

**UNITED STATES PATENT AND TRADEMARK OFFICE**

---

**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

---

INTUITIVE SURGICAL, INC.,  
Petitioner,

v.

ETHICON LLC,  
Patent Owner.

---

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

---

**PATENT OWNER'S MOTION TO SEAL**

**TABLE OF CONTENTS**

I. INTRODUCTION .....1

II. REASONS FOR THE REQUESTED RELIEF AND STATEMENT  
OF FACTS.....2

    A. Good Cause Exists for Sealing Confidential Information .....2

    B. Ex. 2026: Deposition Transcript from Co-Pending Litigation .....2

    C. Sur-Reply.....3

III. CERTIFICATION OF NON-PUBLICATION .....3

IV. CONCLUSION.....3

## I. INTRODUCTION

At Petitioner's (Intuitive) request, Patent Owner (Ethicon) moves to seal portions of Exhibit 2026 pursuant to 37 C.F.R. §§ 42.14 and 42.54. Petitioner has also requested that certain portions of Patent Owner's Sur-Reply that rely on Ex. 2026 be sealed. Patent Owner is not in a position to provide a basis for sealing Ex. 2026 or Patent Owner's Sur-Reply.<sup>1</sup> *See* 37 C.F.R. § 42.14 (providing for provisional sealing).

By agreement of the parties, Patent Owner also requests entry of the Proposed Protective Order (Attachment 1).<sup>2</sup> Patent Owner has conferred with Petitioner, and the parties have stipulated to the Proposed Protective Order.

---

<sup>1</sup> Petitioner is in the best position to explain why it believes the documents are and should remain confidential. *RPX Corp. v. Applications in Internet Time, LLC*, IPR2015-01750, Paper 42 at 2 (P.T.A.B. January 26, 2016) (clarifying who should move to seal).

<sup>2</sup> Attachment 2 is a redline showing the differences between the proposed protective order and the PTAB default protective order.

## **II. REASONS FOR THE REQUESTED RELIEF AND STATEMENT OF FACTS**

### **A. Good Cause Exists for Sealing Confidential Information**

The Board will seal documents for good cause. *See* 37 C.F.R. § 42.54(a); *see also Argentum Pharms. LLC v. Alcon Research, Ltd.*, Paper 27, 2 (2013). “The rules aim to strike a balance between the public’s interest in maintaining a complete and understandable file history and the parties’ interest in protecting truly sensitive information.” *Office Patent Trial Practice Guide*, 77 Fed. Reg. 48756, 48760 (2012). The public’s interest in having access to confidential business information that is only indirectly related to patentability is “minimal.” *Garmin v. Cuozzo*, IPR2012-00001, Paper 36, 8-9 (2013) (granting a motion to seal an agreement relating to the “commercializ[ation]” of the patent-at-issue). Such documents should be subject to the Proposed Protective Order. *See* Attachment at 5 (“Information designated as confidential that is disclosed to another party during discovery or other proceedings before the Board shall be clearly marked as “PROTECTIVE ORDER MATERIAL” and shall be produced in a manner that maintains its confidentiality.”).

### **B. Ex. 2026: Deposition Transcript from Co-Pending Litigation**

Exhibit 2026 includes excerpts of deposition testimony from the co-pending litigation between Patent Owner and Petitioner. As noted above, Patent Owner is not in a position to make the necessary representations about why Ex. 2026 may

warrant sealing. At Petitioner's request, however, Patent Owner has filed Ex. 2026 under seal.

### **C. Sur-Reply**

Patent Owner's sur-reply refers to Ex. 2026. Again, Patent Owner is not in a position to make the necessary representations about why discussion of Ex. 2026 might warrant sealing portions of Patent Owner's sur-reply. At Petitioner's request, however, Patent Owner has filed these documents under seal. Public, redacted versions of these documents have also been filed by Patent Owner.

### **III. CERTIFICATION OF NON-PUBLICATION**

As noted above, Patent Owner is not in a position to make the necessary representations about Ex. 2026 or the portions of Patent Owner's sur-reply that refer to it. Any certification regarding Ex. 2026 and the sur-reply references to Ex. 2026 will need to be provided by Petitioner in any supplemental motion to seal that Petitioner may file.

### **IV. CONCLUSION**

Patent Owner respectfully requests that the Board grants its motion to seal Ex. 2026 and Patent Owner's sur-reply, which references Ex. 2026, with the understanding that Petitioner may file a supplemental motion demonstrating that this information warrants sealing. If the Board is not inclined to grant the motion to seal due to some deficiency in this motion, Patent Owner respectfully requests leave to file another motion to seal to correct that deficiency.

# 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.