

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

3

MEDTRONIC, INC., and
4 MEDTRONIC VASCULAR, INC.,

5 Petitioners,

6 vs.

Case No. IPR2020-00126
U.S. Patent No. 8,048,032

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

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)
IPR2020-00135 (Patent RE45,776 E)
IPR2020-00136 (Patent RE45,776 E)
IPR2020-00137 (Patent RE47,379 E)
IPR2020-00138 (Patent RE47,379 E)
15

16 VIDEOCONFERENCE VIDEOTAPED
17 DEPOSITION OF
18 PETER T. KEITH

19 DATE: December 1, 2020

20 TIME: 8:00 a.m.

21 PLACE: Minneapolis, Minnesota

(via videoconference)

22 JOB NO.: MW 4338328

23 REPORTED BY: Dawn Workman Bounds, CSR
24
25

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Page 2	<p>1 A P P E A R A N C E S</p> <p>2 (ALL APPEARANCES VIA VIDEOCONFERENCE)</p> <p>3 ON BEHALF OF PETITIONERS:</p> <p>4 CYRUS A. MORTON, ESQ.</p> <p>5 EMILY TREMBLAY, ESQ.</p> <p>6 ROBINS KAPLAN LLP</p> <p>7 2800 LaSalle Plaza</p> <p>8 800 LaSalle Ave</p> <p>9 Minneapolis, MN 55401</p> <p>10 612.349.8500</p> <p>11 camorton@rkmc.com</p> <p>12 ETremblay@RobinsKaplan.com</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 (APPEARANCES CONTINUED ON NEXT PAGE)</p> <p>25</p>
Page 3	<p>1 ON BEHALF OF PATENT OWNER:</p> <p>2 DEREK VANDENBURGH, ESQ.</p> <p>3 JOSEPH W. WINKELS, ESQ.</p> <p>4 CARLSON CASPERS VANDENBURGH & LINDQUIST, PA.</p> <p>5 Capella Tower, Suite 4200</p> <p>6 225 South Sixth Street</p> <p>7 Minneapolis, MN 55402</p> <p>8 612.436.9623</p> <p>9 dvandenburg@carlsoncaspers.com</p> <p>10 jwinkels@carlsoncaspers.com</p> <p>11 KENNETH E. LEVITT, ESQ.</p> <p>12 DORSEY & WHITNEY, LLP</p> <p>13 50 S. Sixth Street, Suite 1500</p> <p>14 Minneapolis, MN 55402</p> <p>15 612.340.2600</p> <p>16 levitt.kenneth@dorsey.com</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 4	<p>1 I N D E X</p> <p>2 WITNESS: PETER T. KEITH PAGE</p> <p>3 EXAMINATION BY MR. MORTON..... 6</p> <p>4 EXAMINATION BY MR. VANDENBURGH..... 100</p> <p>5 PREVIOUSLY MARKED EXHIBITS REFERRED TO</p> <p>6 No. 1003: Application Transmittal..... 7</p> <p>7 No. 1025: Patent No. U.S. 2005/0015073 A1..... 38</p> <p>8 No. 2023: Declaration of Peter Keith..... 103</p> <p>9 No. 2118: Declaration of Howard Root..... 86</p> <p>10 No. 2123: Declaration of Peter Keith</p> <p>11 Regarding Conception and Reduction</p> <p>12 to Practice Submitted in Connection</p> <p>13 With Patent Owner's Responses</p> <p>14 IPR2020-00126..... 48</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 5	<p>1 P R O C E E D I N G S</p> <p>2 THE VIDEOGRAPHER: Good morning. We are</p> <p>3 going on the record at 8:00 a.m. CST on Tuesday, December</p> <p>4 1, 2020. Audio and video recording will continue to take</p> <p>5 place unless all parties agree to go off the record.</p> <p>6 This is media unit 1 of the video-recorded deposition of</p> <p>7 Peter Keith in the Matter of Medtronic versus Teleflex</p> <p>8 Innovations, filed in Patent Trial and Appeals Board,</p> <p>9 Case Number IPR2020-00127.</p> <p>10 The deposition is being held via</p> <p>11 videoconference. My name is Craig Jones from the firm</p> <p>12 Veritext Midwest, and I'm the videographer. The court</p> <p>13 reporter is Dawn Bounds from the firm Veritext Midwest.</p> <p>14 I'm not related to any party in this action, nor am I</p> <p>15 financially interested in the outcome.</p> <p>16 Counsel and all present in the room and</p> <p>17 everyone attending remotely will now state their</p> <p>18 appearance and affiliation for the record, beginning with</p> <p>19 the noticing attorney.</p> <p>20 MR. MORTON: Hello. This is Cyrus Morton</p> <p>21 of the law firm of Robins Kaplan on behalf of Petitioner</p> <p>22 Medtronic, and with me also is Emily Tremblay.</p> <p>23 MR. VANDENBURGH: And this is Derek</p> <p>24 Vandenburg of the Carlson Caspers firm here on behalf of</p> <p>25 the Patent Owner Teleflex. With me today is Joe Winkels</p>

