

ESTTA Tracking number: **ESTTA591939**

Filing date: **03/11/2014**

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

Proceeding	91206212
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Date	03/11/2014
Attachments	EXECUTED Applicant's Opposition to Opposer's Motion to Compel.pdf(162155 bytes) EXECUTED Declaration of EMHickey.pdf(344700 bytes)

**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 OPPOSITION TO OPPOSER'S MOTION TO COMPEL DISCOVERY

Opposer CareFusion 2200, Inc. ("Opposer") has moved to compel Applicant Entrotech Life Sciences, Inc. ("Applicant") to produce documents in response to five of Opposer's seven requests from its Second Set of Requests for Production of Documents and Things, which it served upon Applicant on January 21, 2014, or to respond that Applicant does not have any non-privileged, responsive documents. None of these five requests, however, is relevant to either of the two claims Opposer has alleged in this proceeding nor is it calculated to lead to the admissibility of relevant evidence. Accordingly, Applicant respectfully requests that this Trademark Trial and Appeal Board (the "Board") deny Opposer's Motion to Compel Discovery

and hold that Opposer is not entitled to the irrelevant, proprietary information that it has repeatedly sought since discovery opened and now moves to compel.¹

I. RELEVANT BACKGROUND

Since the beginning of discovery, Opposer has repeatedly and improperly requested Applicant's proprietary, scientific research, which has absolutely no bearing on the registrability of Applicant's marks. When Opposer propounded its first set of discovery, it sought information and documents relating to Applicant's research and testing of chlorhexidine film, its filings with the Food and Drug Administration (the "FDA") for its products, and its applications to patent its products. Applicant objected to the specific interrogatories and document requests that sought information about these topics on grounds that none of them is relevant nor calculated to lead to the admissibility of relevant evidence in this matter because none of them has anything to do with the registrability of Applicant's marks with the United States Patent and Trademark Office ("U.S.P.T.O."). Annexed hereto as **Exhibit A to the Declaration of Erin M. Hickey, Esq.** (the "Decl. of Erin M. Hickey, Esq.") are true and correct copies of the relevant portions of Applicant's Objections and Responses to Opposer's First Set of Interrogatories and the relevant portions of Applicant's Objections and Responses to Opposer's First Set of Requests for Production of Documents and Things.

Counsel for Opposer and counsel for Applicant spoke in or around September 2013 about the grounds for Applicant's objections and counsel for Applicant explained that Opposer's discovery seeking information about Applicant's scientific research and testing, filings with the FDA, and applications to patent its products are not relevant to this trademark opposition proceeding before the Board, which is limited to the registrability of Applicant's marks. Decl. of

¹ While Applicant opposes the Motion to Compel Discovery, it agrees with Opposer that the Board should suspend this proceeding and re-set all deadlines after it resolves the matter.

Erin M. Hickey, Esq. ¶ 2. In a good-faith effort to resolve the discovery dispute, however, counsel for Applicant advised counsel for Opposer that Applicant would not object to any discovery seeking information relevant to the registrability of Applicant's marks, such as any market-based or consumer-based research or testing that Applicant has conducted concerning the marks at issue in this opposition. *Id.* ¶ 3. During their conversation, counsel for Opposer never once explained that she was seeking information about Applicant's scientific research and testing, filings with the FDA, and applications to patent its products to determine whether Opposer could prove that Applicant did not have a *bona fide* intent to use each of its marks when it applied to register them or whether Applicant still has such a *bona fide* intent. *Id.* ¶ 4. Had she, counsel for Applicant would have advised her that it also would not object to discovery seeking information supporting or negating Applicant's *bona fide* intent, such as business or marketing plans. *Id.*

After counsel spoke in or around September 2013, Opposer agreed to amend its first set of discovery. Yet, when Applicant received Opposer's Amended First Set of Interrogatories and Amended First Set of Requests for Production of Documents and Things, Opposer still had included requests for the same type of information. In fact, Opposer provided six amended requests for documents, and three of those six again asked for the same information Applicant had objected to in the first instance because Opposer did not narrow the requests to information relevant to the registrability of Applicant's marks. Annexed hereto as **Exhibit B to the Decl. of Erin M. Hickey, Esq.** are true and correct copies of the relevant portions of Applicant's Objections and Responses to Opposer's Amended First Set of Requests for Production of Documents and Things. Indeed, none of the amended interrogatories or requests for documents sought information about Applicant's market-based or consumer-based research and/or testing,

relating to the marks at issue in this opposition, nor did they seek information about Applicant's business or marketing plans to use each of its marks in United States commerce. Decl. of Erin M. Hickey, Esq. ¶ 5 (emphasis added).

