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By: *Thomas M. Galgano* Dated: 6/6/08  
Thomas M. Galgano, Esq.

**TTAB**

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

In the Matter of Application Serial No. 76/405,848

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SMITHS MEDICAL ASD, INC.	:
(formerly Level 1, Inc.)	:
Opposer,	:
	:
	: Opposition No.: 91159799
vs.	:
	:
PORTLAND ORTHOPAEDICS PTY LTD.	:
	:
Applicant.	:
	:
-----X	

**MOTION FOR JUDGMENT  
UNDER RULE 2.132(a)**

Assistant Commissioner of Trademarks  
United States Patent and Trademark Office  
Trademark Trial And Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451



06-09-2008

U.S. Patent & TMO/TM Mail Rpt Ct. #34

Dear Sir:

Applicant, Portland Orthopaedics Pty Ltd. ("Portland") hereby submits this Motion For Judgment under 37 C.F.R. §2.132(a) for involuntary dismissal due to Opposer's failure to take testimony or offer any other evidence during its testimony period.

37 CFR §2.132(a) states that:

"If the time for taking testimony by any party in the position of plaintiff has expired and that party has not taken testimony or offered any other evidence, any party in the position of defendant may, without waiving the right to offer evidence in the event the motion is denied, move for dismissal on the ground of the failure of the plaintiff to prosecute. The party in the position of plaintiff shall have fifteen days from the date of service of the motion to show cause why judgment should not be rendered against him. In the absence of a showing of good and sufficient cause, judgment may be rendered against the party in the position of plaintiff. If the motion is denied, testimony periods will be reset for the party in the position of defendant and for rebuttal."

Pursuant to the Board's order of January 16, 2007, Opposer's testimony period ended on January 12, 2008. During that time period Opposer failed to take any testimony or offer any other evidence. Thus, the Opposer's testimony period has passed and they have failed to prosecute.

Accordingly, Applicant requests that the Opposition be dismissed under 37 CFR §2.132(a) for failure of the opposer to prosecute.

Respectfully submitted,

PORTLAND ORTHOPAEDICS PTY LTD.



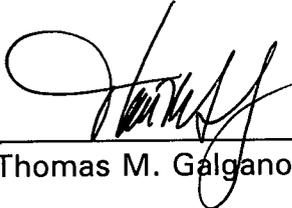
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Thomas M. Galgano  
Attorneys for Applicant  
GALGANO & ASSOCIATES, PLLC  
20 W. Park Avenue, Suite 204  
Long Beach, New York 11561  
(516) 431-1177

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **MOTION FOR JUDGMENT UNDER RULE 2.132(a)** has this June 6, 2008 been sent by first-class mail to:

SANDRA EPP RYAN, ESQ.  
FAEGRE & BENSON LLP  
2200 WELLS FARGO CENTER  
90 SOUTH 7TH STREET  
MINNEAPOLIS; MINNESOTA 55402

  
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Thomas M. Galgano