

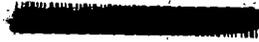
TTAB



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

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

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



02-21-2003

U.S. Patent & TMO/TM Mail Rcpt. Dt. #40

RESPONSE TO THE BOARD'S ORDER OF JANUARY 27, 2003

On January 27, 2003, the Board issued an order that suspended the subject case and requested that applicant submit another copy of its summary judgment motion papers that were filed on December 10, 2002, or confirm that the USPTO has those papers. The Order set a deadline for response by February 26, 2003. This response is being timely filed on February 21, 2003.

Applicant has confirmed that the USPTO has a complete copy of the summary judgment motion papers filed on December 10, 2002. It appears that the entry of the summary judgment motion papers crossed with the issuance of the Board's order of January 27, 2003.

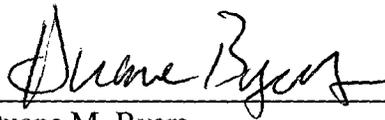
In this regard, Mr. James Scott, a Legal Assistant with the Trademark Trial and Appeal Board, has kindly confirmed that the USPTO has a complete copy of the summary judgment motion papers as filed on December 10, 2002. This is further confirmed by the attached printout of the USPTO Adversary Proceeding Data sheet. See Exhibit 1.

To assist the Board and avoid confusion by the re-submission of another set of summary judgment motion papers, the undersigned understands that a re-submission of documents is not required at this time. If the Board would like an additional copy, the undersigned will promptly provide an additional copy.

Finally, to assist the Board and the public, the undersigned respectfully notes that the parties are attempting in good faith to resolve issues concerning the filing of summary judgment documents that have been marked as "confidential" and may not be confidential. In this regard, attached is the latest good faith exchange between counsel on this issue. See Exhibit 2. Every effort will be made by the parties to remove "confidential" designations from summary judgment documents that are not truly confidential.

Respectfully submitted,

Date: 2-21-03



Duane M. Byers
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Attorneys for Applicant,
Inviro Medical Devices Ltd.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the RESPONSE TO THE BOARD'S ORDER OF JANUARY 27, 2003 (including Exhibits 1 and 2) was served this 21 day of Feb, 2003, 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



Adversary Proceeding Data

Proceeding Number: 91150298
Proceeding Status and Date: Pending 2001-12-12
Interlocutory Attorney Name: KARYN RYAN
Proceeding Location: 845 - TTAB
Proceeding Location Date: 2003-02-03
Proceeding Charged To Location:
Proceeding Charged To Employee Name:
Date Proceeding Filed: 2001-10-29

Prosecution History

Entry#	Entry Date	Due Date	History Text
32	2003-01-24		D'S REQUEST RE MOTION TO AMEND
31	2002-12-23		P'S RESPONSE IN OPPOSITION TO D'S MOT TO SUSPEND
30	2003-01-21		P'S RESPONSE TO D'S MOT FOR SJ AND CROSS MOT FOR SJ
29	2002-12-10		D'S MOT TO AMEND ANSWER AND ADD COUNTERCLAIM
28	2002-12-10		D'S MOT FOR SUMMARY JUDGEMENT W/MEMO IN SUPPORT
27	2003-01-27		SUSPENDED PENDING DISP OF OUTSTNDNG MOT
26	2002-12-10		D'S MOT TO SUSP PEND SETLMT NEGOTIATIONS
25	2002-12-10		DF MOT TO CONSOLIDATE
24	2002-12-09		P'S MOT TO STRIKE SURREPLY
23	2002-12-09		P'S REPLY BRIEF ON NO. 20
22	2002-11-19		D'S REPLY BRIEF ON D'S MOT TO COMPEL (NO . 12) W EXHIBITS
21	2002-11-25		D'S OPPOSITION TO P'S MOT FOR ORAL DEPOS ITION W EXHIBITS
20	2002-11-12		P'S M ORAL DEPO FOREIGN DEF+P'S NOTICE W RITTN DEPO DR. SHARP+P'S 30B6 NOTICE ON
19	2002-12-12		DELETE ENTRY
18	2002-11-07		P'S REPLY BRIEF ON P'S MOT TO COMPEL (NO . 12)
17	2002-10-21		PL'S RESPONSE TO BOARD ORDER D'S OPPOSITION TO P'S MOTION TO COMPEL, D'S CROSS-MOTION TO COMPEL DISCOVERY
16	2002-10-16		
15	2002-10-15		EXECUTED PROTECTIVE ORDER

