

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, INC.,
Patent Owner.

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

Record of Oral Hearing
Held: September 17, 2018

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)

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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--and--

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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.

1 P R O C E E D I N G S

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3 JUDGE KINDER: Good afternoon, everyone. I'm
4 Judge Kinder, and with me today are Judge Tartal and Judge
5 Moore on the far end. Today we're calling two proceedings for a
6 supplemental hearing in IPR2017-435 and IPR2017-440, both
7 involving patent number 9,271,731.

8 This is -- as I mentioned, this is a supplemental hearing,
9 so it's -- we have already had an initial hearing. We also note that
10 these two cases have not been consolidated or joined, but just like
11 this morning's proceeding, they involve overlapping issues, so we
12 are going to argue them both together. But as I think the parties
13 want, we are going to separate the '435 and '440 issues out as
14 needed.

15 Each party will have 60 minutes of time, and because
16 the Petitioner bears the burden, the Petitioner will go first, and
17 then can reserve time for rebuttal, much like this morning,
18 however you prefer.

19 So at this point, I want to get a roll call of who's here for
20 Petitioner.

21 MR. ZANFARDINO: Good afternoon, Your Honors.
22 For Petitioners Dominic Zanfardino and Jason Schigelone.

23 JUDGE KINDER: All right, thank you.

24 For Patent Owner?

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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