

ESTTA Tracking number: **ESTTA429401**

Filing date: **09/08/2011**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Guided Delivery Systems Inc.
Granted to Date of previous extension	11/23/2011
Address	2355 Calle De Luna Santa Clara, CA 95054 UNITED STATES
Attorney information	Jennifer Lee Taylor Morrison & Foerster LLP 425 Market Street San Francisco, CA 94105 UNITED STATES jtaylor@mofo.com, jkripke@mofo.com, mmcdaniel@mofo.com

Applicant Information

Application No	85259807	Publication date	07/26/2011
Opposition Filing Date	09/08/2011	Opposition Period Ends	11/23/2011
Applicant	Acumed LLC 5885 NW Cornelius Pass Road Hillsboro, OR 97124 UNITED STATES		

Goods/Services Affected by Opposition

Class 010. All goods and services in the class are opposed, namely: Surgical and medical apparatus and instruments for use in orthopedic surgery; Surgical implants comprising artificial material

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3681583	Application Date	03/24/2006
Registration Date	09/08/2009	Foreign Priority Date	NONE
Word Mark	ACCUCINCH		

Design Mark	ACCUCINCH
Description of Mark	NONE
Goods/Services	Class 010. First use: First Use: 2009/03/05 First Use In Commerce: 2009/03/05 Medical devices for use by interventional cardiologists in mitral valve repair, namely, implants consisting of artificial matter, anchors, cables, catheters, sleeves, and surgical apparatuses used to deliver cardiac implants during surgery

U.S. Application No.	77837650	Application Date	09/29/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	SMARTCINCH		
Design Mark	SMARTCINCH		
Description of Mark	NONE		
Goods/Services	Class 010. First use: Medical devices for use in cardiac remodeling and repair, namely, implants consisting of artificial matter, anchors, cables, and catheters; surgical apparatuses used to deliver cardiac implants for use in cardiac remodeling and repair; medical catheters used to deliver cardiac implants for use in cardiac remodeling and repair		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	ACCUCINCH		
Goods/Services	Medical devices		

Attachments	78845999#TMSN.jpeg (1 page)(bytes)
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	77837650#TMSN.jpeg (1 page)(bytes) ACU-SINCH_Opposition.pdf (22 pages)(808930 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Jennifer Lee Taylor/
Name	Jennifer Lee Taylor
Date	09/08/2011

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

GUIDED DELIVERY SYSTEMS INC.,

Opposer,

vs.

ACUMED LLC,

Applicant.

Opposition No.: TO BE ASSIGNED

Application Serial No.: 85/259,807

Filed on March 7, 2011

Published for Opposition on July 26, 2011

NOTICE OF OPPOSITION

Box TTAB FEE
Commissioner for Trademarks
P.O. Box 1451
Arlington, VA 22313-1451

Guided Delivery Systems Inc. (“Opposer”), a Delaware Corporation having its principal place of business at 2355 Calle De Luna, Santa Clara, CA 95054, believes that it will be damaged by registration of the mark shown in U.S. Application Serial No. 85/259,807 and hereby opposes the same.

As grounds for the opposition, it is alleged as follows:

1. Opposer develops innovative medical devices to provide safe, minimally invasive, and clinically effective solutions for unserved patients with life-impairing and potentially life-threatening conditions. Among these devices is Opposer’s ACCUCINCH percutaneous mitral valve repair devices for use in connection with cardiac surgery, including implants, anchors, cables, catheters, sleeves, and surgical apparatuses.
2. Opposer has continuously used the ACCUCINCH mark in commerce in connection with the development, promotion, and sale of medical devices for use in connection with cardiac surgery, including implants, anchors, cables, catheters, sleeves, and surgical apparatuses, since at

least as early as March 5, 2009. Through the continuous use and promotion of its ACCUCINCH mark, Opposer has acquired common law rights in the ACCUCINCH mark. Opposer continues and will continue to offer and promote these medical devices in the United States under the ACCUCINCH mark.

