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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

INARI MEDICAL, INC.,)
) CV-24-03117 EKL
)
) PLAINTIFF,)
)
) SAN JOSE, CALIFORNIA
)
) VS.)
)
) MAY 28, 2025
)
) IMPERATIVE CARE, INC.,)
)
) PAGES 1-103
)
) DEFENDANT.)
)
)
)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE EUMI K. LEE
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: PERKINS COIE LLP
BY: RAMSEY M. AL-SALAM
1201 THIRD AVENUE, SUITE 4900
SEATTLE, WASHINGTON 98101

BY: AMANDA TESSAR
1900 SIXTEENTH STREET, SUITE 1400
DENVER, COLORADO 80202

BY: DANIEL T. KEESE
1120 NW COUCH STREET, 10TH FLOOR
PORTLAND, OREGON 97209

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER:
IRENE L. RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

Imperative Care v. Inari Medical
IPR2025-00728
Imperative Care Ex. 1035

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A P P E A R A N C E S: (CONT'D)

FOR THE DEFENDANT: KNOBBE, MARTENS, OLSON & BEAR, LLP
BY: JOSEPH R. RE
JOSHUA J. STOWELL
2040 MAIN STREET, 14TH FLOOR
IRVINE, CALIFORNIA 92614

BY: NICHOLAS A. BELAIR
333 BUSH STREET, 21ST FLOOR
SAN FRANCISCO, CALIFORNIA 94104

ALSO PRESENT: IMPERATIVE CARE
BY: SCOTT ELLIOTT, EVP
1359 DELL AVENUE
CAMPBELL, CALIFORNIA 95008

STRYKER
BY: MERLE S. ELLIOTT
SAMANTHA PAK
2825 AIRVIEW BOULEVARD
KALAMAZOO, MISSOURI 49002

1 SAN JOSE, CALIFORNIA

MAY 28, 2025

2 P R O C E E D I N G S

09:43AM 3 (COURT CONVENED AT 9:43 A.M.)

09:43AM 4 THE CLERK: WE'RE CALLING CASE NUMBER
09:43AM 5 5:24-CV-3117-EKL, INARI MEDICAL, INC., VERSUS IMPERATIVE CARE,
09:43AM 6 INC., ET AL.

09:43AM 7 IT IS ON TODAY FOR A MOTION FOR A PRELIMINARY INJUNCTION
09:43AM 8 AND MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT.

09:43AM 9 COUNSEL, IF YOU COULD PLEASE STEP FORWARD AND STATE YOUR
09:43AM 10 APPEARANCES ON THE RECORD STARTING WITH COUNSEL FOR THE
09:43AM 11 PLAINTIFF.

09:43AM 12 MR. AL-SALAM: RAMSEY AL-SALAM OF PERKINS COIE,
09:43AM 13 YOUR HONOR, FOR PLAINTIFF INARI MEDICAL.

09:43AM 14 I'M JOINED BY MY COLLEAGUES, AMANDA TESSAR AND DAN KEESE.
09:43AM 15 AND I'M ALSO JOINED BY TWO REPRESENTATIVES OF THE STRYKER
09:43AM 16 IN-HOUSE LEGAL DEPARTMENT, MERLE ELLIOTT AND SAMANTHA PAK.

09:44AM 17 THE COURT: GOOD MORNING EVERYBODY. I JUST REALIZED
09:44AM 18 I HAVE NOT SEEN YOU ALL IN PERSON.

09:44AM 19 MR. RE: DO I LOOK TALLER?

09:44AM 20 THE COURT: YOU DO. YOU DO.

09:44AM 21 MR. RE: GOOD MORNING, YOUR HONOR.

09:44AM 22 MY NAME IS JOSEPH RE FROM KNOBBE, MARTENS, OLSON & BEAR.
09:44AM 23 I REPRESENT THE DEFENDANT IMPERATIVE CARE.

09:44AM 24 AND WITH ME ARE MY COLLEAGUES, JOSH STOWELL, NICK BELAIR.

09:44AM 25 AND WITH US, JOINING US IS SCOTT ELLIOTT. HE IS THE

09:44AM 1 EXECUTIVE VICE PRESIDENT AND CHIEF LEGAL OFFICER OF
09:44AM 2 IMPERATIVE CARE.

09:44AM 3 THE COURT: GOOD MORNING TO YOU ALL.

09:44AM 4 MR. ELLIOTT: GOOD MORNING.

09:44AM 5 THE COURT: ALL RIGHT. WELL, AS MADAM CLERK
09:44AM 6 MENTIONED, WE ARE HERE TODAY TO DISCUSS BOTH THE MOTION TO
09:44AM 7 AMEND AS WELL AS THE PRELIMINARY INJUNCTION.

09:44AM 8 MY THOUGHT IS TO ACTUALLY TAKE IT IN REVERSE ORDER JUST
09:44AM 9 BECAUSE I FIND THAT PEOPLE ARE A LITTLE BIT -- THE MOTION FOR
09:44AM 10 PRELIMINARY INJUNCTION CAN KEEP GOING AND GOING, AND IT JUST
09:44AM 11 SEEMS IN TERMS OF OUR TIMELINES AND SUCH THAT IT WOULD BE
09:44AM 12 USEFUL TO DISCUSS THE MOTION FOR LEAVE TO FILE THIRD AMENDED
09:45AM 13 COMPLAINT, WHICH I DON'T THINK WILL TAKE VERY LONG, AND THEN
09:45AM 14 MOVE INTO THE MPI.

09:45AM 15 IN TERMS OF THE PRELIMINARY INJUNCTION MOTION, I WAS
09:45AM 16 TRYING TO REMEMBER WHETHER OR NOT, AND I COULD NOT RECALL
09:45AM 17 WHETHER OR NOT WE PUT A SPECIFIC TIMESTAMP ON IT, BUT I WAS
09:45AM 18 INCLINED TO DO ONE HOUR PER SIDE. I THINK WE HAD DISCUSSED
09:45AM 19 SOMEWHERE IN THAT TIMEFRAME, BUT HADN'T LANDED ON A SPECIFIC.

09:45AM 20 BUT I WANTED TO CHECK IN WITH THE PARTIES ABOUT THAT,
09:45AM 21 PARTICULARLY IN TERMS OF INARI, IF THEY WANTED TO RESERVE SOME
09:45AM 22 TIME FOR REBUTTAL.

09:45AM 23 SO THOUGHTS ABOUT TIMING?

09:45AM 24 MR. AL-SALAM: YES, YOUR HONOR. WE WOULD LIKE TO
09:45AM 25 RESERVE TEN MINUTES FOR REBUTTAL.

09:45AM 1 THE COURT: GREAT. AND ONE HOUR EACH SIDE?

09:45AM 2 MR. RE: THAT WOULD BE EXCELLENT, YOUR HONOR.

09:45AM 3 THE COURT: ALL RIGHT. SO WITH THAT, LET'S ACTUALLY
09:45AM 4 BEGIN WITH THE MOTION FOR LEAVE TO FILE A THIRD AMENDED
09:45AM 5 COMPLAINT.

09:45AM 6 I'M INCLINED -- I MEAN, I WILL JUST GIVE YOU WHAT MY
09:45AM 7 INCLINATIONS. I'M INCLINED TO GRANT THE PARTIES TO MEET AND
09:46AM 8 CONFER REGARDING A SHORT EXTENSION OF TIMEFRAMES. I DON'T WANT
09:46AM 9 A LONG ONE, BUT I DO THINK IT WILL REQUIRE SOME PUSH OF SOME
09:46AM 10 DEADLINES, AND WE ONLY HAVE DEADLINES THROUGH JULY ANYWAY. SO
09:46AM 11 IT WOULD INCLUDE BOTH THE CLAIM CONSTRUCTION AND THE -- MOVING
09:46AM 12 THAT SLIGHTLY AND A COUPLE OF THE OTHER DEADLINES.

09:46AM 13 WHY DON'T WE BEGIN WITH PLAINTIFF IN TERMS OF REACTION TO
09:46AM 14 THE TENTATIVE AND SO FORTH.

09:46AM 15 MR. AL-SALAM: I LIKE IT.

09:46AM 16 SO, YOUR HONOR, I MEAN, I DO -- WE APPRECIATE THAT. WE
09:46AM 17 THINK IT'S CLEAR THAT WE SHOULD BE ENTITLED TO ADD THIS PATENT.
09:46AM 18 IT MAKES SENSE IN TERMS OF JUDICIAL ECONOMY.

09:46AM 19 WE WERE, WE WERE DILIGENT IN IDENTIFYING THE PATENT. WE
09:46AM 20 MOVED TO AMEND THE DAY AFTER IT ISSUED. THEY KNEW ABOUT IT
09:46AM 21 BEFORE. WE DON'T THINK THAT IT REALLY SHOULD IMPACT THE CLAIM
09:46AM 22 CONSTRUCTION DEADLINES, BUT WE ARE HAPPY TO MEET WITH THEM, TO
09:47AM 23 WORK WITH THEM ON ANY EXTENSION THAT THEY FEEL IS NECESSARY IF
09:47AM 24 THERE ARE TERMS IN THIS PATENT, WHICH IS RELATED TO OTHER
09:47AM 25 PATENTS ALREADY IN THE CASE, THAT THEY THINK REQUIRES THAT WE

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HAVE, FOR EXAMPLE, ANOTHER TERM TO CONSTRUE.

AND IF -- AND SO WE'RE HAPPY TO DO THAT.

THE COURT: AND YOU ALL ARE AT NINE TERMS RIGHT NOW ANYWAY. SO THERE'S ROOM FOR ONE MORE.

MR. AL-SALAM: THERE IS, YOUR HONOR.

THE COURT: A QUESTION I HAD FOR YOU IN PART BECAUSE I AM GOING TO JUST SAY UP-FRONT, I AM UNLIKELY TO -- I GET CONCERNED WITH PATENT CASES OF THE "AND THEN, AND THEN, AND THEN, AND THEN." I MEAN, THERE HAS TO BE A STOPPING POINT AT SOME POINT. SO MY INCLINATIONS WOULD BE NOT TO GRANT ANOTHER LEAVE TO FILE ANOTHER AMENDED COMPLAINT, NOT TO ADD ON OR KEEP ADDING.

BUT SORT OF RELATED TO THAT QUESTION WHICH WE WERE MUSING OVER, IT DOESN'T MAKE A DIFFERENCE IN TERMS OF THE RULING WITH THIS, BUT IT MAY MAKE A DIFFERENCE DOWN THE ROAD IN TERMS OF WHICH RULE APPLIES AND THE STANDARD WHICH APPLIES. I BELIEVE THAT RULE 16 APPLIES RATHER THAN RULE 15 IN TERMS OF THE LEAVE TO AMEND.

I WANTED TO HEAR FROM YOU, MR. AL-SALAM, A LITTLE BIT ABOUT THAT.

MR. AL-SALAM: YOU'RE AHEAD OF ME, YOUR HONOR.

WHY WOULD RULE 16 INSTEAD OF 15 APPLY?

THE COURT: BECAUSE THE SCHEDULING ORDER WAS ALREADY ISSUED.

MR. AL-SALAM: I SEE.

09:48AM 1 THE COURT: AND SO AT THIS POINT IT WOULD BE UNDER
09:48AM 2 THE GOOD CAUSE STANDARD RATHER THAN THE MORE LIBERAL RULE 15
09:48AM 3 STANDARD.

09:48AM 4 MR. AL-SALAM: I WOULD AGREE THAT IF WE'RE TRYING TO
09:48AM 5 CHANGE THE SCHEDULE, RULE 16 APPLIES. AT THIS POINT WE DON'T
09:48AM 6 HAVE A REAL CASE SCHEDULE, BUT WE DO HAVE A SCHEDULE THROUGH
09:48AM 7 CLAIM CONSTRUCTION.

09:48AM 8 THE COURT: OKAY.

09:48AM 9 MR. AL-SALAM: BUT WE UNDERSTAND THAT WE CAN'T JUST
09:48AM 10 KEEP ADDING PATENTS, AND WE DON'T WANT TO DO THAT.

09:48AM 11 SO I'M NOT GOING TO SAY -- IF I UNDERSTAND THE COURT'S
09:48AM 12 POSITION THAT WE'LL NEED GOOD CAUSE IF WE ARE TO CHANGE THE
09:48AM 13 SCHEDULE GOING FORWARD.

09:48AM 14 THE COURT: AND I WOULD SAY, I FIND GOOD CAUSE. I
09:48AM 15 MEAN, I STILL BELIEVE THAT RULE 16 APPLIES NOW. I DO FIND THAT
09:49AM 16 GOOD CAUSE APPLIES FOR ALL OF THE REASONS THAT YOU HAD JUST
09:49AM 17 STATED A MOMENT AGO. I BELIEVE PLAINTIFFS HAVE BEEN DILIGENT.

09:49AM 18 BUT I JUST WANTED TO MAKE SURE THAT WE WERE ON THE SAME
09:49AM 19 PAGE IN TERMS OF THE STANDARD, AND, FRANKLY, IN TERMS OF GIVING
09:49AM 20 YOU A PREVIEW OF MY TENTATIVE IN THE FUTURE NOT AS LIKELY.

09:49AM 21 MR. AL-SALAM: WE UNDERSTAND THE MESSAGE,
09:49AM 22 YOUR HONOR.

09:49AM 23 THE COURT: OKAY. THANK YOU.

09:49AM 24 MR. AL-SALAM: THANK YOU, YOUR HONOR.

09:49AM 25 THE COURT: MR. RE OR MR. STOWELL, ANYTHING

09:49AM 1 REGARDING INARI'S MOTION FOR LEAVE TO FILE AN AMENDED
09:49AM 2 COMPLAINT?

09:49AM 3 MR. AL-SALAM: YES.

09:49AM 4 MR. RE: YES, YOUR HONOR. THANK YOU.

09:49AM 5 JOSEPH RE FOR IMPERATIVE CARE.

09:49AM 6 WE HAVE NO PROBLEM WITH WHAT YOU SAID FROM THE BENCH JUST
09:49AM 7 RIGHT NOW ON THAT ORDER.

09:49AM 8 THE ISSUE IS THEY ARE RESERVING, IT APPEARS, THE ABILITY
09:49AM 9 TO BRING MORE PATENTS INTO THE CASE, THE STANDARD, GOOD CAUSE
09:49AM 10 OR OTHERWISE.

09:49AM 11 WE ARE CONCERNED THAT THEY CLEARLY ARE GOING TO TRY TO
09:49AM 12 BRING IN MORE PATENTS, AND WE CAN'T GET FINAL RELIEF IN THIS
09:50AM 13 CASE.

09:50AM 14 THE COURT: UH-HUH.

09:50AM 15 MR. RE: SO IF YOU MEAN WHAT YOU SAID, THIS IS THE
09:50AM 16 LAST MOTION FOR LEAVE TO AMEND, I HAVE NO PROBLEM WITH THE
09:50AM 17 ORDER.

09:50AM 18 THE PROBLEM I JUST HEARD MR. AL-SALAM SAY, THAT HE THINKS
09:50AM 19 HE CAN BRING IN MORE PATENTS IF HE MEETS THE GOOD CAUSE
09:50AM 20 STANDARD.

09:50AM 21 OUR PROBLEM IS NOT JUST WITH THE SCHEDULE, BUT THE ABILITY
09:50AM 22 TO GET FINAL RELIEF. AND THAT'S WHY WE ALSO HAVE A MOTION TO
09:50AM 23 STAY, WHICH IS PENDING, AND I THINK IT'S GOING TO COME UP IN
09:50AM 24 OUR PRELIMINARY INJUNCTION HEARING, AND YOU'LL SEE WHY.

09:50AM 25 SO THE BIGGER ISSUE REALLY IS FINALITY AND DO WE HAVE ALL

09:50AM 1 OF THE PATENTS IN THIS CASE THAT WILL BE BROUGHT.

09:50AM 2 AND I HAVE YET TO HEAR FROM STRYKER/INARI THAT THEY WON'T
09:50AM 3 BRING MORE PATENTS INTO THE CASE, BECAUSE I DON'T WANT TO DO
09:50AM 4 THIS CASE TWICE. AND THAT'S WHAT I THINK MIGHT HAPPEN BECAUSE
09:50AM 5 THEY HAVE 13 MORE APPLICATIONS PENDING ON THE 3 FAMILIES THAT
09:50AM 6 ARE AT ISSUE IN THIS CASE, 13. AND I FILED A DECLARATION ON
09:51AM 7 THE MOTION TO STAY THAT SPECIFICALLY OUTLINED THAT.

09:51AM 8 AND I HAVE YET TO HEAR FROM STRYKER/INARI ON WHETHER THEY
09:51AM 9 PLAN TO ASSERT ANYMORE PATENTS BECAUSE I JUST WANT TO GO TO
09:51AM 10 CLAIM CONSTRUCTION ONCE, I WANT TO GO TO TRIAL ONCE. I THINK,
09:51AM 11 I ASSUME, THAT YOU WANT TO ISSUE ONE FINAL JUDGMENT. I WANT TO
09:51AM 12 DO THIS ONCE, AND RIGHT NOW WE DON'T HAVE THAT -- EVEN
09:51AM 13 LISTENING RIGHT NOW, WE DON'T HAVE THAT SECURITY.

09:51AM 14 THE COURT: AND THAT IS THE REASON THAT I RAISED THE
09:51AM 15 "AND THEN, AND THEN, AND THEN, AND THEN, AND THEN" CONCERN,
09:51AM 16 WHICH I HAVE.

09:51AM 17 I MEAN, PARTIES WILL ALWAYS SAY I LIKE TO RESERVE AND YOU
09:51AM 18 ALL CAN RESERVE IT AND I WILL MAKE THE RULING I MAKE, RIGHT?

09:51AM 19 SO I'VE EXPRESSED MY RESERVATIONS ABOUT -- AND MY
09:51AM 20 UNLIKELINESS TO PERMIT FURTHER AMENDMENT, BUT THAT IS AS FAR AS
09:51AM 21 I WILL GO AS WELL TODAY.

09:51AM 22 MR. RE: THANK YOU, YOUR HONOR.

09:51AM 23 THE COURT: ALL RIGHT. SO WITH THAT, LET ME JUST GO
09:51AM 24 AHEAD AND RULE FROM THE BENCH.

09:51AM 25 THE COURT GRANTS INARI'S MOTION TO AMEND TO ADD THE '333

09:52AM 1 PATENT. I FIND THAT UNDER THE FEDERAL RULES OF CIVIL PROCEDURE
09:52AM 2 16, I BELIEVE (B) (4), THAT GOOD CAUSE APPLIES FOR THE REASONS
09:52AM 3 STATED ON THE RECORD AND THAT INARI HAS BEEN DILIGENT IN
09:52AM 4 SEEKING AMENDMENT.

09:52AM 5 I'VE ALREADY MADE MY EXPECTATIONS CLEAR.

09:52AM 6 I'M ORDERING THE PARTIES TO MEET AND CONFER REGARDING
09:52AM 7 PROPOSED AMENDMENTS TO THE CURRENT CASE SCHEDULE, PARTICULARLY
09:52AM 8 THE TIMING FOR THE INVALIDITY CONTENTIONS AND WHETHER A SHORT
09:52AM 9 EXTENSION OF THE CLAIM CONSTRUCTION HEARING IS WARRANTED.

09:52AM 10 THE PARTIES SHOULD ENGAGE IN A CONSTRUCTIVE DIALOGUE
09:52AM 11 REGARDING THE AMENDMENTS IN LIGHT OF THIS.

09:52AM 12 AND SOMETHING WHICH I DIDN'T DISCUSS, BUT I AM ACTUALLY
09:52AM 13 GOING TO ORDER THE PARTIES TO MEET AND CONFER AND PROPOSE A
09:52AM 14 PROCESS FOR NARROWING THE PATENTS AND CLAIMS FOR TRIAL.

09:52AM 15 AND THE PARTIES SHOULD GENERALLY, AS PART OF THAT MEET AND
09:53AM 16 CONFER, ADDRESS WHETHER THIS NARROWING SHOULD OCCUR.

09:53AM 17 I MEAN -- SO, THAT'S THE RULING. AND THEN I'LL JUST
09:53AM 18 ELABORATE A LITTLE BIT ABOUT IT. NO MATTER WHAT, WE CAN'T
09:53AM 19 PRESENT ALL OF THESE TO THE JURY.

09:53AM 20 THE JURY WILL GLAZE OVER, AS YOU ALL KNOW, YOU'RE MUCH
09:53AM 21 MORE EXPERIENCED IN THIS THAN I AM IN TERMS OF THE PATENT
09:53AM 22 TRIALS. SO TRYING TO FIGURE OUT WHEN WE'RE GOING TO NARROW,
09:53AM 23 WHAT MAKES THE MOST SENSE.

09:53AM 24 SO I'D LIKE TO HEAR FROM YOU ALL BASED ON YOUR EXPERTISE
09:53AM 25 AND YOUR PROPOSAL REGARDING THAT.

09:53AM 1 OKAY? ALL RIGHT. SO THAT COMPLETES THE MOTION FOR LEAVE
09:53AM 2 TO FILE.

09:53AM 3 LET'S TURN TO THE PRELIMINARY INJUNCTION.

09:53AM 4 WE'LL DO ONE HOUR EACH, AND PLAINTIFFS CAN RESERVE
09:53AM 5 TEN MINUTES FOR REBUTTAL.

09:53AM 6 I'LL GIVE YOU SOME SORT OF "APPROACHING" IN TERMS OF --
09:54AM 7 I'M ASSUMING WE'RE GOING TO GO FOR 50 MINUTES OR SO, AND THEN
09:54AM 8 WE'LL TAKE A BREAK, AND GIVE MY COURT STAFF A BREAK, WE'LL TAKE
09:54AM 9 A 15 MINUTE BREAK, AND WE'LL COME BACK, AND WE'LL HEAR FROM
09:54AM 10 IMPERATIVE CARE AND THE REBUTTAL AND WRAP IT UP FOR TODAY.

09:54AM 11 MR. RE: THANK YOU, YOUR HONOR.

09:54AM 12 THE COURT: ALL RIGHT. THANK YOU.

09:54AM 13 MR. AL-SALAM: WHO KNOWS, I MIGHT NOT EVEN USE THE
09:54AM 14 WHOLE 50 MINUTES.

09:54AM 15 THE COURT: YOU ARE THE ONE I THINK DURING THE
09:54AM 16 TUTORIAL WHO SAID HOW MUCH TIME ARE YOU GOING TO GIVE ME.

09:54AM 17 MR. AL-SALAM: IT WASN'T ME. IT WASN'T ME.

09:54AM 18 THE COURT: NOT DURING THE TUTORIAL BUT WHEN WE WERE
09:54AM 19 TALKING ABOUT THE TIME.

09:54AM 20 MR. AL-SALAM: THAT'S TRUE. THAT'S TRUE.

09:54AM 21 THE COURT: YOUR COLLEAGUE WAS VERY DIRECTED.

09:54AM 22 MR. AL-SALAM: WELL, THANK YOU.

09:54AM 23 AND THANK YOU NOT JUST FOR -- IS IT ON?

09:54AM 24 MS. TESSAR: OURS WENT OFF.

09:54AM 25 THE CLERK: I DON'T SEE IT.

09:54AM 1 THE COURT: NO, IT'S OFF.

09:54AM 2 MR. AL-SALAM: I WONDER WHY.

09:55AM 3 THE COURT: I THINK IT'S AN "US" PROBLEM, NOT A
09:55AM 4 "YOU" PROBLEM.

09:55AM 5 MR. AL-SALAM: BECAUSE IT WORKED EARLIER.

09:55AM 6 THE COURT: LET'S GO OFF THE RECORD FOR A MOMENT.
09:55AM 7 THANK YOU, IRENE.

09:55AM 8 (PAUSE IN PROCEEDINGS.)

09:55AM 9 THE COURT: LET'S GO BACK ON THE RECORD.

09:55AM 10 MR. AL-SALAM: THANK YOU, YOUR HONOR. AND THANK YOU
09:55AM 11 FOR TAKING THE TIME TO HEAR THIS MOTION NOT ONLY FOR THE PEOPLE
09:55AM 12 IN THE COURTROOM BUT FOR EVERYBODY AT INARI.

09:55AM 13 AS THE COURT KNOWS, THIS IS A VERY IMPORTANT ISSUE, AND
09:55AM 14 THIS LAWSUIT IS VERY IMPORTANT TO INARI.

09:55AM 15 AND IN THAT REGARD, BEFORE WE GET INTO THE DETAILS OF THE
09:55AM 16 PRELIMINARY INJUNCTION MOTION, I WANT TO STEP BACK A LITTLE
09:55AM 17 BIT.

09:55AM 18 AND I KNOW THE COURT HEARS HYPERBOLE FROM LAWYERS ALL OF
09:56AM 19 THE TIME, BUT THIS CASE DEFINES WHY WE HAVE PATENTS AND WHY
09:56AM 20 PATENTS ARE IMPORTANT. THE DETAILS -- THE COURT HEARD A LITTLE
09:56AM 21 BIT ABOUT THE DISEASE IN CONNECTION WITH THE TUTORIAL BUT
09:56AM 22 REALLY DIDN'T HEAR THAT MUCH, A LITTLE BIT, ABOUT THE HISTORY
09:56AM 23 OF INARI.

09:56AM 24 AND THAT IS SET FORTH IN MR. HYKES'S DECLARATION, AND I
09:56AM 25 JUST WANT TO SUMMARIZE IT A LITTLE BIT BECAUSE IT REALLY DOES

09:56AM 1 IMPACT WHY INARI NEEDS INJUNCTIVE RELIEF.

09:56AM 2 INARI WAS FORMED IN 2011 WITH ONE MISSION, TO COME UP WITH
09:56AM 3 A SOLUTION TO HELP PATIENTS OF DEEP VEIN THROMBOSIS AND
09:56AM 4 PULMONARY EMBOLISM.

09:56AM 5 AT THAT TIME NOBODY HAD BUILT A PURPOSEFUL, A PURPOSE
09:56AM 6 DIRECTED THROMBECTOMY DEVICE FOR EITHER OF THOSE DISEASES.
09:57AM 7 THOSE DISEASES STILL KILL 100,000 AMERICANS, JUST AMERICANS, A
09:57AM 8 YEAR. AND THE MORTALITY RATE, WHICH MR. HYKES EXPLAINS, IS
09:57AM 9 ABOUT 15 PERCENT FOR THOSE WITH INTERMEDIATE RISK FOR PE, WHICH
09:57AM 10 IS PULMONARY EMBOLISM, HAS NOT CHANGED FOR 50 YEARS.

09:57AM 11 WITHOUT ANY QUESTION, THERE WAS A LONG-FELT NEED FOR
09:57AM 12 SOMEBODY TO COME INTO THIS INDUSTRY, TO THIS DISEASE, AND TRY
09:57AM 13 TO SOLVE IT. AND THAT'S WHAT INARI DID.

09:57AM 14 THEY SPENT HUNDREDS OF MILLIONS OF DOLLARS AND YEARS OF
09:57AM 15 EFFORT TO COME UP WITH, THROUGH CLINICAL TRIALS, RESEARCH AND
09:57AM 16 DEVELOPMENT, TO COME UP WITH DEVICES THAT COULD HELP THESE
09:57AM 17 PATIENTS.

09:57AM 18 AND THE RESULTS WERE SPECTACULAR. THEY, THEY -- FROM THE
09:57AM 19 DAY ONE THEIR FLOWTRIEVER WAS FOUND TO BE INCREDIBLY EFFECTIVE
09:57AM 20 FOR PE. FOR THOSE IN HIGH RISK, IT WAS 90 PERCENT MORE
09:58AM 21 EFFECTIVE IN SAVING LIVES.

09:58AM 22 NOW WE'RE IN 2025, 14 YEARS LATER, THEY'RE STILL TRYING TO
09:58AM 23 BECOME PROFITABLE.

09:58AM 24 NOW, WHEN I SAY "PROFITABLE," THEY HAVE PUT SO MUCH
09:58AM 25 INVESTMENT INTO THIS INDUSTRY, INTO SOLVING THESE PROBLEMS.

09:58AM 1 YOU SAW TWO OF THE EMPLOYEES, DR. TU, THOMAS TU,
09:58AM 2 BEN MERRITT, AND THEY EXPLAINED THEIR OWN PRIDE IN WHAT THEY
09:58AM 3 HAVE DEVELOPED AND THE LIVES THEY'VE SAVED. ON INARI'S WEBSITE
09:58AM 4 --

09:58AM 5 MR. RE: YOUR HONOR, I DO WANT TO IMPOSE AN
09:58AM 6 OBJECTION. THIS DR. TU WAS NOT A WITNESS ON THIS INJUNCTION,
09:58AM 7 AND THAT WAS OFF THE RECORD. DR. TU WAS NOT OF RECORD, AND HE
09:58AM 8 SHOULD NOT BE REFERRED TO. HE IS NOT A DECLARANT. THE
09:58AM 9 TUTORIAL WAS NOT A RECORD.

09:58AM 10 MR. AL-SALAM: HIS DEPOSITION WAS TAKEN, WASN'T IT?

09:58AM 11 MR. RE: NO.

09:58AM 12 MR. AL-SALAM: NO. I AM SORRY. I AM SORRY. I TAKE
09:58AM 13 IT BACK. OKAY. I'M SORRY. I WON'T MENTION DR. TU.

09:58AM 14 THE COURT: OKAY.

09:58AM 15 MR. AL-SALAM: BEN MERRITT, ONE OF THE INVESTORS,
09:58AM 16 EXPLAINED HIS PRIDE IN WHAT THEY'VE ACCOMPLISHED, AND THEY
09:58AM 17 POINTED OUT AND WE POINTED OUT THAT THERE IS A WEBSITE. I
09:59AM 18 MEAN, IN THE INARI WEBSITE THEY HAVE TESTIMONIALS FROM PEOPLE
09:59AM 19 WHOSE LIVES HAVE BEEN SAVED WITH THIS INARI FLOWTRIEVER DEVICE.

09:59AM 20 THE FLOWTRIEVER IS PRIMARILY FOR PULMONARY EMBOLISMS, AND
09:59AM 21 CLOTTRIEVER IS USUALLY TREATED FOR DVT. THE COURT KNOWS THIS,
09:59AM 22 AND I WON'T GO THROUGH ALL OF THIS. DVT IS WHEN YOU GET A CLOT
09:59AM 23 SOMEWHERE DEEP IN THE VEINS AND IT CAN TRAVEL TO THE LUNGS, AND
09:59AM 24 THAT'S WHEN IT BECOMES A PULMONARY EMBOLISM AND THREATENS YOUR
09:59AM 25 LIFE.

09:59AM 1 SO THE QUESTION IS WHY DID INARI PUT ALL OF THIS TIME,
09:59AM 2 EFFORT, AND MONEY INTO DOING THIS IF IT DIDN'T THINK IT COULD
09:59AM 3 GET ITS INVESTMENT BACK?

09:59AM 4 AND IT DID THINK IT COULD GET ITS INVESTMENT BACK FOR ONE
09:59AM 5 REASON, IT KNEW THAT IT WAS COMING UP WITH INNOVATIONS THAT
09:59AM 6 WERE GOING TO BE PATENTED. AND THE PATENT OFFICE HAS AGREED
09:59AM 7 WITH INARI. THE PATENT OFFICE HAS GRANTED INARI MORE THAN
10:00AM 8 50 PATENTS IN THIS FIELD RELATING TO THESE PRODUCTS.

10:00AM 9 NOBODY ELSE HAS COME UP WITH A PRODUCT THAT IS SPECIFIC TO
10:00AM 10 DEALING WITH DVT AND PE BEFORE IMPERATIVE CARE/TRUVIC. THEY'RE
10:00AM 11 OUR ONLY COMPETITOR THAT HAS NOW COME UP WITH A DEVICE THAT LO
10:00AM 12 AND BEHOLD, IT USES THE SAME SIZE CATHETERS, A 24 CATHETER WITH
10:00AM 13 A 16 -- A 24 FRENCH CATHETER, THAT DEFINES WIDTH, A 16 FRENCH
10:00AM 14 CATHETER THAT TELESCOPES THROUGH IT. THEY HAVE A HEMOSTASIS
10:00AM 15 VALVE THAT USES TWO FILAMENTS THAT WRAP AROUND THE LUMEN, JUST
10:00AM 16 LIKE WE DO. THEY USE WHAT WE CALL WHOOSH, WHICH IS CREATING A
10:00AM 17 VACUUM SUCH WHEN YOU TURN A VALVE, IT CAN SUCK THE CLOT OUT.

