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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

INARI MEDICAL, INC.,
Plaintiff,
v.
IMPERATIVE CARE, INC. ,
Defendant.

Case No. 4:24-cv-03117-EKL-SVK

**JOINT LETTER BRIEF CONCERNING
PLAINTIFF’S MOTION TO COMPEL
PRODUCTION OF MATERIALS
RELATING TO DEFENDANT’S BLOOD
RETURN SYSTEM**

Location: San Jose Federal Courthouse,
Courtroom 6, 4th Floor
Magistrate Judge: Susan van Keulen

Inari-2010
Imperative Care, Inc. v. Inari Medical, Inc.
IPR2025-00728

INTRODUCTION

Pursuant to Section 7(b) of this Court’s Civil and Discovery Referral Matters Standing Order (“Discovery Standing Order”), the parties submit this Joint Discovery Letter Brief in connection with a discovery dispute they are unable to resolve regarding Plaintiff’s Request for Production of Documents Nos. 75-78 (*see* Ex. A (Defendant’s responses to Plaintiff’s First Set of RFPs)) and 97-101 (*see* Ex. B (Defendant’s responses to Plaintiff’s Second Set of RFPs)) and Interrogatory No. 16 (*see* Ex. C (Defendant’s responses to Plaintiff’s Second Set of Interrogatories)). The parties dispute whether Defendant must produce documents describing Defendant’s development of a blood return system and/or a blood filtration system for use with the accused mechanical thrombectomy system. Pursuant to this Court’s Discovery Standing Order, the parties met-and-conferred on this issue by video conference on February 13, 2025, and by email from December 20, 2024 through January 16, 2025 and by letter and email on February 6, 2025 and February 19, 2025, but were unable to come to an agreement and neither party has proposed any compromises. No deadline has been set in this case for the close of fact discovery.

I. INARI’S STATEMENT

Plaintiff Inari Medical, Inc. (“Inari”) seeks discovery about Defendant Imperative Care Inc.’s (“Truvic’s”)¹ blood return and filtration system. As detailed, Truvic has itself injected issues relating to blood return into the case, and these issues are relevant to at least the public interest factor of the injunction inquiry and damages. Moreover, there are claims in one of the patents that Inari has already asserted (No. 11,969,333) requiring blood return (*e.g.*, Claims 5, 24 (requiring “reintroducing the filtered blood”)). Inari has not yet been able to assert those claims due to lack of information (instead focusing on other claims of that patent that do not require blood return), but it makes no sense that Inari would have to wait to do so (and to assert claims from other patents specifically directed to blood return) for a separate case, as Truvic posits, given the interrelatedness of the blood return issues to those already being litigated here.

¹ The company that originally designed the accused products was named “Truvic” and the accused products still bear that name. To avoid confusion between two “I” companies, Inari refers to the defendant as “Truvic.”

1 **Background.** This is a competitor patent infringement case. Inari seeks to protect its
2 patented thrombectomy systems and the market that it has single-handedly created for them.
3 Inari asserts that Truvic is willfully infringing approximately a dozen patents covering its
4 systems and their components. Inari accuses Truvic of copying Inari’s designs (including by
5 submitting FOIA requests to the FDA to learn the design), stealing its employees, and attempting
6 to convert Inari’s customers with Truvic’s copycat devices and poached employees.

7 Truvic argued in opposition to Inari’s motion for preliminary injunction that, rather than
8 just copying Inari’s devices, it also “improved” upon them. PI Opp. (ECF 36) at 6 (Truvic filed
9 its FOIA requests “to improve upon [Inari’s] products, which Imperative Care has successfully
10 done”). Truvic claims that it is therefore in the public interest (one of the four injunction factors)
11 for it to continue to be able to sell its allegedly “improved” infringing thrombectomy systems.

12 One of Truvic’s alleged “improvements” relates to blood loss. Specifically, Truvic has
13 argued that use of its system results in less patient blood loss than use of Inari’s system, *id.* at
14 35, even presenting a declaration with its opposition brief that posits that the reduced blood loss
15 of Truvic’s accused system obviates the need to return lost blood to patients (*e.g.*, Tomalty Decl.
16 (ECF 36-43) at ¶¶ 14-16)—a disputed point. As part of its public interest position, Truvic’s
17 witnesses went even further, suggesting that offering a blood return system like Inari’s might be
18 actively dangerous to patients. Scott Dep. Tr. at 100 (“There’s been a lot of debate recent about
19 the quality or the health of the blood that’s being returned.”); Turk Dep. Tr. at 194-95 (“I just
20 worry about, you know, how good is that blood.”); Tomalty Decl. at ¶ 16 (arguing that “some
21 doctors” prefer Truvic’s products because they supposedly do not need a blood return system).

