UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

INARI MEDICAL, INC.,	) Case No.
	) 4:24-cv-03117-EKL
Plaintiff,	)
	)
vs.	)
	)
IMPERATIVE CARE, INC.,	)
	)
Defendant.	)
	)

DEPOSITION OF

TROY THORNTON

Volume I

Monday, September 30, 2024

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NCRA Registered Diplomate Reporter
NCRA Certified Realtime Captioner

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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