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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
HONORABLE MICHAEL M. ANELLO, DISTRICT JUDGE

MEDTRONIC SOFAMOR DANEK, USA) CASE NO. 08 CV 1512-MMA
ET AL.,)
PLAINTIFF,)
VS.) AUGUST 30, 2011
NUVASIVE, INC.,) TUESDAY, 8:30 AM
DEFENDANT.) TRIAL - DAY ONE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR THE PLAINTIFF: LUKE L. DAUCHOT, ESQ.
NIMALKA WICKRAMASEKERA, ESQ.
SHARRE LOTFOLLAHI, ESQ.
ALEXANDER F. MACKINNON, ESQ.
MICHAEL DOBSZEWICZ, ESQ.
KIRKLAND & ELLIS, LLP

JEFF SCHWARTZ, ESQ.
DEWEY & LEBOEUF

FOR THE DEFENDANT: FRANK SCHERKENBACH, ESQ.
TODD G. MILLER, ESQ.
JONATHAN J. LAMBERSON, ESQ.
NEIL WARREN, ESQ.
KEELEY I. VEGA, ESQ.
FISH & RICHARDSON, P.C.

ELIZABETH CESENA, CSR 12266, (619) 237-0100
USDC, SOUTHERN DISTRICT OF CA
PO BOX 131037, SAN DIEGO, CA 92170



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2 MEDTRONIC V. NUVASIVE, 8/30/11

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ELIZABETH CESENA, CSR 12266, (619) 237-0100
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1 Q DR. MICHELSON, I DON'T SEE TRANSLATERAL UP THERE?

2 A THAT'S CORRECT.

3 Q LET'S SPEAK ABOUT THE TERM TRANSLATERAL. THAT'S A TERM
4 IN OPENING STATEMENT WE SAW IN THE CONTEXT OF YOUR '973
5 PATENT.

6 TO YOUR KNOWLEDGE, WAS THAT A TERM SPECIFICALLY IN
7 THIS AREA THAT EXISTED BEFORE THE TIME THAT YOU INVENTED
8 THIS IMPLANT?

9 A WELL TO THE BEST OF MY KNOWLEDGE, I ACTUALLY CREATED
10 THAT WORD. WITH THE IDEA OF THE TRANSCONTINENTAL RAILROAD
11 IN MIND, THAT'S WHY I PICKED THE WORD TRANSLATERAL THAT
12 TRANSCONTINENTAL RAILROAD CONNECTED THE ATLANTIC OCEAN TO
13 THE PACIFIC OCEAN AND CROSSED THE ENTIRE CONTINENT AND MY
14 CONCEPT OF A TRANSLATERAL IMPLANT WAS AN IMPLANT THAT WOULD
15 ACTUALLY BE CAPABLE OF SITTING ON THIS APOPHYSEAL RING ON
16 ONE SIDE AND GOING ALL THE WAY ACROSS AND SITTING ON THE
17 APOPHYSEAL RING ON THE OPPOSITE SIDE.

18 Q CAN WE PUT UP SLIDE FIVE, DAVE? CAN YOU PRESS.

19 DOES THAT DEPICT TRANSLATERAL AS YOU USED IT IN
20 YOUR '973 PATENT.

21 A YES. AND ALSO ONE OTHER THING. IT'S COMING IN
22 ESSENTIALLY PERPENDICULAR TO WHAT WE CALL THAT MID SAGITTAL
23 LINE, SO WHILE THIS WAS THE FRONT AND THAT WAS THE BACK AND
24 THINGS WENT IN FRONT TO BACK, THIS IS COMING IN AT 90 DEGREE
25 ANGLE TO THE OLD TECHNOLOGY.

ELIZABETH CESENA, CSR 12266, (619) 237-0100
USDC, SOUTHERN DISTRICT OF CA
PO BOX 131037, SAN DIEGO, CA 92170

1 NEVER OPERATED ON AN ANIMAL. I'M NOT A VETERINARIAN. I
 2 DON'T WHAT SPINAL DISORDERS THEY GET, IF ANY, THEY WALK ON
 3 ALL FOURS. NO. THESE ARE ALL FOR HUMANS.

4 Q YOUR HONOR, THIS IS PROBABLY A GOOD TIME TO TAKE A
 5 BREAK IF IT'S OKAY.

6 THE COURT: SURE. WE'RE CLOSE TO QUITTING TIME IF
 7 THIS IS A CONVENIENT TIME FOR YOU, WE'LL DO THAT. WE'LL
 8 TAKE OUR EVENING RECESS. PLEASE REMEMBER THE ADMONITION WE
 9 TALKED ABOUT. DON'T TALK TO ANYONE ABOUT THE CASE OR GET
 10 ANY INFORMATION FROM OUTSIDE. HAVE A NICE EVENING. SEE
 11 YOU BACK HERE AT 9:00 O'CLOCK TOMORROW. THANKS.

12 (EVENING RECESS TAKEN)

13 SAN DIEGO, CALIFORNIA)
 14 COUNTY OF SAN DIEGO) SS:
)

15 I, ELIZABETH M. CESENA, CSR 12266, AN OFFICIAL
 16 REPORTER OF THE UNITED STATES DISTRICT COURT, SOUTHERN
 17 DISTRICT OF CALIFORNIA, DO HEREBY CERTIFY THAT I REPORTED IN
 18 SHORTHAND THE PROCEEDINGS, TO THE BEST OF MY ABILITY, IN THE
 19 ABOVE-ENTITLED CAUSE AND THAT THE FOREGOING TRANSCRIPT,
 20 NUMBERED FROM PAGES 1 TO 183 INCLUSIVE, IS A FULL, TRUE AND
 21 CORRECT TRANSCRIPT OF PROCEEDINGS HELD ON AUGUST 30, 2011.

22 SAN DIEGO, CALIFORNIA, DATED THIS 31ST DAY OF
 23 AUGUST, 2011.

24 /S/ ELIZABETH CESENA
 25 _____

ELIZABETH M. CESENA, CSR 12266
 OFFICIAL COURT REPORTER

ELIZABETH CESENA, CSR 12266, (619) 237-0100
 USDC, SOUTHERN DISTRICT OF CA
 PO BOX 131037, SAN DIEGO, CA 92170

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IN THE UNITED STATES DISTRICT COURT
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HONORABLE MICHAEL M. ANELLO, DISTRICT JUDGE

_____)	
MEDTRONIC SOFAMOR DANEK, USA)	CASE NO. 08 CV 1512-MMA
ET AL.,)	
)	
PLAINTIFF,)	
)	
VS.)	AUGUST 31, 2011
)	
NUVASIVE, INC.,)	WEDNESDAY, 9:00 AM
)	
DEFENDANT.)	TRIAL - DAY TWO
_____)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR THE PLAINTIFF:	LUKE L. DAUCHOT, ESQ. NIMALKA WICKRAMASEKERA, ESQ. SHARRE LOTFOLLAHI, ESQ. ALEXANDER F. MACKINNON, ESQ. MICHAEL DOBSZEWICZ, ESQ. KIRKLAND & ELLIS, LLP
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