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Filing date: **03/13/2006**

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

Proceeding	91119020
Party	Plaintiff GO MEDICAL INDUSTRIES PTY LTD.
Correspondence Address	ROBIN L. MCGARTH ALSTON & BIRD LLP ONE ATLANTIC CENTER 1201 WEST PEACHTREE STREET ATLANTA, GA 30309-3424
Submission	Other Motions/Papers
Filer's Name	Holly S. Hawkins
Filer's e-mail	holly.hawkins@alston.com
Signature	/s/ Holly S. Hawkins
Date	03/13/2006
Attachments	Opposer's Clarification and Report on the Status of Pending Civil Litigation.pdf (23 pages)

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

In the matter of U.S. Application Serial No. 75/786,274
Mark: MMG O'NEIL
Filing Date: August 24, 1999

GO MEDICAL INDUSTRIES PTY, LTD.,

Opposer,

v.

INMED CORPORATION,

Applicant.

Opposition No. 91119020

**OPPOSER'S CLARIFICATION OF ITS SEPTEMBER 12, 2005 SUBMISSION
AND REPORT ON THE STATUS OF PENDING CIVIL ACTION**

In connection with the above-styled opposition and in response to the March 3, 2006 Order denying Opposer's September 12, 2005 "Motion," Opposer respectfully submits this "Clarification of its September 12, 2005 Submission and Report on the Status of Pending Civil Action" in order to explain the basis of its September 12, 2005 submission to the Trademark Trial and Appeal Board ("Board") and to further inform the Board of the status of the pending civil litigation.

On August 1, 2005, the Board sent Opposer an Order to inform the Board of the status of the civil action which occasioned the suspension of proceedings. Opposer responded to this request on August 9, 2005, providing an update as to the status of the civil action, and notifying the Board that Applicant's February 23, 2004 Motion for Judgment Notwithstanding the Verdict ("JNOV Motion") on the issue of Applicant's trademark damages award was still pending. Shortly after Opposer's August 9 update, the district court denied the Applicant's JNOV Motion. Accordingly, on September 12, 2005 Opposer submitted an "Update on Status of Civil Litigation" ("Update"), providing a further update on the status of the district court litigation and specifically notifying the

Board of the district court's denial of Applicant's JNOV Motion. In connection with that Update, Opposer attached the district court's August 5, 2005 Order and Opinion.¹

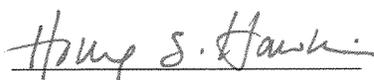
On March 10, 2006, Opposer received notification from the Board that its September 12, 2005 "Motion" was denied for (1) failure to attach the appropriate order; (2) failure to serve the "Motion" on Applicant; and (3) failure to submit a formal motion, as required by 37 C.F.R. § 2.127 (detailing the requirements for submitting motions to the Board). Opposer's September 12 Update, however, was not meant to serve as a Motion; rather, it was meant to simply update the Board of the status of the pending civil litigation as requested in the Board's August 1 Order.

Opposer is aware that under Trademark Trial and Appeal Board Manual of Procedure ("TBMP") § 510.02(b) "[a] proceeding is considered to have been finally determined when a decision on the merits of the case (i.e., a dispositive ruling that ends litigation on the merits) has been rendered, *and no appeal has been filed therefrom, or all appeals filed have been decided.*" (Emphasis added). In this case, the district court entered a final Order on September 30, 2004 ("Order"), granting Opposer's Motion for Permanent Injunction barring Inmed Corporation d/b/a/Rüsch ("Applicant") and Alpine Medical, Inc. from "[a]dopting, using, or registering any trademark, service mark, business name or domain name consisting in whole or in part of the word O'NEIL" A true and correct copy of this Order is attached hereto as Exhibit A. On February 10, 2005, judgment was entered on the Order. A true and correct copy of this Judgment is attached hereto as Exhibit B. However, on February 28, 2005, Applicant filed a timely Notice of Appeal from the Order. A true and correct copy of this Notice of Appeal is attached hereto as Exhibit C. The appeal is currently pending in the Federal Circuit.

¹ Opposer regrettably admits that it submitted the wrong Order for the Board's consideration and failed to serve the September 12 Update on Applicant. In an abundance of caution, Opposer has served a copy of this submission on counsel for Applicant.

