C. § 101 *et seq*.

PARTIES

10. Plaintiff JIT is a type of foreign limited liability company organized under the laws of the People's Republic of China. JIT sells pulse oximeter products on Amazon.

11. Upon information and belief, Defendant is a type of foreign limited liability company organized under the laws of the People's Republic of China.

12. Upon information and belief, Defendant has no physical presence in the United States beyond what is believed to be a wholly-owned subsidiary, ChoiceMMed America Corporation, a Pennsylvania corporation.

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a) because it arises under the Patent Laws of the United States, 35 U.S.C. §§ 101 *et. seq*. Subject matter jurisdiction over this action is further provided under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

14. Defendant is subject to this Court's personal jurisdiction pursuant to the due process clause of the Constitution and/or the Texas Long Arm Statute, due at least to Defendant's substantial business in this State and District, including: regularly conducting and soliciting business, engaging in other persistent conduct, and/or deriving substantial revenue from Texas residents.

15. Alternatively, Defendant is subject to this Court's personal jurisdiction pursuant to Fed. R. Civ. P. 4(k)(2).

16. Venue is proper in this District pursuant to 28 U.S.C. 1391.

THE ACCUSED PRODUCT

17. JIT is an e-commerce company selling medical-grade pulse oximeters on Amazon under the storefront and brand name "Alecaremed" (Seller ID: A3QIGD0IEW31XP).

18. The JIT storefront has earned a lifetime customer rating of 5 out of 5 stars.

19. The Accused Product at issue is the Alecaremed Pulse Oximeter identified by ASIN Nos. B0BYD34DYV, B0CLRZPDCH, B0CXPYP6RQ, & B0CXPXK2DZ. The listing for the Accused Product has earned a customer rating of 4.6 out of 5 stars.

Pulse Oximeter, 4 Color OLED Display Oxygen Monitor Fingertip with 20 × Memory, Blood Oxygen Saturation Monitor (SpO2), Alarm & Brightness Adjustable, Batteries & Lanyard (White)

Visit the Alecaremed Store

4.6 ★★★★½ 1,495 ratings

| Search this page

Amazon's Choice

3K+ bought in past month

-8% $21.99 ($21.99 / Count)

List Price: $23.99

FREE Returns

Redeem Save 5% on 2 select item(s) promo

20. The Amazon marketplace constitutes JIT's primary sales channel into the United States. To remain competitive in the United States market for metal detectors, JIT needs their products listed in the Amazon marketplace.

21. Defendant's ability to use the APEX as an inequitable injunction significantly harm JIT. In addition to the direct effects of monetary losses, the delisting of products immediately results in lost sales numbers, product reviews, and product ratings, which are all important factors in determining their Amazon ranking. Amazon ranking is in turn important to product visibility in consumer searches and to Amazon's award of the "Amazon Choice" badge or the "Amazon Bestseller" designations which create a significant sales boost.

UNITED STATES PATENT NO. 8,639,308

22. Defendant is the assignee of record of the Patent. *See* Exhibit 1.

23. The Patent is entitled "Fingertip Oximeter and a Method for Observing a Measurement Result Thereon" and generally discloses "a fingertip oximeter that has a plurality of display modes which are presented sequentially in a circulating way, allowing users to easily observe a measurement result from any of surrounding directions. The present invention makes users to be able to observe a measurement result of the fingertip oximeter from any of surrounding directions, without the need of bending his/her finger. Thus, any partial occlusion of the arterial blood capillary can be avoided, so that strength of the pulse will not decrease, and strength of the signal will not be affected. As a result, the precision of the measurement is improved." Exhibit 1 at Abstract.

24. The named inventors of the Patent are Feng Xu and Shuhai Liu, both of Beijing China. *Id*.

25. The Patent was issued on January 28, 2014 and has a purported effective filing date of August 7, 2006. *Id.*

26. The Patent has two independent claims and four dependent claims. Claim 4 specifically recites a fingertip oximeter.

DEFENDANT BEIJING CHOICE

27. Defendant is a medical equipment manufacturer founded in 1993 in Beijing, China. Defendant specializes in providing medical and health products for homecare and professional needs.