22 It turns out, however, that Truvic has developed its own blood return product, designed
23 to return to the patient blood lost during use of its accused product during thrombectomy
24 procedures. Truvic’s blood return system seems to be designed to compete with Inari’s, which
25 Inari sells with its other patented thrombectomy system components and which most doctors use
26 with them.² Nevertheless, Truvic refuses to provide any information about its blood return

27 ² Public trademark filings show that Truvic has named this product “Restore.” Pursuant to the
28 Court’s procedures, Inari does not submit exhibits to establish this or other points made in this
motion, but can do so if the Court so requests.

1 system, raising Inari’s suspicions that it likely is a copy of Inari’s. Truvic “opened the door” to
2 the relevance of blood return systems with the arguments above.

3 Having injected the issue of blood loss into the case, Truvic should not now be allowed
4 to refuse to produce information about its blood return system, patient safety concerns
5 surrounding the topic of blood return, and whether its accused thrombectomy systems would
6 benefit from blood return. But that is exactly what it has done. Truvic now contends that blood
7 return is “irrelevant” to this case and that it would be “prejudicial” to Truvic to have to produce
8 this information. Truvic should be ordered to do so.

9 **History Of Negotiations Regarding Blood Return.** In connection with Inari’s
10 preliminary injunction motion, the parties agreed to exchange physical samples of their devices.
11 When Truvic provided its required samples, it did *not* provide its blood return system. When
12 Inari contacted Truvic about the missing sample, Truvic’s response was to play word games
13 about whether the blood return product was already “for sale” and whether it had been part of
14 the parties’ discovery agreement. Apparently as a delay tactic, it also invited Inari to send formal
15 written discovery requests, even though Inari had by this time already done so, and even though
16 Truvic apparently had no intention of answering them—and ultimately refused to do so.³

17 Truvic has not claimed any undue burden or suggested any compromise to get Inari some
18 of the information it seeks. Instead, Truvic refuses to produce *any* information about its blood
19 return system, its design, marketing plans, projected launch date, or how testing confirms or
20 refutes positions Truvic has taken in this case. Truvic’s reasons for refusing to produce the
21 information in question are that Truvic does not *yet* sell and is not *yet* cleared by the FDA to
22 market its blood return system. Truvic says that, because some pre-clearance activities are
23 exempted from claims of infringement under 35 U.S.C. § 271(e), its blood return product is
24 entirely irrelevant and exempt from all discovery in this case. That is simply wrong.

25 **Imperative Care’s Blood Return System Is Relevant For Many Reasons.** Truvic’s

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27 ³ Inari had meanwhile served RFP Nos. 75-78 (see Ex. A), which are specifically directed to
28 Truvic’s blood return system, and it then served a second set of RFPs (Nos. 97-101) almost
entirely devoted to blood return (see Ex. B) and an interrogatory (No. 16) relating to blood
return (see Ex. C). Truvic objected to the interrogatory and all of these requests and refused
to produce any documents or samples. (Exs. A to C.)

1 blood return system is already at issue here, having been raised by Truvic itself. The discovery
2 that Inari seeks relating to that system is relevant to at least: (1) public interest; (2) damages; and
3 (3) infringement claims that will be most efficiently decided in the context of this case. Truvic,
4 notably, largely ignores the first two issues in its statement in favor of focusing on the third. But
5 any of these three points alone justifies the discovery sought here.

6 First, Truvic should not be permitted to argue that its devices are “improvements” to
7 Inari’s because they are safer due to reduced blood loss while also hiding contradictory evidence
8 in the form of its development of a blood return system comparable to Inari’s. Why is Truvic
9 developing a blood return system for its accused system if, as it contends, its “improved”
10 thrombectomy systems do not require one? In other words, as Truvic cannot dispute, its blood
11 return system is relevant to the public interest factor of whether Truvic’s accused product is safer
12 than Inari’s patented product. Truvic should not be allowed to use the lack of any need for blood
13 return as a “sword,” but then “shield” Inari from getting any information on the subject.

