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

Baxter International Inc.,)
)
Opposer,)
)
v.)
)
Inviro Medical Devices Ltd.,)
)
Applicant.)

Opposition No. 91150298
Application No. 76/151,380

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**INVIRO'S OPPOSITION TO BAXTER'S
MOTION TO COMPEL DISCOVERY & PROTECTIVE ORDER and
INVIRO'S CROSS-MOTION TO COMPEL DISCOVERY**

Applicant, Inviro Medical Devices Ltd. ("Inviro"), hereby opposes the Motion To Compel filed by Opposer, Baxter International Inc. ("Baxter"). In addition, Inviro hereby files a cross-motion to compel Baxter to produce certain information.

Inviro's Opposition to Baxter's Motion

Baxter's motion contains two parts: (1) Baxter contends that Inviro has not properly responded to Baxter's interrogatories and document requests, and (2) Baxter requests entry of a Protective Order. Taking these two issues in reverse order, Inviro has the following response.

The Protective Order Issue

On October 15, 2002, the parties jointly submitted a form of Protective Order for entry in this case. As a result, Inviro submits that the second part of Baxter's motion is now moot, but Inviro does request that the Board direct both parties to produce their confidential information without further delay.

Inviro must note for the record, and to correct Baxter's misleading statements in its motion, that Inviro long ago proposed that the parties exchange confidential documents on an "attorney's eyes only" basis while the parties negotiated a form of Protective Order governing confidential information. Baxter's motion failed to mention this proposal by Inviro. Inviro's "attorney's eyes only" proposal was discussed by phone in July 2002, and is reflected in the fourth paragraph of counsel's letter of July 27, 2002, attached as Exhibit 1. Baxter initially agreed with this proposal, but later reneged and refused to exchange confidential documents on an "attorney's eyes only" basis. Apparently, Baxter wanted to withhold its confidential documents as long as possible. As of the writing of this October response, Baxter has still not produced any confidential documents.

To avoid burdening the Board with motions, and because Inviro is a small startup company that is trying to conserve resources, Inviro has not filed any motion complaining of Baxter's withholding of confidential information, but does request that the Board enter the Protective Order jointly submitted on October 15, and direct both parties to produce their confidential information without further delay.

Inviro's Responses

The other part of Baxter's motion is directed to Baxter's contention that Inviro has not "properly responded" to Baxter's interrogatories and document requests. In response, Inviro has the following comments.

At the outset, Inviro notes that Baxter's motion misstates a number of facts and omits many other facts. The following is Inviro's statement of the real facts in this case, which reveal that Baxter is merely seeking to drive up costs for Inviro, which is a small company with an "intent to use" application at issue.

Baxter filed the subject opposition nearly one year ago – on October 24, 2001. This opposition concerns Inviro's "intent to use" application for the ULTRALINK trademark. Inviro has not yet used its ULTRALINK mark. See Exhibit 2, which is a current print out of Inviro's website. Exhibit 2 instructs the public to watch this website space for a possible future product bearing the ULTRALINK trademark. This "intent to use" information is critical to an understanding of this motion, i.e., the little information Inviro has on its "intent to use" mark was produced many months ago.

The parties served their only discovery requests on each other in March 2002 – six months ago. Significantly, Inviro fully responded to Baxter's discovery by producing all of Inviro's documents and interrogatory answers in July 2002.¹ Inviro has no other information or documents for its "intent to use" mark and has repeatedly told Baxter this position in various telephone conferences that are not mentioned in Baxter's motion.

In contrast to Inviro's full disclosure in July 2002, Baxter unilaterally delayed its partial responses until August 2002. Inviro never complained about Baxter's unilateral delay. In fact, Baxter is still producing information at this time, but without Inviro's complaint. Inviro is a small company that wants to minimize expense and avoid a costly saga over its "intent to use" trademark application. Baxter, on the other hand, appears intent on driving up costs by extending document production and by filing various motions (at least four to date) - in an effort to force Inviro to withdraw its application. Inviro refuses to be bullied by these big company tactics.

Although Inviro long ago told Baxter to depose Inviro personnel in order to obtain whatever other information Baxter thought Inviro had, Baxter delayed noticing depositions until just recently.

¹ Baxter's motion complains that Inviro's document production is not arranged in a special fashion or Bates numbered. As stated to Baxter's counsel, Inviro's documents were produced as they were "kept in the usual course of business" pursuant to Rule 34(b), Fed.R.Civ.P.

