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

Proceeding	91204337
Party	Defendant Endocyte, Inc.
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Attachments	Endocyte Answer and Affirmative Defenses.pdf (7 pages)(240384 bytes)

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

In the Matter of Application Serial Nos. 85/306,842 and 85/308,111
For the Marks Endocyte and Endocyte & Design

ENDO PHARMACEUTICALS INC. Opposer	)	Opposition No. 91204337
vs.	)	APPLICANT'S ANSWER AND AFFIRMATIVE DEFENSES
ENDOCYTE , INC. Applicant	)	

Applicant Endocyte, Inc ("Applicant") hereby answers Opposer Endo Pharmaceuticals' ("Opposer") separately filed Notices of Opposition to Application Serial Nos. 85/306,842 and 85/308,111, and asserts affirmative defenses as follows:

I. ANSWER TO NOTICE OF OPPOSITION AGAINST APPLICATION NUMBER 85/306,842

1. Answering Opposer's Introductory Paragraph, Applicant denies that Opposer will be damaged by the registration for the trademarks shown in Application Serial Number 85/306,842.

2. Answering Opposer's Paragraph 1, Applicant lacks sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 1 and, accordingly, denies the same.

3. Answering Opposer's Paragraph 2, Applicant lacks sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 2 and, accordingly, denies the same.

4. Answering Opposer's Paragraph 3, Applicant lacks sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 3 and, accordingly, denies the same.

5. Answering Opposer's Paragraph 4, Applicant lacks sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 4 and, accordingly, denies the same.

6. Answering Opposer's Paragraph 5, Applicant admits the allegation to the extent that Endo is the owner of the registered mark ENDO, US Reg. 2,004,648; ENDOCET, US Reg. 1,993,892 and ENDODAN, US Reg. 1,995,498 as claimed in the Notice of Opposition, but lacks sufficient knowledge as to whether or not there are other registered marks owned by Opposer that utilize the "endo" prefix.

7. Answering Opposer's Paragraph 6, Applicant denies the allegations set forth in Paragraph 6.

8. Answering Opposer's Paragraph 7, Applicant admits the allegations set forth in Paragraph 7, with the exception that the original application for Endocyte (Serial No. 85/306,842) was filed on April 28, 2011 based upon a bona fide intent to use the mark. Further investigation revealed actual use in commerce prior to that date and the application was amended on July 11, 2011 to claim a date of first use of at least as early as July 6, 2000 for the goods and services identified in Classes 5 and 42.

9. Answering Opposer's Paragraph 8, Applicant admits the allegations set forth in Paragraph 8.

10. Answering Opposer's Paragraph 9, Applicant lacks sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 9 and, accordingly, denies the same.

11. Answering Opposer's Paragraph 10, Applicant admits that Opposer has filed Section 15 Affidavits of Continuous Use for its ENDO, ENDOCET and ENDODAN registrations. Applicant otherwise denies that the ENDO® Marks are incontestable.

12. Answering Opposer's Paragraph 11, Applicant denies the allegations set forth in Paragraph 11.

13. Answering Opposer's Paragraph 12, Applicant denies the allegations set forth in Paragraph 12.

14. Answering Opposer's Paragraph 13, Applicant denies the allegations set forth in Paragraph 13.

15. Answering Opposer's Paragraph 14, Applicant admits the allegation that it submitted an Amendment to Allege Use declaring that Applicant's ENDOCYTE mark was in use on goods identified in the application. Applicant denies the remaining allegations.

16. Answering Opposer's Paragraph 15, Applicant denies the allegations set forth in Paragraph 14.

17. Answering Opposer's Paragraph 16, Applicant denies the allegations set forth in Paragraph 15.

II. ANSWER TO NOTICE OF OPPOSITION AGAINST APPLICATION NUMBER 85/308,111

1. Answering Opposer's Introductory Paragraph, Applicant denies that Opposer will be damaged by the registration for the trademarks shown in Application Serial Number 85/308,111.

2. Answering Opposer's Paragraph 1, Applicant lacks sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 1 and, accordingly, denies the same.

3. Answering Opposer's Paragraph 2, Applicant lacks sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 2 and, accordingly, denies the same.

4. Answering Opposer's Paragraph 3, Applicant lacks sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 3 and, accordingly, denies the same.

5. Answering Opposer's Paragraph 4, Applicant lacks sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 4 and, accordingly, denies the same.

6. Answering Opposer's Paragraph 5, Applicant admits the allegation to the extent that Endo is the owner of the registered mark ENDO, US Reg. 2,004,648; ENDOCET, US Reg. 1,993,892 and ENDODAN, US Reg. 1,995,498 as claimed in the Notice of Opposition, but lacks sufficient knowledge as to whether or not there are other registered marks owned by Opposer that utilize the "endo" prefix.

7. Answering Opposer's Paragraph 6, Applicant denies the allegations set forth in Paragraph 6.

8. Answering Opposer's Paragraph 7, Applicant admits the allegations set forth in Paragraph 7, with the exception that the original application for Endocyte (Serial No. 85/308,111) was filed on April 29, 2011 based upon a bona fide intent to use the mark. Further investigation revealed actual use in commerce prior to that date and the application was amended on July 11, 2011 to claim a date of first use of at least as early as July 6, 2000 for the goods and services identified in Classes 5 and 42.

9. Answering Opposer's Paragraph 8, Applicant admits the allegations set forth in Paragraph 8.

10. Answering Opposer's Paragraph 9, Applicant lacks sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 9 and, accordingly, denies the same.

11. Answering Opposer's Paragraph 10, Applicant admits that Opposer has filed Section 15 Affidavits of Continuous Use for its ENDO, ENDOCET and ENDODAN registrations. Applicant otherwise denies that the ENDO® Marks are incontestable.

12. Answering Opposer's Paragraph 11, Applicant denies the allegations set forth in Paragraph 11.

13. Answering Opposer's Paragraph 12, Applicant denies the allegations set forth in Paragraph 12.

14. Answering Opposer's Paragraph 13, Applicant denies the allegations set forth in Paragraph 13.

15. Answering Opposer's Paragraph 14, Applicant admits the allegation that it submitted an Amendment to Allege Use declaring that Applicant's ENDOCYTE mark was in use on goods identified in the application. Applicant denies the remaining allegations.

16. Answering Opposer's Paragraph 15, Applicant denies the allegations set forth in Paragraph 14.

17. Answering Opposer's Paragraph 16, Applicant denies the allegations set forth in Paragraph 15.

III. AFFIRMATIVE DEFENSES

Applicant asserts the following affirmative defenses to Opposer's Notices of Opposition to Application Serial Nos. 85/306,842 and 85/308,111:

FIRST AFFIRMATIVE DEFENSE

Opposer fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Laches. Opposer has known of Endocyte, Inc., and its use of the trademark EC Logo since as early as 2009 based upon conversations and correspondence between the Opposer and the Applicant's employees. At no time during those discussions was the concern raised that the EC logo trademark would cause confusion or harm to Opposer.

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WHEREFORE, Applicant prays that the "Notices of Opposition" be denied in their entirety, and that the Applications be allowed to proceed to registration.

Respectfully submitted,

By: _____

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CERTIFICATE OF SERVICE

I, Frances M. Jagla, hereby certify under penalty of perjury of the laws of the State of Washington that I caused to be served a copy of the foregoing document to the following person(s) in the manner indicated below at the following address(es):

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DATED this 22nd day of June, 2012.

Frances M. Jagla