After Applicant again objected to certain of Opposer's amended discovery, Opposer proceeded to notice the depositions of two of Applicant's employees under Rule 30(b)(1) of the Federal Rules of Civil Procedure and included 27 "topics"² upon which Opposer intended to seek testimony, 14 of which **again** sought discovery of (or, at the very least, were broad enough to encompass) the topics to which Applicant repeatedly has objected. *Id.* ¶ 6 (emphasis added). Opposer also propounded a Second Set of Requests for Production of Documents and Things, in which five of the seven requests **again** sought discovery of the same topics. These five requests are now the subject of Opposer's Motion to Compel.

Steadfast in its belief that this information is not relevant to the registrability of its marks, Applicant again objected to each of these "topics" as well as the five objectionable requests in Opposer's Second Set of Requests for Production of Documents and Things. *Id.* ¶ 7. A copy of Applicant's Objections and Responses to Opposer's Second Set of Requests for Production of Documents and Things was annexed to Opposer's Motion to Compel as **Opposer's Exhibit B**. After Applicant objected, counsel for Opposer wrote to counsel for Applicant, and, for the first time since this discovery dispute began, claimed that it needed this information to determine whether Applicant had a *bona fide* intent to use its marks when it applied to register them. The letter from counsel for Opposer to counsel for Applicant was annexed to Opposer's Motion to Compel as **Exhibit A to the Declaration of Mary R. True, Esq.** Counsel for Applicant wrote

² For the record, Opposer noticed these two depositions under Rule 30(b)(1) of the Federal Rules of Civil Procedure, making its list of "topics," which are only provided when noticing the deposition of a witness under Rule 30(b)(6) of the Federal Rules of Civil Procedure, inappropriate.

back, making it clear that “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.” The letter from counsel for Applicant to counsel for Opposer was annexed to Opposer’s Motion to Compel as **Exhibit B to the Declaration of Mary R. True, Esq.** Opposer responded by moving to compel the irrelevant discovery, rather than propounding discovery tailored to learn about Applicant’s *bona fide* intent.

II. ARGUMENT

A. LEGAL STANDARD

Although the scope of discovery under the Federal Rules is relatively broad, it is not unlimited, especially in a proceeding before the Board, which has limited jurisdiction and “is empowered to determine only the right to register.” *Frito-Lay North America, Inc. v. Princeton Vanguard, LLC*, 100 U.S.P.Q.2d 1904, 2011 WL 6012209, at *4 (T.T.A.B. 2011) (emphasis original); *see also* Section 102.01 of the Trademark Trial and Appeal Board’s Manual of Procedure (the “TBMP”). Indeed, “the scope of discovery in Board proceedings is generally narrower than in court proceedings, especially court proceedings involving allegations of infringement, and/or in which both parties are, unlike here, making extensive use of their marks. In short, it is not surprising (nor is it improper) ... [to] treat[] discovery in Board proceedings differently than discovery in other types of trademark litigation.” *Id.* “Both the Trademark Rules [of Practice] and the Federal Rules of Civil Procedure grant the Board discretion to manage the discovery process in order to balance the requesting party's need for information against any injury that may result from discovery abuse.” *FMR Corp. v. Alliant Partners*, 51 U.S.P.Q.2d 1759, 1999 WL 696008, at *2 (T.T.A.B. 1999); *see also* Section 402.02 of the

TBMP and the authorities cited therein. With its discretion in mind, the Board has warned before that “each party and its attorney has a duty not only to make a good faith effort to satisfy the discovery needs of its opponent[,] but also to make a good faith effort to seek only such discovery as is proper and relevant to the specific issues involved in the case.” *Luehrmann v. Kwik Kopy Corp.*, 2 U.S.P.Q.2d 1303, 1987 WL 123810, at *3 (T.T.A.B. 1987).

B. APPLICANT'S SCIENTIFIC RESEARCH, FILINGS WITH THE FDA, AND PATENT APPLICATIONS ARE NOT RELEVANT NOR CALCULATED TO LEAD TO THE ADMISSIBILITY OF RELEVANT EVIDENCE ABOUT THE REGISTRABILITY OF APPLICANT'S MARKS.

