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3:04-CV-1378 HEMOCUE AB V. STANBIO LABORATORY

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ORIGINAL

FILED

GREGORY B. WOOD (Bar No. 068064)

FULBRIGHT &amp; JAWORSKI L.L.P.

865 South Figueroa Street, 29th Floor

Los Angeles, California 90017

Telephone: (213) 892-9200

Facsimile: (213) 680-4518

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CLERK OF DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

PAUL KRIEGER (Tex No. 11726470) BY:

EDWARD STEAKLEY (Tex. No. 24010423)

FULBRIGHT &amp; JAWORSKI L.L.P.

1301 McKinney

Suite 5100

Houston Texas 77010-3095

DEPUTY

Attorneys for Plaintiffs

HemoCue AB and HemoCue, Inc.

IN THE UNITED STATES DISTRICT COURT "BY FAX"  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

'04 CV 1378 BEN (AJB)

HEMOCUE AB; HEMOCUE, INC.,

Case No. \_\_\_\_\_

Plaintiffs,

## COMPLAINT

v.

STANBIO LABORATORY, L.P.; EKF-  
DIAGNOSTIC GMBH,

Defendants.

1) Patent Infringement (35 U.S.C.  
§271); and2) Federal Unfair Competition  
(15 U.S.C. §1125(a)).

Demand for Jury Trial

HemoCue AB and HemoCue, Inc. bring this complaint against Stanbio  
Laboratory, L.P. ("Stanbio") and EKF-Diagnostic GmbH ("EKF") as follows:

1 **PARTIES**

2 1. HemoCue AB is a corporation organized under the laws of Sweden  
3 with its principal place of business at Box 1204SE-262 23 Ängelholm, Sweden, and  
4 is the owner of the patent-in-suit.

5 2. HemoCue, Inc., an affiliate of HemoCue AB, is a corporation  
6 organized under the laws of California with its principal place of business at 40  
7 Empire Drive, Lake Forest, California, 92630, and is the exclusive licensee of the  
8 patent-in-suit within the United States.

9 3. Stanbio is a limited partnership organized under the laws of the State  
10 of Texas, with its principal place of business at 1261 North Main Street, Boerne,  
11 Texas, 78006.

12 4. Upon information and belief, EKF is a corporation organized under the  
13 laws of Germany with its principal place of business at Ebendorfer Chaussee 3, D –  
14 39179, Barleben / Magdeburg.

15 **JURISDICTION AND VENUE**

16 5. This is an action for patent infringement under 35 U.S.C. § 271 et seq.,  
17 and an action for unfair competition under the Trademark Act of 1946, as amended,  
18 15 U.S.C. § 1051 et seq. ("Lanham Act").

19 6. This Court has federal subject matter jurisdiction pursuant to 28 U.S.C.  
20 §§ 1331 and 1338, and 15 U.S.C. § 1121.

21 7. Upon information and belief, EKF has sufficient contacts with this  
22 District to be deemed to reside in this District and is subject to personal jurisdiction  
23 of this Court for this patent infringement action. EKF has purposely placed its  
24 products into the stream of commerce with the expectation they will be purchased  
25 and used by consumers in the State of California. Therefore, personal jurisdiction  
26 over defendant EKF is conferred under Article II of the United States Constitution.

27 8. Upon information and belief, Stanbio has sufficient contacts with this  
28 District to be deemed to reside in this District and is subject to personal jurisdiction

1 of this Court for this patent infringement action. Stanbio has done business and is  
2 doing business in California and has purposely placed its products and services into  
3 the stream of commerce with the expectation they will be purchased and used by  
4 consumers in the State of California. Therefore, personal jurisdiction over  
5 defendant Stanbio is conferred under Article II of the United States Constitution.

6 9. The acts and transactions complained of herein were conceived,  
7 carried out, made effective, and had effect within the State of California and within  
8 this District, among other places. Venue is proper in this District pursuant to 28  
9 U.S.C. §§ 1391 (b) and (c) and 1400.

### 10 RELATED SUIT

11 10. On October 29, 2003, Stanbio filed a Declaratory Judgment Action in  
12 the Western District of Texas, Cause No. SA 03 CA 1080 OG, alleging that  
13 HemoCue threatened litigation against Stanbio for infringement of HemoCue's  
14 5,674,457 patent. HemoCue contends that there was no threat of infringement and  
15 that the action in San Antonio was premature because there was no justiciable  
16 controversy between the parties. HemoCue filed a motion to dismiss the lawsuit for  
17 lack of subject matter jurisdiction based on HemoCue's contention that at the time  
18 the suit was filed, Stanbio did not have a reasonable apprehension of being sued by  
19 HemoCue. This motion is presently pending before the court in San Antonio.

