

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)

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 VIDEOCONFERENCE VIDEOTAPED

21 DEPOSITION OF

22 DR. JOHN J. GRAHAM, MB ChB, MRCP (UK)

23 DATE: November 18, 2020

24 TIME: 6:42 a.m. (EST)

25 PLACE: Toronto, Ontario, Canada

(via videoconference)

JOB NO.: MW 4338252

REPORTED BY: Dawn Workman Bounds, CSR

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1 P R O C E E D I N G S
2 THE VIDEOGRAPHER: This is the beginning
3 of the videotaped deposition of Dr. John Graham in the
4 matter of Medtronic versus Teleflex Innovations. Today's
5 date is November 18, 2020, and the time is 6:42 a.m.
6 Counsel, please introduce yourselves,
7 after which our court reporter will make a statement and
8 swear in the witness.
9 MR. PINAHS: Good morning. This is Chris
10 Pinahs from the Robins Kaplan law firm on behalf of the
11 Petitioner, Medtronic. Also with me this morning is my
12 colleague Cy Morton from the Robins Kaplan law firm as
13 well.
14 MR. WINKELS: Here on behalf of the patent
15 owner, Joe Winkels with Carlson Caspers; and with me is
16 Peter Kohlhepp; and Derek Vandenburg will be joining a
17 little bit later.
18 THE REPORTER: Due to the need for this
19 deposition to take place remotely because of the
20 government's order for physical distancing, the parties
21 will stipulate that the court reporter may swear in the
22 witness over the videoconference and that the witness has
23 verified that he is in fact Dr. John Graham.
24 Agreed, counsel?
25 MR. PINAHS: So stipulated for petitioner.

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1 MR. WINKELS: The patent owner agrees as
2 well.
3 JOHN GRAHAM,
4 duly sworn via videoconference as stipulated by counsel
5 was examined and testified as follows:
6 EXAMINATION
7 BY MR. PINAHS:
8 Q. Good morning, Dr. Graham.
9 A. Good morning.
10 Q. Can you just state your name and work address
11 for the record, please.
12 A. My name is John Graham. I work at St.
13 Michael's Hospital in the division of cardiology, 30 Bond
14 Street, Toronto, Ontario, Canada.
15 Q. Dr. Graham, have you been deposed before?
16 A. This is my first time.
17 Q. First time. All right. Great. Let's go over
18 a couple ground rules then since it's your first time.
19 It's particularly important, especially
20 given the circumstances of a deposition over Zoom, if you
21 give verbal answers today. Can you do that?
22 A. Yes.
23 Q. And I'm going to try to ask as straightforward
24 questions as possible; but if for any reason you don't
25 understand, I just ask that you ask for clarification of

