UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NEW WORLD MEDICAL, INC.,

Petitioner,

-vs- Case IPR2020-01711
U.S. Patent No. 9,358,155

MICROSURGICAL TECHNOLOGY, INC.,

Patent Owner.

NEW WORLD MEDICAL, INC.,

Petitioner,

-vs- Case IPR2021-00017
U.S. Patent No. 9,820,885

MICROSURGICAL TECHNOLOGY, INC.,

Patent Owner.

NEW WORLD MEDICAL, INC.,

Petitioner,

-vs- Case IPR2021-00066
U.S. Patent No. 9,999,544

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA,

Patent Owner.

VIDEOTAPED DEPOSITION OF PETER NETLAND, M.D., Ph.D.

9:14 a.m. to 4:24 p.m.
May 27, 2021
Charlottesville, Virginia

Job No. 45352/4590692

REPORTED BY: Rhonda D. Tuck, RPR, CRR

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NEW WORLD MEDICAL, INC.,

Petitioner,

-vs- Case IPR2021-00065
U.S. Patent No. 10,123,905

MICROSURGICAL TECHNOLOGY, INC.,

Patent Owner.

NEW WORLD MEDICAL, INC.,

Petitioner,

-vs- Case IPR2020-01573
U.S. Patent No. 9,107,729

MICROSURGICAL TECHNOLOGY, INC.,

Patent Owner.

VIDEOTAPED DEPOSITION OF PETER NETLAND, M.D., Ph.D.

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Videotaped deposition of PETER NETLAND, M.D., Ph.D., taken and transcribed on behalf of the Patent Owners, by and before Rhonda D. Tuck, RPR, CRR, Notary Public in and for the Commonwealth of Virginia at large, pursuant to 37 CFR § 42.53 and the Board's authorization, and by Notice to Take Depositions, commencing at 9:14 a.m., May 27, 2021, at 1201 West Main Street, Charlottesville, Virginia.

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Gordon Croll - Videographer

INDEX

EXHIBITS

* * * * *

(9:14 a.m., May 27, 2021)

THE VIDEOGRAPHER: All right. This is the videotaped deposition of Dr. Peter Netland, being taken on behalf of New World Medical. My name is Gordon Croll. I'm here representing Veritext Court Reporting. The court reporter today is Rhonda Tuck, also here representing Veritext.

Would counsel please identify themselves now for the record.

MR. SUNG: Lawrence Sung, of Wiley Rein, representing Patent Owners MicroSurgical Technology and the Regents of the University of California.

MS. SUMMERS: Teresa Summers, also with Wiley Rein and representing the patent owners, New World Medical -- excuse me, MicroSurgical Technologies and the Regents of the University of California.

MR. DEIGHAN: Kyle Deighan, from Calfee, Halter & Griswold, representing the petitioner, New World Medical.

MR. KLANN: David Klann, General Counsel for New World Medical, petitioner.

THE VIDEOGRAPHER: Thank you. Today's date is May 27th. The year is 2021. The time is approximately 9:14 a.m.

Would the reporter please swear in the witness.

(Oath administered by the court reporter.)

PETER NETLAND, M.D., Ph.D.,
having been duly sworn, testified as follows:

EXAMINATION

BY MR. SUNG:

Q. Dr. Netland, please state your full name and address for the record.

A. Peter Netland, Charlottesville, Virginia.

Q. And have you been deposed previously?

A. Yes, in one -- as an expert, just once.

Q. And about how long ago was that?

A. About 15 years ago.

Q. Okay. So just to refresh your

recollection, please allow me to address a few housekeeping matters before we get started. This deposition is designed to allow MicroSurgical Technology, or MST, and the Regents of the University of California, which I'll refer to as UC -- they are the respective patent owners in these Inter Partes Reviews, which I'll refer to today as the IPRs, and it will allow us to engage in a cross-examination of you as the witness based on the declaration you provided in support of the petitions that challenge the validity of certain patents and patent claims by MST and UC.

For each question, your answer must be audible to allow the court reporter to transcribe your response. Allow me to complete my question, and I will do the same with your answer so that we do not talk over one another. We may disagree about some things, but we want to establish an accurate written record of today's discussion.

If you are unable to hear or answer my question, please let me know so that I may repeat or clarify. If you provide an answer, we will presume

that you understood the question.

