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

Proceeding	91184415
Party	Plaintiff Intuitive Surgical, Inc.
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INTUITIVE SURGICAL, INC.,)	
)	Opposition No. 91184415
Opposer,)	
)	Serial No. 77/321,258
v.)	
)	Filed: November 5, 2007
DA VINCI CENTER, L.L.C.,)	
)	Published: April 8, 2008
Applicant.)	
)	

OPPOSITION TO MOTION FOR EXTENSION OF TIME
TO RESPOND TO DISCOVERY

Opposer Intuitive Surgical, Inc. ("Opposer") hereby submits its opposition to Applicant Da Vinci Center, L.L.C.'s ("Applicant") Motion for Extension of Time to Respond to Discovery.

I. INTRODUCTION

Opposer initiated this Opposition Proceeding by filing a Notice of Opposition on June 3, 2008. On July 14, 2008, Applicant sought, and obtained, an extension of time to file its answer to the Notice of Opposition. Since that time, Opposer has contacted Applicant's counsel on numerous occasions to discuss potential informal resolution of this proceeding. On many of those occasions and despite assurances that they would respond or contact Opposer's counsel regarding such resolution, Applicant's counsel have failed to do so.

On February 17, 2009, Opposer served by U.S. Mail on Applicant its First Set of Requests for Production of Documents and Things to Applicant, First Set of Requests for Admission to Applicant and First Set of Interrogatories to Applicant (the "Discovery"). Responses to the Discovery were due on March 24, 2009. Only one day before, on March 23, 2009, counsel for Applicant contacted counsel for Opposer and, among other things, sought an extension of time to March 27, 2009 to provide the responses. Counsel for Opposer agreed to the requested extension of time.

On March 27, 2009, at approximately 1:30 p.m. Eastern time, counsel for Applicant contacted counsel for Opposer. In an ensuing telephone conversation, counsel for Applicant stated that his law firm was going through certain changes and requested an additional 10-day extension of time – to April 6, 2009 – to respond to the Discovery. Opposer granted Applicant until the close of business on April 1, 2009 to provide responses to the Discovery. Pursuant to the Board's Order of July 30, 2008, Opposer's pretrial disclosures must be served no later than April 4, 2009.

II. ARGUMENT

This Board should deny Applicant's Motion on two grounds. First, Applicant is seeking to provide responses to the Discovery after the date upon which Opposer must serve its pretrial disclosures in this proceeding, thereby prejudicing Opposer. A party's discovery responses do not dictate the opposing party's pretrial disclosures. However, discovery responses, including produced documents, inform the opposing party's case and the opposing party's pretrial disclosures. Here, Opposer's pretrial disclosures are due on or before April 4, 2009. Nonetheless, Applicant sought from Opposer an extension of time to April 6 to respond to the Discovery and seeks from the Board an even longer extension of time – to April 10, 2009. Both

requests would delay receipt of Applicant's responses to the Discovery until well after Opposer must prepare and serve its pretrial disclosures, thereby depriving Opposer of the opportunity to review and incorporate in its pretrial disclosures Applicant's responses to the Discovery.

Opposer agreed to an extension of time to April 1, 2009, which both provided Applicant with a full 38 days – eight days more than statutorily provided – to respond to the Discovery and provided Opposer with at least two days to review the responses and use them to inform its pretrial disclosures. Applicant is seeking to deprive Opposer of that opportunity here.

Second, Applicant has not requested an extension of, and this Board should not *sua sponte* extend, the testimony periods or the corresponding pretrial disclosure deadline in this proceeding. Since this proceeding was initiated, Opposer has contacted Applicant many times regarding informal resolution of this matter. On a number of occasions, Applicant has promised to get back to Opposer and has failed to do so, thereby unnecessarily delaying any resolution of this proceeding. Any extension of the testimony periods here would simply further delay this case. In addition, as described above, allowing Applicant to respond to the Discovery after Opposer's pretrial disclosures are due would prejudice Opposer. Accordingly, this Board should not allow further delay. Opposer's agreed-to deadline of April 1, 2009 is perfectly reasonable and accounts for the concerns of both Applicant and Opposer.

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III. CONCLUSION

For the foregoing reasons, Opposer requests that this Board deny Applicant's Motion for Extension of Time to Respond to Discovery.

DATED: March 27, 2009

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By



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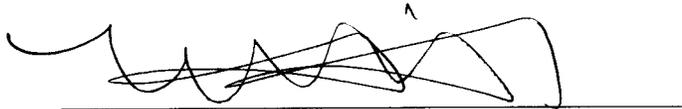
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **OPPOSITION TO MOTION FOR EXTENSION OF TIME TO RESPOND TO DISCOVERY** was served on Applicant, Da Vinci Center, L.L.C., by email to pkobak@kpkb.com and mchesal@kpkb.com and by First Class U.S. Mail, postage prepaid, to:

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This 27th day of March, 2009.

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

Michelle Hirth