

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION
INARI MEDICAL, INC.,)
Plaintiff,)
vs.) Civil Action No.
IMPERATIVE CARE, INC.,) 24-cv-3117-YGR
Defendant.)

*** OUTSIDE COUNSEL EYES ONLY ***
VIDEOTAPED DEPOSITION OF BRIAN BROWN
Tuesday, August 27, 2024
8:09 A.M.

Stenographically reported by:
Lindsay DeWaide, RMR, CRR

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19 ALSO PRESENT: Pat Curto - Videographer

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3 OAKLAND DIVISION
4 INARI MEDICAL, INC.,)
5 Plaintiff,)
6 vs.) Civil Action No.
7 IMPERATIVE CARE, INC.,) 24-cv-3117-YGR
8 Defendant.)
9

12 VIDEOTAPED DEPOSITION OF BRIAN BROWN, taken
13 at the instance of the Defendant, pursuant
14 to the Federal Rules of Civil Procedure,
15 before Lindsay DeWaide, Registered Merit
16 Reporter and certified Realtime Reporter,
2141 Lindau Lane, Bloomington, Minnesota,
on the 27th day of August, 2024, commencing
at 8:09 a.m. and concluding at 3:49 p.m.

1 INDEX

2 EXAMINATIONS

3 BY MR. STOWELL 7

6 EXHIBITS

7 No. Description Page
8 [Exhibit 1011](#) Declaration of Brian 17
Brown in Support of Inari's
9 Motion for a Preliminary
Injunction
10 [Exhibit 1012](#) Notice of Allowance and 134
Fees Due for Application No.
17/226,318

14 PREVIOUSLY MARKED EXHIBITS

15 No. Description Page
16 [Exhibit 1](#) U.S. Patent No. 11,974,910 41
17 [Exhibit 2](#) U.S. Patent No. 11,844,921 46
18 [Exhibit 4](#) United States Patent and 90
Trademark Office Office
19 Action in Application No.
18/342,553
20 [Exhibit 29](#) United States Patent 92
Application Publication US
2015/0173782 A1
21 [Exhibit 31](#) United States Patent 136
Application Publication US
2003/0116731 A1
22 [Exhibit 32](#) United States Patent 143
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2	
3	INFORMATION TO BE SUPPLIED
4	Page Line
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1	BLOOMINGTON, MINNESOTA; TUESDAY, AUGUST 27, 2024
2	8:09 A.M.
3	***
4	(Whereupon Exhibit No. 1011 was marked for
5	identification.)
6	THE VIDEOGRAPHER: We are now on the
7	record. Today's date as indicated is August 27,
8	2024. The time as indicated is 8:10 a.m.
9	This is the video deposition of Brian Brown
10	in the matter of Inari Medical versus
11	Imperative Care, filed in the United States District
12	Court for the Northern District of California,
13	Case No. 4:24-cv-03117-YGR.
14	Let's see. This deposition is taking place
15	at JW Marriott, 2141 Lindau Lane, Bloomington,
16	Minnesota.
17	My name is Pat Curto. I'm a Certified
18	Legal Video Specialist representing Kayla Lotstein
19	Stenography.
20	Would counsel please state their
21	appearances for the record starting with the noticing
22	attorney.
23	MR. STOWELL: Joshua Stowell of
24	Knobbe Martens on behalf of the defendant,
25	Imperative Care. Joining me today is Nick Belair,

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1	also of Knobbe Martens.
2	MR. KEESE: Dan Keese of Perkins Coie LLP
3	on behalf of plaintiff, Inari, and with me is my
4	colleague, Amanda Tessar.
5	THE VIDEOGRAPHER: The court reporter today
6	is -- is Lindsay DeWaide also representing Kayla
7	Lotstein Stenography.
8	Sir, you may remain seated, and the court
9	reporter will swear you in.
10	BRIAN BROWN, called as a witness herein,
11	having been first duly sworn on oath, was
12	examined and testified as follows:
13	E X A M I N A T I O N
14	BY MR. STOWELL:
15	Q Good morning, Mr. Brown. Could you please
16	say and spell your name for the record.
17	A Brian Brown, B-R-I-A-N, B-R-O-W-N.
18	Q And what is your home address?
19	A It is 178 Jandel, J-A-N-D-E-L, Avenue
20	Northeast, Hanover, Minnesota.
21	Q And I know you've been deposed before, but
22	I'm just going to go over a couple of standard
23	operating procedures so we're on the same page.
24	You understand that you're under oath
25	today, and that you're required to tell the truth

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1	just as if you were in a court of law?
2	A I do.
3	Q Okay. The court reporter is writing down
4	our conversation today, so if you can try to wait for
5	me to finish asking my question, and I will wait for
6	you to answer before we proceed, and that way we can
7	avoid talking over each other.
8	Does that make sense?
9	A It does.
10	Q Your answers today will need to be verbal,
11	which you're already doing a good job with, but that
12	way the court reporter will be able to write down
13	your testimony.
14	Does that make sense?
15	A It does.
16	Q From time to time, your counsel may make
17	objections, but you will still need to answer all of
18	my questions unless you are specifically instructed
19	not to answer by your counsel.
20	Does that make sense?
21	A It does.
22	Q Okay. If at any point today you don't
23	understand one of my questions, which is bound to
24	happen, please speak up and let me know. If you
25	don't say anything, the assumption will be that you

