

1 UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE PATENT TRIAL AND APPEAL BOARD

3

MEDTRONIC, INC., AND MEDTRONIC
4 VASCULAR, INC.,

5 Petitioners,

6 vs.

7 TELEFLEX INNOVATIONS S.A.R.L.,

8 Patent Owner.
9

10 IPR2020-00126 (Patent 8,048,032 B2)

11 IPR2020-00127 (Patent 8,048,032 B2)

12 IPR2020-00128 (Patent RE45,380 E)

13 IPR2020-00129 (Patent RE45,380 E)

14 IPR2020-00130 (Patent RE45,380 E)

15 IPR2020-00132 (Patent RE45,760 E)

16 IPR2020-00134 (Patent RE45,760 E)

17 IPR2020-00135 (Patent RE45,776 E)

18 IPR2020-00136 (Patent RE45,776 E)

19 IPR2020-00137 (Patent RE47,379 E)

20 IPR2020-00138 (Patent RE47,379 E)
21

22 VIDEOTAPED DEPOSITION OF
23 DR. STEPHEN BRECKER
24

25 DATE: January 14, 2021

TIME: 5:06 a.m. (Central Standard Time)

PLACE: Veritext Virtual Videoconference

REPORTED BY: PAULA K. RICHTER, RMR, CRR, CRC

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Page 2	<p>1 APPEARANCES</p> <p>2 (All parties appeared via videoconference)</p> <p>3 ON BEHALF OF THE PETITIONERS:</p> <p>4 Ms. Sharon Roberg-Perez, Esq.</p> <p>5 Mr. Cyrus A. Morton, Esq.</p> <p>6 Mr. Christopher A. Pinahs, Esq.</p> <p>7 ROBINS KAPLAN, LLP</p> <p>8 800 LaSalle Avenue, Suite 2800</p> <p>9 Minneapolis, Minnesota 55401</p> <p>10 (612) 349-8500</p> <p>11 sroberg-perez@robinskaplan.com</p> <p>12 cmorton@robinskaplan.com</p> <p>13 cpinahs@robinskaplan.com</p> <p>14</p> <p>15 ON BEHALF OF THE PATENT OWNER:</p> <p>16 Mr. J. Derek Vandenburg, Esq.</p> <p>17 Mr. Peter M. Kohlhepp, Esq.</p> <p>18 CARLSON, CASPERS, VANDENBURGH & LINDQUIST</p> <p>19 225 South Sixth Street, Suite 4200</p> <p>20 Minneapolis, Minnesota 55402</p> <p>21 (612) 436-9600</p> <p>22 dvandenburg@carlsoncaspers.com</p> <p>23 pkohlhepp@carlsoncaspers.com</p> <p>24</p> <p>25 (APPEARANCES continued on next page)</p>	Page 4
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Page 6	Page 8
<p>1 PROCEEDINGS</p> <p>2 THE VIDEOGRAPHER: Good morning. We 05:06:09</p> <p>3 are going on the record at 5:06 a.m. Central Time, 05:06:10</p> <p>4 January 14, 2021. 05:06:18</p> <p>5 Please note that microphones are 05:06:20</p> <p>6 sensitive and may pick up whispering and private 05:06:23</p> <p>7 conversations. Please mute your microphone 05:06:25</p> <p>8 whenever possible. Audio and video recording will 05:06:29</p> <p>9 continue to take place unless all parties agree to 05:06:32</p> <p>10 go off the record. 05:06:35</p> <p>11 This is Media Unit 1 of the 05:06:38</p> <p>12 video-recorded deposition of Dr. Stephen Brecker, 05:06:41</p> <p>13 in the matter of Medtronic, Inc., et al. versus 05:06:44</p> <p>14 Teleflex Innovations, S.A.R.L., filed in the U.S. 05:06:52</p> <p>15 Patent and Trademark Office, Numbers 05:07:05</p> <p>16 IPR2020-00126, IPR2020-00129 -- 128, 05:07:08</p> <p>17 IPR2020-00129, IPR2020-00132, IPR2020-00134, 05:07:16</p> <p>18 IPR2020-00135, IPR2020-00137. 05:07:25</p> <p>19 This deposition is being held 05:07:32</p> <p>20 remotely. 05:07:34</p> <p>21 My name is Phil Glauberson from the 05:07:35</p> <p>22 firm Veritext, and I am the videographer. The 05:07:37</p> <p>23 court reporter is Paula Richter from Veritext. 05:07:40</p> <p>24 I am not authorized to administer an 05:07:43</p> <p>25 oath. I am not related to any party in this 05:07:46</p>	<p>1 swear the witness, please. 05:08:57</p> <p>2 DR. STEPHEN BRECKER, 05:09:12</p> <p>3 duly sworn, was examined and testified as follows: 05:09:12</p> <p>4 EXAMINATION 05:09:12</p> <p>5 BY MR. VANDENBURGH: 05:09:12</p> <p>6 Q. All right. Good morning again, Dr. Brecker. 05:09:13</p> <p>7 A. Good morning. 05:09:16</p> <p>8 Q. I'm going to skip the usual intro. This is 05:09:17</p> <p>9 the third time that we've had one of these 05:09:19</p> <p>10 depositions. I guess the only thing I will ask 05:09:23</p> <p>11 is, is there anything that would prevent you from 05:09:27</p> <p>12 testifying truly or correctly today? 