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Table with 5 columns: APPLICATION NO., ISSUE DATE, PATENT NO., ATTORNEY DOCKET NO., CONFIRMATION NO.
11/729,355 02/17/2009 7490749 END5915USNP/060330 6426

7590 01/28/2009
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK, NJ 08933-7003

ISSUE NOTIFICATION

The projected patent number and issue date are specified above.

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)
(application filed on or after May 29, 2000)

The Patent Term Adjustment is 19 day(s). Any patent to issue from the above-identified application will include an indication of the adjustment on the front page.

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (http://pair.uspto.gov).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (571)-272-4200.

APPLICANT(s) (Please see PAIR WEB site http://pair.uspto.gov for additional applicants):

Christopher J. Schall, Cincinnati, OH;
Chad P. Boudreaux, Cincinnati, OH;



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Bib Data Sheet

CONFIRMATION NO. 6426

<b>SERIAL NUMBER</b> 11/729,355	<b>FILING OR 371(c) DATE</b> 03/28/2007 <b>RULE</b>	<b>CLASS</b> 227	<b>GROUP ART UNIT</b> 3721	<b>ATTORNEY DOCKET NO.</b> END5915USNP/060330
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**APPLICANTS**  
 Christopher J. Schall, Cincinnati, OH;  
 Chad P. Boudreaux, Cincinnati, OH;

**\*\* CONTINUING DATA \*\*\*\*\***

**\*\* FOREIGN APPLICATIONS \*\*\*\*\***

**IF REQUIRED, FOREIGN FILING LICENSE GRANTED**  
**\*\* 04/18/2007**

Foreign Priority claimed 35 USC 119 (a-d) conditions met	<input type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/> Met after Allowance	<b>STATE OR COUNTRY</b> OH	<b>SHEETS DRAWING</b> 25	<b>TOTAL CLAIMS</b> 20	<b>INDEPENDENT CLAIMS</b> 3
Verified and Acknowledged	Examiner's Signature _____ Initials _____				

**ADDRESS**  
 JOHNSON & JOHNSON  
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 NEW BRUNSWICK, NJ08933-7003

**TITLE**  
 SURGICAL STAPLING AND CUTTING INSTRUMENT WITH MANUALLY RETRACTABLE FIRING MEMBER

<b>FILING FEE RECEIVED</b> 1430	FEES: Authority has been given in Paper No. _____ to charge/credit DEPOSIT ACCOUNT No. _____ for following:	<input type="checkbox"/> All Fees <input type="checkbox"/> 1.16 Fees ( Filing ) <input type="checkbox"/> 1.17 Fees ( Processing Ext. of time ) <input type="checkbox"/> 1.18 Fees ( Issue ) <input type="checkbox"/> Other _____ <input type="checkbox"/> Credit
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(Depositor's name)
(Signature)
(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/729,355	03/28/2007	Christopher J. Schall	END5915USNP/060330	6426

TITLE OF INVENTION: SURGICAL STAPLING AND CUTTING INSTRUMENT WITH MANUALLY RETRACTABLE FIRING MEMBER

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1440- \$1,510	\$300	\$0	\$1740- \$1,810	01/02/2009

EXAMINER	ART UNIT	CLASS-SUBCLASS
SMITH, SCOTT A	3721	227-176100

<p>1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).</p> <p><input checked="" type="checkbox"/> Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.</p> <p><input type="checkbox"/> "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. Use of a Customer Number is required.</p>	<p>2. For printing on the patent front page, list</p> <p>(1) the names of up to 3 registered patent attorneys or agents OR, alternatively, 1 _____</p> <p>(2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed. 2 _____</p> <p>3 _____</p>
---	---

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE: **Ethicon Endo-Surgery, Inc.**

(B) RESIDENCE: (CITY and STATE OR COUNTRY) **Cincinnati, Ohio**

Please check the appropriate assignee category or categories (will not be printed on the patent):  Individual  Corporation or other private group entity  Government

<p>4a. The following fee(s) are submitted:</p> <p><input checked="" type="checkbox"/> Issue Fee</p> <p><input checked="" type="checkbox"/> Publication Fee (No small entity discount permitted)</p> <p><input type="checkbox"/> Advance Order - # of Copies _____</p>	<p>4b. Payment of Fee(s): (Please first reapply any previously paid issue fee shown above)</p> <p><input type="checkbox"/> A check is enclosed.</p> <p><input type="checkbox"/> Payment by credit card. Form PTO-2038 is attached.</p> <p><input checked="" type="checkbox"/> The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number <u>11-1110</u> (enclose an extra copy of this form).</p>
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5. Change in Entity Status (from status indicated above)

a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27.  b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

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Authorized Signature:  Date: December 2, 2008

Typed or printed name: Thomas J. Edgington Registration No. 34,324

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

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<b>CHANGE OF CORRESPONDENCE ADDRESS</b> <i>Application</i>  Address to: Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450	Application Number	11/729,355
	Filing Date	March 28, 2007
	First Named Inventor	Christopher J. Schall
	Art Unit	3721
	Examiner Name	Scott A. Smith
	Attorney Docket Number	END5915USNP/060330

Please change the Correspondence Address for the above-identified patent application to:

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Country	USA				
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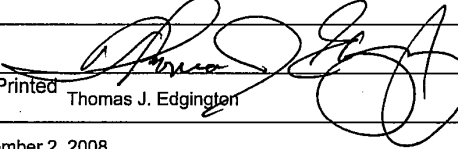
I am the:

Applicant/Inventor

Assignee of record of the entire interest. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96).

Attorney or agent of record. Registration Number 34,324

Registered practitioner named in the application transmittal letter in an application without an executed oath or declaration. See 37 CFR 1.33(a)(1). Registration Number \_\_\_\_\_

Signature 

Typed or Printed Name Thomas J. Edgington

Date December 2, 2008 Telephone (412) 355-8303

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

\*Total of 1 forms are submitted.

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<b>Title of Invention:</b>	<p>Your fee transmittal sheet cannot be generated at this time. Please complete your submission.          After completing your submission, please contact the Electronic Business Center (EBC) to request the fee transmittal sheet for this submission.</p> <p>We apologize for the inconvenience.</p> <p>Electronic Business Center (EBC)          1-866-217-9197 (toll-free)          or 571-272-4100          6 a.m. to 12 Midnight Eastern Time          Monday -Friday</p>				
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<b>Filer:</b>					
<b>Attorney Docket Number:</b>					
<b>Filing Fees</b>					
<b>Description</b>	<b>Fee Code</b>	<b>Quantity</b>	<b>Amount</b>	<b>Sub-Total in USD(\$)</b>	
<b>Basic Filing:</b>					
<b>Pages:</b>					
<b>Claims:</b>					
<b>Miscellaneous-Filing:</b>					
<b>Petition:</b>					
<b>Patent-Appeals-and-Interference:</b>					
<b>Post-Allowance-and-Post-Issuance:</b>					
<b>Extension-of-Time:</b>					

Description	Fee Code	Quantity	Amount	Sub-Total in USD(\$)
<b>Miscellaneous:</b>				
<b>Total in USD (\$)</b>				

## Electronic Patent Application Fee Transmittal

<b>Application Number:</b>	11729355			
<b>Filing Date:</b>	28-Mar-2007			
<b>Title of Invention:</b>	SURGICAL STAPLING AND CUTTING INSTRUMENT WITH MANUALLY RETRACTABLE FIRING MEMBER			
<b>First Named Inventor/Applicant Name:</b>	Christopher J. Schall			
<b>Filer:</b>	Thomas J. Edgington/Mona Cornelia			
<b>Attorney Docket Number:</b>	END5915USNP/060330			
Filed as Large Entity				
<b>Utility under 35 USC 111(a) Filing Fees</b>				
<b>Description</b>	<b>Fee Code</b>	<b>Quantity</b>	<b>Amount</b>	<b>Sub-Total in USD(\$)</b>
<b>Basic Filing:</b>				
<b>Pages:</b>				
<b>Claims:</b>				
<b>Miscellaneous-Filing:</b>				
<b>Petition:</b>				
<b>Patent-Appeals-and-Interference:</b>				
<b>Post-Allowance-and-Post-Issuance:</b>				
Utility Appl issue fee	1501	1	1510	1510
Publ. Fee- early, voluntary, or normal	1504	1	300	300

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<b>Extension-of-Time:</b>				
<b>Miscellaneous:</b>				
<b>Total in USD (\$)</b>				<b>1810</b>

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<b>EFS ID:</b>	4381027
<b>Application Number:</b>	11729355
<b>International Application Number:</b>	
<b>Confirmation Number:</b>	6426
<b>Title of Invention:</b>	SURGICAL STAPLING AND CUTTING INSTRUMENT WITH MANUALLY RETRACTABLE FIRING MEMBER
<b>First Named Inventor/Applicant Name:</b>	Christopher J. Schall
<b>Customer Number:</b>	26285
<b>Filer:</b>	Thomas J. Edgington/Mona Cornelia
<b>Filer Authorized By:</b>	Thomas J. Edgington
<b>Attorney Docket Number:</b>	END5915USNP/060330
<b>Receipt Date:</b>	02-DEC-2008
<b>Filing Date:</b>	28-MAR-2007
<b>Time Stamp:</b>	16:26:45
<b>Application Type:</b>	Utility under 35 USC 111(a)

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1_copy8		Issue_Publication_Fee_Payment.pdf	263003 cb32aa9f4eee5a2dbc2b48bfa9c6348bedae6c47f	yes	2
<b>Multipart Description/PDF files in .zip description</b>					
		<b>Document Description</b>	<b>Start</b>	<b>End</b>	
		Issue Fee Payment (PTO-85B)	1	1	
		Change of Address	2	2	
<b>Warnings:</b>					
<b>Information:</b>					
2_copy7	Fee Worksheet (PTO-06)	fee-info.pdf	30061 769380a49c92bc8e06d1c1dfb5959d2273810ce5	no	2
<b>Warnings:</b>					
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Table with 4 columns: APPLICATION NUMBER (11/729,355), FILING OR 371(C) DATE (03/28/2007), FIRST NAMED APPLICANT (Christopher J. Schall), ATTY. DOCKET NO./TITLE (END5915USNP/060330)

CONFIRMATION NO. 6426

26285
K&L GATES LLP
535 SMITHFIELD STREET
PITTSBURGH, PA 15222

PUBLICATION NOTICE



Title: SURGICAL STAPLING AND CUTTING INSTRUMENT WITH MANUALLY RETRACTABLE FIRING MEMBER

Publication No. US-2008-0237298-A1

Publication Date: 10/02/2008

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<b>Application Number</b> 	<b>Application/Control No.</b> 11/729,355	<b>Applicant(s)/Patent under Reexamination</b> SCHALL ET AL.

<b>Document Code - DISQ</b>	<b>Internal Document – DO NOT MAIL</b>
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Date Filed : 09/25/08	<b>This patent is subject to a Terminal Disclaimer</b>	

<b>Approved/Disapproved by:</b>
Felicia D. Roberts 11/497,936

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EXAMINER

SMITH, SCOTT A

ART UNIT PAPER NUMBER

3721

DATE MAILED: 10/01/2008

Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO.

11/729,355 03/28/2007 Christopher J. Schall END5915USNP/060330 6426

TITLE OF INVENTION: SURGICAL STAPLING AND CUTTING INSTRUMENT WITH MANUALLY RETRACTABLE FIRING MEMBER

Table with 7 columns: APPLN. TYPE, SMALL ENTITY, ISSUE FEE DUE, PUBLICATION FEE DUE, PREV. PAID ISSUE FEE, TOTAL FEE(S) DUE, DATE DUE

nonprovisional NO \$1440 \$300 \$0 \$1740 01/02/2009

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

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- A. Pay TOTAL FEE(S) DUE shown above, or
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_____ (Depositor's name)
_____ (Signature)
_____ (Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/729,355	03/28/2007	Christopher J. Schall	END5915USNP/060330	6426

TITLE OF INVENTION: SURGICAL STAPLING AND CUTTING INSTRUMENT WITH MANUALLY RETRACTABLE FIRING MEMBER

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1440	\$300	\$0	\$1740	01/02/2009

EXAMINER	ART UNIT	CLASS-SUBCLASS
SMITH, SCOTT A	3721	227-176100

<p>1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).</p> <p><input type="checkbox"/> Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.</p> <p><input type="checkbox"/> "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. <b>Use of a Customer Number is required.</b></p>	<p>2. For printing on the patent front page, list</p> <p>(1) the names of up to 3 registered patent attorneys or agents OR, alternatively, _____ 1</p> <p>(2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed. _____ 2</p> <p>_____ 3</p>
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3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE \_\_\_\_\_ (B) RESIDENCE: (CITY and STATE OR COUNTRY) \_\_\_\_\_

Please check the appropriate assignee category or categories (will not be printed on the patent):  Individual  Corporation or other private group entity  Government

<p>4a. The following fee(s) are submitted:</p> <p><input type="checkbox"/> Issue Fee</p> <p><input type="checkbox"/> Publication Fee (No small entity discount permitted)</p> <p><input type="checkbox"/> Advance Order - # of Copies _____</p>	<p>4b. Payment of Fee(s): (Please first reapply any previously paid issue fee shown above)</p> <p><input type="checkbox"/> A check is enclosed.</p> <p><input type="checkbox"/> Payment by credit card. Form PTO-2038 is attached.</p> <p><input type="checkbox"/> The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number _____ (enclose an extra copy of this form).</p>
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5. Change in Entity Status (from status indicated above)

a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27.  b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature \_\_\_\_\_ Date \_\_\_\_\_

Typed or printed name \_\_\_\_\_ Registration No. \_\_\_\_\_

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

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Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO.
Row 1: 11/729,355, 03/28/2007, Christopher J. Schall, END5915USNP/060330, 6426
Row 2: 26285, 7590, 10/01/2008, [Empty], [Empty]
Row 3: [Empty], [Empty], [Empty], EXAMINER, [Empty]
Row 4: [Empty], [Empty], [Empty], SMITH, SCOTT A, [Empty]
Row 5: [Empty], [Empty], [Empty], ART UNIT, PAPER NUMBER

K&L GATES LLP
535 SMITHFIELD STREET
PITTSBURGH, PA 15222

3721
DATE MAILED: 10/01/2008

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)
(application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 19 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 19 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (http://pair.uspto.gov).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

<b>Notice of Allowability</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	11/729,355	SCHALL ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Scott A. Smith	3721	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to the terminal disclaimer filed on 9/25/08.
2.  The allowed claim(s) is/are 1-10 and 12-20.
3.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All    b)  Some\*    c)  None    of the:
    1.  Certified copies of the priority documents have been received.
    2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_ .
    3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5.  CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a)  including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1)  hereto or 2)  to Paper No./Mail Date \_\_\_\_\_.
  - (b)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

**Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).**
6.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |   |
|---|---|
| <ol style="list-style-type: none"> <li>1. <input type="checkbox"/> Notice of References Cited (PTO-892)</li> <li>2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</li> <li>3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br/>Paper No./Mail Date <u>9/25/08</u></li> <li>4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material</li> </ol> | <ol style="list-style-type: none"> <li>5. <input type="checkbox"/> Notice of Informal Patent Application</li> <li>6. <input type="checkbox"/> Interview Summary (PTO-413),<br/>Paper No./Mail Date _____ .</li> <li>7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment</li> <li>8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance</li> <li>9. <input type="checkbox"/> Other _____.</li> </ol> |
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### **EXAMINER'S AMENDMENT**

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

The application has been amended as follows: Patentably distinct claim 11, non-elected without traverse in the election filed on 7/10/08, was canceled.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott A. Smith whose telephone number is 571-272-4469. The examiner can normally be reached on 5:30-4:00 Tues.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

S. Smith

/Scott A. Smith/  
Primary Examiner, Art Unit 3721

<b>Issue Classification</b> 	<b>Application/Control No.</b> 11/729,355	<b>Applicant(s)/Patent under Reexamination</b> SCHALL ET AL.
	<b>Examiner</b> Scott A. Smith	<b>Art Unit</b> 3721

ISSUE CLASSIFICATION												
ORIGINAL						INTERNATIONAL CLASSIFICATION						
CLASS			SUBCLASS			CLAIMED			NON-CLAIMED			
227			176.1			A	61	B	17	/068		
CROSS REFERENCES												
CLASS	SUBCLASS (ONE SUBCLASS PER BLOCK)											
227	19	180.1							/		/	
606	139	219							/		/	
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--- (Assistant Examiner) (Date)						/Scott A. Smith/ 9/28/08 (Primary Examiner) (Date)			<b>Total Claims Allowed: 19</b>			
(Legal Instruments Examiner) (Date)									O.G. Print Claim(s) 1		O.G. Print Fig. 1	

<input type="checkbox"/> Claims renumbered in the same order as presented by applicant		<input type="checkbox"/> CPA		<input type="checkbox"/> T.D.		<input type="checkbox"/> R.1.47	
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**Index of Claims**



Application/Control No.

11/729,355

Examiner

Scott A. Smith

Applicant(s)/Patent under Reexamination

SCHALL ET AL.

Art Unit

3721

√	Rejected
=	Allowed

-	(Through numeral) Cancelled
+	Restricted

N	Non-Elected
I	Interference

A	Appeal
O	Objected

Claim		Date			
Final	Original	9/25/08			
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## BIB DATA SHEET

CONFIRMATION NO. 6426

SERIAL NUMBER	FILING or 371(c) DATE RULE	CLASS	GROUP ART UNIT	ATTORNEY DOCKET NO.		
11/729,355	03/28/2007	227	3721	END5915USNP/060330		
<b>APPLICANTS</b> Christopher J. Schall, Cincinnati, OH; Chad P. Boudreaux, Cincinnati, OH;						
<b>** CONTINUING DATA *****</b>						
<b>** FOREIGN APPLICATIONS *****</b>						
<b>** IF REQUIRED, FOREIGN FILING LICENSE GRANTED **</b> 04/18/2007						
Foreign Priority claimed <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		<input type="checkbox"/> Met after Allowance Initials	<b>STATE OR COUNTRY</b> OH	<b>SHEETS DRAWINGS</b> 25	<b>TOTAL CLAIMS</b> 20	<b>INDEPENDENT CLAIMS</b> 3
35 USC 119(a-d) conditions met <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No						
Verified and Acknowledged /SCOTT A SMITH/ Examiner's Signature						
<b>ADDRESS</b> K&L GATES LLP 535 SMITHFIELD STREET PITTSBURGH, PA 15222 UNITED STATES						
<b>TITLE</b> Surgical stapling and cutting instrument with manually retractable firing member						
<b>FILING FEE RECEIVED</b> 1130	FEES: Authority has been given in Paper No. _____ to charge/credit DEPOSIT ACCOUNT No. _____ for following:			<input type="checkbox"/> All Fees		
				<input type="checkbox"/> 1.16 Fees (Filing)		
				<input type="checkbox"/> 1.17 Fees (Processing Ext. of time)		
				<input type="checkbox"/> 1.18 Fees (Issue)		
				<input type="checkbox"/> Other _____		
				<input type="checkbox"/> Credit		

## EAST Search History

Ref #	Hits	Search Query	DBs	Default Operator	Plurals	Time Stamp
L1	8	(surgical and stapler and rack and trigger).clm.	US-PGPUB; USPAT	OR	OFF	2008/09/28 18:14
L2	5	(surgical and stapler and rod and trigger).clm.	US-PGPUB; USPAT	OR	OFF	2008/09/28 18:14
L3	13	(surgical and stapler and retraction and handle).clm.	US-PGPUB; USPAT	OR	OFF	2008/09/28 18:14
L4	15	(surgical and stapler and retraction and firing).clm.	US-PGPUB; USPAT	OR	OFF	2008/09/28 18:14
L5	0	(surgical and stapler and sole and firing).clm.	US-PGPUB; USPAT	OR	OFF	2008/09/28 18:15
L6	0	(surgical and stapler and sole).clm.	US-PGPUB; USPAT	OR	OFF	2008/09/28 18:15
L7	36	(surgical and stapler and single).clm.	US-PGPUB; USPAT	OR	OFF	2008/09/28 18:15

9/ 28/ 08 6:16:12 PM

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		Application Number	11/729,355
		Filing Date	March 28, 2007
		First Named Inventor	Christopher J. Schall
		Art Unit	3721
Examiner Name	Scott A. Smith	Attorney Docket Number	END5915USNP/060330
Sheet	1	of	6

U.S. PATENT DOCUMENTS					
Examiner Initials*	Cite No. <sup>1</sup>	Document Number	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number - Kind Code <sup>2</sup> (if known)			
		2004/0006372 A1	01-08-2004	Racenet et al.	
		2004/0094597 A1	05-20-2004	Whitman et al.	
		2004/0122471 A1	06-24-2004	Toby et al.	
		2004/0167572 A1	08-26-2004	Roth et al.	
		2004/0222268 A1	11-11-2004	Bilotti et al.	
		2004/0243151 A1	12-02-2004	Demmy et al.	
		2004/0254608 A1	12-16-2004	Huitema et al.	
		2005/0023324 A1	02-03-2005	Doll et al.	
		2005/0070958 A1	03-31-2005	Swayze et al.	
		2005/0072827 A1	04-07-2005	Mollenauer	
		2005/0119669 A1	06-02-2005	Demmy	
		2005/0125009 A1	06-09-2005	Perry et al.	
		2005/0143759 A1	06-30-2005	Kelly	
		2005/0187576 A1	08-25-2005	Whitman et al.	
		2005/0216055 A1	09-29-2005	Scirica et al.	
		2006/0011699 A1	01-19-2006	Olson et al.	
		2006/0047307 A1	03-02-2006	Ortiz et al.	
		2006/0047308 A1	03-02-2006	Ortiz et al.	
		2006/0052825 A1	03-09-2006	Ransick et al.	
		2006/0060630 A1	03-23-2006	Shelton, IV et al.	
		2006/0085033 A1	04-20-2006	Criscuolo et al.	
		2006/0100643 A1	05-11-2006	Laufer et al.	
		2006/0289602 A1	12-28-2006	Wales et al.	
		2007/0023477 A1	02-01-2007	Whitman et al.	
		2007/0114261 A1	05-24-2007	Ortiz et al.	
		2008/0164296 A1	07-10-2008	Shelton et al.	
		2008/0167522 A1	07-10-2008	Giordano et al.	
		2008/0167644 A1	07-10-2008	Shelton et al.	
		2008/0167670 A1	07-10-2008	Shelton et al.	
		2008/0167671 A1	07-10-2008	Giordano et al.	
		2008/0167672 A1	07-10-2008	Giordano et al.	

Examiner Signature	/Scott Smith/	Date Considered	09/28/2008
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\*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. <sup>1</sup> Applicant's unique citation designation number (optional). <sup>2</sup> See Kinds Codes of USPTO Patent Documents at [www.uspto.gov](http://www.uspto.gov) or MPEP 901.04. <sup>3</sup> Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). <sup>4</sup> For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. <sup>5</sup> Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. <sup>6</sup> Applicant is to place a check mark here if English language Translation is attached.

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.

ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH. /SS/

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Substitute for form 1449/PTO  <b>INFORMATION DISCLOSURE STATEMENT BY APPLICANT</b>  <i>(use as many sheets as necessary)</i>			<b>Complete if Known</b>		
			Application Number	11/729,355	
			Filing Date	March 28, 2007	
			First Named Inventor	Christopher J. Schall	
			Art Unit	3721	
Examiner Name	Scott A. Smith	Attorney Docket Number	END5915USNP/060330		
Sheet	2	of	6		

U.S. PATENT DOCUMENTS					
Examiner Initials*	Cite No. <sup>1</sup>	Document Number	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number - Kind Code <sup>2</sup> (if known)			
		2008/0167736 A1	07-10-2008	Swayze et al.	
		2008/0169327 A1	07-17-2008	Shelton et al.	
		2008/0169328 A1	07-17-2008	Shelton	
		2008/0169329 A1	07-17-2008	Shelton et al.	
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Examiner Signature	/Scott Smith/	Date Considered	09/28/2008
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		Application Number	11/729,355
		Filing Date	March 28, 2007
		First Named Inventor	Christopher J. Schall
		Art Unit	3721
Examiner Name	Scott A. Smith	Attorney Docket Number	END5915USNP/060330
Sheet	3	of	6

U.S. PATENT DOCUMENTS						
Examiner Initials*	Cite No. <sup>1</sup>	Document Number		Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number - Kind Code <sup>2</sup> (if known)				
		5,535,935		07-16-1996	Vidal et al.	
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		5,547,117		08-20-1996	Hamblin et al.	
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Examiner Name	Scott A. Smith					
Sheet	4	of	6	Attorney Docket Number	END5915USNP/060330	

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Examiner: Scott A. Smith :

In re application of Christopher J. Schall et al. : SURGICAL STAPLING AND CUTTING INSTRUMENT WITH MANUALLY RETRACTABLE FIRING MEMBER

Group Art Unit No. 3721 :

Serial No.: 11/729,355 : Filing Date: March 28, 2007

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT

Pittsburgh, Pennsylvania 15222

September 25, 2008

**VIA ELECTRONIC FILING**

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450


Sir:

Assignee of the entire right, title and interest in and to the above-captioned application (hereinafter "Applicant"), in accordance with the duty of disclosure pursuant to 37 C.F.R. § 1.56, hereby advises the United States Patent and Trademark Office of the references listed on the accompanying form PTO/SB/08A (substitute for 1449A/PTO) *Information Disclosure Statement by Applicant*. A copy of each of the non-U.S. patent references cited therein is herewith enclosed.

Applicant notes that although the cited references may be relevant to the examination of the above-referenced application, under 37 C.F.R. § 1.97(h), the filing of this *Information Disclosure Statement* "shall not be construed to be an admission that the information cited in the statement is, or is considered to be, material to patentability as defined in § 1.56(b)."

As an Office Action has issued with respect to the referenced application, the Applicant has authorized that the appropriate fee be charged to Account No. 11-1110. Nevertheless, the Commissioner is hereby authorized to charge any additionally required fees deemed necessary for consideration of this Information Disclosure Statement to Account No. 11-1110.

Respectfully submitted,



Thomas J. Edgington  
Registration No. 34,324  
Attorney for Applicant

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Henry W. Oliver Building  
535 Smithfield Street  
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(412) 355-8303  
(412) 355-6501 (FAX)

*Application Serial No. 11/729,355  
Response dated September 25, 2008  
Reply to Official Action of August 8, 2008*

## REMARKS

Claims 1-20 are pending. Claim 11 has been withdrawn. Claims 1-10 and 12-20 have been provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-10 and 11-20 of co-pending Application No. 11/497,936. Without admitting to or acquiescing to any of the statements made in the Official Action and expressly reserving the right challenge any such assertions in the future, Applicant is herewith submitting a Terminal Disclaimer, along with the Terminal Disclaimer fee. The Office is hereby authorized to charge Deposit Account 11-1110 for any fee deficiencies associated with the Terminal Disclaimer and/or this Response. Accordingly, all of the pending claims are in condition for allowance.

The subject application identifies the related U.S. Patent Applications listed below. The current status of each of those Applications as of the filing date of this Amendment is herewith provided.

U.S. Patent Application Serial No. 11/729,013; **Status:** A final Action was mailed on August 6, 2008. Applicant has not yet responded to that Action.

In addition, the following commonly owned U.S. Patent Application was cited in Paragraph [00116] of the subject application:

U.S. Patent Application Serial No. 10/615,962; **Status:** Issued as U.S. Patent No. 6,786,382 on September 7, 2004.

Applicant also owns the following pending patent applications:

1. U.S. Patent Application Serial No. 11/497,936, filed August 2, 2006, entitled PNEUMATICALLY POWERED SURGICAL CUTTING AND FASTENING INSTRUMENT WITH MANUALLY OPERATED RETRACTION APPARATUS; Inventors: Shelton et al. **Status:** A Notice of Allowance was mailed on July 8, 2008.

2. U.S. Patent Application Serial No. 11/498,282, filed August 2, 2006, entitled PNEUMATICALLY POWERED SURGICAL CUTTING AND FASTENING INSTRUMENT

*Application Serial No. 11/729,355*  
*Response dated September 25, 2008*  
*Reply to Official Action of August 8, 2008*

WITH MECHANICAL LINKAGE COUPLING END EFFECTOR AND TRIGGER MOTION;

Inventors: Shelton et al. **Status:** A Notice of Allowance was mailed on June 3, 2008.

3. U.S. Patent Application Serial No. 12/008,266, filed January 10, 2008, entitled SURGICAL STAPLING INSTRUMENT WITH A FIRING MEMBER RETURN MECHANISM; Inventors: Boudreaux. **Status:** No action on the merits has been received to date.

4. U.S. Patent Application Serial No. 12/008,303, filed January 10, 2008, entitled SURGICAL STAPLING INSTRUMENT WITH A GEARED RETURN MECHANISM; Inventors: Boudreaux. **Status:** No action on the merits has been received to date.

5. U.S. Patent Application Serial No. 11/809,935, filed June 4, 2007, entitled SURGICAL INSTRUMENT HAVING A COMMON TRIGGER FOR ACTUATING AN END EFFECTOR CLOSING SYSTEM AND A STAPLE FIRING SYSTEM; Inventors: Shelton et al. **Status:** No action on the merits has been received to date.

6. U.S. Patent Application Serial No. 11/821,347, filed June 22, 2007, entitled SURGICAL STAPLING INSTRUMENT WITH A RETURN MECHANISM; Inventors: Boudreaux. **Status:** A Notice of Allowance was mailed on June 18, 2008. The issue fee was paid on September 17, 2008.

7. U.S. Patent Application Serial No. 12/031,368, filed February 14, 2008, entitled SURGICAL STAPLING APPARATUS WITH LOAD-SENSITIVE FIRING MECHANISM; Inventors: Hueil et al. **Status:** No action on the merits has been received to date.

8. U.S. Patent Application Serial No. 12/030,974, filed February 14, 2008, entitled SURGICAL STAPLING APPARATUS WITH RETRACTABLE FIRING SYSTEMS; Inventors: Hueil et al. **Status:** No action on the merits has been received to date.

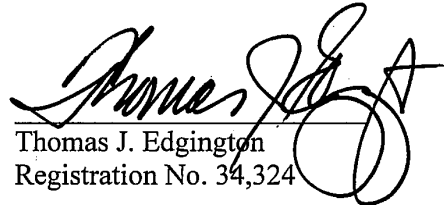
Copies of the foregoing documents may be obtained from the Patent Office's PAIR database or will be supplied by Applicant upon request.

Applicant is also herewith filing an Information Disclosure Statement. Consideration of the art cited therein is respectfully solicited.

*Application Serial No. 11/729,355  
Response dated September 25, 2008  
Reply to Official Action of August 8, 2008*

Examination of the elected claims and passage to allowance thereof at an early date are earnestly solicited. However, if the Examiner has any remaining concerns regarding Applicant's present Response, the Examiner is invited to contact the Applicant's undersigned attorney at the telephone number listed below so that those concerns may be expeditiously addressed.

Respectfully submitted,



Thomas J. Edgington  
Registration No. 34,324

Attorney for Applicant

K&L Gates LLP  
Henry W. Oliver Building  
535 Smithfield Street  
Pittsburgh, Pennsylvania 15222  
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		2004/0006372 A1	01-08-2004	Racenet et al.	
		2004/0094597 A1	05-20-2004	Whitman et al.	
		2004/0122471 A1	06-24-2004	Toby et al.	
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		4,429,695	02-07-1984	Green	
		4,655,222	04-07-1987	Florez et al.	
		5,071,430	12-10-1991	de Salis et al.	
		5,158,567	10-27-1992	Green	
		5,211,649	05-18-1993	Kohler et al.	
		5,222,975	06-29-1993	Crainich	
		5,258,009	11-02-1993	Connors	
		5,282,806	02-01-1994	Haber et al.	
		5,282,829	02-01-1994	Hermes	
		5,304,204	04-19-1994	Bregen	
		5,342,395	08-30-1994	Jarrett et al.	
		5,342,396	08-30-1994	Cook	
		5,350,400	09-27-1994	Esposito et al.	
		5,366,479	11-22-1994	McGarry et al.	
		5,397,324	03-14-1995	Carroll et al.	
		5,425,745	06-20-1995	Green et al.	
		5,474,566	12-12-1995	Alesi et al.	
		5,478,354	12-26-1995	Tovey et al.	
		5,482,197	01-09-1996	Green et al.	
		5,484,451	01-16-1996	Akopov et al.	
		5,485,952	01-23-1996	Fontayne	

Examiner Signature		Date Considered	
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\*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. <sup>1</sup> Applicant's unique citation designation number (optional). <sup>2</sup> See Kinds Codes of USPTO Patent Documents at [www.uspto.gov](http://www.uspto.gov) or MPEP 901.04. <sup>3</sup> Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). <sup>4</sup> For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. <sup>5</sup> Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. <sup>6</sup> Applicant is to place a check mark here if English language Translation is attached.

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Substitute for form 1449/PTO  <b>INFORMATION DISCLOSURE STATEMENT BY APPLICANT</b>  <i>(use as many sheets as necessary)</i>		<b>Complete if Known</b>	
		Application Number	11/729,355
		Filing Date	March 28, 2007
		First Named Inventor	Christopher J. Schall
		Art Unit	3721
Examiner Name	Scott A. Smith	Attorney Docket Number	END5915USNP/060330
Sheet	3	of	6

U.S. PATENT DOCUMENTS					
Examiner Initials*	Cite No. <sup>1</sup>	Document Number	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number - Kind Code <sup>2</sup> (if known)			
		5,535,935	07-16-1996	Vidal et al.	
		5,540,375	07-30-1996	Bolanos et al.	
		5,547,117	08-20-1996	Hamblin et al.	
		5,554,169	09-10-1996	Green et al.	
		5,562,239	10-08-1996	Boiarski et al.	
		5,562,682	10-08-1996	Oberlin et al.	
		5,575,799	11-19-1996	Bolanos et al.	
		5,584,425	12-17-1996	Savage et al.	
		5,597,107	01-28-1997	Knodel et al.	
		5,603,443	02-18-1997	Clark et al.	
		5,605,272	02-25-1997	Witt et al.	
		5,624,452	04-29-1997	Yates	
		5,636,779	06-10-1997	Palmer	
		5,645,209	07-08-1997	Green et al.	
		5,647,526	07-15-1997	Green et al.	
		5,649,937	07-22-1997	Bito et al.	
		5,667,527	09-16-1997	Cook	
		5,702,408	12-30-1997	Wales et al.	
		5,706,997	01-13-1998	Green et al.	
		5,715,987	02-10-1998	Kelley et al.	
		5,716,366	02-10-1998	Yates	
		5,718,359	02-17-1998	Palmer et al.	
		5,725,536	03-10-1998	Oberlin et al.	
		5,725,554	03-10-1998	Simon et al.	
		5,752,644	05-19-1998	Bolanos et al.	
		5,758,814	06-02-1998	Gallagher et al.	
		5,762,255	06-09-1998	Chrisman et al.	
		5,794,834	08-18-1998	Hamblin et al.	
		5,871,135	02-16-1999	Williamson IV et al.	
		5,878,937	03-09-1999	Green et al.	
		5,894,979	04-20-1999	Powell	

Examiner Signature		Date Considered	
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\*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. <sup>1</sup> Applicant's unique citation designation number (optional). <sup>2</sup> See Kinds Codes of USPTO Patent Documents at [www.uspto.gov](http://www.uspto.gov) or MPEP 901.04. <sup>3</sup> Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). <sup>4</sup> For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. <sup>5</sup> Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. <sup>6</sup> Applicant is to place a check mark here if English language Translation is attached.

