

1 UNITED STATES PATENT AND TRADEMARK OFFICE

2 -----
3 BEFORE THE PATENT TRIAL AND APPEAL BOARD

4 -----
5 MEDTRONIC, INC.,

6 Petitioner,

7 v.

8 MOSKOWITZ FAMILY LLC,

9 Patent Owner

10 -----
11 IPR2026-00124

Patent No. 11,096,797

12 -----
13
14 REMOTE DEPOSITION OF

15 BRAD CULBERT
16
17

18 DATE: July 22, 2026

19 TIME: 10:00 a.m.

20 PLACE: Veritext Virtual Videoconference
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24 Reported By: Christine K. Herman, RPR, CRR

25 Job #8345239

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A P P E A R A N C E S
(all appearing remotely via Zoom)

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P R O C E E D I N G S

THE COURT REPORTER: Do counsel stipulate to the swearing of the witness remotely by the court reporter?

(Counsel so stipulated.)

Whereupon,

BRAD CULBERT,

a witness in the above-entitled matter,
after having been first duly sworn,
deposes and says as follows:

EXAMINATION

BY MS. LaVALLEY:

Q Good morning, Mr. Culbert. It's good to see you again. I'm going to go through some of the ground rules for the deposition today. I know you've been through this before. But can you please state your name and address for the record.

A Brad Culbert, 22532 Petra,
Mission Viejo, California 92692.

Q And Mr. Culbert, where are you testifying from today?

A I'm at the Paul Hastings office in Irvine, California.

1 Q And other than your counsel, who else
2 is in the room with you today?

3 A No one else.

4 Q And I see you have a tablet in front
5 of you. Is there anything on that tablet?

6 A It's the video control icons.

7 Q Okay. And I believe you have some
8 paper documents with you today as well. Is that
9 true?

10 A Correct.

11 Q Can you just let me know what paper
12 documents you have in front of you?

13 A My declaration is in one binder. In
14 another binder are exhibits.

15 Q Do you have a copy of the petition
16 with you today?

17 MR. PARK: All the materials
18 considered, just to clarify that.

19 MS. LaVALLEY: Okay. Thank you.

20 BY MS. LaVALLEY:

21 Q Do you have the petition with you as
22 well?

23 A No, I do not.

24 Q And how many times have you been
25 deposed before?

1 A Twelve times.

2 Q And, generally, what types of
3 proceedings were those depositions in? IPRs?
4 Court cases?

5 A The major have been IPR cases.

6 Q Any court cases?

7 A There was one litigation case. I
8 didn't go to court, but I did provide an expert
9 report and was deposed on it.

10 Q Was this a patent infringement case?

11 A No, it was not.

12 Q What type of case was it?

13 A Trade secret case.

14 Q And, generally, what types of
15 technologies were at issue in those proceedings?

16 A The majority of the proceedings that I
17 have been an expert witness on have been
18 expandable interbody cages.

19 Q Apart from expandable interbody cages,
20 did any of the matters in which you served as an
21 expert involve any other types of technologies?

22 A Yes. They -- they have.

23 Q And what are those technologies?

24 A The rapid pulse case involved narrow
25 thrombectomy device or system.

1 Q Any other technologies?

2 A Not on the ones that are listed that
3 are not confidential.

4 Q And do you understand you're
5 testifying under oath today?

6 A I do.

7 Q Is there any reason you cannot give
8 truthful, accurate, and complete testimony
9 today?

10 A No.

11 Q If at any point I ask you a question
12 that you don't understand, can you please let me
13 know, and I'll try to clarify it?

14 A I will.

15 Q If you respond to any question, is it
16 fair to assume you understood what I was asking?

17 A Yes.

18 Q And so we can try to get a clear
19 record, will you please try to provide a verbal
20 response to my questions?

21 A I will.

22 Q And I'll try to take a break every
23 hour or so. But please let me know if at any
24 point you need a break. All right?

25 A Okay.

1 Q And you understand that at certain
2 points your counsel may make objections to my
3 questions?

4 A I do.

5 Q And unless they instruct you not to
6 answer, I'll ask that you provide an answer to
7 my question. Do you understand?

8 A I understand.

9 Q Who retained you in this proceedings?

10 A Who, or -- Like the company? The
11 firm?

12 Q Who specifically is your agreement
13 with?

14 A Hueston -- I think it's Hueston
15 Hennigan.

16 Q The law firm Hueston Hennigan?

17 A The law firm. That is correct.

18 Q And did Hueston Hennigan retain you on
19 behalf of Medtronic?

20 A That is correct.

21 Q And what is the scope of your
22 engagement in this proceeding?

23 A The scope is -- meaning the -- I've
24 been asked to consider whether prior art
25 references disclose or suggest the features

1 recited in claims 16 and 19 of the '797 patent
2 and provide an expert report upon that.

3 Q And for the record, were you reading
4 from your declaration, which is Medtronic
5 Exhibit 1002, for that response?

6 A That is correct.

7 Q And you were reading from paragraph 1;
8 is that correct?

9 A That is correct.

10 Q And how did you become involved in
11 this proceeding?

12 MR. PARK: Objection to form.

13 A I was contacted by Karen Younkings
14 about potential case.

15 BY MS. LaVALLEY:

16 Q When were you first contacted? And --
17 Sorry. Strike that.

18 Karen Young. Who is Karen Young?

19 A Younkings, I believe is her last name.

20 Q Who is Karen Younkings?

21 A She is an attorney with Hueston
22 Hennigan.

23 Q Okay. And when were you first
24 contacted by Ms. Younkings?

25 A I don't know the date.

1 Q Do you remember generally the month?

2 A I don't even know the month. It was
3 last year.

4 Q So you were first contacted at some
5 point in 2025 regarding becoming involved in
6 this proceeding; is that correct?

7 A That is correct.

8 Q Do you know how many months prior to
9 submission of your declaration you were first
10 contacted?

11 A I don't know. It was definitely a few
12 months before this proceeding.

13 Q Do you believe it was greater than or
14 less than six months?

15 A It was probably less than six months.

16 Q Do you know when you were officially
17 engaged in connection with this proceeding?

18 A It was at that same time, which I
19 don't recollect the month.

20 Q Have you done other work for
21 Medtronic?

22 A I'm involved with nine proceedings
23 with Medtronic concurrently.

24 Q Are these all IPR proceedings?

25 MR. PARK: I was just trying to get

1 some clarification. I think there might be a
2 time lag between us, so I think there might -- I
3 don't know about you, Madam Court Reporter, but
4 is Ms. LaValley's feed coming in a little bit
5 choppy to you?

6 (Discussion held off the record.)

7 BY MS. LaVALLEY:

8 Q So going back, you said you're
9 involved with nine proceedings with Medtronic
10 concurrently. Are these all IPR proceedings?

11 A Can you repeat the question, please?
12 You're cutting out.

13 Q You said you're involved with nine
14 proceedings with Medtronic concurrently. Are
15 all of these IPR proceedings?

16 A That is correct.

17 Q And are all of these proceedings
18 against Moskowitz Family LLC?

19 A That is correct.

20 Q Apart from Medtronic's proceedings
21 against the Moskowitz Family's patents, have you
22 done any other work for or on behalf of
23 Medtronic?

24 A No. I have not done any work for or
25 on behalf of Medtronic before these proceedings.

1 Q And are you being compensated for your
2 work in this proceeding?

3 A I am being compensated at my hourly --
4 standard hourly rate.

5 Q And what's your standard hourly rate?

6 A \$500 per hour.

7 Q And is that the rate you normally
8 charge in connection with consulting work?

9 A It's the rate I charge as an expert
10 witness for all my clients.

11 Q Do you charge a different rate for
12 other consulting work?

13 A For engineering work, I do have a
14 different rate, for start-ups, which is a
15 combination of an hourly rate plus stock
16 options.

17 Q And what is that standard -- or do you
18 have a standard hourly rate for that engineering
19 work?

20 A No. I don't have a standard rate for
21 that engineering work. It's a conversation I
22 worked out with the founders of Innocuvate for
23 that, a rate and stock options, as a total
24 compensation package.

25 Q Approximately how many hours have you

1 billed in connection with these proceedings?

2 A I don't recall.

3 Q Can you provide an approximate range?

4 A As I mentioned, there's nine
5 proceedings. I don't keep track of each one
6 individually in my mind how much I billed for.

7 (Internet connection issues. Short
8 recess taken.)

9 Q So for your work in connection with
10 the Medtronic IPRs against the Moskowitz
11 patents, is it correct that you don't keep track
12 of your billing for each individually on paper,
13 or do you mean just in your -- in your mind?

14 A In my mind, I don't keep track.

15 Q But you do track your time, your
16 billing time, separately for each matter on
17 paper, correct?

18 A That is correct. I keep track of
19 hours spent on each IPR for billing purposes.

20 Q But you can't provide any
21 approximation as to how much time you've spent
22 in connection with the IPR for the '797 patent;
23 is that correct?

24 A That is correct. I don't recall the
25 number of hours I've spent on this or billed for

1 this.

2 Q Are you able to provide any
3 approximation of how much time you spent
4 reviewing the prior art at issue in the '797
5 IPR?

