

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

EDWARDS LIFESCIENCES AG and )  
EDWARDS LIFESCIENCES LLC, )

Plaintiffs, )

v. )

COREVALVE, INC. and, )  
MEDTRONIC COREVALVE, LLC )

Defendants. )  
\_\_\_\_\_ )

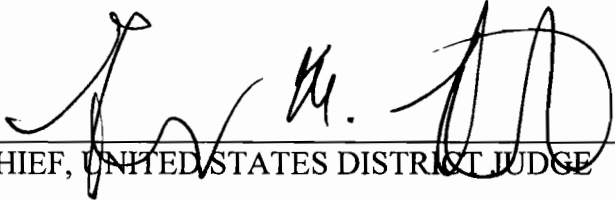
C.A. No. 08-91-GMS

**ORDER**

At Wilmington, this 23<sup>rd</sup> day of February, 2011, having considered the protective order (D.I. 38), the letters filed by the parties (D.I. 423, D.I. 425, and D.I. 427), and the parties' assertions during the January 12, 2011 teleconference;

IT IS HEREBY ORDERED that Edwards' request that the court determine "that the Protective Order (D.I. 38) does not preclude its technical expert (Dr. Nigel Buller) or trial counsel (Paul Weiss) from participating in two patent reexamination initiated by" the defendants is DENIED. The court finds that permitting Dr. Buller and Paul Weiss attorneys to participate in the reexamination would create a high risk that confidential CoreValve/Medtronic information would be used or disclosed. Edwards' retained reexamination counsel is, of course, permitted to use the public record relating to this case in its reexamination responses, just as the defendants used the public record when instituting the reexamination. Edwards may also have its attorneys provide an authenticating declaration with respect to non-confidential litigation documents, just

as an associate with the defendants' trial counsel provided an authenticating declaration for the public records referenced in their reexamination request. Beyond that, however, the court finds that the risk of the use of confidential information and the harm that the defendants might suffer as a result far outweighs the potential harm to Edwards of enforcing the prosecution bar in the reexamination.<sup>1</sup>



CHIEF, UNITED STATES DISTRICT JUDGE

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<sup>1</sup> Indeed, since the defendants have limited themselves to the use of the public record in making their reexamination arguments, the court does not perceive any prejudice or undue burden that could result from Edwards being similarly restricted in making its reexamination arguments.