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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91175319
Party	Plaintiff Intuitive Surgical, Inc.
Correspondence Address	Michelle D. Kahn Sheppard, Mullin, Richter & Hampton LLP Four Embarcadero Center, 17th Floor San Francisco, CA 94111 UNITED STATES mhirth@sheppardmullin.com, kwarman@sheppardmullin.com
Submission	Testimony For Plaintiff
Filer's Name	Michelle J. Hirth
Filer's e-mail	mhirth@sheppardmullin.com, kwarman@sheppardmullin.com
Signature	/mjh/
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

INTUITIVE SURGICAL, INC.,)	CERTIFIED COPY
)	
Opposer,)	Opposition No. 91175319
)	Serial No.: 78/728,786
vs.)	Published: 12/19/2006
)	
DAVINCI RADIOLOGY ASSOCIATES,)	
P.L.,)	
)	
Applicant.)	

West Palm Beach, Florida
January 19, 2009
1:10 o'clock P.M.

DEPOSITION
OF
THOMAS P. BOYLE, M.D.

APPEARANCES:

For The Opposer:

SHEPPARD, MULLIN, RICHTER & HAMPTON, L.L.P.
Four Embarcadero Center, 17th Floor
San Francisco, CA 94111
By MICHELLE J. HIRTH, ESQUIRE
- appearing telephonically -

For The Applicant:

LAW OFFICE OF MATTHEW T. VANDEN BOSCH
301 Clematis Avenue, Suite 3000
West Palm Beach, FL 33401
By MATTHEW T. VANDEN BOSCH, ESQUIRE

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I N D E X

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E X H I B I T I N D E X

Intuitive Surgical's Exhibits

NO.	DESCRIPTION	IDENTIFIED	MARKED
1	Business card	12	15
2	Additional business cards	21	22
3	Appointment card	29	30
4	Letterhead stationery	37	40
5	High Field MRI Brochure	42	45
6	64-Slice CT Scanning Brochure	48	51
7	PET/CT Fusion Brochure	55	57
8	MSPB Web site printout - 1/15/2009	66	66
9	MSPB Web site printout - 11/5/2007	68	70
10	Digital Mammography Brochure	60	71
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Deposition of THOMAS P. BOYLE, M.D., a witness of lawful age, taken by the Opposer, for the purpose of discovery and for use as evidence in the above entitled cause, wherein: INTUITIVE SURGICAL, INC. is the Opposer, and DAVINCI RADIOLOGY ASSOCIATES, P.L. is the Applicant, in the United States Patent And Trademark Office before the Trademark Trial and Appeal Board, pursuant to notice heretofore filed, before MICHELLE L. DESANTI, a Registered Professional Reporter, Florida Professional Reporter and Notary Public in and for the State of Florida at Large, at 2001 Palm Beach Lakes Blvd., Suite 502-F, West Palm Beach, Palm Beach County, Florida, on the 19th day of January, 2009, commencing at 1:10 o'clock P.M.

1 (Whereupon, telephonic communications were
2 established with Ms. Hirth.)

3 THEREUPON,

4 THOMAS P. BOYLE, M.D.,

5 Being a witness in the notice heretofore
6 filed, being of lawful age, and being first duly sworn
7 in the above cause, testified on his oath as follows:

8 THE WITNESS: Yes.

9 DIRECT EXAMINATION

10 Q. (By Ms. Hirth) Dr. Boyle, my name is
11 Michelle Hirth and I represent Intuitive Surgical in
12 this matter.

13 Just by way of background, could you please
14 state your name?

15 A. Thomas Boyle.

16 Q. And can you state your current business
17 address?

18 A. 101 JFK Drive, Atlantis, Florida 33462.

19 Q. Thank you.

20 Do you understand that we've been called here
21 today to have your testimony taken in an opposition
22 proceeding and that that proceeding involves the
23 application of DaVinci Radiology Associates for
24 registration of the mark DaVinci Diagnostic Imaging &
25 Design; is that correct?

1 A. Yes.

2 Q. Have you ever had your deposition taken
3 before?

4 A. Yes.

5 Q. How many times would you estimate you've had
6 your deposition taken in the past?

7 A. Ten times.

8 Q. Were you a party to any of those cases in
9 which those depositions were taken?

10 A. Meaning?

11 Q. Meaning were you a plaintiff or a defendant or
12 in the alternative, were you a witness?

13 A. I've been a witness and a defendant.

14 Q. Okay. And just generally can you tell me what
15 sort of cases those were, and when I say that, what the
16 subject, the general subject matter was of the cases in
17 which you were deposed?

18 A. They were medical cases.

19 Q. And when you say medical do you mean medical
20 malpractice?

21 A. Yes.

22 Q. Okay. Thank you.

23 And have you ever given your testimony at
24 trial before?

25 A. No.

1 Q. Now, I'll just preliminarily tell you that
2 this is a little different than a normal -- than a
3 deposition in a medical malpractice case because it's a
4 testimony deposition and that is for purposes of trial
5 on paper before the Trademark Trial And Appeal Board.
6 So I want to go through just a couple of ground rules
7 before we start, if that's okay.

8 A. Okay.

9 Q. You've taken an oath, so that means that your
10 testimony here is the same as if you were giving it
11 before a judge and a jury. So I'm just asking for your
12 best memory and your best testimony.

13 To make sure that the court reporter can hear
14 and take down everything we say and, more importantly,
15 because I'm on the phone with you, I'm going to try very
16 hard not to talk over you and I would ask the same from
17 you if we can try to avoid that. Sometimes it happens,
18 but hopefully we can do the best that we can.

19 I would also ask that you provide audible
20 answers, particularly since I'm on the phone, but also
21 for the court reporter; that is, that you don't nod or
22 shake your head.

23 I would also ask that you give your best
24 testimony. And when I say that, please don't guess. Of
25 course, you can estimate something as long as you tell

1 me that that's what you're doing.

2 And if at any time you don't understand a
3 question or you can't hear it, particularly since I'm on
4 the phone, please let me know and I'll try to do my best
5 to repeat it or rephrase it because if you don't let me
6 know I'll assume you're answering what I'm asking.

7 A. Okay.

8 Q. If at any time during the deposition you
9 remember something new and you want to correct some
10 testimony you've already given, please just let us know
11 that. We certainly don't want to prevent you from doing
12 that.

13 And then if at any time you'd like to take a
14 break let me know that and that goes for the court
15 reporter as well. We certainly don't want to have an
16 endurance test. We want to do this as easily for all of
17 us as we can. So is all of that clear?

18 A. Yes.

19 Q. Wonderful.

20 Dr. Boyle, have you taken any medication
21 during the last 24 hours?

22 A. No.

23 Q. Okay. Is there anything that you're aware of
24 today that might affect your memory and ability to give
25 us your best testimony?

1 A. No.

2 Q. Okay. Wonderful.

3 Dr. Boyle, you have a medical degree, correct?

4 A. Correct.

5 Q. And you are a medical doctor by profession; is
6 that true?

7 A. Yes.

8 Q. Do you have a specialized area of practice?

9 A. Yes.

10 Q. And what is that specialized area of practice?

11 A. Diagnostic radiology.

12 Q. And would it be correct to say then that
13 you're trained as a radiologist?

14 A. Yes.

15 Q. Is it also correct to say that you have
16 specialized training in medical diagnostic imaging?

17 A. Yes.

18 Q. Okay. Great.

19 Sir, you're currently employed by the Medical
20 Specialists of the Palm Beaches; is that correct?

21 MR. VANDEN BOSCH: Objection. Assumes
22 facts not in evidence.

23 MS. HIRTH: You can answer, sir.

24 A. Yes.

25 Q. (By Ms. Hirth) And Medical Specialists of

1 the Palm Beaches, can you tell me what it is that they
2 do?

3 A. It's a multi-specialty practice group.

4 Q. Multi-specialty practice group, do you mean
5 they provide medical services?

6 A. Yes.

7 Q. And where are they located?

8 A. Corporate office is in Lake Worth -- is in
9 Greenacres, Florida.

10 Q. Where is the practice itself located if
11 anywhere different from Greenacres, Florida?

12 A. Lake Worth and Atlantis region.

13 Q. Now, is that in Palm Beach County, Florida?

14 A. Yes.

15 Q. As an employee of the Medical Specialists of
16 the Palm Beaches you act as a medical doctor, correct?

17 A. Yes.

18 Q. And can you tell me what your area of
19 specialty is in your work for the Medical Specialists of
20 the Palm Beaches?

21 A. I'm a physician employed by them.

22 Q. Okay. When you say a physician, what kind
23 of -- what area of the medical field are you practicing
24 in there?

25 A. Diagnostic radiology.

1 Q. When did you first become employed by the
2 Medical Specialists of the Palm Beaches?

3 A. 2004.

4 Q. And in what capacity were you employed; that
5 is, what was your job title or your job duties at that
6 time?

7 A. Diagnostic radiologist.

8 Q. Is that the same capacity in which you are
9 employed by them now?

10 A. Yes.

11 Q. Do you have any duties that are different from
12 those you had when you were first employed by the
13 Medical Specialists of the Palm Beaches?

14 A. No.

15 Q. Are you currently the medical director of the
16 DaVinci Diagnostic Imaging Center?

17 A. No.

18 Q. Okay. Are you in any way affiliated with the
19 DaVinci Diagnostic Imaging Center at this time?

20 A. Yes.

21 Q. And in what way are you affiliated with that
22 center?

23 A. I'm a radiologist there.

24 Q. Were you at one time the director of the
25 DaVinci Diagnostic Imaging Center?

1 A. No.

2 Q. Is the DaVinci Diagnostic Imaging Center in
3 any way related to the Medical Specialists of the Palm
4 Beaches?

5 A. Yes.

6 Q. In what way is it related?

7 A. It's a place where they have their diagnostic
8 imaging done.

9 Q. Is it managed or run by the Medical
10 Specialists of the Palm Beaches?

11 A. Yes.

12 Q. Now, Dr. Boyle, you're also associated with
13 DaVinci Radiology Associates, correct?

14 A. Correct.

15 Q. What is your position with DaVinci Radiology
16 Associates?

17 A. I'm a radiologist.

18 Q. And what are your duties associated with being
19 a radiologist at DaVinci Radiology Associates?

20 A. I interpret diagnostic imaging studies.

21 Q. Can you tell me -- well, let me start over.

22 DaVinci Radiology Associates is a four-member
23 group of radiologists; is that correct?

24 A. Correct.

25 Q. And are they in some manner affiliated with

1 DaVinci Diagnostic Imaging Center?

2 A. Yes.

3 Q. In what way?

4 A. They work there.

5 Q. Now, you're generally familiar with the
6 business operation of DaVinci Radiology Associates,
7 correct?

8 A. Yes.

9 Q. And as a radiologist there you have authority
10 to speak on behalf of DaVinci Radiology Associates for
11 purposes of this proceeding?

12 A. Yes.

13 Q. Dr. Boyle, is it correct that in October of
14 2005 DaVinci Radiology Associates filed an application
15 for registration of a trademark?

16 A. (Nonverbal response.)

17 MR. VANDEN BOSCH: Do you remember?

18 THE WITNESS: I'm not exactly sure when
19 the registration was filed.

20 Q. (By Ms. Hirth) But you are aware that an
21 application for registration of a trademark was filed
22 with the U.S. Patent and Trademark Office on behalf of
23 DaVinci Radiology Associates, right?

24 A. Yes.

25 Q. I've provided ahead of time a business card

1 that I think you have a copy of there, if you could take
2 a look at it. It has on it as one of the things on it
3 it says Neda Vanden Bosch, M.D.

4 THE WITNESS: We're going to look for
5 that.

6 MS. HIRTH: Absolutely.

7 (Whereupon, a brief discussion was held off
8 the record.)

9 Q. (By Ms. Hirth) Dr. Boyle, could you take a
10 look at that business card or that card, I should say?

11 A. Yes.

12 Q. Okay. Now, you'll see that sort of on the
13 left-hand portion of the card, covering perhaps
14 two-thirds of the top portion of it, there's some
15 wording that says, DaVinci Diagnostic Imaging. Can you
16 look at that and tell me, is that an accurate
17 representation of the mark for which DaVinci Radiology
18 Associates filed this application in seeking
19 registration?

20 MR. VANDEN BOSCH: Objection. The
21 trademark that was filed is already in
22 evidence.

23 MS. HIRTH: But not for purposes of this
24 deposition. So I'm asking Dr. Boyle if he can
25 just let me know if that's an accurate

1 representation of the mark that's at issue in
2 this proceeding.

3 A. I didn't review the papers that were submitted
4 for the trademark, so it would be -- I don't know if
5 this is the same trademark that was submitted.

6 Q. (By Ms. Hirth) Let me ask you this, then:
7 Is this an accurate representation of a mark that the
8 DaVinci Diagnostic Center and the Medical Specialist
9 of the Palm Beaches, has been and is using?

10 A. Yes --

11 MR. VANDEN BOSCH: Objection. It's
12 compound.

13 Q. (By Ms. Hirth) Just to clarify that,
14 Dr. Boyle, is this on this particular card an accurate
15 representation of the trademark that DaVinci
16 Diagnostic Imaging Center is using?

17 A. Yes.

18 Q. And also is this an accurate representation of
19 the trademark that the Medical Specialists of the Palm
20 Beaches is using?

21 A. Yes.

22 Q. Thank you. Just for simplicity purposes
23 throughout I'm going to refer to this mark either as the
24 mark or as the DaVinci Diagnostic Imaging & Design mark
25 if that's okay with you, Dr. Boyle; will you understand

1 what I'm referring to?

2 A. Yes.

3 MS. HIRTH: Now, if we could mark this
4 card as Exhibit 1 for this deposition, that
5 would be great.

6 (Thereupon, Intuitive Surgical's Exhibit
7 Number 1 was marked for identification.)

8 Q. (By Ms. Hirth) Dr. Boyle, the mark that
9 we've been talking about most recently has been
10 licensed by DaVinci Radiology Associates to the
11 Medical Specialists of the Palm Beaches, correct?

12 A. Correct.

13 Q. And that license is ongoing and has not been
14 terminated, correct?

15 A. Correct.

16 Q. The Medical Specialists of the Palm Beaches
17 uses the mark in association with medical diagnostic
18 imaging services, right?

19 A. Yes.

20 Q. And the facility at which those services are
21 provided is referred to as the DaVinci Diagnostic
22 Imaging Center, right?

23 A. Yes.

24 MR. VANDEN BOSCH: I'm sorry was that is
25 or was?

1 MS. HIRTH: Is.

2 Did you hear my response?

3 THE REPORTER: Yes.

4 MR. VANDEN BOSCH: Is it still even called
5 that?

6 Q. (By Ms. Hirth) Dr. Boyle, is that facility
7 located at 101 JFK Drive in Atlantis, Florida?

8 A. Yes.

9 Q. Can you -- well, let me ask you this. As a
10 radiologist who provides services at the DaVinci
11 Diagnostic Imaging Center are you familiar with the
12 diagnostic imaging services and tests offered there?

13 A. Yes.

14 Q. And do those tests include magnetic resonance
15 imaging?

16 A. Yes.

17 Q. Do they include computed tomography?

18 A. Yes.

19 Q. Do they include positron emission tomography?

20 A. Yes.

21 Q. Do they include PET/CT scans which is a
22 combination of the computed tomography and the positron
23 emission tomography?

24 A. Yes.

25 Q. Do they include digital mammography?

1 A. Yes.

2 Q. Do they also include ultrasound?

3 A. No.

4 Q. Are there any other diagnostic imaging
5 services that I have not mentioned that are provided and
6 performed at the DaVinci Diagnostic Imaging Center?

7 A. No.

8 Q. Sir, are you familiar with the facility that
9 houses the DaVinci Diagnostic Imaging Center?

10 A. Yes.

11 Q. And you've seen that facility or that
12 building, correct?

13 A. Yes.

14 Q. Is there any signage on the building that
15 houses the DaVinci Diagnostic Imaging Center?

16 A. Yes.

17 Q. And where is the sign located on that
18 building?

19 A. On the front door.

20 Q. Can you please describe the sign for me?

21 A. It says, MSPB Diagnostic Imaging Center.

22 Q. Is there any other signage on that building?

23 A. There's a 101.

24 Q. Is there any signage in the vicinity; that is,
25 within a few blocks of the building that refers to that

1 center?

2 A. No.

3 Q. Is there any signage anywhere on that building
4 or within a few blocks of the building that includes or
5 incorporates the term, DaVinci?

6 A. No.

7 Q. Can you look again at what we have already
8 marked as Exhibit 1?

9 A. Okay.

10 Q. Now, this card includes on it the name Neda
11 Vanden Bosch, M.D., correct?

12 A. Correct.

13 Q. And have you seen this business card before
14 to --

15 A. Excuse me?

16 Q. Have you seen this business card before today?

17 A. Yes.

18 Q. Do the other members of DaVinci Radiology
19 Associates have similar business cards?

20 A. They did.

21 Q. When you say they did, do they currently?

22 A. I don't believe so.

23 Q. Can you describe for me what their current
24 business cards look like?

25 A. I haven't seen anybody's business card

1 recently.

