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



11-12-2002

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #01

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

**OPPOSER'S MOTION FOR ORAL
DEPOSITION OF APPLICANT**

Pursuant to 37 C.F.R. § 2.120(c) and T.B.M.P. 404.03(c)(1), Opposer, Baxter International Inc. (hereinafter Baxter) moves this Board for good cause, to order the oral deposition of Applicant, Inviro Medical Devices (hereinafter Inviro) to occur in Vancouver, Canada.

In accordance with T.B.M.P. 404.03(c)(1), depositions of foreign parties are to occur by written deposition, unless the parties stipulate to the taking of the deposition orally, or the Board finds "good cause" for the taking of an oral deposition. What constitutes good cause for a motion to take a discovery deposition orally must be determined on a case-by-case basis, upon consideration of the particular facts and circumstances in each situation. *Orion Group Inc. v. The Orion Insurance Co. P.L.C.*, 12 U.S.P.Q.2d 1923, 1925 (TTAB 1989). In determining such a motion, the Board weighs the equities, including the advantages of an oral deposition and any financial hardship that the party to be deposed might suffer if the deposition were taken orally in the foreign country, and orders that the deposition be taken orally in appropriate cases. *Id.*

U.S. PATENT & TRADEMARK OFFICE
COMMUNICATIONS SECTION

OPPOSER'S EVIDENCE OF GOOD CAUSE

As outlined below, in this case, the advantages of taking an oral deposition, the lack of financial hardship on the Applicant if forced to submit to an oral deposition, and the balance of the equities, all weigh in favor of allowing Baxter to take Inviro's deposition orally.

A. The Format For Conducting A Written Deposition Is Unlikely To Produce Meaningful Results in this Case.

This opposition has become a protracted battle between the parties as Baxter has attempted, fruitlessly, to gain information and documents from Inviro in order to learn about the products it intends to sell under the mark at issue, ULTRALINK.¹

Inviro has only divulged the name of one knowledgeable individual and has not produced in discovery any substantive information on its intended product, marketing, market or trade channels. Consequently, Baxter is compelled to take the deposition of Inviro's main contact, Dr. Sharp, in order to understand Inviro's intentions regarding its application for ULTRALINK. Inviro's attorney has even encouraged Baxter to do so, stating that Baxter will be able to find out what it needs to know through deposition. Baxter requested that Inviro consent to an oral or telephonic deposition. However, Inviro refused. An oral deposition is crucial in this case since Inviro's past uncooperative and stonewalling tactics have hindered Baxter's ability to gather any meaningful information.

As noted above, because Inviro is a foreign corporation, located in Vancouver, Canada, and its main and only contact, Dr. Sharp resides in Canada, Baxter requested Inviro's consent to an oral deposition of Dr. Sharp at a location convenient to the witness

¹ Baxter has already filed a Motion to Extend Discovery because of its inability to gather any meaningful information from Inviro during the initial period (which is now moot, as the Board already extended discovery because the Opposition was Amended with Consent), and a Motion to Compel Discovery, which is currently pending.

in Canada. Inviro refused to consent to the request, and in response, Baxter suggested that, if cost was an issue (because Inviro's counsel is located in Alexandria, Virginia), Baxter would be willing to take the oral deposition via telephone in a three-way conference call, so that Inviro's counsel did not have to travel, but so that Baxter could have the opportunity to take a more meaningful deposition. Inviro again refused consent. Being that discovery was about to close (prior to the most recent extension by the Board), Baxter was forced to begin the procedure for taking a written deposition of Inviro.² The parties are now in the midst of submitting questions back and forth for use in the written deposition, and it is becoming clear that continuation of this process is unlikely to produce any meaningful information. (Attached hereto as Exhibit 1 are the Written Questions Baxter initially submitted on September 23rd and 24th for the depositions of Dr. Sharp and Inviro Medical Devices, through a 30(b)(6).)

As this Board is undoubtedly aware, per 37 C.F.R. § 2.124(b), the process for a written deposition requires a party to send opposing counsel its proposed questions, allows the deponent's attorney time to submit cross questions, allows the deposing party time to then submit re-direct questions, allows the deponent's attorney more time to submit re-cross questions, and further, allows either party the opportunity to submit objections to questions, which can then be addressed with further responses and new questions. However, the rules do not make clear how to handle certain situations, several of which are now an issue:

² Although Baxter initially noticed up two depositions—one of Dr. Sharp, and one of Inviro through a 30(b)(6) witness, Inviro has since informed Baxter that Dr. Sharp would be Inviro's 30(b)(6) witness and therefore, he can be deposed individually and on behalf of Inviro in one deposition. Therefore, Baxter is hereby requesting only one oral deposition.

(1) Objections

The rules provide that parties may submit objections in writing prior to the taking of the deposition and that the receiving party is given time to respond. 37 C.F.R. § 2.124. Further, in accordance with F.R.C.P. 32(d)(3), objections as to the form of written questions are waived, unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions. *See Baranowski v. Nat'l Union Fire Ins. Co. of Pittsburgh, Penn.*, 141 F.R.D. 55, 56 (N.D. Texas 1992). However, in Inviro's Response and Cross Questions To Baxter's Notice of Written Deposition [of Dr. Sharp], Inviro "reserv[ed] its right to specifically object when the written questions are presented" and in Inviro's Response and Cross Questions to Baxter's Notice of Written Deposition [of Inviro's 30(b)(6) witness], Inviro "reserv[ed] its right to specifically object when the written questions are presented (for example, as to form, geographic scope, etc.)." (See Inviro's Objections and Cross Questions, Exhibit 2.) Inviro's tactics appear to be not only improper, because reserving such rights (1) prevents Baxter from having the opportunity to respond to the objections on the record, and (2) prevents Baxter from having the opportunity to prepare new questions in response to any objections which could be used at the time of the deposition, but are also evidence of Inviro's intention to slow down, confuse, and complicate this proceeding.

(2) Advance Preparation

Most importantly, Baxter is concerned that the nature of the procedure for written depositions will allow Inviro's deponent to be so thoroughly coached by his attorney prior to the taking of the deposition, that it is unlikely Baxter will learn any substantive information. As is clear from the interrogatory responses Baxter has received (see

Exhibit 3), which Inviro's counsel stands behind as complete, relying on Inviro's counsel to encourage the full disclosure of relevant information is naive. Baxter's interrogatories asked numerous inquiries regarding what specific goods Inviro intends to market under ULTRALINK, as well as its intentions with regard to marketing and advertising, its projections regarding sales and costs, its knowledge about competition, and its knowledge about Baxter through its interrogatories. For every question asked, Inviro merely pointed to its recitation of goods in its application for ULTRALINK, and provided no substantive information to any question. Though the parties conferenced about these issues, Inviro refused further supplementation to its discovery responses and Baxter was forced to seek the Board's assistance in a Motion to Compel Discovery (pending). As is clear from the initial written deposition questions Baxter has submitted, it is still trying to ascertain exactly what Inviro does and what it intends to do with its ULTRALINK mark. (See Exhibit 1).

The rules do not appear to specify whether a deponent's attorney can share the questions it receives from opposing counsel with the deponent before the deposition, and Baxter assumes that the rules do not prevent such activity. However, it must be improper for an attorney to advise his client on how to answer each question presented, just as it would in an oral deposition.³ During a conference call on October 23rd, Inviro's counsel advised Baxter's counsel that the deponent may come to the deposition with written notes regarding the deposition questions. Baxter objects to this, and believes this

³ "Once an oral deposition begins, an attorney and client do not have an absolute right to confer. Rather, a private conference between a deponent and the deponent's attorney during the taking of a deposition is improper unless the conference is for the purpose of determining whether a privilege should be asserted....Furthermore, private conferences between the deponent and the deponent's attorney are prohibited during deposition recesses; otherwise, a clever lawyer or witness who finds that the deposition is going in an undesirable or unanticipated direction could simply insist on a short recess to discuss the unanticipated yet desire answer, thereby circumventing the prohibition on private conferences." Federal Procedure § 26:290.

is good cause for taking the deposition orally. Attorneys may advise and prepare their clients before depositions, but are prohibited from coaching their clients on how to answer each question during an oral examination. *See* Federal Procedure § 26:290, *infra* fn 3. Baxter would like to prevent the deponent from having this opportunity. Given the fact that in a written deposition, the deponent appears to be given the opportunity to review every question with his attorney in advance, it is difficult, if not impossible to prevent some coaching. Further, Inviro may take that coaching to an extreme by coming prepared to the deposition with answers pre-written to each question. This would be the equivalent of having one's attorney whisper in his ear on how to answer each question as it is asked in an oral deposition. Clearly, such behavior must be improper.

Finally, because the nature of written depositions seems to prevent the officer who is taking the deposition from asking any questions that have not been pre-exchanged by the parties, Baxter would be prevented from having the record reflect whether, and for which questions, Inviro's deponent looked to notes or documents, whether he read answers to questions directly from notes, and if so, who wrote the notes, when they were written, etc.

Given the situation at hand and the fact that Inviro continually has stated that there is only one witness for Baxter to depose, and the fact that Baxter is relying on this one deposition to make its case because it has received no meaningful information from Inviro through other discovery measures, it is imperative that the deposition occur in a format most likely to produce meaningful information, rather than canned, rehearsed, and "attorney-approved" answers, so long as that format is not unduly burdensome.

B. The Costs Associated With Conducting An Oral Deposition Of the Witness In Canada Is Unlikely To Cause Any Financial Hardship On Inviro.