2 (Pages 2 - 5)

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<p style="text-align: right;">Page 6</p> <p>1 of our firm, and Ken Levitt of the Dorsey firm, and Craig 2 Smock of Teleflex. 3 THE VIDEOGRAPHER: Will the court reporter 4 please swear in the witness. 5 THE REPORTER: Due to the need for this 6 deposition to take place remotely because of the 7 government's order for physical distancing, the parties 8 will stipulate that the court reporter may swear in the 9 witness over the videoconference and that the witness has 10 verified that he is in fact Peter Keith. 11 Agreed, counsel? 12 MR. VANDENBURGH: Stipulated. 13 MR. MORTON: Yes. 14 PETER T. KEITH, 15 duly sworn via videoconference as stipulated by counsel 16 was examined and testified as follows: 17 EXAMINATION 18 BY MR. MORTON: 19 Q. Good morning, Mr. Keith. 20 A. Good morning. 21 Q. I'd like to start today with your declaration 22 in support of the motions to amend. So if you want to 23 have that declaration available. It's for 24 IPR2020-00126. 25 But it's all the same declaration, but I'm</p>	<p style="text-align: right;">Page 8</p> <p>1 that's in the flexible tip portion, right? 2 A. I don't know if I use those exact words. 3 But in my report on page 12, I've got a 4 number of paragraphs under the heading of: The 5 Specification Does Not Require the Side Opening to Be in 6 the Substantially Rigid Portion. 7 Q. Okay. But that was not my question. 8 My question is that, did you identify a 9 side opening in the flexible tip portion in your 10 declaration? 11 MR. VANDENBURGH: Objection, form. 12 A. I identified a number of -- of aspects of the 13 opening that I think would be conveyed to one of skill in 14 the art reading the specification in its entirety. I 15 have examples related to those -- related to various 16 openings, various shapes of openings, various locations 17 of those openings. 18 Some of the embodiments that are described 19 are -- have openings in the flexible tubular portion. 20 There are openings in -- described in what I think could 21 be considered a very flexible portion of the device. The 22 embodiment, for example, with the relief cuts. 23 So I think I provide a number of examples 24 of different openings and different embodiments that I 25 think would convey to one of skill in the art that a side</p>
<p style="text-align: right;">Page 7</p> <p>1 looking at that version. 2 A. Okay. I have a binder in front of me. 3 Okay. I think I have it. 4 So I have Exhibit 2124. 5 Q. Yep. 6 A. Okay. 7 Q. You may want to pull that one out. And then 8 we're also going to be talking about Exhibit 1003, which 9 is the 629 application file history. So you want to have 10 access to that Exhibit 1003 as well. 11 A. Okay. That one's pretty thick, so I think I'll 12 just leave it in the binder for now. 13 Q. Yeah, I'd like the declaration out of the 14 binder and leave the application and file history in the 15 binder. 16 A. Okay. 17 Q. Okay. In that original patent application, 18 Exhibit 1003, every disclosed side opening is in the 19 rigid portion, right? 20 A. No, I don't think so. 21 Q. So you think there are side openings that are 22 disclosed that are not in the rigid portion? 23 A. Generally, I think so, yes. 24 Q. Okay. Nowhere in your declaration, which you 25 have in front of you, do you identify a side opening</p>	<p style="text-align: right;">Page 9</p> <p>1 opening could be in a flexible portion of the device. 2 BY MR. MORTON: 3 Q. So we're going to get to all your opinions in 4 that declaration. But my question was a little 5 different. I asked if you identified a side opening in 6 the flexible tip portion? 7 MR. VANDENBURGH: Objection. 8 A. Again, I don't know if I used those exact 9 words. 10 BY MR. MORTON: 11 Q. Can you identify a side opening in the flexible 12 tip portion? 13 MR. VANDENBURGH: Same objection. 14 A. Again, I think the specification taken as a 15 whole identifies a number of different openings in a 16 number of different places. Some of them are vertical. 17 Some of them are angled openings. Some of them are in 18 the -- in a rigid portion of the tube. Some of them are 19 in a -- a rigid portion of the device rather. Some of 20 them are in a more flexible portion of the device. 21 So I think -- at a high level, I think 22 that's in the specification as it would be conveyed to 23 one of skill in the art. 24 BY MR. MORTON: 25 Q. Well, that's a lot of general statements. But</p>

