

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

TELEFLEX INNOVATIONS S.A.R.L.
Patent Owner.

Case IPR2020-00135
Patent RE 45,776

DECLARATION OF PETER T. KEITH

I, Peter Keith, hereby declare and state as follows:

1. I have been retained by the owner of U.S. Patent No. RE45,776 (“the ’776 patent”), whom I will refer to in this declaration as “Teleflex,” to provide my independent expert opinions in this matter. I understand that petitions for *inter partes* review have been filed against certain claims of the ’776 patent. The following provides my opinions in support of Teleflex’s Patent Owner Preliminary Response in this matter.

I. PERSONAL BACKGROUND

2. I summarize my educational background and career history in the following paragraphs. My complete qualifications are provided in my curriculum vitae, which is attached to this declaration as Appendix A.

3. I received a Bachelor of Science degree in mechanical engineering with High Distinction from the University of Minnesota in 1987. During my undergraduate training, I began working as an engineering intern in the research and development (R&D) department at SCIMED, which was later acquired by Boston Scientific Corporation. I joined SCIMED full-time after graduation, and I remained with the company until 1996. During this time I rose from engineering intern to full-time R&D engineer to Director of R&D. Throughout my various roles at SCIMED, the focus of my work was on medical devices in the field of interventional cardiology, particularly catheter design.

4. Since 1997, I have served as an independent consultant for early stage medical device companies in the areas of product design and intellectual property development. Several of my consulting clients have developed successful products that are on the market and in hospitals today. A number of the products have been in the field of interventional cardiology, particularly catheters.

5. In addition to my work as an independent consultant, since 2000 I have engaged in a number of entrepreneurial ventures in the field of medical devices. In many of these ventures, I held chief responsibility for product design and development. Several of these products have been in the area of interventional cardiology. I have also done considerable work outside the area of interventional cardiology, including in treatments for orthopedics for extremities such as feet and ankles and treatment of spinal disorders. In 2006, I co-founded Entellus Medical, a company focused on catheter based treatments for chronic sinusitis. As Chief Technology Officer, I led the product development and research teams. Entellus went public in 2015, and was acquired by Stryker in 2018.

6. Between my work at SCIMED, my independent consulting, and my entrepreneurial ventures, I have been named as an inventor on over 140 issued U.S. patents, as well as many corresponding patents in foreign countries. Numerous patent applications on which I am a named inventor are still pending.

7. I have prior experience with patent litigation involving the technology at issue and the patent families at issue in this case. Among other things, I provided expert infringement and validity opinions on behalf of Teleflex in the case of *QXMédical, LLC v. Vascular Solutions LLC, et al.*, No. 0:17-cv-01969 (D. Minn.) (the QXM case). In the QXM case, among the patents asserted were four of the five patents at issue in these IPRs: U.S. Patent Nos. 8,048,032; RE45,380; RE45,760; and RE45,776. U.S. Patent No. RE47,379 had not yet issued when the QXM case was filed, but it is in the same family as the other four patents listed above that were asserted in the QXM case.

8. I have also provided expert opinions concerning all five patents at issue in these proceedings on behalf of Teleflex in the case of *Vascular Solutions LLC, et al. v. Medtronic, Inc., et al.*, No. 19-cv-01760 (D. Minn.). Those opinions were provided in connection with Teleflex's Motion for Preliminary Injunction.

9. In writing this declaration, I have considered my own knowledge and experience, including my work experience in designing interventional cardiology devices and my experience in working with others involved in the field of interventional cardiology devices, including medical doctors working as interventional cardiologists. I have also considered the information that a POSITA would have been aware of in May 2006, including the documents I discuss in this declaration.

10. I am being compensated at \$525 per hour for my time, my standard rate for this type of consulting activity. My compensation is not contingent on the results of these or any other legal proceedings.

II. LEGAL STANDARDS

11. I am not an attorney and I have not independently researched the law on patentability. I have been informed by counsel of the legal standards below.

A. **Claim Construction**

12. I understand that patent claims are to be interpreted in view of a patent's specification and prosecution history. I understand that claim construction starts with the plain language of the claims as understood by a person having ordinary skill in the art at the time the patent was filed.

13. I understand that the parties agreed to constructions for certain claim terms in the QXM case. I understand that those constructions are provided in the document filed by the Petitioner in this *inter partes* review as Exhibit 1012. Other than as specifically discussed in this declaration, I do not at this time offer any opinions regarding those constructions. Rather, I apply them for the purpose of this declaration.

14. I understand that a patent may be its own lexicographer, so long as the definition of a specific term is clearly set forth in the specification and it is clear the inventor intended to define the term.

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