6 A No. I don't know how much time I
7 spent reviewing the prior art for this IPR.

8 Q Are you able to approximate how much
9 time you spent preparing your declaration in
10 connection with this IPR?

11 A No. Again, I don't keep track in my
12 mind how much time I've spent on the different
13 elements of this IPR.

14 Q Are you able to recall whether you've
15 spent more or less than 10 hours in connection
16 with this IPR?

17 A Again, I -- it would be a pure guess
18 at this point.

19 Q Do you know how much time you spent
20 preparing for this deposition?

21 A The exact number of hours? Not an
22 exact number of hours, no.

23 Q Are you able to provide an approximate
24 number of hours you spent preparing for this
25 deposition?

1 A I would -- I would estimate
2 approximately two and a half days.

3 Q And how did you prepare for the
4 deposition?

5 A I reviewed my declaration, with the
6 supporting exhibits for the declaration, as well
7 with meeting with counsel.

8 Q And how many meetings did you have
9 with counsel prior to the deposition, to prepare
10 for the deposition?

11 A I had a brief phone call last week,
12 and then two days with counsel this week.

13 Q And when you say two days with counsel
14 this week, were they two full eight-hour days
15 with counsel?

16 A I would say they were less than two
17 days with counsel. They weren't full eight
18 hours, no.

19 Q And who specifically did you meet with
20 during those two days?

21 A Mr. Young Park and Mr. Tony Chen, I
22 believe his last name is.

23 MR. PARK: Sheh.

24 A Sheh. Sorry.

25 BY MS. LaVALLEY:

1 Q And who was your conversation with
2 counsel during your brief phone call last week?

3 A His first name's Quadeer.

4 Q Is he an attorney at Paul Hastings?

5 A That is correct.

6 Q Have you reviewed patent owner's
7 preliminary response?

8 A No, I have not.

9 Q And you mentioned your declaration
10 that you submitted in connection with this IPR.
11 Correct?

12 A Can you repeat that question again,
13 please?

14 Q Sorry. Strike that question.

15 A Okay.

16 Q I want to talk about your declaration
17 that you submitted in connection with this IPR
18 next, which is previously marked Medtronic
19 Exhibit 1002. And you have a copy of that
20 declaration in front of you, correct?

21 A That is correct.

22 Q And if you could turn to page 43 of 59
23 of your declaration.

24 A Okay. I'm there.

25 Q And is that your signature on page 43

1 of 59?

2 A That is my signature that I placed on
3 this page.

4 Q You placed that signature on page 43
5 of 59?

6 A Yes. I placed that.

7 Q At the time you signed, did you
8 believe the opinions expressed in your
9 declaration were accurate?

10 A Yes.

11 Q Have any of your opinions changed
12 since you signed your declaration?

13 A No, they have not.

14 Q Are you aware of anything in your
15 declaration that you believe to be incorrect?

16 A No, I do not.

17 Q And without disclosing the content of
18 your communications with counsel, can you
19 generally explain the process of how your
20 declaration was prepared?

21 A Counsel provided me with materials to
22 review. Well, the prior art references, as well
23 as the '797 patent. And I came up with ideas,
24 and we brainstormed together the ideas, and we
25 worked together on an iterative process to come

1 up with what you see here as the final report.

2 Q Did you identify any of the prior art
3 references at issue in this IPR?

4 A I don't recall, in this case, if I
5 came up with any of these prior art examples.

6 Q You don't know whether counsel
7 supplied the references to you in this case?

8 A Counsel definitely provided some
9 references. I'm not sure if it was all the
10 references.

11 Q Do you know whether counsel provided
12 the two main references, the Michelson and the
13 McLuen reference -- references at issue in this
14 proceeding?

15 A I believe they did provide the two,
16 the McLuen and Michelson references, in this
17 proceeding.

18 Q Did you independently search for any
19 prior art?

20 A I know I have searched for prior art.
21 I can't remember if it was in this proceeding or
22 not.

23 Q Did you draft the declaration
24 yourself?

25 A I provided ideas for the declaration,

1 and counsel provided drafts along the way for me
2 to review and edit as I see fit.

3 Q Have you reviewed the petition in this
4 case, in this proceeding?

5 A No, I have not.

6 Q Do you know whether the petition was
7 prepared before or after your declaration?

8 A No, I don't.

9 Q So you had no role in drafting the
10 petition. Is that accurate?

11 A What do you mean by role? I assume
12 some of my expert report probably ended up into
13 the petition, but I don't know -- I provided
14 this, so I don't know if I had a role in the
15 petition or not.

16 Q But you never -- you did not assist in
17 drafting the actual petition, apart from
18 providing your declaration that may support the
19 petition. Is that accurate?

20 A That is correct. I had -- in -- I
21 never reviewed drafts or looked at the petition.
22 That is correct.

23 Q And in paragraph 39 of your
24 declaration, Medtronic Exhibit 1002, you state
25 that you have not expressly construed any claim

1 term. Is that correct?

2 MR. PARK: You said paragraph 39?

3 MS. LaVALLEY: Excuse me. Paragraph
4 38 of your declaration.

5 BY MS. LaVALLEY:

6 Q Let me reask the question, with the
7 correct paragraph. Do you have paragraph 38 in
8 front of you?

9 A I do.

10 Q Okay. So in paragraph 38 of your
11 declaration, Medtronic Exhibit 1002, you state
12 that you have not expressly construed any claim
13 term. Is that correct?

14 A That is correct.

15 Q So you don't construe any claim term
16 for any term in the '797 patent, correct?

17 A I don't expressly construe any claim
18 term in the '797.

19 Q Even without providing an express
20 construction, you necessarily applied some
21 understanding of the claim language in forming
22 your opinions. Is that accurate?

23 A Yes. I said, I understand that claim
24 terms are typically given their ordinary and
25 customary meanings as would have been understood

1 by a POSITA at the time of the invention of the
2 patent.

3 Q And how do you determine the meaning
4 of the claim terms when preparing your
5 declaration?

6 A Can you reask that question, please?

7 Q Sure. How did you determine the
8 meaning of the claim terms when you were
9 preparing your declaration?

10 A I think I just answered that. I
11 typically give their ordinary and customary
12 meanings as would have been understood by a
13 POSITA at the time of the invention of the
14 patent.

15 Q Did you consider any materials in
16 determining the meaning of the claim terms?

17 A Yeah. In considering the meaning of
18 the patent claims, one must consider the
19 language of the claims, the specification, and
20 the prosecution history of the patent.

21 Q Did you consider the specifications,
22 the prosecution, and the language of the claims
23 in determining the meaning of the patent claims?

24 A That is correct.

25 Q Did you consider the prior art in

1 determining what the meaning of the claim
2 language is?

3 A Yeah. I've not expressly construed
4 any claim term, because the prior art discloses
5 or suggests each claim limitation under any
6 reasonable construction.

7 Q Did you consider the prior art in
8 determining what the claim language of the
9 '757 [sic] patent means?

10 A I don't recall, exactly, if I needed
11 to bring in additional information. I felt that
12 the patent claims themselves, the specification
13 and the prosecution history, was enough.

14 Q So did you reach an understanding of
15 what the claims of the '757 patent mean before
16 applying the prior art?

17 A Do you mean -- You asked about the
18 '757 patent.

19 Q Excuse me. I mean '797 patent.

20 A Just clarifying.

21 Q Yes. Let me clarify that.

22 Did you reach an understanding of what
23 the claims of the '797 patent mean before
24 applying the prior art?

25 A Well, I used the ordinary and

1 customary meanings, so I had a general
2 understanding what the claim terms were.

3 Q And you have a copy of the '797 patent
4 in front of you? This is Medtronic Exhibit
5 1001, U.S. Patent 11,096,797?

6 A Yes. I have it in front of me.

7 Q Okay. Can you please turn to claim
8 16? And this starts at column 17, line 34. Are
9 you with me?

10 A I am with you.

11 Q Great. And now claim 16 claims a
12 first tool, a second tool, and a third tool.
13 Correct?

14 A Along with an expandable
15 intervertebral fusion device. Correct.

16 Q And your declaration doesn't provide
17 an express construction for the term tool,
18 correct?

19 A Correct. I don't give an express
20 claim term for tool.

21 Q What did you understand the term tool
22 to mean when offering your opinions?

23 A It -- Generally, a tool is a device
24 that provides a function.

25 Q And how did you arrive at that

1 understanding?

2 A That's the -- what I perceive as the
3 ordinary and customary meaning of the word tool.
4 And when I reviewed '797 patent, it fits.

5 Q And is that your general understanding
6 with respect to tool generally, or is that
7 specific to tools used for surgical implants?

8 A Both.

9 Q And what do you mean by -- So you said
10 a tool is a device that provides a function.
11 Correct?

12 A A tool generally provides a function.
13 Correct.

14 Q And what do you mean by function?

15 A It does something to something else.

16 Q And is that understanding based on
17 anything specific in the '797 patent?

18 A Can you repeat that again, please?

19 Q Is your understanding of what a tool
20 means based on anything specific from the '797
21 patent?

22 A As I mentioned, that's my general
23 understanding of a tool. And when I reviewed
24 the '797, I didn't see anything that would
25 change that definition.

