

ESTTA Tracking number: **ESTTA588833**

Filing date: **02/24/2014**

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

Proceeding	91206212
Party	Plaintiff Carefusion 2200, Inc.
Correspondence Address	JOSEPH R DREITLER DREITLER TRUE LLC 137 E STATE STREET COLUMBUS, OH 43215 UNITED STATES mtrue@ustrademarklawyer.com,jdreitler@ustrademarklawyer.com,ttrofino@ustrademarklawyer.com
Submission	Motion to Compel Discovery
Filer's Name	Mary R. True
Filer's e-mail	mtrue@ustrademarklawyer.com, jdreitler@ustrademarklawyer.com, ttrofino@ustrademarklawyer.com
Signature	/Mary R. True/
Date	02/24/2014
Attachments	Motion to Compel.pdf(319523 bytes)

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

**IN THE MATTER OF Trademark Application Serial Nos. 85/499349; 85/499345;
85/499337 and 85/499332**

DATE OF PUBLICATION: May 29, 2012

Carefusion 2200, Inc.,

Opposer,

**Combined Opposition No: 91-
206,212**

v.

Entrotech, Inc.

Applicant

MOTION TO COMPEL, SUSPEND AND RESET DATES

Pursuant to Rule 2.120(e) of the Trademark Rules of Practice and Section 523.01 of the TBMP, Opposer, CareFusion 2200, Inc. hereby requests this Board for an Order compelling Applicant, Entrotech, Inc. to provide documents responsive to Opposer's Second Set of Requests for Production of Documents.¹ Applicant has objected to Requests Nos. 2 -6 on the grounds of relevance and has refused to either produce documents or state that no such documents exist.² Counsel have exchanged letters and telephone calls on this issue in a good faith effort to resolve the matter;³ however, the parties have a basic disagreement as to the legal scope of discovery in this matter which cannot be resolved without the Board's assistance.

¹ Opposer's Second Set of Requests for Production of Documents, served January 21, 2014, is attached hereto as Exhibit A.

² Applicant's Objections and Responses to Opposer's Second Set of Requests for Production of Documents, served February 20, 2014, is attached hereto as Exhibit B.

³ See Declaration of Mary R. True, Esq. ("True Declaration"), attached hereto as Exhibit C.

I. BACKGROUND

On July 24, 2012, Opposer filed a Combined Notice of Opposition against Applicant's four (4) intent-to-use trademark applications (the "chlora-formative applications"):

- 1) Chloraderm – Ser. No. 85/499349 for Medical and surgical dressings, filed December 19, 2011 and published on May 29, 2012;
- 2) Chlorabsorb - Ser. No. 85/499345 for Medical and surgical dressings filed December 19, 2011 and published on May 29, 2012;
- 3) Chlorabond – Ser. No. 85/499337 for Topical antimicrobial solutions for dermatologic use filed December 19, 2011 and published on May 29, 2012;
and
- 4) Chloradrape – Ser. No. 85/499332 for Surgical drapes filed December 19, 2011 and published on May 29, 2012.

In addition to asserting likelihood of confusion under Section 2(d) with Opposer's CHLORAPREP and CHLORASHIELD⁴ registrations and applications for similar medical products as a grounds for its Opposition, Opposer also asserted that Applicant did not have a *bona fide* intent to use the marks in commerce and that the applications were, therefore, *void ab initio*.

Applicant has objected to the following document requests on the basis of

⁴ A Statement of Use for Opposer's prior-filed application of CHLORASHIELD for "antimicrobial catheter patch dressing", Serial No. 85051474, was accepted on January 22, 2014, subsequent to the filing of the Opposition. A Statement of Use for Opposer's prior-filed application of CHLORASHIELD for "surgical incise drape", Serial No. 85051477, was accepted on February 4, 2014, subsequent to the filing of the Opposition.

relevance:

