

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 IPR2020-00126 (Patent 8,048,032 B2)
10 IPR2020-00127 (Patent 8,048,032 B2)
11 IPR2020-00128 (Patent RE45,380 E)
12 IPR2020-00129 (Patent RE45,380 E)
13 IPR2020-00130 (Patent RE45,380 E)
14 IPR2020-00132 (Patent RE45,760 E)
15 IPR2020-00134 (Patent RE45,760 E)
16 IPR2020-00135 (Patent RE45,776 E)
17 IPR2020-00136 (Patent RE45,776 E)
18 IPR2020-00137 (Patent RE47,379 E)
19 IPR2020-00138 (Patent RE47,379 E)

20 VIDEOTAPED DEPOSITION OF
21 GREGG SUTTON

22 DATE: November 6, 2020

23 TIME: 8:55 a.m. Central Time

24 PLACE: Veritext Virtual Videoconference

25 REPORTED BY: PAULA K. RICHTER, RMR, CRR, CRC
(By videoconference)

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Page 2	<p>1 APPEARANCES</p> <p>2 ON BEHALF OF THE PETITIONERS (By videoconference):</p> <p>3 Ms. Emily J. Tremblay, Esq.</p> <p>4 Ms. Sharon Roberg-Perez, Esq.</p> <p>5 Mr. Cyrus A. Morton, Esq.</p> <p>6 ROBINS KAPLAN, LLP</p> <p>7 800 LaSalle Avenue, Suite 2800</p> <p>8 Minneapolis, Minnesota 55401</p> <p>9 (612) 349-8500</p> <p>10 etremblay@robinskaplan.com</p> <p>11 sroberg-perez@robinskaplan.com</p> <p>12 cmorton@robinskaplan.com</p> <p>13</p> <p>14 ON BEHALF OF THE PATENT OWNER (By videoconference):</p> <p>15 Ms. Tara C. Norgard, Esq.</p> <p>16 Mr. Alexander S. Rinn, Esq.</p> <p>17 Mr. Derek Vandenburg, 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 tnorgard@carlsoncaspers.com</p> <p>23 arinn@carlsoncaspers.com</p> <p>24 dvandenburg@carlsoncaspers.com</p> <p>25 (APPEARANCES continued on next page)</p>	Page 4
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<p style="text-align: right;">Page 6</p> <p>1 THE VIDEOGRAPHER: Okay. Thank you. 2 Please swear in the witness. 3 GREGG SUTTON, 4 duly sworn, was examined and testified as follows: 5 EXAMINATION 6 BY MS. TREMBLAY: 7 Q. Good morning, Mr. Sutton. 8 A. Good morning. 9 Q. Could you please state your full name for the 10 record and spell your last name. 11 A. Gregg Stuart Sutton, last name is 12 S-U-T-T-O-N. 13 Q. My name is Emily Tremblay. I'm an attorney 14 with Robins Kaplan and I'm here representing 15 Medtronic, Inc., and Medtronic Vascular, Inc. 16 You've given a deposition before, Mr. Sutton; is 17 that correct? 18 A. Yes, I believe so. 19 Q. Well, I'm just going to go over a few basic 20 ground rules as a refresher. Please feel free to 21 ask questions. 22 So today I'm going to be asking you 23 a series of verbal questions and you will do your 24 best to answer them truthfully and completely and 25 verbally. The court reporter can't record a head</p>	<p style="text-align: right;">Page 8</p> <p>1 A. No, I have not. 2 Q. Is there any reason that you will not be able 3 to understand my questions and answer truthfully 4 and completely today? 5 A. No reasons. 6 Q. Do you have any questions before we begin? 7 A. No, I don't. 8 Q. What did you do to prepare for your 9 deposition today? And before you answer, I'm not 10 interested in any advice that you may have 11 received from your attorneys. 12 A. What did I do today? 13 Q. Well, to prepare for today. 14 A. I reviewed my declaration that was entered in 15 September. 16 Q. Did you speak with anyone other than your 17 attorneys? 18 A. No. 19 Q. Did you review any documents other than your 20 declaration that you just mentioned? 21 A. No, I did not. 22 Q. Did you do anything else other than review 23 your declaration in anticipation of today? 24 A. No. 25 Q. Mr. Sutton, I'm going to move an exhibit into</p>
<p style="text-align: right;">Page 7</p> <p>1 nod or a head shake or hand gestures. We're going 2 to do our best to speak one at a time and not over 3 each other, again, for the benefit of the court 4 reporter as she records what we're saying. 5 And because we're remote, I'm going 6 to ask if there's anyone in the room with you 7 today? 8 A. No, there is not. 9 Q. Over the course of today, if you don't 10 understand one of my questions, please ask me to 11 clarify or to rephrase. I will assume that if you 12 do answer my question, you've heard it and you 13 understood it. Is that fair? 14 A. That's fair. 15 Q. We'll be taking breaks, but if you need one 16 or want one before we take one, please just let me 17 know. I will only ask that if I've asked you a 18 question, that you answer it before we take a 19 break so that we don't leave a question pending on 20 the record. Do you understand? 21 A. I do. 22 Q. Have you consumed any alcohol today? 23 A. No, I have not. 24 Q. Have you taken any controlled substances or 25 prescription medication?</p>	<p style="text-align: right;">Page 9</p> <p>1 the Marked Exhibits folder. It will be titled 2 Exhibit 1108. Do you see it? 3 A. I do. 4 Q. Will you please open that exhibit? 5 MS. NORGDARD: If you could hold on 6 one moment. 7 MS. TREMBLAY: Oh, sure. 8 MS. NORGDARD: I don't have it yet. 9 And I think that's because I'm in the wrong 10 folder. 11 THE WITNESS: I see it, but I can't 12 really read it. 13 MS. TREMBLAY: And there is a 14 zoom-in feature towards the bottom of the page, if 15 that helps too. I'm going to give your counsel a 16 moment to make sure that she can pull it up too. 17 MS. NORGDARD: 1108? 18 MS. TREMBLAY: Yes. 19 MS. NORGDARD: Thank you. 20 BY MS. TREMBLAY: 21 Q. Great. So Mr. Sutton, do you recognize 22 Exhibit 1108? 23 A. No, I don't. 24 Q. If you are able to zoom in using the feature 25 towards the bottom of the screen, you'll see that</p>

