

TTAB

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

Baxter International, Inc.,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No.: 91150298
	)	Application No. 76/151,380
Inviro Medical Devices, Ltd.	)	
	)	
Applicant.	)	

RECEIVED  
 10-21-2002  
 U.S. Patent & Trademark Office/TM Mail Rcpt Dt. #39

**OPPOSER'S RESPONSE TO BOARD ORDER,  
DATED OCTOBER 1, 2002**

As requested by the Board in its Order dated October 1, 2002, attached hereto is the written consent provided by Applicant and referenced in the pending MOTION TO AMEND OPPOSER'S NOTICE OF OPPOSITION. A copy of this filing has been provided to Applicant, as stated in the certificate of service attached hereto.

Respectfully submitted,

Date: Oct. 16, 2002 \_\_\_\_\_  
*Elizabeth C. Diskin*

Lynn A. Sullivan  
 Elizabeth C. Diskin  
 LEYDIG, VOIT & MAYER, LTD.  
 Two Prudential Plaza, Suite 4900  
 Chicago, Illinois 60601  
 312/616-5600  
 Attorneys for Baxter

ORIGINAL

**Nixon & Vanderhye PC**

ATTORNEYS AT LAW

8TH FLOOR  
1100 NORTH GLEBE ROAD  
ARLINGTON, VIRGINIA 22201-4714

August 23, 2002

TELEPHONE: (703) 816-4000  
FACSIMILE: (703) 816-4100  
WRITER'S DIRECT DIAL NUMBER:  
(703) 816-4009  
EMAIL: dmb@nixonvan.com**VIA FACSIMILE / THEN MAIL**Elizabeth C. Diskin, Esq.  
LEYDIG, VOIT & MAYER, LTD.  
Two Prudential Plaza, Suite 4900  
Chicago, IL 60601

**Subject: U.S. Trademark Opposition**  
**Baxter v. Inviro**  
**Mark: ULTRALINK**  
**Your ref: 213453**  
**Our ref: 968-154**

10-21-2002

U.S. Patent &amp; TMO/c/TM Mail Rpt Dt. #39

Dear Elizabeth:

Thank you for your letter of August 21, 2002, and its attached draft motion and draft Amended Notice of Opposition.

In your draft motion, please revise it to inform the Board that "Baxter is hereby withdrawing, in its entirety, Baxter's prior Motion for Leave to Amend as filed on July 18, 2002." This will terminate Baxter's prior motion and reduce the Board's motion load. If you include this quoted information in your draft motion, then Inviro consents to Baxter's motion to file the amended Notice of Opposition attached to your letter of August 21. As you can appreciate, however, Inviro does not consent or agree with Baxter's assertions contained in its amended Notice of Opposition, and will duly respond after its entry by the Board.

As a separate but somewhat related issue, we are still awaiting Baxter's production of its alleged trademark licensing documents, including documents concerning Baxter's quality control actions.<sup>1</sup> Without that information, we will have no choice but to seek cancellation of Baxter's trademarks on the grounds of, *inter alia*, naked licensing and lack of policing. We have been quite patient and courteous in waiting for this information, if any exists. Baxter has had five months to gather and provide any such information, and we have even agreed to handle any confidential documents on an "attorneys' eyes only" basis. Moreover, based on our telephone discussions yesterday, we question whether any of that information is confidential because you confirmed that you had not even reviewed Baxter's alleged licensing documents to determine whether they included any "confidential" titles or "confidentiality" provisions. We once again

<sup>1</sup> We are also awaiting other information from Baxter, as discussed in our recent telephone discussions.

August 23, 2002

Page 2

request that you produce any such licensing information. Otherwise, we will have to assume that none exists or that it confirms problems.

If you have any questions, please feel free to contact me.

Very truly yours,

**NIXON & VANDERHYE P.C.**



---

Duane M. Byers

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of **OPPOSER'S RESPONSE TO BOARD ORDER, DATED OCTOBER 1, 2002** (along with any documents referred to as being attached or enclosed) was sent on this 16th day of October, 2002, via United States Mail, first class postage prepaid, to:

Duane M. Byers  
Nixon & Vanderhye P.C.  
1100 North Glebe Road, 8<sup>th</sup> Floor  
Arlington, VA 22202-4714

  
\_\_\_\_\_

**CERTIFICATE OF MAILING**

I hereby certify that this **OPPOSER'S RESPONSE TO BOARD ORDER, DATED OCTOBER 1, 2002** (along with any documents referred to as being attached or enclosed) is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, **Box TTAB-NO FEE**, Arlington, Virginia 22202-3513 on October 16, 2002.

Date: October 16, 2002



---