

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTUITIVE SURGICAL, INC.

Petitioner

v.

ETHICON LLC

Patent Owner

Case IPR2018-00935

Patent 8,991,677

PETITIONER'S OBJECTIONS TO EVIDENCE

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner, Intuitive Surgical, Inc. (“Petitioner”), hereby submits its notice of objections to certain evidence that Patent Owner, Ethicon LLC (“Patent Owner”), submitted with its Patent Owner Preliminary Response dated September 10, 2018, in connection with IPR2018-00935. These objections are being submitted within ten business days of the Institution Decision.

Petitioner objects to Exhibit No. 2003 (Excerpts from Technology Tutorial filed in *Ethicon LLC, et al. v. Intuitive Surgical, Inc., et al.*, C.A. No. 17-871 (LPS) (CJB) (District of Delaware)). Exhibit 2003 is a set of demonstrative slides that appears to contain excerpts from documents that are not cited and not part of this record as well as attorney arguments regarding the same. As such, Exhibit 2003 is not evidence, but rather an improper attempt to submit incomplete and unidentified documentary evidence along with additional attorney arguments that are not included in Patent Owner’s Preliminary Response. *See St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, Case No. IPR2013-00041, slip op. at 2-3 (PTAB Jan. 27, 2014) (Paper 65) (explaining that demonstrative exhibits are not evidence and that demonstrative exhibits are not an opportunity for additional briefing). Thus, the bases for objecting to this exhibit include the following Federal Rules of Evidence:

FRE 801, 802 & 803: Hearsay. Petitioner objects to Exhibit 2003 as inadmissible hearsay to the extent Patent Owner intends to offer this Exhibit for the truth of the matters asserted, including the attorneys' arguments regarding alleged facts to which they have no first-hand knowledge.

FRE 401 & 402: General Admissibility of Relevant Evidence.

Petitioner objects to Exhibit 2003 as irrelevant to the extent it concerns a proceeding involving patents not at issue here. Furthermore, Exhibit 2003 has not been shown to be a recognized authority for any of the subject matter contained therein.

FRE 106 & 403: Remainder of or Related Writings or Recorded Statements and Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons. To the extent Exhibit 2003 is deemed to be relevant, Petitioner objects to Exhibit 2003 because it: (1) concerns a litigation involving unrelated patents; (2) appears to contain excerpts of documents that are not part of this record; (3) is itself a partial document; and (4) contains unsupported attorney arguments. Thus, the probative value of Exhibit 2003 (if any), would be substantially outweighed by the dangers of unfair prejudice, wasting time, and confusing the issues.

Proceeding No. IPR2018-00935
Attorney docket No. 11030-0049IP3

Dated: December 20, 2018

Respectfully submitted,

/John C. Phillips/

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