In its Motion to Compel, Opposer attempts to disguise its irrelevant requests by claiming an alleged “need” for certain documents to determine whether Applicant had a *bona fide* intent to use its marks in United States commerce when it applied to register them, and whether it still has that *bona fide* intent. Opposer's argument in this regard, however, is misplaced.

To be sure, discovery seeking documents that either would support or negate Applicant's *bona fide* intent is relevant in a proceeding, where, as here, that claim is alleged in the Notice of Opposition, and Applicant does not and has not objected to producing such documents if sought in connection with appropriately worded and tailored requests. For example, in Opposer's Second Set of Requests for Production of Documents and Things, Opposer propounded the following two requests, to which Applicant timely responded on February 20, 2014 – just two business days before Opposer filed its Motion to Compel – by stating that it would produce responsive, non-privileged documents, which it already has and/or will be producing shortly:

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

RESPONSE: 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**

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: 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**

Opposer's Exhibit B (emphasis added). Requests Nos. 1 and 7 are examples of appropriate discovery seeking information about whether Applicant had and has a *bona fide* intent to use each of its marks in United States commerce. (In addition to these two requests, Applicant also responded to Request No. 19, from Opposer's First Set of Requests for Production of Documents and Things, by producing a document showing its marketing plans for the products to be sold under its marks.) Compare these requests to the following five requests, which are the subject of Opposer's Motion to Compel:

2. All documents relating to plans and protocols **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.

Opposer's Exhibit A (emphasis added).

Conspicuously missing from Opposer's Motion to Compel are any cases holding that documents relating to scientific research, FDA filings, and patent filings are required to be produced during discovery to prove Applicant did not and does not have a *bona fide* intent to use its marks in connection with medical devices in United States commerce. Although, that is not surprising, given that the Board's decisions do not tip in Opposer's favor. *See, e.g., In Re Myron Stuart Hurwitz*, 2004 WL 2341820, at *6 (T.T.A.B. 2004) ("the fact that applicant's invention is novel enough to be the subject of an issued patent is irrelevant to the question of whether applicant's applied-for trademarks are registrable under the Trademark Act"); *Alfacell Corp. v. Anticancer Inc.*, 71 U.S.P.Q.2d 1301, 2004 WL 1631116, at *5 n. 5 (T.T.A.B. 2004) ("Suffice it to say that the likelihood that the FDA will or will not approve petitioner's drug for market use, or that the efficacy of respondent's drug is greater than that of petitioner's drug, is entirely irrelevant to the issue of likelihood of confusion before us.")

Instead, in an attempt to somehow support its position, Opposer has cited to a handful of cases – all of which were decided either on a motion for summary judgment or after trial and/or oral argument, and none of which was decided on a motion to compel – in which the Board concluded that the applicant had not produced **any** documentary evidence proving his or its *bona fide* intent. For example, in *L'Oreal*, the Board held that the applicant lacked the requisite *bona fide* intent because: (1) he "stated that he has no documents evidencing a *bona fide* intent to use

the [applied-for] mark for aloe vera drinks,” **and the Board cited certain of his responses to three of the opposer's document requests asking him for the same**; (2) he “admits that he has no industry-relevant experience or any expertise in manufacturing or selling aloe vera drinks,” **and the Board cited his response to one of the opposer's requests to admit asking him to admit same**; and (3) he responded that he had “not developed a business plan, contacted any potential business partners or investors, developed any logos or packaging, or undertaken any other concrete activities in preparation for use of the applied-for mark in connection with the [applied-for] goods,” **and the Board cited certain of his responses to two of the opposer's interrogatories asking for same**. *L'Oreal S.A. v. Marcon*, 102 U.S.P.Q.2d 1434, 2012 WL 1267956, at *11 (T.T.A.B. 2012). Here, Opposer has not requested any of this information in its discovery requests.

As another example, in *Swatch AG*, the Board concluded that the applicant did have the capacity to manufacture watches and clocks, but held the applicant did not have the requisite *bona fide* intent because: (1) it testified that it “actually did not intend to use the [applied-for] mark for clocks when the application was filed”; (2) other testimony “indicating that applicant lacked an intent to use the mark on [other goods identified in the application]”; and (3) contradictory testimony regarding applicant's efforts to develop and market watches under the applied-for mark. *Swatch AG v. M.Z. Berger & Co., Inc.*, 108 U.S.P.Q.2d 1463, 2013 WL 5655834, at *15 (T.T.A.B. 2013). Rather than support Opposer's position, these cases highlight the narrow and focused discovery – including deposition testimony, as well as appropriately worded written discovery, tailored to the specific issue at hand – that Opposer should be seeking, but has yet to propound. *See also The Saul Zaentz Company dba Tolkien Enterprises v. Joseph M. Bumb*, 95 U.S.P.Q.2d 1723, 2010 WL 2783892, at *5 (T.T.A.B. 2010)(holding that the