20 11. This present Action should not be transferred to the Western District of  
21 Texas as that Court lacks federal subject matter jurisdiction because no controversy  
22 existed at the time the Declaratory Judgment Action was filed.

### 23 BACKGROUND AND FACTS

#### 24 **A. The Patent-In-Suit**

25 12. United States Patent No. 5,674,457 ("the '457 Patent"), entitled  
26 "Capillary Microcuvette," issued on October 7, 1997, is the patent in suit. A copy  
27 of the '457 Patent is attached as Exhibit 1.  
28

1           13. The '457 patent covers a device called a microcuvette that is sold to  
2 take blood samples from patients for testing hemoglobin levels in blood. A  
3 patient's finger is pricked so that a small sample of blood may be drawn into the  
4 microcuvette. The microcuvette is then placed into a reader to measure the  
5 hemoglobin level in blood samples. The patented microcuvette is designed to  
6 prevent bubbles from forming in the measuring zone of the microcuvette that might  
7 result in an inaccurate reading.

8           14. HemoCue AB is the assignee and the owner of all right, title and  
9 interest in and to the '457 Patent.

10           15. HemoCue AB has granted HemoCue, Inc., an exclusive license to  
11 make, use, sell, offer to sell and import into the United States products under the  
12 '457 Patent.

13 **B. Patent Infringement Activity**

14           16. Stanbio has in the past offered for sale and sold, and is currently  
15 offering for sale and selling, the HemoPoint® H2 Hemoglobin Measurement  
16 System for measuring hemoglobin levels in blood samples.

17           17. The Hemopoint® H2 Hemoglobin Measurement System utilizes  
18 microcuvettes called the H2 Microcuvettes.

19           18. On information and belief, Stanbio entered into a distribution  
20 agreement with EKF, a German manufacturer, to import and sell the H2  
21 Microcuvettes in the United States. EKF has manufactured the H2 Microcuvettes  
22 and delivered them to Stanbio for sale in the United States.

23           19. Stanbio offers for sale and sells the H2 Microcuvettes under part  
24 numbers 3010-100 (sold in lots of 100 cuvettes), and 3010-200 (sold in lots of 200  
25 cuvettes).

26           20. On information and belief, on or about May 5, 2004, Stanbio offered to  
27 sell H2 Microcuvettes to the San Diego Blood Bank at a price of 75 cents per  
28

1 cuvette. The San Diego Blood Bank has a principal office located at 440 Upas St.,  
2 San Diego, California 92103.

3 **C. Facts Related to Unfair Competition**

4 21. Stanbio prominently uses HemoCue's trade name and registered  
5 trademark HEMOCUE (the "HemoCue Mark") on package labels for the H2  
6 Microcuvettes. For example, the product labels for HemoPoint® H2 Cuvettes  
7 prominently display the words "For Use with HemoPoint® H2 Meter and  
8 HemoCue® Meter." An example of Stanbio's product labeling is attached as  
9 Exhibit 2. This use of the HemoCue mark and tradename was done without  
10 HemoCue's consent.

11 22. The use described above by Stanbio of the HemoCue Mark and trade  
12 name is likely to cause confusion, to cause mistake, and/or to deceive consumers  
13 and potential consumers of the parties, at least as to falsely implying (a) an  
14 affiliation, connection, or association of HemoCue with Stanbio, (b) an  
15 endorsement or sponsorship of the H2 Microcuvettes by HemoCue, (c) an approval  
16 by HemoCue for the use of the H2 Microcuvettes with HemoCue's photometer, or  
17 (d) that HemoCue has granted a license to Defendants for the '457 Patent. On  
18 information and belief, other product literature improperly uses the HemoCue Mark  
19 and trade name.

20 23. Stanbio's improper use of the HemoCue Mark and trade name in the  
21 United States enables Defendants to trade on and receive the benefit of goodwill  
22 HemoCue built up at great labor and expense over many years, and to gain  
23 acceptance of Defendants' goods not solely on their own merit, but on the  
24 reputation and goodwill of HemoCue, the HemoCue Mark and trade name.

25 24. Defendants' improper use of the HemoCue Mark and trade name in the  
26 United States unjustly enriches Defendants at Plaintiffs' expense.  
27  
28

### Patent Infringement Under 35 U.S.C. §271

26. Plaintiffs repeat the allegations above in paragraphs 1-25 as if fully set forth herein.

27. Upon information and belief, EKF has exported to the United States the H2 Microcuvettes, and such activities constitute infringement of the '457 Patent and active inducement of others to infringe the '457 Patent within the United States, all in violation of 35 U.S.C. § 271(a) and (b), all without the authorization of Plaintiffs.

