

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MEDTRONIC, INC., AND MEDTRONIC VASCULAR, INC.,
Petitioner,

v.

TELEFLEX INNOVATIONS S.À.R.L.,
Patent Owner.

Case IPR2020-01341
Patent 8,142,413

**PETITIONERS' OBJECTIONS UNDER 37 C.F.R. § 42.64 TO PATENT
OWNER'S POST-INSTITUTION EVIDENCE FILED MAY 14, 2021**

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioners Medtronic, Inc., and Medtronic Vascular, Inc., (“Medtronic”) submit the following objections to certain post-institution evidence filed by Patent Owner Teleflex Innovations S.À.R.L (“Teleflex”) on May 14, 2021.

I. Exhibits 2046, 2118: Declarations of Howard Root

Medtronic has yet to cross-examine Mr. Root in this IPR. Medtronic therefore reserves the right to move to exclude Exhibits 2046, 2118, and/or any testimony therein on the bases of FRE 401/402 (relevance), FRE 403 (probative value outweighed by prejudice, confusing, waste of time), FRE 602 (lack of personal knowledge), FRE 701 (opinion by lay witness), and FRE 702/703 (insufficient support for expert testimony). In addition, Medtronic objects to Exhibits 2046 and 2118 under FRE 802 (hearsay) to the extent Medtronic does not have the opportunity to cross-examine Mr. Root regarding his declaration/transcript.

II. Exhibits 2007-2011, 2013-2014, 2016-2038, 2040-2041, 2058, 2061-2063, 2065-2067: Documents/Evidence Submitted with Mr. Root Declaration

Medtronic objects under FRE 106 (completeness), FRE 401/402 (relevance), FRE 403 (probative value outweighed by prejudice, confusing, waste of time), FRE 802 (hearsay), FRE 901 (authenticity), and FRE 1002 (requirement for original).

III. Exhibit 2039: Declaration of Deborah Schmalz

Medtronic has yet to cross-examine Ms. Schmalz in this IPR. Medtronic therefore reserves the right to move to exclude Exhibit 2039 and/or any testimony therein on the bases of FRE 401/402 (relevance), FRE 403 (probative value outweighed by prejudice, confusing, waste of time), FRE 602 (lack of personal knowledge), FRE 701 (opinion by lay witness), and FRE 702/703 (insufficient support for expert testimony). In addition, Medtronic objects to Exhibit 2039 under FRE 802 (hearsay) to the extent Medtronic does not have the opportunity to cross-examine Ms. Schmalz regarding her declaration.

IV. Exhibits 2056, 2072, 2123, 2138, & 2250: Expert Report/Declaration of Peter T. Keith

Medtronic has yet to cross-examine Mr. Keith in this IPR. Medtronic therefore reserves the right to move to exclude Exhibits 2056, 2072, 2123, 2138, 2250 and/or any testimony therein on the bases of FRE 401/402 (relevance), FRE 403 (probative value outweighed by prejudice, confusing, waste of time), FRE 602 (lack of personal knowledge), FRE 701 (opinion by lay witness), and FRE 702/703 (insufficient support for expert testimony). In addition, Medtronic objects to Exhibits 2056, 2072, 2123, 2138, 2250 under FRE 802 (hearsay) to the extent Medtronic does not have the opportunity to cross-examine Mr. Keith regarding his expert report/declaration.

V. Exhibits 2057, 2060: Teleflex Website

Medtronic objects under FRE 106 (completeness), FRE 401/402 (relevance), FRE 403 (probative value outweighed by prejudice, confusing, waste of time), hearsay (FRE 802), and FRE 901 (authenticity).

VI. Exhibits 2069 & 2071: Exhibits to Complaint

Medtronic objects under FRE 106 (completeness), FRE 401/402 (relevance), FRE 403 (probative value outweighed by prejudice, confusing, waste of time), and hearsay (FRE 802).

VII. Exhibit 2070: Guide Catheters

Medtronic objects under FRE 106 (completeness), FRE 401/402 (relevance), FRE 403 (probative value outweighed by prejudice, confusing, waste of time), hearsay (FRE 802), FRE 901 (authenticity), and FRE 1002 (requirement for original).

