

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MINNESOTA

3 -----
4 VASCULAR SOLUTIONS, LLC,
5 TELEFLEX INNOVATIONS, S.à r.l.,
6 ARROW INTERNATIONAL, INC.,
7 and TELEFLEX, LLC,
8 Plaintiffs,

9 vs. No. 0:19-cv-01760-PJS-TNL
10 MEDTRONIC, INC., and
11 MEDTRONIC VASCULAR, INC.,
12 Defendants.

13 -----
14 VIDEO EXPERT DEPOSITION TESTIMONY OF
15 PETER T. KEITH
16 WEDNESDAY, OCTOBER 16, 2019
17 MINNEAPOLIS, MINNESOTA

18 * * *

Page 2

1 * * *

2

3 Video Expert Deposition Testimony of

4 PETER T. KEITH taken at the law offices of

5 Fredrikson & Byron, P.A., Suite 4000, 200 South

6 Sixth Street, Minneapolis, Minnesota on

7 Wednesday, October 16, 2019, commencing at 9:00

8 a.m. before Rebecca L. Klanderud, a Certified

9 Shorthand Reporter.

10

11

12

13

14 * * *

15

16

17

18

19

20

21

22

23

24

25

Page 4

1 APPEARANCES (continued):

2 FREDRIKSON & BYRON, P.A.

3 BY: KURT J. NIEDERLUECKE, ESQUIRE

4 kniederluecke@fredlaw.com

5 LAURA L. MYERS, ESQUIRE

6 lmyers@fredlaw.com

7 Suite 4000

8 200 South Sixth Street

9 Minneapolis, Minnesota 55402

10 612.492.7000

11 Counsel for Defendants

12

13 ROBINS KAPLAN, LLP

14 BY: CYRUS A. MORTON, ESQUIRE

15 cmorton@robinskaplan.com

16 Suite 2800

17 800 LaSalle Avenue

18 Minneapolis, Minnesota 55402

19 612.349.8722

20 Counsel for Defendants

21 Also Present:

22 Greg Smock, Vascular Solutions, Inc.

23 * * *

24

25

Page 3

1 APPEARANCES:

2 CARLSON, CASPERS, VANDENBURGH,

3 LINDQUIST & SCHUMAN, P.A.

4 BY: JOSEPH W. WINKELS, ESQUIRE

5 jwinkels@carlsoncaspers.com

6 J. DEREK VANDENBURGH, ESQUIRE

7 dvandenburg@carlsoncaspers.com

8 Suite 4200

9 225 South Sixth Street

10 Minneapolis, Minnesota 55402

11 612.436.9600

12 Counsel for Plaintiffs

13

14 DORSEY & WHITNEY, LLP

15 BY: KENNETH E. LEVITT, ESQUIRE

16 levitt.kenneth@dorsey.com

17 Suite 1500

18 50 South Sixth Street

19 Minneapolis, Minnesota 55402

20 612.340.2755

21 Counsel for Plaintiffs

22

23

24

25

Page 5

1 INDEX:

2 EXAMINATION: PAGE

3 By Mr. Niederluecke 9, 291

4 By Mr. Winkels. 286

5 * * *

6 EXHIBITS:

7 MEDTRONIC EXHIBITS: PAGE MARKED

8 Exhibit 1 United States Patent No.

9 US 8,048,032 B2, Root, et al. 8

10 Exhibit 2 United States Reissued Patent No.

11 US RE45,380 E, Root, et al. 8

12 Exhibit 3 United States Reissued Patent No.

13 US RE45,776 E, Root, et al. 8

14 Exhibit 4 United States Reissued Patent No.

15 US RE47,379 E, Root, et al. 8

16 Exhibit 5 United States Reissued Patent No.

17 US RE45,760 E, Root, et al. 8

18 Exhibit 6 Declaration of Peter Keith in

19 Support of Plaintiffs' Motion for

20 Preliminary Injunction 12

21 Exhibit 7 Teleflex GuideLiner V3 Catheter

22 product brochure 14

23 Exhibit 8 Curriculum Vitae of Peter T.

24 Keith, also marked Exhibit Q

25 to his declaration 18

Page 6

1 EXHIBITS (continued):
 2 MEDTRONIC EXHIBITS: PAGE MARKED
 3 Exhibit 9 Article by Takahashi, et al.
 4 entitled: "New Method to Increase
 5 a Backup Support of Six French