The “back and forth” required by the rules for written depositions has meant that a deposition which was initially served on Applicant’s counsel on September 23rd, could not possibly occur before December 9th, and even that date may be a long shot if either party chooses to submit new questions in response to a written objection.⁴ The attorney time involved in reviewing and exchanging questions in advance is incredibly costly for both parties and the potential that the deposition may not even occur before the discovery cut off on January 31, 2003 looms as a distinct possibility. Baxter’s counsel has already spent numerous hours just reviewing and preparing draft objections to Inviro’s cross questions and preparing re-direct questions. Given the initial cross questions and objections Baxter received, it predicts that the procedure for preparing for the written deposition will continue on for weeks as the parties review and object to the other’s proposals and continue to submit their own questions. Were Baxter’s counsel permitted to fly to Vancouver to take the deposition, it could, in a matter of hours, ask all questions it deems necessary, Inviro’s counsel could have the opportunity to object and cross, and the entire process would be more efficient, and hence, less expensive.

Though Applicant’s counsel is located in Virginia and would have to fly to Vancouver for an oral deposition, the costs associated with such travel are not much more

⁴ Because Baxter served Inviro with its questions on September 23rd, Inviro had until October 18th to submit cross questions and objections. Baxter then would have had until November 4th to submit its objections and re-redirect questions (though Inviro has agreed to suspending the exchange of written questions pending this Board’s ruling on this motion). Had Baxter submitted questions on the 4th, Inviro would thereafter have had until November 19th to submit objections and re-cross questions. Baxter could then serve substitute questions in response to any objections by December 4. Finally, within 10 days after that date, Baxter would need to formally notice up the deposition (by December 14th). Presumably, the whole process of objecting and crossing could begin again for any new questions propounded in response to objections submitted by the other side.

than the cost of flying to many locations within the United States and certainly less expensive than continuing on with the written deposition procedure, when one considers the total attorney time involved in preparing for and taking the deposition.

This Board has found “good cause” for the taking of an oral deposition of a foreign witness in a similar situation. In *Orion Group, Inc. v. The Orion Insurance Co. P.L.C.*, 12 U.S.P.Q.2d 1923 (TTAB 1989), the opposer moved for the Board to order the oral deposition of Applicant’s witness who resided in London. In that case, the Opposer’s counsel was located in San Francisco and the Applicant’s counsel was located in New York. *Id.* at 1925. The Board noted that the cost of a round-trip flight for the Applicant’s counsel from New York to London would not be that much greater than many round trip flights within the United States and that the taking of the deposition orally in London would not involve problems of translating to and from a foreign language. *Id.* In such a situation, the Board found that it would be unjust to deprive the opposer of the opportunity of obtaining discovery and specifically of confronting and examining the witness by oral examination. *Id.* at 1926.

Similarly, in this case, the cost of round-trip airfare to Vancouver from the Washington DC area is not much more expensive than many other domestic flights,⁵ and further, as in the *Orion Group* case, there would be no issues with translating the testimony of the deponent. In this case, it is clearly not less expensive for Inviro to submit itself to a written deposition.

⁵ Baxter’s investigation into the cost of round-trip tickets from the Washington DC area to Vancouver (or from Chicago, where Baxter’s counsel is located), has indicated tickets that run for as low as \$415.00, though the average is about \$800.00. See Exhibit 4.

CONCLUSION

Opposer respectfully requests this Board to order the oral deposition of Dr. Sharp, Inviro's 30(b)(6) witness to occur in Vancouver, at a time mutually agreeable to the parties before the close of discovery. The facts of this case make it clear that the balance of equities and burden on the Applicant, do not justify preventing Baxter from confronting its deponent in a face-to-face deposition. If this Board hesitates to require Inviro's counsel to travel for the deposition, Baxter seeks this Board's order that an oral deposition occur via telephone.

Respectfully submitted,

Date: November 6, 2002



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September 23, 2002

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Confirmation via Federal Express

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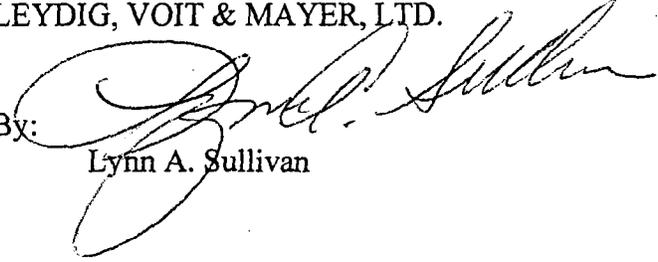
Re: **Baxter v. Inviro Medical Devices, Ltd.**
re: application for registration of ULTRALINK
Our Reference: 213453

Dear Mr. Byers:

We regret your change of position from consenting to oral deposition of Dr. Sharpe. However, we are prepared to proceed in accordance with your most recent correspondence suggesting that we take Dr. Sharpe's deposition in writing before the end of the discovery. Enclosed herewith is a notice of deposition for September 30th. Please note that if Dr. Sharpe is available during the week of September 23rd and would rather have the deposition occur on one of those days, we will be glad to try and coordinate a representative and an Officer of the Court who can swear him in and transcribe the deposition on a day that is more suitable to his schedule. Otherwise, we have scheduled one of our associates and a court reporter to be available at Inviro's offices at 10:00 a.m. on September 30th to proceed with a Deposition Upon Written Questions.

Very truly yours,

LEYDIG, VOIT & MAYER, LTD.

By: 
Lynn A. Sullivan

ECD/sb
Enclosure
cc: Elizabeth C. Diskin (w/out encl.)

Exhibit 1

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

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

NOTICE OF WRITTEN DEPOSITION

Attn.: Duane M. Byers
Nixon & Vanderhye P.C.
1100 North Glebe Road, 8th Floor
Arlington, VA 22201-4714
Counsel for Inviro Medical Devices, Ltd.

Opposer, Baxter International Inc., hereby requests, in accordance with 37 C.F.R. § 2.124, F.R.C.P. 28, and T.M.B.P. §§ 404.01 and 714, the written deposition of Dr. F. Ross Sharpe, to occur on September 30, 2002, at 10:00a.m., at Dr. Sharpe's offices at Inviro Medical Devices, Inc., 1188 Thurlow Street, Vancouver, British Columbia, V6E 1X3 before an officer of the Court, namely, an attorney from the firm of GOWLING, LAFLEUR & HENDERSON LPL, 1055 Dunsmuir Street, Suite 2300, Vancouver, BC, Canada V7X 1J1, and transcribed by a representative of Reportex Agency, Ltd.

INSTRUCTIONS AND DIRECTIONS

1. Any request for cross questions or objections to the written depositions questions must be asserted in advance of the date upon which the deposition will occur. § 37 C.F.R. 124.
2. The term "document" is used in its customary sense under the applicable rules and includes, without limitation, the following items, whether printed, or recorded or reproduced by any other electronic or mechanical process or written or produced by hand, and whether or not claimed to be privileged against discovery on any ground, namely: letters, memoranda, notes, agreements, contracts, licenses, communications including intra-company communications, correspondence, telegrams; bills of lading; warehouse receipts; orders for the delivery of goods or performance of services; documents of title; memoranda; summaries of records of personal conversations or interviews; diaries, forecasts; statistical statements; graphs, laboratory and engineering reports and notebooks; charts; plans; drawings; minutes or records of meetings; minutes or records of conferences; expressions or statements of policy; lists of persons attending meetings or conferences; reports and/or summaries of interviews; reports and/or summaries of investigations; opinions or reports of consultants; opinions of counsel; records, reports or summaries of negotiations; brochures; pamphlets, advertisements, circulars, trade letters; press releases; drafts of any documents; original or preliminary notes; photographs; all other writings and data compilation; marginal comments appearing on any document; copies which differ in any respect from an original or copy thereof; and tangible things such as models and prototypes.
3. The term "Inviro" is to mean both Inviro Medical Devices Inc. and Inviro Medical Devices Ltd., if not specifically designated.

DEPOSITION QUESTIONS

1. Please state your full name for the record.
2. Where do you live?
3. How long have you lived at this location?
4. Where do you currently work?
5. How long have you worked for Inviro?
6. And before working at Inviro, please describe your employment history from finishing medical school to the present.
7. For each place of employment referenced, please indicate the length of time you worked there, and the capacity in which you worked. [your title and/or duties]
8. Where did you receive your medical education?
9. When did you graduate from medical school?
10. How long have you been practicing medicine?
11. What is your specialty?
12. If you are involved predominately in research and development, please specify the type of research you have focused on while at Inviro and the type of research you focused on in your previous jobs.
13. Please describe your position at Inviro Medical Devices Inc.
14. When did you become employed by Inviro Medical Devices Inc.?
15. How long have you held your current position at Inviro Medical Devices Inc.?
16. If you have not been in this position since the start of your employment at Inviro Medical Devices Inc., please describe the other positions you have held and the length of time for which you held them.
17. How long have Inviro Medical Devices Inc. and Inviro Medical Devices Ltd. been in existence?
18. Are you an officer of Inviro Medical Devices Inc.?

19. If you are an officer, what is your position?
20. How many officers are there of Inviro Medical Devices Inc.?
21. Are you a director of Inviro Medical Devices Inc.?
22. If you are a director, do you have a specific role on the board of directors?, What?
23. How many directors are there?
24. Are you a shareholder of Inviro Medical Devices Inc.?
25. If you are a shareholder, what percentage of Inviro Medical Devices Inc.'s shares do you own?
26. How many shareholders are there?
27. Are you a founder of Inviro Medical Devices Inc.?
28. Is Inviro Medical Devices Inc. a closed corporation?
29. Is Inviro Medical Devices Inc. a publicly traded corporation?
30. What is your title within Inviro Medical Devices Inc.? What is your title within Invoro Medical Devices Ltd.?
31. Do you work for any other companies, businesses, or individuals currently?
32. How many employees are there at Inviro Medical Devices Inc.?
33. Is there a group or individual dedicated to research and development?
34. Are you in that group, or are you that individual?
35. If there are others, please state how many others, and the main contact for that information.
36. Is there a group or individual dedicated to financial and accounting issues?
37. Are you in that group, or are you that individual?
38. If there are others, please state how many others, and the main contact for that information.
39. Is there a group or individual that is dedicated to marketing issues?

