

ESTTA Tracking number: **ESTTA284747**

Filing date: **05/18/2009**

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

Proceeding	91175319
Party	Plaintiff Intuitive Surgical, Inc.
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Date	05/18/2009
Attachments	ISMotiontoExtendRebuttalPeriod.pdf (4 pages)(158808 bytes)

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

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

OPPOSER INTUITIVE SURGICAL, INC.'S MOTION FOR EXTENSION
OF OPPOSER'S REBUTTAL PERIOD IN LIGHT OF THE BOARD'S MAY 18, 2009 ORDER

Opposer Intuitive Surgical, Inc. ("Opposer") hereby submits this motion to extend Opposer's rebuttal period in light of the Trademark Trial and Appeal Board's (the "Board") Order issued on May 18, 2009. Due to the unavailability of the witness and Opposer's counsel during the five days during which the oral deposition may be taken under the Board's Order, Opposer requests a 15-day extension of its rebuttal period to provide sufficient time to take the oral deposition testimony of its witness.

I. STATEMENT OF FACTS

On May 7, 2009, Opposer filed a Notice of Testimonial Deposition Upon Written Questions of Benjamin Gong to be taken during Opposer's rebuttal testimony period. Opposer filed its Notice of Testimonial Deposition Upon Written Questions of Benjamin Gong pursuant to 37 C.F.R. §§ 2.123(a) and 2.124(b)(1) which allow for the taking of a deposition upon written questions during a party's testimony period but are not clear whether that testimony period includes an opposer's rebuttal period. Opposer filed its Notice of Testimonial Deposition Upon

Written Questions of Benjamin Gong under the belief that the Trademark Rules allowed such depositions during an opposer's rebuttal testimony period, which now has been clarified by the Interlocutory Attorney.

In response to the motions of Applicant DaVinci Radiology Associates, P.L.'s ("Applicant") to strike the notice of taking deposition upon written questions and requesting that the subject deposition be taken orally, the Board issued an Order on May 18, 2009 in which it granted Applicant's motion to have the deposition taken by oral testimony and extended Opposer's rebuttal period by ten days to conduct the deposition. Pursuant to the Board's Order, Opposer's rebuttal period now closes on May 24, 2009.

II. ARGUMENT

Opposer's counsel received the Board's Order on May 18, 2009 and immediately contacted the witness, Benjamin Gong, to determine his availability for oral deposition between May 18 and May 24, 2009. Late in the evening on May 18, 2009, Opposer's counsel learned that Mr. Gong is currently out of town and will not return to California until Thursday, May 23, 2009. Counsel for Opposer is scheduled to be away from the office and is unavailable from May 21, 2009 through May 26, 2009. Accordingly, the availability of the witness and of Opposer's counsel do not overlap at any time between May 18 and May 24, the period during which Mr. Gong's oral deposition may be taken under the Board's Order. Moreover, under the current time frame, Opposer is unable to provide to Applicant the generally accepted ten days reasonable notice of the oral deposition.

Given the short period during which Opposer can take the oral deposition of the witness, the very limited availability of the witness during this time, the limited availability of Opposer's counsel during this time and the lack of any overlap in their availability between May 18 and May 24, Opposer hereby requests a 15-day extension of its rebuttal period to allow sufficient

time to take the oral deposition of Mr. Gong. A 15-day extension of time will not prejudice Applicant. Applicant has itself requested that the deposition be taken orally rather than upon written questions and a short extension of Opposer's rebuttal period to allow Opposer to do so will not negatively affect Applicant's defenses in this proceeding.

III. CONCLUSION

For the foregoing reasons, Opposer respectfully requests that this Board grant its motion for extension of Opposer's rebuttal period and extend Opposer's rebuttal period for an additional 15 days to June 8, 2009 so Opposer may have sufficient time to take the oral deposition of Mr. Gong.

Dated: May 8, 2008

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By 

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Opposer Intuitive Surgical, Inc.'s Motion for Extension of Opposer's Rebuttal Period in Light of the Board's May 18, 2009 Order** was served on Applicant DaVinci Radiology Associates, P.L., by First Class U.S. Mail, postage prepaid to:

Matthew T. Vanden Bosch, Esq.
301 Clemetis Avenue, Suite 3000
West Palm Beach, FL 33401

Attorneys for Applicant

This 18 day of May, 2009.


Kathryn Campion