

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
25 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
4 that a filament?

13:35:33

13:35:40

5 A. I do believe that that's the common term used
6 in fabric making, are filaments. Yeah, a filament of
7 cotton or polyester would be considered a filament for
8 the purposes of making a bed sheet.

13:35:46

13:35:49

13:35:55

13:36:01

9 Q. What about for the purpose of the '921 patent?
10 Is a string such -- of fabric, such as one found in a
11 bed sheet, is that a filament?

13:36:03

13:36:07

13:36:15

12 A. It could be if it were a polymer strong enough
13 to perform the functions that are required for the
14 device.

13:36:17

13:36:21

13:36:25

15 Q. Is it your testimony that a filament has to be
16 a polymer?

13:36:35

13:36:37

17 MR. BELAIR: Objection, misstates.

13:36:38

18 THE WITNESS: No, as I think the patent itself
19 says a polymer is synthetic or metal.

13:36:42

13:36:46

20 BY MR. KEESE:

13:36:49

21 Q. Doesn't the patent say it can be formed from a
22 range of materials; for example, a polymer, a synthetic,
23 or a metal?

13:36:50

13:36:52

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

CONTAINS CONFIDENTIAL INFORMATION

Transcript of Troy Thornton
Conducted on September 30, 2024

123

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
2 eventually, correct?

3 And so if I took a strand of that 3D printer
4 material, while it was still soft, is that a filament?

5 MR. BELAIR: Objection, vague.

6 THE WITNESS: For the purposes of this, '21, I
7 would probably say no.

8 BY MR. KEESE:

9 Q. And why?

10 A. For the purposes of this patent, the filament
11 would need some axial -- minimal axial elongation.

12 Q. Okay. And, certainly, if you took some of
13 that 3D printer material and formed it into an arc and
14 let it cure and harden, that wouldn't be a filament,
15 correct?

16 MR. BELAIR: Objection, vague.

17 THE WITNESS: Yeah, I don't know.

18 BY MR. KEESE:

19 Q. And why do you not know whether it would be a
20 filament?

21 A. I think it would be important to know the
22 mechanical characteristics of the -- of the finished
23 part.

24 Q. What mechanical characteristics would you need
25 to know about the finished part to determine whether

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

CONTAINS CONFIDENTIAL INFORMATION

Transcript of Troy Thornton
Conducted on September 30, 2024

168

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

CONTAINS CONFIDENTIAL INFORMATION

Transcript of Troy Thornton
Conducted on September 30, 2024

169

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

CONTAINS CONFIDENTIAL INFORMATION

Transcript of Troy Thornton
Conducted on September 30, 2024

226

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