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**Exhibits**

**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. 76-151380

**ANSWER TO NOTICE OF OPPOSITION**

Applicant, INVIRO MEDICAL DEVICES LTD., hereby answers the Notice of Opposition in the following manner:

1. Applicant admits the allegations in Paragraph 1 of the Opposition.
2. Applicant lacks sufficient knowledge to form a belief concerning any of the allegations in Paragraph 2 of the Opposition and, therefore, denies all of the allegations in Paragraph 2 and leaves Opposer to its proof.
3. Applicant lacks sufficient knowledge to form a belief concerning any of the allegations in Paragraph 3 of the Opposition, including the poor copies of portions of five registrations and two computer printouts of partial applications attached to the Opposition and the lack of any Exhibit A, and, therefore, denies all of the allegations in Paragraph 3 and leaves Opposer to its proof.
4. Applicant lacks sufficient knowledge to form a belief concerning any of the allegations in Paragraph 4 of the Opposition, including the lack of any Exhibit B or any

attachment relating to PLASMALINK, and, therefore, denies all of the allegations in Paragraph 4 and leaves Opposer to its proof.

5. Applicant lacks sufficient knowledge to form a belief concerning any of the allegations in Paragraph 5 of the Opposition and, therefore, denies all of the allegations in Paragraph 5 and leaves Opposer to its proof.

6. Applicant lacks sufficient knowledge to form a belief concerning any of the allegations in Paragraph 6 of the Opposition and, therefore, denies all of the allegations in Paragraph 6 and leaves Opposer to its proof.

7. Applicant lacks sufficient knowledge to form a belief concerning any of the allegations in Paragraph 7 of the Opposition and, therefore, denies all of the allegations in Paragraph 7 and leaves Opposer to its proof, with the exception that Applicant admits it has a pending application U.S. Serial No. 76/151380 covering "medical devices, namely, cannulae, medical, hypodermic, aspiration and injection needles, medical, hypodermic, aspiration and injection syringes, connectors, ports, catheters and injection sites."

8. Applicant lacks sufficient knowledge to form a belief concerning any of the allegations in Paragraph 8 of the Opposition and, therefore, denies all of the allegations in Paragraph 8 and leaves Opposer to its proof, with the exception that Applicant admits its application covers "medical devices, namely, cannulae, medical, hypodermic, aspiration and injection needles, medical, hypodermic, aspiration and injection syringes, connectors, ports, catheters and injection sites."

9. Applicant lacks sufficient knowledge to form a belief concerning any of the allegations in Paragraph 9 of the Opposition and, therefore, denies all of the allegations in Paragraph 9 and leaves Opposer to its proof.

10. Applicant lacks sufficient knowledge to form a belief concerning any of the allegations in Paragraph 10 of the Opposition and, therefore, denies all of the allegations in Paragraph 10 and leaves Opposer to its proof.

11. Applicant denies the allegation in the second sentence of Paragraph 11 of the Opposition that reads: "[such customers] would likely believe that Applicant's goods were somehow related to, complementary to, or otherwise authorized by Opposer," and leaves Opposer to its proof. Applicant lacks sufficient knowledge to form a belief concerning any other allegations in Paragraph 11 of the Opposition and, therefore, denies all of the allegations in Paragraph 11 and leaves Opposer to its proof.

12. Applicant denies that its mark is very similar in sight, sound and commercial impression to Opposer's marks, and is identical in product and nature of use, and leaves Opposer to its proof. In this regard, Applicant notes that there are a plethora of third party "LINK" trademark applications and registrations in the United States Trademark Office in Class 10 -- which severely limits the scope of any alleged "LINK" rights that Opposer claims. See, e.g., Exhibit 1. In fact, Opposer was not the first party to use or register a "LINK" trademark for Class 10 medical goods in the United States. Moreover, no party can claim any exclusive rights in the generic/descriptive term "LINK" as used with Class 10 medical goods in the United States. Furthermore, Applicant's distinctive Class 10 term ULTRA as used in its trademark is completely different than Opposer's Class 10 terms INTER and LUER in appearance,

pronunciation, connotation and commercial impression. These factors and others preclude any likelihood of confusion, mistake or deception under 15 U.S.C. § 1052(d). Finally, Applicant lacks sufficient knowledge to form a belief concerning any of the other allegations in Paragraph 12 of the Opposition and, therefore, denies all of the allegations in Paragraph 12 and leaves Opposer to its proof.

### **AFFIRMATIVE DEFENSES**

13. The differences between Opposer's marks and Applicant's mark and/or the goods with which these marks are used or intended to be used precludes any likelihood of confusion, mistake or deception.

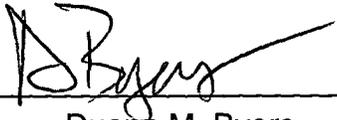
14. Because of the generic/descriptive nature of the word "LINK," Opposer's rights in its cited LINK registrations, if any, are limited in scope.

15. In view of third party usage, applications for and registration of marks including the word "LINK" for various types of medical goods in Class 10, and the lack of Opposer's policing efforts, Opposer is entitled only to a narrow scope of protection for its alleged "LINK" trademarks. See, for example, the plethora of third party "LINK" U.S. trademark applications and registrations identified in the computer printouts attached as Exhibit 1 hereto.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed and that it be adjudged entitled to the registration of its mark in Application Serial No. 76/151,380.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By:   
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**CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing ANSWER TO NOTICE OF OPPOSITION was served on counsel for Opposer by depositing same in the United States mail, first class, postage pre-paid, this 22 day of January 2002, addressed to:

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



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Duane M. Eyers

(January 21 = federal holiday)