

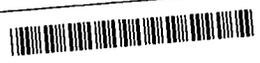
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TTAB

April 27, 2005

Assistant Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451


04-29-2005
U.S. Patent & TMO/TM Mail Rcpt Dt. #11

Re: Medtronic, Inc. v. Cardiac Pacemakers, Inc.
Opposition No. 91163746
Ser. No. 76/535,841 (PACERPLUS)

Dear Sir:

Enclosed for filing in regard to the above-referenced matter please find Applicant's Response to Opposers' Alleged Clarification of Joint Submission and Stipulation.

By copy of this letter, opposing counsel is served.

Yours truly,

NIKOLAI & MERSEREAU, P.A.


James T. Nikolai

JTN:br
Enclosure
cc: Molly Loussaert, Esq.

In the Matter of Trademark Serial Nos. 76/535,842; 76/535,841; 76/535,840; and 76/536,437
For the Marks: PACEMAKERPLUS, PACERPLUS, PACER+ and PACEMAKER+

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

Medtronic, Inc.,

Opposer,

Opposition No. 91161441

Opposition No. 91161444

v.

Opposition No. 91161204

Cardiac Pacemakers, Inc.,

Applicant.



04-29-2005

U.S. Patent & TMOrc/TM Mail RcptDt. #11

Pacesetter, Inc. d/b/ a

St. Jude Medical Cardiac Rhythm
Management Division,

Opposer,

Opposition No. 91161301

Opposition No. 91162106

v.

Opposition No. 91161126

Cardiac Pacemakers, Inc.,

Applicant.

Medtronic, Inc., and Pacesetter, inc.

d/b/a St. Jude Medical Cardiac
Rhythm Management Division,

Opposer,

Opposition No. 91163746

v.

Cardiac Pacemakers, Inc.,

Applicant.

**APPLICANT'S RESPONSE TO OPPOSERS' ALLEGED CLARIFICATION OF
JOINT SUBMISSION AND STIPULATION**

On February 16, 2005, counsel for Opposers signed the parties' Joint Submission and Stipulation. On March 1, 2005, the undersigned signed this document and subsequently forwarded to the U.S. Patent and Trademark Office in connection with the subject oppositions. The Joint Submission and Stipulation includes a statement by Applicant that it has expressly

abandoned three applications (Nos. 76/535,841; 76/535,840 and 76/536,437) for the marks PACERPLUS, PACER+ and PACEMAKER+, respectively.

Trademark Rule 2.135 provides:

After the commencement of an opposition, concurrent use, or interference proceeding, if the applicant files a written abandonment of the application or of the mark without written consent of every adverse party to the proceeding, judgment shall be entered against the applicant. The written consent of the adverse party may be signed by the adverse party or by the adverse party's attorney or other authorized representative.

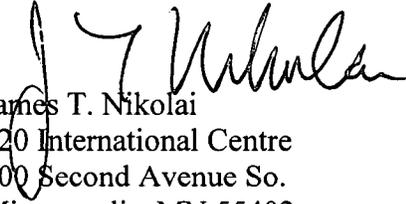
By signing the Joint Submission and Stipulation, counsel for Opposers consented to the written abandonment of the applications. This is all that is required by the Rule. As such, it was entirely proper for the applications to be abandoned and the oppositions dismissed without prejudice.

The Stipulation that was signed by counsel for the parties made no reference as to whether the abandonment should be with or without prejudice and does not indicate anywhere that the consent was in any way conditioned upon the entry of judgment against the Applicant with prejudice with respect to the abandoned marks. By signing the Submission and Stipulation, counsel for the Opposers consented to its contents, including the provisions related to abandonment of these applications due to the fact that Applicant no longer has a *bona fide* intent to use those marks.

In view of the foregoing, the prior orders should stand.

Respectfully submitted,

NIKOLAI & MERSEREAU, P.A.



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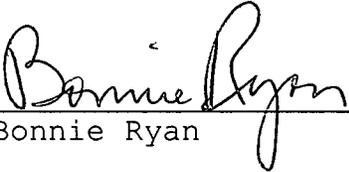
Dated: 4/27, 2005.

CERTIFICATE OF MAILING

I hereby certify that the foregoing APPLICANT'S RESPONSE TO OPPOSERS' ALLEGED CLARIFICATION OF JOINT SUBMISSION AND STIPULATION is being deposited with the U.S. Postal Service as First Class Mail in an envelope addressed to:

Assistant Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

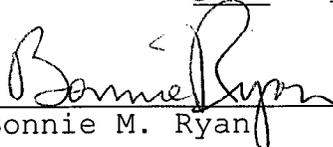
postage prepaid, on April 27, 2005.



Bonnie Ryan

CERTIFICATE OF SERVICE

I hereby certify that a true copy of APPLICANT'S RESPONSE TO OPPOSERS' ALLEGED CLARIFICATION OF JOINT SUBMISSION AND STIPULATION was served upon Molly O'Brien Loussaert, Fredrikson & Byron, P.A., 200 So. 6th Street, Suite 4000, Minneapolis, Minnesota 55402 by First Class Mail this 27th day of April, 2005.



Bonnie M. Ryan