

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NEW WORLD MEDICAL, INC.,
Petitioner

v.

MICROSURGICAL TECHNOLOGY, INC.,
Patent Owner

Case No. IPR2020-01573

U.S. Patent No. 9,107,729

REPLY DECLARATION OF DR. PETER NETLAND

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I. INTRODUCTION

1. My name is Dr. Peter Netland, MD, PhD, and I have been retained by counsel for New World Medical, Inc. (“New World Medical”) as an expert witness in the above-captioned proceeding. I am the Dr. Peter Netland, MD, PhD who previously submitted a declaration in this proceeding as Exhibit 1003 (“Opening Declaration”).

2. I have been asked to provide this Reply Declaration regarding the validity of claims 1-10 of U.S. Patent No. 9,107,729 (“the ‘729 patent”) (Ex.1001). Specifically, I have been asked to respond to issues raised by the Patent Owner’s Response (Paper 29) (“Response”) and the accompanying Declaration of Garry P. Condon, M.D. in Support of Patent Owner’s Response (Ex.2019) (“Condon Declaration”) and Sworn Affidavit of Manuel Quintana, M.D. (Ex.2020) (“Quintana Affidavit”) filed in this proceeding.

3. My opinions are based on my years of education, research, and experience, which I summarized in my Opening Declaration (Ex.1003), as well as my investigation and study of relevant materials. In addition to the information I identified in my Opening Declaration, I have also considered the Board’s Institution Decision (Paper 22) (“Institution Decision”), the Patent Owner’s Response, the Condon Declaration, the Quintana Affidavit, and any other cited reference in this Reply Declaration.

4. I may rely upon these materials, my knowledge and experience, and/or additional materials to rebut arguments raised by the Patent Owner MicroSurgical Technologies, Inc. (“MST”), Dr. Condon, and/or Dr. Quintana. Further, I may also consider additional documents and information in forming any necessary opinions, including documents that may not yet have been provided to me.

5. This declaration and my Opening Declaration represent only those opinions I have formed to date. I reserve the right to revise, supplement, and/or amend my opinions stated herein based on new information and on my continuing analysis of the materials produced in this proceeding.

6. I am being compensated on a per hour basis for my time spent working on issues in this case at the rate of \$500 per hour. My compensation does not depend on the outcome of this matter or the opinions I express.

II. QUINTANA DISCLOSES CUTTING A “STRIP OF TISSUE” FROM THE TRABECULAR MESHWORK

7. As explained in my Opening Declaration, it is my opinion that the surgical procedure described in the Quintana reference (Ex.1004) (“Quintana”) would without question have resulted in cutting “strips of tissue” from the TM. Ex.1003 (Opening Declaration), ¶98. This is confirmed by Quintana’s explicit disclosures, including but not limited to Quintana statements that the procedure “achieves a section of the trabecular meshwork,” “the TM is stripped slowly,

gently and easily from the canal's lumen towards the anterior chamber as the needle progresses in the angle," "[f]urther studies are necessary to disclose the 'in vivo' behavior of the sectioned trabecular meshwork," and Figure 2 and caption that states "[t]he tip of the needle stripping the trabecular meshwork." *Id.*, ¶¶ 136-37, 193-94; Ex.1004 (Quintana), 3-5, 8. I understand that Patent Owner, Dr. Condon, and Dr. Quintana address certain opinions I expressed in my Opening Declaration regarding the Quintana reference (Ex.1004) and offer contrary arguments regarding whether the Quintana reference (Ex.1004) discloses cutting a "strip of tissue" from the TM.

8. In particular, I understand Patent Owner and Dr. Condon assert that the surgical procedure disclosed in the Quintana reference (Ex.1004) does not involve the removal of TM. Response, 13; Condon Declaration, ¶30. I further understand that Dr. Condon asserts that my Opening Declaration "seizes on the words 'section' and 'stripping' used in Quintana in an attempt to rationalize that TM must have been removed even though Quintana never actually says so." Condon Declaration, ¶31. I understand Dr. Condon asserts that "a POSA would have understood Quintana's reference to 'section' . . . to mean incising or opening the TM, as opposed to creating or removing a strip of TM." Condon Declaration, ¶32. I further understand Dr. Condon asserts that "a POSA would have understood Quintana's reference to 'stripped' and 'stripping' . . . to mean simply cutting or

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