

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.

IPR2020-00126 (Patent 8,048,032 B2)
IPR2020-00127 (Patent 8,048,032 B2)
IPR2020-00128 (Patent RE45,380)
IPR2020-00129 (Patent RE45,380)
IPR2020-00130 (Patent RE45,380)
IPR2020-00132 (Patent RE45,760)
IPR2020-00134 (Patent RE45,760)
IPR2020-00135 (Patent RE45,776)
IPR2020-00136 (Patent RE45,776)
IPR2020-00137 (Patent RE47,379)
IPR2020-00138 (Patent RE47,379)

Before SHERIDAN K. SNEDDEN, JON B. TORNQUIST, and
CHRISTOPHER G. PAULRAJ, *Administrative Patent Judges*.

TORNQUIST, *Administrative Patent Judge*.

CONSOLIDATED SCHEDULING ORDER

IPR2020-00126, IPR2020-00127 (Patent 8,048,032 B2)
IPR2020-00128, IPR2020-00129, IPR2020-00130 (Patent RE45,380)
IPR2020-00132, IPR2020-00134 (Patent RE45,760)
IPR2020-00135, IPR2020-00136 (Patent RE45,776)
IPR2020-00137, IPR2020-00138 (Patent RE47,379)

A. BACKGROUND

On June 8, 2020, we instituted *inter partes* reviews in IPR2020-00126 IPR2020-00128, IPR2020-00129, IPR2020-00132, IPR2020-00135, and IPR2020-00137. *See, e.g.*, IPR2020-00126, Paper 22. On the same day, we issued a Scheduling Order in each of these proceedings. *See* IPR2020-00126, Paper 23.

On June 25, 2020, we instituted *inter partes* reviews in IPR2020-00127, IPR2020-00130, IPR2020-00134, IPR2020-00136, and IPR2020-00138. *See, e.g.*, IPR2020-00130, Paper 20.

Because there is significant overlap of issues and prior art between the instituted proceedings, and to facilitate the handling of these proceedings in an efficient manner, we issue the following Consolidated Scheduling Order for the above-identified proceedings, including a separate briefing schedule for the issue of conception and reduction to practice. The prior Scheduling Order for IPR2020-00126 IPR2020-00128, IPR2020-00129, IPR2020-00132, IPR2020-00135, and IPR2020-00137 is hereby superceded by this Consolidated Scheduling Order.

B. CONCEPTION AND REDUCTION TO PRACTICE

In IPR2020-00126, -00128, -00129, -00132, -00134, -00135, and -00137, Patent Owner asserts that Itou is not prior art to the challenged patents because the inventions recited in the challenged claims were conceived and reduced to practice “before Itou’s priority date.” *See* IPR2020-00126, Paper 8, 21. In view of the common legal and factual issues presented, we provide a consolidated briefing and argument schedule

IPR2020-00126, IPR2020-00127 (Patent 8,048,032 B2)
IPR2020-00128, IPR2020-00129, IPR2020-00130 (Patent RE45,380)
IPR2020-00132, IPR2020-00134 (Patent RE45,760)
IPR2020-00135, IPR2020-00136 (Patent RE45,776)
IPR2020-00137, IPR2020-00138 (Patent RE47,379)

for this issue. Specifically, Patent Owner may file a separate Patent Owner Response of 5000 words addressing only the issue of conception and reduction to practice for the patents challenged in IPR2020-00126, -00128, -00129, -00132, -00134, -00135, and -00137, Petitioner may file a 2800 word Reply, and Patent Owner may file a 2800 word Sur-reply.

C. BRIEFING ON ASSERTED GROUNDS

Briefing on all issues other than conception and reduction to practice in IPR2020-00126, -00128, -00129, -00132, -00134, -00135, and -00137 shall be submitted in a Patent Owner Response of 12,000 words, a Reply of 4750 words, and a Sur-Reply of 4750 words.

The briefing schedule and word count limits for IPR2020-00127, IPR2020-00130, IPR2020-00136, and IPR2020-00138 remain unmodified and follow the schedule set forth in Appendix A (set forth below) and the word count limits set forth in 37 C.F.R. § 42.24.

D. ORAL ARGUMENT

If requested by DUE DATE 4, the Board anticipates two separate oral hearings. The oral hearings may be held during the morning and afternoon of the same day (DUE DATE 8), or they may be spread out over multiple days. The first hearing will address conception and reduction to practice in IPR2020-00126, -00128, -00129, -00132, -00134, -00135, and -00137 and the second hearing will address all other issues set forth in the parties' briefings in each of the above-captioned cases (including IPR2020-00127, IPR2020-00130, IPR2020-00136, and IPR2020-00138). If any party anticipates that additional time for oral hearings are necessary to address the

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issues presented in these proceedings, the parties shall address that issue during an initial conference call with the Board.

Additionally, to the extent that any party anticipates that live testimony may be useful to present the factual issues in these proceedings, the parties shall make a request for such live testimony and identify all witnesses that it anticipates calling at the hearing as part of the Request for Oral Hearing submitted on DUE DATE 4. Although the Board does not envision that live testimony will be necessary at many oral arguments, the panel may consider whether live testimony is appropriate for the underlying factual issues related to conception and reduction to practice in IPR2020-00126, -00128, -00129, -00132, -00134, -00135, and -00137. For guidance on the scope and procedures for live testimony at Oral Argument, we refer the parties to *DePuy Synthes Products, Inc. v. Medidea, L.L.C.*, Case IPR2018-00315, Paper 29 (Jan. 23, 2019) (precedential) and *K-40 Electronics, LLC v. Escort, Inc.*, Case IPR2013-00203, Paper 34 (May 21, 2014) (precedential).

E. GENERAL INSTRUCTIONS

1. Initial and Additional Conference Calls

The parties are directed to contact the Board within a month of this Order if there is a need to discuss proposed changes to this Scheduling Order or proposed motions that have not been authorized in this Order or other prior Order or Notice. *See* Consolidated Trial Practice Guide (“Consolidated

IPR2020-00126, IPR2020-00127 (Patent 8,048,032 B2)
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IPR2020-00135, IPR2020-00136 (Patent RE45,776)
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Practice Guide”)¹ at 9–10, 65 (guidance in preparing for a conference call); *see also* 84 Fed. Reg. 64,280 (Nov. 21, 2019). A request for an initial conference call shall include a list of proposed motions, if any, to be discussed during the call.

The parties may request additional conference calls as needed. Any email requesting a conference call with the Board should: (a) copy all parties, (b) indicate generally the relief being requested or the subject matter of the conference call, (c) include multiple times when all parties are available, (d) state whether the opposing party opposes any relief requested, and (e) if opposed, either certify that the parties have met and conferred telephonically or in person to attempt to reach agreement, or explain why such meet and confer did not occur. The email may not contain substantive argument and, unless otherwise authorized, may not include attachments. *See Consolidated Practice Guide* at 9–10.

2. Protective Order

No protective order shall apply to this proceeding until the Board enters one. If either party files a motion to seal before entry of a protective order, a jointly proposed protective order shall be filed as an exhibit with the motion. It is the responsibility of the party whose confidential information is at issue, not necessarily the proffering party, to file the motion to seal.² The Board encourages the parties to adopt the Board’s default protective order if

¹ Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

² If the entity whose confidential information is at issue is not a party to the proceeding, please contact the Board.

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