3. Opposer owns U.S. Registration No. 3,681,583 for the ACCUCINCH mark for “medical devices for use by interventional cardiologists in mitral valve repair, namely, implants consisting of artificial matter, anchors, cables, catheters, sleeves, and surgical apparatuses used to deliver cardiac implants during surgery” in International Class 10 (the “ACCUCINCH Registration”). Opposer filed the application that matured into the ACCUCINCH Registration on March 24, 2006, and the ACCUCINCH Registration issued on September 8, 2009. Opposer owns the mark covered by the ACCUCINCH Registration, the ACCUCINCH Registration itself, and the goodwill and reputation of the goods connected with and symbolized by the mark shown in the ACCUCINCH Registration. Attached hereto as Exhibit A are true and correct copies of printouts of the registration certificate, Assignment record, and the TARR status report for U.S. Registration No. 3,681,583 from the United States Trademark and Patent Office (“USPTO”) website.

4. Opposer owns U.S. Application Serial No. 77/837,650 for the SMARTCINCH mark for “medical devices for use in cardiac remodeling and repair, namely, implants consisting of artificial matter, anchors, cables, and catheters; surgical apparatuses used to deliver cardiac implants for use in cardiac remodeling and repair; medical catheters used to deliver cardiac implants for use in cardiac remodeling and repair” in International Class 10 (the “SMARTCINCH Application”). Opposer filed the SMARTCINCH Application on September 29, 2009, and the Notice of Allowance for the SMARTCINCH Application was mailed on August 3, 2010. Opposer owns the mark covered by the SMARTCINCH Application, the SMARTCINCH Application itself, and the goodwill and reputation of the goods connected with and symbolized by the mark shown in the SMARTCINCH Application. Attached hereto as

Exhibit B are true and correct copies of printout of the Assignment record and TARR status report for U.S. Application Serial No. 77/837,650 from the USPTO website.

5. Acumed LLC (“Applicant”), an Oregon limited liability company having its principal place of business at 5885 NW Cornelius Pass Road, Hillsboro, OR 97124, filed U.S. Application Serial No. 85/259,807 for the ACU-SINCH mark (the “ACU-SINCH Application”) on March 7, 2011. Attached hereto as Exhibit C is a true and correct copy of a printout of the TARR status report for U.S. Application Serial No. 85/259,807 from the USPTO website.

6. The ACU-SINCH Application was published in the *Official Gazette* on July 26, 2011. Opposer obtained an extension of time to oppose the ACU-SINCH Application until November 23, 2011.

7. By its ACU-SINCH Application herein opposed, Applicant seeks to register the ACU-SINCH mark for “surgical and medical apparatus and instruments for use in orthopedic surgery; surgical implants comprising artificial material” in International Class 10.

8. Applicant filed its ACU-SINCH Application on an intent-to-use basis on March 7, 2011.

9. On information and belief, Applicant has not yet used the ACU-SINCH mark in commerce in connection with the goods identified in the ACU-SINCH Application.

10. Opposer has continuously used its ACCUCINCH mark in commerce for more than two years prior to the filing date of Applicant’s ACU-SINCH Application. Opposer thus has continuously used its ACCUCINCH mark in commerce since substantially prior to the filing date of Applicant’s ACU-SINCH Application.

11. Opposer filed the application that matured into its ACCUCINCH Registration on March 24, 2006, almost exactly five years prior to the filing date of Applicant’s ACU-SINCH Application. Opposer’s constructive priority date for its ACCUCINCH Registration is thus substantially prior to the filing date of Applicant’s ACU-SINCH Application.

12. Opposer filed its SMARTCINCH Application on September 29, 2009, more than seventeen months prior to the filing date of Applicant’s ACU-SINCH Application. Opposer’s

constructive priority date for its SMARTCINCH Application is thus substantially prior to the filing date of Applicant's ACU-SINCH Application.

13. Applicant's ACU-SINCH mark is so similar in sight, sound, meaning, and commercial impression to Opposer's ACCUCINCH and SMARTCINCH marks as to be likely to cause confusion, or to cause mistake, or to deceive. Applicant's ACU-SINCH mark and Opposer's ACCUCINCH mark create nearly identical commercial impressions. The two marks are aurally indistinguishable, and they are also highly similar in appearance, given that they differ only by two letters and a hyphen. Moreover, because the marks are virtually identical, consumers of the parties' products will understand them to have the same meaning. Opposer's ACCUCINCH mark and Applicant's ACU-SINCH mark thus create highly similar commercial impressions making confusion likely. The confusion will be exacerbated by the fact that Opposer also intends to use the SMARTCINCH mark in connection with medical devices, creating a "family" of -CINCH marks, because ACU-SINCH will be viewed as a member of that family of marks.

