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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SMITH & NEPHEW, INC.,

Petitioner,

v.

CONFORMIS, INC.,

Patent Owner.

Case No. TBD U.S. Patent No. 8,657,827

PETITION FOR *INTER PARTES* REVIEW OF CLAIMS 1-25, 28, 29, AND 32-46 OF U.S. PATENT NO. 8,657,827



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KSR Int'l Co. v. Teleflex Inc., 550 U.S. 398 (2007)	25, 35
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