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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EDWARDS LIFESCIENCES CORPORATION,
Petitioner

v.

BOSTON SCIENTIFIC SCIMED, INC.,
Patent Owner

Case No. IPR2017-00444

Patent 6,915,560

**PETITIONER'S RESPONSE TO PATENT OWNER'S
MOTION FOR OBSERVATIONS ON CROSS-EXAMINATION**

Petitioner Edwards Lifesciences Corporation (“Edwards”) submits the following Response to Patent Owner Boston Scientific Scimed, Inc.’s (“Boston’s”) Motion for Observations on Cross-Examination (Paper No. 26). As set forth below, with few exceptions, Boston’s descriptions and characterizations of Mr. Sheehan’s testimony are either incomplete, inaccurate, or take Mr. Sheehan’s testimony out of context. Accordingly, Edwards generally disagrees with Boston’s observations regarding the relevance of Mr. Sheehan’s testimony, and, for certain observations noted below, Edwards believes such observations are irrelevant.

Response to Observation 1: Edwards does not dispute that Mr. Sheehan testified that he removed stents from balloon catheters for the matter *Medtronic Vascular Inc. et al. v. Boston Scientific Corp. et al.* (E.D. Tex. 2006) in the year 2005 or 2006. Ex. 2052 at 9:17-10:25.

Response to Observation 2: Boston’s description of Mr. Sheehan’s testimony is incomplete. While Mr. Sheehan testified that he did not crimp the TriReme “constrained structure on a balloon catheter,” he also testified that he had personally observed the crimping procedure. Ex. 2052 at 14:4-10.

Response to Observation 3: Boston’s description of Mr. Sheehan’s testimony is inaccurate and incomplete. Mr. Sheehan did not testify, as Boston contends, that “only Figure 9 of Yasumi relates to a pin connector.” Mr. Sheehan testified at length (Ex. 2052 at 15:15-20:1) that Yasumi’s specification discloses the use of the

Figure 8 embodiment with a “linear member,” which a POSITA would understand to include a pin connector, as well as a number of things. *See e.g., id.* at 17:21-23 (“let’s say the device in figure 8, you can do the exact same thing in figure 8. You can crimp a wire onto a pin. That’s crimping.”); *id.* at 16:11 (“Well, you can do it in figure 8.”); *id.* at 18:3-6 (“I know that in the specifications, there are references to different kinds of linear members, and so that would catch -- the phrase ‘linear member,’ that would catch everything.”); *id.* at 23:10-14 (“So one of ordinary skill in the art would understand that any reference in this patent to crimping a wire or shaping a wire is in the context of crimping that wire inside of a pin connector....”).

Response to Observation 4: Boston’s description of Mr. Sheehan’s testimony is inaccurate and incomplete. The actual testimony reads:

Q. In that sentence, electric wire is the only example of a linear member given, correct?

A. Well, it says ‘or the like.’ So the answer to that is no, but it’s the only – it’s the only object described with absolute specificity. No problem with that.

Ex. 2052 at 27:20-25.

Response to Observation 5: Boston’s characterization of Mr. Sheehan’s testimony is inaccurate. Mr. Sheehan pointed to several portions of column 8 that

explain how Yasumi's movable handle 37 is coupled to the setting piece 32. Ex. 2052 at 28:6-32:16. For example, Mr. Sheehan specifically identified portions of Yasumi's specification beginning at column 8, lines 10, 12, and 22. *Id.* at 30:4-10, 31:25-32:16. Mr. Sheehan also identified column 8, line 41 where Yasumi's specification expressly states that "the fixed handle 26, the movable handle 37, and the setting piece 32 are coupled together."¹ *Id.* at 31:10-19.

Response to Observation 6: Boston's description of Mr. Sheehan's testimony is incomplete and takes Mr. Sheehan's testimony out of context. In the course of explaining how the movable handle 37 and setting piece 32 interact, Mr. Sheehan testified that "32 is shown to be a relatively thin plate . . . [s]o they would kind of flex. I'd expect them to flex a little bit to allow for any movement. But do they touch each other? I would say the proper answer is yes." Ex. 2052 at 32:22-33:16. Edwards disagrees with Boston's observation that this "testimony is relevant to whether there is sufficient disclosure in Yasumi to show how the device of Figure 8 works and whether it could be used to crimp a stent."

¹ Edwards objects to Boston's Observations 5-13 because Boston improperly argues that Mr. Sheehan's testimony is "relevant to whether there is sufficient disclosure in Yasumi to show how the device of Figure 8 works." The Federal Circuit, however, has consistently held that enablement of a prior art reference is irrelevant to obviousness. *See e.g. ABT Systems, LLC v. Emerson Elec. Co.*, 115 U.S.P.Q.2d , 2015 WL 4924160, *8 n.2 (Fed. Cir. 2015). Rather than filing a motion to exclude, Petitioner understands that the Board will accord Observations 5-13 with the appropriate weight.

Response to Observation 7: Mr. Sheehan testified, consistent with his declarations, that Yasumi discloses that the movable handle 37 does not move independently of the setting piece 32 before the setting piece 32 hits the adjust cam because the pins run through everything. Ex. 2052 at 38:8-18; Ex. 1105 (Sheehan Decl.) at ¶¶102-104; Ex. 1127 (Sheehan Supp. Decl.) at ¶23.

Response to Observation 8: Mr. Sheehan testified, consistent with his declarations, that when the movable handle 37 and the setting piece 32 are turning together, the pins 45 also rotate (“Everybody rotates.”). Ex. 2052 at 40:5-15; Ex. 1105 (Sheehan Decl.) at ¶¶102-104; Ex. 1127 (Sheehan Supp. Decl.) at ¶23.

Response to Observations 9A-C: Boston’s observation 9A is irrelevant given that Mr. Sheehan voluntarily acknowledged on his own that he misspoke during his earlier testimony and then promptly corrected his testimony as the questioning continued in real-time. Consistent with observations 9B and 9C and his declarations, Mr. Sheehan testified that before the setting piece 32 hits the adjust cam, the movable pieces rotate with the other components but the aperture does not necessarily change in size. Ex. 2052 at 43:11-44:18, 45:18-46:11; Ex. 1105 (Sheehan Decl.) at ¶¶102-104; Ex. 1127 (Sheehan Supp. Decl.) at ¶23.

Response to Observation 10: Boston’s description of Mr. Sheehan’s testimony is inaccurate and vague in its reference to “certain operation.” The phrase “certain

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