

SUPERINTENDENCIA DE INDUSTRIA Y COMERCIO



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Señora

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Jefe de División de Nuevas Creaciones

SUPERINTENDENCIA DE INDUSTRIA Y COMERCIO

E. \_\_\_\_\_ S. \_\_\_\_\_ D. \_\_\_\_\_

Referencia: Expediente No. 05.066.418

Solicitud de Patente de Invención titulada: "Termómetro timpánico con mecanismo de eyección"

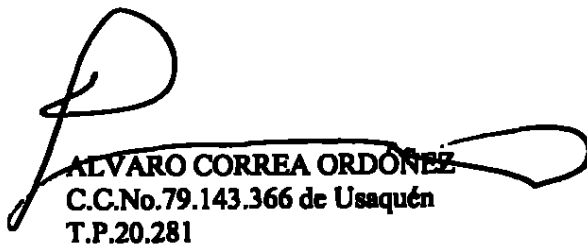
Solicitante: Sherwood Services AG

**MEMORIAL DE ALCANCE**

ÁLVARO CORREA ORDÓÑEZ, mayor de edad y vecino de Bogotá D.C., identificado según aparece al pie de mi firma, en mi condición de apoderado de la sociedad en referencia, manifiesto lo siguiente:

El día 06 de julio de 2005, bajo el número de radicación 05.066.418, presenté la solicitud de patente de invención de la referencia, para la cual adjunto copia de la opinión escrita emitida recientemente en fase internacional para la solicitud PCT/US2003/000256.

Atentamente,

  
ÁLVARO CORREA ORDÓÑEZ  
C.C.No.79.143.366 de Usaquén  
T.P.20.281

Anexo: Opinión Escrita del Reporte Preliminar Internacional  
Sustitución de poder

## PATENT COOPERATION TREATY

From the  
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITYDOCKETED  
PCT

000002

WRITTEN OPINION

(PCT Rule 66)

To:  
MARK S. LEONARDO  
BROWN RUDRICK BIRLACK ISRAELI LLP  
ONE FINANCIAL CNTRR  
BOSTON, MA 02111Date of Mailing  
(day/month/year) 01 DEC 2006

Applicant's or agent's file reference

20510/24-PCT- M-1107 WO

REPLY DUE

within 2 months/days from  
the above date of mailing

International application No.

PCT/US03/00256

International filing date (day/month/year)

06 January 2003 (06.01.2003)

Priority date (day/month/year)

International Patent Classification (IPC) or both national classification and IPC

IPC: A61B 5/00( 2006.01);G01K 1/00( 2006.01)

USPC: 600/549-374/158

Applicant

SHERWOOD SERVICES AG

1. This written opinion is the first (first, etc.) drawn by this International Preliminary Examining Authority.
2. This opinion contains indications relating to the following items:
  - I ☒ Basis of the opinion
  - II ☐ Priority
  - III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
  - IV ☐ Lack of unity of invention
  - V ☒ Reasoned statement under Rule 66.2 (a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
  - VI ☐ Certain documents cited
  - VII ☒ Certain defects in the international application
  - VIII ☐ Certain observations on the international application
3. The applicant is hereby invited to reply to this opinion.
 

When? See the time limit indicated above. ~~The applicant may, before the expiration of that time limit, request this Authority to grant an extension. See rule 66.3(4).~~

How? By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

Also For an additional opportunity to submit amendments, see Rule 66.4.  
For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4 bis.  
For an informal communication with the examiner, see Rule 66.6

If no reply is filed, the international preliminary examination report will be established on the basis of this opinion.
4. The final date by which the international preliminary examination report must be established according to Rule 69.2 is: 18 November 2006 (18.11.2006).

Name and mailing address of the IPEA/US  
Mail Stop PCT, Attn: IPEA/US  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
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Authorized officer

Max Hindenburg

Telephone No. (571) 272-4726

Form PCT/IPEA/408 (cover sheet)(July 1998)

WRITTEN OPINION

International application No.

