

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

IMPERATIVE CARE, INC.,
Petitioner,

v.

INARI MEDICAL, INC.,
Patent Owner

IPR2025-00289
Patent 11,554,005 B2

Record of Oral Hearing
Held: April 16, 2026

Before JEFFREY N. FREDMAN, ERIC C. JESCHKE, and TIMOTHY G.
MAJORS, *Administrative Patent Judges*.

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The above-entitled matter came on for hearing on April 16, 2026,
commencing at 9:00 a.m., via video teleconference.

P R O C E E D I N G S

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JUDGE MAJORS: Thank you. Good morning, everyone. As Judge Fredman just said, this is Judge Majors and with us on the panel as well, Judge Jeschke. This is the final oral hearing in IPR2025-00289 concerning U.S. Patent Number 11,554,005.

Our parties are Imperative Care Inc., as the Petitioner, and Patent Owner is Inari Medical Inc. We have a court reporter present. There will be a transcript prepared that will be available in due course. Petitioner's Counsel, would you kindly identify who is appearing today for your side and who will be doing the speaking?

MR. STOWELL: Good morning, Your Honors. Joshua Stowell of Knobbe Martens on behalf of the Petitioner, Imperative Care, Inc. I will be arguing on behalf of the Petitioner today. Joining me at counsel's tables is my colleague, Brian Barnes.

JUDGE MAJORS: Thank you. And Patent Owner's Counsel, the same.

MR. HAMILTON: Good morning, Your Honors, Joseph Hamilton from Perkins Coie on behalf of Patent Owner. A representative from real party in interest Stryker Corporation, Merle Elliott is on the public viewing link and there may be others as well.

JUDGE MAJORS: All right. Welcome. So as set forth in our order setting the oral hearing, each side is going to have 60 minutes today to present its argument. We're going to do our best on the panel side to track the time, but I would suggest the parties try to track their time as well.

1 Petitioner, as you bear the burden of proof, you're going to present your
2 arguments first. Would you like to reserve any rebuttal time, Petitioner?

3 MR. STOWELL: Yes, Your Honor. I'd like to reserve 20 minutes
4 of rebuttal time.

5 JUDGE MAJORS: Very well. And Mr. Hamilton, would you like
6 to reserve any rebuttal time?

7 MR. HAMILTON: Yes, Your Honor. Also, 20 minutes.

8 JUDGE MAJORS: Thank you. Okay. The hearing is open to the
9 public, and as you noted, there's an open public phone line. And although I
10 don't believe there's any confidential information in this case that would
11 raise any concerns, the panel has access to the record. We also have your
12 demonstratives.

13 As you make your presentations today, please do your best to refer
14 to the demonstratives by page number so we can follow along and so the
15 record is clear. If during the presentation of your argument today you notice
16 a technical problem, just please bring that to our attention and we'll see if we
17 can get that sorted out.

18 So with all that, Mr. Stowell, we're going to put 40 minutes on the
19 clock. You can go into your rebuttal time if you need to or you want to.
20 And you can begin whenever you're ready.

21 MR. STOWELL: Well, thank you, Your Honors, and may it
22 please the panel, Josh Stowell, on behalf of the Petitioner Imperative Care.
23 Petitioner has prepared a set of demonstratives that were filed as Exhibit
24 1051 in this matter. And I'll refer to those demonstratives as I go through
25 my presentation today.

26 At Slide 2 of the demonstratives, there's just a brief overview. And

1 I plan to focus my arguments today on issues that the panel has not
2 previously decided. This panel has already issued two final written
3 decisions and made a number of findings of fact. I don't plan to reargue
4 those issues.

5 So I will focus my discussion today on Grounds 2 through 3,
6 which is the Garrison plus Schaffer plus Hartley or Eller grounds. I will also
7 briefly talk about Ground 4 as it relates to Claim 10 because that presents a
8 unique issue. And those are the two issues that I spent -- plan to spend most
9 of my time on today.

10 If we turn to Slide 4, the grounds that were raised in this IPR are
11 listed there. And again, I'm going to focus on Grounds 2 and 3, which cover
12 all of the challenged claims in this IPR, Claims 1 through 15. On Slide 5,
13 we've listed the issues that are in dispute with respect to Grounds 2 through
14 3, and there are only two real issues in dispute.

15 First is the first bullet point. Patent Owner has argued that
16 Garrison does not disclose an on-off control in the flow path. And their
17 argument is that Claim 1 and Claim 10 of the '005 Patent require an on-off
18 control to be in the same housing as the hemostasis valve. And so we'll go
19 through that in a minute.

20 This is a new argument that was introduced for the first time in the
21 Patent Owner response. So the institution decision did not deal with it, and
22 the Court has not previously addressed this in any of its final written
23 decisions. The other issue that's raised with respect to Grounds 2 through 3
24 has been discussed at length by the Board in the recent final written
25 decisions.

26 And that's whether a person of ordinary skill in the art would've

1 been motivated to combine Schaffer with Hartley and Eller. And we've
2 discussed this in two oral arguments. The Board has provided detailed
3 findings of fact and final written decisions regarding that motivation to
4 combine.

5 The Board has found that the evidence supports a motivation to
6 combine. Here, the parties have supplied the same evidence and same
7 arguments that were raised in the 011 and 012 IPRs. And so, I don't plan to
8 re-cover that today. I have slides if there are questions, but I think the Board
9 -- that's well-trodden territory.

10 JUDGE MAJORS: Mr. Stowell, can I interrupt you for just one
11 moment?

12 MR. STOWELL: Sure.

13 JUDGE MAJORS: So we now have two final written decisions
14 where we have construed the filament term and it's several iterations,
15 whether including a loop or not including a loop. And I ask this question not
16 to suggest that you acquiesce or the Petitioner acquiesces to what we said in
17 the other two final written decisions, but just to ask whether you think there's
18 something additional that the Board needs to cover with respect to the claim
19 construction argument as it concerns the filament?

20 MR. STOWELL: I don't think there's been any additional
21 evidence or argument submitted in this IPR that the Board has not already
22 considered regarding the construction of filament. And so I don't believe
23 there's anything additional for the Board to consider in this IPR.

24 JUDGE MAJORS: Okay, thank you.

25 MR. STOWELL: On Slide 7, we've identified a number of issues
26 that are not in dispute, which is always helpful in this IPR. There's no

1 dispute that the Hartley and Eller references disclose the filament that we
2 were just talking about, that that filament extends around a tubular member
3 and forms a loop.

4 There's also no dispute regarding the motivations to combine
5 Garrison, which is the aspiration system reference with Schaffer's valve,
6 either as modified by Hartley or Eller alone. So there's no dispute that
7 there's a motivation to combine. Patent Owner hasn't raised any unique
8 arguments regarding the dependent claims.

9 There is no dispute that Petitioner's references qualify as prior art,
10 and Petitioner -- or Patent Owner has not submitted any evidence of
11 secondary considerations. If we turn to Slide 8, there's also no dispute about
12 the qualifications of a person of ordinary skill in the art.

13 On Slide 8, we have an excerpt from Patent Owner's response
14 where it adopts Petitioner's definition for purposes of this IPR. There is one
15 housekeeping matter. If we turn to Slide 9, independent Claim 1 requires the
16 hemostasis valve, and the Board's dealt with that, and the hemostasis valve
17 must have a filament according to the claim.

18 And if we turn to Slide 11, the '005 Patent does not describe the
19 valve with the filament. It describes a valve 106, and then it purports to
20 incorporate by reference another patent application that describes hemostasis
21 valves. We've referred to that in this IPR as the 591 application, and I may
22 refer to that during the hearing today.

23 If we turn to Slide 12, the Board will be very familiar with the
24 written description or the specification of the '519 application because it is
25 identical to the '011 Patent and the '012 Patent that the Board has already
26 issued final written decisions on. So just for nomenclature today, if I refer to

1 the '519 application, that's why I'm referring to it.

2 So I'm going to start at Slide 14 and discuss this issue relating to
3 the on-off control. And the first issue is that there is no dispute that Garrison
4 discloses an on-off control. We have included on Slide 14 the portion
5 paragraph 132 of Garrison which describes valve 3325, and the valve is used
6 to control whether the pressure source is connected to one of the aspiration
7 catheters, both of the aspiration catheters, or none of the aspiration catheters.

8 And we asked Patent Owner's expert Dr. Zalesky about this
9 disclosure during his deposition. I'm going to refer to his deposition
10 frequently today because it's enlightening. It's Exhibit 1042, and I'm
11 specifically at page 121 of his deposition transcript line 9.

12 He was asked, question, "Would you agree that Garrison's Figure
13 34 includes an on-off valve that is identified as reference number 3325?"
14 Answer, "Yes, that is what is depicted." So there's no dispute we have an on-
15 off control in Garrison. Moving to Slide 15, we can see on the left-hand side
16 we have Claim 1 of the '005 Patent.

17 It requires a housing. And if we read further down into the claim,
18 we see that the hemostasis valve is in the housing. And so that tells us what
19 housing we're discussing. And if we look at Garrison Figure 34, Mr.
20 Thornton has offered the opinion that the proximal adapter at the end of
21 catheter 2030 is a housing.

22 And the patent discloses that that housing includes a hemostasis
23 valve. If we go to Slide 16, we have the portion of Garrison that discloses
24 that proximal adapter, and it explains that the proximal adapter can have a
25 separate hemostasis valve attached or it can have an integral hemostasis
26 valve with it.

1 And again, we asked Patent Owner's expert Dr. Zalesky at Exhibit
2 1042, page 119, line 15 about this. And the question was, "Do you agree
3 that the portion of Garrison's system circled in yellow includes a hemostasis
4 valve within a proximal adapter?" Answer, "Yes."

5 To use his written description, that would be either a Tuohy-Borst
6 or a passive seal valve. So we have an on-off control, we've got a
7 hemostasis valve within a housing, and there's no dispute. And if we look at
8 Slide 17, we can see that the construction of the embodiments in the '005
9 Patent on the left-hand side is an excerpted portion of Figure 1 from the '005
10 Patent that's been annotated by Dr. Zalesky.

11 He identifies the hemostasis valve. We can see a housing that
12 surrounds the valve and there's a Y-arm or a connector that comes off the
13 hemostasis valve that goes to the tubing. And then the tubing continues to
14 the on-off control. The same setup is present in Garrison.

15 We have the proximal adapter, it has a connector that comes off of
16 the proximal adapter. Goes to tubing, the tubing then continues to --

17 JUDGE FREDMAN: Well, kind of interestingly, it doesn't
18 actually use the word housing for 106 though, does it?

19 MR. STOWELL: Sorry, what was your question, Your Honor?

20 JUDGE FREDMAN: In the patent, in the '005 Patent, it doesn't
21 actually use the word housing for 106, right?

22 MR. STOWELL: You're --

23 JUDGE FREDMAN: So Figure 21, I think.

24 MR. STOWELL: You're absolutely correct. The '005 Patent does
25 not describe or use the term housing in connection with a hemostasis valve.
26 The '519 application does describe a hemostasis valve that has a housing.

