

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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EDWARDS LIFESCIENCES CORPORATION,  
Petitioner,

v.

BOSTON SCIENTIFIC SCIMED, INC.,  
Patent Owner.

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Case IPR2017-01281  
Patent 7,828,767 B2

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Before NEIL T. POWELL, JAMES A. TARTAL, and  
STACY B. MARGOLIES, *Administrative Patent Judges*.

TARTAL, *Administrative Patent Judge*.

ORDER  
*Request for Oral Argument*  
37 C.F.R. § 42.70

The date set for oral argument in this proceeding is August 7, 2018, if requested by either party and granted by the Board. Paper 10. Petitioner requests oral argument. Paper 14. The request for oral argument is *granted* as provided below.

Each side will have thirty (30) minutes, total, to present its argument in the case, under the following procedures. Petitioner bears the ultimate burden of proof that Patent Owner's claims at issue in this review are unpatentable and shall open the hearing by presenting its case regarding the challenged claims for which the Board instituted trial. This includes both the grounds instituted in the original Institution Decision (Paper 9), as well as the additional grounds instituted in our Order Modifying Institution (Paper 15) in light of *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348 (2018).

Patent Owner did not provide a Patent Owner Response to our original Institution Decision. Accordingly, Patent Owner has waived the opportunity to present arguments during the oral argument in response to the Petition with respect to the grounds instituted in the original Institution Decision. With regard to the grounds instituted in our Order Modifying Institution, we permitted Patent Owner to adopt its arguments from its Preliminary Patent Owner Response only with respect to those newly instituted grounds. Paper 16. Accordingly, Patent Owner may, if it chooses, present arguments during the oral argument in response to the Petition with respect to the grounds instituted in our Order Modifying Institution.

Finally, Petitioner may use any time it has reserved for rebuttal to respond only to Patent Owner's arguments regarding the grounds instituted in our Order Modifying Institution.

The hearing will commence at 1:30 PM on August 7, 2018, on the ninth floor of the Madison Building East, 600 Dulany Street, Alexandria, Virginia. The Board will provide a court reporter for the hearing and the reporter's transcript will constitute the official record of the hearing. The hearing will be open to the public for in-person attendance that will be accommodated on a first-come, first-served basis. If the parties have any concern about disclosing confidential information, they are requested to contact the Board at least seven days in advance of the hearing to discuss the matter.

The parties are reminded that, under 37 C.F.R. § 42.53(f)(7), a proponent of deposition testimony must file such testimony as an exhibit. The Board will not consider any deposition testimony that has not been so filed.

Furthermore, under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served at least seven business days before the hearing date and filed no later than the time of the oral argument. The parties also shall provide a courtesy copy of any demonstrative exhibits to the Board at least five business days prior to the hearing by emailing them to [Trials@uspto.gov](mailto:Trials@uspto.gov).

The parties must file any objections to the demonstrative exhibits with the Board at least two business days before the hearing. Any objection to demonstrative exhibits that is not timely presented will be considered waived. The objections should identify with particularity which demonstrative exhibits are subject to objection, and include a short (one sentence or less) statement of the reason for each objection. No argument or further explanation is permitted. The Board will consider the objections and schedule a conference if deemed necessary. Otherwise, the Board will

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reserve ruling on the objections until after the oral argument. The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. Board of Regents of the University of Michigan*, IPR2013-00041 (PTAB Jan. 27, 2015) (Paper 65), for guidance regarding the appropriate content of demonstrative exhibits. The parties are reminded that the demonstrative exhibits presented in this case are not evidence and are intended only to assist the parties in presenting their oral argument to the panel.

The Board expects lead counsel for each party to be present in person at the oral hearing. However, any counsel of record may present the party's argument. If either party expects that its lead counsel will not be attending the oral argument, the parties should initiate a joint telephone conference with the Board no later than two business days prior to the oral hearing to discuss the matter.

Any special requests for audio-visual equipment should be directed to [Trials@uspto.gov](mailto:Trials@uspto.gov). Requests for special equipment will not be honored unless presented in a separate communication not less than five days before the hearing directed to the above email address.

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PETITIONER:

James Isbester  
KILPATRICK TOWNSEND & STOCKTON LLP  
jisbester@kilpatricktownsend.com

Craig Summers  
Cheryl Burgess  
KNOBBE, MARTENS, OLSON & BEAR, LLP  
2css@knobbe.com  
2ctb@knobbe.com

PATENT OWNER:

Wallace Wu  
Jennifer Sklenar  
Nicholas Nyemah  
ARNOLD & PORTER KAYE SCHOLER LLP  
wallace.wu@apks.com  
jennifer.sklenar@apks.com  
nicholas.nyemah@aporter.com