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<p style="text-align: right;">Page 10</p> <p>1 this is titled "Gregg Sutton from 6/20/2018," and 2 this is a transcript of a deposition that you've 3 given previously. 4 Does that refresh your recollection? 5 A. Yes, only that I read the attorney, 6 Thomas Vitt, on top. 7 Q. And you'll see towards the left -- the top 8 left corner of the first page is the case caption. 9 It provides QXMedical, LLC versus Vascular 10 Solutions, LLC, Teleflex Innovations S.A.R.L., and 11 Arrow International. So that would have been the 12 case that this deposition was given in. Do you 13 recall that? 14 A. I do. 15 Q. So do you remember giving this deposition? 16 A. Yes, I do. 17 Q. And you swore an oath prior to giving this 18 deposition similar to today; is that correct? 19 A. That's correct. 20 Q. In which you swore to tell the truth; is that 21 correct? 22 A. That's correct. 23 Q. And you testified truthfully here when you 24 gave this deposition; is that correct? 25 A. I did.</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. And before SurModics, where were you 2 employed? 3 A. NorMedix, Incorporated. 4 Q. And what was your position with NorMedix? 5 A. I was the CEO, owner. 6 Q. And is that also a medical device company? 7 A. Yes. 8 Q. And what year did you found NorMedix? 9 A. It's either 2009 or '10. 10 Q. Fine. A rough approximation. Just trying to 11 get a sense of your background. 12 A. Sure. 13 Q. So before you founded NorMedix in the 2009, 14 2010 time frame, where were you working? 15 A. Before I founded that, I was at -- back at 16 Atritech, Inc. 17 Q. What was your role at that time? 18 A. Also vice president, research and 19 development. 20 Q. And then assuming that Atritech was also a 21 medical device company; is that correct? 22 A. Yes, ma'am. 23 Q. And before Atritech, where were you? 24 A. Vascular Solutions. 25 Q. All right. So we've arrived at VSI. And did</p>
<p style="text-align: right;">Page 11</p> <p>1 MS. TREMBLAY: You can set Exhibit 2 1108 to the side. We may come back to that later. 3 BY MS. TREMBLAY: 4 Q. I'd like to talk a little bit about your 5 background. So, Mr. Sutton, what do you currently 6 do for work? 7 A. I don't. I retired in February, March time 8 frame. 9 Q. Congratulations. What did you do before your 10 retirement? 11 A. I had a position as a vice president of 12 research and development at SurModics, 13 Incorporated. 14 Q. And could you briefly describe what SurModics 15 did? 16 A. SurModics is a surface coatings company for 17 medical devices. 18 Q. You said you -- oh, sorry, go ahead. 19 A. Sorry. And also was getting into medical 20 device technology development. 21 Q. And you said that you were VP of research and 22 development there; is that correct? 23 A. That's correct. 24 Q. And how long were you at SurModics? 25 A. Four years and two months.</p>	<p style="text-align: right;">Page 13</p> <p>1 you join VSI in 2004; is that correct? 2 A. That's correct. 3 Q. Do you know about what month you joined VSI 4 in 2004? 5 A. I think it was late, probably in the fall, 6 September, October of 2004. 7 Q. And you joined VSI as vice president of 8 research and development; is that correct? 9 A. That is correct. 10 Q. Did you remain in that role until you left? 11 A. Yes. 12 Q. To whom did you report in that role? 13 A. Mr. Howard Root. 14 Q. And what was his title at Vascular Solutions? 15 A. He was the chief executive officer. 16 Q. And in your role as vice president, research 17 and development, how many people reported to you, 18 about? 19 A. It ranged from when I started to when I left, 20 from probably 10 to 15. 21 Q. About 10 when you started, growing to 15 when 22 you left; is that correct? 23 A. Approximately, yes. 24 Q. And when did you leave Vascular Solutions? 25 A. I believe it was in June of 2006.</p>

