IN THE CIRCUIT COURT OF THE
EIGHTH JUDICIAL CIRCUIT
ALACHUA COUNTY, FLORIDA

UNIVERSITY OF FLORIDA RESEARCH FOUNDATION, INC., Plaintiff,	)	Civil Action No. _____
vs.	)	Jury Trial Demanded
MEDTRONIC PLC and, MEDTRONIC, INC.	)	
Defendant.	)	

COMPLAINT

Plaintiff, University of Florida Research Foundation, Inc. ("UFRF") sues Defendant Medtronic PLC and Medtronic, Inc. (collectively, "MEDTRONIC") as follows.

PARTIES, JURISDICTION, AND VENUE

1. This is a cause of action within the jurisdictional limits of this Court.

2. The University of Florida ("UF") is a non-profit educational institution based in Gainesville, Florida and is consistently ranked among the nation's top research universities. It has more than 50,000 students and 4,000 faculty members, including 34 Eminent Scholar chairs and 42 members of the National Academy of Sciences, National Academy of Engineering, the Institute of Medicine, and the American Academy of Arts and Sciences. Among public universities in 2014, UF ranked third in the number of start-up companies created, fifth in technology licenses and options granted, and sixth in the total number of patent applications filed.

3. UFRF is a direct support organization established by The University of Florida pursuant to statutory authority that is tasked with promoting, encouraging, and providing

assistance to the research activities of UF faculty, staff, and students. UFRF is a not-for-profit organization that provides a means by which research can be conducted flexibly and efficiently and by which discoveries, inventions, processes, and work products of UF faculty, staff, and students can be transferred from the laboratory to the public. Funds generated by licensing UF innovations are channeled back to UF to enhance UF's research and education mission. UFRF has a principal place of business at 288 Grinter Hall, Gainesville, Florida 32611-5500.

4. Upon information and belief, Defendant Medtronic PLC is a public limited corporation organized under the laws of the Republic of Ireland having a principal executive office at 20 Lower Hatch Street, Dublin 2, Ireland, and operational headquarters at 710 Medtronic Parkway, Minneapolis, Minnesota, USA.

5. Upon information and belief, Defendant Medtronic, Inc. is a Minnesota Corporation with a principal place of business at 710 Medtronic Parkway, Minneapolis, Minnesota, USA and a location at 6743 Southpoint Drive North, Jacksonville, Florida, 32216.

6. MEDTRONIC can be served with process through Medtronic, Inc.'s agent for service of process at CT Corporation System, 1200 S. Pine Island Road, Plantation, Florida, 33324.

7. The Circuit Court of Alachua County, Florida, has jurisdiction pursuant to Section 48.193, Florida Statutes, as MEDTRONIC operates, conducts, engages in, or carries out a business or business venture in this state or has an office or agency in this state. Alternatively, the Circuit Court of Alachua County, Florida, has jurisdiction pursuant to Section 48.193, Florida Statutes as MEDTRONIC caused injury to persons or property within this state and products, materials, or things processed, serviced, or manufactured by MEDTRONIC were used or consumed within this state in the ordinary course of commerce, trade or use. Pleading further

alternatively, the Circuit Court of Alachua County, Florida, has jurisdiction pursuant to Section 48.193, Florida Statutes as MEDTRONIC breached a contract in this state by failing to perform acts required by the contract to be performed in this state. Additionally, MEDTRONIC contractually agreed that the license agreement at issue in this case "shall be construed in accordance with the internal laws of the State of Florida."

8. Venue is proper in Alachua County, Florida, pursuant to Section 47.051, Florida Statues, as the cause of action in this case accrued in this County.

9. As discussed further herein, all conditions precedent to this action have been performed, satisfied or waived.

ALLEGATIONS COMMON TO ALL COUNTS

10. UFRF is the assignee and exclusive owner of the more than 900 patents originated at UF, including U.S. Patent No. 7,062,251 (the "'251 patent.").

11. MEDTRONIC is the current exclusive licensee of the '251 patent pursuant to a Software Development Agreement and Exclusive License Agreement with Sublicensing Terms effective as of January 19, 2006 (the "LICENSE"). The LICENSE contains a confidentiality provision that prohibits disclosure "except pursuant to, and in order to carry out, the terms and objectives of [the LICENSE]." As a result, the LICENSE is submitted concurrently herewith for filing under seal as Exhibit A.

12. The LICENSE originally granted exclusive rights to ICU AcquisitionCo Inc. ("ICUA"). ICUA was acquired by V2R in 2006, which was acquired by Somanetics Corp. in 2008, which was then acquired by Covidien PLC in 2010.[1] Covidien was finally acquired by

[1] Notably, Covidien had more than 20 patents that cite to the '251 patent.

MEDTRONIC in January 2015. Pursuant to Section 10 of the LICENSE, any subsequent purchaser assumed all of the LICENSE obligations.

13. MEDTRONIC does not dispute that the LICENSE and all of its terms are binding on MEDTRONIC. Pursuant to mandatory dispute resolutions procedures discussed further herein, MEDTRONIC affirmatively waived the notice requirements of the LICENSE including "any notice requirements to ICU AcquisitionCO Inc., Covidien plc, and Medtronic USA, Inc." and confirmed its rights, obligations, and duties pursuant to the LICENSE. *See, e.g.*, Correspondence between MEDTRONIC and UFRF dated December 18, 2015 at Exhibit B.

14. The LICENSE covers both "Licensed Products" and "Licensed Processes" for any product or process covered in whole or in part by any claim of the'251 patent on a worldwide basis.

15. MEDTRONIC is required to pay a royalty rate on Net Sales of Licensed Products or Processes and contractually agreed to repay UFRF for any attorney fees or out-of-pocket expenses incurred by UFRF in collecting overdue royalty payments. Termination of the LICENSE does not release MEDTRONIC from payment of previously-incurred royalties.

16. MEDTRONIC has the contractual obligation to diligently develop markets for Licensed Products and Licensed Processes. To ensure MEDTRONIC and the previous licensees met this obligation, UFRF negotiated, and each licensee agreed, to provide certified full accounting statements showing how royalty amounts have been calculated. In addition to being certified, the accounting statements must include a written representation by an executive officer that states that the statements are true, accurate, and fairly represent all amounts payable to UFRF. Accountings are required even if no payment is owed and are due on a quarterly basis.

17. To ensure compliance with MEDTRONIC's obligation to market the Licensed Products and Processes diligently, the LICENSE expressly grants UFRF audit rights. MEDTRONIC is required, among other requirements, to "take all steps necessary" to provide UFRF with the opportunity to audit and copy all of the books and records at a single U.S. location to verify the accuracy of MEDTRONIC's accountings. If royalties are underreported by a threshold amount, MEDTRONIC is responsible for UFRF's out-of-pocket expenses incurred with respect to such review.

18. Not a single payment provided subsequent to those from ICUA included the required certified accounting statement, a certification signed by an executive as to the accuracy of accounting or any explanation of how or why certain products were included or excluded as Licensed Products or Licensed Processes. Notably, the LICENSE contains a no-modification provision at Section 14.4.

19. MEDTRONIC approached UFRF on April 21, 2015 to "open a discussion" regarding the LICENSE. *See* e-mail correspondence between MEDTRONIC and UFRF, attached hereto as Exhibit C. On April 22, 2015, David Uffer of MEDTRONIC and Anita Rao of UFRF briefly discussed the LICENSE. MEDTRONIC confirmed it was utilizing the technology claimed by the '251 patent and offered to purchase the '251 patent outright.

20. On May 20, 2015, Mr. Uffer apologized for the delay in his response and requested to "open the discussion again regarding the License Agreement, and potential for an outright purchase." *See* e-mail correspondence between MEDTRONIC and UFRF, attached hereto as Exhibit D. David Day, Ms. Rao and Mr. Uffer conferred again on May 27, 2015, and UFRF requested further details regarding what products were covered by the LICENSE, the level of sales, and how royalties were tied to products and sales. At that time, MEDTRONIC agreed to

check with its finance and marketing departments and to get back to UFRF with those details. MEDTRONIC never provided the requested information.

