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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.
Correspondence Address	Matthew Vanden Bosch 8 Hudson Avenue Ocean Ridge, FL 33435 UNITED STATES mvbosch@comcast.net
Submission	Opposition/Response to Motion
Filer's Name	Matt Vanden Bosch
Filer's e-mail	mvbosch@comcast.net
Signature	/Matt Vanden Bosch/
Date	05/19/2009
Attachments	Document (7).pdf (3 pages)(47095 bytes)

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 BRIEF IN OPPOSITION TO

OPPOSER'S MOTION FOR EXTENSION OF TIME

Applicant DaVinci Radiology Associates, P.L. ("Applicant"), respectfully requests the Trademark Trial and Appeal Board (the "Board") deny the Motion for an Extension of Time, dated May 18, 2009 (the "Motion"), of Opposer Intuitive Surgical, Inc. ("Opposer").

Opposer fails to show good cause when it is extremely likely that the Board will exclude Mr. Gong's testimonial deposition. As revealed from Opposer's written questions, Mr. Gong's deposition is aimed at introducing the circumstances behind Opposer's Opposition Case No. 91158726 against Serial No. 76248902, "Da Vinci", and later Registration No. 2,870,790, one of the registrations listed in paragraph 2 of Applicant's Notice of Reliance.

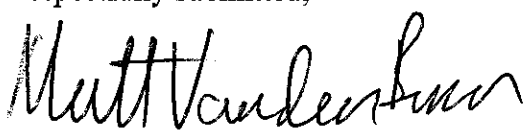
As argued in Applicant's Motion to Strike, the testimony goes beyond the scope of Applicant's defense. Also, why Opposer withdrew its opposition is irrelevant to any issue in this matter.

On September 10, 2003, the Board filed a Notice of Publication for Serial No. 76248902, "Da Vinci," stating that it was entitled to registration. Opposer's instituted opposition

proceeding number 91158726. Later the parties settled. The Board issued Registration Certificate No. 2,870,790 on August 10, 2004. Judging from the written questions, Opposer's position seems to be that the settlement of the opposition proceeding would have been the Board's decision if the matter proceeded to trial. That is speculation at best.

Applicant listed Registration Certificate No. 2,870,790 in its Notice of Reliance to show the number and nature of similar marks in use on similar goods and services, along with the weak and narrowly construed rights associated with a mark in a crowded field of similar marks. Applicant submits that because Mr. Gong's deposition is outside the scope of Applicant's defense and relevant to no issue in this case, instead of waiting for the final hearing in this matter, the Board should take the opportunity now to rule on this evidentiary issue and prevent an irrelevant, but timely and expensive, deposition.

Respectfully submitted,



Dated: May 19, 2009

Matthew T. Vanden Bosch
Attorney for Applicant
DaVinci Radiology Associates, P.L.
301 Clematis Avenue, Suite 3000
West Palm Beach, FL 33401
(561) 736-4696

CERTIFICATE OF SERVICE

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

On May 19, 2009, I hereby certify that I served a copy of Applicant's Brief in Opposition to Opposer's Motion for an Extension of Time

By first class, U.S. mail, postage prepaid to:

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

Executed on May 19, 2009, at Boynton Beach, Florida.

Matthew T. Vanden Bosch