2. All documents relating to plans and proposals to conduct both pilot studies and clinical trials for each product to be sold under Applicant's Marks
3. All documents relating to FDA approvals for conducting pilot studies and clinical trials for each product to be sold under Applicant's Marks
4. All documents relating to clinical trial protocols each clinical trial for each product to be sold under Applicant's Marks
5. All documents relating to approvals by an Institutional Review Board for each product to be sold under Applicant's Marks
6. All documents relating to results of any pilot studies and clinical trials for each product to be sold under Applicant's Marks

According to counsel for Applicant, such documents “are not relevant to a trademark matter nor are they calculated to lead to the admissibility of relevant evidence in a trademark matter because they have nothing to do with whether consumers would be likely to be confused between your client's marks ... and our client's marks.” Applicant also asserts that while it would have no objection to producing evidence of “market-based or consumer-based research”, it regarded Opposer's discovery requests as “a fishing expedition for our client's scientific research, which has no relevance in this matter.”⁵

To the contrary, Opposer's requests are seeking relevant information as to whether Applicant had a *bona fide* intent to use the applied-for marks in commerce as of the date of the applications, or that it has been working to develop and commercialize such products since the filing date more than two years ago. Applicant's chlora-formative applications are for medical products, not consumer goods. The ability to

⁵ See February 13, 2014 letter from Erin Hickey to Mary True, attached as Exhibit B to the True Declaration.

develop and sell medical products requires a company to have significant capabilities in scientific development, approved manufacturing facilities and regulatory expertise. The requested discovery goes directly to Applicant's abilities to actually develop such products and is unquestionably relevant to Opposer's claims in this opposition.⁶

II. LEGAL ARGUMENT

Trademark Act Section 1(b), 15 U.S.C. Section 1051(b), states that "a person who has a bona fide intention, under circumstances showing the good faith of such person, to use a trademark in commerce" may apply for registration of the mark. An applicant's bona fide intent to use a mark must reflect an intention that is firm, though it may be contingent on the outcome of an event (that is, market research or product testing) and must reflect an intention to use the mark "in the ordinary course of trade, ... and not ... merely to reserve a right in a mark." *Commodore Electronics Ltd. v. CBM Kabushiki Kaisha*, 26 USPQ2d 1503 (TTAB 1993) (quoting Trademark Act Section 45, 15 U.S.C. Section 1127, and citing Senate Judiciary Comm. Rep. on S.1883, S. Rep. No. 515, 100th Cong., 2d Sess. 24-25 (1988)). A determination of whether an applicant has a bona fide intention to use the mark in commerce is an objective determination based on all the circumstances. *Boston Red Sox Baseball Club LP v. Sherman*, 88 USPQ2d 1581, 1587 (TTAB 2008); see also *Aktieselskabet AF 12. November 2001 v. Fame Jeans Inc.*, 86 USPQ2d 1527, 1537-38 (D.C. Cir. 2008) ("Here, Congress made clear that a 'bona fide intent to use' also involves an objective standard by specifying there must be 'circumstances showing . . . good faith.' Thus, an opposer may defeat a trademark application for lack of bona fide intent by proving the applicant did not actually intend to

⁶ This is particularly true given the broad scope of "relevance" under the Federal Rules (Fed. R. Civ. P. 26(b)(1)).

use the mark in commerce or by proving the circumstances at the time of filing did not demonstrate that intent.”). In determining the sufficiency of documentary evidence demonstrating bona fide intent, the Board has held that the Trademark Act does not expressly impose “any specific requirement as to the contemporaneousness of an applicant's documentary evidence corroborating its claim of bona fide intention. Rather, the focus is on the entirety of the circumstances, as revealed by the evidence of record.” *Lane Ltd. v. Jackson International Trading Co.*, 33 USPQ2d 1351, 1355 (TTAB 1994).

