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

Proceeding	91175319
Party	Defendant DaVinci Radiology Associates, P.L.
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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

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**APPLICANT'S MOTION TO TAKE THE TESTIMONIAL DEPOSITION**  
**OF BENJAMIN GONG ORALLY IF MOTION TO STRIKE NOTICE IS DENIED**

If the Board denies Applicant's Motion to Strike Opposer's Notice of Testimonial Deposition Upon Written Questions of Benjamin Gong, filed herewith, then Applicant respectfully moves the Trademark Trial and Appeal Board (the "Board") to order that the deposition of Benjamin Gong be taken by oral examination for the following reasons:

1. If a party serves notice of the taking of a testimony deposition on written questions of a witness who is, or will be at the time of the deposition, present within the United States (or any territory which is under the control and jurisdiction of the United States), any adverse party may, within 15 days from the date of service of the notice (20 days if service of the notice was by first-class mail, "Express Mail," or overnight courier--see 37 CFR § 2.119(c)), file a motion with the Board, for good cause, for an order that the deposition be taken by oral examination. *See* 37 CFR § 2.123(a)(1), and TBMP § 703.01(b) (Form of Testimony) and cases cited therein.
2. "A deposition on written questions is a cumbersome, time-consuming procedure. It requires that cross questions, redirect questions, recross questions, and objections all be framed

and served before the questions on direct examination have even been answered. Moreover, it deprives an adverse party of the right to confront the witness and ask follow-up questions on cross examination.” *See*, TBMP § 703.02(m) and authority cited therein.

3. In the immediate matter, Opposer filed its Notice of Deposition seven days into its rebuttal testimony period on May 7, 2009. The trial was almost over. A deposition on written questions will unnecessarily prolong the trial for a long time. The deponent is in the United States. All of Opposer’s other witnesses’ testimony were taken orally. Oral testimony will speed this matter along and allow for all questions to be asked. Applicant will be able to ask Benjamin Gong questions based on his responses to Opposer’s questions, instead of Applicant framing questions based on how Opposer framed its written questions. All of these reasons are good cause to grant Applicant’s motion for oral testimony.

For the foregoing reasons, Applicant respectfully demands that if the Board denies Applicant’s Motion to Strike Opposer’s Notice of Deposition upon Written Questions filed of even date herewith, then the Board should order that Benjamin Gong’s deposition be taken orally.

Respectfully submitted,



Matthew T. Vanden Bosch  
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Dated: May 15, 2009

**CERTIFICATE OF SERVICE**

*Intuitive Surgical, Inc. v. DaVinci Radiology Associates, P.L.*  
Opposition No. 91175319

On May 15, 2009, I hereby certify that I served a copy of Applicant's Motion to Take the Testimonial Deposition of Benjamin Gong Orally if Motion to Strike Notice is Denied

By U.S. Mail to:

Michelle J. Hirth, Esq.  
Embarcadero Four, 17th Floor  
San Francisco, California 94111

Executed on May 15, 2009, at Boynton Beach, Florida.

  
Matthew T. Vanden Bosch