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Substitute for form 1449/PTO  <b>INFORMATION DISCLOSURE STATEMENT BY APPLICANT</b>  <i>(use as many sheets as necessary)</i>				<b>Complete if Known</b>		
				Application Number	11/729,355	
				Filing Date	March 28, 2007	
				First Named Inventor	Christopher J. Schall	
				Art Unit	3721	
				Examiner Name	Scott A. Smith	
Sheet	4	of	6	Attorney Docket Number	END5915USNP/060330	

U.S. PATENT DOCUMENTS					
Examiner Initials*	Cite No. <sup>1</sup>	Document Number	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number - Kind Code <sup>2</sup> (if known)			
		5,897,562	04-27-1999	Bolanos et al.	
		5,911,353	06-15-1999	Bolanos et al.	
		6,079,606	06-27-2000	Milliman et al.	
		6,083,242	07-04-2000	Cook	
		6,086,600	07-11-2000	Kortenbach	
		6,102,271	08-15-2000	Longo et al.	
		6,109,500	08-29-2000	Alli et al.	
		6,155,473	12-05-2000	Tompkins et al.	
		6,171,330 B1	01-09-2001	Benchetrit	
		6,264,086 B1	07-24-2001	McGuckin, Jr.	
		6,264,087 B1	07-24-2001	Whitman	
		6,273,897 B1	08-14-2001	Dalessandro et al.	
		6,315,184 B1	11-13-2001	Whitman	
		6,387,113 B1	05-14-2002	Hawkins et al.	
		6,443,973 B1	09-03-2002	Whitman	
		6,488,197 B1	12-03-2002	Whitman	
		6,491,201 B1	12-10-2002	Whitman	
		6,505,768 B2	01-14-2003	Whitman	
		6,616,686 B2	09-09-2003	Coleman et al.	
		6,629,988 B2	10-07-2003	Weadock	
		6,669,073 B2	12-30-2003	Milliman et al.	
		6,681,979 B2	01-27-2004	Whitman	
		6,695,199 B2	02-24-2004	Whitman	
		6,698,643 B2	03-02-2004	Whitman	
		6,716,233 B1	04-06-2004	Whitman	
		6,773,438 B1	08-10-2004	Knodel et al.	
		6,805,273 B2	10-19-2004	Bilotti et al.	
		6,978,922 B2	12-27-2005	Bilotti et al.	
		7,008,435 B2	03-07-2006	Cummins	
		7,056,330 B2	06-06-2006	Gayton	
		7,059,508 B2	06-13-2006	Shelton, IV et al.	

Examiner Signature		Date Considered	
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\*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. <sup>1</sup> Applicant's unique citation designation number (optional). <sup>2</sup> See Kinds Codes of USPTO Patent Documents at [www.uspto.gov](http://www.uspto.gov) or MPEP 901.04. <sup>3</sup> Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). <sup>4</sup> For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. <sup>5</sup> Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. <sup>6</sup> Applicant is to place a check mark here if English language Translation is attached.

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**TERMINAL DISCLAIMER TO OBTAIN A PROVISIONAL DOUBLE PATENTING  
REJECTION OVER A PENDING "REFERENCE" APPLICATION**

Docket Number (Optional)  
**END5915USNP/060330**

In re Application of: Christopher J. Schall, et al.

Application No.: 11/729,355

Filed: 03/28/2007

For: SURGICAL STAPLING AND CUTTING INSTRUMENT WITH MANUALLY RETRACTABLE  
FIRING MEMBER

The owner\*, Ethicon Endo-Surgery, Inc., of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term of any patent granted on pending reference Application Number 11/497,936, filed on 08-02-2006, as such term is defined in 35 U.S.C. 154 and 173, and as the term of any patent granted on said reference application may be shortened by any terminal disclaimer filed prior to the grant of any patent on the pending reference application. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and any patent granted on the reference application are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.


In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of any patent granted on said reference application, "as the term of any patent granted on said reference application may be shortened by any terminal disclaimer filed prior to the grant of any patent on the pending reference application," in the event that: any such patent: granted on the pending reference application: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as shortened by any terminal disclaimer filed prior to its grant.

Check either box 1 or 2 below, if appropriate.

1.  For submissions on behalf of a business/organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the business/organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2.  The undersigned is an attorney or agent of record. Reg. No. \_\_\_\_\_

  
Signature

17 Sept 07  
Date

Dean L. Garner - Assistant Secretary  
Typed or printed name

513-337-8559  
Telephone Number

- Terminal disclaimer fee under 37 CFR 1.20(d) is included.

**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

\*Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner).  
Form PTO/SB/96 may be used for making this statement. See MPEP § 324.

This collection of information is required by 37 CFR 1.321. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

## Electronic Patent Application Fee Transmittal

<b>Application Number:</b>	11729355			
<b>Filing Date:</b>	28-Mar-2007			
<b>Title of Invention:</b>	Surgical stapling and cutting instrument with manually retractable firing member			
<b>First Named Inventor/Applicant Name:</b>	Christopher J. Schall			
<b>Filer:</b>	Thomas J. Edgington/Mona Cornelia			
<b>Attorney Docket Number:</b>	END5915USNP/060330			
Filed as Large Entity				
<b>Utility under 35 USC 111(a) Filing Fees</b>				
<b>Description</b>	<b>Fee Code</b>	<b>Quantity</b>	<b>Amount</b>	<b>Sub-Total in USD(\$)</b>
<b>Basic Filing:</b>				
<b>Pages:</b>				
<b>Claims:</b>				
<b>Miscellaneous-Filing:</b>				
<b>Petition:</b>				
<b>Patent-Appeals-and-Interference:</b>				
<b>Post-Allowance-and-Post-Issuance:</b>				
<b>Extension-of-Time:</b>				

Description	Fee Code	Quantity	Amount	Sub-Total in USD(\$)
<b>Miscellaneous:</b>				
Submission- Information Disclosure Stmt	1806	1	180	180
Statutory disclaimer	1814	1	130	130
<b>Total in USD (\$)</b>				<b>310</b>

## Electronic Acknowledgement Receipt

<b>EFS ID:</b>	4005201
<b>Application Number:</b>	11729355
<b>International Application Number:</b>	
<b>Confirmation Number:</b>	6426
<b>Title of Invention:</b>	Surgical stapling and cutting instrument with manually retractable firing member
<b>First Named Inventor/Applicant Name:</b>	Christopher J. Schall
<b>Customer Number:</b>	26285
<b>Filer:</b>	Thomas J. Edgington/Mona Cornelia
<b>Filer Authorized By:</b>	Thomas J. Edgington
<b>Attorney Docket Number:</b>	END5915USNP/060330
<b>Receipt Date:</b>	25-SEP-2008
<b>Filing Date:</b>	28-MAR-2007
<b>Time Stamp:</b>	15:07:51
<b>Application Type:</b>	Utility under 35 USC 111(a)

### Payment information:

Submitted with Payment	yes
Payment Type	Deposit Account
Payment was successfully received in RAM	\$310
RAM confirmation Number	360
Deposit Account	111110
Authorized User	

The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows:

Charge any Additional Fees required under 37 C.F.R. Section 1.16 (National application filing, search, and examination fees)

Charge any Additional Fees required under 37 C.F.R. Section 1.17 (Patent application and reexamination processing fees)



<b>File Listing:</b>					
<b>Document Number</b>	<b>Document Description</b>	<b>File Name</b>	<b>File Size(Bytes)/ Message Digest</b>	<b>Multi Part /.zip</b>	<b>Pages (if appl.)</b>
1	Miscellaneous Incoming Letter	Amendment_Transmittal_09_25_2008.pdf	255906 5669d115eb9d9c9d9a1b67e0389e6039622c085a	no	4
<b>Warnings:</b>					
<b>Information:</b>					
2		Amendment_09_25_2008.pdf	314345 1fbf225fb74dd161ed9d3b49c4e42bc49f322aa4	yes	4
<b>Multipart Description/PDF files in .zip description</b>					
<b>Document Description</b>		<b>Start</b>	<b>End</b>		
Amendment/Req. Reconsideration-After Non-Final Reject		1	1		
Request for Continued Examination (RCE)		2	4		
<b>Warnings:</b>					
<b>Information:</b>					
3		4th_Supplemental_IDS.pdf	926098 8f66d102eab193218e7e4066fd5f82141c026d9a	yes	8
<b>Multipart Description/PDF files in .zip description</b>					
<b>Document Description</b>		<b>Start</b>	<b>End</b>		
Information Disclosure Statement Letter		1	2		
Information Disclosure Statement (IDS) Filed (SB/08)		3	8		
<b>Warnings:</b>					
<b>Information:</b>					
4	Foreign Reference	WO2004112652A2.pdf	1078405 f5188a99ef52c2ea8b5a75205c61a15dc67ce77c	no	30
<b>Warnings:</b>					
<b>Information:</b>					
5	Foreign Reference	WO0064365A1.pdf	2127176 760962cd84d91eb7a9153d9dd81d3f6a1213b2a0	no	54
<b>Warnings:</b>					
<b>Information:</b>					
6	Foreign Reference	WO0219920A1.pdf	2071200 08b907947b33d16f68f561caf7b54315aae0b49	no	65

<b>Warnings:</b>					
<b>Information:</b>					
7	Terminal Disclaimer Filed	Terminal_Disclaimer.pdf	151995 ecd32c0036425c0217666bc80554e889a4518630	no	1
<b>Warnings:</b>					
<b>Information:</b>					
8	Fee Worksheet (PTO-06)	fee-info.pdf	31510 253c30b350d2fb380a46634ee08f0cb5bffd1b9ce	no	2
<b>Warnings:</b>					
<b>Information:</b>					
<b>Total Files Size (in bytes):</b>				6956635	
<p><b>This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.</b></p> <p><b><u>New Applications Under 35 U.S.C. 111</u></b>  <b>If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.</b></p> <p><b><u>National Stage of an International Application under 35 U.S.C. 371</u></b>  <b>If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.</b></p> <p><b><u>New International Application Filed with the USPTO as a Receiving Office</u></b>  <b>If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.</b></p>					

END5915USNP/060330  
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Art Unit 3721  
Examiner Scott A. Smith :  
  
In re application of  
Christopher J. Schall et al. : SURGICAL STAPLING AND  
CUTTING INSTRUMENT WITH  
Serial No. 11/729,355 : MANUALLY RETRACTABLE FIRING  
MEMBER  
Filed March 28, 2007 :  
  
: Group No. 3700

Pittsburgh, Pennsylvania 15222

September 25, 2008

**VIA ELECTRONIC FILING**

**Mail Stop: Amendment  
Commissioner for Patents  
P.O. Box: 1450  
Alexandria, VA 22313-1450**

**AMENDMENT TRANSMITTAL**

1. Transmitted herewith is an amendment for this application.

**STATUS**

2. Applicant is

A statement that this filing is by a small entity is hereby asserted in accordance with the rule change effective September 8, 2000, 65 Fed. Reg. 54603.

other than a small entity.

## EXTENSION OF TERM

**NOTE:** "Extension of Time in Patent Cases (Supplement Amendments) - If a timely and complete response has been filed after a Non-Final Office Action, an extension of time is not required to permit filing and/or entry of an additional amendment after expiration of the shortened statutory period.

*If a timely response has been filed after a Final Office Action, an extension of time is required to permit filing and/or entry of a Notice of Appeal or filing and/or entry of an additional amendment after expiration of the shortened statutory period unless the timely-filed response placed the application in condition for allowance. Of course, if a Notice of Appeal has been filed within the shortened statutory period, the period has ceased to run." Notice of December 10, 1985 (1061 O.G. 34-35).*

**NOTE:** See 37 CFR 1.645 for extensions of time in interference proceedings, and 37 CFR 1.550(c) for extensions of time in reexamination proceedings.

3. The proceedings herein are for a patent application and the provisions of 37 CFR 1.136 apply.

(complete (a) or (b), as applicable)

(a)  Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d) for the total number of months checked below:

<u>Extension (months)</u>	<u>Fee for other than small entity</u>	<u>Fee for small entity</u>
<input type="checkbox"/> one month	\$ 120.00	\$ 60.00
<input type="checkbox"/> two months	\$ 460.00	\$230.00
<input type="checkbox"/> three months	\$1,050.00	\$525.00
<input type="checkbox"/> four months	\$1,640.00	\$820.00

**Fee: \$**

If an additional **extension** of time is required, please consider this a petition therefor.

(check and complete the next item, if applicable)

An extension for \_\_\_\_\_ months has already been secured and the fee paid therefor of \$\_\_\_\_\_ is deducted from the total fee due for the total months of extension now requested.

Extension fee due with this request \$

**OR**

(b)  Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition for extension of time.

### FEE FOR CLAIMS

4. The fee for claims (37 CFR 1.16(b)-(d) has been calculated as shown below:

	(Col. 1)	(Col. 2)	(Col. 3)	SMALL ENTITY			OTHER THAN A SMALL ENTITY	
	CLAIMS REMAINING AFTER AMENDMENT	HIGHEST NO PREVIOUSLY PAID FOR	PRESENT EXTRA	RATE	ADDIT. FEE	OR	RATE	ADDIT. FEE
TOTAL	20 •	MINUS 20 ••	=0	X25=	\$0		X50=	\$0
INDEP.	3 •	MINUS 3 •••	= 0	X105=	\$0		X210=	\$0
<input type="checkbox"/>	FIRST PRESENTATION OF MULTIPLE DEP. CLAIM			+185=	\$		+370=	\$0
				TOTAL ADDIT. FEE	\$0	OR	TOTAL ADDIT. FEE	\$0

- If the entry in Col. 1 is less than entry in Col. 2, write "0" in Col. 3.
- If the "Highest No. Previously Paid for" IN THIS SPACE is less than 20, enter "20."
- If the "Highest No. Previously Paid for" IN THIS SPACE is less than 3, enter "3."  
The "Highest No. Previously Paid for" (Total or indep.) is the highest number found in the appropriate box in Col. 1 of a prior amendment or the number of claims originally filed.

**WARNING** "After final rejection or action (§ 1.113) amendments may be made cancelling claims or complying with any requirement of form which has been made." 37 CFR § 1.116(a) (emphasis added).

Complete (c) or (d), as applicable)

(c)  No additional fee for claims is required.

**OR**

(d)  Total additional fee for claims required \$ \_\_\_\_\_

### FEE PAYMENT

5.  Attached is a check in the sum of \$ \_\_\_\_\_

Charge Account No. \_\_\_\_\_ the sum of \$ \_\_\_\_\_

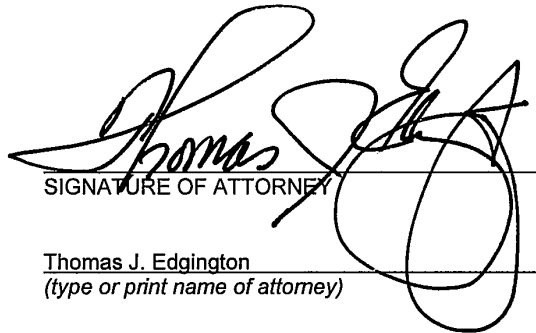
**FEE DEFICIENCY**

*NOTE: If there is a fee deficiency and there is no authorization to charge an account, additional fees are necessary to cover the additional time consumed in making up the original deficiency. If the maximum, six-month period has expired before the deficiency is noted and corrected, the application is held abandoned. In those instances where authorization to charge is included, processing delays are encountered in returning the papers to the PTO Finance Branch in order to apply these charges prior to action on the cases. Authorization to charge the deposit account for any fee deficiency should be checked. See the Notice of April 7, 1986, (1065 O.G. 31-33).*

6.  If any additional extension and/or fee is required, charge Account No. 11-1110.

**AND/OR**

7.  If any additional fee for claims is required, charge Account No. 11-1110.

  
SIGNATURE OF ATTORNEY

Reg. No.: 34,324  
Tel. No.: (412) 355-8303  
Customer No. 26285

Thomas J. Edgington  
(type or print name of attorney)

K&L Gates LLP  
P.O. Address  
Henry W. Oliver Building  
535 Smithfield Street  
Pittsburgh, PA 15222-2312

END5915USNP/060330  
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Art Unit 3721

Examiner Scott A. Smith :

In re application of

Christopher J. Schall et al. :

SURGICAL STAPLING AND  
CUTTING INSTRUMENT WITH

Serial No. 11/729,355 :

MANUALLY RETRACTABLE FIRING  
MEMBER

Filed March 28, 2007 :

: Group No. 3700

**RESPONSE TO OFFICE ACTION**

Pittsburgh, Pennsylvania 15222-2312

September 25, 2008

**VIA ELECTRONIC FILING**

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Responsive to the Official Action dated August 8, 2008 (the "Official Action") issued in connection with the above-identified application (the "subject application"), Assignee of the entire right, title and interest in and to the subject application (hereinafter "Applicant") submits the following:

**Remarks** begin on page 2 of this paper.



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/729,355	03/28/2007	Christopher J. Schall	END5915USNP/060330	6426
26285	7590	08/08/2008	EXAMINER	
K&L GATES LLP 535 SMITHFIELD STREET PITTSBURGH, PA 15222			SMITH, SCOTT A	
			ART UNIT	PAPER NUMBER
			3721	
			MAIL DATE	DELIVERY MODE
			08/08/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



<b>Office Action Summary</b>	<b>Application No.</b> 11/729,355	<b>Applicant(s)</b> SCHALL ET AL.	
	<b>Examiner</b> Scott A. Smith	<b>Art Unit</b> 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on 10 July 2008.
- 2a)  This action is **FINAL**.                      2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 1-20 is/are pending in the application.
  - 4a) Of the above claim(s) 11 is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 1-10 and 12-20 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on 28 March 2007 is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a)  All    b)  Some \*    c)  None of:
    - 1.  Certified copies of the priority documents have been received.
    - 2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    - 3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 10/31/08; 7/10/08.
- 4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5)  Notice of Informal Patent Application
- 6)  Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election of group I in the reply filed on 7/10/08 is acknowledged.

Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Claim 11 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Election was made **without** traverse in the reply filed on 7/10/08.

### *Double Patenting*

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-10 and 12-20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-10 and 11-20

of copending Application No. 11/497,936. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are substantially co-extensive in scope and differ in terminology used. Further, it would have been obvious to provide the firing drive with a rack since to do so is notoriously well known, as well as actuating the device such that pneumatic power is not required since such manually or electrically actuated devices are also well known.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Allowable Subject Matter***

5. The following is a statement of reasons for the indication of allowable subject matter: The claims are not anticipated or deemed obvious over the prior art in which the claimed invention of a surgical instrument comprises a firing mechanism movable from an unactuated position to an actuated position from a drive system, and a separate manually operated retraction member for moving the firing mechanism in a proximal direction from the actuated position to the unactuated position providing a sole retraction motion of the driving mechanism. The closest prior art sets forth retraction mechanisms which manually move the firing mechanisms in both directions proximally and distally.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See the attached PTO-892 for related art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott A. Smith whose telephone number is 571-272-4469. The examiner can normally be reached on 5:30-4:00 Tues.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

S. Smith

/Scott A. Smith/  
Primary Examiner, Art Unit 3721

<b>Notice of References Cited</b>	Application/Control No. 11/729,355	Applicant(s)/Patent Under Reexamination SCHALL ET AL.	
	Examiner Scott A. Smith	Art Unit 3721	Page 1 of 1

**U.S. PATENT DOCUMENTS**

*	Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A US-7,143,926	12-2006	Shelton et al.	227/177.1
	B US-			
	C US-			
	D US-			
	E US-			
	F US-			
	G US-			
	H US-			
	I US-			
	J US-			
	K US-			
	L US-			
	M US-			

**FOREIGN PATENT DOCUMENTS**

*	Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N				
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	T				

**NON-PATENT DOCUMENTS**

*	Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U
	V
	W
	X

\*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)  
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

**Index of Claims**



Application/Control No.

11/729,355

Examiner

Scott A. Smith

Applicant(s)/Patent under Reexamination

SCHALL ET AL.

Art Unit

3721

√	Rejected
=	Allowed

-	(Through numeral) Cancelled
+	Restricted

N	Non-Elected
I	Interference

A	Appeal
O	Objected

Claim		Date				
Final	Original	8/1/08				
1	√					
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Substitute for form 1449A/PTO  <b>INFORMATION DISCLOSURE STATEMENT BY APPLICANT</b>  <i>(use as many sheets as necessary)</i>				<b>Complete if Known</b>	
				Application Number	11/729,355
				Filing Date	March 28, 2007
				First Named Inventor	Christopher Schall
				Art Unit	3721
				Examiner Name	Scott A. Smith
Sheet	1	of	3	Attorney Docket Number	END5915USNP/060330

U.S. PATENT DOCUMENTS					
Examiner Initials*	Cite No. <sup>1</sup>	Document Number	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number - Kind Code <sup>2</sup> (if known)			

FOREIGN PATENT DOCUMENTS						
Examiner Initials*	Cite No. <sup>1</sup>	Foreign Patent Document	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T <sup>6</sup>
		Country Code <sup>3</sup> -Number <sup>4</sup> -Kind Code <sup>5</sup> (if known)				
		CA 2512960 A1	01-28-2006	Shelton et al.		
		CA 2514274 A1	01-28-2006	Shelton		
		DE 273689 C (English Abstract Unavailable)	05-08-1914	Sanitats-geschaft M. Schaerer AG		
		DE 9412228 U (English Abstract)	09-22-1994	Rauh		
		DE 10314072 A1 (English Abstract)	10-21-2004	Mayenberger et al.		
		DE 20121753 U1 (English Abstract Unavailable)	04-17-2003	BEMA GmbH & Co. KG		
		DE 20112837 U1 (English Abstract Unavailable)	10-04-2001	Aesculap AG & Co. KG		
		DE 69328576 T2 (English Abstract)	01-04-2001	Hooven		
		EP 0033548 B1	05-14-1986	Green		
		EP 0122046 A1	10-17-1984	Mericle		
		EP 0392547 B1	12-27-1995	Vasconcelos et al.		
		EP 0484677 B2	06-12-1996	Green et al.		
		EP 0503662 B1	06-04-1997	Green et al.		
		EP 0552050 B1	05-10-2000	Hooven		
		EP 0552423 B1	01-07-1998	Green et al.		
		EP 0592244 B1	01-14-1998	Allen et al.		
		EP 0593920 A1	04-27-1994	Fontayne		
		EP 0600182 A2	06-08-1994	Green et al.		
		EP 0603472 B1	11-25-1998	Green et al.		
		EP 0630612 A1	12-28-1994	Byrne et al.		
		EP 0634144 A1	01-18-1995	Hooven et al.		
		EP 0639349 A2	02-22-1994	Guy et al.		
		EP 0646356 A2	04-05-1995	Williamson et al.		
		EP 0656188 B1	01-02-2003	Sorrentino et al.		

Examiner Signature	/Scott Smith/	Date Considered	08/01/2008
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\*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. <sup>1</sup> Applicant's unique citation designation number (optional). <sup>2</sup> See Kinds Codes of USPTO Patent Documents at [www.uspto.gov](http://www.uspto.gov) or MPEP 901.04. <sup>3</sup> Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). <sup>4</sup> For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. <sup>5</sup> Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST. 16 if possible. <sup>6</sup> Applicant is to place a check mark here if English language Translation is attached.

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.

PI-1870982 v1

ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH. /SS/

Substitute for form 1449A/PTO  <b>INFORMATION DISCLOSURE STATEMENT BY APPLICANT</b>  <i>(use as many sheets as necessary)</i>				<b>Complete if Known</b>		
				Application Number	11/729,355	
				Filing Date	March 28, 2007	
				First Named Inventor	Christopher Schall	
				Art Unit	3721	
				Examiner Name	Scott A. Smith	
Sheet	2	of	3	Attorney Docket Number	END5915USNP/060330	

U.S. PATENT DOCUMENTS					
Examiner Initials*	Cite No. <sup>1</sup>	Document Number	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number - Kind Code <sup>2</sup> (if known)			

FOREIGN PATENT DOCUMENTS						
Examiner Initials*	Cite No. <sup>1</sup>	Foreign Patent Document	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	† <sup>6</sup>
		Country Code <sup>3</sup> -Number <sup>4</sup> -Kind Code <sup>5</sup> (if known)				
		EP 0667119 B1	07-17-1996	Cooper et al.		
		EP 0679367 A2	11-02-1995	Boiarski et al.		
		EP 0685204 A1	12-06-1995	Alesi et al.		
		EP 0699418 A1	03-06-1996	Young et al.		
		EP 0705570 B1	04-28-2004	Alesi et al.		
		EP 0705571 A1	04-10-1996	Viola et al.		
		EP 0760230 B1	02-24-1999	Mastri et al.		
		EP 0813843 B1	10-01-2003	Measamer et al.		
		EP 0829235 B1	06-04-2003	Knodel et al.		
		EP 0872213 B1	05-08-2002	Bryan et al.		
		EP 0888749 B1	09-22-2004	Long et al.		
		EP 0908152 B1	01-02-2002	Whipple		
		EP 1045672 B1	08-02-2006	Kearns et al.		
		EP 1064883 B1	08-17-2005	Hamilton et al.		
		EP 1086713 B1	05-19-2004	Tims et al.		
		EP 1090592 A1	04-11-2001	Nalagatla et al.		
		EP 1129665 B1	11-15-2006	Dalessandro et al.		
		EP 1238634 A2	09-11-2002	Bryan et al.		
		EP 1256317 B1	12-27-2006	Grant et al.		
		EP 1256318 B1	05-07-2001	Grant et al.		
		EP 1382303 B1	06-21-2006	Plyley et al.		
		EP 1426012 A1	06-09-2004	Alesi et al.		
		EP 1477119 A1	11-17-2004	Suzuki		
		EP 1479346 B1	01-10-2007	Shelton et al.		
		EP 1484024 B1 (English Abstract)	01-17-2007	Braun		
		EP 1520523 A1	04-06-2005	Shelton et al.		
		EP 1520525 A1	04-06-2005	Dalessandro et al.		

Examiner Signature	/Scott Smith/	Date Considered	08/01/2008
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PI-1870982 v1

ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH. /SS/



Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number

Substitute for form 1449A/PTO  <b>INFORMATION DISCLOSURE STATEMENT BY APPLICANT</b>  <i>(use as many sheets as necessary)</i>				<b>Complete if Known</b>			
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Sheet	1	of	2	Attorney Docket Number		END5915USNP/060330	

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		Country Code <sup>3</sup> -Number <sup>4</sup> -Kind Code <sup>5</sup> (if known)					
		EP 1621141 A2		02-01-2006	Shelton		
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				Application Number	11/729,355	
				Filing Date	March 28, 2007	
				First Named Inventor	Christopher Schall	
				Art Unit	3721	
Examiner Name	Scott A. Smith					
Sheet	2	of	2	Attorney Docket Number	END5915USNP/060330	

U.S. PATENT DOCUMENTS						
Examiner Initials*	Cite No. <sup>1</sup>	Document Number		Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
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Examiner Initials*	Cite No. <sup>1</sup>	Foreign Patent Document		Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	† <sup>6</sup>
		Country Code <sup>3</sup> -Number <sup>4</sup> -Kind Code <sup>5</sup> (if known)					
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		5,535,934		07-16-1996	Boiarski et al.	
		5,560,532		10-01-1996	DeFonzo et al.	
		5,562,241		10-08-1996	Knodel et al.	
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		5,636,780		06-10-1997	Green et al.	
		5,639,008		06-17-1997	Gallagher et al.	

Examiner Signature	/Scott Smith/	Date Considered	08/01/2008
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Substitute for form 1449A/PTO				<b>Complete if Known</b>	
				Application Number	11/729,355
<b>INFORMATION DISCLOSURE STATEMENT BY APPLICANT</b>				Filing Date	March 28, 2007
				First Named Inventor	Christopher J. Schall
				Art Unit	3721
				Examiner Name	Scott A. Smith
(use as many sheets as necessary)				Attorney Docket Number	END5915USNP/060330
Sheet	5	of	9		

U.S. PATENT DOCUMENTS					
Examiner Initials*	Cite No. <sup>1</sup>	Document Number	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number - Kind Code <sup>2</sup> (if known)			
		5,651,491	07-29-1997	Heaton et al.	
		5,653,373	08-05-1997	Green et al.	
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<b>INFORMATION DISCLOSURE STATEMENT BY APPLICANT</b>		Application Number	11/729,355
		Filing Date	March 28, 2007
		First Named Inventor	Christopher J. Schall
		Art Unit	3721
		Examiner Name	Scott A. Smith
(use as many sheets as necessary)		Attorney Docket Number	END5915USNP/060330
Sheet	6	of	9

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		Number - Kind Code <sup>2</sup> (if known)			
		5,954,259	09-21-1999	Viola et al.	
		6,010,054	01-04-2000	Johnson et al.	
		6,032,849	03-07-2000	Mastri et al.	
		6,202,914 B1	03-20-2001	Geiste et al.	
		6,241,139 B1	06-05-2001	Milliman et al.	
		6,250,532 B1	06-26-2001	Green et al.	
		6,619,529 B2	09-16-2003	Green et al.	
		6,644,532 B2	11-11-2003	Green et al.	
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		6,817,508 B1	11-16-2004	Racenet et al.	
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		6,830,174 B2	12-14-2004	Hillstead et al.	
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		7,070,083 B2	07-04-2006	Jankowski	
		7,128,253 B2	10-31-2006	Mastri et al.	
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		7,258,262 B2	08-21-2007	Mastri et al.	

Examiner Signature	/Scott Smith/	Date Considered	08/01/2008
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Substitute for form 1449A/PTO  <b>INFORMATION DISCLOSURE STATEMENT BY APPLICANT</b>  <i>(use as many sheets as necessary)</i>				<b>Complete if Known</b>	
				Application Number	11/729,355
				Filing Date	March 28, 2007
				First Named Inventor	Christopher J. Schall
				Art Unit	3721
				Examiner Name	Scott A. Smith
Sheet	7	of	9	Attorney Docket Number	END5915USNP/060330

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		Number - Kind Code <sup>2</sup> (if known)			
		7,328,828 B2	02-12-2008	Ortiz et al.	
		7,354,447 B2	04-08-2008	Shelton, IV et al.	

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		Country Code <sup>3</sup> -Number <sup>4</sup> -Kind Code <sup>5</sup> (if known)				
		CA 2458946 A1	03-13-2003	Weadock		
		DE 20112837 U1 (English Translation)	10-04-2001	Aesculap AG & Co. KG		✓
		DE 20121753 U1 (English Translation)	04-17-2003	BEMA GmbH & Co. KG		✓
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		EP 0537572 B1	06-23-1999	Green et al.		
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		EP 1728473 A1	12-06-2006	Viola et al.		
		EP 1728475 A2	12-06-2006	Beetel		
		FR 1112936 A (English Translation)	03-20-1956	Hainault		✓
		GB 2336214 A	10-13-1999	Taylor et al.		
		JP 2005505322 T (English Abstract)	02-24-2005	Weadock		

Examiner Signature	/Scott Smith/	Date Considered	08/01/2008
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<b>INFORMATION DISCLOSURE STATEMENT BY APPLICANT</b>				Filing Date	March 28, 2007
				First Named Inventor	Christopher J. Schall
				Art Unit	3721
				Examiner Name	Scott A. Smith
				Attorney Docket Number	END5915USNP/060330
Sheet	8	of	9		
<i>(use as many sheets as necessary)</i>					

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		Country Code <sup>3</sup> -Number <sup>4</sup> -Kind Code <sup>5</sup> (if known)					
		RU 2187249 C2 (English Abstract)		08-20-2002	Vorob'ev		
		RU 2225170 C2 (English Abstract)		03-10-2004	Dubrovskij		
		SU 1377053 A1 (English Translation)		02-28-1988	Sakhautdinov et al.		√
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		WO 99/12483 A1		03-18-1999	Hipps		
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		WO 2006/132992 A1		12-14-2006	Viola et al.		
		WO 2007/016290 A2		02-08-2007	Whitman et al.		

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END5915USNP/060330  
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Art Unit 3721  
Examiner Scott A. Smith :  
In re application of Christopher J. Schall et al. : SURGICAL STAPLING AND CUTTING INSTRUMENT WITH  
Serial No. 11/729,355 : MANUALLY RETRACTABLE FIRING MEMBER  
Filed March 28, 2007 :  
: Group No. 3700

**AMENDMENT AND RESPONSE  
TO RESTRICTION REQUIREMENT**

Pittsburgh, Pennsylvania 15222-2312

July 10, 2008

**VIA ELECTRONIC MAIL**

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Responsive to the Official Action dated June 16, 2008 (the "Official Action") issued in connection with the above-identified application (the "subject application"), Assignee of the entire right, title and interest in and to the subject application (hereinafter "Applicant") submits the following:

**Amendments to the Specification** begin on page 2 of this paper.

**Remarks** begin on page 4 of this paper.



**Amendments to the Specification**

On Page 1, please replace the Paragraph under the heading “CROSS REFERENCE TO RELATED APPLICATIONS” with the following amended Paragraph:

The present application is related to commonly-owned U.S. Patent Application ~~filed on~~ ~~even date herewith~~ Serial No. 11/729,013, to Chad P. Boudreaux and Christopher J. Schall, filed March 28, 2007, entitled “Surgical Stapling and Cutting Instrument With Side Mounted Retraction Member”, ~~to Chad P. Boudreaux, and Christopher J. Schall~~, the disclosure of which is hereby incorporated by reference in its entirety.

Please replace paragraph [0054] with the following amended paragraph:

[0054] The illustrative end effector 12 is described in greater detail in four commonly-owned U.S. patents and a patent application, the disclosure of each being hereby incorporated by reference in their entirety: (1) U.S. Patent No. 7,044,352 to Frederick E. Shelton IV, Michael E. Setser, William B. Weisenburgh II, issued May 16, 2006 and entitled “Surgical Stapling Instrument Having a Single Lockout Mechanism For Prevention of Firing”; (2) U.S. Patent No. 7,000,818 to Frederick E. Shelton IV, Michael E. Setser, Brian J. Hemmelgarn II, issued February 21, 2006 and entitled “Surgical Stapling Instrument Having Separate Distinct Closing and Firing Systems”; (3) U.S. Patent No. 6,988,649 to Frederick E. Shelton IV, Michael E. Setser, and William B. Weisenburgh II, issued January 24, 2006 and entitled “Surgical Stapling Instrument Having A Spent Cartridge Lockout”; (4) U.S. Patent No. 7,143,923, to Frederick E. Shelton IV, Michael E. Setser, and William B. Weisenburgh II, issued December 5, 2006 and entitled Surgical Stapling Instrument Having A Firing Lockout For An Unclosed Anvil”; and (5) U.S. Patent Application entitled “Surgical Stapling Instrument Incorporating an E-Beam Firing Mechanism”, Ser. No. 10/443,617, to Frederick E. Shelton IV, Michael E. Setser, William B. Weisenburgh II, filed 20 June 2003, now U.S. Patent No. 6,978,921. However, the unique and

*Application Serial No. 11/729,355*  
*Response dated July 10, 2008*  
*Reply to Official Action of June 16, 2008*

novel features of various embodiments of the present invention may also be employed with different types of end effectors without departing from the spirit and scope of the present invention.

Please replace paragraph [0055] with the following amended paragraph:

[0055] It should be appreciated that although a nonarticulating shaft assembly 18 is illustrated herein, applications of the present invention may include instruments capable of articulation, such as those described in three commonly owned U.S. patents and two commonly owned U.S. Patent applications, the disclosure of each being hereby incorporated by reference in their entirety: (1) U.S. Patent No. 7,111,769 to Kenneth S. Wales, Douglas B. Hoffman, Frederick E. Shelton IV, and Jeffrey S. Swayze, issued September 26, 2006, entitled "Surgical instrument Incorporating An Articulation Mechanism Having Rotation About the Longitudinal Axis"; (2) U.S. Patent No. 6,981,628 to Kenneth S. Wales, issued January 3, 2006, entitled "Surgical Instrument With A Lateral-Moving Articulation Control"; (3) U.S. Patent No. 7,055,731 to Frederick E. Shelton IV, Michael E. Setser, William B. Weisenburgh II, issued June 6, 2006 entitled "Surgical Stapling Instrument Incorporating A Tapered Firing Bar For Increased Flexibility Around The Articulation Joint"; (4) U.S. Patent Publication No. 2005/0006429 entitled "Surgical Stapling Instrument Having Articulation Joint Support Plates For Supporting A Firing Bar", Ser. No. 10/615,971, to Kenneth S. Wales and Joseph Charles Hueil, filed 9 July 2003, now U.S. Patent No. 6,964,363; and (5) U.S. Patent Application entitled "Surgical Stapling Instrument Incorporating An Articulation Joint For a Firing Bar Track", Ser. No. 10/615,962, to Brian J. Hemmelgarn, filed 9 July 2003. Those of ordinary skill in the art will readily understand, however, that the unique and novel aspects of various features of the present invention may be employed in connection with other types of articulating surgical instruments without departing from the spirit and scope of the present invention.

## REMARKS

The Official Action provides that restriction to one of the following inventions is required under 35 U.S.C. § 121:

I. Claims 1-10 and 12-20, drawn to a surgical stapler having a lockout, classified in class 227, subclass 175.3.

II. Claim 11, drawn to a method of processing a surgical instrument, classified in class 606, subclass 139.

Responsive to this restriction requirement and without admitting or acquiescing to any of the statements made in the Official Action, Applicant hereby elects Invention 1, claims 1-10 and 12-20. Applicant expressly reserves the right to pursue patent protection for the subject matter of the non-elected claim that is ultimately deemed withdrawn in divisional application(s). Applicant's election made herein should not be taken as a disclaimer or abandonment of subject matter.