21. Given that MEDTRONIC declined to provide any supporting documentation, UFRF became concerned that MEDTRONIC and its predecessor licensees had underreported the appropriate royalty payments or had developed products specifically to avoid or design around the '251 patent in violation of their duty to diligently develop markets based upon the licensed technology.

22. As a result, UFRF requested an audit in writing on September 2, 2015, and provided the name and contact information for its independent auditor. The request fully complied with LICENSE § 6.2. *See* Correspondence between UFRF and MEDTRONIC, attached hereto as Exhibit E.

23. UFRF representatives and MEDTRONIC in-house counsel conferred on September 21, 2015 and again on October 1, 2015 regarding UFRF's audit request. MEDTRONIC refused to agree to an audit that included any information related to two product families, ZephyrLIFE and Vital Sync (the "DISPUTED PRODUCTS"). MEDTRONIC also refused any audit over its products that may compete with the licensed technology, products developed in violation of its duty to develop and promote the licensed technology.

24. On October 21, 2015, UFRF pressed its demand for an audit of the DISPUTED PRODUCTS, explaining why MEDTRONIC's unilateral exclusion of the DISPUTED PRODUCTS from an audit is both legally incorrect and creates a material breach of the LICENSE's audit clause. *See* correspondence from counsel for UFRF and MEDTRONIC, attached hereto as Exhibit F.

25. The parties participated in additional calls on November 19 and December 10, 2015. MEDTRONIC refused to allow an audit of the DISPUTED PRODUCTS, refused to supply more than summary financial information, and declined to participate in an in-person meeting. *See* correspondence from counsel for UFRF and MEDTRONIC, attached hereto as Exhibit G. As a result, UFRF requested that MEDTRONIC provide a list of proposed mediators as required by LICENSE § 11.1.3. MEDTRONIC immediately engaged outside counsel. *See* correspondence from MEDTRONIC to counsel for UFRF, attached hereto as Exhibit H.

26. After MEDTRONIC engaged outside counsel, MEDTRONIC conceded that "Vital Sync Bedside is a Licensed Product that uses the licensed technology." *See* correspondence from MEDTRONIC to counsel for UFRF attached hereto as Exhibit I. MEDTRONIC, however, still refused to provide the full audit scope, including an audit regarding Vital Sync VPMP and ZephyrLIFE and products developed to compete with the licensed technology.

27. MEDTRONIC has never explained why it has never paid a single penny in royalties on Vital Sync Bedside, stated what those royalties, interest and penalties total, nor certified the prior amounts paid.

28. On March 15, 2016, the parties engaged in the mediation required by section 11 of the LICENSE.

29. At the mediation, UFRF made clear its position that a technical and financial audit is required (and was overdue in October of 2015) and specifically requested the following technical information for the DISPUTED PRODUCTS and financial information for all Licensed Products:

A. Technical information: market requirement information; product requirement information; product and component functional specifications; product and component technical specifications; server hardware specifications; versioning history; internal training manuals; programming manuals; product and component software development plans, including but not limited to software development plans (SDP), system/subsystem specifications (SSS), software requirement specifications (SRS), software design specifications (SRS), software design descriptions (SDD), software quality assurance documents (SQA), and software test plans; product and component test plans and testing and validation data and results; white papers; FDA applications, whether accepted or not, including but not limited to 501k documents and referenced materials; technical manuals; complete end-user documentation including but not limited to user guides, installation guides, operators manuals, training manuals and materials, system administrator manuals, server administration guides, system integrator documentation, network installation documentation, and network structure documentation; list of supported hardware devices; interfacing modules; and access to source code, including drivers.

B. Financial information: invoices; purchase orders; payment receipts, including but not limited to any trade and/or quantity discounts, credits on returns and allowances, outbound transportation costs, sales of any non-Licensed Products that are integrated into the Licensed Product or Licensed Process, and fees or other revenue generated in consideration for implementation, training data analysis, and maintenance of the non-Licensed Product or non-Licensed

Process; inventory records; manufacturing records; sales analyses; general ledgers; audited and unaudited financial statements; tax records; SAS or other salesforce tracking databases; and due diligence documents.

30. MEDTRONIC continued to refuse to provide the full scope of the contractually-required audit. Upon information and belief, MEDTRONIC never intended to agree to the audit at the mediation because it did not bring individuals with authority to agree, as required by the mediator and as promised by MEDTRONIC as a condition to mediation. However, MEDTRONIC agreed to continue to negotiate regarding an audit and executed a forbearance agreement to delay suit while those negotiations continued.

31. Unfortunately, MEDTRONIC refused to respond to UFRF's proposals and correspondence during the first three weeks of the forbearance agreement. With only one week remaining under the forbearance agreement, MEDTRONIC responded to UFRF's proposals by reverting to its pre-mediation position and refusing to negotiate regarding any of the substantive proposals raised by UFRF. By doing so, MEDTRONIC repudiated the forbearance agreement and made clear that it had never had any interest in negotiating in good faith. Upon information and belief, MEDTRONIC agreed to the forbearance agreement to induce UFRF to delay in filing suit so that MEDTRONIC could prepare its own litigation. The forbearance agreement expired on April 16, 2016.

32. All of the alternate dispute resolution procedures required by the LICENSE as a prerequisite to suit have been satisfied as it relates to the allegations herein by UFRF. Any litigation filed by MEDTONRIC, however, would be in breach of the dispute resolution procedures in the LICENSE.

33. MEDTRONIC is responsible for repayment to UFRF of any attorney fees and out-of-pocket expenses required to collect overdue payments under LICENSE Section 4.3.1 and is responsible to pay UFRF's out-of-pocket expenses for an audit under LICENSE Section 6.2. As a result, UFRF seeks its attorneys' fees and out-of-pocket expenses required to obtain MEDTRONIC's compliance with the audit, accounting, and other provisions of the LICENSE.

COUNT I – BREACH OF CONTRACT AGAINST MEDTRONIC

34. UFRF incorporates all prior allegations as stated herein.

35. The parties agreed to the valid and binding LICENSE, through which MEDTRONIC received a license to practice, use, make, offer for sale, and sell both Licensed Products and Licensed Processes. In exchange, UFRF received royalty rights and MEDTRONIC's promise to diligently create markets for Licensed Products and Licensed Processes (not competing alternatives), among other things, including the accountings and audit rights discussed herein.

36. MEDTRONIC's failure to provide the required accountings and required audit are material breaches of the LICENSE. Additionally, if MEDTRONIC's royalty payments are accurate because products were developed as a design-around to the '251 patent, MEDTRONIC breached its contractual obligation to develop markets and sales for Licensed Products and Processes.

37. MEDTRONIC's breaches, particularly in light of its unsubstantiated offer to purchase the '251 patent outright, the substantial negotiations between the parties, UFRF's substantial attempts to resolve this dispute, and MEDTRONIC's breaches of the forbearance agreement are either intentional or alternatively, negligent and are directed to Gainesville, Florida.

38. UFRF requests specific performance of the audit and accounting provisions of the LICENSE and that MEDTRONIC be compelled to allow the audit including the information discussed in paragraph 29 herein for both DISPUTED PRODUCTS and Licensed Products.

39. UFRF has further been damaged by MEDTRONIC's breaches including, *inter alia*, by not receiving the required accountings and audits required by the LICENSE and being required to hire the undersigned and a professional auditor to prosecute its LICENSE rights. UFRF additionally seeks its damages in obtaining the requested accountings and audit, in an amount to be proved at a post-judgment hearing and after MEDTRONIC's specific performance.

COUNT II – ACTION FOR DECLARATORY JUDGMENT

40. UFRF incorporates Paragraphs 1 through 33 as if full set forth herein.

41. The parties agreed to the valid and binding LICENSE, through which MEDTRONIC received a license to practice, use, make, offer for sale, and sell both Licensed Products and Licensed Processes. In exchange, UFRF received royalty rights and MEDTRONIC's promise to diligently create markets for Licensed Products and Licensed Processes, among other things, including the accountings and audit rights discussed herein.