28. Defendant is headquartered in Beijing, while its marketing network covers all over the world. Defendant owns five overseas branches in global key regions, exporting products to more than 100 countries.

29. On or around November 14, 2024, Defendant lodged a meritless Amazon infringement complaint (Complaint ID: 16657940341) against JIT and the Accused Product. *See* Exhibit 2, Amazon Infringement Complaint Email.

30. Defendant further initiated an APEX procedure against JIT and the Accused Product, therein asserting claim 4 of the Patent. *See* Exhibit 3, Amazon Patent Evaluation Express Agreement.

31. JIT opted not to participate in the APEX, resulting in Amazon inevitably removing the listing of the Accused Product and potentially similar products.

THE PRIOR ART

32. There exist several prior art references, as cited herein, that either anticipate or render the Patent obvious. Every prior art reference cited herein predates the purported effective filing date of the Patent.

33. For example, United States Patent No. 6,654,621 to Palatnik *et al*. ("Palatnik") issued on November 25, 2003. *See* Exhibit 4. Palatnik generally discloses a finger oximeter having a fixed first finger grip member and a second finger grip member that is movable relative to the first fixed finger grip member. The finger grip members are mounted to a casing, with the first finger grip member being fixedly coupled to a top portion of the casing and the second finger grip member being movable vertically within the casing. A force is continuously applied against the movable finger grip member to bias it towards the fixed finger gripping member. This biasing force has sufficient yield so that when a finger is inserted between the two finger grip members, the movable finger grip member would yield to the incoming finger. At the same time the biasing force is of a sufficient magnitude to push the movable finger grip member towards the fixed finger grip member to effect a firm grip of the finger. The biasing force is evenly distributed to the

movable finger grip portion to effect a floating finger grip suspension system for the finger oximeter.

34. United States Patent Publication No. 2006/0079739 to Chen Wang *et al*. ("Wang") published on April 13, 2006. *See* Exhibit 5. Wang generally discloses a multifunctional portable medical measurement device and the display method thereof. The multifunctional portable medical measurement device has a first medical measurement unit, a second medical measurement unit, a key unit, a display unit, and a microprocessor. The microprocessor selects either a first measured value or a second measured value for output to the display unit according to the operation of the key unit. When the portable medical measurement device operates in the second measurement mode, a digital display for displaying only a numeral is used to display the second measured value of the second medical measurement unit. When the portable medical measurement device operates in the first measurement mode, a plurality of digital displays for displaying a numeral is combined to display the first measured value of the first medical measurement unit.

35. United States Patent No. 5,211,479 to Coffey *et al.* ("Coffey") issued on May 18, 1993. *See* Exhibit 6. Coffey generally discloses a pacifier thermometer having one or more electrical sensors within the pacifier nipple and digital measurement and display units external to the nipple. An insulating nipple core can be utilized to improve the speed and accuracy of sensor response. Two or more sensors along with digital logic selection of the highest constant reading can be used to avoid false low readings. Additional conventional features can be provided as well.

36. Japanese Patent Application No. 2001-204697 to Watanabe *et al*. ("Watanabe") published on July 31, 2001. *See* Exhibit 7. Watanabe generally discloses an electronic sphygmomanometer which can be used easily even when the sphygmomanometer is fitted to either one of right and left upper limbs. SOLUTION: The electronic sphygmomanometer is composed

of a cuff 1 which is a bio-information detecting means that is fitted to the upper limb of a human body and detects the bio-information of the human body which changes depending upon the blood pressure of the human body, a blood pressure value deciding means 7 which calculates the blood pressure value of the human body from the bio-information obtained from the cuff 1, and a fitted upper limb discriminating means 9 which discriminates whether the upper limb fitted with the cuff 1 is a right upper limb or left upper limb. Since the discriminating means 9 discriminates the fitted upper limb, an appropriate function can be presented in accordance with the fitted upper limb. In addition, the blood pressures measured from both upper limbs can be computed and this sphygmomanometer can be used for the discovery of a disease, such as the arteriosclerotic peripheral arterial obstruction, etc.