28. Stanbio has imported into the United States, used, offered for sale and sold the H2 Microcuvettes, and such activities constitute infringement of the '457 Patent and active inducement of others to infringe the '457 Patent within the United States, all in violation of 35 U.S.C. § 271(a) and (b), all without the authorization of Plaintiffs.

29. Upon information and belief, EKF and Stanbio had knowledge of the '457 Patent since at least prior to the time of committing acts of direct infringement and actively inducing others to infringe.

30. Upon information and belief, EKF's and Stanbio's infringement of the '457 Patent has been willful.

31. This case is an "exceptional" case within the meaning of 35 U.S.C. § 285.

32. Plaintiffs have been irreparably harmed by EKF's and Stanbio's acts of infringement of the '457 Patent and will continue to be harmed unless and until Defendants' acts of infringement are enjoined and restrained by order of this Court.

1 Plaintiffs have no adequate remedy at law and therefore seek both a preliminary and  
2 permanent injunction.

3 33. As a result of Defendants' acts of infringement of the '457 Patent,  
4 Plaintiffs have suffered and will continue to suffer damages in an amount to be  
5 proven at trial.

6 34. EKF's and Stanbio's infringing conduct has caused and will continue  
7 to cause irreparable injury to Plaintiffs unless preliminarily and permanently  
8 enjoined.

9 **COUNT TWO**

10 **Unfair Competition Under Lanham Act, 15 U.S.C. § 1125(a)**

11 35. Plaintiffs repeat the allegations in paragraphs 1-34 above as if fully set  
12 forth herein.

13 36. The acts of Defendants complained of herein constitute unfair  
14 competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

15 37. Defendants' unauthorized use of the HemoCue Mark and trade name  
16 in the United States is likely to cause confusion, to cause mistake, and/or to mislead  
17 or deceive consumers and potential customers of the parties, at least as to falsely  
18 implying (a) an affiliation, connection, or association of HemoCue with Stanbio, (b)  
19 an endorsement or sponsorship of the H2 Microcuvettes by HemoCue, (c) an  
20 approval by HemoCue for the use of the H2 Microcuvettes with HemoCue's  
21 photometer, or (d) that HemoCue has granted a license to Defendants for the '457  
22 Patent, and therefore constitutes unfair and fraudulent business practices in  
23 violation of 15 U.S.C. § 1125(a).

24 38. Unless the acts of Defendants are restrained by this Court, they will  
25 continue to cause irreparable injury to Plaintiffs and to the public for which there is  
26 no adequate remedy at law.

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1  
2 WHEREFORE, HemoCue AB and HemoCue, Inc. pray for judgment as  
3 follows:

4 A. For an Order:

- 5 1) declaring that Defendants have infringed and/or induced the  
6 infringement of the '457 Patent in violation of 35 U.S.C. § 271; and  
7 2) declaring that Defendants have willfully infringed the '457 Patent;  
8 3) that Plaintiffs be awarded damages from Defendants for Defendants'  
9 patent infringement pursuant to 35 U.S.C. § 284;  
10 4) that Plaintiffs be awarded prejudgment and postjudgment interest and  
11 costs, pursuant to 35 U.S.C. § 284;  
12 5) that this case be deemed exceptional based on Defendants' intentional  
13 conduct and on that basis that HemoCue AB and HemoCue, Inc. be  
14 awarded its attorneys' fees and non-taxable costs pursuant to 35 U.S.C.  
15 § 285;  
16 6) that the damages awarded be enhanced pursuant to 35 U.S.C. § 284;  
17 7) declaring that Defendants have engaged in unfair competition in  
18 violation of Section 43 (a) of the Lanham Act, 15 U.S.C. § 1125 (a);  
19 and  
20 8) that Plaintiffs be awarded damages from Defendants for Defendants'  
21 unfair competition and that Plaintiffs be awarded three times their  
22 damages together with a reasonable attorney's fee, pursuant to 15  
23 U.S.C. § 1117 (a) (b).

24 B. That Defendants, their officers agents, servants, employees, successors  
25 and assigns, and all others acting by or under their direction and authority, be  
26 preliminarily and permanently enjoined and restrained as follows:

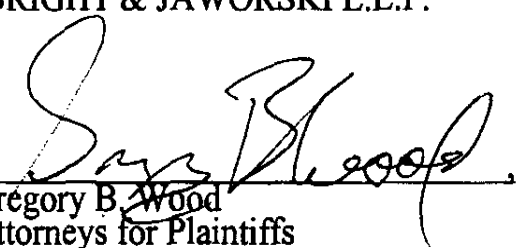
- 27 1) from infringing, inducing infringement, and contributing to the  
28 infringement of the '457 Patent, pursuant to 35 U.S.C. § 283;