10:00AM 18 WE BELIEVE THEY COPIED US. THEY'RE GOING TO TALK ABOUT,
10:00AM 19 OH, THERE'S DIFFERENCES, BUT WE BELIEVE THERE'S NOBODY ELSE
10:01AM 20 THAT HAS DONE WHAT THEY HAVE DONE. THEY COPIED US. AND, YOU
10:01AM 21 KNOW, IN SOME PLACES THEY WOULD CALL THIS THE EMPTY CHAIR.

10:01AM 22 OF ALL OF THE DECLARATIONS THAT THEY HAVE PROVIDED, THEY
10:01AM 23 DID NOT PROVIDE A SINGLE DECLARATION OF ANYBODY WHO ACTUALLY
10:01AM 24 DEVELOPED THEIR PRODUCT, WHO WORKED ON THE PRODUCT.

10:01AM 25 WE TOOK THE POSITION THAT THEY COPIED US. THEY DID NOT.

10:01AM 1 THEY SAY THERE ARE DIFFERENCES, BUT THEY DON'T DENY THAT THEY
10:01AM 2 LOOKED AT OUR PRODUCT, THEY LOOKED AT OUR FDA APPLICATION.

10:01AM 3 THEY, THEY -- THE FACT IS THAT THEY ARE RIDING OUR
10:01AM 4 COATTAILS, AND THAT'S OKAY IN SOME BIG PICTURE IF YOU DON'T
10:01AM 5 INFRINGE. BUT IF YOU INFRINGE PATENTS, AND AFTER WE PUT ALL OF
10:01AM 6 THIS INVESTMENT, THAT'S WHAT INJUNCTIVE RELIEF IS FOR.

10:01AM 7 THE COURT: SO, I MEAN, THEY -- IMPERATIVE CARE
10:01AM 8 ACTUALLY DOESN'T DISAGREE OR DOESN'T CONTEST INFRINGEMENT FOR
10:01AM 9 PURPOSES OF THE '921, BUT THEY DO ASSERT OBVIOUSNESS AND
10:02AM 10 ANTICIPATION.

10:02AM 11 PTAB ARGUABLY MAY AGREE WITH THEM OR AT LEAST FIND THAT
10:02AM 12 THEY RAISED A SUBSTANTIAL QUESTION, RIGHT? SO BETWEEN THE TWO
10:02AM 13 AND GIVEN THE TIME, I WOULD ENCOURAGE, AND I WAS GOING TO START
10:02AM 14 BY SAYING THIS, BUT I GOT SIDE-TRACKED BY THE LEAVE TO AMEND,
10:02AM 15 BUT I DO THINK THAT '910 SHOULD BE A LITTLE BIT MORE OF THE
10:02AM 16 FOCUS FOR TODAY. I WOULD SAY THAT TO BOTH COUNSEL.

10:02AM 17 MR. AL-SALAM: I UNDERSTAND.

10:02AM 18 THE COURT: BUT JUST IN TERMS OF THINGS THAT YOU'RE
10:02AM 19 RAISING, WHEN I LOOK AT IT, A LOT OF WHAT YOU'RE REFERRING TO
10:02AM 20 IS THE SYSTEM, THE WHOOSH, THE THIS, AND SO I WOULD ENCOURAGE
10:02AM 21 COUNSEL TO FOCUS A BIT ON THE '910.

10:02AM 22 MR. AL-SALAM: INSTRUCTION TAKEN.

10:02AM 23 AND THAT'S ENOUGH OF THE BACKGROUND, BUT I JUST WANTED TO
10:02AM 24 PUT IT IN PERSPECTIVE BECAUSE I THINK IT'S IMPORTANT IN TERMS
10:02AM 25 OF THE BIG PICTURE OF WHY WE ARE HERE AND WHY INARI IS SEEKING

10:02AM 1 INJUNCTIVE RELIEF.

10:02AM 2 THE COURT: ABSOLUTELY. AND I THINK THE TUTORIAL
10:02AM 3 WAS VERY INFORMATIVE FOR BOTH SIDES. IT HAS VERY HELPFUL TO
10:02AM 4 HEAR FROM THE INVENTORS AND SO FORTH AND JUST SEE THE BIG
10:02AM 5 PICTURE.

10:03AM 6 MR. AL-SALAM: SO THE COURT ALREADY KNOWS THIS,
10:03AM 7 THERE ARE FOUR FACTORS, AND NOW I'LL GET TO THE PRELIMINARY
10:03AM 8 INJUNCTION ISSUES: LIKELIHOOD OF SUCCESS, IRREPARABLE HARM,
10:03AM 9 AND THOSE ARE THE TWO MOST IMPORTANT FACTORS.

10:03AM 10 THE COURT: UH-HUH.

10:03AM 11 MR. AL-SALAM: AND THEN WE HAVE TWO OTHER FACTORS
10:03AM 12 THE COURT HAS CONSIDERED: THE BALANCE OF EQUITY AND BALANCE OF
10:03AM 13 HARM AND PUBLIC INTEREST.

10:03AM 14 AND THE COURT HAS ALREADY POINTED OUT, WE COULD BE
10:03AM 15 ENTITLED TO INJUNCTIVE RELIEF IF WE ESTABLISH LIKELIHOOD OF
10:03AM 16 SUCCESS FOR EITHER PATENT AND CHECKED THE OTHER BOXES OR MEET
10:03AM 17 THE OTHER REQUIREMENTS.

10:03AM 18 THE COURT: I THINK THERE ARE TWO INTERESTING SHADES
10:03AM 19 WITH THAT. BUT I DO WANT TO SAY AND SO I'M GOING TO STOP
10:03AM 20 BOUNCING IN. BUT I THINK THE INTERESTING ISSUE WITH THAT IS
10:03AM 21 SORT OF THE IRREPARABLE HARM AND WHERE THE PRODUCT IS AT THIS
10:03AM 22 POINT IN TERMS OF DVT VERSUS PE ROLLOUT, AND THAT IS THE SAME
10:04AM 23 PRODUCT AND WHAT THE IMPLICATIONS ARE.

10:04AM 24 MR. AL-SALAM: I WILL ADDRESS THAT, TOO.

10:04AM 25 THE COURT: YES. AND THEN THE OTHER THING, BEFORE

10:04AM 1 WE EVER GET TO THE FOUR PARTS IS AT SOME POINT I DEFINITELY
10:04AM 2 DON'T WANT US TO GIVE A SLEIGHT OF HAND TO THE MANDATORY VERSUS
10:04AM 3 PROHIBITORY. SO IF WE CAN JUST TOUCH UPON THAT AT SOME POINT.

10:04AM 4 MR. AL-SALAM: I WILL DO THAT, YOUR HONOR.

10:04AM 5 THE COURT: THANK YOU.

10:04AM 6 MR. AL-SALAM: SO IN TERMS OF THE TWO CLAIMS THAT
10:04AM 7 WE'RE GOING TO TALK ABOUT, AT THE COURT'S REQUEST WE'LL FOCUS
10:04AM 8 PRIMARILY ON CLAIM 1 OF THE '910 PATENT.

10:04AM 9 THE COURT: OKAY.

10:04AM 10 MR. AL-SALAM: NOW, WE HAVE TWO CLAIMS IN THE '921
10:04AM 11 PATENT THAT WE HAVE ASSERTED FOR THE PURPOSE OF THIS
10:04AM 12 PRELIMINARY INJUNCTION. CLAIM 1, THE BROADER INDEPENDENT
10:04AM 13 CLAIM, AND CLAIM 10, THE NARROWER DEPENDENT CLAIM.

10:04AM 14 FOR THE REASONS THAT YOU'VE INDICATED, AND I WANT TO GET
10:04AM 15 TO THOSE IPR INSTITUTION DECISIONS BY THE PTAB ON THE '921. I
10:04AM 16 DON'T WANT TO SUGGEST THAT THEY RESOLVE THE ISSUE.

10:04AM 17 THE COURT: UH-HUH.

10:04AM 18 MR. AL-SALAM: BUT WE WILL FOCUS JUST ON CLAIM 10.
10:04AM 19 IT'S NARROWER THAN CLAIM 1, AND AS THE COURT UNDERSTANDS, WHEN
10:05AM 20 IT'S NARROWER, IT'S BOTH HARDER TO INFRINGE AND HARDER TO
10:05AM 21 INVALIDATE.

10:05AM 22 BUT GIVEN, AS THE COURT POINTED OUT, THERE'S NO DISPUTE ON
10:05AM 23 INFRINGEMENT, THEY'RE NOT DENYING THAT THEY'RE INFRINGING
10:05AM 24 CLAIM 10 OF THE '921 PATENT, THERE'S NO REASON FOR US TO FOCUS
10:05AM 25 ON CLAIM 1.

10:05AM 1 DOES THE COURT -- SO WE WILL FOCUS ON CLAIM 10 OF THE '921
10:05AM 2 PATENT, WHICH IS THE NARROWER OF THE TWO CLAIMS, AND CLAIM 1 OF
10:05AM 3 THE '910 PATENT.

10:05AM 4 AND WE'LL BEGIN WITH CLAIM 1 OF THE '910 PATENT BECAUSE I
10:05AM 5 UNDERSTAND THE COURT'S CONCERN THAT THE PTAB, THE PATENT TRIAL
10:05AM 6 AND APPEALS BOARD, WHICH I'LL REFER TO AS THE PTAB, DECISIONS
10:05AM 7 MIGHT SUGGEST THERE'S A SUBSTANTIAL QUESTION OF VALIDITY AS TO
10:05AM 8 CLAIM 10. WE DON'T AGREE WITH THAT, AND I'LL RESPOND TO THAT,
10:05AM 9 BUT LET'S START WITH CLAIM 1 OF THE '910, BECAUSE I DO THINK
10:05AM 10 THAT THAT ONE IS EASIER BECAUSE -- AND IT'S EASIER, AND I WILL
10:06AM 11 SORT OF GIVE YOU A HINT OF WHAT I'M GOING TO TALK ABOUT.

10:06AM 12 THERE'S A BETTER VERB FOR THAT.

10:06AM 13 THE '691 NON-INSTITUTION DECISION IS VERY RELEVANT TO
10:06AM 14 WHETHER OR NOT THEY HAVE CREATED A SUBSTANTIAL QUESTION OF
10:06AM 15 VALIDITY ON THE '910 PATENT.

10:06AM 16 BUT LET'S GO -- THE '910 PATENT, YOU'VE POINTED OUT THAT
10:06AM 17 THEY DO HAVE ONE NON-INFRINGEMENT POSITION AND THAT HAS TO DO
10:06AM 18 WITH THESE PRESSURE SOURCES. IT'S THE ONLY NON-INFRINGEMENT
10:06AM 19 POSITION THAT I'VE SEEN THAT THEY'VE REALLY RAISED.

10:06AM 20 AND EVEN THAT POSITION IS NOT SUPPORTED BY ANY EXPERT
10:06AM 21 DECLARATION. FOR EXAMPLE, MR. THORNTON, THEIR EXPERT ON
10:06AM 22 INVALIDITY, HAS AGREED THAT HE IS NOT OPINING ON
10:06AM 23 NON-INFRINGEMENT AT ALL. AND I THINK WE KNOW WHY, BECAUSE IT'S
10:06AM 24 A DIFFICULT ARGUMENT TO MAKE. AND I'LL EXPLAIN WHY.

10:07AM 25 BUT I JUST SUGGEST THAT IF THEY COULD HAVE GOTTEN HIM TO

10:07AM 1 OPINE THAT THERE WAS NO INFRINGEMENT, THEY WOULD HAVE.

10:07AM 2 BUT WHAT THEY'VE INSTEAD, THEY'RE MAKING ATTORNEY ARGUMENT
10:07AM 3 AND THEY'RE SAYING, WHICH IS TRUE, THE CLAIM REQUIRES TWO
10:07AM 4 PRESSURE SOURCES, ONE FOR EACH CATHETER.

10:07AM 5 AND HERE'S THE CLAIM. WE DON'T HAVE TO GO THROUGH IT IN
10:07AM 6 DETAIL, BUT IT HAS A FIRST CATHETER WITH A FIRST PRESSURE
10:07AM 7 SOURCE AND THEN A SECOND CATHETER WITH A SECOND PRESSURE
10:07AM 8 SOURCE.

10:07AM 9 AND THEY HAVE WHAT THEY CALL FLUID CONTROL DEVICES, WHICH
10:07AM 10 ARE ESSENTIALLY YOU CAN OPEN IT UP SO YOU CREATE A NEGATIVE
10:07AM 11 PRESSURE, YOU TURN IT ON, AND IT GOES WHEW, AND IT SUCKS UP THE
10:07AM 12 CLOT. THAT'S THE INTENT.

10:07AM 13 SO WE HAVE TWO PRESSURE SOURCES, ONE FOR EACH CATHETER.

10:07AM 14 AND FOR EACH CATHETER, THE WAY THIS IS DEFINED AS, YOU CAN
10:08AM 15 HAVE THE SMALLER CATHETER THROUGH THE LARGER CATHETER, WHAT WE
10:08AM 16 CALL TELESCOPED, WHICH EVERYBODY AGREED IS VERY IMPORTANT FOR
10:08AM 17 PE. YOU HAVE TO GO FARTHER UP THROUGH THE VASCULATURE TO REACH
10:08AM 18 A PULMONARY EMBOLISM IN THE LUNG.

10:08AM 19 SO HAVING THIS 16 FRENCH CATHETER THAT GOES THROUGH THE
10:08AM 20 24 FRENCH CATHETER ALLOWS YOU TO GO FARTHER.

10:08AM 21 EVERYBODY AGREES THAT THAT IS SOMETHING THAT IS USED --
10:08AM 22 IT'S VERY -- I DON'T KNOW. MR. SCOTT JUST SAID IN HIS
10:08AM 23 DEPOSITION THAT HE AGREED IT WAS MORE IMPORTANT FOR PE. OUR
10:08AM 24 OPPONENT -- OUR WITNESSES SAID IT IS USUALLY USED IN PE AND
10:08AM 25 MOST PE PROCEDURES.

10:08AM 1 SO THEY SAY WE ONLY HAVE ONE PRESSURE SOURCE, THE PUMP.

10:08AM 2 THEY POINT OUT THAT THE PATENT TALKS OFTEN ABOUT YOU HAVE
10:08AM 3 TWO SYRINGES, ONE FOR EACH OF THE CATHETERS. AND YOU PULL BACK
10:09AM 4 THE SYRINGE TO CREATE THAT NEGATIVE PRESSURE, AND THEN YOU TURN
10:09AM 5 THE STOCK CAUGHT AND THAT CREATES THE WHOOSH FOR ONE CATHETER
10:09AM 6 AND YOU CAN DO IT FOR THE OTHER CATHETER.

10:09AM 7 THEY SAY THAT'S TWO PRESSURE SOURCES. WE ONLY HAVE ONE.
10:09AM 8 WE ONLY HAVE THE PUMP. THE PUMP CREATES THE NEGATIVE PRESSURE
10:09AM 9 FOR EACH. THAT'S THEIR ARGUMENT.

10:09AM 10 THE ARGUMENT FAILS BOTH IN TERMS OF COMMON PARLANCE, HOW
10:09AM 11 PEOPLE USE THE WORD "SOURCE," AND IF THERE WERE ANY AMBIGUITY,
10:09AM 12 IT'S RESOLVED BY THE PATENT ITSELF. THOSE ARE THE TWO KEY
10:09AM 13 THINGS.

10:09AM 14 FIRST OF ALL, WHAT WE KNOW IS THAT THE WAY THE PUMP WORKS,
10:09AM 15 IT CREATES NEGATIVE PRESSURE IN EACH OF THESE CANNISTERS, WHAT
10:09AM 16 THEY CALL THE CLOT CANNISTER, SUCH THAT WHAT HAPPENS IS THAT
10:09AM 17 THIS SHOWS THE CLOT IN THE CANNISTER. BUT WHEN YOU APPLY THE
10:09AM 18 PUMP, IT CREATES NEGATIVE PRESSURE IN THAT CANNISTER, AND THEN
10:10AM 19 WHEN YOU TURN THE SWITCH, THAT NEGATIVE PRESSURE IS APPLIED TO
10:10AM 20 THE CATHETER AND SUCKS THE CLOT UP.

10:10AM 21 THERE ARE MULTIPLE REASONS WHY WE WOULD SAY THAT THERE ARE
10:10AM 22 TWO SOURCES OF PRESSURE. ONE IS THE SOURCE OF NEGATIVE
10:10AM 23 PRESSURE EXISTS IN EACH CANNISTER, SO, THEREFORE, THERE IS ONE
10:10AM 24 AT THAT CANNISTER AND THERE IS ONE AT THE OTHER CANNISTER.

10:10AM 25 AND IF YOU REALLY THINK ABOUT THE WORD "SOURCE," THERE ARE

10:10AM 1 ALWAYS ULTIMATE SOURCES AND INTERMEDIATE SOURCES, ESPECIALLY
10:10AM 2 WHEN YOU'RE TALKING ABOUT FLUIDS. I'LL JUST -- I'LL GIVE YOU
10:10AM 3 SOME EXAMPLES THAT I THINK WOULD COME UP IN EVERY DAY.

10:10AM 4 IF I SAY WHAT ARE THE WATER SOURCES FOR THE CITY OF
10:10AM 5 SAN JOSE? I DON'T ACTUALLY KNOW THE ANSWER. BUT LET'S JUST
10:10AM 6 SAY IT'S A RESERVOIR. A RESERVOIR COULD BE ONE. IT COULD BE A
10:11AM 7 LAKE. MAYBE THERE'S A RIVER, MAYBE THE SACRAMENTO RIVER FOR
10:11AM 8 SAN FRANCISCO.

10:11AM 9 BUT THE FACT IS THAT THE ULTIMATE SOURCE IS THE SIERRAS,
10:11AM 10 IT'S ALWAYS -- OR THE ULTIMATE SOURCE IS THE RAIN, IT'S THE
10:11AM 11 CLOUDS. THERE ARE -- YOU CAN ALWAYS GO UPSTREAM AND FIND
10:11AM 12 ANOTHER SOURCE AND ULTIMATELY GET TO A SOURCE, BUT PEOPLE IN
10:11AM 13 EVERY DAY, IN EVERY DAY SPEECH WOULD SAY THE RESERVOIR IS THE
10:11AM 14 SOURCE FOR OUR WATER OR WE HAVE TWO SOURCES, THE RESERVOIR AND
10:11AM 15 SOMETHING ELSE.

10:11AM 16 THEY DON'T NECESSARILY GO AND SAY, OH, IT'S THE SIERRAS,
10:11AM 17 OR THE RAINFALL, OR I SUPPOSE THAT GOD IS THE SOURCE FOR
10:11AM 18 EVERYTHING IF YOU'RE RELIGIOUS.

10:11AM 19 BUT THAT'S BECAUSE THERE ARE ALWAYS SOURCES IN BETWEEN. I
10:11AM 20 MIGHT GET INFORMATION FROM MY COLLEAGUE, MR. KEESE, HE WOULD BE
10:11AM 21 MY SOURCE, BUT HE GOT IT FROM, I DON'T KNOW, FROM A TREATISE.
10:11AM 22 THAT WOULD BE HIS SOURCE.

10:11AM 23 AND THEN THE TREATISE GOT IT FROM THE AUTHOR, AND THE
10:12AM 24 AUTHOR GOT IT FROM SOMEWHERE ELSE.

10:12AM 25 SO THERE ARE -- YOU CAN USE SOURCE SUCH THAT THERE ARE

10:12AM 1 INTERMEDIATE SOURCES, EVEN IF YOU GO BACK AND SAY, SURE, THE
10:12AM 2 PUMP CREATES THE TWO PRESSURE SOURCES BUT THERE ARE TWO
10:12AM 3 PRESSURE SOURCES, ONE FOR EACH CATHETER.

10:12AM 4 YOU COULD ALSO SAY THE PUMP AND THE CLOT CANNISTER FOR
10:12AM 5 EACH -- FOR ONE CATHETER CREATES THE PRESSURE SOURCE AND THE
10:12AM 6 PUMP AND THE CLOT CANNISTER FOR THE OTHER CATHETER CREATES A
10:12AM 7 PRESSURE SOURCE.

10:12AM 8 NOW SOMEBODY MIGHT SAY, OKAY, WELL, WHAT YOU'RE SAYING IS
10:12AM 9 THERE'S AN AMBIGUITY. THERE'S AN AMBIGUITY IN HOW SOURCE IS
10:12AM 10 USED. IT DOESN'T SAY ULTIMATE SOURCE. BUT IF THERE WERE ANY
10:12AM 11 AMBIGUITY, ANY AMBIGUITY, THOSE AMBIGUITIES ARE RESOLVED BY THE
10:12AM 12 PATENT ITSELF BECAUSE THE PATENT ITSELF TELLS YOU THAT THEY'RE
10:12AM 13 USING SOURCE IN THE WAY THAT I'M USING IT.

10:12AM 14 FOR EXAMPLE, IT SAYS IN THE BACKGROUND, QUOTE, "THE
10:13AM 15 PRESSURE SOURCES CAN BE FLUIDLY COUPLED AND/OR INTEGRALLY
10:13AM 16 FORMED."

10:13AM 17 THERE'S NO WAY TO READ THAT SENTENCE WITHOUT UNDERSTANDING
10:13AM 18 WHAT THEY MEAN IS THE TWO PRESSURE SOURCES CAN COME FROM THE
10:13AM 19 SAME SOURCE.

10:13AM 20 AND IF THAT WEREN'T CLEAR ENOUGH, THE DEPENDENT CLAIMS --
10:13AM 21 AND REMEMBER, THE DEPENDENT CLAIMS ARE CLAIMS WHICH NARROW THE
10:13AM 22 INDEPENDENT CLAIM. THEY NARROW CLAIM 1. SO THEY -- CLAIM 1 IS
10:13AM 23 ALWAYS GOING TO BE CONSIDERED BROADER THAN CLAIMS 4 AND 5.

10:13AM 24 CLAIM 4 OF THE '910 PATENT SAYS WHEREIN THE FIRST PRESSURE
10:13AM 25 SOURCE IS THE SAME AS THE SECOND PRESSURE SOURCE. SO BY WHAT

10:13AM 1 IS CALLED CLAIM DIFFERENTIATION, AND WHAT THAT MEANS IS THAT
10:13AM 2 THERE IS A STRONG PRESUMPTION THAT AN INDEPENDENT CLAIM IS AT
10:13AM 3 LEAST AS BROAD AS THE DEPENDENT CLAIM.

10:14AM 4 AND SO BY CLAIM DIFFERENTIATION -- AND BY THE WAY, THIS IS
10:14AM 5 ALSO -- DEPENDENT CLAIMS CAN BE USED FOR CLAIM CONSTRUCTION,
10:14AM 6 THIS CREATES THE PRESUMPTION THAT THE TWO PRESSURE SOURCES CAN
10:14AM 7 HAVE THE SAME SOURCE.

10:14AM 8 AND THEN CLAIM 5 SAYS, WHEREIN THE FIRST PRESSURE SOURCE
10:14AM 9 AND THE SECOND PRESSURE SOURCE COMPRISE AN ELECTRIC PUMP, NOT
10:14AM 10 ELECTRIC PUMPS, AN ELECTRIC PUMP. THAT RESOLVES THE ISSUE.

10:14AM 11 THERE ARE TWO PRESSURE SOURCES, ONE FOR EACH CATHETER,
10:14AM 12 EVEN IF THEY BOTH DERIVE UPSTREAM FROM A SINGLE ELECTRIC PUMP.

10:14AM 13 DOES THE COURT HAVE ANY QUESTIONS ON THAT BECAUSE WE
10:14AM 14 BELIEVE THIS SHOULD BE AN EASY INFRINGEMENT ISSUE?

10:15AM 15 THE COURT: NO QUESTIONS.

10:15AM 16 MR. AL-SALAM: OKAY. THANK YOU. NOW, THEY HAVE
10:15AM 17 SOME OTHER ARGUMENTS, AND I THINK THE COURT MENTIONED THIS.

10:15AM 18 THE COURT MIGHT HAVE SOME CONCERNS THAT, WELL, IT HASN'T
10:15AM 19 BEEN APPROVED, THE SYMPHONY HAS NOT BEEN APPROVED FOR USE WITH
10:15AM 20 PE, PULMONARY EMBOLISMS.

10:15AM 21 AND WE ALSO AGREE THAT THE CLINICAL TRIALS THAT THEY ARE
10:15AM 22 DOING, BECAUSE THEY ARE DOING CLINICAL TRIALS RIGHT NOW WITH
10:15AM 23 SYMPHONY, ARE NOT SUBJECT TO AN INFRINGEMENT CLAIM.

10:15AM 24 THE COURT: RIGHT.

10:15AM 25 MR. AL-SALAM: SO THEN THE COURT MIGHT SAY, WELL,

10:15AM 1 HOW CAN YOU GET A PRELIMINARY INJUNCTION IF THEY'RE NOT YET
10:15AM 2 APPROVED FOR PE?

10:15AM 3 THERE ARE TWO TO THREE REASONS. ONE REASON IS THE CLAIM
10:15AM 4 IS NOT ABOUT USE. SO THERE ARE METHOD CLAIMS. IF THIS CLAIM
10:15AM 5 WAS A METHOD OF USING A MECHANICAL THROMBECTOMY DEVICE TO TREAT
10:15AM 6 PE, THEN THE ACTUAL INFRINGEMENT ONLY OCCURS WHEN SOMEONE USES
10:15AM 7 IT FOR THAT PURPOSE.

10:15AM 8 BUT WHEN YOU HAVE A DEVICE OR SYSTEM CLAIM, THEN YOU
10:16AM 9 INFRINGE UNDER 271(A), AMONG OTHER WAYS, BY SELLING, OFFERING
10:16AM 10 FOR SELL, OR MAKING EVEN.

10:16AM 11 SO WHAT THIS CLAIM REQUIRES, IF WE GO BACK TO IT, IT'S A
10:16AM 12 CLOT TREATMENT SYSTEM FOR TREATING CLOT MATERIAL INCLUDING
10:16AM 13 COMPRISING, WHICH MEANS INCLUDING, A PULMONARY EMBOLISM IN THE
10:16AM 14 VASCULATURE OF A PATIENT.

10:16AM 15 THERE IS NO DISPUTE THAT SYMPHONY IS DESIGNED FOR TREATING
10:16AM 16 PULMONARY EMBOLISMS. THAT'S WHAT THE PRODUCT IS.

10:16AM 17 NOW, THERE ARE -- THEN IT'S TRUE THAT IF THEY SELL THAT
10:16AM 18 PRODUCT TO SOMEBODY THAT USES IT FOR CLINICAL TRIALS, THAT'S
10:16AM 19 OFF. WE CAN'T ASSERT THAT.

10:16AM 20 BUT WHEN THEY SELL IT OTHERWISE, WHEN IT'S NOT BEING USED
10:16AM 21 FOR CLINICAL TRIALS, THEY SELL IT TO A PHYSICIAN WHO HAS A
10:16AM 22 CHOICE. THAT PHYSICIAN CAN USE IT FOR DVT, THAT'S THE ONLY
10:17AM 23 THING IT'S APPROVED FOR, OR, AS EVERYBODY AGREES, PHYSICIANS
10:17AM 24 OFTEN MAKE WHAT THEY CALL OFF-LABEL USES. AND THEY COULD
10:17AM 25 TREAT -- THEY COULD USE IT FOR PE EVEN IF IT'S NOT YET BEEN

10:17AM 1 APPROVED FOR THAT. AND, IN FACT, THEY, OF COURSE, KNOW THAT
10:17AM 2 THERE ARE CLINICAL TRIALS BEING DONE WITH THIS NOW. AND WE
10:17AM 3 BELIEVE THAT THERE ARE USES.

10:17AM 4 BUT WHETHER OR NOT THERE ARE USES, AS LONG AS YOU SELL A
10:17AM 5 PRODUCT --

10:17AM 6 THE COURT: YOU HAD JUST DISTINGUISHED THAT WE'RE
10:17AM 7 NOT IN A USE OF A SYSTEM PATENT, WE'RE AT A SITUATION WHERE
10:17AM 8 IT'S ONLY BEEN APPROVED AT THIS POINT FOR DVT. IT'S PENDING IN
10:17AM 9 TERMS OF FOR PE. 210 IS ONLY ABOUT -- THERE'S THE LIMITING
10:17AM 10 TERM OF FOR PE, RIGHT?

10:17AM 11 SO WALK ME THROUGH THE IRREPARABLE HARM FOR PRELIMINARY
10:17AM 12 INJUNCTION WHICH IS PREMISED ON ARGUABLY FUTURE HARM, I.E., THE
10:18AM 13 FDA APPROVAL FOR PE AND YOUR BEST CASE FOR THAT.

10:18AM 14 MR. AL-SALAM: PERFECT. I UNDERSTAND THE POINT.

10:18AM 15 I WAS JUST ARGUING AT THIS POINT I'M KEEPING INFRINGEMENT
10:18AM 16 SEPARATE FROM IRREPARABLE HARM.

10:18AM 17 THE COURT: OKAY.

10:18AM 18 MR. AL-SALAM: BUT I AGREE AND I UNDERSTAND THE
10:18AM 19 COURT'S CONCERN THAT, WELL, IF IT'S NOT APPROVED YET FOR PE,
10:18AM 20 THEN HOW ARE WE SUFFERING IRREPARABLE HARM?

10:18AM 21 WELL, MY BEST CASE FOR THAT, I HAVE TWO OF THEM ON THIS
10:18AM 22 SLIDE, IS THAT YOU DON'T HAVE TO WAIT UNTIL YOU'RE SUFFERING
10:18AM 23 THE IRREPARABLE HARM TO GET INJUNCTIVE RELIEF.

10:18AM 24 IN FACT, WE DON'T HAVE TO WAIT UNTIL THE HAMMER COMES DOWN
10:18AM 25 ON OUR HEAD TO TRY TO GET AN ORDER FROM PRECLUDING THEM FROM

10:18AM 1 HITTING US WITH A HAMMER.

10:18AM 2 I MEAN, WE KNOW THAT THERE'S A HAMMER COMING FOR US. IT'S
10:18AM 3 IN SLOW MOTION, BUT IT'S COMING AT US, AND IT'S GOING TO HIT
10:18AM 4 US.

10:18AM 5 AND WE'RE ASKING THE COURT -- WE KNOW WHAT IS GOING TO
10:19AM 6 HAPPEN WHEN THIS HAMMER HITS US. THEY KNOW WHAT IS GOING TO
10:19AM 7 HAPPEN. WE HAVE GIVEN THE COURT THEIR OWN ESTIMATES OF WHAT
10:19AM 8 THEIR SALES WILL BE IN 2026 AND WHAT THEY PROJECT FOR THESE
10:19AM 9 SALES, AND THEY ARE GOING TO BE SUBSTANTIAL.

10:19AM 10 AND AS THE COURT MIGHT RECALL, CURRENTLY OUR ONLY
10:19AM 11 COMPETITOR IN PE IS PENUMBRA, WHICH IS ABOUT 20, 25 PERCENT OF
10:19AM 12 THE MARKET, SOMEWHERE IN THERE.

10:19AM 13 RIGHT NOW, THEY ARE POISED TO GET INTO THE MARKET AND TAKE
10:19AM 14 SUBSTANTIAL MARKET SHARE FROM US. IT'S UNDER SEAL, SO I WON'T
10:19AM 15 SAY THE EXACT NUMBER THAT INARI HAS PROJECTED, BUT IT'S TENS OF
10:19AM 16 MILLIONS OF DOLLARS THAT INARI PROJECTS THEY WILL LOSE WHEN
10:19AM 17 THEY JOIN THE MARKET.

10:19AM 18 THEIR PROJECTIONS ARE ACTUALLY HIGHER BECAUSE THEY HAVE A
10:19AM 19 TWO YEAR PROJECTION WHICH IS -- ALMOST EQUALS OUR LONGER
10:19AM 20 PROJECTION.

10:19AM 21 SO THESE ARE THE CASES WE'RE RELYING ON IS THAT YOU DON'T
10:19AM 22 HAVE TO WAIT UNTIL WE'RE SUFFERING. IF IT'S CLEAR THAT WE ARE
10:20AM 23 GOING TO SUFFER, THAT WE ARE GOING TO HAVE A HAMMER COME DOWN
10:20AM 24 ON US, YOU CAN SAY HOLD OFF ON THAT HAMMER, THAT LET'S -- AT
10:20AM 25 THE VERY LEAST, LET'S RESOLVE THESE INFRINGEMENT AND VALIDITY

10:20AM 1 ISSUES BEFORE YOU START SELLING IN THE PE MARKET AGAINST INARI
10:20AM 2 AND TAKE INARI'S MARKET SHARE.

