United States District Court,
N.D. California.

MEDTRONIC, INC., et al,
Plaintiff.
v.
W.L. GORE & ASSOCIATES, INC,
Defendant.

No. C 06-04455 JSW

Sept. 19, 2007.

Ellen J. Wang, James J. Elacqua, Noemi C. Espinosa, Andrew Neil Thomases, Joshua C. Walsh-Benson, Tina Park Faris Soriano, Dechert LLP, Mountain View, CA, Hieu H. Phan, Michelle Wai Yang, Dechert LLP, Palo Alto, CA, Jeffrey Plies, Dechert LLP, Austin, TX, Karen D. McDaniel, Merchant & Gould, Minneapolis, MN, for Plaintiff.

Gerard Haddad, Christopher K. Hu, Jennifer Bianrosa, John T. Gallagher, Joshua P. Jaffe, Dickstein Shapiro LLP, William S. Feiler, Morgan & Finnegan LLP, David H. Pfeffer, Locke Lord Bissell & Liddell, LLP, New York, NY, Erick Ottson, Osborn Maledon, P.A., William J. Maledon, Phoenix, AZ, Hillary Noll Kalay, Mark Jay Linderman, Sonnenschein Nath & Rosenthal LLP, Matthew K. Blackburn, Locke Lord et al., San Francisco, CA, for Defendant.

ORDER RE CLAIM CONSTRUCTION

JEFFREY S. WHITE**, District Judge.**

On August 14, 2007, this matter came before the Court for a hearing pursuant to Markman v. Westview Instruments, Inc., 517 U .S. 370 (1996) to construe disputed terms and phrases of the patents-in-suit.

At that hearing, the parties advised the Court that they were close to an agreement on the meaning of the term guide wire. The parties are HEREBY ORDERED to file a joint statement with the Court as to whether or not they were able to reach agreement on that term by no later than September 28, 2007. The parties are FURTHER ORDERED not to submit additional argument. Rather, they should simply advise the Court whether they agree on the meaning of the term.

The Court does, however, request additional briefing from the parties on another matter. The Court has located a reference to the '062 Patent in U.S. Patent 5,314,472 to Fontaine FN1, in which the stent of the '062 Patent is described as including "a cylindrical, open-ended spiral component made of low memory metal wire that provides radial support inside a blood vessel." The Court also located a reference in Medtronic, Inc. v. Advanced Cardiovascular Syst., Inc., 182 F.Supp.2d 810, 813 (D.Mn.2000) to the '062 Patent, in which that court suggests that the stent of the '062 Patent is a balloon-expandable stent. Finally, at

pages 44-48 of the parties' Amended Joint Claim Construction Statement, Gore relies on statements in the prosecution history of the Wiktor Patents in support of its proposed constructions, but Gore has not included the references cited in the evidentiary record before the Court.

FN1. Cook Incorporated is the assignee of this patent.

Accordingly, the parties are HEREBY ORDERED to submit supplemental briefing, **not to exceed ten (10) pages,** that addresses the references above and their impact, if any, on the "low memory metal" and "balloon-expandable" limitations proposed by Gore. **The parties shall submit their briefs, and the portions of the prosecution history referenced above, to the Court by no later than October 9, 2007.**

IT IS SO ORDERED.

N.D.Cal.,2007.
Medtronic, Inc. v. W.L. Gore & Associates, Inc.

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