The subject application identifies the related U.S. Patent Applications listed below. The current status of each of those Applications as of the filing date of this Amendment is herewith provided.

U.S. Patent Application Serial No. 11/729,013; **Status:** A non-final Action was mailed on January 11, 2008. An Amendment was filed on April 10, 2008.

In addition, the following commonly owned U.S. Patent Application was cited in Paragraph [00116] of the subject application:

U.S. Patent Application Serial No. 10/615,962; **Status:** Issued as U.S. Patent No. 6,786,382 on September 7, 2004.

Applicant also owns the following pending patent applications:

1. U.S. Patent Application Serial No. 11/497,936, filed August 2, 2006, entitled PNEUMATICALLY POWERED SURGICAL CUTTING AND FASTENING INSTRUMENT WITH MANUALLY OPERATED RETRACTION APPARATUS; Inventors: Shelton et al.

*Application Serial No. 11/729,355*  
*Response dated July 10, 2008*  
*Reply to Official Action of June 16, 2008*

**Status:** A Notice of Allowance was mailed on July 8, 2008.

2. U.S. Patent Application Serial No. 11/498,282, filed August 2, 2006, entitled PNEUMATICALLY POWERED SURGICAL CUTTING AND FASTENING INSTRUMENT WITH MECHANICAL LINKAGE COUPLING END EFFECTOR AND TRIGGER MOTION; Inventors: Shelton et al. **Status:** A Notice of Allowance was mailed on June 3, 2008.

3. U.S. Patent Application Serial No. 12/008,266, filed January 10, 2008, entitled SURGICAL STAPLING INSTRUMENT WITH A FIRING MEMBER RETURN MECHANISM; Inventors: Boudreaux. **Status:** No action on the merits has been received to date.

4. U.S. Patent Application Serial No. 12/008,303, filed January 10, 2008, entitled SURGICAL STAPLING INSTRUMENT WITH A GEARED RETURN MECHANISM; Inventors: Boudreaux. **Status:** No action on the merits has been received to date.

5. U.S. Patent Application Serial No. 11/809,935, filed June 4, 2007, entitled SURGICAL INSTRUMENT HAVING A COMMON TRIGGER FOR ACTUATING AN END EFFECTOR CLOSING SYSTEM AND A STAPLE FIRING SYSTEM; Inventors: Shelton et al. **Status:** No action on the merits has been received to date.

6. U.S. Patent Application Serial No. 11/821,347, filed June 22, 2007, entitled SURGICAL STAPLING INSTRUMENT WITH A RETURN MECHANISM; Inventors: Boudreaux. **Status:** A Notice of Allowance was mailed on June 18, 2008.

7. U.S. Patent Application Serial No. 12/031,368, filed February 14, 2008, entitled SURGICAL STAPLING APPARATUS WITH LOAD-SENSITIVE FIRING MECHANISM; Inventors: Hueil et al. **Status:** No action on the merits has been received to date.

8. U.S. Patent Application Serial No. 12/030,974, filed February 14, 2008, entitled SURGICAL STAPLING APPARATUS WITH RETRACTABLE FIRING SYSTEMS; Inventors: Hueil et al. **Status:** No action on the merits has been received to date.

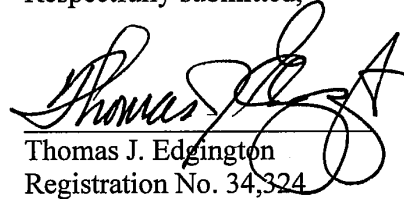
*Application Serial No. 11/729,355  
Response dated July 10, 2008  
Reply to Official Action of June 16, 2008*

Copies of the foregoing documents may be obtained from the Patent Office's PAIR database or will be supplied by Applicant upon request.

Applicant is also herewith filing an Information Disclosure Statement. Consideration of the art cited therein is respectfully solicited.

Examination of the elected claims and passage to allowance thereof at an early date are earnestly solicited. However, if the Examiner has any remaining concerns regarding Applicant's present Response, the Examiner is invited to contact the Applicant's undersigned attorney at the telephone number listed below so that those concerns may be expeditiously addressed.

Respectfully submitted,



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Registration No. 34,324

Attorney for Applicant

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(412) 355-8303

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				Filing Date	March 28, 2007
				First Named Inventor	Christopher J. Schall
				Art Unit	3721
				Examiner Name	Scott A. Smith
Sheet	1	of	9	Attorney Docket Number	END5915USNP/060330

U.S. PATENT DOCUMENTS						
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		Number - Kind Code <sup>2</sup> (if known)				
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		2004/0108357	A1	06-10-2004	Milliman et al.	
		2004/0164123	A1	08-26-2004	Racenet et al.	
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				Art Unit	3721
				Examiner Name	Scott A. Smith
Sheet	2	of	9	Attorney Docket Number	END5915USNP/060330

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		2008/0078805 A1	04-03-2008	Omaits et al.	
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		Number - Kind Code <sup>2</sup> (if known)				
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Substitute for form 1449A/PTO				<b>Complete if Known</b>	
				Application Number	11/729,355
<b>INFORMATION DISCLOSURE STATEMENT BY APPLICANT</b>				Filing Date	March 28, 2007
				First Named Inventor	Christopher J. Schall
				Art Unit	3721
				Examiner Name	Scott A. Smith
(use as many sheets as necessary)				Attorney Docket Number	END5915USNP/060330
Sheet	5	of	9		

U.S. PATENT DOCUMENTS					
Examiner Initials*	Cite No. <sup>1</sup>	Document Number	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number - Kind Code <sup>2</sup> (if known)			
		5,651,491	07-29-1997	Heaton et al.	
		5,653,373	08-05-1997	Green et al.	
		5,653,374	08-05-1997	Young et al.	
		5,655,698	08-12-1997	Yoon	
		5,657,921	08-19-1997	Young et al.	
		5,662,258	09-02-1997	Knodel et al.	
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		5,669,544	09-23-1997	Schulze et al.	
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		5,673,841	10-07-1997	Schulze et al.	
		5,680,981	10-28-1997	Millili et al.	
		5,680,982	10-28-1997	Schulze et al.	
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		5,732,871	03-31-1998	Clark et al.	
		5,743,456	04-28-1998	Jones et al.	
		5,779,130	07-14-1998	Alesi et al.	
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		5,785,232	07-28-1998	Vidal et al.	
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		5,826,776	10-27-1998	Schulze et al.	
		5,836,503	11-17-1998	Ehrensfels et al.	
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		5,901,895	05-11-1999	Heaton et al.	
		5,941,442	08-24-1999	Geiste et al.	

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				Application Number	11/729,355
<b>INFORMATION DISCLOSURE STATEMENT BY APPLICANT</b>				Filing Date	March 28, 2007
				First Named Inventor	Christopher J. Schall
				Art Unit	3721
				Examiner Name	Scott A. Smith
(use as many sheets as necessary)				Attorney Docket Number	END5915USNP/060330
Sheet	6	of	9		

U.S. PATENT DOCUMENTS					
Examiner Initials*	Cite No. <sup>1</sup>	Document Number	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number - Kind Code <sup>2</sup> (if known)			
		5,954,259	09-21-1999	Viola et al.	
		6,010,054	01-04-2000	Johnson et al.	
		6,032,849	03-07-2000	Mastri et al.	
		6,202,914 B1	03-20-2001	Geiste et al.	
		6,241,139 B1	06-05-2001	Milliman et al.	
		6,250,532 B1	06-26-2001	Green et al.	
		6,619,529 B2	09-16-2003	Green et al.	
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		6,843,403 B2	01-18-2005	Whitman	
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		6,905,057 B2	06-14-2005	Swayze et al.	
		6,945,444 B2	09-20-2005	Gresham et al.	
		6,953,138 B1	10-11-2005	Dworak et al.	
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		6,988,650 B2	01-24-2006	Schwemberger et al.	
		7,000,819 B2	02-21-2006	Swayze et al.	
		7,032,798 B2	04-05-2006	Whitman et al.	
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				Application Number	11/729,355
				Filing Date	March 28, 2007
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				Art Unit	3721
				Examiner Name	Scott A. Smith
Sheet	7	of	9	Attorney Docket Number	END5915USNP/060330

U.S. PATENT DOCUMENTS					
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		Number - Kind Code <sup>2</sup> (if known)			
		7,328,828 B2	02-12-2008	Ortiz et al.	
		7,354,447 B2	04-08-2008	Shelton, IV et al.	

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		Country Code <sup>3</sup> -Number <sup>4</sup> -Kind Code <sup>5</sup> (if known)				
		CA 2458946 A1	03-13-2003	Weadock		
		DE 20112837 U1 (English Translation)	10-04-2001	Aesculap AG & Co. KG		✓
		DE 20121753 U1 (English Translation)	04-17-2003	BEMA GmbH & Co. KG		✓
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		EP 0537572 B1	06-23-1999	Green et al.		
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		JP 2005505322 T (English Abstract)	02-24-2005	Weadock		

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		Country Code <sup>3</sup> -Number <sup>4</sup> -Kind Code <sup>5</sup> (if known)					
		RU 2187249 C2 (English Abstract)		08-20-2002	Vorob'ev		
		RU 2225170 C2 (English Abstract)		03-10-2004	Dubrovskij		
		SU 1377053 A1 (English Translation)		02-28-1988	Sakhautdinov et al.		√
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		WO 99/12483 A1		03-18-1999	Hipps		
		WO 00/057796 A1		10-05-2000	Rosenblatt et al.		
		WO 02/098302 A1		12-12-2002	Cummins		
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		WO 2006/044810 A2		04-27-2006	Viola		
		WO 2006/132992 A1		12-14-2006	Viola et al.		
		WO 2007/016290 A2		02-08-2007	Whitman et al.		

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Sheet	9	of	9		

NON PATENT LITERATURE DOCUMENTS			
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		Disclosed Anonymously, "Motor-Driven Surgical Stapler Improvements," Research Disclosure Database Number 526041, Published: February 2008.	
		C.C. Thompson et al., "Peroral Endoscopic Reduction of Dilated Gastrojejunal Anastomosis After Roux-en-Y Gastric Bypass: A Possible New Option for Patients with Weight Regain," Surg Endosc (2006) Vol. 20, pp. 1744-1748.	

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<b>EFS ID:</b>	3593191
<b>Application Number:</b>	11729355
<b>International Application Number:</b>	
<b>Confirmation Number:</b>	6426
<b>Title of Invention:</b>	Surgical stapling and cutting instrument with manually retractable firing member
<b>First Named Inventor/Applicant Name:</b>	Christopher J. Schall
<b>Customer Number:</b>	26285
<b>Filer:</b>	Thomas J. Edgington/Mona Cornelia
<b>Filer Authorized By:</b>	Thomas J. Edgington
<b>Attorney Docket Number:</b>	END5915USNP/060330
<b>Receipt Date:</b>	10-JUL-2008
<b>Filing Date:</b>	28-MAR-2007
<b>Time Stamp:</b>	15:02:05
<b>Application Type:</b>	Utility under 35 USC 111(a)

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### File Listing:

Document Number	Document Description	File Name	File Size(Bytes) /Message Digest	Multi Part /.zip	Pages (if appl.)
1	Miscellaneous Incoming Letter	Amendment_Transmittal.pdf	254540 e10fb46578434149fe49d2f0774d175f4f4bfc00	no	4

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2		Amendment_and_RRR.pdf	539494 1516d6661750417cb79714dede4e4fee 46112b17	yes	6
<b>Multipart Description/PDF files in .zip description</b>					
		<b>Document Description</b>	<b>Start</b>	<b>End</b>	
		Response to Election / Restriction Filed	1	1	
		Specification	2	3	
		Applicant Arguments/Remarks Made in an Amendment	4	6	
<b>Warnings:</b>					
<b>Information:</b>					
3		3rd_Supplemental_IDS.pdf	1433443 98dc4f8e850e3fb2d163bee4b26bf0a00 12ae728	yes	11
<b>Multipart Description/PDF files in .zip description</b>					
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		Information Disclosure Statement (IDS) Filed	3	11	
<b>Warnings:</b>					
<b>Information:</b>					
4	Foreign Reference	CA2458946A1.pdf	1325907 4a22de4faa092de3bf465e961616c543 dc048c4e	no	41
<b>Warnings:</b>					
<b>Information:</b>					
5	Foreign Reference	DE20112837U1_Translation. pdf	2129697 c48a57af62719d663cb8d30bab4567a6 4dcf336a	no	33
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<b>Information:</b>					
6	Foreign Reference	DE20121753U1_Translation. pdf	2458524 c0fedc02083d083dc73f0b6c7b8f901bb 050b14	no	37
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<b>Information:</b>					
7	Foreign Reference	DE273689C_Translation.pdf	495486 7b28d4f8b1598b57d9012c229c9a4b30 d90ba062	no	7
<b>Warnings:</b>					



<b>Information:</b>					
8	Foreign Reference	EP0537572B1.pdf	788675	no	14
			718e9757144d2e01501eea38cb1ef1bf6b6caf6e		
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<b>Information:</b>					
9	Foreign Reference	EP0541987B1.pdf	2232827	no	34
			8bff56d6659024a71f3583840a067ca05ce69587		
<b>Warnings:</b>					
<b>Information:</b>					
10	Foreign Reference	EP0625335B1.pdf	1681098	no	33
			487f0ecc1141b2520793d966e4eddea01104bfb5		
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<b>Information:</b>					
11	Foreign Reference	EP0646357A1.pdf	608321	no	12
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<b>Information:</b>					
12	Foreign Reference	EP0648476B1.pdf	2156189	no	39
			5ebb8d29f9c03dc7deddcf575dbe3a06d1734d2a		
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<b>Information:</b>					
13	Foreign Reference	EP0669104A1.pdf	994345	no	17
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<b>Information:</b>					
14	Foreign Reference	EP0702937A1.pdf	641919	no	12
			81e4547dfaa227b5ffe4c53b12fcc6bd7caccdad		
<b>Warnings:</b>					
<b>Information:</b>					
15	Foreign Reference	EP0770355A1.pdf	1377766	no	27
			328b18d563cd5d19751bd6c618be7aa5bfd20941d		
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<b>Information:</b>					
16	Foreign Reference	EP0878169A1.pdf	1033840	no	22
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<b>Information:</b>					
17	Foreign Reference	EP1300117B1.pdf	2192181	no	49
			6d6420260cce13c28b303d5572705f2823e71964		
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<b>Information:</b>					
18	Foreign Reference	EP1479345A1.pdf	1453680	no	34
			db54b65159b9caa8a96fa0ffe7994661fa0d0d80		
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<b>Information:</b>					
19	Foreign Reference	EP1479347A1.pdf	1369124	no	31
			cbf116c22f51f7d5d14ec225ebf6cc1cf10b9746		
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20	Foreign Reference	EP1479348A1.pdf	1567724	no	35
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21	Foreign Reference	EP1557129A1.pdf	776001	no	17
			704b3ba961ab58e77b158e81d83da3cc4e4fb48a		
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22	Foreign Reference	EP1652481A2.pdf	2033022	no	37
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23	Foreign Reference	EP1728473A1.pdf	371054	no	11
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24	Foreign Reference	EP1728475A2.pdf	1722174	no	32
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<b>Information:</b>					
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26	Foreign Reference	GB2336214A.pdf	201992	no	5
			e5030c9ef4ff6c8d03c8775051a74b625aa1287		
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<b>Information:</b>					
27	Foreign Reference	JP2005505322EngAb.pdf	12415	no	1
			f866ca71b3a6d8801cde19d31c2c366df3d5e104		
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<b>Information:</b>					
28	Foreign Reference	RU2187249C2.pdf	229572	no	5
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<b>Information:</b>					
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30	Foreign Reference	SU1377053A1_Translation.pdf	791282	no	9
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31	Foreign Reference	SU1561964A1_Translation.pdf	612976	no	7
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32	Foreign Reference	SU1722476A1_Translation.pdf	1156354	no	13
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<b>Information:</b>					
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47	Foreign Reference	WO2004047653A2.pdf	1176885	no	35
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56	NPL Documents	Research_Disclosure_No_5 26041.pdf	1578293	no	10
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57	NPL Documents	Thompson.pdf	195550	no	5
			795527f1eac6fe857fe0ba82f114a59f75904320		
<b>Warnings:</b>					
<b>Information:</b>					
<b>Total Files Size (in bytes):</b>			91527067		
<p><b>This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.</b></p> <p><b><u>New Applications Under 35 U.S.C. 111</u></b>  If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.</p> <p><b><u>National Stage of an International Application under 35 U.S.C. 371</u></b>  If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.</p> <p><b><u>New International Application Filed with the USPTO as a Receiving Office</u></b>  If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.</p>					

END5915USNP/060330  
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Art Unit 3721

Examiner Scott A. Smith :

In re application of  
Christopher J. Schall et al. :

Serial No. 11/729,355 : SURGICAL STAPLING AND  
CUTTING INSTRUMENT WITH  
MANUALLY RETRACTABLE FIRING  
MEMBER

Filed March 28, 2007 :

: Group No. 3700

Pittsburgh, Pennsylvania 15222

July 10, 2008

**VIA ELECTRONIC MAIL**

**Mail Stop: Amendment  
Commissioner for Patents  
P.O. Box: 1450  
Alexandria, VA 22313-1450**

**AMENDMENT TRANSMITTAL**

1. Transmitted herewith is an amendment for this application.

**STATUS**

2. Applicant is

A statement that this filing is by a small entity is hereby asserted in accordance with the rule change effective September 8, 2000, 65 Fed. Reg. 54603.

other than a small entity.

## EXTENSION OF TERM

**NOTE:** "Extension of Time in Patent Cases (Supplement Amendments) - If a timely and complete response has been filed after a Non-Final Office Action, an extension of time is not required to permit filing and/or entry of an additional amendment after expiration of the shortened statutory period.

*If a timely response has been filed after a Final Office Action, an extension of time is required to permit filing and/or entry of a Notice of Appeal or filing and/or entry of an additional amendment after expiration of the shortened statutory period unless the timely-filed response placed the application in condition for allowance. Of course, if a Notice of Appeal has been filed within the shortened statutory period, the period has ceased to run." Notice of December 10, 1985 (1061 O.G. 34-35).*

**NOTE:** See 37 CFR 1.645 for extensions of time in interference proceedings, and 37 CFR 1.550(c) for extensions of time in reexamination proceedings.

3. The proceedings herein are for a patent application and the provisions of 37 CFR 1.136 apply.

(complete (a) or (b), as applicable)

(a)  Applicant petitions for an extension of time under 37 CFR 1.136  
(fees: 37 CFR 1.17(a)-(d) for the total number of months checked below:

Extension (months)	Fee for other than <u>small entity</u>	Fee for <u>small entity</u>
<input type="checkbox"/> one month	\$ 120.00	\$ 60.00
<input type="checkbox"/> two months	\$ 460.00	\$230.00
<input type="checkbox"/> three months	\$1,050.00	\$525.00
<input type="checkbox"/> four months	\$1,640.00	\$820.00

**Fee: \$ \_\_\_\_\_**

If an additional **extension** of time is required, please consider this a petition therefor.

(check and complete the next item, if applicable)

An extension for \_\_\_\_\_ months has already been secured and the fee paid therefor of \$ \_\_\_\_\_ is deducted from the total fee due for the total months of extension now requested.

Extension fee due with this request \$ \_\_\_\_\_

**OR**

(b)  Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition for extension of time.



### FEE FOR CLAIMS

4. The fee for claims (37 CFR 1.16(b)-(d)) has been calculated as shown below:

	(Col. 1)		(Col. 2)		(Col. 3)	SMALL ENTITY		OTHER THAN A SMALL ENTITY		
	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NO PREVIOUSLY PAID FOR		PRESENT EXTRA	RATE	ADDIT. FEE	OR	RATE	ADDIT. FEE
TOTAL	20 •	MINUS	20 ••		=0	X25=	\$0		X50=	\$0
INDEP.	3 •	MINUS	3 •••		= 0	X105=	\$0		X210=	\$0
<input type="checkbox"/>	FIRST PRESENTATION OF MULTIPLE DEP. CLAIM					+185=	\$		+370=	\$0
						TOTAL ADDIT. FEE	\$0	OR	TOTAL ADDIT. FEE	\$0

- If the entry in Col. 1 is less than entry in Col. 2, write “)” in Col. 3.
- If the “Highest No. Previously Paid for” IN THIS SPACE is less than 20, enter “20.”
- If the “Highest No. Previously Paid for” IN THIS SPACE is less than 3, enter “3.”  
The “Highest No. Previously Paid for” (Total or indep.) is the highest number found in the appropriate box in Col. 1 of a prior amendment or the number of claims originally filed.

**WARNING** "After final rejection or action (§ 1.113) amendments may be made cancelling claims or complying with any requirement of form which has been made." 37 CFR § 1.116(a) (emphasis added).

Complete (c) or (d), as applicable)

(c)  No additional fee for claims is required.

**OR**

(d)  Total additional fee for claims required \$ \_\_\_\_\_

### FEE PAYMENT

5.  Attached is a check in the sum of \$ \_\_\_\_\_

Charge Account No. \_\_\_\_\_ the sum of \$ \_\_\_\_\_

**FEE DEFICIENCY**

*NOTE: If there is a fee deficiency and there is no authorization to charge an account, additional fees are necessary to cover the additional time consumed in making up the original deficiency. If the maximum, six-month period has expired before the deficiency is noted and corrected, the application is held abandoned. In those instances where authorization to charge is included, processing delays are encountered in returning the papers to the PTO Finance Branch in order to apply these charges prior to action on the cases. Authorization to charge the deposit account for any fee deficiency should be checked. See the Notice of April 7, 1986, (1065 O.G. 31-33).*

6.  If any additional extension and/or fee is required, charge Account No. 11-1110.

**AND/OR**

7.  If any additional fee for claims is required, charge Account No. 11-1110.



SIGNATURE OF ATTORNEY

Reg. No.: 34,324

Tel. No.: (412) 355-8303

Customer No. 26285

Thomas J. Edgington  
*(type or print name of attorney)*

K&L Gates LLP  
P.O. Address  
Henry W. Oliver Building  
535 Smithfield Street  
Pittsburgh, PA 15222-2312

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Examiner: Scott A. Smith :  
In re application of : SURGICAL STAPLING AND CUTTING  
Christopher J. Schall et al. : INSTRUMENT WITH MANUALLY  
Group Art Unit No. 3721 : RETRACTABLE FIRING MEMBER  
Serial No.: 11/729,355 : Filing Date: March 28, 2007

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT

Pittsburgh, Pennsylvania 15222

July 10, 2008

VIA ELECTRONIC MAIL

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

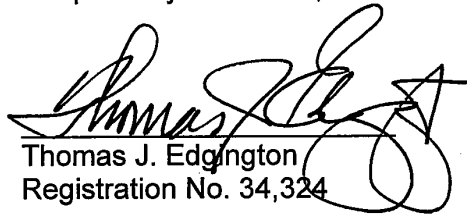
Sir:

Assignee of the entire right, title and interest in and to the above-captioned application (hereinafter "Applicant"), in accordance with the duty of disclosure pursuant to 37 C.F.R. § 1.56, hereby advises the United States Patent and Trademark Office of the references listed on the accompanying forms PTO/SB/08A and PTO/SB/08B (substitute for 1449A/PTO) *Information Disclosure Statement by Applicant*. A copy of each of the non-U.S. patent references cited therein is herewith enclosed.

Applicant notes that although the cited references may be relevant to the examination of the above-referenced application, under 37 C.F.R. § 1.97(h), the filing of this *Information Disclosure Statement* "shall not be construed to be an admission that the information cited in the statement is, or is considered to be, material to patentability as defined in § 1.56(b)."

Applicants submit that no fee is necessary for consideration of this *Information Disclosure Statement* under 37 C.F.R. §1.97(b)(3). Nevertheless, the Office is hereby authorized to charge Account No. 11-1110 for any fees necessary for consideration of this *Information Disclosure Statement*.

Respectfully submitted,



Thomas J. Edgington  
Registration No. 34,324

Attorney for Applicant

K&L Gates LLP  
Henry W. Oliver Building  
535 Smithfield Street  
Pittsburgh, Pennsylvania 15222-2312

(412) 355-8303  
(412) 355-6501 (FAX)



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO. Includes fields for EXAMINER (SMITH, SCOTT A), ART UNIT (3721), PAPER NUMBER, MAIL DATE (06/16/2008), and DELIVERY MODE (PAPER).

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-10 and 12-20, drawn to a surgical stapler having a lockout, classified in class 227, subclass 175.3.
  - II. Claim 11, drawn to a method of processing a surgical instrument, classified in class 606, subclass 139.

It should be noted that claim 11 is being treated as an independent claim including the subject matter of claim 1 from which it improperly depends.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions of group I and II are related as process and apparatus for its practice.

The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process.

(MPEP § 806.05(e)). In this case the apparatus need not be sterilized or stored in a container. Further, the method could be performed on virtually any surgical instrument.

3. Restriction for examination purposes as indicated is proper because all these inventions listed in this action are independent or distinct for the reasons given above and there would be a serious search and examination burden if restriction were not required because one or more of the following reasons apply:

- (a) the inventions have acquired a separate status in the art in view of their different classification;

- (b) the inventions have acquired a separate status in the art due to their recognized divergent subject matter;
- (c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries);
- (d) the prior art applicable to one invention would not likely be applicable to another invention;
- (e) the inventions are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

**Applicant is advised that the reply to this requirement to be complete must include (i) an election of a invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.**

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention.



If claims are added after the election, applicant must indicate which of these claims are readable upon the elected invention.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

4. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott A. Smith whose telephone number is 571-272-4469. The examiner can normally be reached on 5:30-4:00 Tues.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

S. smith

/Scott A. Smith/  
Primary Examiner, Art Unit 3721

**Index of Claims**



Application/Control No.

11/729,355

Examiner

Scott A. Smith

Applicant(s)/Patent under Reexamination

SCHALL ET AL.

Art Unit

3721

√	Rejected
=	Allowed

-	(Through numeral) Cancelled
+	Restricted

N	Non-Elected
I	Interference

A	Appeal
O	Objected

Claim		Date			
Final	Original	6/11/08			
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Claim		Date			
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## UNITED STATES PATENT AND TRADEMARK OFFICE

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 P.O. Box 1450  
 Alexandria, Virginia 22313-1450  
 www.uspto.gov

## BIB DATA SHEET

CONFIRMATION NO. 6426

<b>SERIAL NUMBER</b> 11/729,355	<b>FILING or 371(c) DATE</b> 03/28/2007 <b>RULE</b>	<b>CLASS</b> 227	<b>GROUP ART UNIT</b> 3721	<b>ATTORNEY DOCKET NO.</b> END5915USNP/060330		
<b>APPLICANTS</b> Christopher J. Schall, Cincinnati, OH; Chad P. Boudreaux, Cincinnati, OH;						
<b>** CONTINUING DATA *****</b>						
<b>** FOREIGN APPLICATIONS *****</b>						
<b>** IF REQUIRED, FOREIGN FILING LICENSE GRANTED **</b> 04/18/2007						
Foreign Priority claimed <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	35 USC 119(a-d) conditions met <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Met after Allowance Initials _____	<b>STATE OR COUNTRY</b> OH	<b>SHEETS DRAWINGS</b> 25	<b>TOTAL CLAIMS</b> 20	<b>INDEPENDENT CLAIMS</b> 3
<b>ADDRESS</b> KIRKPATRICK & LOCKHART PRESTON GATES ELLIS LLP 535 SMITHFIELD STREET PITTSBURGH, PA 15222 UNITED STATES						
<b>TITLE</b> Surgical stapling and cutting instrument with manually retractable firing member						
<b>FILING FEE RECEIVED</b> 1130	FEES: Authority has been given in Paper No. _____ to charge/credit DEPOSIT ACCOUNT No. _____ for following:		<input type="checkbox"/> All Fees <input type="checkbox"/> 1.16 Fees (Filing) <input type="checkbox"/> 1.17 Fees (Processing Ext. of time) <input type="checkbox"/> 1.18 Fees (Issue) <input type="checkbox"/> Other _____ <input type="checkbox"/> Credit			

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Examiner: Scott A. Smith :  
  
In re application of : SURGICAL STAPLING AND CUTTING  
Christopher Schall : INSTRUMENT WITH MANUALLY  
Group Art Unit No. 3721 : RETRACTABLE FIRING MEMBER  
  
Serial No.: 11/729,355 : Filing Date: March 28, 2007

INFORMATION DISCLOSURE STATEMENT

Pittsburgh, Pennsylvania 15222

October 31, 2007

VIA ELECTRONIC MAIL

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

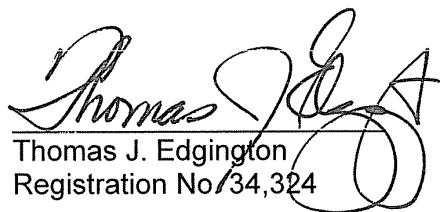
Sir:

Assignee of the entire right, title and interest in and to the above-captioned application (hereinafter "Applicant"), in accordance with the duty of disclosure pursuant to 37 C.F.R. § 1.56, hereby advises the United States Patent and Trademark Office of the references listed on the accompanying forms PTO/SB/08A and PTO/SB/08B (substitute for 1449A/PTO) *Information Disclosure Statement by Applicant*. A copy of each of the non-U.S. patent references cited therein is herewith enclosed.

Applicant notes that although the cited references may be relevant to the examination of the above-referenced application, under 37 C.F.R. § 1.97(h), the filing of this *Information Disclosure Statement* "shall not be construed to be an admission that the information cited in the statement is, or is considered to be, material to patentability as defined in § 1.56(b)."

Applicants submit that no fee is necessary for consideration of this *Information Disclosure Statement* under 37 C.F.R. §1.97(b)(1). Nevertheless, the Office is hereby authorized to charge Account No. 11-1110 for any fees necessary for consideration of this *Information Disclosure Statement*.

Respectfully submitted,

  
Thomas J. Edgington  
Registration No. 34,324

Attorney for Applicant

Kirkpatrick & Lockhart Preston Gates Ellis LLP  
Henry W. Oliver Building  
535 Smithfield Street  
Pittsburgh, Pennsylvania 15222-2312

(412) 355-8303  
(412) 355-6501 (FAX)







## Electronic Acknowledgement Receipt

<b>EFS ID:</b>	2400738
<b>Application Number:</b>	11729355
<b>International Application Number:</b>	
<b>Confirmation Number:</b>	6426
<b>Title of Invention:</b>	Surgical stapling and cutting instrument with manually retractable firing member
<b>First Named Inventor/Applicant Name:</b>	Christopher J. Schall
<b>Customer Number:</b>	26285
<b>Filer:</b>	Thomas J. Edgington/Mona Cornelia
<b>Filer Authorized By:</b>	Thomas J. Edgington
<b>Attorney Docket Number:</b>	END5915USNP/060330
<b>Receipt Date:</b>	31-OCT-2007
<b>Filing Date:</b>	28-MAR-2007
<b>Time Stamp:</b>	13:34:36
<b>Application Type:</b>	Utility under 35 USC 111(a)

### Payment information:

Submitted with Payment	no
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<p><b>This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.</b></p> <p><b><u>New Applications Under 35 U.S.C. 111</u></b>  If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.</p> <p><b><u>National Stage of an International Application under 35 U.S.C. 371</u></b>  If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.</p> <p><b><u>New International Application Filed with the USPTO as a Receiving Office</u></b>  If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.</p>					

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Examiner: Scott A. Smith :  
  
In re application of : SURGICAL STAPLING AND CUTTING  
Christopher Schall : INSTRUMENT WITH MANUALLY  
Group Art Unit No. 3721 : RETRACTABLE FIRING MEMBER  
  
Serial No.: 11/729,355 : Filing Date: March 28, 2007

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT

Pittsburgh, Pennsylvania 15222

October 31, 2007

VIA ELECTRONIC MAIL

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

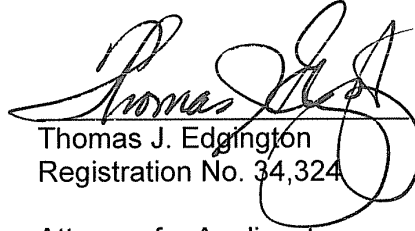
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Assignee of the entire right, title and interest in and to the above-captioned application (hereinafter "Applicant"), in accordance with the duty of disclosure pursuant to 37 C.F.R. § 1.56, hereby advises the United States Patent and Trademark Office of the references listed on the accompanying form PTO/SB/08A (substitute for 1449A/PTO) *Information Disclosure Statement by Applicant*. A copy of each of the non-U.S. patent references cited therein is herewith enclosed.

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Respectfully submitted,



Thomas J. Edgington  
Registration No. 34,324

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Substitute for form 1449A/PTO  <b>INFORMATION DISCLOSURE STATEMENT BY APPLICANT</b>  <i>(use as many sheets as necessary)</i>				<b>Complete if Known</b>	
				Application Number	11/729,355
				Filing Date	March 28, 2007
				First Named Inventor	Christopher Schall
				Art Unit	3721
				Examiner Name	Scott A. Smith
Sheet	1	of	3	Attorney Docket Number	END5915USNP/060330

U.S. PATENT DOCUMENTS					
Examiner Initials*	Cite No. <sup>1</sup>	Document Number	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number - Kind Code <sup>2</sup> (if known)			

FOREIGN PATENT DOCUMENTS						
Examiner Initials*	Cite No. <sup>1</sup>	Foreign Patent Document	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T <sup>6</sup>
		Country Code <sup>3</sup> -Number <sup>4</sup> -Kind Code <sup>5</sup> (if known)				
		CA 2512960 A1	01-28-2006	Shelton et al.		
		CA 2514274 A1	01-28-2006	Shelton		
		DE 273689 C (English Abstract Unavailable)	05-08-1914	Sanitatsgeschäft M. Schaerer AG		
		DE 9412228 U (English Abstract)	09-22-1994	Rauh		
		DE 10314072 A1 (English Abstract)	10-21-2004	Mayenberger et al.		
		DE 20121753 U1 (English Abstract Unavailable)	04-17-2003	BEMA GmbH & Co. KG		
		DE 20112837 U1 (English Abstract Unavailable)	10-04-2001	Aesculap AG & Co. KG		
		DE 69328576 T2 (English Abstract)	01-04-2001	Hooven		
		EP 0033548 B1	05-14-1986	Green		
		EP 0122046 A1	10-17-1984	Mericle		
		EP 0392547 B1	12-27-1995	Vasconcelos et al.		
		EP 0484677 B2	06-12-1996	Green et al.		
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		EP 0552050 B1	05-10-2000	Hooven		
		EP 0552423 B1	01-07-1998	Green et al.		
		EP 0592244 B1	01-14-1998	Allen et al.		
		EP 0593920 A1	04-27-1994	Fontayne		
		EP 0600182 A2	06-08-1994	Green et al.		
		EP 0603472 B1	11-25-1998	Green et al.		
		EP 0630612 A1	12-28-1994	Byrne et al.		
		EP 0634144 A1	01-18-1995	Hooven et al.		
		EP 0639349 A2	02-22-1994	Guy et al.		
		EP 0646356 A2	04-05-1995	Williamson et al.		
		EP 0656188 B1	01-02-2003	Sorrentino et al.		

Examiner Signature	Date Considered
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\*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. <sup>1</sup> Applicant's unique citation designation number (optional). <sup>2</sup> See Kinds Codes of USPTO Patent Documents at [www.uspto.gov](http://www.uspto.gov) or MPEP 901.04. <sup>3</sup> Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). <sup>4</sup> For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. <sup>5</sup> Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST. 16 if possible. <sup>6</sup> Applicant is to place a check mark here if English language Translation is attached.