42. MEDTRONIC has refused to provide an audit as required by the LICENSE. UFRF seeks a declaration that MEDTRONIC is required to allow requested audits, for all potential Licensed Products and Licensed Processes identified by UFRF, including the topics and materials discussed in paragraph 29 herein.

43. A declaratory judgment is required so as to guide the parties in their future relationship.

44. A bona fide, actual, present, and practical need for a declaration exists.

45. The declaration requested concerns a present, ascertained or ascertainable state of facts or present controversy as to a state of facts.

46. A privilege or right of UFRF is dependent upon the facts or the law applicable to the facts.

47. UFRF and MEDTRONIC have an actual, present, adverse and antagonistic interest in the subject matter, either in law or in fact.

48. The relief sought by UFRF is not merely giving of legal advice or the answer to questions propounded for curiosity.

49. UFRF additionally seeks its damages in obtaining a declaration regarding accountings and audits in an amount to be proved at a post-judgment hearing and after the Court's declaration of UFRF's rights under the LICENSE.

COUNT III – ACTION FOR BREACH OF IMPLIED DUTY OF GOOD FAITH AND FAIR DEALING

50. UFRF incorporates Paragraphs 1 through 33 as if fully set forth herein.

51. As previously alleged, MEDTRONIC breached express terms of the LICENSE by failing to provide the required accounting and audit and by failing to diligently develop and market products covered by the '251 patent.

52. MEDTRONIC's failure to abide by its contractual obligations is a breach of its implied duty of good faith and fair dealing in abiding by the development, marketing, accounting and audit LICENSE terms. Alternatively, if MEDTRONIC's royalty payments are accurate because products were developed as a design-around to the licensed patent, MEDTRONIC has breached its duty to develop markets and sales for Licensed Products and has instead used its exclusivity to prevent UFRF from licensing the technology to others without any benefit to UFRF.

53. A duty of good faith and fair dealing is implicit in all enforceable contracts under Florida law and implied in the performance of every term of an express contract.

54. By repeatedly engaging in practices that refused UFRF its contractual rights, MEDTRONIC continually demonstrated bad faith in performing the terms of the LICENSE.

55. As a result of MEDTRONIC's failure to follow through on its promises and assurance, UFRF has been damaged.

PRAYER

WHEREFORE, UFRF respectfully requests that judgment be entered in its favor and against Defendants and respectfully requests that the Court grant the following relief:

A. MEDTRONIC be required to specifically perform the audit and accounting provisions of the LICENSE, including but not limited to providing an audit of the following information:

   i. For the DISPUTED PRODUCTS: market requirement information; product requirement information; product and component functional specifications; product and component technical specifications; server hardware specifications; versioning history; internal training manuals; programming manuals; product and component software development plans, including but not limited to software development plans (SDP), system/subsystem specifications (SSS), software requirement specifications (SRS), software design specifications (SRS), software design descriptions (SDD), software quality assurance documents (SQA), and software test plans; product and component test plans and testing and

validation data and results; white papers; FDA applications, whether accepted or not, including but not limited to 501k documents and referenced materials; technical manuals; complete end-user documentation including but not limited to user guides, installation guides, operators manuals, training manuals and materials, system administrator manuals, server administration guides, system integrator documentation, network installation documentation, and network structure documentation; list of supported hardware devices; interfacing modules; and access to source code, including drivers.

ii. For all Licensed Products: invoices; purchase orders; payment receipts, including but not limited to any trade and/or quantity discounts, credits on returns and allowances, outbound transportation costs, sales of any non-Licensed Products that are integrated into the Licensed Product or Licensed Process, and fees or other revenue generated in consideration for implementation, training data analysis, and maintenance of the non-Licensed Product or non-Licensed Process; inventory records; manufacturing records; sales analyses; general ledgers; audited and unaudited financial statements; tax records; SAS or other salesforce tracking databases; and due diligence documents;

B. A declaratory judgment as set forth in Count II above;

C. Attorneys' fees, expenses, and costs as required by the LICENSE, jointly and severally, against Medtronic PLC and Medtronic, Inc.;

D. Pre- and post-judgment interest, jointly and severally, against Medtronic PLC and Medtronic, Inc.;

E. Such other further relief as the Court may deem just and proper, in law or in equity.

JURY DEMAND

Plaintiff University of Florida Research Foundation hereby demands a trial by jury on all issues triable to a jury.

Respectfully submitted this 17th day of April, 2016, by the following attorneys for the University of Florida Research Foundation, Inc.:

