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109545	7590	01/28/2019	EXAMINER	
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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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ANGIODYNAMICS, INC.
Respondent, Requester

v.

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

Appeal 2015-004506
Inter Partes Reexamination Control 95/002,092
United States Patent 7,959,615 B2¹
Technology Center 3900

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

SONG, *Administrative Patent Judge*.

DECISION AFTER REMAND

¹ Issued June 14, 2011 to Stats et al. (“the ’615 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 Appeal² 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 '615 patent as follows:

1. Reversed the Examiner's decision rejecting claims 1–5 and 8 under § 102(b) as being anticipated by Reuter³ (Grounds A and C). *AngioDynamics v. C.R. Bard*, 2016 WL 1166545 *2 (PTAB 2016).
2. Affirmed the Examiner's decision rejecting claims 1–5 and 8–10 under § 103(a) as being unpatentable over Reuter in view of “well-known general knowledge” as shown in Sanfilippo⁴ and Bunodiere⁵ (Ground D). *Id.*
3. Reversed the Examiner's decision rejecting claims 6 and 7 under Ground D as being as being unpatentable over Reuter in view of “well-known general knowledge.” *Id.*
4. Declined to reach Ground E as applied to claims 1–5 and 8–10 in view of their rejection under Ground D. *Id.*

² *AngioDynamics, Inc. v. C.R. Bard, Inc.*, 2016 WL 1166545 (PTAB 2016) (“Board's Decision”). The Board also issued Decision on Request for Rehearing with respect to this reexamination on February 21, 2017 (Appeal 2015-004506 (PTAB 2017)).

³ Reuter et al., EP 1 238 682 A2, published Sept. 11, 2002 (“Reuter”).

⁴ Sanfilippo II, US 5,919,160, issued July 6, 1999.

⁵ Bunodiere et al., US 2005/0075614 A1, published Apr. 7, 2005 (“Bunodiere”).

5. Reversed the Examiner's decision rejecting claims 6 and 7 under Ground E as being unpatentable over Reuter in view of Reinicke⁶ and "the representative knowledge of the ability to recognize an access port by its shape after implantation." *Id.*

After issuance of the Board's Decision on Request for Rehearing, the Patent Owner appealed the Board's decision to the Federal Circuit, and the Requester cross-appealed as to claims 6 and 7, 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 as to claims 6 and 7. *C.R. Bard v. AngioDynamics*, 2018 WL 4677441 **8–10. As to the Patent Owner's appeal, the court:

1. Affirmed the Board's conclusion of obviousness as to claims 1–5 and 10. *Id.* at **5, 7, 10.
2. Vacated the Board's obviousness conclusions regarding claims 8 and 9, determining that the Board erred in its interpretation of the claim language "at least one structural feature of the access port identifying the access port as being power injectable," and construing this language to mean "that the claimed access port is power injectable." *Id.* at **5–7, 10. The court remanded the issue to the Board to "determine whether, under a correct construction requiring the ports to be power injectable, whether, these claims are obvious in view of the prior art of record." *Id.* at *10; *see also id.* at *6.

⁶ US 4,626,244, issued Dec. 2, 1986.

ANALYSIS

As noted above, the court vacated the Board's obviousness conclusion regarding claims 8 and 9, disagreeing with the Board's claim construction as to the limitation "at least one structural feature of the access port identifying the access port as being power injectable," recited in independent claim 8. The court interpreted this limitation 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, that are applicable to claims 8 and 9 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 Reuter, or any of the other references relied upon in the proposed and adopted rejections of claims 8 and 9, 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 modify the Board's Decision to reverse the Examiner's rejections of claims 8 and 9 under Grounds D and E.

DECISION

We modify the Board's Decision to REVERSE the Examiner's rejections of claims 8 and 9 under Grounds D and E.

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Reexamination Control 95/002,092
Patent US 7,959,615 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).

AFFIRMED-IN-PART

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