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Filing date: **08/05/2011**

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

Proceeding	91200436
Party	Plaintiff CardioMEMS, Inc.
Correspondence Address	Olivia Maria Baratta Kilpatrick Townsend & Stockton LLP 1100 Peachtree St. NE., Suite 2800 Atlanta, GA 30309 UNITED STATES tmadmin@kilpatricktownsend.com, mbaratta@kilpatricktownsend.com, vnorthcutt@kilpatricktownsend.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Olivia Maria Baratta
Filer's e-mail	mbaratta@kilpatricktownsend.com
Signature	/Maria Baratta/
Date	08/05/2011
Attachments	Motion to Amend NOO.pdf (9 pages)(57474 bytes)

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

CARDIOMEMS, INC.,)	
)	In re Serial No. 85/082098
Opposer,)	
)	Mark: CHAMPIONIR
v.)	
)	Opposition No. 91200436
MEDINOL LTD.,)	
)	
Applicant.)	

**OPPOSER’S MOTION FOR LEAVE TO AMEND NOTICE OF OPPOSITION
AND MEMORANDUM IN SUPPORT**

Pursuant to Rule 2.107 of the Trademark Rules of Practice and Rule 15(a) of the Federal Rules of Civil Procedure, Opposer CardioMEMS, Inc. hereby moves the Board to amend its Notice of Opposition as shown in its Amended Notice of Opposition, attached as Exhibit A.

Opposer’s Amended Notice of Opposition does not add any new claims, allegations, grounds, or bases in support of the opposition; instead, Opposer merely seeks to clarify its basis for claiming priority.

Pleadings in an opposition proceeding may be amended in the same manner and to the same extent as in a civil action. 37 C.F.R. § 2.107. Rule 15(a) of the Federal Rules of Civil Procedure provides that a party may amend its pleading by leave of court, which should be freely given when justice so requires. Fed. R. Civ. P. 15(a). The Trademark Trial and Appeal Board Manual of Procedure provides that “the Board liberally grants leave to amend pleadings at any stage of a proceeding when justice so requires, unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party or parties.” TBMP § 507.02. Neither circumstance exists here.

Entry of the Amended Notice of Opposition would violate no law; the amendment merely seeks to clarify the basis upon which Opposer claims priority. Indeed, the Amended Notice of Opposition does not add any new claim or basis upon which Opposer relies; if anything, the amendment *narrows* the scope of Opposer's basis for claiming priority. As such, it is not prejudicial in any way to Applicant's rights. Moreover, as Applicant has not yet filed its Answer in this proceeding, it would not be prejudiced by entry of the Amended Notice of Opposition.

Further, by clarifying and focusing the basis upon which Opposer claims priority, the Amended Notice of Opposition will conserve the resources of the Board and will enable a quicker resolution to this proceeding.

The Board frequently has granted leave to amend where the resulting Amended Notice of Opposition would add claims upon which the opposition is based. *See Hurley Int'l L.L.C. v. Volta*, 82 U.S.P.Q.2d 1339 (T.T.A.B. 2007); *Karsten Mfg. Corp. v. Editoy AG*, 79 U.S.P.Q.2d 1783 (T.T.A.B. 2006); *Boral Ltd. v. FMC Corp.*, 59 U.S.P.Q.2d 1701 (T.T.A.B. 2000). In the present case, the Amended Notice of Opposition does not add any claims, allegations, grounds, or bases to the opposition, and Opposer therefore requests that the Board grant leave to amend its Notice of Opposition as proposed.

This 5th day of August, 2011.



Olivia Maria Baratta
James W. Faris
Kilpatrick Townsend & Stockton LLP
1100 Peachtree Street, NE
Suite 2800
Atlanta, Georgia 30309-4530
(404) 815-6500

Attorney for Opposer

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CERTIFICATE OF SERVICE

I hereby certify that on this date I served the attached document upon counsel of record by depositing a copy thereof in the United States mail, postage prepaid and addressed as follows:

Anna Erenburg, Esq.
Cadwalader, Wickersham & Taft LLP
1 World Financial Center 19th Floor
New York, New York 10281

This the 5th day of August, 2011.



Olivia Maria Baratta
James W. Faris
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Attorneys for Opposer

Exhibit A

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AMENDED NOTICE OF OPPOSITION

Opposer CardioMEMS, Inc. will be damaged by registration of the CHAMPIONIR mark underlying Application Serial No. 85/082098 and states the following for its Amended Notice of Opposition to that application:

1. Opposer CardioMEMS, Inc. (“Opposer”) is a Delaware corporation with a principal place of business at 387 Technology Circle, Suite 500, Atlanta, Georgia 30313. Opposer is a medical device company that has developed and is commercializing a proprietary wireless sensing and communication technology for the human body.