40. Are you in that group, or are you that individual?
41. If there are others, please state how many others, and the main contact for that information.
42. How many employees are there at Inviro Medical Devices, Ltd.?
43. Are you an employee of, director, officer or shareholder of Inviro Medical Devices, Ltd.?
44. What is the relationship between Inviro Medical Devices, Ltd. and Inviro Medical Devices, Inc.?
45. What is the function of Inviro Medical Devices, Ltd.?
46. How many offices are there of Inviro Medical Devices Inc. and/or Ltd?
47. Are there any offices in the United States?
48. If yes, do you have an office in the United States?
49. Were you involved in the selection of the trademark ULTRALINK for use in connection with the goods described in that trademark application's recitation? ("medical devices, namely, cannulae, medical, hypodermic, aspiration and injection needles, medical, hypodermic, aspiration and injection syringes, connectors, ports, catheters and injection sites")
50. If yes, are you the only person at Inviro who was and is involved in the selection of the trademark under which the products will be sold?
51. If not, who else at Inviro (hereinafter Inviro to mean either Inviro Medical Devices Inc. or Ltd, whichever applies to the situation) was involved in that decision? (please state each person's full name, title and location.)
52. Did Inviro conduct any research in order to come up with the name ULTRALINK?
53. Did Inviro research any third party trademarks being used for competitive goods at the time it came up with the name?
54. Describe the process through which the mark ULTRALINK was selected for consideration.
55. Has Inviro used any kind of advertising, marketing or research agency in connection with its contemplation of this or other trademarks for use in connection with the goods listed in the recitation in the ULTRALINK application? If so, please identify the specific agencies used, their location, and the contact names of the individuals there.

56. Was Inviro aware of Baxter's use of INTERLINK at the time Inviro chose the name INTERLINK?
57. What is your understanding of the products Baxter sells under the INTERLINK trademark?
58. Are you aware of any competitors or prospective competitors in the U.S. who use LINK in connections with the types of goods you intend to sell under the mark ULTRALINK?
59. Have you considered any logos in which to present the mark ULTRALINK once the mark is put on marketing, advertising and other point of purchase materials?
60. Is there any documentation related to the decision to use ULTRALINK?
61. Is there any correspondence between you and others at Inviro regarding the decision to consider ULTRALINK?
62. Is there any correspondence between Inviro and any agencies or third parties (beyond correspondence with Inviro's counsel Duane Byers) regarding the decision to consider ULTRALINK?
63. Please describe the specific products which Inviro intends to sell under the ULTRALINK mark in the U.S.
64. Please describe when these products were invented and whether they have been previously marketed in the U.S. under any other trademark.
65. If the products have been previously marketed under other marks, please state how long they have been on the market under different names and why Inviro is considering changing the marketing?
66. How soon does Inviro intend to bring its goods to market under the ULTRALINK name in the U.S.?
67. Are the products for which Inviro intends to use the mark ULTRALINK ready for market?—Are they still in development or are they ready for sale?
68. Who specifically does Inviro intend to market the goods to in the U.S.?
69. Does it (Inviro) intend to market the goods to hospitals in the U.S.?
70. If so, are there specific areas in the hospital that Inviro believes these products will be marketed—ie, surgery, NICU, or emergency?
71. Does it intend to market the goods to acute care facilities in the U.S.?

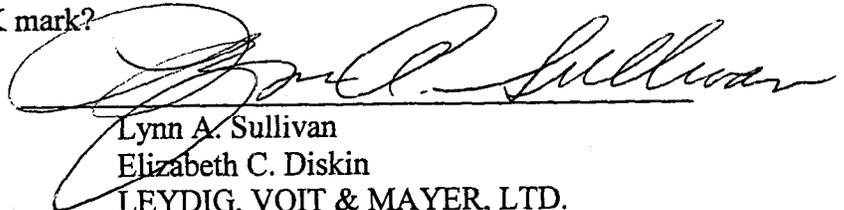
72. Does it intend to market the goods to nursing homes in the U.S.?
73. Does it intend to market the goods to any doctor's offices in the U.S.?
74. Does it intend to market the goods to any other category of customer?
75. How does Inviro intend to advertise the goods to be sold under ULTRALINK in the U.S.?
76. Does it intend to advertise the ULTRALINK products at trade shows in the U.S.?
77. If so, at which trade shows—or types of trade shows would it do so?
78. Does Inviro attend or show product at any tradeshow?
79. If so, which ones?
80. Does Inviro intend to advertise in trade journals available in the U.S.?
81. If so, what trade journals does Inviro intend to advertise in?
82. Does Inviro intend to do direct mail marketing in the U.S.?
83. If so, to whom would it direct the mail?
84. Are there other products currently sold by Inviro Medical Devices in the U.S.?
85. If so, what products are those?
86. What are the trademarks under which they are sold in the U.S.?
87. To whom does Inviro sell those products in the U.S.?
88. Does Inviro intend to sell ULTRALINK products to the same group of customers to whom it currently sells the other Inviro products?
89. Does Inviro intend to market the product to specific geographic regions within the United States? If so, where specifically?
90. If not, does Inviro intend to market the products nationally?
91. Does Inviro intend to do any television advertising?
92. Does Inviro intend to do any radio advertising?

93. Does Inviro intend to do any Internet advertising?
94. Does Inviro intend to create brochures to advertise, market or promote the products to be sold under ULTRALINK?
95. Have any internal documents been created with regard to Inviro's intended marketing, promotion or advertising?
96. Have any documents been created with regard to the channels of trade through which Inviro intends to market the products?
97. Are there specific individuals at Inviro, other than yourself, who are knowledgeable about the channels of trade through which Inviro intends to sell its products under ULTRALINK?
98. If so, who? List name, title and address.
99. If you are not knowledgeable about Inviro's marketing plans, who is knowledgeable about such plans? List name, title and address.
100. Are there others at Inviro with whom you work regarding the intended marketing of ULTRALINK? List names, titles and addresses.
101. Has Inviro contemplated the budget for advertising, marketing and promotion of the products that will be sold under ULTRALINK?
102. If so, what is the projected budget per year for the advertising, marketing and promotion of the products to sold under ULTRALINK?
103. Is there any documentation in relation to the proposed marketing budget for the products to be sold under ULTRALINK?
104. Who does Inviro consider will be its main competitors when it brings the ULTRALINK product to market?
105. Have any documents been created with regard to who Inviro considers to be a competitor of the products that will be sold under ULTRALINK? Does Inviro keep files on competitors?
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108. Have any products been sold under the mark ULTRALINK?

109. Have any free samples of products that will be sold under the mark ULTRALINK been distributed anywhere in the United States?
110. If so where and to whom? Where they distributed under the mark ULTRALINK?
111. If not, what were they called?
112. Has Inviro projected any sales goals with regard to the products that will be sold under the ULTRALINK mark?
113. If so, what are the projected sales per year?
114. Is there any documentation related to the sales Inviro hopes to make for the products to be sold under the ULTRALINK mark?
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121. Are there any samples of the package units Inviro intends to sell the products in with the ULTRALINK mark on them?
122. Are there any samples of the brochures Inviro intends to use to sell the products to be sold under the ULTRALINK mark?

Date:

9/23/02



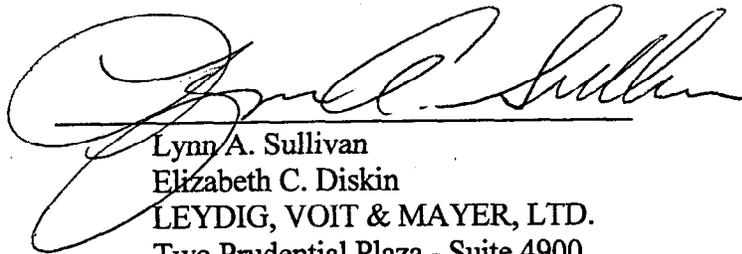
Lynn A. Sullivan
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Attorneys for Opposer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of NOTICE OF WRITTEN DEPOSITION was sent on this 23rd day of September, 2002, via facsimile and Federal Express to:

Duane M. Byers
Nixon & Vanderhye P.C.
1100 North Glebe Road, 8th Floor
Arlington, VA 22201-4714



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September 24, 2002

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Confirmation via Federal Express

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*RESIDENT IN WASHINGTON OFFICE **RESIDENT IN ROCKFORD OFFICE
*RESIDENT IN SEATTLE OFFICE

Duane M. Byers, Esq.
NIXON & VANDERHUYE P.C.
1100 North Glebe Road, 8th Floor
Arlington, VA 22201-4714

Re: Baxter v. Inviro Medical Devices, Ltd.
re: application for registration of ULTRALINK
Our Reference: 213453

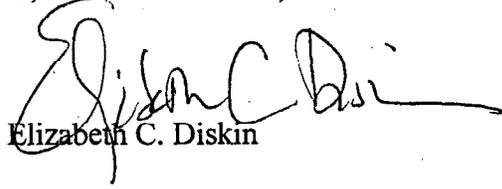
Dear Mr. Byers:

As you are aware, we forwarded you a notice of the Written Deposition of Dr. Sharpe via facsimile and Federal Express yesterday. Assuming Dr. Sharpe is qualified to answer all of the questions we have propounded, his deposition should be sufficient. In the event that there are others at Inviro Medical who are better suited to answer certain categories of questions, enclosed herewith is a Notice of Written Deposition of Inviro Medical Devices, in accordance with F.R.C.P. 30(b)(6). Please review the categories of questions at issue, as noted in the Instructions and Directions, and advise us if another individual or individuals will be presented for deposition. We can arrange to have them deposed on September 30th as well, or sooner, if that is more convenient for Inviro.

