

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 IPR2017-0060
Patent 8,992,608

**PETITIONERS' MOTION TO FILE CONFIDENTIAL DOCUMENTS
UNDER SEAL PURSUANT TO 37 C.F.R. §§ 42.14 & 42.54**

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Petitioners Edwards Lifesciences, Edwards Lifesciences LLC, and Edwards Lifesciences AG (“Petitioners”) respectfully submit this Motion to Seal their Reply and Exhibits 1045, 1046, 1049, 1050, 1061, 1062, and 1063, all of which are filed concurrently herewith.¹

I. BACKGROUND

On August 10, 2017, the Board granted (Paper No. 29) the parties’ Joint Motion for Entry of Stipulated Protective Order (Paper No. 26) and entered the Stipulated Protective Order (Exhibit 2092). Petitioners now move pursuant to the Stipulated Protective Order to file under seal their Reply, as well as Exhibits 1045, 1046, 1049, 1050, 1061, 1062, and 1063.

Petitioners request only that portions of their Reply and Exhibits 1045 (the “Buller Declaration”) and 1046 (the “Wood Declaration”) be sealed. Thus, Petitioners concurrently submit non-confidential, redacted versions of their Reply and Exhibits 1045 and 1046. Petitioners request that Exhibits 1049, 1050, 1061, 1062, and 1063 be sealed in their entirety. Petitioners’ reasons why the information in each document is confidential and should not be made public are provided below.

¹ Patent Owner did not indicate whether they oppose this motion in response to Petitioners’ request. As such, Petitioners’ indicated that they would represent to the Board that this motion is opposed.

II. GOOD CAUSE EXISTS FOR SEALING CERTAIN CONFIDENTIAL INFORMATION

Petitioners submit that each of the proposed Exhibits summarized in the table below contains Petitioners' confidential engineering, design, business, or commercial information. In the table below, Petitioners provide detailed good cause reasons for sealing each of the exhibits.

Exhibit	Good Cause for Filing Under Seal
1045	[Buller Declaration] – This is a declaration filed by Petitioners containing references to and copying pictures from Petitioners' highly confidential documents, including references to and pictures from exhibits that were addressed in the parties' July 28, 2017 Joint Motion to Seal (Paper No. 25), as well as exhibits included in this submission. The portions that have been redacted contain internal Edwards information about Edwards' Sapien 3 product, including competitively sensitive information such as engineering and design information, as well as highly confidential information about Edwards' prototypes.
1046	[Wood Declaration] – This is a declaration filed by Petitioners containing references to and copying pictures from Petitioners' highly confidential documents. (Petitioners also request herein to file under seal those source documents.) The portions of the declaration that have been redacted contain internal Edwards information about Edwards' highly confidential prototypes and highly confidential prototypes that PVT developed before it was acquired by Edwards, including design ideas and testing results. This highly confidential design and testing information includes competitively sensitive information.
1049	[EDWARDS 01016212-314] – This document is an internal Edwards "Technical Design Review" presentation regarding a confidential development project and contains internal Edwards information about Edwards' prototypes. It contains photographs and information about the designs of these prototypes, as well as testing results and information on design goals and changes. This highly confidential design and testing information includes competitively sensitive information. This document was produced in the district court litigation with all pages designated as "Highly Confidential" pursuant to the terms of the Delaware protective order.

Exhibit	Good Cause for Filing Under Seal
1050	[EDWARDS 02433143-211] – This document is an internal presentation given at Edwards discussing prototypes developed by PVT. It includes photographs of these highly confidential prototype designs. This document was produced in the district court litigation with all pages designated as “Highly Confidential” pursuant to the terms of the Delaware protective order.
1061	Exhibits 32-43 to May 26, 2017 Deposition of A. Bash in <i>Boston Sci. Corp. v. Edwards Lifesciences Corp.</i> , C.A. No. 16-275-JFB-SRF (D. Del.) – This document is a set of photographs of highly confidential prototypes designed by PVT. These prototypes were entered as exhibits during the Deposition of Assaf Bash on May 26, 2017 in connection with the district court litigation. That deposition was marked as “Confidential – Attorneys’ Eyes Only” and the photographs of the prototypes were subsequently produced designated as “Highly Confidential” pursuant to the terms of the protective order in the district court litigation.
1062	[EDWARDS 01026774-82] – This document is a set of highly confidential engineering drawings containing precise details of the design and assembly of Petitioners’ product. This document was produced in the district court litigation with all pages designated as “Highly Confidential – Attorneys’ Eyes Only” pursuant to the terms of the Delaware protective order.
1063	[EDWARDS 01026765-73] – This document is a set of highly confidential engineering drawings containing precise details of the design and assembly of Petitioners’ product. This document was produced in the district court litigation with all pages designated as “Highly Confidential – Attorneys’ Eyes Only” pursuant to the terms of the Delaware protective order.

Finally, Petitioners’ Reply cites to and excerpts text and pictures from highly confidential documents—both documents included in the above list that Petitioners now move to seal and documents included in the parties’ July 28, 2017 Joint Motion to Seal (Paper No. 25). Pursuant to Paragraph 5(A) of the Protective Order (Ex. 2092), Petitioners submit concurrently herewith a redacted version of their Reply. The portions that have been redacted contain internal Edwards information

that is competitively sensitive, including information about Edwards' Sapien 3 product, as well as design and testing of highly confidential prototypes.

For the reasons explained in the above table, Petitioners request that only portions of Exhibits 1045 and 1046 be filed under seal, and submit concurrently herewith redacted versions of Exhibits 1045 and 1046.

In light of the competitively sensitive, confidential information disclosed throughout each of Exhibits 1049, 1050, 1061, 1062, and 1063, Petitioners seek to maintain each of these exhibits under seal in their entirety. Moreover, the entirety of each of Exhibits 1049, 1050, 1061,² 1062, and 1063 is marked "Highly Confidential"—a designation that has not been disputed for any of these Exhibits—in accordance with the Protective Order entered in the United States District Court for the District of Delaware matter captioned *Boston Scientific Corp. v. Edwards Lifesciences Corp.*, C.A. No. 16-275-JFB-SRF. The Protective Order there requires Exhibits marked "Highly Confidential" to be filed under seal.

² As Petitioners explain in the above table, although the pages in Exhibit 1061, which are photographs of physical prototypes that were entered as deposition exhibits, are not stamped "Highly Confidential," the deposition itself was designated as "Confidential – Attorneys' Eyes Only" and the photographs were subsequently produced as "Highly Confidential" in the district court litigation.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.