

United States Court of Appeals for the Federal Circuit

02-1145

BROOKHILL-WILK 1, LLC,

Plaintiff-Appellant,

v.

INTUITIVE SURGICAL, INC.,

Defendant -Appellee.

Peter L. Berger, Levisohn, Lerner, Berger & Langsam, LLP, of New York, New York, filed a response to the petition for plaintiff-appellant. With him on the response was Marilyn Neiman.

David M. Barkan, Fish & Richardson, P.C., of Redwood City, California, filed a combined petition for panel rehearing and rehearing en banc for defendant-appellee. With him on the petition was David M. Shaw, Vice President, Legal Affairs & Corporate Counsel, Intuitive Surgical, Inc., of Sunnydale, California. Of counsel were Todd G. Miller and Dina Grinshpun, Fish & Richardson, P.C., of San Diego, California; and Frank E. Scherkenbach, Fish & Richardson, P.C., of Boston, Massachusetts.

Appealed from: United States District Court for the Southern District of New York

Judge Naomi Reice Buchwald

United States Court of Appeals for the Federal Circuit

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Plaintiff-Appellant,

v.

INTUITIVE SURGICAL, INC.,

Defendant -Appellee.

ON PETITION FOR PANEL REHEARING AND REHEARING EN BANC

ORDER

A combined petition for panel rehearing and for rehearing en banc was filed by the defendant-appellee, and a response thereto was invited by the court and filed by the plaintiff-appellant. The petition for rehearing and response was referred first to the merits panel that heard this appeal, and thereafter, the petition for rehearing en banc and response were referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

- (1) The petition for panel rehearing is GRANTED for limited purposes in a separate order.
- (2) The petition for rehearing en banc is DENIED.

The mandate of the court will issue on July 7, 2003.

FOR THE COURT

Jan Horbaly

June 27, 2003

Jan Horbaly

Clerk

c: Peter L. Berger

David M. Barkan