UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Moskowitz Family LLC, Plaintiff, vs. Medtronic, Inc., Medtronic Sofamor Danek, Inc., Medtronic Sofamor Danek USA, Inc., Warsaw Orthopedic, Inc., and Titan Spine, Inc., Defendants.	)	File No. 25-cv-769 (PJS/DLM) VIA VIDEOCONFERENCE March 6, 2026 1:01 p.m.

BEFORE THE HONORABLE DOUGLAS L. MICKO
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE
(MOTION HEARING)

APPEARANCES (Via Zoom Videoconference):

For the Plaintiff: Avantech Law LLP
JASON M. ZUCCHI, ESQ.
80 South Eighth Street
Suite 900
Minneapolis, Minnesota 55402

For the Defendants: Greene Espel PLLP
X. KEVIN ZHAO, ESQ.
KSHITHIJ SHRINATH, ESQ.
222 South Ninth Street
Suite 2200
Minneapolis, Minnesota 55402

Hueston Hennigan LLP
CHRISTINA VON DER AHE RAYBURN, ESQ.
620 Newport Center Drive
Suite 1300
Newport Beach, California 92660

Court Reporter: PAULA K. RICHTER, RMR-CRR-CRC
300 South Fourth Street
Box 1005
Minneapolis, Minnesota 55415

Proceedings reported by certified stenographer; transcript produced with computer.

Moskowitz Exhibit 2063,
Medtronic v. Moskowitz IPR2026-00162 p. 1
MEDTRONIC EXHIBIT 1071
Medtronic, Inc. v. Moskowitz Family LLC
IPR2026-00217

P R O C E E D I N G S

(VIA ZOOM VIDEOCONFERENCE)

THE COURT: Good afternoon, everyone. We are here in the matter of Moskowitz Family, LLC versus Medtronic and others. It's court file number 25-CV-769. And we're here on defendants' motion to stay.

Let me get appearances from counsel for both sides, starting with the plaintiff.

MR. ZUCCHI: Jason Zucchi with Avantech Law on behalf of plaintiff, Moskowitz Family.

THE COURT: Okay. Good afternoon, Mr. Zucchi.

How about on behalf of defendants today?

MR. ZHAO: Good afternoon. Kevin Zhao from Greene Espel on behalf of Medtronic defendants, and my co-counsel, from Hueston Hennigan, Christina Rayburn.

THE COURT: Good afternoon, Mr. Zhao. Good afternoon, Ms. Rayburn.

Now, before we get started, let me make sure of one of the more important things. Paula, were you able to hear everyone okay?

(Court reporter nods head.)

THE COURT: Okay, good.

With that, folks, just to orient you, I have made my way through all of your materials and I've got some

**Moskowitz Exhibit 2063,
Medtronic v. Moskowitz IPR2026-00162 p. 2**

thoughts and some questions, but more importantly, I want to hear from you. I don't know who I'm going to be hearing from on defendants' side. It's your motion, whether it's Mr. Zhao or Ms. Rayburn, whenever you're ready, tell me what you think I ought to know.

MS. RAYBURN: Thank you, Your Honor, and may it please the Court.

Paula, can you hear me?

(Court reporter nods head.)

MS. RAYBURN: Just because I haven't been checked. Thank you so much.

Your Honor, I do have a slide deck to highlight a couple of my points in my presentation. May I please have permission to share that?

THE COURT: Sure, that's fine.

MS. RAYBURN: Thank you.

THE COURT: And, Ms. Rayburn, while you're doing that, I just got a notification that somebody named Tony Sheh, S-H-E-H, has --

MS. RAYBURN: That is my client, Your Honor. We should --

THE COURT: Okay. I'll just go ahead and admit that person and we'll take it from there.

MS. RAYBURN: I appreciate that.

Can you see my screen?

**Moskowitz Exhibit 2063,
Medtronic v. Moskowitz IPR2026-00162 p. 3**

THE COURT: Yes.

MS. RAYBURN: Great. Thank you.

Moskowitz has intentionally and strategically created a morass of a case. A stay pending IPRs would help narrow and focus this case without unduly prejudicing Moskowitz. For that reason, a stay should be entered.

And we wanted to start this argument with reference to a timeline illustrating Moskowitz's approach to this case. Moskowitz admits that he first provided notice of his patents to Medtronic in 2015. He does deny that Medtronic then, promptly in January 2016, said, no, thank you, we are not interested in your tech. He does deny -- he does not deny that Moskowitz then spent a decade having patent prosecutors file more and more patents and pursuing other defendants rather than saying anything to Medtronic, much less filing suit against Medtronic on his long-issued patents. The result is a 12-patent case asserting 150 claims against eight accused products across five named defendants.

And I'm just going to click forward quickly to show the patent family we are dealing with here, which I --

THE COURT: Ms. Rayburn, just to -- I don't mean to interrupt your flow, but I want you to know, I saw this in your declaration --

MS. RAYBURN: Great.

THE COURT: -- so I'm aware of your view of the relationship between the patents.

MS. RAYBURN: Okay, great.

And what happened here, as we've explained in our IPRs, is that Moskowitz manipulated the patent office in issuing invalid patents over 20 years. Instead of filing patent applications based on invention, he inundated the office with dozens of similar applications containing claims covered by the prior art. He has filed, as shown here, at least 70 applications claiming priorities through the same patent family. This is precisely the sort of complicated patent family that the PTAB rather than a jury is suited to address.

And I know you've read our briefs, Your Honor, so I want to address kind of points in Moskowitz's brief that this timeline helps illustrate the incorrectness of.

THE COURT: That sounds fine. I do have some questions for you, but like I said, I want you to feel like you can tell me what you think is important too.

MS. RAYBURN: Sure. Thank you, Your Honor.

First, there's a point in Moskowitz's brief on page 13 where it says that these patents issued starting in 2018. That's not true. The first asserted patent issued in April 2015, and according to the second amended complaint, was attached to Moskowitz's 2015 letter to Medtronic. As

you can see, five more patents issued by the end of 2019 and three more by July 2022. The only explanation for Moskowitz's delay in pursuing his claims against Medtronic is that he was strategically waiting to compile a bigger and bigger war chest to create this unwieldy case. He cannot claim urgency now.

