



## **Intuitive Surgical Receives Favorable Rulings in Two of Three Patent Interferences Against Computer Motion; District Court Extends Litigation Stay**

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SUNNYVALE, Calif., Apr 2, 2002 (BUSINESS WIRE) -- Intuitive Surgical, Inc. (NASDAQ:ISRG), the industry leader in operative surgical robotics, announced today that a unanimous three-judge panel of the United States Patent Office (PTO) has denied every motion Computer Motion filed in two of the three interference proceedings with Intuitive. The PTO also has granted several of Intuitive's own motions, thereby affirmatively invalidating on multiple grounds the majority of Computer Motion's involved patent claims. As a result of these decisions, the PTO has entered judgment against Computer Motion in the first interference and has indicated "judgment will eventually be entered" against Computer Motion in the second interference after a brief evidentiary period. In the third interference, the PTO entered an "Order to Show Cause" against Intuitive on an issue that Computer Motion did not appear to argue, to which Intuitive may respond in the next month. Significantly, however, the PTO explicitly did not decide whether Computer Motion's third patent is actually valid, leaving that issue in doubt.

"These decisions by the Patent Office put Computer Motion on formal notice that most of its arguments regarding its three patents were flawed, and that the Patent Office believes Intuitive, not Computer Motion, should own at least two of the three disputed inventions," explained David Shaw, Intuitive's Vice President, Legal Affairs & Corporate Counsel. "Equally important, since the issues decided adversely to Computer Motion permeate its other relevant patents, we believe the potential ramifications of these decisions on what remains of Computer Motion's portfolio are significant. These decisions are, of course, subject to appeal. However, the multiple grounds on which the Patent Office based its decisions should make it very difficult for Computer Motion to try to recover any of the lost ground should it try to challenge the Patent Office's decisions in district court or on appeal."

With its interference proceedings, Intuitive challenged the three U.S. patents that constituted the heart of Computer Motion's portfolio, numbers 5,878,193, 5,855,583 and 5,907,664. In three separate 1999 press releases, Computer Motion characterized these three patents as "fundamental" to the field of surgical robotics and as "essential for the successful integration of robotics into the operating room." As a result of the Patent Office's decisions, subject of course to appeal, Computer Motion has now lost one of its "fundamental" surgical robotics patents to Intuitive -- the "193" patent -- and is on the verge of losing the "583" patent as well. Notably, the "583" patent includes Computer Motion's original "wristed" instrument claims.

"These favorable rulings are a very significant development for Intuitive," stated Lonnie Smith, Intuitive's President and CEO. "These decisions rejecting most of Computer Motion's arguments and clarifying the broad scope of SRI's early robotic surgery work vindicate our requests for the Patent Office's intervention on patents that we believe should never have issued to Computer Motion. These decisions further support the California Court's decision to stay Computer Motion's litigation against Intuitive on all of its closely related patents. Since we do not believe Computer Motion has the grounds to upset any of these decisions, we now anticipate eventual entry of judgment in our favor in the second interference, to add to the judgment we already have in the first. We also look forward to trying to address the Patent Office's concern in the third interference. Importantly, we will now be able to work with the Patent Office to secure for Intuitive patent rights to these inventions."

In the third interference involving the "664" patent, the Patent Office raised an issue called "written description" with one of Intuitive's own patent claims that Computer Motion did not appear to argue. "Out of the myriad issues raised in Computer Motion's papers, we are encouraged that only this single concern remains," stated Mr. Shaw. "We hope to be able to cure this shortcoming in the next several months. While the Order in this interference is not favorable to Intuitive, we are extremely pleased with how our efforts in the Patent Office as a whole have paid off, even including the fact that the validity of the '664' patent remains in doubt."

