

Filed: December 10, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MEDTRONIC COREVALVE LLC,

PETITIONER,

V.

COLIBRI HEART VALVE LLC,

PATENT OWNER.

Case No. IPR2020-01454

U.S. Patent No. 9,125,739

**DECLARATION OF MIEKE K. MALMBERG IN SUPPORT OF PATENT
OWNER'S PRELIMINARY RESPONSE
UNDER 35 U.S.C. § 313 AND 37 C.F.R. § 42.107**

Pursuant to 28 U.S.C. § 1746, I, Mieke K. Malmberg, hereby declare as follows:

1. I am over the age of eighteen and otherwise competent to make this declaration. I have personal knowledge of the facts contained in this declaration, and they are true and correct.

2. I am a Partner with the law firm of Skiermont Derby LLP, which represents the Patent Owner, Colibri Heart Valve, LLC (“Colibri”) in this proceeding. I am local counsel for Colibri in the related district court litigation, Case No. 8:20-cv-00847-DOC-JDE, which was filed on May 4, 2020, in the Central District of California Southern Division (“CDCA Litigation”). (Ex. 2001, 1.)

3. Petitioner Medtronic CoreValve LLC is the Defendant in the CDCA Litigation.

4. On September 4, 2020, Petitioner moved for a stay of the CDCA Litigation pending *inter partes* review. (Ex. 2008.)

5. Also on September 4, 2020, the court entered a scheduling order setting a jury trial for September 14, 2020. (Exs. 2003, 2010.)

6. During an in-person status conference conducted with the District Court on November 17, 2020, Judge Carter denied Petitioner’s request for a stay and indicated that the September 14, 2020 jury trial “would not move under any

circumstances.” (Ex. 2004, 2.) Judge Carter also requested the parties submit additional dates for the schedule, including *Markman* briefing. (*Id.*)

7. On November 24, 2020, Judge Carter entered additional dates into the case schedule, preserving the September 14, 2020 trial date. (Ex. 2005.)

8. On November 6, 2020, Petitioner served invalidity contentions on Colibri in the CDCA Litigation.

9. In those invalidity contentions, Petitioner argues that the ’739 patent is invalid based on the following references/combinations:

- Patent No. 5,840,081 (“Andersen”), in view of United States Patent No. 6,077,295 (“Limon”), U.S. Patent No. 7,025,780 (“Gabbay”), WO/0015147 (“Phelps”) and/or U.S. Patent No. 5,961,549 (“Nguyen”);
- United States Patent No. 5,855,601 (“Bessler”) in view of U.S. Patent Publication No. 2001/0044633 (“Klint”) and U.S. Patent No. 5,332,402 (“Teitelbaum”);
- Bessler and Teitelbaum;
- Bessler in view of U.S. Patent No. 5,957,949 (“Leonhardt”), Klint, U.S. Patent No. 4,218,782 (“Rygg”) and/or U.S. Pat. No. 5,713,950 (“Cox”);
- Bessler in view of Leonhardt, Rygg and/or Cox;

- United States Patent No. 6,425,916 (“Garrison”) in view of Leonhardt, Rygg, Cox and/or Nguyen;
- Garrison and Nguyen;
- Leonhardt, Rygg and/or Cox”;
- Limon, in view of Leonhardt, Rygg and/or Cox; and
- United States Patent Publication No. 2005/0113910 (“Paniagua”).

Under penalty of perjury, I declare the above statements as true and accurate to the best of my recollection. I further state that these statements are made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the U.S. Code.

Executed on this 10th day of December, 2020.

/Mieke K. Malmberg/

Mieke K. Malmberg