

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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INTUITIVE SURGICAL, INC.,  
Petitioner,

v.

ETHICON LLC,  
Patent Owner.

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IPR2019-00880  
U.S. Patent No. 7,490,749

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**PATENT OWNER'S MOTION TO SEAL**

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## **I. INTRODUCTION**

Patent Owner (Ethicon) moves to seal in their entirety Exhibits 2001-2009, 2012-2015, and 2017 pursuant to 37 C.F.R. §§ 42.14 and 42.54.

Patent Owner moves to seal portions of Exhibit 2019 that rely on Exhibits 2001-2007 and 2013-2015 pursuant to 37 C.F.R. §§ 42.14 and 42.54.

Patent Owner also moves to seal portions of Patent Owner's Response that rely on Exhibits 2001-2009, 2012-2015, 2017, and Ex. 2019 pursuant to 37 C.F.R. §§ 42.14 and 42.54.

By agreement of the parties, Patent Owner also requests entry of the Proposed Protective Order (Attachment 1).<sup>1</sup> Patent Owner has conferred with Petitioner (Intuitive), and the parties have stipulated to the Proposed Protective Order.

## **II. REASONS FOR THE REQUESTED RELIEF AND STATEMENT OF FACTS**

### **A. Good Cause Exists for Sealing Confidential Information**

The Board will seal documents for good cause. *See* 37 C.F.R. § 42.54(a); *see also Argentum Pharms. LLC v. Alcon Research, Ltd.*, Paper 27, 2 (2013). “The rules aim to strike a balance between the public’s interest in maintaining a

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<sup>1</sup> Attachment 2 is a redline showing the differences between the proposed protective order and the PTAB default protective order.

complete and understandable file history and the parties' interest in protecting truly sensitive information." *Office Patent Trial Practice Guide*, 77 Fed. Reg. 48756, 48760 (2012). The public's interest in having access to confidential business information that is only indirectly related to patentability is "minimal." *Garmin v. Cuozzo*, IPR2012-00001, Paper 36, 8-9 (2013) (granting a motion to seal an agreement relating to the "commercializ[ation]" of the patent-at-issue). Such documents should be subject to the Proposed Protective Order. *See* Attachment 1 at 5-6 ("[I]nformation designated as confidential that [is] disclosed to another party during discovery or other proceedings before the Board shall be clearly marked as 'PROTECTIVE ORDER MATERIAL' and shall be produced in a manner that maintains its confidentiality.").

**B. Exhibits 2001-2007, 2013-2015: Patent Owner Technical Documents**

Exhibits 2001–2007 and 2013-2015 comprise technical documents of Patent Owner that contain confidential design information concerning surgical stapling technology. These exhibits detail in their entirety confidential and proprietary research and development information that, if publicly disclosed, would substantially harm Patent Owner's competitive position in the surgical instrument industry and ongoing work directed to, *inter alia*, surgical staplers. For example, this information, if not sealed, would provide competitors with valuable

information regarding confidential research and development projects. Such information could also be used by a competitor to improve its products.

**C. Exhibits 2008, 2009, and 2017: Patent Owner Employee Declarations**

Exhibits 2008, 2009, and 2017 comprise declarations from employees of Patent Owner's affiliate regarding the development of surgical stapling technology at Ethicon. These exhibits also describe the contents of Exhibits 2001-2007 and 2013-2015, which comprise technical documents of Patent Owner containing confidential design information. Exhibits 2008, 2009, and 2017 provide further confidential and proprietary research and development information of Patent Owner that, if publicly disclosed, would substantially harm Patent Owner's competitive position in the surgical instrument industry and ongoing work directed to, *inter alia*, surgical staplers. For example, this information, if not sealed, would provide competitors with valuable information regarding confidential research and development projects. Such information could also be used by a competitor to improve its products. Exhibits 2008, 2009, and 2017 also detail the process by which Ethicon develops instrument technology, which if disclosed, would provide competitors with valuable information regarding Ethicon's internal processes.

**D. Exhibit 2012: Declaration of Dean Garner**

Exhibits 2012 is a declaration from a current employee of Patent Owner that describes and includes confidential employment files. This exhibit contains

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