

ESTTA Tracking number: **ESTTA215036**

Filing date: **06/02/2008**

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

Proceeding	91178539
Party	Plaintiff SmithKline Beecham Corporation
Correspondence Address	Glenn A. Gundersen Dechert LLP Cira Centre, 2929 Arch Street Philadelphia, PA 19104-2808 UNITED STATES glenn.gundersen@dechert.com
Submission	Reply in Support of Motion
Filer's Name	Erik Bertin
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Signature	/erik bertin/
Date	06/02/2008
Attachments	Declaration of Jacob Bishop.pdf ( 33 pages )(1016326 bytes )

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

In re Application of Omnisource DDS, LLC  
Application Serial No.: 78/893,144  
Filed; May 25, 2006  
Mark: AQUAJETT

SMITHKLINE BEECHAM CORPORATION	:	
	:	
Opposer,	:	
	:	
v.	:	Opposition No. 91/178,539
	:	
OMNISOURCE DDS, LLC	:	
	:	
Applicant.	:	

**DECLARATION OF JACOB BISHOP**

I, Jacob Bishop, declare and state as follows:

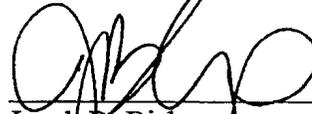
I am an attorney with the law firm of Dechert LLP, counsel of record for Opposer SmithKline Beecham Corporation. I make this Declaration in support of Opposer's Motion for Summary Judgment Based on the Issue of Applicant's *Bona Fide* Intent, which was filed in this proceeding on April 8, 2008. The following facts are within my personal knowledge and, if called and sworn as a witness, I could and would testify competently thereto:

1. Attached hereto as Exhibit A is a true and correct copy of relevant portions of the discovery deposition of Dr. William R. Weissman, DDS, President of Applicant, Omnisource DDS, LLC, taken February 27, 2008.
2. Attached hereto as Exhibit B is a true and correct copy of relevant portions of Opposer's Requests for Admissions to Applicant.
3. Attached hereto as Exhibit C is a true and correct copy of relevant portions of Applicant's Responses to Opposer's Requests for Admissions.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: June 2, 2008

Respectfully submitted,



Jacob R. Bishop  
DECHERT LLP  
Cira Centre, 2929 Arch Street  
Philadelphia, PA 19104-2808  
(215) 994-2183

Attorneys for Opposer  
SMITHKLINE BEECHAM CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Declaration of Jacob Bishop has been duly served by mailing such copy first class, postage prepaid, to Erik M. Pelton, P.O. Box 100637, Arlington, VA 22210 on June 2, 2008.



\_\_\_\_\_  
Erik Bertin

**Declaration of Jacob Bishop – Exhibit A**

A true and correct copy of relevant portions of the discovery deposition of Dr. William R. Weissman, DDS, President of Applicant, Omnisource DDS, LLC, taken February 27, 2008.

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

SMITHKLINE BEECHAM  
CORPORATION,

Opposer,

vs.

No. 91/178,539

OMNISOURCE, DDS, LLC,

Applicant.

CERTIFIED  
COPY

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DEPOSITION OF WILLIAM R. WEISSMAN

North Hollywood, California

Wednesday, February 27, 2008

Reported by:  
MARIA ELLERSICK  
CSR No. 10531  
Job No. 82408

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

3  
4   SMITHKLINE BEECHAM  
5   CORPORATION,

6                   Opposer,

7           vs.

                  No. 91/178,539

8   OMNISOURCE, DDS, LLC,

9                   Applicant.

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13                   Deposition of WILLIAM R. WEISSMAN,  
14           taken on behalf of Opposer, at 10902  
15           Riverside Drive, North Hollywood,  
16           California, beginning at 9:17 a.m. and  
17           ending at 10:40 a.m. on Wednesday,  
18           February 27, 2008, before MARIA ELLERSICK,  
19           Certified Shorthand Reporter No. 10531.  
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APPEARANCES:

For Opposer:

DECHERT, LLP  
BY: ERIK BERTIN  
Attorney at Law  
1775 I Street, N.W.  
Washington, D.C. 20006-2401  
(202) 261-3300

For Applicant:

ERIK M. PELTON & ASSOCIATES  
BY: ERIK M. PELTON  
Attorney at Law  
120 South Fayette Street, Suite B  
Alexandria, Virginia 22314  
(703) 525-8009

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Q.            Could patients use an oral irrigator to prevent dental diseases?

