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

Proceeding	92048656
Party	Plaintiff ICU Medical, Inc.
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Submission	Response to Board Order/Inquiry
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Date	06/11/2009
Attachments	'575 Resp. to 5-13 Order (Neutral Displacement).pdf (3 pages)(66916 bytes) [P245] 2009-04-22 (Doc 182) Order Granting ICU's Mtn for Partial Summary Judgment.pdf (20 pages)(1087944 bytes)

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

ICU MEDICAL, INC.,

Petitioner,

v.

RYMED TECHNOLOGIES, INC.,

Respondent.

Cancellation No. 92048656

Mark: NEUTRAL DISPLACEMENT
Reg. No. 3337575

**RESPONSE TO MAY 13, 2009 ORDER FROM BOARD REQUESTING STATUS OF
CIVIL LITIGATION PROCEEDINGS**

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

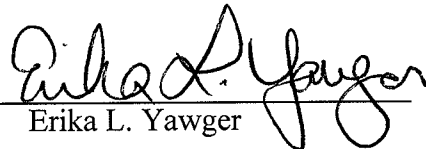
In response to the inquiry of Rochelle Ricks, Paralegal Specialist, mailed May 13, 2009, Petitioner ICU Medical, Inc. ("Petitioner") responds as follows:

The civil litigation upon which the Board based its suspension of these proceedings, *RyMed Technologies, Inc. v. ICU Medical, Inc.*, Case No. SA CV-07 1199 (DOC), is still pending in the United States District Court for the Central District of California. On April 22, 2009, the Court issued an order, attached hereto, granting Petitioner's motion for summary judgment on the trademark claims, holding that the "NEUTRAL DISPLACEMENT" mark at issue in this cancellation proceeding is generic and not entitled to any trademark protection.

The civil litigation is still pending due to other causes of action at issue in the case, and the time for final appeals has not yet passed. Petitioner will promptly notify the Board within twenty (20) days of final determination of the California action. In the interim, please advise if any additional information concerning the progress of the California action is required.

Dated: June 11, 2009

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By: 
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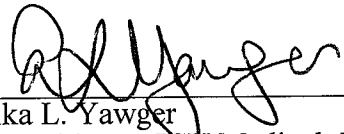
Attorneys for Petitioner
ICU MEDICAL, INC.

Cancellation No. 92048656

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing RESPONSE TO MAY 13, 2009 ORDER FROM BOARD REQUESTING STATUS OF CIVIL LITIGATION PROCEEDINGS for Cancellation No. 92048656 was served on June 11, 2009 by e-mail and first class mail, postage prepaid, on:

David P. Gordon
Gordon & Jacobson PC
60 Long Ridge Road, Suite 407
Stamford, CT 06902-1842



Erika L. Yawger
For Petitioner, ICU Medical, Inc.

Cancellation No. 92048656

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7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 **RyMed Technologies, Inc.,**
12 Plaintiff,
13 v.
14 **ICU Medical, Inc.,**
15 Defendant.

Case No. 8:07-CV-1199 MRP (VBKx)

**ORDER GRANTING ICU MEDICAL,
INC.'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

16
17 **I. Background**

18 A. Procedural History

19 ICU Medical, Inc. ("ICU") brought suit against RyMed Technologies, Inc.
20 ("RyMed") for patent infringement in the District of Delaware on July 27, 2007.
21 RyMed then filed this suit in the Central District of California on October 10, 2007
22 for declaratory judgment of non-infringement and patent invalidity, together with
23 state and federal trademark and related claims.¹ The patent claims were transferred
24

25
26 ¹ RyMed's claims include federal claims under the Lanham Act: trademark
27 infringement (15 U.S.C. § 1114), false designation of origin, and unfair
28 competition (§ 1125(a)); claims under California law: unfair competition (Cal.
Bus. & Prof. Code §§ 17200, 17500); common law passing off and unfair
competition; intentional interference with contract; and intentional interference

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