applicant lacked a *bona fide* intent primarily because he “admitted that[,] aside from documents filed with the U.S.P.T.O. pertaining to his intent-to-use application and documents pertaining to his registration of [certain] domain names, [he] has no documents relating to his adoption of or intent to use the [applied-for] mark in commerce” and **citing to the applicant’s deposition and trial testimony and his responses to four of the opposer’s requests to produce documents asking for proof of same**(emphasis added). Lastly, in *Spirits International*, the Board held that the applicant lacked the requisite intent, given that:

applicant's responses to opposer's document production requests that no responsive materials exist or have been discovered, **including as to any documents evidencing, reflecting or referring to applicant's use or intended use of its mark in connection with any alcoholic product; promotional and marketing materials and advertisements for any wine, beer, spirit, vodka or other alcoholic product offered or to be offered by applicant or any authorized licensee under the mark in the United States; marketing plans involving any wine, beer, spirits, vodka or any other alcoholic product to be sold under the mark; and documents evidencing or referring to any channel of trade through which products have been sold or through which applicant intends to sell products under the mark in the United States.**

Spirits International, B.V. v. S.S. Taris Zeytin Ve Zeytinyagi Tarim Satis Kooperatifleri Birliigi, 99 U.S.P.Q.2d 1545, 2011 WL 2909909, at *3 (T.T.A.B. 2011) (emphasis added). While the Board also considered that the applicant had “admitted” (either through requests to admit or testimony) that it had not obtained regulatory approval to sell its alcoholic beverages in the United States, the Board never held that information regarding regulatory approval was required to be produced to negate or support an applicant’s *bona fide* intent.

If, as Opposer concedes in its brief, it is seeking this discovery “to establish through proofs” that Applicant lacked a *bona fide* intent to use these marks, then Opposer should propound a set of requests to admit, notice and take deposition testimony, and/or ask focused

follow-up written discovery that would support or negate Applicant's *bona fide* intent to use these marks, like the opposers did in each of the cases Opposer cited in its brief, or should have done, according to the Board. *See, e.g., The Wet Seal, Inc. v. FD Management, Inc.*, 82 U.S.P.Q.2d 1629, 2007 WL 458529, at *14 (T.T.A.B. 2007)(holding that the opposer failed to prove that the applicant had lacked the requisite intent because, in part, "opposer did not ask questions which fully explored [the] applicant's actual intent").

III. CONCLUSION

This proceeding, which is solely about the registrability of Applicant's marks, does not entitle Opposer to go on a "fishing expedition" for Applicant's scientific research, filings with the FDA, and/or patent applications. At this point, Opposer's repetitive, irrelevant requests represent nothing more than Opposer's deliberate and harassing attempt to seek Applicant's proprietary information, which has absolutely no bearing on the registrability of Applicant's marks. Accordingly, Applicant respectfully requests that the Board deny Opposer's Motion to Compel and hold that any discovery, written or oral, seeking information about Applicant's scientific research, filings with the FDA, and/or patent applications is well beyond the scope of this Board proceeding.

Dated: March 11, 2014

Respectfully submitted,

FISH & RICHARDSON P.C.

Erin M. Hickey

By: _____

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Attorneys for Applicant

ENTROTECH LIFE SCIENCES, INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of **APPLICANT'S OPPOSITION TO OPPOSER'S MOTION TO COMPEL DISCOVERY** has been served by electronic mail upon Opposer's attorneys of record in this proceeding on this 11th day of March, 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

Erin M. Hickey

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Ser. No. 85/499,349 for the mark **CHLORADERM**
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CAREFUSION 2200, INC.,

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Opposition No.: 91-206,212

DECLARATION OF ERIN M. HICKEY, ESQ.

I, Erin M. Hickey, hereby declare and state as follows:

1. I am a Principal with the law firm of Fish & Richardson P.C., which represents Applicant Entrotech Life Sciences, Inc. ("Applicant") in this proceeding. I am duly licensed to practice law in the states of California and New York, and am authorized to practice before the Trademark Trial and Appeal Board of the United States Patent and Trademark Office. I have personal knowledge of the facts stated in this declaration and can and would testify truthfully thereto if called upon to do so.