Nor is it the case that the accused products were released only recently. As shown here, the vast bulk of them were released by 2015, the same year in which Moskowitz sent his first letter. And the last product was released in the middle of 2021. Again, there's no reason for the delay in the filing of this case, no legitimate one.

This timeline also illustrates the incorrectness of Moskowitz's point that this is a year-old case. The fact of the matter is that Moskowitz just over a month ago filed a second amended complaint adding a new patent. We only recently, on January 30th, received revised infringement contentions that incorporate that patent, as well as indirect infringement theories that Moskowitz have never previously disclosed.

So this is a brand new case. We're starting over right now. And, frankly, given the convoluted prosecution history here, I don't expect this to be the last patent he tries to add. I think this case will continue to evolve.

THE COURT: Well, that's fine, but you told me

**Moskowitz Exhibit 2063,
Medtronic v. Moskowitz IPR2026-00162 p. 6**

that the -- when you said the products, I assume you meant the Medtronic products went to market in 2015.

MS. RAYBURN: Yes.

THE COURT: When did your client become aware of the patents?

MS. RAYBURN: Well, as alleged in the complaint, our client received a letter from Moskowitz that presented the '293 patent and numerous patent applications back in 2015. Probably all of the patent applications from which all of the rest of these patents descend. Our client then in January 2016 said, no, thank you, we're not interested. At that point --

THE COURT: Sure.

MS. RAYBURN: Oh, go ahead. Sorry.

THE COURT: No, I understand. That's not really my question. My question is: Was there anything preventing your client from petitioning for IPR at that point?

MS. RAYBURN: Only the idea of kind of the way conversations work, Your Honor. If Jason Zucchi came up to me and said Christy, you're an evildoer, and I said, nuh-uh, I would then wait for him to respond, as opposed to then saying, not only am I not an evildoer, but I'm going to do X and Y other thing. The fact that Moskowitz never responded to our January 2016 letter gave us the presumption that, as we had concluded, we don't infringe and he is not going to

come after us. And that's only strengthened by the fact that he then went after other patent defendants and not us.

And that's the argument that we made to the IPR -- to the PTAB, Your Honor, and an argument that we believe was accepted when the PTAB decided to allow our '293 IPR to pass the discretionary denial hurdle.

THE COURT: But the board hasn't accepted review of any of the petitions at this point, right?

MS. RAYBURN: No, Your Honor. But we do believe that in this current context, the fact that we have passed the discretionary denial hurdle is a very important indication, both that all of the other patent IPRs are going to pass the discretionary denial hurdle and also that the IPR is likely to be instituted.

As set forth in Moskowitz's brief, discretionary denial has become a very big issue in the PTAB with many, many cases being -- many, many IPRs being rejected at that stage, and the fact that we passed that stage we believe indicates both the strength of our IPR petition and the fact that the PTAB, as we do, believes that this mess of a case is best dealt with before the PTAB.

THE COURT: Okay. So if you believe that, how come -- I mean, here's what I'm struggling with: Even if I'm right there with you, from 2015 until February of 2025 when the case is filed, at that point -- and I understand

the case was filed and then there's some kind of, you know, fits and starts in terms of amending the complaint, but you and your client at that point know at the very least what most of the case is about. And I didn't see anything to suggest that there were petitions that were filed for several months down the line, and then the first petition I think that was filed was for '293 in September, and then after that, kind of one after another up until -- I think your brief said that the final petition would be filed this week. I don't know if that occurred or not. But help me understand why there's this gap.

MS. RAYBURN: Sure, Your Honor. And I have a timeline on that because you're right, our first petition was filed seven months after this case was filed. The next one was just over a month -- the next two were just over a month later. The next two were within the nine-month mark, and they go from there. And yes, our last one was filed.

I don't think that constitutes waiting nearly a year. I think we were faced with 12 patents. We had to evaluate our defenses as to each of those patents. We had to prioritize, and we had to move forward with what we could. And I think seven months indicates diligence, and this is especially so because Moskowitz's infringement contentions weren't due until October of 2015.

So in a patent case, in the complaint, the

Moskowitz Exhibit 2063,
Medtronic v. Moskowitz IPR2026-00162 p. 9

plaintiff only identifies, say, one or two claims from each patent, but then they're going to assert, as you know, Your Honor, 150 claims across all of the patents. So we had the choice to either go ahead and file before understanding what claims the plaintiff was actually asserting or maintain efficiency and file as to the claims that the plaintiff actually asserted.

With regard to the '293 patent, we went ahead and filed based on the claim that they put forth in their complaint, not knowing what else they would assert, and it bit us. In their complaint, they asserted Claim 43. We challenged Claim 43, and then they turned around and asserted a ton more claims in that IPR.

As to the others, we started filing those very promptly after we received the infringement contentions. And I believe that's efficiency and not wasting the PTAB's time, rather than strategic delay on our part.

THE COURT: Okay. I mean, I think it spoke to one of my concerns. The other is this: I remember when we had our pretrial conference back in September and consistent with what you'd put in the Rule 26 report, you kind of forecast that there would be a motion for a stay coming once petitions were filed. How am I to view that in conjunction with the filing of those petitions not being complete until just last week? I mean, I'm looking at six months between

**Moskowitz Exhibit 2063,
Medtronic v. Moskowitz IPR2026-00162 p. 10**

you telling me that we're going to do it and then it happening.

MS. RAYBURN: I think there, hard to prepare, and we worked assiduously on them. And I'm just clicking forward to how many claims we had to address in these petitions.

And you're right, Your Honor, that we did say we are going to move to stay once we get these petitions filed. We were working on them then. We continued working on them. But we didn't want to move to stay right when we filed them. We wanted to see a solid indication from the PTAB that it was going to consider and move forward with these filings, and that's what we got on January 27th, which is why on February 11th I flagged to you that we were going to move to stay, and that's why we're here now.