A.    To prevent dental diseases, no.

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Q. Do you as a dentist use oral irrigators here at your office?

A. No.

Q. You do not?

A. Correct.

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Q. In your experience, do other dentists use oral irrigators in their offices?

A. I don't know.

1 Q. Are you aware of any dentists who sell these  
2 types of products?

3 A. No.

4 Q. You yourself do not provide them to your  
5 patients?

6 A. Correct.

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Q. The oral irrigators that are described in these patents, did you develop these products yourself or with others?

A. With others.

Q. And who were the other inventors?

A. Other engineers.

Q. Engineers who worked on the product?

A. Correct.

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Q. I guess I'll start off by asking when did you start working on the products that are described in these patents?

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A. Somewhere around 1990.

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Q. And were you practicing dental medicine -- in private practice at that time?

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A. Yes.

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Q. Did you develop work on these products as part of your dental practice?

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A. No.

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Q. You worked on them separately from your dental practice?

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A. Correct.

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Q. Are you intending to sell this product to dental professionals specifically for use in their profession?

A. I haven't really thought about exactly who or when these would be sold or to whom.

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Q. The product that's described in these patents,  
have you installed it here at your office?

A. No.

Q. You don't use it in your practice?

A. Correct.

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Q. Am I correct in assuming that you have not sent any marketing materials to any third-parties concerning your oral irrigator products?

A. Correct.

Q. Have you developed any marketing materials for your oral irrigator products?

A. No.

1 Q. Aside from retail stores, have you thought about  
2 any other place where this product might be sold?

3 A. Potentially to dental offices.

4 Q. If Omnisource was to sell the product to dental  
5 offices, how would you go about doing that?

6 A. That hasn't been thought about yet.

7 Q. As a dentist, am I correct in assuming that you  
8 purchase supplies for your practice?

9 A. My office staff purchases supplies.

10 Q. From whom do they purchase their supplies?

11 A. Supply houses.

12 Q. These are companies that specialize in selling  
13 supplies to dental practitioners?

14 A. Correct.

15 Q. Have you identified any dental supply houses to  
16 whom you might offer your oral irrigator products?

17 A. No.

18 Q. Aside from the dentist supply house that you use  
19 in your own practice, have you identified any other  
20 dental supply houses -- or let me rephrase that. Are  
21 you aware of any other dental supply houses?

22 A. I'm aware of several different supply outlets  
23 that provide dentistry supplies.

24 Q. But you have not discussed your oral irrigator  
25 product with any of those dental supply houses?

1 logo for this product?

2 A. No.

3 Q. And that's true today and it was true at the time  
4 that you filed your applications?

5 A. Correct.

6 Q. That's true for the mark Aquajett?

7 A. Correct.

8 Q. Is it true for all of the other marks that you  
9 filed applications for?

10 A. Correct.

11 Q. Have you offered or shown this product at any  
12 trade shows?

13 A. No.

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10 Q. Aside from that trade show, are there any others  
11 that you've attended?

12 A. No.

13 Q. You indicated that companies that sell oral care  
14 products attend that particular trade show. On the  
15 occasions when you've gone, have you discussed your oral  
16 irrigator product with any of the companies that have  
17 exhibited at that show?

18 A. No.

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I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were duly sworn; that a record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; that the foregoing transcript is a true record of the testimony given.

Further, that if the foregoing pertains to the original transcript of a deposition in a Federal Case, before completion of the proceedings, review of the transcript [ ] was [ ] was not requested.

I further certify I am neither financially interested in the action nor a relative or employee of any attorney or party to this action.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: MAR 14 2008

Maria Ellersick  
MARIA ELLERSICK  
CSR No. 10531

I, WILLIAM R. WEISSMAN, do hereby declare under penalty of perjury that I have read the foregoing transcript; that I have made any corrections as appear noted, in ink, initialed by me, or attached hereto; that my testimony as contained herein, as corrected, is true and correct.

EXECUTED this 6 day of APRIL, 2008,  
at NO. HOLLYWOOD, CALIFORNIA  
(City) (State)

*William R. Weissman*

WILLIAM R. WEISSMAN

**Declaration of Jacob Bishop – Exhibit B**

A true and correct copy of relevant portions of Opposer's Requests for Admissions to Applicant.



**Request No. 24.** Admit that Applicant intends to use the AQUAJETT Mark on or in connection with an oral hygiene device that can be used to treat or prevent periodontal disease.

**Request No. 27.** Admit that Applicant intends to use the AQUAJETT Mark on or in connection with an oral hygiene device that can be used to treat or prevent plaque buildup.

