



02-01-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #59

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

In re the Application of Wright Medical Technology, Inc.:

Application No.: 76/191,390
Mark: OLYMPIA
Filed: January 9, 2001
Int'l Class: 10
Published: August 21, 2001 (1249 T.M.O.G. 282)

Olympus Optical Co., Ltd.)	
(Japanese joint stock company),)	Attorney Docket No. 53375/1458
)	
Opposer,)	
)	
v.)	Opposition No. 91150270
)	
Wright Medical Technology, Inc.)	
(Delaware corporation),)	Attorney Docket No. A0,513A
)	
Applicant.)	

3350119-000000
02-01-2002

**Consented Motion
to Amend the Identification of Goods
under 37 C.F.R. § 2.127(a) and 37 C.F.R. § 2.133(a)**

1 Applicant, Wright Medical Technology, Inc., by and through its attorneys, and with the
2 consent of Opposer Olympus Optical Co., Ltd., by and through Opposer's attorney of record
3 Allen J. Baden, Esq., hereby withdraws Applicant's two prior unconsented Motions to Amend
4 the Identification of Goods as filed on December 21, 2001, and January 29, 2002, and, in
5 substitution thereof, and with consent of Opposer Olympus Optical Co., Ltd., by and through
6 Opposer's attorney of record, hereby moves to amend the identification of goods of Applicant's
7 subject application under 37 C.F.R. § 2.127(a) and 37 C.F.R. § 2.133(a), such that the description
8 of goods becomes narrowed to state with greater specificity only those goods on which
9 Applicant intends to use its subject mark.

1 Applicant and Opposer are engaged in settlement negotiations, and Opposer's attorney
2 of record, Allen J. Baden, Esq., in a telephone conference with Applicant's undersigned attorney
3 of record on the afternoon of February 1, 2002, has given Opposer's consent to this motion by
4 Applicant to amend the description of goods as hereinafter given.

5 More specifically, Applicant now moves to amend the identification of goods to be:

6 MEDICAL APPARATUS, NAMELY, AN ORTHOPEDIC SHOULDER
7 IMPLANT THAT FITS INTO AND REPLACES THE UPPER END OF THE
8 HUMERUS BONE; AND A STERILE INSTRUMENTATION TRAY WITH
9 COVER FOR HOLDING INSTRUMENTS USED DURING
10 IMPLANTATION OF THE ORTHOPEDIC SHOULDER IMPLANT AND
11 PROVIDED ONLY FOR USE DURING IMPLANTATION OF THE
12 ORTHOPEDIC SHOULDER IMPLANT, in International Class 10.

13 **Applicant's Brief Memorandum in Support**

14 As originally filed and as published at 1249 *T.M.O.G.* 282 (Aug. 21, 2001), the
15 description of goods for Applicant's subject application was broadly given as:

16 MEDICAL APPARATUS, NAMELY, ORTHOPEDIC IMPLANTS AND
17 RELATED SURGICAL INSTRUMENTATION THEREFOR in International
18 Class 10.

19 Applicant's actual intended use of its subject mark OLYMPIA is for a much narrower
20 description of goods, namely:

21 MEDICAL APPARATUS, NAMELY, AN ORTHOPEDIC SHOULDER
22 IMPLANT THAT FITS INTO AND REPLACES THE UPPER END OF THE
23 HUMERUS BONE; AND A STERILE INSTRUMENTATION TRAY WITH
24 COVER FOR HOLDING INSTRUMENTS USED DURING
25 IMPLANTATION OF THE ORTHOPEDIC SHOULDER IMPLANT AND

1 PROVIDED ONLY FOR USE DURING IMPLANTATION OF THE
2 ORTHOPEDIC SHOULDER IMPLANT, in International Class 10.

3 Because this amendment to the description of goods produces a resulting description of
4 goods that is not broader than, and that is instead narrower than, the scope of the description of
5 goods in the application as filed, such an amendment restricting the scope of the description of
6 goods is proper. 37 C.F.R. § 2.71(a). Furthermore, because the identification of goods has been
7 restricted and narrowed, and because the classification of the goods is not changed, republication
8 of this mark is not required. T.M.E.P. § 1505.01(a); T.M.E.P. § 1505.01(b).

