

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Cook Incorporated, Cook Group Incorporated, and Cook Medical LLC,

Petitioners

v.

Medtronic, Inc.,

Patent Owner

Patent No. 6,306,141

Issue date: October 23, 2001

DECLARATION OF SHIGERU ITOH

Case No. IPR2019-00123

1. My name is Shigeru Itoh and I have personal knowledge of the facts contained in this declaration. I am a Japanese patent attorney (Benrishi) at Itoh & Ebi based in Tokyo, Japan. My work responsibilities include identifying references that are prior art to patents, including investigating the public accessibility of such references.

2. I have been retained by the law firm of Brinks Gilson & Liono to provide this declaration concerning the Titanium / Zirconium Journal, Vol. 30, No. 4 (October 1982) (the “Journal”). The Journal is a periodical that was published at regular intervals. I have been informed that an article published in the Journal will be relied upon by Petitioners in an *inter partes* review proceeding before the Patent Trial and Appeal Board of the U.S. Patent and Trademark Office.

3. I have been asked to search for a copy of the Journal at the National Diet Library (the “Library”) located in Tokyo, Japan, and to determine the date when the Journal was publicly accessible.

4. I am knowledgeable about the date-stamping, indexing, cataloging, and shelving procedures for journals acquired by the Library. Generally, after a journal is received in the mail, it is labeled with the date the journal is processed (referred to as a date stamp) by the Library’s Recording Section of the Domestic Material Division of the Collection Department. The date stamp is added to the journal to identify the date that the journal is received and processed by the

Library, and the date on which the date stamp is added is the same date reflected in the date stamp. The date stamp is added by the Library personnel processing the journal who has knowledge of the then-current date on which the journal is processed.

5. The journal is then sent (typically within one day of the date of the date stamp) from the Recording Section to the Journal Section of the Publications Division of the Collection Department. The Journal Section indexes the journal in the Library's catalog system, and shelves the journal (typically within one day following receipt of the journal from the Recording Section). After shelving, the journal is accessible by the public interested in the subject matter of the journal. The journal with its date stamp is a record of the Library's regularly conducted activity. Also, the journal with its date stamp is kept by the Library in the course of regularly conducted activity of the Library, which includes maintaining publications for the public to access and review.

6. I retrieved a copy of the Journal from the Library. The Journal is date-stamped November 26, 1982. The Journal is over twenty years old, it was prepared with its date stamp before January 1, 1998, it was in a condition that created no suspicion about its authenticity, and it was located in the place where it would be expected to be located. True and correct copies of an excerpt from the Journal, including the date-stamped cover carrying the Table of Contents, is


attached as **Exhibit A**. As reflected in the Table of Contents, Pages 1-8 of this journal constitutes the article entitled, *Shape Memory and Super-elasticity Effects in NiTi Alloys*, by Yuichi Suzuki. A true and correct copy of this article (along with its translation) has been designated as Ex. 1012 in this proceeding.

7. The Journal was locatable on the Library's shelves (at least by December 3, 1982 (within a week's time after the Journal's date stamp)) through the Library's card catalog system that existed before the computerized catalog became available. This card catalog system was searchable by title, subject matter, and authors or editors, among other bibliographic information, and it identified where in the Library a journal was shelved. Upon identification of the journal using the Library's card catalog system, a Library patron could then request a Library employee to retrieve the journal from the location where it was shelved, and the Library employee would retrieve the journal and provide it to the patron.

8. To the best of my knowledge, the copy of the Journal that I retrieved, including the article identified above contained in the Journal, was indexed in, and locatable through, the Library's card catalog system (such as by searching the card catalog by subject matter), and it was available to the public for viewing and making copies by December 3, 1982 (within a week's time after the Journal's date stamp).

9. I have been warned that willful false statements and the like are punishable by fine or imprisonment, or both. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed September 26, 2018, at Tokyo, Japan.


Shigeru Itoh

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