

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN JOSE DIVISION
4

5 INARI MEDICAL, INC.,) Case No.
6 Plaintiff,) 4:24-cv-03117-EKL
7 vs.)
8 IMPERATIVE CARE, INC.,)
9 Defendant.)
10)

11 DEPOSITION OF
12 TROY THORNTON

13 Volume I

14 Monday, September 30, 2024

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17 CONTAINS CONFIDENTIAL INFORMATION
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24 Reported by: Michael C. Rowell, California CSR #13494
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--oOo--

1 includes one or more of a thread, line, cord, rope, 13:26:21
2 ribbon, flat wire, sheet, or tape, that is a filament 13:26:27
3 from one that is not? 13:26:33
4 A. Well, the patent itself describes these things 13:26:40
5 as their definition of filament. They provide the 13:26:43
6 definition, and I'm agreeing with that. 13:26:46
7 Q. Does the '921 patent say that it's defining a 13:26:49
8 filament as that? 13:26:53
9 A. I would have to look at the language they use. 13:26:56
10 Q. Sure. 13:26:59
11 MR. BELAIR: Mr. Thornton. 13:27:24
12 THE WITNESS: Well, I have the quote from the 13:27:26
13 '921 patent on line 18 -- I'm sorry, page 16, line 18. 13:27:30
14 So, in quotes, the '921 -- the '921 patent also states 13:27:37
15 in quotes, "The filament 150 can comprise one or several 13:27:39
16 threads, lines, cords, rope, ribbon, flat wire, sheet or 13:27:43
17 tape." 13:27:49
18 Section 9, line 15 through 17 of the prior 13:27:51
19 reference, I assume it's the '921 patent. 13:27:58
20 Q. Yeah, you can go ahead and grab that. 13:28:02
21 So, under your definition -- 13:28:08
22 MR. BELAIR: Sorry. Did you want to mark this 13:28:15
23 for the record? 13:28:16
24 MR. KEESE: Yeah, we'll get there. 13:28:17
25 /// 13:28:20

1	BY MR. KEESE:	13:28:20
2	Q. So, you have what's before you as Deposition	13:28:20
3	Exhibit 16.	13:28:24
4	(Whereupon, Exhibit 16 was marked for	13:28:24
5	identification.)	13:28:26
6	BY MR. KEESE:	13:28:26
7	Q. Do you see that?	13:28:26
8	A. Yes.	13:28:27
9	Q. Can you identify what that is?	13:28:34
10	A. US Patent, Merritt et al., Patent Number	13:28:35
11	US 11,844,921 B1.	13:28:41
12	Q. And is that the '921 patent you have been	13:28:45
13	referring to?	13:28:49
14	A. Yes.	13:28:49
15	Q. And that you discuss in your declaration?	13:28:49
16	If you could flip back to the first page. And	13:28:52
17	does it have markings for Exhibit 2 and a filing marking	13:28:58
18	as Document 24-9?	13:29:03
19	A. Yes.	13:29:05
20	Q. Okay, great. Under your definition of a	13:29:06
21	"filament," is a piece of paper a filament?	13:29:09
22	A. It depends what the material is, the size.	13:29:26
23	The word "sheet" is here. That's a sheet of paper. It	13:29:31
24	depends on the dimensions, I guess.	13:29:38
25	Q. So, I'm holding up a normal 8-1/2 by 11 piece	13:29:40

1 of printer paper. Is that a filament under your 13:29:44
2 definition? 13:29:49
3 A. Under the ordinary meaning, I would not 13:29:49
4 consider that a filament. 13:29:52
5 Q. Okay. So, what distinguishes a sheet that is 13:29:53
6 a filament from one that is not? 13:29:59
7 A. Probably, the dimensions being a -- narrower 13:30:03
8 in one dimension. 13:30:10
9 Q. Okay. So, a filament has to be narrow in one 13:30:11
10 dimension? 13:30:15
11 MR. BELAIR: Objection, misstates the 13:30:16
12 testimony. 13:30:17
13 THE WITNESS: A sheet would have to be narrow 13:30:17
14 for me to consider it a -- narrow in one dimension to 13:30:20
15 be -- to think of it possibly as a filament. 13:30:25
16 BY MR. KEESE: 13:30:28
17 Q. Okay. So, a piece of paper, it is narrow in a 13:30:28
18 couple of dimensions, right? 13:30:32
19 A. It's thin -- 13:30:33
20 Q. Okay. 13:30:35
21 A. -- in its thickness. 13:30:35
22 Q. Okay. So, why is a piece of paper that is 13:30:37
23 quite thin in one dimension not a filament? 13:30:43
24 A. I would consider it a filament if it were 13:30:51
25 narrow in its, I'll say, X or Y dimension, not in the 13:30:55

