

Dear Mr. Hardt,

In your last response dated September 5, 2008, you stated that Medtronic must reply within 5 days (later extended to 9/15/2008) with a more sufficient justification than previously provided in order to continue to maintain confidential treatment for interior photos for FCC ID: LF5MICSW. You also stated that failure to provide a more sufficient justification within the 5 days would result in the following action: "we will remove the confidentiality status by our own motion". I must admit that I am puzzled by the current above statements for an application that was filed by an authorized agent of the FCC (PCTest TCB) and accepted by the Commission on September 29, 2005.

At the time of the above filing, Medtronic made their request for confidential treatment based on a Confidentiality Request Letter that is a permanent part of record for the filing that addressed each point in Section 0.459 (a) and (b) of the Commission's rules. That justification apparently was acceptable until recently when the application became subject to further review which resulted in your initial correspondence on June 23, 2008. In that correspondence you stated Medtronic's initial letter was not sufficient justification for granting confidential treatment of the interior photos and asked for additional justification.

As a result of your initial correspondence, Medtronic in an effort to fulfill your request had the TCB file a brief additional justification for the internal photos as follows; "The EUT uses a proprietary antenna design. Because the EUT is never sold to the general public, but is loaned to a patient, and then recovered by the applicant when the patient no longer requires the device, and the patient is instructed to never open this medical device while using it, the applicant believes its antenna design will not be seen by the patient. Based on this, and in order maintain its competitive advantage, the applicant desires that internal photos of this new antenna design be granted permanent confidential treatment."

On July 28, 2008 you responded with the following; "Upon reading your response (see below), we fail to see the justification for maintaining these internal photos as confidential exhibits." It appears from your statement that your opinion is based on the fact that the product is used by patients under a loan basis and then returned to Medtronic. You assume that during this time period patients could get access to the internal assemblies even though warned by Medtronic not to do so. I would posit that making such information available via the FCC website where millions of people from all walks of life including competitors of Medtronic cannot be compared with the incidental viewing of the internal apparatus by a curious patient that is using a functional unit to provide valuable therapeutic information to his physician. In any event, I have not been able to find any requirement in the Commission's confidentiality rules that require a 100% guarantee that individual members of the public (patient in Medtronic's case) cannot get access to information which has been granted confidential treatment by the Commission.

It should be noted that the Commission has granted confidential treatment of internal photos for various products that are controlled by the applicant but released to specific

communities that use the products. For example, FCCID:RIASJMRFANT is one such product and another is FCCID: QRIICSPGH. At this time Medtronic maintains that confidential treatment of the internal photos for FCCID:LF5MICSW is warranted under the guidelines in place at the time of filing of the application which appear to be still applicable based on similar request by other applicants for products authorized to be used for medical purposes.

If the above is still deemed insufficient justification, consider this as a request to meet with appropriate FCC personnel either at the Lab or in DC to further clarify the Commissions confidentiality position relative to medical equipment that is necessarily released after manufacture to individuals that will use it for medical therapeutic purposes.

Sincerely,  
Phillip Inglis  
Consultant to Medtronic