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Substitute for form 1449A/PTO  <b>INFORMATION DISCLOSURE STATEMENT BY APPLICANT</b>  <i>(use as many sheets as necessary)</i>				<b>Complete if Known</b>		
				Application Number	11/729,355	
				Filing Date	March 28, 2007	
				First Named Inventor	Christopher Schall	
				Art Unit	3721	
				Examiner Name	Scott A. Smith	
Sheet	2	of	3	Attorney Docket Number	END5915USNP/060330	

U.S. PATENT DOCUMENTS					
Examiner Initials*	Cite No. <sup>1</sup>	Document Number	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number - Kind Code <sup>2</sup> (if known)			

FOREIGN PATENT DOCUMENTS						
Examiner Initials*	Cite No. <sup>1</sup>	Foreign Patent Document	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	† <sup>6</sup>
		Country Code <sup>3</sup> -Number <sup>4</sup> -Kind Code <sup>5</sup> (if known)				
		EP 0667119 B1	07-17-1996	Cooper et al.		
		EP 0679367 A2	11-02-1995	Boiarski et al.		
		EP 0685204 A1	12-06-1995	Alesi et al.		
		EP 0699418 A1	03-06-1996	Young et al.		
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		EP 1064883 B1	08-17-2005	Hamilton et al.		
		EP 1086713 B1	05-19-2004	Tims et al.		
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		EP 1256317 B1	12-27-2006	Grant et al.		
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		EP 1426012 A1	06-09-2004	Alesi et al.		
		EP 1477119 A1	11-17-2004	Suzuki		
		EP 1479346 B1	01-10-2007	Shelton et al.		
		EP 1484024 B1 (English Abstract)	01-17-2007	Braun		
		EP 1520523 A1	04-06-2005	Shelton et al.		
		EP 1520525 A1	04-06-2005	Dalessandro et al.		

Examiner Signature	Date Considered
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\*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. <sup>1</sup> Applicant's unique citation designation number (optional). <sup>2</sup> See Kinds Codes of USPTO Patent Documents at [www.uspto.gov](http://www.uspto.gov) or MPEP 901.04. <sup>3</sup> Enter Office that issued the document, by the two-letter code (WIPO Standard ST 3). <sup>4</sup> For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. <sup>5</sup> Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST. 16 if possible. <sup>6</sup> Applicant is to place a check mark here if English language Translation is attached.

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## Electronic Acknowledgement Receipt

<b>EFS ID:</b>	2401129
<b>Application Number:</b>	11729355
<b>International Application Number:</b>	
<b>Confirmation Number:</b>	6426
<b>Title of Invention:</b>	Surgical stapling and cutting instrument with manually retractable firing member
<b>First Named Inventor/Applicant Name:</b>	Christopher J. Schall
<b>Customer Number:</b>	26285
<b>Filer:</b>	Thomas J. Edgington/Mona Cornelia
<b>Filer Authorized By:</b>	Thomas J. Edgington
<b>Attorney Docket Number:</b>	END5915USNP/060330
<b>Receipt Date:</b>	31-OCT-2007
<b>Filing Date:</b>	28-MAR-2007
<b>Time Stamp:</b>	13:40:54
<b>Application Type:</b>	Utility under 35 USC 111(a)

### Payment information:

Submitted with Payment	no
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<b>Total Files Size (in bytes):</b>				70568850	
<p><b>This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.</b></p> <p><b><u>New Applications Under 35 U.S.C. 111</u></b>  <b>If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.</b></p> <p><b><u>National Stage of an International Application under 35 U.S.C. 371</u></b>  <b>If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.</b></p> <p><b><u>New International Application Filed with the USPTO as a Receiving Office</u></b>  <b>If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.</b></p>					

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Examiner: Scott A. Smith :  
  
In re application of : SURGICAL STAPLING AND CUTTING  
Christopher Schall : INSTRUMENT WITH MANUALLY  
Group Art Unit No. 3721 : RETRACTABLE FIRING MEMBER  
  
Serial No.: 11/729,355 : Filing Date: March 28, 2007

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT

Pittsburgh, Pennsylvania 15222

October 31, 2007

VIA ELECTRONIC MAIL

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Commissioner for Patents  
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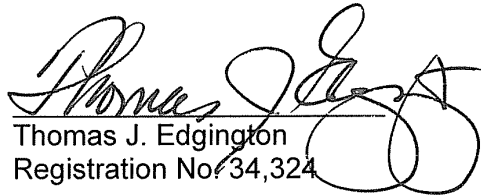
Assignee of the entire right, title and interest in and to the above-captioned application (hereinafter "Applicant"), in accordance with the duty of disclosure pursuant to 37 C.F.R. § 1.56, hereby advises the United States Patent and Trademark Office of the references listed on the accompanying form PTO/SB/08A (substitute for 1449A/PTO) *Information Disclosure Statement by Applicant*. A copy of each of the non-U.S. patent references cited therein is herewith enclosed.



Applicant notes that although the cited references may be relevant to the examination of the above-referenced application, under 37 C.F.R. § 1.97(h), the filing of this *Information Disclosure Statement* "shall not be construed to be an admission that the information cited in the statement is, or is considered to be, material to patentability as defined in § 1.56(b)."

Applicants submit that no fee is necessary for consideration of this *Information Disclosure Statement* under 37 C.F.R. §1.97(b)(1). Nevertheless, the Office is hereby authorized to charge Account No. 11-1110 for any fees necessary for consideration of this *Information Disclosure Statement*.

Respectfully submitted,

  
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Registration No. 34,324

Attorney for Applicant

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Substitute for form 1449A/PTO  <b>INFORMATION DISCLOSURE STATEMENT BY APPLICANT</b>  <i>(use as many sheets as necessary)</i>				<b>Complete if Known</b>	
				Application Number	11/729,355
				Filing Date	March 28, 2007
				First Named Inventor	Christopher Schall
				Art Unit	3721
				Examiner Name	Scott A. Smith
Sheet	1	of	2	Attorney Docket Number	END5915USNP/060330

U.S. PATENT DOCUMENTS						
Examiner Initials*	Cite No. <sup>1</sup>	Document Number		Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number - Kind Code <sup>2</sup> (if known)				

FOREIGN PATENT DOCUMENTS							
Examiner Initials*	Cite No. <sup>1</sup>	Foreign Patent Document		Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	† <sup>6</sup>
		Country Code <sup>3</sup> -Number <sup>4</sup> -Kind Code <sup>5</sup> (if known)					
		EP	1621141 A2	02-01-2006	Shelton		
		EP	1702567 A2	09-20-2006	Plyley et al.		
		FR	1112936 A (English Abstract Unavailable)	03-20-1956	Hainaut		
		GB	939929 A	10-16-1963	Vasili et al.		
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		JP	7051273 A (English Abstract)	02-28-1995	Byrne et al.		
		JP	8033641 A (English Abstract)	02-06-1996	Cooper et al.		
		JP	8229050 A (English Abstract)	09-10-1996	Williamson et al.		
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		WO	93/08755 A1	05-13-1993	Edwards et al.		
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		WO	98/30153 A1	07-16-1998	Gardiner et al.		
		WO	99/15086 A1	04-01-1999	Milliman et al.		
		WO	99/34744 A1	07-15-1999	Kearns et al.		
		WO	00/72762 A1	12-07-2000	Whitman		
		WO	00/72765 A1	12-07-2000	Whitman		
		WO	01/05702 A1	01-25-2001	Shimizu et al.		
		WO	01/010482 A1	02-15-2001	Rosenman		
		WO	01/62158 A2	08-30-2001	Whitman		
		WO	01/62162 A1	08-30-2001	Whitman		

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				Application Number		11/729,355	
				Filing Date		March 28, 2007	
				First Named Inventor		Christopher Schall	
				Art Unit		3721	
				Examiner Name		Scott A. Smith	
Sheet	2	of	2	Attorney Docket Number		END5915USNP/060330	

U.S. PATENT DOCUMENTS						
Examiner Initials*	Cite No. <sup>1</sup>	Document Number		Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number - Kind Code <sup>2</sup> (if known)				

FOREIGN PATENT DOCUMENTS							
Examiner Initials*	Cite No. <sup>1</sup>	Foreign Patent Document		Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	† <sup>6</sup>
		Country Code <sup>3</sup> -Number <sup>4</sup> -Kind Code <sup>5</sup> (if known)					
		WO 01/62164 A2		08-30-2001	Whitman		
		WO 01/91646 A1		12-06-2001	Bilotti et al.		
		WO 02/30297 A2		04-18-2002	Ehrenfels et al.		
		WO 02/43571 A2		06-06-2002	Whitman et al.		
		WO 02/067785 A2		09-06-2002	Emons		
		WO 03/000138 A2		01-03-2003	Whitman et al.		
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		WO 03/037193 A1 (English Abstr.)		05-08-2003	Viat et al.		
		WO 2003/047436 A3		06-12-2003	Whitman et al.		
		WO 03/057048 A1		07-17-2003	Whitman et al.		
		WO 03/057058 A1		07-17-2003	Mollenauer		
		WO 2003/063694 A1		08-07-2003	Whitman		
		WO 03/077769 A1		09-25-2003	Whitman et al.		
		WO 03/082126 A1		10-09-2003	Mooradian et al.		
		WO 03/088845 A2		10-30-2003	Heinrich		
		WO 03/090630 A2		11-06-2003	Heinrich et al.		
		WO 2003/094747 A1		11-20-2003	Viola		
		WO 03/101313 A1		12-11-2003	Hahnen et al.		
		WO 03/105702 A2		12-24-2003	Whitman et al.		
		WO 2004/032760 A2		04-22-2004	Roy		
		WO 2004/032762 A1		04-22-2004	Racenet		
		WO 2004/032763 A2		04-22-2004	Olson et al.		
		WO 2004/049956 A2		06-17-2004	Sutterlin et al.		
		WO 2004/096057 A2		11-11-2004	Scirica et al.		
		WO 2004/112618 A2		12-29-2004	Racenet et al.		
		WO 2005/027983 A2		03-31-2005	Bauman et al.		
		WO 2006/083748 A1		08-10-2006	Oray et al.		

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<b>EFS ID:</b>	2401600
<b>Application Number:</b>	11729355
<b>International Application Number:</b>	
<b>Confirmation Number:</b>	6426
<b>Title of Invention:</b>	Surgical stapling and cutting instrument with manually retractable firing member
<b>First Named Inventor/Applicant Name:</b>	Christopher J. Schall
<b>Customer Number:</b>	26285
<b>Filer:</b>	Thomas J. Edgington/Mona Cornelia
<b>Filer Authorized By:</b>	Thomas J. Edgington
<b>Attorney Docket Number:</b>	END5915USNP/060330
<b>Receipt Date:</b>	31-OCT-2007
<b>Filing Date:</b>	28-MAR-2007
<b>Time Stamp:</b>	13:47:32
<b>Application Type:</b>	Utility under 35 USC 111(a)

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Multipart Description/PDF files in .zip description					
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Information Disclosure Statement Letter			1	2	
Information Disclosure Statement (IDS) Filed			3	4	
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			917af52ae2132e21f9bb19f8eb18a70a902c6674		
<b>Warnings:</b>					
<b>Information:</b>					
15	Foreign Reference	WO9529639A1.pdf	767906	no	20
			e6c4064788bf60b776a460fb8e2a88e8ec59228b		
<b>Warnings:</b>					
<b>Information:</b>					
16	Foreign Reference	WO9635464A1.pdf	868784	no	23
			c4584432d5c938c7ab4d2409f4726aadef0a4117		
<b>Warnings:</b>					
<b>Information:</b>					
17	Foreign Reference	WO9830153A1.pdf	2627591	no	64
			3c46820f36a0733053c9349cac764b89b8c3c1f8		
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<b>Information:</b>					

18	Foreign Reference	WO9915086A1.pdf	3204027	no	83
			7bec7482113a03f371a8615ec8b200580103e87e		
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<b>Information:</b>					
19	Foreign Reference	WO9934744A1.pdf	1315952	no	33
			a394ecb056db45ac6adead37a226f06806a5629		
<b>Warnings:</b>					
<b>Information:</b>					
20	Foreign Reference	WO0072762A1.pdf	1527007	no	38
			afa2ea2345d5f9685a2e606b47787923ada2ae31		
<b>Warnings:</b>					
<b>Information:</b>					
21	Foreign Reference	WO0072765A1.pdf	1400516	no	32
			64bf1b27a10c5f657e867d5f5a1b12e56cod514f		
<b>Warnings:</b>					
<b>Information:</b>					
22	Foreign Reference	WO0105702A1.pdf	765136	no	19
			244d8e9a71609a1466146c055672b2a4d4ef179		
<b>Warnings:</b>					
<b>Information:</b>					
23	Foreign Reference	WO01010482A1.pdf	968072	no	33
			aa9de3ca69c2ef8f254ac2c6dd3c51f0de77a180		
<b>Warnings:</b>					
<b>Information:</b>					
24	Foreign Reference	WO0162158A2.pdf	820427	no	21
			a2bfd0d8f04a913c0d1b31554dee99cb72423fd0		
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<b>Information:</b>					
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<b>Warnings:</b>					
<b>Information:</b>					
26	Foreign Reference	WO0162164A2.pdf	1014106	no	24
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<b>Information:</b>					

27	Foreign Reference	WO0191646A1.pdf	1316422	no	31
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<b>Information:</b>					
28	Foreign Reference	WO0230297A2.pdf	2793353	no	62
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29	Foreign Reference	WO0243571A2.pdf	2703641	no	79
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<b>Information:</b>					
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<b>Information:</b>					
31	Foreign Reference	WO03000138A2.pdf	3603466	no	93
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33	Foreign Reference	WO0337193A1.pdf	676072	no	19
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34	Foreign Reference	WO2003047436A3.pdf	2827804	no	75
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			3c5297bcd866fda4598ed05bb02346b0634f0cc9		
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<b>Information:</b>					



36	Foreign Reference	WO03057058A1.pdf	1655295	no	44
			dc97858db87e1f470f01e9249b9f8088f92122b		
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38	Foreign Reference	WO03077769A1.pdf	3700793	no	116
			c1abd5f622020ff7478192ee00350bf5da1b5		
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<b>Information:</b>					
39	Foreign Reference	WO03082126A1.pdf	2156321	no	56
			9c110c369f69ad8488a4ff092389bfc2c89f3c3		
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			083c8e818cc5595e40d7487catd35183a374ab53		
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43	Foreign Reference	WO03101313A1.pdf	3530523	no	77
			225c3dd82a734a416dfd65b13fb32ee541e8993d		
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44	Foreign Reference	WO03105702A2.pdf	3740969	no	107
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<b>Warnings:</b>					
<b>Information:</b>					

45	Foreign Reference	WO2004032760A2.pdf	1152689 e0d5a6da3ecfb83bc3cbe35b1137102 1f82e348	no	34
<b>Warnings:</b>					
<b>Information:</b>					
46	Foreign Reference	WO2004032762A1.pdf	1332033 20f2584a5dcf09081b0ef133df95e8f87c4 7b500b	no	42
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<b>Information:</b>					
47	Foreign Reference	WO2004032763A2.pdf	2094488 1a1ee4318a7e6c34f47c70fd853b6f7f 87412d9	no	65
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<b>Information:</b>					
48	Foreign Reference	WO2004049956A2.pdf	973160 21a657bac0d872fa71cb4ea856cad5e5 4ecc6a36	no	28
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<b>Information:</b>					
49	Foreign Reference	WO2004096057A2.pdf	2201962 03123f21285addb82e87311920530576 b285a6a2	no	61
<b>Warnings:</b>					
<b>Information:</b>					
50	Foreign Reference	WO2004112618A2.pdf	3976159 192a6b9d8bcee7d6a39e237fa35feeb7 bod5e2d	no	95
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<b>Information:</b>					
51	Foreign Reference	WO2005027983A2.pdf	1774295 847a92e8b381a735529f9a5717ae3176 74eb054a	no	42
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52	Foreign Reference	WO2006083748A1.pdf	1230016 70ebf174b5f48f1a5bbb7cee110699d14 5eab3fe	no	27
<b>Warnings:</b>					
<b>Information:</b>					
<b>Total Files Size (in bytes):</b>				98438964	

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

**New Applications Under 35 U.S.C. 111**

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

**National Stage of an International Application under 35 U.S.C. 371**

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

**New International Application Filed with the USPTO as a Receiving Office**

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.



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Table with 7 columns: APPLICATION NUMBER, FILING or 371(c) DATE, GRP ART UNIT, FIL FEE REC'D, ATTY.DOCKET.NO, TOT CLAIMS, IND CLAIMS. Values: 11/729,355, 03/28/2007, 3721, 1130, END5915USNP/KLG.No.060330, 20, 3

CONFIRMATION NO. 6426

26285
KIRKPATRICK & LOCKHART PRESTON GATES ELLIS LLP
535 SMITHFIELD STREET
PITTSBURGH, PA15222

UPDATED FILING RECEIPT

Date Mailed: 06/15/2007

Receipt is acknowledged of this regular Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please mail to the Commissioner for Patents P.O. Box 1450 Alexandria Va 22313-1450. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).

Applicant(s)

Christopher J. Schall, Cincinnati, OH;
Chad P. Boudreaux, Cincinnati, OH;

Power of Attorney:

Philip Johnson--27200 Dean Garner--35877
Joseph Shirtz--31880 Victor Moreno--40732
Thomas Edgington--34324 Mark Knedeisen--42747
Gerry Gressel--34342 Roberto Capriotti--46599
Verne Kreger Jr--35231 Brian Geisler--54115

Domestic Priority data as claimed by applicant

Foreign Applications

If Required, Foreign Filing License Granted: 04/18/2007

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US11/729,355

Projected Publication Date: 10/02/2008

Non-Publication Request: No

Early Publication Request: No

Title

**Preliminary Class**

227

**PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES**

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at <http://www.uspto.gov/web/offices/pac/doc/general/index.html>.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, <http://www.stopfakes.gov>. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

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**LICENSE FOR FOREIGN FILING UNDER**

**Title 35, United States Code, Section 184**

**Title 37, Code of Federal Regulations, 5.11 & 5.15**

**GRANTED**

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign Assets Control, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

**NOT GRANTED**

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

06-05-07

(FW)



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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
11/729,355	03/28/2007	Christopher J. Schall	END5915USNP/KLG No. 06033

**CONFIRMATION NO. 6426**  
**FORMALITIES LETTER**

26285  
 KIRKPATRICK & LOCKHART PRESTON GATES ELLIS LLP  
 535 SMITHFIELD STREET  
 PITTSBURGH, PA 15222

Date Mailed: 04/18/2007

**NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION**

**FILED UNDER 37 CFR 1.53(b)**

*Filing Date Granted*

**Items Required To Avoid Abandonment:**

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The oath or declaration is missing. *A properly signed oath or declaration in compliance with 37 CFR 1.63, identifying the application by the above Application Number and Filing Date, is required.*  
*Note: If a petition under 37 CFR 1.47 is being filed, an oath or declaration in compliance with 37 CFR 1.63 signed by all available joint inventors, or if no inventor is available by a party with sufficient proprietary interest, is required.*

The applicant needs to satisfy supplemental fees problems indicated below.

The required item(s) identified below must be timely submitted to avoid abandonment:

- To avoid abandonment, a surcharge (for late submission of filing fee, search fee, examination fee or oath or declaration) as set forth in 37 CFR 1.16(f) of \$130 for a non-small entity, must be submitted with the missing items identified in this letter.

**SUMMARY OF FEES DUE:**

06/06/2007 WASFAW1 00000011 11729355

01 FC:1051

130.00 0P

Total additional fee(s) required for this application is **\$130** for a non-small entity

- **\$130** Surcharge.

Replies should be mailed to: Mail Stop Missing Parts

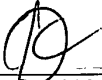
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Registered users of EFS-Web may alternatively submit their reply to this notice via EFS-Web.  
<https://sportal.uspto.gov/authenticate/AuthenticateUserLocalEPF.html>

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Office of Initial Patent Examination (571) 272-4000, or 1-800-PTO-9199

PART 2 - COPY TO BE RETURNED WITH RESPONSE





Practitioner's Docket No. END5915USNP/KLG No. 060330

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Christopher J. Schall et al.

Application No.: 11/729,355  
Filed: March 28, 2007

For: SURGICAL STAPLING AND CUTTING INSTRUMENT WITH MANUALLY RETRACTABLE FIRING MEMBER

Mail Stop: Missing Parts  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

COMPLETION OF FILING REQUIREMENTS  
--NONPROVISIONAL APPLICATION

(check and complete this item, if applicable)

- I.  This replies to the Notice to File Missing Parts of Application (PTO-1533) Mailed: April 18, 2007.
- A copy of the Notice to File Missing Parts of Application—Filing Date Granted (Form PTO-1533) is enclosed.

CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10\*

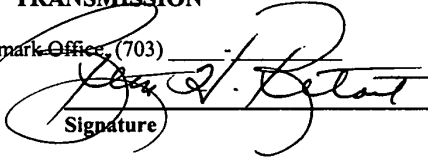
I hereby certify that, on the date shown below, this correspondence is being:

MAILING

- deposited within the United States Postal Service in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450  
37 C.F.R. § 1.8(a)
- with sufficient postage as first class mail.
- as "Express Mail Post Office to Addressee"  
37 C.F.R. § 1.10\*  
Mailing Label No. ER524402991US (mandatory)

TRANSMISSION

- facsimile transmitted to the Patent and Trademark Office, (703)

  
Signature

Date: June 4, 2007

Beth H. Retort  
(type or print name of person certifying)

**DECLARATION OR OATH**

- II.  No declaration or oath was filed. Enclosed is the original declaration or oath for this application.

**OR**

- The declaration or oath that was filed was determined to be defective. A new original oath or declaration is attached.

Attached is a

- (c)  Statement by a registered attorney that the application filed in the PTO is the application that the inventor executed by signing the declaration.
- (d)  Statement that the "attached" specification is a copy of the specification and any amendments thereto that were filed in the PTO to obtain the filing date.

**AMENDMENT CANCELLING CLAIMS**

- III.  Cancel claims \_\_\_\_\_ inclusive.

**TRANSMITTAL OF ENGLISH TRANSLATION  
OF NON-ENGLISH LANGUAGE PAPERS**

- IV.  Submitted herewith is an English translation of the non-English language application papers as originally filed. Also submitted herewith is a statement by the translator of the accuracy of the translation. It is requested that this translation be used as the copy for examination purposes in the PTO.

**SMALL ENTITY STATUS**

- V.
- a.  An assertion that this filing is by a small entity  
*(check and complete applicable items)*
- is attached.
- was filed on \_\_\_\_\_ (original)
- was made by paying the basic filing fee as a small entity.
- is being made now by paying the basic filing fee as a small entity.
- b.  A separate refund request accompanies this paper.

**COMPLETION FEES**

**VI.**

**1. Filing fee**

- utility patent application \$ \_\_\_\_\_
- design application \$ \_\_\_\_\_
- plant application \$ \_\_\_\_\_

**2. Fees for claims**

- each independent claim in excess of 3 \$ \_\_\_\_\_
- each claim in excess of 20 \$ \_\_\_\_\_
- multiple dependent claim(s) \$ \_\_\_\_\_

**3. Search fee**

- Utility \$ \_\_\_\_\_
- Design \$ \_\_\_\_\_
- Plant \$ \_\_\_\_\_

**4. Examination fee**

- Utility \$ \_\_\_\_\_
- Design \$ \_\_\_\_\_
- Plant \$ \_\_\_\_\_

**5. Surcharge fees**

- declaration or oath late payment of filing fee and/or late filing of original \$ 130.00

- Petition and fee for filing by other than all the inventors or a person not the inventor \$ \_\_\_\_\_

- Fee for processing an application filed with a specification in a non-English language \$ \_\_\_\_\_

- Fee for processing and retention of abandoned application \$ \_\_\_\_\_

- Assignment (See "ASSIGNMENT COVER SHEET".) \$ \_\_\_\_\_

Total completion fees \$ 130.00

**EXTENSION OF TIME**

**VII.**

The proceedings herein are a patent application, and the provisions of 37 C.F.R. § 1.36(a) apply.

- (a)  Applicant petitions for an extension of time, for the total number of months checked below:

	<u>Extension (months)</u>	<u>Fee for other than small entity</u>	<u>Fee for small entity</u>
<input type="checkbox"/>	One month	\$ 120.00	\$ 60.00
<input type="checkbox"/>	Two months	\$ 450.00	\$ 225.00
<input type="checkbox"/>	Three months	\$ 1,020.00	\$ 510.00
<input type="checkbox"/>	Four months	\$ 1,590.00	\$ 795.00

Fee: \$ \_\_\_\_\_

If an additional extension of time is required, please consider this a petition therefor.

*(check and complete the next item, if applicable)*

- An extension for \_\_\_\_\_ months has already been secured, and the fee paid therefor of \$ \_\_\_\_\_ is deducted from the total fee due for the total months of extension now requested.

**Extension fee due with this request \$ \_\_\_\_\_**

or

- (b)  Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

**TOTAL FEE DUE**

**VIII.**

The total fee due is

Completion fee(s) \$ 130.00

Extension fee (if any) \$ 0

Total Fee Due **\$130.00**

**PAYMENT OF FEES**

**IX.**

Attached is a  check  money order in the amount of **\$130.00**

Authorization is hereby made to charge the amount of \$ \_\_\_\_\_

to Deposit Account No. 11-1110

to Credit card as shown on the attached credit card information authorization form PTO-2038.

Charge any additional fee required by this paper or credit any overpayment in the manner authorized above.

A duplicate of this paper is attached.

**AUTHORIZATION TO CHARGE ADDITIONAL FEES**

**X.**

The Office is hereby authorized to charge, in the manner shown above, the following additional fees that may be required by this paper and during the entire pendency of this application.

37 C.F.R. § 1.16(a), (b), or (c) (basic fee).

37 C.F.R. § 1.16(h), (i), and/or (j) (presentation of extra claims/multiple dependent claims).

37 C.F.R. § 1.16(k), (l), or (m) (search fee)

37 C.F.R. § 1.16(o), (p), or (q) (examination fee)

37 C.F.R. § 1.16(s) (fee for specification and drawings filed in paper over 100 sheets).

37 C.F.R. § 1.16(f) (surcharge for filing the basic fee and/or declaration on a date later than the filing date of the application)

37 C.F.R. § 1.17(a)(1)-(5) (extension fees pursuant to § 1.136(a))

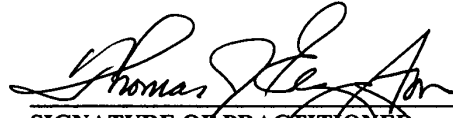
37 C.F.R. § 1.17 (application processing fees)

37 C.F.R. § 1.18 (issue fee at or before mailing of Notice of Allowance, pursuant to 37 C.F.R. § 1.311(b))

Reg. No. 34,324

Tel. No.: (412) 355-8303

Customer No.: 26285



**SIGNATURE OF PRACTITIONER**

Thomas J. Edgington

*(type or print name of practitioner)*

Kirkpatrick & Lockhart Preston Gates Ellis LLP

P.O. Address

Henry W. Oliver Building

535 Smithfield Street

Pittsburgh, PA 15222-2312



Please type a plus sign (+) inside this box

PTO/SB/01 (10-00)  
 Approved for use through 10/31/2002. OMB 0651-0032  
 U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

<b>DECLARATION AND POWER OF ATTORNEY FOR UTILITY OR DESIGN PATENT APPLICATION (37 CFR 1.63)</b>  <input type="checkbox"/> Declaration Submitted with Initial Filing <input checked="" type="checkbox"/> Declaration Submitted after Initial Filing (Surcharge (37 CFR 1.16(e)) required)	Attorney Docket Number	END5915USNP/KLG No. 060330
	First Named Inventor	Christopher J. Schall
	<i>COMPLETE IF KNOWN</i>	
	Application Number	11/729,355
	Filing Date	March 28, 2007
	Group Art Unit	3721
	Examiner Name	

**As a below named inventor, I hereby declare that:**

My residence, mailing address, and citizenship are as stated below next to my name.  
 I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

**SURGICAL STAPLING AND CUTTING INSTRUMENT WITH MANUALLY RETRACTABLE FIRING MEMBER**

**TITLE**

the specification of which  
 is attached hereto

OR

was filed on (MM/DD/YYYY)  as United States Application Number or PCT International Application Number  and was amended on (MM/DD/YYYY)

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment specifically referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56, including for continuation-in-part applications, material information which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.

I hereby claim foreign priority benefits under 35 U.S.C. 119(a)-(d) or 365(b) of any foreign application(s) for patent or inventor's certificate, or 365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below, by checking the box, any foreign application for patent or inventor's certificate, or any PCT international application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application Number(s)	Country	Foreign Filing Date (MM/DD/YYYY)	Priority Not Claimed	Certified Copy Attached?	
				YES	NO
			<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

Additional foreign application numbers are listed on a supplemental priority data sheet PTO/SB/02B attached hereto:



**DECLARATION - Utility or Design Patent Application**

I hereby claim the benefit under 35 U.S.C. 119(e) of any United States provisional application(s) listed below.

Application Number(s)	Filing Date (MM/DD/YYYY)	<input type="checkbox"/> Additional provisional application numbers are listed on a supplemental priority data sheet PTO/SB/02B attached hereto.

I hereby claim the benefit under Title 35, United States Code, §120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, §112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, §1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application:

Application Serial No.	Filing Date	Status

I hereby appoint:

Practitioners at Customer Number  -- Number Bar Code

Place Customer

Practitioner(s) named below:

Label Here

Name	Registration Number
Phil Johnson	Reg. No. 27,200
Verne E. Kreger, Jr.	Reg. No. 35,231
Dean L. Garner	Reg. No. 35,877
Gerry S. Gressel	Reg. No. 34,342
Victor C. Moreno	Reg. No. 40,732
Joseph F. Shirtz	Reg. No. 31,880
<b>of Johnson &amp; Johnson Law Department, P.O. Box 1222, New Brunswick, NJ 08903 and</b>	
Thomas J. Edgington,	Reg. No. 34,324
Roberto Capriotti,	Reg. No. 46,599
Brian T. Geisler	Reg. No. 54,115
Mark G. Knedeisen	Reg. No. 42,747
<b>of Kirkpatrick &amp; Lockhart Preston Gates Ellis LLP, 535 Smithfield Street, Pittsburgh, PA 15222</b>	

as my/our attorney(s) or agent(s) to prosecute the application identified above, and to transact all business in the United States Patent and Trademark Office connected therewith.

Address all telephone calls to Thomas J. Edgington at telephone number (412) 355-8303

Direct all correspondence to:  Customer Number 26285 OR  Correspondence address below

Name:

Address:

Address:

City:	State:	ZIP
Country	Telephone:	Fax:



I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

<b>NAME OF SOLE OR FIRST INVENTOR:</b>				<input type="checkbox"/> A petition has been filed for this unsigned inventor			
<b>Given Name</b> (first and middle [if any]) Christopher J.			<b>Family Name</b> or Surname Schall				
<b>Inventor's Signature</b> <i>Christopher J. Schall</i>			<b>Date</b> 5-23-2007				
<b>Residence: City</b> Cincinnati		<b>State</b> OH		<b>Country</b> USA		<b>Citizenship</b> USA	
<b>Mailing Address</b> 688 Whippoorwill Drive							
<b>City</b> Cincinnati		<b>State</b> OH		<b>ZIP</b> 45244		<b>Country</b> USA	

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

<b>NAME OF SECOND INVENTOR:</b>				<input type="checkbox"/> A petition has been filed for this unsigned inventor			
<b>Given Name</b> (first and middle [if any]) Chad P.			<b>Family Name</b> or Surname Boudreaux				
<b>Inventor's Signature</b> <i>Chad P. Boudreaux</i>			<b>Date</b> 5-23-2007				
<b>Residence: City</b> Cincinnati		<b>State</b> OH		<b>Country</b> USA		<b>Citizenship</b> USA	
<b>Mailing Address</b> 10840 Lakehurst Ct.							
<b>City</b> Cincinnati		<b>State</b> OH		<b>ZIP</b> 45242		<b>Country</b> USA	



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Table with 7 columns: APPLICATION NUMBER, FILING or 371(c) DATE, GRP ART UNIT, FIL FEE REC'D, ATTY.DOCKET.NO, TOT CLAIMS, IND CLAIMS. Values: 11/729,355, 03/28/2007, 3721, 1000, END5915USNP/KLG.No.060330, 20, 3

CONFIRMATION NO. 6426

26285
KIRKPATRICK & LOCKHART PRESTON GATES ELLIS LLP
535 SMITHFIELD STREET
PITTSBURGH, PA15222

CORRECTED FILING RECEIPT

Date Mailed: 05/23/2007

Receipt is acknowledged of this regular Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please mail to the Commissioner for Patents P.O. Box 1450 Alexandria Va 22313-1450. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).

Applicant(s) Christopher J. Schall, Residence Not Provided;

Power of Attorney: None

Domestic Priority data as claimed by applicant

Foreign Applications

If Required, Foreign Filing License Granted: 04/18/2007

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US11/729,355

Projected Publication Date: To Be Determined - pending completion of Missing Parts

Non-Publication Request: No

Early Publication Request: No

Title

Surgical stapling and cutting instrument with manually retractable firing member

Preliminary Class

227

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have

no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at <http://www.uspto.gov/web/offices/pac/doc/general/index.html>.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, <http://www.stopfakes.gov>. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

---

## LICENSE FOR FOREIGN FILING UNDER

### Title 35, United States Code, Section 184

### Title 37, Code of Federal Regulations, 5.11 & 5.15

#### **GRANTED**

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign Assets Control, Department of Treasury (31 CFR Parts 500+) and the Department of

Energy.

**NOT GRANTED**

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

S-4-07

JFW



PATENT  
Docket No.  
END5915USNP  
KLG No. 060330

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Art Unit: 3721  
Examiner: :  
In re application of : SURGICAL STAPLING  
AND CUTTING INSTRUMENT  
Christopher J. Schall : WITH MANUALLY RETRACTABLE  
FIRING MEMBER  
Serial No. 11/729,355 :  
Filed March 28, 2007 :

REQUEST FOR CORRECTED FORMAL FILING RECEIPT

Pittsburgh, Pennsylvania 15222

May 3, 2007

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

The Formal Filing Receipt for the above-identified application indicates that the Attorney  
Docket No. is END5915USNP/KLG No. 06033. The Attorney Docket No. should be:  
END5915USNP/KLG. No. 060330.

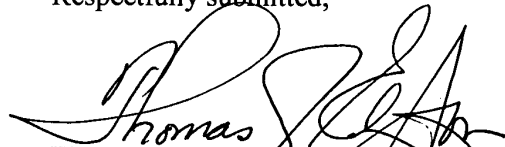
"Express Mail" mailing label number ER524401395US

Date of Deposit May 3, 2007

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail  
Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the  
Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

Accordingly, issuance of a corrected formal filing receipt is respectfully requested.

Respectfully submitted,



Thomas J. Edgington  
Registration No. 34,324

Attorney for Applicant

Kirkpatrick & Preston Gates Ellis LLP  
Henry W. Oliver Building  
535 Smithfield Street  
Pittsburgh, PA 15222

(412) 355-8303



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Table with 7 columns: APPLICATION NUMBER, FILING or 371(c) DATE, GRP ART UNIT, FIL FEE REC'D, ATTY.DOCKET.NO, TOT CLAIMS, IND CLAIMS. Row 1: 11/729,355, 03/28/2007, 3721, 1000, END5915USNP/KLG No. 06033, 20, 3

CONFIRMATION NO. 6426

FILING RECEIPT

26285
KIRKPATRICK & LOCKHART PRESTON GATES ELLIS LLP
535 SMITHFIELD STREET
PITTSBURGH, PA15222

Date Mailed: 04/18/2007

Receipt is acknowledged of this regular Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please mail to the Commissioner for Patents P.O. Box 1450 Alexandria Va 22313-1450. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).

Applicant(s) Christopher J. Schall, Residence Not Provided;

Power of Attorney: None

Domestic Priority data as claimed by applicant

Foreign Applications

If Required, Foreign Filing License Granted: 04/18/2007

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US11/729,355

Projected Publication Date: To Be Determined - pending completion of Missing Parts

Non-Publication Request: No

Early Publication Request: No

Title

Surgical stapling and cutting instrument with manually retractable firing member

Preliminary Class

227

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

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---

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### Title 37, Code of Federal Regulations, 5.11 & 5.15

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This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the



Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

**NOT GRANTED**

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).



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 Alexandria, Virginia 22313-1450  
 www.uspto.gov

APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
11/729,355	03/28/2007	Christopher J. Schall	END5915USNP/KLG No. 06033

**CONFIRMATION NO. 6426**  
**FORMALITIES**  
**LETTER**

26285  
 KIRKPATRICK & LOCKHART PRESTON GATES ELLIS LLP  
 535 SMITHFIELD STREET  
 PITTSBURGH, PA 15222

Date Mailed: 04/18/2007

**NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION**

FILED UNDER 37 CFR 1.53(b)

*Filing Date Granted***Items Required To Avoid Abandonment:**

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The oath or declaration is missing. *A properly signed oath or declaration in compliance with 37 CFR 1.63, identifying the application by the above Application Number and Filing Date, is required.*  
*Note: If a petition under 37 CFR 1.47 is being filed, an oath or declaration in compliance with 37 CFR 1.63 signed by all available joint inventors, or if no inventor is available by a party with sufficient proprietary interest, is required.*

The applicant needs to satisfy supplemental fees problems indicated below.