14 Second, there can be no serious dispute that Truvic’s blood return system is designed to
15 work with its accused thrombectomy system (*i.e.*, to return blood lost while using the accused
16 system)—and obviously has been tested for exactly that, despite unsupported claims below that
17 Truvic has “never been used” with the accused thrombectomy system. But, even accepting
18 Truvic’s argument that the blood return system is a “separate” product, it is still relevant to
19 damages. For instance, a patent owner can recover lost profits caused by sales of noninfringing
20 products that work with infringing products, analogous to a single machine, as here.
21 *E.g.*, *Kalman v. Berlyn Corp.*, 914 F.2d 1473, 1485 (Fed. Cir. 1990) (affirming damages award
22 for filter screens used with patented filtering device); *Kori Corp. v. Wilco Marsh Buggies &*
23 *Draglines, Inc.*, 761 F.2d 649, 656 (Fed. Cir. 1985) (affirming damages award for unpatented
24 uppers for use with patented pontoon structure). Further, even if lost profits were not available,
25 sales of its new blood return system are relevant to a reasonable royalty for many other reasons.
26 *E.g.*, *Exmark Mfg. Co. v. Briggs & Stratton Power Prods. Grp.*, 879 F.3d 1332, 1348-49 (Fed.
27 Cir. 2018); *see also Georgia-Pacific v. U.S. Plywood Corp.*, 318 F. Supp. 1116, 1120 (S.D.N.Y.
28 1970) (describing, *e.g.*, factors 6 (promotion of sales of other patentee products), 11 (extent of

1 use of invention), and 13 (portion of realizable profits creditable to invention)).

2 Third, although Truvic argues that its blood return system has not been launched yet, the
3 design for that product is fixed: the parties are not talking about some speculative or hypothetical
4 future design or the ordinary concern mitigating against discovery into “future” products. Here,
5 Truvic filed for its own patent on it over a year ago (U.S. Pat. No. 12,171,971) and applied for
6 trademark protection for aspects of its blood return system in August 2023, **almost two years**
7 **ago**. And it admits below that it has already applied for FDA clearance for this system. These
8 realities obviate any concerns that Inari seeks discovery about incomplete or hypothetical
9 products with undecided features. Truvic’s patent application even features a picture of the
10 accused thrombectomy system, further reinforcing the close relationship between the two.
11 Truvic’s protestation that it is absolved from discovery because it has not yet “launched” its
12 blood return product make no sense in this context.

13 As explained, the information that Inari seeks here is relevant regardless of whether
14 Truvic’s blood return system infringes Inari patents. But, even if infringement were the issue,
15 there **are** pre-clearance activities that can be the subject of infringement claims. *E.g., Edwards*
16 *Lifesciences Corp. v. Meril Life Scis. Pvt. Ltd.*, No. 19-cv-6593-HSG, 2020 WL 789559, at *2-
17 *4 (N.D. Cal. Feb. 18, 2020) (“Not all activities performed prior to FDA approval ... fall within
18 the exemption.”). Moreover, where a party has an announced intention of launching an
19 infringing product, there is nothing to stop Inari from seeking a declaration that the product **will**
20 infringe upon launch. *E.g., Cat Tech LLC v. TubeMaster, Inc.*, 528 F.3d 871, 881083 (Fed. Cir.
21 2008) (upholding district court discretion to hear declaratory judgment claim for future product
22 with fixed design). The cases cited below by Truvic do not controvert these points; they instead
23 deny discovery based on considerations absent here. *E.g., Impinj, Inc. v. NXP USA, Inc.*, No.
24 19-cv-3161, 2022 WL 16586886, at *2 (N.D. Cal. Nov. 1, 2022) (denying discovery on potential
25 infringement by non-parties); *C & C Jewelry Mfg., Inc. v. West*, No. 9-cv-1303, 2011 WL
26 2433817, at *2 (N.D. Cal. June 13, 2011) (similar); *Asetek Danmark A/S v. CoolIT Sys. Inc.*, No.
27 19-cv-410, 2021 WL 4699170, at *2 (N.D. Cal. Oct. 8, 2021) (denying inequitable conduct
28 discovery where no inequitable conduct claims present in case); *Drone Techs., Inc. v. Parrot*

1 S.A., 838 F.3d 1283, 1300 (Fed. Cir. 2016) (denying discovery because no showing of relevance);
2 *see also Micro Motion, Inc. v. Kane Steel Co.*, 894 F.2d 1318, 1327 (Fed. Cir. 1990) (denying
3 discovery on unaccused products sought *from a third party*).

