

Filed: October 22, 2021

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EDWARDS LIFESCIENCES CORPORATION AND
EDWARDS LIFESCIENCES LLC,

PETITIONERS,

V.

COLIBRI HEART VALVE LLC,

PATENT OWNER.

Case No. IPR2020-01649
U.S. Patent No. 9,125,739

PATENT OWNER'S SUR-REPLY TO PETITIONER'S REPLY

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I. GROUND 1: PETITIONER’S REPLY ADDS NOTHING TO THE PETITION’S PANIAGUA ARGUMENTS THAT THE BOARD ALREADY CONSIDERED AND REJECTED

Petitioner’s Reply repeats the same arguments that the Board already rejected and misapprehends the law’s written description requirements. “The purpose of the written description requirement is to assure that the public receives sufficient knowledge of the patented technology, and to demonstrate that the patentee is in possession of the invention claimed.” *Zoltek Corp. v. United States*, 815 F.3d 1302, 1308 (Fed. Cir. 2016). This “requirement is applied in the context of the state of knowledge at the time of the invention,” meaning that “[t]he written description need not include information that is already known and available to the experienced public.” *Id.* (quotation omitted). Because Petitioner has acknowledged that “multi-piece leaflet valves were known in 2002,” the written description requirement is satisfied. (Reply, 17.)

Regardless, Petitioner rehashes its failed argument that Paniagua’s specification as of January 4, 2002 does not “describe[] using valve leaflets made from multiple pieces in the *invention*.” (Reply, 17-18.) But Petitioner defines the ’739’s *invention* by the patent’s *specification*, despite the fact that “the claims of a patent define the invention to which the patentee is entitled the right to exclude.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005). This is particularly the case where the ’739 indicates that “[w]hile the present invention has been

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