3 (Pages 6 - 9)

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<p style="text-align: right;">Page 10</p> <p>1 my question -- I'll ask it slightly different. 2 Can you identify a side opening in the 3 reinforced portion? 4 MR. VANDENBURGH: Same objections; and 5 objection, form. 6 A. In the reinforced portion? 7 I don't know that there's a specific 8 drawing and a specific portion text that explicitly calls 9 that out. But again, that's -- I think the invention 10 conveys to one of skill in the art, but that is certainly 11 part of the invention. 12 BY MR. MORTON: 13 Q. Okay. But as you sit here, you can't identify 14 a side opening in the reinforced portion in the 629 15 application; is that right? 16 A. Well, when -- if you're saying a specific 17 figure, I don't know that in one specific figure that I 18 can identify that. 19 Q. Okay. And going back to my first question, 20 every explicitly disclosed side opening in the 629 21 application is in the rigid portion, right? 22 MR. VANDENBURGH: Objection. 23 A. No, I don't think that's true. I think in the 24 embodiment that describes the relief cuts, I think that 25 side opening is very well in a flexible portion of the</p>	<p style="text-align: right;">Page 12</p> <p>1 at Figure 10, which is on page 40 of the 629 application, 2 those relief cuts are in the rigid portion 20, right? 3 A. I'd like to just take a moment, if I could, to 4 review the specification a little bit as well. 5 So on -- well, in this document it would 6 be on page -- bold page 18, line 15. There's some text 7 at least there that goes along with that. And it says 8 that the rigid portion may be perforated by relief cuts. 9 So the way it's described, it's using 10 rigid portion there to kind of talk about that whole -- 11 that whole cut hypotube. But clearly that portion of 12 that rigid portion is flexible or can become quite 13 flexible with those relief cuts, and the portion that's 14 not -- does not have the relief cuts would be a more 15 rigid portion. 16 Q. Sure. And my question was just that in this 17 example that you've given me, your one example, the side 18 opening is still in the rigid portion 20, right? 19 MR. VANDENBURGH: Objection, form. 20 A. You know, it depends on how you would read 21 rigid portion. I think in that sentence, it's calling 22 that whole thing the rigid portion, but I think one of 23 skill in the art could refer to, you know, based on the 24 drawings and what the drawings convey that the portion 25 with the relief cuts is quite flexible, and the portion</p>
<p style="text-align: right;">Page 11</p> <p>1 device. 2 BY MR. MORTON: 3 Q. All right. Relief cuts. 4 Any other example where you think a side 5 opening is not -- there's a side opening that is 6 disclosed that is not in the rigid portion? 7 A. Again, I think there's a number of openings. I 8 don't know if there's explicitly any other examples that 9 I can think of right now of side openings that are in 10 the -- I think you said, in the reinforced portion. 11 Q. So for the relief cuts example, those relief 12 cuts are still in rigid portion 20, right? 13 A. I'd have to look it up. I mean, it depends 14 on -- it might depend on how the claim is read on a 15 particular embodiment, I think. 16 Q. No, I'm not asking you about claim. 17 A. That's something off the claim one which I 18 think -- 19 Q. I'm not asking about claims. I'm asking you 20 about the disclosure in Exhibit 1003. You mentioned -- 21 the relief cuts was the one example you've given me where 22 you said there's a side opening disclosed that's not in 23 the rigid portion. Do you recall telling me that? 24 A. Yes. 25 Q. And what I'm saying is if you actually looked</p>	<p style="text-align: right;">Page 13</p> <p>1 proximal to that would still be the rigid portion. 2 BY MR. MORTON: 3 Q. And so that whole portion is still part of the 4 hypotube; is that right? 5 A. Which whole portion? 6 Q. Rigid portion 20. 7 A. In the context of that sentence, I would say 8 that it is. 9 Q. Okay. And the side opening in that instance is 10 not part of the reinforced portion, right? 11 A. In that example, it is -- I don't think it is, 12 if by reinforced portion we're talking about a tubular 13 portion further distal from that. 14 Q. Correct. 15 Do you have any other example that you say 16 shows a side opening that is not in the rigid portion in 17 the 629 application? 18 A. Again, you're asking about like a specific 19 drawing or a specific part of the text. And I'm looking 20 at the application as a whole and what it would convey to 21 one of skill in the art. So I think as a whole, it -- I 22 think that's part of the invention. But I don't know 23 that there's any other specific examples that I can point 24 to sitting here right now of what you're asking about. 25 Q. Okay. So let's break this down a little more</p>