2 Q. Do you have a business card for your work at
3 DaVinci Diagnostic Imaging Center?

4 A. I believe so.

5 Q. And can you describe for me what your business
6 card currently looks like?

7 A. I believe it says Medical Specialists of the
8 Palm Beaches with my name on it.

9 Q. Sir, I'm going to refer you to something that
10 I think you have there that your counsel provided to me
11 this morning and it is a copy of a business card that
12 says Thomas P. Boyle on it.

13 A. Okay.

14 Q. Do you have that in front of you?

15 MR. VANDEN BOSCH: Hold on one second,
16 please.

17 MS. HIRTH: Okay.

18 MR. VANDEN BOSCH: Michelle, which card
19 were you referring to?

20 MS. HIRTH: I received two different, I
21 guess, scans. One is just -- it just says
22 Thomas P. Boyle, M.D. It's just that card.

23 MR. VANDEN BOSCH: Is that the one you
24 want for him to look at?

25 MS. HIRTH: Either one is fine. Actually,

1 I think I would prefer the one that says,
2 Manager, DaVinci Diagnostic Imaging.

3 MR. VANDEN BOSCH: Okay. I've presented
4 it in front of him.

5 Q. (By Ms. Hirth) Thank you.

6 Dr. Boyle, is what is in front of you your
7 current business card?

8 A. No.

9 Q. Is it a past business card that you used?

10 A. It was a card in error.

11 Q. Describe for me what you mean when you say it
12 was a card in error.

13 A. The managing director part.

14 Q. Oh, okay. Was the remainder of what's on that
15 card correct except for the managing director portion?

16 A. Yes.

17 Q. And that card has on the left-hand side, about
18 probably covering two-thirds of the top of it, the mark
19 that we discussed previously, correct?

20 A. Correct.

21 Q. Okay. And when you say it was in error as to
22 the managing portion, what was the error as to that
23 portion?

24 A. Technically, I wasn't the manager.

25 Q. Was someone else the manager?

1 A. No.

2 Q. Was there a manager?

3 A. No.

4 Q. Okay. Let me direct you to yet another card
5 that I believe we have here as well. It also has your
6 name on it and it says board certified radiologist.

7 A. Okay.

8 Q. Just let me know when you have that in front
9 of you.

10 MR. VANDEN BOSCH: Michelle, is that also
11 the one that's just the single card --

12 MS. HIRTH: Yes.

13 MR. VANDEN BOSCH: -- with the DaVinci
14 Diagnostic Imaging logo on it?

15 MS. HIRTH: Yes.

16 MR. VANDEN BOSCH: He has that in front of
17 him now.

18 Q. (By Ms. Hirth) Okay. Dr. Boyle, is this a
19 card or business card that you have used in the past,
20 the one that you have in front of you?

21 A. Yes.

22 Q. Is this a business card that you use
23 currently?

24 A. No.

25 MS. HIRTH: Okay. I would like to mark

1 the two business cards; that is, the one that
2 you have in front of you currently and the one
3 that says manager in error as Exhibit 2,
4 collectively.

5 MR. VANDEN BOSCH: And are you just
6 marking then those two cards or all seven
7 cards?

8 MS. HIRTH: I will be getting to all seven
9 cards.

10 MR. VANDEN BOSCH: Okay.

11 MS. HIRTH: But for now it's just the two.

12 (Thereupon, Intuitive Surgical's Exhibit
13 Number 2 was marked for identification.)

14 Q. (By Ms. Hirth) Dr. Boyle, you said you no
15 longer use either of the cards that are marked as
16 Exhibit 2. Can you describe for me the card you use
17 currently?

18 A. I don't really use a card now.

19 Q. Have you had a card issued to you by anyone
20 for purposes of your work at the DaVinci Diagnostic
21 Imaging Center?

22 A. Probably.

23 Q. And can you describe that card for me?

24 A. You know, I don't use it. I think it says
25 Medical Specialists of the Palm Beaches, Thomas P.

1 Boyle, M.D., Radiologist, something to that effect.

2 Q. Can you tell me when the card -- when the
3 cards, because you mentioned also that the card used by,
4 I think it was Dr. Vanden Bosch also is not in use any
5 longer, can you tell me when those cards, when their use
6 stopped?

7 A. I don't remember exactly. It's been at least
8 one or two years.

9 Q. Can you give me an estimation as to whether it
10 was more than a year ago?

11 A. I don't remember exactly.

12 Q. But you know that it was less than two years
13 ago; is that correct?

14 A. No. I don't remember exactly.

15 Q. Okay. And can you tell me why the use of
16 those cards ceased?

17 A. Because a decision was made not to use that
18 name on the cards because of the current situation with
19 your company.

20 Q. And would that be because of the current
21 opposition proceeding?

22 A. Yes.

23 Q. Dr. Boyle, I'd like you to look at a set of, I
24 think it's six business cards, a copy of which were sent
25 to me as well. There's two for Dr. Butler --

1 A. Okay.

2 Q. -- one for Dr. Vanden Bosch, one for
3 Dr. Stanton, and it looks like two of your own, one of
4 which we've already entered as an exhibit.

5 A. Okay.

6 Q. Do you see those?

7 A. Yes.

8 Q. Those each display the DaVinci Diagnostic
9 Imaging mark, correct?

10 A. Correct.

11 Q. And were these cards at one time used by
12 Dr. Butler, Dr. Stanton and Dr. Vanden Bosch to your
13 knowledge?

14 A. The cards were issued to them.

15 Q. Do you have any knowledge as to whether or not
16 they gave these cards out to anyone?

17 A. No.

18 Q. So you don't know one way or the other?

19 A. No.

20 Q. So that would be correct, that you don't know
21 one way or the other?

22 A. That's correct.

23 Q. Thank you. I just wanted to clarify the
24 record.

25 I would like to enter these, I guess six

1 business cards, as Exhibit 3.

2 (Whereupon, a brief discussion was held off
3 the record.)

4 MS. HIRTH: For purposes of the record we
5 are no longer marking the six business cards as
6 Exhibit 3 and instead are marking all seven
7 business cards; that is, those that appeared
8 and were initially marked as Exhibit 2 and the
9 additional cards that we were to mark as
10 Exhibit 3 will all now be marked as Exhibit 2.

11 Q. (By Ms. Hirth) Dr. Boyle, is it correct that
12 none of the radiologists who perform services at
13 DaVinci Diagnostic Imaging Center currently use cards
14 that include the mark on them?

15 A. I don't believe they do.

16 Q. And is there someone who would know that with
17 certainty?

18 A. No.

19 Q. And so would it be correct that I would have
20 to ask each individual physician whether they use the
21 card currently or not in order to get that information?

22 A. Yes.

23 Q. Do members of DaVinci Radiology Associates
24 ever attend conferences or meetings of physicians'
25 organizations?

1 A. Yes.

2 Q. And at those meetings are you aware of whether
3 or not they give out their business cards to other
4 physicians?

5 A. They might give out a business card.

6 Q. Have you attended such meetings in the past?

7 A. Yes.

8 Q. And have you given out your business card to
9 other physicians?

10 A. Yes.

11 Q. Did you attend any such meeting more than two
12 years ago?

13 A. Yes.

14 Q. And do you know whether you -- well, let me
15 back up. Did you ever hand out your business card more
16 than two years ago to other physicians at any such
17 meeting?

18 A. I don't remember.

19 Q. So you can't say with certainty whether you
20 did or not?

21 A. Correct.

22 Q. Do you know with certainty whether any of the
23 other radiologists who were part of DaVinci Radiology
24 Associates ever gave out business cards more than two
25 years ago at any physicians' meetings?

1 A. I don't know that with certainty.

2 Q. Okay. Is it customary at meetings such as
3 those to give out business cards when you are
4 interacting with other physicians?

5 A. What do you mean by customary?

6 Q. Is it something that people often or generally
7 do?

8 A. No.

9 Q. To whom in your experience then do
10 radiologists such as yourself and the others in your
11 group hand out business cards?

12 A. We might give out business cards to people who
13 wanted to use our services.

14 Q. And when you say to people who want to use
15 your services, can you describe what you mean by people?

16 A. Patients.

17 Q. Okay. Anyone other than patients?

18 A. People who needed to contact us for any sundry
19 reasons.

20 Q. Would people who needed to contact you include
21 other physicians?

22 A. Yes.

23 Q. And would those be physicians that may be
24 interested in ordering services from you?

25 A. Yes.

1 Q. And that would be for their patients, correct?

2 A. Correct.

3 Q. In the past have any of those physicians that
4 have ordered services -- who might be interested, let me
5 put it that way, in ordering services for their patients
6 include surgeons?

7 A. Yes.

8 Q. Would that have been true more than two years
9 ago?

10 A. Yes.

11 Q. Is that also true today?

12 A. Yes.

13 Q. Sir, as an employee of the Medical Specialists
14 of the Palm Beaches were you familiar with the
15 appointment cards used by the Medical Specialists of the
16 Palm Beaches?

17 A. Yes.

18 Q. Are you also familiar with the appointment
19 cards given out for appointments for DaVinci Diagnostic
20 Imaging services?

21 A. Yes.

22 Q. I did provide a copy of a card, of an
23 appointment card, that I hope you have there somewhere,
24 if you could take a look at it.

25 A. Okay.

1 Q. Now, just to clarify for the record, this card
2 includes at the top a logo that says, MSPB, correct?

3 A. Correct.

4 Q. And underneath that it says, DaVinci
5 Diagnostic Imaging, correct?

6 A. Correct.

7 Q. Under that it says, appointment, right?

8 A. Right.

9 Q. Is this an accurate copy of the appointment
10 cards used by Medical Specialists of the Palm Beaches
11 for appointments for DaVinci Diagnostic Imaging
12 services?

13 A. I don't know if this is the card that is
14 specifically being used today.

15 Q. Has this card ever been used to your
16 knowledge?

17 A. I don't know.

18 Q. When you say you don't know if this card is
19 used today, do you have in mind a card that looks
20 different from this that is being used today?

21 A. No.

22 Q. So you don't know one way or the other whether
23 this is the current card being used?

24 A. Correct.

25 Q. I'd like to mark this appointment card as

1 Exhibit -- well, let me back up. Before we mark it, let
2 me ask you one more question, Dr. Boyle. To your
3 knowledge has this card ever been used for appointments
4 for DaVinci Diagnostic Imaging?

5 A. I don't know.

6 Q. Now, is that just because you're not familiar
7 with the cards that have been used in the past?

8 A. Correct.

9 MS. HIRTH: Okay. I would like to mark
10 this as Exhibit 3 to the deposition if we
11 could.

12 (Thereupon, Intuitive Surgical's Exhibit
13 Number 3 was marked for identification.)

14 Q. (By Ms. Hirth) Dr. Boyle, just to ask you
15 one more thing about this card, was this card issued
16 by the Medical Specialists of the Palm Beaches?

17 A. I don't know.

18 Q. Do you know if appointment cards are currently
19 being used by DaVinci Diagnostic Imaging Center?

20 A. No, I don't know.

21 Q. Is that because someone else other than
22 yourself makes appointments for patients?

23 A. Yes.

24 Q. And, Dr. Boyle, let me ask you this: Were you
25 involved in providing documents for purposes of

1 responses to discovery in this proceeding?

2 A. Yes.

3 Q. And were you also involved in providing
4 documents specifically for purposes of responses to
5 requests for production served by Intuitive Surgical in
6 this proceeding?

7 A. Yes.

8 Q. To your knowledge was this appointment card a
9 document that was produced in response to Intuitive
10 Surgical's request for production in this proceeding?

11 A. I think so.

12 Q. And to your knowledge this card is a card that
13 was in the possession, custody and control of DaVinci
14 Radiology Associates at the time it was produced,
15 correct?

16 MR. VANDEN BOSCH: Objection as to the
17 term custody and control. Could you be a
18 little more specific?

19 Q. (By Ms. Hirth) Dr. Boyle, was this card
20 something that was in the possession of DaVinci
21 Radiology Associates at the time that documents were
22 produced in response to Intuitive Surgical's request
23 for production in this proceeding?

24 A. I don't know.

25 Q. Do you know from where this card was obtained

1 for production in this proceeding?

2 A. No.

3 Q. Was someone other than yourself involved in
4 gathering or providing documents in response to
5 Intuitive Surgical's request for production in this
6 proceeding?

7 A. Yes.

8 Q. And who was that?

9 A. Dr. Vanden Bosch.

10 Q. Okay. Did you, yourself, provide this
11 particular card for production in this proceeding?

12 A. I don't remember.

13 Q. So you may have but you may not have?

14 A. Correct.

15 Q. Dr. Boyle, can you just explain to me how a
16 patient comes to use the medical diagnostic imaging
17 services offered by the center?

18 A. They can be referred by their physician or
19 they can call and make an appointment on their own.

20 Q. Now, if a patient called to make an
21 appointment on their own, is it for a test that has been
22 generally ordered by a physician?

23 A. Not always.

24 Q. Can they just call and say they want to have a
25 test done without any referring physician?

1 A. Some tests, yes.

2 Q. Okay. And which tests are those?

3 A. Mammography, screening CT scans, screening MRI
4 scans.

5 Q. Is that it?

6 A. Usually.

7 Q. So would it be correct for the remainder of
8 the tests and the services that you provide, patients
9 are generally referred by physicians?

10 A. Yes.

11 Q. And when a patient is referred by a physician
12 does that physician usually order a particular
13 diagnostic test for the patient?

14 A. Yes.

15 Q. Does the physician fill out a form when
16 ordering that test?

17 A. A physician can fill out any one of a number
18 of forms.

19 Q. Okay. And would that depend upon the test
20 being ordered?

21 A. No.

22 Q. Does the physician sometimes call the office
23 at the center to schedule the test for the patient?

24 A. Yes.

25 Q. Do physicians sometimes refer patients

1 specifically to your center for tests?

2 A. Yes.

3 Q. And some of those physicians that refer
4 patients to your center, would those include surgeons?

5 A. Yes.

6 Q. When the diagnostic tests are performed they
7 produce an image, correct?

8 A. An image is produced, yes.

9 Q. And do the radiologists at the center read or
10 interpret those images?

11 A. Yes.

12 Q. Do they prepare reports on some of the images'
13 results?

14 A. Yes.

15 Q. Are those reports prepared in hand -- not
16 handwritten, but in written form?

17 A. They're transcribed.

18 Q. Okay. And to whom are the -- if anybody, are
19 the transcriptions provided?

20 A. They're provided to the referring physician
21 and sometimes to the patient.

22 Q. And are they to your understanding used by the
23 referring physician to diagnose medical conditions or
24 injuries in some cases?

25 MR. VANDEN BOSCH: Objection. Compound.

1 A. Technically, the diagnosis is made by the
2 interpretation. The physicians may then use that
3 information.

4 Q. (By Ms. Hirth) Okay. In some instances are
5 the images themselves provided to the referring
6 physician?

7 A. Yes.

8 Q. Would that include on some occasions MRI
9 results?

10 A. Yes.

11 Q. And would it be true that some of the
12 referring physicians to whom images are provided would
13 include surgeons?

14 A. Yes.

15 Q. And is it true that, to your understanding, in
16 some instances surgeons use the results or the images to
17 prepare themselves for surgery?

18 A. I'm not sure I understand that.

19 Q. Do you have an understanding whether surgeons
20 use the images provided by your center to assist them in
21 surgical procedures?

22 A. Assist would be the wrong word.

23 Q. Is there a word that you think would be
24 appropriate?

25 A. Aid them in the evaluation.

1 Q. Okay. And so the answer to that is that
2 surgeons do in some instances, as far as you know, use
3 images provided by your center to aid them in the
4 evaluation of patients?

5 A. They use our information in the evaluation of
6 their patients' conditions, yes.

7 Q. Okay. Thank you, sir.

8 The reports that you mentioned that are
9 generated by the center, are those reports provided on
10 any sort of letterhead?

11 A. Yes.

12 Q. And can you describe for me what that
13 letterhead looks like?

14 A. Not exactly.

15 Q. Okay. Are there any logos or marks or
16 addresses on the letterhead?

17 A. I believe it says, MSPB.

18 Q. Okay. When you say it says, MSPB, are you
19 referring to the current letterhead that is used by the
20 center?

21 A. Yes.

22 Q. And I should just clarify. When I say the
23 center, sir, I've been referring to the DaVinci
24 Diagnostic Imaging Center; has that been your
25 understanding as well?

1 A. Yes.

2 Q. Was there ever any letterhead used in the past
3 by the center that included the DaVinci Diagnostic
4 Imaging & Design logo or mark?

5 A. I don't think so.

6 Q. Okay. Let me ask you to refer to something
7 that your attorney e-mailed to me this morning. There
8 are, I think, two different sets of what appear to be
9 letterhead to me. If you could, take a look at them.