Opposition No.: 91-206,212

Declaration of Erin M. Hickey, Esq. in support of Applicant's Opposition to Opposer's Motion to Compel Discovery

2. I spoke with counsel for Opposer, Mary R. True, Esq., in or around September 2013 about the grounds for certain of Applicant's objections to Opposer's First Set of Interrogatories and Opposer's First Set of Requests for Production of Documents and Things. In particular, I explained that Opposer's discovery seeking information about Applicant's scientific research and testing, filings with the FDA, and applications to patent its products are not relevant to this proceeding before the Board, which is limited to the registrability of Applicant's marks.

3. In a good-faith effort to resolve the discovery dispute with Opposer, I advised counsel for Opposer during this conversation that Applicant would not object to any discovery seeking information relevant to the registrability of Applicant's marks, such as any market-based or consumer-based research or testing that Applicant has conducted concerning the marks at issue in this proceeding.

4. During our conversation, counsel for Opposer never once explained that she was seeking information about Applicant's scientific research and testing, filings with the FDA, and applications to patent its products to determine whether Opposer could prove that Applicant did not have a *bona fide* intent to use each of its marks when it applied to register them or whether Applicant still has such a *bona fide* intent. Had she, I would have advised her that Applicant also would not object to discovery seeking information supporting or negating Applicant's *bona fide* intent, such as business or marketing plans, which I later did in my letter to her dated February 13, 2014, which is annexed to Opposer's Motion to Compel as Exhibit B to the Declaration of Mary R. True, Esq.

5. When Applicant received Opposer's Amended First Set of Interrogatories, none of the amended interrogatories or requests for documents sought information about Applicant's

market-based or consumer-based research and/or testing, relating to the marks at issue in this opposition, nor did they seek information about Applicant's business or marketing plans to use each of its marks in United States commerce.

6. After Applicant again objected to certain of Opposer's discovery, Opposer proceeded to notice the depositions of two of Applicant's employees under Rule 30(b)(1) of the Federal Rules of Civil Procedure and included 27 "topics" upon which Opposer intended to seek testimony, 14 of which again sought discovery of (or, at the very least, were broad enough to encompass) the topics to which Applicant repeatedly has objected.

7. Steadfast in its belief that this information is not relevant to the registrability of its marks, Applicant again objected to each of these "topics" as well as the five objectionable requests in Opposer's Second Set of Requests for Production of Documents and Things.

8. Annexed hereto as **Exhibit A** are true and correct copies of the relevant portions of Applicant's Objections and Responses to Opposer's First Set of Interrogatories and the relevant portions of Applicant's Objections and Responses to Opposer's First Set of Requests for Production of Documents and Things.

9. Annexed hereto as **Exhibit B** are true and correct copies of the relevant portions of Applicant's Objections and Responses to Opposer's Amended First Set of Requests for Production of Documents and Things.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my personal knowledge and understanding.

Dated: March 11, 2014

Respectfully submitted,

FISH & RICHARDSON P.C.

A handwritten signature in cursive script that reads "Erin M. Hickey".

Erin M. Hickey
Attorney for Applicant
ENTROTECH LIFE SCIENCES, INC.

EXHIBIT A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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assignment from ENTROTECH, INC.)¹,

Applicant.

Opposition No.: 91-206,212

**APPLICANT'S OBJECTIONS AND RESPONSES TO
OPPOSER'S FIRST SET OF INTERROGATORIES**

Pursuant to Rule 33 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") the following Objections and Responses to Opposer's First Set of Interrogatories.

¹ An assignment from ENTROTECH, INC. to ENTROTECH LIFE SCIENCES, INC. was recorded with the United States Patent and Trademark Office on July 18, 2012. *See* Reel/Frame 4823/0888.

GENERAL OBJECTIONS

1. Applicant objects to each interrogatory 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 proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

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

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

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

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

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

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

9. Applicant objects to each interrogatory that is vague, indefinite, overly broad, unduly burdensome, and/or oppressive because the burden on Applicant to search for, gather, and produce such information, if any, far outweighs the relevancy of such information or the likelihood that such information, if any, will lead to the discovery of admissible evidence.

10. Applicant objects to each interrogatory that seeks discovery of information that is in the public domain and, as a result, of no greater burden for Opposer to obtain than Applicant.