05:09:30</p> <p>13 A. There is not. 05:09:35</p> <p>14 Q. Okay. Can you -- I'm just going to just walk 05:09:37</p> <p>15 through your latest declaration today, so if you 05:09:40</p> <p>16 could just go ahead and pull that up and have that 05:09:44</p> <p>17 in front of you, the binder that we sent you, 05:09:47</p> <p>18 Exhibit 1806, for the record. 05:09:50</p> <p>19 A. I'm just going to make it a bit louder. 05:09:59</p> <p>20 Okay. 05:10:02</p> <p>21 Q. All right. And let's start near the 05:10:03</p> <p>22 beginning where you are talking on, oh, roughly 05:10:06</p> <p>23 paragraphs 7 through 13 regarding the term 05:10:13</p> <p>24 "interventional cardiology devices," and in 05:10:18</p> <p>25 particular, the Venn diagram that you have in 05:10:24</p>
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<p>1 action, nor am I financially interested in the 05:07:49</p> <p>2 outcome. 05:07:51</p> <p>3 Counsel will please now state their 05:07:52</p> <p>4 appearances and affiliations for the record. If 05:07:55</p> <p>5 there are any objections to proceeding or to the 05:07:58</p> <p>6 court reporter administering the oath virtually, 05:08:00</p> <p>7 please state them at the time of your appearance, 05:08:03</p> <p>8 beginning with the noticing attorney. 05:08:06</p> <p>9 MR. VANDENBURGH: Yes. On behalf of 05:08:07</p> <p>10 the Patent Owner, Teleflex, this is Derek 05:08:09</p> <p>11 Vandenburg of the Carlson Caspers firm. Also 05:08:12</p> <p>12 with us today is Peter Kohlhepp of our firm, Ken 05:08:15</p> <p>13 Levitt of the Dorsey firm, and Greg Smock of 05:08:22</p> <p>14 Teleflex. 05:08:25</p> <p>15 MS. ROBERG-PEREZ: On behalf of 05:08:26</p> <p>16 Petitioner, Medtronic, Sharon Roberg-Perez of 05:08:27</p> <p>17 Robins Kaplan. With me are my colleagues, Chris 05:08:31</p> <p>18 Pinahs and Cy Morton. 05:08:35</p> <p>19 MR. VANDENBURGH: And before we 05:08:39</p> <p>20 swear the witness, I'll just state for the record, 05:08:40</p> <p>21 I appreciate the list of cases, Phil, but there 05:08:41</p> <p>22 are actually 11 total all together. I don't think 05:08:44</p> <p>23 they were all on your list, but I think counsel 05:08:46</p> <p>24 all understand which IPRs that are at issue here. 05:08:48</p> <p>25 So, Paula, can you go ahead and 05:08:55</p>	<p>1 paragraph 12. 05:10:28</p> <p>2 Is it your opinion that everything 05:10:32</p> <p>3 that is used during an interventional cardiology 05:10:35</p> <p>4 procedure is an interventional cardiology device 05:10:40</p> <p>5 as that term is used in the Teleflex patents? 05:10:44</p> <p>6 A. Well, just to break that up, first of all, 05:10:53</p> <p>7 everything used -- not everything used in an 05:10:59</p> <p>8 interventional cardiology procedure would 05:11:03</p> <p>9 necessarily be called an interventional cardiology 05:11:07</p> <p>10 device, just thinking about it in the broadest 05:11:11</p> <p>11 sense. 05:11:13</p> <p>12 When you say how is an 05:11:17</p> <p>13 interventional cardiology device defined in the 05:11:20</p> <p>14 Teleflex patent, that's a separate issue; and 05:11:22</p> <p>15 there are various interpretations on that, as we 05:11:29</p> <p>16 have discussed. 05:11:32</p> <p>17 Q. So it sounds like you would agree that the 05:11:35</p> <p>18 term as it's used in the patents is not the same 05:11:42</p> <p>19 as it may be used outside the context of the 05:11:48</p> <p>20 patents? 05:11:51</p> <p>21 MS. ROBERG-PEREZ: Object to form. 05:11:52</p> <p>22 THE WITNESS: It may or may not be. 05:11:56</p> <p>23 BY MR. VANDENBURGH: 05:12:00</p> <p>24 Q. Okay. So there are certainly instances where 05:12:00</p> <p>25 what's considered to be an interventional 05:12:08</p>

