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**From:** "Ellison, Martin" <[martin.ellison@dlapiper.com](mailto:martin.ellison@dlapiper.com)>  
**Date:** Friday, December 4, 2020 at 11:36 AM  
**To:** John Hughes <[john.hughes@bartlitbeck.com](mailto:john.hughes@bartlitbeck.com)>, Colibri <[Colibri@bartlit-beck.com](mailto:Colibri@bartlit-beck.com)>, Mieke Malmberg <[mmalmberg@skiermontderby.com](mailto:mmalmberg@skiermontderby.com)>, External user - Adam Mortara <[adam@mortalalaw.com](mailto:adam@mortalalaw.com)>  
**Cc:** "Fadis, Valerie" <[valerie.fadis@dlapiper.com](mailto:valerie.fadis@dlapiper.com)>, "Ganas, Matt" <[matt.ganas@dlapiper.com](mailto:matt.ganas@dlapiper.com)>, "Grasso, Kathryn Riley" <[kathryn.riley@dlapiper.com](mailto:kathryn.riley@dlapiper.com)>, "Heintz, James M." <[jim.heintz@dlapiper.com](mailto:jim.heintz@dlapiper.com)>, "Huang, Catherine" <[catherine.huang@dlapiper.com](mailto:catherine.huang@dlapiper.com)>, "Fowler, Mark" <[mark.fowler@dlapiper.com](mailto:mark.fowler@dlapiper.com)>  
**Subject:** RE: Colibri v. Medtronic - Meet and Confer Summary

John,

We understand your email below to be a representation that Colibri will provide a substantive response to interrogatory 16 on the due date, and in particular that Colibri will not object to providing a substantive response to any of the claims charts on the basis that they reflect invalidity defenses that are similar to the invalidity defenses at issue in IPR2020-01649 filed by Edwards. We request that you inform us by COB today if our understanding is incorrect as we intend to raise this with the Court in that event. Additionally, if Colibri will not provide a substantive response to the entirety of interrogatory 16 by the due date on that basis, we request that this issue be included in the meet and confer on Monday so that we can satisfy this requirement before raising the issue with the Court.

Thanks.

Martin

**Martin Ellison**

Associate

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**From:** John Hughes <[john.hughes@bartlitbeck.com](mailto:john.hughes@bartlitbeck.com)>  
**Sent:** Thursday, December 3, 2020 1:37 PM  
**To:** Ellison, Martin <[Martin.Ellison@us.dlapiper.com](mailto:Martin.Ellison@us.dlapiper.com)>; Colibri <[Colibri@bartlit-beck.com](mailto:Colibri@bartlit-beck.com)>; Mieke Malmberg <[mmalmberg@skiermontderby.com](mailto:mmalmberg@skiermontderby.com)>; External user - Adam Mortara <[adam@mortalalaw.com](mailto:adam@mortalalaw.com)>  
**Cc:** Fadis, Valerie <[valerie.fadis@us.dlapiper.com](mailto:valerie.fadis@us.dlapiper.com)>; Ganas, Matt <[Matt.Ganas@us.dlapiper.com](mailto:Matt.Ganas@us.dlapiper.com)>; Grasso, Kathryn Riley <[Kathryn.Riley@us.dlapiper.com](mailto:Kathryn.Riley@us.dlapiper.com)>; Heintz, James M. <[Jim.Heintz@us.dlapiper.com](mailto:Jim.Heintz@us.dlapiper.com)>; Huang, Catherine <[Catherine.Huang@us.dlapiper.com](mailto:Catherine.Huang@us.dlapiper.com)>; Fowler, Mark <[Mark.Fowler@us.dlapiper.com](mailto:Mark.Fowler@us.dlapiper.com)>  
**Subject:** Re: Colibri v. Medtronic - Meet and Confer Summary

[EXTERNAL]

Hi Martin,

See my responses below.