10:20AM 3 AND I'LL GET TO IRREPARABLE HARM. I HATE JUMPING AHEAD
10:20AM 4 TOO MUCH. IT'S NOT JUST TAKING MARKET SHARE. IT'S IMPACTING
10:20AM 5 OUR RELATIONSHIPS WITH OUR DOCTORS, THE RELATIONSHIPS THAT
10:20AM 6 WE'VE SPENT A LONG TIME TRYING TO GET THEM TO COME OFF THE USE
10:20AM 7 OF LYTICS AND OTHER TRADITIONAL METHODS AND THERAPIES TO USE
10:20AM 8 WHAT IS A NEW DEVICE FOR TREATING PE. AND THAT HARM IS AS
10:20AM 9 SIGNIFICANT AS THE HARM IN JUST LOST MARKET SHARE.

10:20AM 10 OKAY. I'LL GET BACK TO IRREPARABLE HARM.

10:21AM 11 THE COURT: THAT'S FINE.

10:21AM 12 MR. AL-SALAM: BUT LET THE ME -- I WANT TO GO
10:21AM 13 THROUGH A LITTLE BIT ON CLAIM 10 ON THE '921 PATENT. WELL,
10:21AM 14 FIRST OF ALL, LET'S STEP BACK. I THINK THE COURT'S CONCERNS
10:21AM 15 ARE THAT THERE HAVE BEEN TWO IPR'S, THE '011 AND '012,
10:21AM 16 INSTITUTED RELATING TO PATENTS, NOT THE '921 PATENT, BUT
10:21AM 17 RELATING TO OTHER PATENTS THAT RELATE TO THE HEMOSTASIS VALVE.
10:21AM 18 AND WE ACKNOWLEDGE THAT, AND WE ACKNOWLEDGE THAT THAT IS
10:21AM 19 SOMETHING THAT THE COURT SHOULD CONSIDER IN ITS OVERALL
10:21AM 20 CONSIDERATION OF THESE ISSUES.

10:21AM 21 BUT WE ALSO NEED TO KEEP IN MIND WHAT DECISION DID THE
10:21AM 22 PTAB MAKE? WHAT THAT DECISION MEANS, LITERALLY, IS THEY HAVE A
10:21AM 23 REASONABLE LIKELIHOOD, NOT LIKELIHOOD, THAT THEY WILL PROVE AT
10:21AM 24 LEAST ONE CLAIM IS INVALID, AND WHICH, OF COURSE, MEANS, THE
10:22AM 25 BROADEST CLAIM.

10:22AM 1 AND WE'RE NOT ASSERTING ALL OF THE CLAIMS HERE. I MEAN,
10:22AM 2 THERE ARE 26 CLAIMS, I BELIEVE, IN THE '921 PATENT. AND
10:22AM 3 WHAT -- AND NONE OF -- THERE'S BEEN NO IPR INSTITUTED ON THIS
10:22AM 4 PATENT. BUT WE UNDERSTAND THAT THERE HAVE BEEN TWO IPR'S
10:22AM 5 INSTITUTED ON THE OTHER CLAIM, ON THE OTHER PATENTS.

10:22AM 6 THE COURT: UH-HUH.

10:22AM 7 MR. AL-SALAM: WE DISAGREE WITH THOSE FINDINGS, AND
10:22AM 8 THEY'RE NOT EVEN CONSISTENT.

10:22AM 9 IF YOU LOOK AT THE '011 PATENT, '011 IPR, WHAT IT TURNS ON
10:22AM 10 IS THAT IT SAYS -- IT REALLY TURNS ON WHETHER FILAMENT HAS TO
10:22AM 11 BE FLEXIBLE OR NOT.

10:22AM 12 AND MR. THORNTON, THEIR EXPERT, TAKES THE POSITION IN HIS
10:22AM 13 REPORT THAT THE COURT HAS SEEN FOR THIS MOTION THAT THE PATENT
10:22AM 14 DOES NOT REQUIRE THAT A FILAMENT BE FLEXIBLE, ALTHOUGH HE
10:23AM 15 AGREES THAT THE ORDINARY DEFINITION IS FLEXIBLE.

10:23AM 16 NOW, THE PTAB -- AND WHAT THE ARGUMENT THAT MR. THORNTON
10:23AM 17 HAS IS IF IT DOESN'T REQUIRE FLEXIBILITY, THEN THE GARRISON
10:23AM 18 REFERENCE ANTICIPATES CLAIM 10 OF THE '921 PATENT.

10:23AM 19 AND ANTICIPATES, THE COURT MIGHT KNOW THIS LINGO ALREADY,
10:23AM 20 ANTICIPATES MEANS IT DISCLOSES EVERY ELEMENT OF THE CLAIMS.
10:23AM 21 AND ANTICIPATION IS VERY DIFFERENT THAN OBVIOUSNESS.

10:23AM 22 SO WHAT HAPPENED IN THE '011 IPR IS THE PTAB SAID, YOU
10:23AM 23 KNOW, WE'RE STRUGGLING WITH HOW TO INTERPRET FILAMENT. WE
10:23AM 24 UNDERSTAND THE ARGUMENT THAT IT HAS TO BE FLEXIBLE AND IF IT'S
10:23AM 25 FLEXIBLE, BY THE WAY, GARRISON DOES NOT ANTICIPATE. GARRISON

10:23AM 1 DOES NOT DISCLOSE ANYTHING THAT IS A FILAMENT. A FILAMENT
10:23AM 2 MEANS FLEXIBLE. IT HAS RIGID U-SHAPED MEMBERS, WHAT THEY CALL
10:24AM 3 MEMBERS.

10:24AM 4 SO THEY SORT OF SAID -- AND WE HAVE THIS IN THE BRIEFING,
10:24AM 5 WHICH IS DOCKET 97, WHEN WE EXPLAIN THE SIGNIFICANCE OF THE
10:24AM 6 '011, WE POINTED OUT THAT THEY ESSENTIALLY KICKED THE CAN DOWN
10:24AM 7 THE ROAD.

10:24AM 8 SCHAFFER. I SAY GARRISON, I MEAN SCHAFFER. I MEAN
10:24AM 9 SCHAFFER. I DON'T KNOW WHY.

10:24AM 10 GARRISON IS THE ONE ON THE '910.

10:24AM 11 THE COURT: I WAS WORRIED THAT I HAD --

10:24AM 12 MR. AL-SALAM: YEAH, YEAH. YOU SHOULD CORRECT ME.
10:24AM 13 EVERYBODY HAS GOT TO CORRECT ME. I DON'T KNOW, I KEEP GETTING
10:24AM 14 THOSE TWO MIXED UP.

10:24AM 15 BUT SCHAFFER IS THE ONE THAT IS RELEVANT TO THE '921.
10:24AM 16 GARRISON IS BEING USED MORE FOR THE '910.

10:24AM 17 THE COURT: OKAY. I LEARNED MORE THAN I -- I
10:24AM 18 LEARNED AS MUCH AS I THOUGHT I HAD.

10:24AM 19 MR. AL-SALAM: I APOLOGIZE. I'M TAKING YOU DOWN THE
10:24AM 20 WRONG ROAD.

10:24AM 21 THE COURT: IT'S ALL GOOD.

10:24AM 22 MR. AL-SALAM: SO WHAT THEY SAID IN THE FIRST '011
10:24AM 23 IS THEY SAID WE ARE NOT READY TO MAKE A DECISION ON WHETHER
10:24AM 24 FILAMENT HAS TO BE FLEXIBLE. WE'RE GOING TO -- WE NEED MORE
10:25AM 25 BRIEFING ON THAT. AND I'M PARAPHRASING BUT THAT IS I THINK A

10:25AM 1 FAIR SUMMARY OF WHAT HAPPENED IN THE '012, THE MOST RECENT IPR
10:25AM 2 INSTITUTION, THEY SAID, NO, FILAMENT DOES HAVE TO BE FLEXIBLE.
10:25AM 3 THEY AGREED WITH OUR POSITION ON THAT, AND THAT AGREEMENT MEANS
10:25AM 4 SCHAFFER DOES NOT ANTICIPATE. THEY NOW HAVE TO RELY ON
10:25AM 5 OBVIOUSNESS, BECAUSE SCHAFFER, AS I MENTIONED, THE CLAIMS
10:25AM 6 REQUIRE, THEY REQUIRE FILAMENTS THAT PARTIALLY WRAP AROUND THE
10:25AM 7 ELONGATE MEMBER. HERE'S THE CLAIM HERE.

10:25AM 8 BUT THEY DID SAY BUT WE THINK THERE'S A REASONABLE
10:25AM 9 LIKELIHOOD THAT IMPERATIVE CARE CAN SHOW THAT AT LEAST ONE
10:25AM 10 CLAIM OF THE '012 PATENT IS INVALID BASED ON A COMBINATION, A
10:26AM 11 COMBINATION OF SCHAFFER WITH EITHER HARTLEY OR ELLER.

10:26AM 12 AND THEY RELY ON -- BY THE WAY, MR. THORNTON RAISES THIS,
10:26AM 13 TOO. HE RAISES HARTLEY IN HIS -- HE SAYS I THINK IT DOESN'T
10:26AM 14 NEED TO BE FLEXIBLE, BUT IF I'M WRONG, THEN I STILL THINK IT
10:26AM 15 WOULD BE OBVIOUS.

10:26AM 16 SO IF YOU LOOK AT THE MOST RECENT PTAB DECISION, THEY HAVE
10:26AM 17 SAID THAT IT DOES HAVE TO BE FLEXIBLE AND THEY HAVE NOW SAID,
10:26AM 18 BUT NEVERTHELESS, WE THINK THAT IT WOULD BE, IT WOULD BE
10:26AM 19 OBVIOUS OR WOULD HAVE BEEN OBVIOUS TO COMBINE THESE TWO.

10:26AM 20 THE COURT: LET ME ASK BECAUSE BETWEEN GARRISON AND
10:26AM 21 SCHAFFER AND SO FORTH, THE ARGUMENT THAT YOU'RE MAKING RIGHT
10:26AM 22 NOW, THE POINT THAT YOU'RE MAKING RIGHT NOW IN TERMS OF THE
10:26AM 23 MOST RECENT IPR, IS IT PART OF THE RECORD FOR THIS MPI?

10:26AM 24 MR. AL-SALAM: NO, UNFORTUNATELY IT'S NOT. IT'S
10:27AM 25 PART OF -- THEY SUBMITTED THE INSTITUTION DECISION IN THE REPLY

10:27AM 1 IN SUPPORT OF THE MOTION TO STAY.

10:27AM 2 THE COURT: OKAY. SO THAT'S WHAT I --

10:27AM 3 MR. AL-SALAM: THAT'S WHERE IT IS. WE ACTUALLY
10:27AM 4 EXPECTED THEM TO DO A SUPPLEMENTAL BRIEF AND SUBMIT IT IN
10:27AM 5 CONNECTION WITH THIS MOTION, BUT THEY REFER TO IT IN THEIR
10:27AM 6 SLIDES, AND IT IS IN THE OVERALL COURT RECORD.

10:27AM 7 NOW, I WANT TO POINT OUT SOMETHING ABOUT -- I'M GOING TO
10:27AM 8 JUMP AHEAD.

10:27AM 9 SO NOW WE'RE TALKING ABOUT OBVIOUSNESS. IF WE THINK THAT
10:27AM 10 THE PTAB IS NOW GOING TO TREAT THAT THERE HAS TO BE -- DO I
10:27AM 11 HAVE -- NO.

10:27AM 12 WELL, WE KNOW THAT IF FILAMENT, THE ORDINARY MEANING IS
10:27AM 13 FLEXIBLE, AND IF THE PTAB STICKS WITH ITS CONSTRUCTION, THEY
10:28AM 14 HAVE TO PROVE OBVIOUSNESS. AND I WANT TO GO OFF ON A LITTLE
10:28AM 15 BIT OF A TANGENT ABOUT OBVIOUSNESS BECAUSE --

10:28AM 16 THE COURT: OKAY.

10:28AM 17 MR. AL-SALAM: -- BECAUSE THERE'S A REASON THAT YOU
10:28AM 18 SHOULDN'T PUT TOO MUCH WEIGHT ON THIS INSTITUTION DECISION.

10:28AM 19 OBVIOUSNESS IS VERY TOUGH FOR THE COURTS AND FOR PEOPLE
10:28AM 20 GENERALLY. EVERYTHING SEEMS OBVIOUS IN RETROSPECT, I MEAN
10:28AM 21 EVERYTHING.

10:28AM 22 I TEACH PATENT LAW, AND I ALWAYS GIVE THE EXAMPLE -- AND
10:28AM 23 I'M OLD, OLDER THAN YOU AND EVERYBODY ELSE.

10:28AM 24 BUT I REMEMBER WHEN SUITCASES DIDN'T HAVE WHEELS AND --

10:28AM 25 THE COURT: I REMEMBER THAT AS WELL.

10:28AM 1 MR. AL-SALAM: -- AND EVERYBODY CARRIED SUITCASES
10:28AM 2 THROUGH THE AIRPORT.

10:28AM 3 NOW THEY ALL HAVE WHEELS. TO BUY A SUITCASE WITHOUT
10:28AM 4 WHEELS, AND DOESN'T IT JUST SEEM OBVIOUS TO HAVE PUT WHEELS ON
10:28AM 5 A SUITCASE?

10:28AM 6 HINDSIGHT IS 20/20. THAT'S WHAT PEOPLE SAY. IT'S ALWAYS
10:29AM 7 20/20.

10:29AM 8 THE OTHER PLACE IT COMES UP IS THE STOCK MARKET. HOW MANY
10:29AM 9 ANALYSTS, AFTER SOMETHING HAPPENS IN THE STOCK MARKET, EXPLAIN,
10:29AM 10 WELL, OH, THAT'S BECAUSE THIS AND THIS AND THIS. THEY NEVER
10:29AM 11 SEEM TO BE ABLE TO CONSISTENTLY EXPLAIN WHAT IS GOING TO HAPPEN
10:29AM 12 BUT IN RETROSPECT THEY ALWAYS EXPLAIN WHAT HAPPENED.

10:29AM 13 BUT BECAUSE OF THIS ISSUE, BECAUSE OF THIS HINDSIGHT BIAS
10:29AM 14 IT'S CALLED, THE COURTS HAVE TRIED TO SAY, WELL, LET'S TRY TO
10:29AM 15 FIND SOMETHING THAT'S MORE OBJECTIVE, NOT JUST THIS SUBJECTIVE
10:29AM 16 CRITERIA. LET'S TRY TO FIND SOMETHING.

10:29AM 17 AND THEY COME UP WITH WHAT THEY CALL SECONDARY
10:29AM 18 CONSIDERATIONS OR OBJECTIVE INDICIA OF WHAT IS OBVIOUS AND NOT
10:29AM 19 OBVIOUS.

10:29AM 20 AND HERE ARE SOME EXAMPLES. LONG-FELT NEED. IF THERE WAS
10:29AM 21 A LONG-FELT NEED FOR SOMETHING, AND NOBODY CAME UP WITH THE
10:29AM 22 SOLUTION, IT SURE SUGGESTS THE SOLUTION WASN'T OBVIOUS.

10:30AM 23 HOW ABOUT IF SOMEBODY COMES UP WITH A SOLUTION, A PATENTED
10:30AM 24 INNOVATION, AND IT'S VERY SUCCESSFUL, COMMERCIALY SUCCESSFUL?

10:30AM 25 WELL, IF IT WOULD HAVE BEEN OBVIOUS TO DO THAT BEFORE,

10:30AM 1 WOULDNT JUST THE INCENTIVES OF THE MARKET CAUSED SOMEONE TO DO
10:30AM 2 IT BEFORE? THAT'S ANOTHER ONE THAT IS CONSIDERED A SECONDARY
10:30AM 3 CONSIDERATION.

10:30AM 4 SKEPTICISM OF A SOLUTION. IF EXPERTS SAY I DONT THINK
10:30AM 5 THAT WILL EVER WORK, THAT SUGGESTS IT'S NOT OBVIOUS.

10:30AM 6 PRAISE WHEN YOU COME UP WITH THE SOLUTION, THEY SAY, OH,
10:30AM 7 GEE, THIS IS THE BEST THING SINCE SLICED BREAD. THAT SUGGESTS
10:30AM 8 IT WASN'T OBVIOUS.

10:30AM 9 I RAISE ALL OF THAT BECAUSE WE HAVE SUBMITTED EVIDENCE OF
10:30AM 10 THE SECONDARY CONSIDERATIONS AND THE PTAB HAS NOT CONSIDERED
10:30AM 11 THAT EVIDENCE.

10:30AM 12 THE REAL -- WHAT THE PTAB HAS DONE TO DATE IS JUST REALLY
10:30AM 13 LOOKED AT, WELL, WOULD IT HAVE BEEN OBVIOUS TO HAVE TAKEN THE
10:30AM 14 FILAMENTS, WHICH ARE FLEXIBLE ON HARTLEY, SAY, AND PUT THEM ON
10:31AM 15 SCHAFFER?

10:31AM 16 NOW, WE SAY THEY WOULDNT BE FOR VARIOUS REASONS. YOU
10:31AM 17 CANT JUST ATTACH THEM. AND THE WAY SCHAFFER IS ASSEMBLED, IT
10:31AM 18 TALKS ABOUT YOU HAVE TO PUT THE TUBE, YOU HAVE TO FIND THE AREA
10:31AM 19 TO STICK THE TUBE THROUGH, AND THERE ARE THESE TWO RIGID
10:31AM 20 MEMBERS, AND IF YOU JUST HAD STRINGS, THEY WOULD COLLAPSE AND
10:31AM 21 YOU COULDNT DO IT. I MEAN, WE HAVE THOSE ARGUMENTS, AND WE
10:31AM 22 BELIEVE THEY ARE STRONG ARGUMENTS, AND WE BELIEVE THEY WILL
10:31AM 23 ULTIMATELY PREVAIL.

10:31AM 24 AND IN ADDITION, I'LL SAY ONE OTHER THING, IMPERATIVE CARE
10:31AM 25 HASN'T EVEN BEEN CONSISTENT ABOUT WHETHER SCHAFFER DISCLOSES A

10:31AM 1 SINGLE FILAMENT OR TWO FILAMENTS. AND IF IT'S FLEXIBLE, THEY
10:31AM 2 DON'T DISCLOSE ANY FILAMENTS. THEY HAVE TWO U-SHAPED MEMBERS.

10:31AM 3 AND WE HAVE SOME CLAIMS, NOT BEFORE THE COURT NOW, BUT
10:31AM 4 OTHER CLAIMS, WHERE WE TALK ABOUT -- THE FILAMENT
10:32AM 5 CIRCUMFERENTIALLY CONSTRICTS THE LUMEN, OR THE TUBE.

10:32AM 6 WELL, WE KNOW SCHAFFER DOESN'T DO THAT. IT'S NOT
10:32AM 7 FLEXIBLE. THIS IS -- I THINK THEY CALL IT GARRETT, GARROTE. I
10:32AM 8 COULD NEVER PRONOUNCE IT RIGHT.

10:32AM 9 BUT WHAT OUR PATENTS ARE ABOUT, WHAT OUR INVENTION IS
10:32AM 10 REALLY ABOUT IS HAVING, IN PART, IS HAVING THIS FLEXIBLE
10:32AM 11 FILAMENT THAT GOES AROUND AND YOU PULL IT ON FROM BOTH SIDES,
10:32AM 12 IT'S BIASED WITH STRINGS ON BOTH SIDES, TO CONSTRICT THE
10:32AM 13 FILAMENT. IT CHOKES IT. THAT IS NOT WHAT SCHAFFER DOES.

10:32AM 14 NOW, THEY'RE GOING TO GET UP AND SAY, WELL, THIS CLAIM,
10:32AM 15 MAYBE YOU HAVE OTHER CLAIMS, BUT THIS CLAIM DOESN'T REQUIRE IT
10:32AM 16 WRAP ALL OF THE WAY AROUND. AND WE DO HAVE OTHER CLAIMS, AND
10:32AM 17 THOSE CLAIMS ARE IN THIS CASE, AND THEY'LL COME UP.

10:32AM 18 MAYBE WE COULD HAVE CHOSEN A DIFFERENT CLAIM. BUT THAT IS
10:32AM 19 WHAT THE INVENTION IS AND THAT IS WHAT THEY DO. THAT'S WHAT WE
10:32AM 20 DISCLOSE IN OUR PATENTS WHAT WE CALL THIS GARRETT, GARROTE
10:33AM 21 STYLE.

10:33AM 22 THERE IS THE OTHER THING, AND I THINK I MENTIONED THIS,
10:33AM 23 THERE HAS TO BE A MOTIVATION TO COMBINE REFERENCES FOR
10:33AM 24 OBVIOUSNESS. IT'S NOT JUST THAT THEY ARE IN THE SAME FIELD.
10:33AM 25 THERE HAS TO BE SOMETHING -- THERE HAS TO BE A MOTIVATION FOR

10:33AM 1 SOMEONE TO SAY, I KNOW, I WANT TO TAKE THESE STRINGS ON HARTLEY
10:33AM 2 OR ELLER, OR I THINK IT'S JUST HARTLEY, I CAN'T RECALL, AND PUT
10:33AM 3 THEM ON SCHAFFER BECAUSE SCHAFFER DOES HAVE THE TWO BUTTONS
10:33AM 4 WITH THE SPRINGS THAT PUSH OUT.

10:33AM 5 WE DON'T BELIEVE THAT THERE WAS A MOTIVATION TO COMBINE
10:33AM 6 BECAUSE THERE'S NOT -- IT WOULDN'T WORK. PUTTING THE STRINGS
10:33AM 7 ON SCHAFFER WOULD NOT WORK BASED ON WHAT SCHAFFER SAYS. AND SO
10:33AM 8 THE COURT HAS ALL OF THAT IN FRONT OF IT.

10:33AM 9 I UNDERSTAND THE COURT'S FOCUS, THOUGH, ON THE IPR'S, BUT
10:34AM 10 I DON'T THINK THE COURT SHOULD PUT TOO MUCH WEIGHT ON THEM.

10:34AM 11 NOBODY, NO PTAB HAS FOUND THAT CLAIM 10 OR ANYTHING THAT
10:34AM 12 EXACTLY RESEMBLES CLAIM 10 IS LIKELY INVALID.

10:34AM 13 THE COURT: OKAY.

10:34AM 14 MR. AL-SALAM: NOW LET'S GO TO -- IF THE COURT
10:34AM 15 DOESN'T HAVE QUESTIONS, I'LL GO BACK TO THE '910 PATENT,
10:34AM 16 VALIDITY, BECAUSE I SHOULD HAVE STARTED THERE, BUT I THINK THE
10:34AM 17 COURT GOT ME ON THE '921.

10:34AM 18 THE '910 PATENT -- BY THE WAY, I AGREE THAT IT'S THE
10:34AM 19 STRONGER OF THE TWO PATENTS AT THIS POINT IN THE CASE. THE
10:34AM 20 ONLY NON-INFRINGEMENT POSITION I'VE ADDRESSED, THE TWO SOURCES,
10:34AM 21 WHICH WE THINK THE PATENT MAKES CLEAR, THE COURT IS STILL
10:34AM 22 DOING --

10:34AM 23 THE COURT: RIGHT. I'M THINKING THROUGH MY HEAD
10:34AM 24 THE -- I DO UNDERSTAND.

10:34AM 25 MR. AL-SALAM: HOW THE HEMOSTASIS VALVE WORKS?

10:34AM 1 THE COURT: YES.

10:34AM 2 MR. AL-SALAM: OKAY. NOW, LET'S GET TO THE '910
10:35AM 3 PATENT. AND THIS ONE REALLY IS GARRISON. AND THEY ARGUE
10:35AM 4 GARRISON AND LAUB TOGETHER INVALIDATE CLAIM 1 OF THE '910
10:35AM 5 PATENT.

10:35AM 6 AND HERE WE HAVE A DENIAL OF INSTITUTION ON THE RELATED
10:35AM 7 '691.

10:35AM 8 AND WHEN I SAY "RELATED," IT HAS THE EXACT SAME
10:35AM 9 DISCLOSURE. THE CLAIMS ARE SLIGHTLY DIFFERENT, WHICH I WILL
10:35AM 10 GET TO, BUT IT HAS THE EXACT SAME DISCLOSURE.

10:35AM 11 AND THEY THEMSELVES HAVE SAID THAT THE RESULT OF THE '691
10:35AM 12 IPR WAS -- I WANT TO GET THE EXACT LANGUAGE. AND I DIDN'T HAVE
10:35AM 13 THIS ON THE SLIDE. I PROBABLY SHOULD HAVE. THIS IS PAGE 8 OF
10:35AM 14 THEIR OPPOSITION.

10:35AM 15 THEY SAY ONCE AGAIN, THE CLAIMS OF THE '691 AND THE '910
10:36AM 16 PATENTS OVERLAP SO THE FINDINGS IN THE IPR WILL DECIDE THE KEY
10:36AM 17 ISSUES UNDERLYING INVALIDITY ON THIS MOTION. THAT'S ON PAGE 8
10:36AM 18 OF THEIR OPPOSITION.

10:36AM 19 BECAUSE WHAT THEY DID IS THEY PUT THEIR EGGS IN THE '691
10:36AM 20 INSTITUTION BASKET. THEY WERE THINKING IF WE CAN GET
10:36AM 21 INSTITUTION ON THE '691, WE'RE GOING TO HAVE A STRONG ARGUMENT
10:36AM 22 ON INVALIDITY JUST AS THEY'RE MAKING WITH RESPECT TO THE
10:36AM 23 HEMOSTASIS VALVE.

10:36AM 24 THE '691 INSTITUTION WAS DENIED MEANING THAT THE PTAB
10:36AM 25 DOESN'T THINK THAT THERE'S A REASONABLE LIKELIHOOD THAT THEY

10:36AM 1 CAN INVALIDATE ANY CLAIM OF THE '691, INCLUDING THE BROADEST
10:36AM 2 CLAIMS.

10:36AM 3 THAT IS COMPELLING EVIDENCE BASED ON THEIR OWN ADMISSION
10:36AM 4 OF HOW RELEVANT IT IS THAT THEY CANNOT CREATE A SUBSTANTIAL
10:37AM 5 QUESTION OF VALIDITY ON THE '910 PATENT.

10:37AM 6 AND WE SHOULD, WE SHOULD LOOK AT THE CLAIMS. AND THIS IS
10:37AM 7 A LOT OF COLOR AND HIGHLIGHTING. THIS IS WHAT WE -- THIS IS
10:37AM 8 APPENDIX A TO DOCKET NUMBER 97, WHICH WAS THE SUPPLEMENTAL
10:37AM 9 BRIEFING ON THE RELEVANCE OR IMPLICATIONS OF THE INSTITUTION OF
10:37AM 10 THE '011 IPR AND THE DENIAL OF INSTITUTION ON THE '691 IPR.

10:37AM 11 AND THIS SHOWS ON THE LEFT-HAND COLUMN YOU'VE GOT ONE OF
10:37AM 12 THE CLAIMS FROM THE '691 PATENT AND THEN ON THE RIGHT-HAND
10:37AM 13 COLUMN YOU'VE GOT CLAIM 11 OF '910 PATENT, AND WE PUT IT HERE
10:37AM 14 JUST TO COMPARE THEM. BECAUSE FOR EVERYTHING IN THE '910
10:37AM 15 PATENT, THERE IS ALMOST SOMETHING THAT IS THERE FOR THE '691.

10:37AM 16 NOW, OF COURSE, IF THERE IS MORE, AND THERE IS MORE, THEN
10:38AM 17 IT IS EVEN LESS LIKELY THAT THEY CAN INVALIDATE THE '910.

10:38AM 18 IN OTHER WORDS, IF THERE ARE MORE REQUIREMENTS IN CLAIM 1
10:38AM 19 FOR THE '910 PATENT THAN THERE ARE IN CLAIM 14 OF THE '691,
10:38AM 20 IT'S EVEN LESS LIKELY THAT THEY CAN INVALIDATE IT.

10:38AM 21 THERE IS ONLY ONE THING THAT APPEARS TO BE IN THE '691
10:38AM 22 PATENT, CLAIM 14 THAT IS NOT IN CLAIM 1 OF THE '910 PATENT, AND
10:38AM 23 THAT IS THIS REFERENCE TO A SECOND CHAMBER WHICH WE DON'T HAVE
10:38AM 24 HIGHLIGHTED THERE ON THE LEFT.

10:38AM 25 THEY MAY SAY, OH, WELL, THAT'S THE ONLY REASON THAT WE

10:38AM 1 CANNOT PROVE INVALIDITY OF THE '691, BUT THE CLAIMS ARE
10:38AM 2 ANALOGOUS AND THEY BOTH RELATE TO THE OVERALL SYSTEM AS THE
10:38AM 3 COURT RECOGNIZED.

10:38AM 4 AND WE THINK THIS IS -- I HATE TO USE THE COLLOQUIALISM
10:38AM 5 "THE SMOKING GUN" FOR US ON VALIDITY OF THE '910 PATENT. I
10:39AM 6 MEAN, WE THINK THEIR ARGUMENTS FAIL ANYWAY. AND THE FACT IS IF
10:39AM 7 THIS WAS SO OBVIOUS, WHY DIDN'T PEOPLE COME UP WITH IT EARLIER?
10:39AM 8 WHY DID IT TAKE US ALL OF THIS TIME AND ALL OF THIS INVESTMENT
10:39AM 9 FOR US TO COME UP WITH THESE INVENTIONS AND THIS INVENTION AND
10:39AM 10 NOW THEY ARE, THEY ARE REALLY NOT SERIOUSLY DENYING THAT THEY
10:39AM 11 INFRINGE IT? THIS PRESSURE SOURCE THING IS THE ONLY THING.

10:39AM 12 THE COURT: SO LET'S ASSUME, LET'S ASSUME THAT I
10:39AM 13 AGREE.

10:39AM 14 MR. AL-SALAM: I LIKE THAT ASSUMPTION.

10:39AM 15 THE COURT: I KNOW. WHERE DOES THAT LEAVE ME WITH
10:39AM 16 THE REST OF MY ANALYSIS? SO TAKING -- GOING BACK TO THE
10:39AM 17 QUESTIONS WE BEGAN WITH. YOU KNOW, WE'RE 43 MINUTES IN.

10:39AM 18 MR. AL-SALAM: AH, SHOOT. I HAVEN'T GOTTEN TO --
10:39AM 19 KEEP GOING.

10:39AM 20 THE COURT: SO WE'RE 43 MINUTES IN. SO LET'S TURN
10:39AM 21 TO THE QUESTIONS THAT I'VE RAISED EARLIER, WHERE DOES THAT
10:39AM 22 LEAVE ME IN TERMS OF MY ANALYSIS? TAKE ME TO IRREPARABLE HARM.

10:40AM 23 MR. AL-SALAM: IRREPARABLE HARM.

10:40AM 24 THE COURT: TAKE ME TO CAUSAL NEXUS.

10:40AM 25 MR. AL-SALAM: IRREPARABLE HARM AND CAUSAL NEXUS.

10:40AM 1 SO THE CAUSAL NEXUS IS ARE THE PATENTED INNOVATIONS HERE A
10:40AM 2 DRIVER OF DEMAND FOR THE INFRINGING SYMPHONY PRODUCT? THIS IS
10:40AM 3 CAUSAL NEXUS.

10:40AM 4 AND THEY POINT -- THEY SAY IT HAS TO BE THE DRIVER. THE
10:40AM 5 COURTS ARE CLEAR IT'S A DRIVER.

10:40AM 6 THE COURT: I AGREE.

10:40AM 7 MR. AL-SALAM: AND THERE ARE A LOT OF DRIVERS OF
10:40AM 8 DEMAND. YOU DON'T HAVE TO UNDERSTAND THEM. IF WE GOT TO THE
10:40AM 9 HEMOSTASIS VALVE, WHICH I DON'T THINK THE COURT IS FOCUSSED ON
10:40AM 10 RIGHT NOW, BUT YOU DON'T HAVE TO UNDERSTAND HOW FAR IT WORKS.
10:40AM 11 THE ENGINE ON MY CAR AND THE PERFORMANCE AND HOW EASY IT IS,
10:40AM 12 YOU KNOW, THAT'S WHAT DRIVES MY DEMAND FOR THE CAR. I DON'T
10:40AM 13 UNDERSTAND HOW IT WORKS. I DON'T UNDERSTAND HOW MY LAPTOP
10:40AM 14 WORKS, BUT ITS PERFORMANCE IS WHAT MATTERS, THE PERFORMANCE OF
10:40AM 15 THE HEMOSTASIS VALVE AND ITS EASE OF USE IS WHAT DRIVES IT.