One way an opposer can establish its prima facie case of no bona fide intent is by proving that applicant has no documentary evidence to support its allegation in the application of its claimed bona fide intent to use the mark in commerce as of the application filing date. *Saul Zaentz Co. v. Bumb*, 95 USPQ2d 1723, 1727 (TTAB 2010). The Board has repeatedly found a lack of bona fide intent to use a mark by individuals “who lack the demonstrated capacity to produce the goods identified in the application.” *Swatch AG (Swatch SA)(Swatch Ltd.) v. M.Z. Berger & Co., Inc.*, 108 USPQ2d 1463, (TTAB, Opposition No. 91187092, September 30, 2013); see *L’Oreal S.A. v. Marcon*, 102 USPQ2d 1434 (TTAB 2012); *Saul Zaentz Co.*, 95 USPQ2d at 1726-27; *Wet Seal, Inc. v. FD Mgmt., Inc.*, 82 USPQ2d 1629,1643 (TTAB 2007). In *Spirits International, B.V. v. S.S. Taris Zeytin Ve Zeytinyagi Tarim Satis Kooperatiflileri Birliigi*, 99 USPQ2d 1545, (TTAB Opposition No. 91163779, July 6, 2011), the Board found lack of bona fide intent by the Applicant to use the applied-for mark on alcoholic beverages, based in part on Applicant’s admissions that it had not taken any steps to obtain regulatory approval to sell spirits in the United States.

In this case, Opposer is seeking this discovery to establish through proofs that

Applicant, who in December of 2011 filed four separate applications for three different types of medical products, all four beginning with the prefix “chlora” and covering specific types of FDA regulated medical products, 1) has no ongoing business in manufacturing and selling such medical products; 2) it filed the four applications when it did not have three separate medical products under development; and 3) that Applicant has done nothing to develop three different medical products to be sold under four different chlora-formative marks since it ended its business relationship with Opposer in the summer of 2011. The Board stated in *Honda Motor Co. v. Winkelmann*, 90 USPQ2d 1660, 1662 n. 5 (TTAB 2009),

The situation in *Lane* is to be contrasted with the present case where there is no evidence that applicant is engaged in the manufacture or sale of automobiles under the claimed mark, thereby providing no evidence of a bona fide intention to use the mark in commerce.

III. CONCLUSION

The discovery sought by Opposer is directly relevant to the issue of whether Applicant had a demonstrated capacity to produce the medical products set forth in its applications as of the time the applications were filed or has taken steps necessary to develop and market such products since the filing date. Opposer is unquestionably entitled to see these materials, or be informed that no such materials exist. Moreover, because this dispute between the parties as to the appropriate scope of discovery goes to the very heart of the issues in dispute in this Opposition, no further discovery can be conducted (including the deposition of Applicant’s medical Director, Dr. John Foor, currently scheduled for February 28, 2014) until this matter is resolved. Thus, Opposer respectfully requests that the Board suspend this matter during the pendency of this

Motion and reset all dates accordingly.

Dated: February 24, 2014.

Respectfully Submitted,

DREITLER TRUE LLC

/Mary R. True/
Joseph R. Dreitler
Mary R. True
137 E. State St.
Columbus, OH 43215
Telephone: 614-545-6355
Facsimile: 614-241-2169
E-mail: jdreitler@ustrademarklawyer.com
E-mail: mtrue@ustrademarklawyer.com

*Attorneys for Opposer
CareFusion 2200, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2014, a true and correct copy of the foregoing was served via electronic mail upon Lisa M.Martens, Esq. at martens@fr.com and Erin Hickey at hickey@fr.com.

/s/ Mary R. True
Mary R. True

Exhibit A

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

**IN THE MATTER OF Trademark Application Serial Nos. 85/499349; 85/499345;
85/499337 and 85/499332**

DATE OF PUBLICATION: May 29, 2012

Carefusion 2200, Inc.,		
	Opposer,	Combined Opposition No: 91-
		206,212
v.		
Entrotech, Inc.		
	Applicant	

Pursuant to Rule 2.120(d) of the Trademark Rules of Practice and Rule 34 of the Federal Rules of Civil Procedure, Opposer, CareFusion 2200, Inc. hereby requests that Applicant, Entrotech, Inc. provide documents responsive to the following Requests within thirty (30) days after the service hereof to the offices of Dreitler True LLC, 137 E. State Street, Columbus, OH 43215. These Requests are intended to be continuing in nature and any documents which may be discovered subsequent to the service of responsive documents should be brought to the attention of Opposers through Supplemental Answers, within a reasonable time following such discovery, pursuant to Rule 26 of the Federal Rules of Civil Procedure.

