

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.)	



12-09-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #77

**BAXTER'S MOTION TO STRIKE INVIRO'S SURREPLY IN OPPOSITION TO
BAXTER'S MOTION TO COMPEL DISCOVERY**

In accordance with T.M.E.P. 517, Opposer, Baxter International, Inc. (hereinafter "Baxter") hereby submits its motion to strike "Inviro's Reply To Baxter's Reply Brief

Baxter filed a Motion to Compel Discovery on September 27, 2002. Thereafter, on October 16, 2002, Inviro filed its "Opposition to Baxter's Motion to Compel Discovery" and its own "Cross-Motion to Compel." Baxter, upon review of the Opposition brief, felt it necessary to file a Reply brief to clarify several inaccuracies and provide further explanation of the facts, and did so on November 4, 2002. Baxter noted in its Reply that the TTAB does not encourage reply briefs, but would review them under certain circumstances, and asked the Board's consideration of its reply in this case.

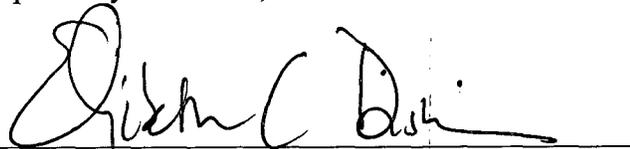
Inviro, without citation to any TTAB provision, and without seeking the Board's leave to do so, filed a surreply to Baxter's Motion on November 19, 2002. Such a filing should be struck as improper and not within the rules. The TTAB rules do not reference the ability to file such surreplies and, therefore, Inviro should not have filed another brief. Parties in an opposition should not be permitted to file such briefs merely in an effort to

get the last word. In fact, Inviro cited 37 C.F.R. § 2.127, in asking the Board to consider its “short reply” (which extended over three pages). Section 2.127 makes clear, however, that for any motion, (1) a response may be filed by the opposing party, (2) in its discretion, the Board may consider a reply brief [filed by the moving party] if filed within 15 days from the date of service of the brief in response to the motion, and (3) **no further papers in support or in opposition to a motion will be considered.** Inviro suggested that the Board could consider its filing by calling it a “reply”, but in fact, Baxter’s filing was the only “reply” which may be considered, and Inviro’s supplemental filing was merely a “further paper in opposition to a motion” which should not be considered.

Therefore, Baxter respectfully requests the Board to strike Inviro’s “Reply to Baxter’s Reply”, filed on November 19, 2002 as not within the scope of the rules.

Respectfully submitted,

Date: December 4, 2002



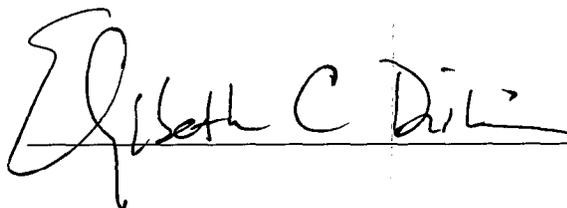
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of **BAXTER'S MOTION TO STRIKE INVIRO'S SURREPLY IN OPPOSITION TO BAXTER'S MOTION TO COMPEL DISCOVERY** was sent on this 4th day of December, 2002, via United States

Mail, first class postage prepaid, to:

Duane M. Byers
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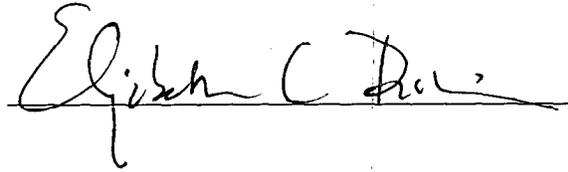


Elizabeth C. Dill

CERTIFICATE OF MAILING

I hereby certify that the **BAXTER'S MOTION TO STRIKE INVIRO'S
SURREPLY IN OPPOSITION TO BAXTER'S MOTION TO COMPEL
DISCOVERY** 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 December 4, 2002.

Date: December 4, 2002

A handwritten signature in cursive script, appearing to read "Elizabeth C. Davis", written over a horizontal line.