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1 Q Okay. And is that still your understanding
2 of Garrison I today?
3 A Yes. As -- as the examiner has defined it
4 up above, that -- that is what I am agreeing with
5 there.
6 Q Okay. And is that determination that
7 Garrison does not teach a telescoping configuration,
8 was that important to your conclusion that Garrison
9 does not render Claim 1 of the '910 patent invalid?
10 MR. KEESE: Objection. Document speaks for
11 itself.
12 THE WITNESS: That was part of what drew me
13 to that conclusion, yes.
14 BY MR. STOWELL:
15 Q And you actually go a little bit further,
16 and you say that Garrison I actually teaches against
17 the telescoping configuration.
18 Is that still your opinion today?
19 A Where are you reading now?
20 Q Yeah. I'm in paragraph 212, first
21 sentence.
22 A Okay. Well, I would say that it teaches
23 against it by the fact that it doesn't teach to do
24 it.
25 Q Okay. But is there a -- "teaching against"

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1 is kind of a term of -- of art in patent law.
2 Is there a -- do you believe there's an
3 express teaching in Garrison I that says: Do not
4 telescope a first catheter through -- or a second
5 catheter through a first catheter?
6 A Not that I recall.
7 Q I'm going to hand you what's been
8 previously marked in this case as [Exhibit 4](#). This is
9 an office action from the patent office in
10 Application No. 18/342,553. The notification date on
11 this document is November 6, 2023.
12 MR. STOWELL: Here you go, Dan.
13 MR. KEESE: Thank you.
14 BY MR. STOWELL:
15 Q Mr. Brown, are you familiar with this
16 document, [Exhibit 4](#)?
17 A As mentioned earlier, I've seen portions of
18 this.
19 Q Okay. And in paragraph 211, when you refer
20 to the nonfinal rejection dated November 6, 2023, are
21 you referring to [Exhibit 4](#)?
22 A I'm looking for that date on this document,
23 if you're aware of where it is.
24 Q Sure.
25 If you go to kind of the first page,

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1 there's a notification date on the right-hand side
2 that says November 6, 2023.
3 A Based on the -- that date, it does appear
4 to be the same document.
5 Q And when you were drafting your
6 declaration, do you recall seeing [Exhibit 4](#) and
7 reviewing it?
8 A As I mentioned, I reviewed portions of it.
9 Q Okay. This document has some stamping at
10 the top, and it says -- for example, on the first
11 page, it says page 1 of 9.
12 Do you have that on your copy? Yeah.
13 Okay.
14 So what I'll do, when I refer to pages in
15 this document, because it's not sequentially
16 paginated, I'll refer to the page number on the top.
17 A Very good.
18 Q Okay. If you could turn to page 4 of 9.
19 A I am there.
20 Q Okay. And there is a bullet No. 4, and
21 then it begins "Claim 18."
22 Do you see where I'm at?
23 A I do.
24 Q Okay. And this is where the examiner is
25 explaining the examiner's review of Claim 18. And

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1 the examiner says, "Regarding Claim 18, Garrison
2 teaches a clot treatment system."
3 Do you see that?
4 A I do.
5 Q Okay. And do you agree with the examiner
6 that Garrison teaches a clot treatment system?
7 A I do. That is what the Garrison patent is
8 teaching.
9 Q Okay. And the examiner also concluded that
10 Garrison teaches a first clot aspiration assembly.
11 Do you agree that Garrison teaches a first
12 clot aspiration assembly?
13 A I don't believe I have Garrison in front of
14 me, do I?
15 Q I don't think you do among your stuff
16 there. Do you need Garrison?
17 A That would be helpful.
18 Q Okay. Okay, Mr. Brown. I'm going to
19 provide to you what has been previously marked in
20 this case as [Exhibit 29](#). It is U.S. Publication
21 No. U.S. 2015/0173782, and this is a patent to
22 Mr. Garrison.
23 MR. KEESE: I just want to object to the
24 extent that it mischaracterizes the document.
25 MR. STOWELL: What part of it do you think

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1 is mischaracterized?
2 MR. KEESE: It's not an issued patent;
3 right?
4 MR. STOWELL: Yeah. It says U.S.
5 Application Number.
6 MR. KEESE: Okay. I just want to be clear.
7 MR. STOWELL: Yeah. Let me -- I'll be
8 clear on the record.
9 [Exhibit 29](#) is U.S. Publication No. U.S.
10 2015/0173782 A1.
11 BY MR. STOWELL:
12 Q Okay. Mr. Brown, you now have Garrison in
13 front of you.
14 Do you agree with the examiner's conclusion
15 that Garrison teaches a first clot aspiration
16 assembly?
17 A I do not.
18 Q Okay. And what do you think the examiner
19 got wrong?
20 A Well, he's using a different term for that
21 assembly than what Garrison does.
22 Q Sure. The terms may be different across
23 the patents, but -- but do you believe that the
24 examiner was correct when the -- when the examiner
25 concluded that Garrison teaches a first clot

