

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MEDTRONIC, INC., AND MEDTRONIC VASCULAR, INC.
Petitioner,
v.

TELEFLEX INNOVATIONS S.À.R.L.,
Patent Owner.

Case No.: IPR2020-00126
Case No.: IPR2020-00127
U.S. Patent No: 8,048,032

**DECLARATION OF STEPHEN JON DAVID BRECKER,
MD, FRCP, FESC, FACC SUBMITTED IN SUPPORT OF PETITIONER'S
OPPOSITION TO PATENT OWNER'S MOTION TO AMEND**

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I. Introduction

1. I have been retained by Robins Kaplan LLP on behalf of Medtronic, Inc. and Medtronic Vascular, Inc. (“Medtronic”) as an independent expert to provide my opinions on the subject matter recited in U.S. Patent No. 8,048,032.

2. I make this declaration based on personal knowledge. I am over the age of 21 and am otherwise competent to make this declaration.

3. I have submitted other declarations in connection with these petitions and do not repeat the content of those declarations herein.

4. I understand that Teleflex proposes to substitute the claims below for claims of the '032 patent in IPR2020-00126 and IPR2020-00127. It is my opinion that certain prior art references teach or suggest all of the features recited in substitute claim 23 (previously claim 1), substitute claim 24 (previously claim 11) and substitute claim 25 (previously claim 16). It is my opinion that substitute claims 23-25 are invalid as obvious.

5. In the charts herein, Teleflex’s proposed amendments are underlined, while deleted language is in [brackets].

II. Legal Standard

6. I understand that under U.S. Patent Law, 35 U.S.C. § 103, a claim is invalid as obvious if the differences sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains.

7. I am informed that an obviousness analysis requires an assessment of the scope and content of the prior art, the differences between the art and the claims at issue, and the level of ordinary skill in the art. I am told that it is against this backdrop that obviousness is assessed.

8. I am also informed that there may be objective indicia of non-obviousness, or secondary considerations that must be considered when present. I understand that secondary considerations may be used to rebut a prima facie showing of obviousness.¹

9. I understand that factors that may be considered in determining the level of ordinary skill in the art include (a) the educational level of the inventor; (b) the type of problem encountered in the art; (c) prior art solutions to those problems; (d) the rapidity with which inventions are made; (e) sophistication of the technology; and (f) the educational level of those working in the field.

¹ To date, I am unaware of any objective indicia of non-obviousness that have been raised in conjunction with Patent Owner's Motion to Amend. To the extent that the Patent Owner offers any in connection with these proceedings, I will respond to them as appropriate.

10. I am informed that a POSITA is a hypothetical person who is presumed to be aware of all the pertinent prior art. I am also informed that an obviousness analysis may take account of the inferences and creative steps that a person of ordinary skill in the art would employ.

III. Person of Ordinary Skill in the Art

11. For this patent, a person of ordinary skill in the art (“POSITA”) at the time of the alleged invention would have had (a) a medical degree, (b) completed a coronary intervention training program, and (c) experience working as an interventional cardiologist. Alternatively, a POSITA would have had (a) an undergraduate degree in engineering, such as mechanical or biomedical engineering; and (b) three years of experience designing medical devices, including catheters or catheter-deployable devices. Ex. 1042, ¶ 18-19 (IPR2020-00126). Extensive experience and technical training might substitute for education, and advanced degrees might substitute for experience. Additionally, a POSITA with a medical degree may have access to a POSITA with an engineering degree, and one with an engineering degree might have access to one with a medical degree.

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