10:41AM 16 IN TERMS OF THE '910 PATENT, THESE ARE FUNDAMENTAL
10:41AM 17 ELEMENTS. IT'S THE TELESCOPING WITH THE TWO CATHETERS, LARGE
10:41AM 18 BORE CATHETERS, AND WITH THE TELESCOPING ASPECT AND WITH THE
10:41AM 19 WHOOSH, WITH THE NEGATIVE PRESSURE APPLIED TO THE CATHETERS.
10:41AM 20 THOSE ARE FUNDAMENTAL PROPERTIES OF THESE PRODUCTS. YOU CAN'T
10:41AM 21 USE THESE PRODUCTS FOR PE WITHOUT HAVING THOSE -- WELL, IF YOU
10:41AM 22 CAN, THEY'RE NOT -- WITHOUT HAVING THESE FUNDAMENTAL
10:41AM 23 PROPERTIES. AND I'M GOING BACK IN TERMS OF, AGAIN, IN TERMS OF
10:41AM 24 THE IRREPARABLE HARM, WE WILL SUFFER IRREPARABLE HARM ONCE
10:41AM 25 THEY'RE ABLE TO MARKET THIS FOR PE.

10:41AM 1 AND THE COURT DOESN'T HAVE TO WAIT UNTIL THAT DATE. I
10:41AM 2 MEAN, WE CAN COME BACK AND SAY, OKAY, IT'S NOW BEEN APPROVED
10:41AM 3 AND THEY'RE SELLING LIKE CRAZY AND THEY'RE KILLING US IN THE
10:41AM 4 MARKET AND WE'RE LAYING OFF EMPLOYEES.

10:41AM 5 THERE'S NO REASON TO WAIT TILL THEN IF THAT'S WHAT THE
10:42AM 6 COURT'S QUESTION IS.

10:42AM 7 THE COURT: I MEAN, BECAUSE IT IS NOT -- IF THERE IS
10:42AM 8 A SPLIT DECISION SO TO SPEAK BETWEEN THE '921 AND THE '910, AND
10:42AM 9 ONE IS APPROVED INSOFAR AS FOR DVT AND ONE IS YET TO BE PROVED,
10:42AM 10 HOW WOULD I SHAPE THE SCOPE OF ANY TYPE OF -- BECAUSE WHAT YOU
10:42AM 11 ARE SEEKING RIGHT NOW WOULD ONLY BE -- IS BROADER, RIGHT? IT'S
10:42AM 12 THE SAME PRODUCT ACROSS THE --

10:42AM 13 MR. AL-SALAM: I UNDERSTAND WHAT THE COURT'S CONCERN
10:42AM 14 IS.

10:42AM 15 WE DO SEEK AN INJUNCTION THAT PRECLUDES THEIR SALE OF
10:42AM 16 SYMPHONY, PERIOD.

10:42AM 17 BUT WITHOUT AGREEING TO IT, THE COURT COULD CONCEIVABLY
10:42AM 18 SAY I DON'T THINK YOU'RE GOING TO SUFFER IRREPARABLE HARM IF
10:42AM 19 YOU'RE ALLOWED TO CONTINUE TO SELL THIS FOR DVT. THAT IS IN
10:43AM 20 ESSENCE THE STATUS QUO. BUT I WILL PRECLUDE THEM FROM SELLING
10:43AM 21 IT FOR PE UNTIL WE HAVE A TRIAL, AND BY THE WAY, WE ARE FINE
10:43AM 22 WITH HAVING AN EARLY TRIAL.

10:43AM 23 SO THAT IS -- THE COURT COULD -- I'LL CALL IT A COMPROMISE
10:43AM 24 ON THE INJUNCTION BY JUST ENJOINING THE USE OF SALE OF SYMPHONY
10:43AM 25 FOR PE.

10:43AM 1 IS THAT ADDRESSING THE COURT'S QUESTION?

10:43AM 2 THE COURT: ADDRESSING ONE OF MY QUESTIONS.

10:43AM 3 MR. AL-SALAM: GIVE ME ANOTHER ONE. I ONLY HAVE A
10:43AM 4 FEW MINUTES LEFT.

10:43AM 5 THE COURT: YOU CITED TO -- WELL, LET ME ASK YOU A
10:44AM 6 LITTLE BIT MORE ABOUT THE SCOPE OF WHAT YOU'RE DESCRIBING AS
10:44AM 7 THE, QUOTE-UNQUOTE, "THE COMPROMISE." SO WHAT WOULD THAT LOOK
10:44AM 8 LIKE, THAT THEY COULD NOT SELL FOR PURPOSES OF FOR PE, WHICH
10:44AM 9 THEY CANNOT SELL RIGHT NOW ANYWAY, AND IT SEEMS SOMEWHAT
10:44AM 10 SPECULATIVE.

10:44AM 11 MR. AL-SALAM: EXACTLY.

10:44AM 12 THE COURT: BUT LET'S SAY WHAT WOULD THAT THEN LOOK
10:44AM 13 LIKE IN TERMS OF IT -- WOULD IT BE AN INJUNCTION REGARDING
10:44AM 14 MARKETING? BECAUSE IT'S THE SAME PRODUCT, WE ALL AGREE IT'S
10:44AM 15 THE SAME PRODUCT, SO WHAT WOULD THAT LOOK LIKE?

10:44AM 16 MR. AL-SALAM: IT WOULD INVOLVE MARKETING BECAUSE
10:44AM 17 THE COURT IS CORRECT THAT PHYSICIANS COULD BUY IT AND IT'S
10:44AM 18 POSSIBLE THAT IMPERATIVE CARE CAN'T CONTROL WHAT PHYSICIANS DO
10:44AM 19 WITH IT.

10:44AM 20 SOMEONE COULD BUY IT AND SOMEONE COULD SAY, WELL, THERE'S
10:44AM 21 A COURT ORDER THAT SAYS THAT YOU CAN'T USE IT FOR PE, YOU KNOW,
10:44AM 22 WINK-WINK, YOU KNOW, I'M NOT WATCHING WHAT YOU'RE DOING IN THE
10:44AM 23 OPERATING ROOM. WE WOULD HOPE THAT WOULDN'T HAPPEN. WE WOULD
10:45AM 24 HOPE THAT PHYSICIANS WOULD COMPLY WITH WHAT THE COURT'S ORDER
10:45AM 25 WOULD BE, BUT IT WOULD DEFINITELY BE -- THAT IS DEFINITELY A

10:45AM 1 SOLUTION.

10:45AM 2 ALSO, THIS IS ACTUALLY EVEN BETTER AND MORE CREATIVE,
10:45AM 3 MS. TESSAR POINTED IT OUT, IF YOU CAN'T -- IF YOU DON'T --
10:45AM 4 RIGHT NOW THEY'VE SAID THAT THEIR PRODUCT IS NOT USED FOR DVT
10:45AM 5 WITH TELESCOPING.

10:45AM 6 I MEAN, IT'S USED -- IT COULD BE CONFIDENTIAL, BUT IT'S A
10:45AM 7 VERY SMALL PERCENTAGE OF THE CASES ACCORDING TO THEIR
10:45AM 8 WITNESSES.

10:45AM 9 SO, IN OTHER WORDS, WHEN THEY USE IT FOR DVT, THEY DON'T
10:45AM 10 USE TELESCOPING, THEY DON'T USE THE 16 FRENCH CATHETER GOING
10:45AM 11 THROUGH THE 24 FRENCH. SO IF THE COURT SIMPLY ENJOINED THEM
10:45AM 12 FROM SELLING THE 16 FRENCH CATHETER, IT WOULD ESSENTIALLY
10:45AM 13 ASSURE THAT THE DEVICE WAS ONLY USED FOR DVT.

10:45AM 14 THE COURT: SO TO MODIFY THEIR PRODUCT?

10:45AM 15 MR. AL-SALAM: WELL, THEY DON'T, THEY DON'T ALWAYS
10:46AM 16 SELL THEM TOGETHER OR THEY DON'T NEED TO.

10:46AM 17 THESE ARE TWO SEPARATE PIECES. THEY DON'T HAVE TO MODIFY.
10:46AM 18 THEY DON'T HAVE TO SELL -- IT'S LIKE AN ADD-ON THAT IS USED FOR
10:46AM 19 PE. THEY DON'T SELL THE ADD-ON. THEY SELL THE BASE PRODUCT
10:46AM 20 WHICH IS USED FOR DVT. THEY DON'T SELL THE ADD-ON WHICH CAN BE
10:46AM 21 USED FOR PE.

10:46AM 22 EVERYBODY AGREES IF YOU'RE GOING TO BE USING IT FOR PE,
10:46AM 23 YOU'RE GOING TO WANT THAT ADD-ON AND THE ADD-ON BEING THE
10:46AM 24 16 FRENCH CATHETER.

10:46AM 25 THE COURT: SO LET'S GO BACK TO THE CASE LAW YOU

10:46AM 1 CITED EARLIER AND I THINK IT WAS -- I'M TRYING TO THINK ABOUT
10:46AM 2 WHAT CASE IT IS, BUT THIS NOTION THAT IS THIS SPECULATIVE? IS
10:46AM 3 THE HARM RIGHT NOW SPECULATIVE?

10:46AM 4 AND I KNOW YOU'RE SAYING, WELL, WE DON'T HAVE TO WAIT
10:46AM 5 UNTIL WE GET BLUDGEONED IN THE MARKET. BUT RIGHT NOW WE'RE NOT
10:46AM 6 TALKING ABOUT A -- WE'RE TALKING ABOUT AWAITING FDA APPROVAL,
10:46AM 7 AND THAT'S NOT A SMALL TASK AT HAND, AND THAT'S NOT SOMETHING
10:47AM 8 WHICH IS -- REMIND ME WHAT THOSE CASES SAY AND HOW THEY APPLY
10:47AM 9 HERE.

10:47AM 10 MR. AL-SALAM: WELL, THE CASES ARE OFTEN RELATED TO
10:47AM 11 WHEN SOMEBODY IS ABOUT TO COME OUT WITH AN INFRINGING PRODUCT
10:47AM 12 THAT THE COURTS DECIDE WE KNOW IT LIKELY INFRINGES AND WE
10:47AM 13 KNOW -- FOR EXAMPLE, WE HAVE A CASE, AND I'LL RUN THROUGH MY
10:47AM 14 IRREPARABLE HARM CASES.

10:47AM 15 WE HAVE CASES THAT TALK ABOUT THAT YOU HAVE INFLECTION
10:47AM 16 POINT IN THE MARKET OR IT'S A CRITICAL TIME IN THE MARKET, YOU
10:47AM 17 MIGHT HAVE A FLAGSHIP PRODUCT, AND YOU CAN GET AN INJUNCTION
10:47AM 18 PRECLUDING SALES THAT MIGHT HURT THE SALES OF THAT PRODUCT.

10:47AM 19 BUT THE COURT'S INJUNCTION COULD BE IF AND WHEN YOU OBTAIN
10:47AM 20 BECAUSE WE DON'T -- WE THINK IT'S INEVITABLE THAT THEY'LL GET
10:47AM 21 APPROVAL TO SELL IT IN PE. SO I DON'T THINK THAT'S A REAL
10:47AM 22 CONTINGENCY THAT ANYBODY THINKS MAY NOT HAPPEN.

10:48AM 23 BUT THE COURT'S INJUNCTION COULD CERTAINLY SAY IF OR WHEN
10:48AM 24 YOU GET APPROVAL FROM THE FDA TO MARKET THIS FOR PE, YOU SHALL
10:48AM 25 HOLD OFF MARKETING IT FOR PE AND THAT SHALL INCLUDE CEASING THE

10:48AM 1 SALES OF THE 16 FRENCH CATHETER WITH THE 24 FRENCH CATHETER TO
10:48AM 2 ENSURE THAT THE PRODUCT ISN'T USED FOR PE UNTIL WE GET THIS
10:48AM 3 TRIAL DONE.

10:48AM 4 THE COURT: AND ASTRA-ZENECA, IT WAS THE GENERICS
10:48AM 5 CASE, RIGHT?

10:48AM 6 MR. AL-SALAM: I DON'T RECALL WHICH CASE. I HAD A
10:48AM 7 COUPLE OF CASES. I KNOW WE HAVE CASES IN OUR BRIEFING ABOUT --
10:48AM 8 THAT YOU CAN GET AN INJUNCTION TO AVOID IMMINENT HARM AS
10:48AM 9 OPPOSED TO WAITING FOR THE HARM TO OCCUR.

10:48AM 10 THE COURT: OKAY.

10:48AM 11 MR. AL-SALAM: AND I THINK THOSE FIT HERE.

10:48AM 12 THE COURT: SO WE ARE AT -- WELL, WE'RE 3 MINUTES
10:48AM 13 OVER 50, BUT I GAVE YOU A LITTLE BIT OF A FREEBEE.

10:48AM 14 MR. AL-SALAM: THANK YOU, YOUR HONOR.

10:48AM 15 THE COURT: SO LET'S STOP NOW AND RESERVE THE REST.

10:48AM 16 MR. AL-SALAM: YES, PLEASE.

10:48AM 17 THE COURT: AND WITH THAT LET ME ALSO GIVE -- LET ME
10:49AM 18 ASK LAURA, HOW ARE YOU ON TECH?

10:49AM 19 THE CLERK: WE CAN BRING HIM UP NOW DURING THE
10:49AM 20 BREAK.

10:49AM 21 THE COURT: SURE.

10:49AM 22 THE CLERK: I DON'T THINK THE DEFENDANTS ARE GOING
10:49AM 23 TO BE USING THIS.

10:49AM 24 THE COURT: LET ME ASK A QUICK ADMINISTRATIVE
10:49AM 25 QUESTION.

10:49AM 1 MR. RE, MY UNDERSTANDING IS THAT THE DEFENDANTS ARE NOT
10:49AM 2 GOING TO BE USING, MR. STOWELL, THE SCREENS?

10:49AM 3 MR. RE: THAT'S CORRECT, I HAVE PAPER COPIES.

10:49AM 4 THE COURT: OKAY. WELL, WE WERE THINKING ABOUT
10:49AM 5 HAVING OUR I.T. COME UP AND TRY TO TWEAK THE SCREENS BUT MAYBE
10:49AM 6 WE'LL LEAVE THE GREMLINS ALONE FOR NOW.

10:49AM 7 SO WITH THAT, LET'S GO AHEAD AND TAKE A 15 MINUTE BREAK.

10:49AM 8 THE CLERK: ALL RISE.

10:49AM 9 (RECESS FROM 10:49 A.M. UNTIL 11:11 A.M.)

11:11AM 10 THE COURT: ALL RIGHT. WE'RE BACK ON THE RECORD IN
11:11AM 11 THE INARI VERSUS IMPERATIVE CARE MATTER PICKING UP WITH MR. RE.

11:12AM 12 MR. RE: THANK YOU, YOUR HONOR. AND THANK YOU FOR
11:12AM 13 THE ONE HOUR. AND I HOPEFULLY DON'T NEED IT ALL, BUT I WILL
11:12AM 14 TRY.

11:12AM 15 I DID PREPARE A BOOKLET. I DID WANT TO GO THROUGH SOME OF
11:12AM 16 THESE SLIDES, AND I WILL FOCUS ON THE SYSTEM CLAIM, WHICH SEEMS
11:12AM 17 TO BE THE MAIN INTEREST OF THE COURT.

11:12AM 18 AND TO DISCUSS THE SYSTEM CLAIM, WE HAVE TO START WITH
11:12AM 19 ASPIRATION OF BLOOD CLOTS. AND ON SLIDE 2 I JUST HAVE SOME
11:12AM 20 BASIC TERMINOLOGY THAT NEEDS TO BE UNDERSTOOD IN ORDER TO
11:12AM 21 DISCUSS WHAT REALLY ARE THE MARKET DIFFERENCES OR THE
11:12AM 22 INVENTIONS OR THE CHANGES IN PROCEDURES OVER TIME.

11:12AM 23 AND I HAVE A PICTURE OF THE HUMAN BODY WITH VARIOUS PARTS
11:12AM 24 OF THE HUMAN VASCULATURE. AND YOU CAN SEE THAT THERE ARE MANY
11:12AM 25 DIFFERENT PARTS OF THE VASCULATURE AND SUCTION OR ASPIRATION

11:12AM 1 HAS BEEN USED FOR MANY YEARS TO SUCK OUT CLOTS.

11:12AM 2 THE FOCUS OF INARI SEEMS TO BE PULMONARY AND DEEP-VEIN
11:13AM 3 THROMBOSIS, WHICH YOU WILL NOTICE THERE ARE OTHER AREAS ON THE
11:13AM 4 BODY, AND IN FACT MY CLIENT, IMPERATIVE CARE, SPECIALIZED AND
11:13AM 5 IS IN THIS FIELD BECAUSE IT DOES BY FAR THE MORE DIFFICULT
11:13AM 6 PROCEDURE, WHICH IS REMOVING CLOTS FROM THE BRAIN.

11:13AM 7 THE BRAIN IS FARTHER AWAY THAN PULMONARY. THE BRAIN IS
11:13AM 8 HIGHER THAN A PULMONARY EMBOLISM, WHICH IS NEAR THE LUNGS AND
11:13AM 9 HEART.

11:13AM 10 AND MY CLIENT, IMPERATIVE CARE, HAS GREAT CREDIBILITY WITH
11:13AM 11 HOSPITALS AND DOCTORS BECAUSE IT HAS MASTERED A MUCH MORE
11:13AM 12 DIFFICULT AREA OF CLOT REMOVAL.

11:13AM 13 YOU'LL NOTICE THAT MY FRIEND REFERS TO MY CLIENT AS TRUVIC
11:13AM 14 BECAUSE THAT IS NOT DONE TO AVOID CONFUSION, THAT IS DONE TO
11:13AM 15 ERADICATE THE HISTORY THAT MY CLIENT HAS IN CLOT REMOVAL BY
11:13AM 16 ASPIRATION.

11:13AM 17 TRUVIC DOES NOT EXIST. TRUVIC WAS JUST A CREATOR OF THE
11:14AM 18 SYMPHONY PRODUCT, WHICH IS AT ISSUE. BUT MY CLIENT WAS
11:14AM 19 REMOVING BLOOD CLOTS THROUGH ITS PRODUCTS IN BOTH THE
11:14AM 20 PERIPHERAL VASCULATURE AND THE CEREBRAL VASCULATURE FOR MANY
11:14AM 21 YEARS.

11:14AM 22 IF WE GO TO SLIDE 3, THERE ARE -- THERE IS ONE MAJOR
11:14AM 23 DIFFERENCE IN THE EVIDENCE THAT THE PARTIES HAVE SUBMITTED.
11:14AM 24 IMPERATIVE CARE HAS ITS DECLARANTS ON THE RIGHT, AND INARI HAS
11:14AM 25 ITS DECLARANTS ON THE LEFT ON PAGE 3.

11:14AM 1 INARI HAS COME UP WITH A THEORY OF THE CASE IN ORDER TO
11:14AM 2 ACCOMMODATE WHAT DR. TU TOLD THE PATENT OFFICE IN ORDER TO GAIN
11:14AM 3 THE SYSTEM '910 PATENT.

11:14AM 4 BUT YOU'LL NOTICE ON THE LEFT INARI HAS NO USERS OF THE
11:14AM 5 DEVICES, NOBODY EXPLAINING THE ART BY SOMEONE WHO DESIGNS AND
11:14AM 6 ACTUALLY USES THESE DEVICES.

11:15AM 7 WE SUBMITTED TWO DECLARATIONS FROM TWO DIFFERENT DOCTORS,
11:15AM 8 INCLUDING OUR CHIEF MEDICAL OFFICER, DR. TURK, BUT ALSO
11:15AM 9 DR. DANA TOMALTY WHO USES BOTH PARTY'S DEVICES FOR ALL AREAS OF
11:15AM 10 THE BODY. HIS DECLARATION STANDS UNREBUTTED AS DOES DR. TURK'S
11:15AM 11 DECLARATIONS.

11:15AM 12 SO THE DECLARATIONS FROM THE DOCTORS, THE PEOPLE WHO USE
11:15AM 13 THESE DEVICES, STANDS UNREBUTTED, AND I WILL SHOW THE
11:15AM 14 SIGNIFICANCE OF THAT AS WE GET TO THE EQUITABLE FACTORS.

11:15AM 15 UNFORTUNATELY, INARI USES FINANCIAL PEOPLE AND ENGINEERS
11:15AM 16 TO EXPLAIN THE NATURE OF CLOTS. THEY ARE NOT QUALIFIED TO
11:15AM 17 DISCUSS THE NATURE OF CLOTS. THEY DON'T REMOVE CLOTS. THEY'VE
11:15AM 18 NEVER TRIED THESE DEVICES, UNLIKE MY WITNESSES.

11:15AM 19 WE HAVE SOME POINTS OF AGREEMENT. I ALWAYS FIND IT NICE
11:15AM 20 WHEN THERE'S POINTS OF AGREEMENT BEFORE ANY ARGUMENT, AND WE
11:15AM 21 HAVE SOME VERY IMPORTANT AGREEMENTS ON SLIDE 4 OF MY BOOKLET.

11:16AM 22 WE BOTH AGREE THAT ONLY A SMALL FRACTION OF PATIENTS
11:16AM 23 SUFFERING FROM PULMONARY EMBOLISMS AND DVT'S GET ASPIRATION
11:16AM 24 TREATMENT. I THINK THE PERCENTAGE IS SINGLE DIGITS, AND THE
11:16AM 25 VAST MAJORITY OF PATIENTS DO NOT GET THIS TREATMENT. THIS IS A

11:16AM 1 GROWING MARKET.

11:16AM 2 SECOND, INARI AND IMPERATIVE CARE HAVE SEVERAL FORMIDABLE
11:16AM 3 COMPETITORS IN THIS FIELD, PARTICULARLY PENUMBRA. PENUMBRA IS
11:16AM 4 AN 800-POUND GORILLA IN THIS FIELD. THEY TRY TO TRIVIALIZE
11:16AM 5 PENUMBRA'S PRESENCE, AND I WILL SHOW YOU THE MARKET DATA
11:16AM 6 DEALING WITH PENUMBRA.

11:16AM 7 NEXT. WE HEARD A VERY NICE PRESENTATION BY MR. AL-SALAM
11:16AM 8 ABOUT THIS FIELD IN GENERAL. YES, WE AGREE BLOOD CLOTS ARE
11:16AM 9 BAD. IT'S GREAT TO REMOVE THEM. WE AGREE THIS IS GROWING, BUT
11:17AM 10 WHAT MR. AL-SALAM DID NOT DO WAS ACTUALLY TIE HIS PRESENTATION
11:17AM 11 TO THE INVENTIONS AT ISSUE ON THIS MOTION.

11:17AM 12 WE ALL AGREE INARI DID NOT INVENT ASPIRATION CATHETERS FOR
11:17AM 13 REMOVING BLOOD CLOTS. THAT'S OLD. EVERYBODY AGREES THAT'S
11:17AM 14 OLD.

11:17AM 15 SO ASPIRATION AND REMOVAL OF THE BLOOD CLOTS IS NOT THE
11:17AM 16 INVENTION.

11:17AM 17 WE ALSO AGREE THAT INARI DID NOT INVENT HEMOSTASIS VALVES,
11:17AM 18 AND I WILL MINIMIZE MY REMARKS ON HEMOSTASIS VALVES BECAUSE I
11:17AM 19 REALIZE THE COURT'S INTEREST IS ON THE SYSTEM CLAIM.

11:17AM 20 WE DO AGREE ON THE PRELIMINARY INJUNCTION FACTORS SET
11:17AM 21 FORTH ON PAGE 5, BUT ONE THING THAT WE NEED TO KNOW IS THAT
11:17AM 22 THEY BEAR THE BURDEN, INARI BEARS THE BURDEN, AND INARI MUST
11:17AM 23 SUCCEED ON THE FIRST TWO FACTORS TO EVEN HAVE A CHANCE. THEY
11:17AM 24 MUST SUCCEED ON FACTORS 1 AND 2 IN ORDER TO EVEN HAVE A CHANCE
11:17AM 25 FOR PRELIMINARY RELIEF.

11:17AM 1 OKAY. NOW WE MOVE TO -- LET'S START OFF WITH SLIDE 7.

11:18AM 2 WE AGREE THIS IS THE STANDARD. IF WE, IMPERATIVE CARE,

11:18AM 3 RAISES A SUBSTANTIAL QUESTION CONCERNING EITHER INFRINGEMENT,

11:18AM 4 EITHER INFRINGEMENT OR VALIDITY, THAT IS, WE ASSERT AN

11:18AM 5 INFRINGEMENT OR INVALIDITY DEFENSE THAT INARI CAN'T PROVE LACKS

11:18AM 6 SUBSTANTIAL MERIT, THEY HAVE TO SHOW THAT OUR DEFENSES LACK

11:18AM 7 SUBSTANTIAL MERIT. WE DON'T HAVE TO BE RIGHT. ALL WE HAVE TO

11:18AM 8 DO IS SHOW SOMETHING THAT DOESN'T LACK SUBSTANTIAL MERIT, AND

11:18AM 9 YOU CAN TELL FROM THE ISSUES HERE, THERE'S A LOT OF SUBSTANTIAL

11:18AM 10 MERIT HERE. THESE ARE DIFFICULT ISSUES THAT THEY'RE TRYING TO

11:18AM 11 NAVIGATE THROUGH.

11:18AM 12 LET ME EXPLAIN NOW THIS TIMELINE ON PAGE 8 TO GIVE YOU A

11:18AM 13 LITTLE BACKGROUND. WHAT HAPPENED? HOW DID THE PARTIES COME TO

11:19AM 14 ABOUT THIS DISPUTE?

11:19AM 15 WHAT HAS HAPPENED HERE AND THE REASON WHY MR. AL-SALAM HAS

11:19AM 16 SO MUCH TROUBLE EXPLAINING HIS CASE -- HE'S A SMART LAWYER.

11:19AM 17 THE DIFFICULTY IS THAT THE PRIOR ART IS POPPING UP AS THIS CASE

11:19AM 18 HAS PROCEEDED. THE IPR'S ARE BEING RULED ON AND THINGS ARE

11:19AM 19 CHANGING, AND THIS MOTION HAS BEEN PENDING FOR TEN MONTHS.

11:19AM 20 THEY CHANGED THE THEORY OF THEIR CASE FROM OPENING BRIEF TO

11:19AM 21 REPLY BRIEF, AND THIS IS WHY THERE ARE SO MANY INCONSISTENCIES

11:19AM 22 IN THE PRESENTATION.

11:19AM 23 THEY WROTE THEIR FIRST LETTER TO US IN SEPTEMBER OF 2023,

11:19AM 24 AND THEY ASSERTED FOUR PATENTS. FOUR. NONE OF THOSE PATENTS

11:19AM 25 ARE ON THIS PI. SO THEIR LETTER WRITING TO US DIDN'T EVEN

11:19AM 1 CONCERN THE PATENTS ON THE PI. SO THIS WHOLE THING ABOUT
11:19AM 2 WRITING TO US AND TRYING TO AVOID THE DISPUTE, NOT TRUE.

11:19AM 3 IN FACT, WE WROTE BACK TO THEM, AND WE UNCOVERED GARRISON
11:20AM 4 AND SCHAFFER.

11:20AM 5 SO AS OF JANUARY 2024, ALL OF THESE PATENT APPLICATIONS,
11:20AM 6 ALL OF THESE CLAIMS THAT INARI WROTE WITHOUT KNOWING ABOUT
11:20AM 7 GARRISON OR SCHAFFER, THEY DIDN'T KNOW THE ART. AND WE TOOK
11:20AM 8 THE DEPOSITIONS OF THE INVENTOR, MR. MERRITT, A FINE YOUNG MAN,
11:20AM 9 AND HE ADMITTED HE DIDN'T KNOW THE ART. HE ACTUALLY THOUGHT HE
11:20AM 10 INVENTED THE GARROTE VALVE AROUND ELECTABLE TUBE BECAUSE HE
11:20AM 11 DIDN'T KNOW ABOUT SCHAFFER. HE DIDN'T KNOW THE ART.

11:20AM 12 DR. TU, WHO GOT THE PATENTS ALLOWED, DIDN'T KNOW ABOUT
11:20AM 13 GARRISON WHEN THEY FILED AND HE HAD TO DISTINGUISH GARRISON.

11:20AM 14 SO YOU'LL SEE THE '921 PATENT, THE VALVE, THAT ISSUED IN
11:20AM 15 DECEMBER 2023 WITHOUT SCHAFFER.

11:20AM 16 SO THE REASON WHY THE '921 PATENT WITH THE VALVE IS SILLY
11:20AM 17 IS BECAUSE IT ISSUED AND THE PATENT OFFICE NEVER HAD SCHAFFER
11:20AM 18 WITH THE BUTTONS AND THE SPRINGS, AND IT LOOKED EXACTLY LIKE
11:21AM 19 IT.

11:21AM 20 SO WE WROTE BACK JANUARY 15TH. AND MONTHS PASSED, AND WE
11:21AM 21 DIDN'T HEAR FROM INARI.

11:21AM 22 AND THEN THE '910 ISSUES IN MAY, AND NOW WE FINALLY HEAR
11:21AM 23 FROM THEM. BUT THE '910 PATENT WAS LIMITED TO PE USES. THIS
11:21AM 24 WAS THE REASON WHY THEY DIDN'T HAVE TO RUSH BECAUSE THIS PATENT
11:21AM 25 IS LIMITED TO PE, AND, THEREFORE, THERE WAS NO RUSH.

11:21AM 1 AND IN FACT THEY AGREED WITH YOU, YOUR HONOR, IN FEBRUARY
11:21AM 2 WHEN YOU SAID IS IT OKAY IF WE DELAY IT BECAUSE THERE'S REALLY
11:21AM 3 NO HARM AND NO PE? AND MR. AL-SALAM SAID THAT'S FINE,
11:21AM 4 YOUR HONOR, AND WE DELAYED THIS MOTION WITH THEIR CONSENT
11:21AM 5 BECAUSE BACK THEN THE THEORY WAS PE.

11:21AM 6 THEY THEN FILED THEIR PRELIMINARY INJUNCTION IN JULY OF
11:21AM 7 2024. LET IT BE CLEAR THAT WE WERE SELLING, AND APPROVED, FOR
11:21AM 8 DVT WITH THE VERY DEVICE THAT THEY WANT TO ENJOIN SINCE WE WERE
11:22AM 9 SELLING IN THE SUMMER OF 2023. THAT DEVICE IS STILL ON THE
11:22AM 10 MARKET. WE'VE BEEN SELLING IT FOR DVT. IT'S GOT APPROVAL
11:22AM 11 SINCE FEBRUARY OF 2023.

11:22AM 12 AND THESE PATENTS ISSUED AFTER THE LETTER, AND THEY
11:22AM 13 SELECTED THESE TWO PATENTS RATHER THAN THE FOUR PATENTS THAT
11:22AM 14 THEY ASSERTED AGAINST US IN SEPTEMBER OF 2023.

11:22AM 15 WHY? THE REASON WHY IS BECAUSE THE PRIOR ART IS POPPING
11:22AM 16 UP ALL THE TIME. REMEMBER, A PATENT APPLICANT HAS NO
11:22AM 17 OBLIGATION TO FIND THE PRIOR ART. YOU THINK YOU INVENTED
11:22AM 18 SOMETHING, YOU FILE A PATENT. THAT'S IT. THERE'S NO
11:22AM 19 OBLIGATION TO SEE IF YOU REALLY WERE THE FIRST INVENTOR.

11:22AM 20 THE PROBLEM IS ONCE YOU SUE SOMEBODY WHO HAS A LITTLE BIT
11:22AM 21 OF INCENTIVE TO FIND THE PRIOR ART, WE'LL FIND IT. AND
11:22AM 22 GARRISON POPPED UP RIGHT AWAY, AND THAT'S WHY INARI WAS SILENT
11:22AM 23 FOR FIVE MONTHS UNTIL THEY COULD TRY TO GET SOME CLAIMS ALLOWED
11:23AM 24 OVER GARRISON.

