

Nos. 22-1136; -1186

**United States Court of Appeals
For the Federal Circuit**

C.R. BARD, INC. and BARD PERIPHERAL VASCULAR, INC.,

Plaintiffs-Appellants

v.

MEDICAL COMPONENTS, INC.,

Defendant-Cross-Appellant.

Appeal from the United States District Court for the District of Utah,
Case No. 2:12-cv-00032-RJS-DAO, Chief District Judge Robert J. Shelby

**CORRECTED REPLY BRIEF OF DEFENDANT-CROSS-APPELLANT
MEDICAL COMPONENTS, INC.**

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Dated: July 19, 2022

CERTIFICATE OF INTEREST

Counsel for Medical Components, Inc. (“MedComp”) hereby certifies the following:

1. The full name of every party or amicus represented by me is: Medical Components, Inc.

2. The name of the Real Party in interest (Please only include any real party in interest NOT identified in Question 3) represented by me is: None.

3. All parent corporations and any publicly held companies that own 10% or more of the stock of the party or amicus curiae represented by me are: None.

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court (and who have not or will not enter an appearance in this case) are:

- MONTGOMERY McCracken Walker & Rhoads LLP: Aaron S. Haleva, Alfred W. Zaher, Brianna Vinci*, John J. Powell, Peter Breslauer, Stephanie K. Benecchi, Joseph C. Monahan*, Maryellen Madden, Patrick J. Farley, Joseph E. Samuel, Jr.
- DENTONS DURHAM JONES PINEGAR, PC: J. Mark Gibb, Clinton E. Duke
- HORN WILLIAMSON LLC: Michael B. Hayes
- BLANK ROME LLP: Bruce D. George*, Joel L. Dion*

- BUCHANAN INGERSOLL & ROONEY PC: Ralph G. Fischer*, Samantha L. Southall*
- Jeffrey A. Stephens*

* -- attorney no longer with firm and/or has withdrawn as counsel

5. The title and number of any case known to counsel to be pending in this or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal: *C.R. Bard, Inc., et al. v. Medical Components, Inc.*, C.A. No. 2:17-cv-00754-HCN-DAO (D. Utah); *C.R. Bard, Inc. et al. v. Smiths Medical ASD, Inc.*, C.A. No. 20-1543-CFC (D. Del.); *C.R. Bard, Inc. et al. v. AngioDynamics, Inc.*, C.A. No. 20-1544-CFC (D. Del.). This civil action previously came before this Court on a petition for writ of mandamus concerning an unrelated issue. *See Order, In re Medical Components, Inc.*, Case No. 13-148 (Fed. Cir. Aug. 2, 2013). The panel was comprised of Judges Rader, Bryson, and Wallach.

6. Information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees): Not applicable.

Dated: July 19, 2022

/s/ Alfred W. Zaher
Alfred W. Zaher

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PRELIMINARY STATEMENT

In its Principal and Response Brief (at 62-63), MedComp concisely stated the grounds for its cross-appeal of the District Court’s order (Appx00041-55) holding that MedComp’s ’324 Patent was invalid. MedComp pointed to that Order and summarized its position: the District Court treated MedComp’s patent the same as it had Bard’s patents because its order holding Bard’s patents invalid was law of the case and the factual record showed that the use of radiopaque indicia on implanted medical devices was routine and conventional. That is what the District Court’s order provides. Thus, if entering judgment against Bard was erroneous, so, too, was entering judgment against MedComp.

In Bard’s Response and Reply Brief, Bard accuses MedComp’s counsel of “wrongly assert[ing]” that the District Court relied on law of the case, and asserts that MedComp had to show the distinctions between the claims of Bard’s and MedComp’s patents are so insignificant that this Court should treat them the same way. *See* Bard’s Response and Reply Br. at 36-37.

In this Reply, MedComp necessarily but briefly shows Bard’s positions are directly contrary to the positions Bard took, and prevailed upon, to obtain the summary judgment order below that held MedComp’s patent invalid. Remarkably, Bard’s positions are also contrary to Bard’s statements in its own brief.

ARGUMENT

**THE DISTRICT COURT’S WELL-REASONED ANALYSIS APPLIED ITS
PRIOR ORDER AS LAW OF THE CASE TO MEDCOMP’S PATENT**

As MedComp stated in its opening brief, Chief Judge Shelby applied his prior order holding Bard’s patents ineligible as law of the case to likewise hold MedComp’s patent ineligible. *See* MedComp’s Principal and Response Br. at 62-63.

While Bard states that MedComp’s counsel misrepresented the District Court’s reliance on law of the case, Bard’s own opening brief states that “the district court invited Bard to move for summary judgment, *under the law-of-the-case doctrine*, that MedComp’s asserted claims are invalid under § 101” and Bard so moved. Bard’s Principal Br. at 15 (citing Appx03796-3797) (emphasis added). And, the record shows Chief Judge Shelby did exactly that, applying the law of the case to all aspects of the opinion, as next shown.

First, the District Court applied the same detailed *AngioDynamics* and *Alice* framework that it had applied in holding Bard’s patents invalid in addressing Bard’s motion to hold MedComp’s patent invalid. Appx00044 (“using the same framework” from its prior order); Appx00045-48 (summarizing the framework relied upon in holding Bards’ patents ineligible); Appx00048 (“Accordingly, the court will evaluate the ’324 Patent under the same framework.”); Appx00045-55 (summarizing that framework then applying it to MedComp’s patent). Bard’s own

brief acknowledges that “[t]he district court applied the same legal framework” to “invalidate[] the asserted claims of the ’324 patent.” Bard’s Response and Reply Br. at 15 (citing Appx00041-55).