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1 cardiology device outside the scope of the patents 05:12:10	1 cardiology device. It just says that the segment 05:15:48
2 is broader than how you would use that term within 05:12:12	2 defining a partially cylindrical opening is 05:15:53
3 the patent itself? 05:12:17	3 configured to receive one or more interventional 05:15:58
4 A. That's correct. There are interventional 05:12:20	4 cardiology devices. 05:16:01
5 cardiology devices which may not fulfill the 05:12:25	5 Now, it's saying it's configured to 05:16:06
6 criteria of an interventional cardiology device as 05:12:33	6 receive devices. That doesn't -- if you're saying 05:16:09
7 one might interpret it in the patent. It's not 05:12:35	7 could -- let me -- could any device be considered 05:16:15
8 defined in the patent. 05:12:40	8 an interventional cardiology device, well, it 05:16:20
9 Q. I'm sorry. So it is -- you do consider it to 05:12:42	9 could still be considered an interventional 05:16:23
10 be defined in the patent? 05:12:46	10 cardiology device without it necessarily 05:16:26
11 MS. ROBERG-PEREZ: Object to form. 05:12:48	11 fulfilling the ability for this to be configured 05:16:27
12 THE WITNESS: No. I said it's not 05:12:49	12 to it, to accept it. This doesn't define an 05:16:33
13 defined in the patent. 05:12:50	13 interventional cardiology device. 05:16:37
14 BY MR. VANDENBURGH: 05:12:53	14 Q. I agree. I'm not trying to at this point -- 05:16:39
15 Q. I misheard. 05:12:54	15 A. Yeah. 05:16:43
16 So as it's used in the patent, would 05:12:57	16 Q. -- you know, get to a definition. I just 05:16:43
17 you consider a guide catheter to be an 05:13:01	17 want to understand when -- that term has a 05:16:46
18 interventional cardiology device? 05:13:04	18 meaning, correct? We need to give words and 05:16:52
19 A. When you say "as it's used in the patent," 05:13:18	19 claims meaning. You understand that? 05:16:55
20 you would need to take me to a specific example. 05:13:20	20 A. I do. 05:16:57
21 Q. Okay. 05:13:24	21 Q. Okay. So as those words are used in that 05:16:58
22 A. There are examples in the patent where it 05:13:26	22 claim, interventional cardiology device, what does 05:17:01
23 says interventional cardiology device, dot, dot, 05:13:29	23 it mean? 05:17:05
24 dot, and then it gives a specification to it. I 05:13:32	24 A. Well, this -- what it means is a device that 05:17:06
25 mean, a guide catheter is an interventional 05:13:37	25 can go through a guide extension catheter. 05:17:09
Page 11	Page 13
1 cardiology device in general terms. 05:13:42	1 Q. Okay. So does that mean that anything that 05:17:13
2 Q. Okay. So, for example, let's -- we can go 05:13:44	2 can go through a guide extension catheter is an 05:17:16
3 ahead and pull up a specific patent. Do you have 05:13:50	3 interventional cardiology device within the scope 05:17:20
4 a binder with the patents in them? 05:13:53	4 of that claim, in your opinion? 05:17:22
5 A. I do. That would be -- I've got binder 2 05:13:56	5 A. I'm not -- I'm not quite sure I understand. 05:17:29
6 from the original deposition, which has the 05:14:04	6 Anything that could go through an -- a guide 05:17:34
7 patents. 05:14:10	7 extension catheter -- you're asking me in a 05:17:40
8 Q. Perfect. So let's use as an example the '776 05:14:11	8 different direction. This is simply saying 05:17:46
9 Patent, RE 45776. 05:14:16	9 that -- this is giving characteristics of a guide 05:17:50
10 A. Have you got that as a -- yeah, I have that. 05:14:22	10 extension catheter and saying it's configured to 05:17:52
11 That's 135. 1001-135 as I've got it marked. 05:14:26	11 accept one or more interventional cardiology 05:17:56
12 Q. I believe it's Exhibit 1001 to the 035 IPR. 05:14:33	12 devices, but that doesn't define what an 05:17:57
13 A. Yeah, I have that. 05:14:42	13 interventional cardiology device -- nor does it 05:18:03
14 Q. Okay. And if we go to Claim 25 of the '776 05:14:46	14 say that anything, absolutely anything that goes 05:18:05
15 Patent. 05:15:04	15 through would be a device. So I'm struggling to 05:18:10
16 A. I have it. 05:15:04	16 think of something that you would put through a 05:18:14
17 Q. I believe you will see two-thirds of the way 05:15:04	17 guide extension catheter that wouldn't be a 05:18:16
18 down the longer paragraph that starts, "A segment 05:15:08	18 device. I mean -- 05:18:19
19 defining ..." It says, it needs to be configured 05:15:11	19 Q. Wouldn't it be an -- just to clarify, 05:18:21
20 to receive one or more interventional cardiology 05:15:14	20 wouldn't it be an interventional cardiology 05:18:24
21 devices therethrough." 05:15:17	21 device? 05:18:27
22 So in the context that it's used 05:15:21	22 A. Yes. I'm struggling to think of an example 05:18:29
23 there, would you consider a guide catheter to be 05:15:24	23 of something that a cardiologist would put through 05:18:33
24 an interventional cardiology device? 05:15:27	24 a guide extension catheter that wouldn't be an 05:18:38
25 A. It doesn't define an interventional 05:15:45	25 interventional cardiology device. I can't 05:18:42

