

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTUITIVE SURGICAL, INC.,
Petitioner,

v.

ETHICON LLC,
Patent Owner.

Case IPR2019-00880
Patent 7,490,749

PETITIONERS' MOTION TO SEAL UNDER 37 CFR § 42.54

I. Introduction

Petitioner (Intuitive), pursuant to 37 C.F.R. §§ 42.14 and 42.54, and in accordance with the stipulated Proposed Protective Order submitted with Ethicon's Motion to Seal (Paper 17), moves to seal portions of the Petitioner's Reply to Patent Owner's Opposition to Petitioner's Motion to Exclude that rely on, or otherwise implicate, Exhibits 2003-2007 and 2009.

II. Good Cause Exists for Sealing Portions of the Petitioner's Reply to Patent Owner's Opposition to Petitioner's Motion to Exclude

Portions of the Petitioner's Reply to Patent Owner's Opposition to Petitioner's Motion to Exclude describe information in Exhibits 2003-2007 and 2009 that Ethicon represents is confidential and proprietary. *See* Paper 17 at 2-3. Ethicon represents that this confidential and proprietary research and development information, if publicly disclosed, would substantially harm Ethicon's competitive position in the surgical instrument industry and ongoing work directed to, *inter alia*, surgical staplers. *Id.* at 4-5. According to Ethicon, this information, if not sealed, would provide competitors with valuable information regarding confidential research and development projects. Such information could also be used by a competitor to improve its products. *Id.*

III. Certification of Non-Publication

The undersigned certifies the information sought to be sealed has not been published or otherwise made public by Intuitive or Intuitive's counsel. Ethicon represents the same. *See* Paper 17 at 5.

IV. Certification of Conference with Opposing Party Pursuant to 37 C.F.R. §42.54

Intuitive has conferred in good faith with Ethicon and reached agreement as to the terms and the scope of the Proposed Protective Order attached to Ethicon's Motion to Seal (Paper 17).

V. Proposed Protective Order

The Protective Order attached to Ethicon's Motion to Seal (Paper 17) is also proposed by Intuitive. Per agreement of the parties, confidential information will be designated "Protective Order Material."

VI. Conclusion

For the above reasons, Intuitive respectfully requests that portions of the Petitioner's Motion to Exclude be placed under seal. Petitioner simultaneously files a redacted version of the Petitioner's Motion to Exclude.

Dated June 26, 2020

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CERTIFICATE OF SERVICE

Pursuant to 37 CFR §§ 42.6(e)(4)(i) *et seq.* and 42.105(b), the undersigned certifies that on June 26, 2020 a complete and entire copy of this Petitioner's Motion To Seal Under 37 CFR § 42.54 was provided via email, to the Patent Owner by serving the email correspondence addresses of record as follows:

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