- 1           2)    to recall and deliver to Plaintiffs for destruction any and all cuvettes
- 2                which infringe the '457 Patent;
- 3           3)    from engaging in unfair competition by using the HemoCue Mark or
- 4                trade name in such a way as to misrepresent or improperly suggest (a)
- 5                affiliation, connection, or association of HemoCue with Stanbio, (b)
- 6                endorsement or sponsorship of the H2 Microcuvettes by HemoCue, (c)
- 7                approval by HemoCue of the H2 Microcuvettes with HemoCue's
- 8                photometer, or (d) that HemoCue has granted a license to Defendants
- 9                for the '457 Patent.
- 10          4)    to engage in corrective advertising to dispel the confusion caused by
- 11                Defendants' wrongful acts;
- 12          5)    to recall and deliver up to the Court for destruction, or show proof of
- 13                destruction of, any and all labels, signs, prints, packages, bottles,
- 14                containers, wrappers, manuals, products, advertisements, Internet web
- 15                pages, and any other materials in Defendants' possession or control
- 16                which bear or depict the HemoCue Marks or any other mark, name,
- 17                designation, or indicia of origin that is confusingly similar to the
- 18                HemoCue Mark, as well as all molds and other means of making the
- 19                same; and
- 20          6)    within thirty days after service of judgment with notice of entry thereof
- 21                upon it, be required to file with the Court and serve upon Defendants'
- 22                attorneys a written report under oath setting forth in detail the manner
- 23                in which Defendants have complied with the foregoing paragraphs.
- 24          C.    For such other and further relief as the Court deems just and proper.
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- 26
- 27
- 28

1 DATED: July 9, 2004

GREGORY B. WOOD  
FULBRIGHT & JAWORSKI L.L.P.

2  
3  
4 By

  
Gregory B. Wood  
Attorneys for Plaintiffs  
HEMOCUE AB; and  
HEMOCUE, INC.



# **Exhibit 1**



US005674457A

**United States Patent** [19]

Williamsson et al.

[11] Patent Number: **5,674,457**[45] Date of Patent: **Oct. 7, 1997**[54] **CAPILLARY MICROCUVETTE**

[75] Inventors: Anders Williamsson, Helsingborg;  
Stefan Wahlqvist, Lomma; Sven-Erik  
Nilsson; Jan Lilja, both of  
Helsingborg; Lars Jansson, Ängelholm;  
Bertil Nilsson, Bjärred, all of Sweden

[73] Assignee: Hemocue AB, Ängelholm, Sweden

[21] Appl. No.: 429,494

[22] Filed: Apr. 26, 1995

[51] Int. Cl.<sup>6</sup> ..... B01L 3/00[52] U.S. Cl. .... 422/102; 422/104; 422/99;  
356/246[58] Field of Search ..... 422/99, 100, 102,  
422/104; 356/246, 440[56] **References Cited****U.S. PATENT DOCUMENTS**

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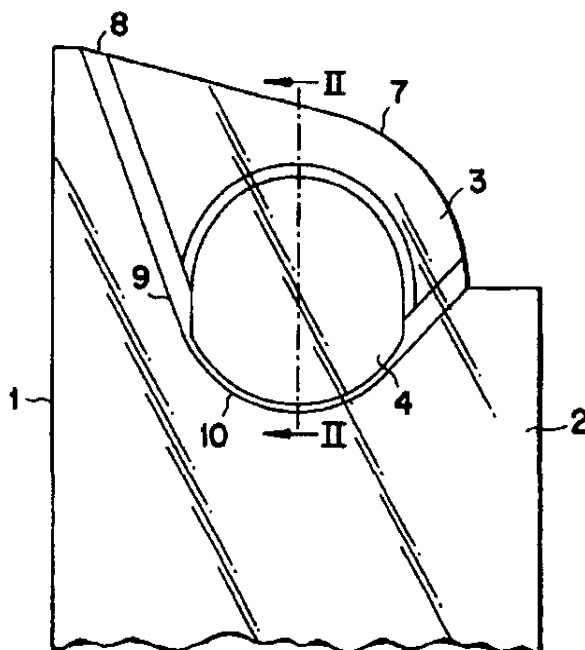
"An Azide-Methemoglobin Method for Hemoglobin Determination in Blood", Giulio Vanzetti, J. Lab. & Clin. Med., vol. 67, No. 1, pp. 116-126, Jan. 1966.

Primary Examiner—Harold Pyon

Attorney, Agent, or Firm—Burns, Doane, Swecker &amp; Mathis, L.L.P.

[57] **ABSTRACT**

The present invention is related to an integral capillary microcuvette comprising a body member and a cavity including a measuring zone within the body member. The cavity is defined by two opposite, substantially parallel inner surfaces of the body member and includes an outer peripheral edge comprising a sample inlet and an inner peripheral zone having a channel of higher capillary force than the measuring zone. The channel extends around the entire inner peripheral zone with ends of the channel communicating with the atmosphere at the exterior of the microcuvette.

