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**GD-13-005791**

**Nicolo M.D. vs Ethicon Endo-Surgery Inc. etal**

<b>Filing Date:</b>	<b>03/29/2013</b>	<b>Case Type:</b>	<b>Intentional Tort</b>
<b>Filing Time:</b>		<b>Court Type:</b>	<b>General Docket</b>
<b>Related Cases:</b>	--	<b>Current Status:</b>	<b>Return of Service</b>
<b>Judge:</b>	<b>No Judge</b>	<b>Jury Requested:</b>	<b>Yes</b>
<b>Amount In Dispute:</b>	<b>\$ .00</b>		

\*Click on PartyID hyperlink to see Alternative name for the party.

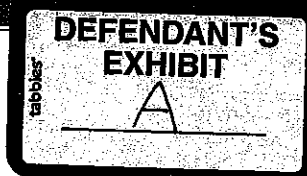
Parties							
-- Litigants --							
ID	LName	FName	MI	Type	Address	Initial Service Completion	Attorney
@1972609	Nicolo M.D.	Enrico	---	Plaintiff	1515 Timerlane Road Claiton PA 15025	--	--
@590464	Ethicon Endo-Surgery Inc.	---	---	Defendant	4545 Creek Road Cincinnati OH 45242	--	--
@1972608	Malek	Kevin	N	Defendant	340 Madison Avenue 19th floor New York NY 10173	--	Strassburger David A,
@1972607	Patterson Belknap Webb & Tyler LLP	---	---	Defendant	1133 Avenue of the Americas New York NY 10036-6710	--	Norton Gregory J,Schadel James R.,

-- Attorney --						
ID	LName	FName	MI	Type	Address	Phone
64386	Shideler	Blynn	L	Plaintiff's Attorney	3500 Brooktree Road Suite 200 Wexford PA 15090	--
200563	Norton	Gregory	J	Defendant's Attorney	429 Fourth Avenue Pittsburgh PA 15219	--
27937	Schadel	James	R.	Defendant's Attorney	Weinheimer Schadel & Haber 429 Fourth Ave. 806 Law and Finance Building Pittsburgh PA 15219	(412) 7653399
76027	Strassburger	David	A	Defendant's Attorney	444 Liberty Ave Suite 2200 Pittsburgh PA 15222	--

-- Non Litigants --	
No Listing	

\*Click on DocketType hyperlink to see Judgments for that Docket.  
Document numbers in the DOCUMENT column may not be consecutive.

Docket Entries				
Filing Date	Docket Type	Docket Text	Filing Party	Document



05/16/2013	Return of Service	of the Complaint, Writ of Complaint and Filing of Original Verification was served by by Juan Pereira on April 24, 2013 at 12:23 by personal delivery upon Patterson Belknap Webb & Tyler, LLP	Nicolo M.D. Enrico	<a href="#">Document 6</a>
05/07/2013	Præcipe for Appearance	by David A. Strassburger, Esq.	Malek Kevin N	<a href="#">Document 5</a>
05/03/2013	Præcipe for Appearance	Gregory J.Norton,Esquie.	Patterson Belknap Webb & Tyler LLP	<a href="#">Document 3</a>
05/03/2013	Præcipe for Appearance	James R.Schadel,Esquire.	Patterson Belknap Webb & Tyler LLP	<a href="#">Document 4</a>
04/01/2013	Verification		Nicolo M.D. Enrico	<a href="#">Document 2</a>
03/29/2013	Complaint		Nicolo M.D. Enrico	<a href="#">Document 1</a>

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**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,  
PENNSYLVANIA**

**Dr. Enrico Nicolo**

An individual resident of Allegheny County

**CIVIL DIVISION**

**No.:** \_\_\_\_\_

**CODE** \_\_\_\_\_

**COMPLAINT**

**Plaintiff,**

**vs.**

**Patterson Belknap Webb**

**& Tyler, LLP.**

A limited Liability Partnership of New York

**Ethicon Endo-Surgery, Inc.**

A corporation of Ohio

**Kevin N. Malek**

An individual resident of New York

**Defendants**

**Filed on Behalf of Plaintiff**

**Dr. Enrico Nicolo**

**Counsel for this Party:**

**BLYNN L. SHIDELER**

**PA I.D. #64386**

**BLK LAW GROUP**

**3500 Brooktree Road, Suite 200**

**Wexford, PA 15090**

**(724) 934-5450 (phone)**

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**Email: [hlynn@blklawgroup.com](mailto:hlynn@blklawgroup.com)**

You are hereby notified  
to plead to the enclosed  
**COMPLAINT**  
within twenty (20) days  
from service or a default  
judgment may be entered  
against you.

/s/ Blynn L. Shideler

**Blynn L. Shideler**

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,  
PENNSYLVANIA**

**Dr. Enrico Nicolo  
Plaintiff,**

**CIVIL DIVISION**

**COMPLAINT**

**vs.**

**Patterson Belknap Webb  
& Tyler, LLP.  
Ethicon Endo-Surgery, Inc.  
Kevin N. Malek  
Defendants**

**NOTICE TO DEFEND**

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED, BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFF. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

**LAWYER REFERRAL SERVICE  
The Allegheny County Bar Association  
11th Floor Koppers Building, 436 Seventh Avenue  
Pittsburgh, Pennsylvania 15219  
412-261-5555**

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,  
PENNSYLVANIA**

**Dr. Enrico Nicolo**

**CIVIL DIVISION**

**Plaintiff,**

**COMPLAINT**

**vs.**

**Patterson Belknap Webb  
& Tyler, LLP.**

**Ethicon Endo-Surgery, Inc.**

**Kevin N. Malek**

**Defendants**

**COMPLAINT**

COMES NOW, Plaintiff, Dr. Enrico Nicolo, by his Attorney, Blynn Shideler, to  
files this Complaint as follows:

**I. JURISDICTION AND VENUE**

1. This honorable court has jurisdiction over the subject matter of this action pursuant to Pa.C.S.A. 931 as the claim of the Plaintiff exceed \$25,000 in value, exclusive of interest and costs, and is brought under the common law and/or the statutory law of the Commonwealth of Pennsylvania.

2. This honorable court has personal jurisdiction over the parties and venue is proper in this court for the subject matter of this action, as the actions upon which this complaint is based occurred in Allegheny County, the Plaintiff, Dr. Enrico Nicolo, is a resident of Allegheny County and the defendant, Ethicon Endo-Surgery, Inc., does business in Allegheny County.

## II. PARTIES

3. Dr. Enrico Nicolo (Dr. Nicolo) is an individual resident of Allegheny County, Pennsylvania residing at 1515 Timerlane Road, Clairton PA 15025.

4. Patterson Belknap Webb & Tyler, LLP (Patterson) is believed to be a limited liability partnership of New York State operating as a law firm and having a place of business at 1133 Avenue of the Americas New York, New York 10036-6710.

5. Kevin N. Malek (Mr. Malek) is believed to be an individual resident of New York State and is believed to have has a residence address at 130 W 15th St, Apt 11J New York, NY 10011-6799 and a business address of 340 Madison Avenue, 19<sup>th</sup> floor, New York, New York 10173.

6. Ethicon Endo-Surgery, Inc. (Ethicon) is a corporation of the state of Ohio and has a place of business at 4545 Creek Road, Cincinnati Ohio 45242.

## III. BACKGROUND

7. Dr. Nicolo is a retired general surgeon and an inventor, who has developed, sold, licensed and otherwise commercially exploited a number of his inventions. At the time of filing this complaint, he is a named (sole or joint) inventor of nine (9) issued United States patents, copies of the front pages of which are attached hereto as exhibits 1-9. These patents include (Exhibit 1) United States Patent Number 5,937,445, entitled "One-piece Surgical Mask and Cap"; (Exhibit 2) United States Patent Number 6,117,148,

entitled “Intraluminal Anastomotic Device”; (Exhibit 3) United States Patent Number 6,279,809, entitled “Circular Stapler for Side to End, Side to Side and End to Side Anastomosis”; (Exhibit 4) United States Patent Number 6,497,650, entitled “Hernia Prostbesis”; (Exhibit 5) United States Patent Number 6,520,398, entitled “Circular Stapler for Side to End, Side to Side and End to Side Anastomosis”; (Exhibit 6) United States Patent Number 6,592,600 entitled “Bowel Clamp”; (Exhibit 7) United States Patent Number 6,652,595, entitled “Method of Repairing Inguinal Hernias”; (Exhibit 8) United States Patent Number 6,981,979, entitled “Surgical Anastomotic Devices” and (Exhibit 9) United States Patent Number 7,156,804, entitled “Hernia Prosthesis.” These developments also have resulted in numerous related international patent applications and associated international patents.

8. Dr. Nicolo, jointly with another inventor, developed a proprietary surgical stapler device for intestinal intraluminal reconstruction and resection that included a mechanism for intussusceptions of a body lumen such as the bowel, a lumen/bowel anastomosis mechanism and a mechanism for severing the resected lumen/bowel, including the provision of an area in the surgical stapler device sufficient to receive intussuscepted tissue for resection and removal, referenced as intraluminal anastomotic technology and which is the subject of U.S. Patent 6,117,148 (Exhibit 2).

9. Dr. Nicolo, jointly with a co-inventor, filed U.S. Provisional Patent Application Serial Number 60/062,281 on October 17, 1997, for the intraluminal anastomotic technology, which application was followed by regular utility Patent Application Serial Number

09/173,867, filed on October 16, 1998, and which issued as U.S. Patent 6,117,148, (Exhibit 2) on September 12, 2000.

10. Representatives of Dr. Nicolo met with representatives of Ethicon, including Ethicon employee Federico Belotti, to discuss the then patent-pending intraluminal anastomotic technology in the spring of 1998. This discussion included a detailed review and discussion of the provision of an area in the surgical circular stapler device used for anastomosis that is sufficient to receive the intussuscepted tissue for resection and removal.