11. Applicant objects to each interrogatory to the extent it calls for the identification of "all" or "each" fact(s), person(s), or document(s) as overly broad and unduly burdensome.

12. Applicant objects to Opposer's interrogatories to the extent that they require responses to multiple discrete parts and subparts.

13. Applicant objects to the definitions, instructions, and requests as vague and ambiguous to the extent they use terms that are not defined or understood. Applicant will not speculate as to the meaning Opposer ascribes to these terms.

14. Applicant objects to Opposer's definition of "Applicant" because it is overbroad, as it encompasses entities beyond Applicant's control, and identifies persons or entities who are not defendants in this proceeding. Applicant will provide only information that is in its own possession, custody, or control and will respond to these interrogatories only on its own behalf.

15. Applicant objects to Opposer's definition of "document" as overbroad. Again, Applicant will provide only information that is in its own possession, custody, or control and will respond to these interrogatories only on its own behalf.

16. The foregoing General Objections are applicable to and included in Applicant's objections to each and every one of Opposer's interrogatories, whether or not specifically raised below. The objections set forth below are not a waiver, in whole or in part, of any of the foregoing General Objections.

RESERVATION OF RIGHTS

Investigation and discovery is ongoing in this case. Applicant responds to Opposer's interrogatories without prejudice to Applicant's right to supplement its response. Applicant also reserves the right to use any information that is discovered after service of this response in support of or in opposition to any motion, in depositions, or at trial. In responding to the interrogatories, 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

INTERROGATORY NO. 1:

Identify and describe in detail all meetings, telephone calls, emails, webinars, proposals, contracts and payments between anyone affiliated with Applicant (including but not limited to Entrofloor Medical, LLC) ("Entrofloor") and Opposer or its related entity CareFusion 213, LLC, relating to chlorhexidine film.

RESPONSE TO INTERROGATORY NO. 1:

Applicant objects to this interrogatory as overly broad and unduly burdensome with respect to its request to identify and describe "all" meetings, telephone calls, emails, webinars, proposals, contracts and payments between "anyone" affiliated with Applicant and Opposer or

its related entity CareFusion 213, LLC. Applicant also objects to this interrogatory as unduly burdensome to the extent it seeks information or the identification of documents that are equally available to Opposer, and, as a result, equally convenient for Opposer to compile. Applicant also objects to this interrogatory to the extent it seeks information not relevant to a claim or defense or reasonably calculated to lead to the discovery of admissible evidence.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

INTERROGATORY NO. 3:

Identify the employees, officers or investors in Applicant's business or any related party (including Entrofloor) who are most familiar with chlorhexidine surgical film.

RESPONSE TO INTERROGATORY NO. 3:

Applicant objects to this interrogatory as overly broad and unduly burdensome. Applicant further objects to this interrogatory to the extent it seeks information not relevant to a claim or defense or reasonably calculated to lead to the discovery of admissible evidence. Applicant also objects to this interrogatory as it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information. Applicant further objects to this interrogatory as unduly burdensome to the extent it seeks information subject to a confidentiality agreement with a third party.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

INTERROGATORY NO. 7:

Identify all documents filed with the FDA for each product that Applicant intends to sell under each of Applicant's Marks.

RESPONSE TO INTERROGATORY NO. 7:

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

[REDACTED]

INTERROGATORY NO. 11:

Identify each employee and each officer of Applicant or Entrofoor who has knowledge of the agreements between Entrofoor and Opposer's related entity CareFusion 213, LLC, relating to a chlorhexidine film.

RESPONSE TO INTERROGATORY NO. 11:

Applicant objects to this interrogatory as overly broad and unduly burdensome with respect to its request to identify "each" employee and "each" officer. Applicant also objects to this interrogatory as unduly burdensome to the extent it seeks information or the identification of documents that are equally available to Opposer, and, as a result, equally convenient for Opposer to compile. Applicant further objects to this interrogatory to the extent it seeks information not relevant to a claim or defense. Applicant also objects to this interrogatory to the extent it seeks information not relevant to a claim or defense or reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 12:

Identify each employee and each officer of Applicant or Entrofoor who had any involvement in the proposed joint development between Applicant or Entrofoor and Opposer's related entity, CareFusion 213 LLC relating to chlorhexidine film.