1 But you're correct, the '005 Patent does not explicitly identify what feature in
2 the patent is the housing. Yes.

3 So if we turn to Slide 18, the next limitation is a flow path
4 extending through the housing. And Mr. Thornton has identified by little
5 red dots the flow path that the blood takes in the Garrison system. And it
6 goes through the catheter, it goes through the housing, out the connector,
7 through the tubing to the on-off control and the other elements of the device.
8 And that's the flow path.

9 And again, we asked Patent Owner's expert Dr. Zalesky at Exhibit
10 1042, page 118, line 13. Question, "Did you agree that in Figure 34 there is
11 a flow path that runs from the aspiration source to the aspiration catheter
12 2030?" Answer, "Yes." So we agree there's a flow path.

13 If we turn to Slide 19, we see the portions of Garrison that describe
14 that the tubing between the proximal adapter and the on-off control is part of
15 the system that creates that flow path. The catheter is connected to the
16 pressure sources via the flow lines.

17 And again, we asked Dr. Zalesky about this during his deposition
18 at page 118 line 17. Question, "Do you agree that the flow path would run
19 through the tubing that is identified as reference number 2045?" Answer, "In
20 this figure, yes." So again, we have an agreement about where the flow path
21 is going.

22 It's going from the pressure source, through tubing 2045, through
23 the hemostasis valve -- or through the proximal adapter to the catheter. And
24 if we look at Slide 20, again, we see that the construction of the figures in
25 the '005 Patent are consistent with the structure of Garrison.

26 On the left-hand side is a drawing that was annotated by Dr.

1 Zalesky, Patent Owner's expert. It's Figure 1 of the '005 Patent. And there
2 he identifies a flow path in blue. We can see that it exits the housing where
3 the hemostasis valve, it goes through connector 108, through the tubing, and
4 through the on-off control.

5 And then Dr. Zalesky draws it going to the pressure source. And
6 that same flow path exists in Garrison. The flow path exits the proximal
7 adapter, which is the housing, it goes into the tubing, proceeds to the on-off
8 control and all the way to the pressure source.

9 Finally, if we go to Slide 21, we see that Garrison discloses an on-
10 off control in the flow path. The flow path is identified in red, it goes
11 directly through the on-off control. And the on-off control determines
12 whether the flow path is connected to the pressure source or not.

13 Turning to Slide 22, again, we see the similarities between Dr.
14 Zalesky's drawing that he put in his expert report in his supplemental
15 declaration in Garrison. And of course, we asked him about the drawing and
16 his annotations to that drawing during his deposition. I'm at page 47 of his
17 deposition, which is Exhibit 1042.

18 And he was asked, question, "In the annotated version of Figure 1
19 on page 14 of your supplemental declaration, you added a blue line to
20 illustrate the flow path extending through a housing, correct?" Answer,
21 "Yes." Question, "In your annotated version of Figure 1, you identified the
22 component labeled with number 126 as an on-off control, correct?" Answer,
23 "Yes."

24 Question, "You stated that the component 126 is an on-off control
25 that is in the flow path in paragraph 36, correct?" Answer, "Yes." And if we
26 fast forward to page 48 of the deposition, line 6, "Why do you believe that

1 the valve 126 is in the flow path?" Answer, "The patent describes that
2 configuration."

3 So we have an on-off control in the flow path in Figure 1, and we
4 have an on-off control in the flow path in Garrison Figure 34. Now, despite
5 those admissions by Dr. Zalesky, if we turn to Slide 23, we can see Patent
6 Owner's argument from the surreply.

7 And Patent Owner argues that Claim 1 requires the on-off control
8 and the hemostasis valve to be in the same housing. And this is the basis
9 upon which Patent Owner tries to distinguish Garrison. Now, the problem
10 with this is that there are no embodiments and there's no description in the
11 '005 Patent or the '519 application that describe an on-off control in the same
12 housing as the hemostasis valve.

13 In fact, the figure show as we just saw in Figure 1 that the on-off
14 control is not in the same housing, it's separated by tubing. And we asked
15 Dr. Zalesky about this during his deposition, Exhibit 1042 page 73 line 1.
16 Question, "You would agree that none of the figures in the '005 Patent
17 disclose an on-off control located in the same housing as a hemostasis valve,
18 correct?"

19 And he says, "I would have to look at all the other figures we didn't
20 address this morning." Question, "Please do so." After he looks at the
21 figures, answer, "I am not seeing any figures that clearly depict an on-off
22 control switch within the housing."

23 JUDGE MAJORS: Mr. Stowell?

24 MR. STOWELL: Yes.

25 JUDGE MAJORS: In the system, if you already have a hemostasis
26 valve in the housing, can you think of any reason why you would also need

1 or you'd want a separate on-off control in the housing as well?

2 MR. STOWELL: I personally cannot think of any reason why you
3 would want them in the same housing. And I've thought about that, but they
4 serve different purposes and there's no reason why, certainly why they
5 would have to be in the same housing. I'm not aware of any. And the patent
6 doesn't describe that.

7 JUDGE MAJORS: One additional question before you get back to
8 your presentation. Patent Owner in their response makes an argument
9 concerning the Prosecution history and what the Examiner may have cited in
10 a reference as satisfying the on-off control as being, for lack of a better
11 description, being part of that housing. Do you agree with Patent Owner's
12 characterization of that Prosecution record?

13 MR. STOWELL: We do not agree. And I'm happy to talk about
14 that. What's described in that patent is you have an on-off control, you have
15 a proximal extension. And at the end of the proximal extension you have a
16 hemostasis valve. And that Garrison reference describes that the proximal
17 extension, that tubing between them is 10 to 25 centimeters long.

18 So clearly the on-off control in that Garrison reference is not in the
19 same housing as the hemostasis valve. They are separated by a great
20 distance of tubing. So we disagree with that characterization.

21 JUDGE MAJORS: Okay, thank you.

22 MR. STOWELL: So there are no, and we -- I read the deposition
23 transcript, there's no figures that identify a hemostasis valve in the same
24 housing as an on-off control. And the claims don't support this construction
25 either. If we go to Slide 24, the claims are clear about what is in the
26 housing, right? The claims say a hemostasis valve in the housing.

1 The claims do not say that the on-off control is in the housing. It
2 would've been very easy to write the claim that way if that was the intention,
3 but it's not. What the claims say is that there is an on-off control in the flow
4 path. And if we go to Slide 25, again, I won't belabor Dr. Zalesky's expert
5 declaration too much, but again, he, in paragraph 36, he describes Figure 1
6 of the '005 Patent, which again is very similar to Garrison Figure 34.

7 And he says that the '005 Patent shows an aspiration system with a
8 flow path extending through a housing a valve 126 in the flow path. And we
9 wanted to be clear that we understood what the housing was. So on Figure 1
10 here on Slide 25, I've circled hemostasis valve 106.

11 And during his deposition at Exhibit 1042, page 48, line 15, we
12 asked him, question, "Can you identify where in Figure 1 the housing that
13 you are referring to is?" Answer, "It is in the vicinity of 106." Question,
14 "Does that housing in 106 include a hemostasis valve?" Answer, "As shown
15 the hemostasis valve is to the right of the housing but could be incorporated
16 as well."

17 Question, "You would agree with me that in Figure 1 of the '005
18 Patent, the valve 126 is not in the housing 106, correct?" Answer, "That
19 appears to be the case." Question, "The valve 126 is connected to the
20 housing 106 by tubing, correct?" Answer, "Yes."

21 And if we turn to Slide 26, we see Dr. Zalesky's testimony that he
22 believes Claim 1 of the '005 Patent covers Figure 1 of the '005 Patent. He
23 was asked question, "Does Claim 1 of the '005 Patent cover the system that
24 is shown in Figure 1 of the '005 Patent?" Answer, "I believe so."

25 And obviously we were confused at this point because he'd taken
26 inconsistent positions. So on Slide 27, we asked him additional questions,

1 and he confirmed that the hemostasis valve does not need to be in the same
2 housing as the on-off control.

3 He was asked, question, "You are construing Claim 1 to require
4 that the on-off control is in the housing, correct? Answer, "No. That is one
5 option. It is not constrained to that." Question, "What are the other
6 options?" Answer, "In the flow path but not in the housing."

7 Question, "So it is your opinion that the on-off control recited in
8 Claim 1 does not need to be in the housing? Is that right?" Answer, "I am
9 allowing for the two options, in or not in the housing." And on Slide 28 we
10 asked him how this description that he has given applies to Garrison.

11 And he conceded that the fact that Garrison's on-off control is
12 segregated from its hemostasis valve was still covered by Claim 1. After a
13 back and forth on the right-hand side, question, "And that configuration is
14 one of the configurations that is encompassed by Claim 1 of the '005 Patent,
15 correct?" Answer, "The segregation aspect is, yes."

16 So there's really no dispute that Garrison is within the scope of
17 Claim 1, that it describes an on-off control in the flow path. If we look at
18 some of the other arguments that Patent Owner has raised on Slide 29, for
19 example, Patent Owner rearranges the words of the claim.

20 And even this doesn't help Patent Owner because the conclusion
21 that Patent Owner draws is that the limitation in on-off control in the flow
22 path requires an on-off control in the flow path extending through the
23 housing. So again, it still doesn't say that the on-off control is in the
24 housing, it says it's in a flow path, and that flow path also extends through
25 the housing.

26 On Slide 30, Patent Owner has raised another argument about a

1 very small portion of the '005 specification in column 6. And in order to
2 understand that we need to understand how the patent describes two
3 different subsystems. So the '005 Patent describes the catheter subsystem
4 100 that's identified by the blue dots.

5 The catheter subsystem includes catheter 102 and valve 106. It
6 separately describes a tubing subsystem 120 identified by green. The tubing
7 subsystem includes the tubing sections 124, and the fluid control device 126.
8 And Patent Owner's expert, Dr. Zalesky, agreed during his deposition that
9 those are separate subsystems.

10 He was asked at page 79 line 1, question, "Would you agree with
11 me that lines" 49 through – "45 through 49 of column 6 are describing
12 configurations of the tubing subsystem 120, correct?" Answer, "Yes." At
13 page 79, line 15, question, "If you look to column 5 lines 27 through 29, you
14 would agree with me that the '005 Patent states that the valve 106 is part of
15 the catheter subsystem 100, not the tubing subsystem 120, correct?" Answer,
16 "That is how this reads. Yes."

17 And so if we go to Slide 31, we see that Patent Owner's argument
18 in its surreply focuses on a portion of the spec that discusses the tubing
19 subsystem 120. And it says that certain portions of the tubing system 120
20 could be combined.

21 But Patent Owner then makes the leap to say, okay, well if you
22 eliminated part of the tubing subsection, then the hemostasis valve and the
23 on-off control would be in the same housing. Well, that's not true. The
24 hemostasis valve is part of the catheter subsystem. The patent doesn't say
25 that we are combining parts of the catheter subsystem with the tubing
26 subsystem.

1 JUDGE FREDMAN: And maybe more directly the claim doesn't
2 say that.

3 MR. STOWELL: Well, correct, Your Honor. That's true too.
4 That particular portion of the specification does not support this argument
5 that the hemostasis valve must be in the same housing as the on-off control.
6 On page 32, we see additional argument that appears in Dr. Zalesky's
7 declaration where he draws or tries to distinguish the word, in, from fluidly
8 coupled.