37. United States Patent No. 6,584,336 to Ali *et al.* ("Ali") issued on June 24, 2003. *See* Exhibit 8. Ali generally discloses a universal pulse oximeter (UPO) comprising a portable unit and a docking station together providing three-instruments-in-one functionality for measuring oxygen saturation and related physiological parameters. The portable unit functions as a handheld pulse oximeter. The combination of the docked portable and the docking station functions as a standalone, high-performance pulse oximeter. The portable-docking station combination is also connectable to, and universally compatible with, pulse oximeters from various manufacturers through use of a waveform generator. The UPO provides a universal sensor to pulse oximeter interface and a pulse oximetry measurement capability that upgrades the performance of conventional instruments by increasing low perfusion performance and motion artifact immunity, for example. Universal compatibility combined with portability allows the UPO to be transported along with patients transferred between an ambulance and a hospital ER, or between various hospital sites, providing continuous patient monitoring in addition to plug-compatibility and

functional upgrading for multiparameter patient monitoring systems. The image on the portable display is rotatable, either manually when undocked or as a function of orientation. In one embodiment, the docking station has a web server and network interface that allows UPO data to be downloaded and viewed as web pages over a local area network or the Internet.

CLAIM I:
DECLARATORY JUDGMENT OF NON-INFRINGEMENT

38. JIT incorporates by reference the preceding paragraphs as though fully set forth herein.

39. An actual, continuing and justiciable controversy exists between JIT and Defendant as to the non-infringement of the Patent, as evidenced by Defendant's allegations of infringement on Amazon, as set forth above.

40. Pursuant to the Declaratory Judgment Act, JIT requests a judicial determination and declaration that the Accused Product does not infringe and has not infringed, either directly or indirectly, literally or under the doctrine of equivalents, any presumably valid claim of the Patent.

41. For example, the Accused Product does not meet each and every limitation of independent claim 4. Likewise, since the independent claim is not infringed, neither are its dependent claims. *Wahpeton Canvas Co. v. Frontier, Inc.*, 870 F.2d 1546, 1552 n.9, 1553 (Fed. Cir. 1989) (a dependent claim cannot be infringed if any claim from which it depends is not infringed).

42. Regarding representative claim 4, the Accused Product does not comprise at least the following elements: the button further controlling the power source; wherein said button also controls the power source unit of the fingertip oximeter; and the central processor being configured to detect the user instruction when the user presses down the button.

43. Further, as discussed herein, since the claims of the Patent are invalid, there can be infringement.

CLAIM II:
DECLARATORY JUDGMENT OF PATENT INVALIDITY

44. JIT incorporates by reference the preceding paragraphs as though fully set forth herein.

45. Under 35 U.S.C. § 103, the claims of the Patent are unpatentable over Palatnik in view of Wang and Coffey. For example, representative claim 4 of the Patent is disclosed and/or taught by Palatnik in combination with Wang and Coffey.

46. Palatnik discloses a fingertip oximeter in figures 1-3 with a power source unit 10 for supplying power to the fingertip oximeter. Palatnik further discloses a button 32 for powering the device on. Wang teaches a device that has a button 11 to change display modes. It would have been obvious to modify Palatnik to use the different display modes, as taught by Wang, to allow for easier viewing by the user and overall flexibility of use. Coffey teaches that the same button powers on the device and controls the display. As such, in the combination, it would have been obvious to modify the combination above to use the same button, to increase the ease of use by avoiding pressing the wrong button. The combination further reduces the number of parts, and therefore the cost of the invention. Palatnik further teaches a microprocessor UI to control operation of the device. The processor of the device then controls all operation, detecting depression of the button, including switching display modes when the button is depressed, and receiving and displaying measurement results in different modes on display 20.