4 These points carry particular weight here where, as mentioned above, there is already a
5 patent in the case that contains blood return claims that Inari should—for efficiency—be able to
6 have adjudicated here. Further, if the discovery shows that the blood return system infringes that
7 or other Inari patents, logic and judicial efficiency support that such claims be resolved in this
8 litigation, given the close relationship between the Truvic’s accused systems already at issue and
9 the blood return features. The Court and jury will need to understand how a blood clot is removed
10 and the dangers and challenges of such procedures, so it is natural to also address here issues
11 relating to blood loss and return. Inari does not, as Truvic suggests, seek to use discovery in this
12 case for other, future cases. Inari wants the discovery to use in *this* case.

13 In any event, it is premature to address infringement now: the present dispute is simply
14 whether Inari is entitled to the requested discovery—and it is. Discovery is just beginning and
15 no trial date has been set. Truvic can hardly claim unfair prejudice in these circumstances.

16 II. IMPERATIVE CARE’S STATEMENT

17 Stryker/Inari’s ⁴ motion is a transparent attempt to improperly access confidential
18 information about Imperative Care’s *possible* future product for the purpose of supporting *future*
19 infringement claims that Stryker/Inari “has not yet been able to assert.” Br. at 1. But discovery
20 cannot be used “to develop new claims or defenses that are not already identified in the pleadings.”
21 Fed. R. Civ. P. 26(b)(1) Advisory Committee’s Note (2000). Despite asserting 202 claims from 11
22 patents, Stryker/Inari has *never* accused Imperative Care’s developmental blood return system of
23 infringing any of those claims. Stryker/Inari makes three arguments that Imperative Care’s blood
24 return system *should become* relevant to this litigation, all of which are wholly without merit for
25 the reasons provided below.⁵

26
27 ⁴ Due to Stryker’s recent acquisition of Inari and Inari’s confusion caused by both parties
having names beginning with the letter “I,” Imperative Care refers to Inari as “Stryker/Inari.”

28 ⁵ Pursuant to the Court’s procedures, Imperative Care is not submitting exhibits but can if
any of the exhibits would be helpful for the Court.

1 **Statement of Relevant Facts.** Stryker/Inari sued Imperative Care, alleging that the sale of
2 its Symphony system infringes 181 claims from 10 patents. After the February 7th deadline for
3 amending the pleadings, Stryker/Inari filed an opposed motion to file a *third* amended complaint
4 to add another patent, asserting 21 new claims. That motion is currently scheduled for hearing on
5 May 28, 2025. None of the 202 claims concern any blood return system. The parties have also
6 started the claim construction process by exchanging terms for construction.

7 Imperative Care is developing a blood return system that may someday be compatible with
8 some of its products, including Symphony. The FDA has not cleared the system for commercial
9 release and Imperative Care has not decided when, or if, it will ever sell such a system. The design
10 is not “fixed,” nor has Imperative Care announced the device’s launch. Although Imperative Care’s
11 development of the system is known outside of the company, the details are not.

12 Stryker/Inari filed a Motion for Preliminary Injunction (“PI Motion”) to be heard May 28,
13 2025 or later. In connection with that motion, Imperative Care agreed to voluntarily produce
14 samples of “the Symphony product with its packaging.” Imperative Care produced those samples.
15 Months later, Stryker/Inari alleged that Imperative Care “may have debuted or be testing with
16 customers a blood return device for use with its Symphony system” and demanded that Imperative
17 Care voluntarily produce that device. Imperative Care recognized Stryker/Inari was misinformed,
18 so it explained that the blood return system is not part of “the Symphony product” and has never
19 been sold or packaged with Symphony. That was not “word games” as alleged. Br. at 3.

20 The discovery requests on this Motion seek technical information about Imperative Care’s
21 blood return system. Imperative Care objected because such information was not relevant to this
22 case. Imperative Care explained that it “does not sell any blood return and/or filtration system and
23 [such system] is not approved by the FDA.” Imperative Care also explained that any work on the
24 system “would be in furtherance of obtaining FDA approval and would be exempted from
25 infringement under 35 U.S.C. § 271(e).” Section 271(e) exempts from patent infringement all acts
26 on a product where the acts are reasonably related to the submission of information to the FDA.
27 Formalizing these objections to improper discovery requests was no “delay tactic.” Br. at 3.

