

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTUITIVE SURGICAL, INC.,
Petitioner,

v.

ETHICON LLC,
Patent Owner.

IPR2018-01247
U.S. Patent No. 8,479,969

DECLARATION OF DR. ELLIOTT FEGELMAN

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I. INTRODUCTION

1. My name is Dr. Elliott Fegelman. I have been asked by counsel for Patent Owner Ethicon LLC (“Patent Owner”) to offer my opinions from the perspective of a practicing surgeon in connection with the above-captioned proceeding. I understand from counsel that the 2011 timeframe is the relevant timeframe for this proceeding, and I was a practicing general surgeon at that time.

2. Unless otherwise stated, the statements in this declaration are based on my personal knowledge, my experience as a surgeon and hospital administrator for nearly 30 years, and the documents cited in this declaration. I am currently employed by and being compensated by Ethicon Endo-Surgery, Inc. (an affiliate of Patent Owner), but I am not being separately compensated for my time in preparing this declaration. If called as a witness, I could and would attest to the statements in this declaration under oath.

II. QUALIFICATIONS AND BACKGROUND

3. I received a Doctor of Medicine degree from Wright State University in 1988. I then completed my residency in general surgery at the University of Cincinnati College of Medicine in 1994. After completing my residency, I joined the faculty at the University of Cincinnati as an assistant professor. I continued to be a professor at the University of Cincinnati until 2009.

4. Starting in 1994, I also was employed at the Christ Hospital in Cincinnati as a general surgeon. I ultimately achieved the position of Chief of Surgery at the Christ Hospital in 2000. I retained that role until July 2002, when I accepted the role of Chief of Surgery at the Jewish Hospital in Cincinnati, Ohio. I retained that position until August 2011.

5. Between 1998 and 2012, while in private practice, I consulted for Ethicon Endo-Surgery, Inc. for approximately four hours per week on a variety of surgical matters. In September 2012, I retired from active surgical practice and accepted a full-time role at Ethicon Endo-Surgery, Inc. From 2012 to 2015, I was a medical director in the area of metabolic disease. Starting in 2015, I moved out of that area and now focus on evaluating third-party technologies across the general surgery platform.

6. During my career as a general surgeon, I have performed numerous open and laparoscopic procedures. During these procedures, I worked extensively with open surgical instruments and hand-held laparoscopic surgical instruments. Examples of laparoscopic surgical instruments that I have used during my career include but are not limited to graspers (forceps), scissors, needle drivers, energy devices, clip appliers, and endocutters.

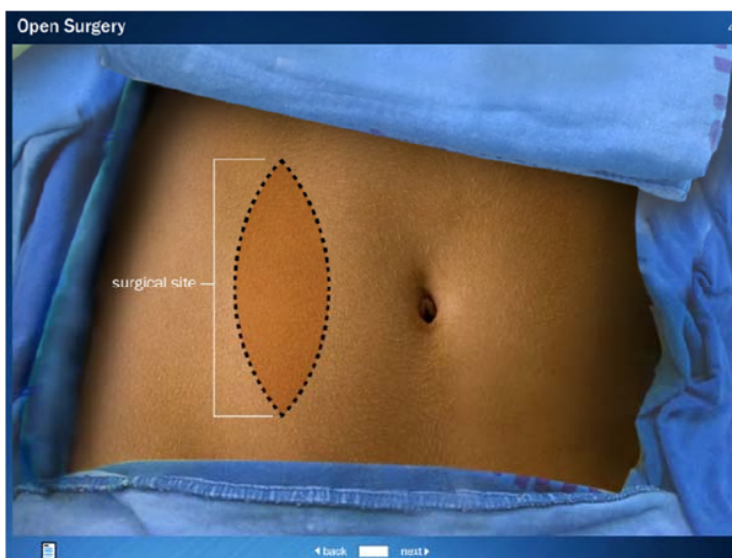
7. During my career, I also became experienced with robotic surgery systems offered by Intuitive Surgical, Inc. and performed numerous surgeries using

the da Vinci Si surgical system. Examples of robotic laparoscopic surgical instruments that I have used during my career include but are not limited to graspers (forceps), scissors, needle drivers, energy devices, and clip appliers. At the time of my retirement, a robotic endocutter was not available.

III. OVERVIEW OF OPEN, TRADITIONAL LAPAROSCOPIC, AND ROBOTIC LAPAROSCOPIC SURGICAL PROCEDURES

8. I will start with a general overview of relevant aspects of open, traditional laparoscopic,¹ and robotic laparoscopic surgical procedures.

9. In an open procedure, a large incision gives the surgeon direct access to the surgical site. This is illustrated below:



Ex. 2001.006 (Excerpts from Ethicon’s Technology Tutorial)

¹ By “traditional,” I am referring to laparoscopic procedures that do not involve robotic systems.

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