9 And he never kind of explains why this distinction really matters.
10 It's true those words are different, but even under his definition, fluidly
11 coupled includes his definition for in. He says that in requires a direct
12 connection, fluidly coupled requires a direct or an indirect connection.

13 And therefore, in is not mutually exclusive of fluidly coupled to.
14 So an on-off control that is in the flow path is also fluidly coupled to the
15 flow path. And so this particular argument does not really advance Patent
16 Owner's argument.

17 So if we go to Slide 33, the bottom line here is that the claim says
18 when something is in the housing. It says that the hemostasis valve is in the
19 housing. It does not say that the on-off control is in the housing. The on-off
20 control is in the flow path.

21 Both experts agree that the claim does not require an on-off control
22 to be in the same housing as the hemostasis valve. And I know from looking
23 at my colleague Mr. Hamilton's slides, he's going to try to convince the
24 Board that Dr. Zalesky has endorsed this opinion that the on-off control
25 means to be in the same housing as the hemostasis valve.

26 I don't know how he does that given all these admissions by Dr.

1 Zalesky during his deposition. He was adamant and repeatedly rejected that
2 premise. I'll move just briefly to Slide 34. Not an issue in dispute that
3 there's a motivation to combine Garrison, which is the aspiration catheter
4 reference with Schaffer's hemostasis valve.

5 There also wasn't a dispute in the '012 Patent IPR that there would
6 be a motivation to combine the valve with the aspiration system. Petitioner
7 and its expert, Mr. Thornton, have identified a number of reasons why that
8 motivation would exist and those aren't in dispute here. So --

9 JUDGE MAJORS: Mr. Stowell?

10 MR. STOWELL: Yes.

11 JUDGE MAJORS: I thought Patent Owner was disputing the idea
12 that you would modify Garrison's valve to include Schaffer's valve or at least
13 as the argument goes, as I understand it, if Schaffer's valve has the problems
14 that Petitioner has articulated, why would you swap out Garrison's valve for
15 this otherwise allegedly inferior valve?

16 MR. STOWELL: Yes, that's a good point, Your Honor. And you
17 did articulate their position correctly, but their position depends on the
18 Board first accepting that Schaffer combined with Hartley or Eller would be
19 a defective valve and wouldn't work for its purpose.

20 The Board has already rejected that position several times. And so
21 that is the hook for why Patent Owner argues that the valve wouldn't be
22 considered with Garrison. Once that argument is dismissed, as the Board
23 has done on two occasions, Patent Owner does not have any other argument
24 why a person of skill wouldn't be motivated to combine the references.

25 As I mentioned on Slide 35, the Board's very familiar with
26 Schaffer, the Board has already addressed with the other argument that was

1 raised by Patent Owner that a person of ordinary skill in the art would not be
2 motivated to combine Schaffer with Hartley's string or Eller's wire. And so
3 I'm not going to cover that again today.

4 I have slides to the extent there are questions, but we've been over
5 that many times. With that I'll jump ahead to Slide 76 in my materials. And
6 this is where we briefly touch on Ground 4. This ground combines Garrison
7 plus Hartley plus Eller.

8 And the Board has already addressed the combination of Hartley
9 and Eller in the '011 and the '012 final written decisions. The particular
10 focus there was whether the references describe an actuator that has a first
11 member and a second member.

12 And I'm not going to reargue that. In these claims, Claim 10,
13 independent Claim 10 does not require a second member, it just requires a
14 first member. And so that's the only claim I'm just going to focus on
15 because it's a unique issue being presented to the Board.

16 If we go to Slide 77, we can see the three arguments that Patent
17 Owner has raised with respect to Ground 4. We just discussed bullet point
18 one, whether Garrison discloses an on-off control in the flow path. The
19 second bullet point applies to independent Claim 1 and many of the
20 dependent claims, but it does not apply to Claim 10.

21 So I'll set that aside. The only remaining argument that relates to
22 Claim 10 is whether a POSITA would've been motivated to modify Hartley
23 to include Eller's biasing system. And so I'll just talk about that quickly
24 because the Board has not had an opportunity to address this specifically.

25 On Slide 79 is Claim 10, and if we look at the right-hand side, sub
26 element b, we have an actuator having at least a first member movable

1 coupled to the support. There is no requirement for the second member in
2 this claim. If we turn to Slide 80, we see an in-profile view of Hartley's
3 rotary actuator.

4 Now, Petitioner has previously argued that it has two members.
5 The Board has disagreed with that. Again, I won't reargue that. But the
6 rotary actuator is at least a first member that is connected to the support as
7 explained in the petition at pages 90 to 92. And so that rotary actuator is the
8 first member of the claim, it is attached to the support.

9 We turn to Slide 81. Eller describes a biasing system for use with
10 rotary actuators. The biasing system is described as being optionally a
11 torsion spring that is positioned between the two rotating members, and can
12 bias one of the rotating members towards the close position.

13 A person of ordinary skill in the art would've been motivated to
14 combine Eller's torsion spring with Hartley's valve. On page 82, we identify
15 several of the motivations to combine Eller with Hartley that are set forth in
16 the petition. These are simple operations. The biasing system will
17 automatically close Hartley's valve, which is advantageous.

18 This is the combination of known elements according to known
19 methods to yield predictable results. And Patent Owner has not disputed
20 that any of these motivations would exist. On Slide 83, we've also identified
21 the reasons a person of skill in the art would've had an expectation of
22 success in combining a torsion spring with Hartley's valve.

23 Again, these reasonable expectations of success are not in dispute.
24 Patent Owner has not raised any issues with any one of these specifically. If
25 we turn to Slide 84, we can see what Patent Owner's argument is. And
26 Patent Owner argues that the combination of the torsion spring from Eller

1 with Hartley would defeat or frustrate the objective of Hartley's valve.

2 And that's not true. On Slide 84, we have a portion of the Patent
3 Owner response in green. We agree with the identification of the object of
4 Hartley. The object is to provide an access valve which can be controlled to
5 vary the size of the aperture through the valve and be flexible so that a seal
6 may be formed against an instrument inserted through the access valve. We
7 agree.

8 This is where Patent Owner makes a mistake. They go on to say
9 that Hartley achieves this objective through a detent arrangement. And that's
10 not accurate. If we turn to Slide 85, the Board preliminarily addressed this
11 in the institution decision and recognized that Hartley's ball and detent
12 system may not be a required feature, and in fact that's true.

13 If we look at paragraph 15 of Hartley, we see that Hartley discloses
14 a number of different ways that the rotary actuator can be retained on the
15 support. One of those is a ball and detent, but it could also be done by the
16 flexible member or the radial flange. There are a number of methods.

17 So the ball and detent is optional for that purpose. Paragraph 18
18 also talks about the ball and detent. And again, it makes clear that the ball
19 and detent is an optional feature that can provide some tactile indication
20 when the rotary actuator is being spun.

21 Again, not mandatory and never mentioned with respect to the
22 objective of Hartley, which is to open and close around an instrument. So
23 for these reasons, Ground 4 also renders independent Claim 10 obvious.
24 With that, if there are no questions from the panel, I will rest and I'll be
25 anxious to hear how Mr. Hamilton describes Dr. Zalesky's admissions
26 during his deposition.

1 JUDGE MAJORS: Are there any questions?

2 JUDGE JESCHKE: Not from me. Thank you.

3 JUDGE FREDMAN: Thank you very much.

4 MR. STOWELL: Thank you, Your Honor.

5 JUDGE FREDMAN: Yes sir. Mr. Hamilton, you can begin when
6 you're ready.

7 MR. HAMILTON: Morning, Your Honors.

8 JUDGE FREDMAN: Morning.

9 MR. HAMILTON: So first I'd like to talk about the '005 Patent
10 generally. The '005 Patent is directed to systems for treating embolisms and
11 associated devices and methods. And briefly, an embolism is a blood clot
12 essentially that is partially or fully obstructing a blood vessel. The clot can
13 be in various vessels.

14 For example, in the cerebral vasculature. That's the brain with
15 very small delicate vessels that take tortuous pathways. Or another example
16 would be in pulmonary vessels. That would be a pulmonary embolism,
17 vessels that are much larger.

18 Treating clots in each of those circumstances has different
19 considerations and complications for that treatment. So there are many
20 different ways of treating different clots in different parts of the vasculature.
21 With that said, that's not an issue here. The claims here are not limited to
22 treating a specific type of clot.

23 There are some related IPRs that are limited, and those trail this,
24 we'll get to those at a different time. But the reason I bring this up is I want
25 to talk about, first, a person of ordinary skill in the art. As Counsel for
26 Petitioner said in this IPR we're not disputing the definition of a person of

1 ordinary skill in the art.

2 You can see at page 32 of the Patent Owner response. We said
3 we've applied it, we said it's wrong. And that will be very important for the
4 later IPRs. But in this one, I just want to make it clear we don't agree with
5 it, but it doesn't make any difference in this case.

6 The issue I'm going to talk about today is essentially the same
7 issue Petitioner's Counsel talked about. And let's just go to Slide 4. And
8 that's these limitations with respect to a housing, a flow path extending
9 through the housing, and on-off control in the flow path, as opposed to in
10 fluid communication with the flow path or fluidly coupled to the flow path.

11 Patent uses different language for those different things. And my
12 argument today is going to focus on that, which as Petitioner's Counsel said,
13 has not yet been addressed by this panel. The --

14 JUDGE MAJORS: Mr. Hamilton.

15 MR. HAMILTON: Yes.

16 JUDGE MAJORS: This is Judge Majors, if I could interrupt you
17 for just a second.

18 MR. HAMILTON: Sure.

19 JUDGE MAJORS: A similar question to what I asked Mr. Stowell
20 on the filament claim construction. Does Patent Owner think that there's an
21 issue that we haven't yet addressed on the construction of a filament that we
22 need to or we should address in this case?

23 MR. HAMILTON: Not that I'm aware of. Filament must be
24 flexible. I think Patent Owner agrees with that construction. We had
25 worded it a little differently, but essentially that is the main point of the
26 Board's construction, I believe.

1 JUDGE MAJORS: Thank you.

2 MR. HAMILTON: So now I've moved to Slide 5, this is Claim
3 10. Claim 10, the other independent claim in the '005 Patent has those exact
4 same limitations, a housing, a flow path extending through the housing, and
5 an on-off control in the flow path as opposed to in fluid communication with
6 the flow path, or fluidly coupled to the flow path.

7 Both those claims, and I'm going to jump back to Slide 4 again,
8 also include a hemostasis valve that is in the housing as well. And that
9 hemostasis valve has various specifics, some differences between Claim 1
10 and Claim 10. I'm not going to go over that again other than just make a few
11 points at the end of clarification.

12 That's been argued extensively in the previous two IPRs. Today
13 I'm going to focus on a flow path extending through the housing and an on-
14 off control in the flow path as opposed to in fluid communication with the
15 flow path or fluidly coupled to the flow path.

16 So according to the claim's claim language and meaning, the on-
17 off control must be in the flow path that extends through the housing. Not
18 just in fluid communication with that flow path or fluidly coupled to the
19 flow path, but in the flow path that extends through the housing. The claim
20 language is clear.

