

TTAB

02-25-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #64

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.	)	

**BAXTER'S REPLY IN SUPPORT OF ITS  
CROSS-MOTION FOR MOTION FOR SUMMARY JUDGMENT**

In accordance with 37 C.F.R. § 2.127(e)(1), Baxter International Inc., (hereinafter "Baxter") files this timely reply in support of its Cross-Motion for Summary Judgment, to which Inviro filed a response on February 3, 2003.

Inviro's response in opposition to Baxter's Cross-Motion is a one-paragraph response in which Inviro refers to its own Reply Brief filed in support of its own Summary Judgment motion as the sole basis of its opposition to Baxter's Cross-Motion. In the alternative, Inviro seeks time to take discovery on the declarations and documents submitted by Baxter with its Cross Motion because those documents were not previously produced in discovery.

Baxter does not believe that Inviro has presented sufficient evidence of naked licensing to justify its Motion for Summary Judgment, seeking cancellation of Baxter's famous INTERLINK mark registrations. Baxter's response to Inviro's motion and its own Cross-Motion present ample evidence that no naked licensing has occurred. Should this Board deny Inviro's Motion, Baxter does not believe that Inviro should be granted

additional time to go on a fishing expedition in another misplaced attempt to prove naked licensing.

Inviro has successfully de-railed the focus of Baxter's opposition, suspending all progress in the case for countless months, by putting forth a hollow attempt to buy time and challenge Baxter's famous INTERLINK mark. Assuming this Board agrees that Inviro's Motion should be denied, its one-paragraph response to Baxter's Cross Motion should not serve as a basis to further delay progress in this case.

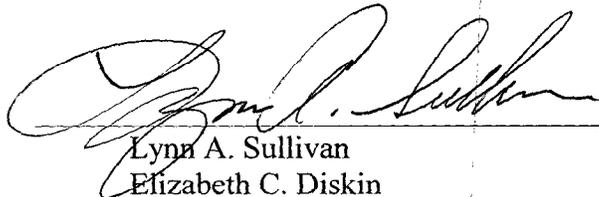
Baxter further objects to Inviro's request for additional discovery because, in accordance with F.R.C.P. 56(f), a court may order discovery on an issue and defer judgment when a party opposing summary judgment presents information, via an affidavit, that it is unable to present essential facts which justify the party's opposition. Baxter does not believe Inviro has done this. Mr. Byers' declaration, submitted in support of its Response and Reply Brief attempt to present evidence that he asked for quality control information and that Baxter's attorneys confirmed that such information would be produced. The declaration, however, presents no evidence in support of this. Baxter denies that Inviro's counsel specifically asked for "quality control" information during its conversations with Baxter counsel, and its reference to and attachment of letters exchanged by counsel do not support this alleged "fact." Though Inviro's counsel's self-serving letters reference "quality control", in no letter written by Baxter's counsel does anyone confirm that such information was being sought or gathered. (See for example, letters written by Baxter's counsel to Byers, and attached as Exhs. 4 & 5 to Byers' Declaration). More importantly, the actual discovery requests made never referenced "quality control" and Baxter's response to Inviro's discovery requests

objected to and limited the scope in which Baxter would provide answers and documents. (See Exhs. A&B of Inviro's Motion for Summary Judgment). Inviro never challenged Baxter's objections and Inviro never took depositions or sought follow-up discovery on the vast amount of information and documents presented to Inviro during the discovery phase. Inviro now presents a last ditch attempt to seek discovery on the documents it should have sought prior to filing its unsupported Summary Judgment Motion and run up further expense in this case. This tactic should be seen for what it is—another delay.

Baxter's licenses with third parties contain quality control provisions. Baxter's own declarations and documents confirm that those provisions are not hollow. Relationships with the third parties and specific measures have been taken which assure Baxter that quality control over its INTERLINK products has been maintained. Therefore, Baxter respectfully requests that its Cross-Motion for Summary Judgment be granted, and Inviro's request for additional discovery on the documents presented be denied.

Respectfully submitted,

Date: 2/20/03



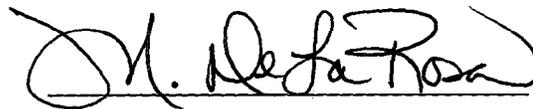
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**CERTIFICATE OF MAILING**

I hereby certify that **BAXTER'S REPLY IN SUPPORT OF ITS  
CROSS-MOTION FOR MOTION FOR SUMMARY JUDGMENT** is being deposited  
(in triplicate) 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.

Date: February 20, 2003

A handwritten signature in black ink, appearing to read "M. De la Rosa", written over a horizontal line.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of **BAXTER'S REPLY IN SUPPORT OF ITS CROSS-MOTION FOR MOTION FOR SUMMARY JUDGMENT** was served via first class mail on February 20, 2003, to:

Duane M. Byers, Esq.  
Nixon & Vanderhye, P.C.  
1100 N. Glebe Road, 8<sup>th</sup> Floor  
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A handwritten signature in black ink, appearing to read "D. M. Byers", is written over a horizontal line.