10 A. Yes.

11 Q. And do you have those in front of you now?

12 A. Yes.

13 Q. Okay. I think we'll start with one and,
14 although they look very similar, I have one that appears
15 to just be plain white paper with some writing at the
16 top; do you see that one?

17 A. Yes.

18 Q. Now, at the top of that it lists Howard
19 Butler, M.D.; William Stanton, M.D.; Thomas P. Boyle,
20 M.D.; and Neda Vanden Bosch, M.D., correct?

21 A. Correct.

22 Q. And it also includes the mark that we've been
23 speaking about, correct?

24 A. Correct.

25 Q. To your knowledge is this letterhead that is

1 currently in use by anyone working on or for the center?

2 A. No.

3 Q. Okay. To your knowledge has this letterhead
4 ever been used by anyone at the center?

5 A. Not for patient reports.

6 Q. Okay. To your knowledge what has this
7 letterhead been used for?

8 A. If it was ever used it was probably used for
9 personal correspondence.

10 Q. And when you say personal correspondence, can
11 you describe to me what correspondence you're talking
12 about, to whom that would be sent?

13 A. I don't ever remember using this but if I were
14 to write the American College of Radiology for a copy of
15 my license or something like that I might use this
16 letterhead if it were in my office but I haven't seen
17 this in a long time, so I don't know what we used it
18 for.

19 Q. Now, when you say you haven't seen this in a
20 long time, when was the last time that you did see this
21 letterhead, if you recall?

22 A. When we opened, which was about 2005.

23 Q. Okay. Have you seen it since that time?

24 A. I haven't seen it in a long time. I can't
25 remember exactly when.

1 Q. Okay. To your knowledge have any of the other
2 members of DaVinci Radiology Associates used this
3 letterhead?

4 A. I don't know.

5 Q. Now, I would like to turn your attention to
6 the other piece of what appears to be letterhead to me
7 but it appears to have some coloring on it?

8 A. Okay.

9 Q. Now, this one, other than an outline around it
10 and the coloring, does this appear to be, you know, very
11 similar to the other piece of letterhead we just looked
12 at?

13 A. Yes.

14 Q. And it also includes at the top the DaVinci
15 Diagnostic Imaging & Design mark, correct?

16 A. Correct.

17 Q. Is this letterhead, this second piece of
18 letterhead, currently in use?

19 A. No.

20 Q. Has it ever been in use?

21 A. I don't know.

22 Q. Have you, yourself, ever used it?

23 A. I don't remember.

24 Q. When you say it's not currently in use, what
25 is your understanding of when it's use --

1 THE REPORTER: I'm sorry?

2 THE WITNESS: Pardon me?

3 Q. (By Ms. Hirth) You say it's not currently in
4 use; what is your understanding of the date the use of
5 this particular letterhead ceased?

6 A. It would have ceased when we stopped using the
7 cards, about the same time that your company -- the
8 company you represent got in touch with us.

9 Q. Okay. So between one and two years ago?

10 A. Correct.

11 MS. HIRTH: I'd like to mark both of these
12 pieces of letterhead as the next exhibit in
13 order which I think is Exhibit 4.

14 (Thereupon, Intuitive Surgical's Exhibit
15 Number 4 was marked for identification.)

16 Q. (By Ms. Hirth) Dr. Boyle, this second piece
17 of letterhead, the one that has some coloring on it,
18 has this letterhead ever been used to send out reports
19 to referring physicians?

20 A. I don't believe that was its purpose and
21 certainly our professional transcription company that
22 does our formal transcriptions did not use that.

23 Q. Okay. Other than your transcription company
24 that makes your formal transcriptions was it ever used
25 to send out reports or letters to referring physicians?

1 A. Letters -- I don't know about letters but it
2 was not used for official patient reports.

3 Q. Okay. Do you have knowledge one way or
4 another whether either of these particular sheets of
5 letterhead were ever used to send out letters to
6 referring physicians?

7 A. I don't specifically remember doing that
8 myself.

9 Q. Okay. Do you have knowledge one way or
10 another whether any of the other radiologists at the
11 center used either of these types of letterhead that are
12 Exhibit 4 to send out letters to referring physicians?

13 A. I don't have any specific recollection of
14 that.

15 Q. Okay. Do you have any knowledge whether
16 anyone at the center, physicians or otherwise, sent any
17 correspondence on these two types of letterhead to
18 referring physicians for any purpose?

19 A. I don't recall any of that.

20 Q. Okay. And does that mean that you don't know
21 one way or another?

22 A. I don't remember it.

23 Q. Okay. Now, sir, I'm going to switch gears
24 just a little bit. The mark that we've been talking
25 about; that is, the DaVinci Diagnostic Imaging & Design

1 mark, it's also displayed on brochures pertaining to the
2 center; is that correct?

3 A. Correct.

4 Q. Okay. And as a member or radiologist at the
5 center are you familiar with the brochures that promote
6 the services offered under the mark?

7 A. Familiar, yeah.

8 Q. Okay. I've provided ahead of time to you some
9 brochures. And if you wouldn't mind taking a look at
10 one of them, I want you to look at one that is in an
11 orange color, if you have them in color there.

12 MR. VANDEN BOSCH: We don't have them in
13 color.

14 MS. HIRTH: Okay. Well, then I'll help
15 you a little differently. It's got a man on it
16 with a black shirt on with kind of like a band
17 around the arm.

18 MR. VANDEN BOSCH: What kind of study is
19 it for?

20 MS. HIRTH: High field MRI.

21 (Whereupon, a brief discussion was held off
22 the record.)

23 Q. (By Ms. Hirth) Sir, do you have the brochure
24 titled High Field MRI before you?

25 A. Yes.

1 Q. Have you seen this brochure before?

2 A. Yes.

3 Q. This brochure was produced in response to
4 Intuitive Surgical's request for production to DaVinci
5 Radiology Associates, correct?

6 A. Correct.

7 Q. And this is a brochure used to promote high
8 field MRI offered by the center, right?

9 A. Correct.

10 Q. Now, just to clarify, the copy that you have
11 there was laid flat to scan it so that you could see all
12 of the panels but normally it's folded up, right?

13 A. Correct.

14 Q. Now, other than the laying flat versus the
15 folding, is this an accurate copy of the brochure that's
16 used by the center?

17 A. Yes.

18 Q. And when I say used by the center, I also
19 should ask you it's used by Medical Specialists of the
20 Palm Beaches, right?

21 A. It was used.

22 Q. And when did you cease?

23 A. Cease using it?

24 Q. Correct.

25 A. Well, we ceased publishing them when we had

1 the discussions with the company you represent about the
2 patent.

3 Q. Did I misunderstand? Did you say about the
4 patent?

5 A. I'm sorry. The trademark.

6 Q. Okay. So would that have been between one and
7 two years ago?

8 A. Yes.

9 Q. Now, when you say publication ceased, let's
10 clarify, are those brochures still in use? And when I
11 say that, I don't mean the publication, I mean given out
12 or available?

13 A. They're still around.

14 (Whereupon, a brief discussion was held off
15 the record.)

16 Q. (By Ms. Hirth) Sir, when you say they're
17 still around, what does that mean?

18 A. You could still find them in physicians'
19 offices or lying around but we don't print them anymore.

20 Q. Okay. And when you say, lying around, does
21 that mean they're still available at the center?

22 A. I'm not sure, they may be.

23 Q. Okay. Do you have a different brochure that
24 you publish or you have published now for high field
25 MRI?

1 A. No.

2 Q. Do you intend to use brochures in the future
3 to promote high field MRI?

4 A. Right now we have no plans.

5 MS. HIRTH: What I'd like to do is to mark
6 this orange -- well, you don't know that it's
7 orange so I'm sorry about that -- brochure
8 titled High Field MRI as, I think it's
9 Exhibit 5.

10 (Thereupon, Intuitive Surgical's Exhibit
11 Number 5 was marked for identification.)

12 Q. (By Ms. Hirth) Now, Dr. Boyle, if you look
13 at this brochure there is a picture of a man in a
14 shirt on one panel, right?

15 A. Right.

16 Q. And the title above that; that is, the title
17 of the brochure is High Field MRI, correct?

18 A. Correct.

19 Q. The mark is displayed at the bottom of the
20 panel, right?

21 A. Correct.

22 Q. And if you look over to the panel next to it
23 to the right which has a map on it, do you see that?

24 A. Yes.

25 Q. The mark is displayed on that panel as well,

1 correct?

2 A. Correct.

3 Q. And at the bottom of that panel; that is, the
4 one with the map on it, there is also displayed the URL,
5 www.davinci-imaging.com, right?

6 A. Right.

7 Q. Now, if you look at what would be the other
8 side of this brochure which would be the second flat
9 page that I think you have, if you look you'll see that
10 there is a panel with the title at the top, A
11 Renaissance in Care; do you see that?

12 A. Yes.

13 Q. Could you read aloud for me the first sentence
14 under that title, the sentence that starts, Beauty
15 meets?

16 A. Beauty meets technology at the
17 state-of-the-art DaVinci Diagnostic Imaging Center.

18 Q. Thank you.

19 And can you look at the next panel that has a
20 title at the top that says, Leading the Imaging Field;
21 do you see that?

22 A. Yes.

23 Q. Now, if you could please go down to the third
24 paragraph which starts, Avanto's TIM technology, and
25 look at the second sentence that says, Through the

1 Avanto's, would you read aloud for me that second
2 sentence?

3 A. Through the Avanto's advanced imaging tools,
4 physicians are able to get better medical information on
5 their patients and provide more accurate diagnoses.

6 Q. Is that statement true to your knowledge?

7 A. Yes.

8 Q. Now, if you could look at, I guess you'd be
9 going back to the other page that we were looking at
10 previously and if you look there is a panel titled, The
11 Benefits of DaVinci's High Field MRI; do you see that?

12 A. Yes.

13 Q. And what I just said, that is the title of
14 that panel, right, The Benefits of DaVinci's High Field
15 MRI?

16 A. Yes.

17 Q. Could you read aloud for me the first bullet
18 under that title?

19 A. DaVinci offers the newest, most powerful
20 advancement in MRI technology.

21 Q. And then could you read aloud for me the fifth
22 bullet under that panel --

23 A. Advanced imaging tools give physicians more
24 complete information.

25 Q. Is that statement true?

1 A. Yes.

2 Q. And then can you read aloud for me the last
3 bullet on that panel?

4 A. Revolutionary technology allows doctors to
5 make more precise diagnoses.

6 Q. And is that true?

7 A. Yes.

8 Q. Thank you.

9 What I'd like to do now is to move on to a
10 different brochure and that is titled 64-Slice CT
11 Scanning.

12 A. I have it.

13 Q. Okay. Great.

14 And have you seen this brochure before?

15 A. Yes.

16 Q. This brochure was produced in response to
17 Intuitive Surgical's request for production to DaVinci
18 Radiology Associates, right?

19 A. Yes.

20 Q. And this brochure is used to promote CT
21 scanning offered by the center?

22 A. Yes.

23 Q. Again, the copy that I've provided to you was
24 laid flat so you have copies of both sides of the
25 brochure but normally it would be folded up, correct?

1 A. Correct.

2 Q. Okay. Other than the folding and the laying
3 flat, is this brochure an accurate copy of the one with
4 which you're familiar?

5 A. Yes.

6 Q. Is this brochure still in use?

7 A. It's not being published anymore.

8 Q. Okay. And let me ask you, would this be the
9 same as with the brochure we looked at a moment ago,
10 that it's still available?

11 A. Yes.

12 Q. And why is it no longer published?

13 A. We stopped publishing it when we discussed
14 that with the company you represent.

15 Q. So that would have been about between one and
16 two years ago?

17 A. Yes.

18 Q. But it was published in the past?

19 A. Yes.

20 Q. And it was used to promote 64-slice CT
21 scanning in the past?

22 MR. VANDEN BOSCH: Objection to who it's
23 being promoted to. Could you be more
24 definitive on what's the promotion?

25 Q. (By Ms. Hirth) Sir, you can answer.

1 A. Our brochures are designed to promote our
2 studies to our physicians. MSPB is a multi-specialty
3 practice group and those are the physicians we publish
4 this material for.

5 Q. Are there any surgeons in that practice group?

6 A. No.

7 Q. To your knowledge is it possible that these
8 brochures were obtained by surgeons not in the MSPB
9 practice group?

10 A. By law, according to Stark laws, we're only
11 allowed to do 15 percent of our work outside of our
12 population of physicians. So surgeons could be a part
13 of that 15 percent but it's a small piece of the overall
14 business.

15 Q. Okay. And when you say 15 percent outside
16 your group of physicians, that group, you're referring
17 to the MSPB group, right?

18 A. Yes. The group of subspecialty doctors that
19 make up MSPB.

20 Q. Okay. Do you have plans to use a brochure
21 different from this one to promote 64-slice CT scans?

22 A. Not that I know of.

23 MS. HIRTH: I'd like to mark this
24 brochure, 64-Slice CT Scanning brochure, as
25 Exhibit, I think it's 6.

1 (Thereupon, Intuitive Surgical's Exhibit
2 Number 6 was marked for identification.)

3 Q. (By Ms. Hirth) Dr. Boyle, when you said that
4 15 percent of the work that you do can be or is
5 outside of the MSPB practice group, is that entire
6 15 percent located within Palm Beach County, Florida?

7 A. Not the entire 15 percent, no, but most of it.

8 Q. Where --

9 A. And it's not necessarily 15 percent -- I'm
10 sorry.

11 15 percent is the maximum allowed by the
12 regulations but I don't think we're anywhere close to
13 the 15 percent, if you actually looked at the numbers.

14 Q. Okay. For the physicians that are outside
15 Palm Beach County, Florida for whom you provide
16 services, where are they located?

17 A. It would be a very rare example, say if
18 somebody's on vacation from New York or somewhere else
19 during the winter and they need an imaging study, it
20 would be that type of thing usually.

21 Q. Okay. And that has occurred in the past?

22 A. Yes. It's usually an emergency or something
23 like that.

24 Q. Now, you mentioned New York, is that one place
25 where a physician has, I guess, referred or used your

1 services?

2 MR. VANDEN BOSCH: Objection to --

3 A. No --

4 MR. VANDEN BOSCH: -- used or referred.

5 It's compound again.

6 A. No. I just said New York because that's a
7 place people vacation from. I don't have any exact -- I
8 was just trying to give you an example.

9 Q. (By Ms. Hirth) Okay. Do you have any
10 information as to the locations of physicians that
11 have used your services outside of Palm Beach County
12 in the past?

13 A. Last week I had a physician from Costa Rica
14 who sent us a woman for mammograms. I mean, it's pretty
15 far-fetched. It does happen.

16 Q. Okay. But other than the Costa Rica example
17 you can't give me an example or excuse me, a list today
18 of where those physicians are located?

19 A. No. And they wouldn't have heard of us. The
20 patient would just be sent to us because they were
21 seeing one of the physicians at MSPB while on vacation
22 or while wintering here.

23 Q. Okay. Now, if you can look back at the
24 64-Slice CT Scanning pamphlet or brochure?

25 A. Okay.

1 Q. The title on, I guess the introductory panel
2 is 64-Slice CT Scanning, correct?

3 A. Correct.

4 Q. And the mark is displayed at the bottom of
5 that panel?

6 A. Yes.

7 Q. Now, if you'll look at the next panel over
8 which has the map on it, that panel also displays the
9 mark, correct?

10 A. Correct.

11 Q. And if you look at the bottom, there is the
12 display of the URL www.davinci-imaging.com, correct?

13 A. Correct.

14 Q. Now, if you'll look -- for me it's the other
15 side but if you look at the other page of this brochure,
16 again, you'll see a panel that is titled, A Renaissance
17 in Care, right?

18 A. Yes.

19 Q. Could you look at what's really the third full
20 paragraph on that panel that starts, Heart attacks occur
21 when one of the small blood vessels, et cetera?

22 A. Okay.

23 Q. And if you could, read aloud the, I guess it's
24 the third and fourth sentences of that paragraph; it
25 begins, DaVinci Diagnostic Imaging.

1 A. DaVinci Diagnostic Imaging is proud to be one
2 of the few centers in the nation to offer the 64-slice
3 CT scanner, the newest technology in the fight against
4 heart disease.

5 Q. Okay. I'll stop you there.

6 Is that statement true?

7 A. Not anymore.

8 Q. How is it no longer true?

9 A. There are many more 64-slice CT scanners
10 available currently.

11 Q. Other than that part of the statement is the
12 rest of that statement, correct?

13 A. You mean, were we proud?

14 Q. Sure.

15 A. Yes, we were.

16 Q. And then if you'd read the sentence after that
17 that starts, The miraculous, out loud?

18 A. The miraculous 3-D images created by the
19 64-slice CT scanner make it possible to diagnose
20 coronary artery disease quicker and safer than ever
21 before.