11:23AM 25 AND HOW DID THEY GET A PATENT ALLOWED OVER GARRISON? THEY

11:23AM 1 TOLD THE PATENT OFFICE IT'S LIMITED TO PE, AND WE'LL GET INTO
11:23AM 2 THAT IN GREATER DETAIL WHEN WE ACTUALLY LOOK AT THE CLAIM
11:23AM 3 LANGUAGE.

11:23AM 4 YOU'LL NOTICE THAT MR. AL-SALAM DIDN'T REALLY READ AND GO
11:23AM 5 THROUGH THE CLAIM LANGUAGE. I WILL DO THAT.

11:23AM 6 I NEXT WANT TO GO TO SLIDE 9. I HEARD SOMETHING FROM
11:23AM 7 MR. AL-SALAM AND I COULDN'T BELIEVE IT WHEN HE SAID WE PUT ALL
11:23AM 8 OF OUR EGGS IN THE '691 IPR. DID YOU HEAR THAT? WELL, I MUST
11:23AM 9 BE A FARMER. I MUST HAVE A LOT OF EGGS. LOOK AT PAGE 9.

11:23AM 10 I WANT YOU TO LOOK AT THIS FOR JUST ONE MOMENT. THESE ARE
11:23AM 11 ALL PUBLIC DOCUMENTS. THE DECISIONS ARE OF RECORD, TWO
11:23AM 12 INSTITUTION DECISIONS, BUT MY CLIENT HAS SPENT MILLIONS IN
11:23AM 13 CHALLENGING THESE PATENTS IN THE PATENT OFFICE. LOOK AT THESE
11:23AM 14 FILING FEES IN THE FAR RIGHT. THOSE ARE JUST THE FILING FEES.

11:23AM 15 NOW, DO YOU KNOW WHAT THIS COSTS TO FILE THIS LAWSUIT IN
11:24AM 16 THIS COURT? 350 BUCKS.

11:24AM 17 DO YOU KNOW WHAT IT COSTS TO FILE AN IPR AT THE PATENT
11:24AM 18 OFFICE? AT LEAST 50,000 IF NOT HIGHER DEPENDING ON THE NUMBER
11:24AM 19 OF CLAIMS. MY CLIENT HAS FILED IPR'S ON ALL EIGHT PATENTS IN
11:24AM 20 THIS CASE, ALL EIGHT THAT WERE IN THE ORIGINAL COMPLAINT, AND
11:24AM 21 HAS SPENT MILLIONS OF DOLLARS IN ATTORNEYS' FEES AND EXPERT
11:24AM 22 WITNESS FEES TO HAVE THE PATENT OFFICE DECIDE ALL OF THE ISSUES
11:24AM 23 WE'RE STRUGGLING WITH TODAY.

11:24AM 24 NEEDLESS TO SAY, THAT'S WHY WE MOVED FOR A STAY. THIS
11:24AM 25 CASE IS THE POSTER CHILD FOR A STAY. THAT'S WHY I DIDN'T WANT

11:24AM 1 A SCHEDULE. THESE ISSUES WILL BE DECIDED THIS YEAR WELL BEFORE
11:24AM 2 THIS COURT HAS A CHANCE TO DECIDE.

11:24AM 3 ALSO, YOU'LL NOTICE ON THE FIRST IPR AND HOW THINGS ARE
11:24AM 4 CHANGING. THEY'RE CONSTANTLY CHANGING BECAUSE OF THESE
11:24AM 5 DECISIONS. IN FACT, THE FIRST IPR GRANTED ON THE '011 PATENT
11:24AM 6 ON THE FAR LEFT, AND THEY DROPPED THE PATENT. THEY IMMEDIATELY
11:24AM 7 DROPPED THE PATENT ONCE THEY SAW THAT ONE GET GRANTED.

11:25AM 8 AND NOW THEY'RE TRYING TO COME UP WITH REASONS TO SAY THAT
11:25AM 9 IT'S NO LONGER RELEVANT, BUT I'LL SHOW YOU NOW THE RELEVANCE OF
11:25AM 10 THOSE IPR'S.

11:25AM 11 BUT I JUST WANTED THE COURT TO REALIZE HOW MUCH ACTIVITY
11:25AM 12 IS GOING ON. IT PALES IN COMPARISON TO WHAT IS HAPPENING HERE.

11:25AM 13 HERE, NOTHING IS HAPPENING COMPARED TO THE PATENT OFFICE.
11:25AM 14 WE FILE THINGS IN THE PATENT OFFICE ALMOST DAILY. THERE IS SO
11:25AM 15 MUCH ACTIVITY IN THE PATENT OFFICE.

11:25AM 16 NOW LET'S GO TO WHAT IS REALLY AT ISSUE IN THIS MOTION.
11:25AM 17 SLIDE 10.

11:25AM 18 WELL, IF THERE'S NOT ENOUGH SURPRISES, AND THERE'S A LOT
11:25AM 19 OF SURPRISES IN THE ARGUMENT BY MR. AL-SALAM, AND YOU PROBABLY
11:25AM 20 DIDN'T NOTICE THEM BECAUSE, FIRST OF ALL, THE SLIDE DECK THAT
11:25AM 21 HE USED TODAY WAS DIFFERENT THAN THE SLIDE DECK THAT HE GAVE
11:25AM 22 THE COURT YESTERDAY. THAT'S HOW FAST THINGS ARE CHANGING, AND
11:25AM 23 IT'S CHANGING BECAUSE THERE'S A LOT OF ACTIVITY.

11:25AM 24 THE ONLY PATENTS ON THIS ARGUMENT, THE ONLY ARGUMENT THAT
11:25AM 25 HE MADE TODAY WAS CLAIM 1 OF THE '910, WHICH THE COURT IS

11:26AM 1 DEFINITELY INTERESTED IN, AND CLAIM 10. BUT YOU NOTICE HE
11:26AM 2 DIDN'T WANT TO TALK ABOUT CLAIM 1 ANYMORE, BECAUSE GUESS WHAT?
11:26AM 3 THERE'S AN IPR GRANTED ON THAT CLAIM. SO NOW HE JUST WANTS IT
11:26AM 4 TO DISAPPEAR.

11:26AM 5 BUT NOW WE HAVE GOT TO SHOW SOMEHOW HOW CLAIM 10 IS
11:26AM 6 PATENTLY DISTINCT FROM CLAIM 1, AND HE OBVIOUSLY CAN'T DO THAT.

11:26AM 7 SO AGAIN, SHIFTING. BUT THE REAL CLAIM WE NEED TO FOCUS
11:26AM 8 ON TODAY IS THE SYSTEM CLAIM OF THE '910 PATENT.

11:26AM 9 LET'S TAKE A LOOK AT THAT CLAIM. YOU'LL NOTICE THAT MY
11:26AM 10 CLAIM CHARTS ARE HIGHLIGHTED. IT'S A LONG CLAIM. IT'S A VERY
11:26AM 11 DETAILED CLAIM. THE MORE WORDS IN THE CLAIM, THE MORE NARROW.
11:26AM 12 THAT'S WHY EACH WORD IS CALLED A LIMITATION.

11:26AM 13 FOR INARI TO SHOW INFRINGEMENT, THEY NEED TO SHOW EACH AND
11:26AM 14 EVERY WORD IS SATISFIED BY THE DEFENDANT.

11:26AM 15 WELL, YOU RAISE SOME GREAT QUESTIONS BECAUSE WHAT IS
11:26AM 16 UNCLEAR IN THIS CASE IS WHAT IS THE INFRINGING ACTIVITY? THEY
11:26AM 17 HAVEN'T EVEN DEFINED OR ARE ABLE TO DEFINE WHAT IS THE
11:27AM 18 INFRINGING ACTIVITY?

11:27AM 19 INFRINGEMENT ARE ACTS. THERE ARE FIVE VERBS IN THE
11:27AM 20 INFRINGEMENT STATUTE OF 271(A): MAKE, USE, SELL, OFFER TO SELL
11:27AM 21 OR IMPORT. THOSE ARE THE FIVE ACTS.

11:27AM 22 WHAT ACT IS AT ISSUE HERE? IT'S UNCLEAR.

11:27AM 23 WHAT THEY NOW SAY THE ACT IS THE SALE OF SYMPHONY, PERIOD,
11:27AM 24 REGARDLESS OF USE.

11:27AM 25 WELL, IF THAT WAS TRUE, WHY DID YOU WAIT SO LONG TO SUE

11:27AM 1 WHEN WE WERE SELLING SYMPHONY IN 2023? OBVIOUSLY THEY CHANGED
11:27AM 2 THE THEORY OF THEIR CASE.

11:27AM 3 LET'S LOOK AT THIS CLAIM, CLAIM 1, THE SYSTEM CLAIM.

11:27AM 4 THIS CLAIM WAS ALLOWED SOLELY BECAUSE IT'S LIMITED TO
11:27AM 5 PULMONARY EMBOLISM USES. MR. AL-SALAM IS CORRECT, THIS CLAIM
11:27AM 6 WAS INTENDED TO BE A SYSTEM CLAIM, A THING, A DEVICE.

11:28AM 7 THE PROBLEM WAS, DR. TU WENT TO THE PATENT OFFICE AND
11:28AM 8 COULDN'T CONVINCED THEM THAT THE DEVICE WAS PATENTABLE. DR. TU,
11:28AM 9 OBVIOUSLY NOT A PATENT LAWYER, THE EXAMINER OBVIOUSLY NOT
11:28AM 10 KNOWING ABOUT CLAIM DRAFTING, THE EXAMINER TOLD DR. TU THAT YOU
11:28AM 11 MUST PUT IN PULMONARY EMBOLISM IN THIS CLAIM FOR ME TO ALLOW
11:28AM 12 IT.

11:28AM 13 SO PULMONARY EMBOLISM WAS NOT ONLY IN THE CLAIM, IT WAS
11:28AM 14 THE REASON FOR ALLOWANCE, AND NOW THEY WANT IT TO DISAPPEAR AS
11:28AM 15 IF PULMONARY EMBOLISM IS IRRELEVANT. HE SAID HOW YOU USE IT IN
11:28AM 16 THE PULMONARY EMBOLISM IS IRRELEVANT.

11:28AM 17 IRRELEVANT? WELL, WHAT ABOUT MY BLUE HIGHLIGHTING? IT'S
11:28AM 18 IN THERE THREE TIMES IN THE CLAIM.

11:28AM 19 SECONDLY, MR. AL-SALAM KEPT TALKING ABOUT HOW YOU NEED TWO
11:28AM 20 PRESSURE SOURCES. NO, THAT'S NOT THE CLAIM LANGUAGE. THE
11:28AM 21 CLAIM LANGUAGE IS THAT YOU NEED A FIRST PRESSURE SOURCE AND A
11:29AM 22 SECOND PRESSURE SOURCE. TWO PRESSURE SOURCES. EACH PRESSURE
11:29AM 23 SOURCE IS PART OF ITS OWN ASSEMBLY, A FIRST AND A SECOND
11:29AM 24 CATHETER ASSEMBLY.

11:29AM 25 THE CLAIM LANGUAGE IS MUCH MORE DETAILED THAN MR. AL-SALAM

11:29AM 1 PRESENTED TO YOU. AND THIS IS OBVIOUSLY VERY IMPORTANT ON THE
11:29AM 2 EQUITIES BECAUSE THEY HAVE NO NEXUS ON THE EQUITIES TO THE
11:29AM 3 ACTUAL CLAIMED INVENTION.

11:29AM 4 THERE WAS NO LONG-FELT NEED WITH TWO PRESSURE SOURCES FOR
11:29AM 5 TELESCOPIC FOR PULMONARY EMBOLISM, BLAH, BLAH, BLAH, BLAH.
11:29AM 6 THOSE WERE GENERALITIES.

11:29AM 7 BUT THE NEXUS HAS TO BE TO THE CLAIMED INVENTION AND
11:29AM 8 INFRINGEMENT OF THE CLAIMED INVENTION. AND THIS CLAIMED
11:29AM 9 INVENTION HAS A LOT OF DETAIL.

11:29AM 10 LET'S TALK ABOUT WHAT THE PATENT SAYS ABOUT THIS PATENT,
11:29AM 11 THIS CLAIM AND WHY THE SIERRAS AND THE ROCKIES AND THE LAKES
11:29AM 12 AND THE RESERVOIRS IS A SILLY EXAMPLE. IT'S SILLY. I CAN'T
11:29AM 13 THINK OF ANY OTHER WORD FOR IT.

11:30AM 14 BUT LET ME SHOW YOU WHY IT'S SO SILLY. FIRST OF ALL,
11:30AM 15 LET'S LOOK AT WHAT THE PATENT SAYS AND WHY NOBODY OF SKILL IN
11:30AM 16 THE ART WOULD THINK THAT A RESERVOIR IS A SOURCE OF WATER
11:30AM 17 BECAUSE WATER IS DIVISIBLE. NEGATIVE PRESSURE IS NOT. YOU
11:30AM 18 HAVE NEGATIVE PRESSURE OR YOU DON'T. I CAN'T HAND YOU SOME
11:30AM 19 NEGATIVE PRESSURE. IT'S NOT DIVISIBLE LIKE WATER. WATER CAN
11:30AM 20 BE DETAINED AND HELD. NEGATIVE PRESSURE CANNOT. NEGATIVE
11:30AM 21 PRESSURE EXISTS FROM ONE END TO THE OTHER, AND IT MUST BE THE
11:30AM 22 SAME.

11:30AM 23 NOW, LOOK AT FIGURE 11 ON SLIDE 12. THIS IS WHAT THE
11:30AM 24 PATENT EXPLAINS. TWO SEPARATE CATHETER ASSEMBLIES WITH TWO
11:30AM 25 INDEPENDENT DISTINCT PRESSURE SOURCES, 1040 AND 1140 IN THE

11:30AM 1 GREEN BOXES IN THE LOWER RIGHT. IT HAS TO HAVE A FULL CATHETER
11:30AM 2 ASSEMBLY WITH SEPARATE FLUID CONTROL VALVES, SEPARATE CATHETERS
11:30AM 3 WITH SEPARATE PRESSURE SOURCES.

11:31AM 4 OKAY. IS IT CLEAR WHAT THE CLAIM IS? AND THIS IS WHAT
11:31AM 5 THE CLAIM IS READING ON. OKAY. WE SAY IT'S A READ ON. THE
11:31AM 6 CLAIM READS ON THE SPECIFICATION. THE SPECIFICATION SUPPORTS
11:31AM 7 THE CLAIM TO SHOW WHAT THE CLAIM IS ABOUT.

11:31AM 8 THIS FIGURE 11 IS THE BEST FIGURE DESCRIBING THE CLAIM.

11:31AM 9 THERE IS ALSO A BLOCK DIAGRAM IN THE PATENT. FIGURES 15
11:31AM 10 OF THE PATENT, WE BROKE IT UP SO IT COULD FIT SIDE BY SIDE, BUT
11:31AM 11 THIS IS ACTUALLY ONE LONG LINEAR STEP TO PRACTICE THE CLAIM.

11:31AM 12 AND YOU'LL NOTICE YOU ACTIVATE FIRST PRESSURE SOURCE IN
11:31AM 13 BOX 1586 AND YOU ACTIVATE A SECOND PRESSURE SOURCE IN BOX 1594.
11:31AM 14 SO YOU ACTIVATE DIFFERENT PRESSURE SOURCES TO GIVE YOU
11:31AM 15 DIFFERENT BENEFITS. THAT'S THE BENEFIT OF TWO PRESSURE
11:31AM 16 SOURCES. YOU CAN HAVE BENEFITS.

11:31AM 17 WELL, WHAT ARE THOSE BENEFITS? WELL, THE PATENT EXPLAINS
11:31AM 18 THAT.

11:32AM 19 LET'S GO TO THE NEXT SLIDE. WHAT IS THE BENEFIT OF HAVING
11:32AM 20 TWO PRESSURE SOURCES?

11:32AM 21 WELL, IF YOU GO TO THE '910 PATENT AT COLUMN 27, LINES 18
11:32AM 22 TO 33 IT'S DESCRIBING FIGURES 11 AND 15, WHICH ARE THE TWO
11:32AM 23 FIGURES THAT I JUST SHOWED YOU, AND YOU'LL SEE THAT IT EXPLAINS
11:32AM 24 THAT WITH THE SECOND PRESSURE CHARGE YOU CAN ACTIVATE IT TO
11:32AM 25 BUILD UP OR PRE-CHARGE A VACUUM, UNLIKE THE PRIOR PARAGRAPHS

11:32AM 1 TALKING ABOUT THE FIRST PRESSURE SOURCE WHERE IT CAN BE
11:32AM 2 DIFFERENT THAN THE SECOND PRESSURE SOURCE.

11:32AM 3 AND THE SECOND PRESSURE SOURCE SOMETIMES CAN GIVE
11:32AM 4 SUSTAINED VACUUM RATHER THAN INSTANTANEOUS RELEASE OF VACUUM.

11:32AM 5 THESE LINES, LINES 18 TO 33, EXPLAIN THE BENEFIT OF HAVING
11:32AM 6 TWO DISTINCT SEPARATE PRESSURE SOURCES. THE SLIDES THAT WERE
11:32AM 7 REMOVED FROM YOUR DECK FROM LAST NIGHT TO TODAY OR YESTERDAY AT
11:33AM 8 9:00 A.M. TO TODAY, WHEN THEY HAD SLIDES SHOWING, POINTING TO
11:33AM 9 THE SAME GENERATOR TWICE, THEY REMOVED THOSE SLIDES TODAY
11:33AM 10 BECAUSE MR. AL-SALAM KNOWS YOU CAN'T POINT TO THE SAME
11:33AM 11 GENERATOR AND CALL THAT A FIRST AND A SECOND PRESSURE SOURCE.

11:33AM 12 THE CONTAINER DOES NOT CREATE, GENERATE, OR BE THE SOURCE
11:33AM 13 OF ANY PRESSURE. IT HOLDS IT, BUT SO DOES THE TUBE, SO DOES
11:33AM 14 THE CATHETER, SO DOES EVERYTHING HAVE NEGATIVE PRESSURE. BUT
11:33AM 15 YOU WOULD NEVER SAY THE CLOT CONTAINER IS A SOURCE OF NEGATIVE
11:33AM 16 PRESSURE. THAT'S SILLY.

11:33AM 17 THE SOURCE GENERATES THE NEGATIVE PRESSURE, AND THIS IS
11:33AM 18 WHY A WATER EXAMPLE DOESN'T APPLY BECAUSE YOU DO NOT CREATE
11:33AM 19 WATER. THE WATER IS PASSED AND YOU CAN HOLD IT DOWN AND PASS
11:33AM 20 IT DOWN FROM A LAKE TO RESERVOIR. YOU CAN'T DO THAT WITH
11:33AM 21 NEGATIVE PRESSURE.

11:33AM 22 SO WHY CAN'T THEY SHOW LIKELIHOOD OF SUCCESS ON THE '910
11:33AM 23 PATENT? I HAVE A LITTLE SUMMARY SLIDE 15.

11:33AM 24 FIRST OF ALL, SYMPHONY. I MEAN, I CAN'T BELIEVE THIS IS
11:34AM 25 EVEN A DEBATE. SYMPHONY NEVER USES A FIRST PRESSURE SOURCE AND

11:34AM 1 A SECOND PRESSURE SOURCE. NEVER. WE USE ONE GENERATOR, AND
11:34AM 2 THAT'S THE ADVANTAGE OF THE GENERATOR.

11:34AM 3 WHAT THEY'RE SCARED ABOUT IS THAT GENERATORS ARE TAKING
11:34AM 4 OVER THE MARKET. NOBODY LIKES THE MANUAL SYRINGES. THAT'S
11:34AM 5 ANTIQUATED, AND THAT'S WHAT PENUMBRA IS DOING AND THAT'S WHY
11:34AM 6 PENUMBRA IS EATING THEIR LUNCH. AND WE'LL GET TO THAT, AND
11:34AM 7 I'LL SHOW YOU SOME MARKET DATA.

11:34AM 8 NOBODY -- ALL WE NEED TO SHOW IS A SUBSTANTIAL QUESTION.
11:34AM 9 AND SOME PHYSICIANS PREFER THE PUMP BECAUSE IT'S CONTINUOUS AND
11:34AM 10 ALL YOU HAVE TO DO IS THE VALVE, ON, OFF, MEDIUM, LITTLE BIT,
11:34AM 11 AND AS OPPOSED TO PULLING THE SYRINGE -- GETTING TWO SYRINGES,
11:34AM 12 PULLING FROM THE SYRINGE, S-Y-R-I-N-G-E, SYRINGE, AND THEN YOU
11:34AM 13 LOSE YOUR NEGATIVE PRESSURE THE MINUTE THE SYRINGE IS DONE, BUT
11:35AM 14 WITH THE PUMP, IT'S CONTINUOUS, AND THAT'S HOW WE MARKET IT.

11:35AM 15 THE COURT: AND IT'S MORE THE SPEED THAT YOU WERE
11:35AM 16 SPEAKING THAN THE SPELLING.

11:35AM 17 MR. RE: OKAY. OH, SORRY. I'LL SLOW DOWN.

11:35AM 18 SO WE USE A PUMP SO WE DON'T NEED A SECOND, SECOND
11:35AM 19 PRESSURE SOURCE. THE PUMP CAN SUPPLY IT TO AS MANY CATHETERS
11:35AM 20 AS YOU WANT, SO WHY WOULD WE NEED TWO PRESSURE SOURCES? WE
11:35AM 21 DON'T.

11:35AM 22 IN FACT, AS MR. AL-SALAM ADMITTED, THE VAST MAJORITY OF
11:35AM 23 OUR CASES ONLY USE ONE CATHETER. AND AS A MATTER OF FACT, IF
11:35AM 24 YOU LOOK AT SLIDE 15 YOU SEE 90-PLUS PERCENT --

11:35AM 25 THIS IS NOT AEO, RIGHT? THIS IS OKAY? OKAY.

11:35AM 1 98.5 PERCENT OF THE TIME ONLY ONE CATHETER IS USED. SO
11:35AM 2 HOW COME YOU HAVE A FIRST CATHETER ASSEMBLY AND A SECOND
11:35AM 3 CATHETER ASSEMBLY WHEN WE NEVER HAVE A SECOND CATHETER?

11:36AM 4 THE COURT: ISN'T THAT IN PART BECAUSE IT HASN'T
11:36AM 5 BEEN APPROVED FOR PE YET?

11:36AM 6 MR. RE: NO, BECAUSE THEY'RE GOING TO AFTER DVT AS
11:36AM 7 WELL, AND DVT DOESN'T USE IT. THAT'S WHAT I AM TALKING ABOUT.
11:36AM 8 WE ONLY USE DVT.

11:36AM 9 THE COURT: RIGHT. OKAY.

11:36AM 10 MR. RE: THAT'S A GOOD QUESTION. WHO SAYS WE HAVE
11:36AM 11 TWO CATHETERS FOR THE PE? WHERE IS THAT IN THE RECORD? IT'S
11:36AM 12 NOT. WE DON'T NEED TWO CATHETERS FOR PE, EITHER.

11:36AM 13 THERE'S NOTHING TO SUPPORT WHAT MR. AL-SALAM SAID.

11:36AM 14 WHO SAYS OUR FDA APPLICATION REQUIRES THESE TWO CATHETER
11:36AM 15 ASSEMBLIES? WHERE IS THAT IN THE RECORD? I DIDN'T SEE THAT.

11:36AM 16 THAT'S MADE UP. YOU TALK ABOUT SPECULATION, THEY DON'T
11:36AM 17 EVEN KNOW WHAT THE FINAL DESIGN IS GOING TO BE APPROVED BY THE
11:36AM 18 FDA. HOW COULD THEY PROVE INFRINGEMENT. UNLIKE THE CASES HE'S
11:36AM 19 CITED -- HE'S TALKING ABOUT CASES IN THE TWO SUPPLIER MARKET
11:36AM 20 WHERE EVERYBODY KNOWS THE PRODUCTS ARE GOING TO BE LAUNCHED,
11:36AM 21 YOU KNOW, NEXT WEEKEND OR NEXT WEEK IT'S AT A TRADE SHOW OR
11:36AM 22 SOMETHING.

11:36AM 23 THAT'S NOT OUR CASE. NOBODY KNOWS WHAT OUR PE PRODUCT
11:36AM 24 WILL FINALLY LOOK LIKE. IT'S NOT KNOWN, AND IT'S NOT IN THE
11:37AM 25 RECORD.

11:37AM 1 SO WHO SAYS IT HAS TWO CATHETERS? WHO SAYS IT HAS TWO
11:37AM 2 PRESSURE SOURCES? SO THEY CAN'T EVEN PROVE INFRINGEMENT OF
11:37AM 3 THAT FUTURE DEVICE THAT THEY'RE SO WORRIED ABOUT BECAUSE THIS
11:37AM 4 CLAIM IS TOO NARROW.

11:37AM 5 AND I AGREE, LOOK AT POINT 3, IT'S NOT APPROVED FOR PE, SO
11:37AM 6 HOW COULD THERE BE INFRINGEMENT?

11:37AM 7 SO THEY MUST BE TALKING ABOUT A FUTURE DEVICE OF WHICH
11:37AM 8 THEY KNOW NOTHING, OTHERWISE THEY CAN'T JUST WIPE OUT PE.

11:37AM 9 THEY'RE SO CONCERNED ABOUT YOUR SPECULATION CONCERN THAT
11:37AM 10 THEY'RE NOW TRYING TO WIPE OUT PE AS A LIMITATION OF THE CLAIM.
11:37AM 11 THEY CAN'T DO THAT BECAUSE THAT WAS THE BASIS FOR ALLOWANCE.

11:37AM 12 SO LET'S TAKE A --

11:37AM 13 THE COURT: SO I'M THINKING THIS THROUGH. SO IN
11:37AM 14 TERMS OF THE FREQUENCY YOU'RE POINTING TO THE 98.5 PERCENT
11:37AM 15 VERSUS 1.5 PERCENT, WHY DOES OR DOES IT MATTER IN TERMS OF THE
11:37AM 16 FREQUENCY OF MEETING THE CLAIM LIMITATION? DOES IT MATTER FOR
11:38AM 17 PURPOSES OF INFRINGEMENT FOR MY ANALYSIS HERE?

11:38AM 18 MR. RE: YES.

11:38AM 19 THE COURT: OKAY.

11:38AM 20 MR. RE: BECAUSE IF THE PRODUCT DOESN'T HAVE TWO
11:38AM 21 CATHETERS, IT CAN'T INFRINGE.

11:38AM 22 THE COURT: OKAY.

11:38AM 23 MR. RE: RIGHT?

11:38AM 24 SO HOW COULD THERE BE HARM, FIRST OF ALL, BASED ON
11:38AM 25 1.5 PERCENT OF THE CASES? IT CAN'T. NO NEXUS EITHER.

11:38AM 1 SO THEY'RE NOW TRYING TO STOP THE SALE OF SYMPHONY FOR
11:38AM 2 DVT, THEY'RE TRYING TO STOP THE SALE OF SYMPHONY FOR DVT, WHAT
11:38AM 3 WE'VE BEEN DOING FOR TWO YEARS, THEY'RE STILL TRYING TO STOP
11:38AM 4 THAT, WHEN WE DON'T EVEN USE TWO CATHETERS 98.5 PERCENT OF THE
11:38AM 5 TIME.

11:38AM 6 THE COURT: BUT THOSE CATHETERS ARE PRESENT,
11:38AM 7 CORRECT, IN ALL OF THE --

11:38AM 8 MR. RE: NO.

11:38AM 9 THE COURT: WE'RE STILL TALKING ABOUT THE SAME
11:38AM 10 MACHINE.

11:38AM 11 MR. RE: NO. THAT'S ANOTHER THING, ANOTHER MISTAKE
11:38AM 12 THAT THEY MAKE, AND I HAVE ANOTHER SLIDE ON THAT. WE DON'T
11:38AM 13 SELL TWO CATHETERS TOGETHER. WE ONLY SELL THEM ONE AT A TIME.
11:39AM 14 WE SELL A LA CARTE. IF THE DOCTOR WANTS TO USE THEM OFF LABEL
11:39AM 15 OR DO SOMETHING ON HIS OWN WITH MULTIPLE CATHETERS AND MULTIPLE
11:39AM 16 PUMPS, WHATEVER, THAT'S HIS BUSINESS. THEY'RE NOT GOING AFTER
11:39AM 17 THAT. THOSE ARE NOT AT ISSUE.

11:39AM 18 SO, NO, WE DO NOT SELL TWO CATHETERS AT ONCE TO HAVE THE
11:39AM 19 CLAIM EVEN READ ON TWO CATHETERS.

11:39AM 20 IN FACT, LET ME GO TO THE NEXT SLIDE.

11:39AM 21 THE COURT: LET ME GET -- JUST SO I UNDERSTAND IT
11:39AM 22 BECAUSE NOW I'M A LITTLE BIT CONFUSED.

11:39AM 23 SO WHAT WAS REFERENCED AS THE BASE DURING INARI'S
11:39AM 24 DISCUSSION, IS THERE A BASE IN ADD-ONS IN TERMS OF THE WAY
11:39AM 25 SYMPHONY IS SOLD?

11:39AM 1 MR. RE: I DON'T KNOW WHAT AN ADD-ON IS WHEN YOU
11:39AM 2 SELL A LA CARTE.

11:39AM 3 THE COURT: OKAY. WE'LL TAKE YOUR LANGUAGE, A LA
11:39AM 4 CARTE. I LOVE MY RESTAURANTS. SO I'M ASSUMING IF I -- WELL, I
11:39AM 5 WILL NOT TAKE THIS ANALOGY AS FAR AS I WANT TO, I WILL JUST
11:39AM 6 LEAVE IT WITH THIS.

11:39AM 7 WHEN YOU'RE SAYING "A LA CARTE," YOU'RE SAYING OKAY,
11:40AM 8 HERE'S THE SYMPHONY MECHANISM, IT COMES WITH THE FIRST CATHETER
11:40AM 9 OR IT DOESN'T COME WITH THE FIRST CATHETER, WHAT IS THE --

11:40AM 10 MR. RE: YOU BUY A CATHETER. I DON'T KNOW WHAT THE
11:40AM 11 FIRST AND SECOND MEANS. YOU BUY A CATHETER.

11:40AM 12 THE COURT: AND THEN YOU BUY ANOTHER CATHETER?

11:40AM 13 MR. RE: YOU CAN BUY ANOTHER CATHETER, SURE.

11:40AM 14 THE COURT: AND BY CATHETER, DOES IT HAVE THE
11:40AM 15 TELESCOPING AUTOMATICALLY INCLUDED?

11:40AM 16 MR. RE: IF YOU BUY CATHETERS OF THE APPROPRIATE
11:40AM 17 SIZE IN ORDER TO TELESCOPE AND YOU WANT TO DO TELESCOPING, BUT
11:40AM 18 YOU KNOW WHAT THE PROBLEM IS, YOU STILL DON'T HAVE A SECOND
11:40AM 19 PRESSURE SOURCE. SO YOU STILL DON'T INFRINGE EVEN IN THE
11:40AM 20 1.5 CASES BECAUSE THERE'S STILL NO SECOND PRESSURE SOURCE.

11:40AM 21 THE COURT: DO I BUY THAT A LA CARTE?

11:40AM 22 MR. RE: YEAH, WE DO. WE SELL AND SUPPLY --

11:40AM 23 THE COURT: WELL, YOU HAVE THE --

11:40AM 24 MR. RE: THE PUMP.

11:40AM 25 THE COURT: -- THE PUMP.

11:40AM 1 MR. RE: YEAH, YOU BUY ONE PUMP OR GET ONE PUMP. WE
11:40AM 2 SELL IT VARIOUS WAYS. THE RECORD SHOWS SOMETIMES YOU GET IT
11:40AM 3 FOR FREE AND SOMETIMES IT'S SOLD FOR X DOLLARS OR SOMETIMES IT
11:40AM 4 IS SOLD 2X DOLLARS DEPENDING ON THE SITUATION, BUT THE POINT IS
11:40AM 5 THAT WE USE AN ELECTRONIC PUMP, NOT SYRINGES, AND, THEREFORE,
11:41AM 6 HAVE NO NEED EVER TO HAVE A FIRST AND A SECOND PRESSURE SOURCE.
11:41AM 7 AND THAT'S A NON-INFRINGEMENT GROUNDS RIGHT THERE. THAT'S
11:41AM 8 SUMMARY JUDGMENT MATERIAL. I DON'T KNOW HOW THEY CAN SAY
11:41AM 9 THAT'S NOT A SUBSTANTIAL QUESTION OF INFRINGEMENT. OF COURSE
11:41AM 10 IT IS.