21 Petitioner does not allege that any of its prior art discloses that
22 limitation alone or in combination under that plain understanding of the
23 claim language. And so here Petitioner has --

24 JUDGE FREDMAN: Let me ask you a question.

25 MR. HAMILTON: Yes.

26 JUDGE FREDMAN: I have a faucet in my home, right? This is

1 the kitchen sink. It's in the flow path with the county, with the city water
2 supply of the city of Rockville. But that goes through the flow path of the
3 housing of the water plant, right? They're all connected. I mean are you
4 trying to argue that by connected, that we're talking about any two things
5 that are physically even indirectly coupled they're connected, and they're
6 therefore in the housing?

7 MR. HAMILTON: I'm sorry I don't quite understand the question.
8 So in --

9 JUDGE FREDMAN: The city of Rockville provides me with
10 water. We've got a faucet in my house.

11 MR. HAMILTON: Yes.

12 JUDGE MAJORS: There's also a big water plant that has pumps
13 and all sorts of stuff, right? And the big water plant is where the river water
14 goes in and then comes out. And then certainly, you could call that a
15 housing in that water plant. Is that connected? Is that they're in -- my faucet
16 is in the flow path, there's no doubt.

17 And the flow path goes through the housing, that is the water plant,
18 and then goes all the way through all the pipes to get to my faucet. Okay.
19 Are you saying that that faucet is also in the housing because it's connected?
20 Is that what you're trying to say?

21 MR. HAMILTON: No, no. The opposite. It is not in the housing,
22 it is -- it may be fluidly coupled to the housing that's in the plant. There is a
23 fluid connection, a fluid coupling --

24 JUDGE FREDMAN: The flow path is different than fluidly
25 connected?

26 MR. HAMILTON: No. No. The flow path can mean many

1 different things. You could say a flow path from one end of the catheter to
2 the aspiration source. There are many different meanings for flow path. The
3 claim, as opposed to whatever other context or example you want to give,
4 it'll depend on that example. The claim says a flow path extending through
5 the housing. And then --

6 JUDGE FREDMAN: So let's go to a more specific example. In
7 Figure 21A of your patent. Okay. The '005 Patent, I think that's the only
8 place where the word housing is used or one of the few places where the
9 word housing is used, if you'll get Figure 21A, I don't know if you have the
10 patent in front of you.

11 MR. HAMILTON: Let me see if I can do that. I do. Now I can
12 put it up on the screen if Your Honor would want.

13 JUDGE FREDMAN: You can put if you want it, either way. It
14 might be easier because then we can more easily talk about it.

15 MR. HAMILTON: You said 21A?

16 JUDGE FREDMAN: 21A. Well, we're doing a claim
17 construction argument here essentially. So I think we're allowed to look at
18 the patent to decide what the claim construction is.

19 MR. HAMILTON: Sure. Okay.

20 JUDGE FREDMAN: So in Figure 21A, you'll see that there's a
21 housing 2152, and an on-off control 2126. The expressway identifies 2152
22 as housing.

23 MR. HAMILTON: Okay.

24 JUDGE FREDMAN: Those do not appear to me to be in the same
25 -- I mean the 2126 is not part of 2152. Would you agree with that?

26 MR. HAMILTON: Absolutely. Absolutely.

1 JUDGE FREDMAN: So then the embodiment there is showing a
2 situation at least where the on-off switch is not in the flow path. And yet I
3 think it's the only time you use the word housing.

4 MR. HAMILTON: And this is also showing -- well, number one,
5 this doesn't have an aspiration source at all. This is a different embodiment
6 where the two syringes you can see are taken --

7 JUDGE FREDMAN: Yes. I can see them. I can see them

8 MR. HAMILTON: -- and put on difference of a housing for a clot
9 canister.

10 JUDGE FREDMAN: Right.

11 MR. HAMILTON: The only time the word housing is used in the
12 '005 may be for the clot canister. The '005 says the hemostasis valve can be
13 the hemostasis valve in the I think '519, make sure I get that number right.
14 In the patent that's incorporated with reference, that's the same specification
15 essentially as the '011 patent that's the final written decision. And the '012,
16 that's the final written decision has a housing for -- that the hemostasis valve
17 is --

18 JUDGE FREDMAN: You're bringing the housing in from the
19 what? '519 Patent. Okay.

20 MR. HAMILTON: Well, and a person of ordinary skill in the art
21 would understand what a housing is. That's not a --

22 JUDGE FREDMAN: That's true.

23 MR. HAMILTON: That's not in dispute here.

24 JUDGE FREDMAN: Okay, keep going.

25 MR. HAMILTON: The question is, which housing are we talking
26 about? And this is key because as shown in Figure 21A, even for these two

1 syringes, there is tubing 2124a, and 2124b that separates the on-off valve
2 from that housing 2152.

3 JUDGE FREDMAN: Right.

4 MR. HAMILTON: And then when the patent discusses what that
5 tubing does, the tubing fluidly couples parts together. And then the patent
6 goes on to say --

7 JUDGE FREDMAN: Puts them in the same flow path.

8 MR. HAMILTON: Pardon?

9 JUDGE FREDMAN: So they're all in the same flow path.

10 MR. HAMILTON: Well, it depends what flow path you're talking
11 about. If the flow path --

12 JUDGE FREDMAN: The flow path from one syringe here to the
13 other syringe. No?

14 MR. HAMILTON: In this example, yes, there is a flow path from
15 one syringe to the other one. Yes.

16 JUDGE FREDMAN: Judge Majors.

17 JUDGE MAJORS: Yes. Mr. Hamilton, you're not taking the
18 position, are you? That the flow path of the claim extends only through the
19 housing? Are you?

20 MR. HAMILTON: The flow path in the claim extends only
21 through the housing. That's exactly what the claim says. That is the
22 position. And how do we know that? Because the claim says, immediately
23 after the on-off control is in the flow path that extends through the housing,
24 it says these other components are fluidly coupled to the flow path. And the
25 patent explains what fluidly coupled means. That's when it's separated by
26 tubing. They are fluidly coupled.

1 JUDGE FREDMAN: So in your demonstratives --

2 JUDGE MAJORS: What would we call --

3 JUDGE FREDMAN: Go ahead.

4 JUDGE MAJORS: What would we call the path that the blood
5 goes through in the catheter and into the clot canister? What do we call that
6 according to this system?

7 MR. HAMILTON: Well, there are many flow paths disclosed in
8 the '005 Patent.

9 JUDGE FREDMAN: Right. So let's look at Figure 7 of your
10 -- your Slide 7. Which shows Figure 34, right? Is that line dotted red that I
11 think Dr. Zalesky did it, I'm not sure, not a flow path?

12 MR. HAMILTON: That absolutely is a flow path. It's not the
13 claim flow path.

14 JUDGE FREDMAN: What is the claim flow path?

15 MR. HAMILTON: So if you look at the claim, the claim says --

16 JUDGE FREDMAN: Do you have an image of the claim flow
17 path?

18 MR. HAMILTON: Pardon?

19 JUDGE MAJORS: Do you have an image of the claim flow path
20 in the slides?

21 JUDGE FREDMAN: (INDISCERNIBLE) an example of the
22 claim flow (INDISCERNIBLE) whether you're simply using the
23 (INDISCERNIBLE).

24 MR. HAMILTON: Well, I can just (INDISCERNIBLE) Dr.
25 Zalesky (INDISCERNIBLE) on-off valve in the housing with the hemostasis
26 valve. They're separated by that tubing. That testimony is clear. And he

1 testifies about this figure in paragraphs 36, and this is (INDISCERNIBLE).
2 And if you look at this figure, and I'll just let's see if my laser pointer will
3 work there. Give me just a sec.

4 There's a housing that has the hemostasis valve. And you'll recall
5 that's (INDISCERNIBLE) extending through the housing from here to here
6 in this figure. What this figure doesn't show is the on-off valve in that flow
7 path. What the patent says is in this figure, and I'll just go to Slide 8.

8 This is that figure and some excerpts from the specification in the
9 '005. What it says is, in this figure, in Figure 1, the fluid -- excuse me, the
10 tubing 124a and 124b fluidly couple the on-off valve to that other housing.
11 Clearly explains what the patent means by fluidly coupled.

12 JUDGE FREDMAN: So you're trying to read flow path extending
13 through the housing as meaning solely in the housing?

14 MR. HAMILTON: That's right. That's right. And --

15 JUDGE FREDMAN: Do you have any basis for that on the
16 specification on the '005 Patent?

17 MR. HAMILTON: This is it. This is it.

18 JUDGE FREDMAN: No. In the patent. Are there any text -- is
19 there any text in the patent that actually says solely or uses that word or
20 expressly indicates? Where in the five -- I forgot the number. In the '519
21 application, is there any statement in either of those documents that says
22 solely?

23 MR. HAMILTON: The word solely doesn't appear.

24 JUDGE FREDMAN: Is there a word that is similar to solely?

25 MR. HAMILTON: So it's right in the claim itself, those words are
26 right in the claim.

1 JUDGE FREDMAN: The claim doesn't use the word solely. So
2 the claim is -- you're reading a limitation into the claim, which we know is
3 not permitted. Right? So the question then becomes can you point to
4 something in the supporting documents that supports that interpretation?
5 Are you making that interpretation?

6 And you have to. I get that. I'm not going to dispute your right to
7 do that. But do you have any support in the supporting documents? Is there
8 any evidence supporting this? Or in a declaration, I suppose even?

9 MR. HAMILTON: Supporting that --

10 JUDGE FREDMAN: That the flow path means, means.

11 MR. HAMILTON: That's exactly what Dr. Zalesky said on direct,
12 and said again at cross exam, and said again on redirect --

13 JUDGE FREDMAN: (CROSSTALK) indicated that it meant only
14 the housing? The declaration, either his deposition. Tell me where.

15 MR. HAMILTON: This is his testimony on direct. "Garrison
16 does not disclose that the valve 3325 is in the flow path extending through
17 the housing. First, Claims 1 and 10 use the term, in, to describe the relative
18 position of the on-off control relative to the flow path, but use the term,
19 fluidly coupled to, to describe the relative position."

20 JUDGE FREDMAN: So here are the experts doing claim
21 interpretation. That's really not that helpful, right? Because he's not a
22 lawyer, I don't think. I'm asking the question of is there any factual support?
23 He's not saying, he's interpreting a claim. He's not pointing to any support in
24 the specification for this.

25 MR. HAMILTON: Factual support. The most important way to
26 interpret the scope of the claim is read what the words of the claim say.

1 JUDGE FREDMAN: The most important in light of the
2 specification.

3 MR. HAMILTON: In light of the specification.

4 JUDGE FREDMAN: The question is where in the specification
5 does that say that?

6 MR. HAMILTON: It doesn't use the word, only, it used --

7 JUDGE FREDMAN: Or somewhat like that. I'm asking for that
8 word.

9 MR. HAMILTON: It says when there is a tubing subsystem, the
10 two components are fluidly coupled. Just like the claim. It uses that exact
11 same language.

12 JUDGE FREDMAN: You're trying to read the word fluid. You're
13 trying to read that as a single -- okay. That's fine. I'll let you keep going.