THE COURT: Okay. As long as I'm kind of on a roll here, one of the things that Mr. Zucchi tells me is even if the PTAB undertakes -- or institutes for all of the petitions, that's not going to really streamline things too much because it's not going to touch a number of the claims and it's not going to touch at least three of the patents. Tell me what your response is to that.

MS. RAYBURN: So I think, as part of that argument, he argued that at the end of the day, there will be four patents left, and I believe that --

Moskowitz Exhibit 2063,
Medtronic v. Moskowitz IPR2026-00162 p. 11

THE COURT: I saw that, too, but I thought you were going to take care of one of them through the filing that happened this week. Maybe I was wrong on that.

MS. RAYBURN: No. That's slightly different, and I'll tell you that. But I mean, even from 12 to 4 is a significant streamlining. I understand that this Court only wants to construe ten claim terms at a claim construction hearing. To move from more patents than claim terms to four patents is a significant streamlining. But we can look more directly, Your Honor -- I have a slide on the patents asserted, the patents challenged, the IPR coverage of those here.

So the very last patent that Moskowitz asserted is the '088 patent, and they filed the complaint asserting that patent in January. So that is one of the ones -- is one of the three that we are not -- we have not yet challenged on IPR because kind of our decision point to even try to do that just started a month ago, so I put that one in a different category from the rest of them that have been part of the case since the beginning.

So after that, there are three remaining, I believe, if I'm doing Mr. Zucchi's count right, and it is the '674 patent, which we did not challenge; the '505 patent, which we did not challenge; and the '293 patent for which we challenged Claim 43.

**Moskowitz Exhibit 2063,
Medtronic v. Moskowitz IPR2026-00162 p. 12**

So as a general matter, I will say, yes, Moskowitz has asserted that the core infringement dispute will survive intact, but there's no way to confirm that language. And, in fact, we believe that we have challenged the core infringement dispute. As a general matter, the broadest claims are the most likely to be invalid over prior art, and those are the ones we have challenged in the IPRs, and those are also the claims that are the hardest to challenge for noninfringement. So if and when we get these broadest claims eliminated, that will, in our view, substantially narrow the case.

THE COURT: So help me with that, though, because this is something I've been kind of struggling with. You may well be right on that, but is it Medtronic's position that we will know that by whatever happens with the '293 patent before the PTAB, or is this something where, under your view of things, we wouldn't know kind of the breadth of the entirety of the case, I guess, until we have decisions on all eight or nine of the patents that you've got IPR petitions?

MS. RAYBURN: I think we do need to wait until we have institution decisions on all nine. And just to give Your Honor the calendar on that, we will have institutions on all of them by early September of 2026. We'll have their first institution decision on the '293 patent in a month,

**Moskowitz Exhibit 2063,
Medtronic v. Moskowitz IPR2026-00162 p. 13**

and then they follow kind of regularly after that.

But yes, we will know everything within six months, and we think it is more than reasonable to wait at least six months to know what is in this case before we move forward.

But moving back to the '293 patent specifically, we only challenged Claim 43, and we told Your Honor why. Claim 43 is the only claim in that patent that doesn't have a claim term that is a universal claim term that we believe is a clean noninfringement argument for us and it will be decided on claim construction.

And as we argued, the claim construction of that universal term is currently up on appeal before the Federal Circuit from a different case. We think that is a reason also to stay so that the Federal Circuit can decide the claim construction of that term before you do -- or before Judge Schiltz does.

But in addition to that, Moskowitz said, no, but that was universal from a different claim from a different patent. Right now in a co-pending case that same claim term from the '293 patent is being disputed. And that's in the NuVasive case that Moskowitz has filed against NuVasive that is co-pending. Now, that case, its dispositive motion deadline and its trial deadline are a year ahead of us, and Moskowitz has already filed his opening claim construction

**Moskowitz Exhibit 2063,
Medtronic v. Moskowitz IPR2026-00162 p. 14**

brief. So this is yet another reason at this point, if the Court enters into claim construction on the other claim terms in the '293 patent, he'll be doing it at the same time as two other courts, which we believe is highly inefficient.

THE COURT: But am I wrong that for our case, *Markman* proceedings are looking to start in October of 2026? Isn't that the schedule that we've got?

MS. RAYBURN: I have that we're starting our exchange in August and then the hearing is October.

THE COURT: All right. The hearing is --

MS. RAYBURN: Yes.

THE COURT: Sure. So getting back to the NuVasive case, regardless of what happens here, if things trend your way with that case, don't you think you could -- separate and apart from seeking a stay, that you could make kind of a hybrid estoppel argument?

MS. RAYBURN: I suppose it depends on how quickly that Court rules on claim construction. It may be that the Court leaves it pending. But you're right. And actually that's a reason why we believe that the fact that we only challenged Claim 43 of the '293 patent still means that we've challenged the majority of that patent or the core of that patent dispute, because Claim 43 doesn't have that claim construction, and that we're challenging in the IPR, and the rest of them do have that claim construction issue.

Moskowitz Exhibit 2063,
Medtronic v. Moskowitz IPR2026-00162 p. 15

So allowing both of those things to proceed will essentially kill off that patent for us.

THE COURT: Okay. You know, I don't often get into post-case analysis on stay issues because there is so much discretion for the Court to issue or grant the stay or not, but I do want to, either now or when you're ready, give you an opportunity to tell me why this case should be handled differently than the way that Judge Montgomery handle the *Dane Technologies* case. I think it was cited by your opponent. It's at 2013 WL 4483355. It's not a long case, but --

MS. RAYBURN: Yes, Your Honor, I have reviewed it, and I agree that it is the least distinguishable of the four cases that my opponent cited on this point.

THE COURT: Yeah, because here's what I'm seeing there and here's what I'm seeing here: Motions to stay while a petition for IPR is pending, suggestions that the process -- the IPR process is going to deal with some but maybe not all of the issues, and a suggestion by the movant that there's a really, really high acceptance rate for the IPR. And I think that what Judge Montgomery did there was say, Well, that's all fine; come back to me if you get -- if the board accepts review. And I'm trying to figure out, how do I see things differently here?

