

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

WARSAW ORTHOPEDIC, INC.,

Plaintiff,

vs.

Case No.

3:08-CV-1512 MMA (AJB)

NUVASIVE, INC.,

Defendant.

NUVASIVE, INC.,

Counterclaimant,

vs.

MEDTRONIC SOFAMOR DANEK USA,
INC.; WARSAW ORTHOPEDIC, INC.;
MEDTRONIC PUERTO RICO OPERATIONS
CO.; and MEDTRONIC SOFAMOR DANEK
DEGGENDORF, GmbH,

Counterclaim Defendants.

AND RELATED COUNTERCLAIM.

CONFIDENTIAL, PATENT PROSECUTION SENSITIVE

Deposition of

GARY MICHELSON, M.D.

November 19, 2010

Reported by LAURY WASOFF, CSR NO. 10995, RPR

SHARI MOSS & ASSOCIATES
Certified Shorthand Reporters
1838 El Camino Real, Suite 108
Burlingame, California 94010

1 FRIDAY, NOVEMBER 19, 2010; LOS ANGELES, CALIFORNIA

2 8:46 A.M.

3 -oOo-

4

5 THE VIDEOGRAPHER: Good morning. We are on the record.
6 The time is currently 8:46 A.M. This marks the beginning
7 of tape No. 1 in Volume I of the deposition testimony of
8 Gary Michelson, M.D. in the matter of Warsaw Orthopedic,
9 Inc. v. Nuvasive pending before the United States District
10 Court, Southern California District, Case No. 3:08-CV-1512.

11 Today's date is November 19 of 2010, and the
12 videographer is Michael Figari contracted by Eureka Street
13 Legal Video, telephone (415) 215-2041.

14 This deposition is being held at the LAX Marriott
08:47 15 in Los Angeles, California and was noticed by Fish &
16 Richardson for the defense and cross-complainant.

17 Counsel, would you please introduce yourselves and
18 state your appearances for the record.

19 MR. SCHERKENBACH: Frank Scherkenbach and Neil Warren
08:47 20 of Fish & Richardson for the defendant and counter-claimant
21 Nuvasive.

22 MR. DAUCHOT: Luke Dauchot here on behalf of the
23 witness, the plaintiff, and the counter-defendants.

24 THE VIDEOGRAPHER: Your reporter is Laury Wasoff of
08:48 25 Shari Moss & Associates. Would she swear in the witness.

08:48 1

2

GARY MICHELSON, M.D.,

3

the witness herein, having been first duly

4

sworn, deposed and testified as follows:

08:48 5

6

EXAMINATION

7

BY MR. SCHERKENBACH:

8

Q Good morning, Doctor.

9

A Good morning.

08:48 10

11

Q You have obviously had your deposition taken a
number of times before. Correct?

12

A Yes.

13

Q So you're familiar generally with the process of

14

the deposition and how it works. Is that fair?

08:48 15

16

Q You understand that if you don't understand a

17

question I ask, you can ask me to rephrase it and I'd be

18

happy to do that. Okay?

19

A Yes.

08:48 20

21

Q And at the same time it's important you let me
finish my question before you begin answering so that the

22

court reporter can get down both my question and your

23

answer. You understand that?

24

A Yes.

08:48 25

Q

As usual we will probably go in about hour-long

10:32 1 describes in some level of detail what was shown. Just at
2 a high level again, if you were explaining it to a
3 layperson, what is it you showed Danek at that meeting or
4 told Danek at that meeting? What was the technology
10:32 5 involved?

6 A Well, I mean, some things I can remember quite
7 clearly. And I guess I'll need to ask you a question. Do
8 you want to turn this into a memory test or do you want my
9 best testimony? Because if you want me to remember, I can
10:33 10 only remember what I can remember.

11 Q Let me ask a more specific question. The
12 August/September '93 meeting, did you show them implants?

13 A Yes. I showed them -- that I clearly remember.
14 I showed them the threaded interbody spinal fusion
10:33 15 implants. I actually showed them the instruments and the
16 surgical procedure for doing it both anteriorly and
17 posteriorly.

18 Q But not laterally?

19 A Not laterally.

10:33 20 Q And is that because you had not yet conceived at
21 that time of doing the procedure laterally? And I mean
22 direct laterally.

23 A That would be consistent with my best
24 recollection.

10:34 25 Q Dr. Michelson, I'm going to hand you what I'm

10:34 1 marking as Exhibit 721. This is an invoice to Karlin
2 Technology from Mr. Imre, production numbers MNUV0005459.

3 A I'm sorry. What number did you just read me?

4 Q There's multiple numbers on it. The one that
10:34 5 applies to this case is the one at the extreme lower
6 right.

7 A Oh, I'm sorry. You're just talking about -- oh,
8 I apologize.

9 Q Just an identification number is all.

10:34 10 A I apologize.

11 (Exhibit 721 marked for identification.)

12 Q BY MR. SCHERKENBACH: Have you seen this document
13 before today?

14 A I've seen this before.

10:34 15 Q When is the last time you saw it?

16 A A couple of days ago.

17 Q This is one of the ones you looked at in prep for
18 your deposition?

19 A Yeah.

10:35 20 Q And does this, in your view, relate to what you
21 call the second generation of implants?

22 A I think -- it would be yes on that.

23 Q How can you tell?

24 A Well, that's what it is. The dimensions are 24
10:35 25 times 42. That was the original translateral implant I

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