Very truly yours,

LEYDIG, VOIT & MAYER, LTD.

By:


Elizabeth C. Diskin

ECD/sb
Enclosure
cc: Lynn Sullivan (w/out encl.)

INSTRUCTIONS AND DIRECTIONS

1. In accordance with FRCP 30(b)(6), deponent, Inviro Medical Devices, Inc. shall designate one or more officers, directors, managing agents, or others who consent to testify on its behalf with regard to the inquiries set forth below –namely, matters involving (a) the corporate structure and organization of the deponent, (b) Inviro's selection of the ULTRALINK mark, marketing plans for the ULTRALINK products, (c) Inviro's development of the ULTRALINK products, (d) Inviro's financial forecasts for its ULTRALINK products, (e) information regarding competitive third party products on the markets, (f) Inviro's previous or current marketing and sales of products that will be sold under the ULTRALINK mark, and (g) Inviro's marketing and sales of the ULTRALINK marks outside the U.S.-- and should set forth in advance of the deposition date, the names of those individuals and the matters on which they intend to testify.

2. Any request for cross questions or objections to the written depositions questions must be asserted in advance of the date upon which the deposition will occur. 37 C.F.R. § 124.

3. The term "document" is used in its customary sense under the applicable rules and includes, without limitation, the following items, whether printed, or recorded or reproduced by any other electronic or mechanical process or written or produced by hand, and whether or not claimed to be privileged against discovery on any ground, namely: letters, memoranda, notes, agreements, contracts, licenses, communications including intra-company communications, correspondence, telegrams; bills of lading; warehouse receipts; orders for the delivery of goods or performance of services; documents of title; memoranda; summaries of records of personal conversations or interviews; diaries, forecasts; statistical statements; graphs, laboratory and engineering reports and notebooks; charts; plans; drawings; minutes or records of meetings;

minutes or records of conferences; expressions or statements of policy; lists of persons attending meetings or conferences; reports and/or summaries of interviews; reports and/or summaries of investigations; opinions or reports of consultants; opinions of counsel; records, reports or summaries of negotiations; brochures; pamphlets, advertisements, circulars, trade letters; press releases; drafts of any documents; original or preliminary notes; photographs; all other writings and data compilation; marginal comments appearing on any document; copies which differ in any respect from an original or copy thereof; and tangible things such as models and prototypes.

4. The term "Inviro" is to mean both Inviro Medical Devices Inc. and Inviro Medical Devices Ltd., if not specifically designated.

DEPOSITION QUESTIONS

1. Please state your full name for the record.
2. Where do you live?
3. How long have you lived at this location?
4. Where do you currently work?
5. How long have you worked for Inviro?
6. And before working at Inviro, please describe your employment history since completing your education.
7. For each place of employment referenced, please indicate the length of time you worked there, and the capacity in which you worked. [your title and/or duties]
8. Please state where you received your degrees (medical or otherwise)?
9. If you are a licensed medical doctor, how long have you been practicing medicine?
10. What is your specialty?

11. If you are involved predominately in research and development, please specify the type of research you have focused on while at Inviro and the type of research you focused on in your previous jobs.
12. Please describe your position at Inviro Medical Devices Inc.
13. When did you become employed by Inviro Medical Devices Inc.?
14. How long have you held your current position at Inviro Medical Devices Inc.?
15. If you have not been in this position since the start of your employment at Inviro Medical Devices Inc., please describe the other positions you have held and the length of time for which you held them.
16. How long have Inviro Medical Devices Inc. and Inviro Medical Devices Ltd. been in existence?
17. Are you an officer of Inviro Medical Devices Inc.?
18. If you are an officer, what is your position?
19. How many officers are there of Inviro Medical Devices Inc.?
20. Are you a director of Inviro Medical Devices Inc.?
21. If you are a director, do you have a specific role on the board of directors?, What?
22. How many directors are there?
23. Are you a shareholder of Inviro Medical Devices Inc.?
24. If you are a shareholder, what percentage of Inviro Medical Devices Inc.'s shares do you own?
25. How many shareholders are there?
26. Are you a founder of Inviro Medical Devices Inc.?
27. Is Inviro Medical Devices Inc. a closed corporation?
28. Is Inviro Medical Devices Inc. a publicly traded corporation?
29. What is your title within Inviro Medical Devices Inc.? What is your title within Inviro Medical Devices Ltd.?

30. Do you work for any other companies, businesses, or individuals currently?
31. How many employees are there at Inviro Medical Devices Inc.?
32. Is there a group or individual dedicated to research and development?
33. Are you in that group, or are you that individual?
34. If there are others, please state how many others, and the main contact for that information.
35. Is there a group or individual dedicated to financial and accounting issues?
36. Are you in that group, or are you that individual?
37. If there are others, please state how many others, and the main contact for that information.
38. Is there a group or individual that is dedicated to marketing issues?
39. Are you in that group, or are you that individual?
40. If there are others, please state how many others, and the main contact for that information.
41. How many employees are there at Inviro Medical Devices, Ltd.?
42. Are you an employee of, director, officer or shareholder of Inviro Medical Devices, Ltd.?
43. What is the relationship between Inviro Medical Devices, Ltd. and Inviro Medical Devices, Inc.?
44. What is the function of Inviro Medical Devices, Ltd.?
45. How many offices are there of Inviro Medical Devices Inc. and/or Ltd?
46. Are there any offices in the United States?
47. If yes, do you have an office in the United States?
48. Were you involved in the selection of the trademark ULTRALINK for use in connection with the goods described in that trademark application's recitation? ("medical devices, namely, cannulae, medical, hypodermic, aspiration and injection needles, medical, hypodermic, aspiration and injection syringes, connectors, ports, catheters and injection sites")

49. If yes, are you the only person at Inviro who was and is involved in the selection of the trademark under which the products will be sold?
50. If not, who else at Inviro (hereinafter Inviro to mean either Inviro Medical Devices Inc. or Ltd, whichever applies to the situation) was involved in that decision? (please state each person's full name, title and location.)
51. Did Inviro conduct any research in order to come up with the name ULTRALINK?
52. Did Inviro research any third party trademarks being used for competitive goods at the time it came up with the name?
53. Describe the process through which the mark ULTRALINK was selected for consideration.
54. Has Inviro used any kind of advertising, marketing or research agency in connection with its contemplation of this or other trademarks for use in connection with the goods listed in the recitation in the ULTRALINK application? If so, please identify the specific agencies used, their location, and the contact names of the individuals there.
55. Was Inviro aware of Baxter's use of INTERLINK at the time Inviro chose the name INTERLINK?
56. What is your understanding of the products Baxter sells under the INTERLINK trademark?
57. Are you aware of any competitors or prospective competitors in the U.S. who use LINK in connections with the types of goods you intend to sell under the mark ULTRALINK?
58. Have you considered any logos in which to present the mark ULTRALINK once the mark is put on marketing, advertising and other point of purchase materials?
59. What logos have been considered?
60. Is there any documentation related to the decision to use ULTRALINK?
61. Is there any correspondence between you and others at Inviro regarding the decision to consider ULTRALINK?
62. Is there any correspondence between Inviro and any agencies or third parties (beyond correspondence with Inviro's counsel Duane Byers) regarding the decision to consider ULTRALINK?
63. Please describe the specific products which Inviro intends to sell under the ULTRALINK mark in the U.S.

64. Please describe when these products were invented and whether they have been previously marketed in the U.S. under any other trademark.
65. If the products have been previously marketed under other marks, please state how long they have been on the market under different names and why Inviro is considering changing the marketing?
66. How soon does Inviro intend to bring its goods to market under the ULTRALINK name in the U.S.?
67. Are the products for which Inviro intends to use the mark ULTRALINK ready for market?—Are they still in development or are they ready for sale?
68. Who specifically does Inviro intend to market the goods to in the U.S.?
69. Does it (Inviro) intend to market the goods to hospitals in the U.S.?
70. If so, are there specific areas in the hospital that Inviro believes these products will be marketed—ie, surgery, NICU, or emergency?
71. If yes, which areas?
72. Does it intend to market the goods to acute care facilities in the U.S.?
73. Does it intend to market the goods to nursing homes in the U.S.?
74. Does it intend to market the goods to any doctor's offices in the U.S.?
75. Does it intend to market the goods to any other category of customer?
76. How does Inviro intend to advertise the goods to be sold under ULTRALINK in the U.S.?
77. Does it intend to advertise the ULTRALINK products at trade shows in the U.S.?
78. If so, at which trade shows—or types of trade shows would it do so?
79. Does Inviro attend or show product at any tradeshow?
80. If so, which ones?
81. Does Inviro intend to advertise in trade journals available in the U.S.?
82. If so, what trade journals does Inviro intend to advertise in?

