

*Medtronic, Inc. and Medtronic Vascular, Inc.
Teleflex Innovations S.A.R.L.*

**Patent Owner's
Hearing Demonstratives
on CRTP**

Petitioner Bears the Burden of Persuasion on

In an *inter partes* review, 35 U.S.C. § 316(e) imposes the ultimate burden of persuasion to “prove unpatentability by a preponderance of the evidence” on the petitioner. This burden never shifts to the patent owner. *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2016). However, when the patent owner attempts to antedate the prior art, “[a]n additional and distinct burden, the burden of production” can shift between the petitioner and the patentee. *Id.* at 1379; see *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1375–76 (Fed. Cir. 2016). Specifically, the patent owner “bears the burden of establishing that its claimed invention is entitled to an earlier priority date than an asserted prior art reference.” *Magnum Oil Tools*, 829 F.3d at 1375–76. Once the patent owner establishes it is entitled to an earlier priority date, the burden of production then shifts back to the petitioner “to convince the court that [the patent owner] is not entitled to the benefit” of the earlier priority date. *Dynamic Drinkware*, 800 F.3d at 1379 (citing *Tech. Licensing Corp. v. Videotek, Inc.*, 545 F.3d 1316, 1328 (Fed. Cir. 2008)).

Medtronic, Inc. v. Teleflex Innovations S.A.R.L., IPR2020-01-001, Paper 127 at 16 (June 27, 2021); Sur-Reply at 1.

Rule of Reason

“In the final analysis, each corroboration case must be decided on its own merits with a view to deciding whether the evidence as a whole is persuasive.” *v. Gottstein*, 618 F.2d 771, 776 (CCPA 1980).... “Even the most credible testimony is *a fortiori* required to be corroborated by independent evidence which may consist of documentary evidence as well as the testimony of inventors.” [*Medichem*, 437 F.3d] at 1171–72.

Medtronic v. Teleflex IPR2020-00126, Paper 127 at 15; Sur-R

“In order to corroborate a reduction to practice, it is not necessary to provide an actual over-the-shoulder observer. Rather, sufficient circumstantial evidence of an independent nature can satisfy the corroboration requirement.’ *Cooper v. U.S. Patent & Trademark Office*, 921 F.3d at 1330.... Put another way, the law ‘does not require that evidence be from a source independent of the inventors on every aspect of conception and reduction to practice; such a standard is the antithesis of the rule of reason.’ *du Pont De Nemours & Co. v. Unifrax I LLC*, 921 F.3d 1060, 1077 (Fed. Cir. 2019) (internal quotation omitted).”

Medtronic v. Teleflex IPR2020-00126, Paper 127 at 48; Sur-R

Issues for CRTP

- Petitioner Does Not Challenge Prior Concepts
- For Actual RTP, Petitioner Challenges:
 - Assembly of Prototypes – **Resolved in Prior IPRs**
 - Testing Sufficient to Show Prototypes Would Work for Intended Purpose – **Resolved in Prior IPRs**
 - Performance of the Claimed Method *in vivo*
- For Constructive RTP, Petitioner Challenges
Diligence – **Resolved in Prior IPRs**

Summary of Reduction to Practice Evidence

Testimony

- Root Declaration and Deposition Testimony (Inventor)
- Sutton Declaration (Inventor)
- Erb Declaration and Deposition Testimony (VSI Technician)
- Schmalz Declaration (Former VSI Regulatory Executive)
- Goemer Declaration (Vendor)
- O'Neil Declaration (Vendor)
- Keith Declaration (Expert)

Documents – Near Exhibits, Including

- Purchase orders, invoices, certificates of completion, prototype components
- Assembly drawings for prototype proximal and portions (April and July)
- August engineering drawings
- Sales presentation with of coronary model with Guideliner
- Draft regulatory documents
- Other company memoranda

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