14. Applicant has applied to register its ACU-SINCH mark for "surgical and medical apparatus and instruments for use in orthopedic surgery; surgical implants comprising artificial material." Opposer uses its ACCUCINCH mark on implants and other medical devices. Applicant's ACU-SINCH implants are legally identical to Opposer's ACCUCINCH implants. Moreover, on information and belief, the remainder of the goods in the ACU-SINCH Application appears to be related and/or complementary to the medical devices that Opposer offers under its ACCUCINCH mark and intends to offer under its SMARTCINCH mark.

15. On information and belief, Applicant's goods, on the one hand, and Opposer's goods, on the other, will be offered through the same or similar channels of trade and will target overlapping customer bases. On information and belief, healthcare professionals who use Opposer's ACCUCINCH and SMARTCINCH goods to treat patients are likely to encounter Applicant's ACU-SINCH goods, and vice versa. On information and belief, healthcare professionals who are responsible for ordering Opposer's ACCUCINCH and SMARTCINCH

goods are likely also to be responsible for ordering Applicant's ACU-SINCH goods. On information and belief, patients who receive treatments with Opposer's ACCUCINCH or SMARTCINCH goods may also receive treatments with Applicant's ACU-SINCH goods, and vice versa.

16. Given that Applicant's ACU-SINCH mark is nearly identical to Opposer's ACCUCINCH mark in sight, sound, meaning, and commercial impression; that Applicant's ACU-SINCH mark also shares strong similarities with Opposer's SMARTCINCH mark; that Applicant's goods, on the one hand, and Opposer's goods, on the other, are legally identical, related and/or complementary; that the channels of trade for Applicant's and Opposer's respective goods appear to be the same or overlapping; and that the customer bases for Applicant's and Opposer's respective goods appear to be the same or overlapping, Applicant's ACU-SINCH mark so resembles Opposer's ACCUCINCH mark as to be likely to cause confusion, or to cause mistake, or to deceive. Opposer would thereby be injured by Applicant's registration of the ACU-SINCH mark.

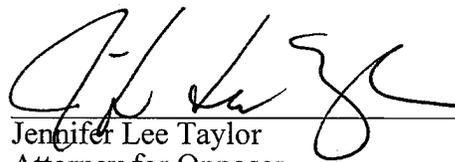
17. Filing Fee: The USPTO is authorized to charge \$300.00 for the Notice of Opposition to Morrison & Foerster LLP's Deposit Account 03-1952 (Reference No. 57849-6003502).

WHEREFORE, Opposer prays that application Serial No. 85/259,807 be rejected, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Respectfully submitted,

Dated: September 8, 2011

By:



Jennifer Lee Taylor
Attorney for Opposer
Guided Delivery Systems Inc.

Morrison & Foerster LLP
425 Market Street
San Francisco, California 94105-2482
Telephone: (415) 268-6538
Facsimile: (415) 268-7522

EXHIBIT A

Int. Cl.: 10

Prior U.S. Cls.: 26, 39, and 44

United States Patent and Trademark Office

Reg. No. 3,681,583

Registered Sep. 8, 2009

**TRADEMARK
PRINCIPAL REGISTER**

ACCUCINCH

GUIDED DELIVERY SYSTEMS INC. (DELA-
WARE CORPORATION)
2355 CALLE DE LUNA
SANTA CLARA, CA 95054

FOR: MEDICAL DEVICES FOR USE BY INTER-
VENTIONAL CARDIOLOGISTS IN MITRAL VALVE
REPAIR, NAMELY, IMPLANTS CONSISTING OF
ARTIFICIAL MATTER, ANCHORS, CABLES, CA-
THETERS, SLEEVES, AND SURGICAL APPARATU-
SES USED TO DELIVER CARDIAC IMPLANTS
DURING SURGERY, IN CLASS 10 (U.S. CLS. 26, 39
AND 44).

FIRST USE 3-5-2009; IN COMMERCE 3-5-2009.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

SN 78-845,999, FILED 3-24-2006.

JEFFERY COWARD, EXAMINING ATTORNEY



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No assignment has been recorded at the USPTO

For Serial Number: 78845999

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350. v.2.2
Web interface last modified: July 25, 2011 v.2.2

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Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2011-09-08 11:55:46 ET

Serial Number: 78845999 Assignment Information Trademark Document Retrieval

Registration Number: 3681583

Mark

ACCUCINCH

(words only): ACCUCINCH

Standard Character claim: Yes

Current Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Date of Status: 2009-09-08

Filing Date: 2006-03-24

Transformed into a National Application: No

Registration Date: 2009-09-08

Register: Principal

Law Office Assigned: LAW OFFICE 106

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 650 -Publication And Issue Section

Date In Location: 2009-08-05

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Guided Delivery Systems Inc.

