

EXHIBIT 3

DECLARATION OF TRENT D. TANNER

IN SUPPORT OF

NUVASIVE'S OPPOSITION TO

DEFENDANTS' MOTIONS IN LIMINE NOS. 1-10

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNIVERSITY OF PITTSBURGH OF THE
COMMONWEALTH SYSTEM OF HIGHER
EDUCATION,

Plaintiff

vs.

Civil Action No. 08-1307

VARIAN MEDICAL SYSTEMS, INC.,

Defendant

PROCEEDINGS (Day 1)

Transcript of Jury Trial proceedings, commencing on
Monday, January 23, 2012, United States District Court,
Pittsburgh, Pennsylvania, before Honorable Arthur J. Schwab,
United States District Judge.

APPEARANCES:

For the Plaintiff: WILLIAM QUINN, Esquire
ARTHUR STROYD, Esquire
ELIZABETH STROYD WINDSOR, Esquire

For the Defendant: HENRY SNEATH, Esquire
WILLIAM ANTHONY, Esquire
MATTHEW POPPE, Esquire

Reported by: Virginia S. Pease
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Pittsburgh, Pennsylvania 15219
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I N D E X

<u>PLAINTIFF WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Mark A. Nordenberg				
By Mr. Quinn	57			
By Mr. Anthony		70		
Joel S. Greenberger, M.D.				
By Miss Windsor	75			

* * * * *

1 MONDAY MORNING SESSION, JANUARY 23, 2012, 11:25 A.M.

2 * * * * *

3 (Whereupon, the jury selection was had,
4 and the following was had in open Court.)

5 THE COURT: All right. The eight of you may stand
6 and be sworn.

7 THE CLERK: Would each of you stand and please raise
8 your right hand?

9 (Whereupon, the jury was sworn in.)

10 THE CLERK: You may be seat.

11 THE COURT: Anything on the record before I read the
12 preliminary charge, behalf the plaintiff?

13 MR. QUINN: No, Your Honor.

14 THE COURT: Defendant?

15 MR. SNEATH: No, Your Honor.

16 THE COURT: One thing. As people go in and out will
17 you please close the door? Because, otherwise, we just hear a
18 lot of traffic out in the hall. So, I would appreciate if you
19 do that as a courtesy to my staff, so she doesn't have to keep
20 getting up and down closing doors.

21 Ladies and gentlemen of the jury, welcome. It's
22 good to see you. Glad we didn't lose the wonderful coat in
23 the back row. Cutting edge of fashion.

24 So, thank you. We'll spend some time together.

25 Usually patent cases take many, many weeks, many, many,

1 Varian Medical Systems, a company that manufactures and sells
2 medical equipment, including equipment used to treat cancer
3 patients. I'll refer to the parties as Pitt and as Varian.

4 Pitt alleges that Varian makes and sells products
5 that infringe U.S. patent No. 5,727,554 which the parties
6 refer to and I will refer to as patent '554. Imagine me
7 having to satisfy all those numbers all the time so, it's
8 patent 554.

9 Specifically, Pitt claims that Varian's RPM gating
10 system, as well as a combination of the RPM gating system and
11 Varian's clinac linear trilogic linear accelerators infringe
12 the '554 patent.

13 In addition, Pitt alleges that the Varian's
14 infringement of that patent has been willful. The concept of
15 willful infringement is something I will explain to you
16 shortly.

17 This Court has already ruled that the Varian's
18 products at issue in this case do, in fact, infringe the '554
19 patent. Because Varian's infringement of the patent has
20 already been established, that is not an issue for you to
21 decide. Instead, the only purpose of this trial and the only
22 issue you are to decide is whether Varian's infringement of a
23 patent was willful.

24 Whether Varian's infringement is willful relates
25 to the amount of damage Pitt is entitled to recover in the

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