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AND

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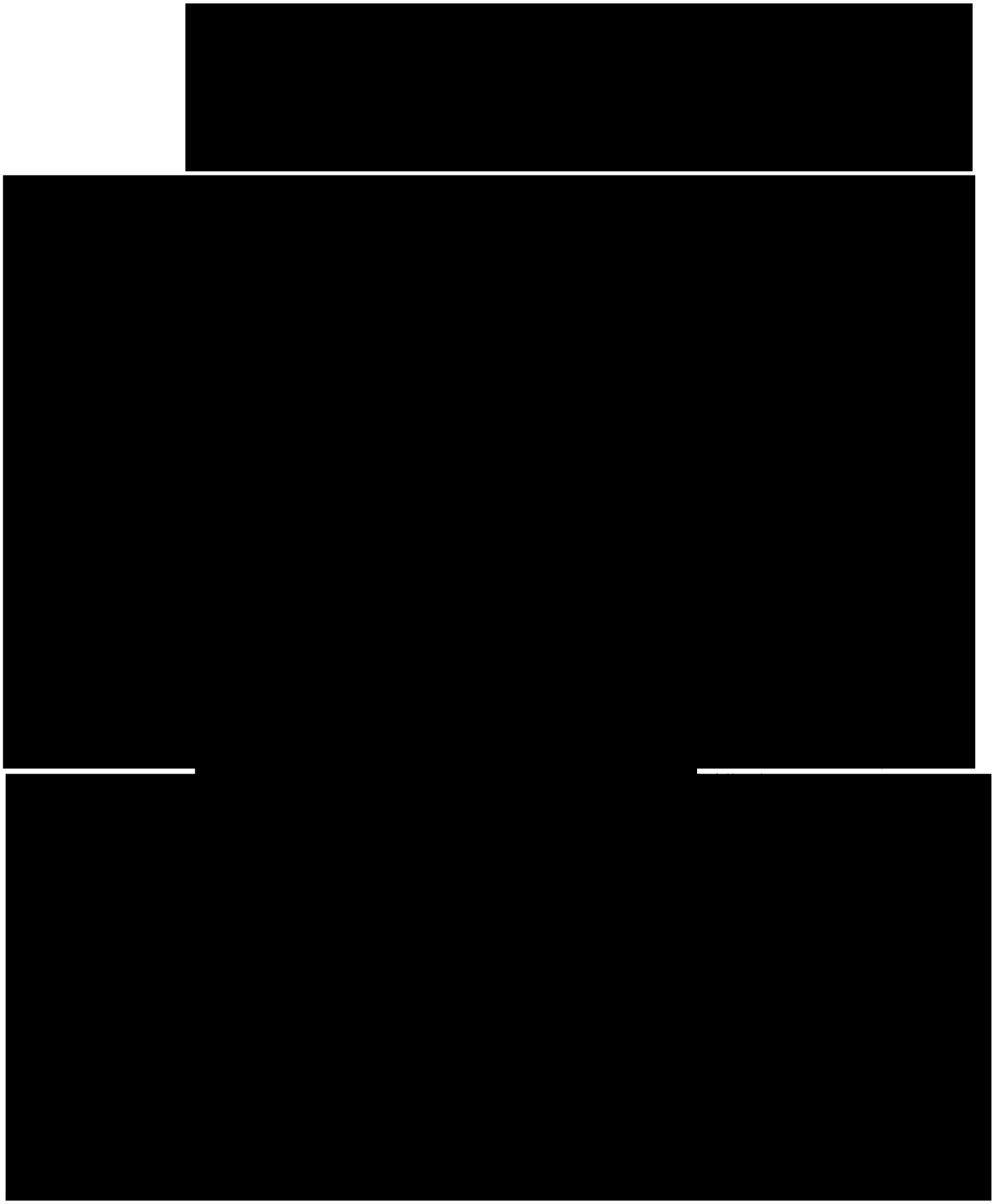
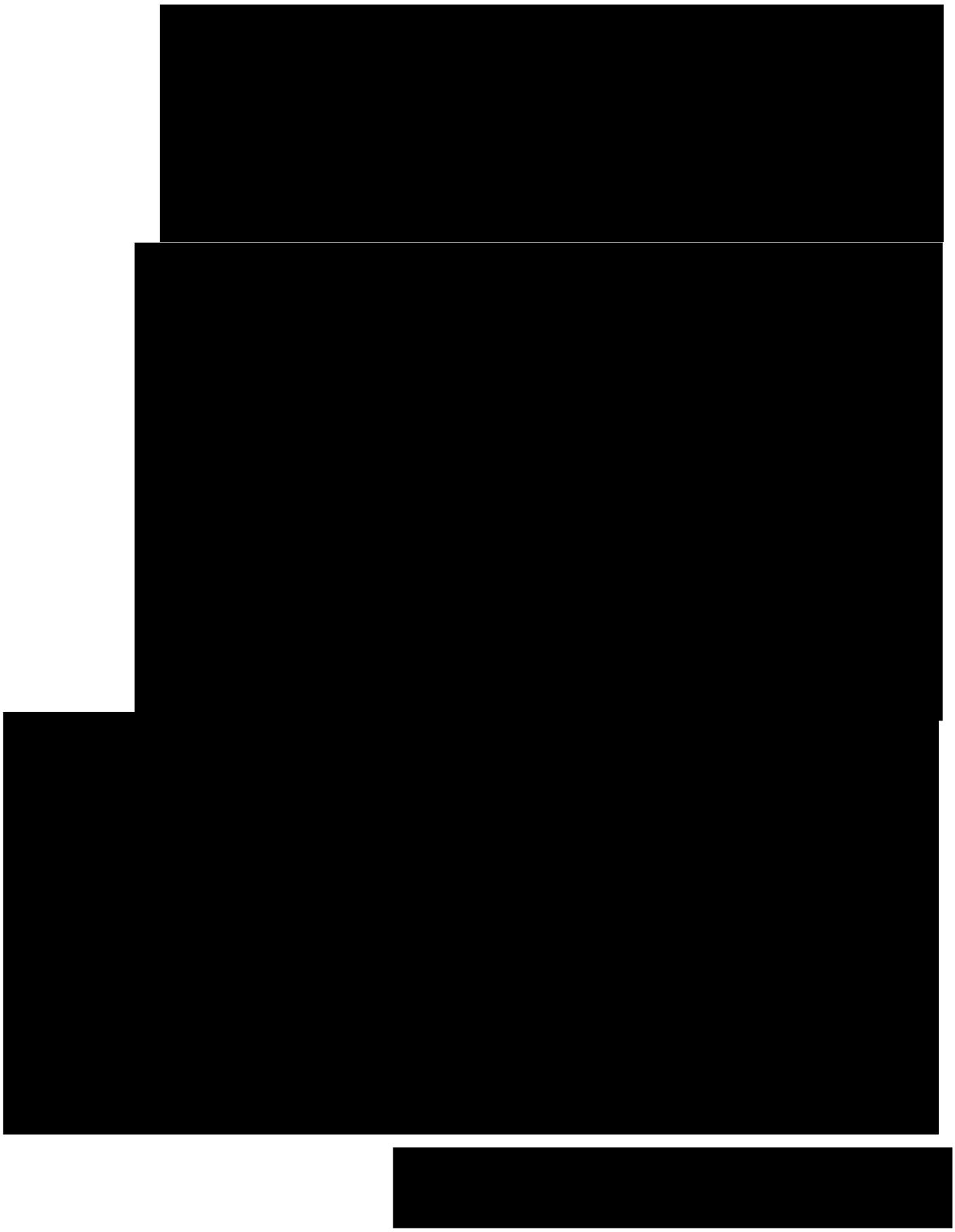
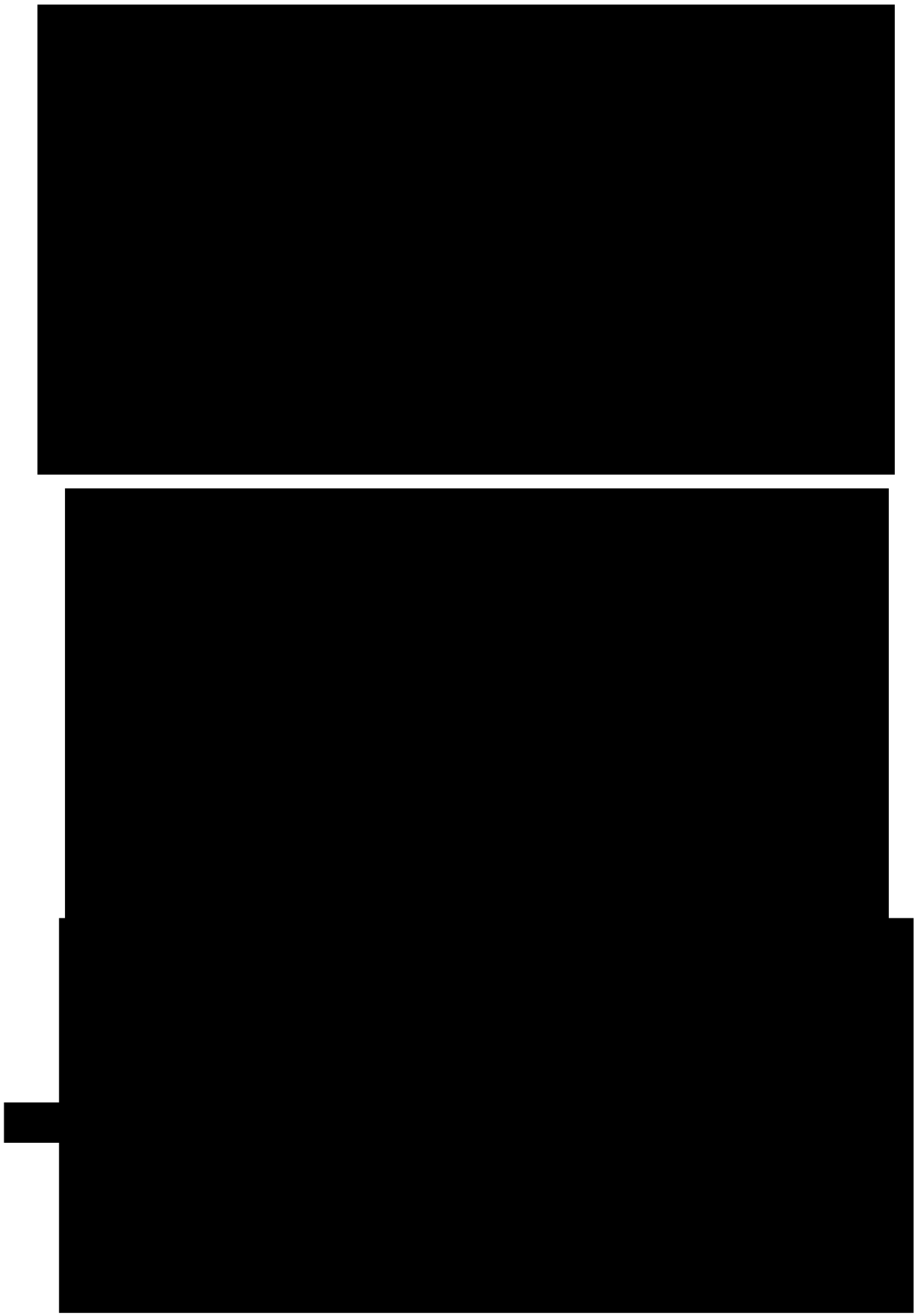
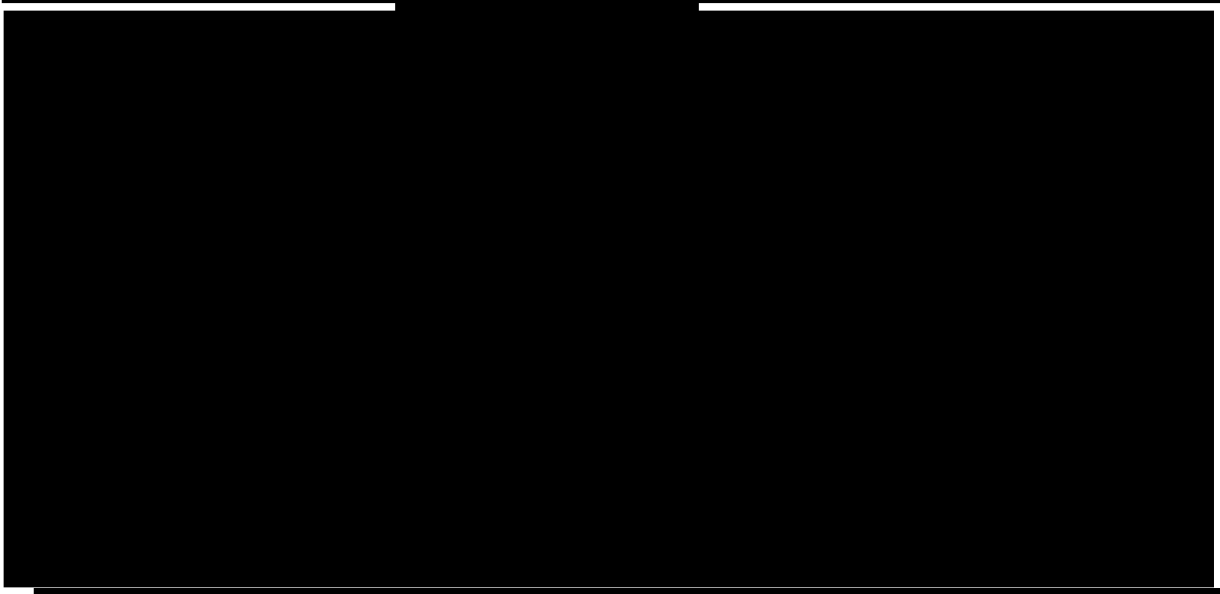
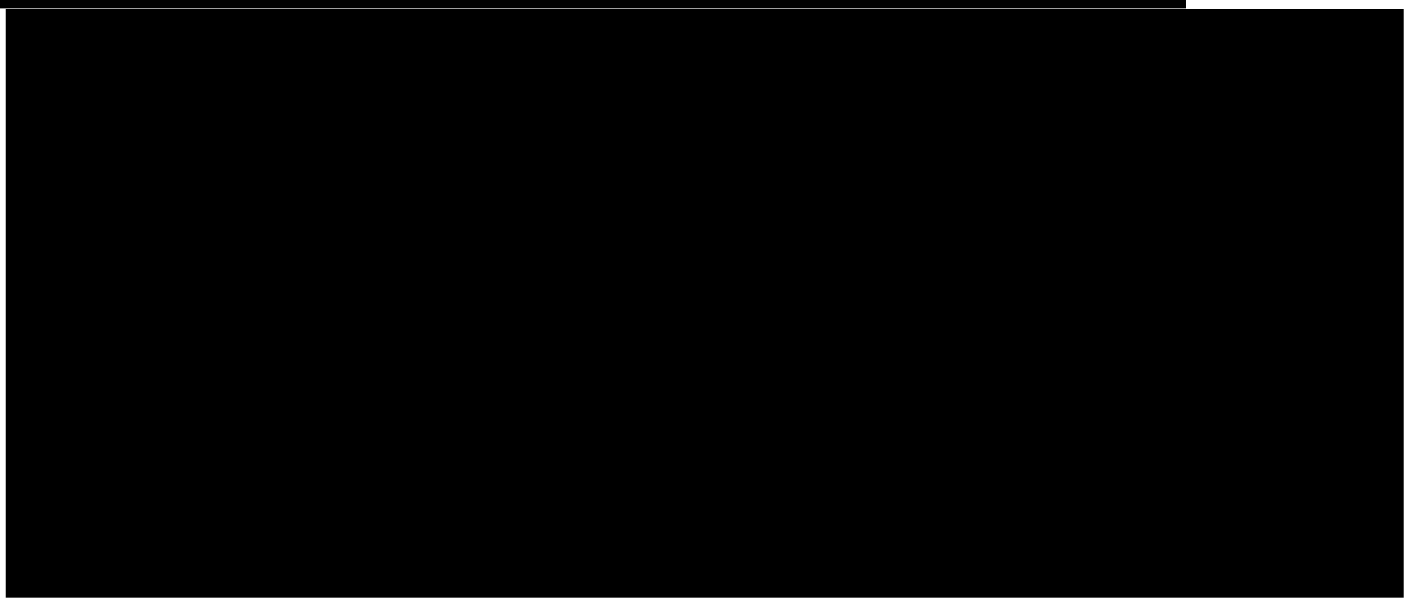
ATTORNEYS FOR PLAINTIFF