Second, the District Court treated the claims of Bard’s and MedComp’s patents the same for the purposes of its analysis and then relied upon law of the case to hold that MedComp’s patent was likewise invalid. Context is important for understanding this aspect of the District Court’s application of law of the case.

When MedComp had earlier moved for summary judgment on Bard’s Port ID Patents, Bard argued that those patents disclosed not just indicia to identify a port, but also some new power-injectable port. The District Court wrote that it “would not countenance” Bard’s argument that its patents disclosed any novel power-injectable port, but instead held that they disclosed, and claimed, only *typical* ports with indicia indicating power injectability. Appx00027.

Later, when Bard moved for summary judgment of invalidity on MedComp’s patent, MedComp conceded that its patent did not disclose or claim some new power-injectable port. *See* Appx04213-4215. In that context, Bard asserted in the District Court that the claims of MedComp’s patent were indistinguishable from those of Bard’s patents as they had been construed by the District Court. *See* Appx03924 (Bard arguing that “*there is no principled distinction* between the subject matter claimed in Bard’s patents and MedComp’s

'324 patent"; and noting "the overwhelming similarity between Bard's claims, which the Court ruled invalid, and the claims asserted by MedComp") (emphasis added). In its responsive briefing in the District Court, MedComp argued there were some distinctions between the claims, but conceded the distinctions made no difference for this analysis, and that the parties' patents stood, or fell, together. *See* Appx04213-4215.

In its order, the District Court adopted Bard's position that there was no distinction between the claims of the parties' respective patents. Specifically, the District Court found that "[l]ike the invalidated Bard Patents, the '324 Patent recites the assembly of a *typical* venous access port with the additional feature of the printed matter conveying the information that the port is power-injectable." Appx00053 (emphasis added).

Given the lack of principled distinction between the claims of the patents as argued by Bard, the District Court then applied the law of the case established in its order holding Bard's patents invalid: "[a]s this court stated in its prior Order concerning the Bard Patents, '[b]eyond the printed matter, there are no other elements that could be considered "inventive."'" Appx00053 (citing Appx00028.) See also Appx00052 ("*Like the three Bard Patents*, the asserted claims of the '324 Patent consist of an access port with radiopaque indica to indicate a pressure property of the port) (emphasis added).

The District Court ultimately held that “the ’324 Patent is Invalid Under the Law of the Case,” applying the same legal analysis to what Bard conceded were indistinguishable claims, concluding:

Indeed, no matter which characters are used, the claimed innovation of the ’324 patent—*like the Bard Patents*—is using radiopaque indicia to communicate information about the access port to medical professionals.

Appx00051 (emphasis added).

The District Court then continued its application of law of the case in relying upon the same factual record from its order holding Bard’s patents ineligible.

Appx03932; Appx03935-3936. That record established that it had been routine and conventional to use radiopaque identifiers on implanted medical devices.

Appx00055. The District Court relied upon that record, and its prior holding that Bard’s patents had been invalid, to hold MedComp’s patent was likewise invalid:

the claimed inventive concept, at bottom, is an access port with radiopaque indicia used for the purpose of informing medical practitioners of the pressure capacity of the port. *As with the Bard Patents*, there is no additional inventive concept because radiopaque identifiers are not new within the medical device field. Because the radiopaque identifiers only communicate an abstract idea, the claims in the ’324 Patent do not contain an inventive concept sufficient to render them a patent-eligible application.

Appx00055 (emphasis added).

CONCLUSION

MedComp submits that Bard wrongly accused MedComp’s counsel of misrepresenting the fact that the District Court had relied on law of the case to enter judgment against MedComp. MedComp waived nothing by concisely stating what Bard’s reply brief required MedComp to lay out in unnecessary detail now: “The District Court only held that the ’324 Patent was ineligible under Section 101 because its ‘prior Order’ was ‘now law of the case.’” MedComp’s Principal and Response Br. at 63.

Because the District Court applied the same legal analysis to patents without principled distinctions between them and relied on the same factual record, if the District Court erred with respect to its judgment of invalidity of Bard’s patents, the judgment of invalidity of MedComp’s patent should likewise be reversed.

Respectfully submitted,

Dated: July 19, 2022

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Counsel for Medical Components, Inc.

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Federal Circuit Rule 28.1(b)(3)(A). This brief contains 1,221 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and Federal Circuit Rule 32(b).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6). This brief has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365 in 14-point font Times New Roman.

Respectfully submitted,

Dated: July 19, 2022

/s/ Alfred W. Zaher

Alfred W. Zaher

Counsel for Medical Components, Inc.

CERTIFICATE OF SERVICE

I, Alfred W. Zaher, hereby certify that on this 19th day of July, 2022, a true and correct copy of the foregoing Corrected Reply Brief of Defendant-Cross-Appellant Medical Components, Inc. has been filed electronically and is available for viewing and downloading from the ECF system. I further certify that I caused a true and correct copy of same to be served on all counsel of record via ECF filing.

Respectfully submitted,

Dated: July 19, 2022

/s/ Alfred W. Zaher

Alfred W. Zaher

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