

1 UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE PATENT TRIAL AND APPEAL BOARD

3 MEDTRONIC, INC., AND MEDTRONIC
4 VASCULAR, INC.,

5 Petitioners,

6 vs.

7 TELEFLEX INNOVATIONS S.A.R.L.,

8 Patent Owner.

9 IPR2020-00126 (Patent 8,048,032 B2)
10 IPR2020-00127 (Patent 8,048,032 B2)
11 IPR2020-00128 (Patent RE45,380 E)
12 IPR2020-00129 (Patent RE45,380 E)
13 IPR2020-00130 (Patent RE45,380 E)
14 IPR2020-00132 (Patent RE45,760 E)
15 IPR2020-00134 (Patent RE45,760 E)
16 IPR2020-00135 (Patent RE45,776 E)
17 IPR2020-00136 (Patent RE45,776 E)
18 IPR2020-00137 (Patent RE47,379 E)
19 IPR2020-00138 (Patent RE47,379 E)

20 VIDEOTAPED DEPOSITION OF
21 DR. STEPHEN BRECKER

22 DATE: January 14, 2021

23 TIME: 5:06 a.m. (Central Standard Time)

24 PLACE: Veritext Virtual Videoconference

25 REPORTED BY: PAULA K. RICHTER, RMR, CRR, CRC

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1 APPEARANCES

2 (All parties appeared via videoconference)

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11 ALSO PRESENT BY VIDEOCONFERENCE:

12 Phil Glauberson - Videographer

13 Greg Smock - Teleflex 05:05:52

14 05:06:09

15

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19 (Original exhibits attached to original transcript;

20 copies provided to counsel.)

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1 PROCEEDINGS

2 THE VIDEOGRAPHER: Good morning. We 05:06:09

3 are going on the record at 5:06 a.m. Central Time, 05:06:10

4 January 14, 2021. 05:06:18

5 Please note that microphones are 05:06:20

6 sensitive and may pick up whispering and private 05:06:23

7 conversations. Please mute your microphone 05:06:25

8 whenever possible. Audio and video recording will 05:06:29

9 continue to take place unless all parties agree to 05:06:32

10 go off the record. 05:06:35

11 This is Media Unit 1 of the 05:06:38

12 video-recorded deposition of Dr. Stephen Brecker, 05:06:41

13 in the matter of Medtronic, Inc., et al. versus 05:06:44

14 Teleflex Innovations, S.A.R.L., filed in the U.S. 05:06:52

15 Patent and Trademark Office, Numbers 05:07:05

16 IPR2020-00126, IPR2020-00129 -- 128, 05:07:08

17 IPR2020-00129, IPR2020-00132, IPR2020-00134, 05:07:16

18 IPR2020-00135, IPR2020-00137. 05:07:25

19 This deposition is being held 05:07:32

20 remotely. 05:07:34

21 My name is Phil Glauberson from the 05:07:35

22 firm Veritext, and I am the videographer. The 05:07:37

23 court reporter is Paula Richter from Veritext. 05:07:40

24 I am not authorized to administer an 05:07:43

25 oath. I am not related to any party in this 05:07:46

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1 action, nor am I financially interested in the 05:07:49

2 outcome. 05:07:51

3 Counsel will please now state their 05:07:52

4 appearances and affiliations for the record. If 05:07:55

5 there are any objections to proceeding or to the 05:07:58

6 court reporter administering the oath virtually, 05:08:00

7 please state them at the time of your appearance, 05:08:03

8 beginning with the noticing attorney. 05:08:06

9 MR. VANDENBURGH: Yes. On behalf of 05:08:07

10 the Patent Owner, Teleflex, this is Derek 05:08:09

11 Vandenburg of the Carlson Caspers firm. Also 05:08:12

12 with us today is Peter Kohlhepp of our firm, Ken 05:08:15

13 Levitt of the Dorsey firm, and Greg Smock of 05:08:22

14 Teleflex. 05:08:25

15 MS. ROBERG-PEREZ: On behalf of 05:08:26

16 Petitioner, Medtronic, Sharon Roberg-Perez of 05:08:27

17 Robins Kaplan. With me are my colleagues, Chris 05:08:31

18 Pinahs and Cy Morton. 05:08:35

19 MR. VANDENBURGH: And before we 05:08:39

20 swear the witness, I'll just state for the record, 05:08:40

21 I appreciate the list of cases, Phil, but there 05:08:41

22 are actually 11 total all together. I don't think 05:08:44

23 they were all on your list, but I think counsel 05:08:46

24 all understand which IPRs that are at issue here. 05:08:48

25 So, Paula, can you go ahead and 05:08:55

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1 swear the witness, please. 05:08:57