28 The parties met and conferred regarding the discovery requests but were unable to resolve

1 their dispute. On February 18, shortly after the meet and confer, Stryker/Inari wrote to Imperative
2 Care, warning Imperative Care to “consider” *over 60 new unasserted claims* in six Stryker/Inari
3 patents “in connection with its blood return system.” The letter asked Imperative Care to explain
4 why “its blood return solution or solutions *will not* infringe ... *upon* commercialization *after* its
5 FDA approval.” Imperative Care responded that Stryker/Inari was improperly using this litigation
6 to learn confidential information about future products. Imperative Care again explained that its
7 blood return system is exempted from any claims of patent infringement under § 271(e).
8 Stryker/Inari did not respond. Instead, it sent its first draft of its portion of this Brief.

9 **The Blood Return System is Not Relevant to Infringement.** Stryker/Inari identifies
10 unasserted claims 5 and 24 of the ’333 Patent as including the step of “reintroducing the filtered
11 blood.” Br. at 1. It concedes it “has not yet been able to assert those claims due to lack of
12 information.” But, ignoring the case schedule, it argues “it makes no sense that [it] would have to
13 wait ... for a separate case” to assert those new patent claims, “given the interrelatedness of the
14 blood return issues to those already being litigated here.” *Id.* Thus, this Motion is *not* seeking
15 information relevant to any *existing* claim or defense. Rather, it seeks information that might
16 support a *future* infringement claim.

17 But the purpose of discovery is to “assist a party to prove a claim it reasonably believes to
18 be viable without discovery, not to find out if it has any basis for a claim.” *Micro Motion, Inc. v.*
19 *Kane Steel Co.*, 894 F.2d 1318, 1327 (Fed. Cir. 1990). “[D]iscovery cannot be used as a fishing
20 expedition for evidence of claims *that have not been properly pled.*” *Impinj, Inc. v. NXP USA,*
21 *Inc.*, No. 19-CV-03161-YGR (AGT), 2022 WL 16586886 (N.D. Cal. Nov. 1, 2022); *see also C &*
22 *C Jewelry Mfg., Inc. v. West*, No. C09-01303 JF HRL, 2011 WL 2433817, *2 (N.D. Cal. June 13,
23 2011). Nor can it be used to try to add new claims or defenses. *See Asetek Danmark A/S v. CoolIT*
24 *Sys. Inc.*, No. 19-CV-00410-EMC (LB), 2021 WL 4699170 (N.D. Cal. Oct. 8, 2021) (quoting Fed.
25 R. Civ. P. 26(b)(1) Advisory Committee’s Note (2000), which provides, “The rule change signals
26 to the court that it has the authority to confine discovery to the claims and defenses asserted in the
27 pleadings, and signals to the parties that they have *no entitlement to discovery to develop new*
28 *claims* or defenses that are not already identified in the pleadings.”).

1 Stryker/Inari ignores its February 18th letter. That letter, and this Brief, confirm
2 Stryker/Inari is trying to use discovery to investigate new infringement claims. Stryker/Inari admits
3 “*if* the discovery shows that the blood return system infringes [the ’333 Patent] or other Inari
4 patents, logic, and judicial efficiency support that such claims be resolved in this litigation” Br.
5 at 5. But there are *no such claims*, and Stryker/Inari’s mere “suspicion” of infringement is
6 insufficient to support relevance. Br. at 1; *see Micro Motion*, 894 F.2d at 1327; *see also Drone*
7 *Techs., Inc. v. Parrot S.A.*, 838 F.3d 1283, 1300 (Fed. Cir. 2016). That future claims might be
8 “interrelated” to other pled claims is no reason to: a) allow discovery to explore the viability of
9 those future claims, b) allow amendment of the pleadings, and c) disregard the case schedule.

10 Stryker/Inari also ignores § 271(e). It cannot assert patent claims against Imperative Care’s
11 blood return system because it has only been submitted to the FDA for clearance. Stryker/Inari
12 argues “there *are* pre-clearance activities that can be the subject of infringement claims” (Br. at 5),
13 but it pled no such claims and identifies no such activities.

14 Stryker/Inari also argues that “there is nothing to stop [Stryker/Inari] from seeking a
15 declaration that [the blood return] product *will* infringe *upon launch*.” *Id.* (citing *Cat Tech*, 528
16 F.3d at 881-83). Regardless, Stryker/Inari has asserted no such declaratory judgment claim *in this*
17 *case*. Because Stryker/Inari’s discovery requests are based on “mere suspicion [and] speculation,”
18 the requested information is necessarily “not relevant to the subject matter involved *in the pending*
19 *action*.” *Micro Motion*, 894 F.2d at 1326 (internal quotations omitted).