<p style="text-align: right;">Page 6</p> <p>1 my question.</p> <p>2 A. Understood.</p> <p>3 Q. From time to time your counsel may object to a</p> <p>4 question I ask. Unless he instructs you not to answer</p> <p>5 for reasons of privilege, you can answer the question</p> <p>6 after the objection.</p> <p>7 Do you understand?</p> <p>8 A. I understand.</p> <p>9 Q. If at any point you want to take a break, more</p> <p>10 than happy to do so.</p> <p>11 Only thing I ask is that you answer any</p> <p>12 pending questions before we go off the record. Okay?</p> <p>13 A. I understand.</p> <p>14 Q. Is there any reason you can't give truthful and</p> <p>15 honest answers today, Doctor?</p> <p>16 A. No. My intention is to speak the truth.</p> <p>17 Q. All right. And you've been retained by the</p> <p>18 patent owner Teleflex as an expert in these IPRs,</p> <p>19 correct?</p> <p>20 A. That is correct.</p> <p>21 Q. And when were you retained by the patent owner?</p> <p>22 A. Earlier on this year. I -- I have the</p> <p>23 information. It -- the springtime is -- is roughly when;</p> <p>24 March or April, I believe. I can confirm, but I would</p> <p>25 have to...</p>	<p style="text-align: right;">Page 8</p> <p>1 A. Other than counsel, so Carlson Caspers.</p> <p>2 Q. In preparing your declaration, did you review</p> <p>3 any materials other than those cited in the declaration?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. What were those materials?</p> <p>6 A. There were various things.</p> <p>7 So when I was writing my declaration and</p> <p>8 subsequent to it, we had submitted some references, some</p> <p>9 academic papers; and in the context of that, there was a</p> <p>10 lot of manuscript and journal searching just to --</p> <p>11 because this is a -- almost a -- not quite historic, but</p> <p>12 there's a lot things -- a lot of the alleged prior art</p> <p>13 relates back to the '90s and early 2000s.</p> <p>14 So I had gone back to do a literature</p> <p>15 review to refresh my memory and go back to things;</p> <p>16 because in the early '90s, I wasn't practicing. So I had</p> <p>17 to go back then to just refresh my memory and see what</p> <p>18 other practice was employed at that time.</p> <p>19 Q. So it sounds like you did a literature search.</p> <p>20 Anything else that you reviewed in</p> <p>21 preparation of preparing your declaration other than the</p> <p>22 literature search and what's cited in your declaration?</p> <p>23 A. And there were also -- so the -- Medtronic and</p> <p>24 Teleflex have on their websites, they have a lot of</p> <p>25 product brochures, so I -- various things, for example,</p>
<p style="text-align: right;">Page 7</p> <p>1 Q. March or April of 2020, Doctor?</p> <p>2 A. 2020.</p> <p>3 Q. All right. Thank you.</p> <p>4 All right. So it sounds as though you've</p> <p>5 already opened up the box of documents we sent you,</p> <p>6 correct?</p> <p>7 A. I did, yes.</p> <p>8 Q. And you opened those yesterday?</p> <p>9 A. Yesterday afternoon when they arrived, yes.</p> <p>10 Q. Okay. So what I'd like you to do is pull out</p> <p>11 Exhibit 2145, which is your declaration in this case.</p> <p>12 A. I have it.</p> <p>13 Q. Excellent. Now, Doctor, did you write your</p> <p>14 declaration?</p> <p>15 A. It is my words in it. I put my thoughts down,</p> <p>16 and myself -- and Carlson Caspers helped me write it, but</p> <p>17 it's my words.</p> <p>18 Q. And other than the attorneys, which it sounds</p> <p>19 like wrote the declaration, did you discuss the content</p> <p>20 of your declaration with anyone else?</p> <p>21 A. No, not -- not with counsel.</p> <p>22 Q. Sorry, I didn't understand that, Doctor.</p> <p>23 Are you saying you didn't discuss the</p> <p>24 content of your declaration with anyone other than</p> <p>25 counsel?</p>	<p style="text-align: right;">Page 9</p> <p>1 guide catheter internal dimensions.</p> <p>2 There -- I often worked in millimeters in</p> <p>3 the metric system, but it's often put in inches; so I</p> <p>4 often had to go on and just refresh my memory between the</p> <p>5 two of them. So I would say that academic literature</p> <p>6 review and on the -- the companies' websites to look at</p> <p>7 their product, I/F, the instruction for use manuals.</p> <p>8 Q. All right. So a literature search, product</p> <p>9 literature.</p> <p>10 Anything else?</p> <p>11 A. There may be others, but that's the main ones</p> <p>12 that I can recall just now.</p> <p>13 Q. Now, your declaration, Doctor, doesn't contain</p> <p>14 any experiments or tests that you performed, correct?</p> <p>15 A. Correct.</p> <p>16 Q. Did you perform any experiments or tests in</p> <p>17 preparation of your declaration?</p> <p>18 A. Could you be more specific?</p> <p>19 Q. Yeah, so it sounds like, if I understand your</p> <p>20 testimony correctly, Doctor, that you worked with the</p> <p>21 attorneys to draft your declaration; that you also</p> <p>22 performed a literature search; and looked at product</p> <p>23 literature on-line.</p> <p>24 Correct so far?</p> <p>25 A. That and my experience with using guide</p>