2 DR. STEPHEN BRECKER, 05:09:12

3 duly sworn, was examined and testified as follows: 05:09:12

4 EXAMINATION 05:09:12

5 BY MR. VANDENBURGH: 05:09:12

6 Q. All right. Good morning again, Dr. Brecker. 05:09:13

7 A. Good morning. 05:09:16

8 Q. I'm going to skip the usual intro. This is 05:09:17

9 the third time that we've had one of these 05:09:19

10 depositions. I guess the only thing I will ask 05:09:23

11 is, is there anything that would prevent you from 05:09:27

12 testifying truly or correctly today? 05:09:30

13 A. There is not. 05:09:35

14 Q. Okay. Can you -- I'm just going to just walk 05:09:37

15 through your latest declaration today, so if you 05:09:40

16 could just go ahead and pull that up and have that 05:09:44

17 in front of you, the binder that we sent you, 05:09:47

18 Exhibit 1806, for the record. 05:09:50

19 A. I'm just going to make it a bit louder. 05:09:59

20 Okay. 05:10:02

21 Q. All right. And let's start near the 05:10:03

22 beginning where you are talking on, oh, roughly 05:10:06

23 paragraphs 7 through 13 regarding the term 05:10:13

24 "interventional cardiology devices," and in 05:10:18

25 particular, the Venn diagram that you have in 05:10:24

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1 paragraph 12. 05:10:28

2 Is it your opinion that everything 05:10:32

3 that is used during an interventional cardiology 05:10:35

4 procedure is an interventional cardiology device 05:10:40

5 as that term is used in the Teleflex patents? 05:10:44

6 A. Well, just to break that up, first of all, 05:10:53

7 everything used -- not everything used in an 05:10:59

8 interventional cardiology procedure would 05:11:03

9 necessarily be called an interventional cardiology 05:11:07

10 device, just thinking about it in the broadest 05:11:11

11 sense. 05:11:13

12 When you say how is an 05:11:17

13 interventional cardiology device defined in the 05:11:20

14 Teleflex patent, that's a separate issue; and 05:11:22

15 there are various interpretations on that, as we 05:11:29

16 have discussed. 05:11:32

17 Q. So it sounds like you would agree that the 05:11:35

18 term as it's used in the patents is not the same 05:11:42

19 as it may be used outside the context of the 05:11:48

20 patents? 05:11:51

21 MS. ROBERG-PEREZ: Object to form. 05:11:52

22 THE WITNESS: It may or may not be. 05:11:56

23 BY MR. VANDENBURGH: 05:12:00

24 Q. Okay. So there are certainly instances where 05:12:00

25 what's considered to be an interventional 05:12:08

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1 cardiology device outside the scope of the patents 05:12:10
 2 is broader than how you would use that term within 05:12:12
 3 the patent itself? 05:12:17
 4 A. That's correct. There are interventional 05:12:20
 5 cardiology devices which may not fulfill the 05:12:25
 6 criteria of an interventional cardiology device as 05:12:33
 7 one might interpret it in the patent. It's not 05:12:35
 8 defined in the patent. 05:12:40
 9 Q. I'm sorry. So it is -- you do consider it to 05:12:42
 10 be defined in the patent? 05:12:46
 11 MS. ROBERG-PEREZ: Object to form. 05:12:48
 12 THE WITNESS: No. I said it's not 05:12:49
 13 defined in the patent. 05:12:50
 14 BY MR. VANDENBURGH: 05:12:53
 15 Q. I misheard. 05:12:54
 16 So as it's used in the patent, would 05:12:57
 17 you consider a guide catheter to be an 05:13:01
 18 interventional cardiology device? 05:13:04
 19 A. When you say "as it's used in the patent," 05:13:18
 20 you would need to take me to a specific example. 05:13:20
 21 Q. Okay. 05:13:24
 22 A. There are examples in the patent where it 05:13:26
 23 says interventional cardiology device, dot, dot, 05:13:29
 24 dot, and then it gives a specification to it. I 05:13:32
 25 mean, a guide catheter is an interventional 05:13:37

