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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MEDTRONIC, INC., et al.,

Plaintiffs,

No. C 06-04455 JSW

v.

**ORDER RE GORE’S MOTION IN
LIMINE NO. 5**

W.L. GORE & ASSOCIATES, INC.,

Defendant.

_____ /

This matter comes before the Court upon consideration of Gore’s Motion in Limine No. 5, to exclude evidence contrary to the Court’s claim construction.

Medtronic contends that Dr. Sinclair will opine that “if a nitinol alloy achieves pseudoelasticity (also known as superelasticity) upon removal of stress, SIM was necessarily created in the alloy.” (*See Opp. Br.* at 2:23-26.) If the Court understands this statement correctly, it implies that evidence that an alloy behaves pseudoelastically is *conclusive* evidence that the alloy contains stress-induced martensite, rather than evidence that the alloy *may* contain stress-induced martensite. As the Court understand’s Gore’s argument, Dr. Sinclair should not be permitted to testify that an alloy that behaves pseudoelastically is *conclusive* evidence that the alloy contains stress-induced martensite, because an alloy that behaves pseudoelastically also may contain thermal induced martensite, *i.e.* pseudoelasticity is *not conclusive* evidence that stress-induced martensite is present. In the Court’s view, that is a matter for the experts to address and for the jury to decide. For that reason, the Court **tentatively denies** motion in limine no. 5, but will hear argument from Gore on this issue following jury selection.

United States District Court
For the Northern District of California