22 Q. Is that statement true?

23 A. Yes.

24 Q. Okay. Now, if you could, look at the panel
25 that is titled, if I can find it -- okay. I'm sorry.

1 It's the very last panel that's titled, The Benefits of
2 DaVinci's 64-Slice CT Scanner.

3 A. Yes.

4 Q. And that is the title on that panel, correct?

5 A. That is the title.

6 Q. Could you read aloud the fifth bullet down
7 under that title?

8 A. Earlier diagnosis with results available
9 within hours.

10 Q. Is that true that that's a benefit of the
11 DaVinci 64-slice CT scanner?

12 A. That's a benefit of any 64-slice CT scanner.

13 Q. Okay. And could you read the final bullet on
14 that panel out loud for me?

15 A. Produces highly detailed images allowing for a
16 more precise diagnosis.

17 Q. And is that true also of 64-slice CT scanners?

18 A. Yes.

19 Q. Okay. If we could move on to what I call the
20 blue brochure but what is titled for you as, PET/CT
21 Fusion?

22 A. Okay.

23 Q. Have you seen this brochure before?

24 A. Yes.

25 MR. VANDEN BOSCH: Michelle, can we

1 stipulate to admitting this document and then
2 you asking whatever questions you want to ask
3 that are on the face of this document?

4 MS. HIRTH: I'd be happy to. Why don't we
5 do it this way: Sir, will you --

6 THE WITNESS: Yes.

7 MS. HIRTH: I just want to do it -- maybe
8 we can stipulate to the authenticity of this
9 document and that Dr. Boyle is familiar with
10 it?

11 MR. VANDEN BOSCH: We could stipulate to
12 that.

13 Q. (By Ms. Hirth) Okay. And, Dr. Boyle, is
14 this a brochure that was used by the center to promote
15 PET/CT fusion?

16 MR. VANDEN BOSCH: Objection. Promote to
17 whom?

18 MS. HIRTH: You can answer, sir.

19 A. Yes. We use this to promote to our doctors at
20 MSPB.

21 Q. (By Ms. Hirth) And is this the same sort of
22 situation as we -- as you described when we talked
23 about the 64-slice CT scanner?

24 A. Yes. It's the same situation with all our
25 imaging.

1 Q. Okay. And is this brochure still in use?

2 A. It's the same -- I have the same response as
3 for the other two brochures, so same thing.

4 Q. Okay. That's perfectly fine.

5 And at this time are you aware of whether the
6 center intends to use any other brochures for PET/CT
7 fusion?

8 A. I don't have any knowledge of that.

9 MS. HIRTH: Okay. What I'd like to do is
10 mark this brochure; that is, the PET/CT fusion
11 brochure as Exhibit 7.

12 (Thereupon, Intuitive Surgical's Exhibit
13 Number 7 was marked for identification.)

14 Q. (By Ms. Hirth) Sir, if you can look at the
15 first panel and then is it correct that the title is
16 PET/CT Fusion?

17 A. Didn't we do that already?

18 Yes.

19 Q. Okay. Thank you.

20 And the mark is displayed at the bottom of
21 that panel, right?

22 A. Yes.

23 Q. If you look over to the panel that has a map
24 on it, the mark is also displayed at the top of that
25 panel, right?

1 A. Correct.

2 Q. And at the bottom of that panel is displayed
3 the URL www.davinci-imaging.com, right?

4 A. Right.

5 Q. Okay. Now, if you'll look at what for you is
6 the second page of this particular brochure, the title
7 on that page says, A Renaissance in Care, right?

8 A. Right.

9 Q. Now, if you'll go down and read out loud the
10 entirety of the third or final paragraph on that panel,
11 I'd appreciate it.

12 A. With the new PET/CT fusion at DaVinci
13 Diagnostic Imaging, a computer system combines CT's
14 ability to locate tumors with PET's ability to determine
15 if those tumors are likely to be cancerous. This
16 technology helps doctors make a more accurate diagnosis.

17 Q. Now, with regard to that first sentence that
18 you just read out loud, is that statement correct?

19 A. Yes.

20 Q. And the second sentence you just read out
21 loud, is that statement correct?

22 A. Yes.

23 Q. If you'd look to the next panel, there's a
24 heading that says, sort of three-quarters of the way
25 down the page, says, Ensuring the Best Treatment for

1 You; do you see that heading?

2 A. Yes.

3 Q. Would you read aloud for me the first sentence
4 under that heading?

5 A. Patients planning for cancer therapy can
6 benefit the most from this new technology.

7 Q. Is that statement true?

8 A. Yes.

9 Q. And can you read the next sentence under that
10 heading?

11 A. PET/CT images can be used to guide a surgeon
12 to the exact location of a malignancy and help the
13 oncologist better localize treatment and follow
14 response.

15 Q. Is that statement true?

16 A. Yes.

17 Q. Now, if you'll look at the back panel, I guess
18 is what I'll call it, the title is, The Benefits of
19 DaVinci's PET/CT Fusion?

20 A. Yep.

21 Q. Could you read aloud for me the sixth bullet
22 point under that title?

23 A. Getting answers sooner gives tumors less time
24 to grow.

25 Q. Could you read for me aloud the seventh or the

1 next bullet point under that panel or under that title?

2 A. Aids doctors in determining the proper course
3 of treatment.

4 Q. Is that statement true about PET/CT fusion?

5 A. Yes.

6 Q. Can you read the last bullet point under that
7 title?

8 A. Helps guide surgeons to the exact location of
9 the cancer.

10 Q. And is that statement true about the PET/CT
11 fusion provided by DaVinci?

12 A. Yes.

13 Q. Now, I want to go to the very last brochure,
14 I'm sure you'll be happy to know, which is titled
15 Digital Mammography.

16 A. Okay.

17 Q. And I'd be happy, again, to stipulate that
18 you're familiar with this and that this is an accurate
19 representation of the actual brochure, if your counsel
20 will so stipulate.

21 MR. VANDEN BOSCH: Stipulate.

22 Q. (By Ms. Hirth) Okay. Sir, if you can, look
23 at the -- well, let me back up.

24 Is this particular brochure still in use?

25 A. It has the same status as the other brochures.

1 Q. So that information that we discussed
2 previously with regard to the other brochures is the
3 same with regard to this one, correct?

4 A. Correct.

5 Q. If you'll look at the panel that's titled
6 Digital Mammography, that is the mark displayed at the
7 bottom of the panel, correct?

8 A. Correct.

9 Q. And if you go to the next panel over that has
10 a map on it, the mark is displayed at the top of that
11 panel, correct?

12 A. Correct.

13 Q. If you look at the bottom of that panel there
14 is the URL www.davinci-imaging.com that is displayed,
15 correct?

16 A. Correct.

17 Q. If you'll look at what is the other flat page
18 of this panel, again there is a section that's titled, A
19 Renaissance in Care; do you see that?

20 A. Yes.

21 Q. If you could, read for me starting with the
22 sentence that starts with, The latest technology, and
23 it's the second paragraph on this panel.

24 A. The latest technology in the fight against
25 breast cancer, digital mammography provides sharper,

1 clearer images that can be enhanced by our radiologists
2 to obtain a closer view of any potential abnormalities,
3 resulting in the most accurate mammogram reading
4 available and greater peace of mind.

5 Q. Is that statement correct?

6 A. Yes.

7 Q. And then if you could -- let's see, I'm trying
8 to figure out where I am as well. If you could, read
9 the very next sentence that starts, This computerized,
10 aloud for me?

11 A. This computerized method of mammography offers
12 accuracy unparalleled by its film predecessor. Because
13 digital mammograms are stored on a computer, the
14 magnification, orientation, brightness and contrast of
15 the image may be altered after the exam is completed to
16 help the radiologist more clearly see certain areas.

17 Q. And is that statement correct?

18 A. Correct.

19 Q. Could you please read the very next sentence
20 for me?

21 A. This enhanced ability to analyze the mammogram
22 is one reason why recent large studies show that digital
23 mammography detects up to 28 percent more breast
24 cancers.

25 Q. Is that information correct?

1 A. That's how I interpret the studies.

2 Q. Okay. So the statement as far as you're
3 concerned is correct?

4 A. Yes.

5 Q. Could you read the next sentence for me?

6 A. Additionally, the computerized digital
7 mammography system has the ability to over-read the
8 mammogram and act as a second set of trained eyes,
9 offering a second interpretation.

10 Q. And is that statement accurate and correct?

11 A. Yes.

12 Q. And you'll be happy to know, finally, could
13 you read the last sentence there or the very next
14 sentence for me?

15 A. This system, called CAD, computer assisted
16 detection, can itself be responsible for detecting 12 to
17 15 percent more breast cancers.

18 Q. And is that statement correct?

19 A. Yes.

20 Q. Now, if you could, look at the panel titled,
21 The Benefits of Digital Mammography.

22 A. Okay.

23 Q. And please read aloud the first bullet under
24 that heading.

25 A. Provides sharper, clearer images than film.

1 Q. And is that bullet correct about digital
2 mammography?

3 A. Yes.

4 Q. Could you please read aloud the second bullet
5 under that heading?

6 A. Computerized scan allows radiologist to
7 manipulate image for better analysis of problem areas.

8 Q. And is that bullet correct for digital
9 mammography as well?

10 A. Yes.

11 Q. Could you read the third or next bullet aloud
12 for me?

13 A. Image is read by two sets of eyes, the
14 radiologist and the computer.

15 Q. And is that bullet correct as to digital
16 mammography?

17 A. Yes.

18 Q. Okay. I think that's all I have for this
19 particular brochure. So I'm going to change gears a
20 little bit. Sir, do you need a break or anything at the
21 moment?

22 A. No.

23 (Whereupon, a brief discussion was held off
24 the record.)

25 Q. (By Ms. Hirth) So we're back on the record.

1 Dr. Boyle, as an employee of Medical
2 Specialists of the Palm Beaches are you familiar with
3 the Medical Specialists of the Palm Beaches' Internet
4 Web site?

5 MR. VANDEN BOSCH: Objection to the term
6 employee. It's vague.

7 Q. (By Ms. Hirth) Sir, you testified earlier
8 that you're an employee of the Medical Specialists of
9 the Palm Beaches, correct?

10 MR. VANDEN BOSCH: Objection to the term
11 employee. It's vague.

12 Q. (By Ms. Hirth) Sir, do you work for the
13 Medical Specialists of the Palm Beaches?

14 A. As a diagnostic radiologist I'm a
15 subcontractor to them.

16 Q. Okay. As a subcontractor to the Medical
17 Specialists of the Palm Beaches are you familiar with
18 the Medical Specialists of the Palm Beaches' Internet
19 Web site?

20 A. Yes.

21 Q. And when I ask you about that Web site I'm
22 referring to the Web site with the URL www.mspb.md; are
23 you familiar with that Web site?

24 A. I've seen it. I mean, I don't know everything
25 it says.

1 Q. Okay. Are you aware of whether the Medical
2 Specialists of the Palm Beaches promotes its diagnostic
3 imaging services on that Web site?

4 A. I believe it does.

5 Q. I provided some Internet Web page printouts to
6 you and I'm going to direct you to one of them now. It
7 is the one that is labeled at the bottom,
8 <http://www.mspb.md/diagnostics/index.html>, and it's
9 dated January 15th, 2009.

10 MR. VANDEN BOSCH: Can we go off the
11 record?

12 MS. HIRTH: Sure.

13 (Whereupon, a brief discussion was held off
14 the record.)

15 MR. VANDEN BOSCH: With respect to the
16 MSPB index HTML page dated 1/15/2009 that
17 you've just identified, I'm willing to
18 stipulate to the authenticity of this document.

19 MS. HIRTH: Okay. Thank you. So I'd like
20 to mark this document as, I think it's
21 Exhibit 8.

22 (Thereupon, Intuitive Surgical's Exhibit
23 Number 8 was marked for identification.)

24 Q. (By Ms. Hirth) Sir, if you take a look at
25 this document that's now before you, and that's

1 Exhibit 8, there are a number of places in this Web
2 page where MSPB Diagnostic Imaging Center or The
3 Diagnostic Imaging Center is referred to; is that
4 correct?

5 A. Correct.

6 Q. And if you look a little less than halfway
7 down the page it says, MSPB Diagnostic Imaging Center
8 offers a wide range of imaging services including, and
9 then it lists some services; do you see that?

10 A. Yes.

11 Q. Now, it also says just thereunder, For more
12 information on services at MSPB Diagnostic Imaging,
13 visit our new Web site; is that correct it says that?

14 A. Yes.

15 Q. And if you click on that link -- have you ever
16 clicked on that link before?

17 A. No.

18 Q. Are you aware of where it takes you if you
19 click on that link?

20 A. No.

21 Q. Would it surprise you to know that it takes
22 you to the davinci-imaging.com Web site?

23 A. Surprise might be the wrong word.

24 Q. Would it be something that you would be --
25 surprised is the word I'm coming to, so what would be

1 the right word, sir?

2 A. I didn't know that that link was there.

3 Q. Okay. Now, you also have there, and it might
4 take you a moment to find it, a Web page with the exact
5 same URL at the bottom but it's dated 11/5/2007, and I'd
6 like you to take a look at that once you locate it.

7 A. Okay.

8 Q. Have you seen that Web page before?

9 A. Probably.

10 Q. Does it appear to you to be an earlier version
11 of the same Web page that we marked as Exhibit 8?

12 A. Yes.

13 Q. Okay. And if you -- you'll notice that -- and
14 I do apologize for this, that on this particular version
15 the right-hand side is cut off but other than that, does
16 it appear to be an accurate copy of that earlier version
17 of this Web page?

18 A. Yes.

19 Q. Now, nowhere on this page does the term MSPB
20 Diagnostic Imaging Center appear, right?

21 A. Right.

22 Q. And, again, a little less than halfway down
23 the page it says this time, DaVinci Diagnostic Imaging
24 Center offers a wide range of imaging services; is that
25 correct?

1 A. Correct.

2 Q. Then a little below that it says, For more
3 information on services at DaVinci Diagnostic Imaging,
4 visit our, and then it's cut off; is that true?

5 A. Yes.

6 Q. Have you ever -- in the past when the Web site
7 appeared this way did you ever click on that link?

8 A. I don't remember.

9 Q. Are you aware of where that link takes the
10 user?

11 A. I believe so.

12 Q. And where does it take the user?

13 A. To the DaVinci Web site.

14 Q. When you say the DaVinci Web site, are you
15 talking about the Web site with the URL
16 www.davinci-imaging.com?

17 A. Yes.

18 Q. Okay. Are you aware of why the term DaVinci
19 Diagnostic Imaging Center on this Web page was changed
20 to MSPB Diagnostic Imaging Center?

21 A. It was changed when we entered the discussions
22 about the trademark with the company you represent.

23 Q. And do you know when it was changed?

24 A. Not exactly.

25 Q. Would it be correct that it still used the

1 term DaVinci Diagnostic Imaging Center in November of
2 2007 to your knowledge?

3 A. I don't exactly know when that was changed.

4 Q. Okay. Would it have been changed sometime
5 between one and two years ago?

6 A. I think so.

7 Q. Now, I also provided you with -- let me back
8 up. I can't recall, did I mark this particular document
9 as Exhibit 9? If I didn't, let's do that.

10 THE REPORTER: No, you didn't. I'm
11 marking it now for you.

12 (Thereupon, Intuitive Surgical's Exhibit
13 Number 9 was marked for identification.)

14 Q. (By Ms. Hirth) Sir, now, you'll have there
15 that I provided, and it might take a moment to look
16 for them, four additional Web pages with particular
17 URLs. They're all dated January 16th, 2009, and the
18 URLs are all www.mspb.md/diagnostics and then
19 individually they are also, /64_slice_scan,
20 digitalmammo, MRI, and PET_CT_scan.

21 MR. VANDEN BOSCH: Michelle, you have not
22 marked -- I know you're there and you've got a
23 lot going on but you haven't marked digital
24 mammography as an exhibit.

25 MS. HIRTH: Oh, thank you for telling me

1 that. I intended to. Maybe in the meantime,
2 while you're looking for those we could mark
3 the Digital Mammography brochure as the next
4 exhibit in order.

5 (Thereupon, Intuitive Surgical's Exhibit
6 Number 10 was marked for identification.)

7 MR. VANDEN BOSCH: Okay. The January 16,
8 2009 Web pages from MSPB's Web site are in
9 front of Dr. Boyle.

10 Q. (By Ms. Hirth) Fabulous. Thank you.

11 Dr. Boyle, have you seen these Web pages
12 previously?

13 A. No.

14 Q. Do you have an understanding that these Web
15 pages are accurate depictions of what is currently
16 presented on the MSPB Web site?

17 A. Yes.

18 MS. HIRTH: So what I'd like to do is to
19 mark these collectively, all four of them, as
20 the next exhibit in line which I think is 11.

21 (Thereupon, Intuitive Surgical's Exhibit
22 Number 11 was marked for identification.)