EXHIBIT A







Initials DD TY

Appendix B - Equity Agreement

EXHIBIT B

WILMERHALE

December 18, 2015

Mary (Mindy) V. Sooter

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VIA EMAIL ONLY

Alfonso Garcia Chan
Shore Chan DePumpo LLP
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Dallas, TX 75202

Re: License between University of Florida Research Foundation ("UFRF") and Medtronic, Inc.

Dear Mr. Chan:

I write on behalf of Medtronic regarding the parties' dispute relating to the Software Development Agreement and Exclusive License Agreement with Sublicensing Terms, dated January 19, 2006 (the "Agreement"). Turning first to logistics, as I indicated in my prior letter, Medtronic agrees to waive the formal notice requirements set forth in Section 15 of the License, and to accept notice via email addressed to myself, provided that UFRF reciprocates in accepting notice by email. This offer to waive the formality of the notice requirements includes any notice requirements to ICU AcquisitionCO Inc., Covidien plc, and Medtronic USA, Inc. On a related note, your most recent letter was dated December 14, 2015, but was not sent via email until December 15, 2015. We, therefore, consider your notice pursuant to Section 11.1.2 of the Agreement to have been provided on December 15, 2015.

Turning next to the dispute at hand, the "background" you provide in your letter misstates several facts and requires clarification. First, your letter indicates that Medtronic breached its obligation to provide an audit. That is incorrect. Medtronic has never objected to UFRF conducting an audit of *proper* scope; Medtronic objects only to UFRF's request for an audit that is significantly broader than the Agreement allows. Moreover, ever since UFRF's initial audit request in September, Medtronic has communicated promptly and worked in good faith to determine the proper scope of the audit. In fact, immediately after receiving the audit request, and without obligation to do so, Medtronic arranged a presentation for October 1, 2015 in which Medtronic walked UFRF through its positions in detail, explaining why UFRF's audit request was beyond the scope of the Agreement. Following that meeting, UFRF requested time to consider the information provided, and then waited until October 21, 2015 to respond via letter rejecting Medtronic's reasoning without substantive explanation. UFRF's demand for an overbroad audit and its own three-week delay in responding to Medtronic's explanations about the proper scope certainly cannot be considered any breach on Medtronic's part.

Second, your letter suggests that Medtronic is unwilling to have an in-person meeting. That is also incorrect. As Medtronic explained in the teleconference on November 19, Medtronic stands

willing to meet in person, but believes that the parties should try to resolve as much as possible by phone in advance. By identifying an impasse and electing the neutral advisor process under Sections 11.1.2 and 11.1.3 of the Agreement, however, Medtronic now understands that UFRF is no longer interested in pursuing this independent path of resolution.