**7 Claims, 2 Drawing Sheets**

## U.S. Patent

**Oct. 7, 1997**

Sheet 1 of 2

**5,674,457**

FIG. 1

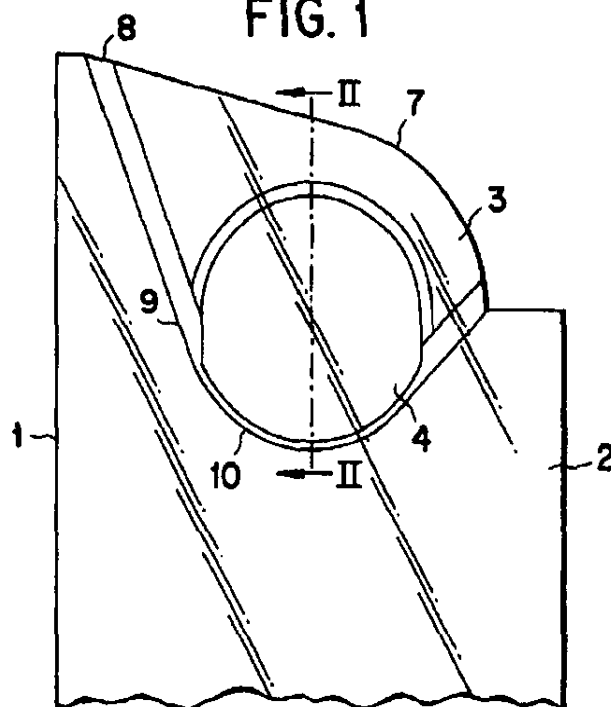
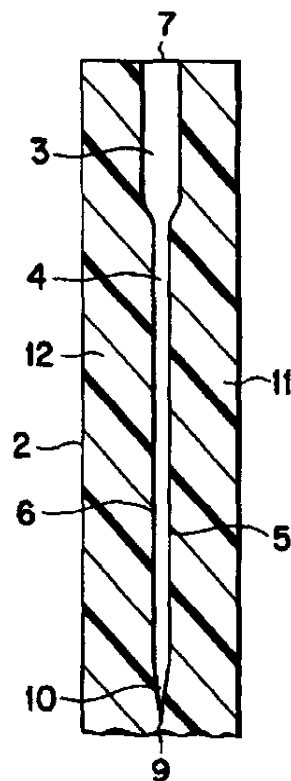


FIG. 2

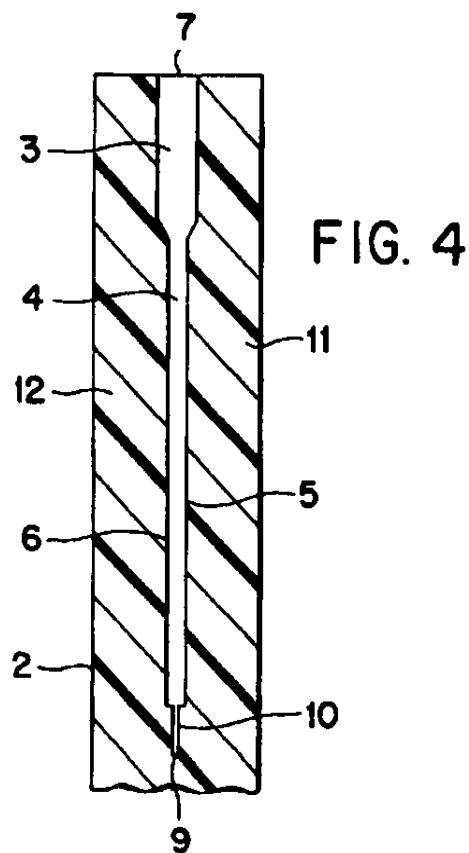
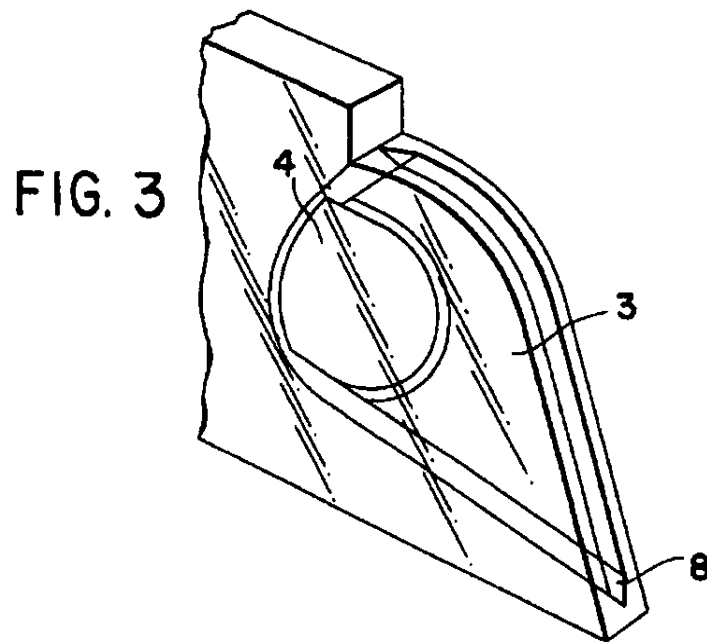


