UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MEDTRONIC, INC., AND MEDTRONIC VASCULAR, INC.,

Petitioners,

v.

TELEFLEX INNOVATIONS S.À.R.L.,

Patent Owner.

IPR2020-00126
IPR2020-00128
IPR2020-00129
IPR2020-00132
IPR2020-00134
IPR2020-00135
IPR2020-00137

PETITIONERS' SUR-SUR-REPLY TO PATENT OWNER'S SUR-REPLY ADDRESSING CONCEPTION AND REDUCTION TO PRACTICE

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I. INTRODUCTION

Teleflex asks the Board to conclude that VSI reduced its GuideLiner RX inventions to practice before Itou, based on conclusory, uncorroborated statements and a record devoid of meaningful documents. Even if the VSI documents are exactly what the inventors say they are, the record cannot support the inventors' sweeping assertions that they assembled and tested RX prototypes before September 23, 2005. Teleflex cannot carry its burden.

II. TELEFLEX MUST PROVE PRIOR INVENTION.

Teleflex misstates its burden—if the Board is uncertain about the CRTP evidence, then Teleflex has not satisfied its burden. Teleflex bears "the burden of going forward with evidence…and presenting persuasive argument based on" that evidence. *Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1379 (Fed. Cir. 2015). It must "establish[] that its claimed invention is entitled to an earlier priority date than an asserted prior art reference." *In re Magnum Oil Tools Int'l, Ltd.*, 829 F.3d 1364, 1376 (Fed. Cir. 2016). Prior invention is "effectively an affirmative defense." *Id.* Teleflex must prove that VSI invented before Itou, not Medtronic prove that VSI did not. *Apator Miitors ApS v. Kamstrup A/S*, 887 F.3d 1293, 1297 (Fed. Cir. 2018). The fact that Medtronic must prove unpatentability does not change that.

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