20 Finally, seeking confidential information to bring new claims violates the protective order,
21 which provides a “Receiving Party may use Protected Material...only for prosecuting, defending,
22 or attempting to settle *this litigation*.” Dkt. #76 at ¶7.1; *see On Command Video Corp. v. LodgeNet*
23 *Ent. Corp.*, 976 F. Supp. 917, 922 (N.D. Cal. 1997) (“The purpose of the [Protective Order] is to
24 limit the use of confidential information *to this case*. By using such information to file a separate
25 lawsuit in another forum, plaintiff violated the plain terms of the Protective Order.”).

26 **Imperative Care’s Blood Return System is Not Relevant to the PI Motion.** Stryker/Inari
27 argues that Imperative Care’s developmental “blood return system is already at issue here, having
28 been raised by [Imperative Care] itself.” Br. at 3. But Imperative Care never raised that system on

1 the PI Motion. Imperative Care referred to it only in response to deposition questions from Inari
2 asking specifically about the system. Those responses are not “positions” as alleged. Br. at 2.
3 Stryker/Inari’s interest in a future product does not make the product relevant to the PI Motion.

4 Stryker/Inari also argues that Imperative Care “itself injected issues relating to blood *return*
5 into the case” when showing the public-interest factor favors denying the PI Motion. Br. at 1. But
6 as Stryker/Inari later explains, Imperative Care argued Symphony is an “improvement” or is “safer”
7 than Stryker/Inari’s products because of its reduced blood *loss*. Br. at 2. Stryker/Inari’s letter brief
8 misleadingly treats blood loss and blood return as flipsides of the same coin. They are not.
9 Imperative Care’s blood *return* system has never been used with Symphony and the FDA has not
10 even cleared it for sale. That system has no bearing on the safety of Symphony or its safety relative
11 to any competitive product.

12 Imperative Care agrees blood *loss* is an issue on the PI motion. As Imperative Care
13 explained in its opposition, one of Symphony’s many benefits is its “integrated blood management
14 feature ... called ‘differential flow,’” which “results in the withdrawal of minimal blood during a
15 standard procedure.” Dkt. #35-04 at 35. Imperative Care has agreed to produce documents and
16 information about this feature. But unlike the “differential flow” feature, Imperative Care’s
17 developmental blood return system is *not* part of Symphony. Stryker/Inari’s argument that
18 Imperative Care’s “blood return system is designed to work with” Symphony is speculative and
19 irrelevant. Br. at 4. The system is still undergoing FDA review, so it is not yet known what products
20 it will be cleared to work with (if any).

21 Stryker/Inari also suggests that the developmental blood return system is relevant because
22 it contradicts Imperative Care’s evidence that Symphony reduces blood loss as compared to Inari’s
23 products. Stryker/Inari is incorrect. Imperative Care’s executives testified that the development of
24 a blood return system was *not* based on any concerns about Symphony’s blood loss. Nalbone Dep.
25 Tr., 83:4-12. Rather, Imperative Care is considering a blood return system as an option for
26 physicians performing thrombectomies. Scott Dep. Tr, 100:14-101:6. And that makes sense
27 because other companies, like Stryker/Inari, offer such blood return systems. Further, Symphony
28 either results in less blood loss or it does not. The availability of a future blood return system is

1 not “contradictory evidence” of those facts. Br. at 4. Importantly, Imperative Care has produced
2 documents and information relating to Symphony’s blood loss, so Stryker/Inari is not being
3 deprived of any discovery relevant to the PI Motion.

4 **The Blood Return System is Not Relevant to Damages.** Stryker/Inari argues Imperative
5 Care’s blood return system is also relevant to damages. Stryker/Inari offers two theories, both of
6 which show they are not applicable here. First it argues, a “patent owner can recover lost profits
7 caused by *sales* of noninfringing products that work with infringing products” Br. at 4. Second,
8 it argues, “*sales* of [Imperative Care’s] new blood return system are relevant to a reasonable
9 royalty” *Id.* As shown, both theories require *sales* of the non-infringing product. Here, the
10 non-infringing product (Imperative Care’s blood return system) remains under development, has
11 no definitive date for FDA clearance, and has *never* been sold. Under these circumstances,
12 Stryker/Inari cannot possibly show lost sales or any impact on a reasonable royalty. Thus, the blood
13 return system cannot be relevant to any theory of patent damages Stryker/Inari might pursue.

14 **Conclusion:** Because Imperative Care’s blood return system it is not part of, or relevant
15 to, any claim or defense in this case, this Court should deny Stryker’s/Inari’s motion to compel.

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1 Dated: March 14, 2025

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