

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 PETER KEITH

22 DATE: February 17, 2021

23 TIME: 9:04 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)

3 ON BEHALF OF THE PETITIONERS:

4 Mr. Cyrus A. Morton, Esq.

5 Mr. Ryan E. Dornberger, Esq.

6 ROBINS KAPLAN, LLP

7 800 LaSalle Avenue, Suite 2800

8 Minneapolis, Minnesota 55401

9 (612) 349-8500

10 cmorton@robinskaplan.com

11 rdornberger@robinskaplan.com

12

13 ON BEHALF OF THE PATENT OWNER:

14 Mr. Joseph W. Winkels, Esq.

15 CARLSON, CASPERS, VANDENBURGH & LINDQUIST

16 225 South Sixth Street, Suite 4200

17 Minneapolis, Minnesota 55402

18 (612) 436-9600

19 jwinkels@carlsoncaspers.com

20

21

22

23

24

25 (APPEARANCES continued on next page)

Page 3

1 APPEARANCES (Continued)

2

3 ON BEHALF OF PATENT OWNER:

4 Mr. Kenneth E. Levitt, Esq.

5 THE DORSEY FIRM

6 50 South Sixth Street, Suite 1500

7 Minneapolis, Minnesota 55402

8 (612) 340-2600

9 levitt.kenneth@dorsey.com

10

11 ALSO PRESENT:

12 Rick Sanborn - Veritext Concierge

13 Greg Smock - Teleflex

14

15

16

17

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19

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7 EXHIBITS MARKED: PAGE:

8 EXHIBIT 1921 Second Declaration of Peter

9 Keith in Support of Plaintiffs'

10 Motion for Preliminary

11 Injunction..... 39

12

13 (Original exhibits attached to original transcript;

14 copies provided to counsel.)

15

16 EXHIBIT PREVIOUSLY MARKED AND REFERRED TO:

17 EXHIBIT 2243 Peter Keith Declaration..... 12

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1 PROCEEDINGS

2 PETER KEITH,

3 duly sworn, was examined and testified as follows:

4 EXAMINATION

5 BY MR. MORTON:

6 Q. Good morning, Mr. Keith.

7 A. Good morning.

8 Q. Just to make sure, do you have your binder of

9 materials that has your declaration in the front

10 of it and then I think should be tab 12 has the

11 '629 application we've discussed before?

12 A. I do. I haven't opened it yet. Yes.

13 Q. So in the '629 application, just to orient

14 us, I guess, if you go to page 9, at about lines 4

15 and 5 on page 9.

16 A. Okay. I have my declaration. There's a --

17 you wanted me to go to tab 9? I'm sorry.

18 Q. I wanted you to have two things at your

19 disposal. Your declaration.

20 A. Yes, I've got that.

21 Q. And then for starters, the '629 application,

22 which was the original patent application. I

23 think I have the same binder as you. That should

24 be tab 12.

25 A. Tab 12. Okay. Okay. Page 9. And this is

Page 6

1 the original document page 9 or the lower  
2 right-hand page 9?  
3 Q. I was going with the lower right-hand page 9,  
4 so it's document page 6 --  
5 A. Okay.  
6 Q. -- and lines 4 and 5. Just to orient  
7 ourselves, what we're talking about again, do you  
8 see where it says, "The coaxial guide catheter  
9 includes a tip portion, a reinforced portion and a  
10 substantially rigid portion"?  
11 A. Yes.  
12 Q. All right. And generally here, the tip  
13 portion and the reinforced portion form a distal  
14 tube portion of the catheter. Is that your  
15 understanding?  
16 MR. WINKELS: Objection; form.  
17 THE WITNESS: Yeah, I would say  
18 generally that's true.  
19 BY MR. MORTON:  
20 Q. Okay. And then the other part of the device  
21 is obviously the substantial -- substantially  
22 rigid portion that's more proximal and leads up to  
23 that distal tube; is that fair?  
24 MR. WINKELS: Objection; form.  
25 THE WITNESS: Well, generally, I

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1 think that's one way that you can look at it.  
2 Kind of when you get into the details of different  
3 embodiments or whatnot, you know, there may be  
4 some slight variations to that.  
5 BY MR. MORTON:  
6 Q. Okay. And I want to talk about the  
7 variations and give you a chance to tell me if  
8 there's variations on this. So in every example  
9 in this specification, that distal tubular portion  
10 made up of the tip portion and the reinforced  
11 portion, in every example, that has a proximal end  
12 opening in the specification, right?  
13 A. I believe so, yes.  
14 Q. Now, if you connect that distal tubular  
15 portion to the substantially rigid portion, it  
16 still has an end opening, right?  
17 A. There's an end opening somewhere, yes.  
18 Q. Okay. And in Figures, say, 1 and 2 and 20  
19 through 22, for instance, that distal tubular  
20 portion is connected to more like a push rod,  
21 right?  
22 A. I would say that's true, yes.  
23 Q. All right. And in those examples, that  
24 distal tube again has an end opening, right?  
25 A. Yes.