We'll plan to proceed to about 60 to 90 minutes between breaks, but if at any time you wish to pause, feel free to inform us. We only ask that you first complete your response to any outstanding question before we break.

Now, because your deposition is being conducted in the IPR context, you're cautioned not to discuss your testimony with your counsel during any breaks, including between the time we end for today and then we start tomorrow and Friday. If your counsel objects to my question, you are still under an obligation to answer to the best of your ability, unless your counsel specifically instructs you not to answer.

Do you have any questions before we begin?

A. No.

Q. Are you aware of anything that would keep you from giving full, complete, and truthful answers to my questions here today?

A. No.

Q. Are you taking any medications or have any

other medical issues or concerns that might impact that?

A. No.

Q. So during our next two days together -- and I don't want to make it sound too bad, but we'll provide you with some documents to facilitate our discussion. So I'm going to start handing over some and -- to sort of try to be as efficient as possible rather than doing it piecemeal, we'll just slide a pile over to him for that purpose.

So let me go ahead and start here. Let me go ahead. I'm going to be handing you a document that's previously marked as Exhibit 1003 in IPR2021-00066.

Dr. Netland, I represent to you that this is a copy of the declaration electronically signed by you on October 18th, 2020. Are you familiar with this document?

A. Yes, I am.

Q. And again, apologies, but we're going to be going through a whole bunch of these. So you can set that to the side. Here's the next one.

Dr. Netland, you've been handed a document previously marked as Exhibit 1003 and IPR2021-00065, and I represent to you that this is a copy of the declaration electronically signed by you on October 16th, 2020.

Are you familiar with this document?

A. Yes.

MR. DEIGHAN: Almost looks like it's upside down.

BY MR. SUNG:

Q. Dr. Netland, I've handed you a document previously marked as Exhibit 1003 and IPR2021-00017, and I represent to you that this is a copy of the declaration electronically signed by you on October 10th, 2020.

Are you familiar with this document?

MR. DEIGHAN: I think you gave me the '155.

MR. SUNG: You can hold that one.

MR. DEIGHAN: I'll keep that. So this is the one?

MR. SUNG: Yeah.

THE WITNESS: Question. I can annotate a

number here, as well?

MR. SUNG: The numbers are right here.

THE WITNESS: Yes.

MR. DEIGHAN: Okay.

BY MR. SUNG:

Q. I'm sorry. Dr. Netland. There's an outstanding question whether you're familiar with that last document.

A. Yes, I am.

Q. Okay. Yes. You'll see that a lot of this is very methodical.

I'm handing you another document, and this document was previously marked as Exhibit 1003 in IPR2021-01711, and I represent to you that this is a copy of the declaration electronically signed by you on October 1, 2020. Are you familiar with this document?

A. Yes, I am.

MR. SUNG: I apologize. Can we go off the record for a minute? We need to get the other declaration. It's right next door.

MR. DEIGHAN: Sure.

THE VIDEOGRAPHER: All right. The time is approximately 9:22 p.m. (sic), and we are off the record.

(Break in proceedings.)

THE VIDEOGRAPHER: All right. The time is approximately 9:23, and we are back on the record.

BY MR. SUNG:

Q. I apologize for that, Dr. Netland. I'm handing you another document. You've been handed a document previously marked as Exhibit 1003 and IPR2020-01573, and I represent to you that this is a copy of the declaration electronically signed by you on September 4, 2020. Are you familiar with this document?

A. Yes, I am.

Q. Now, for purposes of our discussion today, any question I ask without reference to a particular IPR or version of your declaration should be taken as applicable across all five IPRs, and similarly, any answer you provide without reference to a particular IPR or version of your declaration will be taken as

applicable across all five IPRs. Is that acceptable to you?

A. Yes.

Q. Do you recall where you were at the time you electronically signed these declarations?

A. Yes. In Charlottesville.

Q. Now, in the last document that I provided to you, which is the declaration for the IPR ending in 1573, if you can turn to Paragraph 281, which is near the middle. It should be on Bates-stamped Page Number 177 of the exhibit.

At the lower right-hand corner of all those pages, there should be a number, and it's internally numbered 176.