Notwithstanding the entry of Final Judgment, under TBMP § 510.02(b) there has been no final determination of the litigation, because an appeal was filed in a timely manner and has not yet been decided. Accordingly, Opposer's September 12 Update was meant to simply update the Board as to the status of the pending civil litigation between the parties to this proceeding. Unless otherwise directed by the Board, Opposer will notify the Board at the time the Federal Circuit rules on the pending appeal, and will, at that time, request a decision on the merits of this Opposition in its favor.

Respectfully submitted, this 13th day of March, 2006.



Holly S. Hawkins
Georgia Bar Number 142496
ALSTON & BIRD, LLP
One Atlantic Center
1201 W. Peachtree Street
Atlanta, Georgia 30309-3424
(404) 881-7000 – telephone
(404) 881-7777 – facsimile

Attorney for Opposer
GO MEDICAL INDUSTRIES PTY, LTD.

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

In the matter of U.S. Application Serial No. 75/786,274
Mark: MMG O'NEIL
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GO MEDICAL INDUSTRIES PTY, LTD.,

Opposer,

v.

INMED CORPORATION,

Applicant.

Opposition No. 91119020

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing **OPPOSER'S CLARIFICATION OF ITS
SEPTEMBER 12, 2005 SUBMISSION AND REPORT ON THE STATUS OF PENDING
CIVIL ACTION** was served by first class mail, postage prepaid, upon counsel for Applicant,
addressed as follows:

George A. Smith, Jr.
HOWSON & HOWSON
Box 457
One Spring House Corporate Center
Spring House, PA 19477

Dated: March 13, 2006.


HOLLY S. HAWKINS

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

GO MEDICAL INDUSTRIES PTY,
LTD. and ALEXANDER G.B.
O'NEIL,

Plaintiffs,

v.

INMED CORPORATION d/b/a
RUSCH, INTERNATIONAL, a
wholly owned subsidiary of Teleflex,
Inc., and ALPINE MEDICAL, INC.
(formerly known as Medical Marketing
Group, Inc.),

Defendants.

CIVIL ACTION FILE
NO. 1:01-CV-313-TWT

ORDER

The Plaintiffs having moved the Court for a permanent injunction, and having read and duly considered the Plaintiffs' brief in support of said motion, together with the Defendants' response thereto, the Plaintiffs' Motion for a Permanent Injunction [Doc. 260] is GRANTED.

Defendants Inmed Corp. d/b/a Rusch and Alpine Medical Inc. (formerly known as Medical Marketing Group, Inc.), and each of their divisions, officers, agents,

employees, and attorneys, and all those persons in active concert with them, are hereby permanently restrained and prohibited from:

1. Adopting, using, or registering any trademark, service mark, business name or domain name consisting in whole or in part of the word “O’NEIL” or any term, mark, or name confusingly similar thereto, in any manner, in connection with urinary catheters or any other medical apparatus, including, but not limited to:
 - i. Registering, seeking to register or using any domain name that incorporates the term “O’NEIL” or any term, mark, or name confusingly similar thereto; and
 - ii. Adopting, using, or registering any trade name, corporate name, service mark, or e-mail address that incorporates the term “O’NEIL” or any term, name, or mark confusingly similar thereto.
2. Passing off or inducing or enabling others to sell or pass off any goods or services that are not authorized by the Plaintiffs as and for goods or services that are sponsored or endorsed by, associated with, or affiliated with the Plaintiffs; and
3. Otherwise diluting the distinctive quality of the Plaintiffs’ O’NEIL Mark; otherwise infringing any of the Plaintiffs’ O’NEIL Mark; otherwise falsely

representing themselves as being connected with, sponsored by, or associated with the Plaintiffs.

SO ORDERED, this 30 day of September, 2004.

/s/Thomas W. Thrash
THOMAS W. THRASH, JR.
United States District Judge

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

GO MEDICAL INDUSTRIES, PTY
LTD. and ALEXANDER G.B.
O'NEIL,

Plaintiffs,

v.

INMED CORP., d/b/a RÜSCH, and
ALPINE MEDICAL, INC. (formerly
known as Medical Marketing
Group, Inc.),

Defendants.