1	thickness dimension.	13:31:00
2	Q. Okay. So you would need it to be narrow in	13:31:01
3	two dimensions?	13:31:03
4	MR. BELAIR: Objection, misstates the	13:31:04
5	testimony.	13:31:06
6	THE WITNESS: Narrow and thin.	13:31:06
7	BY MR. KEESE:	13:31:09
8	Q. Okay.	13:31:09
9	THE WITNESS: Sorry.	13:31:10
10	Thickness, I would say, is different than	13:31:12
11	being narrow.	13:31:15
12	BY MR. KEESE:	13:31:17
13	Q. Okay.	13:31:17
14	A. If we're talking about flat wire or tape or	13:31:17
15	ribbon.	13:31:24
16	Q. Okay. So, in terms of a sheet, it could be a	13:31:24
17	filament if it is long in one dimension, correct? So,	13:31:28
18	long is -- is narrow and not thick.	13:31:35
19	A. I guess it could be.	13:31:42
20	Q. So, if I have a sheet, like this sheet of	13:31:48
21	paper, you agree that it is thin enough that it could be	13:31:52
22	a filament, correct?	13:31:58
23	MR. BELAIR: Objection, misstates testimony.	13:32:01
24	THE WITNESS: I think it depends on what	13:32:03
25	purpose and what function you're using it as, but it's	13:32:05

1	thin.	13:32:08
2	BY MR. KEESE:	13:32:09
3	Q. Okay. For the purpose of a filament in the	13:32:09
4	'921 patent, is a sheet of paper's thickness	13:32:13
5	sufficiently not thick that it could be a filament?	13:32:19
6	A. Can you rephrase that?	13:32:24
7	Q. Yeah. So, in terms of the purpose of a	13:32:25
8	filament for the '921 patent, which is what we're	13:32:30
9	talking about, is a sheet of paper thin enough in terms	13:32:32
10	of thickness that it could be a filament?	13:32:39
11	MR. BELAIR: Objection, vague.	13:32:43
12	THE WITNESS: I don't think any engineer would	13:32:46
13	think of using paper, almost regardless of the	13:32:48
14	dimensions, as a filament in a medical device.	13:32:53
15	BY MR. KEESE:	13:33:00
16	Q. So, what about a sheet of fabric, right, a bed	13:33:01
17	sheet? Is that a filament?	13:33:07
18	A. It would depend on the dimensions.	13:33:13
19	Q. So, a normal bed sheet, is it a filament?	13:33:17
20	A. I wouldn't consider a normal bed sheet a	13:33:20
21	filament, no.	13:33:23
22	Q. Okay. And why not?	13:33:23
23	A. Because it's not narrow in one dimension and	13:33:24
24	long in the other dimension.	13:33:28
25	Q. Would a bed sheet be a filament under the	13:33:32

1 construction you provided, because it is one or more 13:33:36
2 sheets? 13:33:39

3 A. I -- I don't know. 13:33:50

4 Q. Okay. And so I just want to be clear, you 13:33:52
5 don't know whether a bed sheet could be a filament or 13:34:08
6 not under your construction? 13:34:11

7 MR. BELAIR: Objection, misstates the 13:34:12
8 testimony. 13:34:13

9 THE WITNESS: I think what I said is I would 13:34:15
10 not consider a bed sheet to be a filament. 13:34:16

11 BY MR. KEESE: 13:34:22

12 Q. What determines, under your proposed 13:34:22
13 construction, whether one or more sheets is a filament 13:34:28
14 or not? 13:34:31

15 A. One or more bed sheets, you're talking about? 13:34:43

16 Q. No. So, your construction says one or more 13:34:47
17 sheets is a filament, correct? 13:34:49

18 A. It can be. 13:34:53

19 Q. So, what distinguishes one or more sheets that 13:34:56
20 is a filament from one or more sheets that isn't a 13:34:59
21 filament? 13:35:02

22 MR. BELAIR: Objection, vague. 13:35:03

23 THE WITNESS: I think a sheet of the 13:35:11
24 appropriate material, whether it's polymer or metal, 13:35:14
25 that has the appropriate strength could be considered a 13:35:17