11:41AM 11 AND LOOK AT WHAT OUR DEVICE LOOKS LIKE ON PAGE 16. THIS
11:41AM 12 IS WHAT WE SELL.

11:41AM 13 THE COURT: BEFORE WE LEAVE SLIDE 15, JUST FOR
11:41AM 14 CLARIFICATION, SO WE HAVE 1.5 PERCENT OF CASES, YOU'RE MAKING
11:41AM 15 THIS DISTINCTION BETWEEN 98.5 AND 1.5. ARE THOSE 1.5 PERCENT
11:41AM 16 CASES AUTOMATICALLY PULMONARY EMBOLISM CASES OR ARE THEY
11:41AM 17 SOMETIMES DVT CASES OR ARE THEY --

11:41AM 18 MR. RE: THEY'RE ALWAYS DVT CASES. WE ARE NOT
11:41AM 19 APPROVED FOR -- AND THEY ADMIT TELESCOPING IS RARE FOR DVT.

11:41AM 20 IF YOU LOOK AT MY SLIDE -- SLIDE 18 INARI IS IN AGREEMENT
11:41AM 21 THAT TELESCOPE -- IF YOU LOOK AT INARI'S BRIEF, FOOTNOTE 6,
11:42AM 22 REPLY BRIEF ON PAGE 4 INARI WRITES, "TELESCOPING CATHETERS ARE
11:42AM 23 USED FOR MOST PE PROCEDURES BUT RARELY FOR DVT PROCEDURES."

11:42AM 24 WE AGREE. THAT'S ANOTHER POINT OF AGREEMENT. OKAY.

11:42AM 25 THE COURT: OKAY.

11:42AM 1 MR. RE: WE'RE ONLY TALKING DVT. AND I'M SORRY I
11:42AM 2 HAVE TO ADDRESS DVT BECAUSE THE SCOPE OF THE RELIEF NOW IS
11:42AM 3 AGAINST SYMPHONY EVEN IS USED AS A DOORSTOP. SO NOW I HAVE TO
11:42AM 4 ADDRESS ALL USES BECAUSE THEY'RE DISREGARDING THE PULMONARY
11:42AM 5 EMBOLISM LIMITATION OF CLAIM 1.

11:42AM 6 THE COURT: WELL, IF WE CAN REACH THAT AT SOME POINT
11:42AM 7 WITHIN YOUR HOUR I WANT TO HEAR ABOUT THEIR MODIFIED PROPOSAL
11:42AM 8 REGARDING, WELL, WHAT IF WE JUST LIMIT IT TO -- THE SCOPE OF
11:42AM 9 THE PRELIMINARY INJUNCTION WAS JUST LIMITED TO PULMONARY
11:42AM 10 EMBOLISM.

11:42AM 11 MR. RE: I'LL BE MORE THAN HAPPY TO. THAT MAKES NO
11:42AM 12 SENSE EITHER BECAUSE DVT USES NEVER HAVE A SECOND PRESSURE
11:42AM 13 SOURCE SO THAT WOULD BE A POOR INJUNCTION BECAUSE THERE'S NO
11:42AM 14 INFRINGEMENT.

11:43AM 15 THE DVT CASES, THE NON-PE, WE STILL NEVER HAVE A SECOND
11:43AM 16 PRESSURE SOURCE. THERE CAN NEVER BE INFRINGEMENT REGARDLESS OF
11:43AM 17 USE.

11:43AM 18 THE COURT: RIGHT. GOING BACK TO -- BUT THAT'S
11:43AM 19 ADOPTING IMPERATIVE CARE'S INTERPRETATION OF SOURCE.

11:43AM 20 MR. RE: THE NORMAL ENGLISH WORD "SOURCE" WE AGREE
11:43AM 21 IS WHERE THE PRESSURE IS GENERATED, GENERATED. THE PRESSURE IS
11:43AM 22 GENERATED.

11:43AM 23 THE COURT: ASSUMING THAT I ACCEPT THE ARGUMENT,
11:43AM 24 THEN, YES, NO MATTER WHAT THERE WOULD BE NO --

11:43AM 25 MR. RE: YES, YES. WELL, LET'S TAKE A CLOSER LOOK.

11:43AM 1 THE COURT: OKAY. LET'S SAY THE COURT WERE NOT TO
11:43AM 2 ADOPT IMPERATIVE CARE'S INTERPRETATION OF SOURCE, I'M NOT
11:43AM 3 SAYING I'M GOING ONE WAY OR THE OTHER, I JUST WANT A REACTION
11:43AM 4 REGARDING THEIR PROPOSAL AT THE END OF THEIR PRESENTATION.

11:43AM 5 MR. RE: YEAH. SO I WOULD SAY, WELL, TAKE A LOOK AT
11:43AM 6 THE SLIDES THEY ELIMINATED THAT THEY HAD YESTERDAY WHERE THEY
11:43AM 7 POINTED TO OUR GENERATOR TWICE AS THE SAME PRESSURE -- AS TWO
11:43AM 8 DIFFERENT PRESSURE SOURCES, AND THEN I WOULD SAY TO THE COURT,
11:44AM 9 YOUR HONOR, WHERE DID YOU FIND THE SECOND PRESSURE SOURCE AND
11:44AM 10 WHAT WOULD YOU POINT TO TO BE THE SECOND PRESSURE SOURCE?

11:44AM 11 THEY ARE POINTING TO THE CLOT CANNISTER. THE CLOT
11:44AM 12 CANNISTER OF EACH CATHETER ASSEMBLY AND SAYING THE CLOT
11:44AM 13 CANNISTER IS A PRESSURE SOURCE.

11:44AM 14 THAT IS FRIVOLOUS. IT JUST HOLDS NEGATIVE PRESSURE LIKE
11:44AM 15 THE REST OF THE SYSTEM DOES. IT'S ONE NEGATIVE PRESSURE FROM
11:44AM 16 POINT TO POINT. IT DOESN'T GENERATE. IT'S NOT THE SOURCE OF
11:44AM 17 NEGATIVE PRESSURE.

11:44AM 18 IF I PUT A VACUUM TO THIS ROOM AND PUT NEGATIVE PRESSURE
11:44AM 19 IN THIS ROOM, THE SOURCE OF THE NEGATIVE PRESSURE IS THE
11:44AM 20 MACHINE OUTSIDE OF THE DOOR.

11:44AM 21 IF I OPEN THE CLOSET AND PUT NEGATIVE PRESSURE IN THERE,
11:44AM 22 TOO, WOULD YOU SAY THE CLOSET IS THE SOURCE OF NEGATIVE
11:44AM 23 PRESSURE? OF COURSE NOT. IT'S JUST ANOTHER AREA HOLDING THE
11:44AM 24 NEGATIVE PRESSURE.

11:44AM 25 THAT'S WHY WATER AND PRESSURE AREN'T THE SAME.

11:44AM 1 THE CLOSET COULD NEVER BE THE SOURCE OF NEGATIVE PRESSURE.

11:45AM 2 THE SOURCE IS STILL THE MACHINE WITH THE TUBE INSIDE OF

11:45AM 3 THE DOOR PUTTING NEGATIVE PRESSURE INSIDE OF THE ROOM.

11:45AM 4 HAVING ANOTHER AREA WITH NEGATIVE PRESSURE DOES NOT MAKE

11:45AM 5 IT A SOURCE OF NEGATIVE PRESSURE. IT DOESN'T GENERATE NEGATIVE

11:45AM 6 PRESSURE.

11:45AM 7 IN FACT, IT COSTS NEGATIVE PRESSURE. IT LOWERS THE

11:45AM 8 NEGATIVE PRESSURE THE BIGGER THE SPACE.

11:45AM 9 SO IF I OPEN UP THAT DOOR, THE NEGATIVE PRESSURE WOULD

11:45AM 10 ACTUALLY BE WORSE BECAUSE THE SPACE IS BIGGER.

11:45AM 11 SO THIS -- I WOULD SAY TO THE COURT, YOU CAN IDENTIFY

11:45AM 12 ANOTHER PRESSURE SOURCE OTHER THAN OUR GENERATOR. THAT'S MY

11:45AM 13 RESPONSE.

11:45AM 14 THE COURT: I UNDERSTAND YOUR ARGUMENT, BUT I'M JUST

11:45AM 15 PLAYING IT OUT IN TERMS OF ASSUMING I WERE NOT TO ACCEPT THAT

11:45AM 16 ARGUMENT. I'M NOT SAYING I'M LEANING THAT WAY.

11:45AM 17 MR. RE: OKAY.

11:45AM 18 THE COURT: JUST CURIOUS.

11:45AM 19 MR. RE: LET'S TAKE A LOOK AT OUR DIAGRAM.

11:45AM 20 THE COURT: ALL RIGHT.

11:45AM 21 MR. RE: LOOK AT NUMBER 17, AND YOU'LL SEE THIS

11:45AM 22 DEVICE WHERE IT ACTUALLY SHOWS TWO CATHETERS, TWO CATHETERS

11:46AM 23 TOGETHER, BUT YOU'LL NOTICE THAT THEY'RE BOTH CONNECTED TO THE

11:46AM 24 TRUVIC GENERATOR.

11:46AM 25 THE GENERATOR SUPPLIES THE NEGATIVE PRESSURE TO BOTH

11:46AM 1 DEVICES. THERE'S ONLY ONE GENERATOR.

11:46AM 2 NOW, MR. AL-SALAM POINTS TO THE CLOT CANNISTER, YOU SEE
11:46AM 3 THE TWO CLOT CANNISTERS, BUT WHY ISN'T HE POINTING TO THE
11:46AM 4 CANNISTER BY THE GENERATOR UP THERE? WHY NOT POINT TO THE
11:46AM 5 TUBING? THAT ALL HAS THE SAME NEGATIVE PRESSURE IN IT.

11:46AM 6 YOU CAN'T JUST ARBITRARILY SELECT AN AREA OF THE ROOM
11:46AM 7 HAVING NEGATIVE PRESSURE, WHICH IS WHAT HE HAS BASICALLY DONE.
11:46AM 8 THE NEGATIVE PRESSURE SOURCE IS THAT CORNER OF THE ROOM. IT'S
11:46AM 9 ALL SUBJECTED TO THE SAME NEGATIVE PRESSURE GENERATED BY THE
11:46AM 10 SAME GENERATOR, WHICH IS SHOWN ON PAGE 17.

11:46AM 11 I WANT TO MAKE SURE IT'S CLEAR ON THE RECORD MY STATEMENT
11:46AM 12 EARLIER I MADE. IF YOU GO TO SLIDE 19, THE SCOTT DECLARATION
11:46AM 13 MAKES IT CLEAR THAT WE SELL OUR COMPONENTS ON A
11:47AM 14 COMPONENT-BY-COMPONENT BASIS. THIS IS PARAGRAPH 20 OF THE
11:47AM 15 SCOTT DECLARATION. THIS MEANS PHYSICIANS PURCHASE ONLY THE
11:47AM 16 COMPONENTS THAT THEY NEED FOR A GIVEN PROCEDURE. THIS IS
11:47AM 17 UNDISPUTED. WE DO NOT SELL TWO CATHETERS AT ONCE.

11:47AM 18 AND SLIDE 20. IT'S UNDISPUTED THAT WE ARE NOT APPROVED
11:47AM 19 FOR PE, AND THAT'S UNDISPUTED AT SLIDE 20.

11:47AM 20 AND IT'S UNDISPUTED, SLIDE 21, THAT IF OUR FDA TRIALS
11:47AM 21 CANNOT BE SUBJECT TO INFRINGEMENT. SO THE PE USES THAT WE
11:47AM 22 ACTUALLY KNOW ABOUT ARE NOT EVEN AT ISSUE IN THIS CASE BECAUSE
11:47AM 23 THEY'RE EXEMPTED BY STATUTE UNDER 271(E) OF THE PATENT ACT AND
11:47AM 24 THEY CANNOT AND DO NOT ALLEGE USE OF THE DEVICES FOR FDA TRIALS
11:47AM 25 IS AN INFRINGEMENT. AND THIS WAS FOOTNOTE 9 OF THEIR

11:47AM 1 PRELIMINARY INJUNCTION MOTION ON PAGE 16.

11:47AM 2 SO TO ME THAT IS CLEARLY A SUBSTANTIAL QUESTION OF NO
11:48AM 3 INFRINGEMENT. CAN WE -- THAT'S ALL I WANT TO SHOW. I JUST
11:48AM 4 NEED A SUBSTANTIAL QUESTION. I DON'T NEED SUMMARY JUDGMENT. I
11:48AM 5 JUST NEED SUBSTANTIAL QUESTION.

11:48AM 6 AND I THINK EVEN IF YOU AND I WERE TO DISAGREE ABOUT THE
11:48AM 7 PRESSURE SOURCES, I THINK WE WOULD AGREE THAT I HAVE A -- I
11:48AM 8 HAVE RAISED A SUBSTANTIAL QUESTION, WHICH IS ALL I NEED TO DO.

11:48AM 9 NOW LET'S GO TO VALIDITY. THIS IS WHAT CAUSED THE
11:48AM 10 PROBLEM. THIS IS WHAT CAUSED INARI TO STOP PURSUING US FOR
11:48AM 11 FIVE MONTHS IN THAT TIMELINE. IT WAS THIS REFERENCE TO
11:48AM 12 GARRISON.

11:48AM 13 GARRISON PRIOR ART -- I SHOW TWO FIGURES FROM GARRISON,
11:48AM 14 PAGE 22, FIGURES 33 AND 34.

11:48AM 15 THIS PRIOR ART STOPPED THEM DEAD IN THEIR TRACKS. THEY
11:48AM 16 SENT DR. TU TO THE PATENT OFFICE AND SAID, DR. TU, DO WHAT YOU
11:48AM 17 CAN. HOW DO WE GET AROUND THE GARRISON PRIOR ART?

11:48AM 18 IT'S TELESCOPING, IT'S BLOOD ASPIRATION, IT EVEN HAS TWO
11:49AM 19 PRESSURE SOURCES, TWO PRESSURE SOURCES, INDEPENDENT PRESSURE
11:49AM 20 SOURCES, IT HAS THE FLUID CONTROL DEVICE. IT HAS GOT
11:49AM 21 EVERYTHING.

11:49AM 22 HE HAD TO COME UP WITH SOME GROUND TO AT LEAST TRY TO
11:49AM 23 DISTINGUISH GARRISON, AND HE DID. AND THAT IS SHOWN ON
11:49AM 24 SLIDE 23 WHERE THE EXAMINER SET FORTH REASONS FOR ALLOWANCE.

11:49AM 25 THERE IS NO WAY THAT YOU CAN WIPE OUT REASONS FOR

11:49AM 1 ALLOWANCE IN CONSTRUING A PATENT CLAIM.

11:49AM 2 AND I'VE HIGHLIGHTED, OBVIOUSLY, THE KEY SENTENCES WHERE
11:49AM 3 IT SAYS, HOWEVER, GARRISON FAILS TO TEACH A CLOT TREATMENT
11:49AM 4 SYSTEM FOR TREATING CLOT MATERIAL COMPRISING A PULMONARY
11:49AM 5 EMBOLISM IN THE VASCULATURE OF A PATIENT WHEREIN THE SECOND
11:49AM 6 CATHETER HAS A SIZE OF 16 FRENCH OR GREATER.

11:49AM 7 SO THESE WERE THE LIMITATIONS THAT THEY ADDED THAT I
11:49AM 8 HIGHLIGHTED IN MY SLIDE EARLIER. THESE WERE THE LIMITATIONS
11:50AM 9 THAT INARI HAD TO ADD TO GET A PATENT. I DON'T THINK THERE'S
11:50AM 10 ANY DISPUTE OVER THAT. WE'RE IN AGREEMENT THOSE WORDS WERE
11:50AM 11 ADDED.

11:50AM 12 THERE'S ONE LITTLE PROBLEM. DR. TU DIDN'T KNOW THE PRIOR
11:50AM 13 ART. DR. TU SAID PULMONARY EMBOLISM 16 FRENCH OR GREATER, AND
11:50AM 14 THE EXAMINER SAID OKAY, PUT THAT IN, AND I'LL GIVE YOU A
11:50AM 15 PATENT.

11:50AM 16 THE PROBLEM IS, IF YOU GO TO SLIDE 24, AND THIS IS WHY THE
11:50AM 17 THEORIES KEEP CHANGING, LAUB DISCLOSES EXACTLY THAT. LAUB IS
11:50AM 18 ANOTHER REFERENCE WHICH SAYS THAT SYSTEMS ACCORDING TO THESE
11:50AM 19 EMBODIMENTS MAY BE USED, FOR EXAMPLE, TO REMOVE CLOTS FROM
11:50AM 20 PATIENTS SUFFERING FROM OR AT RISK OF PULMONARY EMBOLISMS.
11:50AM 21 THAT'S DOCKET 36-16, EXHIBIT 2021.

11:50AM 22 AND HE SAYS, IN SOME EMBODIMENT, ASPIRATION CATHETER 200
11:50AM 23 HAS FRENCH SIZE OF AT LEAST 16 FRENCH.

11:51AM 24 NOW, WHAT WOULD DR. TU SAY NOW IF THE EXAMINER HAD THIS ON
11:51AM 25 HIS LAP? DO YOU SEE WHY IT WOULDN'T HAVE ISSUED? THIS IS WHY

11:51AM 1 WE FILED THE IPR'S. LAUB IS A KILLER REFERENCE BECAUSE IT
11:51AM 2 EXPLICITLY SHOWS 16 FRENCH OR GREATER FOR PE AND GARRISON SHOWS
11:51AM 3 TELESCOPIC WITH TWO PRESSURE SOURCES. THERE'S NO INVENTION
11:51AM 4 LEFT OF THIS CLAIM 1 OF THE '910 PATENT.

11:51AM 5 AND THEN IF THERE WAS ANY DOUBT, I DON'T WANT YOU TO TAKE
11:51AM 6 MY WORD FOR IT, WE HAD DR. TURK, UNREBUTTED TESTIMONY FROM A
11:51AM 7 PHYSICIAN IN THE FIELD WHO USES THESE DEVICES, AND HE EXPLAINS
11:51AM 8 THAT THIS IS A NATURAL EXPANSION OF USE OF ASPIRATION.

11:51AM 9 EVERYONE KNOWS YOU ADAPT THE SIZE OF THE CATHETER FOR THE CLOT
11:51AM 10 FOR THE VESSEL YOU'RE GOING THROUGH. THIS IS NOT SOME
11:51AM 11 GROUNDBREAKING IDEA OF 16 FRENCH. SO YOU CAN'T ENJOIN THE USE
11:52AM 12 OF 16 FRENCH BECAUSE 16 FRENCH IS WELL-KNOWN IN THE ART AND
11:52AM 13 IT'S IN THE PUBLIC DOMAIN. THAT'S WHY THIS IS SILLY.

11:52AM 14 16 FRENCH, PULMONARY EMBOLISM, TELESCOPIC CATHETERS, TWO
11:52AM 15 PRESSURE SOURCES, ALL IN THE PRIOR ART, THIS PATENT IS GOING TO
11:52AM 16 GO DOWN IN THE IPR.

11:52AM 17 THEREFORE, I THINK IT'S PRETTY CLEAR THAT WE HAVE RAISED A
11:52AM 18 SUBSTANTIAL QUESTION OF INVALIDITY OF CLAIM 1, THAT IS, THERE
11:52AM 19 IS NOTHING NEW OR NON-OBVIOUS ABOUT CLAIM 1 OF THE SYSTEM
11:52AM 20 CLAIM.

11:52AM 21 AS A RESULT, THEY HAVE NO CHANCE OF GETTING A PRELIMINARY
11:52AM 22 INJUNCTION BECAUSE THEY CAN'T SHOW MY INVALIDITY DEFENSE LACKS
11:52AM 23 SUBSTANTIAL MERIT. IT OBVIOUSLY HAS MERIT.

11:52AM 24 WHAT DID THEY SAY ABOUT LAUB? MAYBE YOU WERE SURPRISED BY
11:52AM 25 LAUB BECAUSE THEIR BRIEF DOESN'T ADDRESS IT. EVERYTHING IN HIS

11:52AM 1 SLIDE IS NEW ARGUMENT. I LIKE SLIDES, BUT I DON'T LIKE SLIDES
11:53AM 2 THAT AUGMENT BRIEFS.

11:53AM 3 THEY HAVE NO MENTION IN THEIR REPLY BRIEF OF LAUB. NOBODY
11:53AM 4 TALKS ABOUT LAUB. AND HIS SLIDES TALK ABOUT LAUB A LITTLE BIT,
11:53AM 5 BUT THERE'S NO EVIDENCE FROM LAUB. HE HAS NO CITATIONS ON HIS
11:53AM 6 SLIDES BECAUSE LAUB WAS IGNORED BY THEM ON REPLY.

11:53AM 7 SO 16 FRENCH, LARGE BORE, PE, OLD. TELESCOPIC, OLD. TWO
11:53AM 8 PRESSURE SOURCES, OLD. I DON'T KNOW WHAT THEY THINK THE
11:53AM 9 INVENTION IS, AND THAT'S WHY MR. AL-SALAM TALKS IN SUCH
11:53AM 10 GENERALITIES ABOUT THE INNOVATIONS.

11:53AM 11 THE COURT: SO WHAT WOULD THE MOTIVATION BE TO
11:53AM 12 COMBINE LAUB AND GARRISON?

11:53AM 13 MR. RE: THE MOTIVATION IS EXPLICIT, IT IS EXPLICIT
11:53AM 14 TO SAY IF YOU WANT TO TREAT A PULMONARY EMBOLISM, USE A LARGER
11:53AM 15 CATHETER. IT TELLS YOU TO DO IT. IF YOU WANT TO TREAT A
11:53AM 16 PULMONARY EMBOLISM, THAT IS YOUR MOTIVATION.

11:53AM 17 THESE ARE IN THE IDENTICAL FIELD TO THE IDENTICAL PURPOSE
11:53AM 18 OF ASPIRATING BLOOD CLOTS. IT'S NOT LIKE I'M TAKING REFERENCES
11:54AM 19 FROM OTHER ARTS IN OTHER FIELDS. THESE ARE IN THE FIELDS
11:54AM 20 EXPLICITLY TEACHING YOU, IF YOU WANT TO DO A PULMONARY
11:54AM 21 EMBOLISM, YOU NEED A LARGER CATHETER. THAT'S WHAT IT SAYS.
11:54AM 22 THAT IS THE COMBINATION BECAUSE THEY TOOK THE DEVICE, AND THEY
11:54AM 23 WANTED TO DO PULMONARY EMBOLISM, AND SO THEY CLAIMED 16 FRENCH
11:54AM 24 OR GREATER. THAT'S WHAT THEY DID. BUT THAT'S KNOWN.

11:54AM 25 NOW, IT APPEARS THAT SINCE THEY REALLY HAVE NO RESPONSE ON

11:54AM 1 LAUB AND HE DIDN'T EVEN TALK ABOUT IT, AND THE BRIEF DOESN'T
11:54AM 2 TALK ABOUT IT, THEY WENT TO THE '691 AS IF THIS IS WHERE ALL OF
11:54AM 3 OUR EGGS ARE PUT. DO YOU REMEMBER HE SAID ALL OF OUR EGGS
11:54AM 4 UNDER THE '691 IPR? WHICH IS NOT TRUE, WE HAVE IPR'S PENDING
11:54AM 5 ON ALL OF THE PATENTS.

11:54AM 6 BUT HE SHOWED YOU WHAT WAS IN HIS NEW BOOK, SLIDE 21.

11:54AM 7 THIS WAS THE ONLY TIME THAT I REALLY SAW MR. AL-SALAM
11:55AM 8 HIGHLIGHTING CLAIM LANGUAGE. HE FINALLY HIGHLIGHTS CLAIM
11:55AM 9 LANGUAGE, AND HE HIGHLIGHTS IT ON A PATENT THAT IS NOT AT
11:55AM 10 ISSUE.

11:55AM 11 BUT ALL HE DID WAS SAY, DO YOU SEE BLUE? BLUE MEANS BLUE,
11:55AM 12 AND, THEREFORE, BLUE IS THE SAME.

11:55AM 13 WELL, THAT'S THREE CARD MONTE. THAT'S NOT RIGHT.

11:55AM 14 WE ALREADY EXPLAINED TO THE COURT IN DOCUMENT 89 ON PAGE 8
11:55AM 15 IN OUR SUPPLEMENTAL BRIEF, THIS WAS THE SUPPLEMENTAL BRIEF THAT
11:55AM 16 THE COURT ALLOWED US TO DO WHEN THE IPR STARTED GETTING
11:55AM 17 GRANTED, AND WE FILED THIS ON MARCH 5TH.

11:55AM 18 SO THEY'RE WELL AWARE OF THE FACT THAT THE DENIAL OF THE
11:55AM 19 IPR AND THE '691 RELATED TO CLAIM LANGUAGE THAT IS EXPLICITLY
11:55AM 20 NOT IN CLAIM 1 AT ISSUE ON THIS MOTION.

11:55AM 21 IN FACT, AS WE BOLDED ON PAGE 8 OF OUR BRIEF, DOCKET 89,
11:55AM 22 THE BOARD FOCUSSED ITS ANALYSIS PARTICULARLY ON THE LANGUAGE
11:55AM 23 "REQUIRING A USER ACTUATABLE VALVE BETWEEN THE SECOND CHAMBER
11:55AM 24 AND THE ASPIRATION CATHETER, WHEREIN THE VALVE IS CONFIGURED TO
11:55AM 25 BE CLOSED WHILE NEGATIVE PRESSURE IS GENERATED IN THE FIRST AND

11:56AM 1 SECOND CHAMBERS." THAT IS THE LANGUAGE ON THE LEFT SIDE OF THE
11:56AM 2 BLUE '691, CLAIM 14.

11:56AM 3 NOW, DOES ANYONE SEE THAT LANGUAGE ON '910, CLAIM 1? OF
11:56AM 4 COURSE NOT. IT'S NOT IN HERE. THIS WAS A TOTAL DECEPTION.
11:56AM 5 COMPLETE MISLEADING. THE '691 DENIAL OF IPR WAS BASED ON CLAIM
11:56AM 6 LANGUAGE HAVING NOTHING TO DO WITH THIS MOTION. NOTHING.

11:56AM 7 AND THIS IS THEIR ONLY RESPONSE TO MAYBE CLAIM 1 IS VALID
11:56AM 8 BECAUSE THEY HAVE NO RESPONSE IN LAUB.

11:56AM 9 SO WHEN MR. AL-SALAM COMES BACK AND HAS TEN MINUTES, I'D
11:56AM 10 LIKE HIM TO EXPLAIN WHY HE DIDN'T ADDRESS LAUB BECAUSE LAUB WAS
11:56AM 11 A BIG PART OF OUR EXPERT REPORT, IT WAS A BIG PART OF OUR
11:56AM 12 OPPOSITION BRIEF, IT SAYS 16 FRENCH FOR PE, AND IT WASN'T
11:57AM 13 BEFORE THE PATENT OFFICE, AND IT IS THE BASIS OF OUR IPR'S.
11:57AM 14 AND FOR SOME REASON THEIR BRIEF ON REPLY DOES NOT SAY THE WORD
11:57AM 15 "LAUB."

11:57AM 16 SO I THINK THAT SHOWS THAT WE HAVE A SUBSTANTIAL QUESTION
11:57AM 17 ON VALIDITY. I NOW WOULD LIKE TO GO TO THE EQUITABLE FACTORS.
11:57AM 18 I'LL SKIP THE VALVE. I'LL SKIP THE SCHAFFER.

11:57AM 19 SCHAFFER IS CLEARLY PRIOR ART THE PATENT OFFICE DIDN'T
11:57AM 20 HAVE, AND IT IS THE BASIS OF IPR GRANTS THAT WERE LITIGATED IN
11:57AM 21 THE PATENT OFFICE.

11:57AM 22 THE COURT: MR. RE, BEFORE WE MOVE ON, CAN YOU
11:57AM 23 ADDRESS OR JUST RESPOND TO THE OBJECTIVE INDICIA OF
11:57AM 24 NON-OBVIOUSNESS AND COMMERCIAL SUCCESS?

11:57AM 25 MR. RE: YES. THAT WOULD BE REALLY GREAT IF IT WAS

11:57AM 1 TRUE, THE PROBLEM IS THERE'S NO NEXUS. WE AGREE THAT THERE HAS
11:57AM 2 TO BE A NEXUS BETWEEN THE INFRINGEMENT AND THE HARM BEING
11:57AM 3 SUFFERED. OKAY? BUT THE HARM, THE INFRINGEMENT -- I'M SORRY,
11:58AM 4 THAT'S IRREPARABLE HARM, THAT'S MY NEXT SLIDE.

11:58AM 5 ON SECONDARY CONSIDERATIONS, THEY HAVE TO SHOW A NEXUS TO
11:58AM 6 THE PRAISE, A NEXUS TO THE COMMERCIAL SUCCESS, A NEXUS TO THE
11:58AM 7 LONG-FELT NEED.

11:58AM 8 WHERE IS THE PRAISE FOR, OH, I'M SO GLAD YOU HAVE A
11:58AM 9 TELESCOPIC CATHETER WITH TWO PRESSURE SOURCES AND FOR PULMONARY
11:58AM 10 EMBOLISMS. THERE'S NO PRAISE FOR THAT.

11:58AM 11 WHERE IS THE LONG-FELT NEED FOR A TELESCOPIC CATHETER WITH
11:58AM 12 PE, WITH 16 FRENCH, WITH BLAH, BLAH, BLAH IN THE CLAIM?
11:58AM 13 THERE'S NO NEXUS. THERE'S NOTHING TYING THE SECONDARY
11:58AM 14 CONSIDERATIONS TO THE CLAIMED INVENTION. THEY HAVE NO AWARDS
11:58AM 15 FOR THE AWESOME HEMOSTASIS VALVE. THERE'S NOTHING TYING IT.
11:58AM 16 THERE'S NO NEXUS TO THE SECONDARY CONSIDERATIONS AND THE
11:58AM 17 CLAIMED INVENTION. AND, IN FACT, HE SAYS THE PATENT OFFICE
11:58AM 18 DIDN'T HAVE IT.

11:58AM 19 WELL, THEY'RE FREE TO SUBMIT THAT TO THE PATENT OFFICE IF
11:58AM 20 THEY REALLY HAD IT. AND GUESS WHAT? IN THE IPR, DID THEY
11:59AM 21 SUBMIT ANY SECONDARY CONSIDERATIONS? NO. BECAUSE THE PATENT
11:59AM 22 OFFICE WOULD SAY HOW DOES THAT COMMERCIAL SUCCESS RELATE TO THE
11:59AM 23 CLAIMED INVENTION? THEY HAVE NO EVIDENCE OF THAT, AND THEY
11:59AM 24 DIDN'T SUBMIT ANY.

11:59AM 25 THE REAL ANSWER TO A LOT OF THE ARGUMENTS THAT

11:59AM 1 MR. AL-SALAM MADE, NO EVIDENCE. HE DIDN'T HAVE A SINGLE SLIDE
11:59AM 2 QUOTING A SINGLE DECLARATION. THAT'S YOUR FIRST CLUE. NOT
11:59AM 3 ONCE. A LOT OF IT WAS TESTIMONY.

11:59AM 4 THE REASON I GOT CONFUSED FOR A SECOND ON THE NEXUS, THE
11:59AM 5 NEXUS REQUIREMENT APPLIES TO IRREPARABLE HARM AS WELL. AND
11:59AM 6 THAT'S MY NEXT SLIDE, SLIDE 38.

11:59AM 7 THIS IS THE SAME NEXUS REQUIREMENT. WHENEVER YOU WANT TO
11:59AM 8 TALK ABOUT AN ISSUE IN PATENT LAW, YOU MUST TIE IT TO THE
11:59AM 9 CLAIMED INVENTION FOR IT TO HAVE ANY RELEVANCE. AND
11:59AM 10 MR. AL-SALAM COULD NEVER DO THAT.

11:59AM 11 AND ON IRREPARABLE HARM, WE BOTH AGREE THIS IS THE CORRECT
11:59AM 12 CASE THAT GOVERNS THIS ISSUE. SALES LOST TO AN INFRINGING
12:00PM 13 PRODUCT CANNOT IRREPARABLY HARM A PATENTEE IF CUSTOMERS BUY
12:00PM 14 THAT PRODUCT FOR REASONS OTHER THAN THE PATENTED FEATURE.