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1 aspiration assembly?
2 A I do not recall whether Garrison teaches
3 that to be a first aspiration assembly.
4 Q Did you review this portion of [Exhibit 4](#) of
5 the nonfinal rejection when you were rendering the
6 opinions in your declaration?
7 A I did. I have to say, though, that I -- as
8 I'm looking at it right now, I don't recall whether
9 that is what Garrison refers to as that assembly, a
10 first clot aspiration assembly.
11 Q And you're aware that the prior art can use
12 different words to describe the device, and it can
13 still meet the limitations of the claim; right?
14 MR. KEESE: Objection. Calls for a legal
15 conclusion.
16 THE WITNESS: I don't know that officially,
17 but it sounds reasonable.
18 BY MR. STOWELL:
19 Q Okay. And so as we sit here, if I
20 understand your testimony, you're -- you're not sure
21 if you agree with the examiner's conclusion that
22 Garrison teaches a first clot aspiration assembly?
23 A And, like I said, it's just based on -- I
24 know that Garrison uses different terminology, so
25 that's my just initial reaction as -- as I'm reading

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1 this.
2 Q Okay. Do you believe that the examiner was
3 mistaken in concluding that Garrison teaches a first
4 clot aspiration assembly?
5 A I would have to go back and look to see how
6 Garrison describes it.
7 Q When you were rendering your expert
8 opinion, did you assess whether Garrison discloses a
9 first clot aspiration assembly?
10 A What I recall from Garrison is the -- what
11 is being referred to as a first clot aspiration
12 assembly was referred to by Garrison as access
13 device.
14 Q So you believe that what the examiner is
15 identifying as a first clot aspiration assembly, you
16 believe that Garrison refers to that as an access
17 device?
18 A Correct. So they are referring to the
19 first aspiration assembly connected to line 2025, so
20 the aspiration assembly, I'm assuming, is device
21 2010.
22 Q Okay. And what -- and what is your
23 understanding of what device 2010 is?
24 A A access device.
25 Q Okay. And is it your understanding that

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1 the access device is not a first clot aspiration
2 assembly?
3 A As I said, I would have to look again at
4 Garrison to see if he describes it that way. My
5 recollection is that he describes it as an access
6 device.
7 Q Okay. But do you believe it meets the
8 limitation of the claim that the examiner was
9 reviewing requiring a first clot aspiration assembly?
10 MR. KEESE: Calls for a legal conclusion.
11 THE WITNESS: Again, not without going back
12 and reading Garrison.
13 BY MR. STOWELL:
14 Q Okay. The examiner also concluded that
15 Garrison teaches a first catheter, a first pressure
16 source.
17 Do you agree with those conclusions by the
18 examiner?
19 A For the most part, yes.
20 Q Okay. The examiner also concluded on the
21 next page that Garrison discloses a fluid control
22 device which may be a stopcock.
23 Do you agree with that conclusion?
24 A As shown in Figure 34, I do agree with
25 that.

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1 Q The examiner also concluded that Garrison
2 discloses "Wherein the fluid control device may be a
3 stopcock valve or a flow controller with a simple
4 actuation which selects the open or closed
5 configuration."

6 Do you agree with that description of
7 Garrison?

8 A Yes.

9 Q Okay. The examiner also concluded that
10 Garrison discloses wherein the fluid control device
11 "is moveable between (a) an open position in which
12 the first pressure source is fluidly connected to the
13 first catheter and (b) a closed position in which the
14 first pressure source is fluidly disconnected from
15 the first catheter."

16 Do you agree with that portion of the
17 examiner's conclusion?

18 A Yes.

19 Q The examiner also concluded that Garrison
20 discloses "Wherein the first pressure source is
21 configured to generate vacuum pressure while the
22 fluid control device is in the closed position."

23 Do you agree with that portion of the
24 examiner's conclusion?

25 MR. KEESE: Vague.

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1 as -- of what's written there.

2 Q I would agree with you. I think the
3 examiner mixed up open and closed position.

4 Is that your interpretation, as a person of
5 skill in the art, reading this statement?

6 A It is.

7 Q Do you agree, then, that if we flip the
8 words there, that Garrison discloses, wherein, upon
9 movement of the fluid control device from the closed
10 position to the open position, the vacuum pressure is
11 applied to the first catheter to generate suction at
12 a distal portion of the first catheter?

13 A Yes.

14 Q The examiner also concluded that Garrison
15 discloses a second clot aspiration assembly.

16 Do you agree with that portion of the
17 examiner's conclusion?

18 A I do believe that the second catheter is
19 defined as a aspiration assembly.

20 Q And the examiner concludes that Garrison
21 discloses a second clot aspiration assembly that
22 includes a second catheter and a second pressure
23 source configured to be fluidly coupled to the second
24 catheter.

25 Do you agree with that portion of the

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1 THE WITNESS: Yeah. For the most part,
2 I -- I do. It's -- it's kind of odd here when it
3 talks about a pressure source. I mean, earlier, I
4 think they defined the pressure source, at least
5 Garrison defined it or the examiner defined it, as
6 31 -- I guess 3125.