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<p style="text-align: right;">Page 10</p> <p>1 extension catheters over the past 16, 17, 18 years. 2 Q. Okay. I understand you're a practicing 3 physician. 4 So setting that experience aside, I just 5 want to know whether you performed any tests as you were 6 preparing your declaration? 7 A. Not for the preparation of this, but I have 8 performed experiments with guide catheter extensions, but 9 I did not -- 10 Q. And those -- 11 A. I did not use that for the purposes of my 12 declaration. 13 Q. And the experiments you mentioned with guide 14 catheters, was that performed in your capacity as a 15 practicing physician or in the capacity of this 16 litigation? 17 A. Practicing physician. It was nothing to do 18 with this litigation. It preceded it by a few years. 19 Q. Doctor, how long did you spend preparing for 20 today's deposition? 21 A. Today's deposi -- do you mean the hours I've 22 spent in total working on this? 23 Q. We'll get to that -- we'll get to that question 24 in just a second, Doctor. 25 I just want to know, let's say, over the</p>	<p style="text-align: right;">Page 12</p> <p>1 spent in this case or retained for Teleflex on this 2 matter? 3 A. So I think -- and I know this -- I spent 68 4 hours up until early October, and then in the past two to 5 three weeks close to another 30 hours. 6 Q. All right. Doctor, I'd like you to flip to 7 your CV in your declaration. It's on page 144. 8 And when I say page 144, I mean the pages 9 in the lower left, the bolded numbers. We'll go off 10 those today. 11 A. I have it. 12 Q. Great. 13 So my first question, Doctor - given that 14 I am not familiar with how medical school works in the 15 U.K. - so in 1995 you got an MB ChB. 16 Can you explain what that is? 17 A. It's Latin. Medical bachelor, Chirurgiae 18 bachelor. So it basically means a bachelor of medicine 19 and a bachelor of surgery. The equivalent would be M.D. 20 in North America. 21 Q. All right. So I'm assuming then that you 22 didn't do any PCI procedures during medical school, 23 correct? 24 A. Correct. 25 Q. And just so that we're on the same page, what</p>
<p style="text-align: right;">Page 11</p> <p>1 last two weeks, how much time did you spend preparing for 2 your deposition? 3 A. In the last two weeks, I would imagine -- I 4 can -- I'd have to look at my laptop, but it's probably 5 close to 20, maybe even 30 hours. 6 Q. And was anyone else involved with you in those 7 preparations? 8 A. So a lot of the reading and preparation was 9 done at home on my own, and then I've had a few telephone 10 calls with counsel. 11 Q. Okay. And anyone other than counsel? 12 A. The chief counsel for Teleflex was on one call, 13 and I believe the chief medical officer. 14 Q. All right. In preparing your deposition, did 15 you review any materials other than those cited in this 16 declaration. 17 (Mr. Buller entered the videoconference.) 18 A. Again, so I would have looked at product 19 brochures just to refresh my memory, because I've read so 20 much stuff; but essentially, mainly around the 21 declaration. 22 Q. All right. Doctor, you mentioned that you 23 spent roughly 20 to 30 hours preparing for your 24 deposition over the last two to three weeks. 25 How many hours would you say, roughly, you</p>	<p style="text-align: right;">Page 13</p> <p>1 is a PCI procedure? 2 A. So PCI stands for percutaneous coronary 3 intervention. Previously it was called PTCA, which is 4 percutaneous transcatheter or transluminal coronary 5 angioplasty. 6 And it involves -- there are many 7 iterations that are done. Historically, a PCI was a 8 plain old balloon angioplasty, POBA; and it was first 9 described in 1977. The main issue with that was the 10 higher rate of renarrowing, or restenosis; so the 11 blockage would come back fairly quickly. 12 And in 1988, the first man or first human 13 stent implantation was described. And a stent is a 14 metal -- oh, it's like a little spring or scaffolding 15 that is on top of a balloon and is put in the artery; and 16 when the balloon is withdrawn, the stent remains there. 17 So currently a PCI procedure would usually 18 involve balloon dilatation of an artery and subsequent 19 stent implantation. There are various derivations of 20 that where with more diffuse disease, a special balloon 21 is used, a drug-coated balloon, rather than putting a 22 stent in if the artery is not suitable for a stent. And 23 sometimes other procedures, such as atherectomy a 24 performed and occasionally no stent implanted. 25 Q. So I have sometimes heard of PCI being formerly</p>

