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' REPLY TO PATENT OWNER'S RESPONSE ADDRESSING CONCEPTION AND REDUCTION TO PRACTICE

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I. INTRODUCTION

Teleflex asserts invention before Itou's September 23, 2005 effective filing date. But Teleflex cannot prove reduction to practice because no documents show that VSI built and tested prototypes. And no documents *or testimony* address testing *the intended purpose*: providing increased backup support during complex PCI procedures. Indeed, non-inventor Erb, on whom Teleflex relies for corroboration, shredded his laboratory notebook. Teleflex blames its lack of proof-of-concept documents on VSI's practice of not retaining them, but documents that VSI *did* keep show that it built and tested non-inventive over-the-wire (OTW) GuideLiner devices, not rapid-exchange (RX) devices. Indeed, the more complete record shows that VSI could not have reduced to practice in 2005.

Moreover, Teleflex's claim-by-claim arguments sit in appendices to a declaration: Teleflex improperly incorporates by reference. That error ends the analysis because Teleflex bears the burden of proving prior invention. Substantively and procedurally, Teleflex's attempt to show prior invention fails.[1]

[1] Further, because the '380, '760, '776, and '379 patents lack written description for at least one claim, they are AIA patents (first to file, not first to invent), and Teleflex cannot swear behind. *See* Medtronic's Reply.

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