MS. RAYBURN: Sure, Your Honor, I think there are

**Moskowitz Exhibit 2063,
Medtronic v. Moskowitz IPR2026-00162 p. 16**

two major differences. One, in that case there had been no indication of how the PTAB viewed that case. They hadn't instituted IPR. And back then, discretionary denial wasn't this monstrous gatekeeping function that it currently is. So here, unlike in *Dane*, we have received a strong indication that we will proceed to IPR and get that instituted.

And the second one, Your Honor, is that we are -- I didn't see argument in *Dane* of a significant and burdensome upcoming deadline. And I do want to talk about the invalidity and noninfringement deadline that's coming up on April 28th, because it is -- it is a very burdensome deadline to try to propose noninfringement contentions and invalidity contentions for 12 patents all at the same time. We have been working on it for a long time. We will spend a lot of our time working on it for the next month and a half. But we are doing that in a changing landscape.

For example, on February 20th the patent owner filed his preliminary response to our IPR petitions to the '755 and the '797 patents, and in that preliminary response, he proposed claim constructions about how his patents should be understood. And when a patent owner does that in IPR, that creates intrinsic evidence that then needs to be considered for those patents.

So the claim construction landscape for these

**Moskowitz Exhibit 2063,
Medtronic v. Moskowitz IPR2026-00162 p. 17**

patents is actively changing, and it will change again on March 8th when the petitioner -- when the patent owner's preliminary response to the next two patents is due, and again on April 22nd when the patent owner's response to the next ones are due. And it will change again on April 8th when the decision date on the '293 IPR is -- passes.

So for us to be trying to juggle this ongoing changing landscape and preparing kind of a burden -- and pursuing this burdensome effort all at the same time we think makes no sense when -- the question to us becomes, why does patent owner so badly want these invalidity contentions next month as opposed to a month or two thereafter, or six thereafter?

THE COURT: Well, I'm sure Mr. Zucchi would argue that the overlap here is in many respects a problem of your own making because you hadn't petitioned for IPR sooner on some or really all of the patents, so how do I deal with that?

MS. RAYBURN: That's a hard one for me to argue, Your Honor. I think seven months is diligent in the face of the number of claims we are facing, the number of patents we are facing, that I know from personal experience that we were moving diligently. And so I agree that we are now at this place based on the timing of how the IPRs came in and then the timing of when their new patent came in, which is

**Moskowitz Exhibit 2063,
Medtronic v. Moskowitz IPR2026-00162 p. 18**

why we then changed the invalidity contention deadline, and we are now in a place through essentially kind of just a series of events that ended up with us here, but this is where we are.

THE COURT: Okay.

MS. RAYBURN: And we think that forcing us to take positions now when it very well may be moot in a month is just a waste of resources.

And I also do want to flag, Moskowitz explains in its own brief that preparing district court contentions at the same time as a pending IPR proceeding is a very fraught process right now. Intentions have long been the place for parties to disclose all their theories early to guide discovery, and those theories could be pled in the alternative, but that's the purpose of the contentions undertaking, to create the scope of the case.

For example, you may be arguing for a particular claim construction, but you don't know if you'll win that claim construction so you need to disclose theories under the plaintiff's construction as well. Never before has that practice had a downside, but now in today's evolving landscape, it does.

As shown in the decisions Moskowitz cites, the director of the USPTO sometimes now de-institutes review after determining that review is appropriate, if he

**Moskowitz Exhibit 2063,
Medtronic v. Moskowitz IPR2026-00162 p. 19**

identifies perceived inconsistencies between a party's positions in the IPR and district court, even when those positions are just disclosed in contentions. And that presents a significant question for us as to how to -- as to how to approach our invalidity contentions.

Of course, we are not planning to present anything inconsistent. We don't have inconsistent positions. But here, both parties have proposed constructions in the IPRs. We don't know whether the PTAB will adopt our constructions, Moskowitz's constructions, or something else. In a typical world, we would put down our invalidity theories under our constructions and Moskowitz's constructions and any others we think the Court might be likely to adopt, but now doing that might well result in the USPTO director deciding we have been inconsistent and deciding not to institute our IPRs as a result.

But that is not the right result for this case. The right result for this case is for IPRs to be instituted and completed, thus simplifying the issues in this case. So the current USPTO focus on contentions served in the district court weighs in favor of a stay, not against, because it makes it the most likely that these patents will receive full consideration by the PTAB, who is the most qualified to give these patents this consideration.

THE COURT: All right. Thank you, Ms. Rayburn.

Moskowitz Exhibit 2063,
Medtronic v. Moskowitz IPR2026-00162 p. 20

Let me hear from Mr. Zucchi for a little bit, and do you feel like --

MS. RAYBURN: Your Honor, may I -- sorry. May I add one more thing?

THE COURT: Of course.

MS. RAYBURN: As a factual matter, Moskowitz claims that we only identified a handful of claim terms for claim construction in the IPRs. We, in fact, identified 20, which is already a weighty claim construction exercise that we believe should happen before the PTAB.

THE COURT: Understood. Okay. Thank you.

All right. Mr. Zucchi, what do you think I ought to know about all this?

And just for purposes of, you know, fair play here, I'm going to ask you to stop sharing your screen.

MS. RAYBURN: That makes sense. I lost my cursor. My apologies. There we go.

THE COURT: All right. Mr. Zucchi, you heard some of my questions. It doesn't mean that you have to respond to those to start out with. Tell me what you think I need to know.

MR. ZUCCHI: Well, thanks, Your Honor. I think Ms. Rayburn ended where I want to begin, and that's really the timing of Medtronic's motion, and I think it raises some questions that the Court should ask.

Moskowitz Exhibit 2063,
Medtronic v. Moskowitz IPR2026-00162 p. 21

One is, why is Medtronic waiting to file -- why is it filing this motion right before its invalidity contentions are due and it's going to be taking claim construction positions? I think she just answered that. Why not wait until September when the patent office will decide whether any of these IPRs should be instituted? And the answer is she just told us, because Medtronic wants to freeze the case here so it doesn't take inconsistent positions in the district court and the PTAB.