U.S. Patent

Oct. 7, 1997

Sheet 2 of 2

5,674,457





5,674,457

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**CAPILLARY MICROCUVETTE****BACKGROUND OF THE INVENTION**

The present invention concerns a capillary microcuvette. More specifically the invention concerns a disposable integral capillary microcuvette having improved flow for essentially simultaneously sampling a fluid and analyzing of the sample.

A cuvette for sampling a fluid, mixing the sample with a reagent and directly making optical analysis of the sample mixed with the reagent is previously known from U.S. Pat. No. 4,088,448. This cuvette comprises a body member including two planar surfaces defining an optical path and placed at a predetermined distance from one another to determine the optical path length and to define a cavity which includes a measuring zone therein, having an inlet for communicating said cavity with the exterior of the body member. The cavity has a predetermined fixed volume, and the predetermined distance permits the sample to enter the cavity by capillary force. Furthermore, a reagent is coated on the cavity surface, which mixes with the sample and allows the sample to be measured by optical analysis.

This known cuvette has several advantages when compared with the conventionally used devices. It permits sampling of a liquid, mixing and chemically reacting it with a suitable reagent; e.g. for colour development, in the same vessel as the one used for the subsequent measurement. The cuvette disclosed in U.S. Pat. No. 4,088,448 thus simplifies the sampling procedure, reduces the number of devices needed and in most cases, depending on the type of analysis, considerably improves the accuracy of the analysis by making the analyzing procedure independent of the operation of the device.

However, it has been discovered that the microcuvette described in U.S. Pat. No. 4,088,448 may develop air bubbles that can interfere with the optical analysis. Air bubbles generally form in the cavity of the cuvettes because of unsatisfactory sample flow in the cuvette cavity. This is especially detrimental for hemoglobin measurements because of the strong absorption of the hemoglobin. In particular, in a photometric determination, the presence of a large air bubble in the light path traversing the measuring zone will result in an overall measured hemoglobin value below the actual level because the photometer will read the bubble as a contribution of extremely low hemoglobin. Quality control is routinely carried out to discard those cuvettes which include air bubbles, thereby eliminating the risk that air bubbles will be present in the measuring zone when the cuvettes are used in a clinical procedure. A considerable number of cuvettes do not pass the quality control and have to be discarded, thereby increasing the overall cost of the cuvettes.

**OBJECT OF THE INVENTION**

One object of the present invention is to provide an improved cuvette which eliminates the risk of failure caused by the presence of air bubbles in the measuring zone.

**SUMMARY OF THE INVENTION**

The above objects and others are accomplished by providing a disposable, integral capillary microcuvette for essentially simultaneous sampling a fluid and analyzing the sample. In connection with the present invention the term "integral" means that the cuvette is made or manufactured in

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one, integral, piece. The microcuvette comprises a body member and a cavity including a measuring zone within the body member. The cavity is defined by two opposite, substantially parallel inner surfaces of the body member and includes an outer peripheral edge comprising a sample inlet and an inner peripheral zone having a channel of higher capillary force than the measuring zone. The channel extends around the entire inner peripheral zone with ends of the channel communicating with the exterior of the microcuvette.

**BRIEF DESCRIPTION OF THE DRAWINGS**

FIG. 1 is a plan view of the microcuvette according to one embodiment of the present invention.

FIG. 2 is a cross sectional view of a microcuvette according to the present invention, taken along line II—II of FIG. 1.

FIG. 3 is a perspective view of the microcuvette according to the invention.

FIG. 4 is a cross-sectional view of a microcuvette according to another embodiment of the present invention.

