

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Appellant: Victor Gura, Carlos Jacobo Ezon and Masoud Beizai

Application No.: 13/239,000                      Group: 1776

Filed: September 21, 2011                      Examiner: Green, Jason M.

Confirmation No.: 3810

For: Carbon Dioxide Gas Removal From A Fluid Circuit Of A Dialysis Device

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**APPEAL BRIEF**

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P.O. Box 1450  
Alexandria, VA 22313-1450

Commissioner:

This Appeal Brief is submitted pursuant to the Notice of Appeal received in the U.S. Patent and Trademark Office on October 5, 2012, and in support of the appeal from the final rejection set forth in the Office Action mailed on June 7, 2012. The fee for filing a brief in support of an appeal is enclosed.

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I. REAL PARTY IN INTEREST

The real party in interest is Fresenius Medical Care Holdings, Inc., 920 Winter Street Waltham, MA 02451-1457. Fresenius Medical Care Holdings, Inc. is the Assignee of the entire right, title and interest in the subject application, by virtue of an Assignment recorded on October 24, 2012 at Reel 029180 Frames 0927-0938.

II. RELATED APPEALS AND INTERFERENCES

Appellants, the undersigned Attorney, and the Assignee are not aware of any related appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-9 have been finally rejected, and a copy appears in the Appendix of this Brief. Claim 8 was amended in the Amendment filed on March 27, 2012. Claims 1-7 and 9 appear as originally filed. Claims 1-9 are being appealed herein.

IV. STATUS OF AMENDMENTS

All prior amendments have been entered in the application. No amendments are being filed concurrently with this Appeal Brief or have been filed subsequent to the Final Office Action dated June 7, 2012 (hereinafter, "Final Office Action").

V. SUMMARY OF CLAIMED SUBJECT MATTER

Claim 1

Claim 1 is an independent claim that claims an aspect of the present invention that relates to a wearable dialysis system comprising a wearable dialyzer that removes solutes from impure blood into dialysate, a wearable pump that pumps blood and dialysate through the dialyzer, a wearable dialysate regeneration system comprising urease in fluid communication with the dialysate (Specification on page 7, line 26 to page 8, line 7, and as shown in FIG. 1), and a wearable degassing device in fluid communication with the dialysate regeneration system (Specification on page 8, lines 24-27, and as shown in FIG. 1), the degassing device comprising a dialysate degassing tube having an external wall exposed to atmosphere, the wall comprising a

material that passes gas but does not pass liquid in any orientation of the degassing device (Specification on page 9, lines 3-20, and as shown in FIGS. 5a and 5b).

#### VI. GROUNDINGS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Gura (U.S. Patent Application No. 10/940,862 published as U.S. 2005/0101901 A1 on May 12, 2005), hereinafter “Gura,” in view of Bowman *et al.*, (U.S. Patent No. 4,325,715 issued on April 20, 1982), hereinafter “Bowman.”

#### VII. ARGUMENT

The 35 U.S.C. § 103(a) Rejection of Claims 1-9 based on Gura in view of Bowman

Appellants’ Claim 1 recites a wearable dialysis system comprising a wearable dialyzer that removes solutes from impure blood into dialysate, a wearable pump that pumps blood and dialysate through the dialyzer, a wearable dialysate regeneration system comprising urease in fluid communication with the dialysate, and a wearable degassing device in fluid communication with the dialysate regeneration system, the degassing device comprising a dialysate degassing tube having an external wall exposed to atmosphere, the wall comprising a material that passes gas but does not pass liquid in any orientation of the degassing device.

Gura discloses a wearable continuous renal replacement therapy (CRRT) device adapted to be worn on a portion of the body of a patient, including at least one or a plurality of dialyzers connected in series or parallel that utilize dialysate to remove impurities from blood of the patient and at least one sorbent device for regenerating the spent dialysate. *See* Gura ¶ 7. Gura also discloses a wearable degassing device in fluid communication with the dialysate regeneration system. *See* Gura ¶ 78 and FIG. 12.

The Examiner, at page 4 of the Final Office Action, acknowledges that Gura fails to teach or suggest a degassing device comprising a dialysate degassing tube having an external wall exposed to atmosphere, the wall comprising a material that passes gas but does not pass liquid in any orientation of the degassing device, but then states that Bowman teaches a degassing device in a dialysate regeneration system comprising a dialysate degassing tube having an external wall exposed to atmosphere, the wall comprising a material that passes gas but does not pass liquid in any orientation of the degassing device, and wherein the dialysate degassing tube is configured as a coil of tubing. The Examiner then combines Gura with Bowman, stating that it would have