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<p style="text-align: right;">Page 14</p> <p>1 known as angioplasty with a stent. 2 Do you agree with that characterization? 3 A. It is one characterization that is used, but 4 the field has evolved. And in the field of complex PCI, 5 often we have to use PCI with no stent, so a drug-coated 6 balloon angioplasty. But angioplasty with a stent is -- 7 could be used. 8 Q. All right. So it looks like your first stop 9 after medical school was a JHO in medicine starting in 10 August of 1995. Correct? 11 A. Correct. 12 Q. And what does JHO stand for? 13 A. It stands for junior house officer. It's 14 the -- it's the equivalent of an internship. It's where 15 you get abused and have to work 120 hours a week for very 16 little pay. It's the equivalent of an internship. And 17 it's been -- thankfully it's been sort of made redundant. 18 There's not a formal training. 19 Q. So that's similar to what would be considered a 20 residency in America? 21 A. So the SHO is more akin to residency. It was 22 more -- we called it "internship," where you really -- 23 you did everything for a year; six months of general 24 medicine and six months of general surgery. 25 Q. All right. So I'm assuming, then, that you</p>	<p style="text-align: right;">Page 16</p> <p>1 Brompton Hospital in London, I did scrub in for a few, 2 purely as an assistant. And when I was working at 3 cardiac intensive care at the Brompton, I did -- I did 4 not do them then. 5 Q. All right. So just to make sure I understand, 6 Doctor. We've discussed up until August of 1999. 7 And at this point you've observed a few 8 PCI procedures, but have not yet performed your own PCI 9 procedure, correct? 10 A. I have not performed solo, but I have scrubbed 11 in and assisted. 12 Q. Maybe I can short-circuit this. 13 When did you perform your first PCI 14 procedure where you were in charge of it? 15 A. That would be when I was -- October of 2000 -- 16 no, actually, I beg your pardon. 17 It would have been when I was working at 18 King George Hospital, Ilford. I used to go to the London 19 Chest Hospital one day a week, and I performed PCI there. 20 I was working -- I was a -- I did the 21 procedure, but I was under the direct supervision of a 22 staff cardiologist. 23 Q. Do you remember, ballpark, in that yearlong 24 residency, when you would have performed that first 25 procedure?</p>
<p style="text-align: right;">Page 15</p> <p>1 didn't perform any PCI procedures in either of your JHO 2 positions? 3 A. I did not perform PCI, but I looked after PCI 4 patients, correct. 5 Q. And did you -- you looked after PCI patients. 6 Did you observe or watch PCI procedures in 7 either of your JHO positions? 8 A. I was expressing an interest in cardiology, and 9 I did observe a few from afar, from the control room 10 behind the screen. 11 Q. All right. So I want to then move to the 1996 12 to 1998 time period -- or 1999 period. 13 What does SHO stand for? 14 A. Senior house officer. 15 And that is more akin to the residency 16 program in North America. 17 Q. And during either or any of your -- because you 18 have three of them -- during any of your SHO stops, did 19 you perform a PCI procedure? 20 A. So I scrubbed in and did -- so in -- let me 21 just go through this. 22 In 19 -- August '96 to August '98, when I 23 was in Glasgow, in Scotland, I witnessed a few, but did 24 not participate in them. Between August '98 and February 25 '99, when I was working as a resident, or an SHO, at</p>	<p style="text-align: right;">Page 17</p> <p>1 A. So I started in October. It 2 would probably have -- it would have been -- not in the 3 first couple of months. It would have been in the early 4 months of 2002. 5 Q. And during your time at King George Hospital, 6 roughly, how many PCI procedures would you have 7 performed? 8 A. That -- between the early months of 2002 and 9 September of that year, probably 20, maybe 30. 10 This is dim memory, so I -- that may be an 11 underestimate because it was a busy hospital. 12 Q. And then at your next stop, which is St. 13 Bartholomew, roughly, how many PCI procedures do you 14 think you performed? 15 A. A lot. 300. 16 Q. All right. So when would you say you performed 17 your first complex PCI procedure? 18 A. Probably in St. Bartholomew's Hospital. 19 Q. All right. So that would have been sometime 20 between October of 2002 and March of 2005? 21 A. Yes. So there were two hospitals in the 22 rotation, London Chest and St. Bartholomew's. So 23 unfortunately both of them -- actually, St. Bartholomew's 24 is still in existence, but the Chest was subsumed into 25 St. Bartholomew's; but we would spend either six months</p>

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