14 JUDGE MAJORS: Mr. Hamilton. I'm sorry, I'm going to jump in
15 as well. Well, you say that the fluidly coupled to language in the claim, we
16 should read that in a more -- in a distinct sense and that the word in --

17 JUDGE FREDMAN: Are you frozen?

18 JUDGE MAJORS: Of course. Sorry about that. I cut out there for
19 a second. Let me start over. Can you hear me?

20 JUDGE FREDMAN: Yes.

21 JUDGE MAJORS: Okay. I'm sorry again. You're pointing to the
22 language of the claim that recites "fluidly coupled to" and suggesting that
23 that must mean something different than "in the flow path." But how do you
24 grapple with the fact that the claim elsewhere explicitly says a hemostasis
25 valve in the housing. If the author of this claim wanted to say something
26 was in the housing, they knew how to do that. But we don't see that

1 language with respect to the flow path.

2 MR. HAMILTON: Sure. And there's a very important reason why
3 the hemostasis valve is in the housing as opposed to the on-off control in the
4 flow path. The point of the hemostasis valve is to separate the flow path
5 from an additional flow path through a second catheter. So I'm going to just
6 jump up to Slide 3. This is that Figure 1.

7 So you can see the flow path extending from this end here. This is
8 the flow path. And this is the exact same -- this portion of the flow path is
9 the exact same thing that Petitioner identified. They identified that it goes
10 much farther. It's not the portion extending through the housing, it's the
11 entire flow path, but that's not what the claim says.

12 But at least this portion is that. And then you can see the valve,
13 that the buttons and the string is over here to the right. It's not in that flow
14 path. That's why that claim says there's a valve in the housing, and the flow
15 path extends through the housing. It's in the housing and it's in that -- excuse
16 me. And the on-off control is in that flow path because that's where -- that's
17 the flow path that the on-off control must control.

18 JUDGE MAJORS: Okay. But that's not what your own expert,
19 Dr. Zalesky, said in paragraph 36 of its supplemental declaration. He
20 annotated this very figure through the flow path with a blue highlight and
21 said that the valve 126 was an on-off control in the flow path. How do you
22 reconcile that?

23 MR. HAMILTON: Sure. So Figure 30 -- excuse me, paragraph
24 36 of Dr. Zalesky's testimony, and I've got that up at Slide 14 of the
25 demonstratives. This is Dr. Zalesky's declaration where he's discussing the
26 background of the '005 Patent. And he's talking about what Figure 1

1 discloses.

2 When Dr. Zalesky goes to talk -- and you'll notice, this blue line
3 doesn't extend through the housing that has the hemostasis valve. This
4 cannot be a description of what the claim covers. And in fact, he says this is
5 what the figure covers.

6 JUDGE FREDMAN: So doesn't it enter the housing? It doesn't go
7 through the valve. I wouldn't disagree at least that particular flow path. But
8 it goes through the housing, right?

9 MR. HAMILTON: Oh, it doesn't. He doesn't show it coming out
10 the other side. He's just showing that it hits the housing there. And if you
11 look at what's said --

12 JUDGE FREDMAN: It stopped there and then there's no more
13 flow? Is that --

14 MR. HAMILTON: No, there will be more flow.

15 JUDGE FREDMAN: It will flow from there, will it flow to the
16 left or the right in that figure? Or will it be stopped by something?

17 MR. HAMILTON: As Petitioner showed, the flow path goes into
18 -- there is a flow path. Now, so we got to be clear about what a flow path is,
19 and the flow path. And if you look at this language here, a housing and the
20 housing, this is talking about the spec.

21 JUDGE FREDMAN: Answer my question though. Where does
22 the flow path go?

23 MR. HAMILTON: So there is --

24 JUDGE FREDMAN: In this figure.

25 MR. HAMILTON: -- a flow path --

26 JUDGE FREDMAN: Mm-hm.

1 MR. HAMILTON: -- that flows through that housing and into the
2 catheter, and through the aspiration source. That's the point of all these
3 components.

4 JUDGE FREDMAN: So there is a flow path that flows through
5 the housing to the catheter. It does not flow through the valve, but it flows
6 through the housing?

7 MR. HAMILTON: That's right. And that's why the claim says the
8 hemostasis valve is in the housing, it's not in the flow path as opposed to the
9 on-off control is in the flow path, which the claim says is in the housing,
10 extends through the housing.

11 JUDGE MAJORS: So you're saying that this figure that we're
12 looking at here in paragraph 36, this is not covered by Claim 1?

13 MR. HAMILTON: That's right. That's right. And that's exactly
14 what Dr. Zalesky says when he gets to paragraphs 91 through 93 of his
15 declaration. So this is the background saying this is what Figure 1 discloses.
16 And then when you go to paragraphs 91 to 93, Dr. Zalesky explains,
17 Garrison doesn't teach an on-off control in the flow path because Garrison
18 shows the on-off control is separated from the -- let's just make sure I word
19 it right.

20 Garrison doesn't disclose the valve in the flow path extending to
21 the housing because -- sorry, I'm on the wrong one. Slide 12. "Is it your
22 opinion that Garrison" doesn't -- this is actually on cross exam, "does not
23 disclose an on-off control in the flow path as recited in Claim 1 because
24 Garrison's valve 3325 is not located in the same housing as the hemostasis
25 valve? Yes, that's what I'm stating." This is on cross exam. This was his
26 testimony.

1 JUDGE MAJORS: Okay. Mr. Hamilton, can you go back to
2 Figure 1 please? Okay, thank you. So I thought you were just saying that
3 this figure doesn't meet the claims because the flow path is not going
4 through the entirety of the housing, including the hemostasis valve, which I
5 guess is depicted there with the X that's between structures 101. Is that
6 right?

7 MR. HAMILTON: No, that's not correct. This doesn't meet the
8 claim --

9 JUDGE MAJORS: Okay.

10 MR. HAMILTON: -- because the claim requires that the on-off
11 control is in the flow path. Here they have the on-off control separated from
12 the flow path by tubing. It is fluidly coupled to the flow path that extends
13 through the housing. Like the patent distinguishes that is a different thing.

14 The patent says it's either in it or it's fluidly coupled to it. In this
15 embodiment, the on-off control 126 is fluidly coupled to the housing and
16 that flow path that extends through the housing. And that's exactly what the
17 spec says. When the spec describes this embodiment --

18 JUDGE MAJORS: Okay. Lets --

19 MR. HAMILTON: Please.

20 JUDGE MAJORS: So let's go back to Judge Fredman's earlier
21 question. What's your best support in the specification for this idea that the
22 on-off control needs to be in the same housing as the hemostasis valve?

23 MR. HAMILTON: The best support in the specification?

24 JUDGE MAJORS: Sure.

25 MR. HAMILTON: An embodiment that shows just that, an
26 embodiment that shows that exact configuration.

1 JUDGE MAJORS: Shows it, describes it?

2 MR. HAMILTON: So here's where it is. First, the specification
3 describes Figure 1. It says this --

4 JUDGE FREDMAN: Which slide is this?

5 MR. HAMILTON: I'm sorry. Excuse me. Slide 8. And I'm on
6 the -- I'll use my pointer again. I'm on the right side of the slide, top
7 paragraphs. This describes that the tubing subsystem fluidly couples this
8 valve 126 to this other housing. That's what this says.

9 And it uses this language, "The fluid control device is a stopcock
10 that is fluidly coupled to the side port of the valve via first tubing section
11 124a and then fluidly coupled via another tubing section on the other side."
12 That's what this embodiment says. This says, in Figure 1, you show -- it
13 shows a stopcock that is fluidly coupled to the valve that has this housing.
14 Okay?

15 And then in the next paragraph it says, "In other embodiments, the
16 tubing subsystem can have more or fewer tubing sections." Meaning you
17 can eliminate any of those tubing sections. And in some embodiments, one
18 or more of the components can be permanently connected or integrally
19 formed.

20 So you eliminate -- there's only two tubing sections shown. One or
21 more can be eliminated. You eliminate those tubing sections, and you
22 integrally form or permanently connect those components. You have a
23 valve in the housing -- excuse me, you have an on-off, the stopcock, an
24 embodiment of the on-off stopcock in the valve with -- excuse me, in the
25 housing that also has the hemostasis valve, which is exactly what's set forth
26 in the claim. As opposed to fluidly coupled to that housing via tubing

1 sections.

2 JUDGE FREDMAN: That sounds to me like an obviousness
3 argument and description requires inherency. It requires it to be described,
4 103 doesn't allow obviousness. So I hear that argument. I think it's
5 interesting. Yes.

6 MR. HAMILTON: Well, there's two tubing sections. And it says
7 you can eliminate one or more. So you eliminate both tubing sections.

8 JUDGE FREDMAN: You can eliminate tubing in all sorts of
9 places here, right? Because there's lots of other tubing. I mean, right, there
10 has to be tubing between the pressure source and the right side in Figure 1,
11 for example, where the hemostasis valve is. Because there has to be
12 pressure there. There has to be more tubing than just that. But yes.

13 MR. HAMILTON: You could eliminate that tubing as well, Your
14 Honor.

15 JUDGE FREDMAN: Eliminate all the tubing. Sure.

16 MR. HAMILTON: That's right. And that's exactly what this says.

17 JUDGE FREDMAN: Yes. Go ahead.

18 MR. HAMILTON: And then the patent that is incorporated by
19 reference that shows the valve, it doesn't have a stopcock. That's not part of
20 that hemostasis valve patent. But what it does say is the housing can be one
21 piece or multi-piece. You eliminate the tubing you have and you can
22 permanently connect or integrally form the parts together.

23 You can have a one piece or multi-piece housing that includes both
24 the hemostasis valve in the housing that's not in the flow path, that extends
25 through the housing, and also the stopcock, the on-off control in that
26 housing. That's what's claimed in the claim.

1 So what Dr. Zalesky clearly testified to was this description here
2 and Figure 1 as disclosing a different embodiment. And then the
3 embodiment that's related to the claim, he clearly referred to this other
4 section 645 through 49. And that's right here in Exhibit 2026 at paragraph
5 93.

6 The '005 Patent descript reflects the difference as well, drawing the
7 distinction with between embodiments in which the fluid control devices
8 fluidly coupled to the valve, to a valve housing via tubing, and embodiments
9 in which the fluid control device is part of the valve housing.

10 JUDGE FREDMAN: It never actually says the fluid control
11 device is part of the valve housing. It simply says you can do whatever you
12 want and make things together. Put any parts of these together.

13 MR. HAMILTON: He's a person of ordinary skill in the art, that's
14 how --

15 JUDGE FREDMAN: I hear you. But yes.

16 MR. HAMILTON: Now --

17 JUDGE MAJORS: Mr. Hamilton, and you would agree then that
18 under Patent Owner's proposed interpretation of the claim, every one of the
19 embodiments that's depicted in the '005 Patent, each of the 25 figures that
20 are depicted are excluded from the claim.

21 MR. HAMILTON: If you mean depicted in the figures as opposed
22 to the specification, yes.

23 JUDGE MAJORS: And your best support, just to recap, your best
24 support is that sentence or two on column 6 --

25 JUDGE FREDMAN: That catch-all sentence.

26 JUDGE MAJORS: -- for your interpretation? Did I cut out? And

1 I wanted to just clarify and Patent Owner's best support for its interpretation
2 is that phrasing that we just looked at on column 6 of the '005 Patent?