PCT/US03/00256

1. Basis of the opinion

1. With regard to the elements of the international application:\*

- ☐ the international application as originally filed
- ☒ the description:  
pages 1-13, as originally filed  
pages NONE, filed with the demand  
pages NONE, filed with the letter of \_\_\_\_\_
- ☒ the claims:  
pages 14-17, as originally filed  
pages NONE, as amended (together with any statement) under Article 19  
pages NONE, filed with the demand  
pages NONE, filed with the letter of \_\_\_\_\_
- ☒ the drawings:  
pages 1-7, as originally filed  
pages NONE, filed with the demand  
pages NONE, filed with the letter of \_\_\_\_\_
- ☐ the sequence listing part of the description:  
pages NONE, as originally filed  
pages NONE, filed with the demand  
pages NONE, filed with the letter of \_\_\_\_\_

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language \_\_\_\_\_ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the written opinion was drawn on the basis of the sequence listing:

- ☐ contained in the international application in printed form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages NONE
- ☐ the claims, Nos. NONE
- ☐ the drawings, sheets/fig NONE

5. ☐ This opinion has been drawn as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

\* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed."

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WRITTEN OPINION

International application No.  
PCT/US03/00256

V. Reasoned statement under Rule 66.2(a)(II) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

|                               |                               |     |
|-------------------------------|-------------------------------|-----|
| 1. STATEMENT                  |                               |     |
| Novelty (N)                   | Claims 3, 4, 10, 12 and 20    | YES |
|                               | Claims 1-2, 5-9, 11 AND 13-19 | NO  |
| Inventive Step (IS)           | Claims NONE                   | YES |
|                               | Claims 1-20                   | NO  |
| Industrial Applicability (IA) | Claims 1-20                   | YES |
|                               | Claims NONE                   | NO  |

2. CITATIONS AND EXPLANATIONS

Please See Continuation Sheet

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WRITTEN OPINION

International application No.

PCT/US01/00156

VII. Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

Claim 12 is objected to under PCT Rule 66.2(a)(iii) as containing the following defect(s) in the form or contents thereof: at line 2-3 of the claim, the limitations "fingers" and "longitudinal ribs" render the claim indefinite; for example, it is unclear from the alternative language used in claim 1 whether or not the thermometer comprises a single or a plurality of "fingers" and "longitudinal ribs".

## Supplemental Box

(To be used when the space in any of the preceding boxes is not sufficient)

## TIME LIMIT:

The time limit set for response to a Written Opinion may not be extended. 37 CFR 1.484(d). Any response received after the expiration of the time limit set in the Written Opinion will not be considered in preparing the International Preliminary Examination Report.

## V. 2. Citations and Explanations:

1. Claims 1-2, 5-9, 11 and 13-19 lack novelty under PCT Article 33(2) as being anticipated by Sato (US Patent No. 3,738,173).

In regards to claim 1, Sato disclose(s) a tympanic thermometer comprising:

a heat sensing probe 11 defining a longitudinal axis and an outer surface extending from a distal end of the tympanic thermometer;

an ejection apparatus 13 including at least one finger 13c extending from the distal end of the tympanic thermometer and being configured for movement along the outer surface of the probe 11; and

a probe cover 12 being mountable to the distal end of the tympanic thermometer, the probe cover 12 defining an inner surface configured to engage the outer surface of the probe 11, the probe cover 12 including at least one longitudinal rib 12d radially projecting from the inner surface thereof, the longitudinal rib defining a proximal face to facilitate ejection of the probe cover 12,

wherein the at least one finger 13c is configured to engage the proximal face (see figs. 4, 6 & 8-10; column 3/lines 30-48 & 51-57; column 3/lines 11-20; column 4/lines 43-56; column 5/lines 7-15; column 6/lines 34-38 & 53-64; column 7/lines 3-6, 30-38, 46-54 & 63-68).

In regards to claim 2, Sato disclose(s) a tympanic thermometer wherein the outer surface of the probe defines a groove 29, transversely oriented relative to the longitudinal axis, which is configured to receive a portion of the probe cover 12 for releasably retaining the probe cover 12 with the probe (see figs. 6 & 8; column 3/lines 11-20; column 5/lines 7-15; column 7/lines 3-6).

In regards to claim 5, Sato disclose(s) a tympanic thermometer wherein the at least one finger 13c includes a tapered finger tip defining a distal strike face 13a (see fig. 9).