9 Additionally, by clarifying and narrowing the description of goods, the issues at trial
10 during this opposition proceeding will be narrower, thereby reducing the scope of discovery and
11 easing the burden on the Board when making its decision.

12 Accordingly, Applicant hereby requests that the Board grant this consented motion for
13 amendment of the identification of goods as indicated above.

14 A consented motion for a thirty-day suspension of this opposition proceeding, including
15 all discovery deadlines associated therewith, is filed concurrently herewith so that Applicant and
16 Opposer may continue their ongoing settlement negotiations.

Respectfully submitted,

WRIGHT MEDICAL TECHNOLOGY, INC.

Date: 2/1/2002

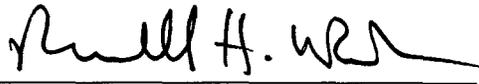
By: Russell H. Walker

Russell H. Walker
Walker, McKenzie & Walker, P.C.
6363 Poplar Ave., Suite 434
Memphis, Tennessee 38119-4896
Tel. No. (901) 685-7428
U.S.P.T.O. Registration No. 35,401
Attorney for Applicant

Certificate of Service - I hereby certify that a true copy of the foregoing Consented Motion to Amend the Identification of Goods under 37 C.F.R. § 2.127(a) and 37 C.F.R. § 2.133(a) is being deposited with the United States Postal Service as Express Mail - Post Office to Addressee, postage prepaid, on **February 1, 2002**, in an envelope addressed to Opposer's counsel,

Allen J. Baden, Esq.
Kenyon & Kenyon
333 West San Carlos Street, Sixth Floor
San Jose, California 95110

Date: 2/1/2002


Russell H. Walker
U.S.P.T.O. Registration No. 35,401

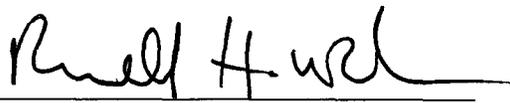
Certificate of Express Mailing under 37 C.F.R. § 1.10

Express Mail Label No.: ET391467120US

I hereby certify pursuant to 37 C.F.R. § 1.10 that the foregoing Consented Motion to Amend the Identification of Goods under 37 C.F.R. § 2.127(a) and 37 C.F.R. § 2.133(a) is being deposited by me with the United States Postal Service as U.S. Postal Service Express Mail - Post Office to Addressee, postage prepaid, on **February 1, 2002**, in an envelope addressed to:

Commissioner for Trademarks
Box TTAB - No Fee
2900 Crystal Drive
Arlington, Virginia 22202-3513

Date: 2/1/2002


Russell H. Walker
U.S.P.T.O. Registration No. 35,401
(Person making deposit)



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2900 Crystal Drive
Arlington, Virginia 22202-3513

Sir:

Enclosed herewith are the documents set forth hereinbelow for processing:

- (1) Consented Motion to Amend the Identification of Goods under 37 C.F.R. § 2.127(a) and 37 C.F.R. § 2.133(a); and
- (2) Consented Motion under 37 C.F.R. § 2.117(c) to Suspend Opposition Proceeding for Thirty Days; and
- (3) Return Receipt post card.

Please charge any additional fees or credit any overpayment concerning the filing of the enclosed documents to Deposit Account No. 23-0125.

52

Respectfully submitted,

Wright Medical Technology, Inc.

Date:

2/1/2002

By:

Russell H. Walker

Russell H. Walker
6363 Poplar Ave., Suite 434
Memphis, Tennessee 38119-4896
Tel. No. (901) 685-7428
U.S.P.T.O. Registration No.: 35,401
Attorney for Applicant