

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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EDWARDS LIFESCIENCES CORPORATION  
Petitioners

v.

BOSTON SCIENTIFIC SCIMED, INC.  
Patent Owner

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Case IPR2017-00444  
Patent 6,915,560

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**JOINT MOTION FOR ENTRY OF STIPULATED PROTECTIVE  
ORDER**

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Patent Trial and Appeal Board  
U.S. Patent & Trademark Office  
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Alexandria, VA 22313-1450

Pursuant to the Final Rules of Practice for Trials Before the Patent Trial and Appeal Board and Judicial Review of Patent Trial and Appeal Board Decisions (77 Fed. Reg. 157, Aug. 14, 2012), 35 U.S.C. § 316, 37 C.F.R. § 42.54, and § A.2 of the Case Management and Scheduling Order entered in this proceeding, Patent Owner Boston Scientific Scimed, Inc. and Petitioner Edwards Lifesciences Corporation jointly move for entry of the Stipulated Protective Order attached hereto as Exhibit 1.

The Stipulated Protective Order is based on the Default Protective Order provided in Appendix B of the Trial Practice Guide (the “Default Order”), with modifications agreed upon by the Parties. Good cause exists for entry of the Stipulated Protective Order because the modifications proposed by the Parties are intended to aid the Parties’ compliance with a protective order (the “California Protective Order”) entered by the court in a patent infringement action in the United States District Court for the Central District of California captioned *Boston Scientific Corp., et al. v. Edwards Lifesciences Corp.*, No. 8:16-cv-0730-CJC-GJS (the “California Action”). The California Protective Order permits the parties to use information designated in the California Action as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” (collectively, “California Protective Order Material”) in *inter partes* review proceedings relating to the

patents-in-suit, including U.S. Patent 6,915,560, subject to the conditions described in the California Protective Order. As described in detail below and reflected in the document comparing the Parties' Stipulated Protective Order to the Default Protective Order attached hereto as Exhibit 2, each of the modifications to the Board's default protective order agreed to by the Parties is intended to comply with the California Protective Order while effectuating the Parties' intent that they be permitted to use California Protective Order Material in this IPR. While the changes from the Board's Default Order are intended to ensure that the parties themselves comply with the California Protective Order, the Parties' Stipulated Protective Order does not require the Board to interpret the California Protective Order or for the Board to ensure that the Parties comply with the California Protective Order.

Paragraph 1 - This new paragraph is warranted because it explains why the Parties have requested entry of a protective order that differs from the Default Order and defines terms used elsewhere in the order. The definition of California Protective Order Material is intended to make clear when the proposed order is referring to information that is subject to the protections imposed by the California Protective Order. The final two sentences of this paragraph are intended to confirm that the Parties remain bound by the California Protective Order, and that any disputes arising from that Order will

be resolved by the District Court for the Central District of California. This clarifies that any disputes arising from the California Protective Order will not require this Board to interpret or enforce that Order.

Paragraph 2 (Default Order Paragraph 1) - In addition to including the Default Order's requirement regarding the marking of confidential information, this paragraph requires the Parties to maintain the original confidentiality markings applied pursuant to the California Protective Order so that the Parties can ensure they are complying with the requirements of both protective orders.

Paragraph 3 (Default Order Paragraph 5(B)) - This paragraph is modified to make clear that it addresses information designated as confidential that was not previously produced and designated in the California Action.

Paragraph 4 (Default Order Paragraph 2) - The modification to the first sentence of this paragraph is intended to make clear that the provisions of the Stipulated Protective Order apply in this proceeding to distinguish it from the California Action, which is governed by the California Protective Order, and to remove the requirement that individuals must execute the acknowledgement appended to the proposed order, except as specifically set forth in subsequent paragraphs.

Paragraph 4(A) (Default Order Paragraph 2(A)) - This sub-paragraph is modified to permit the Parties to comply with provisions of the California

Protective Order that prohibit the Parties (not including in-house counsel) from reviewing California Protective Order Material.

Paragraph 4(C) (Default Order Paragraph 2(C)) - This sub-paragraph is modified to expressly require that experts not covered by Paragraph 3(A) be required to execute the acknowledgement appended to the proposed order prior to accessing confidential information for purposes of this proceeding.

Default Order Paragraph 2(D) - This sub-paragraph is eliminated as it is effectively incorporated into Paragraph 2 of the proposed order.

Default Order Paragraph 2(E) - This sub-paragraph is eliminated to permit the Parties to comply with provisions of the California Protective Order that prohibit the Parties (not including in-house counsel) from reviewing California Protective Order Material.

Paragraph 4(D) (Default Order Paragraph 4(F)) - This sub-paragraph is modified to maintain its consistency with the Default Order, which does not require certain Office personnel to sign an acknowledgement, in view of Paragraph 4 of the proposed order.

Paragraph 4(E) (Default Order Paragraph 4(G)) - This sub-paragraph is modified to maintain its consistency with the Default Order, which does not require certain support personnel to sign an acknowledgement, in view of Paragraph 4 of the proposed order.

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