11. About seven months following the meeting with representatives of Dr. Nicolo, United States patent application serial number 09/197,805, was filed by Ethicon on November 29, 1998, listing Federico Bilotti as one named inventor, and issued as U.S. Patent No. 6,102,271, and assigned to Ethicon. A front page of U.S. Patent No. 6,102,271 is attached hereto as Exhibit 10.

12. The patent application number 09/197,805 described, in part, a surgical circular stapling instrument for the removal of hemorrhoids that intussuscepted bowel tissue and incorporated an area in the device sufficient to receive the intussuscepted tissue for resection and removal, hereinafter referenced as the hemorrhoidectomy device technology.



13. Although United States patent application serial number 09/197,805 incorporated claimed elements which were developed by Dr. Nicolo and a co-inventor and which were disclosed to Ethicon relating to the provision of an area in the surgical stapler device sufficient to receive the intussuscepted tissue for resection and removal, United States patent application serial number 09/197,805 did not name either Dr. Nicolo or his co-inventor as co-inventors of this disclosed technology of U.S. Patent Application 09/197,805.

14. Ethicon commercialized the hemorrhoidectomy device technology which commercial product incorporated an area in the device sufficient to receive the intussuscepted tissue for resection and removal.

15. Dr. Nicolo believed that Ethicon's commercialized hemorrhoidectomy device technology misappropriated his intellectual property; namely, that this commercial product infringed on his 6,117,148 patent (Exhibit 2).

16. Following unsuccessful attempts to negotiate a settlement with Ethicon relating to possible infringement of his 6,117,148 patent (Exhibit 2), Dr. Nicolo and his co-inventor filed a patent infringement lawsuit against Ethicon (Civil Action number 2:2004cv00617) on April 23, 2004, in the Western District of Pennsylvania.

17. Civil Action number 2:2004cv00617 was settled by agreement between the parties following discovery and hearing on the scope of the claims of the 6,117,148 patent

(Exhibit 2). In the settlement agreement Ethicon paid Dr. Enrico Nicolo a fixed fee one-time payment for, in part, relevant rights to U.S. Patent 6,117,148 (Exhibit 2).

18. This settlement resolved the alleged misuse of Dr. Nicolo's intellectual property rights in U.S. Patent 6,117,148 (Exhibit 2) by this device. Although the terms of this settlement are no longer required to be maintained as confidential, the Plaintiff has not attached a copy of this agreement hereto as it is believed Ethicon would prefer to not have public publication of all of the details of this settlement and thus the Plaintiff only includes this settlement summary as relevant background to the instant case.

19. Dr. Nicolo developed novel circular staplers for side-to-end, side-to-side or end-to-side anastomosis, referenced as his Side-to-End Stapler technology and which is the subject of U.S. Patents 6,279,809 (Exhibit 3) and 6,520,398 (Exhibit 5).

20. Dr. Nicolo filed for and was granted U.S. Patents on his Side-to-End Stapler technology, namely, U.S. Provisional Patent Application Serial Number 60/077,393, filed March 10, 1998, followed by Regular utility patent application serial number 09/264,764, filed on March 9, 1999, which issued as U.S. Patent 6,279,809 on August 28, 2001, (Exhibit 3) followed by a divisional application filed on May 25, 2001, which issued as U.S. Patent 6,520,398 on February 18, 2003 (Exhibit 5).

21. Following filing of a patent application on the Side-to-End Stapler technology in about late 1998 or early 1999, Dr. Nicolo met with employees of Ethicon in their offices

in Cincinnati, Ohio, to discuss a number of Dr. Nicolo's developments including his Side-to-End Stapler technology as well as an unfiled patent concept for non-surgical treatment for morbid obesity, comprising a method and apparatus to facilitate nutritional malabsorption utilizing intra-luminal sleeve positioned substantially within the small intestine (Cincinnati Meeting).

22. Shortly following the Cincinnati Meeting, Ethicon indicated they were not interested in pursuing any of the concepts presented by Dr. Nicolo, including his Side-to-End Stapler technology and the concept for non-surgical treatment for morbid obesity comprising a method and apparatus to facilitate nutritional malabsorption utilizing an intra-luminal sleeve positioned substantially within the small intestine.

23. Later following the Cincinnati Meeting with Dr. Nicolo, Ethicon filed patent application serial number 10/644,571 on August 20, 2003, directed to a "method and apparatus to facilitate nutritional malabsorption by diverting digestive secretions, such as bile or pancreatic secretions. A tube is positioned substantially within the small intestine." Patent application serial number 10/644,571 issued as U.S. Patent 7,314,489. A front page of U.S. Patent No. 7,314,489 is attached hereto as Exhibit 11.

24. An Ethicon employee, listed as a co-inventor of U.S. Patent No. 7,314,489, was a principal participant in the Cincinnati Meeting in which Dr. Nicolo disclosed a number of his developments including his concept for non-surgical treatment for morbid obesity

comprising a method and apparatus to facilitate nutritional malabsorption utilizing intraluminal sleeve positioned substantially within the small intestine.

25. Dr. Nicolo believes his confidential disclosure at the Cincinnati Meeting at least prompted the development of the subject matter of U.S. Patent No. 7,314,489 by Ethicon. Dr. Nicolo consequently became highly skeptical of Ethicon's good faith in their assertion that they were not interested in pursuing any of the concepts presented by Dr. Nicolo.

26. Ethicon has asserted that since 1995 Ethicon has been the industry leader in surgical stapler technology.

27. In light of the above-described personal past experiences with Ethicon, by 2009, Dr. Nicolo adopted a heightened level of discretion and caution in approaching Ethicon and sharing any business proposals and technical developments with Ethicon. Ethicon's dominating presence in select marketplaces is such that he believes Ethicon cannot be completely overlooked as potential licensees and business partners for his developments in these fields, but extreme caution is warranted.

28. Dr. Nicolo has now come to understand that Patterson has represented for a number of years, and is believed to continue to represent Ethicon in legal matters, including those relating to intellectual property matters and surgical staplers.

29. Mr. Malek was an associate attorney of Patterson including a period through at least April 2010.

30. During his course of employment as an associate at Patterson, Mr. Malek was or became aware of Dr. Nicolo and at least some of his patents relating to surgical staplers including U.S. Patents 6,279,809 (Exhibit 3) and 6,520,398 (Exhibit 5).

31. Mr. Malek became aware of Dr. Nicolo and his patents through Patterson's legal representation of Ethicon.

#### IV COUNT 1 MISAPPROPRIATION OF TRADE SECRETS By Defendants Patterson

Belknap Webb & Tyler, LLP., Kevin N. Malek and Ethicon

32. All above numbered paragraphs are incorporated herein by reference as if set forth in full.

33. During his course of employment as an associate at Patterson, Mr. Malek determined that he and his law firm desired further confidential information regarding Dr. Nicolo's patents relating to surgical staplers including U.S. Patents 6,279,809 (Exhibit 3) and 6,520,398 (Exhibit 5). Further, regardless of Mr. Malek's awareness, the obtaining and use of such confidential information would be for the benefit of the law firm's client Ethicon.

34. In about March 2010, Mr. Malek directly contacted Dr. Nicolo by telephone, announced he was an attorney, and proposed a personal meeting with Dr. Nicolo in Pittsburgh to discuss at least some of his patents relating to surgical staplers, specifically including U.S. Patents 6,279,809 (Exhibit 3) and 6,520,398 (Exhibit 5). Mr. Malek asserted that he and his firm could assist Dr. Nicolo with these patents.

35. In the initial telephone conversation with Mr. Malek, Mr. Malek never conveyed or suggested to Dr. Nicolo that either he or his firm represented Ethicon, an industry leader in surgical staplers. In this initial telephone conversation, Dr. Nicolo had no knowledge that Mr. Malek or the firm for which he worked represented Ethicon.

36. Shortly after the initial telephone conversation, Dr. Nicolo and Mr. Malek exchanged e-mails to schedule a personal meeting in Pittsburgh, Pennsylvania. Mr. Malek asserted that the purpose of the meeting was to discuss how Mr. Malek and his firm could assist Dr. Nicolo with U.S. Patents 6,279,809 (Exhibit 3) and 6,520,398 (Exhibit 5).

37. In these e-mail communications with Mr. Malek, Mr. Malek never conveyed or suggested to Dr. Nicolo that either he or his firm represented Ethicon, an industry leader in surgical staplers. In these e-mail communications Dr. Nicolo had no knowledge that Mr. Malek or the firm for which he worked represented Ethicon.

38. Contrary to Mr. Malek's assertion that this proposed representation would be to assist Dr. Nicolo with the subject patents, the purpose of the meeting was to obtain

further confidential information on the subject patents for the benefit of the Patterson's client Ethicon, possibly at the direct request of Ethicon.

