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C.R. Bard, Inc. c/o Greenblum & Bernstein, P.L.C. 1950 Roland Clarke Place Reston, VA 20191			WILLIAMS, CATHERINE SERKE	
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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ANGIODYNAMICS, INC.  
Respondent, Requester

v.

Patent of C.R. BARD, INC.  
Appellant, Patent Owner

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Appeal 2015-001533  
*Inter Partes* Reexamination Control 95/002,089  
United States Patent 7,785,302 B2<sup>1</sup>  
Technology Center 3900

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Before STEVEN D.A. McCARTHY, DANIEL S. SONG, and  
BRETT C. MARTIN, *Administrative Patent Judges*.

SONG, *Administrative Patent Judge*.

DECISION AFTER REMAND

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<sup>1</sup> Issued August 31, 2010 to Kelly B. Powers (“the ’302 patent”).

## STATEMENT OF THE CASE

The present Decision After Remand is necessitated by the Federal Circuit's recent decision, which Affirmed-In-Part, Vacated-In-Part, Reversed-In-Part, and Remanded, an earlier Board's Decision on Appeal<sup>2</sup> in the subject reexamination. *C.R. Bard, Inc. v. AngioDynamics, Inc.*, --- Fed.Appx. --- (Fed. Cir. 2018); 2018 WL 4677441.

The Board's Decision decided the Patent Owner's appeal of the Examiner's rejections of claims 1–10 of the '302 patent as follows:

1. Affirmed the Examiner's decision rejecting claims 5, 6, and 8–10 under §102(b) as being anticipated by IsoMed<sup>3</sup> (Grounds A and C). *AngioDynamics v. C.R. Bard*, 2016 WL 923521 \*2.
2. Declined to reach Grounds D and E as applied to claims 5, 6, and 8–10. *Id.* Ground D proposed that claims 1–10 be rejected under 35 U.S.C. § 103(a) as being unpatentable over IsoMed. *Id.* Ground E proposed that claims 1–10 be rejected under 35 U.S.C. § 103(a) as being unpatentable over IsoMed, Jones,<sup>4</sup> and “the representative knowledge of radiopaque alphanumeric markers.” *Id.*
3. Reversed the Examiner's decision rejecting claim 7 under § 102(b) as being anticipated by IsoMed (Grounds A and C). *Id.*
4. Affirmed the Examiner's decision rejecting claim 7 under § 103(a) as being unpatentable over IsoMed and Jones (Ground E). *Id.*

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<sup>2</sup> *AngioDynamics, Inc. v. C.R. Bard, Inc.*, 2016 WL 923521 (PTAB 2016) (“Board's Decision”). The Board also denied rehearing requests of the parties in Decision on Request for Rehearing. 2017 WL 542597 (PTAB 2017).

<sup>3</sup> Document identified as Medtronic, Inc., *IsoMed Constant-Flow Infusion System* (bearing a 2000 copyright notice and the legend “Revised Sept. 2000”).

<sup>4</sup> Jones et al., US 6,287,293 B1, issued Sept. 11, 2001 (“Jones”).

5. Declined to reach Ground D as applied to claim 7. *Id.*
6. Reversed the Examiner's decision rejecting claims 1–4 under § 103(a) as being unpatentable over IsoMed in view of either Jones (Ground E) or the knowledge of one of ordinary skill in the art (Ground D). *Id.*

After issuance of the Board's Decision on Request for Rehearing, the Patent Owner appealed the Board's decision as to the rejected claims to the Federal Circuit, and the Requester cross-appealed as to claims 1–4, which the Board determined to be patentable.

#### THE COURT'S REMAND

In its decision, the court rejected the Requester's cross-appeal, agreeing with the Board's Decision. *C.R. Bard v. AngioDynamics*, 2018 WL 4677441 \*\*7–10. However, as to the Patent Owner's appeal, the court:

1. Vacated the Board's finding that IsoMed qualifies as a printed publication, and remanded for the Board to clarify its factual findings with respect to IsoMed. *Id.* at \*\*5, 10.
2. Reversed the Board's anticipation finding of claims 5, 6, and 8–10, determining that the Board erred in its interpretation of the claim language that the alphanumeric message “indicate[s] that the assembly is power injectable,” and construing this, and similar language to mean “that the claimed access port is power injectable.” *Id.* at \*\*1, 5, 10.
3. Vacated the Board's obviousness conclusions regarding claim 7, and remanded the issue to the Board to “determine whether, under a correct construction requiring the ports to be power injectable, whether, [] claims [5–10] are obvious in view of the prior art of record.” *Id.* at \*10; *see also id.* at \*6.

## ANALYSIS

As noted above, the court reversed the Board's anticipation finding of claims 5, 6, and 8–10, and vacated the Board's obviousness conclusion regarding claim 7, disagreeing with the Board's claim construction as to the limitation “the alphanumeric message indicating that the assembly is power injectable” recited in independent claim 5, and similar limitation in independent claim 8. The court interpreted such limitations to mean “that the claimed access port is power injectable.” *Id.* at \*5; *see also id.* at \*\*6, 10.

The court's claim interpretation is dispositive to the present Decision After Remand. Each of the rejections proposed by the Requester, and adopted by the Examiner, was premised on a claim interpretation that did not require the access port to have “power injectable” capability. Indeed, while the court's decision is clear “that the claimed access port is power injectable,” our review of the record does not indicate that the IsoMed, or any of the other references relied upon in the proposed and adopted rejections, disclose a power injectable access port. Prior art evidence as to a power injectable access port is missing from the rejections at issue. Therefore, in view of the court's claim construction, we reverse the Examiner's rejections of claims 1–10 under Grounds A and C–E.

Finally, the issue noted in the court's decision as to whether IsoMed was a printed publication as of the effective date is moot because, as noted above, there is no indication that IsoMed, or any other prior art relied upon, discloses a power injectable access port.

## DECISION

We REVERSE the Examiner's rejections of claims 1–10.

Appeal 2015-001533  
Reexamination Control 95/002,089  
Patent US 7,785,302 B2

Requests for extensions of time in this *inter partes* reexamination proceeding are governed by 37 C.F.R. §§ 1.956 and 41.77(g).

REVERSED

Patent Owner:

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