

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 IPR2017-01585  
Patent 8,337,463 B2

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

DANIELS, *Administrative Patent Judge*.

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

## I. INTRODUCTION

### A. Background

Becton, Dickinson and Company (“Petitioner”) filed a Petition requesting *inter partes* review of claims 1, 2, 10, 12, 25, and 28 of U.S. Patent No. 8,337,463 B2 (“the ’463 patent”). Paper 3, (“Pet.”). B. Braun Melsungen AG (“Patent Owner”) filed a Preliminary Response contending that the Petition should be denied as to all challenged claims. Paper 7, (“Prelim. Resp.”).

We have jurisdiction 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.

### B. Additional Proceedings

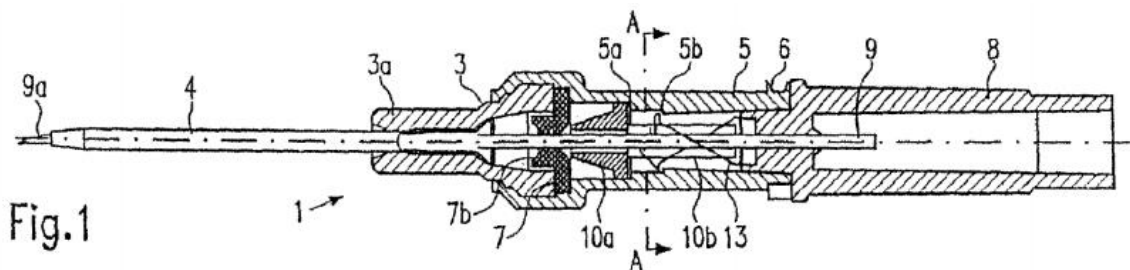
Petitioner represents that the ’463 patent is at issue in *B. Braun Melsungen AG et al. v. Becton, Dickinson & Co. et al.*, No. 1:16-cv-00411 (D. Del.). Pet. 1. Petitioner also represents that petitions for *inter partes* review were also filed challenging related patents US. Patent Nos.: 8,328,762; 8,333,735; 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

*C. The '463 Patent (Ex. 1001)*

The '463 patent, titled “Catheter Insertion Device,” purports to prevent “an outflow of blood from the catheter . . . after removal of the hollow needle with [a] needle guard element.” Ex. 1001, 1:33–34. Figure 1 of the '463 patent’s catheter insertion device is reproduced below:



According to the '463 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 passes through valve disc 7 and extends through catheter 4.

Ex. 1001, 2:8–9, 19–22. Between needle hub 8 and valve disc 7 is valve actuating element 10, which has a truncated cone-shaped section 10a, which serves to open valve disc 7. *Id.* at 2:20–24. Also shown is needle guard element 13 in the form of a spring clip. *Id.* at 2:27–29. 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 2:31–39.

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

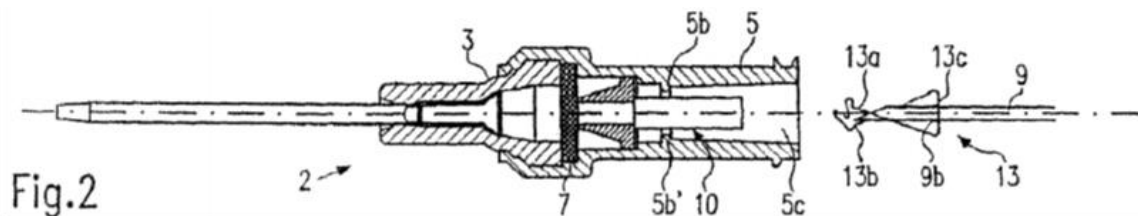


Figure 2, above, depicts the catheter insertion device with needle 9 removed from catheter hub 2. Ex. 1001, 1:57–58, 2:33–38. As shown, when needle guard element/spring clip 13 is removed from the catheter hub along with needle 9, the spring clip’s spring arms 13a, 13b cover the needle’s tip. *Id.* at 2:38–41. Figure 2 depicts also 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.

#### *D. Illustrative Claim*

Of the challenged claims, claims 1, 10, and 25 are independent. Each of dependent claims 2, 12, and 28 depend directly from respective independent claims 1, 10, and 25. Claim 1 illustrates the claimed subject matter and is reproduced below:

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 sized and shaped to obstruct fluid flow through the catheter hub comprising a wall surface comprising a slit positioned inside the interior cavity of the catheter hub and abutting a shoulder in 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 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 structured 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.

Ex. 1001, 5:2–30 (emphasis added).

*E. The Alleged Grounds of Unpatentability*

Petitioner contends that the challenged claims are unpatentable on the following specific grounds.<sup>1</sup>

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<sup>1</sup> Petitioner supports its challenge with a Declaration of Jack Griffis, III, (Ex. 1002), and in its Preliminary Response, Patent Owner relies upon a Declaration of Richard Meyst (Ex. 2001). *See infra*.

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