83. Does Inviro intend to do direct mail marketing in the U.S.?
84. If so, to whom would it direct the mail?
85. Are there other products currently sold by Inviro Medical Devices in the U.S.?
86. If so, what products are those?
87. What are the trademarks under which they are sold in the U.S.?
88. To whom does Inviro sell those products in the U.S.?
89. Does Inviro intend to sell ULTRALINK products to the same group of customers to whom it currently sells the other Inviro products?
90. Does Inviro intend to market the ULTRALINK products to specific geographic regions within the United States? If so, where specifically?
91. If not, does Inviro intend to market the products nationally?
92. Does Inviro intend to do any television advertising?
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Date:

Sept. 24, 2002



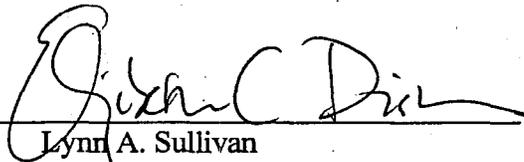
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Attorneys for Opposer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of NOTICE OF WRITTEN DEPOSITION was sent on this 24th day of September, 2002, via facsimile and Federal Express to:

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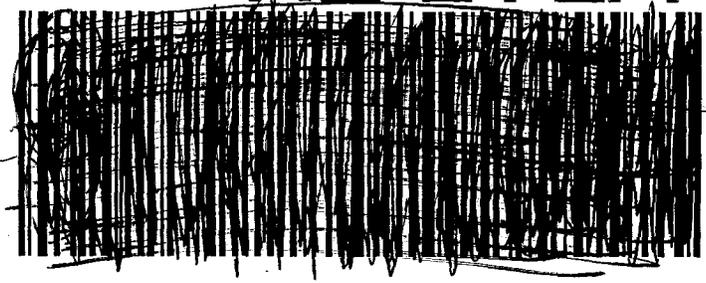
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E-3) NO ANSWER

E-2) BUSY
E-4) NO FACSIMILE CONNECTION

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(312) 849-0495 (G4)

FACSIMILE COVER SHEET

DATE: SEPTEMBER 24, 2002

NUMBER OF PAGES (INCLUDING
THIS TRANSMITTAL COVER SHEET): 13

YOUR REFERENCE:

OUR REFERENCE: 213453

To: Duane M. Byers, Esq.
NIXON & VANDERHYE P.C.
1100 North Glebe Road, 8th Floor
Arlington, VA 22201-4714

TELEPHONE: 703-816-4000
FACSIMILE NUMBER: 703-816-4100

FROM: ELIZABETH DISKIN

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11-12-2002

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

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

**INVIRO'S RESPONSE AND CROSS QUESTIONS TO
BAXTER'S NOTICE OF WRITTEN DEPOSITION**

Applicant, Inviro Medical Devices Ltd. ("Inviro"), hereby responds, within twenty plus five days, to the Notice of Written Deposition of Opposer, Baxter International Inc. ("Baxter"), served on September 23, 2002, and apparently revised and reissued on October 17, 2002.

Applicant objects to Opposer's Notice of Deposition and written questions to the extent that they do not comply with the Federal Rules of Civil Procedure and/or the Rules of the U.S. Patent and Trademark Office.

Applicant objects to Opposer's Notice of Deposition because it fails to comply with the requirement of an identification of a proper officer to take the responses and prepare the record.

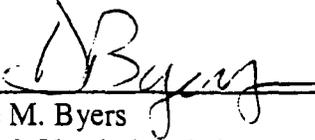
Applicant objects to Opposer's Notice of Deposition and written questions to the extent they attempt to require Applicant or the deponent to take any actions beyond those required by the Federal Rules of Civil Procedure, the Rules of the U.S. Patent and Trademark Office and/or Canadian law, or to the extent that they do not comply with any of those rules.

Applicant hereby reserves its right to specifically object when the written questions are presented.

Exhibit 2

Attached hereto are Applicant's cross questions.

Date: 10-18-02



Duane M. Byers
Nixon & Vanderhye P.C.
1100 North Glebe Road, Suite 800
Arlington, VA 22201-4714
Telephone 703-816-4009
Attorneys for Applicant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of INVIRO'S RESPONSE AND CROSS QUESTIONS TO BAXTER'S NOTICE OF WRITTEN DEPOSITION (served on September 23, 2002, and apparently revised and reissued on October 17, 2002), was served this 18 day of Oct., 2002, via first class mail, postage prepaid, on counsel for Opposer:

Lynn A. Sullivan
LEYDIG, VOIT & MAYER, LTD.
Two Prudential Plaza - Suite 4900
Chicago, Illinois 60601



CROSS QUESTIONS

1. Please provide a brief description and explanation of your medical background.
2. Please provide a brief description and explanation of Inviro's history, business and objectives.
3. Has Inviro sold any products under the ULTRALINK trademark?
4. Has Inviro sold any products under the SNAPLINK trademark?
5. Are you aware of other companies that use or intend to use a LINK trademark in the medical field in the United States?
6. Approximately how many other companies are you aware of that use or intend to use a LINK trademark in the medical field in the United States?
7. Can you name some of those companies?
8. Can you name some of the medical products or medical services that are associated with those companies and their LINK trademarks?
9. Is the LINK term a generic term in the medical field in the United States?
10. Please explain why the LINK term a generic term in the medical field in the United States.
11. How many years have people and companies been using the LINK term in the medical field in the United States?
12. Was Baxter the first company or entity in the United States to use a LINK term or trademark with its medical products or services?
13. Has Baxter has taken any action against the companies that you have identified in response to the previous questions?
14. Why do you think Baxter has not taken action against those companies?

15. Why is there no likelihood of confusion between Inviro's ULTRALINK trademark and Baxter's INTERLINK trademark?
16. Why is there no likelihood of confusion between Inviro's SNAPLINK trademark and Baxter's INTERLINK trademark?
17. Did Baxter file an opposition against Inviro's UNILINK trademark application in the United States?
18. Why do you think Baxter did not file an opposition against Inviro's UNILINK trademark application in the United States?
19. Has the U.S. Trademark Office ever cited the Baxter INTERLINK trademark registrations against any of Inviro's UNILINK, ULTRALINK or SNAPLINK trademark applications?
20. Why do you think the U.S. Trademark has never cited the Baxter INTERLINK trademark registrations against any of Inviro's UNILINK, ULTRALINK or SNAPLINK trademark applications?
21. Do you know Baxter personnel?
22. Has anyone from Baxter ever complained to Inviro or you about Inviro's ULTRALINK trademark?
23. Has anyone from Baxter ever complained to Inviro or you about Inviro's SNAPLINK trademark?
24. Has anyone from Baxter ever complained to Inviro or you about Inviro's UNILINK trademark?

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

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

**INVIRO'S RESPONSE AND CROSS QUESTIONS TO
BAXTER'S NOTICE OF WRITTEN DEPOSITION**

Applicant, Inviro Medical Devices Ltd. ("Inviro"), hereby responds, within twenty plus five days, to the Notice of Written Deposition of Opposer, Baxter International Inc. ("Baxter"), served on September 24, 2002, and apparently revised and reissued on October 17, 2002. Applicant reserves the right to submit additional cross questions within twenty plus five days of the apparently revised and reissued questions presented on October 17, 2002, corresponding to this Notice or an earlier Notice.

Applicant objects to Opposer's Notice of Deposition and written questions to the extent that they do not comply with the Federal Rules of Civil Procedure and/or the Rules of the U.S. Patent and Trademark Office.

Applicant objects to Opposer's Notice of Deposition because it fails to comply with the requirement of an identification of a proper officer to take the responses and prepare the record.

Applicant objects to Opposer's Notice of Deposition and written questions to the extent they attempt to require Applicant or the deponent to take any actions beyond those required by the

Federal Rules of Civil Procedure, the Rules of the U.S. Patent and Trademark Office and/or Canadian law, or to the extent that they do not comply with any of those rules.

Applicant objects to any questions that concern issues not relevant to this matter.

Applicant objects to any questions regarding activities outside the United States.

Applicant hereby reserves its right to specifically object when the written questions are presented (for example, as to form, geographic scope, etc.).

Attached hereto are Applicant's cross questions.

Date: October 21, 2002

October 19 = Saturday
October 20 = Sunday



Duane M. Byers
Nixon & Vanderhye P.C.
1100 North Glebe Road, Suite 800
Arlington, VA 22201-4714
Telephone 703-816-4009

Attorneys for Applicant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of INVIRO'S RESPONSE AND CROSS QUESTIONS TO BAXTER'S NOTICE OF WRITTEN DEPOSITION (served on September 24, 2002, and apparently revised and reissued on October 17, 2002), was served this 21 day of Oct, 2002, via first class mail, postage prepaid, on counsel for Opposer:

~~Lynn A. Sullivan
LEYDIG, VOIT & MAYER, LTD.
Two Prudential Plaza - Suite 4900
Chicago, Illinois 60601~~



CROSS QUESTIONS

1. Please provide a brief description and explanation of your medical background.
2. Please provide a brief description and explanation of Inviro's history, business and objectives.
3. Has Inviro sold any products under the ULTRALINK trademark?
4. Has Inviro sold any products under the SNAPLINK trademark?
5. Are you aware of other companies that use or intend to use a LINK trademark in the medical field in the United States?
6. Approximately how many other companies are you aware of that use or intend to use a LINK trademark in the medical field in the United States?
7. Can you name some of those companies?
8. Can you name some of the medical products or medical services that are associated with those companies and their LINK trademarks?
9. Is the LINK term a generic term in the medical field in the United States?
10. Please explain why the LINK term a generic term in the medical field in the United States.
11. How many years have people and companies been using the LINK term in the medical field in the United States?
12. Was Baxter the first company or entity in the United States to use a LINK term or trademark with its medical products or services?
13. Has Baxter taken any action against the companies that you have identified in response to the previous questions?
14. Why do you think Baxter has not taken action against those companies?