 6 Guiding Coronary Catheter." 50
 7 Exhibit 10 Medtronic Telescope Guide
 8 Extension Catheter - Retained by
 9 Counsel, Mr. Niederluecke 91
 10 Exhibit 11 Claim chart for U.S. Patent No.
 11 RE45,380, also marked as
 12 Exhibit M to Mr. Keith's
 13 declaration 96
 14 Exhibit 12 Claim chart for U.S. Patent No.
 15 RE45,776, also marked as
 16 Exhibit N to Mr. Keith's
 17 declaration 143
 18 Exhibit 13 Claim chart for U.S. Patent No.
 19 RE47,379, also marked as
 20 Exhibit O to Mr. Keith's
 21 declaration 174
 22 Exhibit 14 Order in the QXMédical vs.
 23 Vascular Solutions, LLC, et al.
 24 case, dated 10/2/19 187
 25

Page 7

1 EXHIBITS (continued):
 2 MEDTRONIC EXHIBITS: PAGE MARKED
 3 Exhibit 15 Claim chart for U.S. Patent No.
 4 RE45,760, also marked as
 5 Exhibit P to Mr. Keith's
 6 declaration 201
 7 Exhibit 16 Declaration of Peter T. Keith in
 8 Support of Defendants' Opposition
 9 to Plaintiff's Motion for Summary
 10 Judgment and Defendants'
 11 Cross-Motion for Summary Judgment
 12 in the QXMédical vs. Vascular
 13 Solutions, LLC, et al. case 215
 14 Exhibit 17 Demonstrative exhibit titled
 15 "Straw Side Views" 276
 16 * * *
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 8

1 * * *
 2 (Whereupon, Deposition Exhibits 1
 3 through 5 were marked for
 4 identification.)
 5 * * *
 6 THE VIDEO TECHNICIAN: We are going
 7 on the record at 9:02 a.m.
 8 Today's date is October 16th, 2019.
 9 This is media unit one of the video-recorded
 10 deposition of Peter T. Keith taken by counsel
 11 for the defendant in the matter of Vascular
 12 Solutions, LLC, et al. versus Medtronic,
 13 Incorporated, et al., filed in the United States
 14 District Court, District of Minnesota, Court
 15 File Number 0:19-CV-1760 PJS/TNL. This
 16 deposition is being held at Fredrikson & Byron
 17 in Minneapolis, Minnesota.
 18 My name is Adam Wallin from the firm
 19 Veritext, and I'm the videographer. The court
 20 reporter is Rebecca Klanderud from Veritext.
 21 Will counsel please identify
 22 themselves for the record?
 23 MR. NIEDERLUECKE: Kurt Niederluecke
 24 from Fredrikson & Byron on behalf of the
 25 Medtronic defendants.

Page 9

1 MS. MYERS: Laura Myers from
 2 Fredrikson & Byron also on behalf of Medtronic
 3 defendants.
 4 MR. MORTON: This is Cyrus Morton
 5 from Robins Kaplan. I also represent Medtronic.
 6 MR. WINKELS: On behalf of the
 7 plaintiffs, Joe Winkels and Derek Vandenburg
 8 with Carlson Caspers. And we've got Ken Levitt
 9 with the Dorsey Firm and Greg Smock.
 10 THE VIDEO TECHNICIAN: Will the court
 11 reporter please swear in the witness?
 12 * * *
 13 PETER T. KEITH,
 14 a witness in the above-entitled matter,
 15 having been first duly sworn,
 16 testified on his oath as follows:
 17 * * *
 18 EXAMINATION
 19 * * *
 20 BY MR. NIEDERLUECKE:
 21 Q. Good morning, Mr. Keith.
 22 A. Good morning.
 23 Q. Mr. Keith, I understand that you are
 24 here today in your capacity as an expert witness
 25 in this case; is that correct?

