

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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EDWARDS LIFESCIENCES CORP.,

*Petitioner,*

v.

BOSTON SCIENTIFIC SCIMED, INC.,

*Patent Owner.*

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Case IPR2017-00444

Patent 6,915,560

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

**PATENT OWNER BOSTON SCIENTIFIC SCIMED, INC.'S  
FIRST SET OF OBJECTIONS TO  
PETITIONER EDWARDS LIFESCIENCES CORP.'S EXHIBITS**

Pursuant to 37 C.F.R. § 42.64(b)(1), the undersigned, on behalf of and acting in a representative capacity for Boston Scientific Scimed, Inc. (“Patent Owner”), hereby submits the following objections to Petitioner Edwards Lifesciences Corp.’s (“Petitioner”) Exhibits 1105-1125, and any reference to and/or reliance on the foregoing. Patent Owner’s objections below apply the Federal Rules of Evidence (“F.R.E.”) as required by 37 C.F.R. § 42.62.

**I. OBJECTIONS TO EXHIBITS 1108-1125, AND ANY REFERENCE TO AND/OR RELIANCE THEREON**

Evidence objected to: Exhibits 1008 (German Patent No. DE9034 to Nix), 1109 (Certified translation of German Patent No. DE9034 to Nix); 1110 (U.S. Patent No. 2,664,996 to Andrews), 1111 U.S. Patent No. 4,308,744 to Baker), 1112 (International Patent Publication No. WO1994014573 A1 to Hartley), 1113 (U.S. Patent No. 5,918,511 to Sabbaghian *et al.*), 1114 (U.S. Patent No. 6,364,870 to Pinchasik), 1115 (U.S. Patent No. 5,261,263 to Whitesell), 1116 (U.S. Patent No. 3,695,087 to Tuberman), 1117 (U.S. Patent No. 6,176,116 to Wilhelm *et al.*), 1118 (U.S. Patent No. 6,051,002 to Morales), 1119 (U.S. Patent No. 5,951,540 to Verbeek), 1120 (U.S. Patent No. 7,892,201 to Laguna *et al.*), 1121 (U.S. Patent No. 6,125,523 to Brown *et al.*), 1122 (U.S. Patent No. 3,370,451 to Schuetz), 1123 (U.S. Patent No. 3,154,978 to Baker), 1124 (U.S. Patent No. 3,417,598 to Valente), 1125 (U.S. Patent No. 6,074,381 to Dinh *et al.*), and any reference to and/or reliance thereon.

Grounds for objection: F.R.E. 401 (“Test for Relevant Evidence”); F.R.E. 402 (“General Admissibility of Relevant Evidence”); F.R.E. 403 (“Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons”).

**A. Exhibits 1108-1125 are Irrelevant**

Exhibits 1108-1125 are not relevant to any ground on which this IPR was instituted and, if admitted, their minimal probative value would be substantially outweighed by the unfair prejudice they would cause, the confusing and misleading nature of the materials, the undue delay upon these proceedings, and the waste of time that would ensue, in violation of F.R.E. 401-403.

**II. OBJECTIONS TO EXHIBITS 1105-1107 AND ANY REFERENCE TO AND/OR RELIANCE THEREON**

Evidence objected to: Exhibit 1005 (Declaration of Neil Sheehan), Exhibit 1106 (Curriculum Vitae of Neil Sheehan), and 1107 (Materials Considered by Neil Sheehan), and any reference to and/or reliance thereon.

Grounds for objection: F.R.E. 401 (“Test for Relevant Evidence”); F.R.E. 402 (“General Admissibility of Relevant Evidence”); F.R.E. 403 (“Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons”); 37 C.F.R. § 42.61 (“Admissibility”); F.R.E. 601 (“Competency to Testify in General”); F.R.E. 602 (“Need for Personal Knowledge”); F.R.E. 701 (“Opinion Testimony by Lay Witness”); F.R.E. 702 (“Testimony by Expert Witness”); F.R.E.

703 (“Bases of an Expert’s Opinion Testimony”); F.R.E. 704 (“Opinion on an Ultimate Issue”); F.R.E. 705 (“Disclosing the Facts or Data Underlying an Expert’s Opinion”); 37 C.F.R. § 42.65 (“Expert Testimony; Tests and Data”).

**A. Ground 1: Mr. Sheehan is Not a Qualified Expert**

There has been no showing that Mr. Sheehan is qualified to provide expert testimony on whether the claims of U.S. Patent No. 6,915,560 (“the ’560 patent”) are valid, whether a person of ordinary skill would have been motivated to combine prior art references to disclose the inventions claimed in the ’560 patent, or whether such combination would have been accompanied by a reasonable expectation of success (*see, e.g.*, Exhibit 1005 Sections III-VII), rendering his testimony on these matters improper and inadmissible pursuant to at least F.R.E. 702-705 and 37 C.F.R. § 42.65. There has further been no showing that Mr. Sheehan is qualified to provide expert testimony on claim construction or the application of claim terms from the ’560 patent, (*see, e.g., id.* Sections V, VII), rendering his testimony on these matters improper and inadmissible pursuant to at least F.R.E. 702-705 and 37 C.F.R. § 42.65. Further, Mr. Sheehan has not demonstrated that he possesses first-hand knowledge, experience, or perceptions regarding the testimony identified above, rendering any lay testimony or lay opinions on these matters improper and inadmissible pursuant to at least F.R.E. 601-602 and 701.

Accordingly, Mr. Sheehan's testimony regarding the matters identified above, and any reference thereto and/or reliance thereon in Petitioner's submissions, would be misleading and unfairly prejudicial to Patent Owner, in violation of F.R.E. 403.

**B. Mr. Sheehan's Testimony is Not Based on Sufficient Facts, Data, or Scientific Evidence**

Mr. Sheehan's testimony regarding the validity of the '560 patent claims and a person of ordinary skill's motivation to combine prior art references to disclose the inventions claimed in the '560 patent, including how prior art devices could be combined, why prior art devices would be combined, and the function of combined prior art devices (*see, e.g., id.* Sections III-VII (in particular, paragraphs 155-165, 168-169, 172-173, and 175-177)), is not based on sufficient facts, data, or scientific evidence, rendering his testimony on these matters improper and inadmissible pursuant to at least F.R.E. 702 and 37 C.F.R. § 42.65.

**C. Mr. Sheehan's Testimony is Irrelevant**

Mr. Sheehan's testimony in paragraphs 93-94, 105-108, 123-125, and 134-135 of his declaration is not relevant to any ground on which this IPR was instituted and, if admitted, its minimal probative value would be substantially outweighed by the unfair prejudice it would cause, the confusing and misleading nature of the testimony, the undue delay upon these proceedings, and the waste of time that would ensue, in violation of F.R.E. 401-403 and 37 C.F.R. § 42.61.

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