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

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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

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.

1 WITH IT.

2 SO I THINK EVEN THOUGH THE PERSON IS SITTING RIGHT  
3 HERE, I THINK HE'S ENTITLED TO READ THE DEPO. AND OF  
4 COURSE, IF SOMETHING COMES OUT IN THE DEPO THAT YOU DON'T  
5 LIKE, THEN YOU'VE GOT YOUR GUY HERE, YOU WILL PUT HIM ON AND  
6 STRAIGHTEN IT OUT.

7 MR. SCHERKENBACH: FAIR ENOUGH. THANK YOU, YOUR  
8 HONOR.

9 THE COURT: ANYTHING ELSE WE CAN RESOLVE BEFORE WE  
10 CALL OUR JURORS IN? I HATE TO SET A PRECEDENT BY CALLING  
11 THEM IN EARLY.

12 SO WHY DON'T WE GO OFF THE RECORD FOR A MOMENT.

13 THE RECORD CAN REFLECT THAT ALL OF OUR JURORS ARE  
14 BACK. THIS IS REALLY IMPRESSIVE. YOU'RE REALLY PUNCTUAL  
15 AND ON TIME WHEN. WHEN THAT HAPPENS, I REPORT YOU DOWN TO  
16 JURY LOUNGE THAT YOU'RE REALLY GOOD JURORS, AND THEN THEY  
17 INVITE YOU TO COME BACK AFTER A MONTH OR SO AND SERVE ON OUR  
18 JURY.

19 IS THAT OKAY FOR ME TO DO THAT? I WON'T DO THAT.  
20 THANK YOU. WE APPRECIATE YOU BEING SO TIMELY.

21 WE ARE, I GUESS, GOING TO CONTINUE ON WITH SOME MORE  
22 QUESTIONS FOR DR. MICHELSON.

23 MR. DAUCHOT: WE ARE, YOUR HONOR. OKAY TO  
24 PROCEED?

25 THE COURT: YES. GO AHEAD.

## 1 DIRECT EXAMINATION

2 BY MR. DAUCHOT:

3 Q DR. MICHELSON, GOOD MORNING.

4 A GOOD MORNING.

5 Q YOU ARE STILL UNDER OATH.

6 A YES, SIR.

7 Q TWO QUICK POINTS BEFORE WE PICK UP YOU WHERE WE LEFT  
8 YESTERDAY. ONE, YOU MENTIONED THAT A COMPANY CALLED  
9 SURGICAL DYNAMICS LICENSED YOUR '247 TECHNOLOGY?

10 A YES.

11 Q AND DO YOU REMEMBER THAT YOU RECEIVED ROYALTIES FROM  
12 SDI ON ITS RAY CAGE FOR THAT '247?

13 A THAT'S CORRECT.

14 Q AND YOU TESTIFIED THAT SOFAMOR DANEK AS WELL LICENSED  
15 THEIR '247 PATENT. THIS IS THE ONE, RIGHT?

16 A YES.

17 Q DO YOU RECALL IF THEY WERE PAYING YOU ROYALTIES ON  
18 INNER FIX AND NOVICE WITH RESPECT TO THAT PATENT?

19 A YES.

20 Q ALL RIGHT. I WANT TO SHIFT GEARS AND QUICKLY GO  
21 THROUGH THE CONCEPTION DATE OF THE TRANSLATERAL PATENT -- OR  
22 THE TRANSLATERAL IMPLANT.

23 YOU WITH ME?

24 A I AM.

25 Q APPROXIMATELY WHEN DID YOU INVENT THE TRANSLATERAL

1 IMPLANT?

2 A IT WAS THE SEPTEMBER-OCTOBER 1993 TIME FRAME.

3 Q ALL RIGHT. AND I WANT TO WORK THROUGH WITH THE JURY  
4 FAIRLY QUICKLY HOW IT IS THAT YOU RECALL THAT.

5 CAN YOU TURN TO PX0284. IT'S IN THAT BINDER,  
6 DR. MICHELSON.

7 MR. DAUCHOT: CAN WE PUT THAT UP ON THE SCREEN,  
8 PLEASE.

9 BY MR. DAUCHOT:

10 Q CAN YOU SEE IT? ARE YOU WITH ME, DR. MICHELSON?

11 A I AM.

12 Q OKAY. WHAT ARE WE LOOKING AT HERE?

13 A WELL, DESIDER IMRE WAS THE MACHINIST WHO ACTUALLY MADE  
14 THE SET. AND HE SENT US AN INVOICE THAT WE RECEIVED AT MY  
15 OFFICE ON 12/26/93. AND THAT WAS AFTER TWO SETS OF  
16 INSTRUMENTS HAD ACTUALLY BEEN MADE.

17 SO IF YOU LOOK DOWN THE INVENTORY, IT'S TWO OF  
18 THIS AND TWO OF THAT. THE REASON WAS THAT HE HAD MADE A SET  
19 PREVIOUSLY. AND AFTER WORKING WITH IT, I WAS NOT SATISFIED,  
20 SO I HAD HIM MAKE A SECOND SET. SO THAT'S THE INVOICE.

21 Q LET'S FOCUS ON THE SECOND LINE. YOU HAVE TWO IMPLANTS  
22 24 BY 42 MILLIMETERS -- DO YOU SEE THAT -- WITH CAPS?

23 A YES.

24 Q IS THAT A TRANSCRIPT OF YOUR TRANSLATERAL IMPLANT?

25 A THAT IS ONE OF THE EMBODIMENTS, YES.

1 Q LET'S WORK BACKWARDS HERE -- WELL, ONE QUESTION: DID  
2 THE MACHINIST INVENT THE IMPLANT AND SELL IT TO YOU?

3 A NO. HE ACTUALLY WORKED AT ANOTHER COMPANY AS A GENERAL  
4 MACHINIST. AND ON HIS OVERTIME OR SPARE TIME, WHEN HE  
5 WASN'T A FOREMAN AT THAT COMPANY, AS TIME PERMITTED, HE  
6 WOULD MAKE THINGS FOR ME. I WOULD GIVE HIM A DRAWING, HE  
7 WOULD MAKE IT, I'D REVIEW IT, HE'D CORRECT IT, HE'S REMAKE  
8 IT.

9 MR. DAUCHOT: DAVE, CAN YOU BACK UP. I NEED TO  
10 SEE THE DATE ON THERE.

11 BY MR. DAUCHOT:

12 Q HERE'S A DATE, 12/26/93. DO YOU SEE THAT?

13 A YES.

14 Q THAT'S THE DATE THAT YOU RECEIVED THE INVOICE?

15 A CORRECT.

16 Q SO BY THEN HE HAD MADE THESE?

17 A HE HAD MADE TWO SETS BY THEN.

18 Q TWO SETS BY THEN.

19 NOW, LET'S WORK BACKWARDS. HOW DOES THAT GET YOU  
20 TO, ROUGHLY -- I THINK YOU SAID SEPTEMBER OF '93?

21 A IT WAS EITHER THE END OF SEPTEMBER OR THE BEGINNING OF  
22 OCTOBER.

23 Q SO BASICALLY, YOU'RE SAYING FOR HIM TO HAVE MADE TWO  
24 SETS, YOU ARE WORKING BACKWARDS FROM SEPTEMBER '93, WHEN YOU  
25 APPROACHED HIM THE FIRST TIME?

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