1 Q So you didn't rely on any specific
2 portion of the specification to arrive at that
3 definition, but you confirmed it was consistent
4 with that definition. Is that accurate?

5 MR. PARK: Objection to form.

6 A Yeah. So can you repeat that
7 question, please?

8 BY MS. LaVALLEY:

9 Q Sure. You didn't rely on any specific
10 portion of the specification to arrive at your
11 definition, but you confirmed that your
12 definition was consistent with the
13 specification. Is that correct?

14 MR. PARK: Objection to form.

15 A After reviewing the '797
16 specification, using the general definition of
17 tool, nothing specifically in the '797 changed
18 my mind of what that definition should be.

19 BY MS. LaVALLEY:

20 Q How would you distinguish between a
21 surgical tool and a component of a tool?

22 A I'm not sure what you're asking.

23 Q Is there a difference, to you, between
24 a component of a tool and a tool?

25 A I would need to see a little more

1 specific question, an example.

2 Q Okay. So taking a screwdriver, for
3 example, would you agree that both the handle of
4 the screwdriver and the actual metal end of the
5 screwdriver perform functions?

6 A I agree with that.

7 Q So would you -- Is it your opinion
8 that a screwdriver is actually two tools
9 comprised of the handle and the metal end?

10 A In this example, I would say the
11 screwdriver is one tool.

12 Q Why is that?

13 A It's a single unit. It's a single
14 unit.

15 Q Is it because the two components
16 cooperate to achieve one result?

17 MR. PARK: Objection to form.

18 A I more see it as two -- it's a single
19 unit, as opposed to, if you had a screwdriver
20 shaft, a handle that's separate, and you take
21 that handle and interlock it with or couple it
22 with the screwdriver shaft in turn, then it's
23 two tools. But because it comes as one unit,
24 singly all together, to me that's one tool.

25 BY MS. LaVALLEY:

1 Q What about a screwdriver with a
2 replaceable screwdriver tip? Would you consider
3 that to be one or two tools?

4 MR. PARK: Objection. Outside the
5 scope.

6 A I would have to think about that some
7 more, about the tips being separate. It seems
8 to be more along the lines of having a
9 replaceable handle that's a separate tool. But
10 I'm not -- I would have to think about it some
11 more to give an opinion.

12 Q In your opinion, would a POSITA
13 consider a permanently integrated component
14 itself to be a separate surgical tool?

15 MR. PARK: Objection to form.

16 A So I missed a couple of the words
17 there. Can you please repeat the question?
18 BY MS. LaVALLEY:

19 Q Sure. In your opinion, would a POSITA
20 consider a permanently integrated component
21 itself to be a separate surgical tool?

22 MR. PARK: Objection to form.

23 A That's kinda broad. Can you give a
24 specific example?

25 BY MS. LaVALLEY:

1 Q I'll strike that question and
2 rephrase.

3 For your definition of tool, what
4 characteristics would make something a tool as
5 opposed to merely a component of one?

6 MR. PARK: Objection to form. Outside
7 the scope.

8 A Generally, a tool is a device that
9 provides a function. It would have to -- you
10 would have to look at it on a case-by-case
11 scenario, with specific examples.

12 BY MS. LaVALLEY:

13 Q And would the structural
14 characteristics of a device affect your
15 determination of whether or not something is a
16 tool?

17 MR. PARK: Objection to form.

18 A Again, we're talking hypothetical
19 here. I would really like to look at specific
20 examples and apply that general meaning.

21 BY MS. LaVALLEY:

22 Q Going back to the screwdriver example,
23 the screwdriver with a replaceable screwdriver
24 tip, if you were to weld the replaceable
25 screwdriver tip to the handle, and therefore

1 permanently integrate them together, would you
2 consider that a single tool?

3 MR. PARK: Objection to form. Outside
4 the scope.

5 A If the screwdriver tip is welded,
6 cannot move, permanently attached, it would
7 appear that it would be part of the single tool.
8 Correct.

9 BY MS. LaVALLEY:

10 Q Can you turn to Figure 8C of the '797
11 patent? Let me know when you're there, please.

12 A I am there.

13 Q And is this an exploded view of the
14 '797 patent's tool assembly?

15 MR. PARK: Objection to form.

16 A It's an exploded view of an embodiment
17 of the '797 tool assembly.

18 BY MS. LaVALLEY:

19 Q And in your opinion, how many tools
20 are shown in this figure?

21 MR. PARK: Objection to form. Outside
22 the scope.

23 A I would need to review the spec in a
24 little more detail, specifically to 802 and 805.
25 They appear to be potentially additional tools,

1 but I would really have to dig into this to
2 figure that out. But there are at least the
3 three tools, 801, 804, and 803.

4 BY MS. LaVALLEY:

5 Q You would say 801, 803, and 804 are
6 tools, correct?

7 A That is correct.

8 Q Okay. And if you'd like to review the
9 description associated with Figure 8C, that's
10 column 10, lines 43 through 60.

11 MR. PARK: Are you asking him to
12 review, or --

13 MS. LaVALLEY: Yes. Please.

14 MR. PARK: Obviously feel free to
15 review what other portions you need to review.

16 BY MS. LaVALLEY:

17 Q I want to ask you just to focus your
18 review. I want to ask you specifically about
19 the spring 802, which is shown in Figure 8C.
20 And my question is, would you consider the
21 spring 802 --

22 MR. PARK: Hold on. He's reviewing.

23 MS. LaVALLEY: Sure. I want to ask my
24 question just so he can review specifically to
25 answer my question. And of course take the time

1 you need.

2 BY MS. LaVALLEY:

3 Q But my question, just to focus your
4 review more, is, would you consider the spring
5 802 to be a separate tool?

6 MR. PARK: Hold on. Let's get
7 organized here. It sounds like you're asking
8 him to do two things at one time. So do you
9 want him to listen to your question, or do you
10 want him to review?

11 BY MS. LaVALLEY:

12 Q I want to focus your review. And I
13 thought it would be helpful if I asked you the
14 question, and you can review, and then let me
15 know when you're ready to respond. And I'm
16 happy to repeat my question for you. But my
17 question will be, just to focus your review,
18 would you consider the spring 802 to be a
19 separate tool? And I'm happy to, after you
20 review, to reask my question.

21 MR. PARK: And I would object to that
22 question as outside the scope.

23 But go ahead and do your review.

24 A I have reviewed it, and you can go
25 ahead and ask the question, please.

1 BY MS. LaVALLEY:

2 Q Sure. And would you consider spring
3 802 to be a separate tool?

4 MR. PARK: Objection. Outside the
5 scope.

6 A I have not provided an opinion on
7 that, and I don't think I'm ready, at this time,
8 to provide an opinion on that.

9 BY MS. LaVALLEY:

10 Q Does 802 meet the definition of tool
11 that you provided earlier?

12 MR. PARK: Objection to form. Outside
13 the scope.

14 A I'd have to really dig into this to
15 really figure out what the spring is doing to
16 define -- to see if it meets the general
17 definition of a tool.

18 BY MS. LaVALLEY:

19 Q Is it your understanding that spring
20 802 provides a function in the '797 patent?

21 MR. PARK: Objection to form. Outside
22 the scope.

23 A Again, I don't feel comfortable at
24 this time, based on reading a few lines, to
25 provide an opinion that I haven't provided

1 before.

2 BY MS. LaVALLEY:

3 Q If spring guide 802 performs a
4 function, would you consider it to be a tool?
5 Excuse me. Strike that question.

6 If spring 802 performs a function,
7 would you consider it to be a tool?

8 MR. PARK: Objection to form. Outside
9 the scope.

10 A Again, I would need to really dig into
11 this further to provide an opinion.

12 BY MS. LaVALLEY:

13 Q What would you need to know in order
14 to opine on whether spring 802 is a tool?

15 MR. PARK: Objection to form. Outside
16 the scope.

17 A Again, I would need to bring this
18 in -- I haven't opined on this before, and I
19 have not gone through this entire patent with
20 that in mind, so I would really need to dig into
21 the material to see if it meets the definition
22 or not.

23 BY MS. LaVALLEY:

24 Q Would it not be enough that it
25 performs a function to meet your definition of

1 tool?

2 MR. PARK: Objection to form. Outside
3 the scope.

4 A Again, I do not know exactly what is
5 said in here in regards to the spring and the
6 function of it.

7 BY MS. LaVALLEY:

8 Q Hypothetically speaking, if spring 802
9 performs a function, would it meet your
10 construction of tool, which was a device that
11 generally performs a function?

12 MR. PARK: Objection to form. Outside
13 the scope.

14 A Again, I'd prefer not to give an
15 opinion that I have not provided an opinion
16 before, and -- until I have a chance to really
17 review this.

18 BY MS. LaVALLEY:

19 Q How about the knob on Allen key 801 in
20 Figure 8C? Do you see that?

21 A I see the knob on 801 on Figure 8C.

22 Q Would you consider the knob on 801
23 itself to be a tool?

24 A Yeah. Based on my read of the claim
25 and specification and the figures, it is fully

1 integrated, attached -- it's probably all
2 machined together, that 801 is all part -- the
3 handle of the -- or the knob of 801 is part of
4 801 as a single tool.