39. Dr. Nicolo maintains certain information as trade secrets regarding all of his patents, patent applications, and other intellectual property (the Nicolo Technologies), specifically including U.S. Patents 6,279,809 (Exhibit 3) and 6,520,398 (Exhibit 5). This information, collectively referred to as the Dr. Nicolo Confidential Business Information, includes but is not limited to:

- i) Identification of those in the industry or those planning to enter the industry (e.g., startups) who have approached Dr. Nicolo and those that he has approached regarding the development, licensing, assignment, and/or general commercialization of the relevant Nicolo Technologies, and those of whom he was aware who have not approached Dr. Nicolo regarding the same;

- ii) Negotiation and agreement particulars and details (e.g., monetary amounts, agreement terms, and development plans and milestones) of agreements and proposed agreements of relevant Nicolo Technologies;

- iii) Dr. Nicolo's knowledge of what developments third parties in the industry are and are not working on, including potential competitors and competitive products (or lack thereof) regarding relevant Nicolo Technologies;

- iv) Dr. Nicolo's plans (or lack thereof) for developing and/or commercializing the relevant Nicolo Technologies;

- v) Dr. Nicolo's technical improvements and future technological development plans (or lack thereof) for the relevant Nicolo Technologies;

vi) Dr. Nicolo's knowledge of potential infringers and potentially infringing products (or lack thereof) to patents covering the relevant Nicolo Technologies;

vii) Dr. Nicolo's knowledge of prior art literature and products (or lack thereof) relevant to patents covering the relevant Nicolo Technologies;

viii) Dr. Nicolo's knowledge or understanding of the coverage of his issued patents covering the relevant Nicolo Technologies, including the patentee's perceived strengths and weaknesses and scope of the issued patents covering the relevant Nicolo Technologies.

40. Mr. Malek came to Pittsburgh, Pennsylvania, in late March, 2010, and conducted a personal meeting with Dr. Nicolo in Pittsburgh, discussing at least some of his patents relating to surgical staplers and including at least U.S. Patents 6,279,809 (Exhibit 3) and 6,520,398 (Exhibit 5).

41. In the personal meeting between Dr. Nicolo and Mr. Malek, Mr. Malek gave Dr. Nicolo a business card identifying himself as an associate of Patterson, a copy of which card is attached as Exhibit 12.

42. In the personal meeting between Dr. Nicolo and Mr. Malek, Mr. Malek alleged that he was aware of potential infringers of U.S. Patents 6,279,809 (Exhibit 3); namely, he alleged that companies known as Watson Pharmaceuticals and Covedien had possible infringing developments and he alleged that he and his firm would like to investigate U.S. Patents 6,279,809 (Exhibit 3) and 6,520,398 (Exhibit 5) regarding a potential



representation of Dr. Nicolo by Mr. Malek and Patterson in this alleged patent infringement matter.

43. In this personal meeting with Mr. Malek, Mr. Malek never conveyed or suggested to Dr. Nicolo that either he or his firm represented Ethicon, an industry leader in surgical staplers. In this personal meeting Dr. Nicolo had no knowledge that Mr. Malek or the firm for which he worked represented Ethicon.

44. There was no intention of Mr. Malek, or his firm, to represent the legal interests of Dr. Nicolo and the allegations thereof were a ruse to present a perceived attorney-client relationship sufficient to deceive Dr. Nicolo and misappropriate confidential material from Dr. Nicolo and to utilize such confidential material for the benefit of Ethicon, possibly at the direct request of Ethicon.

45. Further, in this personal meeting between Mr. Malek and Dr. Nicolo there could be no legitimate potential attorney-client relationship without a prior full disclosure by Mr. Malek and/or the law firm of their representation of a third party in the surgical stapler field, and the interest of the third party in Dr. Nicolo's developments.

46. In this personal meeting with Mr. Malek, under a false pretense of a potential attorney-client relationship, Mr. Malek inquired about and Dr. Nicolo conveyed proprietary information regarding the identity of those in the industry or those planning to enter the industry who have approached Dr. Nicolo and those that he has approached

regarding the development, licensing, assignment, and/or general commercialization of the subject matter of U.S. Patents 6,279,809 (Exhibit 3) and 6,520,398 (Exhibit 5), and those of whom he was aware who have not approached Dr. Nicolo regarding the same.

47. In this personal meeting with Mr. Malek, under a false pretense of a potential attorney-client relationship, Mr. Malek inquired about and Dr. Nicolo conveyed proprietary information regarding negotiation and agreement particulars and details (e.g., monetary amounts, agreement terms, and development plans and milestones) of agreements and proposed agreements or lack thereof related to the subject matter of U.S. Patents 6,279,809 (Exhibit 3) and 6,520,398 (Exhibit 5).

48. In this personal meeting with Mr. Malek, under a false pretense of a potential attorney-client relationship, Mr. Malek inquired about and Dr. Nicolo conveyed proprietary information regarding Dr. Nicolo's knowledge of what third parties in the industry are and are not working on including potential competitors and competitive products (or lack thereof) regarding the subject matter of U.S. Patents 6,279,809 (Exhibit 3) and 6,520,398 (Exhibit 5).

49. In this personal meeting with Mr. Malek, under a false pretense of a potential attorney-client relationship, Mr. Malek inquired about and Dr. Nicolo conveyed proprietary information regarding Dr. Nicolo's plans (or lack thereof) for developing and/or commercializing the subject matter of U.S. Patents 6,279,809 (Exhibit 3) and 6,520,398 (Exhibit 5).

50. In this personal meeting with Mr. Malek, under a false pretense of a potential attorney-client relationship, Mr. Malek inquired about and Dr. Nicolo conveyed proprietary information regarding Dr. Nicolo's technical improvements and future technological development plans (or lack thereof) for the subject matter of U.S. Patents 6,279,809 (Exhibit 3) and 6,520,398 (Exhibit 5).

51. In this personal meeting with Mr. Malek, under a false pretense of a potential attorney-client relationship, Mr. Malek inquired about and Dr. Nicolo conveyed proprietary information regarding Dr. Nicolo's knowledge of potential infringers and potentially infringing products (or lack thereof) to patents covering the subject matter of U.S. Patents 6,279,809 (Exhibit 3) and 6,520,398 (Exhibit 5).

52. In this personal meeting with Mr. Malek, under a false pretense of a potential attorney-client relationship, Mr. Malek inquired about and Dr. Nicolo conveyed proprietary information regarding Dr. Nicolo's knowledge of prior art literature and products (or lack thereof) to patents covering the subject matter of U.S. Patents 6,279,809 (Exhibit 3) and 6,520,398 (Exhibit 5).

53. In this personal meeting with Mr. Malek, under a false pretense of a potential attorney-client relationship, Mr. Malek inquired about and Dr. Nicolo conveyed proprietary information regarding Dr. Nicolo's knowledge or understanding of the relevant coverage of his issued patents covering the relevant Nicolo Technologies,

including the patentee's perceived strengths and weaknesses and scope of the issued patents covering the subject matter of U.S. Patents 6,279,809 (Exhibit 3).

54. Following the meeting with Mr. Malek, Mr. Malek did not follow up in any meaningful way with Dr. Nicolo regarding the potential infringement or possible representation of Dr. Nicolo by Mr. Malek and his firm, presumably because Mr. Malek and/or Patterson felt there was no further need of keeping the ruse going forward.

55. In around June of 2010, Dr. Nicolo reviewed some of the details of the meeting with Mr. Malek with separate counsel, who was handling an unrelated matter for Dr. Nicolo, and that counsel informed Dr. Nicolo that Patterson has for a number of years, and is believed to continue, to represent Ethicon in legal matters, including those relating to intellectual property matters and surgical staplers. Until around June 2010, Dr. Nicolo had no knowledge or reason to believe that Mr. Malek or Patterson represented Ethicon.

56. As identified above, in this personal meeting with Mr. Malek, under a false pretense of a potential attorney-client relationship, Mr. Malek inquired about and Dr. Nicolo conveyed Dr. Nicolo's Confidential Business Information relating to the subject matter of U.S. Patents 6,279,809 (Exhibit 3) and 6,520,398 (Exhibit 5). This misappropriation of Dr. Nicolo's trade secrets was done by Mr. Malek and his firm Patterson, on behalf of Patterson's client Ethicon, possibly at the direct request of Ethicon.

57. Mr. Malek's conduct described above on behalf of himself, his firm and the firm's client Ethicon are intentional acts, or such gross neglect of duty, as to evince a reckless indifference of the rights of Dr. Nicolo on the part of Mr. Malek, Patterson and Ethicon, and an entire want of care so as to raise the presumption that Mr. Malek, Patterson and Ethicon are conscious of the consequences of this carelessness.

58. As a result of the defendant's willful and malicious misappropriation of Dr. Nicolo's trade secrets by the defendants as described above, the defendants have been unjustly enriched by the use of these trade secrets including but not limited to unfairly gained corporate intelligence regarding competitors and competitors' potential developments relating to the subject matter of U.S. Patents 6,279,809 (Exhibit 3) and 6,520,398 (Exhibit 5) and an unfair advantage in dealing with Dr. Nicolo relating to the subject matter of U.S. Patents 6,279,809 (Exhibit 3) and 6,520,398 (Exhibit 5) including in choosing not to further deal with Dr. Nicolo.

59. As a result of the defendant's willful and malicious misappropriation of Dr. Nicolo's trade secrets by the defendants as described above, Dr. Nicolo has been prevented from fairly dealing at arm's length with Ethicon regarding the subject matter of U.S. Patents 6,279,809 (Exhibit 3) and 6,520,398 (Exhibit 5) and/or to fairly pursue all of the business opportunities with Ethicon relating to the subject matter of U.S. Patents 6,279,809 (Exhibit 3) and 6,520,398 (Exhibit 5).

WHEREFOR, Plaintiff, Dr. Nicolo requests judgment in favor of Dr. Nicolo and against Mr. Malek, Patterson and Ethicon for monetary damages in the amount in excess of \$25,000, exclusive of interests and costs and demands a jury trial; and for exemplary damages in the amount of twice the monetary damages pursuant to 12 Pa.C.S. § 5303(b); and for award reasonable attorney fees, expenses and costs pursuant to 12 Pa.C.S. § 5305.

*/s/ Blynn L. Shideler*  
**BLYNN L. SHIDELER**  
**PA I.D. #64386**  
**BLK LAW GROUP**  
**3500 Brooktree Road, Suite 200**  
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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,  
PENNSYLVANIA

Dr. Enrico Nicolo  
Plaintiff,

CIVIL DIVISION

COMPLAINT

vs.

