

United States Patent and Trademark Office
Trademark Trial and Appeal Board
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dmd/ejs

Mailed: January 4, 2011

In re Intuity Medical, Inc.

Serial No. 77416484

Serial No. 77416487

(consolidated)

Filed: 3/7/2008

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By the Trademark Trial and Appeal Board:

First, because these appeals involve common issues of law and fact, they are hereby consolidated. Future papers that are filed should bear the caption as indicated above.

Second, a review of the files reveals that papers have been continued to be filed in connection with the examination of the applications as though there were no appeals, while at the same time applicant was filing extensions of time in the appeals. Some of this confusion has been caused by the fact that the examining attorney has continued to advise applicant about filing notices of appeal, not recognizing that notices of appeal were filed in May, 2009. At the same time that applicant filed its

notices of appeal, it filed a request for reconsideration in each of its applications. Action on the appeals was suspended while the examining attorney considered the requests, which resulted in a suspension of examination by the examining attorney pending a decision in a cancellation action brought by applicant. On February 4, 2010, the examining attorney issued "final" actions in both applications, and erroneously indicated that applicant's recourse was to file appeals to the Board. The Board corrected this misinformation in its March 9, 2010 and July 13, 2010 orders in the respective appeals, resuming proceedings in the appeals and setting the time for applicant to file its appeal briefs. On June 30, 2010, applicant filed "requests for reconsideration" in both applications, apparently believing that it could do so in response to the February 4, 2010 "final" action. The Board remanded the applications to the examining attorney on September 10, 2010, and the requests for reconsideration were denied on October 1, 2010. The Board thereupon resumed proceedings, and applicant filed appeal briefs on December 3, 2010 in both appeals.

On December 7, 2010 the Board forwarded both applications to the examining attorney for preparation of her briefs. However, the examiner, instead of submitting briefs, issued actions denying requests for reconsideration.

It appears that the examiner mistakenly re-considered the requests for reconsideration that were filed on June 30, 2010, and which she previously denied on October 1, 2010. Accordingly, the second denials issued on December 23, 2010 will be given no consideration. The examining attorney is allowed 60 days from the mailing date of this order to file his appeal brief. As noted, the appeals have been consolidated. Therefore, the examining attorney may file a consolidated appeal brief¹, and applicant may file a consolidated reply brief.

¹ The brief should bear the Serial No. of each consolidated application and a copy of the brief should be submitted for each application.