The required item(s) identified below must be timely submitted to avoid abandonment:

- To avoid abandonment, a surcharge (for late submission of filing fee, search fee, examination fee or oath or declaration) as set forth in 37 CFR 1.16(f) of \$130 for a non-small entity, must be submitted with the missing items identified in this letter.

**SUMMARY OF FEES DUE:**

Total additional fee(s) required for this application is **\$130** for a non-small entity

- **\$130** Surcharge.

Replies should be mailed to: Mail Stop Missing Parts

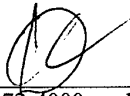
Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450

Registered users of EFS-Web may alternatively submit their reply to this notice via EFS-Web.  
<https://sportal.uspto.gov/authenticate/AuthenticateUserLocalEPF.html>

For more information about EFS-Web please call the USPTO Electronic Business Center at **1-866-217-9197** or visit our website at <http://www.uspto.gov/ebc>.

---

*If you are not using EFS-Web to submit your reply, you must include a copy of this notice.*



---

Office of Initial Patent Examination (571) 272-4000, or 1-800-PTO-9199  
PART 3 - OFFICE COPY

PATENT APPLICATION SERIAL NO. \_\_\_\_\_

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE  
FEE RECORD SHEET

03/30/2007 SSITHIB1 00000059 11729355

01 FC:1011	300.00	OP
02 FC:1111	500.00	OP
03 FC:1311	200.00	OP

PTO-1556  
(5/87)

U.S. Government Printing Office: 2002 — 486-267/69033

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**PATENT APPLICATION FEE DETERMINATION RECORD**

Substitute for Form PTO-875 Effective December 8, 2004

Application or Docket Number

11729355

**APPLICATION AS FILED - PART I**

(Column 1) (Column 2)

FOR	NUMBER FILED	NUMBER EXTRA
BASIC FEE (37 CFR 1.16(a), (b), or (c))	N/A	N/A
SEARCH FEE (37 CFR 1.16(k), (l), or (m))	N/A	N/A
EXAMINATION FEE (37 CFR 1.16(o), (p), or (q))	N/A	N/A
TOTAL CLAIMS (37 CFR 1.16(i))	20 minus 20 =	
INDEPENDENT CLAIMS (37 CFR 1.16(h))	3 minus 3 =	
APPLICATION SIZE FEE (37 CFR 1.16(e))	If the specification and drawings exceed 100 sheets of paper, the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).	
MULTIPLE DEPENDENT CLAIM PRESENT (37 CFR 1.16(j))		

**SMALL ENTITY**

OR

**OTHER THAN SMALL ENTITY**

RATE (\$)	FEE (\$)
N/A	150.00
N/A	\$250
N/A	\$100
X\$ 25	
X100	
+180=	
TOTAL	

RATE (\$)	FEE (\$)
N/A	300.00
N/A	\$500
N/A	\$200
X\$50	
X200	
+360=	
TOTAL	1000

\* If the difference in column 1 is less than zero, enter "0" in column 2.

**APPLICATION AS AMENDED - PART II**

(Column 1) (Column 2) (Column 3)

AMENDMENT A	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA
	Total (37 CFR 1.16(i))	Minus	**	=
	Independent (37 CFR 1.16(h))	Minus	***	=
	Application Size Fee (37 CFR 1.16(s))			
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))				

**SMALL ENTITY**

OR

**OTHER THAN SMALL ENTITY**

RATE (\$)	ADDITIONAL FEE (\$)
X\$ 25	
X100	
+180=	
TOTAL ADD'L FEE	

RATE (\$)	ADDITIONAL FEE (\$)
X\$50	
X200	
+360=	
TOTAL ADD'L FEE	

(Column 1) (Column 2) (Column 3)

AMENDMENT B	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA
	Total (37 CFR 1.16(i))	Minus	**	=
	Independent (37 CFR 1.16(h))	Minus	***	=
	Application Size Fee (37 CFR 1.16(s))			
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))				

RATE (\$)	ADDITIONAL FEE (\$)
X\$ 25	
X100	
+180=	
TOTAL ADD'L FEE	

RATE (\$)	ADDITIONAL FEE (\$)
X\$50	
X200	
+360=	
TOTAL ADD'L FEE	

- \* If the entry in column 1 is less than the entry in column 2, write "0" in column 3.
- \*\* If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20".
- \*\*\* If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3".

The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.

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**UTILITY  
PATENT APPLICATION  
TRANSMITTAL**

(Only for new nonprovisional applications under 37 CFR 1.53(b))

Attorney Docket No.	END5915USNP/KLG No. 060330
First Inventor	Christopher J. Schall
Title	SURGICAL STAPLING AND CUTTING...
Express Mail Label No.	ER524407217US

<b>APPLICATION ELEMENTS</b> See MPEP chapter 600 concerning utility patent application contents.	<b>ADDRESS TO:</b> Commissioner for Patents P.O. Box 1450 Alexandria VA 22313-1450
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1.  **Fee Transmittal Form** (e.g., PTO/SB/17)  
(Submit an original and a duplicate for fee processing)
2.  **Applicant claims small entity status.**  
See 37 CFR 1.27.
3.  **Specification** [Total Pages 34]  
Both the claims and abstract must start on a new page  
(For information on the preferred arrangement, see MPEP 608.01(a))
4.  **Drawing(s)** (35 U.S.C. 113) [Total Sheets 25]
5. **Oath or Declaration** [Total Sheets \_\_\_\_\_]
  - a.  Newly executed (original or copy)
  - b.  A copy from a prior application (37 CFR 1.63(d))  
(for continuation/divisional with Box 18 completed)
  - i.  **DELETION OF INVENTOR(S)**  
Signed statement attached deleting inventor(s)  
name in the prior application, see 37 CFR  
1.63(d)(2) and 1.33(b).
6.  **Application Data Sheet.** See 37 CFR 1.76
7.  **CD-ROM or CD-R** in duplicate, large table or  
Computer Program (Appendix)  
 Landscape Table on CD
8. **Nucleotide and/or Amino Acid Sequence Submission**  
(if applicable, items a. - c. are required)
  - a.  Computer Readable Form (CRF)
  - b.  Specification Sequence Listing on:
    - i.  CD-ROM or CD-R (2 copies); or
    - ii.  Paper
  - c.  Statements verifying identity of above copies

**ACCOMPANYING APPLICATION PARTS**

9.  **Assignment Papers** (cover sheet & document(s))  
Name of Assignee \_\_\_\_\_
10.  **37 CFR 3.73(b) Statement**  **Power of Attorney**  
(when there is an assignee)
11.  **English Translation Document** (if applicable)
12.  **Information Disclosure Statement** (PTO/SB/08 or PTO-1449)  
 Copies of citations attached
13.  **Preliminary Amendment**
14.  **Return Receipt Postcard** (MPEP 503)  
(Should be specifically itemized)
15.  **Certified Copy of Priority Document(s)**  
(if foreign priority is claimed)
16.  **Nonpublication Request** under 35 U.S.C. 122(b)(2)(B)(i).  
Applicant must attach form PTO/SB/35 or equivalent.
17.  **Other:** \_\_\_\_\_

18. If a CONTINUING APPLICATION, check appropriate box, and supply the requisite information below and in the first sentence of the specification following the title, or in an Application Data Sheet under 37 CFR 1.76:

Continuation     Divisional     Continuation-in-part (CIP)    of prior application No.: \_\_\_\_\_

Prior application information:    Examiner \_\_\_\_\_    Art Unit: \_\_\_\_\_

**19. CORRESPONDENCE ADDRESS**

The address associated with Customer Number:     OR     Correspondence address below

Name			
Address			
City	State	Zip Code	
Country	Telephone	Email	

Signature		Date	March 28, 2007
Name (Print/Type)	Thomas J. Edgington	Registration No. (Attorney/Agent)	34,324

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Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

## FEE TRANSMITTAL For FY 2007

Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT		(\$)	1,000.00
<b>Complete if Known</b>			
Application Number			
Filing Date			
First Named Inventor	Christopher J. Schall		
Examiner Name			
Art Unit			
Attorney Docket No.	END5915USNP/KLG No. 060330		

**METHOD OF PAYMENT** (check all that apply)

Check  Credit Card  Money Order  None  Other (please identify): \_\_\_\_\_

Deposit Account Deposit Account Number: 11-1110 Deposit Account Name: Kirkpatrick & Lockhart

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply) Preston Godes Ellis LLC

Charge fee(s) indicated below  Charge fee(s) indicated below, except for the filing fee

Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17  Credit any overpayments

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**FEE CALCULATION**

**1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	1,000.00
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

**2. EXCESS CLAIM FEES**

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180

**Total Claims**      **Extra Claims**      **Fee (\$)**      **Fee Paid (\$)**      **Multiple Dependent Claims**

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**4. OTHER FEE(S)**

Non-English Specification, \$130 fee (no small entity discount)      **Fees Paid (\$)**

Other (e.g., late filing surcharge): \_\_\_\_\_

**SUBMITTED BY**

Signature	Registration No. (Attorney/Agent) 34,324	Telephone (412) 355-8303
Name (Print/Type) Thomas J. Edgington	Date March 28, 2007	

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First Inventor	Christopher J. Schall
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First Named Inventor	Christopher J. Schall		
Examiner Name			
Art Unit			
Attorney Docket No.	END5915USNP/KLG No. 060330		

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Deposit Account Deposit Account Number: 11-1110 Deposit Account Name: Kirkpatrick & Lockhart

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**4. OTHER FEE(S)**

Non-English Specification, \$130 fee (no small entity discount)      **Fees Paid (\$)**

Other (e.g., late filing surcharge): \_\_\_\_\_

<b>SUBMITTED BY</b>		
Signature	Registration No. (Attorney/Agent) 34,324	Telephone (412) 355-8303
Name (Print/Type) Thomas J. Edgington	Date March 28, 2007	

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Attorney Docket No. END5915USNP/KLG No. 060330

UNITED STATES PATENT APPLICATION

FOR

SURGICAL STAPLING AND CUTTING INSTRUMENT  
WITH MANUALLY RETRACTABLE FIRING MEMBER

INVENTORS:

Christopher J. Schall

and

Chad P. Boudreaux

PREPARED BY:

THOMAS J. EDGINGTON, ESQ.  
KIRKPATRICK & LOCKHART PRESTON GATES ELLIS LLP  
HENRY W. OLIVER BUILDING  
535 SMITHFIELD STREET  
PITTSBURGH, PA 15222-2312

(412) 355-8303

EXPRESS MAIL NO: ER524407217US

TITLE

SURGICAL STAPLING AND CUTTING INSTRUMENT  
WITH MANUALLY RETRACTABLE FIRING MEMBER

INVENTORS

Christopher J. Schall, a U. S. citizen residing at 688 Whippoorwill Drive, Cincinnati, Ohio 45244; and

Chad P. Boudreaux, a U.S. citizen residing at 10840 Lakehurst Ct, Cincinnati, Ohio 45242.

CROSS REFERENCE TO RELATED APPLICATIONS

The present application is related to commonly-owned U.S. Patent Application filed on even date herewith, entitled "Surgical Stapling and Cutting Instrument With Side-Mounted Retraction Member" to Chad P. Boudreaux, and Christopher J. Schall, the disclosure of which is hereby incorporated by reference in its entirety.

FIELD OF THE INVENTION

[0001] The present invention relates in general to endoscopic surgical instruments including, but not limited to, surgical stapler instruments that are capable of applying lines of staples to tissue while cutting the tissue between those staple lines and, more particularly, to improvements relating to surgical stapler instruments and improvements in processes for forming various components of such surgical stapler instruments that have manual retraction capabilities.

BACKGROUND OF THE INVENTION

[0002] Endoscopic surgical instruments are often preferred over traditional open surgical devices since a smaller incision tends to reduce the post-operative recovery time and complications. Consequently, significant development has gone into a range of endoscopic surgical instruments that are suitable for precise placement of a distal end effector at a desired surgical site through a cannula of a trocar. These distal end effectors engage the tissue in a number of ways to achieve a diagnostic or therapeutic effect (e.g., endocutter, grasper, cutter,

staplers, clip applier, access device, drug/gene therapy delivery device, and energy device using ultrasound, RF, laser, etc.).

**[0003]** Known surgical staplers include an end effector that simultaneously makes a longitudinal incision in tissue and applies lines of staples on opposing sides of the incision. The end effector includes a pair of cooperating jaw members that, if the instrument is intended for endoscopic or laparoscopic applications, are capable of passing through a cannula passageway. One of the jaw members receives a staple cartridge having at least two laterally spaced rows of staples. The other jaw member defines an anvil having staple-forming pockets aligned with the rows of staples in the cartridge. The instrument commonly includes a plurality of reciprocating wedges which, when driven distally, pass through openings in the staple cartridge and engage drivers supporting the staples to effect the firing of the staples toward the anvil.

**[0004]** An example of a surgical stapler suitable for endoscopic applications is described in U.S. Pat. No. 5,465,895 to Brian D. Knodel, Richard P. Nuchols, and Warren P. Williamson, IV, which advantageously provides distinct closing and firing actions. Thereby, a clinician is able to close the jaw members upon tissue to position the tissue prior to firing. Once the clinician has determined that the jaw members are properly gripping tissue, the clinician can then fire the surgical stapler with a single firing stroke, thereby severing and stapling the tissue. The simultaneous severing and stapling avoids complications that may arise when performing such actions sequentially with different surgical tools that respectively only sever or staple.

**[0005]** One specific advantage of being able to close upon tissue before firing is that the clinician is able to verify via an endoscope that the desired location for the cut has been achieved, including that a sufficient amount of tissue has been captured between opposing jaws. Otherwise, opposing jaws may be drawn too close together, especially pinching at their distal ends, and thus not effectively forming closed staples in the severed tissue. At the other extreme, an excessive amount of clamped tissue may cause binding and an incomplete firing.

**[0006]** Generally, a single closing stroke followed by a single firing stroke is a convenient and efficient way to perform severing and stapling. However, in some instances, it would be desirable for multiple firing strokes to be required. For example, surgeons are able to select a length of staple cartridge for the desired length of cut from a range of jaw sizes. Longer staple

cartridges require a longer firing stroke. Thus, to effect the firing, a hand-squeezed trigger is required to exert a larger force for these longer staple cartridges in order to sever more tissue and drive more staples as compared to a shorter staple cartridge. It would be desirable for the amount of force to be lower and comparable to shorter cartridges so as not to exceed the hand strength of some surgeons. In addition, some surgeons, not familiar with the larger staple cartridges, may become concerned that binding or other malfunction has occurred when an unexpectedly higher force is required.

[0007] One approach for lowering the required force for a firing stroke is a ratcheting mechanism that allows a firing trigger to be stroked multiple times, as described in U.S. Pat. Nos. 5,762,256 and 6,330,965, the disclosures of which are herein incorporated by reference. These known surgical stapling instruments with multiple-stroke firing mechanisms do not have the advantages of a separate closure and firing actions.

[0008] Other ratcheting surgical instruments are disclosed in commonly-owned U.S. Patent No. 7,083,075, issued August 1, 2006 to Jeffrey S. Swayze, Frederick E. Shelton, IV, Kevin Ross Doll, and Douglass B. Hoffman, entitled Multi-Stroke Mechanism With Automatic End of Stroke Retraction, which is hereby incorporated by reference. Various embodiments disclosed therein employ a handle that produces separate closing and firing motions to actuate an end effector. In particular, the handle is configured to generate the firing force necessary to staple and sever the tissue clamped within the end effector through multiple actuations of a firing trigger. The device may further employ a linked transmission which reduces the required handle length, yet achieves a rigid, strong configuration when straightened for firing. A traction biased firing mechanism avoids binding in driving this straightened linked rack in cooperation with an anti-backup mechanism, with a lockout mechanism that prevents releasing the closure trigger during firing. Furthermore, an external indicator gives feedback to the surgeon as to how far firing has progressed, as well as providing a manual retraction capability. These embodiments also generally employ a relatively strong spring to automatically retract the cutting member after the end effector has been fired. While such designs are extremely effective, the use of the retraction spring requires additional firing force to be generated to overcome the opposing spring force during firing. This problem can also be somewhat exacerbated when using articulating end

effectors. In particular, when an articulating end effector is employed, a larger return spring must generally be employed to retract the articulating firing member. Use of such larger spring further increases the amount of firing forces that must be generated to overcome the spring force and fire the end effector components.

[0009] Consequently, a significant need exists for a surgical stapling instrument having a multiple stroke or other type of firing mechanism that is equipped with a manually actuatable retraction mechanism and does not employ an additional retraction means such as a spring or the like that generates forces that must be overcome during the firing stroke.

#### SUMMARY

[0010] In one aspect of the invention, there is provided a surgical instrument has a handle assembly and an end effector for performing a surgical operation. The end effector is operably coupled to the handle assembly and may operably support a firing member that is movable from a retracted position to a fired position in response to a longitudinal firing motion applied thereto. The instrument may also include a firing drive that is supported by the handle assembly and is configured to selectively generate the longitudinal firing motion upon actuation of a firing trigger operably coupled to the handle assembly. A retraction assembly may be supported by the handle assembly and interface with the firing drive such that manual actuation of the retraction assembly causes the firing drive to apply a sole retraction motion which is communicated to the firing member to cause the firing member to move from the fired position to the retracted position.

[0011] In another general aspect of various embodiments of the present invention there is provided a surgical instrument that has a handle assembly that is coupled to an end effector for performing a surgical operation. The end effector may operably support a firing member that is movable from a retracted position to a fired position in response to a longitudinal firing motion applied thereto. A linked rack may be operably supported by the handle assembly and a firing rod may communicate with the linked rack and the end effector for transmitting the firing and retraction motions from the linked rack to the end effector. A firing trigger may be operably supported by the handle assembly and may be configured to interface with the linked rack such

that actuation of the firing trigger causes the linked rack to apply the firing motion to the firing rod. A first gear may be in meshing engagement with the linked rack and a retraction lever may be movably supported by the handle assembly and may be configured to interface with the first gear such that actuation of the retraction lever applies the sole retraction motion or force to the first gear which thereby transfers the sole retraction motion to the linked rack.

[0012] In still another general aspect of various embodiments of the present invention there is provided a surgical instrument that has a handle assembly that is coupled to an end effector. The end effector may operably support a firing member that is movable from a retracted position to a fired position in response to a longitudinal firing motion applied thereto. A first linked rack may be operably supported by the handle assembly. A firing rod may communicate with the linked rack and the end effector for transmitting the firing and retraction motions from the linked rack to the end effector. A firing trigger may be operably supported by the handle assembly and may be configured to selectively interface with the linked rack such that actuation of the firing trigger causes the linked rack to apply the firing motion to the firing rod. A second gear rack may be operably supported by the handle assembly. A drive gear may be in meshing engagement with the first linked rack and the second gear rack. A retraction lever may be movably coupled to the handle assembly and the second gear rack such that actuation of the retraction lever applies the sole retraction motion to the drive gear which thereby transfers the sole retraction motion to the linked rack.

[0013] These and other objects and advantages of the present invention shall be made apparent from the accompanying drawings and the description thereof.

#### BRIEF DESCRIPTION OF THE FIGURES

[0014] The accompanying drawings, which are incorporated in and constitute a part of this specification, illustrate embodiments of the invention, and, together with the general description of the invention given above, and the detailed description of the embodiments given below, serve to explain various principles of the present invention.

[0015] FIG. 1 is a perspective view of a surgical stapling and severing instrument of various embodiments of the present invention.

[0016] FIG. 2 is a left side elevation view taken along line 2-2 in longitudinal cross section of an end effector at a distal portion of the surgical stapling instrument of FIG. 1.

[0017] FIG. 3 is a front perspective view of the end effector of FIG. 2.

[0018] FIG. 4 is a perspective, exploded view of an implement portion of the surgical stapling and severing instrument of FIG. 1.

[0019] FIG. 5 depicts a left side elevation view in section of the end effector of FIG. 3 of the surgical instrument of FIG. 1, the section generally taken along lines 5-5 of FIG. 3 to expose portions of a staple cartridge but also depicting the firing bar along the longitudinal centerline.

[0020] FIG. 6 depicts a left side elevation view in section of the end effector of FIG. 5 after the firing bar has fully fired.

[0021] FIG. 7 is a left side elevation view of the handle of the surgical stapling and severing instrument of FIG. 1 with a left housing shell removed.

[0022] FIG. 8 is a perspective, exploded view of the handle of FIG. 7.

[0023] FIG. 9 is a right side elevational view of the handle of the surgical stapling and severing instrument of FIG. 1 with a right handle shell portion removed and with the closure trigger in the unlocked position.

[0024] FIG. 10 is a right side exploded assembly view of the linked rack of the firing mechanism of FIG. 9.

[0025] FIG. 11 is another right side elevational view of the handle of the surgical stapling and severing instrument of FIG. 1 with a right handle shell portion removed and with the closure trigger in the locked position.

[0026] FIG. 12 is a right side exploded assembly view of a manual retraction assembly embodiment employed in the surgical stapling and severing instrument of FIG. 1.



[0027] FIG. 13 is a right side perspective assembly view of the manual retraction assembly of FIG. 12.

[0028] FIG. 14 is a left side assembly view of the manual retraction assembly of FIGS. 11 and 12.

[0029] FIG. 15 is another left side assembly view of the manual retraction assembly of FIGS. 11-13 with the second gear shown in cross-section.

[0030] FIG. 16 is a left side elevational view of the manual retraction assembly and corresponding portion of the handle housing of FIGS. 12-15, with the manual retraction assembly shown in an up position and with portions of the assembly shown in cross-section for clarity.

[0031] FIG. 17 is another left side elevational view of the manual retraction assembly and corresponding portion of the handle housing of FIGS. 12-16, with the manual retraction assembly shown in a down or actuated position and with portions of the assembly shown in cross-section for clarity.

[0032] FIG. 18 is a perspective view of another surgical stapling and severing instrument of other various embodiments of the present invention.

[0033] FIG. 19 is a left side elevation view of the handle of the surgical stapling and severing instrument of FIG. 18 with a left handle shell portion removed.

[0034] FIG. 20 is a perspective, exploded view of the handle of FIG. 19.

[0035] FIG. 21 is a left side assembly view of a manual retraction assembly of the surgical stapling and severing instrument of FIG. 18.

[0036] FIG. 22 is a perspective view of another surgical stapling and severing instrument of other various embodiments of the present invention.

[0037] FIG. 23 is a perspective, exploded view of the handle of the surgical stapling and severing instrument of FIG. 22.

[0038] FIG. 24 is an exploded assembly view of a manual retraction assembly of the surgical stapling and severing instrument of FIG. 12.

[0039] FIG. 25 is a perspective view of the manual retraction assembly of FIG. 24.

[0040] FIG. 26 is a left side elevation view of the handle of the surgical stapling and severing instrument of FIG. 22 with a left handle shell portion removed and the instrument in an unfired position.

[0041] FIG. 27 is another left side elevational view of the handle of the surgical stapling and severing instrument of FIG. 22 with the left handle shell portion removed and with the closure trigger in the locked position and the manual retraction assembly in the fully retracted position.

#### DETAILED DESCRIPTION

[0042] Turning to the Drawings, wherein like numerals denote like components throughout the several views, FIGS. 1 and 2 depict a surgical stapling and severing instrument 10 that is capable of practicing the unique benefits of the present invention. The surgical stapling and severing instrument 10 may incorporate an end effector 12 having an anvil 14 that is pivotally attached to an elongate channel 16, forming opposing jaws for clamping tissue to be severed and stapled. The end effector 12 may be coupled by an elongate shaft assembly 18 to a handle 20 (FIG. 1). An implement portion 22, formed by the end effector 12 and shaft assembly 18, is advantageously sized for insertion through a trocar or small laparoscopic opening to perform an endoscopic surgical procedure while being controlled by a surgeon grasping the handle assembly 20. The handle assembly 20 may advantageously include features that allow separate closure motions and firing motions, lockouts to prevent inadvertent or ill-advised firing of the end effector, as well as enabling multiple firing strokes to effect firing (i.e., severing and stapling) of the end effector 12 while indicating the degree of firing to the surgeon. In addition, as will be described in detail below, various embodiments may employ a unique and novel manually actuatable retraction mechanism for retracting the firing members without any assistance from a retraction spring or other retraction arrangement, the forces of which must be overcome during the firing operation.

[0043] To these ends, a closure tube 24 of the shaft assembly 18 is coupled between a closure trigger 26 (FIG. 1) and the anvil 14 to cause closure of the end effector 12. Within the closure tube 24, a frame 28 is coupled between the elongate channel 16 and the handle assembly 20 to longitudinally position and support the end effector 12. A rotation knob 30 may be coupled with the frame 28, and both elements are rotatably coupled to the handle assembly 20 with respect to a rotational movement about a longitudinal axis of the shaft assembly 18. Thus, the surgeon can rotate the end effector 12 by turning the rotation knob 30. The closure tube 24 is also rotated by the rotation knob 30 but retains a degree of longitudinal movement relative thereto to cause the closure of the end effector 12. Within the frame 28, a firing rod 32 is positioned for longitudinal movement and coupled between the anvil 14 of the end effector 12 and a multiple-stroke firing trigger 34. The closure trigger 26 is distal to a pistol grip 36 of the handle assembly 20 with the firing trigger 34 distal to both the pistol grip 36 and closure trigger 26.

[0044] In endoscopic operation, once the implement portion 22 is inserted into a patient to access a surgical site, a surgeon may refer to an endoscopic or other diagnostic imaging device to position tissue between the anvil 14 and elongate channel 16. Grasping the closure trigger 26 and pistol grip 36, the surgeon may repeatedly grasp and position the tissue. Once satisfied as to the location of the tissue relative to the end effector 12 and the amount of tissue therein, the surgeon depresses the closure trigger 26 fully toward the pistol grip 36, clamping the tissue in the end effector 12 and locking the closure trigger 26 in this clamped (closed) position. If not satisfied with this position, the surgeon may release the closure trigger 26 by depressing a closure release button 38 and thereafter repeat the procedure to clamp tissue.

[0045] If the clamping is correct, the surgeon may proceed with firing the surgical stapling and severing instrument 10. Specifically, the surgeon grasps the firing trigger 34 and pistol grip 36, depressing the firing trigger 34 a predetermined number of times. The number of firing strokes necessary may be ergonomically determined based on a maximum hand size, maximum amount of force to be imparted to the instrument during each firing stroke, and the longitudinal distance and force needed to be transferred through the firing rod 32 to the end effector 12 during firing.

[0046] During these strokes, the surgeon may reference an indicator, depicted as an indicating knob 40, that positionally rotates in response to the multiple firing strokes. Additionally, the

position of the indicating knob 40 may confirm that full firing has occurred when encountering resistance to further cycling of the firing trigger 34. It should be appreciated that various indicia and instructions may be added to the handle assembly 20 to enhance the indication provided by the rotation of the indicating knob 40.

[0047] It will be appreciated that the terms “proximal” and “distal” are used herein with reference to a clinician gripping a handle of an instrument. Thus, the end effector 12 is distal with respect to the more proximal handle assembly 20. Analogous terms such as “front” and “back” similarly correspond respectively to distal and proximal. It will be further appreciated that for convenience and clarity, spatial terms such as “vertical” and “horizontal” are used herein with respect to the drawings. However, surgical instruments are used in many orientations and positions, and these terms are not intended to be limiting and absolute.

[0048] The present invention is being discussed in terms of endoscopic procedures and apparatus. However, use herein of terms such as "endoscopic", should not be construed to limit the present invention to a surgical stapling and severing instrument for use only in conjunction with an endoscopic tube (i.e., trocar). On the contrary, it is believed that the present invention may find use in any procedure where access is limited to a small incision, including but not limited to laparoscopic procedures, as well as open procedures.

#### E-Beam Firing Member

[0049] The advantages of a handle assembly 20, which is capable of providing multiple-stroke firing motion, has application to a number of instruments, with one such end effector 12 being depicted in FIGS. 2-6. With particular reference to FIG. 4, the end effector 12 responds to the closure motion from the handle assembly 20 (not depicted in FIGS. 2-6) first by including an anvil face 50 (FIGS. 2, 4, 6) connecting to an anvil proximal end 52 that includes a pair of laterally projecting anvil pivot pins 54 that are proximal to a vertically projecting anvil feature 56 (FIG. 4). The anvil pivot pins 54 translate within kidney shaped openings 58 in the elongate channel 16 to open and close anvil 14 relative to elongate channel 16. The anvil feature 56 engages a tab 59 (FIGS. 2, 4, 6) extending inwardly in tab aperture 60 on a distal end 62 of the closure tube 24, the latter distally terminating in a distal edge 64 that pushes against the anvil face 50. Thus, when the closure tube 24 moves proximally from its open position, the tab 59 of

the closure tube 24 draws the anvil feature 56 proximally, and the anvil pivot pins 54 follow the kidney shaped openings 58 of the elongate channel 16 causing the anvil 14 to simultaneously translate proximally and rotate upward to the open position. When the closure tube 24 moves distally, the tab 59 in the tab aperture 60 releases from the anvil feature 56 and the distal edge 64 pushes on the anvil face 50, closing the anvil 14.

**[0050]** With continued reference to FIG. 4, the implement portion 22 also includes components that respond to the firing motion of the firing rod 32. In particular, the firing rod 32 rotatably engages a firing trough member 66 having a longitudinal recess 68. Firing trough member 66 moves longitudinally within frame 28 in direct response to longitudinal motion of firing rod 32. A longitudinal slot 70 in the closure tube 24 operably couples with the rotation knob 30 (not shown in FIGS. 2-6). The length of the longitudinal slot 70 in the closure tube 24 is sufficiently long to allow relative longitudinal motion with the rotation knob 30 to accomplish firing and closure motions respectively with the coupling of the rotation knob 30 passing on through a longitudinal slot 72 in the frame 28 to slidingly engage the longitudinal recess 68 in the frame trough member 66.

**[0051]** The distal end of the frame trough member 66 is attached to a proximal end of a firing bar 76 that moves within the frame 28, specifically within a guide 78 therein, to distally project an E-beam firing member 80 into the end effector 12. The end effector 12 includes a staple cartridge 82 that is actuated by the E-beam 80. The staple cartridge 82 has a tray 84 that holds a staple cartridge body 86, a wedge sled driver 88, staple drivers 90 and staples 92. It will be appreciated that the wedge sled driver 88 longitudinally moves within a firing recess 94 (FIG. 2) located between the cartridge tray 84 and the cartridge body 86. The wedge sled driver 88 presents camming surfaces that contact and lift the staple drivers 90 upward, driving the staples 92 up from staple apertures 96 (FIG. 3) into contact with staple forming grooves 98 (FIG. 3) of the anvil 14, creating formed "B"-shaped staples, such as depicted at 100 of FIG. 6. With particular reference to FIG. 3, the staple cartridge body 86 further includes a proximally open, vertical slot 102 for passage of the E-beam 80. Specifically, a cutting surface 104 is provided along a distal end of E-beam 80 to cut tissue after it is stapled.

**[0052]** In FIGS. 2, 5, 6, respectively, the end effector 12 is depicted in a sequence of open (i.e., start) condition, clamped and unfired condition or position, and fully fired condition or position. Features of the E-beam 80 that facilitate firing of the end effector 12, in particular, are depicted. In FIG. 2, the wedge sled driver 88 is in its fully proximal position, indicating an unfired staple cartridge 82. A middle pin 106 is aligned to enter the firing recess 94 in the staple cartridge 82, for distally driving the wedge sled driver 88. A bottom pin or cap 108 of the E-beam 80 slides along a bottom surface of the elongate channel 16, thus the middle and bottom pins 106, 108 slidingly engage the elongate channel 16. In the open and unfired state of FIG. 2, a top pin 110 of the E-beam 80 has entered and is residing within an anvil pocket 112 of the anvil 14, and thus does not impede repeated opening and closing of the anvil 14.

**[0053]** In FIG. 5, the end effector 12 is depicted as clamped and ready to fire. The top pin 110 of the E-beam 80 is aligned with an anvil slot 114 in the anvil 14 distal to and communicating with the anvil pocket 112. In FIG. 6, the E-beam 80 has been fully fired, with the upper pin 110 translating down the anvil slot 114, affirmatively spacing the anvil 14 from the elongate channel 16 as the cutting surface 104 severs clamped tissue. Simultaneously, the middle pin 106 has actuated the staple cartridge 82 as previously described. Thereafter, the E-beam 80 is retracted prior to opening the end effector 12 and replacing the staple cartridge 82 for an additional operation.

**[0054]** The illustrative end effector 12 is described in greater detail in four commonly-owned U.S. patents and a patent application, the disclosure of each being hereby incorporated by reference in their entirety: (1) U.S. Patent No. 7,044,352 to Frederick E. Shelton IV, Michael E. Setser, William B. Weisenburgh II, issued May 16, 2006 and entitled "Surgical Stapling Instrument Having a Single Lockout Mechanism For Prevention of Firing"; (2) U.S. Patent No. 7,000,818 to Frederick E. Shelton IV, Michael E. Setser, Brian J. Hemmelgarn II, issued February 21, 2006 and entitled "Surgical Stapling Instrument Having Separate Distinct Closing and Firing Systems"; (3) U.S. Patent No. 6,988,649 to Frederick E. Shelton IV, Michael E. Setser, and William B. Weisenburgh II, issued January 24, 2006 and entitled "Surgical Stapling Instrument Having A Spent Cartridge Lockout"; (4) U.S. Patent No. 7,143,923, to Frederick E. Shelton IV, Michael E. Setser, and William B. Weisenburgh II, issued December 5, 2006 and

entitled Surgical Stapling Instrument Having A Firing Lockout For An Unclosed Anvil”; and (5) U.S. Patent Application entitled “Surgical Stapling Instrument Incorporating an E-Beam Firing Mechanism”, Ser. No. 10/443,617, to Frederick E. Shelton IV, Michael E. Setser, William B. Weisenburgh II, filed 20 June 2003. However, the unique and novel features of various embodiments of the present invention may also be employed with different types of end effectors without departing from the spirit and scope of the present invention.

**[0055]** It should be appreciated that although a nonarticulating shaft assembly 18 is illustrated herein, applications of the present invention may include instruments capable of articulation, such as those described in three commonly owned U.S. patents and two commonly owned U.S. Patent applications, the disclosure of each being hereby incorporated by reference in their entirety: (1) U.S. Patent No. 7,111,769 to Kenneth S. Wales, Douglas B. Hoffman, Frederick E. Shelton IV, and Jeffrey S. Swayze, issued September 26, 2006, entitled “Surgical instrument Incorporating An Articulation Mechanism Having Rotation About the Longitudinal Axis”; (2) U.S. Patent No. 6,981,628 to Kenneth S. Wales, issued January 3, 2006, entitled “Surgical Instrument With A Lateral-Moving Articulation Control”; (3) U.S. Patent No. 7,055,731 to Frederick E. Shelton IV, Michael E. Setser, William B. Weisenburgh II, issued June 6, 2006 entitled “Surgical Stapling Instrument Incorporating A Tapered Firing Bar For Increased Flexibility Around The Articulation Joint”; (4) U.S. Patent Publication No. 2005/0006429 entitled “Surgical Stapling Instrument Having Articulation Joint Support Plates For Supporting A Firing Bar”, Ser. No. 10/615,971, to Kenneth S. Wales and Joseph Charles Hueil, filed 9 July 2003; and (5) U.S. Patent Application entitled “Surgical Stapling Instrument Incorporating An Articulation Joint For a Firing Bar Track”, Ser. No. 10/615,962, to Brian J. Hemmelgarn, filed 9 July 2003. Those of ordinary skill in the art will readily understand, however, that the unique and novel aspects of various features of the present invention may be employed in connection with another types of articulating surgical instruments without departing from the spirit and scope of the present invention.

**[0056]** With reference to FIGS. 7-9, the elongate shaft assembly 18 has as its outer structure a longitudinally reciprocating closure tube 24 that pivots the anvil 14 (FIGS. 1 and 2) to effect closure in response to proximal depression of the closure trigger 26 of the handle assembly 20.