7 BY MR. STOWELL:

8 Q And what do you think is odd about that?

9 A I guess I'm just looking at it from the
10 image there of a roller pump. As I look at it more,
11 I guess I can see where it could generate the vacuum
12 that's being discussed here.

13 Q The examiner also concluded that Garrison
14 discloses "Wherein, upon movement of the fluid
15 control device from the open position to the closed
16 position, the vacuum pressure is applied to the first
17 catheter to generate suction at a distal portion of
18 the first catheter."

19 Do you agree with that portion of the
20 examiner's conclusion?

21 A It seems to be written backwards. Where it
22 says, wherein, upon movement of the fluid control
23 device from an open position to the closed position,
24 the vacuum pressure is applied to the first catheter,
25 my initial reaction is it would be just the opposite

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1 examiner's conclusion?

2 MR. KEESE: Vague.

3 THE WITNESS: For the most part, yes.

4 BY MR. STOWELL:

5 Q When you say "for the most part," is there
6 a portion of it that you don't agree with?

7 A I think just the fact that it is a little
8 bit vague is making it a little bit questionable, but
9 I would say as I -- as I look at this and I
10 understand this, I would say that it is accurate.

11 Q And the examiner also concluded that
12 Garrison discloses "a second pressure source
13 configured to be fluidly coupled to the second
14 catheter and to generate suction at a distal portion
15 of the second catheter."

16 Do you agree with that portion of the
17 examiner's conclusion?

18 A Yes.

19 Q Now, if we move to paragraph 6, the
20 examiner reiterates that Garrison teaches all of the
21 limitations we just discussed, and Garrison further
22 teaches a second clot aspiration assembly, including
23 a second catheter and a second pressure source
24 configured to be fluidly coupled to the second
25 catheter and to generate suction at a distal portion

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1 of the second catheter.
2 Do you agree with that conclusion?
3 A Yes.
4 Q And then I think we get to the portion that
5 you quoted in your expert report where the examiner
6 concludes that "Garrison fails to teach a second
7 catheter advanceable through the first catheter."
8 Do you agree with that portion of the
9 examiner's conclusion?
10 A As he had written it there, yes, I do agree
11 with it.
12 Q Okay. And then the examiner says, "The
13 second catheter (2045) does not advance through the
14 first catheter (2025), as shown in Figure 33."
15 Do you agree with that portion of the
16 examiner's conclusion?
17 A Yes, as he has written there.
18 Q Okay. Now, if we go to Figure 33 of
19 Garrison.
20 Do you have that in front of you?
21 A I do.
22 Q Okay. Item 2045 is not the second
23 catheter, is it?
24 MR. KEESE: Objection. Calls for a legal
25 conclusion.

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1 THE WITNESS: 2045 is part of the catheter
2 assembly.
3 BY MR. STOWELL:
4 Q Well, in Garrison, 2045 is described as
5 being a flow line; correct?
6 A I would have to go look, but --
7 Q Sure. Why don't we -- you can look at
8 paragraph 0130 and 0131 of Garrison which describe
9 Figures 32 and 33 as well as some related figures.
10 A Yes. Garrison describes 2045 to be a flow
11 line of the catheter 2030.
12 Q Well, that's not exactly what it says.
13 Right? It says, "Any or all of the arterial access
14 device 2010 and the catheter 2030 may be connected to
15 sources of passive or active aspiration via flow
16 lines 2025 or 2045."
17 Correct?
18 A It does say that. And further down, it
19 says, "In Figure 33, the flow line 2045 of catheter
20 2030."
21 Q Okay. And so in Garrison, element 2045 is
22 not identified as being the catheter; correct?
23 A It's of the catheter 2030.
24 Q Right. So Item 2030 is defined as being
25 the catheter in Garrison; correct?

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1 A Yes. And, as I mentioned, 2045 is a
2 component of the catheter.
3 Q Okay. And Item 2025 is not identified in
4 Garrison as being a catheter or a first catheter;
5 correct?
6 A It is defined as the flow line of catheter
7 2010.
8 Q Okay. And do we agree that the arterial
9 access device 2010 is a catheter?
10 MR. KEESE: Vague. Legal conclusion.
11 THE WITNESS: Yes. I would say it's a
12 catheter.
13 BY MR. STOWELL:
14 Q And based on your experience, is catheter
15 2030 telescoping through catheter 2010 in Figure 33?
16 A It is not based on how I had defined it to
17 you earlier today.
18 Q And why isn't catheter 2030 telescoping
19 through catheter 2010?
20 A As I had defined telescoping to you earlier
21 today, it is to take a catheter of the same type,
22 as -- the two catheters must be of the same type, and
23 the intentions of the telescope is to allow
24 advancement of the first catheter to a more distal
25 location or also allow other modes of treatment of

