

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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BECTON, DICKINSON AND COMPANY,  
Petitioner,

v.

B. BRAUN MELSUNGEN AG,  
Patent Owner.

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Case IPR2017-01583  
Patent 8,333,735 B1

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Before SCOTT A. DANIELS, MICHAEL L. WOODS, and  
ROBERT L. KINDER, *Administrative Patent Judges*.

WOODS, *Administrative Patent Judge*.

DECISION

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

## I. INTRODUCTION

Becton, Dickinson and Company (“Petitioner”) filed a Petition (Paper 3, “Pet.”) requesting *inter partes* review of claims 1, 9–11, 18, 19, and 24 of U.S. Patent No. 8,333,735 B1 (“the ’735 patent”). Pet. 1. B. Braun Melsungen AG (“Patent Owner”) filed a Preliminary Response (Paper 7, “Prelim. Resp.”) in response to the Petition, contending that the Petition should be denied as to all challenged claims. Prelim. Resp. 1.

We have authority under 37 C.F.R. § 42.4(a) and 35 U.S.C. § 314, which provides that an *inter partes* review may not be instituted unless the information presented in the Petition “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 arguments and the evidence presented, for the reasons described below, we do not institute an *inter partes* review of any of the challenged claims.

### A. Related Proceedings

Petitioner represents that the ’735 patent is at issue in *B. Braun Melsungen AG et al. v. Becton, Dickinson & Co. et al.*, No. 1:16-cv-00411 (D. Del.). Pet. 1. Petitioner also represents that petitions for *inter partes* review were filed challenging related U.S. Patent Nos.: 8,328,762; 8,337,463; 8,540,728; 9,149,626; 8,597,249; 8,460,247; and 9,370,641. *Id.* Below is a chart that associates the *inter partes* reviews with each patent:

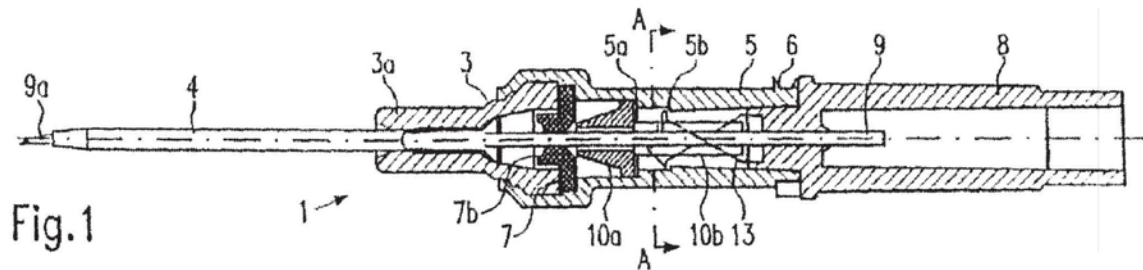
IPR Number	Patent Number
IPR2017-01583	8,333,735
IPR2017-01584	8,540,728
IPR2017-01585	8,337,463
IPR2017-01586	8,328,762

IPR2017-01587	9,149,626
IPR2017-01588	8,460,247
IPR2017-01589	8,597,249
IPR2017-01590	9,370,641

*B. The '735 Patent (Ex. 1001)*

The '735 patent, titled “Catheter Insertion Device,” states that an intended goal is to prevent “an outflow of blood from the catheter . . . after removal of the hollow needle with [a] needle guard element.” Ex. 1001, [54], 1:33–36.

To illustrate an embodiment of the '735 patent's catheter insertion device, we reproduce Figure 1 of the '735 patent, below:



According to the '735 patent, Figure 1 depicts catheter insertion device 1 with catheter 4, needle hub 8, to which hollow needle 9 is fixed and which needle 9 extends through valve disc 7. Ex. 1001, 2:8–9, 19–22. Between needle hub 8 and valve disc 7 is valve actuating element 10 (depicted as 10a and 10b), which has a truncated cone-shaped section 10a, which serves to open valve disc 7, and a plunger section 10b. *Id.* at 2:22–26. Also shown is needle guard element 13 in the form of a spring clip. *Id.* at 2:28–32. Needle guard element 13 serves to cover needle tip 9a upon withdrawal of needle 9 from the catheter hub, thereby “completely protecting and blocking it,” as shown in Figure 2. *See id.* at 2:33–41.