Patterson Belknap Webb  
& Tyler, LLP.  
Ethicon Endo-Surgery, Inc.  
Kevin N. Malek  
Defendants

VERIFICATION

I, Dr. Enrico Nicolo, hereby verify that all of the allegations herein are true upon information and belief or personal knowledge to the best of my personal knowledge and belief. I understand that the statements made herein are made subject to the penalties of 18 Ps. C.S. 4904, relating to unsworn falsification to authorities.

Date:

3/4/2013



Dr. Enrico Nicolo

EXHIBIT LISTING

- (Exhibit 1) A front page of United States Patent Number 5,937,445, entitled "One-piece Surgical Mask and Cap";
- (Exhibit 2) A front page of United States Patent Number 6,117,148, entitled "Intraluminal Anastomotic Device";
- (Exhibit 3) A front page of United States Patent Number 6,279,809, entitled "Circular Stapler for Side to End, Side to Side and End to Side Anastomosis";
- (Exhibit 4) A front page of United States Patent Number 6,497,650, entitled "Hernia Prosthesis";
- (Exhibit 5) A front page of United States Patent Number 6,520,398, entitled "Circular Stapler for Side to End, Side to Side and End to Side Anastomosis";
- (Exhibit 6) A front page of United States Patent Number 6,592,600 entitled "Bowel Clamp";
- (Exhibit 7) A front page of United States Patent Number 6,652,595, entitled "Method of Repairing Inguinal Hernias";
- (Exhibit 8) A front page of United States Patent Number 6,981,979, entitled "Surgical Anastomotic Devices";
- (Exhibit 9) A front page of United States Patent Number 7,156,804, entitled "Hernia Prosthesis."
- (Exhibit 10) A front page of U.S. Patent No. 6,102,271
- (Exhibit 11) A front page of U.S. Patent No. 7,314,489
- (Exhibit 12) A copy of the business card of Mr. Malek given to Dr. Nicolo in March 2010 meeting



## EXHIBIT 1



US005937445A

**United States Patent**

Ravo et al.

[19]

[11] Patent Number: **5,937,445**[45] Date of Patent: **Aug. 17, 1999**[54] **ONE-PIECE SURGICAL MASK AND CAP**

[76] Inventors: **Biagio Ravo**, Rome American Hospital,  
Via Emilio Longoni, 69 - Rome, Italy,  
00155; **Enrico Nicolo**, 1515  
Timberlane, Clairton, Pa. 15025

[21] Appl. No.: **08/969,782**[22] Filed: **Nov. 13, 1997****Related U.S. Application Data**

[60] Provisional application No. 60/030,544, Nov. 13, 1996.

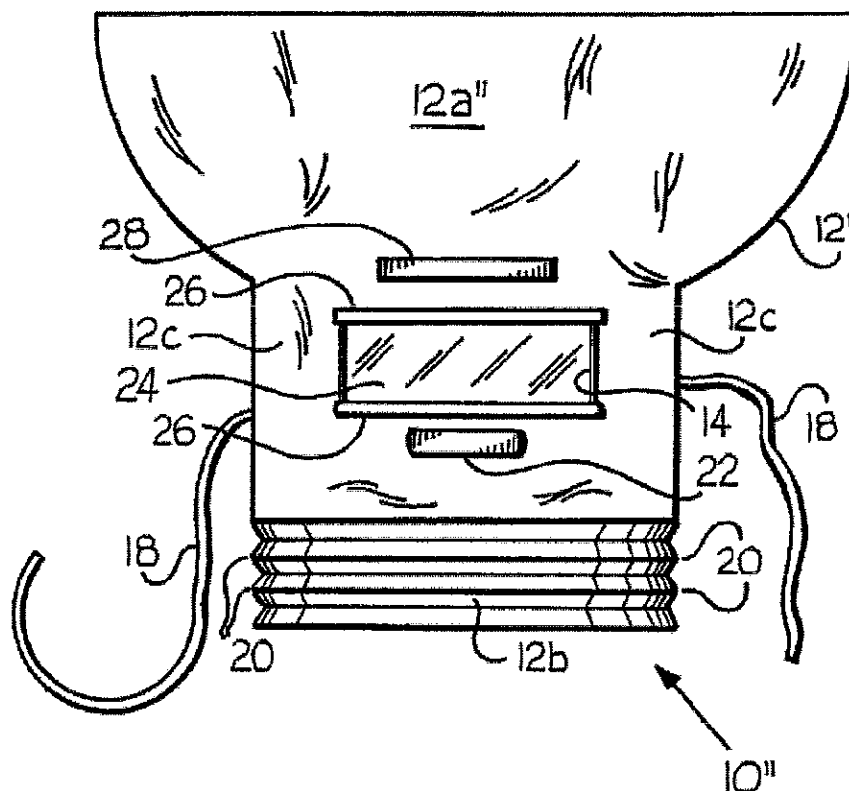
[51] Int. Cl.<sup>6</sup> ..... **A42B 1/04**[52] U.S. Cl. .... **2/173; 2/9; 2/206; 2/901;  
128/201.24; 128/206.19; 128/206.23**[58] Field of Search ..... **2/9, 171, 173,  
2/206, 901, 424; 128/857, 858, 206.12,  
206.19, 201.12, 201.17, 201.24, 206.23**[56] **References Cited****U.S. PATENT DOCUMENTS**

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*Primary Examiner*—Diana L. Oleksa*Attorney, Agent, or Firm*—Webb Ziesenheim Logsdon  
Orkin & Hanson, P.C.[57] **ABSTRACT**

The one-piece surgical mask and cap includes a substantially planar blank with an eye opening formed therethrough. Straps are attached to the side edges of the blank for connecting the one-piece surgical mask and cap to the user. The upper portion of the blank above the eye opening forms the cap portion, and the lower portion of the blank below the eye opening forms the mask portion. Elastic bands may be provided surrounding the eye opening to further secure the one-piece surgical mask and cap of the present invention to the user.

**18 Claims, 2 Drawing Sheets**

## EXHIBIT 2



US006117148A

**United States Patent** [19]  
**Ravo et al.**

[11] **Patent Number:** **6,117,148**  
 [45] **Date of Patent:** **Sep. 12, 2000**

[54] **INTRALUMINAL ANASTOMOTIC DEVICE**

5,355,897 10/1994 Pietrafitta et al. .... 227/180  
 5,639,008 6/1997 Gallagher et al. .... 227/175.1

[76] **Inventors:** **Biagio Ravo**, Rome America Hospital  
 via Emilio Longoni, 69 - Rome, Italy,  
 00155; **Enrico Nicolo**, 1515  
 Timberlane, Clairton, Pa. 15025

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[21] **Appl. No.:** **09/173,867**

[22] **Filed:** **Oct. 16, 1998**

## Related U.S. Application Data

[60] **Provisional application No.** 60/062,281, Oct. 17, 1997.

[51] **Int. Cl.<sup>7</sup>** ..... **A61B 17/04**

[52] **U.S. Cl.** ..... **606/153; 227/180.1; 227/181.1**

[58] **Field of Search** ..... **606/219, 220;**  
**227/19, 179-181.1**

[56] **References Cited**

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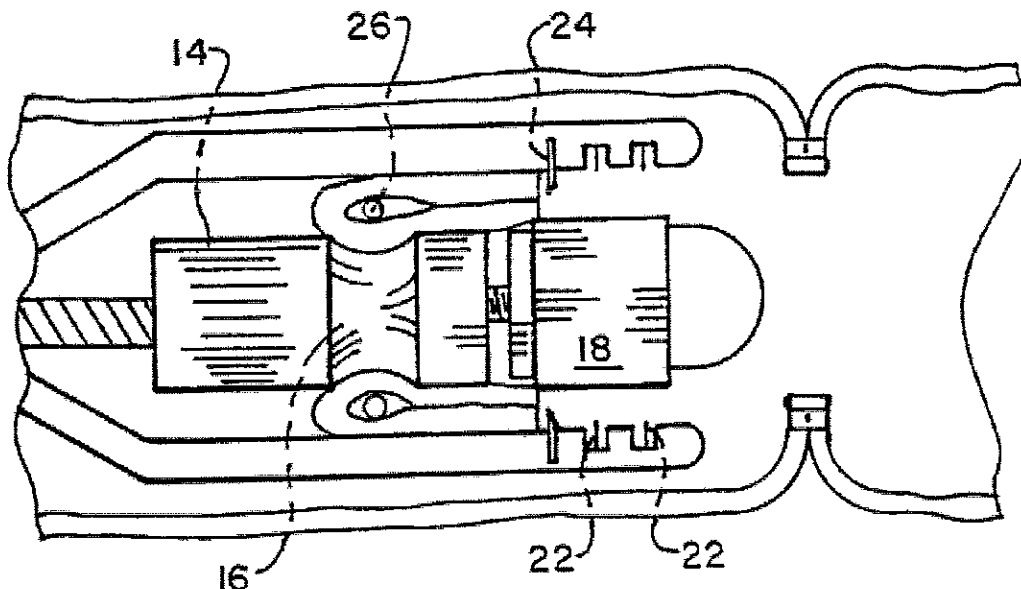
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*Primary Examiner*—Gary Jackson  
*Attorney, Agent, or Firm*—Webb Ziesenheim Logsdon  
 Orkin & Hanson, P.C.

[57] **ABSTRACT**

An intestinal intraluminal reconstruction and resection device includes a mechanism for intussusception of the bowel, a bowel anastomosis mechanism and a mechanism for severing the resected bowel. The surgical device allows the user to carry out intraluminally an anastomosis first, prior to resection of the intestine or any hollow viscus, therefore not exposing the dirty intraluminal content to the clean abdominal or thoracic cavities. The above is achieved by first intussuscepting the hollow viscus, then anastomosis and finally intraluminal resection.