Address:

Guided Delivery Systems Inc.

2355 Calle De Luna
Santa Clara, CA 95054
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Delaware

GOODS AND/OR SERVICES

International Class: 010

Class Status: Active

Medical devices for use by interventional cardiologists in mitral valve repair, namely, implants consisting of artificial matter, anchors, cables, catheters, sleeves, and surgical apparatuses used to deliver cardiac implants during surgery

Basis: 1(a)

First Use Date: 2009-03-05

First Use in Commerce Date: 2009-03-05

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2009-09-08 - Registered - Principal Register

2009-08-05 - Law Office Registration Review Completed

2009-08-05 - Assigned To LIE

2009-07-31 - Allowed for Registration - Principal Register (SOU accepted)

2009-07-16 - Statement Of Use Processing Complete

2009-06-23 - Use Amendment Filed

2009-07-16 - Case Assigned To Intent To Use Paralegal

2009-06-23 - TEAS Statement of Use Received

2009-02-06 - Extension 3 granted

2009-02-06 - Extension 3 filed
2009-02-06 - TEAS Extension Received
2008-08-07 - Extension 2 granted
2008-08-07 - Extension 2 filed
2008-08-07 - TEAS Extension Received
2008-02-07 - Extension 1 granted
2008-02-07 - Extension 1 filed
2008-02-07 - TEAS Extension Received
2007-08-07 - NOA Mailed - SOU Required From Applicant
2007-05-15 - Published for opposition
2007-04-25 - Notice of publication
2007-03-15 - Law Office Publication Review Completed
2007-03-15 - Assigned To LIE
2007-02-17 - Approved For Pub - Principal Register
2007-02-17 - Teas/Email Correspondence Entered
2007-02-16 - Communication received from applicant
2007-02-16 - TEAS Response to Office Action Received
2006-09-07 - Non-final action mailed
2006-09-06 - Non-Final Action Written
2006-09-05 - Assigned To Examiner
2006-03-29 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Jennifer Lee Taylor

CorrespondentJENNIFER LEE TAYLOR
MORRISON & FOERSTER LLP

425 MARKET STREET
SAN FRANCISCO, CA 94105-2482
Phone Number: 415 268 6358
Fax Number: 415 268 7522

EXHIBIT B



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No assignment has been recorded at the USPTO

For Serial Number: 77837650

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Web interface last modified: July 25, 2011 v.2.2

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Serial Number: 77837650 Assignment Information Trademark Document Retrieval

Registration Number: (NOT AVAILABLE)

Mark

SMARTCINCH

(words only): SMARTCINCH

Standard Character claim: Yes

Current Status: A second request for extension of time to file a Statement of Use has been granted.

Date of Status: 2011-08-19

Filing Date: 2009-09-29

The Notice of Allowance Date is: 2010-08-03

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 113

Attorney Assigned:
KEARNEY COLLEEN

Current Location: 700 -Intent To Use Section

Date In Location: 2011-08-15

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Guided Delivery Systems Inc.

Address:

Guided Delivery Systems Inc.
2355 Calle De Luna
Santa Clara, CA 95054
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Delaware

GOODS AND/OR SERVICES

International Class: 010

Class Status: Active

Medical devices for use in cardiac remodeling and repair, namely, implants consisting of artificial matter, anchors, cables, and catheters; surgical apparatuses used to deliver cardiac implants for use in cardiac remodeling and repair; medical catheters used to deliver cardiac implants for use in cardiac remodeling and repair

Basis: 1(b)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

Prior Registration Number(s):

3681583

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2011-08-20 - Notice Of Approval Of Extension Request Mailed