INSTRUCTIONS AND DEFINITIONS

Opposer incorporates the Definitions and Instructions from Opposer's First Set of Requests for Production of Documents as if fully set forth herein.

REQUESTS

1. All documents relating to business plans, proposals and any other efforts to sell or offer to sell products under Applicant's Marks.
2. All documents relating to plans and proposals to conduct both pilot studies and clinical trials for each product to be sold under Applicant's Marks
3. All documents relating to FDA approvals for conducting pilot studies and clinical trials for each product to be sold under Applicant's Marks
4. All documents relating to clinical trial protocols each clinical trial for each product to be sold under Applicant's Marks
5. All documents relating to approvals by an Institutional Review Board for each product to be sold under Applicant's Marks
6. All documents relating to results of any pilot studies and clinical trials for each product to be sold under Applicant's Marks
7. All documents relating to Contracts with any advertising agency or marketing agency relating to the sale of each product sold under Applicant's Marks.

Dated: January 21, 2014.

Respectfully Submitted,

DREITLER TRUE LLC

/Mary R. True/
Joseph R. Dreitler
Mary R. True
137 E. State St.
Columbus, OH 43215
Telephone: 614-545-6355
Facsimile: 614-241-2169
E-mail: jdreitler@ustrademarklawyer.com
E-mail: mtrue@ustrademarklawyer.com

*Attorneys for Opposer
CareFusion 2200, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on January 21, 2014, a true and correct copy of the foregoing was served via electronic mail upon Lisa M.Martens, Esq. at martens@fr.com and Erin Hickey at hickey@fr.com.

/s/ Mary R. True
Mary R. True

Exhibit B

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

In the matter of application Serial Nos.:

Ser. No. 85/499,349 for the mark **CHLORADERM**
Ser. No. 85/499,345 for the mark **CHLORABSORB**
Ser. No. 85/499,337 for the mark **CHLORABOND**
Ser. No. 85/499,332 for the mark **CHLORADRAPE**

Filed on December 19, 2011

Published in the *Official Gazette* on May 29, 2012

CAREFUSION 2200, INC.,

Opposer,

v.

ENTROTECH LIFE SCIENCES, INC.,

Applicant.

Opposition No.: 91-206,212

**APPLICANT'S OBJECTIONS AND RESPONSES
TO OPPOSER'S SECOND SET OF REQUESTS
FOR PRODUCTION OF DOCUMENTS AND THINGS**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rules 2.116 and 2.120 of the Trademark Rules of Practice, Applicant Entrotech Life Sciences, Inc. ("Applicant" or "Entrotech"), by and through its attorneys, hereby serves upon Opposer CareFusion 2200, Inc. ("Opposer" or "CareFusion") Applicant's Objections and Responses to Opposer's Second Set of Requests for Production of Documents and Things.

GENERAL OBJECTIONS

1. Applicant objects to each request to the extent that it seeks information beyond the permissible scope of the Federal Rules of Civil Procedure as being irrelevant to the subject

matter of the action and not reasonably calculated to lead to the discovery of admissible evidence.

2. Applicant objects to each request to the extent it is vague, ambiguous, indefinite, overly broad, unduly burdensome, oppressive, and/or does not reasonably identify the document, information, or thing sought.

3. Applicant objects to each request to the extent it would impose an unreasonable burden or expense on Applicant to produce such documents, information, or things, if any, or requires the creation of material not currently in existence.

4. Applicant objects to each request to the extent it seeks disclosure of documents or information protected by the attorney-client privilege, work-product doctrine, and/or any other applicable privilege or immunity. Any production Applicant makes of such information is inadvertent and is not intended as a waiver of the applicable privilege or immunity as to such information.

