

1 John B. Sganga, Jr. (SBN 116,211)
john.sganga@knobbe.com
2 Craig S. Summers (SBN 108,688)
craig.summers@knobbe.com
3 Christy G. Lea (SBN 212,060)
christy.lea@knobbe.com
4 Joshua J. Stowell (SBN 246,916)
joshua.stowell@knobbe.com
5 KNOBBE, MARTENS, OLSON & BEAR, LLP
2040 Main Street, 14th Floor
6 Irvine, CA 92614
Telephone: 949-760-0404
7 Facsimile: 949-760-9502

8 Brian C. Horne (SBN 205,621)
Brian.horne@knobbe.com
9 1925 Century Park East, Suite 600
Los Angeles, CA 90067
10 Telephone: 310-551-3450

11 Attorneys for Defendant,
EDWARDS LIFESCIENCES CORPORATION

12

13

14

IN THE UNITED STATES DISTRICT COURT

15

FOR THE CENTRAL DISTRICT OF CALIFORNIA

16

SOUTHERN DIVISION

17

18 BOSTON SCIENTIFIC
CORPORATION and
19 BOSTON SCIENTIFIC SCIMED, INC.,

Plaintiff,

20

v.

21

22 EDWARDS LIFESCIENCES
CORPORATION, a California
corporation,

23

Defendant.

24

25

26

27

28

Case No.: 8:16-CV-00730-CJC-GJS

**EDWARDS' SUPPLEMENTAL
RESPONSE TO BSC'S
INTERROGATORY NO. 8**

EDWARDS LIFESCIENCES EX. 1129

Edwards Lifesciences v. Boston Scientific Scimed
IPR2017-00444

1 Pursuant to the Federal Rules of Civil Procedure 26 and 33, Defendant
2 Edwards Lifesciences Corporation (“Edwards”) hereby supplements its response
3 to Interrogatory No. 8 of Plaintiffs Boston Scientific Corporation and Boston
4 Scientific Scimed, Inc. (collectively, “BSC”).

5 PRELIMINARY STATEMENT

6 Edwards hereby incorporates, in full, the Preliminary Statement set forth
7 in its Responses to BSC’s First Set of Interrogatories served on August 26,
8 2016.

9 GENERAL OBJECTIONS

10 Edwards hereby incorporates, in full, the General Objections set forth in
11 its Responses to BSC’s First Set of Interrogatories served on August 26, 2016.

12 INTERROGATORY NO. 8:

13 For each Patent-in-Suit, state all factual and legal bases for any contention
14 that non-infringing alternatives regarding any Accused Product were or are
15 available and acceptable, including an identification of all persons who have
16 knowledge of such contention and all documents related to such contention.

17 RESPONSE TO INTERROGATORY NO. 8:

18 Subject to its General and Specific Objections, Edwards responds as
19 follows:

20 Edwards responds that acceptable non-infringing alternatives to the
21 Accused Products exist. For example, at least some customers would choose to
22 purchase the following transcatheter heart valve systems for use in
23 transcatheter aortic valve replacement or implantation if they could not
24 purchase products from Edwards: CoreValve Evolut R System, CoreValve
25 Evolut System, CoreValve ReValving System, Medtronic CoreValve System,
26 Medtronic Engager System, St. Jude Medical Portico Transcatheter Aortic
27 Valve Replacement System, Symetis Acurate neo System, Symetis Acurate neo
28 System, Symetis Acurate TE System, Symetis Acurate TA System, Direct Flow

1 Medical Transcatheter Aortic Valve System, and JenaValve System. Edwards
2 is unaware of any allegations by BSC that any of the transcatheter heart valve
3 systems sold by these companies infringe any of the patents-in-suit. Because
4 Edwards' investigation of this matter is ongoing, Edwards reserves the right to
5 supplement or amend this response, and to rely on additional documents,
6 witnesses, or other evidence.

