UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

VASCULAR SOLUTIONS LLC, TELEFLEX LIFE SCIENCES LIMITED, ARROW INTERNATIONAL, INC., AND TELEFLEX LLC, PLAINTIFFS, V. MEDTRONIC, INC. AND MEDTRONIC VASCULAR, INC., DEFENDANTS.	CIVIL NO. 19-1760 (PJS/TNL) **AMENDED PRETRIAL SCHEDULING ORDER (PATENT)**

Plaintiffs' Unopposed Motion for Leave to File First Amended and Supplemental Complaint and Unopposed Motion to Amend the Scheduling Order is GRANTED. Plaintiffs shall file their First Amended and Supplemental Complaint within 10 days of the date this Order is filed.

Pursuant to Rule 16 of the Federal Rules of Civil Procedure and the Local Rules of this Court, and in order to secure the just, speedy, and less expensive determination of this action, the following schedule shall govern these proceedings. This schedule may be modified only upon formal motion and a showing of good cause as required by D. Minn. LR 16.3.

1. Discovery & Pleading of Additional Claims & Defenses

   a. Discovery is permitted with respect to claims of willful infringement and defenses of patent invalidity or unenforceability not pleaded by a party, where the evidence needed to support these claims or defenses is in whole or in part in the hands of another party.

   b. Once a party has given the necessary discovery, the opposing party may seek leave of Court to add claims or defenses for which it alleges, consistent with Fed. R. Civ. P. 11, that it has support, and such support shall be explained in the motion seeking leave.

   c. Leave shall be liberally given where prima facie support is present, provided that the party seeks leave as soon as reasonably possible following the opposing party providing the necessary discovery.

2. Fact Discovery

   a. All pre-discovery disclosures required by Fed. R. Civ. P. 26(a)(1) shall be completed on or before October 1, 2019.

   b. Fact discovery shall be commenced in time to be completed on or before **September 1, 2020**.

   c. No more than 30 Interrogatories, counted in accordance with Fed. R. Civ. P. 33(a), shall be served by any side.

   d. No more than 75 Document Requests shall be served by any side.

   e. No more than 50 Requests for Admissions shall be served by any side.

   f. No more than ten depositions, excluding expert witness depositions, shall be taken by either side.

   g. On or before September 12, 2019, the parties shall jointly CM/ECF file a proposed stipulated Protective Order for the Court's review. The sealing of entire pleadings, memoranda of law, exhibits, and the like is strongly discouraged. No document shall be filed under seal unless such document or information therein is genuinely confidential and/or there are *compelling* reasons to do so. Any party seeking to file a document under seal shall specifically review each document and the information therein to limit sealing only to the extent necessary. If a party files a document containing confidential information with the Court, it shall do so in compliance with the Electronic Case Filing Procedures for the District of Minnesota and Local Rule 5.6. **Any joint motion made pursuant to Local Rule 5.6 before United States Magistrate Judge Tony N. Leung shall conform to Exhibit A attached hereto.** Counsel shall provide the Court with two courtesy copies of the unredacted documents with the redacted information highlighted in yellow.

   h. Any party claiming privilege or protection of trial-preparation materials shall serve on the party seeking discovery a privilege log that complies with the requirements in Fed. R. Civ. P. 26(b)(5).

3. ESI Discovery Plan

   On or prior to September 26, 2019, the parties shall jointly CM/ECF file a stipulated ESI discovery plan. The parties shall meet and confer prior to said date.

   The parties shall preserve all electronic documents that bear on any claims, defenses, or the subject matter of the lawsuit.

4. Expert Discovery

   a. The plaintiff may call up to four experts.

   b. The defendant may call up to four experts.

   c. On or before **October 1, 2020**, the parties shall identify to the opposing party the experts who will provide a report that deals with the issues on which that party has the burden of persuasion.

   d. On or before **October 1, 2020**, the parties shall exchange initial expert reports, which reports shall be in accordance with Fed. R. Civ. P. 26(a)(2)(B) ("Initial Expert Reports"). The Initial Expert Reports from each party shall deal with the issues on which that party has the burden of persuasion.

   e. On or before **November 1, 2020**, Rebuttal Expert Reports shall be exchanged. Rebuttal Expert Reports shall also be in accordance with Fed. R. Civ. P. 26(a)(2)(B).

   f. On or before **December 1, 2020**, Reply Expert Reports shall be exchanged. Reply Expert Reports shall also be in accordance with Fed. R. Civ. P. 26 (a)(2)(B).

   g. Matters relating to drafts of expert reports and the preparation of expert witnesses shall be governed by Fed. R. Civ. P. 26(b)(4).

   h. All expert discovery shall be completed by **January 15, 2021**. The parties stipulate to a maximum of one expert deposition for each expert.