5. Applicant objects to each request to the extent that it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information.

6. Applicant objects to each request to the extent it seeks information from individuals or entities over which Applicant has no control.

7. Applicant objects to each request to the extent that it is redundant.

8. Applicant objects to each request as unduly burdensome to the extent it seeks documents or information subject to a confidentiality agreement with a third party.

9. Applicant objects to each request that is vague, indefinite, overly broad, unduly burdensome, and/or oppressive because the burden on Applicant to search for, gather, and produce such information or documents, if any, far outweighs the relevancy of such information

or the likelihood that such information or documents, if any, will lead to the discovery of admissible evidence.

10. Applicant objects to each request that seeks discovery of information or production of documents or things that are in the public domain and, therefore, of no greater burden for Opposer to obtain than Applicant.

11. Applicant objects to the requests to the extent they call for the identification or production of "all" or "each" fact(s), person(s), or document(s) as overly broad and unduly burdensome.

RESERVATION OF RIGHTS

Investigation and discovery is ongoing in this case. Applicant responds to Opposer's document requests without prejudice to Applicant's right to supplement its response. Applicant also reserves the right to produce or use any information or documents that are discovered after service of this response in support of or in opposition to any motion, in depositions, or at trial. In responding to the document requests, Applicant does not waive any objection on the grounds of privilege, relevance, authenticity, or admissibility of the information contained in these responses. Applicant expressly reserves the right to use any of these responses or the subject matter contained in them during any subsequent proceeding, including the trial of this or any other proceeding.

SPECIFIC OBJECTIONS AND RESPONSES

REQUEST NO. 1¹:

All documents relating to business plans, proposals and any other efforts to sell or offer to sell products under Applicant's Marks.

RESPONSE TO REQUEST NO. 1:

Applicant objects to this request as overly broad and unduly burdensome with respect to its request for "all" documents and "any" other efforts. Applicant further objects to this request as vague and ambiguous as to "other efforts." Applicant also objects to this request to the extent that it is redundant of Opposer's previous Request No. 19 from its First Set of Requests for Production of Documents and Things, to which Applicant already produced responsive, non-privileged documents sufficient to identify its intended marketing channels for the products to be sold under Applicant's Marks. Applicant also objects to this request to the extent that it seeks information not relevant to a claim or defense nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, Applicant will produce responsive, non-privilege documents, to the extent any such documents exist, in advance of the deposition of Dr. John Foor, M.D., which is scheduled for Friday, February 28, 2014.

REQUEST NO. 2:

All documents relating to plans and proposals to conduct both pilot studies and clinical trials for each product to be sold under Applicant's Marks.

¹ The numbering of Opposer's Second Set of Requests for Production of Documents and Things is not consecutive to the numbering of its First and Amended First Set of Requests for Production of Documents and Things. Applicant, however, has responded accordingly.

RESPONSE TO REQUEST NO. 2:

Applicant objects to this request as overly broad and unduly burdensome with respect to its request for “all” documents. Applicant further objects to this request because it seeks information not relevant to a claim or defense nor reasonably calculated to lead to the discovery of admissible evidence.

REQUEST NO. 3:

All documents relating to FDA approvals for conducting pilot studies and clinical trials for each product to be sold under Applicant's Marks.

RESPONSE TO REQUEST NO. 3:

Applicant objects to this request as overly broad and unduly burdensome with respect to its request for “all” documents. Applicant further objects to this request because it seeks information not relevant to a claim or defense nor reasonably calculated to lead to the discovery of admissible evidence.

REQUEST NO. 4:

All documents relating to clinical trial protocols each clinical trial for each product to be sold under Applicant's Marks.

RESPONSE TO REQUEST NO. 4:

Applicant objects to this request as overly broad and unduly burdensome with respect to its request for “all” documents. Applicant further objects to this request because it seeks information not relevant to a claim or defense nor reasonably calculated to lead to the discovery of admissible evidence.

REQUEST NO. 5:

All documents relating to approvals by an Institutional Review Board for each product to be sold under Applicant's Marks.