2. Opposer is the owner of Application Serial No. 77/693458, filed on March 18, 2009, to register the CHAMPION mark for the following goods and services:

Medical diagnostic sensors for measuring properties of the body, namely, pressure, corresponding catheter-based delivery apparatus to deliver sensors to locations within the body; telemetry devices for medical application and software to interrogate, receive, process and display pressure data or derived quantities for viewing and printing sold as a unit, in Class 10; and

Providing a web site that enables users to upload and access health and medical data, in Class 44.

3. Opposer’s CHAMPION heart failure sensor is a miniature device that is implanted into a patient’s pulmonary artery using a catheter-based technique. After the sensor is

implanted, the patient performs wireless measurements of his or her pulmonary artery pressure from home. The pressure data is transmitted immediately to a secure database and is available for review by the patient's physician or nurse on Opposer's CHAMPION website.

4. Beginning in 2007, Opposer used its CHAMPION mark in commerce in connection with a now-completed clinical trial involving the Class 10 goods recited in Application Serial No. 77/693458 to evaluate the safety and effectiveness of Opposer's heart failure pressure measurement system in certain patients representing approximately 1.5 million of the 6 million heart failure patients in the United States, who historically account for nearly half of all heart failure hospitalizations.

5. The trial enrolled 550 patients who had been hospitalized for heart failure in the previous year, and involved 64 leading heart centers in the United States

6. The trial showed a 30% reduction in the risk of a heart failure-related hospitalization at six months. Over time, the impact increased, as high as 38%. Further, none of the implanted sensors needed to be removed or replaced, and all functioned throughout the course of the trial.

7. The results were presented in or about June 2010 at the European Society of Cardiology Heart Failure Congress 2010 in Berlin, Germany. More than 3,330 participants attended the Congress. The results were presented by the principal investigators of the trial: William Abraham, M.D., Director of the Division of Cardiovascular Medicine at The Ohio State University Medical Center, and Philip Adamson, M.D., Director of the Heart Failure Institute at the Oklahoma Heart Hospital.

8. On July 11, 2010, Applicant applied to register the mark CHAMPIONIR on the Principal Register for use in connection with "stents" in Class 10. Notably, Applicant filed its

application almost immediately after Opposer presented the results of the CHAMPION clinical trial in June 2010.

9. The CHAMPIONIR mark is virtually identical to Opposer's CHAMPION mark in sound, sight, meaning, and commercial impression. Applicant's CHAMPIONIR mark will be used for medical device goods closely related to the medical device goods and services recited in Opposer's prior application. Opposer therefore is the owner of a prior-filed application to register a near-identical mark for closely-related goods and services.

10. Opposer's CHAMPION mark is an inherently distinctive indicator of origin that additionally has acquired a high degree of recognition, fame, and distinctiveness in the relevant trade or industry and among the relevant consumers in connection with Opposer and its clinical trials prior to the filing date of Applicant's application. The public and trade are familiar with and identify Opposer's mark with Opposer and, by reason of this identification, goods and services associated with the mark are understood by the public and trade to be produced, marketed, and supplied under Opposer's authority or otherwise derived from Opposer.

11. Consistent with the prior use of Opposer's CHAMPION mark in connection with the now-completed clinical trial, recognition of the CHAMPION mark in connection with Opposer extended throughout the United States prior to the filing date of Applicant's application.

12. Based on the similarities of the marks and the respective goods and services, the relevant public is likely to be confused into believing that Applicant's goods, as offered under the CHAMPIONIR mark, emanate from Opposer, or are authorized, licensed, endorsed, or sponsored by Opposer. Registration of Applicant's mark on the Principal Register thus would be inconsistent with Opposer's prior rights in its CHAMPION mark.

13. Opposer will be damaged by the registration of Applicant's CHAMPIONIR mark because it so resembles Opposer's mark as to be likely, when used on or in connection with the goods identified in the subject application, to cause confusion, or to cause mistake, or to deceive in violation of section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

14. Opposer will be damaged by registration of Applicant's CHAMPIONIR mark because the mark is likely to dilute the distinctiveness of Opposer's CHAMPION mark by eroding consumers' exclusive identification of the mark with Opposer, and/or by tarnishing and degrading the positive associations and prestigious connotations of the mark, and/or by otherwise lessening the capacity of the mark to identify and distinguish Opposer's goods and services in violation of section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

15. A filing fee in the amount of \$300.00 accompanies this notice. The Director is authorized to debit Deposit Account No. 11-0860 if there is any deficiency in the required fee.

16. Opposer therefore requests that registration of the mark underlying Application Serial No. 85/082098 be refused, and this Notice of Opposition be sustained in Opposer's favor.

This 5th day of August, 2011.



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