**DETAILED DESCRIPTION OF THE INVENTION**

FIG. 1 is a plan view of a microcuvette generally designated by reference numeral 1, according to one embodiment of the present invention. The microcuvette 1, comprises a body member 2, comprised of two substantially planar sheets of material 11, 12, and includes a cavity 3, defined by two inner surfaces 5, 6, of the body member 2. A measuring zone 4 is arranged within the cavity 3. The distance between the surfaces 5, 6, defining the measuring zone 4, is a critical parameter in providing the proper optical path length for the desired measurement. In a preferred embodiment of measuring hemoglobin, the distance should be between 0.05 and 0.15 mm. The distance between the inner surfaces of the rest of the cavity 3 is preferably in the order of 0.3–2 mm, i.e. clearly longer than the distance between the inner surfaces 5, 6 of the measuring zone. An outer peripheral edge 7, includes a sample inlet 8, comprised of the opening between the two sheets 11, 12, making up the body member 2. An inner peripheral zone 9, includes a channel 10, which has a higher capillary force than the measuring zone 4. The channel 10, which can have any shape, extends along the entire inner peripheral zone 9, and communicates with the atmosphere at both ends of the channel 10. The channel 10, preferably has a width between 10 micron and 2 mm.

When a sample liquid is drawn into the cuvette through the inlet 8, the channel 10 is filled along its entire length due to its high capillary action. After filling of the channel the sample liquid propagates into the rest of the cavity 3 in a flow pattern which prevents air bubbles to be captured in the measuring zone 4.

The provision of the channel having a higher capillary force than the measuring zone thus improves hydrodynamic flow within the cuvette cavity and prevents air bubbles to be trapped in the measuring zone. The channel may have any appropriate shape or form as long as the capillary force of the channel is higher than the capillary force of the measuring zone. This is accomplished by providing a channel having a depth which is less than that of the measuring zone. In particular, the channel may be defined by an inner wall of the inner peripheral zone and by the two opposite, substantially planar, surfaces of the body member whereby the distance between the planar surfaces of the channel is

5,674,457

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shorter than the distance between the inner surfaces of the measuring zone as shown in FIG. 3.

In an alternative embodiment of the present invention, the distance between the two opposite substantially planar surfaces of the body member continuously increases in a direction extending away from the inner end wall of the inner peripheral zone. In this case the channel is shaped as a wedge, the bottom of which opens towards the measuring zone.

The cuvettes according to the present invention may be formed from any suitable material which allows the formation of the channel and measuring zone to the necessary tight tolerance levels. Preferably, the cuvettes according to the present invention are made of glass or a polymeric material.

Cuvettes according to the present invention were compared with cuvettes according to U.S. Pat. No. 4,088,448 as follows:

A reagent of

40 g sodium desoxycholate

18 g sodium azid and

20 g sodium nitrite

per liter solvent was prepared.

100 cuvettes according to U.S. Pat. No. 4,088,448 available from HemoCue AB, Sweden, and 100 cuvettes according to the present invention were filled with the above reagent, air dried and examined optically for uniform drying pattern. The cuvettes were then filled with whole blood, EDTA and an anticoagulating agent. A hemoglobin measurement was then carried out according to a modified azidmethemoglobin method according to Vanzetti described in J. Lab. Clin. Med. 67, 116-26 (1966) wherein the measurement is made at 570 and 880 nm respectively. The number of cuvettes which exhibited air bubbles was recorded.

Type of Cuvette	Number with air bubble
U.S. Pat. No. 4,088,448	25
The invention	0

As is apparent from the above, the cuvettes according to the present invention are very advantageous in eliminating the risks associated with the occurrence of air bubbles within the measuring zone. By providing the cuvette according to the present invention with a channel having higher capillary force than that of the measuring zone, air bubbles were entirely eliminated. This not only reduced the costs associated with discarded cuvettes but also greatly reduces the risk of improper readings which occur because of air bubbles.

The present invention has been described above with respect to the measurement of hemoglobin. However, the

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present invention is equally applicable to the measurement of other blood chemistry values, such as glucose, blood urea nitrogen, albumin, bilirubin, and total protein, etc. Furthermore, the present invention is applicable to numerous other analytical measurements and tests outside the blood chemistry field.

The foregoing has been a description of certain preferred embodiments of the present invention, but it is not intended to limit the invention in any way. Rather, many modifications, variations, and changes in details may be made within the scope of the present invention.

What is claimed is:

1. An integral capillary microcuvette comprising a body member having an outer peripheral edge, the body member being provided with a cavity that communicates with the outer peripheral edge of the body member, the cavity being defined by two opposing inner surfaces of the body member, a portion of the cavity defining a measuring zone within the body member, the cavity having an inner peripheral zone at which is located a channel, the channel extending along the entire inner peripheral zone of the cavity, the channel being sized relative to the measuring zone such that the channel has a higher capillary force than the measuring zone to prevent air bubbles from becoming trapped in the measuring zone, the outer peripheral edge of the body member being provided with a sample inlet through which a sample is drawn into the body member, the sample inlet being in communication with the channel and the channel being in communication with the measuring zone.

2. A microcuvette according to claim 1, wherein said cavity has a predetermined volume.

3. A microcuvette according to claim 1, wherein said cavity includes a dry reagent in a predetermined amount.

4. A microcuvette according to claim 1, wherein the distance between the inner surfaces of the body member at said measuring zone does not exceed 0.15 mm.