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1 the first catheter.
2 And so if we take a look at what's
3 happening here, this is just what I refer to as a
4 conventional interventional procedure. You have an
5 access catheter, and you have a treatment catheter
6 passing through an access catheter. But that is not
7 defined as telescoping.
8 Q When you say catheter of the same type,
9 what are you referring to?
10 A So two guide catheters, two aspiration
11 catheters, two -- I'm trying to think of another
12 example, but those are the two that come to mind.
13 Q And where does that understanding of
14 telescoping come from?
15 A That was the initial use of the term
16 "telescoping" back late '90s, early 2000. The --
17 just passing a catheter through another catheter is
18 an interventional procedure. That's normal. That's
19 done every single day.
20 Telescoping is taking a given catheter of a
21 given design and then a second catheter of a -- of
22 the similar type of design but of smaller profile
23 that is able to go through the first catheter, and
24 that is telescoping.
25 Q Now, the Garrison reference discloses that

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1 Q And did you review that document in full?
2 A I reviewed it at a high level in full. I
3 focused on the areas that are related to what is
4 being discussed here in the declaration.
5 Q And do you recall seeing any errors in that
6 notice of -- notice of allowability?
7 A Not at this time.
8 Q Okay. And did you carefully look at the
9 examiner's statements in the notice of allowability
10 and compare those to the prior art references to make
11 sure you agreed with the examiner?
12 A Again, at a high level.
13 Q What does that mean, "at a high level"?
14 A Meaning, for instance, earlier today, we
15 went through that document and we found a couple of
16 things that we questioned whether it was -- was
17 accurate or not.
18 I reviewed this prosecution history, and I
19 don't recall finding anything. That doesn't mean
20 that we won't find anything if you and I review it
21 again.
22 Q And in paragraph 226, you state, "I agree
23 with the examiner that Hartley fails to disclose a
24 biasing member that is configured to bias the
25 actuator of the valve to a first (constricted)

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1 position."
2 Do you see where I'm at?
3 A I don't. I'm sorry. Start over, please.
4 Q Yeah. Sorry. It's the first -- first
5 sentence in paragraph 226.
6 A Okay. I'm at the paragraph, and I have
7 read the first sentence.
8 Q Okay. And -- and do you agree with the
9 examiner that Hartley fails to disclose a biasing
10 member?
11 A I do.
12 Q And that's still your opinion today?
13 A It is.
14 Q Okay. I'm going to ask our court reporter
15 to mark as [Exhibit 1012](#) the notice of allowance and
16 fees due for Application No. 17/226,318. The date
17 mailed on this document is October 18, 2023.
18 (Whereupon [Exhibit No. 1012](#) was marked for
19 identification.)
20 MR. STOWELL: Here you go, Dan.
21 MR. KEESE: Thank you.
22 BY MR. STOWELL:
23 Q Okay, Mr. Brown. Do you recognize this
24 notice of allowance?
25 A It does appear to be the notice of

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1 allowance that I am referencing in my declaration.
2 Q When you say referencing in your
3 declaration, are you talking about in paragraph 225?
4 A Correct.
5 Q Okay. And this document, you reviewed it
6 as you were preparing your declaration?
7 A Yes, as we discussed earlier.
8 Q Okay. On page 3 -- the pages are in the
9 upper right-hand corner once you get into the
10 document -- the examiner discusses the Hartley
11 reference beginning under the heading "Prior Art
12 Hartley."
13 Do you see where I am?
14 A I do.
15 Q Okay. And the examiner concludes that
16 "Hartley discusses a valve comprising an elongate
17 member defining a lumen."
18 Do you agree with that portion of the
19 examiner's conclusion?
20 A I have no reason to disagree, but I don't
21 have the image in front of me.
22 Q Would it help if you had the Hartley
23 patent?
24 A It would.
25 Q Okay.

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1 MR. KEESE: And, Josh, while we're doing
2 that, I know we've been on for -- for quite a while.
3 I just -- I don't know when you're planning on
4 stopping for lunch, but --
5 MR. STOWELL: Yeah. Why don't we -- let's
6 just finish up this line of questioning --
7 MR. KEESE: Yep.
8 MR. STOWELL: -- and then we can break.
9 Yeah.
10 BY MR. STOWELL:
11 Q Okay. Mr. Brown, I'm going to show you
12 what's been previously marked in this case as
13 [Exhibit 31](#). It is U.S. Patent Publication No. U.S.
14 2003/0116731 A1, and the inventor is Hartley.
15 Okay. Mr. Brown, have you seen this patent
16 publication before?
17 A I have.
18 Q Okay. And is this the Hartley reference
19 that you discuss in your expert declaration?
20 A I believe it is.
21 Q Okay. And so the examiner concluded that
22 "Hartley discloses a valve comprising an elongate
23 member defining a lumen," and I had asked you whether
24 you agree with that portion of the examiner's
25 conclusion.