1 filament for the purposes of this '921. 13:35:22

2 BY MR. KEESE: 13:35:33

3 Q. So, if I took one string from a bed sheet, is 13:35:33

4 that a filament? 13:35:40

5 A. I do believe that that's the common term used 13:35:46

6 in fabric making, are filaments. Yeah, a filament of 13:35:49

7 cotton or polyester would be considered a filament for 13:35:55

8 the purposes of making a bed sheet. 13:36:01

9 Q. What about for the purpose of the '921 patent? 13:36:03

10 Is a string such -- of fabric, such as one found in a 13:36:07

11 bed sheet, is that a filament? 13:36:15

12 A. It could be if it were a polymer strong enough 13:36:17

13 to perform the functions that are required for the 13:36:21

14 device. 13:36:25

15 Q. Is it your testimony that a filament has to be 13:36:35

16 a polymer? 13:36:37

17 MR. BELAIR: Objection, misstates. 13:36:38

18 THE WITNESS: No, as I think the patent itself 13:36:42

19 says a polymer is synthetic or metal. 13:36:46

20 BY MR. KEESE: 13:36:49

21 Q. Doesn't the patent say it can be formed from a 13:36:50

22 range of materials; for example, a polymer, a synthetic, 13:36:52

23 or a metal? 13:36:57

24 A. That is what it says. 13:36:59

25 Q. Okay. And a bed sheet can certainly be formed 13:37:00

1 from polymer, right, polyester? 13:37:07

2 A. I guess there are polyester bed sheets. I 13:37:12

3 prefer cotton. 13:37:15

4 Q. Sure enough. I prefer a flannel. 13:37:18

5 But if I took a string of polyester from a bed 13:37:20

6 sheet, is that a filament? 13:37:31

7 A. I think in the ordinary meaning of terms, it 13:37:36

8 would be a filament. 13:37:38

9 Q. And is it your testimony that a bed sheet made 13:37:40

10 from those polyester strings is not a filament? 13:37:44

11 A. If it's the size of a queen-sized bed, I would 13:37:50

12 not consider that a filament. 13:37:54

13 Q. And so what distinguishes the string of 13:37:57

14 polyester from the bed sheet in determining whether the 13:38:00

15 bed sheet is a filament or not? 13:38:05

16 A. The relative size of the length and the width. 13:38:09

17 Q. Okay. So, you need something that is long and 13:38:12

18 thin to be a filament, correct? 13:38:16

19 MR. BELAIR: Misstates the testimony. 13:38:18

20 THE WITNESS: I think that's part of the 13:38:24

21 ordinary meaning of filament, would be long and thin. 13:38:27

22 BY MR. KEESE: 13:38:32

23 Q. Okay. 13:38:32

24 A. But it depends what dimensions we're talking 13:38:32

25 about too. 13:38:35

1	Q. Does a filament have to be flexible?	13:38:51
2	A. I think in the ordinary meaning of filament,	13:39:03
3	it has flexibility.	13:39:06
4	Q. Okay. So, is a rubber band a filament under	13:39:07
5	your construction?	13:39:17
6	A. I think it could be.	13:39:30
7	Q. Okay.	13:39:31
8	A. It's a polymer or a synthetic.	13:39:32
9	Q. What about a plastic clip like this, is it a	13:39:40
10	filament?	13:39:44
11	A. I would not consider it a filament.	13:39:44
12	Q. What about a paperclip? Is a paperclip a	13:39:48
13	filament?	13:39:52
14	A. If it were extended into its full length, and	13:39:58
15	if it were flexible, it could be considered a filament.	13:40:05
16	Q. Okay. What about a soft plastic, like a spool	13:40:11
17	of 3D printer ink; is that a filament?	13:40:14
18	A. I'm not sure what -- what your meaning is.	13:40:18
19	Q. Have you ever dealt with a 3D printer?	13:40:21
20	A. I've 3D printed some parts, yes.	13:40:25
21	Q. And so the material that's used to 3D print,	13:40:29
22	that's a soft plastic, correct?	13:40:33
23	A. It starts out --	13:40:37
24	Q. Okay.	13:40:38
25	A. -- that way.	13:40:39

