

**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.)	

**Applicant's 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, hereby
2 withdraws its prior Motion to Amend the Identification of Goods as filed on December 21, 2001,
3 and, in substitution thereof, hereby moves to amend the identification of goods of its subject
4 application under 37 C.F.R. § 2.127(a) and 37 C.F.R. § 2.133(a), such that the description of
5 goods becomes narrowed to state with greater specificity only those goods on which Applicant
6 intends to use its subject mark. While Applicant would welcome Opposer's consent to and
7 joining in this motion, and while Applicant offers this substitute motion in the hope that it may
8 lead toward settlement of this matter, Applicant does not mean to imply that Opposer has
9 consented to this motion.

1 More specifically, Applicant moves to amend the identification of goods to now be:
2 MEDICAL APPARATUS, NAMELY, AN ORTHOPEDIC SHOULDER
3 IMPLANT THAT FITS INTO AND REPLACES THE UPPER END OF THE
4 HUMERUS BONE; AND AN IMPLANTATION KIT HOLDING
5 INSTRUMENTS FOR PERFORMING IMPLANTATION OF THE
6 ORTHOPEDIC SHOULDER IMPLANT AND PROVIDED ONLY FOR USE
7 DURING IMPLANTATION OF THE ORTHOPEDIC SHOULDER
8 IMPLANT, in International Class 10.

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

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

12 MEDICAL APPARATUS, NAMELY, ORTHOPEDIC IMPLANTS AND
13 RELATED SURGICAL INSTRUMENTATION THEREFOR in International
14 Class 10.

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

17 MEDICAL APPARATUS, NAMELY, AN ORTHOPEDIC SHOULDER
18 IMPLANT THAT FITS INTO AND REPLACES THE UPPER END OF THE
19 HUMERUS BONE; AND AN IMPLANTATION KIT HOLDING
20 INSTRUMENTS FOR PERFORMING IMPLANTATION OF THE
21 ORTHOPEDIC SHOULDER IMPLANT AND PROVIDED ONLY FOR USE
22 DURING IMPLANTATION OF THE ORTHOPEDIC SHOULDER
23 IMPLANT, in International Class 10.

24 Because this amendment to the description of goods produces a resulting description of
25 goods that is not broader than, and that is instead narrower than, the scope of the description of
26 goods in the application as filed, such an amendment restricting the scope of the description of

1 goods is proper. 37 C.F.R. § 2.71(a). Furthermore, because the identification of goods has been
2 restricted and narrowed, and because the classification of the goods is not changed, republication
3 of this mark is not required. T.M.E.P. § 1505.01(a); T.M.E.P. § 1505.01(b).

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

7 Because this opposition proceeding is only at the opening threshold of its discovery
8 period, because Opposer has not provided any discovery requests to Applicant, and because
9 Opposer has not yet answered any of Applicant's discovery requests, Applicant submits that
10 Opposer will not be prejudiced by this amendment to the description of goods.

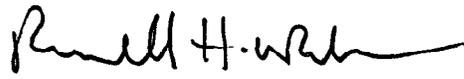
11 Accordingly, Applicant hereby requests that the Board grant this motion for amendment
12 of the identification of goods as indicated above.

13 Even if the Board finds that Opposer is entitled to judgment with respect to Applicant's
14 goods as broadly identified in this application as previously published in the *Official Gazette*,
15 Applicant submits that it would be entitled to registration of its mark with such an amended
16 restricted identification of goods reflecting the actual nature of its goods, as discussed above.

Respectfully submitted,

WRIGHT MEDICAL TECHNOLOGY, INC.

Date: 1/29/2002

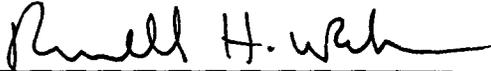
By: 

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Attorney for Applicant

Certificate of Service - I hereby certify that a true copy of the foregoing Applicant's 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 **January 29, 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: 1/29/2002



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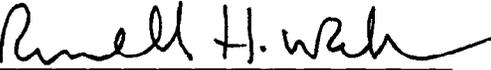
Certificate of Express Mailing under 37 C.F.R. § 1.10

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I hereby certify pursuant to 37 C.F.R. § 1.10 that the foregoing Applicant's 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 **January 29, 2002**, in an envelope addressed to:

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

Date: 1/29/2002



Russell H. Walker
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(Person making deposit)



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

Sir:

Enclosed herewith are the documents set forth hereinbelow for processing:

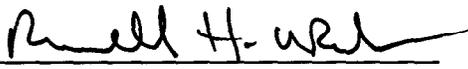
- (1) Applicant's Motion to Amend the Identification of Goods under 37 C.F.R. § 2.127(a) and 37 C.F.R. § 2.133(a); and
- (2) a return receipt postcard.

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

Respectfully submitted,

Wright Medical Technology, Inc.

Date: 1/29/2002

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