

## **EXHIBIT D**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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ETHICON ENDO-SURGERY, INC., et al., :

Plaintiffs/Counterdefendants, : Civil Action No.  
1:16-cv-12556-LTS

v. :

COVIDIEN LP, et al., :

Defendants/Counterplaintiffs. :

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BEFORE THE HONORABLE LEO T. SOROKIN, DISTRICT JUDGE

BENCH TRIAL  
DAY 7

Wednesday, October 2, 2019  
9:01 a.m.

John J. Moakley United States Courthouse  
Courtroom No. 13  
One Courthouse Way  
Boston, Massachusetts

Rachel M. Lopez, CRR  
Official Court Reporter  
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## A P P E A R A N C E S

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1 BY MR. CAVANAUGH:

2 Q. Good morning, Dr. Sullivan.

3 A. Good morning.

4 Q. Dr. Sullivan, what do you do for a living?

5 A. I work as an economist and I serve as the president of  
6 Intensity.

7 Q. What is Intensity?

8 A. We're an economics and data science firm. We have about  
9 20 professionals, including Ph.D. economists, statisticians,  
10 data scientists, and business analysts.

11 Q. Have you prepared a series of demonstratives to assist us  
12 with your testimony today?

13 A. Yes, I have, and they're on the screen.

14 Q. All right. Now, I've given you command of the clicker.

15 So can you describe your educational background?

16 A. Yes, I have a bachelor's degree, master's degree, and a  
17 Ph.D. They're all in economics and all from the University  
18 of California, San Diego.

19 Q. Okay. Did you continue to work with UCSD after earning  
20 your Ph.D.?

21 A. Yes, I served as an invited member of the economics  
22 leadership counsel. And in this role, I advised the faculty  
23 at the department of economics on the practice of economics  
24 in private industry.

25 Q. How long have you been serving as a professional

1 economist and providing such services?

2 **A.** Since 1992. So it's been over 27 years now.

3 **Q.** Okay. You mentioned what Intensity is. What types of  
4 work do you do in conjunction with Intensity?

5 **A.** It falls into three categories. The first is business  
6 analytics, where I work with companies on strategic decision  
7 making, this involves predictive modeling, valuation, and  
8 licensing. I get involved in disputes, such as this, in the  
9 areas of intellectual property, technology, and competition,  
10 and I also have full oversight for the firm.

11 **Q.** What did you do prior to creating Intensity?

12 **A.** I worked with a couple of other economic research firms,  
13 also performing business analytics, and dispute related  
14 services.

15 **Q.** Are you -- has any of your work been published?

16 **A.** Yes. I have multiple publications in peer-reviewed  
17 journals, including the *Journal of Finance*, the *Journal of*  
18 *Econometrics*, and the *International Journal of Forecasting*,  
19 as well as *Les Nouvelles*, which is the journal for the  
20 Licensing Executives Society.

21 **Q.** What does it mean for a journal to be refereed?

22 **A.** So for papers that are refereed, that means they've been  
23 reviewed by other economists to determine whether or not they  
24 are significant advances to the science of economics and  
25 worthy of publications. So I have papers that have been

1 refereed and I, too, serve as a referee for economics  
2 journals.

3 **Q.** Prior to this case, have you served as an expert witness?

4 **A.** Yes. On many occasions.

5 **Q.** Roughly how many expert reports have you submitted?

6 **A.** It's been over 100 different cases now.

7 **Q.** Have you been qualified as an expert to testify in any  
8 trials?

9 **A.** Yes. More than 25 times.

10 **Q.** Have that included testifying on issues relating to  
11 patent damages in patent infringement cases?

12 **A.** Yes. On a number of occasions.

13 **Q.** Have you testified on behalf of both plaintiffs and  
14 defendants?

15 **A.** Yes. It is split roughly 50/50.

16 **Q.** Is Intensity being compensated for the time you've spent  
17 consulting on this matter?

18 **A.** Yes. At a rate of \$990 per hour.

19 **Q.** Does your comp -- does Intensity's compensation turn in  
20 any way on the outcome of this case?

21 **A.** No, not at all.

22 **Q.** Okay. Let's turn to -- what were you asked to do in this  
23 case?

24 **A.** So I was asked to evaluate the analysis and damages  
25 opinions set forth by Dr. Ugone. As part of this process, I

1     calculated damages, both for the '759 patent, as well as for  
2     the '310 patent. It is my role, as a damages expert, I have  
3     assumed that both of the patents are valid and infringed.

4     **Q.** Okay. And did you -- have you made any findings?

5     **A.** Yes, I have.

6     **Q.** Can you just summarize those findings for the Court?

7     **A.** Yes. With respect to the '759 patent, I have found that  
8     a reasonable royalty, in total, is \$354,596. This is  
9     comprised of a per unit royalty of \$1.95 and unit sales of  
10    181,844. For the '310 patent, I have found that an  
11    appropriate per unit royalty is \$1.53, applying that to unit  
12    sales of 181,844 units, which covers the period from February  
13    of 2017 through July of 2019, yields a reasonable royalty of  
14    \$278,221. Summing these two together for both patents yields  
15    \$632,817.

16    **Q.** If we were going to express those royalty rates as  
17    percentages, what would the percentages be?

18    **A.** For the '759 patent, the royalty is approximately  
19    .4 percent. And for the '310 patent, approximately  
20    .3 percent. And that's based upon the average selling price  
21    of the ENSEAL X1 and its first year of sales in 2017, which  
22    is \$492.

23    **Q.** How did you go about calculating reasonable royalty  
24    damages in this matter?

25    **A.** I used the construct of a hypothetical negotiation, which