A. I'm sorry. Did you say Paragraph 281 or -2?

Q. 281, please. Do you have that in front of you?

A. Yes.

Q. Do you understand this paragraph to be your oath or affirmation that all statements in your declaration are true?

A. Yes.

Q. And that you are subject to the penalty for perjury for false statements made in your declaration?

A. Yes.

Q. And so would your answers to these questions about the oath or affirmation in the declaration you submitted for the '729 Patent, which is the one you have in front of you, does that apply equally across the other four declarations you 've signed?

A. Yes.

Q. And similarly, do you understand that you are under oath sitting here today?

A. Yes.

Q. And that you are subject to the penalty for perjury for false statements made by you during this deposition?

A. Yes.

Q. And each of your five declarations, you've stated that, "A complete list of cases in which I've testified at trial, hearing or by deposition within the preceding four years is provided in my curriculum

vitae."

Do you recall making that statement?

A. Would you repeat that question again?

(The court reporter read the record as requested.)

BY MR. SUNG:

Q. And to make it a little bit more efficient, let me refer you to Paragraph 15 in that document.

A. Yes. Okay.

Q. And I'll represent to you that the identical statement exists as Paragraph 15 in each one of your declarations. Do you see that paragraph in front of you?

A. I'm sorry. I'm a bit lost now. Paragraph 15 in --

Q. In each one of your declarations is identical, and I'm just representing that that's the same paragraph.

A. Yes. Yes. Yes.

Q. And you've mentioned that you have not been deposed in the past four years; is that correct?

A. To my recollection, it's correct.

Q. And you have not been deposed in the context of an IPR; is that correct?
A. I believe that's correct.
Q. And do you recall where in your CV this list described in Paragraph 15 is?
A. No. I don't have any recollection. I may not have included the deposition I mentioned earlier in my CV because it's an academic CV.
Q. Okay.
A. That wouldn't be considered an academic accomplishment, necessarily.
Q. Did you personally write Paragraph 15, then?
A. Well, I personally wrote all of this, but I may have been provided with some summary verbiage to cover that point.
Q. Right. Because why would you state that there would be a list provided when there was none?
A. And again, let me make sure I'm on the right correct paragraph here. So this is the statement at the end that you had specifically drawn my attention to. You've mentioned Paragraph 15.

Where -- which one are you trying to get attention to?
Q. In any of the declarations if you turn to Paragraph 15 --
A. Okay.
Q. -- you can see that statement.
A. I'll have to look specifically at that.
Q. Sure.
A. Yes, and I wrote that, and I believe that that is correct.
Q. That there is a list in your CV?
A. No. There were no -- there is no preceding deposition that I'm aware of.
Q. Do you recall any portions of your declarations that you did not write personally?
A. No.
Q. Do you have any financial interest in New World Medical?
A. No. I do at the moment in the sense I'm an expert witness, but otherwise no financial interest at this time.
Q. Do you have any financial interest in any nonacademic business entity involving the technology

relevant to this IPR?
A. No, I do not have any financial interest at this time.
Q. And have you interacted with anyone at New World before the events related to this IPR?
A. Before the events related to this IPR? Yes.
Q. And who are those individuals that you interacted with at New World Medical?
A. Many, many individuals in the -- at New World Medical. It's a long list. So I can go through that if you'd like, but if you have any specific people you're interested in knowing if I had contact with, I can provide that, but I've been in touch over the years, since probably the early 1990s, with many people at New World Medical.
Q. Okay. Can you generally describe your relationship with New World Medical historically?
A. Yes. Historically, I would say that they provide devices that we use for medical treatment, and I've used those devices since the early 1990s and have developed expertise in the use of those devices.

And so my contact with the company has been in different ways related to that activity, providing feedback about the use of the devices, so from an expert viewpoint, providing academic investigations into the use of the device, oftentimes after approval, which does not carry a proprietary interest, and to try to see how the devices work in our patients and to try to, you know, make sure that they're providing safe and effective treatment, and that feedback is valuable to the company in the sense that they do appreciate hearing that, and it's necessary for the process of implementation of technology.
Q. So when you use New World Medical products as you described, is that your personal choice or a choice made by somebody else?
A. It's usually a personal choice. There are occasionally institutional issues or surgery center issues with -- related to more business-related side of things, availability, pricing and so forth, but those are relatively small factors. I think the most important part of it is choice by the physician.
Q. And do you, in your past experience using

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