

United States District Court,
D. Delaware.

MEDTRONIC VASCULAR, INC. and Medtronic USA, Inc,
Plaintiffs.

v.

ADVANCED CARDIOVASCULAR SYSTEMS, INC. and Guidant Sales Corp,
Defendants.

No. Civ.98-80-SLR

Jan. 5, 2005.

Karen Jacobs Loudon, Philip Henry Bangle, Morris, Nichols, Arsht & Tunnell, Patricia Smink Rogowski Connolly, Bove, Lodge & Hutz, Wilmington, DE, for plaintiffs.

Frederick L. Cottrell, III, Richards, Layton & Finger, Wilmington, DE, for defendants.

MEMORANDUM ORDER

ROBINSON, J.

At Wilmington this 5th day of January, 2005, having heard oral argument and having reviewed the papers submitted in connection with the parties' proposed claim construction;

IT IS ORDERED that the disputed claim language in U.S. Patent Nos. 5,514,154 ("the '154 patent"), 5,603,721 ("the '721 patent"), 5,735,893 ("the '893 patent"), 6,056,776 ("the '776 patent"), 6,066,167 ("the '167 patent"), 6,066,168 ("the '168 patent") and 6,432,133 ("the '133 patent") as identified by the above referenced parties, shall be construed consistent with the tenets of claim construction set forth by the United States Court of Appeals for the Federal Circuit, as follows:

1. "Longitudinally flexible stent." Consistent with its ordinary meaning FN1 and the specification, the court construes "longitudinally flexible stent" to mean "a stent that is flexible along its longitudinal axis (i.e.length) to facilitate delivery through tortuous body lumens." FN2

FN1. *See* American Heritage Dictionary 741 (2d ed.1984) (defining "longitudinal" as "of or pertaining to length"); *id.* at 513 (defining "flexible" as "capable of being bent or flexed; pliable").

FN2. Plaintiffs argue that "to facilitate delivery through tortuous body lumens" is an unnecessary restriction. However, the intrinsic evidence supports the conclusion that having longitudinal flexibility alone is not enough to meet the restrictions of the Lau design; a stent must be flexible enough to be delivered through "tortuous body lumens" before it will be considered to meet the "longitudinally flexible" limitation of the

Lau patents.

2. "Cylindrical element," "cylindrically shaped element," and "cylindrical ring." Consistent with the patents at issue FN3 and their prosecution history, FN4 the court construes these terms to mean "a radially expandable segment of a stent having a longitudinal length less than its diameter with a circumferential undulating pattern." FN5 Furthermore, cylindrical rings are not in and of themselves, stents." FN6

FN3. *See, e.g.*, '154 patent, col. 2, l. 67; col. 3, ll. 1-4; col. 5, ll. 44-51, 61-67; col. 6, ll. 8-16

FN4. D.I. 438 at 1535, 1539-40

FN5. The court has construed "undulating pattern" to mean "a wavelike pattern that includes any combination of U-shaped, W-shaped or Y-shaped members." Defendants argue that the references to U-shaped, Y-shaped or W-shaped members in the written description refer only to a preferred embodiment. However, during the prosecution of the patent, the patentee continuously refers to these shaped structures in describing his invention and distinguishing it from others. Therefore, based on the prosecution history it is evident that, despite the references to the preferred embodiment in the written description, the patentee thought the cylindrical elements were defined by these shaped structures.

FN6. Plaintiffs argue that the last sentence is not necessary. In light of the prosecution history, it is apparent that Lau disclaimed using the cylindrical elements as "stand-alone" stents. (D.I. 438 at 1539-40)

3. "Independently expandable in the radial direction." Consistent with the ordinary meaning to one of ordinary skill in the art and the patents at issue, FN7 the court construes this phrase to mean "each cylindrical element is relatively independently expandable with respect to each adjacent cylindrical element."

FN7. *See, e.g.*, '154 patent, col. 1, ll. 60-62; col. 4, ll. 52-55.

4. "Connecting elements," "connecting members," "interconnecting elements" and "struts for connecting." Consistent with the specifications of the patents at issue FN8 and their prosecution history, FN9 the court construes these phrases to mean "segments of a stent that extend between adjacent cylindrical elements, connecting them together."

FN8. D.I. 438 at 1535; D.I. 467, Ex. 46 at 1919.

FN9. *See, e.g.*, '154 patent, col. 1, ll. 64-66; col. 2, ll. 1-6, 57-67.

5. "Interconnected," "connected together," "connected" and "attaching/attaches/attached." Consistent with its

ordinary meaning, the court construes these phrases to mean "connected."

6. "Weld connection." Consistent with the asserted claim at issue,FN10 the specification FN11 and the prosecution history,FN12 the court construes "weld connection" to mean "a weld."

FN10. '168 patent, claim 1, col. 8, ll. 42-45.

FN11. '168 patent, col. 2, ll. 65-67; col. 3, ll. 1-5.

FN12. D.I. 467 at 1903-1920, 2093, 2098.

7. "Generally parallel connecting elements." Consistent with Federal Circuit precedent,FN13 the court construes this phrase to mean "two or more connecting elements that are generally parallel to each other."

FN13. *See* *Advanced Cardiovascular Systems, Inc., et al. v. Scimed Life Systems, Inc. et al.*, 261 F.3d 1329 (Fed.Cir.2001).

8. "Outwardly projecting edges," and "projecting edges." Consistent with the patents at issue FN14 and their prosecution history,FN15 the court construes "outwardly projecting edges" to mean "portions of the U-shaped, Y-shaped or W-shaped members that tip outwardly during expansion, resulting in projections on the outer surface of the expanded stent."

FN14. *See, e.g.*, '154 patent, col. 2, ll. 46-51; col. 4, ll. 10-12; col. 6, ll. 17-26; col. 8, ll. 14-23.

FN15. D.I. 438 at 1537.

9. "Without appreciable shortening." Consistent with the prosecution history,FN16 the court construes "without appreciable shortening" to mean "the stent does not substantially shorten upon expansion."

FN16. D.I. 438 at 1530-31, 38-39.

10. "Undulating pattern," and "undulating portion." Consistent with its ordinary meaning,FN17 the patents at issue FN18 and their prosecution history,FN19 the court construes these phrases to mean "a wavelike pattern that includes any combination of U-shaped, W-shaped or Y-shaped members."

FN17. *See* *American Heritage Dictionary* 1318 (2d ed.1984).

FN18. *See, e.g.*, '154 patent, col. 2, ll. 67; col. 3, ll. 1-4; col. 5, ll. 44-51, 61-67; col. 6, ll. 8-16.

FN19. D.I. 438 at 1535, 1539-40.

D.Del.,2005.

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