14	2002-09-30	DEFENDANT'S MOTION IN OPP TO PLAINTIFF'S EXTENSION OF TIME FOR DISCOVERY
13	2002-10-01	ANSWER TO AMENDED NOTICE OF OPP
12	2002-09-27	P'S MOTION TO COMPEL DISC & FOR PROTECTI VE ORDER
11	2002-10-01	BOARD'S DECISION DEFERRED ON MOTION TO A MEND. DISCOVERY AND TRIAL DATES RESET.
10	2002-09-12	P'S MOT TO EXTEND DISCOVERY W/O CON
9	2002-08-29	P'S MOT TO AMEND W CON + EXHIBITS
8	2002-08-19	DEF'S RESPONSE TO P'S MOT FOR LEAVE TO A MEND NOT OF OPP.
7	2002-07-22	PL'S MOT AMEND NOTICE OF OPP.
6	2002-06-05	EXT APPROVED
5	2002-05-28	P'S MOT FOR EXTEN. OF TIME W/ CONSENT
4	2002-01-22	ANSWER
3	2001-12-12	PENDING, INSTITUTED
2	2001-12-12 2002-01-21	NOTICE AND TRIAL DATES SENT; ANSWER DUE:
1	2001-10-29	FILED AND FEE

Defendant Name Information:**INVIRO MEDICAL DEVICES LTD.****Owner Address:****CHANCERY CHAMBERS HIGH STREET BBX
BRIDGETOWN, CA 91311****Correspondence Address:****DUANE M BYERS
NIXON & VANDERHYE PC
1100 NORTH GLEBE ROAD, 8TH FLOOR
ARLINGTON, VA 22201-4714****Defendant Property Information:****Serial Number: 76151380****Registration Number: 0****International Classes: 010****Application Status: 774 - Opposition pending****Application Status Date: 2001-12-12****Application Location: 849 - TTAB****Application Date in Location: 2001-11-08****Law Office Assigned: M60 - TMO Law Office 115****Attorney: Duane M Byers**

Domestic Representative: NIXON VANDERHYE PC

Application Charged to Location: 85R - TTAB Team D Potential Pending Shelf

Application Charged to Employee:

Registration Date:

Examiner Name: MARC J LEIPZIG

Mark: ULTRALINK

Application Filing Date: 2000-10-20

Plaintiff Name Information:

BAXTER INTERNATIONAL INC.

Correspondence Address:

LYNN A. SULLIVAN & ELIZABETH C DISKIN

LEYDIG, VOIT & MAYER, LTD.

TWO PRUDENTIAL PLAZA, SUITE 4900

CHICAGO, IL 60601

Plaintiff Property Information:

Serial Number: 0

Registration Number: 0

From: "Diskin, Elizabeth" <ediskin@leydig.com>
To: "Duane M. Byers (E-mail)" <dmb@nixonvan.com>
Date: 2/13/03 4:39PM
Subject: FW: Baxter v. Inviro - our file 968-154

Duane,

With regard to your inquiry below, please be advised that we are reviewing the documents you have referenced below and will get back to you as soon as possible. Given the impending holiday and other scheduling issues, it will probably be late next week at the earliest before we can substantively respond.

Elizabeth

-----Original Message-----

From: Duane Byers [mailto:DMB@nixonvan.com]
Sent: Monday, February 10, 2003 5:15 PM
To: lsullivan@leydig.com
Subject: Baxter v. Inviro - our file 968-154

Dear Lynn,

On February 3, 2003, we filed our Reply Brief and Declaration in support of our Summary Judgment Motion. Attached to the Declaration were a number of exhibits that Baxter claims are confidential. Could you please consider removing the "confidential" designation of the following exhibit documents, or let us know why they should be maintained in confidence?

Exhibit 13
Exhibit 14
Exhibit 15
Exhibit 16
Exhibit 18
Exhibit 19

We would like to make sure that we comply with the Trademark Trial and Appeal Board's rules and only file sealed documents that are truly confidential.

Please also consider removing your confidential designation of the trademark license agreements (or at least the trademark license provisions contained in those agreements) attached as Exhibit C to our Summary Judgment Motion.

If you have any questions or would like to discuss this matter, please feel free to contact me.

Regards,
Duane

Duane Byers
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Arlington, Virginia 22201
USA