12:00PM 15 SO WHERE IS THERE EVIDENCE THAT CLIENTS BUY MY CLIENT'S
12:00PM 16 PRODUCT, THAT CUSTOMERS BUY MY CLIENT'S PRODUCT BECAUSE OF THE
12:00PM 17 CLAIMED INVENTION?

12:00PM 18 WELL, WE DON'T HAVE TELESCOPIC CATHETERS. WE SELL A LA
12:00PM 19 CARTE. WHY WOULD ANYBODY BUY OUR PRODUCT WITH THE FEATURES IN
12:00PM 20 CLAIM 1 OR THE '910 PATENT? WE DON'T HAVE A SECOND PRESSURE
12:00PM 21 SOURCE. THAT CAN'T BE THE REASON WHY THEY BUY IT.

12:00PM 22 SO THAT IS WHY I LISTED ON PAGE 39 SOME OF THE REASONS WHY
12:00PM 23 THERE CAN'T BE A NEXUS. WE NEVER USE A FIRST AND SECOND
12:00PM 24 PRESSURE SOURCE, SO NOBODY IS BUYING OUR PRODUCT TO HAVE TWO
12:00PM 25 PRESSURE SOURCES. NO ONE KNOWS THIS CLOT CANNISTER THEORY

12:00PM 1 OTHER THAN YOU, ME, AND THIS TEAM. NO CUSTOMER THINKS THAT A
12:00PM 2 SECOND PRESSURE SOURCE DERIVED FROM A CLOT CANNISTER. WE SAID
12:01PM 3 VERY RARELY, NUMBER 2, DID WE HAVE A FIRST AND SECOND CATHETER.
12:01PM 4 WE SELL A LA CARTE. SO THERE CAN'T BE ANY NEXUS TO THE
12:01PM 5 IRREPARABLE HARM.

12:01PM 6 WE'RE NOT APPROVED FOR PE. AND THEY SUBMITTED NO EVIDENCE
12:01PM 7 WHATSOEVER WHAT DRIVES THE SALE OF THE SYMPHONY. NOTHING. SO
12:01PM 8 THEY HAVE NO EVIDENCE ON IRREPARABLE HARM AT ALL. NONE. THEY
12:01PM 9 CITE CASE LAW, BUT NOBODY POINTED OUT WHERE IS THERE
12:01PM 10 IRREPARABLE HARM?

12:01PM 11 NOW, WE KNOW THE HEMOSTASIS VALVE DOES NOT DRIVE THE
12:01PM 12 SALES. I MEAN, THAT'S SILLY. THEY HAD AN ENGINEER SAY HE
12:01PM 13 HEARD A DOCTOR SAY IT WAS HIS FAVORITE PART, BUT I'M NOT GOING
12:01PM 14 TO TALK ABOUT THE HEMOSTASIS.

12:01PM 15 BUT IF YOU LOOK AT MERRITT'S DECLARATION, THIS IS THE
12:01PM 16 PARAGRAPH THEY CITE FOR THE IRREPARABLE HARM. THEY CITE
12:01PM 17 PARAGRAPH 46. THIS IS SLIDE 42 OF MY PRESENTATION. HE ADMITS
12:01PM 18 THAT THERE ARE NUMEROUS INNOVATIONS THAT DRIVE THE SALE, BUT
12:01PM 19 HE'S GOT TO CONNECT IT TO THE CLAIMED INVENTION.

12:02PM 20 THEY EVEN TALK ABOUT THE BLOOD FILTERING AND RETURN SYSTEM
12:02PM 21 HELPS SELL. WELL, THAT'S NOT RELEVANT HERE.

12:02PM 22 THE SPECIFIC SYRINGE PRESSURE SOURCES. WELL, WE DON'T
12:02PM 23 SELL SYRINGES, SO THAT CAN'T BE THE REASON WHY OUR PRODUCT
12:02PM 24 SELLS. SO ALL THE REASONS HE DID, WHOOSH ASPIRATION CONCEPT.
12:02PM 25 BY THE WAY, THAT'S NOT IN THE CLAIM. THIS WHOOSH ASPIRATION

12:02PM 1 CONCEPT, IT'S NOT IN THE CLAIM. IT JUST SAYS AN ON AND OFF
12:02PM 2 VALVE.

12:02PM 3 WHOOSH IS A METHOD. THAT MEANS YOU DO THE ON AND OFF
12:02PM 4 REALLY QUICKLY. THAT'S NOT IN THE CLAIM. THIS WHOOSH IS MADE
12:02PM 5 UP. THEY HAVE OTHER CLAIMS, OTHER PATENTS WITH WHOOSH. NOT
12:02PM 6 THIS ONE.

12:02PM 7 I DO THINK THEY HAVE GOTTEN CONFUSED. THEY HAVE SO MANY
12:02PM 8 PATENTS, AND I DON'T THINK THEY FOCUSED ON THE VERY CLAIM AT
12:02PM 9 ISSUE HERE. BUT THIS WAS THEIR SOLE SUPPORT FOR NEXUS ON
12:02PM 10 IRREPARABLE HARM. MERRITT DECLARATION, PARAGRAPH 46, THAT IS
12:02PM 11 IT, PAGE 42, THEY ADMIT AND THEY CAME PRETTY CLOSE TO ADMITTING
12:02PM 12 THAT THEIR IRREPARABLE HARM IS SPECULATIVE. IT'S SPECULATIVE.
12:02PM 13 YOU CAN'T HAVE SPECULATIVE IRREPARABLE HARM. THEY NEED MUCH
12:03PM 14 BETTER EVIDENCE, AND THAT'S SLIDE 43. I TOOK THIS RIGHT OUT OF
12:03PM 15 THEIR MOTION. THIS IS THEIR MOTION, PAGE 30 AND 31, WHERE
12:03PM 16 THEY'RE BASICALLY ADMITTING IT'S SPECULATIVE, THEY DON'T KNOW,
12:03PM 17 I'LL LET YOU KNOW LATER. AND THIS WAS WRITTEN IN JULY OF LAST
12:03PM 18 YEAR. AND HAVE THEY SUBMITTED ANY EVIDENCE OVER THESE LAST TEN
12:03PM 19 MONTHS OF ANY HARM OCCURRING? THEY DIDN'T SUBMIT A SINGLE
12:03PM 20 PIECE OF EVIDENCE SINCE THEY FILED THIS MOTION IN JULY OF LAST
12:03PM 21 YEAR.

12:03PM 22 THEY DO MAKE AN ARGUMENT ON PAGE 31 OF THEIR BRIEF THAT
12:03PM 23 THEY LOSE REVENUE AND IT WILL REDUCE THEIR SPENDING.

12:03PM 24 WELL, REVENUE IS NOT IRREPARABLE HARM. REVENUE IS
12:03PM 25 COMPENSABLE IN MONEY AND BY DEFINITION MONEY SHOWS IT'S NOT

12:03PM 1 IRREPARABLE. IRREPARABLE MEANS IT'S NOT COMPENSABLE AND SO
12:03PM 2 MONEY IS NOT AN ARGUMENT.

12:03PM 3 THEY ALSO CANNOT IGNORE THE FACT THAT THEY HAVE TWO
12:03PM 4 STRYKER LAWYERS SITTING HERE. THEY WERE BOUGHT FOR 4.9 BILLION
12:04PM 5 DURING THE PENDENCY OF THIS MOTION, AND THAT'S ON PAGE 45. THE
12:04PM 6 COURT ALLOWED SUPPLEMENTAL BRIEFING ON THAT. WE CITED SOME
12:04PM 7 CASE LAW SHOWING YOU THE RELEVANCE OF THAT.

12:04PM 8 IT IS VIRTUALLY IMPOSSIBLE FOR THESE INARI PEOPLE, THE
12:04PM 9 DECLARANTS, TO CLAIM ANY IRREPARABLE HARM WHEN THEY NOW SIT ON
12:04PM 10 A PILE OF CASH AND THEY SOLD FOR 4.9 BILLION TO STRYKER. THIS
12:04PM 11 MOTION WAS OBVIOUSLY FILED BEFORE THE PURCHASE.

12:04PM 12 THE COURT: AND YOU DID SUPPLEMENTAL BRIEFING.

12:04PM 13 MR. RE: AND WE DID SUPPLEMENT BRIEFING AND YOU SAW
12:04PM 14 EVERYTHING, AND I TOOK THIS RIGHT FROM THAT BRIEFING.

12:04PM 15 THE COURT: OKAY.

12:04PM 16 MR. RE: I NOW WANT TO TALK ABOUT PENUMBRA FOR A
12:04PM 17 MOMENT.

12:04PM 18 ANOTHER REASON WHY THEY HAVE TROUBLE WITH HARM, THAT
12:04PM 19 THEY'RE NOT PROFITABLE YET, YOU KNOW, THEY'RE LOSING MARKET
12:04PM 20 SHARE, THEY'RE BLAMING US SOMEHOW. I WANT YOU TO LOOK AT
12:04PM 21 PAGE 46 OF MY SLIDE DECK.

12:04PM 22 THIS IS THE ACTUAL DATA. IT IS VERY CLEAR THAT THEY ARE
12:04PM 23 GROWING FINANCIALLY, BUT INARI IS LOSING MARKET SHARE, AND
12:05PM 24 THEY'VE BEEN LOSING MARKET SHARE SINCE WELL BEFORE WE WERE ON
12:05PM 25 THE MARKET. SO THEY WERE LOSING MARKET SHARE CLEARLY IN 2022.

12:05PM 1 THEY LOST MORE MARKET SHARE IN 2023. THEY LOST MORE MARKET
12:05PM 2 SHARE IN 2024.

12:05PM 3 YOU CAN SEE THE RED LINE OF PENUMBRA WHO THEY KIND OF
12:05PM 4 POOH-POOHED AS NOT SIGNIFICANT. PENUMBRA IS OBVIOUSLY THE
12:05PM 5 REASON FOR LOSING MARKET SHARE. THIS CANNOT BE BLAMED ON THE
12:05PM 6 TRIVIAL SALES THAT WE HAVE HAD SO FAR.

12:05PM 7 I'D NOW LIKE TO MOVE TO THE BALANCE OF THE HARDSHIPS,
12:05PM 8 PAGE 48. THIS IS A HIGHLY CONFIDENTIAL OUTSIDE ONLY, WHICH IS
12:05PM 9 ONE OF THE REASONS I'M NOT USING THE COMPUTER.

12:05PM 10 THIS SHOWS OUR INVESTMENTS. IF WE HAD -- IT IS OKAY.

12:05PM 11 THE CLERK: IS EVERYONE IN THE COURTROOM?

12:05PM 12 MR. RE: I'M NOT GOING TO SHOW IT AND SAY ANY
12:05PM 13 NUMBERS. YOU SEE I HAVE A SIGN THAT SAYS "NO NUMBERS."

12:05PM 14 THIS SHOWS WHAT WE WOULD LOSE IF WE WERE ENJOINED. WE
12:06PM 15 WOULD LOSE ALL OF THIS MONEY. IT WOULD BE GONE.

12:06PM 16 THEY'RE NOT LOSING ANYTHING. LOOK AT SLIDE 49. THEIR
12:06PM 17 SALES IS GROWING. WHAT THEY'RE UPSET ABOUT IS THEY'RE LOSING
12:06PM 18 MARKET SHARE BECAUSE THIS MARKET IS GROWING. THEY'RE TRYING TO
12:06PM 19 TREAT MORE AND MORE PATIENTS, WHICH IS THE GOAL, IT'S THE ONE
12:06PM 20 COMMON GOAL THESE TWO PARTIES HAVE. WE WANT TO TREAT MORE
12:06PM 21 PATIENTS.

12:06PM 22 THE COURT: THIS SLIDE, WHICH WE ARE NOT GOING TO
12:06PM 23 DISCUSS THE CONTENTS OF IT, ACTUALLY REMINDS ME OF A QUESTION
12:06PM 24 WHICH I WAS SURPRISED BY BOTH PARTIES' BRIEFING THAT THERE WAS
12:06PM 25 NO DISCUSSION OF A BOND --

12:06PM 1 MR. RE: YEAH.

12:06PM 2 THE COURT: -- BY EITHER SIDE.

12:06PM 3 MR. RE: YES, THAT'S CORRECT. THEY WOULD NEED A
12:06PM 4 PRETTY BIG BOND, WOULDN'T THEY? LOOK AT THIS SLIDE. THAT'S
12:06PM 5 THEIR BURDEN ON THE BOND.

12:06PM 6 THEY'RE THE APPLICANT. THEY HAVE TO TAKE CARE OF ANY
12:06PM 7 POSSIBLE HARM FROM A BOND. I DON'T THINK -- BUT IN THIS CASE.

12:06PM 8 THE COURT: NORMALLY -- I MEAN, OFTEN I USUALLY HEAR
12:06PM 9 THAT PEOPLE WHO ARE OPPOSING, COMPANIES WHO ARE OPPOSING AT
12:07PM 10 LEAST DISCUSSING OR RAISING WHAT THEY -- THE AMOUNT IT WOULD
12:07PM 11 NEED TO BE IN ORDER TO, SO I WAS JUST CURIOUS WHETHER OR NOT --

12:07PM 12 MR. RE: DO YOU WANT TO KNOW THE TRUTH? I HAVE --
12:07PM 13 I'M NOT FEARFUL THAT AN INJUNCTION SHOULD BE IN PLACE HERE.
12:07PM 14 I'M REALLY PRETTY CONFIDENT. I HAVE TO TELL YOU THAT I WOULD
12:07PM 15 BE -- I WOULD BE AMAZED IF YOU FOUND A THEORY THAT MY ISSUES
12:07PM 16 WERE NOT SUBSTANTIAL. I THINK I RAISED MANY SUBSTANTIAL ISSUES
12:07PM 17 OF NON-INFRINGEMENT AND INVALIDITY, PARTICULARLY WHEN THEY
12:07PM 18 DIDN'T EVEN RESPOND TO LAUB. I DON'T EVEN HAVE AN OPPONENT ON
12:07PM 19 LAUB.

12:07PM 20 SO I'M NOT TOO WORRIED ABOUT THE SIZE OF THE BOND. BUT,
12:07PM 21 BUT YOUR QUESTION DOES SHOW THE HARDSHIP WE WOULD SUFFER, AND
12:07PM 22 THAT'S WHAT THE BOND IS SUPPOSED TO MITIGATE.

12:07PM 23 THE COURT: WELL, THAT'S THE REASON, IT WAS STARING
12:07PM 24 ME IN THE FACE AND I HAD TO ASK.

12:07PM 25 MR. RE: RIGHT. BUT WHAT WOULD THEY LOSE? NOTHING.

12:07PM 1 THEIR SALES ARE GROWING. THEY'RE NOT LOSING ANY OF THEIR
12:07PM 2 MASSIVE INVESTMENT. THEY'RE KEEPING EVERY NICKEL OF IT.
12:08PM 3 THEY'RE SELLING AND LOOK AT THEIR -- THIS IS RIGHT OUT OF THEIR
12:08PM 4 REPORT AND SELLING THE PRODUCT -- SELLING THE COMPANY TO
12:08PM 5 STRYKER, THEY'RE BRAGGING HOW WELL THEY'RE DOING. OF COURSE
12:08PM 6 THEY WANTED TO TELL STRYKER HOW WELL THEY WERE DOING, THEY SOLD
12:08PM 7 IT FOR 4.9 BILLION.

12:08PM 8 I WANT TO GO NOW TO THE PUBLIC INTEREST BECAUSE TO ME THIS
12:08PM 9 IS THE REASON WHY I AM REALLY CONFIDENT. I SAW FOUR MORE
12:08PM 10 MINUTES.

12:08PM 11 THE COURT: I'M EVEN GIVING YOU AN EXTRA MINUTE
12:08PM 12 BECAUSE I GAVE THEM A COUPLE EXTRA MINUTES. SO YES.

12:08PM 13 MR. RE: THANK YOU VERY MUCH.

12:08PM 14 I WANT TO GO TO THE PUBLIC INTEREST FACTOR. THEY
12:08PM 15 SUBMITTED NO EVIDENCE ON PUBLIC INTEREST. MY DOCTORS STAND
12:08PM 16 UNREBUTTED. I WOULD LIKE TO SHOW YOU SOME OF THE PARAGRAPHS OF
12:08PM 17 THE UNREBUTTED TESTIMONY FROM THE DOCTORS AT ISSUE.

12:08PM 18 THIS DECLARATION BY DR. DANA TOMALTY, WHO USES BOTH
12:08PM 19 PARTIES' DEVICES, HE CAME TO THE CONCLUSION THAT HE'S CONFIDENT
12:08PM 20 THAT SOME PATIENTS WILL NOT GET TREATMENT IF MY CLIENT IS
12:08PM 21 ENJOINED.

12:08PM 22 NOW, THAT'S AN UNDISPUTED FACT. NO ONE DEBATES THAT.
12:09PM 23 THEY SUBMITTED NO EVIDENCE TO REFUTE IT. THEY BASICALLY ADMIT
12:09PM 24 WITH NO RESPONSE THAT PEOPLE ARE NOT GOING TO GET TREATED.
12:09PM 25 MEANWHILE, WE'RE BOTH IN THE BUSINESS OF TRYING OUR BEST TO

12:09PM 1 MAKE SURE AS MANY PEOPLE AS POSSIBLE ARE TREATED.

12:09PM 2 AND LOOK AT DR. TOMALTY, WHO HE IS. LOOK AT SLIDE 52.

12:09PM 3 THERE CANNOT BE A BETTER WITNESS IN THIS CASE. HE'S DONE 200

12:09PM 4 PRODUCTS WITH INARI PRODUCTS. HE LECTURES FOR INARI, HE

12:09PM 5 TEACHES INARI, HE COOPERATES WITH INARI TO EDUCATE PHYSICIANS.

12:09PM 6 THIS IS ONE OF THEIR PEOPLE THAT THEY USE TO EVANGELIZE THIS

12:09PM 7 TECHNOLOGY, AND HE IS TESTIFYING FOR US THAT WE HAVE GREAT

12:09PM 8 INNOVATIONS BETTER THAN INARI THAT SOME PHYSICIANS MAY PREFER,

12:09PM 9 AND ONE IN PARTICULAR THAT WAS THE SUBJECT OF SOME MOTION

12:09PM 10 PRACTICE BEFORE THE MAGISTRATE JUDGE WAS THE ISSUE OF BLOOD

12:09PM 11 LOSS.

12:09PM 12 ONE OF THE REASONS SOME PHYSICIANS PREFER US OVER THEM IS

12:10PM 13 THAT OUR DEVICE CAUSES LESS BLOOD LOSS. THIS IS UNDISPUTED.

12:10PM 14 UNDISPUTED.

12:10PM 15 THESE PARAGRAPHS SHOW MANY OF THE REASONS WHY PHYSICIANS

12:10PM 16 PREFER OUR DEVICE AND WHY SOME PHYSICIANS WON'T USE THEIR

12:10PM 17 DEVICE BECAUSE OF THE EXCESSIVE BLOOD LOSS. IT SHOWS THAT YOU

12:10PM 18 HAVE TO USE THEIR SYRINGES SEVEN TO EIGHT TIMES, WHICH IS 4- TO

12:10PM 19 500 CC'S OF BLOOD. THAT'S A LOT OF BLOOD. THAT'S WHY THEY

12:10PM 20 HAVE A BLOOD RESTORE PRODUCT FOR SOME PHYSICIANS WHO WANT TO

12:10PM 21 PUT THE BLOOD BACK IN. BUT SOME PHYSICIANS DON'T BELIEVE YOU

12:10PM 22 THAT YOU SHOULD DO THAT EITHER.

12:10PM 23 SLIDE 54 SHOWS WHY WE HAVE LESS BLOOD LOSS.

12:10PM 24 DR. TOMALTY EXPLAINS WHY THERE IS SO MUCH BLOOD LOSS WITH

12:10PM 25 FLOWTRIEVER. AND MANY PEOPLE PREFER, ON SLIDE 56, PREFER THE

12:10PM 1 GENERATOR OVER TO MANUALLY OPERATED SYRINGES.

12:11PM 2 DR. TOMALTY EXPLAINS, UNDISPUTED, PARAGRAPHS 11 AND 12 WHY
12:11PM 3 THE GENERATOR IS PREFERABLE, WHY PENUMBRA AND US BOTH USE
12:11PM 4 GENERATORS.

12:11PM 5 BY THE WAY, THESE GENERATORS NOW ARE COMPUTER CONTROLLED
12:11PM 6 AND REALLY SOPHISTICATED. THE MANUAL SYRINGE IS REALLY JUST
12:11PM 7 YESTERDAY'S NEWS.

12:11PM 8 AND IT'S MESSY. PROCEDURE TIME NEEDS TO BE KEPT TO A
12:11PM 9 MINIMUM. REMEMBER, WE COME FROM THE BRAIN AREA. YOU NEED TO
12:11PM 10 BE FAST. YOU MAKE THAT PROCEDURE TOO LONG AND THERE'S
12:11PM 11 CATASTROPHIC CONSEQUENCES. SO WE HAVE AUTOMATIC CONTROL
12:11PM 12 SWITCHES AND CLOT CONTAINERS.

12:11PM 13 AND LOOK ON THE RIGHT ON PAGE 58. EVERY TIME THAT SYRINGE
12:11PM 14 IS USED, THEY HAVE TO SQUIRT OUT ALL OF THE BLOOD, LOOK FOR THE
12:11PM 15 CLOT, AND SEE WHERE THE CLOT IS AND THEN GO BACK AND DO IT
12:11PM 16 AGAIN AND AGAIN.

12:11PM 17 THAT'S TIME CONSUMING.

12:11PM 18 AND DR. TOMALTY EXPLAINS IN AN UNREBUTTED PARAGRAPH 17 WHY
12:11PM 19 OUR CLOT CONTAINER ALSO SAVES TIME. TIME IS LIFE.

12:12PM 20 AND DR. TOMALTY IS UNREBUTTED, AND THAT SHOWS AN
12:12PM 21 UNREBUTTED SHOWING THAT THE PUBLIC INTEREST WOULD BE HARMED IF
12:12PM 22 OUR DEVICE WAS TAKEN OFF THE MARKET, AND I DON'T KNOW HOW THE
12:12PM 23 ORDER WOULD READ, WHICH IS ANOTHER WHOLE ISSUE, I DON'T KNOW
12:12PM 24 HOW IT'S TAKEN OFF THE MARKET, BUT WHAT THEY'RE ASKING FOR IS
12:12PM 25 FOR US TO TAKE OUR PRODUCT OFF THE MARKET EVEN FOR USES WE DID

12:12PM 1 IN 2023, DVT, WHICH DOESN'T HAVE A SECOND CATHETER AT LEAST
12:12PM 2 98.5 PERCENT OF THE TIME.

12:12PM 3 WHERE ARE WE? PAGE 60 IS OUR SUMMARY. WE HAVE RAISED
12:12PM 4 QUESTIONS ON NON-INFRINGEMENT AND ON INVALIDITY.

12:12PM 5 THEY HAVE NO NEXUS ON IRREPARABLE HARM AS WELL AS NO NEXUS
12:12PM 6 ON SECONDARY CONSIDERATIONS.

12:12PM 7 IMPERATIVE CARE WOULD SUFFER HARDSHIP IF ENJOINED WHILE
12:12PM 8 INARI SALES WILL CONTINUE REGARDLESS OF THE INJUNCTION.

12:13PM 9 THEY'RE NOT GOING TO BE AFFECTED IF THERE'S AN INJUNCTION OR
12:13PM 10 NOT. THEY'RE GOING TO KEEP SELLING, AND WE'RE GOING TO BE SHUT
12:13PM 11 DOWN.

12:13PM 12 AND THE SHOWING ON THE PUBLIC INTEREST IS COMPLETELY
12:13PM 13 UNREBUTTED.

12:13PM 14 WITH THAT, IF THERE ARE NO FURTHER QUESTIONS, I DO WANT TO
12:13PM 15 RAISE ONE STATUTORY CONCERN ABOUT THESE TWO PRESSURE SOURCES
12:13PM 16 GOING TO THE DEPENDENT CLAIM, CLAIMS 4 AND 5. THAT'S A CLAIM
12:13PM 17 CONSTRUCTION ARGUMENT THAT THEY APPEAR TO BE MAKING TO TRY TO
12:13PM 18 CONVINCING YOU THAT CLAIM 1 DOES NOT REQUIRE A FIRST PRESSURE
12:13PM 19 SOURCE AND A SECOND PRESSURE SOURCE.

12:13PM 20 WHAT THEY'RE DOING IS I COULD SAY ILLEGAL BECAUSE IT'S
12:13PM 21 CONTRARY TO THE STATUTE. YOU COULD NOT USE A DEPENDENT CLAIM
12:13PM 22 TO WIPE OUT A REQUIREMENT OF THE INDEPENDENT CLAIM, AND THERE'S
12:13PM 23 A STATUTE THAT SAYS THAT AND IT'S 35 U.S.C. SECTION 112(D).
12:13PM 24 AND IT EXPLAINS THAT A DEPENDENT CLAIM MUST HAVE ALL OF THE
12:13PM 25 REQUIREMENTS OF THE INDEPENDENT CLAIM. IT CAN ONLY FURTHER

12:14PM 1 NARROW THE CLAIM.

12:14PM 2 AND IT MUST INCORPORATE BY REFERENCE ALL OF THE
12:14PM 3 LIMITATIONS TO WHICH IT INFERS AND IT MUST SPECIFY FURTHER
12:14PM 4 LIMITATIONS. THIS IS 112, 35 U.S.C. SECTION 112(D).

12:14PM 5 NOW, WHAT THEY'RE DOING IS THEY'RE SAYING CLAIM 1 REQUIRES
12:14PM 6 A FIRST PRESSURE SOURCE AND A SECOND PRESSURE SOURCE. AND A
12:14PM 7 DEPENDENT CLAIM SAYS, YOU KNOW WHAT, YOU ONLY NEED ONE PRESSURE
12:14PM 8 SOURCE. YOU CAN'T DO THAT. YOU CAN'T WIPE OUT WHAT IS
12:14PM 9 REQUIRED BY THE INDEPENDENT CLAIM.

12:14PM 10 WHAT THE TWO DEPENDENT CLAIMS SAY, AND TO READ IT TO
12:14PM 11 PRESERVE THEIR VALIDITY, IT JUST SAYS AS SHOWN IN THE PATENT, I
12:14PM 12 BELIEVE I WROTE THAT DOWN, THE PATENT EXPLAINS WHAT THEY'RE
12:14PM 13 TALKING ABOUT, DEPENDENT CLAIM 4 SAYS WHERE THE FIRST AND
12:14PM 14 SECOND PRESSURE SOURCE CAN BE THE SAME AND DEPENDENT CLAIM 5
12:14PM 15 SAYS WHERE THE FIRST AND SECOND PRESSURE SOURCE CAN BE AN
12:14PM 16 ELECTRIC PUMP. SO YOU CAN HAVE TWO PUMPS, YOU CAN HAVE ONE NOT
12:15PM 17 THE SAME, INTEGRALLY FORMED. THE QUOTE THAT MR. AL-SALAM
12:15PM 18 QUOTED FROM THE PATENT SAID INTEGRALLY FORMED. THAT IS SHOWN
12:15PM 19 IN THE PATENT FIGURE 4. FIGURE 4A OF THE PATENT SHOWS WHAT
12:15PM 20 THAT DEPENDENT CLAIM IS REFERRING TO WHERE THE SYRINGES ARE
12:15PM 21 SIDE BY SIDE AND TOGETHER AS ONE UNIT.

12:15PM 22 SO NOBODY WOULD READ DEPENDENT CLAIM 4 AND 5 TO THINK IT
12:15PM 23 WIPES OUT THE FIRST PRESSURE SOURCE AND THE SECOND PRESSURE
12:15PM 24 SOURCE, AND THEY KNOW THIS IS A CRITICAL ISSUE BECAUSE THEY
12:15PM 25 KNOW THAT WE HAVE ONLY ONE PRESSURE SOURCE, THE GENERATOR.

12:15PM 1 IF THERE ARE NO FURTHER QUESTIONS, I SEE MY TIME IS UP.

12:15PM 2 THE COURT: NO FURTHER QUESTIONS.

12:15PM 3 MR. RE: THANK YOU, YOUR HONOR.

12:15PM 4 THE COURT: I WAS DOING A TIME CHECK.

12:16PM 5 ACTUALLY, MR. RE, LET ME ASK YOU ONE LAST QUESTION BEFORE
12:16PM 6 MR. AL-SALAM.

12:16PM 7 MR. RE, ONE FURTHER QUESTION.

12:16PM 8 THE WHOLE DISCUSSION THAT OCCURRED DURING INARI'S INITIAL
12:16PM 9 PRESENTATION REGARDING THE MOST RECENT IPR AND THE DISTINCTIONS
12:16PM 10 WHICH WERE DRAWN WHICH WERE NOT IN THE RECORD OF THE MPI, I'M
12:16PM 11 TRYING TO REMEMBER THE EXACT --

12:16PM 12 MR. RE: ARE YOU REFERRING TO THE GRANT OF THE
12:16PM 13 INSTITUTION OR DENIAL OF INSTITUTION?

12:16PM 14 THE COURT: THE ONE WHICH WAS ATTACHED TO THE
12:16PM 15 SUPPLEMENTAL, THE IPR STAY MOTION, WHICH YOU HAD INCLUDED WHICH
12:16PM 16 WEREN'T INCLUDED IN THE PAPERS --

12:16PM 17 MR. RE: YES, YES.

12:16PM 18 THE COURT: -- REGARDING THE FILAMENT, BECAUSE WE
12:16PM 19 DIDN'T TOUCH UPON 9 -- WE DIDN'T TOUCH UPON THE FILAMENT DURING
12:16PM 20 YOUR ARGUMENT FOR OBVIOUS REASONS.

12:17PM 21 MR. RE: YES.

12:17PM 22 THE COURT: SHOULD THE COURT BE CONSIDERING --
12:17PM 23 SHOULD THE COURT BE CONSIDERING THAT IN TERMS OF THE MPI?

12:17PM 24 MR. RE: THE ANSWER IS, YES, YOU MAY.

12:17PM 25 SECONDLY, IT BASICALLY HAD THE SAME HOLDING AS THE FIRST

12:17PM 1 IPR THAT WE DISCUSSED, IPR GRANT.

12:17PM 2 SO THERE'S TWO IPR GRANTS THAT HAVE BEEN GRANTED.

12:17PM 3 THE HOLDING OF EACH IS PRETTY MUCH THE SAME, AND THAT IS
12:17PM 4 REGARDLESS OF FILAMENT -- YOU SEE, THIS IS ANOTHER
12:17PM 5 DISTRACTION -- REGARDLESS OF FILAMENT, IT IS OBVIOUS TO ONE
12:17PM 6 SKILLED IN THE ART TO COMBINE SCHAFFER WITH EITHER ELLER AND
12:17PM 7 HARTLEY. ELLER WITH AN E, HARTLEY WITH AN H.

12:17PM 8 AND THE PATENT OFFICE SAID ANYONE WITH BASIC LEVEL OF
12:17PM 9 SKILL IN THE ART KNEW COULD REPLACE WHAT THEY SAY IS NOT A
12:17PM 10 FILAMENT IN SCHAFFER WITH THE STRING OR WIRE OF SCHAFFER. SO
12:18PM 11 WHAT THEY'RE SAYING IS IT WOULD HAVE BEEN OBVIOUS TO PUT ANY
12:18PM 12 KIND OF MATERIAL YOU WANT AROUND THE FLEXIBLE LUMEN TO
12:18PM 13 CONSTRICT IT.

12:18PM 14 AND YOU'LL SEE SCHAFFER. SCHAFFER IS IDENTICAL TO THEIR
12:18PM 15 INVENTION, SO THE ONLY THING THAT THEY COULD COME UP WITH WAS
12:18PM 16 TO SAY THAT SCHAFFER WAS NOT FLEXIBLE.

12:18PM 17 BY THE WAY, THAT'S NOT IN SCHAFFER. THAT'S MADE UP. NO
12:18PM 18 ONE EVER SAID THAT.