20 Claims, 6 Drawing Sheets



## EXHIBIT 3



US006279809B1

(12) **United States Patent**  
Nicolo

(10) **Patent No.:** **US 6,279,809 B1**  
(45) **Date of Patent:** **Aug. 28, 2001**

(54) **CIRCULAR STAPLER FOR SIDE TO END,  
SIDE TO SIDE AND END TO SIDE  
ANASTOMOSIS**

(76) **Inventor:** Enrico Nicolo, 1515 Timmerlane,  
Clairton, PA (US) 15025

(\*) **Notice:** Subject to any disclaimer, the term of this  
patent is extended or adjusted under 35  
U.S.C. 154(b) by 0 days.

(21) **Appl. No.:** 09/264,764

(22) **Filed:** Mar 9, 1999

**Related U.S. Application Data**

(60) **Provisional application No. 60/077,393, filed on Mar. 10,  
1998.**

(51) **Int. Cl.<sup>7</sup>** ..... A61B 17/068

(52) **U.S. Cl.** ..... 227/176.1; 227/19; 227/179.1;  
606/219

(58) **Field of Search** ..... 227/176.1, 175.1,  
227/179.1, 19; 606/139, 219

(56) **References Cited**

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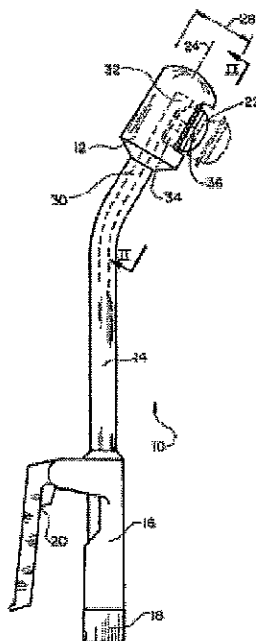
**Primary Examiner**—Scott A. Smith

(74) **Attorney, Agent, or Firm**—Webb Ziesenheim Logsdon  
Orkin & Hanson, P.C.

(57) **ABSTRACT**

A circular stapler for side to end, side to side or end to side anastomosis includes an actuating head portion attached to an elongated tubular body with a handle on the opposed end of the body from the head. The head includes an anvil and associated stapling mechanism, wherein the anvil and the associated stapling mechanism are positioned perpendicular to a longitudinal axis of the head. The anvil is releasably attached to the head and may be attached to the head through an anvil applicator. The anvil may include an extendable stem.

13 Claims, 2 Drawing Sheets



## EXHIBIT 4



US006497650B1

(12) **United States Patent**  
**Nicolo**

(10) **Patent No.:** **US 6,497,650 B1**  
(45) **Date of Patent:** **Dec. 24, 2002**

(54) **HERNIA PROSTHESIS**(75) **Inventor:** Enrico Nicolo, Clairton, PA (US)(73) **Assignee:** C. R. Bard, Inc., Murray Hill, NJ (US)

(\*) **Notice:** Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 25 days.

(21) **Appl. No.:** 09/627,855(22) **Filed:** Jul. 28, 2000**Related U.S. Application Data**

(60) Provisional application No. 60/146,061, filed on Jul. 28, 1999.

(51) **Int. Cl.?** A61F 2/00; A61F 13/00(52) **U.S. Cl.** 600/37

(58) **Field of Search** 600/37; 623/14.13, 623/11.11, 1.21, 13.11; 606/151, 108, 193, 215, 216; 424/426, 424; 602/46, 904, 44, 58

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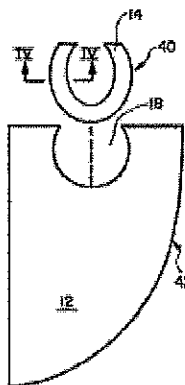
Goldstein, Harold, M.D., F.A.C.S.; Atrium Polypropylene Mesh, "An Atlas of Hernia Repair Using an Inguinal Hernia Repair Preshape with Keyhole Shit", Atrium Medical Corporation, Jun. 1995, 5 pp.

(List continued on next page.)

**Primary Examiner**—Kevin Shaver**Assistant Examiner**—Brian Szmal(74) **Attorney, Agent, or Firm**—Wolf, Greenfield & Sacks, P.C.(57) **ABSTRACT**

A prosthesis and a method for repairing a tissue or muscle wall defect, such as an inguinal hernia, near a cord-like structure, such as the spermatic cord. The prosthesis comprises a layer of repair fabric having a cord opening therethrough that is adapted to receive the cord-like structure when the prosthesis is implanted at the repair site. The prosthesis also includes a cord protector that is attachable to the repair fabric at the opening to isolate the cord-like structure from the fabric in proximity to the opening. The repair fabric may be formed from a material which is susceptible to the formation of adhesions with sensitive tissue and organs. The cord protector may be formed from material which inhibits the formation of adhesions with sensitive tissue and organs. The cord protector may overlie a portion of at least one of the first and second surfaces of the repair fabric. The cord protector may extend substantially farther away from the opening edge on one of the first and second surfaces than on the other of the first and second surfaces. The cord protector may be configured as an insert that is separate from and attachable to the repair fabric. Alternatively, the cord protector may be integral with the repair fabric to form a composite prosthesis.

43 Claims, 3 Drawing Sheets



## EXHIBIT 5



US006520398B2

(12) **United States Patent**  
**Nicolo**

(10) **Patent No.:** **US 6,520,398 B2**

(45) **Date of Patent:** **Feb. 18, 2003**

(54) **CIRCULAR STAPLER FOR SIDE TO END,  
SIDE TO SIDE AND END TO SIDE  
ANASTOMOSIS**

(56) **References Cited**

## U.S. PATENT DOCUMENTS

(75) **Inventor:** Enrico Nicolo, 1515 Timertane,  
Clairton, PA (US) 15025

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(73) **Assignee:** Enrico Nicolo, McKeesport, PA (US)

(\*) **Notice:** Subject to any disclaimer, the term of this  
patent is extended or adjusted under 35  
U.S.C. 154(b) by 0 days.

\* cited by examiner

(21) **Appl. No.:** 09/866,553

(22) **Filed:** May 25, 2001

(65) **Prior Publication Data**

US 2001/0054636 A1 Dec. 27, 2001

## Related U.S. Application Data

(62) Division of application No. 09/264,764, filed on Mar. 9,  
1999, now Pat. No. 6,279,809.

(60) Provisional application No. 60/077,393, filed on Mar. 10,  
1998.

(51) **Int. Cl.** <sup>7</sup> ..... A61B 17/068

(52) **U.S. Cl.** ..... 227/175.1; 227/19; 227/156;  
604/227; 222/386

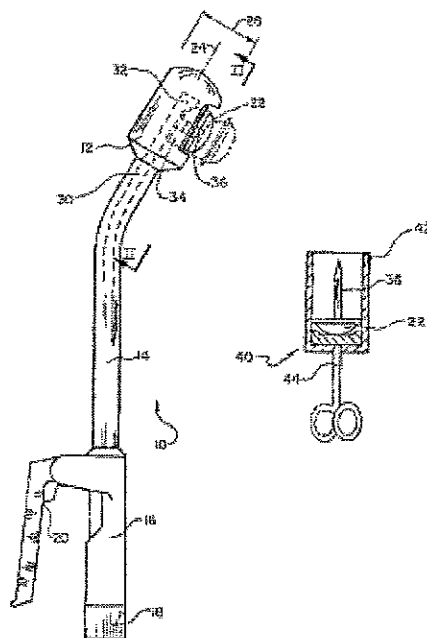
(58) **Field of Search** ..... 227/175.1, 176.1,  
227/19, 156; 222/327, 386, 390, 391; 604/61,  
62, 227, 218

*Primary Examiner*—Scott A. Smith  
(74) *Attorney, Agent, or Firm*—Webb Ziesenheim Logsdon  
Ordin & Hanson, P.C.

(57) **ABSTRACT**

A circular stapler for side to end, side to side or end to side anastomosis includes an actuating head portion attached to an elongated tubular body with a handle on the opposed end of the body from the head. The head includes an anvil and associated stapling mechanism, wherein the anvil and the associated stapling mechanism are positioned perpendicular to a longitudinal axis of the head. The anvil is releasably attached to the head and may be attached to the head through an anvil applicator. The anvil may include an extendable stem.

10 Claims, 2 Drawing Sheets



## EXHIBIT 6



US00659260B1

(12) **United States Patent**  
**Nicolo**

(10) **Patent No.:** **US 6,592,600 B1**  
(45) **Date of Patent:** **Jul. 15, 2003**

(54) **BOWEL CLAMP**

(76) **Inventor:** Enrico Nicolo, 1515 Timberlane,  
Clairton, PA (US) 15025

(\*) **Notice:** Subject to any disclaimer, the term of this  
patent is extended or adjusted under 35  
U.S.C. 154(b) by 320 days.

(21) **Appl. No.:** 09/168,649

(22) **Filed:** Oct. 8, 1998

**Related U.S. Application Data**

(60) Provisional application No. 60/061,455, filed on Oct. 8,  
1997.