Under the Court's schedule, Medtronic's invalidity contentions are due in April. Its claim construction positions are due in August. So as Ms. Rayburn indicated, the PTO director issued a binding decision in November of 2025. And we submitted those cases and attached them, Your Honor, saying that a party can't take one position in the PTAB and another position in district court without explaining it. So Medtronic --

THE COURT: Well, I think I heard from Ms. Rayburn that part of the fluidity is, you know, essentially you're serving and they're volleying; that it's been hard to follow what plaintiff's position is with some of the patents and some of the claims. So what do you have to say about that?

MR. ZUCCHI: Well, what I'd say, Your Honor, I think the *Revvo* case addresses that spot-on. I said, if Medtronic plans to advance claim constructions in this case,

**Moskowitz Exhibit 2063,
Medtronic v. Moskowitz IPR2026-00162 p. 22**

it had a year to file its petitions. It has our infringement contentions, and it was obligated to disclose those claim constructions to the patent office in its petitions. Medtronic said that it's identified claim constructions. It has for means plus function terms. So if it plans on narrowing constructions in this court to avoid infringement, like almost every defendant does, it was required to disclose those to the patent office.

If we go forward in August and it discloses a bunch of claim terms to us and then very narrow construction in August, we plan on submitting that to the director, and the director will very likely vacate institution of any of the IPRs that have been instituted up to that point because Medtronic never explained that in its petitions like it was required to.

So what it's trying to do is have its cake and eat it, too. It wants to take broad constructions in the patent office and invalidate claims and then come to this Court and take narrow constructions. And that's okay, it can do that, it's free to do that, but it was required to explain that in its petitions. It didn't do it.

THE COURT: Okay. Let me ask you this: Let's say that, oh, a month and a half from now the board institutes on '293. Tell me why at that point this isn't appropriate to stay if for no other reason just to streamline for Chief

**Moskowitz Exhibit 2063,
Medtronic v. Moskowitz IPR2026-00162 p. 23**

Judge Schiltz what's likely to come, particularly when we know that the board will, I think, be done with its review within six months.

MR. ZUCCHI: I think the -- well, I think the board would be done with -- if the board decides to institute, it's a full year before we have the results.

THE COURT: Okay.

MR. ZUCCHI: And so the issue really, Your Honor, is Medtronic chose to challenge one claim in the '293 patent. And maybe I should set the table here a little bit clearer because it seems like there's some confusion.

It was in part preparing for today's hearing I realized there are -- right now there's three patents completely unchallenged in the IPR, but there's a total of six patents, 60 claims, completely unchallenged in the IPR. Seven of the accused product lines aren't challenged in the IPR. So whatever this Court does, if it stays or not, at the end of the entire IPR process, 60 claims, six patents, and seven product lines go forward with trial.

THE COURT: No, I understand, but that's -- you know, 60 seems like an awful lot less than 150 to me.

MR. ZUCCHI: Right, Your Honor, but I guess -- well, we can get into the odds of institution now and the likelihood of institution of any of them and then whether or not, even if any of them are instituted, the likelihood of

all claims being invalidated.

I guess what I was reaching for -- what I was trying to explain to the Court is this case is going forward. In terms of Claim 43, if the board were to institute, what Medtronic argued there was that the board should institute -- or the director should institute, because it was a very narrow challenge of one claim addressing that one issue. So that's the argument they made, and, that's the argument that the board adopted -- or that the director adopted and allowed. So these 14 other claims still at issue from that same patent that are unchallenged. So even if the board were to institute on one claim, we have 14 others that cover the exact same accused products at issue in the case. So I don't think the '293 institution would have any meaningful impact on the case at all.

THE COURT: And do you think that if the board institutes for '293, that that's kind of a signal about the remaining petitions, given that there's, from what Ms. Rayburn says, at least some overlap here, or do you think that these are matters that the board will just consider completely independently one after another?

MR. ZUCCHI: Our experience, Your Honor, is completely -- our experience in looking at the director's decisions is that it's completely independent. So I think

**Moskowitz Exhibit 2063,
Medtronic v. Moskowitz IPR2026-00162 p. 25**

the director looks at each petition on its own. We -- you know, the asserted patents issued at different times. The '293, a decade ago. I mean, part of what Medtronic has been arguing is that Dr. Moskowitz could have asserted his patents much sooner. If the Court looks at the issue dates of those patents, you'll see that most of those patents issued in 2018, '19. Some of them issued in '24, '25.

So to answer your question, Your Honor, I think what we've seen is the director looks at each petition on its own and then there's discretionary denial and then a merits review.

Counsel is right that we didn't file a POPR, or a patent owner preliminary response, challenging the merits with respect to '293. We have in every other one.

THE COURT: Okay. Let's turn now to -- I'd like to ask you a couple of questions about prejudice. As I -- separate from the issue of we're going to be litigating in the District of Minnesota one way or another, I read your response to say that much of the prejudice has to do with the passage of time, that Dr. Moskowitz is in his late 60s and the longer this case waits by virtue of a stay, the harder it is for him to get relief at a fair time.

Help me understand the interplay between that argument and the fact that it looks like this dispute has been bubbling for about ten years before the case was filed.

**Moskowitz Exhibit 2063,
Medtronic v. Moskowitz IPR2026-00162 p. 26**

MR. ZUCCHI: Good question, Your Honor. That, I think, dovetails into counsel's argument about delay. I'd love to address it because I've lived with it for almost the last decade.

So Dr. Moskowitz in -- so the backstory here, Your Honor, is Dr. Moskowitz had negotiated -- or had been in communications with Medtronic from 2005 through 2015. He had multiple in-person meetings, emails, letters. Just a bunch. We have identified some in our complaint. We've produced others. But there were extensive communications over that time frame. By 2015, he had his patent counsel send a letter. The '293 patent issued. He was excited. He had his patent counsel send a letter identifying that in the then-pending apps.

