

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EDWARDS LIFESCIENCES CORPORATION, EDWARDS LIFESCIENCES
LLC, AND EDWARDS LIFESCIENCES AG
Petitioners

v.

BOSTON SCIENTIFIC SCIMED, INC.
Patent Owner

Case IPR2017-00060
Patent 8,992,608

**PETITIONERS' OBJECTIONS UNDER 37 C.F.R. § 42.64(b)(1)
TO EVIDENCE SUBMITTED WITH PATENT OWNER RESPONSE**

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Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioners Edwards Lifesciences Corporation, *et al.* (Petitioners) hereby serve these objections to evidence submitted by Patent Owner Boston Scientific Scimed, Inc. (“Patent Owner”) with Patent Owner’s Response in the above noted case. This notice is being timely filed within 5 business days of the filing of Patent Owner’s Response, which occurred on June 23, 2017.

Petitioners incorporate by reference their objections to Exhibits 2001 through 2008, filed April 12, 2017 (Paper No. 10).

1. Exhibit 2014

Petitioners object to the admissibility of Exhibit 2014 under FRE 401/402, 403, 801/802, and 901. Specifically:

- **FRE 401/402, Lack of Relevance:** The exhibit was purportedly archived on October 23, 2016, after the priority date of the patent-at-issue. Exhibit 2014 purports to be a webpage giving an overview of the FDA’s approval of Petitioners’ older generation product, which is not at issue in or relevant to this IPR. For these reasons, it is not relevant to the issues in the Trial.
- **FRE 403, Prejudicial, Confusing, Misleading:** The exhibit was purportedly published after the priority date of the patent-at-issue. Exhibit 2014 purports to be a webpage giving an overview of the FDA’s approval of Petitioners’ older generation product. Therefore, it is likely to cause

confusion regarding the state of the art at the time of the alleged invention and also is misleading and potentially prejudicial.

- **FRE 801/802, Hearsay:** The exhibit is inadmissible hearsay because Patent Owner offers it to prove the truth of the matter asserted, and this exhibit does not fall within any hearsay exception.
- **FRE 901, Lack of Authenticity:** Patent Owner has not provided evidence sufficient to authenticate this exhibit. “When offering a printout of a webpage into evidence to prove the website’s contents, the proponent of the evidence must authenticate the information from the website itself, not merely the printout.” *Neste Oil Oyj v. REG Synthetic Fuels, LLC*, IPR2013-00578, Paper 53 at 4 (P.T.A.B. March 12, 2015). Patent Owner has not proffered testimony of a witness with personal knowledge of the website to authenticate the exhibit. Therefore, the exhibit is inadmissible under FRE 901.

2. Exhibit 2015

Petitioners object to the admissibility of Exhibit 2015 under FRE 401/402, 403, 801/802, and 901. Specifically:

- **FRE 401/402, Lack of Relevance:** The exhibit was purportedly published September 5, 2007, after the priority date of the patent-at-issue. Exhibit 2015 purports to be a press release regarding the European approval of

Petitioners' older generation product, which is not at issue in or relevant to this IPR. For these reasons, it is not relevant to the issues in the Trial.

- **FRE 403, Prejudicial, Confusing, Misleading:** The exhibit was purportedly published after the priority date of the patent-at-issue. Exhibit 2015 purports to be a press release regarding the European approval of Petitioners' older generation product. Therefore, it is likely to cause confusion regarding the state of the art at the time of the alleged invention and also is misleading and potentially prejudicial.
- **FRE 901, Lack of Authenticity:** Patent Owner has not provided evidence sufficient to authenticate this exhibit. "When offering a printout of a webpage into evidence to prove the website's contents, the proponent of the evidence must authenticate the information from the website itself, not merely the printout." *Neste Oil Oyj v. REG Synthetic Fuels, LLC*, IPR2013-00578, Paper 53 at 4 (P.T.A.B. March 12, 2015). Patent Owner has not proffered testimony of a witness with personal knowledge of the website to authenticate the exhibit. Therefore, the exhibit is inadmissible under FRE 901.

3. **Exhibit 2016**

Petitioners object to the admissibility of Exhibit 2016 under FRE 401/402, 403, and 901. Specifically:

- **FRE 401/402, Lack of Relevance:** The exhibit was purportedly published May 14, 2009, after the priority date of the patent-at-issue. Exhibit 2016 purports to be a press release regarding Petitioners' older generation product, which is not at issue in or relevant to this IPR. For these reasons, it is not relevant to the issues in the Trial.
- **FRE 403, Prejudicial, Confusing, Misleading:** The exhibit was purportedly published after the priority date of the patent-at-issue. Exhibit 2016 purports to be a press release regarding Petitioners' older generation product. Therefore, it is likely to cause confusion regarding the state of the art at the time of the alleged invention and also is misleading and potentially prejudicial.
- **FRE 901, Lack of Authenticity:** Patent Owner has not provided evidence sufficient to authenticate this exhibit. "When offering a printout of a webpage into evidence to prove the website's contents, the proponent of the evidence must authenticate the information from the website itself, not merely the printout." *Neste Oil Oyj v. REG Synthetic Fuels, LLC*, IPR2013-00578, Paper 53 at 4 (P.T.A.B. March 12, 2015). Patent Owner has not proffered testimony of a witness with personal knowledge of the website to authenticate the exhibit. Therefore, the exhibit is inadmissible under FRE 901.

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