See Exhibit 3, which are copies of Baxter's first and only Notices of Depositions served on September 23 and 24. As soon as Baxter takes these depositions, it will conclude that Inviro has already provided what little information Inviro has on its "intent to use" trademark – including its intended goods (response to interrogatory no. 7 and information contained in hundreds of documents produced to date), intended channels of trade and marketing (response to interrogatory nos. 8, 9 and 13 and information contained in hundreds of documents produced to date), intended competitors (response to interrogatory no. 14 and information contained in hundreds of documents produced to date), etc. – all of which is set forth in Inviro's interrogatory responses and document production to date. Even the dates when Inviro first learned of Opposer's marks (interrogatory nos. 15 and 16) has been stated to the best of Inviro's ability. Indeed, prior to the filing of the Notice of Opposition, Inviro had not heard of some of Baxter's marks – all of which have now been removed from this opposition with the sole exception of INTERLINK. As stated in various telephone discussions between counsel, the topics of interrogatory nos. 15 and 16 and other topics may best be handled by way of deposition questions.

Simply stated, Baxter's motion fails to show that Inviro has withheld any information. Inviro has not yet used its ULTRALINK trademark, its UNILINK trademark or its SNAPLINK trademark. As a result, Inviro has very little information on these "intent to use" trademarks. All known information, including hundreds of pages of documents, has been provided to Baxter, and Baxter is free to ask deposition questions on these matters.

For the foregoing reasons, Inviro requests that the Board deny Baxter's motion.

Inviro's Cross-Motion

Inviro moves for an order from the Board that directs Baxter to produce information concerning Baxter's "other LINK" trademarks in the medical field. "Other LINK" trademarks means the LINK trademarks other than the INTERLINK trademark of Baxter, i.e., Baxter's RENAL LINK, PLASMA LINK, ALTRA LINK, LUERLINK and PD LINK marks. Inviro's interrogatories and document requests inquired about Baxter's various LINK marks, not just Baxter's INTERLINK mark. See **Exhibits 4 and 5**, which are copies of Inviro's discovery requests and Baxter's responses. The definition of "Opposer's Marks" as used throughout the requests is "INTERLINK, RENAL LINK, PLASMA LINK, ALTRA LINK, LUERLINK and PD LINK marks." See **Exhibit 6**, paragraph D.

In support of this request, Baxter asked for similar information from Inviro, and Inviro produced it. More specifically, Baxter's discovery requests asked for all of Inviro's information on "other LINK" marks, i.e., Inviro's LINK marks other than the opposed ULTRALINK mark. Inviro complied with Baxter's requests by providing Inviro's information on all of its "other LINK" marks, i.e., Inviro's UNILINK and SNAPLINK marks. Baxter, however, has refused to supply Inviro with Baxter's "other LINK" marks information.

This case must be a two way street – not a one way street where Inviro provides its "other LINK" marks information, but Baxter refuses to provide its "other LINK" marks information. Baxter was the party that instituted this opposition, so it should not be heard to complain that it must produce its "other LINK" marks information.

Moreover, the Federal Rules of Civil Procedure require production of Baxter's "other LINK" trademarks information. The Federal Rules call for information that is "reasonably calculated to lead to the discovery of admissible evidence." In this case, there is a dispute over the scope of

Baxter's INTERLINK trademark, the policing of LINK marks, and the plethora of LINK trademark usage or intended usage in the medical field by Baxter, Inviro and many other entities. For this reason and others, both Inviro and Baxter propounded discovery on each other directed to all LINK marks used by the parties in the medical field – because this information is "reasonably calculated to lead to the discovery of admissible evidence." As a result, Baxter should provide the requested information.

Indeed, the relevance of Baxter's "other LINK" marks (e.g., RENAL LINK, PLASMA LINK, ALTRA LINK, LUERLINK and PD LINK) is confirmed by the fact that Baxter initially asserted all of these LINK marks in this opposition. Thus, Baxter cannot legitimately argue that this information is not "reasonably calculated to lead to the discovery of admissible evidence."

Finally, Baxter's discovery responses fail to provide any objection to disclosing this requested information. See, e.g., Baxter's responses to document request nos. 8, 9, 10, 11, 12, 13 and various others. This further justifies its production.

Accordingly, Inviro requests the Board to compel Baxter to supplement its interrogatory responses and document production with information on the RENAL LINK, PLASMA LINK, ALTRA LINK, LUERLINK and PD LINK marks. As shown in Exhibit 7, the parties have been unable to resolve this issue by themselves.

Conclusion

For the foregoing reasons, Inviro respectfully requests that the Board: (1) deny Baxter's motion to compel (with the exception of entering the Protective Order jointly submitted by the parties on October 15, 2002, and directing the parties to produce their confidential information without delay), and (2) grant Inviro's cross-motion to compel.

Date: 10-16-02

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of INVIRO'S OPPOSITION TO BAXTER'S MOTION TO COMPEL DISCOVERY & PROTECTIVE ORDER and INVIRO'S CROSS-MOTION TO COMPEL DISCOVERY was served this 16 day of October, 2002, via first class mail, postage prepaid, on counsel for Opposer:

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