The elongate channel 18 is connected to the handle assembly 20 by a frame 28 that is internal to the closure tube 24. The frame 28 is rotatably engaged to the handle assembly 20 so that twisting the rotation knob 30 causes rotation of the implement portion 22. With particular reference to FIG. 8, each half shell 30a, 30b of the rotation knob 30 includes an inward projection 31 that enters a respective longer side opening 70 in the closure tube 24 and inward to engage the frame 28 that determines the rotated position of the implement portion 22. The longitudinal length of the longer opening 70 is sufficiently long enough to facilitate longitudinal movement of the closure tube 24 during the closure operation.

#### Closure System

[0057] In various embodiments, operation of the closure tube 24 is controlled by means of a closure drive 23 which includes the closure trigger 26. The closure trigger 26 has an upper portion 160 that is configured to activate a closure yoke 162 via a closure link 164. The closure link 164 is pivotally attached at its distal end to the closure yoke 162 by a closure yoke pin 166 and is pivotally attached to the closure trigger 26 at its proximal end by a closure link pin 168. As can be seen in FIG. 7, the closure trigger 26 is urged to the open position by a closure trigger tension spring 246 that is connected proximally to the upper portion 160 of the closure trigger 26 and a handle housing 154 formed by right and left half shells 156, 158.

[0058] The upper portion 160 of the closure trigger 26 also includes a proximal crest 170 that has an aft notch 171 formed therein. See FIGS. 7 and 8. In various embodiments, a closure release button 38 is pivotally attached to the handle housing 154 by a pivot rod arrangement 174. As can be seen in FIG. 8, a locking arm 172 protrudes from the closure release button 38 and, as will be discussed in further detail below, is configured to lockingly engage the upper portion 160 of the closure trigger 26. A compression spring 180 is employed between the closure release button 38 and the handle housing 154 to bias the closure release button away from the housing 154 about the pivot rod assembly 174. FIG. 7 depicts the closure trigger 26 in an unactuated position. As can be seen in that Figure, when in that position, the pivoting locking arm 172 rides upon the proximal crest 170. Such action of the locking arm 172 causes the closure release button 38 to be drawn in towards the handle housing 154 against the force of coil spring 180. When the closure trigger 26 reaches its fully depressed position, the pivoting locking arm 172



drops into the aft notch 171 in the upper portion of the locking trigger 26 under the urging of the compression spring 180. When in that position, the closure trigger is locked in position. In addition, as will be further discussed below, when the locking arm 172 is in that locked position, the firing trigger 34 may be actuated to actuate the firing mechanism 150. When the firing mechanism 150 is in the retracted position, manual depression of the closure release button 38 rotates the pivoting locking arm 172 upward out of retaining engagement with the aft notch 171 in the upper portion of the closure trigger 26 and thereby unlocks the closure trigger 26.

### Firing System

[0059] In various embodiments of the invention, a linked transmission firing drive 150 of the type disclosed in U.S. Patent No. 7,083,075 to Jeffrey S. Swayze, Frederick E. Shelton, IV, Kevin R. Doll, and Douglas B. Hoffman, entitled Multi-Stroke Mechanism With Automatic End of Stroke Retraction, issued August 1, 2006, the relevant portions of which are herein incorporated by reference, may be employed to extend and retract the firing rod 32 as will be further discussed below. With the closure trigger 26 retracted and fully depressed, the firing trigger 34 is unlocked and may be depressed toward the pistol grip 36 multiple times to effect the firing of the end effector 12. As depicted in FIG. 8, the firing trigger 34 pivots about a firing trigger pin 202 that laterally traverses and is attached to the right and left half shells 156, 158.

[0060] An upper portion 204 of the firing trigger 34 moves distally about the firing trigger pin 202 as the firing trigger 34 is depressed toward the pistol grip 36, stretching a proximally placed firing trigger tension spring 206 connected between an upper portion 204 of the firing trigger 34 and the housing 154. See FIGS. 7 and 8. The upper portion 204 of the firing trigger 34 engages a firing mechanism 150 in the form of a linked rack 200 during each firing stroke depression by a spring biased side pawl mechanism 210 that also disengages when the firing trigger 34 is released.

### Linked Rack

[0061] As can be seen in FIGS. 8 and 10, each link 196a-d is pinned to adjacent links 196a-d for downward, proximal rotation into the pistol grip 36. Although bendable in this direction, the linked rack 200 forms a rigid configuration when against a columnar loading, especially a

loading that would otherwise urge the distal links 196a-d to bend upwardly. In particular, each link 196a-c proximally terminates in an extension 300 having lateral through hole 302 on a lower portion thereof. Similarly, each link 196b-d distally terminates in an extension 300a that has a lateral hole 302a therethrough. As can be seen in FIG. 10, the holes 300, 300a are aligned to receive corresponding pivot pins 310 therethrough to hingedly attach the links 196a-d together in a linear fashion.

**[0062]** Each leading link 196a-d has a flat surface 312 at the proximal end that is generally perpendicular to the direction of columnar loading from the firing rod 32. Each trailing link 196a-d has a contact surface 314 at the distal end that is also generally perpendicular to the direction of columnar loading. The lateral through hole 302 is spaced away sufficient so that a notch 316 is formed between lower portions of adjacent flat surface 312 and contact surface 314 to provide clearance for downward pivoting of the trailing link 196a-d relative to the leading link 196a-d. Yet, the upper portions of the adjacent flat surface 312 and contact surface 314 are registered for abutment as the leading and trailing links 196a-d are longitudinally aligned, thereby resisting further upward deflection.

**[0063]** When adjacent links 196a-d are horizontally aligned, the holes 302 and pins 310 are located below the line of action of the firing rod 32. As will be discussed in further detail below, when loads are applied to the firing trigger 34, a traction biasing mechanism 210 applies a pushing load along the line of action and biases consecutive horizontal links 196a-d together. Thus, imparting a line of action of a firing force above the pivot pins 310 maintains any leading links 196a-d in a rigid, straight configuration. It should be appreciated that although pinned connections between links 196a-d have been advantageously depicted, other resilient or flexible connection arrangements may be used. In addition, four links 196a-d are depicted, but various numbers and lengths of links may be selected depending on firing travel, radius of curvature, etc.

**[0064]** As can also be seen in FIG. 10, a left side 304 of each link 196a-d includes the toothed upper surface 222. In addition, a right side 306 of each link 196a-c has a ramped right-side track 282 formed by a proximally and rightwardly facing beveled surface 284. The distal end of the front link 196a is configured for attachment to the proximal end of the firing rod 32. As shown in FIG. 8, an arcuate band 192 may be employed to support the firing mechanism 150 as it is

actuated. In various embodiments, the band is fabricated from steel or other metal. However, the band 192 may be successfully fabricated from other suitable materials. As can be seen in FIG. 8, a distally-disposed end 194 of the band 192 is attached to an attachment feature 195 on the front link 196a. In various embodiments, a small spring 400 may be coupled to the proximal end of the link 196d and the proximal end of the band 192 (FIGS. 8 and 9) to draw the links 196a-d into conforming engagement with the arcuate band 192. Those of ordinary skill in the art will understand that the links 196a-d and band 192 move essentially as a unit. Thus, spring 400 does not apply any retraction force whatsoever to the firing rod 32.

#### Side Pawl Mechanism

[0065] In various embodiments, the upper portion 204 of the firing trigger 34 engages the linked rack 200 during each firing trigger depression through a spring biased side pawl mechanism 210 that also disengages when the firing trigger 34 is released. In particular, a ramped right-side track 282 formed by a proximally and rightwardly facing beveled surface 284 in each of the links 1196a-1196d is engaged by a side pawl assembly 285 as the firing trigger 34 is depressed. Turning to FIG. 8, one form of a side pawl assembly 285 that may be successfully employed includes a pawl slide 270 that is configured with right and left lower guides 272. One guide 272 slides in a left track 274 formed in the closure yoke 162 below the rack channel 291 and the other guide 272 slides in a right track 275 in a closure yoke rail 276 that parallels rack channel 291. As can be seen in FIG. 8, the closure yoke rail 276 is attached to or is integral with a rack channel cover 277 that is coupled to the closure yoke 162 to enclose the rack channel 291. A compression spring 278 is attached between a hook 279 on a top proximal position on the closure yoke rail 276 and a hook 280 on a distal right-side of the pawl slide 270, which keeps the pawl slide 270 drawn proximally into contact with the upper portion 204 of the firing trigger 34.

[0066] With reference to FIGS. 8 and 11, a pawl block 318 is located on the pawl slide 270 and is pivotally attached thereto by a vertical aft pin 320 that passes through a left proximal corner of pawl block 318 and pawl slide 270. A kick-out block recess 322 is formed on a distal portion of a top surface of the block 318 to receive a kick-out block 324 pivotally pinned thereto by a vertical pin 326 whose bottom tip extends into a pawl spring recess 328 on a top surface of the pawl slide 270. A pawl spring 330 (FIG. 8) in the pawl spring recess 328 extends to the right of the vertical

front pin 326 urging the pawl block 318 to rotate counterclockwise when viewed from above into engagement with the ramped right-side track 282. A small coil spring 332 (FIG. 8) in the kick-out block recess 322 urges the kick-out block 324 to rotate clockwise when viewed from above, its proximal end urged into contact with a contoured lip 334 formed in the closure yoke 162 above the rack channel 291.

**[0067]** As the firing trigger 34 is fully depressed and begins to be released, the kick-out block 324 encounters a ridge 336 in the contoured lip 334 as the pawl slide 270 retracts, forcing the kick-out block 324 to rotate clockwise when viewed from above and thereby kicking out the pawl block 318 from engagement with the linked rack 200. The shape of the kick-out block recess 322 stops the clockwise rotation of the kick-out block 324 to a perpendicular orientation to the contoured lip 334 maintaining this disengagement during the full retraction and thereby eliminating a ratcheting noise.

#### Retraction System

**[0068]** The embodiment depicted in FIGS. 7-17 contains a retraction assembly 500 that is configured to enable the surgeon to manually retract the firing bar 32 without any other assistance from springs or other retraction arrangements that serve to place a drag on the firing system and which ultimately require the generation of higher firing forces to actuate the firing mechanism. As can be most particularly seen in FIGS. 16 and 17, in these embodiments, a first gear 220 is operably mounted to mesh with the toothed upper, left surfaces 222 of the linked rack 200. The first gear 220 also engages a second gear 230 that has a smaller right-side ratchet gear 231 thereon. Both the first gear 220 and second gear 230 are rotatably connected to the handle housing 154 respectively on front axle 232 and aft axle 234. One end of the axle 232 extends through the respective right housing half shell 156 and is attached to a right indication member in the form of an indicator gauge wheel 40. Similarly, the other end of the aft axle 232 extends through the left housing half shell 158 and is attached to a left indicator gauge wheel 41. Because the aft axle 234 is free spinning in the handle housing 154 and has a keyed engagement to the second gear 230, the indicator gauge wheels 40, 41 rotate with the second gear 230. The gear relationship between the linked rack 200, first gear 220 and second gear 230 may be advantageously selected so that the toothed upper surface 222 has tooth dimensions that are

suitably strong and that the second gear 230 makes no more than one revolution during the full firing travel of the linked transmission firing mechanism 150.

**[0069]** The smaller right-side ratchet gear 231 of the second gear 230 extends into a hub 506 of a manual retraction member in the form of retraction lever 42 specifically aligned with a vertical longitudinally-aligned slot 508 (FIGS. 12 and 15) bisecting the hub 506. A lateral through hole 510 of the hub 506 communicates with an upper recess 512. See FIG. 12. A front portion 514 is shaped to receive a proximally directed retraction pawl 516 that pivots about a rightward lateral pin 518 formed in a distal end of the upper recess 512. An aft portion 520 is shaped to receive an L-shaped spring tab 522 that urges the retraction pawl 516 downward into engagement with the right-side smaller ratchet gear 231. A hold-up structure 524 (FIGS. 16 and 17) projects from the right half shell 156 into the upper recess 512 for supporting and preventing the retraction pawl 516 from engaging the smaller right-side ratchet gear 231 when the manual retraction lever 42 is up (FIG. 16). A spring 525 (FIG. 8) urges the manual retraction lever 42 into the up position.

**[0070]** After the firing sequence has been completed, the clinician can use the manual retraction lever 42 to retract the firing bar 32 to the unactuated position. This can be accomplished by grasping the pistol grip 36 and sequentially depressing and releasing the manual retraction lever 42. As the manual retraction lever 42 is depressed (FIG. 17), the locking pawl 516 rotates clockwise and no longer is held up by the hold-up structure 524 and engages the smaller right-side ratcheting gear 231, rotating the second gear 230 clockwise when viewed from the left. Because the second gear 230 is in meshing engagement with the forward idler gear 220, clockwise rotation of the second gear 230 causes the forward idler gear 220 to rotate in a counterclockwise direction. As the forward idler gear 220 rotates in a counterclockwise direction, it drives the linked rack in a proximal direction. Thus, continued ratcheting action (arrow A in FIG. 17) of the manual retraction lever 42 will cause the linked rack 200 to be retracted (arrow B) and draw the firing rod 32 to a fully retracted position.

**[0071]** In various embodiments, the invention may be constructed with means for providing the clinician with an indication of how far the firing bar 32 has been advanced and retracted. In those embodiments, the axle 234 on which the indicator gear 230 is journaled is connected to the externally viewable indicator wheels 40, 41. See FIG. 8. In such arrangement, the surgeon can

determine the relative position of the firing mechanism 150 by observing the positions of the indicator wheels 40, 41 and thereby determine how many strokes of the firing trigger 34 are required to complete firing. For instance, full firing travel may require three full firing strokes and thus the indicator wheels 40, 41 rotate up to one-third of a revolution each per stroke. The gear relationship between the linked rack 200, first gear 220 and second gear 230 may be advantageously selected so that the toothed upper surface 222 has tooth dimensions that are suitably strong and that the second gear 230 makes no more than one revolution during the full firing travel of the linked transmission firing mechanism 150.

#### Interaction Between the Closure System and Firing System

**[0072]** When the linked rack 200 is fully retracted and both triggers 26, 34 are open as shown in FIGS. 7 and 9, an opening 240 in a circular ridge 242 on the left side of the second gear 230 is presented to an upper surface 244 of the locking arm 172. See FIG. 7. Locking arm 172 is biased into the opening 240 by contact with the closure trigger 26, which in turn is urged to the open position by a closure tension spring 246. As can be seen in FIG. 7, when a portion of the locking arm 172 extends into the opening 240 in the circular ridge 242, the second gear 230 cannot rotate. Thus, when the locking trigger 26 is in the unlocked position, the firing mechanism 150 cannot be actuated.

**[0073]** FIGS. 18-21 illustrate another surgical stapling and severing instrument 10' of the present invention. As can be seen in FIG. 20, this embodiment may employ the same elements as the instrument 10 described above, except for the side mounted and rotatably supported manual retraction and indicating lever 642 and related components. More particularly and with reference to FIGS. 19 and 20, the instrument 10' includes a first gear 620 that is operably mounted to mesh with the toothed upper, left surfaces 222 of the linked rack 200. The first gear 620 also engages a hubbed aft gear 630. Both the first gear 620 and the aft gear 630 are rotatably connected to the handle housing 154' respectively on front idler axle 232 and aft idler axle 234. One end of the aft axle 232 extends through the respective right housing half shell 156' and is attached to a right indicator gauge wheel 40. The other end of the aft axle 232 extends through the left housing half shell 158' and is attached to the manual retraction indication lever 642. Because the aft axle 234 is free spinning in the handle housing 154' and has a keyed engagement

to the second gear 630, the manual retraction and indication lever 642 rotates with the second gear 630.

[0074] As the clinician advances the firing rod 32 distally by ratcheting the firing handle 34 in the manner described in detail above, the toothed portions 222 of the links 196a-d cause the first gear 620 to rotate (direction “C” in FIG. 19) which, by virtue of its meshing engagement with the second gear 630, causes the second gear 630 and the manual retraction and indication lever 642 to rotate (direction “D” in FIG. 19). FIGS. 18 and 19 illustrate the position of the manual retraction and indication lever 642 in the unfired and fully fired positions. The gear relationship between the linked rack 200, first gear 620 and second gear 630 may be advantageously selected so that the toothed upper surface 222 has tooth dimensions that are suitably strong and that the second gear 630 makes no more than one revolution during the full firing travel of the linked transmission firing mechanism 150. Thus, the clinician can determine how far along the firing sequence is by monitoring the position of the manual retraction and indication lever 642.

[0075] After the firing sequence has been completed, the clinician can use the manual retraction lever 642 to retract the firing bar 32 to the unactuated (retracted) position. This can be accomplished by grasping the manual retraction lever 642 and rotating it in the clockwise (arrow “E” in FIG. 18). As the retraction lever 642 is rotated in that direction, it causes the second gear 630 to also rotate in that direction. Because the second gear 630 is in meshing engagement with the first gear 620, the first gear 620 rotates in a clockwise direction in FIG. 18 which draws the linked rack in the proximal direction until it reaches its starting-unfired position. Again, this embodiment does not employ any spring or other retraction members that apply a retraction force to the firing system which must be overcome during the firing sequence. The gear relationship between the linked rack 200, first gear 620 and second gear 630 may be advantageously selected so that the toothed upper surface 222 has tooth dimensions that are suitably strong and that the second gear 630 makes no more than one revolution during the full firing travel of the linked transmission firing mechanism 150.

[0076] FIGS. 22-27 illustrate another surgical stapling and severing instrument 10” of the present invention. As can be seen in FIG. 23, this embodiment may employ many of the same elements as the instrument 10 described above. As can be most particularly seen in FIGS. 23-27,

this embodiment employs a manual retraction assembly 700 for manually retracting the firing rod 32. In various embodiments, the manual retraction assembly 700 includes a drive gear 720 that is operably mounted to mesh with the toothed upper, left surfaces 222 of the linked rack 200. The drive gear 720 is rotatably supported within the handle housing 154” on an axle 232 that is supported between handle shell portions 156”, 158”. The manual retraction assembly 700 may further include a second gear rack 800 that is movably supported within a rack passage 820 formed in the handle housing 154”. As can be seen in FIG. 23, a track portion 822 is formed in the right shell portion 156 and a track portion 824 is formed in the left shell portion 158. When the shell portions 156, 158 are interconnected together to form the handle housing 154”, the track portions 822, 824 cooperate to form the rack passage 820. The rack passage 820 is sized relative to the second gear rack 800 such that the second gear rack 800 can move axially back and forth (arrow “F” in FIG. 26) within the handle housing 154”. Second gear rack 800 is movably supported within the rack passage 820 and is in meshing engagement with the drive gear 720.

[0077] As can be seen in FIGS. 24 and 25, the second gear rack 800 is attached to a retraction handle 900 by means of a handle yoke 910 that is pinned to the second gear rack 800 with a pin 912 and is also pinned to the retraction handle 900 by pin 914. The retraction handle 900 may be configured with a pair of pivot legs 902, 904 for pivotal attachment to the handle housing 154”. In particular, leg 902 may be pinned to the right hand shell portion 156” by pin 906 and leg 904 may be pivotally pinned to left hand shell portion 158” by pin 908. See FIG. 23.

[0078] As the clinician advances the firing rod 32 distally by ratcheting the firing trigger 34 in the manner described above, the toothed portions 222 of the links 196a-d cause the drive gear 720 to rotate clockwise (direction “G” in FIGS. 26 and 27) which, by virtue of its meshing engagement with the second gear rack 800, causes the second gear rack 800 to move in the proximal direction (arrow “H” in Figure 27). FIG. 27 illustrates the position of the second gear rack 800 and the manual retraction handle 900 at the completion of the firing stroke (i.e., the position wherein the firing rod 32 has been moved to its distal most position). As can be seen in that Figure, a grip portion 930 of the retraction handle is spaced away from the handle housing 154. To retract the firing rod 32, the clinician simply pushes the retraction handle in the “H” direction until the second gear rack 800 reaches the position illustrated in FIG. 26 wherein the



grip portion 930 is adjacent the handle housing 154. Those of ordinary skill in the art will appreciate that the clinician can monitor the progress of the firing stroke by observing the position of the retraction handle 900 as the clinician continues to ratchet the firing trigger 34. In addition, this embodiment does not employ any springs or other retraction members that apply a retraction force to the firing system which must be overcome during the firing sequence.

[0079] In various embodiments, the closure trigger 26 has an upper portion 160 that is configured to activate a closure yoke 162 via a closure link 164. The closure link 164 is pivotally attached at its distal end by a closure yoke pin 166 to the closure yoke 162 and is pivotally attached at its proximal end by a closure link pin 168. As can be seen in FIG. 26, the closure trigger 26 is urged to the open position by a closure trigger tension spring 246 that is connected proximally to the upper portion 160 of the closure trigger 26 and a handle housing 154".

[0080] The upper portion 160 of the closure trigger 26 includes a proximal crest 170 with an aft notch 171. See FIGS. 23 and 26. The closure release button 38 and a pivoting locking arm 172" are connected by a central lateral pivot 174. A compression spring 180 biases the closure release button 38 proximally (clockwise about the central lateral pivot 174 as viewed from the right). With the upper portion 160 back when the closure trigger 26 is released as depicted in FIG. 26, the pivoting locking arm 172" rides upon the proximal crest 170 drawing in the closure release button 38. As can also be seen in FIG. 26, the upper end 173" of the pivoting locking arm 172" is configured to extend into a recess 802 in the second gear rack 800 to thereby prevent actuation of the gear rack 800 to fire the instrument 10". When the closure trigger 26 reaches its fully depressed position, it should be appreciated that the aft notch 171 is presented below the pivoting locking arm 172" which drops into and locks against the aft notch 171 under the urging of the compression spring 180. When the pivoting locking arm 172" drops out of engagement with the second gear rack 800, the gear rack 800 can then be axially advanced. With the firing components retracted, manual depression of the closure release button 38 rotates the pivoting locking arm 172" upward unclamping the closure trigger 26.

[0081] While the present invention has been illustrated by description of several embodiments and while the illustrative embodiments have been described in considerable detail, it is not the

intention of the applicant to restrict or in any way limit the scope of the appended claims to such detail. Additional advantages and modifications may readily appear to those skilled in the art.

**[0082]** For instance, while a surgical stapling and severing instrument 10 is described herein that advantageously has separate and distinct closing and firing actuation, providing clinical flexibility. However, it should be appreciated that applications consistent with the present invention may include a handle that converts a single user actuation into a firing motion that closes and fires the instrument.

**[0083]** In addition, while a manually actuated handle is illustrated, a motorized or otherwise powered handle may benefit from incorporating a linked rack as described herein, allowing reduction of the size of the handle or other benefits. For instance, while partially stowing the linked rack into the pistol grip is convenient, it should be appreciated that the pivot connection between links allows for stowing the link parallel to the straight portion defined by the shaft and the barrel of the handle. In addition, various embodiments employ a unique and novel retraction assembly that enables the clinician to manually retract the firing rod and thus, the end effector firing bar, without the assistance of springs or other force generating members that may be employed to apply a retraction force to the firing drive. Such additional force generating devices, while helpful when retracting the firing rod, require the instrument to generate firing forces that must also overcome the forces generated by such additional retraction force generating members. Thus, the various retraction systems disclosed herein are said to generate the “sole” retraction motion or force. This means that the retraction motions/forces are generated by manipulation of the various retraction members by the clinician without any assistance from additional springs or force generating members.

**[0084]** While several embodiments of the invention have been described, it should be apparent, however, that various modifications, alterations and adaptations to those embodiments may occur to persons skilled in the art with the attainment of some or all of the advantages of the invention. For example, according to various embodiments, a single component may be replaced by multiple components, and multiple components may be replaced by a single component, to perform a given function or functions. This application is therefore intended to cover all such

modifications, alterations and adaptations without departing from the scope and spirit of the disclosed invention as defined by the appended claims.

[0085] The devices disclosed herein can be designed to be disposed of after a single use, or they can be designed to be used multiple times. In either case, however, the device can be reconditioned for reuse after at least one use. Reconditioning can include a combination of the steps of disassembly of the device, followed by cleaning or replacement of particular pieces, and subsequent reassembly. In particular, the device can be disassembled, and any number of particular pieces or parts of the device can be selectively replaced or removed in any combination. Upon cleaning and/or replacement of particular parts, the device can be reassembled for subsequent use either at a reconditioning facility, or by a surgical team immediately prior to a surgical procedure. Those of ordinary skill in the art will appreciate that the reconditioning of a device can utilize a variety of different techniques for disassembly, cleaning/replacement, and reassembly. Use of such techniques, and the resulting reconditioned device, are all within the scope of the present application.

[0086] Preferably, the invention described herein will be processed before surgery. First a new or used instrument is obtained and, if necessary, cleaned. The instrument can then be sterilized. In one sterilization technique, the instrument is placed in a closed and sealed container, such as a plastic or TYVEK® bag. The container and instrument are then placed in a field of radiation that can penetrate the container, such as gamma radiation, x-rays, or higher energy electrons. The radiation kills bacteria on the instrument and in the container. The sterilized instrument can then be stored in the sterile container. The sealed container keeps the instrument sterile until it is opened in the medical facility.

[0087] Any patent, publication, or other disclosure material, in whole or in part, that is said to be incorporated by reference herein is incorporated herein only to the extent that the incorporated materials does not conflict with existing definitions, statements, or other disclosure material set forth in this disclosure. As such, and to the extent necessary, the disclosure as explicitly set forth herein supersedes any conflicting material incorporated herein by reference. Any material, or portion thereof, that is said to be incorporated by reference herein, but which conflicts with existing definitions, statements, or other disclosure material set forth herein will only be

incorporated to the extent that no conflict arises between that incorporated material and the existing disclosure material.

**[0088]** The invention which is intended to be protected is not to be construed as limited to the particular embodiments disclosed. The embodiments are therefore to be regarded as illustrative rather than restrictive. Variations and changes may be made by others without departing from the spirit of the present invention. Accordingly, it is expressly intended that all such equivalents, variations and changes which fall within the spirit and scope of the present invention as defined in the claims be embraced thereby.

What is claimed is:

1. A surgical instrument, comprising:
  - a handle assembly;
  - an end effector for performing a surgical operation, said end effector operably coupled to said handle assembly and operably supporting a firing member that is movable from a retracted position to a fired position in response to a longitudinal firing motion applied thereto;
  - a firing drive supported by said handle assembly and configured to selectively generate said longitudinal firing motion upon actuation of a firing trigger operably coupled to said handle assembly; and
  - a retraction assembly supported by said handle assembly and interfacing with said firing drive such that manual actuation of said retraction assembly causes said firing drive to generate a sole retraction motion which is communicated to said firing member to cause said firing member to move from said fired position to said retracted position.
  
2. The surgical instrument of claim 1 further comprising at least one indication member operably supported on said handle assembly and interfacing with said firing drive to provide a visual indication of the progress of the firing member during the application of said firing motion and sole retraction motion to said end effector.
  
3. The surgical instrument of claim 1 further comprising:
  - a closure drive supported by said handle assembly and configured to generate a closing motion and an opening motion; and
  - an elongate shaft assembly coupling said end effector to said handle assembly and configured to transfer said opening and closing motions and said firing and retraction motions thereto.
  
4. The surgical instrument of claim 3 wherein said end effector comprises:
  - an elongate channel coupled to said elongate shaft assembly and being sized to receive a staple cartridge therein; and

an anvil coupled to said elongate channel and being selectively movable between open and closed positions in response to open and closing motions from said elongate shaft assembly and wherein said firing member comprises a cutting and severing member operably supported within said elongate channel and being responsive to said firing and retraction motions from said elongate shaft assembly.

5. The surgical instrument of claim 3 wherein said closure drive comprises:  
a locking mechanism for automatically locking said closure drive in a locked position after said closure drive has fully applied said closing motion to said end effector; and  
a release mechanism interfacing with said locking mechanism to selectively apply an unlocking motion thereto.

6. The surgical instrument of claim 5 wherein said locking mechanism interfaces with said firing drive such that said locking mechanism prevents actuation of said firing drive unless said closure drive is in said locked position.

7. The surgical instrument of claim 1 wherein said firing drive comprises:  
a linked rack operably supported by said handle assembly;  
a firing rod communicating with said linked rack and said end effector for transmitting said firing and retraction motions thereto; and  
a firing trigger operably supported by said handle assembly and configured to interact with said linked rack such that actuation of said firing trigger causes said linked rack to apply said firing motion to said firing rod.

8. The surgical instrument of claim 7 wherein said retraction assembly comprises a retraction member operably supported by said handle assembly, said retraction member communicating with said linked rack such that manual actuation of said retraction member causes said linked rack to apply said sole retraction motion to said firing rod.

9. The surgical instrument of claim 8 further comprising at least one retraction gear operably supported by said handle assembly and interfacing with said retraction member and said linked rack.

10. The surgical instrument of claim 8 wherein said retraction member is movable between a first position corresponding to said unfired position and a second position corresponding to said fired position and wherein said retraction member is moved from said first position to said second position as said firing trigger is actuated and wherein said retraction member is moved from said second position to said first position upon application of a retraction force to said retraction member.

11. A method for processing an instrument for surgery, the method comprising:  
obtaining the surgical instrument of claim 1;  
sterilizing the surgical instrument; and  
storing the instrument in a sterile container.

12. A surgical instrument comprising:  
a handle assembly;  
an end effector for performing a surgical operation, said end effector operably coupled to said handle assembly and operably supporting a firing member that is movable from a retracted position to a fired position in response to a longitudinal firing motion applied thereto and from said fired position to said retracted position upon application of a retraction motion thereto;  
a linked rack operably supported by said handle assembly;  
a firing rod communicating with said linked rack and said end effector for transmitting said firing and retraction motions from said linked rack to said end effector;  
a firing trigger operably supported by said handle assembly and configured to interface with said linked rack such that actuation of said firing trigger causes said linked rack to apply said firing motion to said firing rod;  
a first gear in meshing engagement with said linked rack; and

a retraction lever movably supported by said handle assembly and configured to interface with said first gear such that actuation of said retraction lever applies a sole retraction motion to said first gear which thereby transfers said sole retraction motion to said linked rack.

13. The surgical instrument of claim 12 further comprising a second gear selectively couplable to said retraction lever and in meshing engagement with said first gear.

14. The surgical instrument of claim 13 wherein said retraction lever is selectively coupled to said second gear by a retraction pawl that selectively engages a portion of said second gear when said retraction lever is pivoted in a first direction and disengages said portion of said second gear when said second gear is pivoted in a second direction.

15. The surgical instrument of claim 14 further comprising:  
a closure drive supported by said handle assembly and configured to generate a closing motion and an opening motion;

an elongate shaft assembly coupling said end effector to said handle assembly and configured to transfer said opening and closing motions from said closure drive to said end effector; and

a locking mechanism for automatically locking said closure drive in a locked position after said closure drive has fully applied said closing motion to said end effector, said locking mechanism interfacing with said second gear to prevent actuation thereof unless said closure drive is in said locked position.

16. A surgical instrument comprising:  
a handle assembly;  
an end effector for performing a surgical operation, said end effector operably coupled to said handle assembly and operably supporting a firing member that is movable from a retracted position to a fired position in response to a longitudinal firing motion applied thereto and from said fired position to said retracted position upon application of a retraction motion thereto;  
a first linked rack operably supported by said handle assembly;



a firing rod communicating with said linked rack and said end effector for transmitting said firing and retraction motions from said linked rack to said end effector;

a firing trigger operably supported by said handle assembly and configured to selectively interface with said linked rack such that actuation of said firing trigger causes said linked rack to apply said firing motion to said firing rod;

a second gear rack operably supported by said handle assembly;

a drive gear in meshing engagement with said first linked rack and said second gear rack;  
and

a retraction lever movably coupled to said handle assembly and said second gear rack such that actuation of said retraction lever applies a sole retraction motion to said drive gear which thereby transfers said sole retraction motion to said linked rack.

17. The surgical instrument of claim 16 further comprising:

a closure drive supported by said handle assembly and configured to generate a closing motion and an opening motion;

an elongate shaft assembly coupling said end effector to said handle assembly and configured to transfer said opening and closing motions from said closure drive to said end effector; and

a locking mechanism for automatically locking said closure drive in a locked position after said closure drive has fully applied said closing motion to said end effector, said locking mechanism interfacing with said second gear rack to retain said second gear rack in a second locked position to prevent actuation thereof unless said closure drive is in said locked position.

18. The surgical instrument of claim 17 further comprising a release mechanism interfacing with said locking mechanism to selectively apply an unlocking motion thereto.

19. The surgical instrument of claim 16 wherein said retraction lever has a grip portion and is movable from a first position wherein said grip portion is adjacent said handle assembly and a second position wherein said grip portion is spaced away from said handle assembly.

20. The surgical instrument of claim 17 wherein said retraction lever has a grip portion that is adjacent the handle assembly when said firing member is in said retracted position and wherein said grip portion is spaced away from said handle assembly when said firing member is in said fired position.

## ABSTRACT OF THE DISCLOSURE

A surgical stapling and severing instrument particularly suited to endoscopic procedures incorporates a handle that produces separate closing and firing motions to actuate an end effector. In particular, the handle produces multiple firing strokes in order to reduce the required amount of force required to fire (i.e., staple and sever) the end effector. A linked transmission reduces the required handle longitudinal length, yet achieves a rigid, strong configuration when straightened for firing. A traction biased firing mechanism avoids binding in driving this straightened linked rack. The instrument further has a manually actuatable retraction system that does not require the use of additional springs or other mechanisms to generate retraction forces which must be overcome when generating the forces necessary to fire the device. In various embodiments, the retraction system provides a visual indication to the surgeon as to how far firing has progressed.