To illustrate the removal of needle 9 from catheter hub 2, we reproduce Figure 2, below:

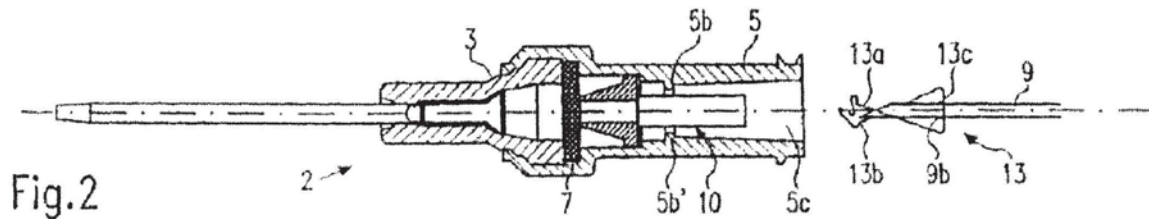


Figure 2 depicts the catheter insertion device with needle 9 removed from catheter hub 2. Ex. 1001, 1:57–58, 2:33–34. As shown above, needle guard element/spring clip 13 is removed from the catheter hub along with needle 9, causing the spring clip's spring arms 13a, 13b to cover the needle's tip. *Id.* at 2:38–41. Figure 2 also depicts valve disc 7—which is elastic—as closing the through-hole from which needle 9 is removed to prevent blood flow from exiting the catheter. *Id.* at 2:41–44.

### C. Illustrative Claim

Of the challenged claims, claims 1, 10, and 18 are independent, with claim 9 depending from claim 1, claim 11 depending from claim 10, and claims 19 and 24 depending from claim 18. *Id.* at 5:1–8:28. Claim 1 is illustrative of the subject matter at issue and is reproduced below, with emphasis added to a particular limitation addressed in our Decision:

1. A catheter insertion device comprising:
  - a catheter hub comprising an interior cavity, an opening at a proximal end, and a catheter tube attached thereto and extending from a distal end;
  - a needle having a needle shaft defining a needle axis projecting distally of an end of a needle hub, said needle projecting through the catheter tube and comprising a needle tip;
  - a valve configured to obstruct fluid flow comprising a wall surface comprising a slit positioned inside the interior cavity of

the catheter hub; said valve remaining inside the interior cavity when the needle is removed from the catheter tube and the catheter hub;

a valve actuating element slidably disposed in the catheter hub configured to actuate the valve, *the valve actuating element comprising a nose section having a tapered end for pushing the valve to open the slit of the valve and at least two plunger elements extending proximally of the nose section and having a gap therebetween to permit fluid flow to flow therethrough*; the two plunger elements configured to transfer a distally directed force to the nose section to push the valve to open the slit;

a needle protective device spaced from the needle tip in a ready position and movable relative to the needle tip to a protective position, at least in part, distally of the needle tip to prevent unintended needle sticks.

*Id.* at 5:2–5:27 (emphasis added).

#### *D. References Relied Upon*

The Petitioner relies in relevant part on the following references (Pet.

3):

Name	Reference	Ex. No.
Woehr	US 6,117,108, issued Sept. 12, 2000	Ex. 1003
Tauschinski	US 4,387,879, issued June 14, 1983	Ex. 1004
Arnett	US 5,817,069, issued Oct. 6, 1998	Ex. 1005
Van Heugten	US 5,053,014, issued Oct. 1, 1991	Ex. 1006
Pike	US 5,954,698, issued Sept. 21, 1999	Ex. 1007
Luther	US 4,842,591, issued June 27, 1989	Ex. 1008
Greene	US 6,221,047 B1, issued Apr. 24, 2001	Ex. 1013

#### *E. Alleged Grounds of Unpatentability*

Petitioner contends that claims 1, 9–11, 18, 19, and 24 of the '735 patent are unpatentable under the following grounds (Pet. 3):

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