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1 A I do.
2 Q Okay. And the examiner also concluded that
3 Hartley discloses a valve comprising "an active
4 tensioning mechanism, including an actuator 12
5 coupled to the elongate member via a filament 20
6 extending at least partially around the elongate
7 member."
8 Do you agree with that portion of the
9 examiner's conclusion?
10 A I'm not sure why, but I am not finding
11 filament 20.
12 Q Do you believe the examiner's reference to
13 filament 20 is an error?
14 A Without studying this more, I cannot give
15 an opinion.
16 Q Do you believe that Hartley discloses a
17 filament?
18 A I believe Hartley defines a filament as
19 Inari has defined a filament.
20 Q And do you believe that Hartley discloses a
21 filament within the valve that's described in the
22 Hartley reference?
23 A I'm sorry. Please ask again.
24 Q Yeah. Maybe I can do it a little quicker.
25 In Hartley, on page 2, at the top

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1 right-hand column, it refers to a string 14.
2 A Yes.
3 Q Okay. Is it your understanding that
4 Hartley's string 14 is a filament?
5 A Yes, as filament has been defined.
6 Q Okay. And so is it your understanding that
7 Hartley discloses an active tensioning mechanism,
8 including an actuator coupled to the elongate member
9 via a filament 14 extending at least partially around
10 the elongate member?
11 A That is my understanding.
12 Q Okay. The examiner also concluded that
13 Hartley discloses a valve "wherein the actuator is
14 moveable between a first position, wherein the lumen
15 is constricted and concealed, and a second position
16 wherein the lumen is at least partially open."
17 Do you agree with that portion of the
18 examiner's conclusion?
19 A I do.
20 Q Okay. There's a portion a little further
21 down in [Exhibit 1012](#), which is the notice of
22 allowability, that says "Regarding Claim 67." I'm on
23 page 3 of the exhibit.
24 A Yes. I'm at that location.
25 Q Your document looks different than mine.

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1 Is that right? Oh, it is. You're -- you're way
2 ahead of me.
3 A Okay.
4 Q Okay. So it says "Regarding Claim 67," it
5 says, "Hartley discloses a valve comprising an
6 elongate member defining a lumen."
7 I believe above, you had agreed that
8 Hartley -- that that portion of the examiner -- or
9 that you agree with that portion of the examiner's
10 conclusion; right?
11 A That is correct.
12 Q Okay. And then the examiner concluded that
13 Hartley discloses "a filament 20 coupled to the
14 elongate member."
15 I believe we've corrected the examiner's
16 mistake, and the filament is actually item 14.
17 So do you agree that Hartley discloses a
18 filament 14 coupled to the elongate member 22?
19 A I do.
20 Q And do you agree with the examiner's
21 conclusion that Hartley discloses "an actuator 12
22 coupled to the elongate member, wherein the actuator
23 12 is moveable between a first position in which the
24 actuator pulls the filament to collapse the elongate
25 member such that the lumen is constricted and sealed

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1 and a second position wherein the lumen is at least
2 partially open"?
3 A I do.
4 MR. STOWELL: Okay. Okay. We have reached
5 a good spot to stop for lunch if people are --
6 MR. KEESE: Yeah.
7 MS. TESSAR: I'm hungry.
8 MR. KEESE: Yeah. Certainly.
9 THE VIDEOGRAPHER: All right. We're
10 going -- we're going off the record. That will be
11 the end of Media 2 in the video deposition of
12 Brian Brown. The time is 11:58 a.m.
13 (Recess taken from 11:58 a.m. to
14 12:46 p.m.)
15 THE VIDEOGRAPHER: We are back on the
16 record. This is the continuation of the video
17 deposition of Brian Brown, beginning of Media 3. The
18 time is 12:47 p.m.
19 Off the record.
20 (Off the record.)
21 THE VIDEOGRAPHER: Back on again at 12:52.
22 Go ahead.
23 BY MR. STOWELL:
24 Q Okay, Mr. Brown. If you could look at
25 paragraph 228 of your declaration, which is

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1 analysis of Claim 1, so I'm just trying to figure out
2 if that's part of the opinion you've rendered in this
3 case or that's just a separate fact that you're aware
4 of.
5 A As of right now, it's just a separate
6 fact --
7 Q Okay.
8 A -- that I'm aware of.
9 Q Okay. And is it fair to say that you're
10 not opining that the use of Symphony to treat DVT
11 infringes Claim 1 of the '910 patent?
12 MR. KEESE: Objection. Calls for a legal
13 conclusion. Misstates testimony.
14 THE WITNESS: I have not created an opinion
15 on Claim 1 for DVT.
16 BY MR. STOWELL:
17 Q Let's turn to page 48. On this page are
18 some -- I guess I'll describe them as cropped images
19 of the Symphony system; correct?
20 A That is a fair description, yes.
21 Q Okay. And this particular catheter that's
22 shown here is the 24 French catheter; correct?
23 A Do you have -- I guess I'm looking at the
24 previous page where it does speak to a 24 French
25 aspiration catheter.

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1 Q Well, on page 48, you've actually labeled
2 it "24 French catheter (first catheter)."
3 A I see that now. So, yes, that is correct.
4 Q Okay. And here, you have some lines
5 underneath the words "first pressure source" in the
6 image at the top of 48, and there's a line going to
7 the clot canister, and there's a line going to what
8 you've called the vacuum pump.
9 Do you see that?
10 A I do see that.
11 Q And so what are you alleging is the first
12 pressure source required by Claim 1 of the '910
13 patent in the Symphony 24 French system?
14 A It is the vacuum pump, and of course, that
15 is pointing to that assembly. So anything within
16 that assembly that would hold or generate vacuum
17 would be included into the first pressure source
18 along with the clot canister that is -- I'll refer to
19 it as the handle of the Symphony device. Also, any
20 of the tubing that would be connecting those various
21 assemblies.
22 Q Would you agree with me that the clot
23 canister cannot generate vacuum?
24 A As shown on the Symphony system, I agree
25 with that.