VIII. Exhibit 2073: Declaration of Alexander S. Rinn

Medtronic has yet to cross-examine Mr. Rinn in this IPR. Medtronic therefore reserves the right to move to exclude Exhibit 2073 and/or any testimony therein on the bases of FRE 602 (lack of personal knowledge), FRE 401/402 (relevance), and FRE 403 (probative value outweighed by prejudice, confusing, waste of time). In addition, Medtronic objects to Exhibit 2073 under FRE 802 (hearsay) to the extent

Medtronic does not have the opportunity to cross-examine Mr. Rinn regarding his declaration.

IX. Exhibit 2119: Declaration of Gregg Sutton

Medtronic has yet to cross-examine Mr. Sutton in this IPR. Medtronic therefore reserves the right to move to exclude Exhibit 2119 and/or any testimony therein based on FRE 401/402 (relevance), FRE 403 (probative value outweighed by prejudice, confusing, waste of time), FRE 602 (lack of personal knowledge), FRE 701 (opinion by lay witness), and FRE 702/703 (insufficient support for expert testimony). In addition, Medtronic objects to Exhibit 2119 under FRE 802 (hearsay) to the extent that Medtronic does not have the opportunity to cross-examine Mr. Sutton regarding his declaration.

X. Exhibit 2120: Declaration of Mark Goemer

Medtronic has yet to cross-examine Mr. Goemer in this IPR. Medtronic therefore reserves the right to move to exclude Exhibit 2120 and/or any testimony therein based on FRE 401/402 (relevance), FRE 403 (probative value outweighed by prejudice, confusing, waste of time), FRE 602 (lack of personal knowledge), FRE 701 (opinion by lay witness), and FRE 702/703 (insufficient support for expert testimony). In addition, Medtronic objects to Exhibit 2120 under FRE 802 (hearsay) to the extent that Medtronic does not have the opportunity to cross-examine Mr. Goemer regarding his declaration.

XI. Exhibits 2095, 2111, 2113-2115: Exhibits Submitted with the Declaration of Mark Goemer

Medtronic objects under FRE 106 (completeness), FRE 401/402 (relevance), FRE 403 (probative value outweighed by prejudice, confusing, waste of time), FRE 802 (hearsay), FRE 901 (authenticity), and FRE 1002 (requirement for original).

XII. Exhibit 2121: Declaration of Amanda O'Neil

Medtronic has yet to cross-examine Ms. O'Neil in this IPR. Medtronic therefore reserves the right to move to exclude Exhibit 2121 and/or any testimony therein based on FRE 401/402 (relevance), FRE 403 (probative value outweighed by prejudice, confusing, waste of time), and FRE 602 (lack of personal knowledge). In addition, Medtronic objects to Exhibit 2121 under FRE 802 (hearsay) to the extent that Medtronic does not have the opportunity to cross-examine Ms. O'Neil regarding her declaration.

XIII. Exhibits 2089, 2092: Exhibits Submitted with the Declaration of Amanda O'Neil

Medtronic objects under FRE 106 (completeness), FRE 401/402 (relevance), FRE 403 (probative value outweighed by prejudice, confusing, waste of time), FRE 802 (hearsay), FRE 901 (authenticity), and FRE 1002 (requirement for original).

XIV. Exhibits 2122 & 2248: Declaration/Testimony of Steven Erb

Medtronic has yet to cross-examine Mr. Erb in this IPR. Medtronic therefore reserves the right to move to exclude Exhibits 2122, 2248 and/or any testimony therein based on FRE 401/402 (relevance), FRE 403 (probative value outweighed by prejudice, confusing, waste of time), FRE 602 (lack of personal knowledge), FRE 701 (opinion by lay witness), and FRE 702/703 (insufficient support for expert testimony). In addition, Medtronic objects to Exhibits 2122 and 2248 under FRE 802 (hearsay) to the extent that Medtronic does not have the opportunity to cross-examine Mr. Erb regarding his declaration.

XV. Exhibits 2110: Exhibits Submitted with the Declaration of Steven Erb

Medtronic objects under FRE 106 (completeness), FRE 401/402 (relevance), FRE 403 (probative value outweighed by prejudice, confusing, waste of time), FRE 802 (hearsay), FRE 901 (authenticity), and FRE 1002 (requirement for original).

