

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: March 12, 2014

Opposition No. 91206212

Carefusion 2200, Inc.

v.

entrotech, inc.

**George C. Pologeorgis,
Interlocutory Attorney:**

This case now comes before the Board for consideration of opposer's motion (filed February 24, 2014) to compel production of documents responsive to opposer's second set of Document Request Nos. 2-6. Applicant filed a timely response to opposer's motion on March 11, 2014.

The Board carefully considered the arguments raised by the parties in their respective motion papers, as well as the supporting correspondence and the record of this case, in coming to a determination regarding opposer's combined motion. Based on the foregoing, the Board makes the following findings and determinations:

Opposer's Motion to Compel Written Discovery

Initially, the Board finds that opposer has made a good faith effort to resolve the parties' discovery dispute prior to seeking Board intervention and that opposer's motion is timely. *See* Trademark Rule 2.120(e)(1).

As to the merits of opposer's motion to compel responses to opposer's second set of Document Request Nos. 2-6, the motion is **GRANTED** for the reasons set forth below.

Applicant seeks to register the following marks for the following associated goods:

1. CHLORADERM for "medical and surgical dressings" in International Class 5;
2. CHLORABSORB for "medical and surgical dressings" in International Class 5;
3. CHLORABOND for "topical antimicrobial solutions for dermatologic use" in International Class 5; and
4. CHLORADRAPE for "surgical drapes" in International Class 10.

In addition to asserting likelihood of confusion under Section 2(d) of the Trademark Act with opposer's pleaded CHLORAPREP and CHLORASHIELD registrations and application for various medical products as a ground for opposition, opposer has also asserted that applicant did not have a bona fide intention to use its subject marks in U.S. commerce at the time it filed its involved applications.

By way of its motion, opposer seeks to compel production of documents responsive to the following document requests:

Document 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;

Document 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;

Document Request No. 4

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

Document Request No. 5

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

Document 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.

Applicant has objected to each of the above-identified document requests on the following grounds: (1) the requests are overly broad and unduly burdensome, (2) relevancy, and (3) the requests are not reasonably calculated to lead to the discovery of admissible evidence.

The Board finds that opposer's second set of Document Request Nos. 2-6 seek information that is relevant to the issue of whether applicant had a *bona fide* intention to use its subject marks in commerce in association with the identified goods at the time it filed its involved applications. Indeed, the requested documents are directly relevant to the issue of whether applicant had a demonstrated capacity to produce the medical products set forth in its applications under its subject marks as of the time the involved applications

were filed or has taken steps necessary to develop and market such products since the filing date of the applications.

In view of the foregoing, opposer's motion to compel is **GRANTED** to the extent that applicant is allowed until **thirty (30) days** from the mailing date of this order to produce non-privileged documents responsive to opposer's second set of Document Request Nos. 2-6. Applicant's objections to the above-identified document requests are overruled.¹

To the extent applicant has failed to produce non-privileged responsive documents to **ANY** of the above-identified document requests and/or refused to respond to **ANY** of these document requests based upon its objections to the requests (which have now been overruled by this order, except for objections based upon privilege), applicant is ordered to produce such withheld documents within the same **thirty days** provided above.

If there are no responsive, non-privileged documents in applicant's possession, custody or control which are responsive to any of the above-identified document requests, applicant must so state affirmatively in its response to the corresponding document request. To the extent applicant has already produced documents responsive to any of the above-identified document requests, applicant must so state in its response to the particular

¹ Applicant may designate the appropriate tier of confidentiality with its production of documents compelled by this order pursuant to the terms of the parties' stipulated protective order approved by the Board on December 9, 2012.

document request and identify, by bates number, the documents which are responsive to each request.

Additionally, applicant is required to provide opposer a privilege log within the same **thirty (30) days** provided above to the extent that applicant claims privilege to any of opposer's discovery requests, if it has not already done so.

In the event applicant fails to provide opposer with full and complete responses to the outstanding discovery, as required by this order, applicant will be barred from relying upon or later producing documents or facts at trial withheld from such discovery. *See* Fed. R. Civ. P. 37(c)(1).²

Trial Schedule

Proceedings are resumed. Trial dates are reset as follows:

Expert Disclosures Due	5/12/2014
Discovery Closes	6/11/2014
Plaintiff's Pretrial Disclosures Due	7/26/2014
Plaintiff's 30-day Trial Period Ends	9/9/2014
Defendant's Pretrial Disclosures Due	9/24/2014
Defendant's 30-day Trial Period Ends	11/8/2014
Plaintiff's Rebuttal Disclosures Due	11/23/2014
Plaintiff's 15-day Rebuttal Period Ends	12/23/2014

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within

² If applicant fails to comply with this order, opposer's remedy lies in a motion for sanctions, pursuant to Trademark Rule 2.120(g)(1). Furthermore, the parties are reminded that a party that has responded to a discovery request has a duty to supplement or correct that response. *See* Fed. R. Civ. P. 26(e).

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thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademarks Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.