Counsel is right, in 2015, Medtronic said, no, thanks. At that point Dr. Moskowitz found new prosecution counsel, Fish & Richardson. I was at Fish at the time, and he initially transferred the portfolio to Fish. Fish took over patent prosecution, and then in 2018 took over litigation of his portfolio. The first case was filed in 2019 against Globus. That case was filed in the Western District of Texas. It was ultimately transferred to the Eastern District of Pennsylvania. As soon as it was transferred, the Court granted a stay because Globus filed eight IPR petitions and they immediately filed a motion to

**Moskowitz Exhibit 2063,
Medtronic v. Moskowitz IPR2026-00162 p. 27**

stay before any institutions. We opposed. We lost. The Court stayed the case. And they went zero for eight on institution. The Court restarted that case, and then we went to trial in December of '23. That case is on appeal.

And we also sued a company called *ZimVie*. After that, that case was dismissed because of conflict of interest that Fish had. It turned out that *ZimVie* had acquired a former Fish client, so Moskowitz was required to dismiss the case. Moskowitz wanted to sue -- was planning to sue NuVasive next, and Fish had a conflict, so he found new counsel. And I had since left Fish, joined Avantech, so he joined us. And since then, we filed cases against Medtronic in February '25 and NuVasive in June of '25.

And counsel is exactly right that the -- in this case, Medtronic had told us they wanted a stay. Medtronic had told us that they were going to file -- or that they were going to file IPR petitions. What we decided to do is agree to a long schedule, a three-year schedule so that we could accommodate that. If the Court wasn't going to stay, at least we would have the final written decisions in hand before we went to trial.

NuVasive, on the other hand, said it wasn't going to file IPR petitions. That case is before Judge Bryson sitting by designation. That's in Delaware. That case is on an 18-month trial schedule. So we're going to trial

February of '27 there and right now, obviously, February of '28 here.

Counsel is right that right now Judge Bryson -- before him is the universal claim term. I can very easily tell you about it. I know a lot about it, and I strongly expect that --

THE COURT: No, I don't need you to tell me about it, but as long as you're down this road -- I mean, it doesn't, frankly, have much to do with our motion to stay but it's been kind of an atmospheric that both of you have touched on now. I guess I don't understand -- I'm struggling to understand -- and I think I heard Mr. Zucchi to say, part of the reason we didn't file suit sooner is we had a lot of different people to sue.

MR. ZUCCHI: Right, Your Honor. I think if Your Honor remembers the old laches framework, the patent laches, the types of things that courts look at as to why a patentee doesn't sue sooner is because they're busy suing other companies. That's what happened here.

THE COURT: I guess what I'm -- and this is the question I have, and like I said, it's just really atmospheric more than anything else, but how in the world does that happen? It strikes me that the type of -- the type of patents that are involved in this case are extremely specialized and only relate to a few companies. And I could

**Moskowitz Exhibit 2063,
Medtronic v. Moskowitz IPR2026-00162 p. 29**

understand that a business owner and a patent owner might seek to partner with med device companies for their patents, but it's curious to me that -- where those partnerships don't materialize, that there's so much kind of litigation that appears to be similar about those patents. I'm just really commenting on it, but I'm happy to hear if you want to give me any insight into that. You don't need to.

MR. ZUCCHI: I think I understand your question correctly. I mean, I think the reason, and I know it, the reason that Dr. Moskowitz hadn't sued Medtronic sooner was resources. It's a small company. It was forced to take contingency fee agreements with firms, and there were just limits on how many cases they were willing to take at a time. So if it was up to Dr. Moskowitz, he would have sued them years ago.

THE COURT: No, I understand. I guess my curiosity is really about why there's so many suits, but that's not something I guess we need to discuss today.

What else -- but what you said was responsive to the question I had about, you know, as I see prejudice and burden. What else do you think it's important for me to know about this? You know, I'm hearing from Medtronic and from Ms. Rayburn that denying the stay right now will -- all it will really do is guarantee, not just for Medtronic but for Dr. Moskowitz and with his resources, double the work.

So why do we want to do that versus streamlining things?

MR. ZUCCHI: What I'd say, Your Honor, is the work will go forward regardless. It's just going -- you hit pause on it.

And just to hit a few things, in terms of the --

THE COURT: Well, hold on a second. Is that really true? I mean, isn't it true that -- let's just pretend the board accepts on all, and on review finds 100 percent in favor of your client, wouldn't that streamline things for Judge Schiltz when he's thinking about the patents in our litigation?

MR. ZUCCHI: I would -- if this was 2013, Your Honor, I would say yes, absolutely, but given a decade of experience, I would say no. The quid pro quo for the stay and for the -- I guess the IPR process has been the IPR estoppel, and -- is that what you're referring to in terms of --

THE COURT: Yes.

MR. ZUCCHI: And I think -- and I can speak to this. I ran Fish's plaintiffs' side group for quite some time, and I can definitively say based on our experience, it rarely, if ever, simplifies a case because the IPR estoppel statute only tackles printed publications. So what that means is any printed publication that Medtronic raises an IPR or reasonably could have raised, it's estopped from

asserting in the district court.

But here's the end run around it: Medtronic can take any product art, system art, or anything else and combine it with those printed publications to come back with 102 and 103 arguments. So imagine, you have a printed -- you have an article describing something that was in use. How is that any different than, you know, the system art? And the answer is there is none, but the statute allows it. So if you look to see what judges allow around the country, rather than -- any of the products that are asserted -- any of the products described in the patents, all they have to do is combine it with the product and the patent to get that.

I -- God, I want to say it was a few months before Judge Stark from Delaware went to the Federal Circuit this exact issue happened. We had an IPR. The IPR was successful. So we were the -- we were the plaintiff in the case. The defendants successfully challenged many of the claims. Four claims emerged, one infringed claim. We went and what the defendants did is they took -- there was an Italian patent they found. That was the primary reference in the IPRs. They took that Italian patent, combined it with a piece of system art for one of the limitations, a piece of one, and combined it. And Judge Stark at the end was asking, why did I stay the case for this long because it

Moskowitz Exhibit 2063,
Medtronic v. Moskowitz IPR2026-00162 p. 32

didn't simplify anything? The amount of time you spent with the jury on invalidity was the exact same and you're making the exact same arguments. So what was the benefit? What was the point of staying? And the answer was there wasn't one.

