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Paper No. 9
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

C.R. BARD, INC.,
Petitioner,

v.

MEDICAL COMPONENTS, INC.,
Patent Owner.

Case IPR2015-01660
Patent 8,257,325 B2

Before LYNNE E. PETTIGREW, DANIEL N. FISHMAN, and KERRY BEGLEY, *Administrative Patent Judges*.

BEGLEY, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108

C.R. Bard, Inc. ("Petitioner") filed a Petition requesting *inter partes* review of claims 1, 2, 5–13, 15–19, 21, and 22 (collectively, "the challenged claims") of U.S. Patent No. 8,257,325 B2 (Ex. 1001, "the '325 patent"). Paper 1 ("Pet."). Medical Components, Inc. ("Patent Owner") filed a Preliminary Response to the Petition. Paper 7 ("Prelim. Resp.").

Pursuant to 35 U.S.C. § 314(a), an *inter partes* review may not be instituted unless "the information presented in the petition . . . and any response . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition." Having considered the Petition and the Preliminary Response, we determine that the information presented does not show that there is a reasonable likelihood that Petitioner would prevail in establishing that any of the challenged claims of the '325 patent are unpatentable. Therefore, we deny institution of *inter partes* review.

I. BACKGROUND

A. THE '325 PATENT

The '325 patent discloses a venous access port assembly with a marking that identifies a characteristic of the port and is visible by X-ray examination when the port is implanted in a patient. Ex. 1001, [57], 1:40–44. For example, the port may include the letters "CT," for "computed tomography" or "contrast enhanced computed tomography," to indicate "power injectable capability," i.e., that the port is rated for power injection of a contrast fluid. *Id.* at 1:59–2:1.

Embodiments of the venous access port disclosed in the '325 patent include a housing and a septum. *Id.* at 2:5–6. One embodiment of the housing is depicted in Figure 13 and a portion of Figure 11, reproduced below:

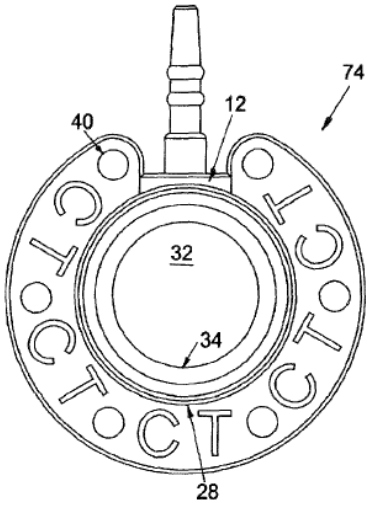

Figure 11

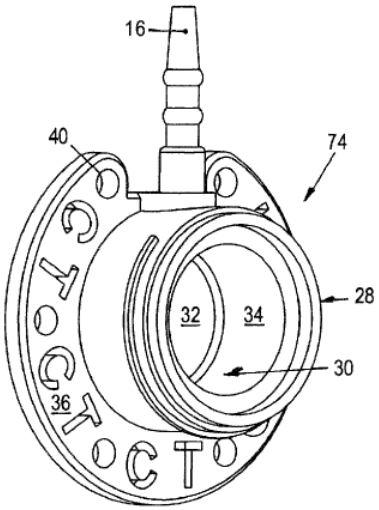

Figure 13

Figure 11 shows a top view and Figure 13 shows an isometric view of an embodiment with housing base 28, including well 30 having bottom floor 32 and side walls 34. *Id.* at 3:24–33, 4:44–57. Housing base 28 also includes flange 36, which features integrally molded "CT" markings alongside suture openings 40. *Id.* at 4:44–57. The "CT" markings are voids in the flange, "as if cut or punched out of" the flange material. *Id.* at 4:54–57. If base 28 or flange 36 is comprised of a metal material, the letters "CT" will be visible by X-ray examination. *Id.* at 4:65–5:3. If base 28 is made of a plastic material, a radiopaque agent or fluid can be applied to the letters "CT," flange 36, or base 28 to allow the applied area to be visible by X-ray examination. *Id.* at 4:61–65.