(51) **Int. Cl.**<sup>7</sup> ..... A61B 17/08

(52) **U.S. Cl.** ..... 606/157; 606/207

(58) **Field of Search** ..... 606/151, 139,  
606/205-208

(56) **References Cited****U.S. PATENT DOCUMENTS**

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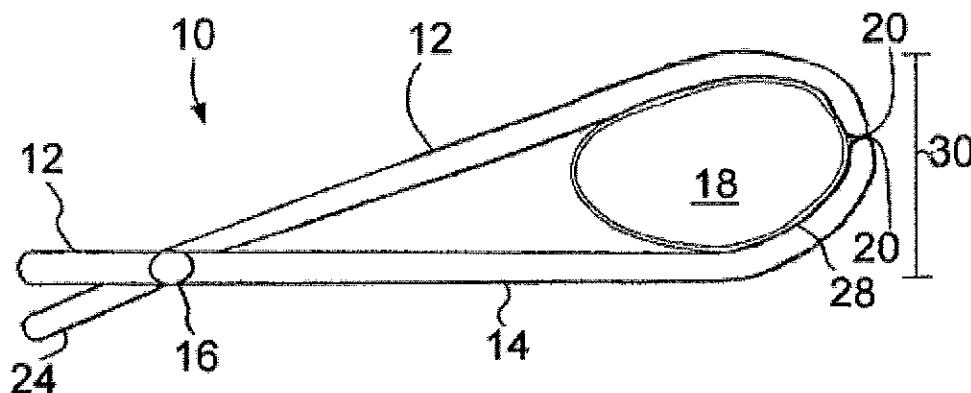
*Primary Examiner*—Gary Jackson

(74) *Attorney, Agent, or Firm*—Webb Ziesenheim Logsdon  
Orkin & Hanson, P.C.

(57) **ABSTRACT**

A surgical clamp allows for mobilization of an organ or  
hollow viscus of a patient during a surgical procedure with  
minimization of trauma to the organ or hollow viscus. The  
surgical clamp includes at least one handle adapted to be  
gripped by the user for manipulation of the surgical clamp  
and the engaged organ or hollow viscus, and at least one jaw  
attached to the handle, wherein the jaw is adapted to  
substantially encircle the engaged organ or hollow viscus of  
the patient. The clamp may be sized to fit through a  
conventional trocar such that the surgical procedure may be  
a laparoscopic procedure for operating on the organ or  
hollow viscus, such as the bowel.

20 Claims, 4 Drawing Sheets



## EXHIBIT 7



US006652595B1

(12) **United States Patent**  
**Nicolo**

(10) Patent No.: **US 6,652,595 B1**  
(45) Date of Patent: **Nov. 25, 2003**

(54) **METHOD OF REPAIRING INGUINAL  
HERNIAS**

(75) Inventor: **Enrico Nicolo, Clairton, PA (US)**

(73) Assignee: **Davel Inc., Cranston, RI (US)**

(\*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

(21) Appl. No.: **09/488,724**

(22) Filed: **Jun. 9, 1998**

**Related U.S. Application Data**

(63) Continuation-in-part of application No. 08/621,475, filed on Mar. 25, 1996, now abandoned.

(51) Int. Cl. **A61F 2/02**

(52) U.S. Cl. **623/23.74; 623/23.72;  
600/36; 606/51**

(58) Field of Search **600/36; 606/151;  
623/11.11, 23.74, 23.76, 23.72**

(56) **References Cited**

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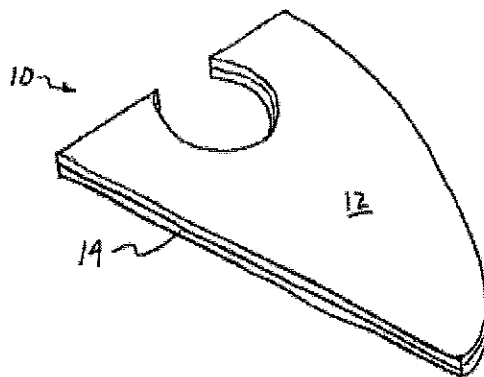
Primary Examiner—Paul B. Prebille

(74) Attorney, Agent, or Firm—Wolf, Greenfield & Sacks, P.C.

(57) **ABSTRACT**

A universal, surgical prosthesis for hernia repair is provided in the form of a foldable sheet. The prosthesis includes a barrier layer formed of a material adapted to prevent biological adherence thereto, such as polytetrafluoroethylene, and a second surface layer formed of a material adapted to promote biological tissue adherence thereto, such as polypropylene. The second surface may be formed of a series of spaced projections. The prosthesis is adapted to be manipulated into an operative position to exhibit an appropriate exterior when in the operative position. In this manner, the universal, surgical prosthesis can be utilized for a wide range of surgical procedures.

16 Claims, 8 Drawing Sheets



## EXHIBIT 8



US 6,981,979 B2

(12) **United States Patent**  
**Nicolo**

(10) **Patent No.:** **US 6,981,979 B2**  
(45) **Date of Patent:** **Jan. 3, 2006**

(54) **SURGICAL ANASTOMOTIC DEVICES**

(76) **Inventor:** Enrico Nicolo, 515 Timber Ln.,  
Jefferson Hills, PA (US) 15025

(\*) **Notice:** Subject to any disclaimer, the term of this  
patent is extended or adjusted under 35  
U.S.C. 154(b) by 256 days.

(21) **Appl. No.:** 10/320,749

(22) **Filed:** Dec. 16, 2002

(65) **Prior Publication Data**

US 2003/0144675 A1 Jul. 31, 2003

**Related U.S. Application Data**

(60) **Provisional application No. 60/340,451, filed on Dec.**  
14, 2001.

(51) **Int. Cl.**  
**A61B 17/04** (2006.01)

(52) **U.S. Cl.** 606/153; 128/898

(58) **Field of Classification Search** 227/175.1;  
606/153

See application file for complete search history.

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**Primary Examiner**—Anh Tuan T. Nguyen

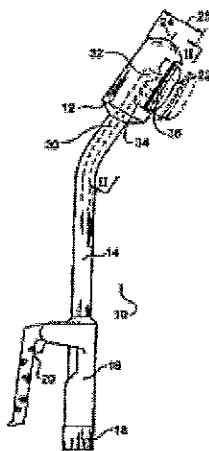
**Assistant Examiner**—Bradford C. Pantuck

(74) **Attorney, Agent, or Firm**—Blynn L. Shidefer; Krisaune  
Shidefer; BLK Law Group

(57) **ABSTRACT**

Specifically, the anastomosis device of the present invention provides an anastomosis ring; such as but not limited to a ring of staples, in the form of an oval or ellipse. One specific embodiment of the present invention is a side to end anastomotic stapler with a row of staples formed in an elliptical pattern. Another embodiment of the present invention is a pair of anastomotic compression rings formed in an ellipse. A further embodiment of the invention is compression disc, rather than open ring structure.

18 Claims, 2 Drawing Sheets





## EXHIBIT 9



US007156804B2

(12) **United States Patent**  
**Nicolo**

(10) Patent No.: **US 7,156,804 B2**  
(45) Date of Patent: **Jan. 2, 2007**

(54) **HERNIA PROSTHESIS**(75) Inventor: **Enrico Nicolo**, Clairton, PA (US)(73) Assignee: **Davol, Inc.**, Cranston, RI (US)

(\*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 144 days.

(21) Appl. No.: **10/307,622**(22) Filed: **Dec. 2, 2002**(65) **Prior Publication Data**

US 2003/0083543 A1 May 1, 2003

**Related U.S. Application Data**

(63) Continuation of application No. 09/627,855, filed on Jul. 28, 2000, now Pat. No. 6,497,650.

(60) Provisional application No. 60/146,061, filed on Jul. 28, 1999.

(51) **Int. Cl.****A61F 2/00** (2006.01)**A61F 13/00** (2006.01)(52) **U.S. Cl.** ..... **600/37**

(58) **Field of Classification Search** ..... **600/37**;  
623/14.13, 11.11, 1.21, 13.11; 606/131,  
606/108, 193, 215, 216, 44, 58; 424/426,  
424/424; 602/46, 44, 53, 904

See application file for complete search history.

(56) **References Cited****U.S. PATENT DOCUMENTS**

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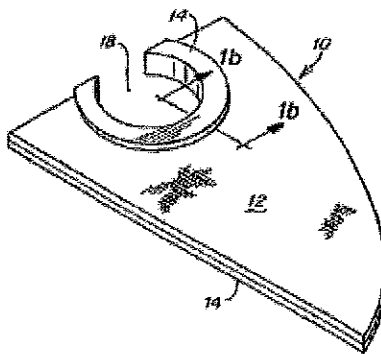
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Robert G. Uzzo et al., "The Effects of Mesh Bioprostheses on the Spermatogenic Cord Structures: A Preliminary Report in a Canine Model", *The Journal Of Urology*, Apr. 1999, vol. 161, pp. 1344-1349.

(Continued)

*Primary Examiner*—Max F. Hindenburg(74) *Attorney, Agent, or Firm*—Wolf, Greenfield & Sacks, PC(57) **ABSTRACT**

A prosthesis for repairing a tissue or muscle wall defect. The prosthesis comprises a layer of repair fabric having first and second and an edge that extends between the first and second surfaces. The prosthesis also includes a barrier that inhibits the formation of adhesions with adjacent tissues and organs. The barrier may overlap a portion of the first and second surfaces. The barrier may be formed separate from and attached to the layer of repair fabric to permanently cover a portion of the edge. The repair fabric may be formed from a material which is susceptible to the formation of adhesions with sensitive tissue and organs. The cord protector may be formed from material which inhibits the formation of adhesions with sensitive tissue and organs. The barrier may overlie a portion of at least one of the first and second surfaces of the repair fabric.

**18 Claims, 3 Drawing Sheets**

## EXHIBIT 10



US06102271A

**United States Patent** [19]

Longo et al.