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1 cardiology device in general terms. 05:13:42
 2 Q. Okay. So, for example, let's -- we can go 05:13:44
 3 ahead and pull up a specific patent. Do you have 05:13:50
 4 a binder with the patents in them? 05:13:53
 5 A. I do. That would be -- I've got binder 2 05:13:56
 6 from the original deposition, which has the 05:14:04
 7 patents. 05:14:10
 8 Q. Perfect. So let's use as an example the '776 05:14:11
 9 Patent, RE 45776. 05:14:16
 10 A. Have you got that as a -- yeah, I have that. 05:14:22
 11 That's 135. 1001-135 as I've got it marked. 05:14:26
 12 Q. I believe it's Exhibit 1001 to the 035 IPR. 05:14:33
 13 A. Yeah, I have that. 05:14:42
 14 Q. Okay. And if we go to Claim 25 of the '776 05:14:46
 15 Patent. 05:15:04
 16 A. I have it. 05:15:04
 17 Q. I believe you will see two-thirds of the way 05:15:04
 18 down the longer paragraph that starts, "A segment 05:15:08
 19 defining ..." It says, it needs to be configured 05:15:11
 20 to receive one or more interventional cardiology 05:15:14
 21 devices therethrough." 05:15:17
 22 So in the context that it's used 05:15:21
 23 there, would you consider a guide catheter to be 05:15:24
 24 an interventional cardiology device? 05:15:27
 25 A. It doesn't define an interventional 05:15:45

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1 cardiology device. It just says that the segment 05:15:48
 2 defining a partially cylindrical opening is 05:15:53
 3 configured to receive one or more interventional 05:15:58
 4 cardiology devices. 05:16:01
 5 Now, it's saying it's configured to 05:16:06
 6 receive devices. That doesn't -- if you're saying 05:16:09
 7 could -- let me -- could any device be considered 05:16:15
 8 an interventional cardiology device, well, it 05:16:20
 9 could still be considered an interventional 05:16:23
 10 cardiology device without it necessarily 05:16:26
 11 fulfilling the ability for this to be configured 05:16:27
 12 to it, to accept it. This doesn't define an 05:16:33
 13 interventional cardiology device. 05:16:37
 14 Q. I agree. I'm not trying to at this point -- 05:16:39
 15 A. Yeah. 05:16:43
 16 Q. -- you know, get to a definition. I just 05:16:43
 17 want to understand when -- that term has a 05:16:46
 18 meaning, correct? We need to give words and 05:16:52
 19 claims meaning. You understand that? 05:16:55
 20 A. I do. 05:16:57
 21 Q. Okay. So as those words are used in that 05:16:58
 22 claim, interventional cardiology device, what does 05:17:01
 23 it mean? 05:17:05
 24 A. Well, this -- what it means is a device that 05:17:06
 25 can go through a guide extension catheter. 05:17:09

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1 Q. Okay. So does that mean that anything that 05:17:13
 2 can go through a guide extension catheter is an 05:17:16
 3 interventional cardiology device within the scope 05:17:20
 4 of that claim, in your opinion? 05:17:22
 5 A. I'm not -- I'm not quite sure I understand. 05:17:29
 6 Anything that could go through an -- a guide 05:17:34
 7 extension catheter -- you're asking me in a 05:17:40
 8 different direction. This is simply saying 05:17:46
 9 that -- this is giving characteristics of a guide 05:17:50
 10 extension catheter and saying it's configured to 05:17:52
 11 accept one or more interventional cardiology 05:17:56
 12 devices, but that doesn't define what an 05:17:57
 13 interventional cardiology device -- nor does it 05:18:03
 14 say that anything, absolutely anything that goes 05:18:05
 15 through would be a device. So I'm struggling to 05:18:10
 16 think of something that you would put through a 05:18:14
 17 guide extension catheter that wouldn't be a 05:18:16
 18 device. I mean -- 05:18:19
 19 Q. Wouldn't it be an -- just to clarify, 05:18:21
 20 wouldn't it be an interventional cardiology 05:18:24
 21 device? 05:18:27
 22 A. Yes. I'm struggling to think of an example 05:18:29
 23 of something that a cardiologist would put through 05:18:33
 24 a guide extension catheter that wouldn't be an 05:18:38
 25 interventional cardiology device. I can't 05:18:42

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1 think -- I mean, I -- you know, you could inject 05:18:47
 2 drugs, for example. But, I mean, in terms of a 05:18:52
 3 piece of kit, if you were advancing a piece of 05:18:57
 4 equipment through a guide extension catheter, it 05:19:01
 5 would be an interventional cardiology device. 05:19:06
 6 Q. Okay. So you can't think of anything that a 05:19:09
 7 cardiologist would put through a guide extension 05:19:15
 8 catheter that would not be an interventional 05:19:22
 9 cardiology device? 05:19:24
 10 A. I'm struggling to think of an example. 05:19:27
 11 Q. Okay. Now, is it your opinion -- because you 05:19:30
 12 used the word "through," is it your opinion that 05:19:35
 13 to be an interventional cardiology device, it has 05:19:39
 14 to come out the other side of the guide extension 05:19:42
 15 catheter? 05:19:45
 16 MS. ROBERG-PEREZ: Object to form. 05:19:45
 17 THE WITNESS: Again, if you're tying 05:19:57
 18 me to the language of the claim, again, this is 05:19:59
 19 defining what the guide extension catheter is 05:20:04
 20 doing, not what the interventional cardiology 05:20:09
 21 device is doing. 05:20:11
 22 For example, if you were advancing a 05:20:15
 23 stent through the extension catheter but you 05:20:18
 24 couldn't actually, for one reason or another, exit 05:20:26
 25 the extension catheter, that doesn't mean that the 05:20:28