7 The above response is subject to Edwards' General Objections, each
8 of which is fully incorporated herein, as well as the following Specific
9 Objections: Edwards objects to this Interrogatory as premature, because fact
10 discovery is ongoing and Edwards' investigation of this matter continues.
11 Edwards objects to this Interrogatory as overly broad and not proportional to the
12 needs of this case to the extent that it seeks information about Edwards' non-
13 accused products or for products that BSC has identified as infringing but for
14 which it has not provided sufficiently (or any) particularized and detailed
15 infringement contentions. Edwards objects to this Interrogatory because it
16 presumes that the Accused Products infringe the Patents-in-Suit, which they
17 do not. Therefore, Edwards does not need to identify any non-infringing
18 alternatives to the Accused Products. Edwards objects to this Interrogatory
19 to the extent it seeks expert testimony or Edwards' contentions at trial.
20 Edwards will disclose any expert opinions or trial contentions as required by
21 the Federal Rules of Civil Procedure, the Local Rules, and the Court's
22 Scheduling Order. Edwards objects to this Interrogatory as premature and
23 calling for legal conclusions to the extent it seeks information concerning
24 the meaning of claim terms that have yet to be construed. Edwards objects
25 to this Interrogatory as overly broad, unduly burdensome, and not
26 proportional to the needs of this case to the extent it seeks "all factual and
27 legal bases" for any such contention. Edwards objects to this Interrogatory
28 to the extent it seeks information that is publicly available, and therefore, of

1 no greater burden for BSC to obtain than Edwards. Edwards objects to this
2 Interrogatory as seeking information protected from disclosure by a
3 privilege or immunity, including without limitation, the attorney-client
4 privilege, the work-product doctrine, and the common interest privilege.

5 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 8:**

6 Edwards hereby incorporates, in full, its response, including Specific
7 Objections, set forth in its Response to Interrogatory No. 8 served on August 26,
8 2016. Subject to its General and Specific Objections, Edwards responds that, in
9 addition to the products identified in its original response, Edwards had
10 noninfringing designs that were available and acceptable alternatives to the
11 following accused products:

12 NovaFlex family and Commander: For the asserted claims of the '543,
13 '548, '962, '827, '234, and '062 patents, Edwards had several acceptable non-
14 infringing alternative designs that do not use the balloon insert in the NovaFlex
15 or the coil in the Commander, which Boston accuses of satisfying the
16 "mounting body" and other similar claim limitations. These designs would have
17 provided adequate retention force on the valve.

18 One option, which Edwards considered in June 2008, was to instruct
19 doctors to add a small amount of fluid to the inflation balloon after the valve is
20 aligned over the inflation balloon. By this time, doctors had commonly added a
21 small amount of fluid to balloon-expandable catheters before deploying the
22 balloon, and doctors had commonly done so with Edwards' Retroflex delivery
23 systems. Edwards tested this solution in June 2008, and determined that it
24 provided a 7.3 lb. retention force, which was greater than the approximately
25 4.78 lb. force provided by the balloon insert. *See* EWL 00373671-72; EWL
26 00397057; May 24, 2017 Deposition Transcript of Tri Tran at 164-172. It
27 would have taken Edwards no additional time to develop this solution, and it
28 would not have cost any more to manufacture than the commercial NovaFlex

1 and Commander products that Edwards sold. Edwards could have
2 commercialized this alternative by the same time that it commercialized its
3 accused NovaFlex and Commander products.

4 A second option, which Edwards considered by September 2008, was to
5 add unidirectional stoppers. This option would have prevented the valve from
6 moving after the valve alignment step and before the valve deployment step. *See*
7 EWL 00350069; June 2, 2017 Deposition Transcript of Ronaldo Cayabyab at
8 88-91, 96-97; May 24, 2017 Deposition Transcript of Tri Tran at 164-172. It
9 would have taken Edwards approximately 10-12 weeks and less than \$25,000 to
10 develop this design. Edwards could have manufactured this alternative for the
11 same cost as the accused NovaFlex and Commander products. Edwards could
12 have commercialized this alternative by the same time that it commercialized its
13 accused NovaFlex and Commander products.

14 A third option would have been to redesign the tip of the flex catheter so
15 that it could expand and break away during inflation. This design would allow
16 the flex tip to support the proximal end of the valve as the valve crossed the
17 native annulus and during initial inflation. It would have taken Edwards
18 approximately 10-12 weeks and less than \$25,000 to develop this design.
19 Edwards could have manufactured this alternative for the same cost as the
20 accused NovaFlex and Commander products. Edwards could have
21 commercialized this alternative by the same time that it commercialized its
22 accused NovaFlex and Commander products.

23 Each alternative to using a balloon insert would have retained the valve as
24 effectively as the balloon insert. Thus, the alternative would have been equally
25 acceptable to doctors using the delivery system. These options could have fit
26 into the same size sheath as the accused products, and therefore could have
27 served the same patient population.

28

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.