"We did not - and do not - file legal challenges lightly," Mr. Smith added. "It is better for all involved to concentrate on the operating room, rather than the court room. However, we felt we had no choice but to defend ourselves and respond to clear efforts by Computer Motion to seek patents on technology and ideas that Computer Motion characterized as 'essential' to robotic surgery but which were developed by SRI International, IBM Corporation and others of Intuitive's partners long before Computer Motion entered the field."

On a related note, during the past 12 months, Intuitive has received over 10 additional U.S. patents on various aspects of robotic surgery technology, some of which are embodied in the da Vinci(TM) Surgical System, and has also licensed several other robotic surgery patents from Olympus Optical Co, Ltd. of Japan, bringing the total in Intuitive's portfolio to over 85 issued U.S. patents and dozens of others pending. "These newly issued and licensed patents strengthen Intuitive's intellectual property portfolio in robotic surgery and further solidify Intuitive's ability to protect its business and technology," Mr. Shaw stated.

### The Interference Process

In mid-1999, Intuitive Surgical formally objected to several of Computer Motion's patents and requested that the U.S. Patent Office intervene. As a result, in December 2000, the U.S. Patent Office declared three interference proceedings between a single SRI International patent application exclusively licensed to Intuitive and three of Computer Motion's U.S. patents, numbers 5,878,193, 5,855,583 and 5,907,664. Each of the three disputed inventions concerns various aspects of robotic surgery.

An interference is a proceeding within the U.S. Patent Office to resolve questions regarding the patentability of inventions and who first invented subject matter claimed by two or more patents or patent applications.

In the three interferences described above, the Patent Office designated SRI/Intuitive as the "Senior Party" because its patent application was filed in January 1992, at least seven months before the earliest filing date of Computer Motion's patents. As "Junior Party" in the interferences, Computer Motion bears the burden of proving that it is entitled to keep its patents.

Almost immediately upon the Patent Office's declarations of interference, the U.S. District Court for the Central District of California stayed the litigation Computer Motion filed in May 2000 against Intuitive on a series of patents intimately related to the three questioned by Intuitive and the Patent Office. Despite Computer Motion's multiple attempts to lift the Stay during 2001, including through an abandoned appeal, the District Court left the Stay in place. More recently, because of the substantial overlap of issues between the interferences and the litigation, the District Court on February 13, 2002 and again on March 25, 2002 further extended the Stay over Computer Motion's objections, to allow the Patent Office to issue its decisions. During the next month, Intuitive will report to the District Court on what has now occurred. A Status Conference will be held in May 2002, at which time the litigation likely will resume now that the Patent Office has weighed in.

#### About Intuitive Surgical's da Vinci(TM) Surgical System

First cleared by the FDA in 1997 for assisting surgery and in July 2000 for performing surgery, the da Vinci(TM) Surgical system is still the only operative robotic surgery system cleared by the FDA to perform surgery. The system consists of a surgeon's console, a patient-side cart, a high performance 3-D vision system and Intuitive Surgical's proprietary EndoWrist(TM) articulating instruments. By integrating computer-enhanced robotic technology with the technical skills of the surgeon, we believe that our system enables surgeons to perform better surgery in a manner never before experienced. The da Vinci(TM) Surgical System seamlessly translates the surgeon's natural hand and wrist movements on instrument controls at the console into corresponding micro-movements of instruments positioned inside the patient through small puncture incisions, or ports.

The da Vinci(TM) Surgical System is the only commercially available technology that can provide the surgeon with the intuitive control, range of motion, fine tissue manipulation capability and 3-D visualization characteristic of open surgery, while simultaneously allowing the surgeon to work through the small ports of minimally invasive surgery.

The statements contained in this release may be deemed to contain "forward-looking statements." Such statements are indicated by words or phrases such as "anticipates," "estimates," "projects," "believes," "intends," "expects" and similar words and phrases. Actual results may differ materially from those expressed or implied in any forward-looking statement as a result of certain risks and uncertainties, including, without limitation, competition and market acceptance of the Company's products, ability to obtain regulatory approvals and third- cautioned not to place undue reliance on such forward-looking statements.

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