RESPONSE TO INTERROGATORY NO. 12:

Applicant objects to this interrogatory as overly broad and unduly burdensome with respect to its interrogatory to identify "each" employee and "each" officer. Applicant also objects to this interrogatory as unduly burdensome to the extent it seeks information or the identification of documents that are equally available to Opposer, and, as a result, equally convenient for Opposer to compile. Applicant further objects to this interrogatory to the extent it

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

INTERROGATORY NO. 20:

Identify any product sold by Applicant under Applicant's Mark for which FDA approval has been requested or obtained by Applicant or anyone acting on behalf of applicant.

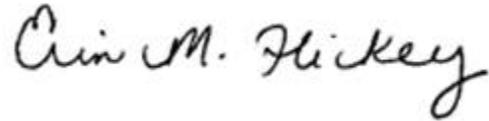
RESPONSE TO INTERROGATORY NO. 20:

Applicant objects to this interrogatory as overly broad and unduly burdensome with respect to its request to identify "any" product. Applicant further objects to this interrogatory to the extent it seeks information not relevant to a claim or defense or reasonably calculated to lead to the discovery of admissible evidence.

[REDACTED]

Dated: July 15, 2013

FISH & RICHARDSON P.C.

A handwritten signature in cursive script that reads "Erin M. Hickey".

By: _____
Lisa M. Martens
Erin M. Hickey

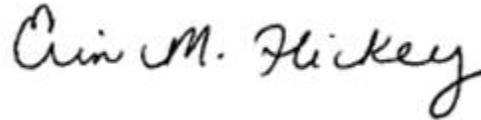
Attorneys for Applicant
ENTROTECH LIFE SCIENCES, INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of **APPLICANT'S OBJECTIONS AND RESPONSES TO OPPOSER'S FIRST SET OF INTERROGATORIES** has been served by electronic mail upon Opposer's attorneys of record in this proceeding on this 15th day of July 2013, at the following electronic addresses, per the parties' agreement regarding electronic service in this proceeding:

:

Joseph R. Dreitler, Esq.
Mary R. True, Esq.
Dreitler True, LLC
137 E. State St.
Columbus, OH 43215
jdreitler@ustrademarklawyer.com
mtrue@ustrademarklawyer.com



Erin M. Hickey

VERIFICATION

I, Jim McGuire, the President and Chief Executive Officer of Applicant, Entrotech Life Sciences, Inc. ("Applicant"), declare and verify on behalf of Applicant that I have read the responses to the Interrogatories annexed hereto, and know the contents thereof, which are true to the best of my knowledge, except as to matters that are stated upon information and belief, as to which matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.



Jim McGuire

**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. (by
assignment from ENTROTECH, INC.)¹,

Applicant.

Opposition No.: 91-206,212

**APPLICANT'S OBJECTIONS AND RESPONSES TO OPPOSER'S FIRST 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 First Set of Requests for Production of Documents and Things.

¹ An assignment from ENTROTECH, INC. to ENTROTECH LIFE SCIENCES, INC. was recorded with the United States Patent and Trademark Office on July 18, 2012. *See* Reel/Frame 4823/0888.

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.

12. Applicant objects to the definitions, instructions, and requests as vague and ambiguous to the extent they use terms that are not defined or understood. Applicant will not speculate as to the meaning Opposer ascribes to these terms.

13. Applicant objects to Opposer's definition of "Applicant" because it is overbroad, as it encompasses entities beyond Applicant's control, and identifies persons or entities who are not defendants. Applicant will provide only information that is in its own possession, custody, or control and will respond to these requests only on its own behalf.

14. Applicant objects to Opposer's definition of "document" as overbroad. Again, Applicant will provide only documents or things that are in its own possession, custody, or control and will respond to these document requests only on its own behalf.

15. The foregoing General Objections are applicable to and included in Applicant's objections to each and every one of Opposer's requests, whether or not specifically raised below.

The objections set forth below are not a waiver, in whole or in part, of any of the foregoing General Objections.

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
TO REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS**

REQUEST NO. 1:

All documents referring to meetings, telephone calls, emails, webinars, proposals, contracts, development agreements, research, studies, testing, invoices, payments made or payments received, relating to chlorhexidine film, between Applicant (including but not limited to Entrofoor Medical, LLC) and Opposer or its related entity, CareFusion 213, LLC.

RESPONSE TO REQUEST NO. 1:

Applicant objects to this request as overly broad and unduly burdensome with respect to its request to identify and describe "all" meetings, telephone calls, emails, webinars, proposals, contracts and payments between "anyone" affiliated with Applicant and Opposer or its related

Applicant also objects to this request to the extent it seeks information not relevant to a claim or defense or reasonably calculated to lead to the discovery of admissible evidence.

