

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 B2

**JOINT MOTION FOR ENTRY OF STIPULATED
PROTECTIVE ORDER**

Mail Stop PATENT BOARD
Patent Trial and Appeal Board
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Pursuant to the Final Rules of Practice for Trials Before the Patent Trial and Appeal Board and Judicial Review of Patent Trial and Appeal Board Decisions (77 Fed. Reg. 157, Aug. 14, 2012), 35 U.S.C. § 316, 37 C.F.R. § 42.54, and § A.2 of the Case Management and Scheduling Order entered in this proceeding, and in accordance with the Board’s July 20, 2017 Decision Denying the Parties’ previous Joint Motion for Entry of Stipulated Protective Order (Paper 24), Patent Owner Boston Scientific Scimed, Inc. and Petitioners Edwards Lifesciences Corporation, Edwards Lifesciences LLC, and Edwards Lifesciences AG jointly move for entry of the Substitute Stipulated Protective Order attached hereto as Exhibit 2092.

The Substitute Stipulated Protective Order is based on the Default Protective Order provided in Appendix B of the Trial Practice Guide (the “Default Order”), with modifications agreed upon by the Parties. Good cause exists for entry of the Substitute Stipulated Protective Order because the modifications proposed by the Parties are intended to aid the Parties’ compliance with a protective order (the “Delaware Protective Order”) entered by the court in a patent infringement action in the United States District Court for the District of Delaware captioned *Boston Scientific Corp., et al. v. Edwards Lifesciences Corp., et al.*, No. 1:16-cv-275-SLR (the “Delaware Action”). The Delaware Protective Order permits the parties to use information designated in

the Delaware Action as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES ONLY” (collectively, “Confidential Information”) in *inter partes* review proceedings relating to the patents-in-suit, including U.S. Patent 8,992,608, subject to the conditions described in the Delaware Protective Order. As described in detail below and reflected in the document comparing the Parties’ Substitute Stipulated Protective Order to the Default Order attached hereto as Exhibit 2093, each of the modifications to the Board’s Default Order agreed to by the Parties is intended to comply with the Delaware Protective Order while effectuating the Parties’ intent that they be permitted to use Confidential Information in this IPR. While the changes from the Board’s Default Order are intended to ensure that the parties themselves comply with the Delaware Protective Order, the Parties’ Substitute Stipulated Protective Order does not require the Board to interpret the Delaware Protective Order or for the Board to ensure that the parties comply with the Delaware Protective Order.

Paragraph 1 - This new paragraph is warranted because it explains why the Parties have requested entry of a protective order that differs from the Default Order and defines terms used elsewhere in the order. The definition of Confidential Information is intended to make clear when the proposed order is referring to information that is subject to the protections imposed by the

Delaware Protective Order. The final two sentences of this paragraph are intended to confirm that the parties remain bound by the Delaware Protective Order, and that any disputes arising from that Order will be resolved by the District Court in Delaware. This clarifies that any disputes arising from the Delaware Protective Order will not require this Board to interpret or enforce that Order.

Paragraph 2 - In addition to including the Default Order's requirement regarding the marking of confidential information, this paragraph requires the Parties to maintain the original confidentiality markings applied pursuant to the Delaware Protective Order so that the Parties can ensure they are complying with the requirements of both protective orders.

Paragraph 3 - The modification to the first sentence of this paragraph is intended to make clear that the provisions of the Substitute Stipulated Protective Order apply in this proceeding to distinguish it from the Delaware Action, which is governed by the Delaware Protective Order.

Paragraph 3(A) - This sub-paragraph is eliminated to permit the parties to comply with provisions of the Delaware Protective Order prohibiting the parties (not including in-house counsel) from reviewing confidential information.

Paragraph 3(B) - This sub-paragraph is modified to permit outside counsel of record in the Delaware Action who are not counsel of record in this proceeding to access Confidential Information so that they can coordinate the prosecution of this proceeding with that of the Delaware Action.

Paragraph 3(C) - This sub-paragraph is modified to permit experts in the Delaware Action who meet the additional requirements imposed by the Default Order to access Confidential Information so that they can be made aware of relevant information that may influence the opinions they offer in the related Delaware Action.

Paragraph 3(D) - This sub-paragraph is modified to permit only specific in-house counsel to access Confidential Information so that the Parties can comply with the terms of the Delaware Action.

Paragraph 3(E) - This sub-paragraph is eliminated to permit the parties to comply with provisions of the Delaware Protective Order prohibiting the parties and their employees (except in-house counsel) from reviewing Confidential Information.

Paragraph 5(B) - This paragraph was modified to make clear how the Parties should mark confidential information that was not designated in the Delaware Action (*i.e.*, in accordance with the requirements of the Default Order).

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.