1 Q. And while it's still soft -- right, it hardens 13:40:40
2 eventually, correct? 13:40:44
3 And so if I took a strand of that 3D printer 13:40:45
4 material, while it was still soft, is that a filament? 13:40:49
5 MR. BELAIR: Objection, vague. 13:40:54
6 THE WITNESS: For the purposes of this, '21, I 13:40:55
7 would probably say no. 13:40:58
8 BY MR. KEESE: 13:41:00
9 Q. And why? 13:41:00
10 A. For the purposes of this patent, the filament 13:41:01
11 would need some axial -- minimal axial elongation. 13:41:06
12 Q. Okay. And, certainly, if you took some of 13:41:16
13 that 3D printer material and formed it into an arc and 13:41:45
14 let it cure and harden, that wouldn't be a filament, 13:41:52
15 correct? 13:41:55
16 MR. BELAIR: Objection, vague. 13:41:56
17 THE WITNESS: Yeah, I don't know. 13:41:58
18 BY MR. KEESE: 13:42:00
19 Q. And why do you not know whether it would be a 13:42:08
20 filament? 13:42:11
21 A. I think it would be important to know the 13:42:14
22 mechanical characteristics of the -- of the finished 13:42:16
23 part. 13:42:24
24 Q. What mechanical characteristics would you need 13:42:26
25 to know about the finished part to determine whether 13:42:28

1 that hardened U of plastic was a filament or not? 13:42:32

2 MR. BELAIR: Objection, vague. 13:42:39

3 THE WITNESS: Can you repeat the question? 13:42:44

4 BY MR. KEESE: 13:42:45

5 Q. Yeah. So, we were talking about a 3D-printed 13:42:46

6 part, where the plastic has now hardened, right? It's 13:42:52

7 formed an arc, and now it's hardened, right? 13:43:00

8 A. Okay. 13:43:03

9 Q. And I asked whether that would be a filament, 13:43:03

10 and you said you would need to know the mechanical 13:43:08

11 characteristics of the finished part. 13:43:11

12 And so now my question is, what mechanical 13:43:14

13 characteristics would you need to know about that 13:43:18

14 finished part to determine whether that hardened plastic 13:43:21

15 was a filament or not? 13:43:28

16 A. I think, really, the -- the rigidity. 13:43:31

17 Q. Uh-huh. So, if it was quite rigid, it 13:43:36

18 wouldn't be a filament? 13:43:44

19 MR. BELAIR: Objection, vague. 13:43:45

20 THE WITNESS: It would be a range. 13:43:46

21 BY MR. KEESE: 13:43:47

22 Q. Okay. 13:43:47

23 A. Yeah, it depends on the definition of 13:43:47

24 rigidity, but I think the -- some level of flexibility 13:43:54

25 would be the common definition of a filament. 13:44:04

1	Q. If I could have you look at paragraph 18 and	13:44:15
2	19 of your declaration?	13:44:26
3	A. Did you say page 18?	13:44:37
4	Q. Paragraph 18 and 19.	13:44:40
5	A. Yes.	13:45:05
6	Q. Okay. And in paragraph 18 and 19, you set	13:45:06
7	forth your understanding of the law regarding claims of	13:45:12
8	obstruction; is that correct?	13:45:16
9	A. Yes.	13:45:17
10	Q. And where did you get that understanding?	13:45:18
11	MR. BELAIR: I'll just caution the witness not	13:45:21
12	to reveal the contents of any communications that he had	13:45:23
13	with counsel.	13:45:27
14	THE WITNESS: These were my understandings	13:45:28
15	from counsel.	13:45:32
16	BY MR. KEESE:	13:45:33
17	Q. Okay. So, counsel provided you with that	13:45:34
18	legal framework, correct, without revealing their	13:45:37
19	specific communication?	13:45:39
20	A. Yes.	13:45:41
21	Q. Okay.	13:45:42
22	A. I didn't write it.	13:45:43
23	Q. Yeah. So, you don't know whether that	13:45:44
24	recitation of the law of claim construction is complete,	13:45:46
25	correct?	13:45:50