3 MR. HAMILTON: So the best support is the claim itself, which is
4 part of the specification, and the embodiment --

5 JUDGE FREDMAN: Is that the originally filed claim? It wasn't
6 amended?

7 MR. HAMILTON: I don't know. We --

8 JUDGE FREDMAN: I mean to say it's part of the specification,
9 the original claim is part of the original specification.

10 MR. HAMILTON: The original specification. If we're talking
11 about priority --

12 JUDGE FREDMAN: The amended claim is not part of the
13 specification. I mean that, yes, that's why examiners write new matter
14 objections. I mean, is the original -- is this identical to the original claim?

15 MR. HAMILTON: I don't know the answer to that as we sit here.

16 JUDGE FREDMAN: Okay.

17 MR. HAMILTON: It was in the original claim, in the original
18 rejection by the examiner. And we can talk about that if you'd like. But this
19 is exactly how the office interpreted the claim initially. Now, I just want to
20 point out, this -- Petitioner bears the burden on this issue.

21 Dr. Zalesky testified what these two embodiments mean, what the
22 specification means. As a technical expert, that's how he's interpreted it.
23 What has Petitioner done? Petitioner has put in no evidence interpreting
24 what any of this means. Petitioner's original petition simply said, here's the
25 language, and it's met by Garrison. That's it. Conclusory --

26 JUDGE MAJORS: Well they have the cross-examination of your

1 own expert that says that that's not the correct interpretation of the claim.

2 MR. HAMILTON: Okay. So I can get to that in just a minute.

3 But let's talk about what they put in, setting that issue aside. So the petition
4 says nothing, it just says the limitation is met. Patent Owner laid out this
5 argument in the Patent Owner response. Petitioner had a reply.

6 Petitioner made two arguments in that reply and had the
7 opportunity to put in a declaration, and put in a declaration, and didn't say
8 anything about how one of skill in the art would interpret fluidly coupled,
9 fluidly communicating versus in the flow path. Completely silent.

10 And in fact, in their reply, didn't discuss that at all either. The only
11 reply was that the specification excludes -- that Patent Owner's interpretation
12 would exclude every embodiment. Just that argument. And then Petitioner's
13 expert somehow admitted that the claim covers something that's separated
14 by tubing section -- by a tubing subsection, that's something that's fluidly
15 coupled versus in the flow path.

16 And so I just want to address -- and as I was saying, this
17 -- Petitioner bears the burden on this issue. So at best for Petitioner, maybe
18 a deposition, Petitioner confused Dr. Zalesky, what's the difference between
19 what the specification discloses and what the claims cover.

20 And I'm going to show you that's exactly what happened because
21 Dr. Zalesky clearly testified on direct, again on cross, and then again on
22 redirect, he confirmed his testimony was all correct with respect to that this
23 limitation is not met because it -- the on-off control in Garrison is not in the
24 housing, it's not in the flow path that's extending through the housing.

25 So at best, maybe that's -- maybe that's ambiguous or they've cast
26 some doubt on his original direct testimony, or his testimony during cross, or

1 his testimony on redirect where he confirmed that that is what the claim
2 means, and that's what the specification teaches.

3 And then on the other side, Petitioner has put in nothing, not even
4 -- has not argued the claim language at all, put in no interpretation of what
5 the patent specification teaches. So Dr. Zalesky's testimony on Figure 1
6 shows fluidly coupled versus --

7 JUDGE FREDMAN: Is that really true in the sense that Dr.
8 Thornton was provided by Petitioner -- in paragraph 78 of his declaration, he
9 states -- or he shows the picture that I think they showed us earlier of Figure
10 34 with the flow path, and the two parts separate. So he understood this as
11 being meeting the claim limitation.

12 So we do have an expert testifying that he thinks that devices being
13 separated meets the specification requirement, the claim requirement. So we
14 have a statement by their expert, and then we have Dr. Zalesky who as you
15 already admitted, perhaps a little bit ambivalent here at best, possibly not.
16 We may not find that, but I don't want to constrain us. But that's the best
17 case for you, I think.

18 MR. HAMILTON: Dr. Zalesky's testimony on direct is clear. His
19 testimony on cross is --

20 JUDGE FREDMAN: I think it's not clear, but go ahead.

21 MR. HAMILTON: Okay. His testimony on cross, he also said
22 Garrison doesn't disclose this limitation because the on-off control in
23 Garrison is separated by tubing. Clearly said that on cross exam. I believe
24 he clearly said that on direct too. And then on redirect, he said it again. He
25 confirmed that again.

26 Petitioner's expert, the portion you just pointed to simply identifies

1 a flow path. It is a flow path, it is not the claim flow path. And he
2 concludes that it meets the claim limitation without any analysis. So, okay,
3 let's give him a pass --

4 JUDGE FREDMAN: An expert who says that.

5 MR. HAMILTON: Pardon?

6 JUDGE FREDMAN: He's an expert who is familiar with the
7 evidence and says that.

8 MR. HAMILTON: That's right.

9 JUDGE FREDMAN: We went to the analysis, he shows what he
10 shows. He said he understood the claim, the way he understood the claim.

11 MR. HAMILTON: That's right. And then what he said -- and then
12 when faced with Petitioner's argument --

13 JUDGE FREDMAN: Did you find any argument, and did you
14 depose him and find -- get him to say anything different? What slide are you
15 on?

16 MR. HAMILTON: So this is Slide 18. We asked him at
17 deposition on his reply declaration. So now he's seen the argument on what
18 the different claim language means, what the specification means. There's
19 nothing in his reply declaration addressing it. Completely omitted from his
20 reply declaration.

21 And when asked, when he was deposed on it, we got the objection
22 beyond the scope. And he said, "I have not considered the difference
23 between that claim language and the claims, the in the flow path versus
24 fluidly coupled to the flow path or fluidly communicating with the flow
25 path." He has not considered that issue.

26 He did not consider that issue in his original declaration where he

1 simply concluded that the on-off control in Garrison is in the flow path.
2 Petitioner bears the burden on this issue. And on reply, Petitioner doesn't
3 address the claim language at all.

4 Petitioner makes an argument about the spec that is incorrect. The
5 spec discloses this other embodiment, how, is not expressly shown in a
6 figure, but it is as Dr. Zalesky testified, expressly disclosed in that sentence.

7 JUDGE FREDMAN: So would you agree that this is a claim
8 construction issue?

9 MR. HAMILTON: It is determining the scope of the claim --

10 JUDGE FREDMAN: I understand.

11 MR. HAMILTON: -- but there isn't a particular term --

12 JUDGE FREDMAN: But the phrase in the housing means and all
13 that in the flow path, what these terms mean, it's claim construction? I'm
14 asking is this claim construction or is this just evidence?

15 MR. HAMILTON: There isn't a particular claim or phrase to be
16 construed, the claim language is clear, it shows the different things. But it is
17 a claim interpretation issue.

18 JUDGE FREDMAN: Okay. And so was it -- and this was raised
19 now in -- essentially you didn't raise this until when?

20 MR. HAMILTON: In the Patent Owner response, when we were
21 required to raise it, that's when it was raised. And Petitioner --

22 JUDGE FREDMAN: He obviously couldn't then address it in our
23 original decision. So we're addressing to the extent that we need to address
24 it.

25 MR. HAMILTON: Yes, that's right.

26 JUDGE FREDMAN: We can't address the claim construction on

1 our final.

2 MR. HAMILTON: That's right.

3 JUDGE FREDMAN: Okay. Thanks.

4 MR. HAMILTON: That's right.

5 JUDGE FREDMAN: I just wanted to clarify that that was the
6 case.

7 MR. HAMILTON: That's right. And Petitioner had a full
8 opportunity to respond.

9 JUDGE FREDMAN: Well, I'm not arguing that they didn't, I'm
10 just trying to make sure it wasn't in the paper, and so that we could have
11 addressed it earlier. We couldn't have addressed it until now, essentially.

12 MR. HAMILTON: No, it was not.

13 JUDGE FREDMAN: Okay.

14 MR. HAMILTON: Petitioner had a full opportunity to respond,
15 said nothing about the claim language itself, not one word. And instead said
16 that the interpretation would exclude every embodiment. That's not correct.
17 Dr. Zalesky testified otherwise. There is no evidence -- Petitioner put in no
18 evidence that that is the correct interpretation of the specification.

19 Completely ignored the file history and I'll show that in just a sec.
20 And then relied on -- and then tried to argue that Dr. Zalesky changed his
21 testimony at the deposition. And I think you heard Petitioner's attorney say
22 they were confused when Dr. Zalesky said, Garrison doesn't teach this
23 because the on-off control is not in the housing.

24 And then he said something to the effect of, the claim covers all
25 these embodiments. He was clearly confused on what the patent covers.
26 He's not a patent expert, he's a technical expert, and what the claims cover.

1 When he talked about the patent, he explained the patent has both
2 embodiments.

3 And when he testified about the claim, he explained that the claim
4 only covers when the housing is in -- excuse me, the on-off control is in the
5 flow path that is extending through the housing, as opposed to separated just
6 fluidly coupled from that flow path.

7 JUDGE FREDMAN: Okay. You have a minute or two left, and
8 then you could of course extend into your rebuttal time if you wish.

9 MR. HAMILTON: Sure. So let me just go back to this figure. So
10 this is what Petitioner did at the deposition. They put in front of Dr. Zalesky
11 --

12 JUDGE FREDMAN: This is Slide 14?

13 MR. HAMILTON: Yes. Sorry. Thank you. Slide 14. They put
14 up his description of the background of Figure 1, which in paragraphs 91
15 through 93, he said is distinguished, fluidly coupled, is distinguished from in
16 the flow path, fluidly coupled to the flow path. Exactly like the claim says.
17 That testimony is clear in 91 to 93.

18 And then they asked him, what does this disclose? You can see the
19 questions when you -- if you look at what Petitioner put up there, through a
20 housing, just like Dr. Zalesky said, a housing. This does go through the
21 housing that the on-off control is in. It doesn't go through the host
22 -- housing that the hemostasis valve is in.

23 And that's in the claim. The claim expressly requires that those
24 two are together. And if you look at -- if you look at that testimony, they
25 don't get the answer they want. They put this in front of them and start
26 mixing between claims and the specification of what this figure teaches

1 when in his declaration and on cross, he clearly said Garrison doesn't teach
2 an on-off control in the flow path extending through the housing as the claim
3 requires.

4 As opposed to fluidly coupled to or fluidly communicating with.
5 And the claim distinguishes expressly between those two -- what those two
6 things mean.

7 JUDGE FREDMAN: Okay.

8 MR. HAMILTON: I'm now on Slide 12 and I'll just go a little bit
9 into my rebuttal time. Slide 12. Immediately before the quotes that
10 Petitioner's attorney said -- where he said that Dr. Zalesky admitted
11 something about what the claim is saying, what Garrison teaches.

12 Dr. Zalesky, this is the immediate question before that section said,
13 "Garrison does not disclose an on-off control in the flow path as recited in
14 Claim 1 because Garrison's valve is not located in the same housing as the
15 hemostasis valve." That cannot be more clear. This is his testimony.

16 And then paragraph 36 is put in front of him, which is not the
17 claim, it's the specification. And Petitioner starts mixing and matching
18 between those two things where Dr. Zalesky -- where they got the sound
19 bites that they wanted.