5 Q You mentioned that the knob is fully
6 integrated with 801. Is that correct?

7 A That is correct.

8 Q And what do you consider fully
9 integrated to mean?

10 A It's either welded, fixed in a way
11 that it cannot move independently with the rest
12 of the shaft, in all directions.

13 Q So if a part is either welded or fixed
14 in a way that it cannot move independently, you
15 would consider that part to be part of the same
16 tool that it's connected to. Is that accurate?

17 A No. I added, independently in all
18 directions.

19 Q So in order for a part to be part of
20 the same tool, it needs to be either welded or
21 fixed in a way that it cannot move independently
22 in all directions? Is that accurate?

23 MR. PARK: Objection to form. Outside
24 the scope.

25 A I was referring to tool 801

1 specifically.

2 BY MS. LaVALLEY:

3 Q So are you saying that that
4 distinction might not apply to other tools?

5 MR. PARK: Objection to form. Outside
6 the scope.

7 A That is very broad. I'm not prepared
8 to give something that I haven't really opined
9 on before.

10 BY MS. LaVALLEY:

11 Q But just to clarify, in the context of
12 801, your determination of why the knob is not
13 considered a separate tool is because it's
14 welded to or fixed in a way that it cannot move
15 independently in all directions to the rest of
16 801? Is that correct?

17 A That is correct. It's all integrated
18 as you described, after reviewing the claim spec
19 and the figures, is what I deduced.

20 Q In turning back to claim 16, and this
21 is column 17, lines 49 through 51. Let me know
22 when you're there.

23 A I'm there.

24 Q So claim 16 requires a first tool
25 having first and second engagement prongs

1 positioned at the first distal end on opposite
2 sides of the first tool access. Correct?

3 A Sorry. I'm -- You said line 49?

4 Q Yes. Starting at line 49 and going
5 through 51.

6 A Okay. And starting with the word,
7 Wherein?

8 Q Yes. Wherein the first tool.
9 (Witness reviewing document.)

10 A Okay.

11 Q So you would agree that claim 16
12 requires a first tool having first and second
13 engagement prongs positioned at the first distal
14 end on opposite sides of the first tool access,
15 correct?

16 A That is correct.

17 Q And what meaning of engagement prongs
18 did you apply in offering your opinions?

19 A They are projections that come out
20 from the main -- from the body of the tool that
21 interact with the implant.

22 Q And what's the basis --

23 MR. PARK: I was just going to say,
24 can we take like a two-minute break?

25 MS. LaVALLEY: Oh, sure. Certainly.

1 Let's take a 10-minute break.

2 (Recess taken 11:19 a.m. to
3 11:30 a.m.)

4 BY MS. LaVALLEY:

5 Q Mr. Culbert, did you speak with your
6 attorney during the break about any of the
7 questioning today?

8 A No, I did not.

9 Q Can you turn back to Figure 8C of the
10 '797 patent that we were looking at previously?

11 A Okay.

12 Q And do you see the prongs 806 at the
13 end of gripper 804?

14 A I see that.

15 Q Would you consider the prongs to be a
16 separate tool?

17 A No, I do not.

18 Q And why not?

19 A Again, after reading the claim
20 specification, looking at the figures, and how
21 they were a permanently fixed part of 804
22 itself, and it shows that 804 is all one, it's
23 all one tool.

24 Q Apart from the prongs being
25 permanently fixed to 804, are there any other

1 characteristics of the prongs that lead you to
2 the conclusion that they aren't separate tools?

3 MR. PARK: Objection to form.

4 A Again, the -- looking at the claim
5 specification, it states that the prongs 806 are
6 a part of the tool, a part of the tool 804.

7 BY MS. LaVALLEY:

8 Q Turning back to claim 16, which you
9 were talking about before the break.

10 A Okay.

11 Q And you previously explained that you
12 consider the engagement prongs to be projections
13 that come out from the body of the tool that
14 interacts with the implant. Is that correct?

15 A That is correct.

16 Q Is there any particular interaction
17 with the implant that's required?

18 MR. PARK: Objection to form.

19 A Can you repeat the question, please?

20 BY MS. LaVALLEY:

21 Q Sure. When you say that you consider
22 the engagement prongs to be projections that
23 come out from the body of the tool that
24 interacts with the implant, is there any
25 particular interaction between the prongs and

1 the implant that you think is required?

2 MR. PARK: Objection to form.

3 A In the case of '797, the engagement
4 prongs interact with the engagement indentations
5 on the first and second sides of the expandable
6 intervertebral fusion device.

7 BY MS. LaVALLEY:

8 Q Okay. And turning to Medtronic
9 Exhibit 1012, which is Patent Application
10 Publication U.S. 2006-0253201 to McLuen. Let me
11 know what you have that in front of you.

12 A I have it here.

13 Q Great. And I'll just refer to
14 Exhibit 1012 as McLuen. Do you understand?

15 A Yes.

16 Q And McLuen describes an expandable
17 bone fusion device, correct?

18 A McLuen discloses a bone expandable
19 fusion device and tools needed to interact with
20 it.

21 Q So McLuen also describes how the
22 device is implanted; is that correct?

23 A McLuen doesn't provide the details of
24 how it's implanted and expanded with the tools,
25 but it does generally talk about how it's done.

1 Q Does McLuen disclose instrumentation
2 that's used during implantation of the device?

3 A McLuen discloses that tools are
4 needed, but does not provide any details on what
5 the tools look like.

6 Q Can you turn to paragraph 75 of
7 McLuen? Let me know when you're there.

8 A I'm there.

9 Q Can you describe how McLuen expands
10 the implant after insertion?

11 A Can you repeat the question?

12 Q Can you describe how McLuen explains
13 how to expand the implant after insertion?

14 A Paragraph 75 that you brought me to
15 explains, if you want me to read it?

16 Q I'm just asking for a general
17 description from you of how McLuen expands the
18 implant after insertion.

19 MR. PARK: Objection to form.

20 BY MS. LaVALLEY:

21 Q Are you able to do that?

22 A Well, seems pretty clear, just reading
23 the first couple sentences, how it's done. I'm
24 not sure if I need to paraphrase that.

25 Q Okay. So paragraph 75 explains how

1 McLuen expands the implant; is that fair?

2 A Paragraph 75 generally talks about how
3 the implant, McLuen implant, is expanded.

4 Q And does McLuen describe that
5 positioning means 1508 must be rotated to expand
6 the implant?

7 A That is correct. Positioning means
8 1508 needs to be rotated.

9 Q And how does McLuen explain how
10 positioning means 1508 should be rotated?

11 A (No response.)

12 Q I'll withdraw the question and restate
13 it.

14 Does McLuen state that a screwdriver
15 can be used to turn positioning means 1508?

16 A I'm just looking for the paragraph
17 that it states exactly what they disclose.

18 Q I'll just direct you to paragraph 76.
19 Does paragraph 76 state that a screwdriver can
20 be used to rotate positioning means 1508?

21 A Yes. Paragraph 76 suggests that a
22 screwdriver is one way to turn the positioning
23 means 1508.

24 Q And paragraph 76 also discusses a
25 concern with using a screwdriver; is that

1 correct?

2 A That is correct. Screwdrivers,
3 unfortunately, have the ability to slip out of
4 place, is what it states.

5 Q So McLuen identifies screwdriver
6 slippage as a risk during surgery. Is that
7 correct?

8 A That is correct.

9 Q So McLuen recognizes that there is a
10 risk of slippage based on using a screwdriver to
11 turn positioning means 1508, correct?

12 A McLuen discloses that a screwdriver
13 alone has the risk of slipping out of place.

14 Q How does McLuen address that concern?

15 A They suggest channels 1522 are
16 implemented to receive a tool, and not shown --
17 the tool not shown as attachment that fit within
18 the channels 1522 to secure the tool not shown
19 in place. And this was what I was saying
20 earlier, that they suggest what needs to happen,
21 but they don't provide any details.

22 Q What details are not provided, in your
23 opinion?

24 A The details of the tools themselves.

25 Q And what specific details of the tools

1 do you think are lacking here?

2 A There are many details that need to be
3 worked out for this to actually be used. It
4 just suggests using attachments that fit within
5 the channels. So it doesn't disclose what those
6 attachments look like, how they interact, or any
7 of the details, and how the screwdriver
8 interacts with the -- with that tool as well.

9 Q Would you agree that McLuen introduces
10 the channels 1522 on the other sides of the
11 implant to assist stabilization?

12 A I agree that McLuen discloses the
13 channels on 1522 to assist in the stabilization
14 when used with a tool, which is not clearly
15 defined.

16 Q The channels 1522 are intended to
17 receive corresponding attachments of an
18 insertion tool; is that correct?

19 A That is correct.

20 Q What purpose does the engagement
21 between a tool and those channels serve?

22 A It's to secure the tool to the implant
23 itself, and interact with the screwdriver to
24 prevent slippage on a high level.

25 Q When you say interact with the

1 screwdriver to prevent slippage, what are you
2 referring to interacting with the screwdriver?
3 The implant itself?

4 A It -- McLuen does not disclose that
5 detail. It just states that, at least a
6 screwdriver and another tool are needed to
7 stabilize the implant and the screwdriver
8 interact together somehow to prevent slippage.