XVI. Exhibits 2090-2091, 2093-2094, 2097, 2104, 2106-2108, 2112: Invoices and Other Third-Party Purchasing Documents

Medtronic objects under FRE 106 (completeness), FRE 401/402 (relevance), FRE 403 (probative value outweighed by prejudice, confusing, waste of time), FRE 802 (hearsay), FRE 901 (authenticity), and FRE 1002 (requirement for original).

XVII. Exhibits 2096, 2101-2103, 2117: Documents from Prosecution Counsel

Medtronic objects under FRE 106 (completeness), FRE 401/402 (relevance), FRE 403 (probative value outweighed by prejudice, confusing, waste of time), FRE 802 (hearsay), FRE 901 (authenticity), and FRE 1002 (requirement for original).

XVIII. Exhibits 2099, 2100, 2105, 2109, 2127-2134: VSI Documents

Medtronic objects under FRE 106 (completeness), FRE 401/402 (relevance), FRE 403 (probative value outweighed by prejudice, confusing, waste of time), FRE 802 (hearsay), and FRE 901 (authenticity).

XIX. Exhibits 2098: Litigation Privilege Log

Medtronic objects under FRE 106 (completeness), FRE 401/402 (relevance), and/or FRE 403 (probative value outweighed by prejudice, confusing, waste of time).

XX. Exhibits 2085, 2086: Ressemann Deposition Exhibits

Medtronic objects under FRE 106 (completeness), FRE 401/402 (relevance), FRE 403 (probative value outweighed by prejudice, confusing, waste of time), and FRE 802 (hearsay).

XXI. Exhibits 2139-2144, 2154-2165, 2167, 2168, 2170, 2172-2194, 2213: GuideLiner Documents, Articles, and other Exhibits Cited in the Declaration of Peter T. Keith

Medtronic objects under FRE 106 (completeness), FRE 401/402 (relevance), FRE 403 (probative value outweighed by prejudice, confusing, waste of time), FRE 802 (hearsay), FRE 901 (authenticity), and FRE 1002 (requirement for original).

XXII. Exhibits 2145 & 2249: Declaration/Testimony of Dr. John J. Graham

Medtronic has yet to cross-examine Dr. Graham in this IPR. Medtronic therefore reserves the right to move to exclude Exhibits 2145, 2249 and/or any testimony therein based on FRE 401/402 (relevance), FRE 403 (probative value outweighed by prejudice, confusing, waste of time), FRE 602 (lack of personal knowledge), FRE 701 (opinion by lay witness), and FRE 702/703 (insufficient support for expert testimony). In addition, Medtronic objects to Exhibits 2145 and 2249 under FRE 802 (hearsay) to the extent that Medtronic does not have the opportunity to cross-examine Dr. Graham regarding his declaration.

XXIII. Exhibits 2146-2150, 2166, 2169, 2171: Exhibits Cited in the Declaration of Dr. John J. Graham

Medtronic objects under FRE 106 (completeness), FRE 401/402 (relevance), FRE 403 (probative value outweighed by prejudice, confusing, waste of time), FRE 802 (hearsay), FRE 901 (authenticity), and FRE 1002 (requirement for original).

XXIV. Exhibit 2151: Declaration of Dr. Lorenzo Azzalini

Medtronic has yet to cross-examine Dr. Azzalini in this IPR. Medtronic therefore reserves the right to move to exclude Exhibit 2151 and/or any testimony therein based on FRE 401/402 (relevance), FRE 403 (probative value outweighed by prejudice, confusing, waste of time), FRE 602 (lack of personal knowledge), FRE 701 (opinion by lay witness), and FRE 702/703 (insufficient support for expert testimony). In addition, Medtronic objects to Exhibit 2151 under FRE 802 (hearsay) to the extent that Medtronic does not have the opportunity to cross-examine Dr. Azzalini regarding his declaration.

XXV. Exhibits 2152, 2153: Declarations of Steve Jagodzinski

Medtronic has yet to cross-examine Mr. Jagodzinski in this IPR. Medtronic therefore reserves the right to move to exclude Exhibits 2152 and 2153 and/or any testimony therein based on FRE 401/402 (relevance), FRE 403 (probative value outweighed by prejudice, confusing, waste of time), FRE 602 (lack of personal knowledge), and FRE 701 (opinion by lay witness). In addition, Medtronic objects to Exhibits 2152 and 2153 under FRE 802 (hearsay) to the extent that Medtronic does not have the opportunity to cross-examine Mr. Jagodzinski regarding his declaration.