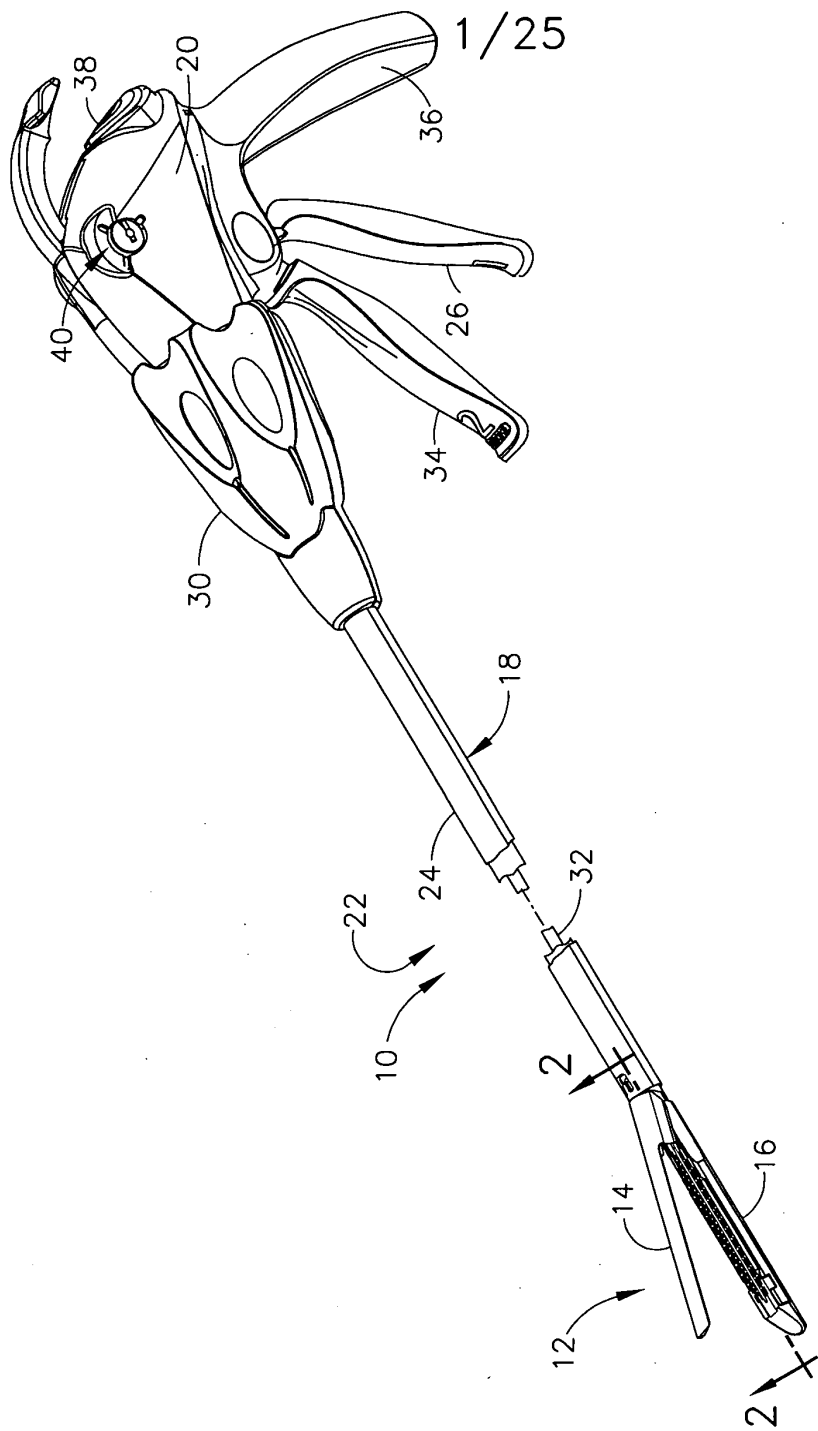


FIG. 1

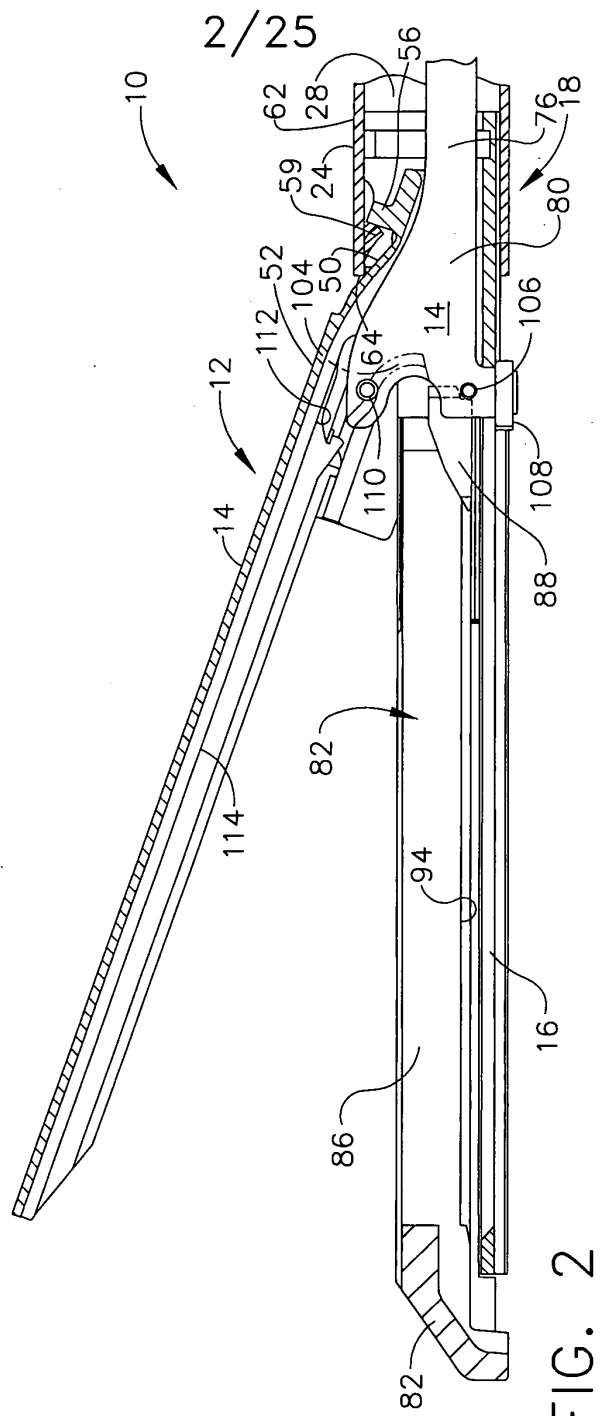


FIG. 2

3/25

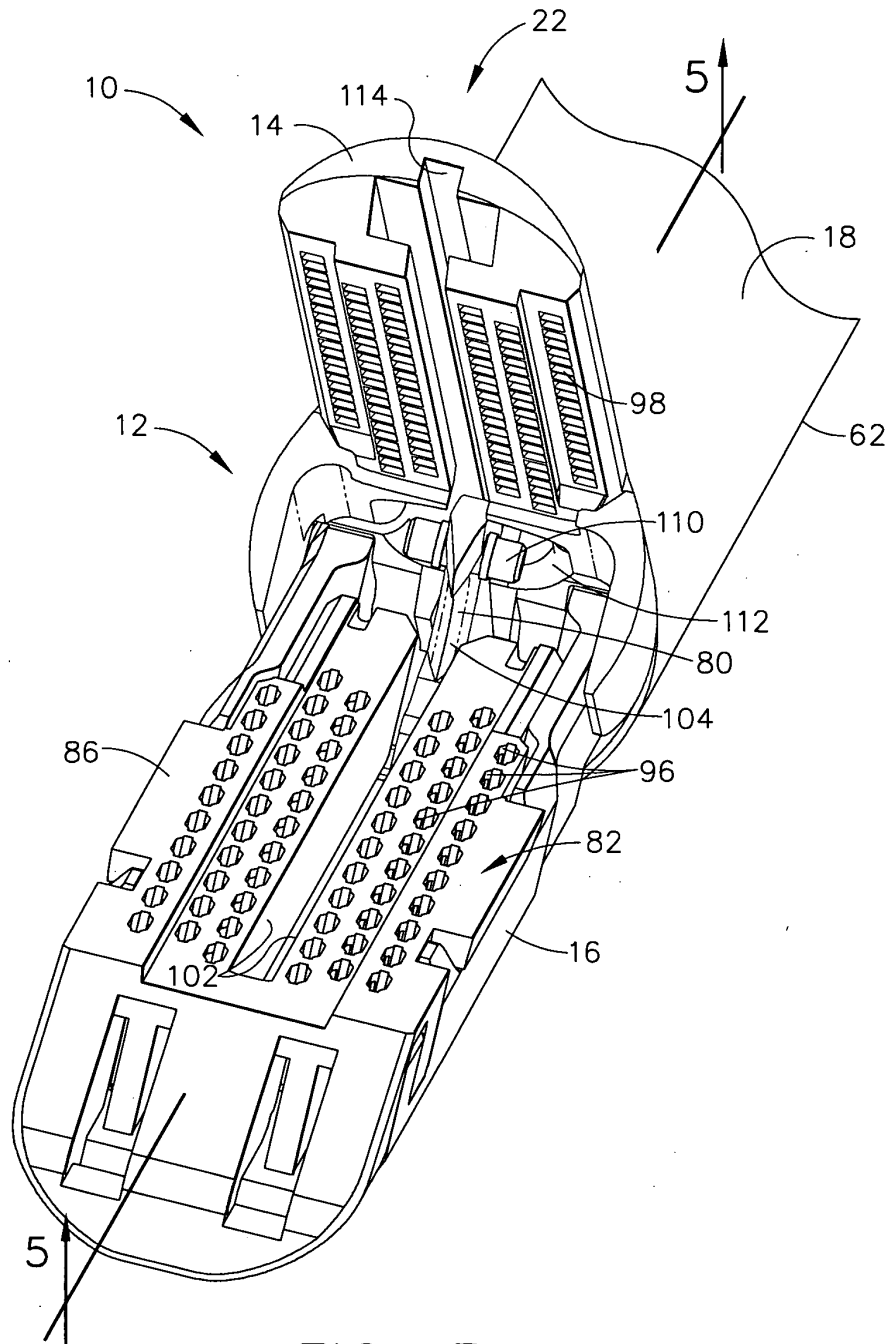


FIG. 3

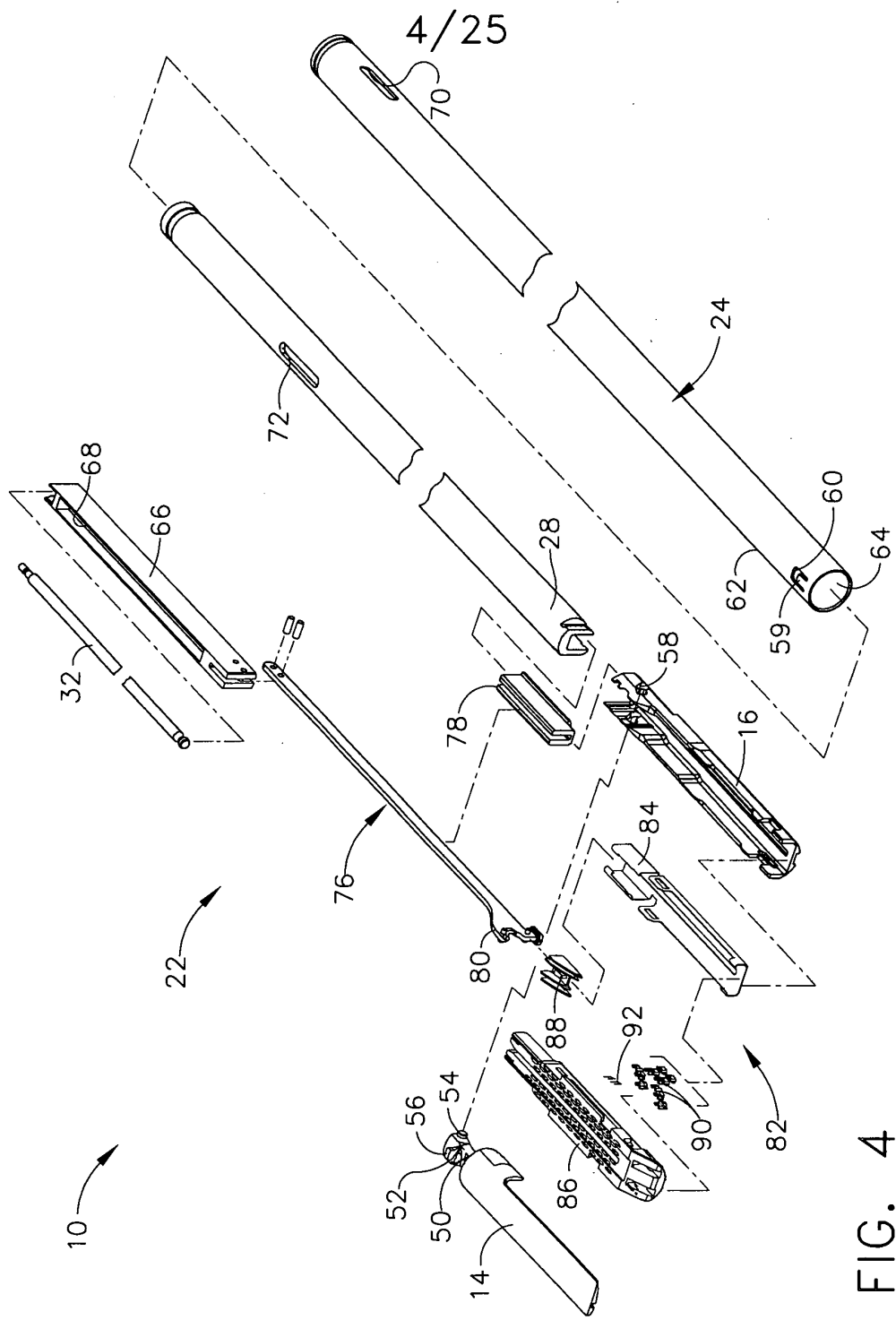


FIG. 4





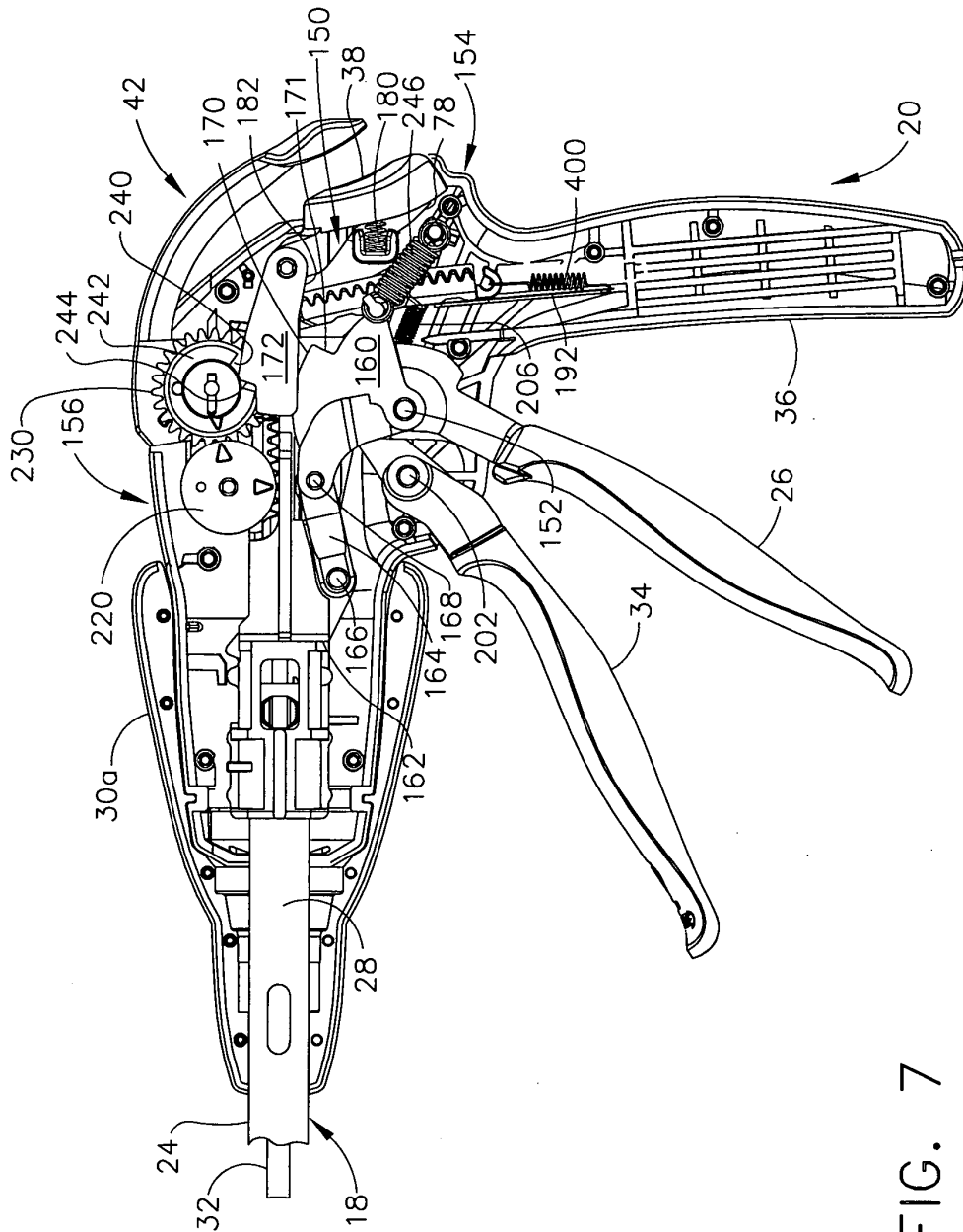


FIG. 7

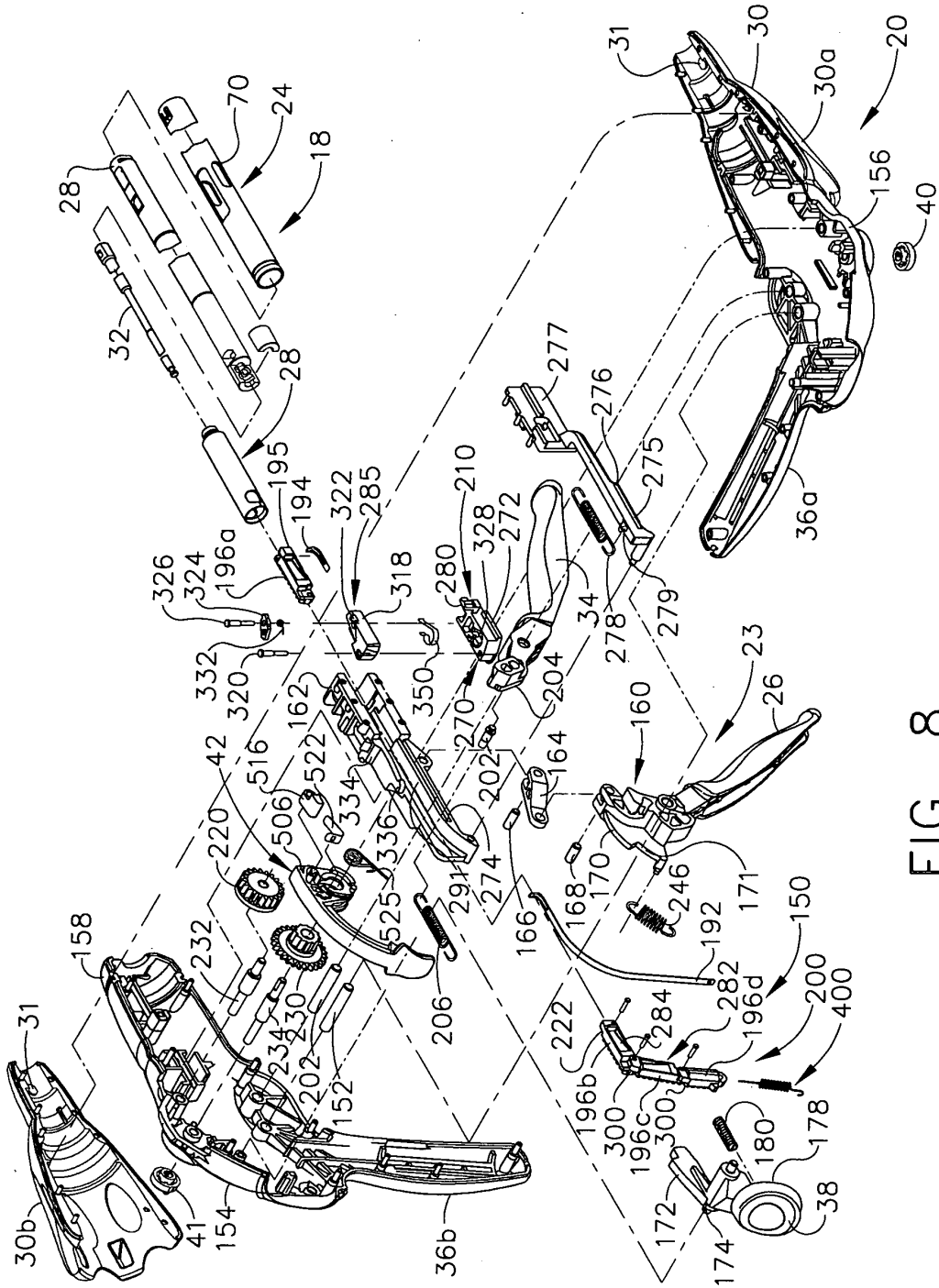


FIG. 8





10/25

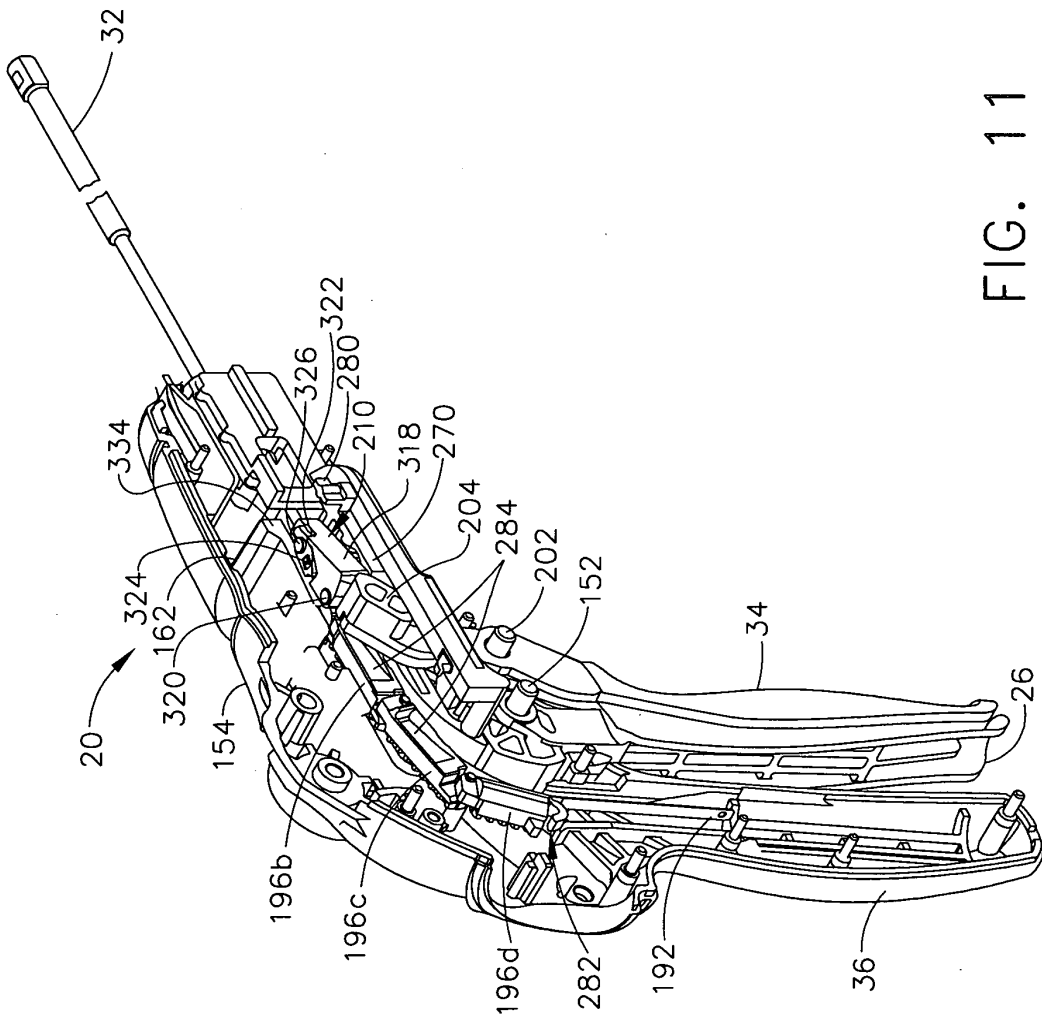


FIG. 11

11/25

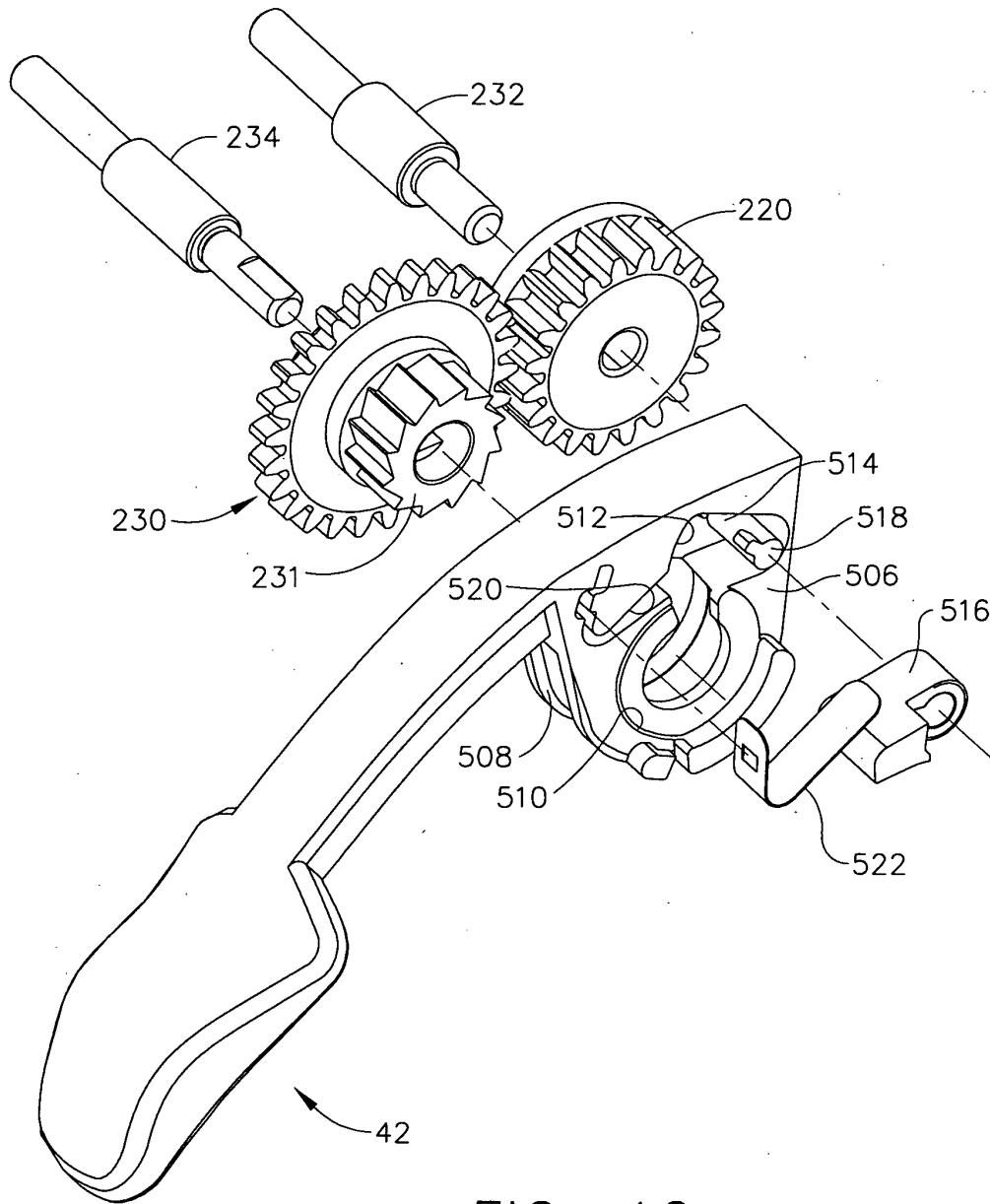


FIG. 12

12/25

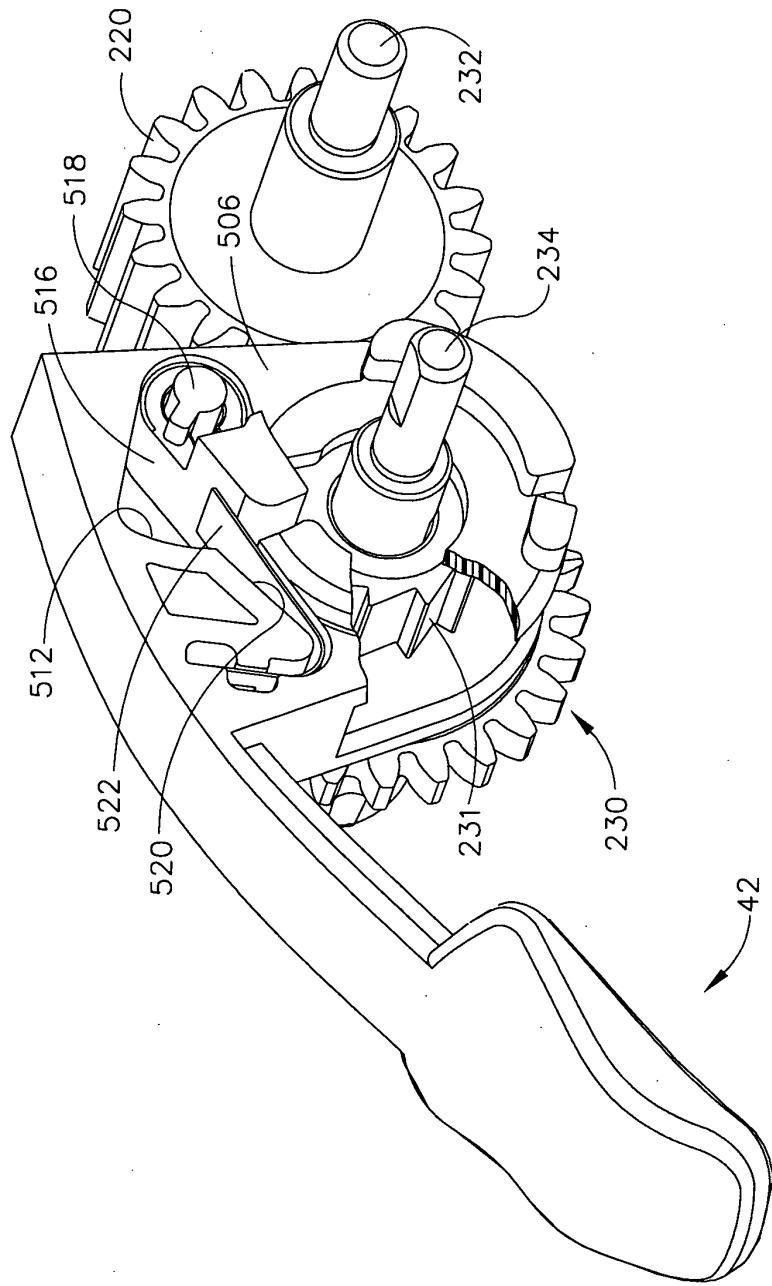


FIG. 13

13/25

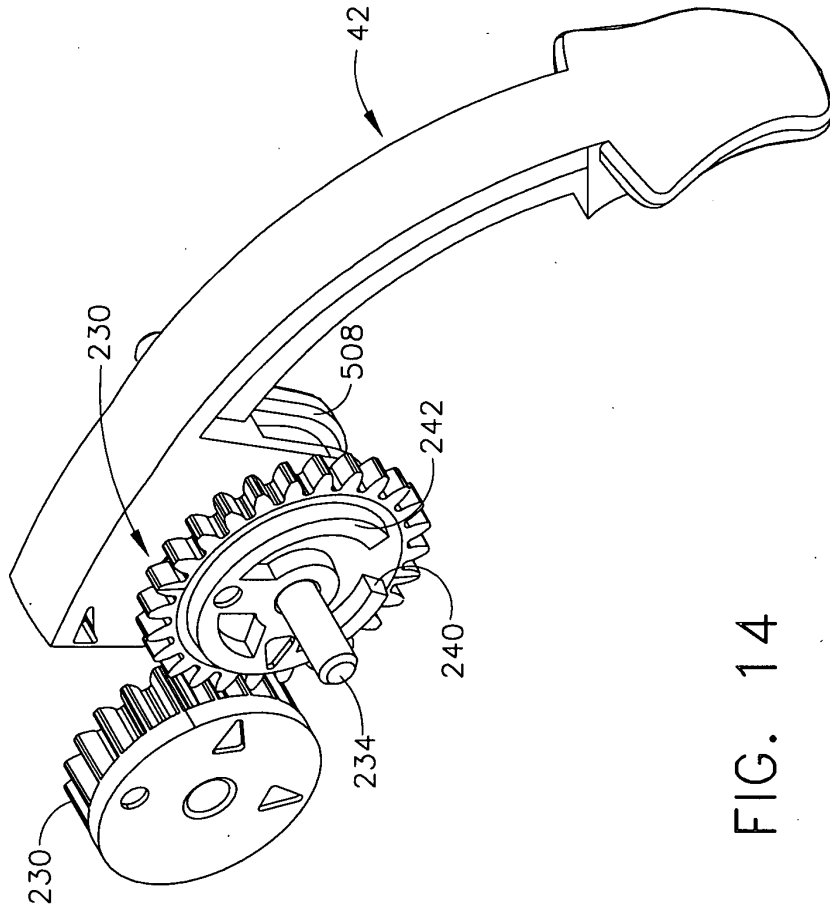


FIG. 14



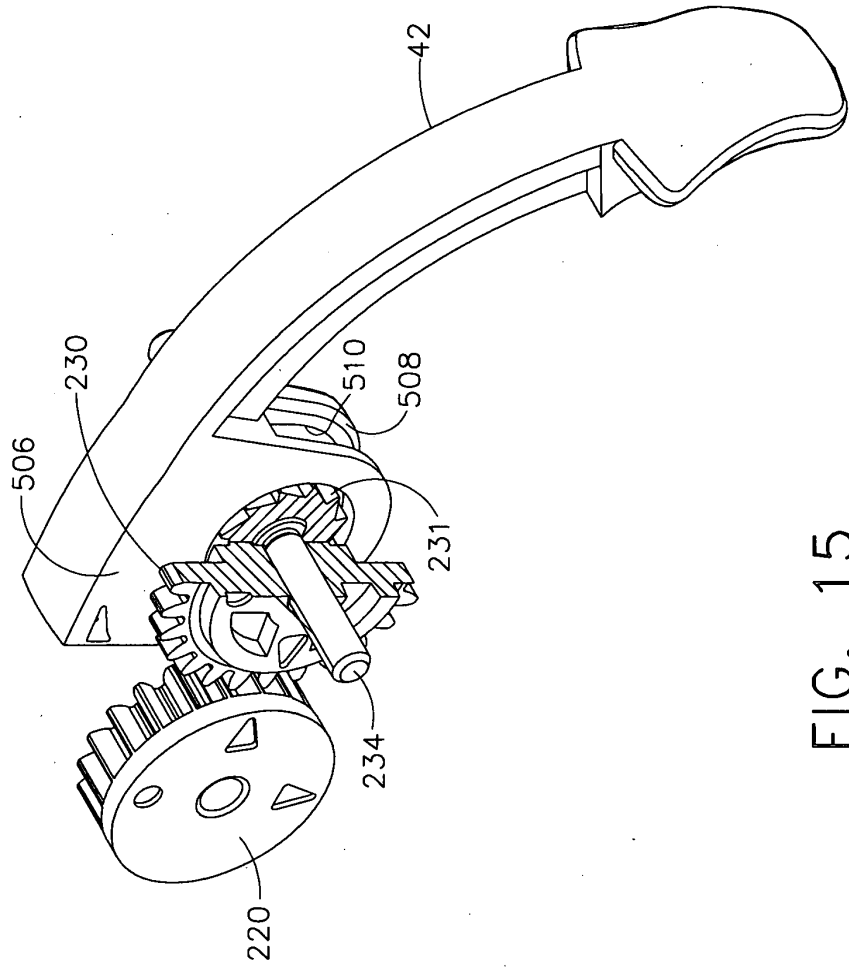


FIG. 15