15. Why is there no likelihood of confusion between Inviro's ULTRALINK trademark and Baxter's INTERLINK trademark?
16. Why is there no likelihood of confusion between Inviro's SNAPLINK trademark and Baxter's INTERLINK trademark?
17. Did Baxter file an opposition against Inviro's UNILINK trademark application in the United States?
18. Why do you think Baxter did not file an opposition against Inviro's UNILINK trademark application in the United States?
19. Has the U.S. Trademark Office ever cited the Baxter INTERLINK trademark registrations against any of Inviro's UNILINK, ULTRALINK or SNAPLINK trademark applications?
20. Why do you think the U.S. Trademark has never cited the Baxter INTERLINK trademark registrations against any of Inviro's UNILINK, ULTRALINK or SNAPLINK trademark applications?
21. Do you know Baxter personnel?
22. Has anyone from Baxter ever complained to Inviro or you about Inviro's ULTRALINK trademark?
23. Has anyone from Baxter ever complained to Inviro or you about Inviro's SNAPLINK trademark?
24. Has anyone from Baxter ever complained to Inviro or you about Inviro's UNILINK trademark?
25. What does the term INTER mean in the medical field?
26. What does the term ULTRA mean in the medical field?

27. What does the term SNAP mean in the medical field?
28. What does the term UNI mean in the medical field?

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



11-12-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #01

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

APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF INTERROGATORIES

Subject to the objections herein, Applicant responds to the numbered Interrogatories as follows:

General Objections

Applicant objects to Opposer's discovery requests insofar as those requests call for confidential business information. Such information is being provided to opposing counsel for opposing counsel's eyes only and, therefore, must not be disclosed to the opposer or anyone other than opposing counsel – and the same will hold true for opposer's confidential business information disclosed to applicant's counsel.

Applicant further objects to Opposer's discovery requests insofar as they request documents and information that are protected by the attorney/client privilege. Any such documents will not be produced.

INTERROGATORIES

INTERROGATORY NO. 1:

Exhibit 3

Identify the facts and circumstances surrounding Applicant's selection, adoption and use of ULTRALINK, as well as Applicant's decision to apply for trademark registration of ULTRALINK, and identify all documents related thereto.

RESPONSE

Applicant (Inviro) selected the ULTRALINK trademark to use with its "medical devices, namely, cannulae, medical, hypodermic, aspiration and injection needles, medical, hypodermic, aspiration and injection syringes, connectors, ports, catheters and injection sites" after it received favorable indication from the U.S. Patent and Trademark Office (USPTO) that there were no third party trademarks that would preclude Inviro from registering its UNILINK trademark in the United States. For example, on June 27, 2000, the USPTO issued an office action for Inviro's UNILINK trademark application serial number 75-892618 that favorably stated:

The examining attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under Trademark Act Section 2(d).

In view of this favorable action and confirmation by the USPTO and examining attorney, Inviro proceeded with its UNILINK trademark application in the United States and elsewhere, and decided to file its ULTRALINK trademark application on October 20, 2000, for the same goods covered by the UNILINK trademark application.

It is also significant to note that when the UNILINK application was published for opposition purposes on June 12, 2001, no one opposed Inviro's registration or usage of the UNILINK trademark.

Moreover, when the USPTO examined Inviro's ULTRALINK trademark application, it never cited any third party trademark application or registration against the ULTRALINK trademark. In other words, the examining attorney searched the USPTO records and did not find

any third party mark that would preclude Inviro from registering the ULTRALINK trademark in the United States. This was confirmed by the USPTO's favorable issuance of a Notice of Publication on July 25, 2001. This USPTO notice states:

The [ULTRALINK] mark of the application identified appears to be entitled to registration.

INTERROGATORY NO. 2:

Identify Applicant's dates of first use, if applicable, or intended dates of first use of ULTRALINK in commerce and otherwise.

RESPONSE

Applicant has not yet used its ULTRALINK trademark, but intends to do so sometime in the future.

INTERROGATORY NO. 3:

Identify the person(s) most knowledgeable about Applicant's selection, adoption, use, and application for ULTRALINK.

RESPONSE

Dr. F. Ross Sharp and Duane M. Byers.

INTERROGATORY NO. 4:

Identify the process and reasoning used by the person(s) identified in number three above to select and develop ULTRALINK, including but not limited to, any surveys, search reports, investigations or opinions sought, and identify all documents relating thereto.

RESPONSE

Applicant (Inviro) selected the ULTRALINK trademark to use with its "medical devices, namely, cannulae, medical, hypodermic, aspiration and injection needles, medical, hypodermic, aspiration and injection syringes, connectors, ports, catheters and injection sites" after it received favorable indication from the U.S. Patent and Trademark Office (USPTO) that there were no third party trademarks that would preclude Inviro from registering its UNILINK trademark in the United States. For example, on June 27, 2000, the USPTO issued an office action for Inviro's UNILINK trademark application serial number 75-892618 that favorably stated:

The examining attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under Trademark Act Section 2(d).

In view of this favorable action and confirmation by the USPTO and examining attorney, Inviro proceeded with its UNILINK trademark application in the United States and elsewhere, and decided to file its ULTRALINK trademark application on October 20, 2000, for the same goods covered by the UNILINK trademark application.

It is also significant to note that when the UNILINK application was published for opposition purposes on June 12, 2001, no one opposed Inviro's registration or usage of the UNILINK trademark.

Moreover, when the USPTO examined Inviro's ULTRALINK trademark application, it never cited any third party trademark application or registration against the ULTRALINK

trademark. In other words, the examining attorney searched the USPTO records and did not find any third party mark that would preclude Inviro from registering the ULTRALINK trademark in the United States. This was confirmed by the USPTO's favorable issuance of a Notice of Publication on July 25, 2001. This USPTO notice states:

The [ULTRALINK] mark of the application identified appears to be entitled to registration.

INTERROGATORY NO. 5:

Identify any additional marks which Applicant previously used or considered for use which contained the word LINK, and if there are any such marks, identify whether any trademark registrations were sought, and identify all documents pertaining to such marks.

RESPONSE

See the attached documents for information on the UNILINK, ULTRALINK, MEDILINK and SNAPLINK trademarks. Foreign applications/registrations correspond to these marks, with the exception of MEDILINK.

INTERROGATORY NO. 6:

Identify whether any third parties are licensed, assigned, or otherwise authorized to use ULTRALINK.

RESPONSE

None.

INTERROGATORY NO. 7:

Identify all products and/or services sold or intended to be sold by Applicant in the United States in connection with ULTRALINK, and identify all documents related thereto.

RESPONSE

See the attached documents. Applicant (Inviro) selected the ULTRALINK trademark to use with its "medical devices, namely, cannulae, medical, hypodermic, aspiration and injection needles, medical, hypodermic, aspiration and injection syringes, connectors, ports, catheters and injection sites" after it received favorable indication from the U.S. Patent and Trademark Office (USPTO) that there were no third party trademarks that would preclude Inviro from registering its UNILINK trademark in the United States. For example, on June 27, 2000, the USPTO issued an office action for Inviro's UNILINK trademark application serial number 75-892618 that favorably stated:

The examining attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under Trademark Act Section 2(d).

In view of this favorable action and confirmation by the USPTO and examining attorney, Inviro proceeded with its UNILINK trademark application in the United States and elsewhere, and decided to file its ULTRALINK trademark application on October 20, 2000, for the same goods covered by the UNILINK trademark application.

It is also significant to note that when the UNILINK application was published for opposition purposes on June 12, 2001, no one opposed Inviro's registration or usage of the UNILINK trademark.

Moreover, when the USPTO examined Inviro's ULTRALINK trademark application, it never cited any third party trademark application or registration against the ULTRALINK trademark. In other words, the examining attorney searched the USPTO records and did not find

any third party mark that would preclude Inviro from registering the ULTRALINK trademark in the United States. This was confirmed by the USPTO's favorable issuance of a Notice of Publication on July 25, 2001. This USPTO notice states:

The [ULTRALINK] mark of the application identified appears to be entitled to registration.

INTERROGATORY NO. 8:

Identify all channels of trade through which Applicant's goods and/or services bearing the ULTRALINK mark are currently sold, offered, or distributed and/or intended to be sold, offered, or distributed, and identify all documents related thereto.

RESPONSE

Applicant has not yet used its trademark, but believes that the channel of trade would be one that supplies "medical devices, namely, cannulae, medical, hypodermic, aspiration and injection needles, medical, hypodermic, aspiration and injection syringes, connectors, ports, catheters and injection sites." This quoted language is the identification used in Applicant's ULTRALINK application that was favorably examined by the USPTO examining attorney and for which the examining attorney did not find any third party trademark that would preclude Applicant's registration of the ULTRALINK trademark for "medical devices, namely, cannulae, medical, hypodermic, aspiration and injection needles, medical, hypodermic, aspiration and injection syringes, connectors, ports, catheters and injection sites" sold in the corresponding channel of trade.

INTERROGATORY NO. 9:

Describe all methods in which Applicant's goods and/or services bearing ULTRALINK are, or are intended to be, advertised, promoted, marketed or otherwise brought to the attention of customers and potential customers, and identify all documents related thereto.

RESPONSE

Applicant has not yet used its trademark, but believes that its trademarked goods will be marketed in manners typical of the channel of trade that supplies "medical devices, namely, cannulae, medical, hypodermic, aspiration and injection needles, medical, hypodermic, aspiration and injection syringes, connectors, ports, catheters and injection sites." This quoted language is the identification used in Applicant's ULTRALINK application that was favorably examined by the USPTO examining attorney and for which the examining attorney did not find any third party trademark that would preclude Applicant's registration of the ULTRALINK trademark for "medical devices, namely, cannulae, medical, hypodermic, aspiration and injection needles, medical, hypodermic, aspiration and injection syringes, connectors, ports, catheters and injection sites" advertised, promoted, marketed or otherwise brought to the attention of customers and potential customers in the corresponding channel of trade.