REQUEST NO. 11:

All documents relating to any research, studies or testing conducted by Applicant or Entrofoor Medical, LLC describing or relating to chlorhexidine film between January 1, 2010 and December 31, 2011.

RESPONSE TO REQUEST NO. 11:

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 to the extent it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information. Applicant also objects to this request to the extent it seeks information not relevant to a claim or defense or reasonably calculated to lead to the discovery of admissible evidence.

[REDACTED]

information not relevant to a claim or defense or reasonably calculated to lead to the discovery of admissible evidence.

[REDACTED]

REQUEST NO. 20:

Copies of all patent applications that applicant or any related party (including Entrofloor Medical, LLC) has filed for any product that Applicant intends to sell under any of Applicant's Marks.

RESPONSE TO REQUEST NO. 20:

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 to the extent it seeks information not relevant to a claim or defense or reasonably calculated to lead to the discovery of admissible evidence. Applicant also objects to this request as unduly burdensome to the extent it seeks information or the identification of documents that are equally available to Opposer, and, as a result, equally convenient for Opposer to compile.

REQUEST NO. 21:

Copies of all documents, including internal memos, meeting notes and emails related to the joint development relating to chlorhexidine film between Applicant (or Entrofloor Medical, LLC) and Opposer's related entity, CareFusion 213 LLC.

RESPONSE TO REQUEST NO. 21:

Applicant objects to this request as overly broad and unduly burdensome with respect to its request to identify "all" documents. Applicant also objects to this request as unduly burdensome to the extent it seeks information or the identification of documents that are equally available to Opposer, and, as a result, equally convenient for Opposer to compile. Applicant further objects to this request to the extent it seeks information not relevant to a claim or defense. Applicant also objects to this request to the extent it seeks information not relevant to a claim or

RESPONSE TO REQUEST NO. 26:

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 to the extent it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information. Applicant also objects to this request to the extent it seeks information not relevant to a claim or defense or reasonably calculated to lead to the discovery of admissible evidence.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

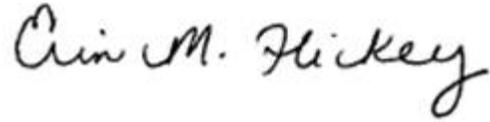
[REDACTED]

[REDACTED]

Dated: July 15, 2013

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 FIRST 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 15th day of July 2013, at the following electronic addresses, per the parties' agreement regarding electronic service in this proceeding:

Joseph R. Dreitler, Esq.
Mary R. True, Esq.
Dreitler True, LLC
137 E. State St.
Columbus, OH 43215
jdreitler@ustrademarklawyer.com
mtrue@ustrademarklawyer.com

Erin M. Hickey

Erin M. Hickey

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 AMENDED FIRST 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 Amended First 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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

conducted by Applicant or Entrofloor Medical, LLC that have been provided to any third party from September 2011 until the present.

RESPONSE TO AMENDED REQUEST NO. 10:

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 it seeks information not relevant to a claim or defense or reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to this request to the extent it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information.

AMENDED REQUEST NO. 11:

All documents relating to any research, studies or testing conducted by Applicant or Entrofloor Medical, LLC describing or relating to any products developed, manufactured, offered, sold, or intended to be sold under Applicant's Marks, between January 1, 2010, and December 31, 2011.

RESPONSE TO AMENDED REQUEST NO. 11:

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 it seeks information not relevant to a claim or defense or reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to this request to the extent it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information.

[REDACTED]

AMENDED REQUEST NO. 26:

Copies of all documents relating to research performed by Applicant or Entrofloor Medical, LLC relating to any products developed, manufactured, offered, sold, or intended to be sold under Applicant's Marks, until December 31, 2011.

RESPONSE TO AMENDED REQUEST NO. 26:

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 it seeks information not relevant to a claim or defense or reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to this request to the extent it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information.

Dated: November 8, 2013

FISH & RICHARDSON P.C.

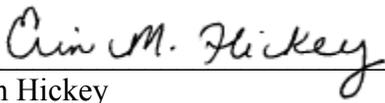
By: Erin M. Hickey
Lisa M. Martens
Erin M. Hickey

Attorneys for Applicant
ENTROTECH LIFE SCIENCES, INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of **APPLICANT'S RESPONSES TO OPPOSER'S AMENDED FIRST 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 8th day of November, 2013, at the following electronic addresses:

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



Erin Hickey