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<p style="text-align: right;">Page 14</p> <p>1 Q. Is that the R&D department then that we're 2 talking about when we're talking about 10 to 15 3 people? 4 A. Yes, ma'am. 5 Q. And why did you leave VSI in June 2006? 6 A. I don't recall specifically. 7 Q. And I know this is going back a ways, but 8 where were you before you joined VSI in fall 2004? 9 A. Atritech, Incorporated. 10 Q. So you had been at Atritech previously before 11 you joined as vice president of research and 12 development; is that correct? 13 A. That's correct, starting in 2000. 14 Q. And what was your role in 2000 at Atritech? 15 A. I was a founder and VP, R&D, co-founder. 16 Q. Could you please describe your educational 17 background? 18 A. Sure. I have a mechanical engineering degree 19 from the University of Minnesota. I graduated in 20 1986, I believe -- no, '85. 21 Q. Do you have any other degrees? 22 A. No. 23 Q. Any specific specialized training? 24 A. No. Not other than, you know, my experience 25 in the med tech industry.</p>	<p style="text-align: right;">Page 16</p> <p>1 of experience and roles in the R&D department. 2 You mentioned engineers of various levels and 3 technicians. Could you briefly describe, kind of, 4 each of those job titles within the R&D department 5 and a sense of what roles each held? 6 A. So you want me to break down engineering into 7 levels or -- I'm not sure what you're asking. 8 Q. Well, let me ask you this: Are the main 9 buckets in the R&D department, are they engineers 10 and technicians; is that correct? 11 A. That's correct. 12 Q. Could you tell me a little bit about what the 13 engineers are doing in terms of new product 14 development? 15 A. They are -- they're basically conducting 16 anywhere from early stage concept and design work, 17 building prototypes, testing prototypes, creating 18 CAD-generated drawings, writing specifications. 19 You know, those are generally what they're working 20 on. 21 Q. What about the technicians? What type of 22 work were they typically doing and how did that 23 differ from the work that you just described the 24 engineers doing? 25 A. Well, they're carrying specific tasks under</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. I'd like to talk about your role as vice 2 president of research and development when you 3 were at VSI. What were some of your 4 responsibilities in that role? 5 A. Well, generally, to oversee all activities in 6 research and development in terms of product 7 innovation and development, oversee the management 8 of the people involved under my -- in my staff, 9 and, you know, help bring products to market. 10 Q. So what does bringing a product to market 11 involve specifically? I'm wondering if you can 12 talk about the type of work that you were 13 performing. 14 A. In my role, it is confined to device 15 inventing, developing, and preparing for 16 manufacturing. 17 Q. What kind of -- you said your role 18 specifically involved advice, inventing. What 19 kind of work did you oversee others perform in the 20 R&D department? 21 A. Well, most of my staff was engineering -- 22 engineers at various levels and technicians, and, 23 you know, so they did the -- all the work product 24 and device development. 25 Q. I'd like to get a better sense of the levels</p>	<p style="text-align: right;">Page 17</p> <p>1 the direction of mainly the engineers, including, 2 you know, building prototypes, testing prototypes, 3 procuring materials, things like that. 4 Q. So you mentioned obviously a big part of R&D 5 is product innovation and development. How did 6 you typically track the development of a new 7 product? 8 A. I'm not sure what you're asking. You're 9 asking plans for development or are you talking 10 about results of development? 11 Q. Let me rephrase. Were there typically phases 12 of, like, new product development, you know, kind 13 of big picture, were there are phases that a new 14 product would move through over the course of its 15 development? 16 A. I don't recall specifically if we had phases, 17 but in general, yes. 18 Q. And how were you typically -- were there 19 benchmarks or other ways that you tracked 20 development? I'm just trying to get a sense of 21 your system as VP of R&D and how you typically 22 monitored the progress of new product development. 23 A. Well, generally we had a -- we would track a 24 project using, you know, a management software and 25 have basically phases and milestones and</p>

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