RESPONSE TO REQUEST NO. 5:

Applicant objects to this request as overly broad and unduly burdensome with respect to its request for "all" documents. Applicant further objects to this request because it seeks information not relevant to a claim or defense nor reasonably calculated to lead to the discovery of admissible evidence.

REQUEST NO. 6:

All documents relating to results of any pilot studies and clinical trials for each product to be sold under Applicant's Marks.

RESPONSE TO REQUEST NO. 6:

Applicant objects to this request as overly broad and unduly burdensome with respect to its request for "all" documents. Applicant further objects to this request because it seeks information not relevant to a claim or defense or reasonably calculated to lead to the discovery of admissible evidence.

REQUEST NO. 7:

All documents relating to Contracts with any advertising agency or marketing agency relating to the sale of each product sold under Applicant's Marks.

RESPONSE TO REQUEST NO. 7:

Applicant objects to this request as overly broad and unduly burdensome with respect to its request for "all" documents. Applicant also objects to this request to the extent that it is redundant of Opposer's previous Request Nos. 16 and 17 from its First Set of Requests for

Production of Documents and Things. Subject to and without waiving its objections, Applicant will produce responsive, non-privilege documents, to the extent any such documents exist, in advance of the deposition of Dr. John Foor, M.D., which is scheduled for Friday, February 28, 2014.

Dated: February 20, 2014

FISH & RICHARDSON P.C.

By:



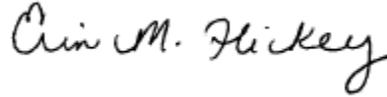
Lisa M. Martens
Erin M. Hickey

Attorneys for Applicant
ENTROTECH LIFE SCIENCES, INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of **APPLICANT'S OBJECTIONS AND RESPONSES TO OPPOSER'S SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS** has been served by electronic mail upon Opposer's attorneys of record in this proceeding on this 20th day of February, 2014, at the following electronic addresses:

Joseph R. Dreitler, Esq.
Mary R. True, Esq.
Dreitler True, LLC
jdreitler@ustrademarklawyer.com
mtrue@ustrademarklawyer.com



Erin M. Hickey

Exhibit C

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

IN THE MATTER OF Trademark Application Serial Nos. 85/499349; 85/499345;
85/499337 and 85/499332

DATE OF PUBLICATION: May 29, 2012

Carefusion 2200, Inc.,

Opposer,

Combined Opposition No: 91-
206,212

v.

Entrotech, Inc.

Applicant

DECLARATION OF MARY R. TRUE, ESQ.

1. I am a partner at Dreitler True LLC, which represents Carefusion 2200, Inc. in this Opposition proceeding.
2. Counsel for the parties have attempted in good faith to resolve the discovery dispute outlined in the accompanying Motion to Compel, including telephone conversations in September and November 2013. Counsel have also exchanged correspondence in an attempt to resolve this matter, but have been unable to do so.
3. Attached hereto as Exhibit A is a letter I sent to Erin Hickey, Esq., counsel for Entrotech on February 13, 2014 outlining Opposer's position.
4. Attached hereto as Exhibit B is the response I received from Ms. Hickey on February 13, 2014.

I declare under penalty of perjury under the laws of the United States of America that the statements set forth above are true and correct to the best of my personal knowledge and understanding.

Date: 2/24/14

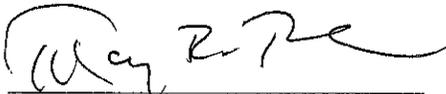
By: 

Exhibit A



137 E. State Street- Suite 101
Columbus, Ohio 43215
February 13, 2014

Mary R. True
Telephone: (614) 545-6355

Facsimile: (614) 241-2169
mtruer@ustrademarklawyer.com

via email: hickey@fr.com

Erin Hickey, Esq.
Fish & Richardson
12390 El Camino Real
San Diego, CA 92130

Re: *Carefusion 2200, Inc. v. Entrotech, Inc., Opposition No. 91206212*

Dear Erin:

This is in response to the Objections we recently received from you with respect to the deposition topics for Dr. Foor and Mr. McGuire, as well as several other troubling issues we have been encountering in Entrotech's discovery responses. We are concerned that your client does not take its discovery obligations seriously, as evidenced by what has been a continuing pattern of evasive and incomplete discovery responses, tardy document production, inappropriate confidentiality designations and overbroad relevance objections.