5. A microcuvette according to claim 1, wherein said channel is defined by an inner end wall at said inner peripheral zone and two substantially planar portions of the inner surfaces of said body member.

6. A microcuvette according to claim 5, wherein said two substantially planar portions are parallel and the distance between the two substantially planar portions is less than the distance between portions of the inner surfaces of the body member at said measuring zone.

7. A microcuvette according to claim 5, wherein the distance between the two substantially planar surfaces of said body member increases in a direction extending away from said inner end wall of said inner peripheral zone.

\* \* \* \* \*



## **Exhibit 2**

# HemoPoint® H2

## Hemoglobin Cuvettes

For use with HemoPoint® H2 Meter  
HemoCue® Meter  
Single-Use Hgb cuvettes  
For Diagnostic Use  
Store at 25°C

Lot: 0011-050

EXP: MAY 04

Lot: 0011-050

Lot: 0011-050

AO 120 (3/85)

<b>TO:</b> <b>Commissioner of Patents and Trademarks</b> <b>Washington, D.C. 20231</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT</b>
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In compliance with the Act of July 19, 1952 (66 Stat. 814; 35 U.S.C. 290) you are hereby advised  
that a court action has been filed on the following patent(s) in the U.S. District Court:

DOCKET NO. 04CV1378BEN (AJB)	DATE FILED July 9, 2004	U.S. DISTRICT COURT United States District Court, Southern District of California
PLAINTIFF Hemocue AB; Hemocue, Incorporated		DEFENDANT Stanbio Laboratory, L.P.; EKF-Diagnostic GMBH
PATENT NO.	DATE OF PATENT	PATENTEE
1 5,674,457	October 7, 2004	Hemocue AB
2		
3		
4		
5		

In the above-entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading			
PATENT NO.	DATE OF PATENT	PATENTEE		
1				
2				
3				
4				
5				

In the above-entitled case, the following decision has been rendered or judgment issued:

DECISION/JUDGMENT		
CLERK	(BY) DEPUTY CLERK	DATE

Copy 1 - Upon initiation of action, mail this copy to Commissioner    Copy 3 - Upon termination of action, mail this copy to Commissioner  
Copy 2 - Upon filing document adding patent(s), mail this copy to Commissioner    Copy 4 - Case file copy

ORIGINAL

JS 44  
(Rev. 07/89)

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

HEMOCUE AB; HEMOCUE, INC.

## DEFENDANTS

STANBIO LABORATORY, L.P.; EKF-DIAGNOSTIC

04 JUL 04 AM 11:16

04 CV 1378

BEN(AJB)

CLERK: U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF  
(EXCEPT IN U.S. PLAINTIFF CASES)

3Y:

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

ATTORNEYS (IF KNOWN)

Gregory B. Wood  
Fulbright & Jaworski L.L.P.  
865 South Figueroa Street, 29th Floor  
Los Angeles, CA 90017  
(213) 892-9200

"BY FAX"

## II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 2 U.S. Government Defendant  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   | PT                         | DEF                        |   | PT                         | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.

Patent Infringement (35 U.S.C. Section 271)

## V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 810 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reappointment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 820 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 640 R.R. & Truck	<input checked="" type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 660 Occupational Safety/Health	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 480 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (13958)	<input type="checkbox"/> 490 Securities/Commodities/Exchange
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<b>LABOR</b>	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 475 Customer Challenge 12 USC 3410
<input type="checkbox"/> 180 Other Contract	<input type="checkbox"/> 365 Other Personal Injury Product Liability	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 491 Agricultural Acts
<input type="checkbox"/> 185 Contract Product Liability		<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 492 Economic Stabilization Act
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 493 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 740 Railway Labor Act	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 494 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 750 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 495 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 761 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 496 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare			<input type="checkbox"/> 497 Constitutionalality of State Statutes
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights			<input type="checkbox"/> 498 Other Statutory Actions
<input type="checkbox"/> 290 All Other Real Property				
	<b>PRISONER PETITIONS</b>			
	<input type="checkbox"/> 510 Motion to Vacate Sentence			
	<b>HABEAS CORPUS:</b>			
	<input type="checkbox"/> 530 General			
	<input type="checkbox"/> 535 Death Penalty			
	<input type="checkbox"/> 540 Mandamus & Other			
	<input type="checkbox"/> 550 Civil Rights			
	<input type="checkbox"/> 555 Prison Conditions			

## VI. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding  
☐ 2 Removal from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23  
DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE USDC, Western Dist. of Texas

Docket Number SA03CA1080 OG

DATE

SIGNATURE OF ATTORNEY OF RECORD

July 8, 2004

Gregory B. Wood

105278 7/9/04 1500