So I think that in terms of estoppel, Your Honor, that's an illusory benefit, given that it allows Medtronic to combine system art, and this segues into the prejudice here. Medtronic --

THE COURT: Hold on a second. What if as a result of their review process, if it occurs, that there were findings in favor of Medtronic? I mean, isn't that going to streamline matters?

MR. ZUCCHI: Do you mean with respect to certain claims or not?

THE COURT: Yes.

MR. ZUCCHI: Sure. I would say that the only claims that I've seen Medtronic construe in the IPR, means plus function claims. Nothing else. So if that's wrong, I'd love to see it. We've looked. But in terms of --

COURT REPORTER: I missed something. I have, "I would say that the only claims that I've seen Medtronic construe in the IPR," and then I missed what you said. Can you repeat that?

MR. ZUCCHI: I can. Means plus function.

**Moskowitz Exhibit 2063,
Medtronic v. Moskowitz IPR2026-00162 p. 33**

And just for reference, Your Honor, the patent office rules require means plus function terms be construed. If that's not done, your petition is dismissed. So they construed what they -- the bare minimum of what they had to construe.

In terms of the timing of the invalidity contentions they were due in January. I mean, defendants -- we had asserted 11 patents. Their invalidity contentions were due in January.

THE COURT: Well, I know, but there was a stipulation to bump that to April.

MR. ZUCCHI: There was, but now they're saying that they have to redo everything. I don't know why. I mean, only one patent was added. They asked for the three-month extension on all the patents. So if the Court were to grant its stay rather than crystallizing the dispute, Medtronic would have years to find prior art -- additional prior art to add to its invalidity case.

THE COURT: Okay.

MR. ZUCCHI: I mean, well, it weaponizes the stay.

THE COURT: I know, but it's hard -- like I said, I -- my memory might not be serving me, but I'm relatively sure that the stay was -- not the stay, I'm sorry, the amendment of the deadlines for prior art charts and invalidity statements was something we did by stipulation,

**Moskowitz Exhibit 2063,
Medtronic v. Moskowitz IPR2026-00162 p. 34**

right?

MR. ZUCCHI: Exactly, Your Honor.

THE COURT: Okay.

MR. ZUCCHI: My point is, now Medtronic is trying to get out of it altogether.

THE COURT: No, I understand.

MR. ZUCCHI: That's not fair.

THE COURT: Anything else you want to tell me about this, Mr. Zucchi?

MR. ZUCCHI: I think that's it. Do you have any other questions for me? I'd be happy to --

THE COURT: No, I don't think I do. Let me just double-check to make sure that I don't. No, I don't. Thank you.

All right. Ms. Rayburn, anything you feel like you need to respond to in there? I'm sure there's a thousand things you'd like to respond to, but...

MS. RAYBURN: I'll keep it limited, Your Honor.

As to the -- so as we know, we're facing an April 8th institution deadline on the '293 patent, and I heard you kind of asking whether you should just wait and see. But whether or not the '293 patent is instituted will change how we prepare our invalidity contentions on that patent, because of the estoppel issue. We have filed *Sotera* stipulations that say, if it's instituted and stays

instituted, we will not present invalidity arguments based on things that we could have brought before the patent office. So whether our invalidity contentions focus on the prior art that we've already asserted in the PTAB or whether they focus on certain other things will depend on that April 8th date. And we think it's just hard to ask us like to prepare everything in the alternative when there's no reason to it. So if the Court is considering a wait-and-see approach, we'd ask that the invalidity contention deadline be extended at least a little bit so we can account for those.

But I also just heard in that conversation that Moskowitz had Medtronic as its fourth priority of who to sue. I heard a story of a lot of diligence of filing a lot of patents and suing a bunch of other people. What that tells me is that we were not the priority, and the delay was intentional because other things were prioritized. So I think we can take that as this case is not urgent. This man is 68 years old. He's a practicing neurosurgeon. There's no indication that he's weak. He's the same age as Ellen DeGeneres. He's just a few years older than Judge Schiltz. This is not a case where --

THE COURT: Do you want me to scrub that from the transcript?

MS. RAYBURN: Sure, Your Honor. Yes, please.

This is not a case where memories are going to fade suddenly quickly in the next 18 months when they didn't over the last decade when these issues actually existed.

THE COURT: I understand the argument on that. What I'm struggling with is the front end of it, not really the undue -- or the prejudice or undue burden or anything like that. I'm really struggling more with the speculative nature of how I'm to consider this. And I appreciate that you say, well, you know, Judge, the discretionary review period is already done; we're all geared up for the -- or the discretionary denial, I should say, period is done; we're all geared up for review on at least '293, but we're not there yet. And that's really what I'm struggling to understand. I think -- I mean, you've made your argument on that, but I just wanted to give you a chance to help me understand that more.

MS. RAYBURN: Your Honor, again, I think the discretionary denial bump is a big one. It makes three arguments. One, you know, is this an IPR that's likely to succeed? And two, is it a big, unwieldy case in the district court? And three, are there settled expectations that this patent is valid that way in Moskowitz's favor?

And by allowing us to pass the discretionary denial threshold, we believe that we've gotten an indication that the IPR is strong on its merits, that the PTAB finds

this case unwieldy enough that it thinks it should address it first, and that even the 20-year-old patent, even the oldest patent, didn't give rise to this sort of settled expectation that the patent was valid in light of this particular circumstance where Moskowitz showed the patent to us and we said, no, thank you, and Moskowitz sat on its hands.

I apologize if I'm repeating myself, but we do believe that the patent office weighing in in our favor on those points indicates that it will continue to weigh in in our favor on the other IPRs, all of which are very similar, and that we will be instituted in a month.

THE COURT: What do I do with Mr. Zucchi's argument that the only reason that we're even thinking about this invalidity statement date for you of April 28th is because you agreed to a three-month bump of the deadline for that and that that was based largely on just adding a few small components to their claims?