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1 Q Okay. Would you agree with me that the
2 tubing on the Symphony system cannot generate vacuum?
3 A I would agree with that for the Symphony
4 system.
5 Q Would you agree with me that the only
6 component of the Symphony system that can generate a
7 vacuum is the vacuum pump?
8 A As shown in this image, it is pointing,
9 yes, just to the vacuum pump. A physician may elect
10 to use other sources to generate the vacuum. A
11 physician could use a syringe. A physician could use
12 the hospital vacuum source. All of those would then
13 be included.
14 Q Are you aware of any physicians that have
15 used a syringe with the Symphony system?
16 A I personally am not.
17 Q Are you aware of any physicians that have
18 used the hospital vacuum system with the Symphony
19 system?
20 A I personally am not. I'm trying to
21 remember whether the Symphony IFU, which is the
22 instructions for use, mentioned anything about
23 alternative vacuum sources.
24 Q Do you believe that the IFU mentioned
25 anything about alternative vacuum sources for the

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1 Symphony system?
2 A Sometimes they do.
3 Q But specifically for the Symphony system,
4 do you recall any separate statements in the IFU for
5 alternative vacuum sources?
6 A I'm telling you right now, I do not recall
7 whether it does or does not.
8 Q Why do you include the clot canister within
9 the -- with what you identify as the first pressure
10 source?
11 A Kind of going back to what we discussed
12 when we first were talking about the first pressure
13 source, it's anything that is the source of the
14 pressure. So it's holding, containing, generating
15 the pressure. So once the fluid control valve is
16 opened, it then is providing that pressure to the
17 system.
18 Q So is it fair to say you are using a broad
19 definition of source to include not just the
20 components that generate the pressure but anything
21 that contains the pressure?
22 MR. KEESE: Objection. Mischaracterizes
23 the testimony. Vague.
24 THE WITNESS: What I'm saying is that the
25 source of the pressure for -- for aspiration comes

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1 THE WITNESS: So the invention, meaning
2 the -- in this case, I believe we're talking about
3 the '910, the -- the invention does include
4 aspiration-only. It includes aspiration in
5 combination with the FlowTrier or the ClotTrier.
6 BY MR. STOWELL:
7 Q So earlier, we talked about mechanical
8 thrombectomy devices that could actually engage the
9 clot.
10 A Correct.
11 Q We had talked about those as being
12 different than aspiration.
13 When you use the term "mechanical
14 thrombectomy," are you referring to thrombectomy
15 devices with only those mechanical elements, or are
16 you including aspiration-only?
17 A I believe here I was referring to both.
18 Q Okay. And you had said you thought we were
19 referring to the '910 patent here. I don't see any
20 mention of the '910 patent.
21 Why do you think this level of ordinary
22 skill in the art is limited to the '910 patent?
23 MR. KEESE: Objection. Misstates the
24 testimony.
25 THE WITNESS: I was reading, in my opinion,

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1 the field of invention, and so I was assuming we were
2 talking about the '910 patent relative to the field.
3 BY MR. STOWELL:
4 Q Okay. Would the field of the invention be
5 different for the '921 patent?
6 MR. KEESE: Document speaks for itself.
7 THE WITNESS: I believe the '921 also
8 applies to this field.
9 BY MR. STOWELL:
10 Q Okay. And you have limited the field to
11 mechanical thrombectomy in peripheral and pulmonary
12 vasculatures.
13 Why is that?
14 A The invention of the '921 and the '910 are
15 primarily related to large-diameter catheters. They
16 are talking about the treatment of both PE and DVT.
17 The thing that is different than prior art
18 is prior art was focusing on mechanical thrombectomy
19 in the areas of coronary and neuro. The invention of
20 all of the unique attributes of the Inari system are
21 contained here in the '921 and the '910, and they are
22 for the treatment of peripheral and pulmonary
23 vasculatures.
24 Q And so do you consider mechanical
25 thrombectomy for neurovascular or coronary

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1 applications a different field than the -- than
2 mechanical thrombectomy for peripheral and pulmonary
3 vasculatures?
4 A It's a different field clinically, yes.
5 Q Okay. What about in terms of from the
6 perspective of a person of ordinary skill in the art?
7 Are you considering it a different field?
8 A If you're talking about a physician being
9 the person of ordinary skill in the art, yes, you
10 would not have a peripheral interventionalist doing
11 procedures in the neurovasculature or you wouldn't
12 have a neurovascular doing procedures in the coronary
13 arteries.
14 And so, yes, from -- from the clinical side
15 of it, yes, it's -- it can be different fields.
16 If you're looking at it from an engineering
17 standpoint, an engineer that has been involved with
18 coronaries and neurovascular and peripheral and
19 venous and has done thrombectomy catheters, yeah,
20 they would be able to cross all these fields.
21 Q Would you be surprised to learn that there
22 are doctors out there that remove clots in
23 neurovascular applications as well as in PE
24 circumstances?
25 A I am not surprised by that, no. I am aware