4 (Pages 10 - 13)

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<p style="text-align: right;">Page 14</p> <p>1 and start with a side opening. 2 What is the definition or meaning of side 3 opening that you're applying for your analysis? 4 A. At a -- at a high level, I would say a side 5 opening is a opening that has some side access to it. So 6 like an angled opening would be an example of a side 7 opening. 8 Q. Okay. So an angled opening or an inclined 9 opening is a side opening? 10 A. Yeah, that's one example. 11 Q. A hemicylindrical opening is a side opening? 12 A. I think it can be. 13 Q. Or a semicylindrical opening, that could be a 14 side opening? 15 A. It could be part of -- at least part of a side 16 opening. 17 Q. Okay. And what the spec talks about is a 18 cutout portion, that's a side opening? 19 A. In at least one embodiment, yes. 20 Q. And how about an opening that extends along the 21 longitudinal axis? Is that a fair way of describing a 22 side opening? 23 A. I mean, outs -- outside of any specific claim, 24 I think that's probably a fair way. 25 Q. Is there anything else you can think of that</p>	<p style="text-align: right;">Page 16</p> <p>1 that as a side opening. What I'm saying is that I don't 2 know that it's explicitly stated that it's not a side 3 opening or that it is a vertical opening. 4 BY MR. MORTON: 5 Q. As you sit here today, is it your testimony 6 that there is a side opening in Figure 1? 7 A. I -- I don't think -- my testimony is that I 8 don't think it's precluded that that could be a side 9 opening, but I don't think it's described or in the text 10 as a side opening, and I -- it's not clear to me that the 11 figure, just because of the perspective aspect of that 12 figure, that that's absolutely a vertical side opening. 13 Q. You can't point to anything in the spec that 14 says there is a side opening or you should create a side 15 opening in reinforced portion 18 of Figure 1, right? 16 MR. VANDENBURGH: Objection. 17 A. In that particular embodiment, that's correct. 18 BY MR. MORTON: 19 Q. Let's look at -- jump ahead to Figures 20, 21, 20 and 22, on page 44 of the exhibit. 21 A. Okay. 22 Q. These figures do not disclose a side opening, 23 correct? 24 A. I would agree with that. 25 Q. Okay. And there's no teaching in the patent to</p>
<p style="text-align: right;">Page 15</p> <p>1 you would say constitutes a side opening or any other way 2 of describing it? 3 A. Not sitting here right now, no. 4 Q. Okay. Well, let's talk about what's not a side 5 opening. 6 So an end opening is not a side opening, 7 right? 8 A. If that opening is vertical in general, I would 9 say it's probably not a side opening. 10 Q. Okay. So like a perpendicular opening is not a 11 side opening, right? 12 A. That's correct. 13 Q. Let's look at Exhibit 1003 and just step 14 through the figures, okay? 15 So if we look at Figures 1 and 2, which is 16 on pages 32 and 33, those do not disclose a side opening, 17 right. 18 A. I'm not sure if it's entirely clear in that 19 exhi -- in that figure whether it's necessarily 20 perpendicular or not. 21 Q. So is it your testimony that Figure 1 discloses 22 a side opening or doesn't disclose a side opening; which 23 is it? 24 MR. VANDENBURGH: Objection, form. 25 A. I don't believe I've specifically referred to</p>	<p style="text-align: right;">Page 17</p> <p>1 create a side opening in braided portion 112; is that 2 right? 3 MR. VANDENBURGH: Objection. 4 A. Well, as I have said before, I think the patent 5 is -- is more than just the specific embodiments. In 6 that specific embodiment, I don't know that there's any 7 specific disclosure to that particular embodiment having 8 a, you know, say an angle or a side opening aspect to it. 9 But, again, I think the specification as a whole would 10 convey to one skilled in the art that that could be made 11 as a side opening. 12 BY MR. MORTON: 13 Q. Okay. So let's go then to Figure 4, page 35. 14 Are you there? 15 A. Yep. 16 Q. Now, Figure 4 discloses a side opening, right? 17 A. Yes. 18 Q. And the side opening that's disclosed is in 19 rigid portion 20, correct? 20 A. In this figure, I would say that it is, yes. 21 Q. All right. In Figure 10, you pointed to 22 before, just to be clear, Figure 10 shows side opening; 23 is that right? 24 A. Yes, it does. 25 Q. And the side opening is in rigid portion 20,</p>

5 (Pages 14 - 17)

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