XXVI. *Exhibit 2215: Declarations of Dr. Craig Thompson*

Medtronic has yet to cross-examine Dr. Thompson in this IPR. Medtronic therefore reserves the right to move to exclude Exhibit 2215 and/or any testimony therein based on FRE 401/402 (relevance), FRE 403 (probative value outweighed by prejudice, confusing, waste of time), FRE 602 (lack of personal knowledge), FRE 701 (opinion by lay witness), and FRE 702/703 (insufficient support for expert testimony). In addition, Medtronic objects to Exhibit 2215 under FRE 802 (hearsay) to the extent that Medtronic does not have the opportunity to cross-examine Dr. Thompson regarding his declaration.

XXVII. *Exhibits 2197, 2198, 2201, 2202, 2204, 2247: Medtronic Documents*

Medtronic objects under FRE 106 (completeness), FRE 401/402 (relevance), and FRE 403 (probative value outweighed by prejudice, confusing, waste of time).

XXVIII. *Exhibits 2196, 2200, 2210, 2211, 2214, 2246: Third-Party Documents*

Medtronic objects under FRE 106 (completeness), FRE 401/402 (relevance), FRE 403 (probative value outweighed by prejudice, confusing, waste of time), FRE 802 (hearsay), FRE 901 (authenticity), and FRE 1002 (requirement for original).

XXIX. *Exhibits 2135, 2136, 2203, 2208, 2209: Miscellaneous Documents*

Medtronic objects under FRE 106 (completeness), FRE 401/402 (relevance), FRE 403 (probative value outweighed by prejudice, confusing, waste of time),

FRE 802 (hearsay), FRE 901 (authenticity), and FRE 1002 (requirement for original).

XXX. Exhibit 2212: U.S. Patent No. 5,290,247

Medtronic objects under FRE 401/402 (relevance) and FRE 403 (probative value outweighed by prejudice, confusing, waste of time).

XXXI. Exhibit 2252: Declaration of Dean Peterson

Medtronic has yet to cross-examine Mr. Peterson in this IPR. Medtronic therefore reserves the right to move to exclude Exhibit 2252 and/or any testimony therein on the bases of FRE 401/402 (relevance), FRE 403 (probative value outweighed by prejudice, confusing, waste of time), FRE 602 (lack of personal knowledge), FRE 701 (opinion by lay witness), and FRE 702/703 (insufficient support for expert testimony). In addition, Medtronic objects to Exhibit 2252 under FRE 802 (hearsay) to the extent Medtronic does not have the opportunity to cross-examine Mr. Root regarding his declaration/transcript.

XXXII. Exhibits 2253-2257: Additional VSI Documents

Medtronic objects under FRE 106 (completeness), FRE 401/402 (relevance), FRE 403 (probative value outweighed by prejudice, confusing, waste of time), FRE 802 (hearsay), FRE 901 (authenticity), and FRE 1002 (requirement for original).

Case IPR2020-01341
Patent 8,142,413

Dated: May 21, 2021

Respectfully submitted,

/Cyrus A. Morton/

Cyrus A. Morton

Reg. No. 44,954

Robins Kaplan LLP

2800 LaSalle Plaza

800 LaSalle Avenue

Minneapolis, MN 55402

Attorney for Patent Owner

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e)(4), the undersigned certifies that on May 21, 2021, a copy of PETITIONERS' OBJECTIONS UNDER 37 C.F.R. § 42.64 TO PATENT OWNER'S POST-INSTITUTION EVIDENCE FILED MAY 14, 2021 was served in its entirety by electronic mail on Patent Owner's counsel at the following addresses indicated in Patent Owner's Mandatory Notices:

J. Derek Vandenburg, Reg. No. 32,179
dvandenburg@carlsoncaspers.com

Dennis C. Bremer, Reg. No. 40,528
dbremer@carlsoncaspers.com

Joseph W. Winkels
jwinkels@carlsoncaspers.com

Peter M. Kohlhepp
pkohlhepp@carlsoncaspers.com

Alexander S. Rinn
arinn@carlsoncaspers.com

Megan E. Christner
mchristner@carlsoncaspers.com

Dated: May 21, 2021

Respectfully submitted,

/Cyrus A. Morton/

Cyrus A. Morton
Reg. No. 44,954
Robins Kaplan LLP
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402
Attorney for Patent Owner