MS. RAYBURN: I don't think that they added small components, Your Honor. They added a new patent, which is -- you can argue is either way. But I think they also realized that they missed something important. They were required to assert their indirect infringement allegations in their infringement contentions. And that's kind of, If you didn't do it, you were telling other people to do it and

**Moskowitz Exhibit 2063,
Medtronic v. Moskowitz IPR2026-00162 p. 38**

so you're an infringer. They just didn't put those in their invalidity contentions, and that's a huge miss. And they wrote us a letter saying that we should consider those to be in there and we said, Heck, no, and we reached a compromise wherein we let them fix their case and we agreed to this extension.

THE COURT: All right. Thank you.

Here's what we're going to do: I'm going to give you a ruling on this today. Give me a couple minutes to collect my thoughts and I'll be right back with you.

(Off the record briefly.)

THE COURT: Thank you, all, for your patience. And thank you again for your argument today, as well as the briefing. It was helpful to me. Like I told you, I'm going to issue an oral ruling on this. You don't need to rush to write this down because I'll also issue minutes about my decision, for whatever it's worth. And then you can also, of course, get the transcript as well.

Based on what I heard today and also my review of the law and the briefing on this, I'm going to deny the stay at this point without prejudice, obviously.

As you know, the Court has inherent authority to manage its docket and to stay proceedings, and it's the movant's burden to establish that a stay is appropriate. It's when matters like this come before the Court, that is,

**Moskowitz Exhibit 2063,
Medtronic v. Moskowitz IPR2026-00162 p. 39**

where there's a pending IPR petition before the PTAB, some of the factors that I'm going to consider are whether there's undue prejudice or a clear tactical disadvantage to the nonmoving party, whether a stay is going to simplify issues, and also how far along the case has gone.

As the parties know and as we discussed, this case was instituted in February of 2025 and the defendant did not file for an IPR petition at that time or not until, at the earliest, September of 2025. And then when it did so, it did so sequenced over the next several months, with the latest filed just a couple of days ago.

And as the parties have described to me and as I know otherwise, there's a six-month period during which the board can determine whether or not it is going to institute review. That means that due to the staggered filings, there's not going to be any decision from the PTAB about whether to institute review until early April for the first of those petitions and then September at the latest.

Because -- despite what I've heard from the movant here, I find that the notion that the PTAB is going to conduct review of those petitions is at this point speculative and the scope of the PTAB's possible review is also speculative. And because of that, it puts the Court in a position where I can't conduct an authentic analysis about whether a stay is going to assist in this litigation.

**Moskowitz Exhibit 2063,
Medtronic v. Moskowitz IPR2026-00162 p. 40**

I have heard, and I saw in the briefing, that there was reference to a 46 percent acceptance rate. I heard from Ms. Rayburn that there's likely even a higher rate for the '293 patent because of the discretionary denial. I test that against what I had mentioned in the *Dane Technologies* case where Judge Montgomery denied a pre-review petition stay where there was perhaps an 89 percent acceptance rate. I think that the -- I don't have to follow what Judge Montgomery did there, but I think it's instructive about how these matters ought to proceed. That is, that stays should not be granted based on speculation.

If I buy the 46 percent acceptance rate of similar petitions, that tells me one important thing, which is that it's more likely than not that review will not be instituted. 46 percent is less than 50.

I'm not going to stay a case unless I get a little bit more clarity about the scope of the PTAB review, and I don't think the issue of prejudice is particularly impactful. There's no doubt that the plaintiff would be prejudiced by a delay of a stay, but given the allegations that the infringing conduct happened potentially years ago, I don't know that that weighs too much one way or another. Again, against the backdrop of what I think is a pretty speculative nature of PTAB review in the first instance, certainly for the entirety of the petitions any prejudice

**Moskowitz Exhibit 2063,
Medtronic v. Moskowitz IPR2026-00162 p. 41**

from delay would be amplified where there might not be any reason for the delay at all.

Even if I turn to the other factors of consideration, that is, you know, simplification of the issues and the stage of the litigation, the balance still weighs in favor of denying a stay.

I heard defendants argue that the stay is going to narrow and streamline issues. Even if the IPRs are not directed at every asserted claim, that's premised on the assumption that the IPR not only institutes review but also decides in favor of Medtronic on each of the petitions, and I think that's a little too much of a speculative assumption.

So as I see the balance of factors at this point, plaintiff ought to be able to prosecute their claims and move forward.

I will note that, as I mentioned, my denial is without prejudice, and that's appropriate, but it also should be read as something more. And what I mean by that is I understand that this is not the ruling that defendants had hoped for, particularly given the impending invalidity date. That said, I note that we have one, two, three, four, five -- five IPR petitions that will be determined whether review will be instituted by, at the latest, June of 2026. That is about three months from now. And then two

Moskowitz Exhibit 2063,
Medtronic v. Moskowitz IPR2026-00162 p. 42

additional ones by late July. It's obviously defendants' prerogative to move forward how they see fit, but I think it would be a much more persuasive argument to the Court that a matter should be stayed if it turns out that one or, as it might be, several more IPR petitions have been instituted for review, and that's just a few months down the line.

So, again, the motion to stay is denied without prejudice to the parties' ability to renew the motion, should the PTAB decide to institute one or more reviews or for any other important reason.

No written order is going to follow, as I mentioned. The transcript of this oral ruling will memorialize my decision, and the minutes will contain the ruling.

Before I let you all go, let me turn to both sides, starting with you, Ms. Rayburn, to make sure there's no lack of clarity about my ruling here today.

MS. RAYBURN: No, Your Honor. Understood.

THE COURT: Okay. Thank you.

And, Mr. Zucchi, how about for plaintiff?

MR. ZUCCHI: Same here, Your Honor. Very clear.

THE COURT: All right. Thank you very much, folks. We will be in recess.

(Court adjourned at 2:08 p.m.)

* * *

I, Paula K. Richter, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Certified by: *s/ Paula K. Richter*

Paula K. Richter, RMR-CRR-CRC

Moskowitz Exhibit 2063,
Medtronic v. Moskowitz IPR2026-00162 p. 44