

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTUITIVE SURGICAL, INC.,
Petitioner,

v.

ETHICON LLC,
Patent Owner.

Case IPR2018-01254
U.S. Patent No. 8,479,969 B2

**PATENT OWNER'S SECOND SET OF OBJECTIONS TO
ADMISSIBILITY OF EVIDENCE SERVED BY PETITIONER INTUITIVE
SURGICAL, INC. IN *INTER PARTES* REVIEW**

Pursuant to 37 C.F.R. § 42.64(b), Patent Owner Ethicon LLC hereby objects as follows to the admissibility of evidence filed by Petitioner Intuitive Surgical, Inc. in *Inter Partes* review of U.S. Patent No. 8,479,969 (IPR2018-01254).

Evidence	Objections
Exhibit 1017	<p>FRE 105: To the extent that any portion of this exhibit may be deemed admissible, such admissibility should be for a limited purpose.</p> <p>FRE 402/403: Paragraphs 3-15 of the exhibit are not relevant to any ground upon which trial was instituted at least because they are not cited in Petitioner’s Reply to Patent Owner’s Response. Moreover, the probative value of paragraphs 3-17 to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly cumulative evidence.</p> <p>FRE 602: As to at least paragraphs 3-17, the exhibit includes assertions for which evidence has not been introduced sufficient to show that the witness has personal knowledge of the matters asserted.</p> <p>FRE 701/702 and/or 37 C.F.R. § 42.65: As to at least</p>

Evidence	Objections
	<p>paragraphs 3-17, the exhibit declarant is not qualified to opine on what a person of ordinary skill in the art would have understood and/or to perform legal analysis of invalidity. The opinion testimony offered in this exhibit is not based on scientific, technical, or other specialized knowledge, and is also not based on personal knowledge. The opinion testimony includes unsubstantiated leaps and advances inaccurate, unqualified generalizations. The opinion testimony fails to properly disclose the underlying facts or data on which the opinion is based. The opinion testimony includes testimony on United States patent law.</p> <p>FRE 705 / 37 C.F.R. § 42.65: Exhibit includes expert testimony that does not disclose underlying facts or data.</p> <p>FRE 802: The entirety of the exhibit is inadmissible hearsay if offered to prove the truth of any matter allegedly asserted therein.</p>
Exhibit 1018	<p>FRE 402: The exhibit is not relevant to any ground upon which trial was instituted.</p> <p>FRE 403: The exhibit's probative value to any ground</p>

Evidence	Objections
	<p>upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly cumulative evidence.</p>
<p>Exhibit 1023</p>	<p>FRE 402: The exhibit is not relevant to any ground upon which trial was instituted.</p> <p>FRE 403: The exhibit’s probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly cumulative evidence.</p>
<p>Exhibit 1024</p>	<p>FRE 105: To the extent that any portion of this exhibit may be deemed admissible, such admissibility should be for a limited purpose.</p> <p>FRE 402: The exhibit is not relevant to any ground upon which trial was instituted.</p> <p>FRE 403: The exhibit’s probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues,</p>

Evidence	Objections
	<p>undue delay, wasting time, or needlessly cumulative evidence.</p> <p>FRE 602: The exhibit includes assertions for which evidence has not been introduced sufficient to show that the witness has personal knowledge of the matters asserted.</p> <p>FRE 701/702 and/or 37 C.F.R. § 42.65: The exhibit deponent is not qualified to opine on what a person of ordinary skill in the art would have understood and/or to perform legal analysis of invalidity. The opinion testimony offered in this exhibit is not based on scientific, technical, or other specialized knowledge, and is also not based on personal knowledge. The opinion testimony includes unsubstantiated leaps and advances inaccurate, unqualified generalizations. The opinion testimony fails to properly disclose the underlying facts or data on which the opinion is based. The opinion testimony includes testimony on United States patent law.</p> <p>FRE 705 / 37 C.F.R. § 42.65: Exhibit includes expert</p>

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