

ESTTA Tracking number: **ESTTA31178**

Filing date: **04/21/2005**

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

<b>Proceeding</b>	91150298
<b>Party</b>	Plaintiff BAXTER INTERNATIONAL INC. ,
<b>Correspondence Address</b>	LYNN A. SULLIVAN & ELIZABETH C DISKIN LEYDIG, VOIT & MAYER, LTD. TWO PRUDENTIAL PLAZA, SUITE 4900 CHICAGO, IL 60601
<b>Submission</b>	Answer to Counterclaim
<b>Filer's Name</b>	Caroline L. Stevens
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<b>Signature</b>	/Caroline L. Stevens/
<b>Date</b>	04/21/2005
<b>Attachments</b>	Answer to Counterclaim 4-21-05.pdf ( 6 pages )

**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.	)	

**BAXTER’S ANSWER TO INVIRO’S AMENDED COUNTERCLAIM TO CANCEL  
OPPOSER’S PLEADED REGISTRATION NOS. 1,721,708; 1,812,016; and 1,821,178**

In response to the counterclaim allegations in “Applicant’s Amended Answer to Amended Notice of Opposition and Amended Counterclaim to Cancel Opposer’s Pleased Registration nos. 1,721,708; 1,812,016; and 1,821,178” (which was filed as Exhibit A to “Inviro’s Motion to Amend Answer and Amend Counterclaim for Cancellation,” filed on December 22, 2003), which is now of record in accordance with the Board Ruling of March 22, 2005, Opposer, Baxter International Inc. answers in the following manner:

A. First Counterclaim

15. Opposer Baxter International Inc. has asserted three INTERLINK trademark registrations in this opposition, i.e., Registration Nos. 1,721,708; 1,812,016; and 1,821,178.

ANSWER: Admitted.

16. On information and belief, Baxter has licensed or allowed various third parties to use the INTERLINK trademark that is the subject of the foregoing three registrations.

ANSWER: Admitted.

17. On information and belief, Baxter has failed to exert quality control over the third parties' usage of the INTERLINK trademark and the corresponding third parties' goods and/or services.

ANSWER: Denied.

18. On information and belief, Baxter's failure to exert quality control amounts to the improper "naked licensing" of its INTERLINK trademark. As a result, the three INTERLINK registrations, i.e., Registration Nos. 1,721,708; 1,812,016 and 1,821,178, should be cancelled.

ANSWER: Allegation calls for legal conclusion. Baxter denies "naked licensing."

**B. Second Counterclaim**

19. Opposer Baxter International Inc. ("Baxter") has asserted the INTERLINK Trademark Registration No. 1,821,178 in this opposition.

ANSWER: Admitted.

20. In its application declaration in 1993 (upon which Registration No. 1,821,178 was based), Baxter swore that it had used the INTERLINK trademark on "drug vials" and "drug vial stoppers" as set forth in Registration No. 1,821,178. In addition, in its Section 8 Declaration in 1999 for Registration No. 1,821,178, Baxter swore that it was currently using the INTERLINK trademark on "drug vials" and "drug vial stoppers" as set forth in Registration No. 1,821,178. Further, in its Section 15 Declaration in 1999, Baxter swore that it was using and had continuously used for the last five years the INTERLINK trademark on "drug vials" and "drug vial stoppers" as set forth in Registration No. 1,821,178. Baxter's application declaration in 1993, Baxter's Section 8 Declaration in 1999, and Baxter's Section 15 Declaration in 1999 were false and fraudulent. According to Baxter's sworn testimony on December 15, 2003, Baxter has never used the INTERLINK trademark on "drug vials" or "drug vial stoppers" as set forth in Registration No. 1,821,178. Furthermore, Baxter has confirmed with sworn testimony on December 15, 2003, that it has never informed the U.S. Trademark Office of these facts. These Baxter actions constitute the fraudulent procurement of Registration No. 1,821,178 as well as the fraudulent maintenance of Registration No. 1,821,178. Accordingly, Registration No. 1,821,178 should be prejudicially cancelled.

ANSWER: Baxter admits that, in its application declaration in 1993 (upon which Registration No. 1,821,178 was based), Baxter swore that it had used the INTERLINK trademark on “drug vials” and “drug vial stoppers” as set forth in Registration No. 1,821,178. Baxter admits that, in its Section 8 Declaration in 1999 for Registration No. 1,821,178, Baxter swore that it was currently using the INTERLINK trademark on “drug vials” and “drug vial stoppers” as set forth in Registration No. 1,821,178. Baxter admits that, in its Section 15 Declaration in 1999, Baxter swore that it was using and had continuously used for the last five years the INTERLINK trademark on “drug vials” and “drug vial stoppers” as set forth in Registration No. 1,821,178.

Baxter admits that, according to Baxter’s sworn testimony on December 15, 2003, Baxter stated that it had never “used,” “marketed,” “commercialized,” or “sold” drug vials and drug vial stoppers under the INTERLINK trademark, but Baxter denies that, according to Baxter’s sworn testimony on December 15, 2003, Baxter never “used” the INTERLINK mark with drug vials and drug vial stoppers as “used” is defined by the USPTO.

Baxter admits that it has confirmed with sworn testimony on December 15, 2003, that it has never informed the U.S. Trademark Office that Baxter never “used,” “marketed,” “commercialized,” or “sold” drug vials and drug vial stoppers under the INTERLINK trademark.

All remaining allegations in Paragraph 20 call for legal conclusions. On information and belief, Baxter denies that its application declaration in 1993 was false. Baxter admits that part of its Section 8 Declaration in 1999 and its Section

15 Declaration in 1999 was false, but denies that any part was fraudulent. Baxter denies that its actions constitute fraudulent procurement of Registration No. 1,821,178 or the fraudulent maintenance of Registration No. 1,821,178. Baxter denies that Reg. No. 1,821,178 should be cancelled.

Respectfully submitted,

Date: April 21, 2005

By: *Caroline Stevens*

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Attorneys for Opposer  
Baxter International Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of "BAXTER'S ANSWER TO INVIRO'S AMENDED COUNTERCLAIM TO CANCEL OPPOSER'S PLEADED REGISTRATION NOS. 1,721,708; 1,812,016; and 1,821,178" is being filed electronically on the date indicated below to the Trademark Trial and Appeal Board.

Dated: April 21, 2005

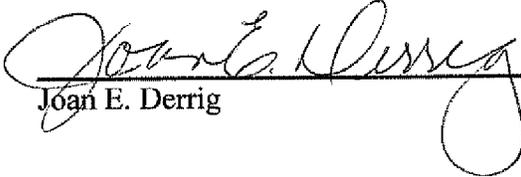
  
\_\_\_\_\_  
Caroline L. Stevens

**CERTIFICATE OF SERVICE TO APPLICANT**

I HEREBY CERTIFY that a true and correct copy of "BAXTER'S ANSWER TO INVIRO'S AMENDED COUNTERCLAIM TO CANCEL OPPOSER'S PLEADED REGISTRATION NOS. 1,721,708; 1,812,016; and 1,821,178" is being served upon attorneys Applicant via Federal Express Overnight, Tracking No. 792262647476, on the date indicated to:

Duane M. Byers  
NIXON & VANDERHYE P.C.  
1100 North Glebe Road, 8<sup>th</sup> Floor  
Arlington, VA 22201-4714

Dated: April 21, 2005

  
Joan E. Derrig

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