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1 of that, yes. And so I'm aware of cardiologists that
2 do neurovascular cases. But you would not take a
3 peripheral interventionalist without training for
4 neuro and have them do neuro.
5 MR. STOWELL: Okay. Yeah. Why don't we go
6 ahead. We'll break so you can do your call.
7 THE VIDEOGRAPHER: We're going off the
8 record. That will be the end of Media 3 in the video
9 deposition of Brian Brown. The time is 3:00 p.m.
10 (Recess taken from 3:00 p.m. to 3:07 p.m.)
11 THE VIDEOGRAPHER: We are back on the
12 record. This is the continuation of the video
13 deposition of Brian Brown, the beginning of Media 4,
14 and the time is 3:07 p.m.
15 BY MR. STOWELL:
16 Q Okay, Mr. Brown. When we left off, we were
17 in paragraph 86. And in that paragraph, you are
18 identifying what you believe to be the level of
19 ordinary skill in the art.
20 And you have a first definition of a
21 person. This is a person with a Bachelor of Science
22 degree in engineering or an equivalent field.
23 Do you see where I'm at?
24 (Interruption in proceedings.)
25 THE VIDEOGRAPHER: Could you ask that

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1 question again?
2 BY MR. STOWELL:
3 Q This is a person with a Bachelor of Science
4 degree in engineer or an equivalent field. Do you
5 see where I'm at after parens 1?
6 A I do.
7 Q Okay. And what -- what would you consider
8 to be a sufficiently equivalent field to engineering?
9 A There are people who have physics degrees.
10 There are people who have engineering technology
11 degrees. And, obviously, depending upon what degree
12 they have, you would want more or less experience.
13 Q You also mentioned that the person would
14 have two to four years of academic or industry
15 experience in the mechanical thrombectomy industry or
16 comparable industry experience.
17 When you say "comparable industry
18 experience," what do you mean?
19 A So thrombectomy is related to the
20 management of blood clots, and so it's very much
21 involved with the -- the whole cardiovascular system.
22 So people that have experience with dealing with the
23 cardiovascular system from a standpoint of -- of
24 blood and what blood does and how it coagulates, how
25 you deal with the coagulation of blood would be

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1 important, people that also have experience with
2 fluid dynamics. Thrombectomy is very, very dependent
3 on fluid dynamics and the understanding of fluid
4 dynamics.
5 And then all, of course, dealing with --
6 with catheters, having that understanding of
7 catheters. The -- of course, anyone that's had the
8 opportunity to work with mechanical thrombectomy and
9 doing any design or invention and doing lab work
10 would definitely have the criteria that we're
11 speaking about here.
12 Q Would a person who had the requisite
13 engineering degree and two to four years of industry
14 experience designing cardiovascular stents or valves
15 meet your definition of a person of ordinary skill in
16 the art?
17 A I would say it would be dependent on
18 whether or not they were dealing with the blood
19 chemistry and how the blood coagulates, how they can
20 potentially manage that coagulation, whether they've
21 ever worked on catheters that are doing aspiration.
22 So, as an example, if -- if this person
23 you're describing had only worked on a balloon
24 catheter or worked on a stent and never worked in any
25 type of aspiration catheter or any type of

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1 thrombectomy catheter, I would say they would be less
2 qualified.
3 Q But would they still be -- they may be less
4 than someone who had worked on aspiration technology,
5 but would they still be a person of ordinary skill in
6 the art?
7 A I -- I think we're speculating here as far
8 as who this individual is. And whether they're
9 qualified or not, I guess we'd have to see their
10 qualifications.
11 Q Okay. You also mention here, you have a
12 parens that says, "including for smaller arteries."
13 Do you see that?
14 A I do.
15 Q Okay. And what are you referring to there?
16 How does the experience with smaller arteries come
17 into play in your definition of the engineering
18 POSITA?
19 A Right. What I'm referring to here is a
20 person of ordinary skill in the art relative to these
21 patents, the '910 and '921 -- of course, the '910 and
22 '921 are talking about catheters and products for
23 treating larger-diameter arteries and veins.
24 And so what I'm saying is if the person has
25 experience in thrombectomy procedures, that is the

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1 qualification they need. It doesn't necessarily have
2 to be just for large-diameter vessels. It could also
3 be for smaller-diameter vessels.
4 Q Got it. Okay.
5 And I realized I used an acronym, POSITA,
6 person of ordinary skill in the art.
7 Are you familiar with that acronym? Have
8 you heard that before?
9 A I am very familiar with that, yes.
10 Q Okay. Okay. Good.
11 So you have your engineering expert. You
12 also then have a second potential person of ordinary
13 skill in the art who would -- you've identified as an
14 interventional radiologist or a pulmonologist;
15 correct?
16 A That is correct.
17 Q Okay. And that person, you believe, would
18 need three years of experience developing or using
19 medical devices in thrombectomy procedures; correct?
20 A That is what I have written here, yes.
21 Q Okay. And so you believe that the -- the
22 doctor's experience would need to be specific to
23 thrombectomy procedures to qualify as a person of
24 ordinary skill in the art?
25 A That is correct.