

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
U.S. Patent No. 7,490,749 B2

**PATENT OWNER'S OBJECTIONS TO ADMISSIBILITY OF EVIDENCE
SERVED BY PETITIONER INTUITIVE SURGICAL, INC. IN *INTER
PARTES* REVIEW**

Pursuant to 37 C.F.R. § 42.64(b), Patent Owner Ethicon LLC, hereby objects as follows to the admissibility of evidence filed by Petitioner Intuitive Surgical, Inc. in *Inter Partes* review of U.S. Patent No. 7,490,749 (IPR2019-00880).

Evidence	Objections
Exhibit 1003	<p>FRE 105: To the extent that any portion of this exhibit may be deemed admissible, such admissibility should be for a limited purpose.</p> <p>FRE 403: The probative value of paragraphs 14-162 to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly cumulative evidence.</p> <p>FRE 602: As to at least paragraphs 14-24, 27-122, 132-162, the exhibit includes assertions for which evidence has not been introduced sufficient to show that the witness has personal knowledge of the matters asserted.</p> <p>FRE 701/702 and/or 37 C.F.R. § 42.65: As to at least paragraphs 14-162, the exhibit declarant is not qualified to opine on what a person of ordinary skill in the art would understand, to opine on patent claim limitations, to</p>

Evidence	Objections
	<p>perform claim construction, and/or to perform legal analysis of invalidity. The opinion testimony offered in this exhibit is not based on scientific, technical, or other specialized knowledge, and is also not based on personal knowledge. The opinion testimony includes unsubstantiated leaps and advances inaccurate, unqualified generalizations. The opinion testimony fails to properly disclose the underlying facts or data on which the opinion is based. The opinion testimony includes testimony on United States patent law and/or patent examination practice.</p> <p>FRE 705 / 37 C.F.R. § 42.65: Exhibit includes expert testimony that does not disclose the underlying facts or data.</p> <p>FRE 802: The entirety of the exhibit is inadmissible hearsay if offered to prove the truth of any matter allegedly asserted therein.</p>
Exhibit 1007	<p>FRE 402: The exhibit is not relevant to any ground upon which trial was instituted.</p>

Evidence	Objections
	<p>FRE 403: The exhibit's probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly cumulative evidence.</p>
<p>Exhibit 1008</p>	<p>Lack of Foundation: Petitioner has not provided sufficient explanation of what the exhibit is or what it allegedly shows.</p> <p>FRE 402: The exhibit is not relevant to any ground upon which trial was instituted.</p> <p>FRE 403: The exhibit's probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly cumulative evidence.</p> <p>FRE 802: The exhibit is inadmissible hearsay if offered to prove the truth of any matter allegedly asserted therein.</p> <p>FRE 805: The exhibit contains improper hearsay within hearsay.</p>

Evidence	Objections
	<p>FRE 901: Petitioner has not produced evidence sufficient to support a finding that the exhibit is what Petitioner claims it is.</p>
<p>Exhibit 1009</p>	<p>Lack of Foundation: Petitioner has not provided sufficient explanation of what the exhibit is or what it allegedly shows.</p> <p>FRE 402: The exhibit is not relevant to any ground upon which trial was instituted.</p> <p>FRE 403: The exhibit’s probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly cumulative evidence.</p> <p>FRE 802: The exhibit is inadmissible hearsay if offered to prove the truth of any matter allegedly asserted therein.</p> <p>FRE 805: The exhibit contains improper hearsay within hearsay.</p>

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.