9 Q So McLuen discloses that the implant
10 and the screwdriver would interact together,
11 correct?

12 A Correct. The screwdriver interacts
13 with the fusion device 1500 to turn the
14 positions means 1508.

15 Q And McLuen doesn't disclose that the
16 screwdriver would need to interact with the
17 stabilization tool, correct?

18 A McLuen doesn't disclose the details on
19 how they potentially could or could not
20 interact, but they need to work together somehow
21 to prevent slippage.

22 Q But McLuen doesn't expressly state
23 that the tool that would interact with the
24 channels 1522 would need to interact with the
25 screwdriver at all, correct?

1 A Can you repeat that again, please?

2 Q Yeah. McLuen doesn't expressly state
3 that the tool that interacts with the channel
4 1522 would need to also interact with the
5 screwdriver, correct?

6 A McLuen does not state that the tool
7 interacts with the screwdriver in detail, but it
8 does say it needs to prevent the screwdriver
9 from slipping. Again, these are the block of
10 details of McLuen that a POSITA would want to
11 look elsewhere on how to achieve that.

12 Q Would a screwdriver be sufficient to
13 rotate the positioning means in McLuen?

14 MR. PARK: Objection to form.

15 A When -- In what scenario are you
16 looking at? After it's implanted? Before it's
17 implanted? Or, like, in general?

18 BY MS. LaVALLEY:

19 Q I guess let's start with during
20 implantation. Would a screwdriver be sufficient
21 to rotate the positioning means?

22 MR. PARK: Objection to form.

23 A So assuming that you somehow have
24 inserted the implant into the -- between the
25 vertebral bodies, and you have no other tools

1 and you're just using a screwdriver, it may or
2 may not, depending on the situation, expand the
3 device.

4 BY MS. LaVALLEY:

5 Q Why might it not be enough to expand
6 the device?

7 A If there's nothing holding the
8 implant, you would need the screwdriver to
9 rotate the implant, instead of just rotating the
10 screw, because of frictional forces.

11 Q So if you had a separate engagement
12 tool that stabilized the implant while the
13 screwdriver was used, would the screwdriver be
14 enough to rotate the positioning means?

15 A Can you ask that again?

16 Q Sure. So if you had a separate
17 engagement tool that stabilized the implant
18 while the screwdriver was used, would the
19 screwdriver be enough to rotate the positioning
20 means?

21 MR. PARK: Objection to form.

22 A Depends on what that stabilization
23 tool is and how it interacts with the
24 screwdriver in order to prevent what McLuen
25 discloses as a potential risk of tool slippage,

1 the screwdriver slippage.

2 BY MS. LaVALLEY:

3 Q Would you agree that McLuen discloses
4 the tools necessary to implant its bone fusion
5 device?

6 MR. PARK: Objection to form.

7 A McLuen discloses what -- at a minimum
8 what is needed, but not all the details and
9 everything that is needed to implant the device.

10 BY MS. LaVALLEY:

11 Q Do you think that McLuen is intended
12 to provide a complete implantation system for
13 its implant?

14 MR. PARK: Objection to form.

15 A McLuen provides the implant and, at a
16 minimum, the tools needed, but not the exact
17 details of the tools to implant the device.

18 BY MS. LaVALLEY:

19 Q Does McLuen criticize its disclosed
20 instrumentation in any way?

21 MR. PARK: Objection to form.

22 A Sorry. I don't understand the
23 question. Can you rephrase it?

24 BY MS. LaVALLEY:

25 Q What part of my question did you not

1 understand?

2 A Repeat it, and I'll tell you.

3 Q Sure. Does McLuen criticize its
4 disclosed instrumentation in any way?

5 A Yeah. What do you mean by criticize
6 its own instrumentation?

7 Q Does it describe any -- anything
8 lacking from its disclosed instrumentation that
9 would be required for implantation of its
10 device?

11 A It discloses that a screwdriver by
12 itself is -- there's risks associated with it,
13 and that you need at least a second tool, if not
14 more, to minimize that risk.

15 Q Paragraph 76 describes a tool that has
16 attachments that fit within channels 1522 to
17 secure the tool, correct?

18 MR. PARK: Objection to form.

19 A Please repeat that question?

20 BY MS. LaVALLEY:

21 Q Paragraph 76 of McLuen describes a
22 tool that has attachments that fit within
23 channels 1522 to secure the tool, correct?

24 MR. PARK: Objection to form.

25 A Paragraph 76 describes a tool that is

1 needed, and generally talks about it, but does
2 not show in figures or in words the details of
3 what it needs to look like.

4 BY MS. LaVALLEY:

5 Q Does paragraph 76 say that the tool
6 must have attachments that fit within the
7 channels 1522 to secure the device?

8 A Paragraph 76 does state the tool not
9 shown has attachments that fit within the
10 channels 1522 to secure the tool not shown in
11 place.

12 Q So you mentioned that McLuen
13 identifies the risks associated with using a
14 screwdriver by itself, correct?

15 A Yeah. McLuen discloses that
16 screwdrivers, unfortunately, have the ability to
17 slip out of place.

18 Q And McLuen identifies the channels of
19 the device and a tool with attachments that fit
20 within the channels to address that potential
21 slippage. Correct?

22 MR. PARK: Objection to form.

23 A McLuen discloses a tool but not
24 details of the tool, other than it needs
25 attachments that fit within the channels. There

1 is no details of the tool itself having
2 attachments.

3 BY MS. LaVALLEY:

4 Q But beyond requiring a tool that has
5 attachments that fit within the channels 1522 to
6 address potential slippage of the screwdriver,
7 McLuen doesn't identify any other potential
8 issues with the instrumentation disclosed in
9 connection with its device, correct?

10 MR. PARK: Objection to form.

11 A McLuen does go on to talk about the
12 gripping ability and that of the prongs -- or,
13 sorry. Not prongs. But what do they call it
14 here? The attachments. So it's pretty broad,
15 that question.

16 BY MS. LaVALLEY:

17 Q And what paragraph of McLuen were you
18 just referring to?

19 A Paragraph 77.

20 Q And what in paragraph 77 would you
21 characterize as a potential issue identified
22 with -- by McLuen with its instrumentation?

23 A I apologize. I misread a word there.
24 So that was not correct about the slippage of
25 the -- the slippage I was discussing on the

1 tool.

2 Q Okay. So going back, apart from the
3 potential slippage of the screwdriver which
4 McLuen -- you would agree that McLuen addresses
5 potential slippage of the screwdriver by adding
6 channels 1522 to the device and -- Strike that.

7 Apart from identifying potential
8 slippage of the screwdriver, does McLuen
9 identify any other issues with its disclosed
10 instrumentation?

11 MR. PARK: Objection to form.

12 A I don't see other potential issues
13 that McLuen expressly discloses in the
14 specification of the tools. Again, they don't
15 provide all the details of the tools themselves.
16 BY MS. LaVALLEY:

17 Q Does McLuen discuss requiring
18 additional stabilization beyond what it already
19 discloses?

20 A Can you repeat that again, please?

21 Q Does McLuen discuss requiring
22 additional stabilization beyond what it already
23 discloses?

24 A Stabilization of the implant with
25 tools?

1 Q Yes.

2 A McLuen -- McLuen doesn't discuss more
3 about stabilization of the implant that it
4 doesn't already disclose. Correct.

5 Q Does anything in McLuen suggest that a
6 POSITA should discard its disclosed
7 instrumentation in favor of alternative tools?

8 MR. PARK: Objection to form.

9 A McLuen discloses that tools are
10 needed, discusses the limitation of a
11 screwdriver alone, and that other tools are
12 needed to help prevent screwdriver slippage.

13 BY MS. LaVALLEY:

14 Q Would you agree that McLuen discloses
15 that a tool with attachments that fit within the
16 channels 1522 is required to secure the tool in
17 place?

18 A McLuen suggests using a tool with
19 channels to fit in 1522 to prevent the
20 screwdriver from slipping.

21 Q And you haven't offered an opinion
22 that McLuen itself discloses the first, second,
23 and third tool required by claim 16, correct?

24 MR. PARK: Objection to form.

25 A Please repeat that again?

1 BY MS. LaVALLEY:

2 Q Have you offered an opinion that
3 McLuen itself discloses the first, second, and
4 third tool required by claim 16?

5 MR. PARK: Check 42.

6 MS. LaVALLEY: Sorry. I don't think
7 the record picked that up.

8 Counsel, were you identifying a page
9 number for the witness?

10 MR. PARK: Yeah. I said, check 42, to
11 short circuit this process.

12 A McLuen does not disclose the specific
13 tools for implanting and expanding bone fusion
14 device 1500, but McLuen discloses a system
15 comprising bone fusion device 1500 and the tools
16 needed to install bone fusion device 1500.

17 BY MS. LaVALLEY:

18 Q Are you offering an opinion that
19 McLuen itself discloses the first, second, and
20 third tools required by claim 16 of the '797
21 patent?

22 MR. PARK: Objection to form.

23 A I'm offering an opinion that McLuen
24 discloses the implant and the need for tools.
25 And without the specifics of the tools, then I

1 went to the prior art, several prior art, and
2 specifically Michelson, to clearly identify the
3 first, second, and third tools needed.

