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Friday, 13 April 2007

*Via Federal Express*

U. S. Patent and Trademark Office  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
South Tower Building, Ninth Floor  
Arlington, VA 22202-3514

Re: Intuitive Surgical, Inc. vs. DaVinci Radiology Associates, P.L.  
Opposition No. 91175319  
Trademark Davinci Diagnostic Imaging & Design

Gentlemen:

Enclosed for filing is a Motion for Order Setting Aside Default.

Thank you for your attention to this matter. If there is any problem with this filing, please notify this office immediately.

Sincerely yours,



Beverly Sennett  
Certified Legal Assistant

Enclosures



04-20-2007  
U.S. Patent & TMO/TM Mail Rcpt Dt. #72

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

INTUITIVE SURGICAL, INC.,	)	
	)	Opposition No. 91175319
Opposer,	)	
	)	Serial No. 78/728,786
v.	)	
	)	Filed: October 7, 2005
DAVINCI RADIOLOGY	)	
ASSOCIATES, P.L.	)	Published: December 19, 2006
	)	
Applicant,	)	Trademark: DAVINCI DIAGNOSTIC IMAGING & DESIGN

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**MOTION FOR ORDER SETTING ASIDE DEFAULT**

DaVinci Radiology Associates, P.L. ("DRA") moves for entry of an order setting aside the default entered against it and as good cause pursuant to Fed. R. Civ. P. 55 (c) shows the following:

1. The answer in this case was due on March 6, 2007.
2. On February 19, 2007 Intuitive Surgical agreed to give DRA until April 5, 2007 to file an answer and on March 30, 2007 this time to file an answer was extended by Intuitive Surgical to May 4, 2007.
3. As a result of a calendaring error, the undersigned counsel for DRA did not file a motion to extend the time for filing an answer until after the original due date.
4. A Stipulation extending the time to answer in the form attached hereto was submitted to counsel for Intuitive Surgical on April 6, 2007; however, counsel was not available to sign the stipulation until April 11, 2007.

5. Counsel for Intuitive Surgical indicated that the Stipulation would be signed and that a motion for an order extending the time for the filing of an answer would not be opposed.

6. Prior to the entry of the default, DRA served its Motion for Order Approving Stipulation to Extend Time for Filing Response to Notice of Opposition on April 6, 2007 and mailed it to the Trademark Trial and Appeal Board for filing the same day. A copy of the Motion and the signed Stipulation are attached hereto as Exhibit A.

7. There will be no prejudice to Intuitive Surgical and it will serve the ends of justice to permit the case to be determined on its merits.

8. DRA asserts that it has a meritorious defense to the Opposition in that DRA is in the business of providing diagnostic imaging services and does not manufacture or sell robotic surgical equipment, components or services.

WHEREFORE, DRA requests entry of an Order setting aside the default and, pursuant to the stipulation between the parties, extending the time for DRA to file an answer to May 4, 2007.

#### VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing Motion and that the allegations therein are true.

  
Kirk Friedland, Attorney for DRA

## CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Stipulation has been served on Michelle D. Kahn, by mailing said copy on April 13, 2007, via First Class Mail, postage prepaid to: Michelle D. Kahn, SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP, Four Embarcadero Center, 17<sup>th</sup> Floor, San Francisco, CA 94111.

A handwritten signature in black ink, appearing to read "Kirk Friedland", written over a horizontal line.

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Attorney for Applicant DRA

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**MOTION FOR ORDER APPROVING STIPULATION TO EXTEND TIME FOR  
FILING RESPONSE TO NOTICE OF OPPOSITION**

DaVinci Radiology Associates, P.L. ("DRA") moves for entry of an order approving a stipulation with Intuitive Surgical, Inc. ("Intuitive Surgical") extending the time for DRA to file a response to the Notice of Opposition until May 4, 2007 and states:

1. Intuitive Surgical filed its Notice of Opposition on January 22, 2007.
2. On February 19, 2007 Intuitive Surgical agreed to give DRA until April 5, 2007 to file a response to its Opposition and on March 30, 2007 this date was extended by Intuitive Surgical to May 4, 2007.
3. A Stipulation in the form attached hereto was submitted to counsel for Intuitive Surgical on April 6, 2007; however, counsel will not be available to sign the stipulation until she returns to the office on April 11, 2007.

4. Counsel for Intuitive Surgical has indicated that the Stipulation will be signed and that this motion will not be opposed.

WHEREFORE, DRA requests entry of an Order extending the time for the filing of a response to the Opposition to May 4, 2007.

#### CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Stipulation has been served on Michelle D. Kahn, by mailing said copy on April 6, 2007, via First Class Mail, postage prepaid to: Michelle D. Kahn, SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP, Four Embarcadero Center, 17<sup>th</sup> Floor, San Francisco, CA 94111.



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**STIPULATION TO EXTEND TIME FOR  
FILING RESPONSE TO NOTICE OF OPPOSITION**

DaVinci Radiology Associates, P.L. ("DRA") and Intuitive Surgical, Inc. have stipulated that DRA may have until May 4, 2007 to file a response to the Notice of Opposition.

SHEPPARD, MULLIN, RICHTER  
& HAMPTON, LLP

By: 

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