INTERROGATORY NO. 10:

In reference to number nine above, for each method of promotion or advertisement, identify: (i) the form of promotion or advertising (i.e., brochure, T.V ad, trade show, etc.); (ii) the dates and geographic areas of said promotion or advertising; (iii) the names, addresses and contact names of all advertising or other agencies used by the Applicant to promote and/or advertise any good and/or services under ULTRALINK, (iv) the identity of all persons most

knowledgeable about Applicant's advertising and promotions, and (v) identify all documents related thereto.

RESPONSE

Because Applicant has not yet used its trademark, it cannot answer this interrogatory at this time. In addition, because Applicant has not yet used its trademark, it cannot identify the persons most knowledgeable about Applicant's advertising and promotions, or the documents related thereto.

INTERROGATORY NO. 11:

State Applicant's annual budget and expenditures [in the United States], or if not yet in use, its projected annual budget and expenditures to advertise or promote the goods and/or services offered under ULTRALINK, and identify all documents relating thereto.

RESPONSE

Because Applicant has not yet used its trademark, it cannot answer this interrogatory at this time, e.g., it does not have a projected annual budget and expenditures to advertise or promote the goods and/or services offered under the ULTRALINK trademark.

INTERROGATORY NO. 12:

State Applicant's annual revenue generated for each of the goods and/or services offered under ULTRALINK, or if not yet in use, Applicant's projected annual revenue generated for each of the goods and/or services offered under ULTRALINK, and identify all documents relating thereto.

RESPONSE

Because Applicant has not yet used its trademark, it cannot answer this interrogatory at this time, e.g., it does not have a projected annual revenue generated for each of the goods and/or services offered under the ULTRALINK trademark.

INTERROGATORY NO. 13:

Identify the market and target market of each of Applicant's goods and/or services offered under ULTRALINK.

RESPONSE

The market for "medical devices, namely, cannulae, medical, hypodermic, aspiration and injection needles, medical, hypodermic, aspiration and injection syringes, connectors, ports, catheters and injection sites." This quoted language is the identification used in Applicant's ULTRALINK application that was favorably examined by the USPTO examining attorney and for which the examining attorney did not find any third party trademark that would preclude Applicant's registration of the ULTRALINK trademark for "medical devices, namely, cannulae, medical, hypodermic, aspiration and injection needles, medical, hypodermic, aspiration and injection syringes, connectors, ports, catheters and injection sites" advertised, promoted, marketed or otherwise brought to the attention of customers and potential customers in the corresponding market.

INTERROGATORY NO. 14:

Identify the competitors of Applicant for goods and/or services offered under, or intended to be offered under ULTRALINK, and identify the documents referring or relating thereto.

RESPONSE

Companies that sell "cannulae, medical, hypodermic, aspiration and injection needles, medical, hypodermic, aspiration and injection syringes, connectors, ports, catheters and injection sites." This quoted language is from the identification used in Applicant's ULTRALINK application that was favorably examined by the USPTO examining attorney and for which the examining attorney did not find any third party trademark that would preclude Applicant's registration of the ULTRALINK trademark for "medical devices, namely, cannulae, medical, hypodermic, aspiration and injection needles, medical, hypodermic, aspiration and injection syringes, connectors, ports, catheters and injection sites."

INTERROGATORY NO. 15:

Identify all facts and circumstances regarding Applicant's first awareness of Opposer's use of any of Opposer's Marks.

RESPONSE

Applicant became aware of all of Opposer's Marks at least as early as when Applicant received a copy of Opposer's opposition that identified INTERLINK, RENAL LINK, PLASMALINK, ALTRA LINK, LUERLINK and PD LINK.

INTERROGATORY NO. 16:

Identify all facts and circumstances regarding Applicant's awareness and knowledge of Opposer's business conducted in connection with Opposer's Marks.

RESPONSE

Applicant became aware of all of Opposer's Marks at least as early as when Applicant received a copy of Opposer's opposition that identified INTERLINK, RENAL LINK,

PLASMALINK, ALTRA LINK, LUERLINK and PD LINK. Applicant will supplement this response as information becomes available.

INTERROGATORY NO. 17:

Identify the person(s) most knowledgeable about Applicant's awareness and knowledge of Opposer's use of Opposer's Marks and its business conducted in connection with Opposer's Marks.

RESPONSE

Dr. F. Ross Sharp

INTERROGATORY NO. 18:

Identify all persons who participated in any way in the preparation of the answers or responses to these interrogatories and state specifically, with reference to interrogatory numbers, the area of participation of each person.

RESPONSE

Dr. F. Ross Sharp and Duane M. Byers participated in the response to each interrogatory (1-20).

INTERROGATORY NO. 19:

Identify all persons, which Applicant expects to provide for deposition in this matter pursuant to Federal Rule of Civil Procedure 30(b)(6) or whose testimony in any form Applicant may intend to offer as evidence in this proceeding.

RESPONSE

Dr. F. Ross Sharp, various executives and employees of Opposer Baxter, and possibly third parties with knowledge or information relevant to this opposition.

INTERROGATORY NO. 20:

Pursuant to Federal Rule of Civil Procedure 26 (a)(2)(B), identify all experts expected to testify on behalf of Applicant and the topic in which each expert will testify, and provide a statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

RESPONSE

At this time, none.

Signed as to objections:

Date: _____

Duane M. Byers
Nixon & Vanderhye P.C.
1100 North Glebe Road, 8th Floor
Arlington, VA 22201-4714
Telephone 703-816-4009
Attorneys for Applicant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of APPLICANT'S
RESPONSES TO OPPOSER'S FIRST SET OF INTERROGATORIES was sent on this 19
day of July, 2002, via first class mail, postage prepaid, to:

Lynn A. Sullivan
Elizabeth C. Diskin
LEYDIG, VOIT & MAYER, LTD.
Two Prudential Plaza - Suite 4900
Chicago, Illinois 60601



ULTRALINK

Status: PUBLISHED - OPPOSED Date: 12/12/2001
OPPOSITION PENDING

Gds/Svcs: Int'l. Cl.: 10 (U.S. Cl.: 26, 39, 44)
MEDICAL DEVICES, NAMELY, CANNULAE, MEDICAL, HYPODERMIC, ASPIRATION AND
INJECTION NEEDLES, MEDICAL, HYPODERMIC, ASPIRATION AND INJECTION SYRINGES,
CONNECTORS, PORTS, CATHETERS AND INJECTION SITES

Serial No.: 76-151380 Filed: 10/20/2000 Published: 08/07/2001

Add. Info.: FILED AS INTENT TO USE.

TTAB Proceedings:

Claimed in Opposition 150,298 Filed: 10/29/2001

Plaintiff: BAXTER INTERNATIONAL INC.

Status: PENDING 12/12/2001

Corresp.: DUANE M BYERS
NIXON & VANDERHYE PC
1100 NORTH GLEBE ROAD, 8TH FLOOR
ARLINGTON, VA 22201-4714

Owner: INVIRO MEDICAL DEVICES LTD. (BARBADOS COMPANY)
CHANCERY CHAMBERS
HIGH STREET
BRIDGETOWN, BBX

Applicant: INVIRO MEDICAL DEVICES LTD. (BARBADOS COMPANY)
CHANCERY CHAMBERS
HIGH STREET
BRIDGETOWN, BBX

Doc F-1 of Set #1

UNILINK

Status: ALLOWED - INTENT TO USE **Date:** 02/19/2002
1ST EXTENSION GRANTED

Gds/Svcs: Int'l. Cl.: 10 (U.S. Cl.: 26, 39, 44)
MEDICAL DEVICES, NAMELY, CANNULAE, MEDICAL, HYPODERMIC, ASPIRATION AND
INJECTION NEEDLES, MEDICAL, HYPODERMIC, ASPIRATION AND INJECTION SYRINGES,
CONNECTORS, PORTS, CATHETERS AND INJECTION SITES

Serial No.: 75-892618 **Filed:** 01/07/2000 **Published:** 06/12/2001

Add. Info.: FILED AS INTENT TO USE.

Corresp.: DUANE M. BYERS
NIXON & VANDERHYE P.C.
1100 NORTH GLEBE ROAD, SUITE 800
ARLINGTON, VIRGINIA 22201-4714

Applicant: INVIRO MEDICAL DEVICES LTD. (BARBADOS COMPANY)
CHANCERY CHAMBERS
HIGH STREET
BRIDGETOWN, BBX

Doc F-4 of Set #1

SNAPLINK

Status: PUBLISHED **Date:** 04/19/2002
REQUEST FOR EXTENSION OF TIME TO TTAB

Gds/Svcs: Int'l. Cl.: 10 (U.S. Cl.: 26, 39, 44)
MEDICAL DEVICES, NAMELY, CANNULAE, MEDICAL, HYPODERMIC, ASPIRATION AND
INJECTION NEEDLES, MEDICAL, HYPODERMIC, ASPIRATION AND INJECTION SYRINGES,
CONNECTORS, PORTS, CATHETERS AND INJECTION SITES

Serial No.: 76-311018 **Filed:** 09/10/2001 **Published:** 03/19/2002

Add. Info.: FILED AS INTENT TO USE.