Page 10

1 A. Yes.
2 Q. And who are you retained by?
3 A. Uh, by, uh, the plaintiffs.
4 Q. Okay. The plaintiffs are the group I
5 presume?
6 A. Yes.
7 Q. Okay. Mr. Keith, I'm going to hand
8 you what's been marked as Medtronic Exhibits 1
9 through 5.
10 MR. NIEDERLUECKE: And for record,
11 Exhibit 1 is U.S. Patent 8,048,032; Exhibit 2 is
12 U.S. Reissued 45,380; Exhibit 3 is U.S. Reissued
13 45,776; Exhibit 4 is U.S. Reissue 47,379, and
14 Exhibit Number 5 is U.S. Reissue 45,760.
15 BY MR. NIEDERLUECKE:
16 Q. And did I -- did I read those
17 accurately?
18 A. I think so, yes.
19 Q. Okay. And, um, does it appear to you
20 that those are the patents related to this
21 matter?
22 A. Um, yes.
23 Q. And those are the, to your
24 understanding, the five patents that the
25 plaintiffs have asserted that Medtronic is

Page 11

1 infringing?
2 A. Yes.
3 Q. Who owns the -- and I'll -- if you
4 don't mind, I'll refer to those as the
5 patents-in-suit, okay?
6 A. Yes.
7 Q. Who do you understand owns the
8 patents-in-suit?
9 A. I believe they're owned by Vascular
10 Solutions.
11 Q. So you think Vascular Solutions, the
12 company, owns them?
13 A. Well, and I -- I mean Vascular
14 Solutions is part of Teleflex Medical, so --
15 Q. And so what I'm asking is who -- do
16 you understand what entity actually owns the
17 patents?
18 A. I guess I don't know for sure.
19 Q. Okay. Do you know what entity has
20 the exclusive rights in the patent?
21 A. Um, I'm not sure.
22 Q. Okay. Do you know what entity has
23 the exclusive rights to sell products under
24 these patents?
25 A. Well, I do -- there -- there may be

Page 12

1 some information in my report on that. I don't
2 recall it exactly right now --
3 Q. Okay.
4 A. -- but I did bring a copy of my
5 report (witness indicating).
6 Q. And I will mark it, and you're
7 welcome if -- if you feel the need to look at
8 it.
9 A. Yeah, I mean because that might
10 clarify that. I'm not sure --
11 Q. Sure.
12 A. -- if it does exactly but --
13 Q. Okay. Why don't we go ahead. In
14 fact, I've got a copy of your report right here.
15 MR. NIEDERLUECKE: Why don't we mark
16 that as Exhibit 6?
17 * * *
18 (Whereupon, Deposition Exhibit 6 was
19 marked for identification.)
20 * * *
21 MR. WINKELS: And just for the
22 record, so Exhibit 6 does not include the
23 exhibits, right?
24 MR. NIEDERLUECKE: Yes.
25 BY MR. NIEDERLUECKE:

Page 13

1 Q. This is -- this is your report, and
2 I'll mark different exhibits individually, but
3 this is for the record your report without the
4 attached exhibits.
5 A. Okay.
6 Q. If you just take a look and confirm
7 for us that Exhibit 6 is -- is indeed the report
8 that you submitted and signed on October 10th,
9 2019?
10 A. Yes. It appears to be.
11 Q. Okay. And -- and you provided this
12 report in support of the plaintiffs' Motion For
13 Preliminary Injunction; is that correct?
14 A. Yes.
15 Q. And so, um, I think we were asking
16 the question about the exclusive rights to sell
17 under the patent, and I asked you whether you
18 were aware what entity holds the exclusive
19 rights to sell under the patent, um, and I think
20 you suggested you would like to look -- take a
21 look at your report in case that would refresh,
22 um --
23 A. Correct.
24 Q. -- your recollection.
25 A. Okay. I am not seeing anything that