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1 Q. But in Figures, say, 4 and 12, for instance,  
2 the substantially rigid portion has a side  
3 opening, right?  
4 A. Well, it would depend on if you're talking  
5 about a particular claim and applying a particular  
6 claim to that structure. That may place that side  
7 opening in -- if the claim refers to a  
8 substantially rigid portion, it may place that  
9 there, or, depending on other claims, it may not  
10 place it there. It may place it as its own  
11 segment. So generally I wouldn't agree with that  
12 because I think it depends on if you're referring  
13 to particular claims and how you apply those  
14 claims.  
15 Q. Sure. And we may get to the particular  
16 claims. For now I want to not talk about the  
17 claims and only talk about the specification. So  
18 in the specification, if you're looking at Figures  
19 4 or 12, for instance, that rigid portion 20 is  
20 where the side opening is, right?  
21 A. Figure 4 and Figure 20?  
22 Q. 12, actually. Figure 4 and Figure 12, I  
23 think. I can double-check for you.  
24 A. Well, I would have to go back and refresh on  
25 the description that goes along with that.

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1 Q. Well, feel free. I'll just point out that  
2 the numeral that's in those two figures is 20, and  
3 20 is always rigid portion 20. So all I'm trying  
4 to establish is that in those examples in the  
5 specification, the side opening is in rigid  
6 portion 20.  
7 A. In those examples, that is how it's described  
8 in the text of the specification.  
9 Q. Okay. Now, the distal tubular portion, what  
10 I've been calling that, in those examples, like in  
11 Figure 4, that still has an end opening, right?  
12 It's just that it's connected to a fully  
13 circumferential portion of rigid portion 20?  
14 MR. WINKELS: Objection; form.  
15 THE WITNESS: I don't know. I  
16 haven't -- I guess I haven't really thought about  
17 that. You're suggesting that if there's a  
18 connection point, that there's an end opening at  
19 that connection point?  
20 BY MR. MORTON:  
21 Q. Yeah. If you imagine starting with two  
22 pieces. You've got your distal tube and you've  
23 got your rigid portion and you're going to connect  
24 those together in, say, the example of Figure 4,  
25 all I'm saying is the distal tubular portion has

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1 an end opening. You connect that to a full  
2 circumferential portion of the rigid portion 20,  
3 and that's how you would make, say, that example  
4 in Figure 4.  
5 A. Again, I haven't really thought of it that  
6 way. I think of the device as having an opening.  
7 I haven't thought about like the very tip, does  
8 that have an end opening before that's connected  
9 to the reinforced portion. I mean, I guess one  
10 could think of it that way, but I don't think end  
11 opening is really ever used in that way in the  
12 spec or in the claims.  
13 Q. So that distal tubular portion that's made up  
14 of a tip portion and the reinforced portion, is  
15 there any example, any description anywhere in the  
16 spec that you can show me where that portion does  
17 not have basically just an end opening?  
18 A. I'm not sure I understand the question.  
19 Q. Well, I want to focus on -- you know, there's  
20 different portions set out here, as we started  
21 out. The tip portion and reinforced portion make  
22 a distal tube. I want to focus on only that  
23 portion. Can you point to anything in the spec  
24 where that portion has some shape to it on the  
25 proximal end of it that's not just a cutoff

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1 perpendicular end opening?  
2 MR. WINKELS: Objection; form.  
3 THE WITNESS: As far as specific  
4 embodiments that show that, I mean, I've -- in  
5 prior depositions have talked about this before,  
6 that I -- there are a number of different  
7 embodiments that are shown in the totality of the  
8 patent. Some of them are perpendicular openings.  
9 Some of them are angled openings. Some of them  
10 are, you know, part of the -- you know, really  
11 coming off the proximal end of the tubular portion  
12 or the reinforced portion and others are not.  
13 So I think what you're asking, is  
14 there a very super specific example of, you know,  
15 that particular combination and where it's a  
16 distal tubular portion connected to a rail  
17 structure, push rod-type structure where it's  
18 either angled or something other than a vertical  
19 cut, and I think I've said before that I don't  
20 think there's that specific example described.  
21 BY MR. MORTON:  
22 Q. All right. We're probably good on that.  
23 Thank you, Mr. Keith.  
24 If you look at your paragraph 35 of  
25 your declaration, which, I guess, for the record

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1 is Teleflex Exhibit 2243.  
2 A. Okay.  
3 Q. So in this paragraph, you're disagreeing with  
4 Dr. Zalesky where he opines that all the examples  
5 in the specifications for the substantially rigid  
6 portion are made from a monolithic metal tube.  
7 Do you see that?  
8 A. Yes.  
9 Q. Okay. Can you show me any example in the  
10 specification where the substantially rigid  
11 portion is not cut from a single monolithic metal  
12 tube?  
13 A. Well, somewhere, I don't know exactly where,  
14 in the specification, but it describes, I think,  
15 in connection with that embodiment that we've been  
16 talking about of Figure 4, that that could be  
17 formed of various metal tubes or other  
18 substantially rigid materials, which just by the  
19 verbiage of that does not mean that that has to be  
20 metal.  
21 Q. Okay. So is the issue basically, you dispute  
22 the term "metal," but otherwise every example in  
23 the specification is a single monolithic tube?  
24 MR. WINKELS: Objection; form.  
25 THE WITNESS: Well, I don't really

