(The following is an excerpt from the hearing of 04/11/14 before Chief Judge Sleet in Civil Action No. 08-91 (GMS).

THE COURT: All right.

Following is the Court's ruling, which will be followed up by a written opinion:

Presently before the Court is Edwards' motion for preliminary injunction. For the reasons that follow, the Court will grant Edwards' motion in part and deny it in part.

To secure a preliminary injunction under Section 283, the movant must establish four factors: First, the likelihood of success on the merits of the underlying litigation; whether irreparable harm is likely if the injunction is not granted; the balance of hardships as between the litigants; and, finally, factors of interest to the public.

In order to establish a likelihood of success on the merits, a patentee must show that it will likely prove infringement of one or more claims of the patent in suit, and that at least one of those claims will survive challenges to its validity. Since Edwards has outright prevailed in the litigation regarding the '552 patent and the appeals process is over, the Court concludes that Edwards has more than demonstrated a likelihood of success

on the merits. Medtronic's argument that since Edwards based its extension only on the Sapien as opposed to the Sapien XT Edwards' rights are limited to copies of the Sapien and do not cover the CoreValve Generation 3 is incorrect. Section 156(b)(1)(a) makes clear that it applies to uses of devices, not merely the actual devices and copies thereof.

Irreparable Harm.

The Court also concludes that Edwards has demonstrated that it will suffer irreparable harm if not granted an injunction.

Despite Medtronic's vigorous arguments to the contrary, the Court is persuaded that Edwards will suffer a loss of sales and market share. First, Edwards is currently the only actor in the market and Medtronic will be Edwards' sole competitor in the United States should it enter the market. Thus, it is likely that at least some of the sales that Medtronic makes will be sales that Edwards could have made. Second, the declaration submitted by Rhonda Robb, the vice president and general manager of Catheter-Based Therapies at Medtronic, Inc., states clearly that "Medtronic will attempt to sell its product in some of the 284 sites in which Edwards sells its Sapien THV."

The Court is also convinced that Medtronic's entry into the market will cause price erosion. Medtronic

has a clear history of undercutting Edwards' prices in Europe, and Medtronic's statements regarding the price it will set for the CoreValve Generation 3 in the United States have been, at best, cryptic. Indeed, Medtronic does not state in its briefs what the price it will set for the CoreValve Generation 3 is. The Court will not take Medtronic's denial that it will undercut at face value in light of Medtronic's history of making dubious representations to the Court. For instance, the Court notes, as did the CAFC, that Medtronic claimed in July 2010 that its facility in Mexico was fully equipped to take over manufacturing from the Irvine, California facility. Later, however, James Sparks, Medtronic's senior director of manufacturing, admitted during a deposition that Medtronic had misrepresented its Mexico operations.

In the end, the Court has no doubt that Edwards stands to be irreparably injured should Medtronic, a willful infringer that has flouted the jury verdict against it since 2010, be allowed to commence commercial sales of the CoreValve Generation 3 in the United States.

The Balance of Hardships.

The Court concludes that the balance of hardships favors granting a preliminary injunction. Without a preliminary injunction, the core right protected by Edwards' patent - the right to exclude - would effectively

be rendered meaningless. Any harm to Medtronic is a result of its willful and ongoing infringement and, thus, cannot be counted in its favor.

The Public Interest.

Regarding the public interest factor, the Court is persuaded that there are patients who cannot be served by either the Sapien or Sapien XT and who need the CoreValve Generation 3. The Court is also convinced that the CoreValve Generation 3 is a safer device and that patients in whom it is implanted have better outcomes with a lower risk of death. At the same time, the Court cannot downplay the strong public interest favoring enforcement of patent rights. Thus, the Court finds that the public interest weighs in favor of granting Edwards a preliminary injunction, but that Medtronic must be allowed to sell its devices to those patients who cannot be helped by Edwards' devices.

It is toward that end that I will order, first, that Edwards' motion for a preliminary injunction is granted in part and denied in part; and that until the date on which the extended term of the '552 patent ends, Medtronic is enjoined from infringing Claim 1 of the '552 patent by selling and/or offering to sell in the United States the CoreValve Generation 3 Revalving System and any device not more than colorably different from it.

The parties are ordered to immediately enter upon discussions to determine if they can agree on a mechanism that will enable a sufficient number of CoreValve Generation 3 devices to be provided to hospitals and clinics currently trained on use of the Generation 3 device to enable physicians to make a clinical judgment as to whether to implant a Generation 3 or Edwards device without regard to whether sufficient numbers of the devices are available.

This matter shall be calendered for May 21st at 10:00 a.m. to discuss the status of those discussions.

We are in recess.

MR. VAN NEST: Your Honor, excuse me. As I understand your order, the injunction is effective today?

THE COURT: Immediately.

MR. VAN NEST: So Medtronic would request a stay pending appeal of Your Honor's injunction.

THE COURT: I will not stay pending appeal.

MR. VAN NEST: In that event, Your Honor, in light of the public safety issues that were aired today, would the Court stay its order for a week to give us a chance, one, to seek immediately emergency relief in the Federal Circuit, and, two, at least give hospitals some notice of what has happened? Because, obviously -- maybe not obviously -- valves are not on the shelves at hospitals.

THE COURT: That is not obvious at all to me.

There has been no evidence to that extent. In fact, to the contrary, there has been evidence that there has been a stockpiling of devices.

MR. VAN NEST: Medtronic brings the valves to the procedures.

THE COURT: I am really not interested --

MR. VAN NEST: Fair enough.

THE COURT: But I will give you a week to notify hospitals.

What was the other purpose of the week?

MR. VAN NEST: To seek emergency relief in the Federal Circuit.

THE COURT: I will give you that week. Okay. Seven days. I will give you seven business days.

(Counsel respond "Thank you.")

(Court recessed at 5:01 p.m.)

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Reporter: Kevin Maurer