In regards to claim 6, Sato disclose(s) a tympanic thermometer wherein the at least one finger 13c is movable between a retracted position (see fig. 9) and an extended position (see fig. 4).

In regards to claim 7, Sato disclose(s) a tympanic thermometer whereby the at least one finger 13c is biased to the extended position (see fig. 4; column 6/lines 53-64).

*It is noted that the collar 13 is biased into the extended position against the force of spring 28 via retaining means 19 (see column 6/line 85 to column 7/line 2).*

In regards to claim 8, Sato disclose(s) a tympanic thermometer whereby the at least one finger 13c is releasably fixable in a retracted position (see fig. 4; column 6/lines 53-64).

In regards to claim 9, Sato disclose(s) a tympanic thermometer wherein the at least one finger 13c is releasably fixable via a latch, whereby the latch includes a release button 15 that is engageable to release the at least one finger 13c from the retracted position.

Form PCT/IPBA/408 (Supplemental Box) (July 1998)

## Supplemental Box

(To be used when the space in any of the preceding boxes is not sufficient)

(see fig. 9; column 7/lines 63-68).

In regards to claim 11, Sato disclose(s) a tympanic thermometer wherein the at least one longitudinal rib 12d has a transverse face having a substantially parallel orientation relative to the longitudinal axis of the probe (see fig. 9).

In regards to claim 13, Sato disclose(s) a tympanic thermometer comprising:

a heat sensing probe 11 defining a longitudinal axis and an outer surface extending from a distal end of the tympanic thermometer, the probe defining a transverse groove 29 in the outer surface;

an ejection apparatus 13 including at least one finger 13c extending from the distal end of the tympanic thermometer and being configured for movement along the outer surface of the probe, the at least one finger 13c being disposed for movement proximal to the transverse groove 29; and

a probe cover 12 having an inner surface being releasably mountable to the outer surface of the probe, the probe cover including at least one longitudinal rib 12d projecting from the inner surface of the probe cover 12, the at least one longitudinal rib defining a proximal face configured for engagement with the at least one finger 13c;

wherein the proximal face and the at least one finger 13 engage for moving the at least one finger 13 between a retracted position and an extended position (see figs. 4, 6 & 8-10; column 2/lines 30-48 & 51-57; column 3/lines 11-20; column 4/lines 45-56; column 5/lines 7-15; column 6/lines 34-38 & 53-64; column 7/lines 3-6, 30-38, 46-54 & 63-68).

In regards to claim 14, Sato disclose(s) a tympanic thermometer wherein the transverse groove 29 is disposed circumferentially about the outer surface of the probe and substantially perpendicular to the longitudinal axis of the probe (see figs. 6 & 8; column 3/lines 11-20; column 5/lines 7-15; column 7/lines 3-6).

In regards to claim 15, Sato disclose(s) a tympanic thermometer wherein the at least one finger 13 includes a tapered finger tip defining a distal strike face 13a (see fig. 9).

In regards to claim 16, Sato disclose(s) a tympanic thermometer wherein the distal strike face 13a is configured for engagement with the proximal face of the at least one longitudinal rib 12d (see figs. 4 & 9; column 6/lines 41-44).

In regards to claim 17, Sato disclose(s) a tympanic thermometer wherein the at least one finger 13 is biased to the extended position (see fig. 4).

*It is noted that the collar 13 is biased into the extended position against the force of spring 26 via retaining means 19 (see column 6/line 68 to column 7/line 2).*

In regards to claim 18, Sato disclose(s) a tympanic thermometer wherein the at least one finger 13 is releasably fixed in the retracted position (see fig. 9; column 7/lines 63-68).

In regards to claim 19, Sato disclose(s) a tympanic thermometer wherein the at least one finger 13c is releasably fixable via a latch, the latch including a release button 15 being engageable to release the at least one finger 13 from the retracted position (see figs. 4 & 9).

**2. Claims 4, 10, 12 and 20 lack an inventive step under PCT Article 33(3) as being obvious over Sato ('173).**

Sato discloses a tympanic thermometer, as disclosed above, that teaches all the limitations of the claims except Sato does not teach a plurality of fingers or longitudinal ribs. However, it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide a thermometer similar to that of Sato with a plurality of fingers and longitudinal ribs since such a modification would amount to a design choice.