20 JUDGE FREDMAN: It's the very next question that is the one you
21 just quoted.

22 MR. HAMILTON: Yes.

23 JUDGE FREDMAN: The question is you're construing -- the next
24 question they ask is, "You're construing Claim 1 to require that the on-off
25 control is in the housing, correct?" Then his response there is "No, that is
26 one option. It is not constrained to that." So that's not consistent with your

1 immediate previous statement as he's saying it doesn't have to be there.

2 MR. HAMILTON: Right. So at best those two are not consistent
3 at best for Petitioner.

4 JUDGE FREDMAN: That says that they don't have to. Go ahead.

5 MR. HAMILTON: And Petitioner didn't ask to clear that up,
6 didn't ask -- didn't say, how can you say this and say that? Petitioner
7 continued. If you look at the very next section, this is page 85, next page. If
8 we turn back to page 13 --

9 JUDGE FREDMAN: "So it is your opinion that the on-off control
10 recited in Claim 1 does not need to be in the housing? Is that right? Right.
11 I'm allowing for two options, in or not in the housing." That's what he says
12 next.

13 MR. HAMILTON: That's right. That's right. And he wasn't
14 talking about the claim language. He was asked about -- the word the claims
15 was used.

16 JUDGE FREDMAN: You said that you were construing Claim 1
17 at line 3 of page 84. How is that not the claim language? You were
18 construing Claim 1. How is he not dealing with the claim language when he
19 was asked that at page 84? You're trying to say it's spec. They're talking
20 about the claim language. That's what they asked.

21 MR. HAMILTON: Okay. So let me just go through this.

22 JUDGE FREDMAN: I mean, that is not consistent with what the
23 statement that Dr. Zalesky made.

24 MR. HAMILTON: Yes. And he was at best clearly confused on it
25 because he testified to the exact --

26 JUDGE FREDMAN: In your opinion he was confused. Yes, we

1 hear that.

2 MR. HAMILTON: Yes. And so here we go. We turn back to
3 page 13. And the first question is the housing.

4 JUDGE FREDMAN: Slide 13, you mean?

5 MR. HAMILTON: Slide 13. Yes. Thank you.

6 JUDGE FREDMAN: Mm-hm.

7 MR. HAMILTON: The question is -- turn back to page 13, that's
8 that figure that's talking about the spec.

9 JUDGE FREDMAN: Yes.

10 MR. HAMILTON: And the question is the housing. And they
11 don't get the answer they want from Dr. Zalesky. So now the question
12 changes to, as you can see on the right side, through a housing. That's all
13 he's talking about in Slide 13, what the spec discloses in Figure 1, which he
14 later says is clearly not covered by the claim.

15 And I can show you where that is. Okay. So we've already talked
16 about that. And then here, again, that same page, he goes back to Garrison.
17 The red dash line used to denote the purported flow path is well beyond
18 either end of the alleged housing. This is on cross examination.

19 JUDGE FREDMAN: Slide 18.

20 MR. HAMILTON: Slide 18, Exhibit 1042, page 85, 10 through
21 21. The red dash line that Petitioner uses to denote the purported flow path
22 extends well beyond either end of the alleged housing and thus tracks more
23 than just the flow path extending through the housing.

24 This is on cross-examination. A POSITA would understand that
25 the proper illustration of the flow path extending through the housing. Now
26 he's talking about the claim language itself would be from one end of the

1 proximal adapter to the other.

2 JUDGE FREDMAN: That is Slide 15?

3 MR. HAMILTON: Slide 15. This is right in that where they
4 confused him on, are you talking about the spec? Are you talking about the
5 claim? And he clearly testified that Garrison doesn't teach what is required
6 by the claim. Or excuse me, the language, the exact language in the claim,
7 the flow path extending through the housing.

8 This is on cross-examination before -- not our questions, their
9 questions. This is what he said. And as Petitioner's attorney said, he was
10 confused by these answers and they never followed up and clarified what he
11 meant by these two different things.

12 And the clear direct testimony is that Garrison doesn't teach
13 limitation for this reason. Clear testimony on cross, he says this as well,
14 albeit some other testimony that seems to conflict but never clarified. And
15 then on redirect --

16 JUDGE FREDMAN: Slide 17?

17 MR. HAMILTON: Slide 17.

18 JUDGE MAJORS: Mr. Hamilton.

19 MR. HAMILTON: Yes.

20 JUDGE MAJORS: Mr. Hamilton, before you get off of that, can
21 you go back to the testimony that you were just showing about the one end
22 of the adapter to the other? I'm just trying to understand this.

23 JUDGE FREDMAN: I think Slide 15.

24 JUDGE MAJORS: Yes, thank you. Slide 15. What do we mean
25 here when we say from one end of the adapter to the other? Are we talking
26 -- for example, if you look back at Figure 1, are we talking the end of the

1 adapter or the -- I'm sorry, the end of the valve there kind of at 107 going out
2 109? Or would it include -- do the ends include for example, that little side
3 arm, 108, that it's shooting off of?

4 MR. HAMILTON: So on Slide 3, I'll just highlight it from here to
5 here, or here to here.

6 JUDGE MAJORS: Yes. I'm trying to understand what we mean
7 here by from one end of the adapter to the other.

8 MR. HAMILTON: Okay. So he clarified that on cross-
9 examination as well. When he kept just -- they kept trying to get the sound
10 bites that they wanted, putting up the spec, putting up his testimony about
11 the spec, as opposed to the claim itself. And he testified, through can be
12 interpreted different ways.

13 One interpretation is axial flow the entire length. So that's from
14 one end to the other that we just talked about. Another interpretation is it
15 goes through part of the housing, and certainly is still through, but a different
16 flow path configuration. Which is the interpretation that applies to Claim 1,
17 interpretation covers both.

18 JUDGE FREDMAN: This is Slide 16.

19 MR. HAMILTON: Slide 16, yes. So either one. And in fact, the
20 flow path identified -- a flow path identified by Petitioner is one that extends
21 far beyond the housing, not the one extending through the housing. And it
22 extends -- it starts at the aspiration source and goes all the way through to
23 the end of the catheter.

24 It's that flow path, everything in that flow path fluidly
25 communicates with the flow path that extends through the housing. And the
26 claim distinguishes what that means versus in the flow path that extends

1 through the housing. And then on --

2 JUDGE FREDMAN: Slide 17.

3 MR. HAMILTON: -- Slide 17, redirect, Dr. Zalesky confirmed all
4 his testimony about Garrison doesn't teach this limitation, and what the
5 limitation means. That's paragraphs 91 through 93 of his declaration. If
6 there was any confusion cleared up here on redirect, this is what his
7 testimony was, is and it's still accurate, hasn't changed.

8 And just after this section, I'll give you the -- the section on
9 redirect is page 133, line 7 through 134, line 3. That's in Exhibit 1042 where
10 he says Claims 1 and 10 require the on-off control to be in the housing, or
11 integrated in the housing. Clearly says it.

12 Petitioner came back and asked -- and recrossed. First question,
13 did he talk -- did Dr. Zalesky talk to his attorneys about any of his testimony,
14 the questions, before being asked about them? He says no. So with no prep,
15 this is his testimony on redirect. And then Petitioner decides not to clarify
16 the issue anymore.

17 So the last word is clearly what Claims 1 and 10 mean. If there
18 was any confusion above, Dr. Zalesky testified on direct, that's what it
19 meant, testified on cross, that's what it meant. And maybe some confusing
20 sections on when he was confused between the spec and the claims. And
21 then on redirect, cleared that up. So --

22 JUDGE FREDMAN: 10 minutes left. Do you want to keep
23 talking or do you want to save any for --

24 MR. HAMILTON: Sure. I'll just wrap up on this one. Summary
25 of the language of Claims 1 and 10 is clear. On-off control, just like the
26 claim says, must be in the flow path as opposed to fluidly communicating

1 with the flow path or fluidly coupled to the flow path. The claim language
2 could not be more clear on the differences between those two.

3 The specification, Patent Owner doesn't say anything about the
4 claim language in its reply, ignores it completely. The most important thing
5 to understand the scope of the claim. Patent Owner makes one argument
6 about the spec that every embodiment is excluded by Patent Owner's
7 interpretation.

8 I've showed you how the spec supported by Dr. Zalesky's
9 testimony shows the two different embodiments, including one where the
10 on-off control is in the flow path that extends to the housing, in the housing
11 that has the hemostasis found, just like the claim says.

12 Petitioner points to no evidence from its expert supporting its
13 argument about what the spec means. Because its expert ignored the issue
14 completely. And then for the file history, this is exactly how the patent
15 office understood the claim. This is a different Garrison reference. Same
16 claim limitations, a housing, a flow path extending through the housing, and
17 an on-off control in the flow path. That's one --

18 JUDGE FREDMAN: Is there a slide showing that?

19 MR. HAMILTON: Pardon?

20 JUDGE FREDMAN: Did you have a slide showing the Examiner?

21 MR. HAMILTON: I don't have a slide with those on it.

22 JUDGE FREDMAN: I was just asking.

23 MR. HAMILTON: Figure 1, Examiner skips Figure 1, which has
24 an on-off switch here, 232, connected by tubing to this Y housing. And then
25 the hemostasis valve is 234. Examiner doesn't point to this, connected by
26 tubing. Doesn't point to this other on-off switch connected by tubing.

1 Instead goes to Figure 5, which happens to have those same two on-off
2 switches that are connected by tubing not in the housing, and instead points
3 to 242, which is in the housing.

4 JUDGE FREDMAN: Figure 5 of the patent?

5 MR. HAMILTON: Figure 5 of the Garrison reference during
6 Prosecution. That's exactly how the office understood the claim. Petitioner
7 said nothing about this in their reply, has no understanding of this. Has
8 presented no evidence on this or argument whatsoever. This is clearly how
9 the patent office understood what the claim meant.

10 JUDGE MAJORS: Mr. Hamilton.

11 MR. HAMILTON: Yes.

12 JUDGE MAJORS: I don't believe that the Examiner pointed to
13 those other structures 232 or 238 and said that those would not satisfy the
14 claim language. Did he or her?

15 MR. HAMILTON: He did not. The examiner did not. Yes.

16 JUDGE MAJORS: Okay. So I think that the core question is not
17 whether the claim would encompass an on-off control that's part of the same
18 housing, and in the flow path. I think the operative question is whether the
19 structures as illustrated in Garrison where the on-off control is not part of the
20 same housing are excluded. So I'm not sure we can make much about the
21 file's history as you've characterized it.

22 MR. HAMILTON: It's not definitive. Absolutely. It's just one
23 piece of evidence. The most important is the claim language itself. An on-
24 off control in the flow path versus in fluid communication with the flow path
25 or fluidly coupled to the flow path.

26 The spec explains exactly what that means with respect to

1 connecting components like the on-off control to the housing that has the
2 hemostasis valve. Fluidly coupled is not in, it is fluidly coupled to. That's
3 the most important. The claim itself explains exactly what is covered. And
4 there's an embodiment that fits with that claim.

5 The Patent Owner's understanding of the scope of the claim does
6 not exclude every embodiment, and Petitioner has pointed to no evidence
7 that it does. And in fact, Dr. Zalesky, has said the opposite. There's two
8 embodiments or these two primary configurations in the patent. And that's
9 how one of skill in the art would interpret those two interpretations.