23 Q. (By Ms. Hirth) Okay. I apologize,
24 Dr. Boyle, because I said there would be no reading
25 aloud any longer but I forgot and I was wrong. So if

1 you could, please turn to the Web page that is titled,
2 64-Slice CT Scan, and this is the page that we just
3 marked as Exhibit 11.

4 A. Okay.

5 Q. If you could, go to the very second sentence,
6 which is also the second paragraph, and just read that
7 sentence aloud.

8 A. This revolutionary technology offers the
9 ability to take unmistakably reflective 3D images of the
10 heart and coronary arteries, non-invasively and within
11 mere seconds, allowing for the most accurate
12 interpretation of the intricate cardiovascular system.

13 Q. And is that sentence true?

14 A. It has some advertising hyperbole in it.

15 Q. And what do you identify as advertising
16 hyperbole in that sentence?

17 A. Unmistakably.

18 Q. Okay. Let me ask you, anything else that you
19 would call advertising hyperbole?

20 A. No.

21 Q. So other than that everything else in there to
22 your knowledge is accurate and true?

23 A. Yes.

24 Q. Okay. If you could, now, turn to the page of
25 this exhibit that's titled, Digital Mammography.

1 A. Okay.

2 Q. And if you could, go down there and read the
3 second -- first sentence of the second paragraph.

4 A. Similar to the processing capabilities of a
5 digital camera, digital mammography provides cleaner and
6 clearer images, allowing radiologists to detect up to 28
7 percent more potential abnormalities than conventional
8 film imaging.

9 Q. And to your knowledge is that statement
10 correct?

11 A. Yes.

12 Q. Could you read the next sentence in that
13 paragraph?

14 A. The digital mammography system also employs
15 the power of CAD, computer assisted detection, which
16 digitally scans the mammogram, offers a second
17 interpretation, and is singly responsible for detecting
18 12 to 15 percent of present cancers.

19 Q. And to your knowledge is that statement true
20 and correct?

21 A. It has some advertising hyperbole in it.

22 Q. Could you identify for me what in that
23 sentence is advertising hyperbole?

24 A. Singly responsible.

25 Q. Other than that phrase, singly responsible, is

1 that sentence true and correct?

2 A. Yes.

3 Q. Could you turn now to the Web page document or
4 this exhibit, excuse me, titled, High Field MRI?

5 A. Okay.

6 Q. And there, could you go to the second
7 paragraph and read the first sentence for me?

8 A. MRI produces intricate images of both the
9 human skeletal structure and soft tissues, including but
10 not limited to muscle, eye, mouth and throat,
11 reproductive organ, and brain composition.

12 Q. And is that statement true?

13 A. Yes.

14 Q. Would you read the next sentence up to the
15 colon for me.

16 A. Due to its ability to generate these highly
17 sophisticated images, MRI is extremely useful in
18 accurately diagnosing medical conditions and disorders
19 such as.

20 Q. Now, other than the such as, is that sentence
21 true?

22 A. Yes.

23 Q. Okay. I want to turn to a different set of
24 Web pages that I provided and these are dated January or
25 1/15/2009. And they are, let's see if I can find them

1 for you. They are all titled -- or not titled, have
2 URLs, excuse me, <http://www.davinci-imaging.com> and then
3 there is that followed by index, difference, imaging,
4 appointment, press and contact. Hopefully that will
5 allow you to locate them.

6 MR. VANDEN BOSCH: These are Web pages
7 from the DaVinci Imaging Web site?

8 MS. HIRTH: Exactly.

9 MR. VANDEN BOSCH: And they're dated when,
10 the 15th?

11 MS. HIRTH: 1/15/2009.

12 MR. VANDEN BOSCH: All right.

13 Q. (By Ms. Hirth) Okay. Are we ready?

14 A. We're ready.

15 Q. Okay. Great.

16 Dr. Boyle, as a member of the DaVinci
17 Radiology Associates and as a radiologist at the center,
18 are you familiar with the Web site [davinci-imaging.com](http://www.davinci-imaging.com)?

19 A. Yes.

20 Q. Okay. And you have, I guess, six Web pages in
21 front of you or printouts of Web pages in front of you.
22 Have you had a chance to look at all six pages?

23 A. Yes.

24 Q. Do these six pages appear to be accurate
25 copies of the pages that appear on the DaVinci Imaging

1 Web site?

2 A. Yes.

3 MS. HIRTH: I'd like to mark these six
4 pages collectively as the next exhibit in order
5 which, is that Exhibit 11?

6 THE REPORTER: 12.

7 MS. HIRTH: 12. Okay. Thank you.

8 (Thereupon, Intuitive Surgical's Exhibit
9 Number 12 was marked for identification.)

10 Q. (By Ms. Hirth) Sir, is it true that the
11 mark; that is, the DaVinci Diagnostic Imaging & Design
12 mark, appears at the top of each of these six Web
13 pages in this Exhibit 12?

14 A. Yes.

15 Q. Okay. Could you please turn to the page with
16 the URL davinci-imaging.com/difference?

17 A. Yes.

18 Q. And under the title, Mission/Philosophy, could
19 you read aloud the first sentence?

20 A. Our passionate physician radiologists are the
21 driving force behind DaVinci Diagnostic Imaging.

22 Q. Okay. And then could you read aloud for me
23 the second sentence?

24 A. The desire to provide only top-notch
25 technology, expertise and service has set the bar high

1 at DaVinci and we are proud to offer our patients
2 nothing but the best.

3 Q. And is it true that this Web page; that is,
4 davinci-imaging.com/difference, that what you just read
5 is an accurate reading of the sentences on this Web
6 page?

7 A. Yes.

8 Q. Okay. Is it true that this particular Web
9 site; that is, www.davinci-imaging.com, and the Web
10 pages that make up Exhibit 12 are currently up on the
11 Internet at this time to your knowledge?

12 A. Yes.

13 Q. And is it correct that neither -- well, let me
14 put it this way: Is it correct that the DaVinci
15 Diagnostic Imaging Center does not at this time intend
16 to take down or relinquish this Web site?

17 A. Yes.

18 Q. Is it also correct that Medical Specialists of
19 the Palm Beaches does not intend at this time to take
20 down or relinquish this Web site?

21 A. We host that Web site; it's not their
22 decision.

23 Q. Okay. Understood.

24 So when you say we host, does that mean that
25 the center hosts it or does that in the alternative mean

1 that the DaVinci Radiology Associates hosts it?

2 A. DaVinci Radiology Associates.

3 Q. Okay. Thank you.

4 And do you expect to continue to use the Web
5 site to promote the diagnostic services offered by the
6 center?

7 A. Yes.

8 Q. Do you expect to continue to display the mark
9 on this Web site?

10 A. Yes.

11 Q. Now, I'm going to switch gears just a little
12 bit, Dr. Boyle, and you'll be happy to know we're almost
13 through.

14 You submitted a declaration in support of
15 DaVinci Radiology Associates' response to Intuitive
16 Surgical's motion for summary judgment; is that right?

17 A. Yes.

18 Q. And can you please take a look at that
19 declaration which I believe I've provided?

20 A. Yes.

21 Q. Okay. If you could, turn to the very last
22 page. Please read the very last sentence that starts, I
23 declare.

24 A. I declare under penalty of perjury under the
25 laws of the State of Florida and the United States of

1 America that the foregoing is true and correct.

2 Q. Okay. And beneath that statement appears a
3 date and your signature; is that right?

4 A. Yes.

5 Q. Now, if you could, turn to paragraph ten of
6 this declaration and it's on the second page, and just
7 read aloud the first sentence in paragraph 10.

8 A. Upon information and belief, MSPB is likely to
9 continue to use the Internet and brochures as trade
10 channels for diagnostic imaging services with
11 applicant's mark.

12 Q. And is that statement true?

13 A. Yes.

14 Q. Could you read the very next sentence in
15 paragraph 10?

16 A. Members of applicant are likely to visit and
17 present at doctors' offices with applicant's mark.

18 Q. And is that statement true?

19 A. Yes.

20 Q. Have members of DaVinci Radiology Associates
21 visited doctors' offices in the past?

22 A. Yes.

23 Q. And who at DaVinci Radiology Associates has
24 made such visits in the past?

25 A. I have.

1 Q. Okay. Anyone else?

2 A. I'm not sure. I don't think so.

3 Q. Okay. What is the purpose of such visits?

4 A. Answer questions.

5 Q. When you say answer questions, what kind of
6 questions are you referring to?

7 A. Questions physicians may have about the
8 technology or indications for the technology.

9 Q. When you say the technology, are you talking
10 about -- well, let me ask you, what do you mean when you
11 say the technology?

12 A. The technology that we have at DaVinci
13 Diagnostic Imaging.

14 Q. So would those be the different kinds of
15 services you provide?

16 A. Yes.

17 Q. So just so I understand, so you would -- the
18 purpose of these visits would be to explain your MRI
19 services, your PET scan services, your CT services, the
20 digital mammography that you offer, that sort of thing;
21 is that right?

22 A. To answer questions about those services, yes.

23 Q. During those visits do you make presentations
24 about the services offered?

25 A. We mainly answer questions.

1 Q. Do you leave with the doctors or their staff
2 materials that describe the services?

3 A. Yes.

4 Q. And what materials do you leave with them?

5 A. Prescription pads, information. We used to
6 leave the brochures.

7 Q. Okay. But you no longer leave the brochures
8 that are exhibits to this deposition; is that right?

9 A. I haven't done that recently.

10 Q. Okay. And do you know when the last time was
11 that you left brochures such as those that are exhibits
12 to this deposition?

13 A. I can't remember exactly.

14 Q. Would it have been less than a year ago?

15 A. No.

16 Q. So sometime more than a year ago?

17 A. Yes.

18 Q. When you say you leave them information, I
19 think you said, other than brochures and the pads that
20 you -- prescription pads, what are the other materials
21 that you would leave at these doctors' visits?

22 A. I might leave them published articles about
23 technologies to remind them of the indications for tests
24 or something like that, scientific literature.

25 Q. Did you ever give business cards to any of the

1 doctors or their staffs during these visits?

2 A. I don't remember. I may have. In general,
3 that's not necessary because these doctors are within
4 our group. So they know who I am and where I am.

5 Q. Okay. Did you ever leave anything there other
6 than the brochures that include the mark on them?

7 A. No.

8 Q. Did you ever leave anything there that include
9 just the term DaVinci or DaVinci Diagnostic Imaging?

10 A. We may have had some chocolates imprinted with
11 that one time but nothing repetitively.

12 Q. And when did you have the chocolates imprinted
13 with that?

14 A. I was just using that as an instance. I'm not
15 sure if we -- we may have at one time used DaVinci
16 Imaging on some things that we left there when we first
17 opened but we haven't done that in a long time.

18 Q. Do you know when the last time was that you
19 did that?

20 A. No.

21 Q. Would that have been within the last --

22 MR. VANDEN BOSCH: Sorry, you were
23 unclear.

24 Q. (By Ms. Hirth) Would that have been within
25 the last year?

1 A. No.

2 Q. Do you expect these doctor visits to continue
3 in the future?

4 A. Yes.

5 Q. And you said that these are doctors within
6 your group. Do you ever visit doctors outside of your
7 group?

8 A. Do I ever, in the present?

9 Q. Yes.

10 A. Or did I ever?

11 Q. Well, I'll ask you both. Let me -- right now
12 I was asking in the present do you ever make these
13 visits that we've been talking about to doctors outside
14 of the MSPB group?

15 A. No.

16 Q. Have you ever in the past made these kinds of
17 visits to doctors outside the MSPB group?

18 A. Yes.

19 Q. And when did you make such visits?

20 A. It's been more than a year.

21 Q. Can you tell me, if you know, the specialties
22 of the doctors that you made such visits to that were
23 outside the MSPB group?

24 A. I remember visiting a rheumatologist. That's
25 about -- the last one that I can remember was a

1 rheumatology group and maybe a neurologist, a
2 neurologist.

3 Q. Okay. Any others other than a rheumatologist
4 or a neurologist --

5 MR. VANDEN BOSCH: Asked and answered.

6 Q. (By Ms. Hirth) You can answer, sir.

7 A. I don't remember. Those are the two I
8 remember specifically.

9 Q. Does that mean to your knowledge there were
10 other specialties that you visited outside the MSPB
11 group but you just don't recall their specialties at the
12 moment?

13 A. I didn't do many of these kind of visits so,
14 you know, there were a few but it was three years ago
15 when we opened. So I don't really remember.

16 Q. Okay. And in the past has anyone else from
17 DaVinci Radiology Associates made such visits to doctors
18 outside the MSPB group?

19 A. I do not believe so.

20 MS. HIRTH: Okay. I believe that for the
21 moment that's all that I have. So we can go
22 off the record for a moment, if you'd like.

23 (Whereupon, a brief discussion was held off
24 the record.)

25 MS. HIRTH: If we could have marked the

1 declaration of Thomas Boyle as the next exhibit
2 in order whichever number that is, that would
3 be great.

4 (Thereupon, Intuitive Surgical's Exhibit
5 Number 13 was marked for identification.)

6 MS. HIRTH: I'm going to pass the witness
7 to Mr. Vanden Bosch.

8 CROSS-EXAMINATION

9 Q. (By Mr. Vanden Bosch) The brochures that
10 have been marked as exhibits during this deposition,
11 are they available to patients?

12 A. I believe some of them are still available.

13 Q. Were they available to patients in the past?

14 A. Yes.

15 Q. How were they made available to patients in
16 the past?

17 A. They were put in display cases around the
18 imaging center. They were also put in some of the
19 doctors' offices, MSPB doctors.

20 Q. Do you have any idea of how many MSPB doctor
21 offices there are?

22 A. There are about 54 or 55 MSPB doctors in about
23 34 or 35 offices.

24 Q. Are all of their offices in Palm Beach County?

25 A. Yes.

1 Q. Do you have knowledge of who the DaVinci Web
2 site is directed at?

3 A. It's directed at the public, the patients who
4 are of the MSPB doctors and at the MSPB doctors but
5 mostly at the MSPB doctors' patients.

6 Q. Do you have any understanding of whom the MSPB
7 Web site, to the extent of the Web pages we viewed here
8 today and are marked as exhibits, are directed at?

9 A. They're directed at patients.

10 Q. How do you know that?

11 A. A number of ways. Number one, MSPB marketing
12 people have set them up to be informative for patients.
13 Number two, that's the way they're worded, for patients.
14 Number three, the objective is to get patients, not to
15 get doctors.

16 Q. Can you describe the circumstances underlying
17 the conception and adoption of DaVinci Radiology
18 Associates' mark by identifying the timing of the
19 conception and adoption, the persons involved --

20 MS. HIRTH: Object --

21 MR. VANDEN BOSCH: Sorry?

22 MS. HIRTH: Oh, go ahead.

23 Q. (By Mr. Vanden Bosch) -- the persons
24 involved in the conception and adoption, the
25 alternatives considered and the factors considered in

1 conceiving adopting the mark?

2 MS. HIRTH: Objection. Outside scope of
3 direct testimony and hearsay.

4 Q. (By Mr. Vanden Bosch) You are familiar with
5 the DaVinci Diagnostic Imaging mark, aren't you?

6 A. Yes.

7 Q. How are you familiar with it?

8 A. It was my idea to use -- it was my and my
9 partner's idea to use the name DaVinci Imaging when we
10 built the imaging center.

11 Q. And how did that come to be?

12 MS. HIRTH: Same objections lodged.

13 MR. VANDEN BOSCH: You can go ahead and
14 answer.

15 A. It was our objective to build a high-end
16 imaging center in order to distinguish it from all of
17 the other imaging centers which were more or less like
18 assembly lines. And along that line, since most imaging
19 centers were named after the location or after some type
20 of technology, or sort of like railroad stations, we
21 were looking for a name that would distinguish a
22 high-end imaging center and we thought that DaVinci,
23 with its renaissance implications, would distinguish it.
24 And plus we were building a building that was not like a
25 run-of-the-mill imaging center. It was a high-end kind

1 of place so that we needed a high-end name, and that's
2 when we came up with DaVinci.

3 MS. HIRTH: Belated additional objection,
4 calls for a narrative.

5 Q. (By Mr. Vanden Bosch) When did you come up
6 with the idea of developing a high-end imaging center?

7 A. 2002 --

8 MS. HIRTH: Objection. Outside scope of
9 direct testimony.

10 Q. (By Mr. Vanden Bosch) Now, you identified
11 the diagnostic imaging services on your direct exam as
12 being MRI, true?

13 A. Yes.

14 Q. CAT scan?

15 A. Yes.

16 Q. PET/CT?

17 A. Right.

18 Q. And digital mammography?

19 A. Right.

20 Q. Are any of those surgical procedures?

21 A. No.

22 Q. Are any of those interventional procedures?

23 A. No.

24 MR. VANDEN BOSCH: Can we go off the
25 record a second?

1 MS. HIRTH: Sure.

2 (Whereupon, a brief discussion was held off
3 the record.)