[11] Patent Number: **6,102,271**[45] Date of Patent: **Aug. 15, 2000****[54] CIRCULAR STAPLER FOR  
HEMORRHOIDAL SURGERY**

[75] Inventors: **Antonio Longo**, Palermo, Italy; **John R. Bittner**, Loveland; **Randall L. Hacker**, Goshen, both of Ohio; **Federico Bilotti**, Hamburg, Germany

[73] Assignee: **Ethicon Endo-Surgery, Inc.**, Cincinnati, Ohio

[21] Appl. No.: **09/197,805**

[22] Filed: **Nov. 23, 1998**

[51] Int. Cl.<sup>7</sup> ..... **A61B 17/068**

[52] U.S. Cl. .... **227/180.1; 227/19; 227/175.1**

[58] Field of Search ..... **227/19, 175.1, 227/180.1, 178.1, 176.1**

**[56] References Cited****U.S. PATENT DOCUMENTS**

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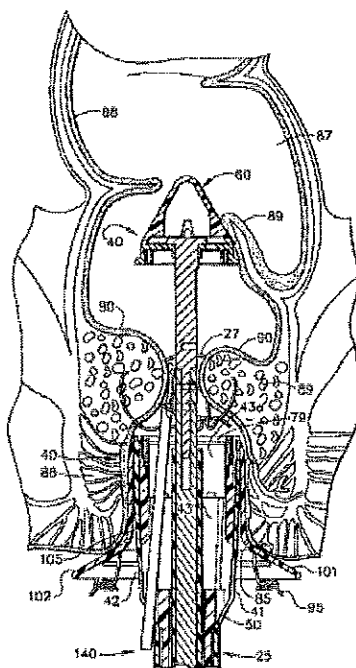
Primary Examiner—**Scott A. Smith**

Attorney, Agent, or Firm—**Matthew S. Goodwin**

**[57] ABSTRACT**

A circular stapling instrument for the removal of hemorrhoids has a stapling end effector having a casing, a hollow staple driver within the casing, an annular blade having an open distal end is located within the staple driver, and a elongated interior drive shaft is reciprocable within the staple driver and the annular blade. A first inner chamber is defined between the staple driver and the interior drive shaft, and a second inner chamber is defined between the annular blade and the drive shaft. The first chamber communicates with the second chamber. The casing has an exterior surface and a substantially unobstructed passageway extends within the casing surface, into the first inner chamber, into the second inner chamber, and through the open distal end of the second inner chamber for insertion and withdrawal of a surgical instrument therethrough.

**6 Claims, 14 Drawing Sheets**



## EXHIBIT 11



US007314489B2

(12) **United States Patent**  
McKenna et al.

(10) **Patent No.:** US 7,314,489 B2  
(45) **Date of Patent:** Jan. 1, 2008

(54) **METHOD AND APPARATUS TO FACILITATE NUTRITIONAL MALABSORPTION**

(75) **Inventors:** Robert Hugh McKenna, Cincinnati, OH (US); Jean Michael Beaupre, Cincinnati, OH (US)

(73) **Assignee:** Ethicon Endo-Surgery, Inc., Cincinnati, OH (US)

(\*) **Notice:** Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(h) by 410 days.

(21) **Appl. No.:** 10/644,871

(22) **Filed:** Aug. 20, 2003

(65) **Prior Publication Data**  
US 2005/0043817 A1 Feb. 24, 2005

(51) **Int. Cl.**  
A61F 2/36 (2006.01)  
A61M 5/32 (2006.01)

(52) **U.S. Cl.** 623/23.65; 604/523

(58) **Field of Classification Search** 623/23.65-23.7; 604/8, 9, 264, 523, 220, 500; 606/108, 191, 506/198

See application file for complete search history.

(56) **References Cited**

**U.S. PATENT DOCUMENTS**

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(Continued)

*Primary Examiner*—Alvin J. Stewart

(74) *Attorney, Agent, or Firm*—Frost Brown Todd, LLC

(57) **ABSTRACT**

A method and apparatus to facilitate nutritional malabsorption by diverting digestive secretions, such as bile or pancreatic secretions. A tube is positioned substantially within the small intestine. The tube comprises a proximal end which when deployed is operative to receive digestive secretions, a distal end which when deployed is operative to discharge the digestive secretions into the alimentary tract, and a tube wall having an inner surface and an outer surface, the tube wall inner surface defining passage extending between the proximal and distal ends. When deployed the passage is operative to transfer the digestive secretions from the proximal end to the distal end thereby reducing digestive contact between the digestive secretions and food in the small intestine.

17 Claims, 5 Drawing Sheets

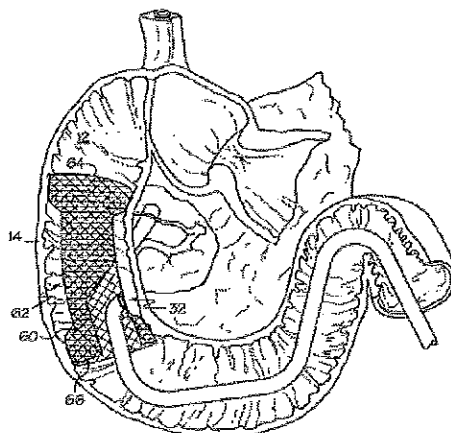


EXHIBIT 12

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**Patterson Belknap Webb & Tyler LLP**

**Kevin N. Malek**

**Attorney At Law**

212.336.2583 direct fax 212.336.1203

kmalek@pbwt.com

1133 Avenue of the Americas New York, NY 10036-6710

212.336.2000 fax 212.336.2222 www.pbwt.com

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,  
PENNSYLVANIA**

**Dr. Enrico Nicolo**  
An individual resident of Allegheny County

**CIVIL DIVISION**

**No.: 13-005791**

**Plaintiff,**

**RETURN OF SERVICE**

**vs.**

**Patterson Belknap Webb  
& Tyler, LLP.**  
A limited Liability Partnership of New York

**Ethicon Endo-Surgery, Inc.**  
A corporation of Ohio

**Kevin N. Malek**  
An individual resident of New York

**Defendants**

**Filed on Behalf of Plaintiff  
Dr. Enrico Nicolo**

**Counsel for this Party:**

**BLYNN L. SHIDELER**  
**PA 1.D. #64386**  
**BLK LAW GROUP**  
**3500 Brooktree Road, Suite 200**  
**Wexford, PA 15090**  
**(724) 934-5450 (phone)**  
**(724) 934-5461 (facsimile)**  
**Email: [blynn@blklawgroup.com](mailto:blynn@blklawgroup.com)**

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,  
PENNSYLVANIA**

**Dr. Enrico Nicolo**

**CIVIL DIVISION**

**Plaintiff,**

**RETURN OF SERVICE**

**vs.**

**Patterson Belknap Webb  
& Tyler, LLP.**

**Ethicon Endo-Surgery, Inc.**

**Kevin N. Malek**

**Defendants**

**RETURN OF SERVICE**

Plaintiff, Dr. Enrico Nicolo, by his Attorney, Blynn Shideler, to files this RETURN OF SERVICE with attached affidavits of service of each defendant.

Defendant Patterson Belknap Webb & Tyler, LLP. was personally served by Juan Pereira on April 24, 2013 at 12:23 by personal delivery of a true copy of the Complaint, Writ of Complaint and Filing of Original Verification in this action to Mathew Finnegan, deputy Managing Clerk of Defendant Patterson Belknap Webb & Tyler, LLP. A copy of the affidavit of service of Juan Pereira is attached hereto.

Defendant Kevin Malek was personally served by Juan Pereira on April 24, 2013 at 12:38 by personal delivery to Kevin Malek of a true copy of the Complaint, Writ of Complaint and Filing of Original Verification in this action. A copy of the affidavit of service of Juan Pereira is attached hereto.

Defendant Ethicon Endo-Surgery, Inc. was personally served by Iris Imami on May 9, 2013 at 12:21 by personal delivery of a true copy of the Complaint and Filing of

Original Verification in this action to Sandy Tarves, business agent of Defendant Ethicon Endo-Surgery, Inc. A copy of the affidavit of service of Iris Imami is attached hereto.

Please enter this RETURN OF SERVICE in this action.

Respectfully Submitted,

/s/ Blynn L. Shideler

**BLYNN L. SHIDELER**

**PA I.D. #64386**

**BLK LAW GROUP**

**3500 Brooktree Road, Suite 200**

**Wexford, PA 15090**

**(724) 934-5450 (phone)**

**(724) 934-5461 (facsimile)**

**Email: [blynn@blklawgroup.com](mailto:blynn@blklawgroup.com)**

ATTACHMENT LISTING

(Attachment 1) A copy of the affidavit of service of Juan Pereira regarding service of Defendant Patterson Belknap Webb & Tyler, LLP.

(Attachment 2) A copy of the affidavit of service of Juan Pereira regarding service of Defendant Kevin N. Malek.

(Attachment 3) A copy of the affidavit of service of Iris Imami regarding service of Defendant Ethicon Endo-Surgery, Inc.



## Attachment I

## IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY PENNSYLVANIA

Job #: 130813

Attorney: BLK Law Group PH:  
Address: 3500 Brooktree Road Suite 200 Wexford, PA 15080

Nicolo M.D., Enrico

vs

Ethicon Endo-Surgery Inc. et al.

Plaintiff

Defendant

Index Number: GD 13 005791

Date Filed: 3/29/2013

Client's File No.:

Court Date:

STATE OF NEW YORK, COUNTY OF NEW YORK, SS.:  
Juan Pereira, being sworn says:

## AFFIDAVIT OF SERVICE

Deponent is not a party herein; is over the age of 18 years and resides in the State of New York.

On 4/24/2013, at 12:23 PM at 1133 Avenue of the Americas, NY, NY 10036 Deponent served the within COMPLAINT, WRIT OF COMPLAINT, FILING OF ORIGINAL VERIFICATION

On: Patterson Belknap Webb &amp; Taylor, therein named.

☐ #1 INDIVIDUAL

By delivering a true copy of each to said recipient personally; Deponent knew the person so served to be the person described in as said recipient therein.