More in regard to claim 12, it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide a thermometer similar to that of Sato, as modified above, with a plurality of equidistantly spaced fingers and/or longitudinal ribs since such a modification would amount to a design choice.

**3. Claim 3 lacks an inventive step under PCT Article 33(3) as being obvious over Sato ('173) in view of Makita et al. (US Patent No. 5,340,215).**

Sato discloses a thermometer, as disclosed above, that teaches all the limitations of the claim except Sato does not disclose a plurality of protuberances projecting from the inner surface of the probe cover. However, Makita et al. disclose a thermometer wherein the portion of the probe cover 9 includes a protuberance projecting from the inner surface of the probe cover 9 and being proximally spaced from the distal end of the probe cover (see figs. 2 & 6; column 4/lines 53-54 & 59-61). Since Sato teaches a retaining means for releasably retaining the probe cover, it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide a thermometer similar to that of Sato with a protuberance similar to that of Makita et al. in order to releasably attach the probe cover to the probe. Moreover, it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide a thermometer similar to that of Sato as modified by Makita et al. with a plurality of protuberances since such a modification would amount to a design choice.

Claims 1-20 meet the criteria set out in PCT Article 33(4), and thus have industrial applicability because the subject matter claimed can be made or used in industry.

## NEW CITATIONS

US 3,905,232 A (KNUTH) 16 SEPTEMBER 1975, SEE ENTIRE DOCUMENT

US 3,999,434 A (YEN) 28 DECEMBER 1976, SEE ENTIRE DOCUMENT

US 4,112,762 A (TURNER ET AL.) 12 SEPTEMBER 1978

US 5,340,215 A (MAKITA ET AL.) 23 AUGUST 1994

US 6,053,875 A (ROSENBAUM ET AL.) 23 APRIL 2000

Purin PCT/JPBA/408 (Supplemental Box) (July 1998)

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Señores:

SUPERINTENDENCIA DE INDUSTRIA Y COMERCIO

DIVISIÓN DE NUEVAS CREACIONES

E. \_\_\_\_\_ S. \_\_\_\_\_ D. \_\_\_\_\_

Referencia: Expediente No. 05.066.418

Solicitud de Patente de Invención titulada: "Termómetro timpánico con mecanismo de eyección"

Solicitante: Sherwood Services AG

**SUSTITUCIÓN DE PODER**

**RICARDO METKE MÉNDEZ**, mayor y vecino de Bogotá, D. C., identificado como aparece al pie de mi firma, actuando en mi carácter de apoderado de la sociedad de la referencia, respetuosamente me permito manifestar que SUSTITUYO el poder a mi conferido por la mencionada sociedad en el doctor **ALVARO CORREA ORDÓÑEZ**, identificado con la cédula de ciudadanía número 79.143.366 de Usaquén y con la Tarjeta Profesional número 20.281, para que sea él quien en adelante, asuma el trámite de la presente solicitud.

El apoderado sustituto queda con las mismas facultades del principal.

Atentamente,



**RICARDO METKE MENDEZ**  
cc No 19.074.428 de Bogotá  
T.P. No. 13531

**DILIGENCIA DE RECONOCIMIENTO  
Y PRESENTACION PERSONAL**  
Ante el Notario Once del Circulo de Santa Fe de Bogotá, compareció **ESTEBAN**  
**ESTEBAN**  
Quien exhibió la C.C. No. **19074428**  
Expedida en **BOGOTÁ** 1353/  
y declaró que la firma y huella que  
se presenta memorial con que se  
nada del mismo es la de:  
Memorial dirigido **INTERESADO**  
Santa Fe de Bogotá, D.C. **18 ABR 2011**  
  
Firma del Declarante **HUELLA**  
Autorizó la anterior diligencia  
  
NOTARIO ONCE DEL CIRCULO DE SANTA FE DE BOGOTÁ

REPUBLICA DE COLOMBIA  
NOTARIO 11 DEL CIRCULO DE  
SANTA FE DE BOGOTÁ, D.C.  
  
**ZULEMA NAVARRO DE BAUTISTA**  
NOTARIA ONCE