4 Q. (By Mr. Vanden Bosch) What is DaVinci
5 Radiology Associates' relationship with MSPB?

6 A. We are a subcontractor to MSPB.

7 Q. Did you license the trademark to MSPB?

8 A. Yes.

9 Q. Do you know about when that happened?

10 A. That was --

11 MS. HIRTH: Objection. Outside scope of
12 direct.

13 A. That was probably about three years ago.

14 Q. (By Mr. Vanden Bosch) Was that part of the
15 relationship you have -- DaVinci Radiology Associates
16 has with MSPB?

17 MS. HIRTH: Same objection.

18 A. Yes.

19 Q. (By Mr. Vanden Bosch) Are you an employee of
20 MSPB in any capacity?

21 A. Yes.

22 Q. And what capacity is that?

23 A. I operate a vein clinic which is a subgroup of
24 MSPB.

25 Q. And how are you an employee of MSPB under this

1 relationship?

2 A. We have a subgroup relationship. We're
3 actually one of the 54 groups of physicians who belong
4 to MSPB but in another medical capacity.

5 Q. Is this limited to the vein subgroup?

6 A. Yes.

7 Q. Are you an employee of MSPB to the extent of
8 diagnostic imaging services?

9 A. No.

10 Q. Do you know the date on which DaVinci
11 Radiology Associates began working as an independent
12 contractor for MSPB?

13 MS. HIRTH: Outside the scope of the
14 direct. Irrelevant.

15 A. August 2005.

16 Q. (By Mr. Vanden Bosch) Is that -- what was
17 the date that Medical Specialists of the Palm Beaches
18 began using the DaVinci Diagnostic Imaging trademark?

19 A. You mean what was the date we licensed them
20 the trademark or when did they start using it -- they
21 started using it when we opened the imaging center.

22 Q. When was that?

23 A. August 2005.

24 Q. Does DaVinci Radiology Associates use the
25 trademark for advertising in journals?

1 A. No.

2 MS. HIRTH: Outside the scope of the
3 direct.

4 Q. (By Mr. Vanden Bosch) Does it use it in
5 trade publications?

6 MS. HIRTH: Same objection.

7 A. No.

8 MS. HIRTH: Also objection to that
9 question and the one prior, leading.

10 Q. (By Mr. Vanden Bosch) Are there any other
11 methods that DaVinci Radiology Associates uses the
12 trademark other than what was answered on your direct
13 exam?

14 A. No.

15 Q. Who ultimately decides whether to use the
16 diagnostic imaging services of DaVinci Radiology
17 Associates, the physician --

18 MS. HIRTH: Outside the scope of the
19 direct and leading.

20 Q. (By Mr. Vanden Bosch) -- the physician or
21 the patient?

22 MS. HIRTH: Same objection.

23 A. The patient.

24 Q. (By Mr. Vanden Bosch) Does DaVinci Radiology
25 Associates use the trademark to sell any goods?

1 A. No.

2 MS. HIRTH: Outside the scope of the
3 direct and leading.

4 Q. (By Mr. Vanden Bosch) Other than services,
5 does MSPB use the DaVinci Diagnostic Imaging trademark
6 to sell?

7 A. No.

8 Q. What does DaVinci Radiology Associates use the
9 trademark to sell?

10 A. Our services.

11 Q. And those services again are?

12 A. MRI, CT, PET/CT, digital mammo.

13 Q. Does the building have a name in which the
14 diagnostic imaging services are performed?

15 MS. HIRTH: Outside scope of the direct.

16 MR. VANDEN BOSCH: You asked it on direct.

17 MS. HIRTH: Actually, I didn't but we'll
18 keep going.

19 A. Well, it's been called the DaVinci Imaging
20 Center.

21 Q. (By Mr. Vanden Bosch) Is it presently called
22 that?

23 A. By most people, yes.

24 Q. Are there any signs on the building with that
25 name?

1 A. No.

2 Q. Is there any art on the outside of the
3 building?

4 A. Yes.

5 Q. What art was there?

6 A. There are bas-reliefs of a Vitruvian man and
7 there are lion's heads.

8 Q. Do they remain there today?

9 A. Yes.

10 Q. Have you received any communications of
11 confusion between DaVinci Diagnostic Imaging's mark and
12 that of DaVinci with Intuitive Surgical?

13 MS. HIRTH: Outside the scope of the
14 direct and leading --

15 A. No.

16 MS. HIRTH: -- assumes facts not in
17 evidence.

18 Was there an answer that I didn't hear?

19 THE WITNESS: No. The answer's no.

20 Q. (By Mr. Vanden Bosch) Would you be the
21 person to whom such a communication would be directed?

22 MS. HIRTH: Same objections.

23 A. Usually.

24 Q. (By Mr. Vanden Bosch) Are you aware of any
25 communications to Medical Specialists of the Palm

1 Beaches involving confusion between DaVinci Diagnostic
2 Imaging's trademark and that of Intuitive Surgical
3 here at issue?

4 MS. HIRTH: Same objections.

5 A. No.

6 Q. (By Mr. Vanden Bosch) Who would MSPB
7 communicate -- would MSPB tell anybody at DRA about
8 such a communication?

9 MS. HIRTH: Same objections.

10 A. Me, usually.

11 Q. (By Mr. Vanden Bosch) Would they communicate
12 it to you in your opinion?

13 A. Yes.

14 MS. HIRTH: Same objections.

15 Q. (By Mr. Vanden Bosch) Are you speculating
16 about that?

17 A. No.

18 MR. VANDEN BOSCH: Okay. That's all.

19 MS. HIRTH: I also have a belated lack of
20 foundation objection to that line.

21 I have one question just on redirect.

22 REDIRECT EXAMINATION

23 Q. (By Ms. Hirth) Dr. Boyle, the diagnostic
24 imaging services of the DaVinci center are all medical
25 services provided in the health care and medical

1 field; is that right?

2 A. Could you say that again, please?

3 Q. All of the diagnostic imaging services that
4 are provided by the DaVinci center are medical services,
5 correct?

6 A. Correct.

7 Q. And they are all services that are within the
8 health care field, correct?

9 A. Correct.

10 MS. HIRTH: Okay. That's all that I have.
11 Thank you.

12 THE WITNESS: Okay.

13 (Whereupon, the deposition was concluded at
14 3:35 p.m.)

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C E R T I F I C A T E

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

INTUITIVE SURGICAL, INC.,)	
)	
Opposer,)	Opposition No. 91175319
)	Serial No.: 78/728,786
vs.)	Published: 12/19/2006
)	
DAVINCI RADIOLOGY ASSOCIATES,)	
P.L.,)	
)	
Applicant.)	

I, THOMAS P. BOYLE, M.D., hereby state that I have read the foregoing transcript of the testimony given by me at my deposition on the 19th day of January, 2009, and that said transcript constitutes a true and correct record of the testimony given by me at said deposition, except as I have so indicated on the errata sheet contained herein.

Dated this _____ day of _____, 2009.

THOMAS P. BOYLE, M.D.
No corrections: (Please initial) _____
STATE OF _____
COUNTY OF _____

The foregoing was acknowledged before me this _____ day of _____ 2009 by _____, who is personally known to me or who has produced _____ as identification.

Commission No.: _____
Notary Public - State of Florida
My Commission Expires: _____

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CORRECTION SHEET:

NAME: THOMAS P. BOYLE, M.D.

RE: INTUITIVE SURGICAL, INC. vs. DAVINCI RADIOLOGY
ASSOCIATES, P.L.

The following corrections, additions or deletions were noted on the transcript of the testimony which I gave in the above-captioned matter held on January 19, 2009:

PAGE(S)	LINE(S)	CHANGE	REASON
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CERTIFICATE OF OATH

STATE OF FLORIDA)
 : SS
COUNTY OF PALM BEACH)

I, the undersigned authority, certify that
THOMAS P. BOYLE, M.D. personally appeared before me
and was duly sworn.

WITNESS my hand and official seal this 4th
day of February, 2009.

Michelle L. DeSanti

Michelle L. DeSanti, RPR, FPR
Commission No.: DD411922
Notary Public - State of Florida
My Commission Expires: 3-27-09

1 February 4, 2009

2 THOMAS P. BOYLE, M.D.
3 c/o Medical Specialists of the Palm Beaches, Inc.
4 101 J.F.K. Drive
5 Atlantis, FL 33462

6 RE: INTUITIVE SURGICAL, INC. vs. DAVINCI RADIOLOGY
7 ASSOCIATES, P.L.

8 Dear Dr. Boyle:

9 This is a courtesy letter to inform you that
10 the deposition given by yourself on January 19, 2009
11 has been ordered, transcribed and is ready for your
12 reading and signing.

13 Please call our office at (561)820-9066 any
14 day, Monday through Friday, between the hours of
15 9:00 a.m. and 4:30 p.m. to schedule an appointment to
16 read and sign your deposition here in our office or,
17 if you prefer, make arrangements with MATTHEW VANDEN
18 BOSCH, ESQUIRE to read and sign his copy of the
19 transcript and then forward to us the signature page
20 and errata sheet.

21 Thank you for your anticipated cooperation.

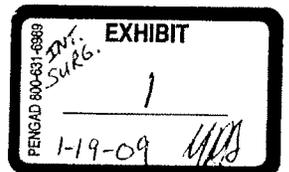
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Intuitive Surgical, Inc. v DaVinci
Radiology Associates, P.L.
Opposition No. 9117539
Thomas P. Boyle, M.D. - 1/19/09
Intuitive Surgical's Exhibit No. 1



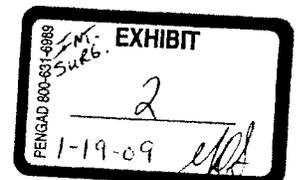


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Board Certified Radiologist: MRI, Breast Imaging

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Intuitive Surgical's Exhibit No. 2





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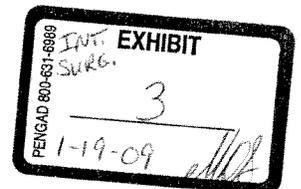
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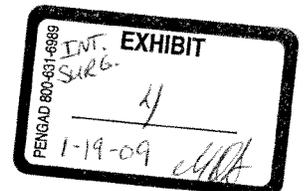
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American Board of Radiology Certified
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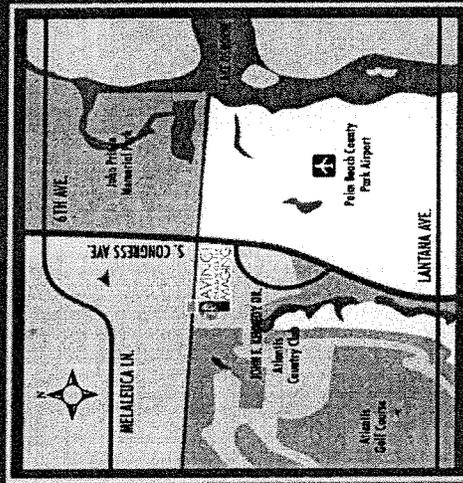
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Magnetic Resonance Imaging

MRI is the advanced imaging technique that produces intricate images of both the human skeletal structure and soft tissues. Due to its ability to generate these highly sophisticated images, MRI is extremely useful in accurately diagnosing medical conditions and disorders such as:

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- Breast Cancer
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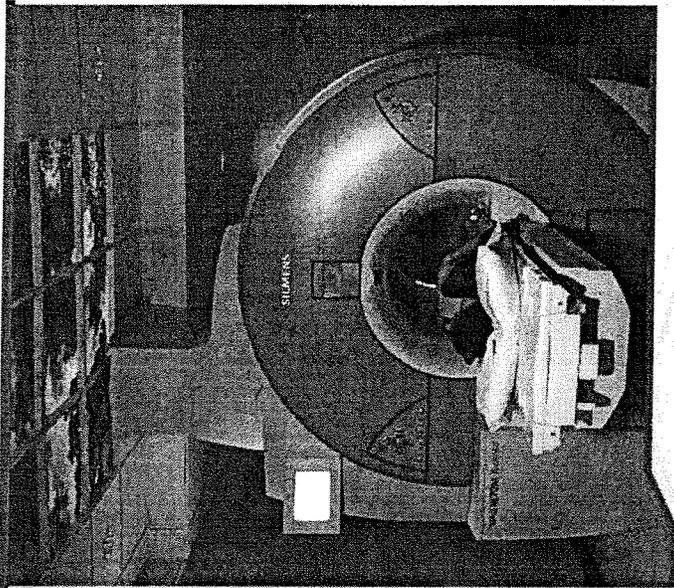
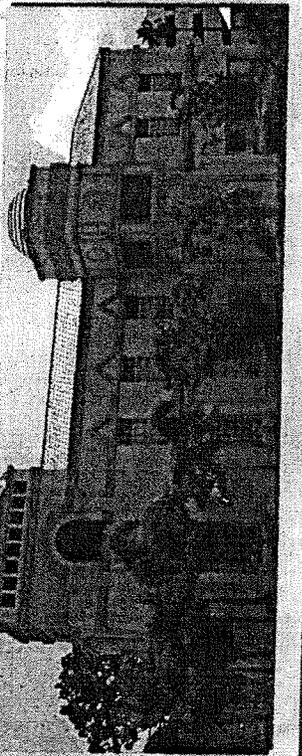
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Committed to Excellence

Our passionate physician radiologists are the driving force behind DaVinci Diagnostic Imaging. The desire to provide only top-notch technology, expertise and service has set the bar high at DaVinci and we are proud to offer our patients nothing but the best. Medical Director Thomas P. Boyle M.D. consults with our staff of physicians and technologists trained at highly accredited institutions including Cornell, Columbia, Sloan Kettering Memorial Cancer Center and The Hospital for Special Surgery. Boasting over 50 years of experience serving Palm Beach County, our radiologists are not only skilled in their field, but are committed to enhancing the medical care within our community.

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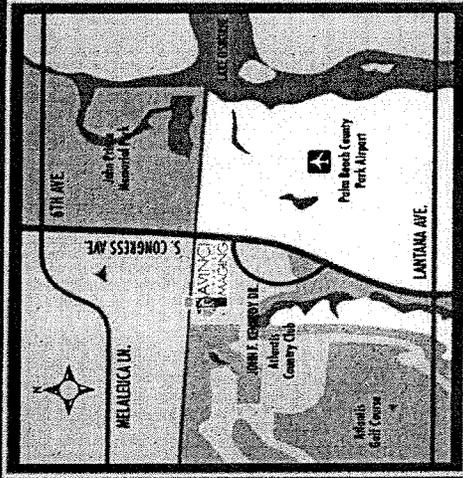
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Radiology Associates, P.L.
Opposition No. 9117539
Thomas P. Boyle, M.D. - 1/19/09
Intuitive Surgical's Exhibit No. 6



MEDICAL SPECIALISTS OF THE PALM BEACHES

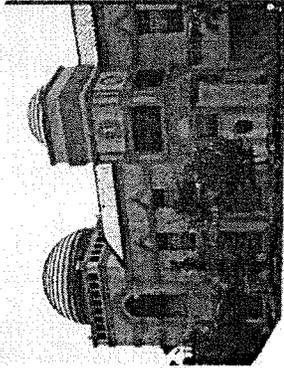
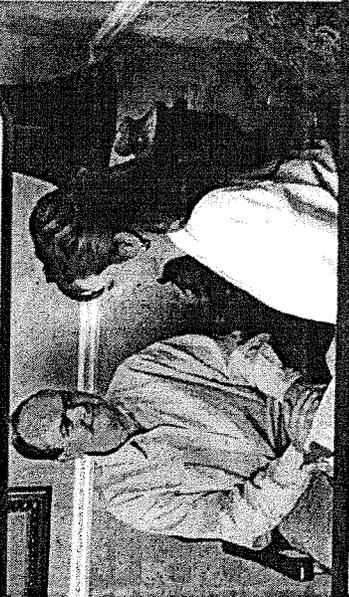
A Renaissance in Care

Beauty meets technology at the state-of-the-art DaVinci Diagnostic Imaging Center. Once you step into our magnificently designed building, you will know that we are not your ordinary imaging center. Hailed as one of the "jewels" of Palm Beach County architecture, the DaVinci Diagnostic Imaging Center houses world-class technology in an atmosphere of unsurpassed comfort and caring.

Stopping a Killer

Every 15 seconds someone in the United States dies from heart disease. The number one killer of both men and women, heart disease causes more deaths each year than the next seven leading causes of death combined.

Heart attacks occur when one of the small blood vessels of the heart becomes clogged. If you can detect a "clogged" vessel early, you can fix it before any damage is done. Da Vinci Diagnostic Imaging is proud to be one of the few centers in the nation to offer the 64-slice CT scanner, the newest technology in the fight against heart disease. The miraculous 3-D images created by the 64-slice CT scanner make it possible to diagnose coronary artery disease quicker and safer than ever before.



