

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

VASCULAR SOLUTIONS LLC, TELEFLEX
INNOVATIONS S.A.R.L., ARROW
INTERNATIONAL, INC., AND TELEFLEX LLC,

PLAINTIFFS,

v.

MEDTRONIC, INC. AND MEDTRONIC
VASCULAR, INC.

DEFENDANTS.

Civil No. 19-1760 (PJS/TNL)

**PRETRIAL SCHEDULING
ORDER
(PATENT)**

Pursuant to Rule 16 of the Federal Rules of Civil Procedure and the Local Rules of this Court, and in order to secure the just, speedy, and less expensive determination of this action, the following schedule shall govern these proceedings. This schedule may be modified only upon formal motion and a showing of good cause as required by D. Minn. LR 16.3.

1. Discovery & Pleading of Additional Claims & Defenses
 - a. Discovery is permitted with respect to claims of willful infringement and defenses of patent invalidity or unenforceability not pleaded by a party, where the evidence needed to support these claims or defenses is in whole or in part in the hands of another party.
 - b. Once a party has given the necessary discovery, the opposing party may seek leave of Court to add claims or defenses for which it alleges, consistent with Fed. R. Civ. P. 11, that it has support, and such support shall be explained in the motion seeking leave.
 - c. Leave shall be liberally given where prima facie support is present, provided that the party seeks leave as soon as reasonably possible following the opposing party providing the necessary discovery.

- ii. As to the doctrine of equivalents, the party defending against infringement shall indicate on its chart its contentions concerning any differences in function, way, and result, and why any differences are substantial.
- c. A party may amend its Claim Chart only by leave of the Court for good cause shown.
- d. **[Plaintiffs' Proposal:** The parties will discuss whether there is a need to limit claims and prior art references and defenses as the case progresses. If the parties decide limiting claims and prior art references and defenses is useful, some limitation should occur after infringement charts and prior art statements but before any additional claim construction, and additional limitations should be made after any additional claim construction. *See, e.g., Regents of the Univ. of Minn. v. AT&T Mobility LLC*, No. 14-cv-4666, 2016 U.S. Dist. LEXIS 181671 (D. Minn. Dec. 13, 2016) (limiting claims to 45 prior to claim construction and 20 after claim construction order or close of fact discovery).] **[Defendants' Proposal:** Plaintiffs shall reduce the number of asserted claims against the defending parties to no more than five claims per patent, and no more than 20 claims total, on or before July 10, 2020. *See, e.g., QXMédical v. Vascular Solutions, Inc.*, Civ. No. 17-cv-01969 (PJS/TNL), Dkt. No. 36 (Plaintiffs in related case with almost identical patents reduced the number of asserted claims to 19 before claim construction); *Arctic Cat v. Polaris Indus., Inc.*, No. 13-cv-3579 (JRT/FLN), Dkt. No. 122 (D. Minn. July 27, 2015) (requiring patentee to limit its claims to 20 before claim construction); *Select Comfort Corp. v. Gentherm, Inc.*, No. 13-cv-2314 (SRN/JJK), 2014 WL 4976586 at *2 (D. Minn. Oct. 3, 2014) (ordering the patentee to reduce its asserted claims prior to claim construction under the five patents to 15 total).]
- e. On or before [Plaintiffs' Proposal: May 8, 2020] [Defendants' Proposal: August 14, 2020], the parties shall simultaneously exchange a list of claim terms, phrases, or clauses that each party contends should be construed by the Court.
- f. On or before [Plaintiffs' Proposal: May 15, 2020] [Defendants' Proposal: September 11, 2020], the parties shall meet and confer for the purpose of finalizing a list of claim terms, phrases or clauses, narrowing or resolving differences, and facilitating the ultimate preparation of a joint claim construction statement.
 - i. During the meet and confer process, the parties shall exchange their preliminary proposed construction of each claim term, phrase or clause which the parties collectively have identified for claim construction purposes and shall make this exchange on or before [Plaintiffs' Proposal: May 15, 2020] [Defendants' Proposal: August 28, 2020].