Page 14

1 helps to clarify that --
2 Q. Okay.
3 A. -- in this report.
4 Q. So as you testify today, you don't
5 know who has the exclusive rights to sell under
6 the patents-in-suit, correct?
7 A. Correct.
8 Q. Do you know what entity actually
9 sells the GuideLiner -- your -- let me step
10 back.
11 You're familiar with a product called
12 the GuideLiner?
13 A. Yes.
14 Q. Um, and the GuideLiner has had
15 different versions, V1 through V3.
16 Is that right?
17 A. Yes.
18 Q. Okay. Do you know who actually
19 currently sells the GuideLiner V3 catheter?
20 A. I believe it's Vascular Solutions.
21 MR. NIEDERLUECKE: Can we have this
22 marked?
23 * * *
24 (Whereupon, Deposition Exhibit 7 was
25 marked for identification.)

Page 15

1 * * *
2 MR. NIEDERLUECKE: And -- here, hold
3 on.
4 BY MR. NIEDERLUECKE:
5 Q. And what do you base your belief that
6 Vascular Solutions sells the GuideLiner V3
7 product?
8 On what do you base that?
9 A. Um, well, I -- I understand there's
10 -- Vascular Solutions as a company, I know there
11 was some sort of an acquisition or a corporate,
12 um, (witness indicating) transaction with
13 Teleflex Medical. Um, I don't know all the
14 details of what that arrangement might be but
15 even prior to Teleflex, when it was Vascular
16 Solutions, and I have been involved in both this
17 proceeding with Medtronic, as well as a
18 proceeding with QXMédical, so I have been
19 working with Vascular Solutions for some time,
20 um, that I believe that it was just Vascular
21 Solutions when I first became involved, um, but
22 I don't know exactly what dates that the
23 corporate transaction with Teleflex took place
24 (witness indicating).
25 Q. And is it your understanding that

Page 16

1 Teleflex owns Vascular Solutions?
2 A. I -- that's my guess. Again, I don't
3 know the exact arrangement as far as the
4 corporate relationships go (witness indicating).
5 Q. I'm going to hand you what's been
6 marked as Medtronic Exhibit Number 7.
7 Can you take a look at that and --
8 and tell me if you recognize this document?
9 A. I don't think I've seen this
10 document.
11 Q. Does it appear to you to be a
12 brochure for the GuideLiner V3 catheter?
13 A. It does appear to be that, yes.
14 Q. And on the front page, um, what
15 entity do you see or -- or what name do you see
16 as a -- as a tradename on the document?
17 A. Uh, Teleflex.
18 Q. And on this document, can you take a
19 look at it and see if you see Vascular Solutions
20 identified anywhere in this brochure?
21 A. Um, I do not see it.
22 Q. So at least based on this Exhibit 7,
23 which appears to be a brochure for the
24 GuideLiner V3, it appears that Teleflex and not
25 VSI is selling the GuideLiner V3 catheter,

Page 17

1 correct?
2 MR. WINKELS: Objection, lack of
3 foundation.
4 THE WITNESS: Again, I don't
5 understand the whole corporate relationship
6 between Teleflex and Vascular Solutions. The
7 document says Teleflex, um, so that's as much as
8 I know about that.
9 BY MR. NIEDERLUECKE:
10 Q. Why did you choose to refer to the
11 group of entities in this case as -- as Vascular
12 Solutions?
13 A. Um, again, that's -- when I became
14 involved in this, it was Vascular Solutions.
15 Um, that was the name on the building, um, so
16 that's how I've referred to them and I -- I have
17 continued to refer to them mostly as Vascular
18 Solutions.
19 Q. And when did you first become
20 involved with Vascular Solutions?
21 A. I don't recall exactly. Sometime
22 during the QXMédical litigation.
23 Q. Was it prior to 2019?
24 A. Yes.
25 Q. Was it prior to 2018?

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.