

United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

em/ra

Mailed: July 13, 2010

In re Intuity Medical, Inc.

Serial No. 77416487

Filed: 3/7/08

DEBORAH A. GUBERNICK  
LATHAM & WATKINS LLP  
650 TOWN CENTER DR  
SUITE 2000  
COSTA MESA, CA 92626-1989

**Rochelle Adams, Paralegal Specialist:**

Proceedings on the appeal were suspended pending the final determination of Cancellation No. 92051016. Office records reveal that the cancellation was dismissed without prejudice on December 10, 2009 based on a withdrawal of proceedings.

On June 30, 2010 applicant filed a request to extend its time to file its appeal brief which is noted.

It has since come to the attention of the Board that applicant filed a copy of a consent agreement with the Trademark Examining Attorney who issued a subsequent final refusal on February 4, 2010. The Board also notes that better practice would have been for applicant to have filed

a request for remand with the Board, so that the case could have been remanded to the Trademark Examining Attorney for continued examination.

In view of the action by the Trademark Examining Attorney regarding the consent agreement, proceedings on the appeal are resumed and applicant is allowed until sixty days from the mailing date hereof in which to file its brief on appeal.<sup>1</sup> A request for an oral hearing, if desired, must be made not later than ten days after the due date for applicant's reply brief.

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<sup>1</sup> The Board notes that the Examining Attorney included that a response should be filed within six months of the date of the Office Action. Applicant is advised that the clause is not appropriate at this time and the case should have been returned to the Board for resumption of the appeal.