4 BY MS. LaVALLEY:

5 Q So you're relying on Michelson as
6 disclosing the first, second, and third tools
7 required by claim 16; is that correct?

8 A I'm relying on McLuen in view of
9 Michelson for the three tools. Correct.

10 Q Are you relying on McLuen's disclosure
11 of any tools as satisfying the first, second,
12 and third tool required by claim 16?

13 A I'm relying on McLuen stating tools
14 are needed but not providing the details, so
15 that's why I went out to the prior art to look
16 for more details of a tool assembly.

17 Q Did you offer an opinion that McLuen
18 discloses the first tool required by claim 16 of
19 the '797 patent?

20 A I never -- I did not give an opinion
21 that McLuen alone discloses tool 1 of claim 16.
22 Or the first tool. Sorry. Not tool 1.

23 Q And did you give an opinion that
24 McLuen alone discloses the second tool of claim
25 16?

1 A No. I did not give an opinion that
2 McLuen alone gives specifically claim -- tool,
3 the second tool of claim 16, other than saying
4 that you need tools.

5 Q And did you give an opinion that
6 McLuen alone discloses the third tool of claim
7 16?

8 A No. Just like the second tool, I
9 never identified specifically a third tool for
10 McLuen alone in claim 16.

11 Q Let's turn to Michelson, which is
12 Medtronic Exhibit 1014, which is U.S. Patent
13 7,118,579. Let me know when you have that in
14 front of you.

15 A I have it.

16 Q And to meet the first, second, and
17 third tool limitations of claim 16, you rely on
18 Michelson's disclosure, correct?

19 A That is correct. I rely on
20 Michelson's disclosure for the first, second,
21 and third tool.

22 Q And specifically you rely on
23 Michelson's implant holder 500 and expander
24 driver 600, correct?

25 A Correct. I rely on Michelson's tool

1 assembly, which is an implant holder, which
2 consists of two tools and an expander driver
3 600.

4 Q And what is implant holder 500
5 comprised of?

6 MR. PARK: Objection to form.

7 A Implant holder 500 has a shaft 502 and
8 an outer sleeve 504.

9 BY MS. LaVALLEY:

10 Q Are shaft 502 and outer sleeve 504
11 intended to function together as a single
12 implant holder?

13 MR. PARK: Objection to form.

14 A The 502 and 504 do work together, but
15 they do have other independent features.

16 BY MS. LaVALLEY:

17 Q What do you mean by other independent
18 features? Are you referring to structural
19 features or -- what did you mean by that?

20 A Correct. For example, 502 on the
21 proximal end has features that interact with the
22 third tool. What's it called? The expander
23 driver. That's one example.

24 Q Do 502 and 504 have separate
25 functions?

1 A 502 and 504 have -- work together for
2 a function, but they also have independent
3 functions as well.

4 Q And can you explain the functions of
5 502?

6 A There's many functions of 502. Is
7 there something specific?

8 Q Well, you just described that 502 and
9 504 work together for a function, but they also
10 have independent functions. And I just -- my
11 question was clarifying what are those
12 independent functions. Can you provide those to
13 me?

14 A I could give you a couple examples,
15 but I would have to look -- study a little
16 further.

17 One is, like I mentioned, the proximal
18 end interacts with the expander driver. The ID
19 pulse of 502 also works with expander driver.
20 And this is all independent of 504.

21 Q Are you aware of any other independent
22 functions of 502?

23 A Yeah. Shaft 502 is preferably hollow
24 and expanded to permit the passage of other
25 instruments, so not just the expanded driver,

1 but potentially other instruments.

2 Q Anything else?

3 A That's -- that seems to be the main
4 independent functions.

5 Q And turning to 504, what are the
6 independent functions of 504 that you're aware
7 of?

8 A 504 has the tabs 532 to interact with
9 the implant, as well as the OD of the 504 itself
10 protects patient tissue, nerves, and the sort.

11 Q Just to clarification you said, as
12 well as the what of 504 itself?

13 A I said OD, meaning outer diameter of
14 504.

15 Q Outer diameter of 504 protects patient
16 tissue, nerves, and the sort? How does it do
17 that?

18 A It's round and smooth and provides a
19 passage for other tools to pass through it,
20 without the risk of those other tools cutting,
21 damaging the vessels, nerves, tissue around the
22 spine.

23 Q And can you describe how implant
24 holder 500 attaches to implant 100?

25 A Yeah. Please repeat that?

1 Q Can you describe how implant holder
2 500 attaches to implant 100 in Michelson?

3 A I go in depth in my paragraphs in my
4 declaration. I'd be happy to read them all, on
5 how they work together, they work to hold the
6 implant. Paragraph 49. Do you want me to read
7 all this?

8 Q No. You don't have to read it. Let
9 me just get to your paragraph 49 here.

10 A Sorry.

11 Q I guess let's -- let's walk through
12 it. So in order to -- for implant holder 500 to
13 attach to implant 100, the distal end of implant
14 holder 500 would be inserted into the trailing
15 end of implant 100, correct?

16 A The distal end of outer sleeve 504 of
17 the implant holder 500 is inserted into the
18 implant.

19 Q And then shaft 502 would be advanced
20 relative to outer sleeve 504. Is that correct?

21 A Shaft 502 -- after the outer sleeve
22 504 is inserted into the implant, shaft 502 is
23 advanced through the outer sleeve and -- to hold
24 the implant. That is correct.

25 Q So that advancement of shaft 502

1 through sleeve 504 actuates the locking
2 mechanism by forcing the side extensions to
3 expand, correct?

4 A Correct. The distal end of shaft --
5 expands 5 -- sorry -- 534 of outer sleeve 504.
6 And -- Sorry. It expands all the distal end of
7 shaft 504 into locking features 532 itself.

8 Q What do you mean by -- You just said
9 it expands all the distal end of shaft 504 into
10 locking features 532 itself. What do you mean
11 by that?

12 A Well, the distal end of 504 has the
13 prongs that interact with the implant, and it
14 expands the length of those prongs, most of the
15 length of the prongs.

16 Q And that would include the flanges
17 532, to expand outward, correct?

18 A That is correct.

19 Q So just to clarify, so shaft 502 would
20 actuate the locking mechanism by forcing the
21 side extensions outward, including the flanges
22 532, correct?

23 A Shaft -- the distal end of shaft 502
24 will expand the tabs 532 to hold onto the
25 implant. Correct.

1 Q And that outward expansion would cause
2 flanges 532 to engage slots 126, correct?

3 A Correct. 514 expands 532 to go into
4 the slots of -- slots 126 of the implant.

5 MR. PARK: Can you let us know when
6 there's a good time for a break?

7 MS. LaVALLEY: Sure. Maybe just a
8 couple more questions here, and then we can take
9 a break.

10 BY MS. LaVALLEY:

11 Q Are slots 126 located within the
12 trailing end of the implant?

13 A Slot 126 on the proximal end of the
14 implant.

15 Q Are slots 126 internal?

16 MR. PARK: Objection to form.

17 A In the configuration we're looking at,
18 the slot 126 is internal.

19 BY MS. LaVALLEY:

20 Q So Michelson's flanges 532 are not
21 received into opposing indentations on the outer
22 sides of the implant, correct?

23 MR. PARK: Objection to form.

24 A In this particular embodiment, it's on
25 the ID. But Michelson does disclose that you

1 can do it in other methods, forms, instead of
2 pushing out. It does describe that you can
3 collapse them as well for locking.

4 BY MS. LaVALLEY:

5 Q By ID you mean inner diameter,
6 correct?

7 A Correct.

8 Q And when you say this particular
9 embodiment, what embodiment are you referring
10 to?

11 A Looking at Figures -- Figure 19.

12 Q Okay.

13 MS. LaVALLEY: We can take a 10-minute
14 break here.

15 (Recess taken 12:38 p.m. to
16 12:48 p.m.)

17 BY MS. LaVALLEY:

18 Q What causes the holder to disengage
19 from the implant?

20 MR. PARK: Objection to form.

21 A Are we back on Figure 19, just before
22 we left for break?

23 BY MS. LaVALLEY:

24 Q Yeah.

25 A As an example?

1 Q Yes. Yes. Sorry. Just to clarify,
2 in Michelson, we were talking about before the
3 break, what would cause the holder to disengage
4 from the implant?

5 A You're asking what the surgeon, how
6 the surgeon would disengage it, or external
7 factors?

8 Q Mechanically, how does the surgeon
9 disengage the tool from the implant?

10 A The surgeon would twist tool 502, and
11 then pull on tool 502 with respect to tool 504.

12 Q So does retraction of shaft 502 allow
13 the side extensions 532 to collapse inward, to
14 disengage the implant?

15 A The -- 532 would then retract back to
16 its original diameter, correct, to disengage
17 from the implant.

18 Q So shaft 502 would retract to allow
19 532 to disengage, correct?

20 A Shaft 502 would need to be turned and
21 then retracted in respect to shaft outer sleeve
22 504 to disengage the tip 514 from underneath the
23 tabs 532 in order to disengage from the implant.

24 Q Do shaft 502 and outer sleeve 504 work
25 together to engage the implant?

1 A What part of engage do you mean? When
2 it's initially put in, shaft 502 is not doing
3 anything there for it, meaning you can put in
4 the outer sleeve 504 to touch the implant
5 without engaging 502.