Best,

John

**BartlitBeck** LLP

John M. Hughes | p: 303.592.3113 | c: 720.394.7266 | [john.hughes@bartlitbeck.com](mailto:john.hughes@bartlitbeck.com) | 1801 Wewatta, Suite 1200, Denver, Colorado 80202

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**From:** "Ellison, Martin" <[martin.ellison@dlapiper.com](mailto:martin.ellison@dlapiper.com)>

**Date:** Wednesday, December 2, 2020 at 5:50 PM

**To:** Colibri <[Colibri@bartlit-beck.com](mailto:Colibri@bartlit-beck.com)>, Mieke Malmberg <[mmalmberg@skiermontderby.com](mailto:mmalmberg@skiermontderby.com)>, External user - Adam Mortara <[adam@mortaralaw.com](mailto:adam@mortaralaw.com)>

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**Subject:** Colibri v. Medtronic - Meet and Confer Summary

John,

Thanks for meeting with us this morning. We write to memorialize our meet and confer and to flag items for follow-up by both parties.

First, Colibri confirmed it will not provide a substantive response to Medtronic's interrogatory number 15. However, Colibri will allow Medtronic to add claim terms or revise claim constructions in light of the subsequently filed IPR responses. Colibri also will produce copies of all IPR responses on the same day they're filed.

I indicated Colibri would meet and confer and be reasonable in terms of any desire by Medtronic to revise constructions or add terms in light of the POPRs. I do not foresee an issue here. We will produce POPRs same day as we file.

Although we did not discuss it on the call, we note that Colibri's response to interrogatory number 16 is due on 12/14. That interrogatory asks, in relevant part, for "all factual bases why each prior art reference(s) alone or in combination does not invalidate each asserted claim of the asserted patents." We expect Colibri will substantively respond to interrogatory 16. Please confirm that Colibri will provide a substantive response to that interrogatory by the 12/14 deadline, and will not refuse to respond as it did with interrogatory 15. We are willing to meet and confer to discuss an agreement with respect to any necessary claim construction amendments in the time period between 12/14 and the opening Markman brief deadline of 12/18.

We plan to satisfy the deadline to respond to interrogatory 16. If you think our response to interrogatory 16 raises a claim construction issue we are willing to meet and confer then, but are not going to agree in advance that necessarily provides an opportunity to alter your claim construction positions. As I explained on the call, you are in the same position as most defendants in a typical patent case. You know our infringement

theory. We know your invalidity theories. That is all that is necessary to proceed to claim construction.

Second, for claim construction exchanges, our understanding is that the parties will exchange documents today at 5 p.m. PT. The parties will meet and confer Friday to discuss claim construction. I believe we provided times that work for us (between 8:00 – 10:30 a.m. PT, as well as 12:00 – 2:30 p.m. PT). Please let us know tomorrow morning what times work for Colibri so we can block the time.

Third, for claim construction briefs, the parties agreed to a 25-page maximum per brief.

Confirmed.

Fourth, regarding depositions, the parties' noticed 30(b)(6) depositions are to be taken off calendar and we will meet and confer regarding topics and objections. As mentioned on the call, we expect to send our objections to Colibri's noticed topics no later than Monday (12/7). We can then hopefully meet on Wednesday (12/9).

Confirmed.

We do need to depose at least one of the inventors for the '294 and '739 patents according to their noticed dates or, at a minimum, sometime during the week of 12/14 prior to claim construction briefs being due. You indicated on the call that you would check witness availability for that deposition.

We are considering this request and checking dates.

Fifth, for document production, you indicated that you expect Colibri's document production to be substantially complete no later than Christmas. We view our production as being substantially complete at this time. As we explained on the call, we have some specific concerns about Colibri's production to date. Although we intend to send out a letter with these issues soon, at least in the short term we request that Colibri produce: (1) an unredacted copy of the inventor declaration that is referenced in your response to interrogatory number 1; (2) a copy of COLIBRI00005143 that shows the entire first page of that document (the bottom of the page is cut off); and (3) copies of COLIBRI0005146, COLIBRI0005147, and COLIBRI0005151 in which the improper "not responsive" redactions have been removed.

I've conferred with our team and can confirm we will substantially complete our document production by the end of the month, hopefully before Christmas. We'll produce on a rolling basis. We will look into the other issues raised in the paragraph above.

Sixth, we discussed your request for samples of Medtronic devices and you indicated that you would provide us (1) the number of samples you are requesting, and (2) an answer as to whether Colibri intends to reimburse Medtronic for the costs of these samples. We will review on our end to assess how best to determine representative devices, if possible.

We'll get back to you on this shortly.

Thank you.

Martin

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Associate

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