

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTUITIVE SURGICAL, INC.,
Petitioner,

v.

ETHICON LLC,
Patent Owner.

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

PATENT OWNER'S MOTION TO SEAL

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I. INTRODUCTION

Patent Owner (Ethicon) moves to seal portions of the Patent Owner's Opposition to Petitioner's Motion to Exclude that rely on Exhibits 2003-2009, 2013-2015, 2017, and 2019 pursuant to 37 C.F.R. §§ 42.14 and 42.54. The parties have previously stipulated to a Protective Order filed with Patent Owner's Motion to Seal on January 14, 2020. *See* Paper 17.

II. REASONS FOR THE REQUESTED RELIEF AND STATEMENT OF FACTS

A. Good Cause Exists for Sealing Confidential Information

The Board will seal documents for good cause. *See* 37 C.F.R. § 42.54(a); *see also Argentum Pharms. LLC v. Alcon Research, Ltd.*, Paper 27, 2 (2013). "The rules aim to strike a balance between the public's interest in maintaining a complete and understandable file history and the parties' interest in protecting truly sensitive information." *Office Patent Trial Practice Guide*, 77 Fed. Reg. 48756, 48760 (2012). The public's interest in having access to confidential business information that is only indirectly related to patentability is "minimal." *Garmin v. Cuozzo*, IPR2012-00001, Paper 36, 8-9 (2013) (granting a motion to seal an agreement relating to the "commercializ[ation]" of the patent-at-issue). Such documents should be subject to the Proposed Protective Order. *See* Paper 17, Attachment 1 at 5-6 ("[I]nformation designated as confidential that [is] disclosed to another party during discovery or other proceedings before the Board shall be

clearly marked as ‘PROTECTIVE ORDER MATERIAL’ and shall be produced in a manner that maintains its confidentiality.”).

B. Patent Owner’s Opposition to Petitioner’s Motion to Exclude

Portions of Patent Owner’s Opposition to Petitioner’s Motion to Exclude describe confidential and proprietary information in Exhibits 2003-2009, 2013-2015, 2017, and 2019. *See* Paper 17 at 2-4. This confidential and proprietary research and development information of Patent Owner, if publicly disclosed, would substantially harm Patent Owner’s competitive position in the surgical instrument industry and ongoing work directed to, *inter alia*, surgical staplers. Accordingly, the references to confidential and proprietary information in Exhibits 2003-2009, 2013-2015, 2017, and 2019 in Patent Owner’s Opposition to Petitioner’s Motion to Exclude warrant sealing for the reasons set forth above and in Patent Owner’s Motion to Seal on January 14, 2020. *See* Paper 17.

III. CERTIFICATION OF NON-PUBLICATION

On Patent Owner’s behalf, the undersigned counsel certifies that, to the best of his knowledge, the sealed portions of Patent Owner’s Opposition to Petitioner’s Motion to Exclude have not been published or otherwise made public.

IV. CONCLUSION

Patent Owner respectfully requests that the Board grant its motion to seal portions of Patent Owner’s Opposition to Petitioner’s Motion to Exclude. If the Board is not inclined to grant the motion to seal due to some deficiency in this

motion, Patent Owner respectfully requests leave to file another motion to seal to correct that deficiency, or in the alternative, a motion to expunge Ethicon's confidential documents and information from the record.

Dated: June 19, 2020

Respectfully submitted,

/Anish R. Desai/

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