Third, your letter suggests that Medtronic could streamline the neutral advisor process set forth in Section 11.1 by simply agreeing to the overbroad audit that UFRF demands, and allowing UFRF to audit the unlicensed products ZephyrLIFE and Vital Sync VPMP. While Medtronic disagrees that products outside of the scope of the Licensed Products should be included in any audit, as a gesture of good faith Medtronic has nevertheless shared, during the November 19 teleconference, sales figures of ZephyrLIFE and Vital Sync VPMP. Given this, and given the fact that these products are outside of the Agreement, Medtronic does not understand UFRF's need to officially audit these numbers. To do so would impermissibly expand UFRF's rights under the license agreement, set an improper precedent, and unnecessarily burden Medtronic's financial resources.

Because UFRF has determined that the parties are at an impasse, Medtronic hereby provides notice pursuant to Section 11.1.2 of the issues in dispute:

1. **Vital Sync VPMP and ZephyrLIFE products are not "Licensed Products" pursuant to Section 1.2.1 of the Agreement and no royalties are due on these products.**[1] Medtronic has carefully considered and analyzed whether these products fall within the scope of the claims of the Licensed Patent and has concluded that they do not. Therefore, under Section 4.2 of the Agreement, no royalties are due on these products. Medtronic diligently explained its non-infringement analysis to UFRF in teleconferences on October 1, 2015, November 19, 2015, and December 10, 2015. In contrast, UFRF has not provided any contrary analysis. UFRF has not identified any particular patent claims nor provided any claim charts showing that either of these products fall within the scope of the Licensed Patent. Instead, UFRF simply argues that it may interpret the patent claims broadly and that it may unilaterally add products to the definition of Licensed Products. As such, it seems that the parties disagree whether Vital Sync VPMP and ZephyrLIFE are Licensed Products for which royalties are due.

2. **The Agreement does not permit UFRF to audit unlicensed products.** Section 6.2 of the Agreement allows UFRF to conduct an audit to "verify the accuracy of [Medtronic's] . . . accounting." Medtronic's accounting responsibilities are described in Section 4.3, which requires an "accounting statement showing how any amounts payable to UFRF under Section 4.3 have been calculated." Section 4.3 refers, in turn, to Section 4.2, which requires payment only of

[1] There are two different products named Vital Sync: Vital Sync *Bedside* and Vital Sync *VPMP*. Vital Sync Bedside is a Licensed Product that uses the licensed technology. Vital Sync VPMP is an entirely different product that utilizes entirely different technology. Medtronic pays royalties on Vital Sync Bedside, and as stated above, stands willing to permit an audit of the Vital Sync Bedside product royalties.

"a royalty calculated as a percentage of Net Sales of Licensed Products which, if not for this Agreement, would infringe Licensed Patents" (emphasis added). Consequently, UFRF is entitled to audit only royalty payments resulting from Licensed Products that "would infringe Licensed Patent[]." As Medtronic has repeatedly explained, Vital Sync VPMP and ZephyrLIFE are not covered by the Licensed Patent. Consequently, UFRF cannot include them in the audit. As stated above, however, Medtronic stands willing to permit an audit of its Vital Sync Bedside product. To the extent that UFRF contends that it is entitled to audit unlicensed products, however, the parties disagree.

Finally, given that the 15-day deadline for providing a list of neutral advisors falls during the holidays on December 30, and given the conflicting issues in dispute, Medtronic proposes that we extend the deadline to provide neutral advisors to **January 15**. Please let me know at your earliest convenience whether UFRF agrees to this modest extension. In the meantime, Medtronic welcomes a call, which I would be happy to facilitate, to clarify the nature of the dispute.

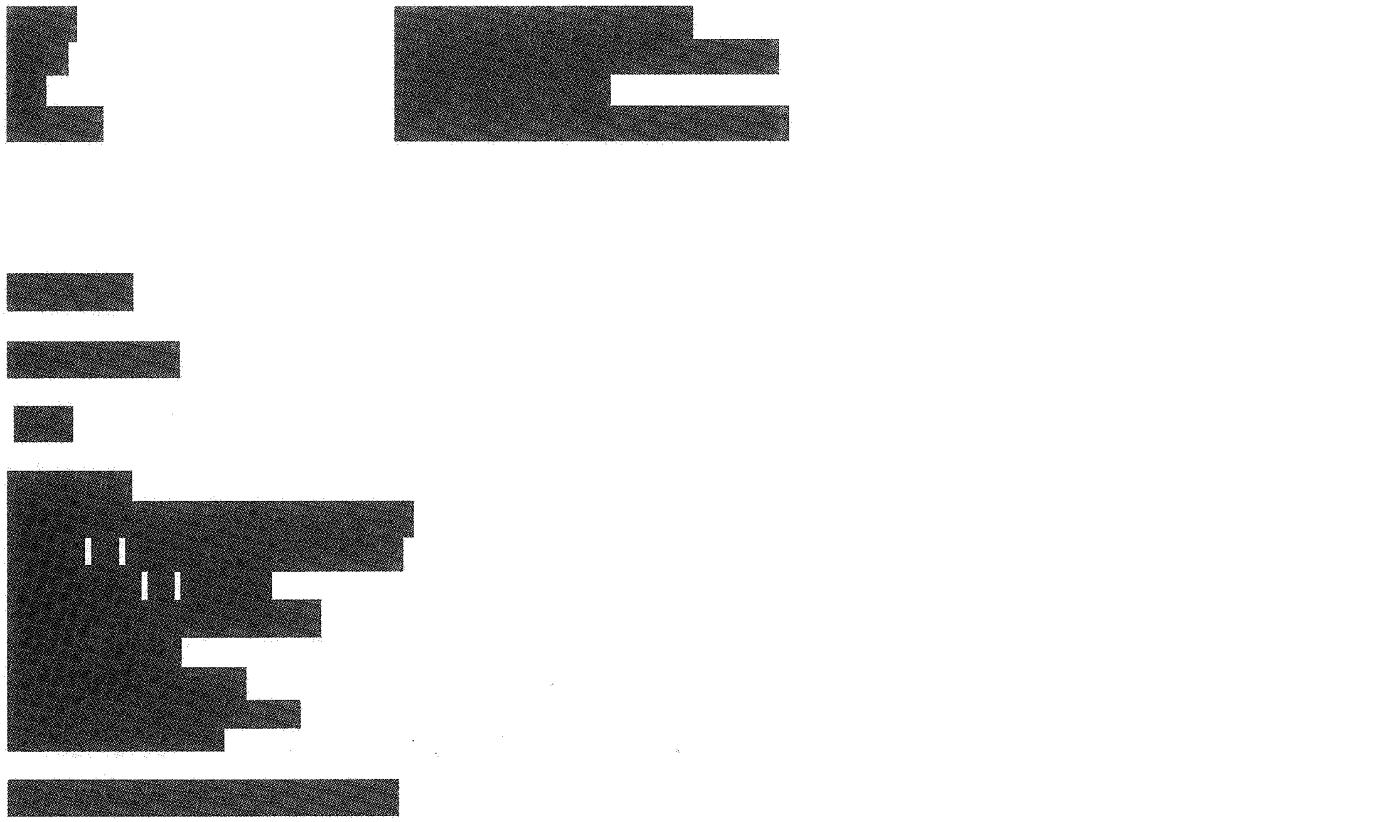
Very truly yours,

Mary V. Sooter /ast

Mary (Mindy) V. Sooter

EXHIBIT C

REDACTED



From: Uffer, David [mailto:david.uffer@covidien.com]
Sent: Tuesday, April 21, 2015 7:54 PM
To: Rao,Anita
Subject: Call to discuss licensing activity

Hello Anita
I am the new head of Business Development and Licensing for the former Covidien Respiratory & Monitoring business, now a part of Medtronic since our January acquisition. I wanted to see if we could open a call regarding a license arrangement we have on one of your patents, License Agreement A5002. If you could suggest a few times that work for you I would like to open a discussion. I look forward to talking soon at your convenience.
Best regards
Dave Uffer

David Uffer | Director, Business Development & Licensing
Medtronic | 15 Hampshire St. | Mansfield, MA 02048
(o) 508-452-4066
david.uffer@covidien.com

Medtronic & COVIDIEN
Covidien is joining Medtronic

EXHIBIT D

REDACTED

[redacted]