The Non-Invasive Alternative

Until now, the standard for discovering heart blockages has been an invasive procedure called a cardiac catheterization. During this procedure, a catheter is inserted into a blood vessel through an incision in the groin and snaked up to the heart where an opaque dye is injected. Any arterial blockage will then appear on an angiogram, an x-ray of the arteries. Cardiac catheterization takes anywhere from four to six hours, can be painful, carries the risk of serious complications and requires one to two days of recovery.

Conversely, the 64-slice CT scan at Da Vinci Diagnostic Imaging is a non-invasive procedure that can be completed in 8 heartbeats, with results available in just hours. During the exam, patients lie comfortably on a table that moves them back and forth through the opening of the examination unit. The 64-slice CT scanner then rapidly captures images of the heart and coronary arteries at rest, between heartbeats. The advanced speed and technology of the 64-slice CT scanner shortens the total scan time to just 15 to 30 seconds.

Preventing Heart Attacks

The warning signs of heart disease can be difficult to detect. Many people of all ages suffer heart attacks without ever knowing they were at risk. Although heart disease is non-discriminating, some people are better candidates than others for a 64-slice CT scan.

You should strongly consider having a 64-slice CT scan if you have any of the following factors:

- You have close blood relatives who had heart disease or a heart attack at an early age, but you haven't had any heart problems yourself.
- You are at high risk for heart disease due to diabetes, high cholesterol, high blood pressure, smoking, lack of exercise or unhealthy weight.
- You have received abnormal or unclear results on a stress test.
- Your concern over your possible heart disease is interfering with your day-to-day life.

Committed to Excellence

At Da Vinci Diagnostic Imaging, we are proud to offer our patients nothing but the best. Medical Director Thomas P. Boyle M.D. consults with our staff of physicians and technologists trained at highly accredited institutions including Cornell, Columbia, Sloan Kettering Memorial Cancer Center and The Hospital for Special Surgery. Boasting over 50 years of experience serving Palm Beach County, our radiologists are not only skilled in their field, but are committed to enhancing the medical care within our community.

Anyone can benefit from knowing the actual health of his or her heart. Arm yourself with the life-saving knowledge provided by the 64-slice CT scanner at DaVinci Diagnostic Imaging.

The Benefits of DaVinci's PET/CT Fusion:

- Combination of PET and CT is much more effective than either test alone
- Determines and locates cancer in only one test
- Effective for most types of cancers
- Particularly effective for pinpointing head and neck cancers
- Virtually eliminates the need for additional testing
- Getting answers sooner gives tumors less time to grow
- Aids doctors in determining the proper course of treatment
- Helps guide surgeons to the exact location of the cancer

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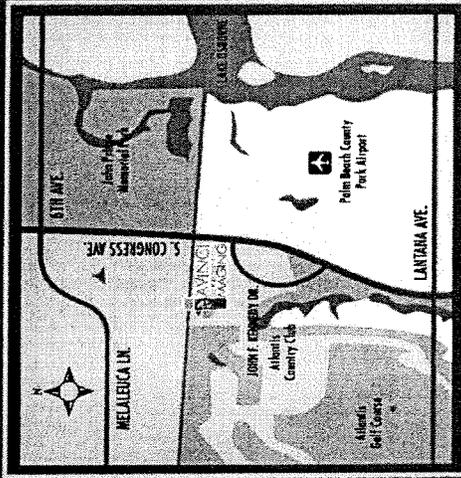
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PET/CT Fusion



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A Renaissance in Care

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What is PET/CT Fusion?

A PET (Positron Emission Tomography) scan alone is a powerful tool for detecting several types of cancer. In a PET scan, the patient is injected with a small amount of safe, radioactive sugar. PET can then tell the difference between normal and cancerous tissue through measuring how quickly the tissue converts this sugar to energy. A CT (Computed Tomography) scan produces highly detailed images of the inside of the body, providing anatomical information such as size, shape and location.

With the new PET/CT Fusion at DaVinci Diagnostic Imaging, a computer system combines CT's ability to locate tumors with PET's ability to determine if those tumors are likely to be cancerous. This technology helps doctors make a more accurate diagnosis.



Accurate Results Sooner

Before PET/CT Fusion, a radiologist might have been unable to isolate exact tumor location, find the most active tumor section, or clearly determine tumor status with PET alone. It was also difficult to determine whether spots found by CT alone were cause for concern. When these situations happened, the patient had to undergo further testing including ultrasound, magnetic resonance imaging (MRI), biopsy or additional PET. PET/CT Fusion eliminates the need for additional testing, making the process shorter and allowing for a more precise and rapid diagnosis.

Although it may be possible to attempt fusion of CT and PET images obtained at different times, the position of the patient is rarely the same in both studies, leaving significant room for error. Additionally, changes in tumor size may occur in the time between scans. DaVinci Diagnostic Imaging combines the strengths of both technologies into one set of images allowing doctors to quickly determine the most accurate course of treatment, before the cancer has the opportunity to spread.

Ensuring the Best Treatment for You

Patients planning for cancer therapy can benefit the most from this new technology. PET/CT images can be used to guide a surgeon to the exact location of a malignancy and help the oncologist better localize treatment and follow response. PET/CT



images also allow accurate localization of areas to be treated with radiation therapy. PET/CT Fusion works on most types of cancers and is particularly effective in pinpointing head and neck cancers, a difficult procedure due to the many small structures that require evaluation.

Committed to Excellence

Our passionate physician radiologists are the driving force behind DaVinci Diagnostic Imaging. The desire to provide only top-notch technology, expertise and service has set the bar high at DaVinci and we are proud to offer our patients nothing but the best. Medical Director Thomas P. Boyle M.D. consults with our staff of physicians and technologists trained at highly accredited institutions including Cornell, Columbia, Sloan Kettering Memorial Cancer Center and The Hospital for Special Surgery. Boasting over 50 years of experience serving Palm Beach County, our radiologists are not only skilled in their field, but are committed to enhancing the medical care within our community.

Early detection and proper treatment for cancer can sometimes mean the difference between life and death. Let the PET/CT Fusion technology at DaVinci Diagnostic Imaging give your doctor the edge in the fight against cancer.



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The Medical Specialists of the Palm Beaches operates two state-of-the-art Diagnostics centers that provide you and your physician with one comprehensive source for diagnostics, medical testing and laboratory procedures.

MSPB Diagnostic Imaging Center

Hailed as one of the "jewels" of Palm Beach County architecture, the MSPB Diagnostic Imaging Center houses world-class technology in an atmosphere of unsurpassed comfort and caring.

Located in Atlantis next to JFK Medical Center, MSPB Diagnostic Imaging Center is the area's newest and most progressive imaging facility. The center is committed to providing the most advanced technology available today and is one of only three imaging center in the state to offer the revolutionary new 64 Slice CT Scan.

MSPB Diagnostic Imaging Center offers a wide range of imaging services including:

- Digital Mammography
- MRI
- PET/CT Scan
- 64 Slice CT Scan

For more information on services at MSPB Diagnostic Imaging, visit our new website.

The Diagnostics Center

Medical Specialist of the Palm Beaches' second state-of-the-art facility, The Diagnostics Center is equipped with the latest technology in medical imaging, patient therapy and rehabilitation, nuclear medicine and laboratory science. The Diagnostics Center provides patients and physicians with a wide range of common medical services in one convenient location.

Services available at The Diagnostics Center include:

- Bone Density Testing
- Cat Scan
- Ultrasound
- X-Ray
- Nuclear Stress Testing
- Physical Therapy
- Patient Rehabilitation
- Laboratory
- MUGU Scan

Location

The Diagnostics Center is located at:
5401 South Congress Avenue
Atlantis, Florida

Driving Directions:

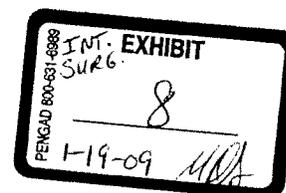
From I-95: Exit I-95 at Lantana Road exit. Go west to Congress Avenue and turn right (north). The Diagnostics Center is 1/2 mile on the left (west) side.

From FL Turnpike:

Exit FL Turnpike at Lake Worth Road exit. Go east approx. 5 miles to Congress Avenue. Turn right (south) on Congress Avenue. The Diagnostics Center is 1.6 miles on the right (west) side.

Map & Directions

Intuitive Surgical, Inc. V DaVinci
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DaVinci Diagnostic Imaging Center offers a wide range of imaging services

- Digital Mammography
- MRI
- PET/CT Scan
- 64 Slice CT Scan

For more information on services at DaVinci Diagnostic Imaging, visit our new we

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Location

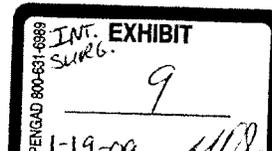
The Diagnostics Center is located at:
5401 South Congress Avenue
Atlantis, Florida

Driving Directions:

From I-95: Exit I-95 at Lantana Road exit. Go west to Congress Avenue and turn The Diagnostics Center in 1/2 mile on the left (west) side.

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<http://www.mspb.md/diagnostics/index.html>



11/5/2007

From FL Turnpike:

Exit FL Turnpike at Lake Worth Road exit. Go east approx. 5 miles to Congress A
right (south) on Congress Avenue. The Diagnostics Center is 1.6 miles on the rig

Map & Directions

The Benefits of Digital Mammography

- Provides sharper, clearer images than film
- Computerized scan allows radiologist to manipulate image for better analysis of problem areas
- Image is read by two sets of "eyes" - the radiologist and the computer
- Better imagery of dense breast tissue
- Detects up to 28% more breast cancers than film
- Less radiation
- Flexible plates mean less squeeze during the exam
- Quicker exam time
- Covered by most insurance
- Increased accuracy means fewer repeat visits

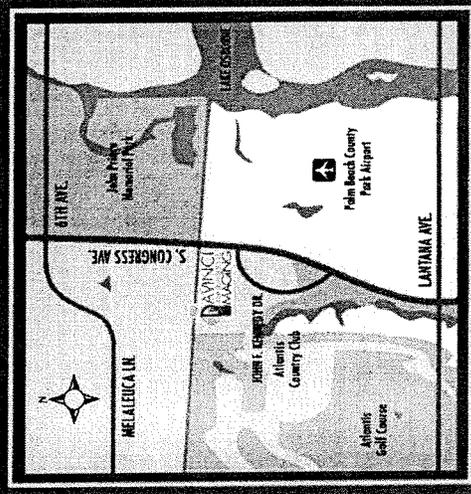
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MEDICAL SPECIALISTS OF THE PALM BEACHES

A Renaissance in Care

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Digital Mammography

The latest technology in the fight against breast cancer, Digital Mammography provides sharper, clearer images that can be enhanced by our radiologists to obtain a closer view of any potential abnormalities, resulting in the most accurate mammogram reading available and greater peace of mind.

This computerized method of mammography offers accuracy unparalleled by its film predecessor. Because Digital Mammograms are stored on a computer, the magnification, orientation, brightness and contrast of the image may be altered after the exam is completed to help the radiologist more clearly see certain areas. This enhanced ability to analyze the mammogram is one reason why recent large studies show that Digital

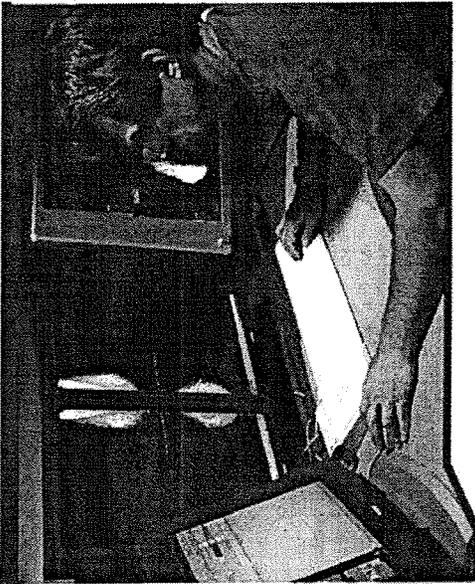
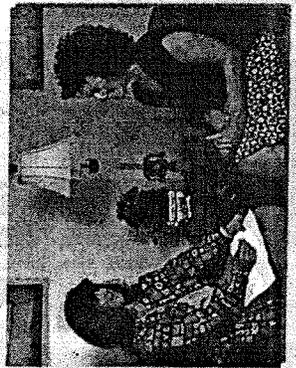
Mammography detects up to 28% more breast cancers. Additionally, the computerized Digital Mammography system has the ability to "over-read" the mammogram and act as a second set of trained eyes, offering a second interpretation. This system, called CAD (Computer Assisted Detection) can itself be responsible for detecting 12-15% more breast cancers.

More Comfort

Although Digital Mammography has not yet eliminated the need for compression, it has made it a bit more bearable in a variety of ways. The flexible plates are more forgiving, providing slightly less squeeze. Additionally, due to immediate computer storage of images and the capability to correct digital images, there is less need for repeat visits due to over or under exposure of film or mislabeled or lost x-rays. Because Digital Mammograms require shorter processing time, the overall length of visit is significantly shorter, allowing patients to get on with their day.

A Better Solution

Studies have shown that women with dense breasts benefit from Digital Mammography because the computerized, digital technique is superior to traditional film for analyzing densities that may hide cancers. However, any woman can have dense breasts or dense areas in her breasts, so digital is better for everyone. And every woman will benefit



from the lower dose of radiation as compared to traditional film mammograms. Most insurance companies currently cover Digital Mammography at no additional cost to the patient.

Committed to Excellence

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Until a cure for breast cancer is found, prevention and early detection are key. Make Digital Mammography at DaVinci Diagnostic Imaging your first line of defense.



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PET/CT FUSION

Combining technology, PET/CT FUSION (Positron Emission Tomography/Computed Tomography) is the most progressive cancer detection method to date.

Although each method is capable of identifying cancers independently, this hybrid procedure is the most powerful tool in discovering most types of existing cancers, particularly those found in small, yet complex structures such as the head and neck.

PET is the process of releasing of a small dose of safe, radioactive sugar into the human body to differentiate between normal and cancerous tissue. Healthy tissues convert sugar into energy more effectively than unhealthy or possibly cancerous tissues. In conjunction with the PET process, the CT scans the tissues, generating a highly detailed image of the body's internal geography.

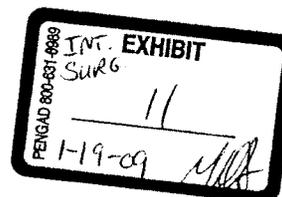
The combined PET/CT Fusion technology allows our specially trained oncologists to view highly detailed images and effectively differentiate between benign and malignant tumors as well as pinpoint tumor size and location.

Performed individually, both PET and CT often require supplementary testing to obtain an accurate reading, significantly increasing the chance for imaging errors and discrepancies due to differences in patient positioning. By combining both technologies into one system, PET/CT Fusion provides more precise and accurate information, allowing doctors to determine the most accurate course of treatment before any cancerous tumors have time to spread.

Get the facts you need for the most effective cancer treatment with advanced PET/CT Fusion at MSPB Diagnostic Imaging.

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64-SLICE CT SCAN

MSPB Diagnostic Imaging is proud to be one of the few centers in the nation, and one of only three in the state of Florida, to offer the 64-slice CT scanner, the newest technology in the fight against heart disease.

This revolutionary technology offers the ability to take unmistakably reflective 3D images of the heart and coronary arteries, non-invasively and within mere seconds, allowing for the most accurate interpretation of the intricate cardiovascular system.

Until now, the standard for discovering heart blockages has been an invasive procedure called a cardiac catheterization. During this procedure a probe is inserted into a blood vessel through an incision in the groin and snaked up toward the heart where an opaque dye is then released. Any arterial blockage then shows up on an X-ray called an angiogram. Cardiac catheterization takes anywhere from four to six hours, can be quite painful and carries the risk of serious complications.

The 64-Slice CT scan at MSPB Diagnostic Imaging uses state-of-the-art technology to take powerful scans of your heart, eliminating the need for invasive surgery altogether. The 64-Slice CT scan takes images so quickly, it actually scans the between heartbeats while the heart is at rest. The procedure can be completed in just eight heartbeats, with results available in just hours.

During the exam, patients lie comfortably on a table that moves them back and forth through the opening of the examination unit. The 64-slice CT scanner then takes rapid images of the heart and the coronary arteries at work and while they are at rest between heartbeats. The advanced speed and technology of the 64-slice CT scanner shortens the total exam time to just 15 to 30 minutes.

The warning signs of heart disease can be difficult to detect. Many people of all ages suffer heart attacks without ever knowing they were at risk. Although heart disease is non-discriminating, some people are better candidates than others for a 64-slice CT scan.

You should strongly consider having a 64-slice CT scan if you have any of the following factors:

- You have close blood relatives who had heart disease or a heart attack at an early age, but you haven't had any heart problems yourself.
- You are at high risk for heart disease due to diabetes, high cholesterol, high blood pressure, smoking, lack of exercise or unhealthy weight.
- You have received abnormal or unclear results on a stress test.

