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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
95/002,090	08/20/2012	7947022	99821.009US2	4355
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	
			ART UNIT	PAPER NUMBER
			3993	
			MAIL DATE	DELIVERY MODE
			01/28/2019	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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 2015-004554
Inter Partes Reexamination Control 95/002,090
United States Patent 7,947,022 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 May 24, 2011 to Amin et al. (“the ’022 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 1–20 of the '022 patent as follows:

1. Affirmed the Examiner's decision rejecting claims 1, 2, 6, 8, and 9 under §102(b) as being anticipated by IsoMed³ (Grounds A and C). *Angiodynamics, Inc. v. C.R. Bard, Inc.*, 2016 WL 1239176 *2 (PTAB 2016).
2. Declined to reach Grounds D and E as applied to claims 1, 2, 6, 8, and 9. *Id.* Ground D proposed that claims 1–20 be rejected under 35 U.S.C. § 103(a) as being unpatentable over IsoMed. *Id.* Ground E proposed that claims 1–20 be rejected under 35 U.S.C. § 103(a) as being unpatentable over IsoMed, Jones,⁴ and “well-known techniques in the analogous prior art to convey to a practitioner various information.” *Id.*
3. Affirmed the Examiner's decision rejecting claims 3–5, 7, and 10–20 under Ground E as being unpatentable over IsoMed, Jones, and

² *AngioDynamics, Inc. v. C.R. Bard, Inc.*, 2016 WL 1239176 (PTAB 2016) (“Board's Decision”). The Board also issued Decision on Request for Rehearing with respect to this reexamination. 2017 WL 766740 (PTAB 2017).

³ Document entitled Medtronic, Inc., *IsoMed Constant-Flow Infusion System* (bearing a 2000 copyright notice and the legend “Revised Sept. 2000”).

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

“well-known techniques in the analogous prior art to convey to a practitioner various information.” *Id.*

4. Declined to reach Ground D as applied to claims 3–5, 7, and 10–20 in view of their rejection as unpatentable over IsoMed and Jones (Ground E). *Id.*

After issuance of the Board’s Decision on Request for Rehearing, the Patent Owner appealed the Board’s decision to the Federal Circuit.

THE COURT’S REMAND

In its decision, 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. 2018 WL 4677441 *5, *10.
2. Reversed the Board’s anticipation finding of claims 1, 2, 6, 8, and 9, determining that the Board erred in its interpretation of the claim language that the alphanumeric message “identif[ies] the access port as a power-injectable port,” and construing this language to mean “that the claimed access port is power injectable.” *Id.* at *1, *5, *10.
3. Vacated the Board’s obviousness conclusion regarding the remaining reexamined claims of the ’022 patent, and 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.

As noted above, the court reversed the Board’s anticipation finding of claims 1, 2, 6, 8, and 9, and vacated the Board’s obviousness conclusion regarding the remaining reexamined claims of the ’022 patent, disagreeing with the Board’s claim construction as to the limitation that the alphanumeric message “identif[ies] the access port as a power-injectable port” recited in

independent claims 1, 10, and claim 16. The court interpreted the 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, 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 1–20 under Grounds A and C–E.

Finally, the issue noted in the court’s decision as to whether the IsoMed publication 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 1–20.

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

Appeal 2015-004554
Reexamination Control 95/002,090
Patent US 7,947,022 B2

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