From: Uffer, David [mailto:david.m.uffer@medtronic.com]
Sent: Wednesday, May 20, 2015 3:57 PM
To: Rao,Anita
Subject: RE: Call to discuss licensing activity A5002

Hi Anita
Sorry I have been traveling for the past month, and we have not followed up on our conversation. I would like to open this discussion again regarding the License Agreement, and potential for an outright purchase of this. If you could suggest perhaps some time either next Monday or Wednesday, I could clear most of the calendar those days.
Thanks and regards
Dave

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Medtronic & COVIDIEN
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EXHIBIT E

UF | UNIVERSITY of FLORIDA

Office of Technology Licensing

PO Box 115575
Gainesville, FL 32611-5575
747 SW 2nd Avenue
Gainesville, FL 32601
352-392-8929
352-392-6600 Fax
http://www.otl.ufl.edu

September 2, 2015

ICU AcquisitionCo Inc.
Attn: Managing Director and Founder
2180 W. State 434 Suite 6184
Longwood, FL 32779
Facsimile Number: 407-682-1506

Covidien plc
710 Medtronic Parkway
Minneapolis, Minnesota 55432-5604

Covidien LP
C T Corporation System
1200 South Pine Island Road
Plantation, Florida 33324

Medtronic plc
710 Medtronic Parkway
Minneapolis, Minnesota 55432-5604

Medtronic USA, Inc.
C T Corporation System
1200 South Pine Island Road
Plantation, Florida 33324

Dear Licensees:

The University of Florida Research Foundation, Inc. ("UFRF") periodically reviews its license agreements as part of our standard operating procedure. One particular agreement up for review is the Software Development Agreement and Exclusive License Agreement With Sublicensing Terms (the "License") between UFRF and ICU AcquisitionCo., Inc. ("ICU") dated January 19, 2006.

It is our understanding that ICU transferred the License by acquisition to V2R, which was subsequently acquired by Somanetics Corp. ("Somanetics"), which was subsequently acquired by Covidien plc ("Coviden"), which was finally acquired by Medtronic plc.

Pursuant to section 6.2 of the License, UFRF requests an audit of your books and records within thirty days of the date of this letter. UFRF has engaged an independent auditor James D. Woods, Ph.D of the BDO group to conduct this audit. This audit will cover "Licensed Products" and

"Licensed Processes," which include any part or product that "is covered in whole or in part by any issued, unexpired claim or pending claim contained in the Licensed Patents, in any country" or products manufactured by any "process which is covered in whole or in part by an issued, unexpired claim or a pending claim contained in the Licensed Patents, in any country in which any such process is used or in which any such product is used or sold." This would include, without limitation, all versions and variations of iCuro, Vital Sync, and ZephyrLIFE units.

Please let us know when you would be available over the next two weeks for a conference call with Dr. Woods to initiate this audit. We look forward to working with you.

Best regards,

David Day

cc: James D. Woods, PhD, BDO (via email)

EXHIBIT F

SHORE CHAN DEPUMPO LLP

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FRE 408 – HIGHLY CONFIDENTIAL SETTLEMENT COMMUNICATION

October 21, 2015

VIA EMAIL matthew.colagrosso@medtronic.com and matthew.anderson@medtronic.com
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Matthew Anderson
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Boulder, Colorado 80301

VIA FAX +1-407-682-1506
ICU AcquisitionCo Inc.
Attention: Managing Director and Founder
2180 West State Road 434, Suite 6184
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VIA FIRST CLASS MAIL
Medtronic USA, Inc.
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Gentlemen and Licensees:

Your October 1, 2015 presentation suggests that the University of Florida Research Foundation ("UFRF") patent license does not cover the ZephyrLIFE, Vital Sync, or iCurio product families because they convert physiologic treatment data into a proprietary format, not a "machine independent format" as called for by U.S. Patent No. 7,062,251 (the "'251 patent").

UFRF disagrees with your narrow reading of the '251 patent. Whether data format is proprietary is irrelevant as to whether it is in the claimed "machine independent format." The '251 patent's specification and claim language make clear that "machine independent format" is not machine specific, but rather may be shared between two or more different machines. *See, e.g.*, '251 patent at 8:45-52; 8:64-66; 13:60-63; and Figure 2.

The publicly-available product brochures you provided confirm that at least ZephyrLIFE and Vital Sync convert data into a "machine independent format" within the meaning of the '251 patent. For example, ZephyrLIFE is depicted converting machine specific data from BioPatch into a machine independent format that can be integrated with additional sensors (such as blood pressure, glucose, weight, and SpO_2) for

storage on the ZephyrLIFE secure, and presentation on either a central monitoring station, web-based clinician access portal or patient portal. Similarly, Vital Sync is described as an "open flexible platform; compatible with virtually any manufacturer" that converts "proprietary patient parameter and alarm data" from bedside monitors and presents them "for display at the bedside" or on a remote device.

Based on the foregoing, UFRF continues to believe that our audit request under Section 6.2 of the Agreement properly covers all Licensed Products and Licensed Processes, including but not limited to ZephyrLIFE, Vital Sync, and iCurio. To the extent you continue to object to the inclusion of these product families in the audit, UFRF hereby provides notice under Section 11.1.1 and proposes an in-person meeting in Gainesville at a mutually convenient date during the month of November 2015. If you do not believe a meeting would be productive, please confirm that we are at an impasse pursuant to Section 11.1.2 and state with particularity the issues you believe remain in dispute.

We look forward to your response.

Sincerely,

Alfonso Garcia Chan

AGC:cj

EXHIBIT G

SHORE CHAN DEPUMPO LLP

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December 14, 2015

VIA EMAIL matthew.colagrosso@medtronic.com and matthew.anderson@medtronic.com
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Matthew Anderson
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2180 West State Road 434, Suite 6184
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VIA FIRST CLASS MAIL
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1200 South Pine Island Road
Plantation, Florida 33324

Gentlemen and Licensees:

We write on behalf of the University of Florida Research Foundation, Inc. ("UFRF") regarding our correspondence from September 2, 2015 and October 21, 2015, as well as our teleconferences on October 1, 2015, November 19, 2015, and December 10, 2015 regarding the Software Development Agreement and Exclusive License Agreement With Sublicensing Terms (the "License").

Beginning on September 2, 2015, UFRF invoked Section 6.2 of the License to request an audit of your books and records within thirty (30) days and provided the name of and contact with its auditor. During our teleconference on October 1, 2015, Medtronic plc. maintained that the audit should not include all Licensed Products and Licensed Processes, including the ZephyrLIFE and Vital Sync product families. On October 21, 2015--approximately three weeks after Medtronic plc. was in breach of its obligation to provide an audit within 30 days, UFRF reiterated that it "continues to believe that our audit request under Section 6.2 of the [License] properly covers all Licensed Products and Licensed Processes, including but not limited to ZephyrLIFE, Vital Sync, and iCurio." UFRF also provided notice that to "the extent you continue to object to the inclusion of these product families in the audit, UFRF hereby provides notice under Section 11.1.1

and proposed an in-person meeting in Gainesville at a mutually convenient date during the month of November 2015."

During our teleconferences on November 19 and December 10, Medtronic plc. continued to dispute whether the audit would include each of the ZephyrLIFE and Vital Sync product families. Medtronic plc. also maintained that an in-person meeting would not be beneficial, and declined to offer any substantive support for the financial amounts provided in that presentation. As a result, the parties are at an impasse pursuant to Section 11.1.2 of the License because "the parties fail[ed] to meet within the time period set forth in section 11.1.1 [30 days from notice]" and because Medtronic, plc. has continually refused to include the ZephyrLIFE and Vital Sync product families in the scope of the audit. Additionally, while UFRF disputes that it has the obligation under section 11.1.2 to set forth "with particularity the issues that remain in dispute," it is clear that the parties remain unable to agree to the scope of the audit under Section 6.2 of the License, whether that audit should include the ZephyrLIFE and Vital Sync product families, and ultimately the amount of the payments that are due and unpaid under the License.