5. Discovery Relating to Claim Construction Hearing

   a. Any party alleging infringement shall serve its Claim Chart to the party defending against infringement by March 1, 2020. The title of the Claim Chart shall identify the party serving it.

      i. This Claim Chart shall identify: (1) which claim(s) of its patent(s) it alleges are being infringed; (2) which specific products or methods of defendant's it alleges literally infringe each claim; and (3) where each element of each claim listed in (1) is found in each product or method listed in (2), including the basis for each contention that the element is present.

      ii. If there is a contention that there is infringement of any claims under the doctrine of equivalents, the party alleging infringement shall separately indicate this on its Claim Chart and, in addition to the information required for literal infringement, that party shall also explain each function, way, and result that it contends are equivalent, and why it contends that any differences are not substantial.

b. Any party defending against infringement shall serve its Responsive Claim Chart to the party alleging infringement by **May 1, 2020**. The title of the Responsive Claim Chart shall identify the party serving it.

   i. The Responsive Claim Chart shall indicate with specificity the elements, on the Claim Chart of the party alleging infringement, which it admits are present in its accused device or process, and which it contends are absent. In the latter regard, the party defending against infringement will set forth in detail the basis for its contention that the element is absent.

   ii. As to the doctrine of equivalents, the party defending against infringement shall indicate on its chart its contentions concerning any differences in function, way, and result, and why any differences are substantial.

c. A party may amend its Claim Chart only by leave of the Court for good cause shown.

d. On or before **August 14, 2020**, the parties shall simultaneously exchange a list of claim terms, phrases, or clauses that each party contends should be construed by the Court.

e. On or before **September 1, 2020**, the parties shall meet and confer for the purpose of finalizing a list of claim terms, phrases or clauses, narrowing or resolving differences, and facilitating the ultimate preparation of a joint claim construction statement.

   i. During the meet and confer process, the parties shall exchange their preliminary proposed construction of each claim term, phrase or clause which the parties collectively have identified for claim construction purposes and shall make this exchange on or before **September 1, 2020**.

   ii. At the same time the parties exchange their respective "preliminary claim construction" they shall also provide a preliminary identification of extrinsic evidence, including without limitation, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses that they contend support their respective claim constructions. The parties shall identify each such items of extrinsic evidence by production number or produce a copy of any such item not previously produced. With respect to any such witness, percipient or expert, the parties shall also provide a brief description of the substance of that witness' proposed testimony.

f. Following the parties' meet and confer and no later than **October 15, 2020**, the parties shall notify the Court as to whether they request that the Court schedule a Claim Construction hearing to determine claim interpretation.

i. If any party believes there is no reason for a Claim Construction hearing, the party shall provide the reason to the Court.

ii. At the same time, the parties shall also complete and file with the Court a joint claim construction statement that shall contain the following information:

A. The construction of those claim terms, phrases, or clauses on which the parties agree;

B. Each party's proposed construction of each disputed claim term, phrase, or clause together with an identification of all references from the specification of prosecution history that support that construction, and an identification of any extrinsic evidence known to the party on which it intends to rely either in support of its proposed construction of the claim or to oppose any other party's proposed construction of the claim, including, but not limited, as permitted by law, dictionary definitions, citation to learned treatises and prior art, and testimony of percipient and expert witnesses;

C. Whether any party proposes to call one or more witnesses, including experts at the Claim Construction hearing, the identity of each such witness and for each expert, a summary of each opinion to be offered in sufficient detail to permit a meaningful deposition of that expert;

D. Whether the parties believe that a technology tutorial would be helpful for the Court and, if so, the proposed timing and format of the tutorial; and

E. An acknowledgement that the filed joint claim construction statement shall not be amended, modified, changed or the like without good cause shown.

g. If the Court schedules a Claim Construction hearing, prior to the date of the Claim Construction hearing, the Court shall issue an Order discussing:

i. Whether it will receive extrinsic evidence, and if so, the particular evidence it will receive;

ii. Whether the extrinsic evidence in the form of testimony shall be the affidavits already filed, or in the form of live testimony from the affiants; and

iii. A briefing schedule.

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