

SIDLEY

SIDLEY AUSTIN LLP
787 SEVENTH AVENUE
NEW YORK, NY 10019
+1 212 839 5300
+1 212 839 5599 FAX

+1 212 839 7364
CLFUKUDA@SIDLEY.COM

AMERICA • ASIA PACIFIC • EUROPE

October 9, 2019

Via CM/ECF

Peter R. Marksteiner
Circuit Executive & Clerk of Court
United States Court of Appeals for the Federal Circuit
717 Madison Place, N.W.
Washington, D.C. 20439

Re: *CardioNet, LLC v. InfoBionic, Inc.*, No. 19-1149:
CardioNet’s Response to InfoBionic’s Rule 28(j) Letter (ECF No. 52) concerning *American Axle & Mfg., Inc. v. NeapCo Holdings LLC, No. 18-1763, Slip Op. (Fed. Cir. Oct. 3, 2019) (“AAM”)*

Dear Col. Marksteiner:

There is no inconsistency between *AAM* and CardioNet’s arguments in this appeal.

AAM stands for the general proposition that claims “simply stating a law of nature while adding the words ‘apply it’” are not eligible. *AAM* at 11, 13-17, 19-21. In *AAM*, “[n]either the claims nor the specification describes how to achieve” the desired results. *Id.* at 7; *id.* at 13 (“the solution to these desired results is not claimed in the patent.”); *id.* at 14-15. Consequently, the Court affirmed the district court’s summary judgment ruling that “the claims’ general instruction to tune a liner amounts to no more than a directive to use one’s knowledge of” a natural law “to engage in an ad hoc trial-and-error process of changing the characteristics of a liner until a desired result is achieved.” *Id.* at 15.

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AAM is distinguishable from this appeal. Here, it is undisputed that the mechanism for achieving the desired results and the inventive concepts are claimed. *See* Blue Br. 21-27; Gray Br. 13. InfoBionic seeks to resolve a factual dispute, at the motion to dismiss stage, about whether the inventive concepts were conventional. *See* Gray Br. 5-11. As oral argument made clear, InfoBionic comes nowhere close to meeting its burden of proving that the evidence viewed in the light most favorable to CardioNet conclusively resolves the factual dispute in InfoBionic's favor. Blue Br. 30-31. In addition, unlike *AAM*, the claims and specification here describe how to achieve the desired results, which improve cardiac monitoring technology in numerous ways. *E.g.*, Blue Br. 16-26.

InfoBionic's bolding, italicizing, and underlining of fragments of *AAM* (from the end of a lengthy footnote and half a sentence on another page) do not change those facts. And *AAM* does not purport to change the legal standards that control the outcome here. Blue Br. 43-49. Among other things, *AAM* endorses *Diehr* and *Berkheimer* as established law. *AAM* at 11. CardioNet has already addressed the remaining arguments in InfoBionic's letter, which rehash points from the briefs. *See* Gray Br. 13-16, 26-30, 33.

Respectfully submitted,

/s/Ching-Lee Fukuda

Ching-Lee Fukuda

SIDLEY AUSTIN LLP

Counsel for Appellants

Cardionet, LLC & Braemar Mfg., LLC

Cc: Counsel of Record

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of October, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Federal Circuit using the Court's CM/ECF system, which will send notifications to all counsel registered to receive electronic notices.

/s/ Ching-Lee Fukuda

Ching-Lee Fukuda

SIDLEY AUSTIN LLP

Counsel for Appellants

Cardionet, LLC & Braemar Mfg., LLC