As a preliminary matter, nearly every document in Applicant's January 27, 2014 document production (which was not produced for more than three months after service of discovery) is designated as confidential, or as highly confidential/attorney's eyes only. For example, you have designated as "confidential" a printout of a 3M brochure for its Loban products that is clearly publicly available (ELS 0000024-65), and you have designated as "highly confidential/attorney's eyes only" copies of email correspondence between CareFusion and Entrotech, as well as documents actually created by my client, CareFusion (see, e.g., ELS0000080-84). Please review your production and provide appropriate re-designations for all of these documents and for any additional documents you produce in response to Opposer's Second Set of Document Requests, served on January 21, 2014.

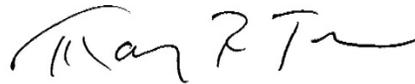
We specifically take issue with the majority of the laundry list of objections raised in your objections to the deposition topics for Dr. Foor and Mr. McGuire, as we will no doubt see the same objections in response to Opposer's Second Set of Document Requests. Entrotech has filed three (3) intent-to-use applications for specific products under various CHLORA-formative names. Documents and testimony relating to Entrotech's bona fide intent, business plans and ability to manufacture and ability to sell all of the products in the



goods description under these marks is one critical aspect of this Opposition. See *Boston Red Sox Baseball Club LP v. Sherman*, 88 USPQ2d 1581, 1587 (TTAB 2008) (the absence of any documentary evidence on the part of an applicant regarding such intent constitutes objective proof sufficient to establish that the applicant lacks a bona fine intention to use its mark in commerce.) The description of your client's goods in the opposed applications are highly similar and in some cases identical to the goods sold by our client under its trademarks. This is hardly surprising, since your client and my client had a business relationship in which your client had proposed to make complementary products to my client's Chloraprep® line of products. Accordingly, your objections to relevance with respect to information on clinical trials, FDA approvals for pilot studies, clinical trial protocols, business plans, etc. are not supportable.

If you are planning to assert relevance objections as justification for failure to produce documents responsive to Opposer's Second Set of Document Requests prior to Dr. Foor's deposition, or if you anticipate instructing your witnesses not to answer questions on these topics in their depositions, then we request that you let us know by the close of business today, as we will need to go to the Board immediately to get a ruling on the parameters of discovery. We have no interest in wasting more time with this gamesmanship on what should be a straightforward Opposition proceeding.

Sincerely,



Mary R. True



Exhibit B

FISH & RICHARDSON P.C.

12390 El Camino Real
San Diego, California
92130

Telephone
858 678-5070

Facsimile
858 678-5099

Web Site
www.fr.com

Erin M. Hickey
858 678-4327

Email
Hickey@fr.com

Frederick P. Fish
1855-1930

W.K. Richardson
1859-1951

BY E-MAIL

February 13, 2014

Mary R. True, Esq.
Dreitler True, LLC
137 E. State Street
Suite 101
Columbus, Ohio 43215
mtrue@ustrademarklawyer.com

Re: Your Letter of Today

Dear Mary:

After your letter this morning, it is clear that it is you, not us, who is engaged in gamesmanship. While we are undertaking a review of the way in which we designated our documents (from our production dated January 24, 2014) to correct any inadvertent mistakes, the claims in your letter are not well taken, particularly given that you chose to ignore the conversation we had in September of last year about our objections to these topics and the reasons for those objections.