1	A. I believe they used the word "plastic" and	15:05:28
2	"metal."	15:05:31
3	Q. Okay.	15:05:31
4	A. It's not in quotes in line 20.	15:05:35
5	Q. Okay.	15:05:42
6	A. I could find it in the patent if you'd like.	15:05:42
7	Q. Well, if you -- if it says polymer, certainly,	15:05:45
8	please do point it out in the patent.	15:05:48
9	A. Polymers are a plastic.	15:05:52
10	Q. You would agree that some polymers are rigid,	15:05:59
11	correct?	15:06:02
12	A. Rigidity has a wide range. How rigid? Are we	15:06:09
13	talking I-beams? Or --	15:06:15
14	Q. So, some plastics are more rigid than you	15:06:18
15	would consider a filament, correct?	15:06:22
16	MR. BELAIR: Vague.	15:06:24
17	THE WITNESS: There are hard plastics used for	15:06:26
18	machining, machining plastics, that wouldn't probably be	15:06:29
19	appropriate as a filament, depending on the size and the	15:06:36
20	rigidity of the material.	15:06:43
21	BY MR. KEESE:	15:06:54
22	Q. Such as a 3D-printed filament when it hardens?	15:06:55
23	MR. BELAIR: Vague.	15:06:59
24	THE WITNESS: Yeah, I don't know.	15:07:03
25	///	15:07:18

1 BY MR. KEESE: 15:07:18

2 Q. And you said that plastic that would be 15:07:18

3 machined would be rigid, correct? 15:07:22

4 A. I think that's a fair statement. 15:07:29

5 Q. Do you know whether Schaffer discloses that 15:07:32

6 the U-shaped actuated members are machined from plastic? 15:07:37

7 A. I don't remember that. 15:07:42

8 Q. Okay. All right. I think we already marked 15:07:43

9 Garrison; is that correct? 15:08:02

10 MR. BELAIR: Yeah. 15:08:06

11 MR. KEESE: So, I think we accidentally 15:08:10

12 previously marked it as Deposition Exhibit 7, but it 15:08:12

13 should be Deposition Exhibit 12, and I think it says 15:08:15

14 Exhibit 29 on the front. 15:08:19

15 And, Nick, if you don't mind, can I adulterate 15:08:20

16 that one to say Deposition Exhibit 12 on the front? 15:08:24

17 MR. BELAIR: Yeah, let's make it correct. 15:08:27

18 THE WITNESS: Garrison, 3782 -- 15:08:29

19 MR. BELAIR: This is why we should just use 15:08:31

20 the Exhibit Numbers that you originally assigned to 15:08:33

21 everything. 15:08:35

22 29, it's right there. 15:08:36

23 MR. KEESE: Okay. 15:08:39

24 BY MR. KEESE: 15:08:42

25 Q. So, Mr. Thornton, I've now handed you what has 15:08:42

1	been marked as Deposition Exhibit 12, which we	15:08:45
2	previously looked at, which is Garrison. And can you	15:08:48
3	verify for the record that on the front, it says	15:08:55
4	Exhibit 29, and it has document filing number -- it	15:08:58
5	should be 24-36.	15:09:11
6	A. Yes, 24-36.	15:09:16
7	Q. Yeah. Okay, great. And, obviously, you	15:09:18
8	discussed this Garrison reference in your declaration;	15:09:25
9	is that correct?	15:09:29
10	A. Yes.	15:09:30
11	Q. When did you learn about this Garrison	15:09:32
12	reference?	15:09:36
13	A. At the beginning of the process, working with	15:09:41
14	counsel.	15:09:43
15	Q. Okay. So, you received it from counsel,	15:09:44
16	without revealing any particular communications?	15:09:48
17	A. Yes.	15:09:50
18	Q. Okay. And we previously discussed that you	15:09:51
19	don't opine that Garrison anticipates the claims of the	15:10:02
20	'910 patent; is that correct?	15:10:08
21	A. That Garrison and Laub together render the	15:10:10
22	claims invalid.	15:10:14
23	Q. Okay. So, you've offered an obviousness	15:10:15
24	opinion involving Garrison and Laub but not an	15:10:18
25	anticipation opinion based upon Garrison?	15:10:25

1 I, MICHAEL C. ROWELL, a Certified Shorthand
2 Reporter of the State of California, duly authorized to
3 administer oaths, do hereby certify:

4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth; that
6 any witnesses in the foregoing proceedings, prior to
7 testifying, were duly sworn; that a record of the
8 proceedings was made by me using machine shorthand which
9 was thereafter transcribed under my direction; that the
10 foregoing transcript is a true record of the testimony
11 given.

12 Further, that if the foregoing pertains to the
13 original transcript of a deposition in a Federal Case,
14 before completion of the proceedings, review of the
15 transcript was requested.

16 I further certify I am neither financially
17 interested in the action nor a relative or employee of
18 any attorney or party to this action.

19 WITNESS WHEREOF, I have this date subscribed
20 my name.

21 Dated: October 3, 2024

22
23 

24
25 MICHAEL ROWELL, RDR, CRR, CSR NO. 13494