

By: David A. Caine (Reg. No. 52,683)
Arnold & Porter Kaye Scholer LLP
3000 El Camino Real
Five Palo Alto Square, Suite 500
Palo Alto, California 94306-3807
Telephone: 650.319.4500
Facsimile: 650.319.4700

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Cook Group Incorporated and Cook Medical LLC,

Petitioners,

v.

Boston Scientific Scimed, Incorporated,

Patent Owner.

Case IPR2017-00134
Patent No. 8,709,027

PATENT OWNER'S BRIEF ON REMAND

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818 F.3d 1293 (Fed. Cir. 2016)8

In re Man Mach. Interface Techs. LLC,
822 F.3d 1282 (Fed. Cir. 2016)8

Leapfrog Prod. Development, LLC v. LifeFactory, Inc.,
IPR2015-00614, Paper 31, 27-28 (PTAB Aug. 17, 2016)2

EXHIBITS

Exhibit No.	Description
2001-2006	Intentionally Skipped
2007	U.S. Patent No. 8,852,211 B2 (issued Oct. 7, 2014)
2008	Mark A. Nicosia et al., Mechanical response of uterine tissue under the influence of hemostatic clips: A non-linear finite-element approach, 6 J. Biomedical Science and Engineering 21 (2013)
2009	The Merriam-Webster Dictionary 183 (1997)
2010	Intentionally Skipped
2011	Deposition of Mark A. Nicosia, Ph. D., August 3, 2017
2012-2028	Intentionally Skipped
2029	Declaration of Dr. Jeffrey Vaitekunas in Support of Patent Owner's Response in IPR2017-00135
2030	Intentionally Skipped
2031	Declaration of Dr. Jeffrey Vaitekunas in Support of Patent Owner's Response in IPR2017-00134
2032-2037	Intentionally Skipped
2038	Errata Sheet for the November 15, 2017 Deposition of Dr. Jeffery Vaitekunas, Ph.D.
2039	Deposition Transcript of Mark A. Nicosia, Ph. D., January 17, 2018
2040	Declaration of Dr. Jeffrey Vaitekunas in Support of Patent Owner's Response Regarding Claim 20 in IPR2017-00134
2041-2098	Intentionally Skipped
2099	Deposition Transcript of Mark A. Nicosia, Ph. D., March 5, 2018
2100	Eleonora P. Westebring-van der Putten et al., Effect of laparoscopic grasper force transmission ratio on grasp control (2009)
2101	Declaration of Dr. Jeffrey Vaitekunas in Support of Patent Owner's Supplemental Response

I. INTRODUCTION

The two issues presented to the Board on remand are: (1) whether '027 patent Claims 4-6, 15, and 20 are obvious over Sackier in view of Nishioka, including consideration of the weight that should be accorded to Patent Owner's preliminary responses in the related IPR2017-00134 and -00135 proceedings; and (2) whether '027 patent Claim 20 is anticipated by Malecki Embodiment #2. With respect to the first question, the Federal Circuit held that the Board may assign zero weight to the preliminary responses. This is what the Board should do. The portions of the preliminary response upon which Petitioners rely, when read in context of the description of Sackier as a whole and further in view of the Patent Owner response and other contemporaneous arguments about Sackier, do not support Petitioners' theory. With respect to the second question, the Board's findings with respect to Malecki Embodiment #1's stabilizing rod 378 and square shaft 382 apply equally to Malecki Embodiment #2. These findings compel a determination of no anticipation based on the plain language of Claim 20.

II. ARGUMENT

A. Claims 4-6, 15 and 20 Are Not Obvious Over Sackier In View of Nishioka

1. The Board Should Give Patent Owner's Preliminary Response No Weight in Determining Whether Sackier Discloses a "Frangible Link"

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