CIVIL ACTION FILE

NO. 101-CV-0313-TWT

JUDGMENT

FILED IN CHAMBERS
THOMAS W. THRASH JR.
U. S. D. C. Atlanta

FEB 10 2005

LUTHER D. THOMAS, Clerk
By: *L. D. Thomas*
Deputy Clerk

This Action, having had certain claims dismissed pursuant to Fed. R. Civ. P. Rule 56 (Docket No. 142) and 50, and having had the remaining claims come on for trial before the Court and a jury, the Honorable Thomas Thrash presiding, and the issues in said claims having been duly tried and the jury having duly rendered its verdict, and portions of said verdict having been overruled by the Court pursuant to Fed. R. Civ. P. 50,

It is Ordered and Adjudged:

1. On Counts I and II of the First Amended Complaint (Patent Infringement), Plaintiffs shall take nothing and judgment is entered in favor of Defendants on this Count;

2. On Count III of the First Amended Complaint (Breach of Contract), judgment is entered in favor of Plaintiffs and against Defendant Alpine Medical, Inc. only on this Count, and Plaintiffs shall recover from Defendant Alpine Medical, Inc. the sum of \$4,820,425, plus such interest thereon that may accrue from the date of this judgment in the amounts allowed by law;

3. On Counts IV - V of the First Amended Complaint (Conspiracy to Breach Fiduciary Duty and Tortious Interference), Plaintiffs shall take nothing and judgment is entered in favor of Defendants on these Counts;

4. On Counts VI-VIII of the First Amended Complaint (Trademark Infringement), judgment consisting of that certain Order granting Plaintiffs' Motion for Permanent Injunction (Docket No. 295) has been entered in favor of Plaintiffs on these Counts, and Plaintiffs shall take no money judgment from Defendants on these claims;

5. On Count VIII of the First Amended Complaint (Georgia Deceptive and Unfair Trade Practices Act, O.C.G.A. Sections 10-1-370, *et seq.*), the relief afforded under that Act is subsumed in the Order granting Plaintiffs' Motion for Permanent Injunction (Docket No. 295);

6. On all causes of action of the Counterclaim of Defendant Alpine Medical, Inc., Defendant Alpine Medical, Inc. shall take nothing from Plaintiffs and judgment is entered in favor of Plaintiffs on these causes of action;

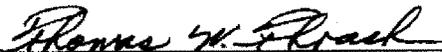
7. On the First through Fourth causes of action of the Counterclaim of Defendant Inmed Corporation d/b/a Rüsç (Trademark Infringement), Defendant Inmed Corporation d/b/a Rüsç shall take nothing from Plaintiffs and judgment is entered in favor of Plaintiffs on these causes of action;

8. On the Fifth cause of action of the Counterclaim of Defendant Inmed Corporation d/b/a Rüsç (Declaratory Judgment - patent invalidity), the Court hereby declares that United States Patent Number 4,652,259 is invalid; and

9. On the Sixth and Seventh causes of action of the Counterclaim of Defendant Inmed Corporation d/b/a Rüsç (Declaratory Judgment), the Court hereby declares and enters judgment that based upon this Court's Order (Docket No. 142) granting summary judgment to Plaintiffs as to the Sixth and Seventh causes of action of Defendant Inmed Corporation's counterclaim, judgment on those claims alleging invalidity and unenforceability of United States Patent Number 4,652,259 due to inequitable conduct by Plaintiffs is entered in favor of Plaintiffs, and Defendant Inmed Corporation's action for declaratory judgment on grounds of invalidity and unenforceability due to inequitable conduct is denied.

Each party shall bear its own costs of action.

Dated at Atlanta, Georgia, this 10 day of February, 2005.



Thomas W. Thrash, Jr., Judge, United States
District Court, Northern District of Georgia

EXHIBIT C

FEB 28 2005

LUTHER D. THOMAS, Clerk
By: *[Signature]*
Deputy Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

GO MEDICAL INDUSTRIES PTY, LTD.
and ALEXANDER G.B. O'NEIL

CIVIL ACTION FILE

Plaintiffs,

NO. 101-CV-0313-TWT

v.

INMED CORPORATION (d/b/a
RÜSCH), a wholly owned subsidiary
of Teleflex, Inc.
and ALPINE MEDICAL, INC.
(formerly known as Medical
Marketing Group, Inc.),

ORIGINAL

Defendants.

**DEFENDANT INMED CORPORATION
d/b/a RÜSCH NOTICE OF APPEAL**

Notice is hereby given that Defendant Inmed Corporation d/b/a Rüs ch appeals to the United States Court of Appeals for the Federal Circuit from those certain Orders dated November 20, 2002 and July 9, 2003 construing certain claims set forth in U.S. Patent No. 4,652,259; and from the Judgment entered by this Court in the above-styled action on February 10, 2005, to the extent adverse to Inmed Corporation including in particular, but without limitation, paragraphs 4 and 5 to the extent granting a permanent injunction arising out of Counts VI through VIII and Count [IX]

of Plaintiff's First Amended Complaint, and such Orders adverse to Inmed Corporation as may be encompassed within said Judgment with respect thereto including specifically, but not necessarily limited to, the following Orders:

1. Those certain claim construction Orders dated November 20, 2002 (Docket No. 91) and upon reconsideration thereof, the Order entered July 9, 2003 (Docket No. 141) with respect to the construction of the terms "about 1.5 cm.", "without bacteria contamination", "position of maximum pressure", and "normally closed but openable".

