#### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patents of: Kyle P. Moore, et al.

U.S. Patent Nos.: 9,084,601 Attorney Docket Nos.: 11030-0049IP1

8,998,058 11030-0049IP2 8,991,677 11030-0049IP3

Title: DETATCHABLE MOTOR POWERED SURGICAL

**INSTRUMENT** 

### **DECLARATION OF DR. GREGORY S. FISCHER**



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	<ul> <li>B. "Means for removably attaching said housing to the surgical instrumer ('058 patent, claim 1; '677 patent, claims 1, 16)</li> <li>C. "Drive means for converting the rotational motion produced by said electric motor to translational motion to eject said staples from said staple cartridge body" ('677 patent, claims 11, 18)</li> <li>D. "Contact arrangement" ('601 patent, claims 1, 11, and 17)</li> <li>E. "Means for fastening tissue on each side of a cut line" ('601 patent, claim 8)</li> </ul>	.30			
VII.	OVERVIEW OF THE PRIOR ART				
	A. Heinrich.  B. Milliman.  C. Hooven.  D. Alesi  E. Tonet	.38 .42 .44 .46			
VIII.	A. Claims 1-2, 4-6, 8-11, 13, and 15-20 are anticipated by Heinrich or, if	•			
	necessary, obvious over Heinrich in view of Milliman	.50			
	removably coupling the housing to an actuator arrangement [1.3] first and second jaws operably coupled to the housing such that a least one said jaw is selectively movable relative to the other said jaw	ıt			



[1.4] an axial drive assembly movably supported for selective axial
travel relative to said first and second jaws61
[1.5] a motor supported by said housing and operably interfacing with
the axial drive assembly to selectively move said axial drive
assembly between a starting position and an ending position
relative to the first and second jaws65
[1.6] a contact arrangement supported by said housing and configured to
permit power to be supplied to the motor only when the housing is
operably attached to the actuator arrangement70
[2] The surgical cutting and stapling instrument of claim 1 wherein one
of the first and second jaws operably supports a fastener cartridge
74
[4.1] The surgical cutting and stapling instrument of claim 1 wherein
said axial drive assembly comprises
[4.2] a drive beam operably coupled to said motor
[4.3] a tissue cutting edge on said drive beam
[5] The surgical cutting and stapling instrument of claim 4 wherein one
of said first and second jaws comprises an anvil and the other of
said first and second jaws operably supports a surgical staple
cartridge therein
[6] The surgical cutting and stapling instrument of claim 5 wherein said
drive beam includes at least one camming pin configured to move
said anvil to a closed position when said axial drive assembly is
axially driven from the starting position to the ending position 77
[8] The surgical cutting and stapling instrument of claim 1 wherein one
of said first and second jaws comprises means for fastening tissue
on each side of a cut line formed therein by a portion of the axial
drive assembly79
[9] The surgical cutting and stapling instrument of claim 1 wherein the
first and second jaws are axially displaced from a portion of the
housing supporting the motor80
[10] The surgical cutting and stapling instrument of claim 9 comprising
a shaft extending between the motor and the axial drive assembly
82
[11.1] A surgical cutting and stapling instrument comprising84
[11.2] a housing including at least one engagement member for
removably coupling the housing to an actuator arrangement84
[11.3] a carrier operably coupled to the housing84
[11.4] a surgical staple cartridge operably supported in the carrier85
[11.5] an anvil movably supported relative to the carrier



[11.6] a drive beam including a distal cutting edge supported for axial
travel relative to the carrier86
[11.7] a motor supported by said housing and operably interfacing with
the drive beam to selectively move said drive beam between a
starting position and an ending position87
[11.8] a contact arrangement supported by said housing and configured
to permit power to be supplied to the motor only when the housing
is operably attached to the actuator arrangement87
[13] The surgical cutting and stapling instrument of claim 11 wherein
said drive beam includes at least one camming pin configured to
move said anvil to a closed position when said drive beam is
axially driven from the starting position to the ending position87
[15] The surgical cutting and stapling instrument of claim 11 wherein
the carrier is axially displaced from a portion of the housing that
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[16] The surgical cutting and stapling instrument of claim 15 comprising
a shaft extending between the motor and the drive beam87
[17.1] A surgical cutting and stapling instrument comprising87
[17.2] an end effector configured to cut and staple tissue87
[17.3] a housing coupled to the end effector and including means for
removably coupling the housing to an actuator arrangement88
[17.4] a motor supported by said housing and operably interfacing with
a portion of the end effector for selective actuation thereof89
[17.5] a contact arrangement supported by said housing and configured
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[18] The surgical cutting and stapling instrument of claim 17 wherein
the portion of the end effector includes a tissue cutting portion89
[19] The surgical cutting and stapling instrument of claim 17 wherein
the motor is located proximal to the end effector within the
housing89
[20] The surgical cutting and stapling instrument of claim 17 further
comprising a shaft extending between the motor and the end
effector portion89
Claims 1-2, 4-11, and 13-20 are obvious over Heinrich in view of Alesi
and, if necessary, Milliman89
[7] The surgical cutting and stapling instrument of claim 4 further
comprising a drive screw rotatably supported within the housing
in operable engagement with the motor, the drive screw in
threaded engagement with a portion of the drive beam90



В.

		[10] The surgical cutting and stapling instrument of claim 9 comprising a shaft extending between the motor and the axial drive assembly
		<ul> <li>[14] The surgical cutting and stapling instrument of claim 11 further comprising a drive screw rotatably supported within the housing in operable engagement with the motor, the drive screw in threaded engagement with a portion of the drive beam96</li> <li>[16] The surgical cutting and stapling instrument of claim 15 comprising a shaft extending between the motor and the drive beam96</li> <li>[20] The surgical cutting and stapling instrument of claim 17 further comprising a shaft extending between the motor and the end</li> </ul>
		effector portion
	C.	[1]-[2], [4]-[6], [8]-[11], [13], and [15]-[20]
		necessary, Milliman
		[3] The surgical cutting and stapling instrument of claim 1 wherein the actuator arrangement comprises a portion of a handheld surgical instrument
		[12] The surgical cutting and stapling instrument of claim 11 wherein the actuator arrangement comprises a portion of a handheld surgical instrument
IX.	TH	E '058 PATENT IS INVALID101
		Claims 1-18 are obvious over Hooven in view of Heinrich
		said disposable loading unit comprising
		[1.2] a carrier operably supporting a cartridge assembly therein104 [1.3] an anvil supported relative to said carrier and being movable from an open position to closed positions upon application of at least
		one control motion thereto
		[1.4] a housing coupled to said carrier, said housing including means for removably attaching said housing to the surgical instrument104
		[1.5] an axial drive assembly at least partially supported within said
		housing and being supported for selective axial travel through said cartridge assembly from a start position to an end position upon
		application of a rotary motion thereto, said axial drive assembly comprising105
		[1.6] a rotary shaft



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