Pursuant to section 11.1.3 of the License, Medtronic plc. is required to provide "a list of the names and addresses of at least three individuals, any one of whom would be acceptable as a neutral advisor" within 15 days of receipt of this letter to resolve the dispute regarding the scope of the audit and the coverage of the License. UFRF will do the same. Thereafter, the parties are required to agree on a Neutral Advisor within 10 days and to follow the procedures of the License with respect to resolving the dispute over the scope of the audit and the License.

Alternatively, Medtronic could agree to the full audit scope so that UFRF may evaluate the numbers provided by Medtronic plc. in its November 19, 2015 presentation. In that event, the parties could limit the costs of a neutral advisor to one session during which the parties could discuss – with full knowledge of the facts at issue – an appropriate final resolution. UFRF, however, is not willing to enter into financial discussions without the full scope of the audit to which it is contractually entitled.

We look forward to your response.

Sincerely,

Alfonso Garcia Chan

AGC:cj

EXHIBIT H

WILMERHALE

December 14, 2015

Mary (Mindy) V. Sooter

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Alfonso Garcia Chan
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901 Main Street, Suite 3300
Dallas, TX 75202

Re: License between University of Florida Research Foundation ("UFRF") and Medtronic, Inc.

Dear Mr. Chan:

I write on behalf of Medtronic in response to the letter from you to Mr. Colagrosso dated October 21, 2015, and to follow up on your teleconference with Mr. Colagrosso on December 10, 2015 regarding the parties' discussions in connection with the Software Development Agreement and Exclusive License Agreement with Sublicensing Terms, dated January 19, 2006 (the "Agreement").

Please address any future correspondence regarding this matter to my attention. Medtronic agrees to waive the formal notice requirements provided in Section 15 of the Agreement, provided that UFRF reciprocates. Please confirm that UFRF agrees, and that future notice by email is acceptable.

Please do not hesitate to contact me with any questions.

Very truly yours,

Mary (Mindy) V. Sooter

EXHIBIT I

WILMERHALE

December 18, 2015

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VIA EMAIL ONLY

Alfonso Garcia Chan
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901 Main Street, Suite 3300
Dallas, TX 75202

Re: License between University of Florida Research Foundation ("UFRF") and Medtronic, Inc.

Dear Mr. Chan:

I write on behalf of Medtronic regarding the parties' dispute relating to the Software Development Agreement and Exclusive License Agreement with Sublicensing Terms, dated January 19, 2006 (the "Agreement"). Turning first to logistics, as I indicated in my prior letter, Medtronic agrees to waive the formal notice requirements set forth in Section 15 of the License, and to accept notice via email addressed to myself, provided that UFRF reciprocates in accepting notice by email. This offer to waive the formality of the notice requirements includes any notice requirements to ICU AcquisitionCO Inc., Covidien plc, and Medtronic USA, Inc. On a related note, your most recent letter was dated December 14, 2015, but was not sent via email until December 15, 2015. We, therefore, consider your notice pursuant to Section 11.1.2 of the Agreement to have been provided on December 15, 2015.

Turning next to the dispute at hand, the "background" you provide in your letter misstates several facts and requires clarification. First, your letter indicates that Medtronic breached its obligation to provide an audit. That is incorrect. Medtronic has never objected to UFRF conducting an audit of *proper* scope; Medtronic objects only to UFRF's request for an audit that is significantly broader than the Agreement allows. Moreover, ever since UFRF's initial audit request in September, Medtronic has communicated promptly and worked in good faith to determine the proper scope of the audit. In fact, immediately after receiving the audit request, and without obligation to do so, Medtronic arranged a presentation for October 1, 2015 in which Medtronic walked UFRF through its positions in detail, explaining why UFRF's audit request was beyond the scope of the Agreement. Following that meeting, UFRF requested time to consider the information provided, and then waited until October 21, 2015 to respond via letter rejecting Medtronic's reasoning without substantive explanation. UFRF's demand for an overbroad audit and its own three-week delay in responding to Medtronic's explanations about the proper scope certainly cannot be considered any breach on Medtronic's part.

Second, your letter suggests that Medtronic is unwilling to have an in-person meeting. That is also incorrect. As Medtronic explained in the teleconference on November 19, Medtronic stands

willing to meet in person, but believes that the parties should try to resolve as much as possible by phone in advance. By identifying an impasse and electing the neutral advisor process under Sections 11.1.2 and 11.1.3 of the Agreement, however, Medtronic now understands that UFRF is no longer interested in pursuing this independent path of resolution.

Third, your letter suggests that Medtronic could streamline the neutral advisor process set forth in Section 11.1 by simply agreeing to the overbroad audit that UFRF demands, and allowing UFRF to audit the unlicensed products ZephyrLIFE and Vital Sync VPMP. While Medtronic disagrees that products outside of the scope of the Licensed Products should be included in any audit, as a gesture of good faith Medtronic has nevertheless shared, during the November 19 teleconference, sales figures of ZephyrLIFE and Vital Sync VPMP. Given this, and given the fact that these products are outside of the Agreement, Medtronic does not understand UFRF's need to officially audit these numbers. To do so would impermissibly expand UFRF's rights under the license agreement, set an improper precedent, and unnecessarily burden Medtronic's financial resources.

Because UFRF has determined that the parties are at an impasse, Medtronic hereby provides notice pursuant to Section 11.1.2 of the issues in dispute:

1. **Vital Sync VPMP and ZephyrLIFE products are not "Licensed Products" pursuant to Section 1.2.1 of the Agreement and no royalties are due on these products.**[1] Medtronic has carefully considered and analyzed whether these products fall within the scope of the claims of the Licensed Patent and has concluded that they do not. Therefore, under Section 4.2 of the Agreement, no royalties are due on these products. Medtronic diligently explained its non-infringement analysis to UFRF in teleconferences on October 1, 2015, November 19, 2015, and December 10, 2015. In contrast, UFRF has not provided any contrary analysis. UFRF has not identified any particular patent claims nor provided any claim charts showing that either of these products fall within the scope of the Licensed Patent. Instead, UFRF simply argues that it may interpret the patent claims broadly and that it may unilaterally add products to the definition of Licensed Products. As such, it seems that the parties disagree whether Vital Sync VPMP and ZephyrLIFE are Licensed Products for which royalties are due.

2. **The Agreement does not permit UFRF to audit unlicensed products.** Section 6.2 of the Agreement allows UFRF to conduct an audit to "verify the accuracy of [Medtronic's] . . . accounting." Medtronic's accounting responsibilities are described in Section 4.3, which requires an "accounting statement showing how any amounts payable to UFRF under Section 4.3 have been calculated." Section 4.3 refers, in turn, to Section 4.2, which requires payment only of

[1] There are two different products named Vital Sync: Vital Sync *Bedside* and Vital Sync *VPMP*. Vital Sync Bedside is a Licensed Product that uses the licensed technology. Vital Sync VPMP is an entirely different product that utilizes entirely different technology. Medtronic pays royalties on Vital Sync Bedside, and as stated above, stands willing to permit an audit of the Vital Sync Bedside product royalties.

"a royalty calculated as a percentage of Net Sales of Licensed Products which, if not for this Agreement, would infringe Licensed Patents" (emphasis added). Consequently, UFRF is entitled to audit only royalty payments resulting from Licensed Products that "would infringe Licensed Patent[]." As Medtronic has repeatedly explained, Vital Sync VPMP and ZephyrLIFE are not covered by the Licensed Patent. Consequently, UFRF cannot include them in the audit. As stated above, however, Medtronic stands willing to permit an audit of its Vital Sync Bedside product. To the extent that UFRF contends that it is entitled to audit unlicensed products, however, the parties disagree.

Finally, given that the 15-day deadline for providing a list of neutral advisors falls during the holidays on December 30, and given the conflicting issues in dispute, Medtronic proposes that we extend the deadline to provide neutral advisors to **January 15**. Please let me know at your earliest convenience whether UFRF agrees to this modest extension. In the meantime, Medtronic welcomes a call, which I would be happy to facilitate, to clarify the nature of the dispute.

Very truly yours,

Mary V. Sooter /ast

Mary (Mindy) V. Sooter