☐ #2 SUITABLE AGE PERSON

By delivering thereto a true copy of each to (Authorized Agent) a person of suitable age and discretion. Said premises is recipient's ( ) actual place of business / employment ( ) dwelling house (usual place of abode) within the state.

☐ #3 AFFIXING TO DOOR

By affixing a true copy of each to the door of said premises which is defendant's  
( ) actual place of business / employment ( ) dwelling house (usual place of abode) within the state. Deponent was unable with due diligence to find defendant or person of suitable age and discretion thereto having called there

☒ #4 Corporation or Partnership or Trust or LLC

By delivering thereto a true copy of each to Matthew Finnegan - deputy managing Clerk personally. Deponent knew said corporation/partnership/trust/LLC so served to be the corporation/partnership/trust/LLC described in said aforementioned document as said defendant and knew said individual to be Authorized Agent thereof.

☐ #5 MAILING

On, deponent enclosed a copy of same in a postpaid envelope properly addressed to defendant at defendant's last known ( ) Actual Place of Residence (X) Actual Place of Business, and deposited the envelope in an official depository, personally or via agency, under the exclusive care and custody of the U.S. Postal Service within New York State. The envelope bore the legend "personal and confidential" and did not indicate on the outside, thereof by return address or otherwise that the communication was from an attorney or concerned an action against the defendant.

☒ #6 DESCRIPTION

Sex: Male Color of skin: White Color of hair: Brown Glasses:  
Age: 40-50 Height: Over 6ft Weight: Over 200 lbs Other Features:

☐ #7 MILITARY SERVICE

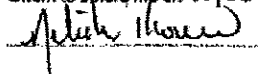
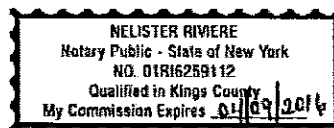

I asked the person spoken to whether defendant was in active military service of the United States or the State of New York in any capacity whatsoever and received a negative reply. The source of my information and the grounds of my belief are the conversations and observations above narrated.

☐ #8 WITNESS FEES

Subpoena Fee Tendered in the amount of

☐ #9 OTHER

Sworn to before me on 05/03/2013



  
 Juan Pereira  
 0882954

Service received from NY Server LLC 281 Main St #382 East Setauket NY 11733 631 778 8021 NYC DCA 1355424 o/b/o client  
 NY SERVER LLC 281 MAIN ST #382 EAST SETAUKET NY 11733 877 358 4515

## Attachment 2

## IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY PENNSYLVANIA

Job #: 130914

Attorney: BLK Law Group PHE

Address: 3500 Brooktree Road Suite 200 Wexford, PA 15090

Nicola M.D., Enrico

VS

Ethicon Endo-Surgery Inc. et al.

Plaintiff

Defendant

Index Number: GD 13 005791

Date Filed: 3/29/2013

Client's File No.:

Court Date:

STATE OF NEW YORK, COUNTY OF NEW YORK, SS.:

Juan Pereira, being sworn says:

## AFFIDAVIT OF SERVICE

Deponent is not a party herein; is over the age of 18 years and resides in the State of New York.

On 4/24/2013, at 12:38 PM at 340 Madison Avenue, NY, NY 10173 Deponent served the within COMPLAINT, WRIT OF COMPLAINT, FILING OF ORIGINAL VERIFICATION

On: Kevin Malek, therein named.

☒ #1 INDIVIDUAL

By delivering a true copy of each to said recipient personally; Deponent knew the person so served to be the person described in as said recipient therein.

☐ #2 SUITABLE AGE PERSON

By delivering thereto a true copy of each to (Personally) a person of suitable age and discretion. Said premises is recipient's [ ] actual place of business / employment [ ] dwelling house (usual place of abode) within the state.

☐ #3 AFFIXING TO DOOR

By affixing a true copy of each to the door of said premises which is defendant's [ ] actual place of business / employment [ ] dwelling house (usual place of abode) within the state. Deponent was unable with due diligence to find defendant or person of suitable age and discretion thereto having called there

☐ #4 Corporation or Partnership or Trust or LLC

By delivering thereto a true copy of each to personally. Deponent knew said corporation/partnership/trust/LLC so served to be the corporation/partnership/trust/LLC described in said aforementioned document as said defendant and knew said individual to be Personally thereof.

☐ #5 MAILING

On, deponent enclosed a copy of same in a postpaid envelope properly addressed to defendant at defendant's last known [ ] Actual Place of Residence [X] Actual Place of Business, and deposited the envelope in an official depository, personally or via agency, under the exclusive care and custody of the U.S. Postal Service within New York State. The envelope bore the legend "personal and confidential" and did not indicate on the outside, thereof by return address or otherwise that the communication was from an attorney or concerned an action against the defendant.

☒ #6 DESCRIPTIONSex: Male Color of skin: White Color of hair: Black Glasses: No  
Age: 36 - 50 Yrs. Height: Over 6' Weight: Over 200 Lbs. Other Features:☒ #7 MILITARY SERVICE

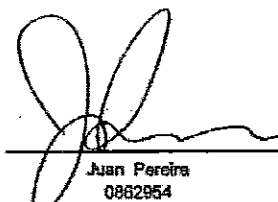
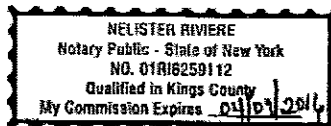
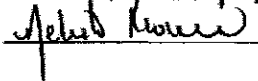
I asked the person spoken to whether defendant was in active military service of the United States or the State of New York in any capacity whatever and received a negative reply. The source of my information and the grounds of my belief are the conversations and observations above narrated.

☐ #8 WITNESS FEES

Subpoena Fee Tendered in the amount of

☐ #9 OTHER

Sworn to before me on 05/03/2013

  
Juan Pereira  
0862954Service received from NY Server LLC 281 Main St #382 East Setauket NY 11733 631 778 8021 NYC DCA 1355424 a/b/o client  
NY SERVER LLC 281 MAIN ST #382 EAST SETAUKET NY 11733 877.358.4515

Attachment 3

**AFFIDAVIT OF SERVICE**

Commonwealth of Pennsylvania

County of ALLEGHENY

Common Pleas Court

Case Number: GD-13-005791

Plaintiff:  
NICCOLO ENRICO, M.D.

vs.

Defendant:  
ETHICON ENDO-SURGERY INC; PATTERSON BELKNAP WEBB &  
TYLER LLP; KEVIN MALEK

For:  
Blynn Shideler  
BLK LAW GROUP  
3500 Brooktree Rd, Ste 200  
Wexford, PA 15090

Received by Cleveland Service Agency on the 9th day of May, 2013 at 12:21 pm to be served on ETHICON ENDO-SURGERY INC C/O CT CORPORATION SYSTEM, 1300 EAST 9TH ST, CLEVELAND, OH 44114.

I, Iris Imami, being duly sworn, depose and say that on the 10th day of May, 2013 at 10:03 am, I:

served a CORPORATION by delivering a true copy of the COMPLAINT IN CIVIL ACTION; FILING ORIGINAL VERIFICATION to: SANDY TARVES as BUSINESS AGENT for ETHICON ENDO-SURGERY INC C/O CT CORPORATION SYSTEM, at the address of: 1300 EAST 9TH ST, CLEVELAND, OH 44114, and informed said person of the contents therein, in compliance with state statutes.

Description of Person Served: Age: 50, Sex: F, Race/Skin Color: BLACK, Height: 5'6, Weight: 160, Hair: BLACK, Glasses: Y

I am over the age of 18, and not a party to this action, that within the boundaries of the State of Ohio, I was authorized by law to perform said service. In Ohio, process servers are not licensed and no license number is available.

State of Ohio, County of Cuyahoga

Subscribed and Sworn to before me on  
5-10-2013 by the affiant who is  
personally known to me.

NOTARY PUBLIC



Iris Imami

Iris Imami  
Process Server

Cleveland Service Agency  
Member Ohio Process Service Network  
P.O. Box 93447  
Cleveland, OH 44101-5447  
(888) 737-8320  
Our Job Serial Number: CSA-2013000647

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RETURN OF SERVICE

7 | Page

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that a true and correct copy of the foregoing RETURN OF SERVICE was served upon the following by U.S. FIRST CLASS MAIL (postage prepaid), E-mail, Facsimile, and/or hand delivery on May 16, 2013.

James R. Schadel, Esq.,  
Gregory J. Norton, Esq.,  
Weinheimer, Schadel & Haber, PC  
602 Law and Finance Building  
429 Fourth Avenue  
Pittsburgh PA 15219  
*(Counsel for Defendant Patterson,  
Belknap Webb & Tyler, LLP)*

David A. Strassburger, Esq.,  
Strassburger, McKenna,  
Gutnick & Gefsky  
Firm no. 278  
Four Gateway Center  
Suite 2200  
444 Liberty Avenue  
Pittsburgh PA 15222  
*(Counsel for Defendant Kevin N. Malek)*

Ethicon Endo-Surgery, Inc.,  
4545 Creek Road  
Cincinnati OH 45242  
*(Defendant – Counsel not of Record)*

James Zeszutek, Esq.,  
Dinsmore & Shohl LLP  
One Oxford Centre  
301 Grant Street  
Suite 2800  
Pittsburgh PA 15219  
*(Counsel for Defendant  
Ethicon Endo-Surgery, Inc.,  
Not yet of Record)*

Respectfully Submitted,

/s/ Blynn L. Shideler  
**BLYNN L. SHIDELER**  
**PA I.D. #64386**  
**BLK LAW GROUP**  
**3500 Brooktree Road, Suite 200**  
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**(724) 934-5450 (phone)**  
**(724) 934-5461 (facsimile)**  
**Email: blynn@blklawgroup.com**