6 Q In order for flanges 532 to engage the
7 slots 126, do 502 and 504 have to work together?

8 MR. PARK: Objection. Asked and
9 answered.

10 A To expand 532 into the slots 126, you
11 need tool 502 to do that and work together with
12 tool 504.

13 BY MS. LaVALLEY:

14 Q Outer sleeve 504 cannot engage the
15 implant without shaft 502 actuating the side
16 extensions; is that correct?

17 A How do you define engage? As I said,
18 engage can mean push into it. You don't need
19 502 -- 502 expands 532 and locks them in place.

20 Q Limiting --
21 (Indiscernible cross-talk.)

22 Q Sorry. Go ahead.

23 A Sorry. There is an initial
24 engagement, as it describes, that you push outer
25 sleeve tool 504 until 534 is a stop on the

1 implant. And that does not require the outer
2 sleeve 502 -- sorry. Not the outer sleeve. The
3 tool 502 to be engaged.

4 Q So I'm referring to engagement
5 specifically between 532 and the slots 126. So
6 using that understanding of engaged, could outer
7 sleeves 504 -- or outer sleeve 504 engage the
8 implant without shaft 502 actuating the side
9 extensions?

10 A The way that Michelson describes the
11 embodiment of Figure 19 is that you need the 502
12 to slide distally and work with the outer sleeve
13 tool 504 to expand 532 into the slots 126.

14 Q And in order to disengage 532 from the
15 slots 126, you also need to retract shaft 502,
16 correct?

17 A You'd need to retract 502 from 504 to
18 allow 532 to disengage from 126 slots.

19 Q Turning to paragraph 71 of your
20 declaration. Let me know when you're there.

21 A I'm there.

22 Q In paragraph 71 of your declaration,
23 which is Medtronic Exhibit 1002, you state that
24 Michelson's holding mechanism could be modified
25 to have prongs that could engage channels 1522

1 located on an outer wall of McLuen's implant.

2 Do you see that?

3 A I see that.

4 Q And you cite to column 15, lines 8
5 through 13 as support that Michelson suggests
6 that.

7 Do you see that?

8 A I see that.

9 Q And if you turn to Michelson, column
10 15, lines 8 through 13, what figure does that
11 citation refer to on line 13?

12 MR. PARK: Objection to form.

13 A That citation is referring to, in
14 general, how the implant holder can be modified
15 and not to a specific figure. It does give a
16 Figure 67 as one example or embodiment of what
17 can be done.

18 BY MS. LaVALLEY:

19 Q Did you analyze the mechanics of
20 Figure 67?

21 A I reviewed Figure 67. I don't know
22 what you mean -- how detailed of an analysis
23 you're looking for, but I reviewed it to
24 generally see how it would work.

25 Q Did you review the disclosure

1 associated with Figure 67 in Michelson?

2 A I reviewed the specification and the
3 drawing.

4 Q Did you review the portion of the
5 specification that describes Figure 67 in
6 Michelson? I believe it's column 25, line 32,
7 to column 26, line 3. Can you review that?

8 A Yes. I reviewed that.

9 Q Please turn to Figure 67.

10 A Okay. I'm there.

11 Q And do you see implant 1700?

12 A I see that.

13 Q Does implant 1700 have channels on an
14 outer wall, like McLuen's implant?

15 A I was just checking what 1716 is, if
16 there are channels or not.

17 But if you're asking if 1820 fits in
18 outer diameter channels, no.

19 Q And 1716 is a pivot point, not an
20 outer wall channel, right?

21 A That's what I was looking up.

22 Q Look at column 25, lines 59 through
23 61.

24 A Right. Correct. It's a pivot point,
25 1716.

1 Q Okay. So 1716, you would agree, is
2 not an outer wall channel, correct?

3 A It's not an outer wall channel
4 intended to interact with the tool.

5 Q So you would agree that, in Figure 67
6 of Michelson, the implant 1700 does not have
7 channels on an outer wall like McLuen's implant,
8 correct?

9 A Implant 1700 does not have channels on
10 the outer wall to interact with tool 1800.

11 Q And do you see internal slots 1752 on
12 Figure 67?

13 A I see the slots 1752.

14 Q And are those intended -- those slots,
15 1725, intended to mate with the external flanges
16 1820 of the tool?

17 A Yes. The 1820 of the tool is intended
18 to fit in 1752 slots.

19 Q Apart from stating that Michelson's
20 implant holder could be modified for its side
21 extensions to be able to engage McLuen's outside
22 channels 1522, you don't explain precisely how
23 Michelson's implant holder would need to be
24 modified to allow that interaction, correct?

25 MR. PARK: Objection to form.

1 A What do you mean by precisely?

2 BY MS. LaVALLEY:

3 Q I guess do you explain -- do you
4 explain -- I guess where in your declaration do
5 you explain how Michelson's implant holder 500
6 would need to be modified for its side
7 extensions to be able to engage McLuen's outer
8 sleeve outside channels 1522?

9 A I talk about it towards the end of
10 paragraph 71.

11 Q And where do you explain how to modify
12 Michelson's implant holder 500 to interact with
13 McLuen's outside channels 1522?

14 A So looking at paragraph 71, at the
15 bottom of page 41 of 59, the very last line, for
16 example, with reference to Michelson's Figure 19
17 below, a POSITA would have modified the side
18 extensions -- that should say 530 of outer
19 sleeve 504 -- such as they would have engaged
20 McLuen's channels 1522 and correspondingly
21 modified the distal portion of shaft 502, which
22 includes reduced portion 510, such that it would
23 lock the side extensions 1530, example, using
24 dovetail joints. Such modifications and other
25 minor altercations are well within the level of

1 ordinary skill.

2 Q Do you describe how 502 would need to
3 be modified such that it would lock the side
4 extensions?

5 A In my report, I didn't go into detail
6 of how it would be -- how to modify them. No.

7 Q And do you explain how outer sleeve
8 504 would need to be modified?

9 A I explain that you have to modify the
10 side extensions of outer sleeve 504 so they
11 would engage McLuen's channels 1522.

12 Q But beyond that, you don't provide any
13 further details on what modifications would be
14 required so that the outer extensions of outer
15 sleeve 504 would engage McLuen's channels,
16 correct?

17 MR. PARK: Objection to form.

18 A Can you repeat the question again,
19 please?

20 BY MS. LaVALLEY:

21 Q Beyond what you -- Beyond explaining
22 that you have to modify the outer extensions of
23 outer sleeve 504 so they would engage McLuen's
24 channels 1522, you don't provide any further
25 details on what modifications would be required

1 to allow that engagement, correct?

2 MR. PARK: Objection to form.

3 A Are we -- Sorry.

4 BY MS. LaVALLEY:

5 Q Do you need me to clarify my question?

6 A Yes, please.

7 Q Sure. So you state, in paragraph 71
8 of your declaration, that a POSITA would have
9 modified the side extensions 1530 of outer
10 sleeve 504 such that they would have engaged
11 McLuen's channels 1522.

12 Do you see that?

13 A I see that.

14 Q Beyond that statement, do you provide
15 any additional details as to what modifications
16 would be required to outer sleeve 504 to allow
17 engagement between side extensions of Michelson
18 and McLuen's channels?

19 A I provide that you need to modify it
20 so it locks -- you need features that would lock
21 the side extensions, and I used an example of
22 using dovetail joints.

23 Q But is that describing a modification
24 to 502?

25 A 502 and 504.

1 Q Okay.

2 A You would need a mating dovetail on
3 504 as well.

4 Q How would the dovetails engage the
5 implant?

6 A I can -- should we -- I can provide
7 more detail.

8 MR. PARK: That's what she's asking.

9 A So let's go to Figures 19 and 20.

10 MR. PARK: Are you there?

11 MS. LaVALLEY: I'm not quite there
12 yet.

13 MR. PARK: Okay.

14 MS. LaVALLEY: Apologies. I had the
15 wrong reference up. I'll withdraw that.

16 MR. PARK: So you don't want him to
17 explain to you the arrangement that he's
18 described in paragraph 71? Is that right?

19 MS. LaVALLEY: There is no arrangement
20 described in paragraph 71. So I'd like to stick
21 with what's in your declaration.

22 MR. PARK: He said that. He said that
23 there's a -- he's explained his modification,
24 and at the end of paragraph 71. I think that's
25 pretty clearly in the record, and I just want

1 to -- to also be very clear in the record that
2 he's offered to tell you about it, but you're
3 not taking him up on his offer.

4 MS. LaVALLEY: I asked what's in his
5 declaration, and I'd like to stick with what is
6 in his declaration. So I don't see any --

7 MR. PARK: He's offering to tell you
8 what's in his -- Well, now you're testifying.

9 MS. LaVALLEY: You're testifying as
10 well, Counsel. So I'm withdrawing my question,
11 to be clear.

12 MR. PARK: Okay. And I'm just stating
13 on the record -- I understand you disagree with
14 me, but I'm stating on the record that the
15 witness has offered to answer your question on
16 how Michelson's embodiment shown in Figure 19
17 could be modified as described expressly in
18 paragraph 71. And you have withdrawn your
19 question and given up your right to ask for any
20 information regarding his opinions in paragraph
21 71.