47. Under 35 U.S.C. § 103, the claims of the Patent are unpatentable over Palatnik in view of Watanabe and Coffey. For example, representative claim 4 of the Patent is disclosed and/or taught by Palatnik in combination with Watanabe and Coffey.

48. Palatnik discloses a fingertip oximeter in figures 1-3 with a power source unit 10 for supplying power to the fingertip oximeter. Palatnik further discloses a button 32 for powering the device on. Watanabe shows body worn medical device that has a display change over switch 9 to change the display 180 degrees depending on which arm the device is worn on. In other words, it changes the display to make the display more viewable. It would have been obvious to modify Palatnik to use the different display modes, as taught by Watanabe, to allow for easier viewing by the user and overall flexibility of use. As such, in the combination, it would have been obvious to modify the combination above to use the same button, to increase the ease of use by avoiding pressing the wrong button. The combination further reduces the number of parts, and therefore the cost of the invention. Palatnik further teaches a microprocessor UI to control operation of the device. The processor of the device then controls all operation, detecting depression of the button, including switching display modes when the button is depressed, and receiving and displaying measurement results in different modes on display 20.

49. Under 35 U.S.C. § 103, the claims of the Patent are unpatentable over Palatnik in view of Ali and Coffey. For example, representative claim 4 of the Patent is disclosed and/or taught by Palatnik in combination with Ali and Coffey.

50. Palatnik discloses a fingertip oximeter in figures 1-3 with a power source unit 10 for supplying power to the fingertip oximeter. Palatnik further discloses a button 32 for powering the device on. Ali shows an oximeter with a soft key 870 that changes the orientation of the display 90 degrees when pressed (see column 17, lines 12-20). It would have been obvious to modify Palatnik to use the different display modes, as taught by Ali, to allow for easier viewing by the user and overall flexibility of use. Coffey teaches that the same button powers on the device and controls the display. As such, in the combination, it would have been obvious to modify the

combination above to use the same button, to increase the ease of use by avoiding pressing the wrong button. The combination further reduces the number of parts, and therefore the cost of the invention. Palatnik further teaches a microprocessor UI to control operation of the device. The processor of the device then controls all operation, detecting depression of the button, including switching display modes when the button is depressed, and receiving and displaying measurement results in different modes on display 20.

51. Dependent claims 5-6 are further disclosed and/or taught by Palatnik in combination with Wang/Watanabe/Ali and Coffey.

DEMAND FOR JURY TRIAL

JIT, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

PRAYER FOR RELIEF

WHEREFORE, JIT respectfully request that this Court enter a judgment as follows:

A. Preliminary and permanent injunctions ordering Defendant to withdraw all Amazon infringement complaints lodged against the Accused Product regarding the Patent, and to refrain from lodging any further infringement complaints regarding the same.

B. A declaration that the Accused Product do not infringe any of the presumably valid claims of the Patent;

C. A declaration that the Patent is invalid over the prior art cited herein;

D. A finding that this case is exceptional and an award to JIT of its costs, expenses, and reasonable attorney fees incurred in this action pursuant to 35 U.S.C § 285; and

E. Such further and additional relief as the Court deems just and proper.

Dated: December 4, 2024

Respectfully submitted,

/s/ Nicholas Najera
Timothy Wang
Texas Bar No.: 24067927
Nicholas Najera
Texas Bar No.: 24127049

Ni, Wang & Massand, PLLC
8140 Walnut Hill Lane, Suite 615
Dallas, TX 75231
972.331.4603
972.314.0900 (facsimile)
twang@nilawfirm.com
nnajera@nilawfirm.com

Counsel for Plaintiff