2. Order on the parties' Motions for Summary Judgment dated July 9, 2003 (Docket No. 142) to the extent of determining infringement by Defendants on U.S. patent No. 4,652,259, and determining that an issue of fact on Plaintiffs' claims of common law trademark arises under the doctrine of licensee estoppel.

3. Order denying Defendant Inmed Corporation's Motion for Reconsideration with respect to the doctrine of licensee estoppel (Docket No. 206).

4. Order denying Defendant Inmed Corporation's Motion in Limine regarding Timothy Terrell, George Anthony Smith and other evidence related to claims of conspiracy, breach of fiduciary duty and tortious interference with contract by Inmed Corporation (Docket No. 207).

5. Order denying Defendant Inmed Corporation's Motion for Leave to File

Motion to Dismiss and Motion to Dismiss submitted therewith (Docket No. 217).

6. Order denying Motion in Limine regarding David Kennedy opinions on damages for breach of fiduciary duty and tortious interference with contract by Inmed (Docket No. 216).

7. Order denying Defendant Inmed Corporation's Motion for Judgment as a Matter of Law with respect to Plaintiffs' claims of common law trademark (Transcript Volume VII, P. 242, 265).

8. Order granting permanent injunction to Plaintiff (Docket No. 295) and all other orders of the trial court determining expressly or implicitly that Plaintiffs held or owned a common law trademark with respect to the name "O'Neil", or that any Defendant was estopped to deny that Plaintiff held or owned such mark.

9. Orders at trial overruling objection to the admission of evidence regarding proof of a trademark and damages including, but not limited to, those rulings at pages 235, 1133 and 1204 of the transcript;

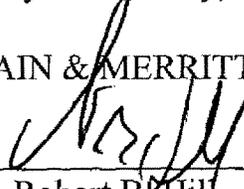
10. All orders encompassed by the grant of any relief to Plaintiffs on the grounds that Plaintiff has proved or established any common law trademark rights or interests in the name "O'Neill", or was otherwise entitled to protection, injunction or

relief under the Lanham Act or any state or federal statutes or common law; and

11. The Court's order dated July 9, 2003 (Docket No. 142), to the extent granting summary judgment in favor of Plaintiffs on the defense that the U. S. Patent No. 4,652,259 was not invalid due to inequitable conduct by Plaintiffs in the prosecution of the patent.

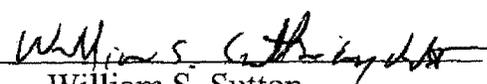
Respectfully submitted, this 28 day of February, 2005.

McLAIN & MERRITT, P.C.

By 

Robert B. Hill

Georgia Bar No. 354450

By 

William S. Sutton

Georgia Bar No. 693825

3445 Peachtree Road
Suite 500
Atlanta, Georgia 30326
(404) 262-9171
(404) 262-7531 (facsimile)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

GO MEDICAL INDUSTRIES PTY, Ltd.*	*	
and ALEXANDER G.B. O'NEIL	*	CIVIL ACTION FILE
	*	
Plaintiffs,	*	NO. 101-CV-0313-TWT
	*	
v.	*	
	*	
INMED CORPORATION (d/b/a	*	
RÜSCH), a wholly owned	*	
subsidiary of Teleflex, Inc.	*	
and ALPINE MEDICAL, INC.	*	
(formerly known as Medical	*	
Marketing Group, Inc.),	*	
	*	
Defendants.	*	

CERTIFICATE OF SERVICE

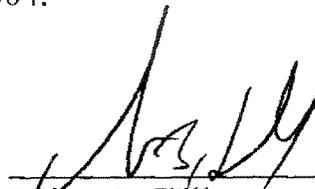
I hereby certify that a copy of the above and foregoing DEFENDANT INMED CORPORATION'S REPLY TO PLAINTIFFS' OPPOSITION TO MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT has this day been served upon opposing counsel by First Class Mail addressed as follows:

Patrick John Flinn, Esq.
Angela Payne James, Esq.
Alston & Bird, LLP
1201 W. Peachtree Street
Atlanta, GA 30309-3424

Ron L. Quigley, Esquire
Davis, Matthews & Quigley
14th Floor, Lenox Tower II
3400 Peachtree Road, NE
Atlanta, Georgia 30326-1186

Charles E. Campbell, Esquire
McKenna, Long & Aldridge LLP
Suite 5300
303 Peachtree Street
Atlanta, Georgia 30308

This 28 day of February, ^{2005,}~~2004.~~



Robert B. Hill

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF GEORGIA
2211 UNITED STATES COURTHOUSE
75 SPRING STREET, SW
ATLANTA, GEORGIA 30303-3361

LUTHER D. THOMAS
CLERK OF COURT

CIVIL SECTION
404-215-1655

March 3, 2005

Mr. Jan Horbaly
Circuit Executive/Clerk of Court
United States Court of Appeals
Howard T. Markey National Courts Building
717 Madison Place, N.W.
Washington, D.C. 20439-0002

U.S.D.C. No.: 1:01-cv-0313-TWT

U.S.C.A. Federal Circuit No.:

**In re: Go Medical Industries, PTY, LTD, and Alexander G. B. O'Neil v. INMED
CORP., d/b/a RUSCH, and ALPINE MEDICAL, Inc. (f/k/a Medical Marketing
Group, Inc.)**

Enclosed are documents regarding an appeal in this matter. Please acknowledge receipt on the enclosed copy of this letter.

Certified copies of the notice of appeal, docket sheet, judgment and orders appealed enclosed.

This is not the first notice of appeal. Other notices were filed on: 2/14/05 .

There is no transcript.

The court reporters are Linda Baggett and Darla Coulter.

There is sealed material as described below: .

Other: .

Fee paid on 2/28/05; RECEIPT No. 534028.

Appellant has been leave to file *in forma pauperis*.

This is a bankruptcy appeal. The Bankruptcy Judge is .

The Magistrate Judge is .

The District Judge is Thomas W. Thrash, Jr.

This is a **DEATH PENALTY** appeal.

Sincerely,

Luther D. Thomas
Clerk of Court

By: /s/ K. A. Carter
Deputy Clerk

Enclosures

U.S. District Court
Northern District of Georgia
Atlanta Division
75 Spring St SW, AtL, GA 30333
MCCLAIN & MERRITT, P.C.

534420 vkt 2/28/2005 @ 14:23

Check	150.00
Fund:510000	
MCCLAIN & MERRITT, P.C.	
1:01-CV-00313 NDA-1	
Check	105.00
Fund:003000	
MCCLAIN & MERRITT, P.C.	
1:01-CV-00313 NDA-1	
Total	255.00
Tendered	255.00
Change	0.00

1:01-cv-313

District Court Appeal Checklist

New appeal transmittal

New notice of appeal packages must include certified copies of the district court docket sheet, the notice of appeal and all orders/judgments being appealed (including the magistrate's report and recommendation); and a copy of order/voucher appointing counsel if applicable

Transmittal information to appeals court complete

Appeal information sheet provided to appellant

Civil appeal statement provided to appellant (in civil cases unless appellant is incarcerated or proceeding pro se)

Bankruptcy Cases

Certified copies of the Bankruptcy docket sheet, order and notice of appeal to the district court must be included in noa package to USCA

Bankruptcy File must be included as exhibits to the record on appeal (or original papers if requested)

Prisoner Civil Rights Cases

"PLRA" notice should be mailed to appellant

Submit to DC judge for fee assessment (or process consent form)

State Habeas Cases

Submit notice of appeal to district judge for ruling on "Certificate of Appealability" (or Certificate of Probable Cause if filed prior to 4-24-96)

Pursue appellate filing fee or motion to proceed on appeal in forma pauperis if needed

State Court Papers must be included as part of the record on appeal (or original papers if requested)

2255s

Submit notice of appeal to district judge for ruling on "Certificate of Appealability" (for cases in which Motion to Vacate was filed on or after 4-24-96)

Pursue appellate filing fee or motion to proceed on appeal in forma pauperis if needed

The defendant's criminal record must be transmitted as exhibits to the record in appeals from orders on Motion to Vacate (or original papers if requested)

DC Orders

Copies of any district court orders entered regarding IFP, COA, CPC, appointment/withdrawal/substitution of counsel should be forwarded to the appeals court upon entry (or transmitted with the notice of appeal package if on file.)