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 OPPOSITION TO PETITIONER'S MOTION TO EXCLUDE

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TABLE OF AUTHORITIES

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Cases

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<i>Chen v. Bouchard</i> , 347 F.3d 1299 (Fed. Cir. 2003)5
<i>Conoco Inc. v. Dep't of Energy</i> , 99 F.3d 387 (Fed. Cir. 1996)4, 5
<i>EMC Corp. v. PersonalWeb Techs., LLC,</i> IPR2013–00082, Paper 83 (P.T.A.B. May 15, 2014)3
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<i>Pfizer, Inc. v. Genentech, Inc.,</i> IPR2017-01488, Paper 87 (P.T.A.B. Nov. 29, 2018)9
Mylan Pharms., Inc. v. Sanofi-Aventis Deutschland GMBH, IPR2018-01676, Paper 30 (P.T.A.B. June 19, 2019)15
Samsung Elecs. Co. v. Huawei Techs. Co., Ltd., IPR2017-01474, Paper 42 (P.T.A.B. Dec. 11, 2018)
Samsung Elecs. Co v. M&K Holdings, Inc., IPR2018-00696, Paper 48 (P.T.A.B. Sept. 4, 2019)2, 10
<i>Seabery N. Am. Inc. v. Lincoln Glob., Inc.,</i> IPR2016-00840, Paper 60 (P.T.A.B. Oct. 2, 2017)
Other Authorities
37 C.F.R. § 42.53(a)14, 15
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Exhibit #	Description
Ex. 2010	U.S. Patent No. 5,465,895 (1995)
Ex. 2011	U.S. Patent No. 5,632,432 (1997)
Ex. 2016	In the Matter of Certain Reload Cartridges for Laparoscopic Surgical Staplers, Inv. No. 337-TA-1167, Order 15: Construing the Terms of the Asserted Claims of the Patents at Issue (January 7, 2020)

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Ex. 2019	Declaration of Shorya Awtar
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