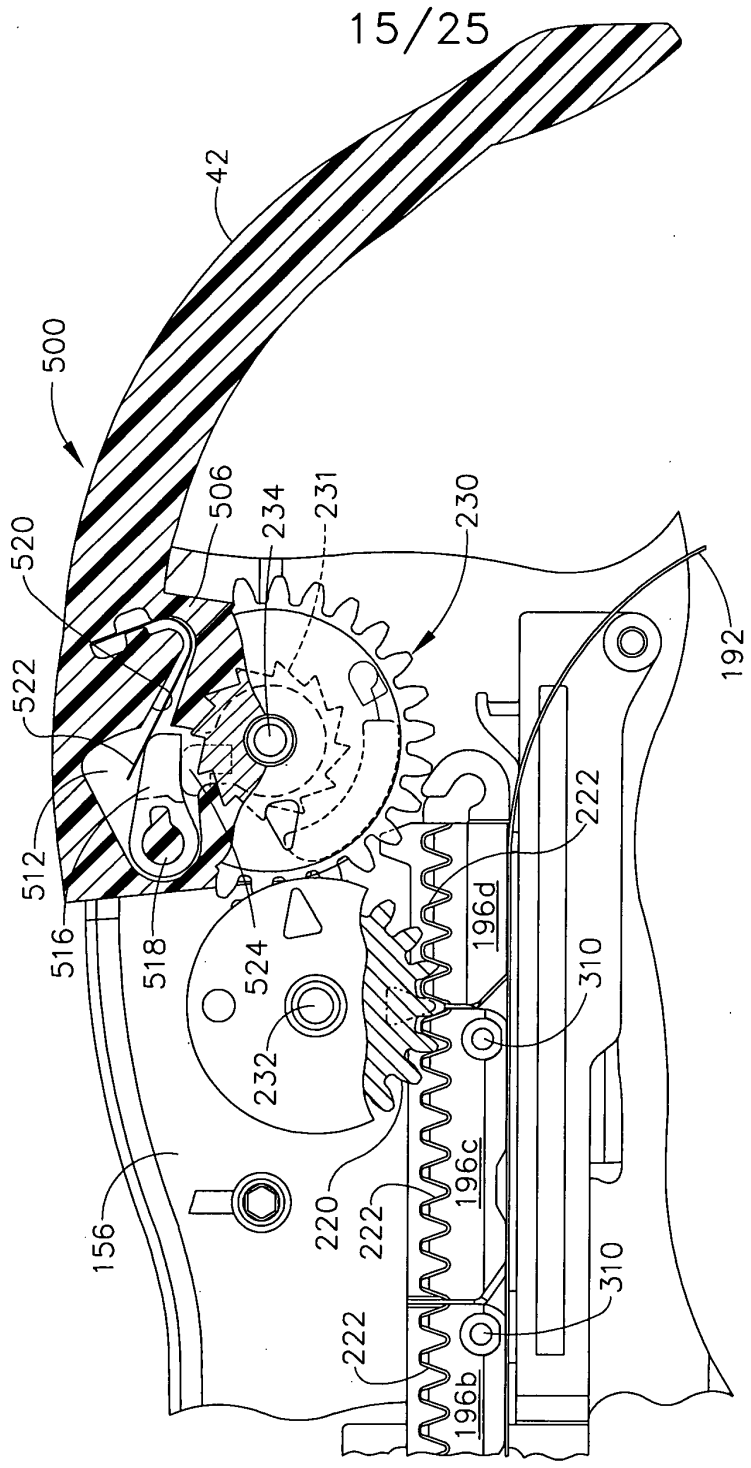


FIG. 16

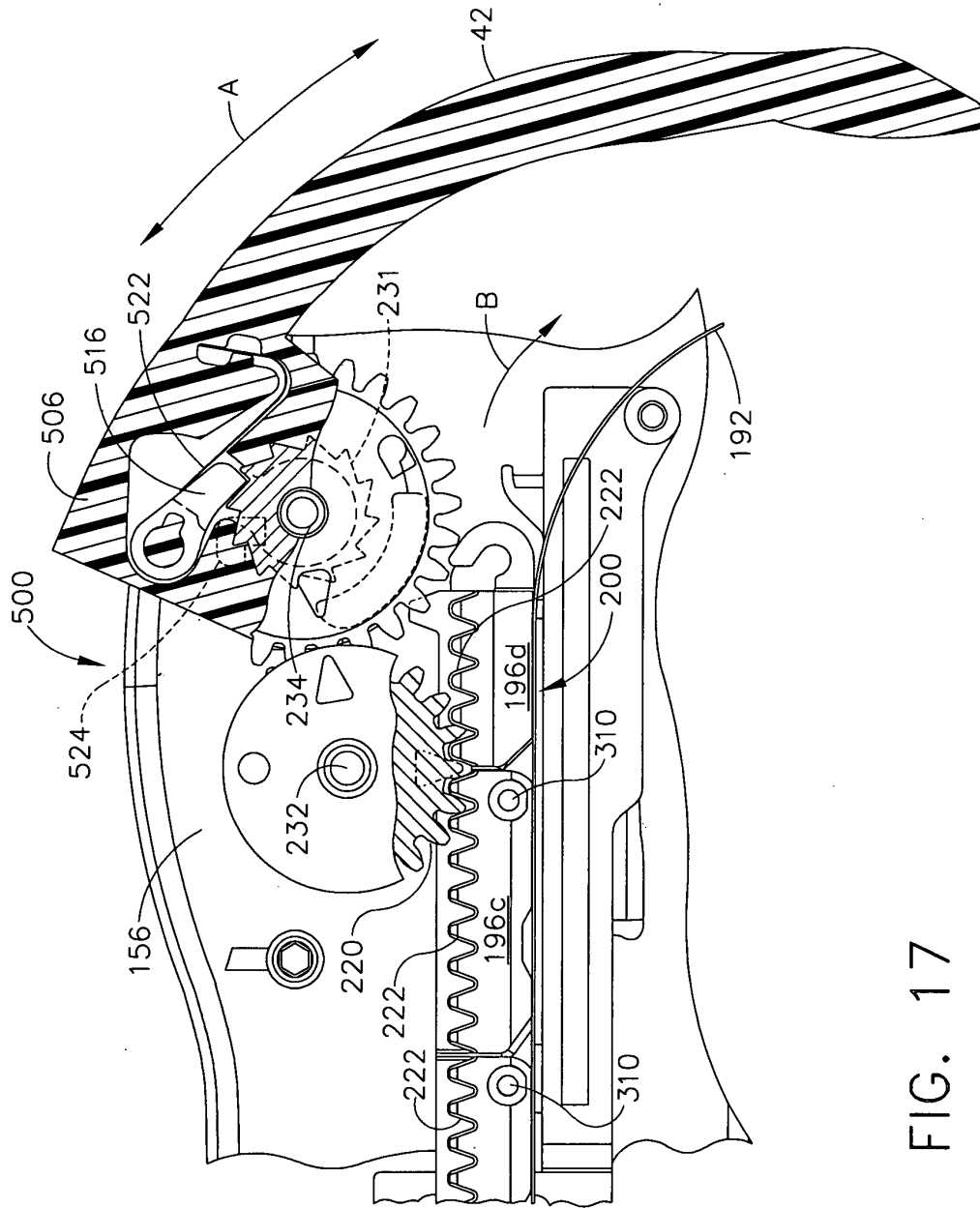


FIG. 17

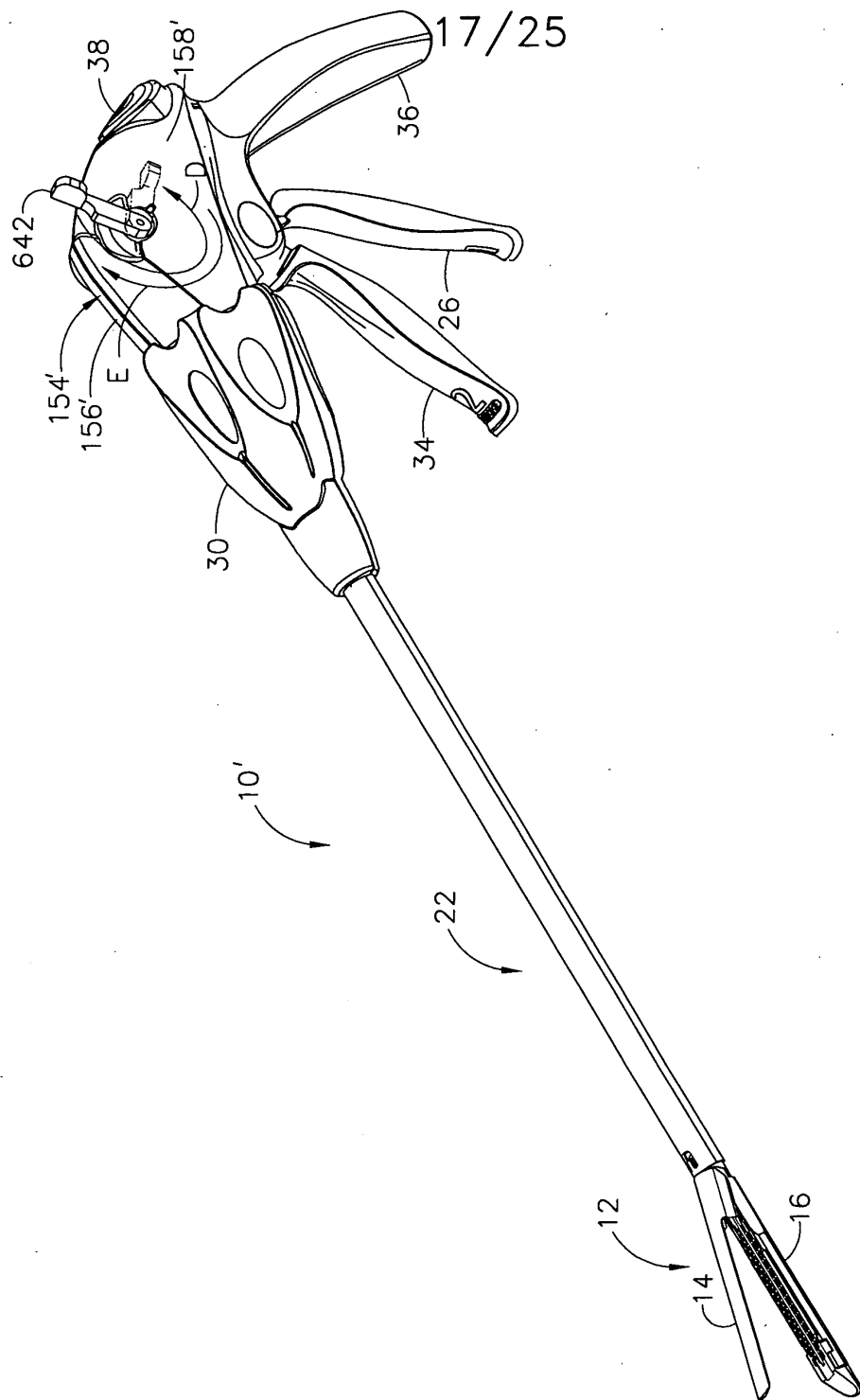


FIG. 18

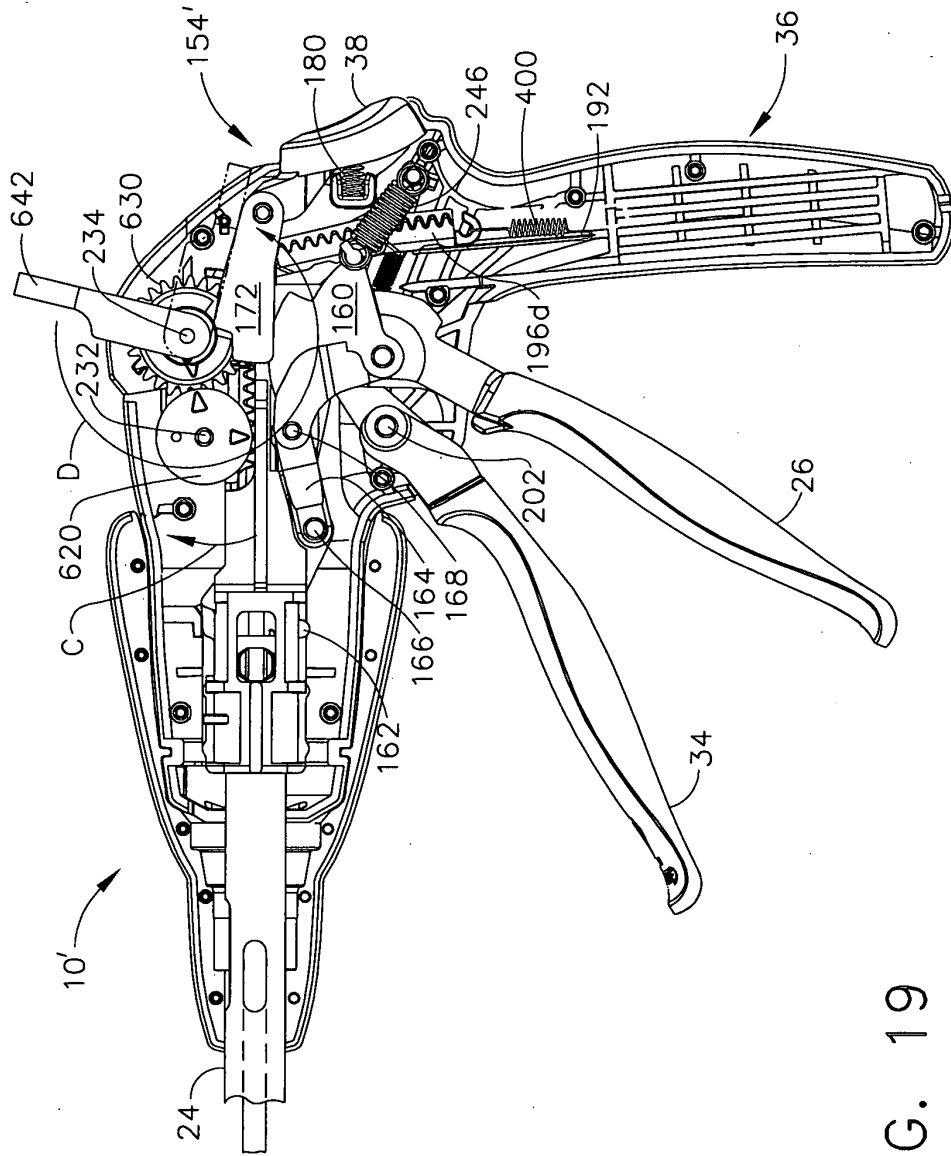


FIG. 19

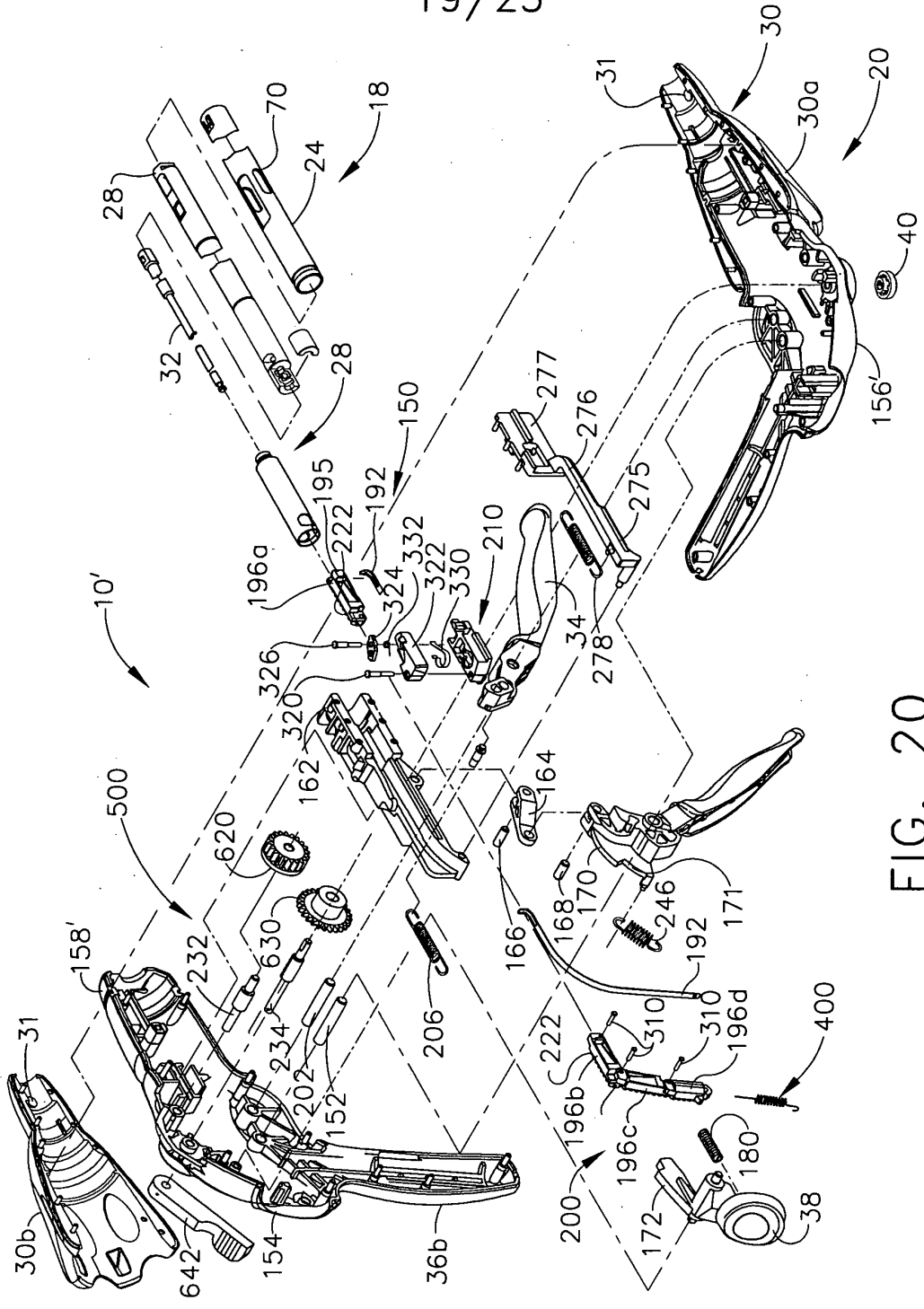


FIG. 20

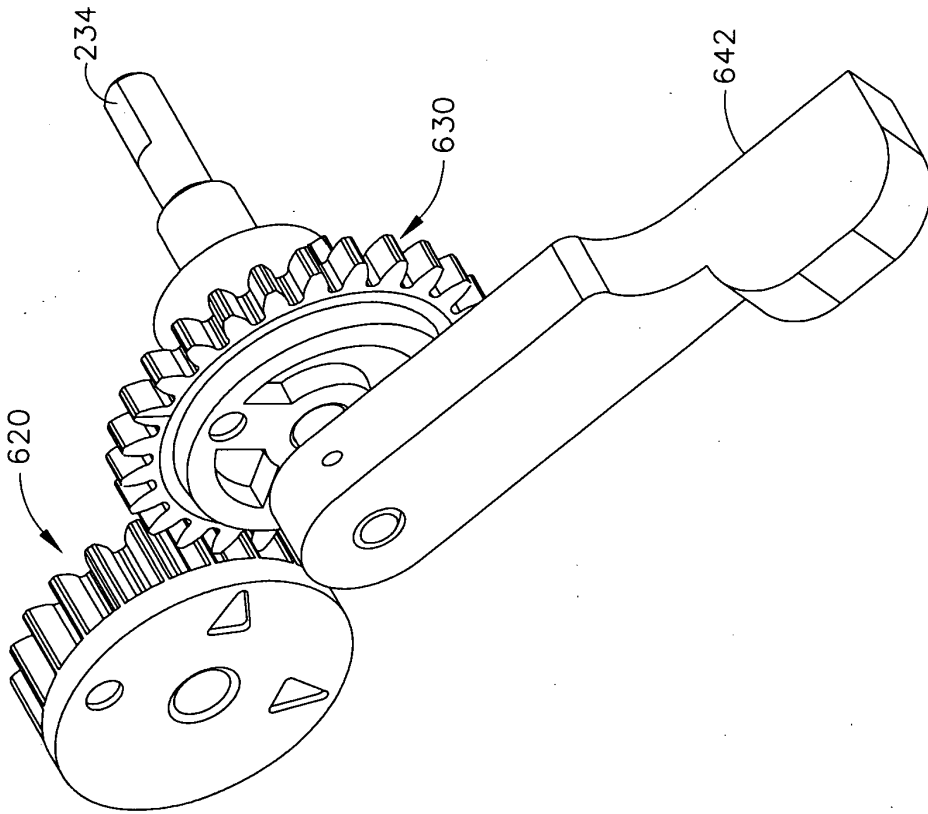


FIG. 21

21/25

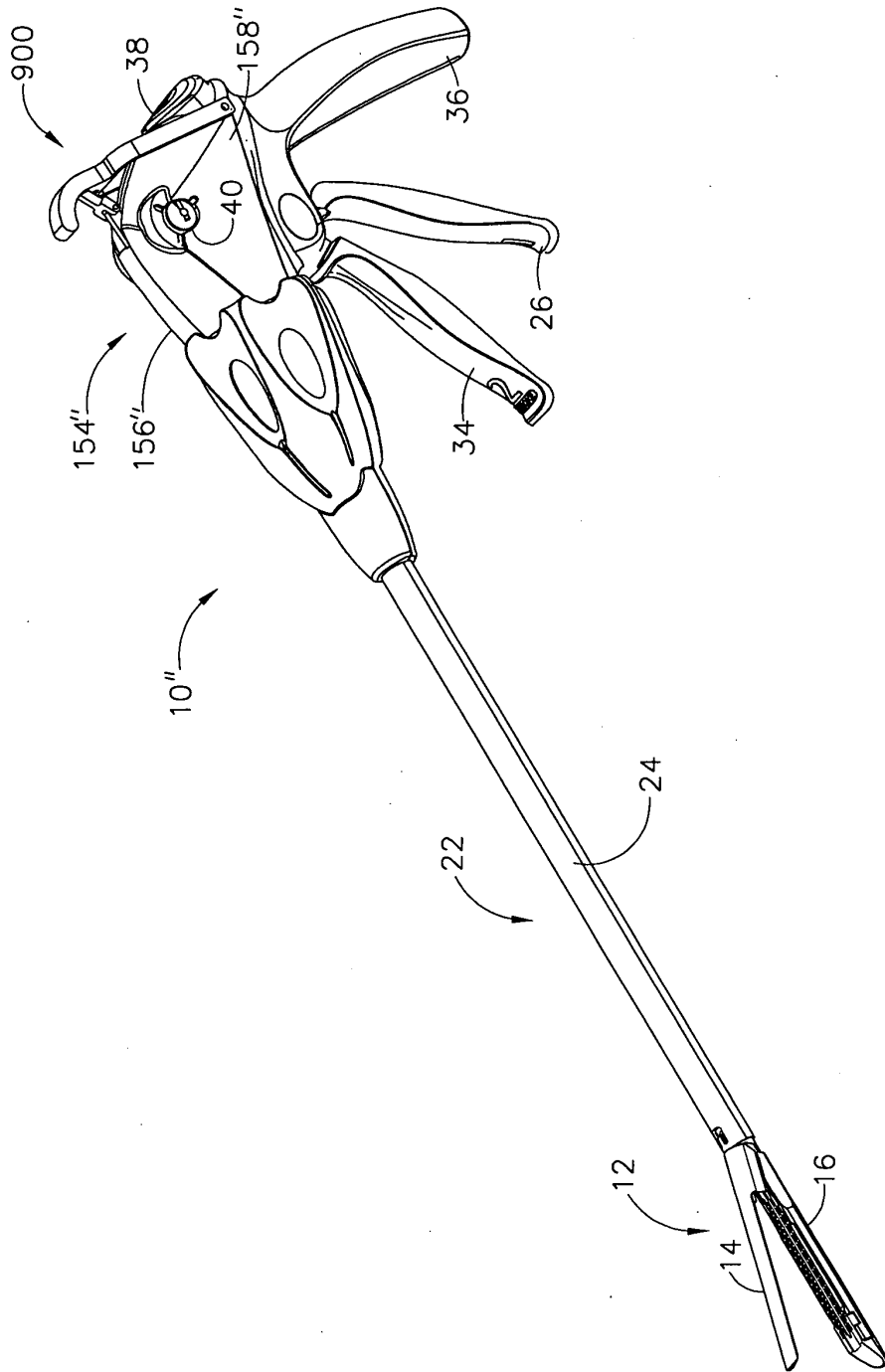


FIG. 22



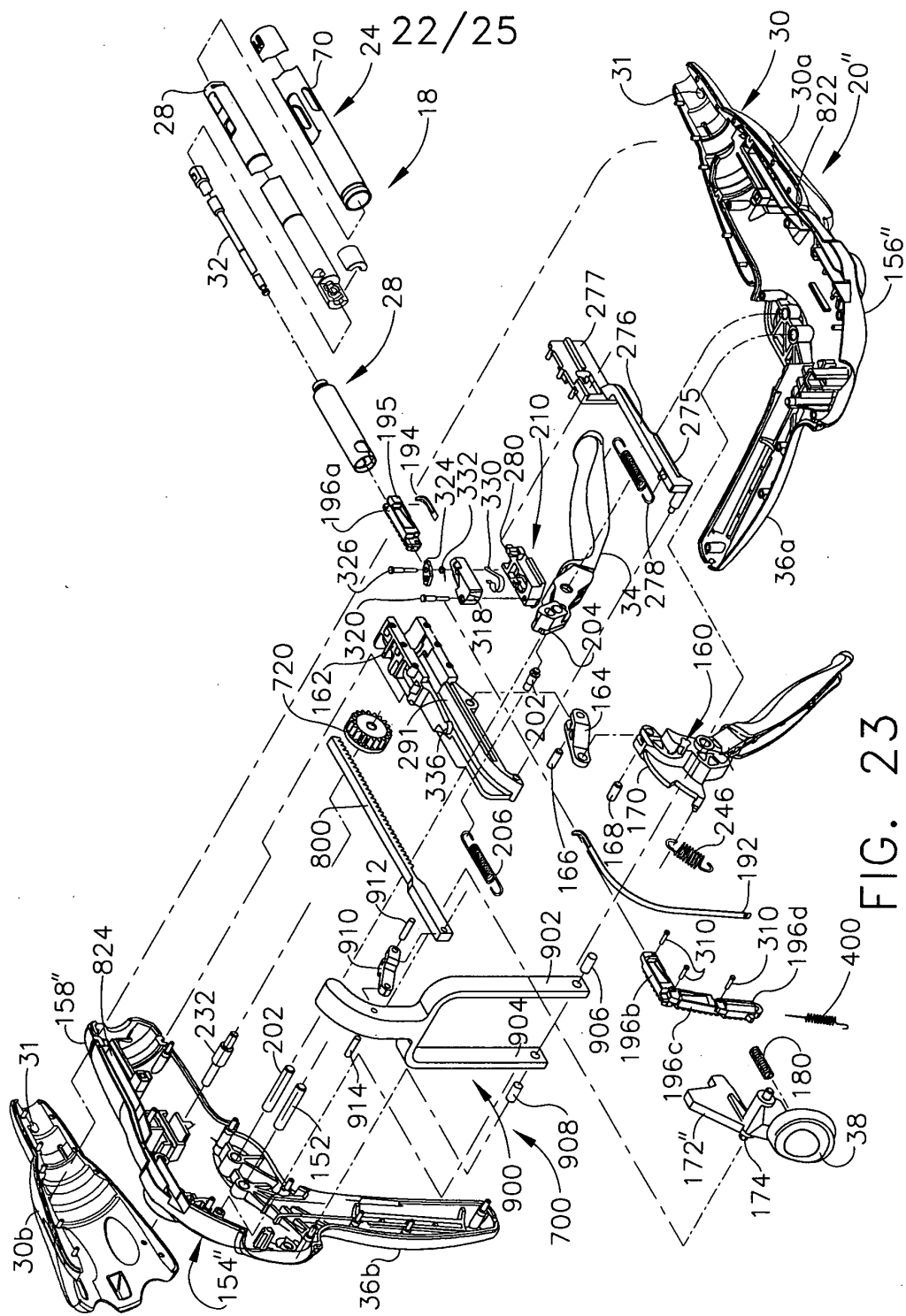


FIG. 23

23/25

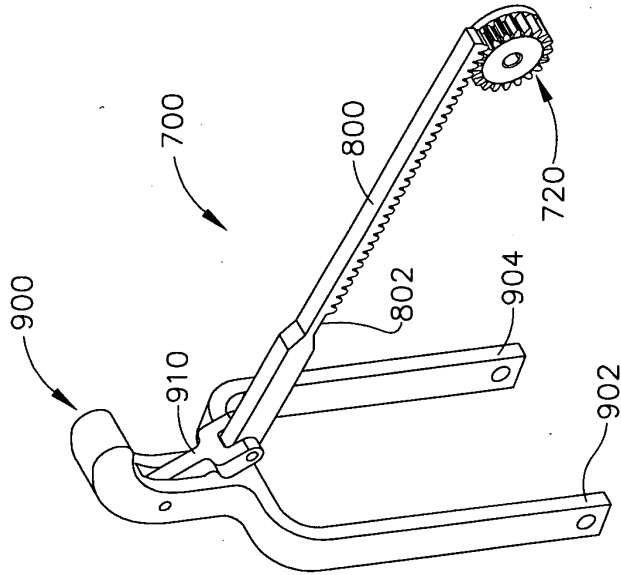


FIG. 25

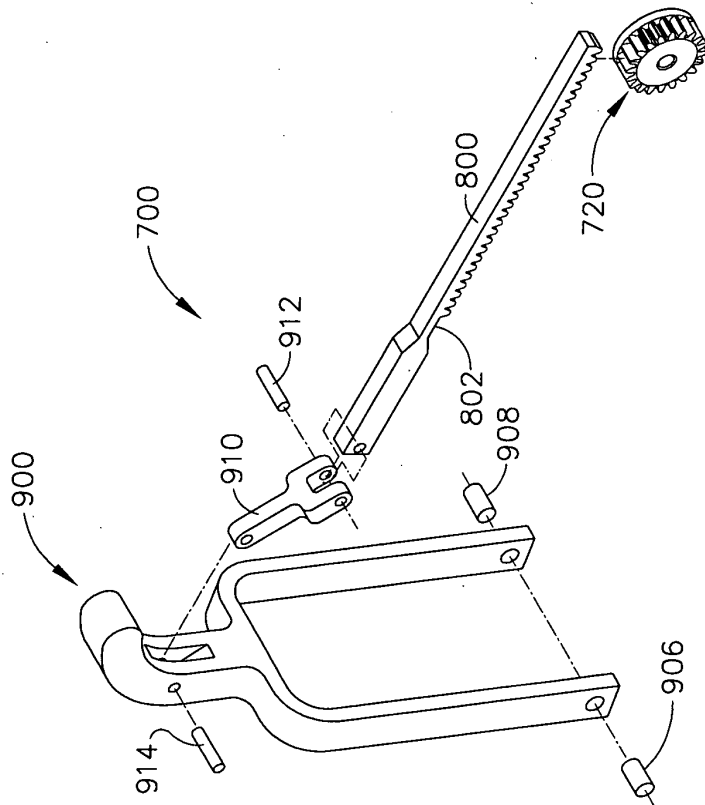


FIG. 24

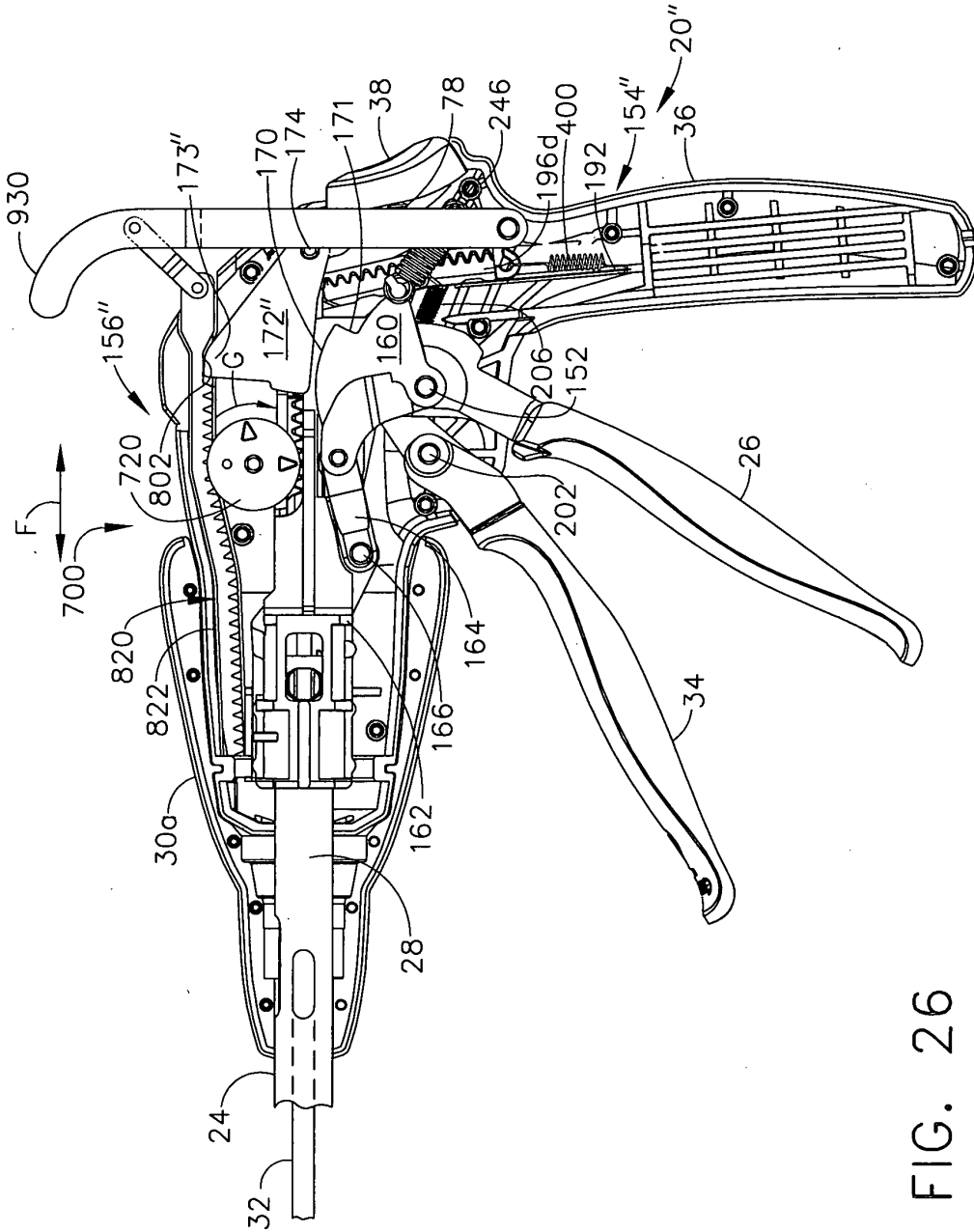


FIG. 26

25/25

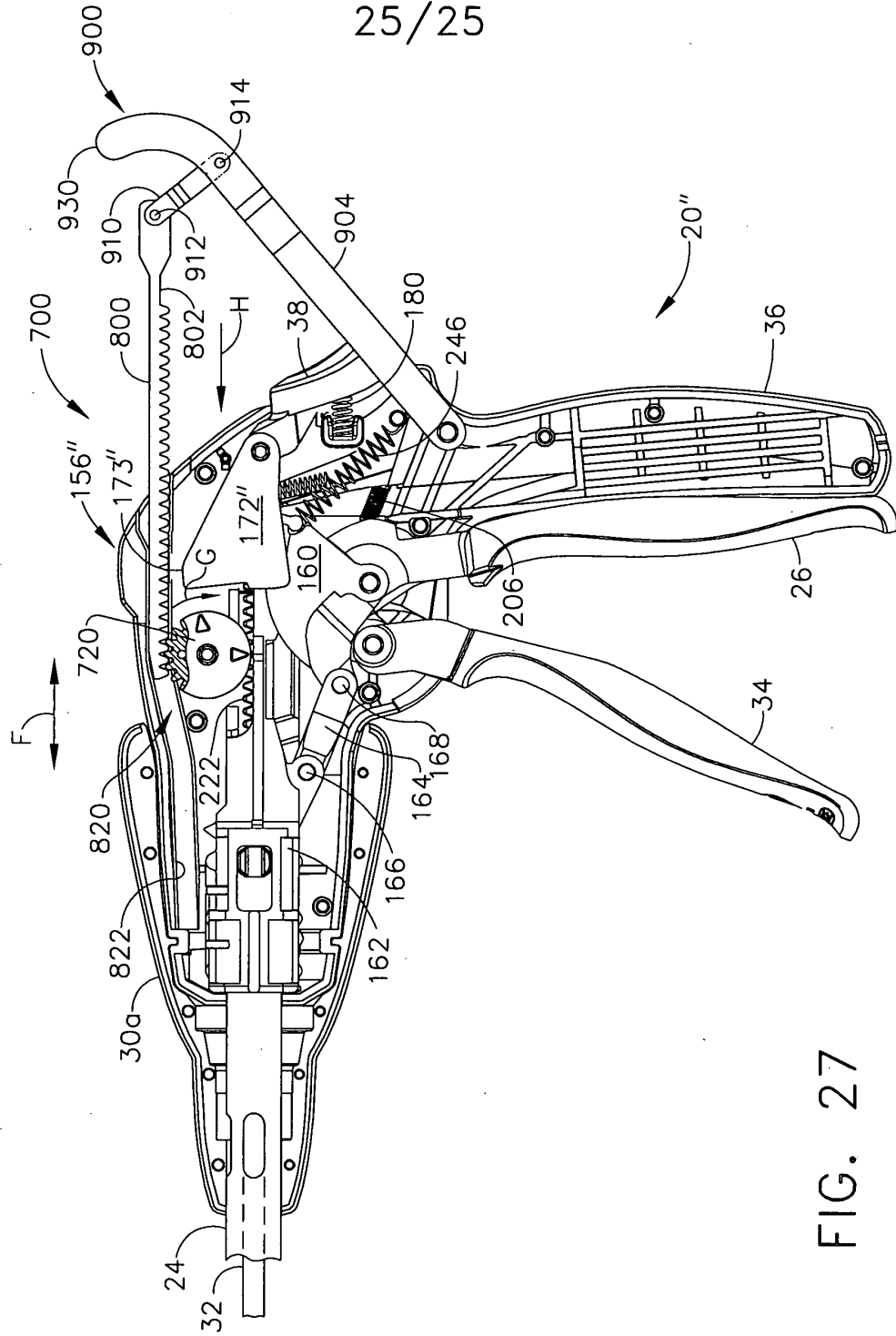


FIG. 27