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1 think -- I mean, I-- you know, you could inject 05:18:47	1 A. Yes. I mean, there are some syringes that 05:22:06
2 drugs, for example. But, I mean, in terms of a 05:18:52	2 are very specifically adapted and have 05:22:09
3 piece of kit, if you were advancing a piece of 05:18:57	3 characteristics to them, and there are some 05:22:10
4 equipment through a guide extension catheter, it 05:19:01	4 devices that are used for injection, like an 05:22:13
5 would be an interventional cardiology device. 05:19:06	5 automated injector. And I think many 05:22:16
6 Q. Okay. So you can't think of anything that a 05:19:09	6 cardiologists would consider those interventional 05:22:19
7 cardiologist would put through a guide extension 05:19:15	7 cardiology devices in the broadest general sense. 05:22:23
8 catheter that would not be an interventional 05:19:22	8 But they wouldn't -- they wouldn't go into the 05:22:29
9 cardiology device? 05:19:24	9 guide catheter. 05:22:32
10 A. I'm struggling to think of an example. 05:19:27	10 Q. Okay. Does -- let's see. Does any part of 05:22:33
11 Q. Okay. Now, is it your opinion -- because you 05:19:30	11 the syringe go into the proximal end of the guide 05:22:43
12 used the word "through," is it your opinion that 05:19:35	12 catheter? 05:22:47
13 to be an interventional cardiology device, it has 05:19:39	13 A. Well, the syringe typically does not. There 05:22:50
14 to come out the other side of the guide extension 05:19:42	14 is -- the syringe is attached to a manifold which 05:22:55
15 catheter? 05:19:45	15 has three-way taps on it and terminates in a flush 05:22:59
16 MS. ROBERG-PEREZ: Object to form. 05:19:45	16 port, that you then -- you screw onto the hub of 05:23:07
17 THE WITNESS: Again, if you're tying 05:19:57	17 the guide catheter -- well, you screw onto the hub 05:23:12
18 me to the language of the claim, again, this is 05:19:59	18 of the O-ring hemostatic valve that screws onto 05:23:16
19 defining what the guide extension catheter is 05:20:04	19 the guide catheter. 05:23:20
20 doing, not what the interventional cardiology 05:20:09	20 Q. Okay. All right. 05:23:21
21 device is doing. 05:20:11	21 A. You don't inject -- you don't attach the 05:23:22
22 For example, if you were advancing a 05:20:15	22 syringe directly to a guide catheter heart. 05:23:25
23 stent through the extension catheter but you 05:20:18	23 Q. Right. Right. The hemostatic valve, does it 05:23:29
24 couldn't actually, for one reason or another, exit 05:20:26	24 actually engage within the proximal end of the 05:23:31
25 the extension catheter, that doesn't mean that the 05:20:28	25 guide catheter? 05:23:35
Page 15	Page 17