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1 stent is not an interventional cardiology device. 05:20:34
 2 BY MR. VANDENBURGH: 05:20:40
 3 Q. Now, an interventional cardiology device can 05:20:46
 4 also include things that just go into the guide 05:20:50
 5 catheter, right? 05:20:52
 6 MS. ROBERG-PEREZ: Object to form. 05:20:54
 7 THE WITNESS: It's possible, but do 05:21:03
 8 you have an example in mind? 05:21:07
 9 BY MR. VANDENBURGH: 05:21:08
 10 Q. Well, I mean, a stent catheter is an 05:21:08
 11 interventional cardiology device regardless of 05:21:11
 12 whether it's put in a guide catheter or a guide 05:21:13
 13 extension catheter, right? 05:21:16
 14 A. That's correct, yes. And that's the point I 05:21:17
 15 was making. 05:21:20
 16 Q. Yeah, yeah. Now, would a syringe for 05:21:21
 17 injecting contrast be considered to be an 05:21:28
 18 interventional cardiology device? 05:21:32
 19 A. Well, now, stepping back out of the context 05:21:38
 20 of the claims, if I went upstairs to the cath labs 05:21:42
 21 and asked my colleague, is that syringe that 05:21:48
 22 you're using to inject an interventional 05:21:51
 23 cardiology device, you'd get a range of answers. 05:21:53
 24 Q. Okay. So the answer is, if it's outside the 05:21:59
 25 scope of the patent, it depends on who you ask. 05:22:01

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1 A. Yes. I mean, there are some syringes that 05:22:06
 2 are very specifically adapted and have 05:22:09
 3 characteristics to them, and there are some 05:22:10
 4 devices that are used for injection, like an 05:22:13
 5 automated injector. And I think many 05:22:16
 6 cardiologists would consider those interventional 05:22:19
 7 cardiology devices in the broadest general sense. 05:22:23
 8 But they wouldn't -- they wouldn't go into the 05:22:29
 9 guide catheter. 05:22:32
 10 Q. Okay. Does -- let's see. Does any part of 05:22:33
 11 the syringe go into the proximal end of the guide 05:22:43
 12 catheter? 05:22:47
 13 A. Well, the syringe typically does not. There 05:22:50
 14 is -- the syringe is attached to a manifold which 05:22:55
 15 has three-way taps on it and terminates in a flush 05:22:59
 16 port, that you then -- you screw onto the hub of 05:23:07
 17 the guide catheter -- well, you screw onto the hub 05:23:12
 18 of the O-ring hemostatic valve that screws onto 05:23:16
 19 the guide catheter. 05:23:20
 20 Q. Okay. All right. 05:23:21
 21 A. You don't inject -- you don't attach the 05:23:22
 22 syringe directly to a guide catheter heart. 05:23:25
 23 Q. Right. Right. The hemostatic valve, does it 05:23:29
 24 actually engage within the proximal end of the 05:23:31
 25 guide catheter? 05:23:35

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1 A. Well, the guide catheter will terminate in a 05:23:37
 2 hub. So the material of the -- the catheter will 05:23:41
 3 terminate at its proximal end in a hub made of 05:23:51
 4 plastic and that's the bit that screws onto the 05:23:59
 5 manifold. You -- where the hub is considered part 05:24:01
 6 of the guide catheter. I suppose it is, but it's 05:24:04
 7 a matter of debate, I suppose. I haven't thought 05:24:07
 8 about it. 05:24:11
 9 Q. So have you applied a definition of 05:24:12
 10 interventional cardiology device as you analyzed, 05:24:18
 11 for example, Claim 25 of the '776 Patent? 05:24:22
 12 A. So looking at Claim 25 -- and I'd just like 05:24:31
 13 to -- although I've read it several times, I just 05:24:34
 14 want to read it through myself again because I 05:24:36
 15 want to be -- I want to give you an accurate 05:24:39
 16 answer. (Reviews document.) 05:24:41
 17 The claim is describing 05:25:01
 18 characteristics of the guide extension catheter, 05:25:03
 19 and it's saying it's configured to receive 05:25:05
 20 interventional cardiology devices. So what the 05:25:08
 21 cardiologist is thinking reading that is, of all 05:25:15
 22 the interventional cardiology devices that exist, 05:25:19
 23 the ones that this is referring to are those that 05:25:20
 24 would be passed through or those that would be 05:25:23
 25 passed into, because it's configured to receive, 05:25:26

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