**Request No. 47.** Admit that Applicant intends to offer its AQUAJETT products to dentists for use in their practice of dental medicine.

**Request No. 48.** Admit that Applicant intends to offer its AQUAJETT products to dental hygienists for use in their practice of dental medicine.

**Request No. 49.** Admit that Applicant intends to offer its AQUAJETT products to orthodontists for use in their practice of orthodontia.

**Request No. 50.** Admit that Applicant intends to offer its AQUAJETT products to endodontists for use in their practice of endodontia.



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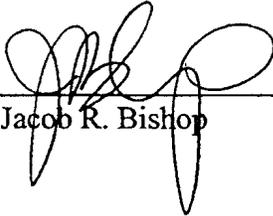
Glenn A. Gundersen  
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2929 Arch Street  
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(215) 994-2183

Attorneys for Opposer,  
SMITHKLINE BEECHAM  
CORPORATION

Dated: February 11, 2008

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Opposer's Requests for Admission to Applicant is being deposited with the U.S. Postal Service, postage prepaid, addressed to Erik M. Pelton, Erik M. Pelton & Associates, PLLC, P.O. Box 100637, Arlington, Virginia 22210, on February 11, 2008.

  
\_\_\_\_\_  
Jacob R. Bishop

**Declaration of Jacob Bishop – Exhibit C**

A true and correct copy of relevant portions of Applicant's Responses to Opposer's Requests for Admissions.

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

SMITHKLINE BEECHAM CORPORATION, )  
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Opposer, )  
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vs. )  
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OMNISOURCE DDS, LLC, )  
)  
Applicant. )

IN THE MATTER OF:

Opposition No. 91178539

RECEIVED

MAR 17 2008

G.A.G.

APPLICANT'S RESPONSES TO  
OPPOSER'S REQUESTS FOR ADMISSIONS

I. PRELIMINARY STATEMENT

Applicant is presently pursuing its investigation and analysis of the facts and law relating to this case and has not yet completed preparation for the Opposition proceedings. The responses set forth herein are given without prejudice to Applicant's right to develop any theory or produce or use any subsequently discovered or previously unknown facts, documents or evidence, or to add to, modify or otherwise change or amend the responses herein. These responses are based upon writings and information currently available to Applicant. The information set forth is true and correct to the best knowledge of Applicant as of this date, and is subject to correction for inadvertent errors, mistakes or omissions.

II. GENERAL OBJECTIONS

Applicant makes the following general objections, whether or not separately set forth in response to each and every instruction, definition and request for admission:

1. Applicant objects to the introductory definitions to the Requests for Admission to the extent that such definitions purport to enlarge, expand, or alter in any way the plain meaning and scope of what is authorized by the Federal Rules of Civil Procedure on the ground that such enlargement, expansion, or alteration renders such request vague, ambiguous, unintelligible,

24. Denied.

27. Denied.

47. Applicant objects to this Request as requesting conjecture or speculation and not grounded in fact. Since Applicant can neither admit nor deny the Request as asked, Applicant must deny.

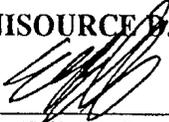
48. Applicant objects to this Request as requesting conjecture or speculation and not grounded in fact. Since Applicant can neither admit nor deny the Request as asked, Applicant must deny.

49. Applicant objects to this Request as requesting conjecture or speculation and not grounded in fact. Since Applicant can neither admit nor deny the Request as asked, Applicant must deny.

50. Applicant objects to this Request as requesting conjecture or speculation and not grounded in fact. Since Applicant can neither admit nor deny the Request as asked, Applicant must deny.

Dated: March 11, 2008

**OMNISOURCE B.D.S., LLC**

By:   
\_\_\_\_\_  
Erik M. Pelton, Esq.

Erik M. Pelton & Associates, PLLC  
PO Box 100637  
Arlington, Virginia 22210  
TEL: (703) 525-8009  
FAX: (703) 525-8089

CERTIFICATE OF SERVICE

I hereby certify that a true copy of APPLICANT'S RESPONSE TO OPPOSER'S REQUESTS FOR ADMISSIONS was deposited with postage sufficient for first class mail on March \_\_//, 2008, to Counsel for Opposer at the following address:

Glenn A. Gundersen  
Dechert LLP  
Cira Centre, 2929 Arch Street  
Philadelphia, PA 19104-2808

By:



\_\_\_\_\_  
Erik M. Pelton, Esq.