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1 know what monolithic means, to be honest.  
2 BY MR. MORTON:  
3 Q. Well, I mean, you know these things in  
4 general are -- well, not in general -- I mean, in  
5 the descriptions, it's cut from a hypotube, right?  
6 MR. WINKELS: Objection; form.  
7 THE WITNESS: Some of the  
8 embodiments, yes.  
9 BY MR. MORTON:  
10 Q. And in those embodiments, you can't point to  
11 anything where there's more than one hypotube  
12 that's joined together, can you?  
13 A. Again, you're saying -- I mean, relying on  
14 just specific embodiments that are described. You  
15 know, the -- I mean, I've said this before too,  
16 that the patent specification conveys to one of  
17 skill in the art more than just the exact specific  
18 embodiments that are described. But those  
19 embodiments that are described happen to be cut  
20 from or formed from a tube.  
21 Q. Okay. Then can you point to anything -- any  
22 other example or even description that would not  
23 be cut from a monolithic tube?  
24 A. Again, you're using monolithic, which I  
25 believe does not show up in the specification,

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1 so -- I don't know if that means more than just a  
2 tube, so I'm a little uncomfortable adopting that  
3 because I feel like maybe that might mean  
4 something more to some people than it necessarily  
5 does to me.  
6 Q. Sure. And if you'd prefer single, I think  
7 that's all I mean by that, is you've got one long  
8 tube, and then you cut it to be whatever shape you  
9 want it to be for the rigid portion 20. So that's  
10 all I mean by it.  
11 So do you have any example or any  
12 suggestion in the spec where there's something  
13 different than that, something different than  
14 starting with one tube that you then cut to form  
15 rigid portion 20?  
16 A. Right. So the examples that are described in  
17 the specification, that is the way they describe  
18 making that structure. Again, I think one of  
19 skill in the art would read this and understand  
20 that there are other ways that one could do that,  
21 but they are not specifically described in the  
22 specification.  
23 Q. Okay. And the things that are described in  
24 the specification, you have that one tube, and  
25 it's that tube for every example where the side

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1 opening is cut; is that right?  
2 A. Yeah. Again, those are the specific examples  
3 that are described in the specification.  
4 Q. Okay. Let's jump ahead in your declaration  
5 to paragraph 46.  
6 A. Okay.  
7 Q. So in paragraph 46, you're talking about  
8 Claims 44 of the '380 Patent and 24 of the '032  
9 Patent and the issue of indefiniteness.  
10 Do you see that?  
11 A. Yes.  
12 Q. And the indefiniteness issue that's been  
13 raised is that the -- the claims say the  
14 substantially rigid portion is "connected to" the  
15 flexible tip portion even though there's a  
16 reinforced portion in between those two portions,  
17 right?  
18 A. Yes.  
19 Q. So right after that you say that you  
20 understand the term "connected to" to connote an  
21 association between features of the claim device.  
22 Do you see that?  
23 A. I'm not sure I exact -- oh, there. Yes.  
24 Q. And you say, "I do not understand the term  
25 'connected to' to require two claimed features to

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1 be in direct contact; i.e., touching."  
2 Do you see that too?  
3 A. Yes.  
4 Q. So when you say "I understand" throughout  
5 your declaration, that's usually where you've been  
6 given some understanding from the lawyers; is that  
7 right?  
8 MR. WINKELS: Objection; form.  
9 THE WITNESS: No.  
10 BY MR. MORTON:  
11 Q. That's not what that means?  
12 A. No. This is my understanding, which is what  
13 I believe.  
14 Q. Okay. Did you perform a claim construction  
15 analysis on connected to?  
16 A. I guess I don't really understand that  
17 question.  
18 Q. Well, you've said that connected to does not  
19 mean a direct connection, right?  
20 A. That's my understanding, applying plain,  
21 ordinary meaning to the claim.  
22 Q. Okay. How did you form that understanding?  
23 A. That's just my understanding as one of skill  
24 in the art.  
25 Q. Okay. Is there anything in the specification

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1 that would suggest connected to means not directly  
2 connected?  
3 A. I'm not sure.  
4 Q. Okay. But you haven't identified anything  
5 like that; is that fair?  
6 MR. WINKELS: Objection; form.  
7 THE WITNESS: I guess I don't recall  
8 specific -- anything specific that helps me to get  
9 that understanding.  
10 BY MR. MORTON:  
11 Q. Okay. Let me see if I understand your  
12 definition. Your definition is, as long as two  
13 things are part of the same overall catheter, then  
14 they are connected; is that right?  
15 A. Well, I'm looking at this in the context of  
16 the claim, and the claim makes perfect sense when  
17 that's what connected to means. And it is --  
18 that's plain and ordinary understanding outside  
19 the context of that claim too, I believe, that  
20 it's not -- the tip is not unconnected to the  
21 catheter and, therefore, it's not unconnected to  
22 the rest of the structures in that device.  
23 Q. But there is a reinforced portion in between  
24 the substantially rigid portion and the flexible  
25 tip portion, right?

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