The miraculous technology of the 64-Slice CT Scan makes it possible to diagnose coronary artery disease quicker and safer than ever before. Early diagnosis of this serious disease is vital to successful treatment, prevention of heart attacks and saving lives. Find out about the 64-Slice CT Scanner today. It may save your life.

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DIGITAL MAMMOGRAPHY

Our Digital Mammography offers women significantly more accurate results leading to better detection of breast cancer in the early stages.

Similar to the processing capabilities of a digital camera, Digital Mammography provides cleaner and clearer images, allowing radiologists to detect up to 28% more potential abnormalities than conventional film imaging. The Digital Mammography system also employs the power of CAD (Computer Assisted Detection), which digitally scans the mammogram, offers a second interpretation, and is singly responsible for detecting 12% -15% of present cancers.

Digital Mammography also offers enhanced comfort during the imaging process. Structured to conform to each patient's unique shape and size, the increased flexibility of the imaging plates reduces the amount of compression and resulting discomfort associated with traditional mammography systems.

With breast cancer continuing to be a growing concern for women of all ethnicities, Digital Mammography is the best defense in the fight for early detection. Unfortunately the cost of a Digital Mammography unit is ten times that of traditional film units so most medical facilities still only offer less accurate film mammograms. At MSPB Diagnostic Imaging, we made the investment for you. **Our patients receive all the benefits of Digital Mammography at no additional cost to you!**

Although every woman can get better screenings with Digital Mammography, patients that will experience the highest increase in accuracy over film include:

Women under the age of 50

- Women of any age with very dense or extremely dense breast tissue
- Pre- or peri-menopausal women of any age
- An estimated 212,920 new cases of invasive breast cancer are expected to occur among women in the United States this year alone.

An estimated 40,970 women, or 1 in 5, will die from breast cancer. Early detection is the best defense in preventing potential abnormalities and eliminating existing breast cancers. Breast health is vital to maintaining a long and healthy lifestyle. Maintain your health with Digital Mammography at MSPB Diagnostic Imaging.

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HIGH FIELD MRI

With the dual powers of magnetic field and radio waves, High-Field MRI (Magnetic Resonance Imaging) is the world's leading imaging procedure.

MRI produces intricate images of both the human skeletal structure and soft tissues, including but not limited to muscle, eye, mouth and throat, reproductive organ, and brain composition. Due to its ability to generate these highly sophisticated images, MRI is extremely useful in accurately diagnosing medical conditions and disorders such as:

- Brain and Organ Tumors
- Eye Abnormalities
- Central Nervous System Disorders
- Reproductive System Problems
- Brain Abnormalities Corresponding With Dementia
- Bone and Joint Damage or Infection

MSPB Diagnostic Imaging proudly offers the Avanto High-Field MRI magnet by Siemens with the new TIM (Total Image Matrix)™ Technology. Incorporating today's most advanced technology in the MRI field, the Avanto High-Field MRI offers our patients the utmost in comfort and care. Our MRI patients will enjoy benefits such as Noise Cancellation Technology, reducing up to 97% of noise heard in traditional MRI machines, feet-first exams for nearly all procedures, virtually eliminating the claustrophobic feelings generally associated with the MRI procedure, and most importantly, higher quality images in a shorter time.

For an accurate exam in a more comfortable atmosphere, experience the difference with High-Field MRI at MSPB Diagnostic Imaging.

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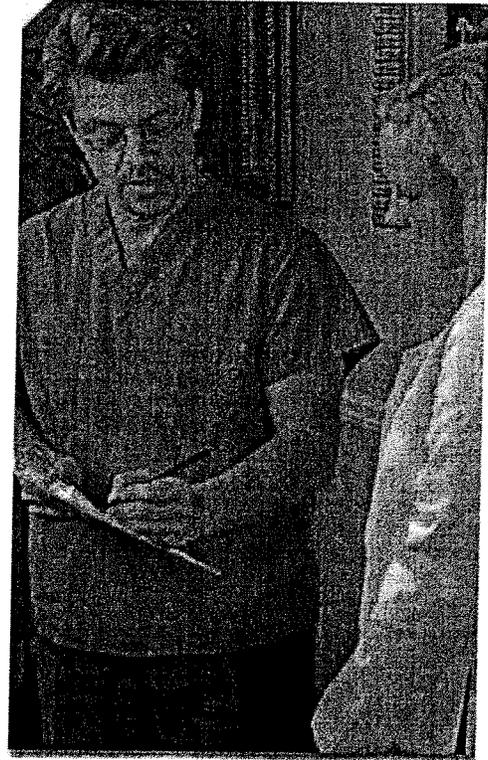
Defining Image

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Located in Atlantis next to JFK Medical Center, DaVinci Imaging Center is the area's premiere imaging facility. DaVinci Imaging Center offers a wide range of imaging services including Digital Mammography, MRI, PET/CT Scan and the revolutionary new 64 Slice CT Scan, one of just three in the state.

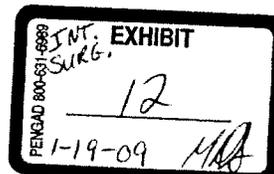
Founded by a highly accredited team of physician radiologists, DaVinci Diagnostic Imaging is committed to providing excellence in patient care with today's most advanced technology in a warm, caring environment.



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Mission/Philosophy Meet The Doctors

Mission/Philosophy

Our passionate physician radiologists are the driving force behind DaVinci Diagnostic Imaging. The desire to provide only top-notch technology, expertise and service has set the bar high at DaVinci and we are proud to offer our patients nothing but the best.

Our mission is to provide patients with the most advanced care possible in a comfortable, compassionate environment. Our investment in state-of-the-art imaging equipment ensures that you receive the finest medical care available using today's top technology.

As one of only three imaging centers in the state to offer 64 Slice CT Scans and as a leader in Digital Mammography, DaVinci Diagnostic Imaging Center is committed to advancing the science of imaging. Through this advancement, we are dedicated to providing superior medical imaging, ensuring more accurate diagnoses, preventing the spread of disease and saving lives.





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High Field MRI 64-Slice CT Digital Mammography PET CT Fusion

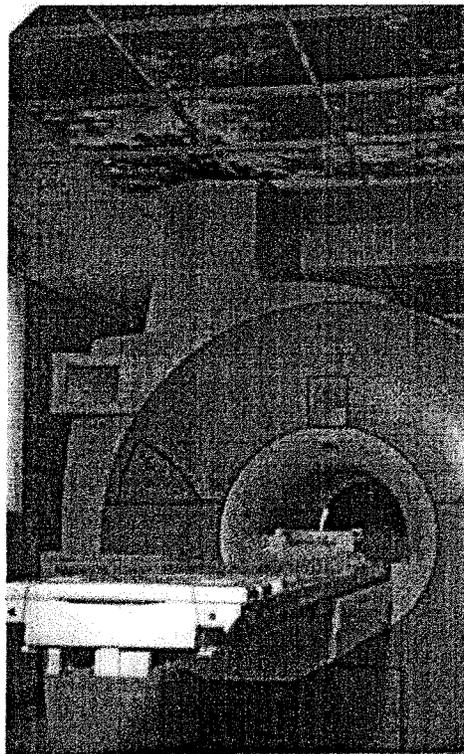
Imaging Services

High Field MRI
With the dual powers of magnetic field and radio waves, High-Field MRI (Magnetic Resonance Imaging) is the world's leading imaging procedure.

64-Slice CT Scanner
We're proud to be one of the few centers in the nation, and one of only three in the state of Florida, to offer the 64-slice CT scanner, the newest technology in the fight against heart disease.

Digital Mammography
Our Digital Mammography offers women significantly more accurate results leading to better detection of breast cancer in the early stages.

PET/CF Fusion
Combining technology, PET/CT FUSION (Positron Emission Tomography/Computed Tomography) is the most progressive cancer detection method to date.





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Make An Appointment

To schedule an appointment for any of DaVinci Diagnostic Imaging service, call 561-968-3310.

New patient?

Save time at your appointment by downloading our New Patient Form and bringing it with you!

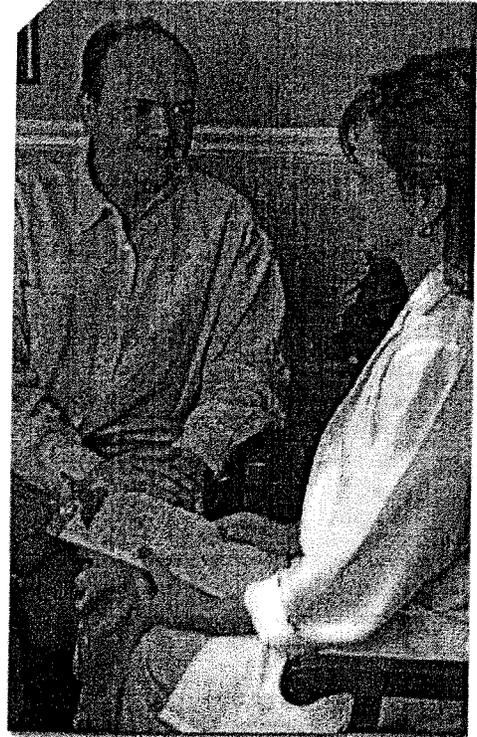
Wondering about your insurance coverage?

We accept most insurance plans for our services.

Digital Mammography is covered by most insurances with no additional cost to you over what your normal co-pay is for a film mammogram.

Please note: 64 Slice CT Scans may not be covered by your insurance.

We will be happy to check your insurance coverage prior to your visit. Just call 561-968-3310 to verify coverage.





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Press Room

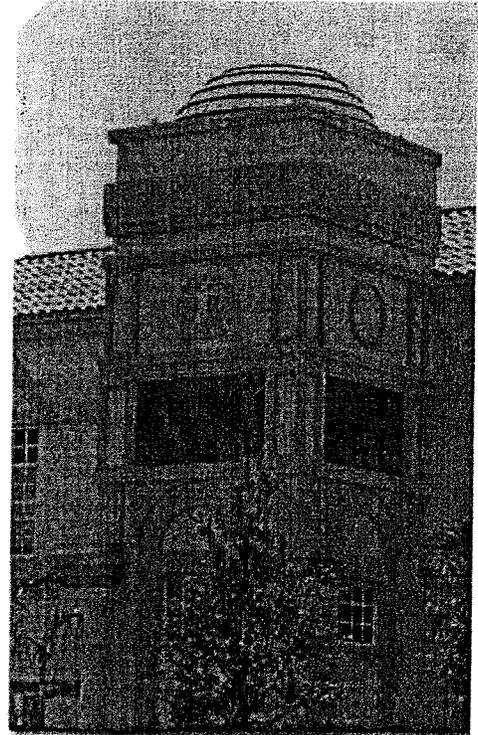
Links:

[The Number One Killer of Women Revealed](#)

[How New Heart-Scanning Technology Could Save Your Life](#)

[Mammograms: digital vs. film](#)

[Saltz Michelson Architects Designs DaVinci Diagnostic Imaging Center](#)





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Contact Us

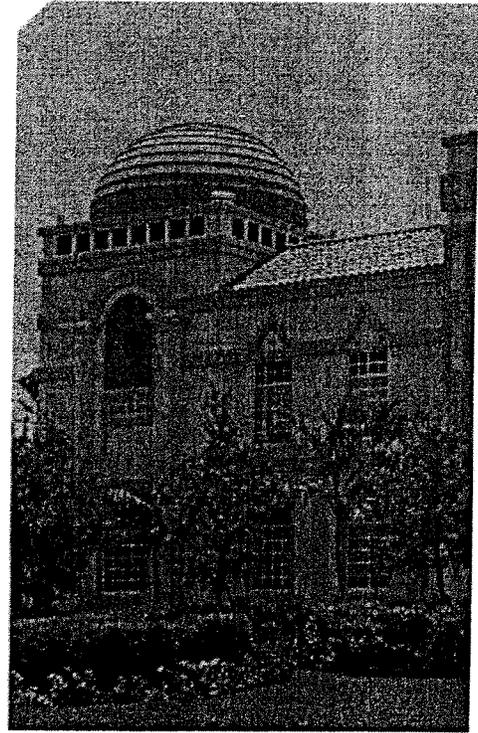
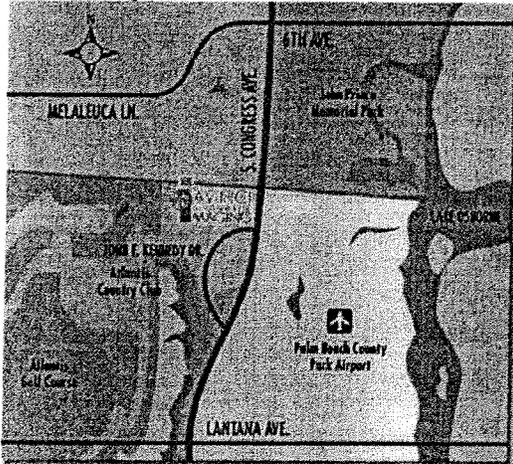
DaVinci Diagnostic Imaging
 101 JFK Drive
 Atlantis, FL 33462
 561-968-3310
www.davinci-imaging.com
info@davinci-imaging.com

Directions:

From I-95: Exit at I-95 at 6th Avenue South. Go west to Congress Avenue and turn left (south). We are approx. 1/2 mile on the right (west) side of the road.

From FL Turnpike: Exit at Lake Worth Road. Go east to Congress and turn right (south). We are approx. 1/2 mile south of 6th Avenue South on the right (west) side of the road.

Click to Enlarge



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

INTUITIVE SURGICAL, INC.,

Opposer,

v.

DAVINCI RADIOLOGY ASSOCIATES,
P.L.,

Applicant.

Opposition No. 91175319

Serial No. 78/728,,786

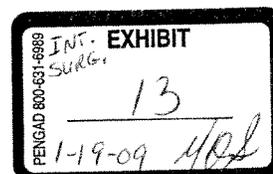
Published: December 19, 2006

DECLARATION OF THOMAS P. BOYLE, M.D. IN SUPPORT OF APPLICANT'S
RESPONSE TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT

I, Thomas P. Boyle, M.D., declare:

1. I am a member of DaVinci Radiology Associates, P.L. ("Applicant"), authorized by Applicant's membership to act on its behalf in this Opposition Proceeding.
2. The undersigned, being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements and the like may jeopardize the validity of the application or documents or any registration resulting therefrom, declares that all statements made of his own knowledge are true and all statements on information and belief are believed to be true.
3. If called as a witness, I could and would competently testify to the following:
4. Applicant is a four-member group of radiologists, organized as a professional limited liability company under the laws of the State of Florida.

Intuitive Surgical, Inc. V DaVinci
Radiology Associates, P.L.
Opposition No. 9117539
Thomas P. Boyle, M.D. - 1/19/09
Intuitive Surgical's Exhibit No. 13



5. From 2003-2005, Medical Management of the Palm Beach, LLC, a Florida limited liability company ("MMPB"), consisting at that time of the same members as Applicant, constructed a building (the "Building") for Applicant's diagnostic imaging business.
6. Instead of owning and operating the diagnostic imaging business itself, on August 1, 2005, MMPB leased the Building and subleased the diagnostic imaging equipment to Medical Specialists of the Palm Beaches, Inc., a Florida corporation ("MSPB").
7. Also on August 1, 2005, Applicant contracted with MSPB to be its exclusive independent contractor for purposes of performing MSPB's diagnostic imaging services at the Building and its existing imaging center location at 5401 S. Congress, Atlantis, Florida 33462 ("5401").
8. Upon information and belief, the website, www.mspb.md, to the extent it is devoted to diagnostic imaging services, is directed towards patients, not doctors. The website, www.davinci-imaging.com is directed at patients, not doctors.
9. Applicant exclusively licensed its mark to MSPB pursuant to the terms of that certain Exclusive License Agreement between Applicant and MSPB, dated August 1, 2005.
10. Upon information and belief, MSPB is likely to continue to use the internet and brochures as trade channels for diagnostic imaging services with Applicant's mark. Members of Applicant are likely to visit and present at doctors' offices with Applicant's mark. Upon information and belief, it is improbable that Applicant's members will run into one of Opposer's sales force at another doctor's office. Upon information and belief, MSPB is unlikely to advertise diagnostic imaging services with Applicant's mark in journals or publications that target physicians, health care professionals, and the administrators of hospitals and surgical centers. Upon information and belief, MSPB is unlikely to engage in direct sales calls for diagnostic imaging services using Applicant's mark to physicians, surgeons and administrators

of hospitals and surgical centers. Upon information and belief, MSPB is unlikely to conduct, using Applicant's mark, workshops for and training or other education of surgeons and physicians about the field of radiology. Upon information and belief, MSPB is unlikely to present at meetings of medical associations and societies regarding diagnostic imaging services using Applicant's mark, or distribute promotional materials other than brochures and on the websites, www.mspb.md and www.davinci-imaging.com.

I declare under penalty of perjury under the laws of the State of Florida and the United States of America that the foregoing is true and correct.

Executed this 7th day of May 2008, at Atlantis, Florida.



Thomas P. Boyle, M.D.