

Law Offices

MENTER, RUDIN & TRIVELPIECE, P.C.

SUITE 404

333 EAST ONONDAGA STREET
SYRACUSE, NEW YORK 13202

A. SOLOMON MENTER
1910-1978

STANLEY R. RUDIN
PAUL A. TRIVELPIECE
EDWARD M. ZACHARY
GERALD J. MATHEWS
PETER L. HUBBARD
DAVID W. PELLAND
DAVID SHOCKEY
ANTONIO E. CARUSO

AREA CODE 315/474-7541

August 17, 1981

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Mario A. Martella
Smyth, Pavitt, Siegemund
& Martella
4262 Wilshire Blvd., Suite 320
Los Angeles, CA 90010

Re: Instruments For Cardiac Research, Inc.
(ICR)

Dear Mr. Martella:

We have referred your letter of July 22, 1981 to our patent counsel and he informs us that he does not agree that the U.S. Patent 3,267,934 can be extended to cover the systems of Instruments For Cardiac Research, Inc. (ICR).

In his opinion, the description in U.S. Patent 3,267,934 is of a system in which a sample from the P-Q segment of one QRS complex is compared to a sample in the S-T segment of the same QRS complex, see column 11, lines 29-36. The sample from the P-Q segment is stored before it is compared with the sample from the S-T segment, see column 16, lines 37-48.

Claim 1 speaks of a "QRS complex preceded by a reference portion and followed by an ST segment"; "first sampling means" which samples a signal "during said reference portion"; and a "second sampling means" which samples a signal "during said ST segment." Similarly, claim 2 recites "a QRS complex" having "an isoelectric reference portion" and "an ST segment" with comparison of samples taken from the reference portion and the ST segment of the same QRS complex. The other claims of possible interest have similar recitations and they recite taking samples from portions of a single QRS complex.

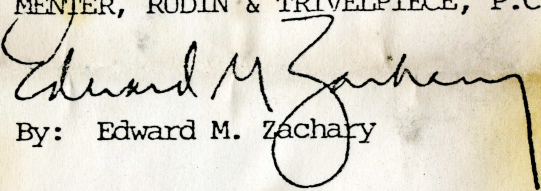
The opinion of the District Court and the Circuit Court of Appeals, in the case of Del Mar Engineering Laboratories v. Physio-Tronics, Inc., rely for patent validity on the feature of U.S. Patent 3,267,934 that samples from the same QRS complex are compared with each other. In the District Court opinion, 202 USPQ 242, that feature is relied upon in Findings Nos. 72-76, 81, 108(d), 108(e), 116; indeed, patentability clearly rests on "the feature of going back in time", Findings 125, 127. In the District Court opinion the prior art Caceres work was distinguished on the basis that Caceres was a digital system, and not an analog system, and that Caceres utilized a constructed straight line as the base (reference) line, see Findings Nos. 52, 53, 60, 107(d), 135. As stated in the opinion of the Circuit Court of Appeals, 642 F.2d 1167 at 1171 (9th Cir. 1981): "Del Mar claims that the unique feature of the Thornton patent is that it effectively goes back in time to measure the PQ internal once the circuit recognizes the R wave", and see page 1173, "... the Thornton technique for effectively going back in time from the R wave to obtain a sample from the PQ internal was 'an extremely clever idea' and not a readily apparent approach."

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In the view of patent counsel, the ICR system is much closer to the prior art Caceres system than to the U.S. Patent 3,267,934. In his opinion the ICR system is "justified" by the prior art, i.e., it is within the teaching of the prior art and not covered by the claims or description of U.S. Patent 3,267,934.

Very truly yours,

MENTER, RUDIN & TRIVELPIECE, P.C.


By: Edward M. Zachary

EMZ/kh

cc: Richard J. Berk, President
Richard P. Bowman, Technical Director

8-27-81

Phil:
I thought you might be
interested in some of Mario's activity
regarding your 51 patent.
Joe