12:18PM 19 BUT EVEN IF SCHAFFER WAS NOT FLEXIBLE AND EVEN IF THE
12:18PM 20 CLAIM REQUIRED FLEXIBLE, AND EVEN IF THE CLAIM REQUIRED THE
12:18PM 21 DEFINITION OF FLEXIBLE THAT THEY ARE ADVANCING, IT DOESN'T
12:18PM 22 MATTER BECAUSE ONE OF SKILL IN THE ART WOULD KNOW THAT THERE
12:18PM 23 ARE NUMEROUS REFERENCES THAT SHOW WIRES OR STRINGS WRAPPED
12:18PM 24 AROUND THE LUMEN.

12:18PM 25 AND ANYONE WOULD KNOW TO REPLACE THE TWO U-SHAPED MEMBERS

12:19PM 1 OF SCHAFFER WITH STRINGS OR WIRES OF HARTLEY OR ELLER.

12:19PM 2 AND THAT'S THE HOLDING OF BOTH OF THOSE IPR GRANTS. THE
12:19PM 3 PANELS WERE IN AGREEMENT ON THAT, AND, THEREFORE, THE
12:19PM 4 CONSTRUCTION OF FILAMENT IS SECONDARY.

12:19PM 5 FILAMENT IS ONLY RELEVANT IF YOU WANT TO SAY WHETHER OR
12:19PM 6 NOT SCHAFFER ANTICIPATES ALONG THE CLAIMED INVENTION ALONG 102.

12:19PM 7 BUT 103 SAYS IF IT'S NOT EXACT, YOU CAN GO TO ANOTHER
12:19PM 8 REFERENCE AND COMBINE THEM.

12:19PM 9 AND THEY SAID UNDER KSR IT'S AN OBVIOUS PREDICTABLE
12:19PM 10 SUBSTITUTION THAT ANYONE OF ORDINARY SKILL IN THE ART WOULD
12:19PM 11 KNOW TO USE A MEMBER OF VARIOUS FLEXIBILITIES DEPENDING ON THE
12:19PM 12 NEEDS THAT YOU WANT.

12:19PM 13 SO FILAMENT IS A SIDE SHOW. THE BOARD FOUND THAT IT WOULD
12:19PM 14 HAVE BEEN OBVIOUS TO COMBINE SCHAFFER WITH OTHER REFERENCES,
12:19PM 15 AND THEY HELD THAT TWICE, AND SO ALL WE'RE SAYING IS THAT'S A
12:19PM 16 PRETTY SUBSTANTIAL QUESTION OF WHETHER THE BOARD HELD IT OR
12:20PM 17 NOT, THAT'S OUR ARGUMENT. AND WE MADE THIS ARGUMENT BEFORE THE
12:20PM 18 BOARD MADE THE ARGUMENT, AND THE BOARD AGREED WITH US AND
12:20PM 19 REJECTED, REJECTED ALL OF THOSE PAGES IN THEIR BRIEF ABOUT WHY
12:20PM 20 ONE OF SKILL IN THE ART WOULD NOT COMBINE THE REFERENCES.
12:20PM 21 THOSE WERE ALL REJECTED EXPLICITLY BY THE PATENT BOARD TWICE.

12:20PM 22 THE COURT: UNDERSTOOD.

12:20PM 23 MR. RE: THANK YOU.

12:20PM 24 THE COURT: THANK YOU.

12:20PM 25 MR. AL-SALAM.

12:20PM 1 MR. AL-SALAM: THANK YOU, YOUR HONOR.

12:20PM 2 THERE ARE A NUMBER OF THINGS I WANT TO ADDRESS AND SOME OF
12:20PM 3 THEM I DON'T KNOW HOW SIGNIFICANT THEY ARE, BUT I WANT TO CLEAR
12:20PM 4 THE RECORD UP.

12:20PM 5 THE COURT: OKAY. TEN MINUTES.

12:20PM 6 MR. AL-SALAM: OKAY. TEN MINUTES. LET ME GET
12:20PM 7 THROUGH THIS.

12:20PM 8 FIRST OF ALL, MR. RE WAS SAYING THAT WE HAVE NEVER
12:20PM 9 ADDRESSED LAUB IN REPLY. THAT'S NOT TRUE. ON PAGE -- I THINK
12:20PM 10 IT'S PAGE 9 OF OUR REPLY, WE EXPRESSLY REFER TO LAUB AND
12:20PM 11 EXPLAIN WHY IT DOESN'T -- WHY IT'S NOT RELEVANT PRIOR ART.

12:20PM 12 I ALSO WANT TO CLEAR UP THIS THING ABOUT -- AND THIS GOES
12:21PM 13 WITH THE GARRISON/LAUB. THEY KEEP SAYING GARRISON DISCLOSES
12:21PM 14 TELESCOPING AND IN THEIR PICTURES THEY SHOW PARTS 2010 AND 2030
12:21PM 15 AND SAY 2010 IS A CATHETER AND SAY 2030 IS A CATHETER THAT GOES
12:21PM 16 UP THROUGH 2010, BUT GARRISON ITSELF DOES NOT REFER TO 2010 AS
12:21PM 17 A CATHETER.

12:21PM 18 WHAT IT IS, IS IT SAYS IT IS ARTERIAL ACCESS DEVICE. IT
12:21PM 19 IS WHAT IS CALLED A SHEATH. AND YOU PUT THE CATHETER THROUGH
12:21PM 20 THE SHEATH, BUT IT DOESN'T GO UP THROUGH THE VASCULATURE. AND
12:21PM 21 THAT'S, FOR EXAMPLE, IN DOCKET 24-36, WHICH IS GARRISON, AT
12:21PM 22 PARAGRAPH 59. IT REPEATEDLY REFERS TO 2010 AS AN ARTERIAL
12:21PM 23 ACCESS DEVICE, AND THAT'S ONE OF THE REASONS THAT GARRISON AND
12:21PM 24 LAUB TOGETHER DO NOT ANTICIPATE OR RENDER OBVIOUS THE CLAIM 1
12:22PM 25 OR THE '910 PATENT.

12:22PM 1 LET'S SEE WHAT ELSE. THIS IS PROBABLY OF LESS
12:22PM 2 SIGNIFICANCE, BUT THERE WAS A SUGGESTION THAT WE NEVER BROUGHT
12:22PM 3 THESE PATENTS IN THE CORRESPONDENCE THAT PRECEDED THE LAWSUIT.
12:22PM 4 THAT MY LETTER OF APRIL 24TH, 192 -- 2024 DOES REFER TO THE
12:22PM 5 '921 PATENT, AND THAT IS ALSO IN THE RECORD.

12:22PM 6 THERE IS ALSO -- I DON'T HAVE IT RIGHT HERE. I'LL SEE IF
12:22PM 7 I CAN FIND IT.

12:22PM 8 THERE IS ALSO THIS IDEA THAT WE DIDN'T RESPOND FOR MONTHS.
12:22PM 9 AND WHY WE DIDN'T RESPOND FOR MONTHS, AS WE MADE CLEAR IN OUR
12:22PM 10 RESPONSIVE LETTER, IS BECAUSE WE DISCLOSED ALL OF THE PRIOR ART
12:23PM 11 THAT THEY IDENTIFIED TO THE PATENT OFFICE, AND WE CONTINUED TO
12:23PM 12 GET CLAIMS ALLOWED OVER THIS PRIOR ART BECAUSE WE DO WANT TO
12:23PM 13 CLARIFY THAT NO MATTER WHAT PRIOR ART THEY BRING UP, OUR
12:23PM 14 PATENT, WE HAVE VALID PATENT RIGHTS, AND THAT'S THE SAME WITH
12:23PM 15 THE '691 IPR THAT THEY LOST.

12:23PM 16 THEY TALK ABOUT DR. TURK. DR. TURK PROVIDED A DECLARATION
12:23PM 17 FOR THAT IPR, AND THE PATENT OFFICE REJECTED THE IPR. THEY
12:23PM 18 SAID -- THERE WAS NO REASONABLE LIKELIHOOD THAT THEY COULD SHOW
12:23PM 19 ANY OF THE CLAIMS IN THE '691 ARE INVALID.

12:23PM 20 AND BY THE WAY, DR. TURK TESTIFIED, AND WE HAVE THIS IN
12:23PM 21 OUR REPLY, THAT HE HAS NEVER EVEN USED THESE DEVICES FOR DVT OR
12:23PM 22 PE. SO HE'S NOT SOMEBODY THAT EVEN UNDERSTANDS THESE DEVICES.
12:23PM 23 I KNOW I'M JUMPING AROUND.

12:23PM 24 THE COURT: WHICH DEVICES ARE YOU REFERRING TO?

12:23PM 25 MR. RE: SYMPHONY OR FLOWTRIEVER FOR DVT OR PE.

12:24PM 1 THERE'S ALSO NO QUESTION ABOUT THIS TELESCOPING.

12:24PM 2 FIRST OF ALL, THERE'S TWO THINGS. THEY DO ADVERTISE BOTH
12:24PM 3 THEIR 16 FRENCH CATHETER AND THEIR 24 FRENCH CATHETER TOGETHER
12:24PM 4 AND THEY DISCLOSE AND PROMOTE TELESCOPING WITH THEM. THAT CAN
12:24PM 5 BE FOUND, FOR EXAMPLE, AT DOCKET 24-14 AT PAGE 12 AND DOCKET
12:24PM 6 24-15 AT PAGE 2 AND 7. SO THEY'RE SELLING THE CATHETERS
12:24PM 7 TOGETHER AND THEY'RE PROMOTING THEIR USE FOR TELESCOPING.

12:24PM 8 NOW, THEY SAY, OH, WE NEVER DO TELESCOPING. THE FACT IS
12:24PM 9 THEY JUST MEAN FOR DVT. WHEN WE TALKED TO MR. SCOTT, THEIR
12:24PM 10 MARKETING DIRECTOR ABOUT IT, AND HE'S THE ONE THAT DID THE
12:24PM 11 DECLARATION, HE SAID I WASN'T ASKED TO LOOK AT HOW OFTEN
12:24PM 12 TELESCOPING IS DONE FOR PE BECAUSE THEY ARE USING THIS DEVICE
12:24PM 13 FOR PE, IT'S JUST IN THE CLINICAL TRIALS.

12:24PM 14 THERE'S NO QUESTION THAT THE DEVICE IS DESIGNED AND
12:25PM 15 INTENDED FOR PE.

12:25PM 16 MR. SCOTT -- THIS IS ON PAGE 20 OF HIS DECLARATION, OF HIS
12:25PM 17 TRANSCRIPT, WHICH IS SUBMITTED IN OUR REPLY. HE WOULD SAY, IS
12:25PM 18 IT --

12:25PM 19 "QUESTION: IS IT MORE IMPORTANT FOR THE CATHETERS TO HAVE
12:25PM 20 EXTENDED REACH FOR PE CASES THAN DVT CASES GENERALLY?

12:25PM 21 "ANSWER: I WOULD SAY THAT'S ACCURATE.

12:25PM 22 "QUESTION: AND THE TELESCOPE AND CATHETERS PROVIDE
12:25PM 23 EXTENDED REACH; IS THAT CORRECT?

12:25PM 24 "ANSWER: CORRECT.

12:25PM 25 "QUESTION: SO IS IT MORE ACCURATE TO SAY THAT TELESCOPING

12:25PM 1 WOULD LIKELY BE MORE IMPORTANT FOR PE CASES THAN DVT CASES?

12:25PM 2 "ANSWER: CORRECT."

12:25PM 3 THEN HE ANSWERED, "DID IMPERATIVE CARE DESIGN THE
12:25PM 4 TELESCOPING FEATURE OF SYMPHONY WITH PE CASES IN MIND?

12:25PM 5 "ANSWER: WHEN I ARRIVED AT IMPERATIVE CARE, THE DESIGN
12:26PM 6 FOR SYMPHONY HAD ALREADY BEEN FINALIZED, SO I WASN'T PART OF
12:26PM 7 THOSE DISCUSSIONS. BUT MY UNDERSTANDING IS THAT TELESCOPING AS
12:26PM 8 A FEATURE WAS DESIGNED TO ACCOMMODATE ANY ANATOMICAL SITUATION
12:26PM 9 WHERE ADDITIONAL REACH WOULD BE BENEFICIAL.

12:26PM 10 "QUESTION: AND THAT'S ESPECIALLY TRUE IN PE WOULD YOU
12:26PM 11 SAY?

12:26PM 12 "ANSWER: YES."

12:26PM 13 SO THE FACT IS THAT TELESCOPING IS FOR PE. AND THAT
12:26PM 14 BRINGS ME TO SOMETHING THAT MY COLLEAGUES TOLD ME I DIDN'T
12:26PM 15 EXPLAIN WELL IN MY EARLIER STATEMENT.

12:26PM 16 THE CLAIM, AS EVERYBODY AGREES, IS A SYSTEM CLAIM FOR THE
12:26PM 17 TREATMENT OF PE CLOTS, AND THERE IS NO QUESTION THAT SYMPHONY
12:26PM 18 IS SOLD AS THE SYSTEM FOR TREATMENT OF PE CLOTS, THAT IT'S IN
12:26PM 19 CLINICAL TRIALS RIGHT NOW FOR THAT, AND WE KNOW THAT THE
12:26PM 20 TELESCOPING FEATURE IS PRIMARILY FOR THAT.

12:26PM 21 BUT WHAT THE CONFUSION IS, IS THAT IT CAN BE USED FOR
12:26PM 22 SOMETHING ELSE. IT CAN BE USED FOR DVT. AND THE COURT HAS
12:27PM 23 MADE THAT CLEAR.

12:27PM 24 AND WE HAVE POINTED OUT THAT WHEN YOU SELL SOMETHING, A
12:27PM 25 SYSTEM, THAT CAN BE USED FOR THE CLAIMED PURPOSE, YOU ARE

12:27PM 1 COMMITTING AN ACT OF INFRINGEMENT WHETHER OR NOT THE PURCHASER
12:27PM 2 USES THAT FOR NOT -- THAT FOR THAT PURPOSE OR NOT.

12:27PM 3 AND I'M TRYING TO COME UP WITH A BETTER EXAMPLE. LET'S
12:27PM 4 SAY I HAVE A PATENT ON A CAMERA, AND THE PATENT IS AN IMPROVED
12:27PM 5 CAMERA.

12:27PM 6 SOMEBODY MIGHT SELL A PHONE. A PHONE CAN BE USED AS A
12:27PM 7 CAMERA OR IT CAN BE USED FOR ANOTHER PURPOSE, AS A PHONE.

12:27PM 8 AND MAYBE THIS ISN'T THE BEST EXAMPLE, BUT THAT IS SIMILAR
12:27PM 9 TO WHAT SYMPHONY IS.

12:27PM 10 THE FACT THAT IF SOMEBODY SELLS A PHONE THAT CAN BE USED
12:27PM 11 FOR A CAMERA IN AN INFRINGING WAY, WHEN THEY SELL IT, THEN IT'S
12:27PM 12 AN ACT OF INFRINGEMENT.

12:27PM 13 THE PATENT OWNER DOES NOT HAVE TO PROVE THAT THEY'RE
12:27PM 14 ACTUALLY USING IT AS A CAMERA. THE FACT IS, IT WAS MADE IN
12:27PM 15 PART TO PROVIDE CAMERA FUNCTIONALITY THAT INFRINGES.

12:28PM 16 SO THAT'S WHY WE KEEP GETTING BACK TO THIS ISSUE, WELL,
12:28PM 17 WE'RE CLAIMING SYMPHONY INFRINGES WHEN IT'S SOLD EVEN IF IT'S
12:28PM 18 NOT USED FOR PE. THAT IS TRUE.

12:28PM 19 NOW, I UNDERSTAND THE COURT MAY DISTINGUISH PE AND DVT FOR
12:28PM 20 THE IRREPARABLE HARM PORTION, BUT IT IS AN ACT OF INFRINGEMENT
12:28PM 21 TO SELL A PRODUCT THAT IS DESIGNED TO TREAT PE, AND WE DON'T
12:28PM 22 HAVE TO THEN FIGURE OUT WHETHER THE PHYSICIAN IS USING IT FOR
12:28PM 23 DVT OR PE.

12:28PM 24 I UNDERSTAND --

12:28PM 25 THE COURT: THE LOGIC THAT IT WAS DESIGNED FOR

12:28PM 1 PURPOSES OF TREATING PE VERSUS DVT, AND THAT THAT'S WHAT THE
12:28PM 2 COURT SHOULD -- WHAT IS YOUR BASIS FOR THAT WITHIN THE RECORD
12:28PM 3 OF SAYING THAT IT IS -- THIS WAS DESIGNED FOR PE, NOT FOR DVT?

12:28PM 4 MR. AL-SALAM: WELL, IT IS DESIGNED FOR BOTH. BUT
12:29PM 5 WE AGREE THAT THE CLAIM REQUIRES TELESCOPING AND THE TESTIMONY
12:29PM 6 THAT I JUST READ YOU IS THEIR OWN WITNESS AGREEING THAT
12:29PM 7 TELESCOPING IS IMPORTANT FOR PE.

12:29PM 8 THEY HAVE TAKEN THE POSITION, WHICH WE DON'T DISPUTE, THAT
12:29PM 9 TELESCOPING ISN'T IMPORTANT FOR DVT.

12:29PM 10 SO WHAT THE COURT IS FACED WITH IS THAT THEY ARE SELLING
12:29PM 11 SYMPHONY WITH -- AND THEY'RE PROMOTING ITS USE FOR TELESCOPING,
12:29PM 12 WHICH WOULD ONLY BE USED FOR PE.

12:29PM 13 AND THEY -- IT IS BEING USED FOR PE RIGHT NOW JUST IN
12:29PM 14 CLINICAL TRIALS.

12:29PM 15 THE COURT: RIGHT, WHICH I CANNOT FIND THE BASIS FOR
12:29PM 16 THAT. I MEAN, BECAUSE THIS LOGIC FEELS A LITTLE BIT TORTURED
12:29PM 17 OF SAYING, OKAY, YOU'RE GOING TO -- IT CAN BE USED FOR THIS,
12:29PM 18 THE TELESCOPING GOES TO THIS, AND SO, THUS, THIS IS AN
12:29PM 19 INFRINGEMENT EVEN THOUGH IT'S NOT APPROVED FOR THIS PURPOSE YET
12:29PM 20 AND IT'S BEING USED ON LABEL, LIKE FAIR AND SQUARE SO TO SPEAK,
12:30PM 21 FOR DVT -- I MEAN, NOT FAIR AND SQUARE FOR THE OVERALL CASE,
12:30PM 22 BUT FOR PURPOSES OF MY MPI, FOR YOUR MPI, I'M JUST TRYING TO
12:30PM 23 FIGURE OUT THE LOGIC BEHIND.

12:30PM 24 MR. AL-SALAM: I UNDERSTAND. I UNDERSTAND. AND I'M
12:30PM 25 TRYING TO THINK OF AN ANALOGY. IT WOULD BE SIMILAR TO IF

12:30PM 1 YOU'RE SELLING A DEVICE THAT CAN BE USED IN TWO WAYS. IT CAN
12:30PM 2 BE USED IN A WAY THAT ISN'T COVERED BY THE CLAIM AND IT CAN BE
12:30PM 3 USED IN A WAY THAT IS COVERED BY THE CLAIM.

12:30PM 4 THE COURT: UNDERSTOOD.

12:30PM 5 MR. AL-SALAM: AND WHAT IF, TO USE IT IN THE WAY
12:30PM 6 THAT IS COVERED BY THE CLAIM, YOU NEEDED AN EXTRA BUTTON?
12:30PM 7 THAT'S TELESCOPING.

12:30PM 8 SO, IN OTHER WORDS, THEY ADMIT IT BECAUSE THEY SAY THAT
12:30PM 9 DVT, NOBODY IS USING TELESCOPING.

12:30PM 10 SO IF SOMEBODY BUYS SYMPHONY AND THEY WANT TELESCOPING
12:30PM 11 FUNCTIONALITY, THEN IT'S GOING TO BE USED FOR PE. THAT'S WHAT
12:30PM 12 THE RECORD SHOWS.

12:31PM 13 NOW --

12:31PM 14 THE COURT: WHERE IS THIS DISTINCTION THAT YOU'RE
12:31PM 15 DRAWING BETWEEN ALL OF THIS WITHIN THE RECORD?

12:31PM 16 MR. AL-SALAM: THE DISTINCTION? WELL, I JUST --

12:31PM 17 THE COURT: THIS ARGUMENT.

12:31PM 18 MR. AL-SALAM: WELL, THEY SAY ONLY 1.5 PERCENT OF
12:31PM 19 DVT CASES USE TELESCOPING. AND WE SAID -- AND AS HE POINTED
12:31PM 20 OUT, IT'S RARELY USED IN DVT -- TELESCOPING IS RARELY USED FOR
12:31PM 21 DVT. SO THAT MEANS --

12:31PM 22 THE COURT: BUT IT CAN BE USED FOR DVT.

12:31PM 23 MR. AL-SALAM: IT COULD.

12:31PM 24 THE COURT: RIGHT. SO THERE'S SOME VERSION OF A
12:31PM 25 VENN DIAGRAM RIGHT NOW WHICH I WOULD STRUGGLE WITH OF TRYING TO

12:31PM 1 SAY --

12:31PM 2 MR. AL-SALAM: OKAY. AND I UNDERSTAND THE COURT'S
12:31PM 3 CONCERN. I'M TRYING TO GET BY THAT YOU HAVE TO UNDERSTAND HOW
12:31PM 4 THE PHYSICIAN IS GOING TO USE IT.

12:31PM 5 WHAT MATTERS IS THAT YOU SELL A PRODUCT THAT CAN BE USED
12:31PM 6 AN IN INFRINGING WAY, AND IT IS DESIGNED FOR THAT PURPOSE, AT
12:32PM 7 LEAST IN PART, NOT TOTALLY. IT CAN BE USED FOR DVT. IT CAN BE
12:32PM 8 USED FOR PE.

12:32PM 9 THE CAMERA I BUY CAN BE USED TO TAKE PICTURES, TO MAKE
12:32PM 10 PHONE CALLS, TO VIEW TEXTS. LET'S JUST SAY ONE OF THOSE
12:32PM 11 FUNCTIONALITIES WAS INFRINGING, COULD YOU ENJOIN THAT
12:32PM 12 FUNCTIONALITY IN THAT PRODUCT? IF IT WAS --

12:32PM 13 THE COURT: WHAT IS YOUR BEST CASE, COUNSEL, FOR
12:32PM 14 THIS? GIVE ME A PRELIMINARY INJUNCTION THAT LOOKS LIKE THIS
12:32PM 15 AND SMELLS LIKE THIS.

12:32PM 16 MR. AL-SALAM: I DON'T HAVE ONE OFF THE TOP OF MY
12:32PM 17 HEAD. I COULD COME UP WITH SUPPLEMENTAL BRIEFING. INJUNCTION
12:32PM 18 GENERALLY IS IF IT DRIVES THE SALE, IF IT DRIVES THE SALE OF
12:32PM 19 THE PRODUCT AND IT IS DESIGNED FOR AN INFRINGING USE -- AND TO
12:32PM 20 BE CLEAR AGAIN, THIS IS TELESCOPING. THIS IS THE USE OF
12:32PM 21 TELESCOPING. IT DOESN'T HAVE A SUBSTANTIAL USE OTHER THAN FOR
12:32PM 22 INFRINGEMENT.

12:32PM 23 THE COURT: OTHER THAN A 1.5 PERCENT OF THE CASES.

12:32PM 24 MR. AL-SALAM: YES.

12:32PM 25 THE COURT: FOR DVT?

12:32PM 1 MR. AL-SALAM: YES.

12:32PM 2 THE COURT: OKAY. YOU HAVE 1 MINUTE AND 30 SECONDS
12:33PM 3 LEFT.

12:33PM 4 MR. AL-SALAM: OKAY. I WANT TO MAKE ONE THING
12:33PM 5 CLEAR. HE SAID WE NEVER REBUTTED THIS PUBLIC INTEREST ABOUT
12:33PM 6 DR. TOMALTY AND THAT DR. TOMALTY SAID, WELL, I LIKE SYMPHONY
12:33PM 7 AND THAT HE SAID THAT PEOPLE WOULD GO UNTREATED.

12:33PM 8 FIRST OF ALL, WE ABSOLUTELY DO NOT WANT PEOPLE TO GO
12:33PM 9 UNTREATED, AND WE DON'T BELIEVE THAT IT'S PLAUSIBLE THAT THEY
12:33PM 10 WILL BE.

12:33PM 11 MR. HYKES POINTED OUT WE CAN MEET ANY DEMAND FOR IT, AND
12:33PM 12 MR. TOMALTY HIMSELF, DR. TOMALTY, AS WE POINTED OUT IN OUR
12:33PM 13 REPLY, HE SAID, HE SAID THAT IF SYMPHONY WEREN'T AVAILABLE, HE
12:33PM 14 WOULD USE INARI'S DEVICES AND HE COULD NOT IDENTIFY A SINGLE
12:33PM 15 OTHER DOCTOR WHO WOULD NOT DO THE SAME.

12:33PM 16 IN OTHER WORDS, EVERYBODY IS GOING TO GET TREATMENT IF
12:33PM 17 THEY'RE NOT -- JUST BECAUSE THEY'RE NOT USING SYMPHONY, IT
12:33PM 18 DOESN'T MEAN THAT THERE WILL NOT BE PEOPLE GETTING TREATMENT.

12:33PM 19 THAT'S ON PAGE 19 OF OUR REPLY AT 118, LINE 23 THROUGH 24
12:33PM 20 AND LINE 18 OF HIS TESTIMONY.

12:34PM 21 THANK YOU, YOUR HONOR. WE APPRECIATE THE TIME. I WAS
12:34PM 22 SURPRISED THEY DIDN'T TALK ABOUT A BOND, TOO, BUT WE FIGURED IF
12:34PM 23 THE COURT IS GOING TO GRANT AN INJUNCTION, WE CAN ADDRESS THE
12:34PM 24 BOND.

12:34PM 25 THE COURT: OKAY. THANK YOU, COUNSEL.

12:34PM 1 MR. AL-SALAM: THANK YOU.

12:34PM 2 THE COURT: ALL RIGHT. I AM -- SO THE COURT IS
12:34PM 3 TAKING THIS UNDER SUBMISSION, AND I'M NOT RULING FROM THE BENCH
12:34PM 4 ON THIS ONE.

12:34PM 5 I REALIZED WHEN I -- GOING BACK TO THE FIRST MOTION THAT I
12:34PM 6 STARTED WITH, THAT WHEN I GRANTED THAT I DIDN'T GIVE YOU A
12:34PM 7 TIMEFRAME IN TERMS OF MEETING AND CONFERRING AND COMING UP WITH
12:34PM 8 A PROPOSED SCHEDULE.

12:34PM 9 HOW'S A WEEK? DO YOU NEED MORE TIME? LESS?

12:34PM 10 MR. AL-SALAM: NO. I THINK IT'S FINE, YOUR HONOR.

12:34PM 11 THE COURT: MR. RE.

12:34PM 12 MR. RE: THAT'S FINE. THANK YOU, YOUR HONOR.

12:34PM 13 MR. AL-SALAM: I ASSUME WE WILL FILE THE AMENDED
12:34PM 14 COMPLAINT AND WITHIN A WEEK WE WILL COME BACK WITH OUR
12:34PM 15 POSITIONS ON THE SCHEDULE?

12:34PM 16 THE COURT: I WAS THINKING THAT YOU ALL COULD
12:34PM 17 PRESENT YOUR SCHEDULE WITHIN A WEEK, PERIOD.

12:35PM 18 MR. AL-SALAM: YES.

12:35PM 19 MR. RE: AND DOES THAT INCLUDE THE SCHEDULE OF THE
12:35PM 20 NARROWING OF THE CLAIMS AND THE PATENT?

12:35PM 21 THE COURT: YES, WHICH IS ONE OF THE REASONS I WAS
12:35PM 22 WONDERING IF YOU NEED MORE TIME BUT --

12:35PM 23 MR. AL-SALAM: AND THAT'S FOR --

12:35PM 24 THE COURT: SEPARATE AND APART FROM THE AMENDMENT.

12:35PM 25 MR. AL-SALAM: YES.

12:35PM 1 THE COURT: AND THEN THE AMENDED COMPLAINT I WAS
12:35PM 2 GOING TO DO JUST THE STANDARD 14 DAYS, BUT --

12:35PM 3 MR. AL-SALAM: WE CAN FILE IT TOMORROW.

12:35PM 4 THE COURT: YEAH, I FIGURED.

12:35PM 5 MR. AL-SALAM: OKAY.

12:35PM 6 THE COURT: SO YOU CAN FILE IT TOMORROW THEN.

12:35PM 7 MR. AL-SALAM: THANK YOU. THANK YOU.

12:35PM 8 THE COURT: I WAS GOING TO GIVE YOU THE STATUTORY
12:35PM 9 DEADLINE FOR THAT.

12:35PM 10 MR. AL-SALAM: SO WITHIN A WEEK WE WILL BACK TO THE
12:35PM 11 COURT WITH OUR POSITIONS ON AMENDING THE CLAIM CONSTRUCTION
12:35PM 12 SCHEDULE AND ON LIMITING THE CLAIMS FOR TRIAL OR PATENTS FOR
12:35PM 13 TRIAL?

12:35PM 14 THE COURT: RIGHT. WITHIN A WEEK YOU'RE GOING TO
12:35PM 15 COME TO ME WITH A PROPOSED SCHEDULE.

12:35PM 16 MR. AL-SALAM: FOR THE WHOLE CASE?

12:35PM 17 THE COURT: NO.

12:35PM 18 MR. AL-SALAM: OKAY.

12:35PM 19 THE COURT: JUST FOR THE EXTENSION FOR THE DEADLINES
12:35PM 20 TO JULY.

12:35PM 21 MR. AL-SALAM: OKAY.

12:35PM 22 THE COURT: SO BASICALLY DOES THE CLAIM CONSTRUCTION
12:35PM 23 NEED TO MOVE? DO THE INVALIDITY CONTENTIONS -- DO ANY OF THE
12:35PM 24 EXISTING DEADLINES NEED TO CHANGE? I AM ASSUMING THAT IT COULD
12:35PM 25 BE A JOINT SCHEDULE.

12:36PM 1 MR. AL-SALAM: I THINK WE SHOULD BE ABLE TO AGREE ON
12:36PM 2 THAT.

12:36PM 3 THE COURT: OKAY. AS TO THE NARROWING, I'M HOPING
12:36PM 4 THAT THAT'S JOINT AS WELL. IF YOU CANNOT REACH AGREEMENT, YOU
12:36PM 5 CAN PROVIDE YOUR SEPARATE POSITIONS. BUT I'M ACTUALLY HOPING,
12:36PM 6 BECAUSE OF THE WEALTH OF EXPERIENCE IN THIS ROOM, THAT YOU CAN
12:36PM 7 COME UP WITH A JOINT PROPOSAL IN TERMS OF NARROWING.

12:36PM 8 MR. AL-SALAM: THANK YOU, YOUR HONOR.

12:36PM 9 THE COURT: ALL RIGHT. THANK YOU BOTH SO SO MUCH.
12:36PM 10 ANYTHING FURTHER?

12:36PM 11 MR. RE.

12:36PM 12 MR. RE: YEAH. I STILL HAVE A PENDING MOTION THAT
12:36PM 13 IS SCHEDULED FOR JULY ON WHETHER TO STAY THE CASE IN VIEW OF
12:36PM 14 THE IPR'S.

12:36PM 15 THE COURT: I UNDERSTAND THAT. IT IS ON MY RADAR.

12:36PM 16 MR. RE: THANK YOU.

12:36PM 17 THE COURT: SO ANYTHING ELSE?

12:36PM 18 MR. RE: NOTHING FURTHER.

12:36PM 19 THE COURT: ALL RIGHT. WELL, I TURNED DOWN BEING ON
12:36PM 20 A PANEL TODAY SO I COULD HEAR YOU GENTLEMEN, SO THANK YOU VERY
12:36PM 21 MUCH. THE COURT WILL TAKE THAT UNDER SUBMISSION.

12:36PM 22 I LOOK FORWARD TO SEEING THE SCHEDULE. I WILL SEE YOU ALL
12:36PM 23 NEXT MONTH.

12:36PM 24 MR. AL-SALAM: THANK YOU FOR YOUR TIME, YOUR HONOR.

12:36PM 25 MR. RE: THANK YOU, YOUR HONOR.

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THE COURT: YOU'RE WELCOME. TAKE CARE.

MR. RE: THANK YOU, YOUR HONOR.

(COURT CONCLUDED AT 12:36 P.M.)

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO
HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS
A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
ABOVE-ENTITLED MATTER.



IRENE RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

DATED: JUNE 8 2025