B. Illustrative Claim

Claims 1, 12, and 17 of the '325 patent are independent claims. *See id.* at 5:11–8:2. Claim 1, reproduced below, is illustrative of the recited subject matter:

> 1. A venous access port assembly for implantation into a patient, comprising:

> a housing comprising a base defining a bottom wall of at least one reservoir, a discharge port extending from the at least one reservoir, and a flange adjacent to the at least one reservoir, the flange comprising a height extending from a top surface of the flange to a bottom surface of the flange, the flange further comprising X-ray discernable indicia configured to indicate, under X-ray examination, that the port assembly is rated for power injection, the X-ray discernable indicia located in the flange and extending through the height of the flange from the top surface of the flange to the bottom surface of the flange so that the X-ray discernable indicia are visually discernable to a naked eye from both the top surface of the flange and the bottom surface of the flange prior to implantation of the port assembly; and
>
> a needle-penetrable septum communicating with the housing.

Id. at 5:12–30.

C. Asserted Prior Art

The Petition relies upon the following references, as well as the supporting Declaration of Steven J. Tallarida (Ex. 1009):

U.S. Patent No. 6,826,257 B2 (issued Nov. 30, 2004) (Ex. 1007, "Sayre");

U.S. Patent No. 7,785,302 B2 (filed Mar. 6, 2006) (issued Aug. 31, 2010) (Ex. 1003, "Powers");

French Patent No. 1,509,165 (issued Dec. 4, 1967) (published Jan. 12, 1968) (Ex. 1005, "Meyer");[1]

Bard Access Systems, Hickman® Subcutaneous Ports & Hickman®/Broviac® Catheters (1992) (Ex. 1017, "Hickman");

[1] Petitioner submitted the original version of Meyer, a French patent, as Exhibit 1005 and, as required under 37 C.F.R. § 42.63(b), a certified English translation of the patent as Exhibit 1006. For purposes of this decision, our citations to Meyer are to the certified English translation.

BARD ACCESS SYSTEMS, PORTS (2003) (EX. 1002, "PORTS"); and

BARD ACCESS SYSTEMS, POWERPORT: GUIDELINES FOR CT TECHNOLOGISTS (2007) (Ex. 1004, "PowerPort").

D. ASSERTED GROUNDS OF UNPATENTABILITY

Petitioner asserts the following grounds of unpatentability. Pet. 3.

Challenged Claims	Basis	References
1, 2, 5–13, 15–19, 21, and 22	§ 103[2]	PORTS, Powers, PowerPort, and Hickman
1, 2, 5–13, 15–19, 21, and 22	§ 103	PORTS, Powers, Sayre, and Hickman
1, 2, 5–13, 15–19, 21, and 22	§ 103	PORTS, Powers, Meyer, and Hickman

II. ANALYSIS

A. CLAIM INTERPRETATION

We interpret claims in an unexpired patent using the "broadest reasonable construction in light of the specification of the patent in which [they] appear[]." 37 C.F.R. § 42.100(b). Here, Petitioner proffers claim terms for construction and argues that all claim terms, including those proposed for construction, "should be afforded their ordinary and customary meanings." Pet. 4–6. In response, Patent Owner "reserves the right to challenge Petitioner's asserted claim constructions" but does not proffer a construction of any term. Prelim. Resp. 7. For purposes of this decision, we determine that none of the claim terms requires an express construction to resolve the issues currently presented by the patentability challenges. *See Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir.

[2] The Leahy Smith America Invents Act ("AIA"), Pub. L. No. 112–29, 125 Stat. 284 (2011), revised 35 U.S.C. § 103, effective March 16, 2013. Because the '325 patent has an effective filing date before March 16, 2013, our references to § 103 are to its pre-AIA version.

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