22 MS. LaVALLEY: And I disagree with
23 that characterization. We've discussed
24 paragraph 71 in great detail already. I'll
25 leave it at that.

1 MR. PARK: Your deposition, Counsel.
2 You get to ask the questions that you want
3 answered. But I will note that you withdrew
4 your last question for some unknown reason.

5 You can proceed, Counsel.

6 MS. LaVALLEY: Thank you. I will
7 proceed when I'm ready with my next question.

8 BY MS. LaVALLEY:

9 Q Does Michelson describe dovetails
10 anywhere in its disclosure?

11 A I don't recall, off the top of my
12 head, if it does or not elsewhere. But it's a
13 standard thing in engineering to use.

14 Q You don't cite any disclosure in
15 Michelson in support of paragraph 71 regarding
16 dovetail joints, correct?

17 MR. PARK: Object to form.

18 A I describe how to modify Michelson's
19 tool slightly, including using dovetail joints,
20 on how to adapt it to McLuen.

21 BY MS. LaVALLEY:

22 Q But do you cite any disclosure in
23 Michelson as describing using dovetail joints in
24 paragraph 71?

25 MR. PARK: Do you want to take a look

1 at 71?

2 THE WITNESS: Yeah.

3 A Can you repeat the question again,
4 please?

5 BY MS. LaVALLEY:

6 Q Sure. In paragraph -- just to
7 clarify, in paragraph 71 of your declaration, do
8 you cite any disclosure in Michelson as
9 describing the use of dovetail joints?

10 A So Michelson discloses the use of the
11 side extensions may be forced toward one another
12 to lock the implant, and one of the ways is to
13 incorporate what a POSITA -- other implants have
14 done using dovetail joints. Or I should say,
15 dovetail joints are well known in the art by a
16 POSITA at the time, and have been used in spinal
17 implants before. So it's a very common feature.

18 Q Is there anywhere in Michelson where
19 dovetail joints are described?

20 A I don't recall Michelson using
21 dovetail joints specifically in the
22 specification or in the figures. As I
23 mentioned, it's a very common design feature,
24 such as like a screw. It's very common to a
25 POSITA at the time.

1 Q You've only offered an opinion based
2 on a combination of McLuen and Michelson,
3 correct?

4 A I've offered an opinion of McLuen in
5 view of Michelson. Correct.

6 Q You're not offering an opinion that
7 the claims of the '797 patent are rendered
8 obvious by any other combination of prior art
9 apart from that combination of McLuen and
10 Michelson, correct?

11 A I don't render opinion of obviousness,
12 period. I provide an opinion whether prior art
13 disclose or suggest -- the features suggests in
14 claim 16 and claim 19 of the '797 patent.

15 MR. PARK: To a person skilled in the
16 art.

17 THE WITNESS: Yeah.

18 MS. LaVALLEY: If we can take a short
19 break. I think I'm nearing the end of my
20 questioning.

21 (Recess taken 1:22 p.m. to 1:33 p.m.)

22 MS. LaVALLEY: So I have no further
23 questions. Thank you for your time,
24 Mr. Culbert. I have no further questions right
25 now.

1 THE WITNESS: Okay.

2 MR. PARK: Okay.

3 EXAMINATION

4 BY MR. PARK:

5 Q Can you turn to paragraph 71?

6 A Okay.

7 Q Do you recall Ms. LaValley asking you
8 how McLuen -- I mean Michelson -- Michelson's
9 tool assembly could be modified to work with
10 McLuen?

11 A Yes.

12 Q And did you provide an explanation in
13 your expert declaration?

14 MS. LaVALLEY: Object to the form.

15 A I provided an explanation how to
16 modify Michelson's tool assembly to work with
17 McLuen.

18 BY MR. PARK:

19 Q Okay. And could you explain your
20 modification.

21 MS. LaVALLEY: I'll object to outside
22 the scope and the form.

23 A So I would -- as it states in my
24 declaration, you would modify the side
25 extensions 530 of outer sleeve 504 such that

1 they would engage McLuen's channels 1522, which
2 would be obvious to increase the outer diameter
3 of the 530 so it fits around the implant instead
4 of inside of implant. And then the prongs would
5 then fit in the channels 1522 of McLuen's
6 channel.

7 That's the first thing you would need
8 to do.

9 The second would be, take the stops
10 534 and invert them inside and create that and
11 use a dovetail feature on it as described in
12 that paragraph. And that would be -- in one
13 case, an example would be a male dovetail, and
14 it would be wrapped. And then you would then
15 modify the distal end of 510, which is, if you
16 look at it, 514, you would modify that as a
17 female dovetail joint to mate with the female
18 dovetail joint so that, when it's advanced, it
19 pulls the prongs together as described by
20 Michelson. As I say earlier in that paragraph
21 71, that the side extensions may be forced
22 toward one another to lock the implant to the
23 implant holder.

24 BY MR. PARK:

25 Q What's the citation of that?

1 A That is from Michelson Exhibit 514.

2 Q 1014?

3 A 1014, patent '579, column 15, lines 8
4 to 13. And, again, it's also in my declaration
5 in paragraph 71.

6 Q So how many steps are there in this
7 proposed modification that you specified in
8 paragraph 71?

9 MS. LaVALLEY: Objection. Outside the
10 scope. And form.

11 A There are three key modifications to
12 modify Michelson's tool assembly in order to
13 interact and mate with McLuen's implant.

14 BY MR. PARK:

15 Q And are each of those three
16 modifications referenced in your paragraph 71?

17 MS. LaVALLEY: Same objections.

18 A Yes. I discuss those three
19 modifications in paragraph 71 of my declaration.

20 MR. PARK: No further questions for
21 me.

22 MS. LaVALLEY: Just one for me.

23 FURTHER EXAMINATION

24 BY MS. LaVALLEY:

25 Q Did you discuss your testimony with

1 your counsel during the break?

2 A No, I did not.

3 MS. LaVALLEY: Thank you. No further
4 questions.

5 (Whereupon, at 1:37 p.m., Wednesday,
6 July 22, 2026, the taking of the Deposition of
7 BRAD CULBERT was adjourned.)

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STATE OF MINNESOTA:)
) ss. CERTIFICATE

COUNTY OF ANOKA:)

Be it known that I reported the deposition of BRAD CULBERT on the 22nd day of July, 2026;

That I was then and there a Notary Public in and for the County of Anoka, State of Minnesota, and that by virtue thereof, I was duly authorized to administer an oath;

That the witness, before testifying, was by me first duly sworn to testify the whole truth and nothing but the truth relative to said cause;

That the testimony of said witness was recorded in shorthand by me and was reduced to typewriting under my direction;

That the cost of the original transcript has been charged to the party noticing the deposition, unless otherwise agreed upon by Counsel, and that copies have been made available to all parties at the same cost, unless otherwise agreed upon by Counsel;

That I am not related to any of the parties hereto nor interested in the outcome of the action;

That the reading and signing of the deposition by the witness and the Notice of Filing were reserved.

WITNESS MY HAND AND SEAL this day
 of -----



Christine K. Herman, RPR, CRR

Veritext Legal Solutions
1100 Superior Ave
Suite 1820
Cleveland, Ohio 44114
Phone: 216-523-1313

July 29, 2026

To: Brad Culbert

Case Name: Medtronic, Inc. v. Moskowitz Family LLC

Veritext Reference Number: 8345239

Witness: Brad Culbert Deposition Date: 7/22/2026

Dear Sir/Madam:

Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature notarized and forward the completed page(s) back to us at the Production address shown above, or email to production-midwest@veritext.com.

If the errata is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived.

Sincerely,
Production Department

NO NOTARY REQUIRED IN CA

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 8345239

CASE NAME: Medtronic, Inc. v. Moskowitz Family LLC

DATE OF DEPOSITION: 7/22/2026

WITNESS' NAME: Brad Culbert

In accordance with the Rules of Civil
Procedure, I have read the entire transcript of
my testimony or it has been read to me.

I have made no changes to the testimony
as transcribed by the court reporter.

Date

Brad Culbert

Sworn to and subscribed before me, a
Notary Public in and for the State and County,
the referenced witness did personally appear
and acknowledge that:

They have read the transcript;

They signed the foregoing Sworn
Statement; and

Their execution of this Statement is of
their free act and deed.

I have affixed my name and official seal

this _____ day of _____, 20____.

Notary Public

Commission Expiration Date

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 8345239

CASE NAME: Medtronic, Inc. v. Moskowitz Family LLC

DATE OF DEPOSITION: 7/22/2026

WITNESS' NAME: Brad Culbert

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have listed my changes on the attached Errata Sheet, listing page and line numbers as well as the reason(s) for the change(s).

I request that these changes be entered as part of the record of my testimony.

I have executed the Errata Sheet, as well as this Certificate, and request and authorize that both be appended to the transcript of my testimony and be incorporated therein.

Date

Brad Culbert

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;

They have listed all of their corrections in the appended Errata Sheet;

They signed the foregoing Sworn Statement; and

Their execution of this Statement is of their free act and deed.

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this _____ day of _____, 20____.

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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