

TTAB

Fredrikson  
& BYRON, P.A.

May 25, 2007

Commissioner for Trademarks  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Re: Masimo Corporation v. Medtronic, Inc.  
Mark: INSYNC MAXIMO  
Cancellation No.: 92,046,064  
Registration No. 2,968,680

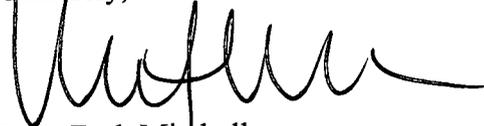
78/341,539

Masimo Corporation v. Medtronic, Inc.  
Mark: MAXIMO  
Cancellation No.: 92,046,058  
Registration No.: 2,916,730

Dear Commissioner:

Enclosed for filing is a Stipulated Motion to Consolidate Proceedings in connection with the above matters.

Sincerely,



Lora Esch Mitchell

*Attorney*

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**Email:** lmittell@fredlaw.com

LEM/mp/4199662

Enclosure

cc: Stacey R. Halpern, Esq.  
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05-29-2007

U.S. Patent & TMO/TM Mail Rcpt Dt. #30

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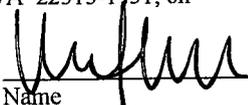
OFFICES  
Minneapolis, London, & Monterrey, Mexico

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

Masimo Corporation,	)	Cancellation No. 92,046,064
	)	Registration No. 2,968,680
Petitioner,	)	Mark: INSYNC MAXIMO
v.	)	
Medtronic, Inc.,	)	
	)	
Registrant.	)	
	)	
<i>and</i>	)	
	)	
Masimo Corporation,	)	Cancellation No. 92,046,058
	)	Registration No. 2,916,730
Petitioner,	)	Mark: MAXIMO
v.	)	
Medtronic, Inc.,	)	
	)	
Registrant.	)	
	)	
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**CERTIFICATE OF MAILING**

I hereby certify that this document is being deposited with the United States Postal Service as First Class Mail under 37 C.F.R. 1.8 and is addressed to the Commissioner for Trademarks, Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, VA 22313-1451, on

5/25/07      

Date                      Name

**STIPULATED MOTION TO CONSOLIDATE PROCEEDINGS**

IT IS HEREBY STIPULATED AND AGREED by the parties to the above-entitled proceedings, through their respective undersigned counsel, as follows:

Medtronic, Inc. owns the two registrations involved in the above proceedings: Registration No. 2,968,680 for the mark INSYNC MAXIMO used in connection with “medical devices, namely implantable pulse generators and cardioverter defibrillators, component parts and fittings therefor,” and Registration No. 2,916,730 for the mark MAXIMO used in connection with “medical device, namely, implantable cardioverter defibrillator, parts and fittings therefor.”

Masimo Corporation filed petitions to cancel both registrations, allegedly because the marks are confusingly similar to the Petitioner's trademark, MASIMO, and because the marks dilute the Petitioner's trademark.

Under Federal Rule of Civil Procedure 42(a), as made applicable by Trademark Rule 2.116(a), cases may be consolidated when they involve common question of law or fact. *See* Fed. R. Civ. P. 42 (a)

The parties agree that Cancellation Nos. 92,046,064 and 92,046,058 involve common questions of law and fact. The Petitioner seeks to cancel the registrations on the same grounds --that the marks are confusingly similar to and dilute the Petitioner's trademark. The parties also agree that consolidation of these proceedings will save time, effort, and expense.<sup>1</sup> Accordingly, the parties request that the Board consolidate the actions.

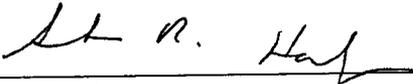
Dated: May 11, 2007



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Dated: May 17, 2007



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<sup>1</sup> Avoiding duplication of effort concerning the common issues in the case is sufficient basis for consolidation. *See S. Industries Inc. v. Lamb-Weston Inc.*, 45 USPQ2d 1293, 1297 (TTAB 1997).