Corresp.: DUANE M. BYERS
NIXON & VANDERHYE PC
1100 N GLEBE RD STE 800
ARLINGTON VA 22201-4714

Applicant: INVIRO MEDICAL DEVICES LTD. (BARBADOS COMPANY)
CHANCERY CHAMBERS
HIGH STREET
BRIDGETOWN, BBX

MEDILINK

Status: ABANDONED - VOLUNTARY Date: 01/18/2001
ABANDONED - EXPRESS

Gds/Svcs: Int'l. Cl.: 10 (U.S. Cl.: 26, 39, 44)
CANNULAE; NEEDLES; SYRINGES; CONNECTORS; PORTS; CATHETERS; INJECTION SITES

Serial No.: 75-892620 Filed: 01/07/2000

Add. Info.: FILED AS INTENT TO USE.

Corresp.: DUANE M. BYERS
NIXON & VANDERHYE P.C.
1100 NORTH GLEBE ROAD, SUITE 800
ARLINGTON, VIRGINIA 22201-4714

Applicant: INVIRO MEDICAL DEVICES LTD. (BARBADOS COMPANY)
CHANCERY CHAMBERS
HIGH STREET
BRIDGETOWN, BARBADOS

312 943 6410 AMERICAN EXPRESS TRAVEL
ROBIN TURNER
605 NORTH MICHIGAN AVENUE
CHICAGO, IL 60611
TELEPHONE 312-435-2584
FAX 312-943-6410

FACSIMILE TRANSMISSION COVER SHEET

CONFIDENTIAL
TO BE READ BY ADDRESSEE ONLY

SEND TO: Elizabeth Diskin

DATE: Nov. 6, 02

FROM: ROBIN TURNER

FAX NUMBER: _____

#OF PAGES: 3 AMERICAN EXPRESS TRAVEL FAX NO. 312 943 6410

MESSAGE:

ORIGINAL

From Dulles, Alaska Airlines, nonrefundable type
tk @ \$415.77.

From Baltimore, Northwest, nonrefundable type
tk @ \$863.

exhibit 4

312 943 6410

**American Express
Travel Related Services Company, Inc.**

605 North Michigan Avenue
Chicago, Illinois 60611
Phone: 312 435-2570
Fax: 312 943-6410



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Please confirm all flights, directly with the airline 24 hours prior to departure. I have read and I accept the below itinerary. I have also been advised of change and cancellation fees.

SALES PERSON: RT
CUSTOMER NBR: 0610008888

ITINERARY
ENRJHN

DATE: 06 NOV 02
PAGE: 11

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SUITE 4900
CHICAGO IL 60601

FOR: DISKIN/ELIZABETH

30 JAN 03 - THURSDAY

AIR	NORTHWEST AIRLINES	FLT:671	ECONOMY	
	LV BALTIMORE WASHNTN		635A	EQP: AIRBUS 310 02HR 45MIN NON-STOP REF: 10FF27
	AR MINNEAPOLIS ST PL		1320A	
	ARRIVE: LINDBERGH TERMINAL			
AIR	NORTHWEST AIRLINES	FLT:1763	ECONOMY	
	LV MINNEAPOLIS ST PL		0900A	EQP: AIRBUS 310 03HR 45MIN NON-STOP REF: 10FF27
	DEPART: LINDBERGH TERMINAL			
	AR VANCOUVER BC		1045A	
	ARRIVE: MAIN TERMINAL			

31 JAN 03 - FRIDAY

AIR	NORTHWEST AIRLINES	FLT:1764	ECONOMY	
	LV VANCOUVER BC		1210P	LUNCH EQP: AIRBUS 310 03HR 29MIN NON-STOP REF: 10FF27
	DEPART: MAIN TERMINAL			
	AR MINNEAPOLIS ST PL		539P	
	ARRIVE: LINDBERGH TERMINAL			
AIR	NORTHWEST AIRLINES	FLT:1074	ECONOMY	
	LV MINNEAPOLIS ST PL		640P	EQP: AIRBUS 310 02HR 23MIN NON-STOP REF: 10FF27
	DEPART: LINDBERGH TERMINAL			
	AR BALTIMORE WASHNTN		1003P	

No
Excluded
Flights
on NW

CST 1022318-10 TA 149-REGISTERED OHIO TRAVEL AGENCY
ML1192 WASHINGTON UBI 600-469-694

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Good news, we've detected a better price; please review the new price below.

\$822.63 Web Fare

6:00 AM Depart Baltimore (BWI)
Arrive Vancouver (YVR) **10:30 AM**

8:50 AM Depart Vancouver (YVR)
Arrive Baltimore (BWI) **6:47 PM**

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Thu 5-Dec
7hr 30mn



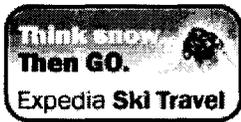
United Airlines
1543 / 3101
Connect in Chicago (ORD)

Fri 6-Dec
6hr 57mn



United Airlines
1032 / 152
Connect in Chicago (ORD)

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\$822.63 Web Fare



7:50 AM Depart Baltimore (BWI)
Arrive Vancouver (YVR) **12:34 PM**

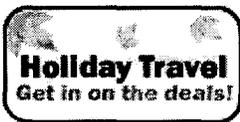
Thu 5-Dec
7hr 44mn

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United Airlines
1661 / 1033
Connect in Chicago (ORD)



8:50 AM Depart Vancouver (YVR)
Arrive Baltimore (BWI) **6:47 PM**

Fri 6-Dec
6hr 57mn



United Airlines
1032 / 152
Connect in Chicago (ORD)

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6:00 AM Depart Baltimore (BWI)
Arrive Vancouver (YVR) **10:30 AM**

8:50 AM Depart Vancouver (YVR)
Arrive Baltimore (BWI) **6:47 PM**

Sun 8-Dec
7hr 30mn

Mon 9-Dec
6hr 57mn



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United Airlines
1543 / 3101
Connect in Chicago (ORD)

United Airlines
1032 / 152
Connect in Chicago (ORD)

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6:00 AM Depart Baltimore (BWI)
Arrive Vancouver (YVR) 10:30 AM

8:50 AM Depart Vancouver (YVR)
Arrive Baltimore (BWI) 6:47 PM

Express Booking

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Mon 9-Dec 7hr 30mn		United Airlines 1543 / 3101 Connect in Chicago (ORD)
Tue 10-Dec 6hr 57mn		United Airlines 1032 / 152 Connect in Chicago (ORD)



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Summary	
1 Ticket / Roundtrip	
ORD Chicago to YVR Vancouver	
Leave:	Mon 16-Dec
Return:	Tue 17-Dec
1 adult	\$779.44
Taxes	\$106.18
Total cost	\$885.62

Total price for this trip: \$885.62

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1 Review the flight details

Mon 16-Dec-02

Web Fare

1726 mi **Chicago (ORD)** to **Seattle (SEA)**
 (2778 km) Depart 8:10 AM Arrive 10:30 AM
 4hr 20mn Terminal 1
 Economy/Coach Class, Breakfast, Boeing 777, 80% on time



127 mi **Seattle (SEA)** to **Vancouver (YVR)**
 (204 km) Depart 11:05 AM Arrive 11:57 AM
 0hr 52mn Terminal M



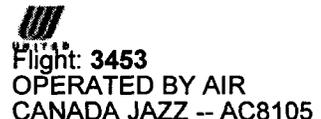
Economy/Coach Class, EMB-120

Total miles: 1853 mi (2982 km)
 Total flight time: 5hr 12mn (5hr 47mn with connections)

Tue 17-Dec-02

Web Fare

127 mi **Vancouver (YVR)** to **Seattle (SEA)**
 (204 km) Depart 7:00 AM Arrive 7:50 AM
 0hr 50mn Terminal M



Economy/Coach Class, DEHAVILLAND DASH 8-300

1726 mi **Seattle (SEA)** to **Chicago (ORD)**
 (2778 km) Depart 9:10 AM Arrive 3:00 PM
 3hr 50mn Terminal 1
 Economy/Coach Class, Snack, Airbus A320, 90% on time



Total miles: 1853 mi (2982 km)
 Total flight time: 4hr 40mn (6hr 0mn with connections)

Tip: Flight terminals may change. Please confirm the terminal with the airline before leaving for the airport.

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You can save up to 30% by booking a different flight for the same dates, *plus* a 1-night hotel stay. Click a vacation package below to view the vacation package details, rules, and restrictions. You will be able to choose your flight times from the Package Details page.

- \$389.80** [America West flight plus 1 night at Quality Inn Airport.](#) [Select and Continue](#)
- \$395.48** [America West flight plus 1 night at Accent Inns Richmond.](#) [Select and Continue](#)
- \$397.01** [America West flight plus 1 night at The Atrium Inn Vancouver.](#) [Select and Continue](#)

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The undersigned hereby certifies that a true and correct copy of **OPPOSER'S MOTION FOR ORAL DEPOSITION OF APPLICANT** (along with any documents referred to as being attached or enclosed) was sent on this 6th day of November, 2002, via United States

Mail, first class postage prepaid, to:

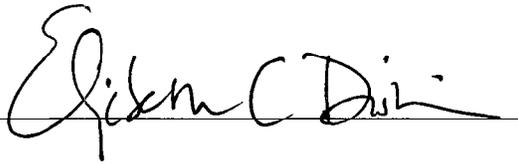
Duane M. Byers
NIXON & VANDERHYE P.C.
1100 North Glebe Road, 8th Floor
Arlington, VA 22202-4714
Fax: 703-816-4100

A handwritten signature in black ink, appearing to read "Duane M. Byers", is written over a horizontal line. The signature is cursive and somewhat stylized.

CERTIFICATE OF MAILING

I hereby certify that the **OPPOSER'S MOTION FOR ORAL DEPOSITION OF APPLICANT** (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 November 6, 2002.

Date: November 6, 2002

A handwritten signature in black ink, appearing to read "Eileen C. Davis", is written over a horizontal line.