

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 31

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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***Ex parte*** WOLFGANG R. DAUM

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Appeal No. 2001-2074  
Application No. 08/552,143

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ON BRIEF

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Before ABRAMS, PATE and BAHR, ***Administrative Patent Judges.***

PATE, ***Administrative Patent Judge.***

***DECISION ON APPEAL***

This is an appeal from the examiner's refusal to allow claims 1 through 5 and 8 through 18 as amended after final

Appeal No. 2001-2074  
Application 08/552,143

rejection. These are the only claims remaining in the application.

The claimed invention is a deflectable needle assembly that can be inserted in an obstructed site in a body. The needle assembly includes a straight rigid cannula, a catheter with a curved distal end, and a stylet inserted in the catheter. When the catheter with the curved distal end is withdrawn into the straight cannula, since the catheter is made of superelastic material, the curved catheter assumes the shape of the straight cannula.

The claimed subject matter may be further understood with reference to the appealed claims appended to appellant's Brief.

The references of record relied upon by the examiner as evidence of obviousness are:

Hillstead	5,066,285	Nov. 19, 1991
Daum (German Offenlegungsschrift)	DE 4223897 A1	Jan. 27, 1994 <sup>1</sup>

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<sup>1</sup>Our understanding of the German reference is via a translation into English prepared by the U.S. Patent and Trademark Office.

Appeal No. 2001-2074  
Application 08/552,143

### ***REJECTIONS***

Claims 1 through 5 and 8 stand rejected under 35 U.S.C. § 103 as unpatentable over Daum. According to the examiner, Daum discloses an outer straight tube or cannula, middle interior tube which is of superelastic material and normally curved, and an inner stylet tube. The examiner takes official notice of the fact that bevelled medical instruments are known in the art. The examiner is of the opinion that it would have been obvious to bevel the outer and middle tubes of Daum to reduce injection site tissue trauma.

Claims 9 through 18 stand rejected under 35 U.S.C. § 103 as unpatentable over Daum in view of Hillstead. The examiner is of the opinion that Hillstead shows handles on the proximal end of the tube and the use of a stopper device. The examiner is of the opinion that it would have been obvious to provide Daum with handles for the tubes of Daum and to provide a stopper device in the Daum invention.

### ***OPINION***

We have carefully reviewed the rejections on appeal in light of the arguments of the appellant and the examiner. As a

Appeal No. 2001-2074  
Application 08/552,143

result of this review, we have determined that the applied prior art does not establish a ***prima facie*** case of obviousness with respect to the claimed subject matter. Accordingly, the rejections of all claims on appeal are reversed. Our reasons follow.

We find ourselves in agreement with appellant's second argument that there is no motivation to modify the Daum invention. We are in agreement with the examiner that bevelled tips are indeed well known on the end of sharpened medical devices. However, we are in agreement with appellant that it would not have been obvious to use such a bevelled tip on the tubes of Daum. We have closely read the translation of the Daum Offenlegungsschrift and we agree with appellant that there is no indication therein that the device disclosed in Daum is for forming the initial penetration into the body. In our view, Daum merely discloses the assembly being inserted into an existing body cavity, or being inserted in a hole previously formed in the body by a trocar or the like. Thus, we find that there is no motivation, incentive or suggestion for providing the claimed bevelled distal tip on the cannula. Likewise, we find no

Appeal No. 2001-2074  
Application 08/552,143

motivation or suggestion for employing the distal tip on the catheter that is recessed into the cannula when the device of Daum is moved into the body.

We have carefully reviewed the Hillstead reference but we find therein no disclosure which would render distal bevelled tips on the cannula and catheter of Daum *prima facie* obvious. For these reasons, the rejections of claims 1 through 5 and 8 through 18, all claims on appeal, are reversed.

**REVERSED**

NEAL E. ABRAMS	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
WILLIAM F. PATE, III	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
	)	
JENNIFER D. BAHR	)	
Administrative Patent Judge	)	

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Appeal No. 2001-2074  
Application 08/552,143

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