2011-08-19 - Extension 2 granted

2011-08-03 - Extension 2 filed

2011-08-15 - Case Assigned To Intent To Use Paralegal

2011-08-03 - TEAS Extension Received

2011-01-12 - Notice Of Approval Of Extension Request Mailed

2011-01-10 - Extension 1 granted

2011-01-10 - Extension 1 filed

2011-01-10 - TEAS Extension Received
2010-08-03 - NOA Mailed - SOU Required From Applicant
2010-06-08 - Published for opposition
2010-05-19 - Notice of publication
2010-05-06 - Law Office Publication Review Completed
2010-05-06 - Assigned To LIE
2010-04-26 - Approved For Pub - Principal Register
2010-04-21 - Teas/Email Correspondence Entered
2010-04-20 - Communication received from applicant
2010-04-20 - TEAS Response to Office Action Received
2009-12-31 - Non-final action mailed
2009-12-30 - Non-Final Action Written
2009-12-26 - Assigned To Examiner
2009-10-09 - Notice Of Pseudo Mark Mailed
2009-10-08 - New Application Office Supplied Data Entered In Tram
2009-10-02 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Jennifer Lee Taylor

Correspondent

JENNIFER LEE TAYLOR
MORRISON & FOERSETER LLP
425 MARKET ST FL 30
SAN FRANCISCO, CA 94105-2482
Phone Number: 415 268 6538
Fax Number: 415 268 7522

EXHIBIT C

Thank you for your request. Here are the latest results from the TARR web server.

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Serial Number: 85259807 Assignment Information Trademark Document Retrieval

Registration Number: (NOT AVAILABLE)

Mark

Acu-Sinch

(words only): ACU-SINCH

Standard Character claim: Yes

Current Status: A request for an extension of time to file an opposition has been filed with the Trademark Trial and Appeal Board. For further information, see TTABVUE on the Trademark Trial and Appeal Board web page.

Date of Status: 2011-08-15

Filing Date: 2011-03-07

Filed as TEAS Plus Application: Yes

Currently TEAS Plus Application: Yes

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 109

Attorney Assigned:
SOBRAL CHRISTINA

Current Location: 650 -Publication And Issue Section

Date In Location: 2011-06-22

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Acumed LLC**Address:**

Acumed LLC
5885 NW Cornelius Pass Road
Hillsboro, OR 97124
United States

Legal Entity Type: Limited Liability Company**State or Country Where Organized:** Oregon

GOODS AND/OR SERVICES

International Class: 010**Class Status:** Active

Surgical and medical apparatus and instruments for use in orthopedic surgery; Surgical implants comprising artificial material

Basis: 1(b)**First Use Date:** (DATE NOT AVAILABLE)**First Use in Commerce Date:** (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2011-08-15 - Extension Of Time To Oppose Received

2011-07-26 - Notice Of Publication E-Mailed

2011-07-26 - Published for opposition

2011-06-22 - Law Office Publication Review Completed

2011-06-22 - Assigned To LIE

2011-06-07 - Approved For Pub - Principal Register

2011-06-07 - Assigned To Examiner

2011-03-11 - Notice Of Pseudo Mark Mailed

2011-03-10 - New Application Office Supplied Data Entered In Tram

2011-03-10 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Timothy J. Engling

Correspondent

TIMOTHY J. ENGLING
MILLER CANFIELD PADDOCK AND STONE, P.L.C
STE 2600
225 W WASHINGTON ST
CHICAGO, IL 60606
Phone Number: 312-460-4241
Fax Number: 312-460-4201

PROOF OF SERVICE BY MAIL

I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California, 94105; I am not a party to the within cause; I am over the age of eighteen years and I am readily familiar with Morrison & Foerster's practice for collection and processing of correspondence for mailing with the United States Postal Service and know that in the ordinary course of Morrison & Foerster's business practice the document described below will be deposited with the United States Postal Service on the same date that it is placed at Morrison & Foerster with postage thereon fully prepaid for collection and mailing.

I further declare that on September 8, 2011, I served a copy of:

NOTICE OF OPPOSITION

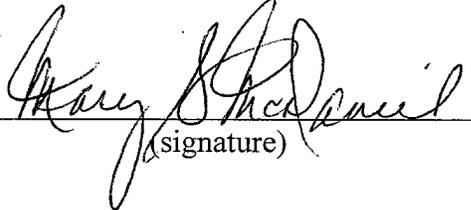
on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at Morrison & Foerster LLP, 425 Market Street, San Francisco, California, 94105, in accordance with Morrison & Foerster's ordinary business practices:

Timothy J. Engling
Miller Canfield Paddock and Stone, P.L.C.
225 W. Washington Street, Suite 2600
Chicago, IL 60606

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at San Francisco, California, this 8th day of September 2011.

Mary S. McDaniel
(typed)



(signature)