When you propounded your first set of discovery, you sought information and documents relating to our client's research and testing of chlorhexidine film, its filings with the Food and Drug Administration for its products, and its applications to patent its products. We objected to those specific interrogatories and document requests on grounds that they are not relevant to a trademark matter nor are they calculated to lead to the admissibility of relevant evidence in a trademark matter because they have nothing to do with whether consumers would be likely to be confused between your client's marks, as registered and applied for with the United States Patent and Trademark Office, and our client's marks, as applied for with the United States Patent and Trademark Office. When we spoke with you last September about these objections, we explained the reasons why we made those objections. We reminded you that this matter is before the Trademark Trial and Appeal Board and is about your client's marks, as registered and applied for with the United States Patent and Trademark Office, and our client's marks, as applied for with the United States Patent and Trademark Office. Your discovery seeking information about our client's scientific research and testing, filings with the Food and Drug Administration, and applications to patent its products are not relevant to any of the likelihood-of-confusion factors that the Trademark Trial and Appeal Board will weigh. We made it very clear to you that we would not object to any discovery seeking any market-based or consumer-based research or testing that our client has conducted concerning its marks nor would we object to any



ATLANTA

AUSTIN

BOSTON

DALLAS

DELAWARE

HOUSTON

MUNICH

NEW YORK

SILICON VALLEY

SOUTHERN CALIFORNIA

TWIN CITIES

WASHINGTON, DC

Mary R. True, Esq.
Dreitler True, LLC
February 13, 2014
Page 2

discovery seeking information or documents relating to the relationship between our clients, despite the fact that you already have such information from your own client.

After that conversation, you agreed to amend your first set of discovery. Yet, when we received your Amended First Set of Interrogatories and Amended First Set of Requests for Documents and Things, you still included requests for the same type of information. In fact, you provided six amended requests for documents, and three of those six again asked for the same information we had objected to in the first instance because you did not narrow the requests to the market-based or consumer-based research and/or testing, relating to our client's marks, that we had discussed in September. Indeed, none of your amended interrogatories or requests for documents sought information about our client's market-based or consumer-based research and/or testing, relating to its marks, making it transparent to us that you are on a fishing expedition for our client's scientific research, which has no relevance to this matter.

After we objected to certain of your amended interrogatories and document requests, you proceeded to notice the depositions of Dr. Foor and Mr. McGuire under Rule 30(b)(1) of the Federal Rules of Civil Procedure and include 27 "topics" upon which you will seek testimony, 14 of which again seek discovery of (or, at the very least, are broad enough to encompass) the topics to which we repeatedly have objected, as well as propound a Second Set of Requests for Production of Documents and Things, in which at least five of the seven requests again seek discovery of the same topics. Whichever way you ask it, and however many times you ask it, the answer will always be the same: these topics are not relevant to this trademark opposition proceeding and you are not entitled to receive information about them. If you believe otherwise, you should conduct the necessary legal research to demonstrate why you would be entitled to such information and move to compel the discovery, as we advised you last September, and we would be happy to defend our position before the Trademark Trial and Appeal Board, as explaining it to you (repeatedly now) appears to be futile. Also, to be clear, we do not object to providing you with information supporting our client's *bona fide* intent to use its marks in connection with its products; however, the specific discovery that we have objected to does not ask for that type of information.

With regard to the upcoming depositions of Dr. Foor and Mr. McGuire, although under the Federal Rules of Civil Procedure I may only instruct my witnesses not to answer questions that would disclose attorney-client privileged information, should you ask any questions relating to the topics we have objected to, I will not

Mary R. True, Esq.
Dreitler True, LLC
February 13, 2014
Page 3

only object to the line of questioning on the record, but I will also request that the court reporter mark any testimony given by Dr. Foor or Mr. McGuire about these topics as “testimony to be stricken from the record” and I will move the Trademark Trial and Appeal Board to strike such testimony in due course. If you proceed with asking extensive questions about these topics during these depositions or propounding further discovery about them, we will be forced to pursue all available remedies.

Sincerely yours,

A handwritten signature in cursive script that reads "Erin M. Hickey". The signature is written in black ink and is positioned below the "Sincerely yours," text.

Erin M. Hickey