10 So on this issue where Petitioner bears the burden, Petitioner
11 doesn't say anything about the claim language, the most important aspect.
12 Makes an argument about the spec unsupported by any evidence, and that is
13 directly contradicted by Patent Owner's expert, and then ignores the file
14 history.

15 That cannot meet Petitioner's burden to show that Garrison teaches
16 this -- discloses this claim limitation. And Petitioner has not argued that it's
17 obvious, has not argued any other aspect of it. Petitioner in the petition
18 simply said, without any analysis whatsoever, that it's met by a flow path
19 that is far beyond the flow path that extends through the housing. That
20 includes the hemostasis valve, which is exactly what the claim covers.

21 JUDGE MAJORS: Just one more question, Mr. Hamilton, on this
22 point. And so when you said that there's an embodiment in the specification,
23 for clarification, you're referring to that language at column 6, lines 45 to
24 49?

25 MR. HAMILTON: In conjunction with the language at column 5,
26 66 through 6, line 11, disclosure of a tubing subsystem that fluidly couples

1 the components together. And then in other embodiments you could omit
2 that subsystem and integrally form those components or permanently
3 connect.

4 And then the '519 application, which says you can have one-piece,
5 multiple piece housings. All that together as interpreted by Dr. Zalesky and
6 not rebutted by any evidence, Petitioner's expert completely ignores it,
7 supports that that discloses the embodiment. That's exactly what's claimed.
8 Fits exactly with what the claim language says. Otherwise it doesn't make
9 any --

10 JUDGE MAJORS: Okay. Thank you.

11 MR. HAMILTON: Otherwise it doesn't make any sense. Sorry, I
12 didn't mean to interrupt you. Otherwise --

13 JUDGE MAJORS: I was just saying, thank you.

14 MR. HAMILTON: Yeah. Otherwise it doesn't make any sense. If
15 in the flow path meant the same thing as in fluid communication, the first
16 catheter would be in the flow path. The clot canister would be in the flow
17 path or conversely, the on-off control would be fluidly communicating with
18 the flow path or fluidly coupled to the flow path.

19 Those different phrases are used, they have different meaning.
20 And it fits with what is disclosed in the specification as supported by Dr.
21 Zalesky's testimony and not disputed by any expert testimony. Okay. I'll
22 reserve those last three minutes. Thanks.

23 JUDGE MAJORS: Sure.

24 JUDGE FREDMAN: Mr. Stowell, you can begin when you're
25 ready.

26 MR. STOWELL: Thank you, Your Honor. I've pulled up here

1 Patent Owner's Demonstrative Slide 14 so that we have the drawing that Dr.
2 Zalesky provided in his declaration. I heard that we tried to bamboozle Dr.
3 Zalesky during his deposition. My colleague Mr. Barnes took that
4 deposition, so I feel the need to defend him.

5 So I'll just read what Dr. Zalesky's testimony -- because I don't
6 think it could be more clear. And the questions were great. Question, and
7 I'm on page 87 of his deposition transcript, Exhibit 1040. Question. "So as
8 it is recited in Claim 1, the blue flow path that you illustrated on page 14 of
9 your supplemental declaration is a flow path extending through the housing,
10 correct?"

11 Answer, "Yes. I will try this one more time. Through can be
12 interpreted different ways by different POSITAs. One interpretation is an
13 axial flow through the entire length of the house. Another interpretation is it
14 goes through a part of the housing, and certainly is still through, but a
15 different flow path configuration."

16 Question, "Which is the interpretation that applies to Claim 1 of
17 the '005 Patent?" Answer, "My interpretation is it covers both." Okay. We
18 go to page 89, line 6. "But the integration of a hemostasis valve and the on-
19 off control is not required by Claim 1 of the '005 Patent, correct?" Answer,
20 "It is not required, but it is included."

21 So we agree, Dr. Zalesky agrees that there is no requirement in
22 Claim 1 that the on-off control be in the same housing as the hemostasis
23 valve. If you go, still staying on Slide 14, I heard Mr. Hamilton suggest that
24 we somehow confused Dr. Zalesky about what housing we were referring to,
25 and what housing he was referring to.

26 He was asked at page 48, "Can you identify where in Figure 1 the

1 housing that you are referring to is?" Answer, "It is in the vicinity of 106."
2 He goes on to explain, "You would agree with me that in Figure 1 of the
3 '005 Patent, the valve 126 is not in the housing 106, correct?" And he says,
4 "That appears to be the case." He agrees.

5 If we go to his deposition at line -- at page 84, line 3. Question,
6 "You are construing Claim 1 to require that the on-off control is in the
7 housing, correct? Answer, "No. That is one option. It is not constrained to
8 that." And Judge Fredman, you read this earlier.

9 He was then asked, "Okay, what are the other options?" Answer,
10 "In the flow path but not in the housing." Question, "So it is your opinion
11 that the on-off control recited in Claim 1 does not need to be in the housing.
12 Is that right?" Answer, "I'm allowing for the two options in or not in the
13 housing."

14 Dr. Zalesky was clear about his testimony. He was clear that the
15 on-off control did not need to be in the same housing as the hemostasis
16 valve. Brian, could we go to Slide 9 real quick? And I do just want to
17 address the Prosecution history.

18 Judge Majors, you had raised this earlier, and your point was very
19 good that the Patent Examiner did not exclude item 238 or item 232 from the
20 scope. And what the Examiner appears to have done is kind of mixed and
21 matched between Figure 1 and Figure 5.

22 But critically in Figure 5 even, that element 242, that valve is not
23 in the same housing as item 234, which is identified at the far-right side as
24 being a hemostasis valve. At paragraph 66 of Exhibit 1019, the application
25 says, "The access sheath includes a proximal extension 2040 that extends
26 between the connector 226 and the proximal hemostasis valve 234."

1 It then goes on, "The proximal extension 240 can be in the range
2 between 10 and 25 centimeters." So there's a long piece of tubing that
3 separates the connector that has the valve from the hemostasis valve. So
4 even this doesn't show a hemostasis valve within the same housing as the
5 on-off valve.

6 We will also just discuss the evidence. Brian, can we go to Slide
7 18. And Petitioner has attacked Mr. Thornton for allegedly not considering
8 the differences between in and fluidly coupled to. So Patent Owner has tried
9 to invent or distinguish -- or invent a problem or distinguish these terms that
10 simply isn't supported by the patent specification.

11 The on-off control is in the flow path. It is also fluidly coupled to
12 the flow path. Patent Owner has not shown any support in the patent
13 specification to suggest that those two terms are mutually exclusive of each
14 other, or that they can't describe the same feature.

15 And so what Mr. Thornton did was he applied the plain and
16 ordinary meaning of those terms. He identified the structure in Garrison that
17 meets the claim language, and he explained that that's why it met the claim
18 language. The on-off control in Garrison is in the flow path.

19 And Petitioner's attack on Mr. Thornton is interesting given their
20 own expert's at least inconsistent testimony. And we asked Dr. Zalesky, this
21 is at page 75 of his deposition, some questions about what he considered.
22 We said, question, "Did you identify any embodiment disclosed in the '005
23 Patent that includes a single housing with both a hemostasis valve and an on-
24 off control in your supplemental declaration?"

25 And he says, "I honestly don't recall." So this is their major
26 argument, he can't recall. Next question, "Was that something you

1 considered when forming the opinions you presented in your supplemental
2 declaration?" Answer, "I looked at Claim 1 in particular and certainly
3 reviewed the written description, and frankly looked at it from a high-
4 altitude perspective without getting into minute detail of the housing."

5 So their own expert didn't even consider their primary argument
6 and the minute details of the housing that they're trying to advance in their
7 surreply. The argument that the hemostasis valve must be in the same
8 housing as the on-off control simply is not supported. With that I will rest.
9 Thank you, Your Honor.

10 JUDGE FREDMAN: Thank you. Mr. Hamilton, you have three
11 minutes. I'm going to show you on Slide 16. Thank you. You're ready?

12 MR. HAMILTON: Thank you, Your Honors. First testimony that
13 Petitioner pointed to is what's shown on Slide 16, what the patent covers the
14 two interpretations is the axial flow path or the flow path that goes through
15 the Y joint in the housing. Patent covers those two interpretations, there's no
16 issue there.

17 Either one would be the flow path extending through the housing,
18 and that he must -- excuse me, the on-off control must be in that flow path.
19 That's clearly what the claim says. Going back to Slide 14, this is Figure 1
20 talking about the specification, the specification's disclosure as to what the
21 claims recite and what the claim covers.

22 This doesn't talk about a hemostasis valve at all, let alone a
23 hemostasis valve in a housing, and an on-off control in a housing. This isn't
24 an admission of anything with respect to the claim. When Dr. Zalesky
25 actually addresses the claim in his declaration, paragraphs 91 through 93, he
26 says that requires that the on-off control be in the housing because the claim

1 recites in the flow path extending through the housing as opposed to fluidly
2 communicating with the fluidly coupled to.

3 If the Patentee wanted to just say fluidly coupled to or fluidly
4 communicating with, the same term would've been used for all three. A
5 different term is used, which indicates that it means something different, and
6 it means exactly what it says.

7 It's in that flow path that extends to the housing, as opposed to just
8 fluidly communicating with that flow path. Dr. Zalesky's testimony, the
9 Petitioner pointed to that he didn't recall. He's asked about his testimony and
10 a declaration that extends many pages. He didn't recall exactly what it said.

11 And when he was asked about it, he explained exactly what it
12 meant, paragraphs -- and the Garrison doesn't teach that claim limitation.
13 The minutia of the housing is not at issue here at all. The issue here is, does
14 the on-off control have to be in the housing as the claim recites, or does it
15 have to be -- or can it just be fluidly coupled to the housing -- or excuse me,
16 to the flow path or fluidly communicate with the flow path.

17 He considered that issue expressly in his declaration in paragraph
18 91 through 93, as opposed to what he said in paragraph 36 about the
19 embodiment in Figure 1. And in that paragraph 93 he says, there are two
20 -- the specification shows two embodiments, one where the on-off control is
21 not in the path extending through the housing. That's Figure 1, he said
22 clearly in his declaration. And then Figure -- excuse me then the description
23 of you can omit those items that fluidly couple the on-off control to the
24 housing --

25 JUDGE FREDMAN: Thank you, Mr. Hamilton, we're done with
26 this hearing.

1 MR. HAMILTON: All right. Thanks.

2 JUDGE FREDMAN: We'll take your arguments under
3 advisement. Are there any further questions or comments from either Judge
4 Majors or Judge Jeschke?

5 JUDGE MAJORS: None for me. Thank you both today. I
6 appreciate it very much.

7 JUDGE FREDMAN: Thank you both for your presentations. We
8 appreciate it. Anything else you want to say, Judge Majors?

9 JUDGE MAJORS: No. Yes, actually, I'm sorry. If Counsel, if
10 you could just kindly remain behind like we've done the last couple times to
11 help our Court Reporter with any questions. With all that, we're now
12 adjourned, and a final written decision will be prepared, entered in due
13 course. Thank you very much.

14 (Whereupon, the above-entitled matter went off the record.)

IPR2025-00289
Patent 11,554,005 B2

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