

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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EDWARDS LIFESCIENCES CORPORATION,  
Petitioner,

v.

BOSTON SCIENTIFIC SCIMED, INC.,  
Patent Owner.

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Case IPR2017-00444  
Patent 6,915,560 B2

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Before NEIL T. POWELL, JAMES A. TARTAL, and  
STACY B. MARGOLIES, *Administrative Patent Judges*.

TARTAL, *Administrative Patent Judge*.

FINAL WRITTEN DECISION  
*Inter Partes* Review  
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

## I. INTRODUCTION

We have jurisdiction to hear this *inter partes* review under 35 U.S.C. § 6(c). This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. Having considered the record before us and for the reasons discussed below, we determine Petitioner has shown by a preponderance of the evidence that claims 10, 11, 14, 15, 17–19, 23, 25–28, 31, 33–35, 37, 39, and 40 of U.S. Patent No. 6,915,560 B2 (Ex. 1101, “the ’560 patent”) are unpatentable. *See* 35 U.S.C. § 316(e). We also deny Patent Owner’s Motion to Exclude.

### A. PROCEDURAL HISTORY

Edwards Lifesciences Corporation (“Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting institution of *inter partes* review of claims 1, 2, 6, 8–11, 14, 15, 17–19, 23, 25–28, 31, 33–35, 37, 39, and 40 of the ’560 patent (the “challenged claims”). Boston Scientific Scimed, Inc. (“Patent Owner”) filed a Preliminary Response (Paper 7, “Prelim. Resp.”).

Pursuant to 35 U.S.C. § 314(a), we determined the Petition showed a reasonable likelihood that Petitioner would prevail in establishing the unpatentability of the challenged claims and instituted *inter partes* review of the ’560 patent on all of the challenged claims. Paper 9 (“Inst. Dec.”). After institution, Patent Owner filed a Patent Owner Response. Paper 15 (“PO Resp.”). Petitioner filed a Reply to Patent Owner’s Response. Paper 17; Paper 18 (publicly available redacted version of the Petitioner Reply) (“Pet. Reply”).

Patent Owner also filed a Motion to Exclude expert testimony and reply arguments (Paper 25, “PO Mot.”), to which Petitioner provided a

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Response in opposition (Paper 31, “Pet. Resp.”), further to which Patent Owner provided a reply in support (Paper 32, “PO Reply”).

Oral argument was held before the Board on March 15, 2018. Paper 37 (“Tr.”).<sup>1</sup> On April 24, 2018, the Supreme Court held in *SAS Inst., Inc. v. Iancu* that a decision to institute under 35 U.S.C. § 314 may not institute on fewer than all claims challenged in the petition. 138 S. Ct. 1348 (2018). As noted above, prior to *SAS* we had instituted review on all of the challenged claims. Inst. Dec. at 31. Further, after *SAS*, we issued an order directing the parties to meet and confer to determine whether any additional briefing and modification of the schedule was desired in light of *SAS*. Paper 38. We also stated that “[t]he parties should discuss whether they seek to include the institution of additional grounds from the Petition into this proceeding.” *Id.* at 3. In response, the parties informed the Board that “[n]either party seeks to include the institution of additional grounds from the Petition” and that “the parties agree that no further briefing or changes to the schedule are necessary.” Paper 39; Ex. 3001.

We issue this Final Written Decision pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73.

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<sup>1</sup> Prior to the oral argument, Patent Owner filed Objections (Paper 34) to the demonstrative exhibit filed by Petitioner. The objections of Patent Owner generally relate to allegations that certain demonstrative exhibits improperly contain new evidence and argument. *See id.* Demonstrative exhibits are not evidence. In this Final Written Decision, we rely directly on the arguments presented properly in the briefs of the parties and the evidence of record, not on demonstrative exhibits; therefore, the objections of Patent Owner are overruled.

## B. RELATED MATTERS

According to the parties the '560 patent is asserted in the United States District Court for the Central District of California, in a case captioned *Boston Scientific Corp. and Boston Scientific Scimed, Inc. v. Edwards Lifesciences Corp.*, Civil Action No. 8:16-cv-0730 (C.D. Cal.). Pet. 14; Paper 4, 2.

## C. REAL PARTIES IN INTEREST

Petitioner Edwards Lifesciences Corporation is identified as a real party in interest in this case. Pet. 14. Patent Owner Boston Scientific Scimed, Inc. and Boston Scientific Corp. are also identified as real parties in interest. Paper 4, 2.

## II. BACKGROUND

The '560 patent, titled "Apparatus for Contracting, Loading or Crimping Self-Expanding and Balloon Expandable Stent Devices," issued July 12, 2005, from U.S. Application No. 10/444,807 (the '807 application), filed May 23, 2003. Ex. 1101. As background information, below we provide a summary of the '560 patent, along with an illustrative claim from the '560 patent, and we identify the instituted grounds of unpatentability and the proffered expert testimony. We also address our reasons for denying the Motion to Exclude.

### A. SUMMARY OF THE '560 PATENT

The '560 patent generally relates to a device "capable of crimping a stent uniformly while minimizing the distortion of and scoring and marking of the stent due to the crimping." Ex. 1101, 2:26–29.

Figure 4A of the '560 patent is reproduced below.

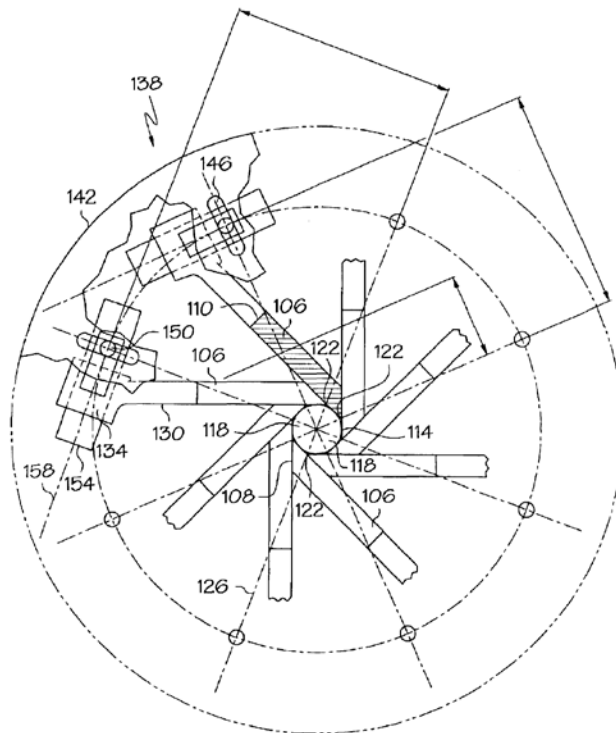


FIG. 4A

Figure 4A illustrates “a partial front view of an embodiment of the inventive apparatus.” Ex. 1101, 4:1–2. Actuation device 138 includes rotatable actuation plate 142 and eight coupled blades 106 disposed about reference circle 114 to form aperture 118. *See id.* at 4:46–49. “Each blade 106 is engaged to actuation plate 142 via a cam follower bearing 150 disposed in radial slot 146 and attached to mounting means in slotted end 134.” *Id.* at 5:19–21. “Each bearing 150 extends from a linear slide 154.” *Id.* at 5:22. “In use, as actuation plate 142 is rotated in a clockwise direction, the clockwise motion of the actuation plate is translated into linear motion of each of linear slide 154 and blade 106 via bearing 150.” *Id.* at 5:46–49. “Each blade 106 moves outward in a direction parallel to the radius 126 on which the radial point 122 of the blade 106 lies, resulting in the opening of

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