

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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COOK GROUP INCORPORATED  
and COOK MEDICAL LLC,  
Petitioners,

v.

BOSTON SCIENTIFIC SCIMED, INC.,  
Patent Owner.

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IPR2017-00435 (Patent 9,271,731 B2)  
IPR2017-00440 (Patent 9,271,731 B2)

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Record of Oral Hearing  
Held: September 17, 2018

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BEFORE JAMES T. MOORE, JAMES A. TARTAL, and  
ROBERT L. KINDER, *Administrative Patent Judges*.

IPR2017-00435 (Patent 9,271,731 B2)  
IPR2017-00440 (Patent 9,271,731 B2)

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The above-entitled matter came on for hearing on Monday,  
September 17, 2018, commencing at 1:30 p.m., at the U.S. Patent  
and Trademark Office, 600 Dulany Street, Alexandria, Virginia.



IPR2017-00435 (Patent 9,271,731 B2)

IPR2017-00440 (Patent 9,271,731 B2)

1           MR. CAINE: Good afternoon, Your Honors. David  
2 Caine and Jeffrey Martin, and, again, our paralegal Shantell  
3 Gutrick, and our client, Denise Lane, our client representative.

4           JUDGE KINDER: All right, thank you.

5           Again, some of the same rules as this morning. When  
6 you get up to argue, please make sure that you give your name  
7 and then which proceeding the argument is either directed to or in  
8 response to, just so when we're going back through the transcript,  
9 we can see those clear delineations of when you switch and who  
10 is actually speaking at the time. It helps the court reporter and us.

11           If there are no questions at this time, we will proceed  
12 with Petitioner, I believe on the '435 case first.

13           MR. ZANFARDINO: Thank you, Your Honors.  
14 Dominic Zanfardino on the '435 case, and I should have also  
15 introduced my other co-counsel from this morning, Jeff Nichols,  
16 and then the client representative, Jack Hunt, and then an  
17 observer from my firm, Alex Wang.

18           Okay, so first the '435. The newly instituted grounds  
19 are grounds 3 and 4. Ground 3 presents the issue of whether what  
20 the parties call Malecki embodiment 2 anticipates the claims that  
21 are listed here on slide number 4, and then ground 4 presents the  
22 issue of whether that same embodiment in Malecki 2 would  
23 render obvious certain claims listed on slide 4.

1           So I am going to jump ahead a few slides here to slide  
2 number 12 to re-orient the Board as to what Malecki embodiment  
3 2 is. My colleague touched upon it a little bit this morning, but I  
4 just want to make sure we all understand what it is.

5           Malecki embodiment 2 is a clamp, and the way it works  
6 is there are two jaws. One is referred to as a fixed jaw, 308B.  
7 Another is referred to as a pivotally mounted jaw, 310B. Now,  
8 it's hard to see, the numbering is small, but to the left of the jaws  
9 that are open on the left side, you can see a -- what's called an  
10 actuator housing, and that bears reference numeral 324B.

11           And the way that works is there is a separate device,  
12 called a clamp positioner, that I believe you all are familiar with,  
13 that sort of acts like a socket wrench. It fits over 324B, this  
14 actuator housing, and it runs along a set of threaded -- there's a  
15 bunch of -- there's some threads here on this jaw extension, 320B,  
16 and as you rotate that actuator housing 320B, you either advance  
17 it proximally or distally.

18           And when you advance it proximally -- I'm sorry,  
19 distally, there's a shoulder portion that's referred to as 325B on  
20 that actuator housing, 324 -- I'm sorry, it's 325, that's on 324B,  
21 and it starts to push that jaw closed. And then as you rotate in the  
22 opposite direction and start pulling that actuator housing 324B  
23 back, that jaw -- that top jaw, 310B, can spring back open,  
24 because there is a spring sitting there somewhere -- and our

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