1 stent is not an interventional cardiology device. 05:20:34	1 A. Well, the guide catheter will terminate in a 05:23:37
2 BY MR. VANDENBURGH: 05:20:40	2 hub. So the material of the -- the catheter will 05:23:41
3 Q. Now, an interventional cardiology device can 05:20:46	3 terminate at its proximal end in a hub made of 05:23:51
4 also include things that just go into the guide 05:20:50	4 plastic and that's the bit that screws onto the 05:23:59
5 catheter, right? 05:20:52	5 manifold. You -- where the hub is considered part 05:24:01
6 MS. ROBERG-PEREZ: Object to form. 05:20:54	6 of the guide catheter. I suppose it is, but it's 05:24:04
7 THE WITNESS: It's possible, but do 05:21:03	7 a matter of debate, I suppose. I haven't thought 05:24:07
8 you have an example in mind? 05:21:07	8 about it. 05:24:11
9 BY MR. VANDENBURGH: 05:21:08	9 Q. So have you applied a definition of 05:24:12
10 Q. Well, I mean, a stent catheter is an 05:21:08	10 interventional cardiology device as you analyzed, 05:24:18
11 interventional cardiology device regardless of 05:21:11	11 for example, Claim 25 of the '776 Patent? 05:24:22
12 whether it's put in a guide catheter or a guide 05:21:13	12 A. So looking at Claim 25 -- and I'd just like 05:24:31
13 extension catheter, right? 05:21:16	13 to -- although I've read it several times, I just 05:24:34
14 A. That's correct, yes. And that's the point I 05:21:17	14 want to read it through myself again because I 05:24:36
15 was making. 05:21:20	15 want to be -- I want to give you an accurate 05:24:39
16 Q. Yeah, yeah. Now, would a syringe for 05:21:21	16 answer. (Reviews document.) 05:24:41
17 injecting contrast be considered to be an 05:21:28	17 The claim is describing 05:25:01
18 interventional cardiology device? 05:21:32	18 characteristics of the guide extension catheter, 05:25:03
19 A. Well, now, stepping back out of the context 05:21:38	19 and it's saying it's configured to receive 05:25:05
20 of the claims, if I went upstairs to the cath labs 05:21:42	20 interventional cardiology devices. So what the 05:25:08
21 and asked my colleague, is that syringe that 05:21:48	21 cardiologist is thinking reading that is, of all 05:25:15
22 you're using to inject an interventional 05:21:51	22 the interventional cardiology devices that exist, 05:25:19
23 cardiology device, you'd get a range of answers. 05:21:53	23 the ones that this is referring to are those that 05:25:20
24 Q. Okay. So the answer is, if it's outside the 05:21:59	24 would be passed through or those that would be 05:25:23
25 scope of the patent, it depends on who you ask. 05:22:01	25 passed into, because it's configured to receive, 05:25:26

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