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

Proceeding	91206212
Party	Defendant entrotech, inc.
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Date	05/21/2015
Attachments	2015-05-21 Applicant's Notice of Reliance + Exhibits (Written Discovery Responses).pdf(380301 bytes)

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

In the matter of application Serial Nos.:

85/499,349 for the mark **CHLORADERM**
85/499,345 for the mark **CHLORABSORB**
85/499,337 for the mark **CHLORABOND**
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.

Combined Opposition Proceeding No. 91-206,212

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, Virginia 22313-1451

APPLICANT'S NOTICE OF RELIANCE

Pursuant to Rule 704.10 of the Trademark Trial and Appeal Board's Manual of Procedure and 37 C.F.R. § 2.120(j), Applicant Entrotech Life Sciences, Inc. ("Applicant" or "Entrotech") hereby notifies Opposer CareFusion 2200, Inc. ("Opposer" or "CareFusion") of its reliance upon the following responses from Opposer to Applicant's interrogatories and Applicant's request for admission (identified as Exhibits D1 and D2):

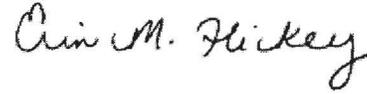
Exhibit	Discovery Responses
D1	Opposer's Responses and Objections to Applicant's First Set of Interrogatories (Nos. 4, 6, 9, 11, 12, 13, 15, 19, 21, 22, 26, 37, and 38, and corresponding exhibit) dated July 15, 2013
D2	Opposer's Response to Applicant's First Request for Admission (No. 1) dated January 7, 2015

Applicant will rely upon these discovery responses to establish: (1) that confusion between Applicant's CHLORADERM, CHLORABSORB, CHLORABOND, and CHLORADRAPE marks at issue in this Opposition, on the one hand, and Opposer's CHLORAPREP and CHLORASHIELD marks at issue in this Opposition, on the other hand, is not likely; (2) the dissimilarity of the channels of trade and marketing/advertising at issue in this Opposition; (3) the purchasing conditions and the sophistication of the purchasers of the goods at issue in this Opposition; (4) the weakness of Opposer's CHLORAPREP and CHLORASHIELD marks; and (5) the scope of Opposer's use of its CHLORAPREP and CHLORASHIELD marks.

Dated: May 21, 2015

Respectfully submitted,

FISH & RICHARDSON P.C.



By: _____

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Attorneys for Applicant,

ENTROTECH LIFE SCIENCES, INC

EXHIBIT D1

**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**

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CAREFUSION 2200, INC.,

Opposer,

v.

ENTROTECH LIFE SCIENCES, INC. (by
assignment from ENTROTECH, INC.),

Applicant.

Opposition No.: 91-206,212

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

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer CareFusion 2200, Inc. ("Opposer") makes the following responses and objections to Applicant Entrotech Life Sciences, Inc.'s ("Applicant") First Set of Interrogatories:

GENERAL OBJECTIONS

1. Opposer objects to the Interrogatories to the extent that they purport to impose upon Opposer burdens beyond those imposed under the Federal Rules of Civil Procedure and the Trademark Rules of Practice.

2. Opposer objects to the “Instructions and Rules of Construction” contained in the Interrogatories to the extent that they purport to require Opposer to do more than required by Rules 26, 33 and 34 of the Federal Rules of Civil Procedure or Trademark Rule 2.120.

3. Opposer objects to the use of the term “all documents” in the Interrogatories to the extent the term requires more than is required under the Federal Rules of Civil Procedure or Trademark Rule 2.120, and to the extent that the term makes the Interrogatories overly broad, unduly burdensome, and/or to the extent that the term would result in the production of documents and information that are merely cumulative. Moreover, Opposer objects to the use of the term “all documents” to the extent it requires Opposer to identify documents not within its possession, custody or control.

4. Opposer objects to the Interrogatories to the extent that they require Opposer to provide information in a form other than the form in which Opposer keeps the information in the ordinary course of business. Opposer will produce non-privileged, responsive information in the form in which Opposer keeps it in the ordinary course of business.

5. Opposer objects to Interrogatories to the extent that they call for information or documents protected from discovery or disclosure by any privilege or doctrine, including without limitation, the attorney-client privilege, or the work product doctrine, or any other applicable privilege or exemption, including without limitation, information that (i) was prepared for, or in anticipation of litigation; (ii) constitutes attorney work product; (iii) reflects attorney-client communications; or (iv) is otherwise privileged or protected from disclosure. Such information shall not be disclosed in response to Applicants’ Interrogatories, and any inadvertent disclosure

thereof shall not be a waiver of any privilege with respect to such information or of any work product protection that may attach thereto.

6. Opposer objects to Interrogatories to the extent that they request proprietary or trade secret information in Opposer's possession that is confidential and proprietary information of non-parties, or information that Opposer is under an obligation to a third party to not disclose, and such information will only be produced in accordance with the terms of the Stipulated Protective Order entered into in this proceeding.

7. Opposer objects to the Interrogatories to the extent they seek information that is confidential, proprietary or otherwise sensitive information belonging to Opposer. Such confidential information will only be produced in accordance with the Stipulated Protective Order entered into in this proceeding.

8. Opposer objects to the Interrogatories to the extent that they seek to have Opposer identify documents in lieu of or in addition to producing such documents. Subject to its general and specific objections, Opposer will produce the documents requested by Applicant unless otherwise immune from discovery. To the extent that documents are withheld as attorney-client privilege or subject to work-product immunity, they will be identified in accordance with Rule 26(b)(5) of the Federal Rules of Civil Procedure.

9. Opposer reserves its right to further supplement its answers to Applicant's Interrogatories as necessary or as further required by the Court or otherwise.

10. No response to any of these Interrogatories shall be construed as an acknowledgment or admission that any information or documents provided are admissible into evidence, and Opposer expressly reserves any and all evidentiary objections. Moreover, no specific reference to documents or Bates numbered productions shall be deemed conclusive or otherwise be construed against Opposer as a limitation, admission or otherwise, and has been provided only for convenience to the parties, in light of the potential volumes of documents involved.

Each of the above General Objections shall be deemed continuing and is incorporated into the specific responses set forth below, whether or not specifically stated in response to each Interrogatory, and are not waived or in any way limited by the responses below.

INTERROGATORIES

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Interrogatory No. 4. State the date of first use and, if different, the date of first use in United States commerce, of each of Opposer's Marks for each of Opposer's Goods, and/or the intended dates of first use and first use in commerce, and the circumstances surrounding each such first use and, if different, each such first use in United States commerce.

RESPONSE: Opposer objects to this interrogatory to the extent it is asking Opposer to provide information that is readily available to Applicant via the USPTO website. Subject to and without waiving any objections, Opposer states that the date of first use and date of first use in U.S. commerce for topical antimicrobial solutions and broad-spectrum antiseptics sold under the CHLORAPREP mark was June 7, 1994.

[REDACTED] - [REDACTED]

[REDACTED]

[REDACTED]

Interrogatory No. 6. Identify the past, current, and future wholesale and/or retail price of each of Opposer's Goods sold or planned to be sold under Opposer's Marks.

RESPONSE: Objection. This Request is overly broad and unduly burdensome and seeks information not reasonably calculated to lead to the discovery of admissible evidence, particularly with respect to information on wholesale pricing. Opposer further objects to this request to the extent it is seeking commercially sensitive information. Subject to, and without waiving any objections, and pursuant to Fed. R. Civ. Pro. 33(d), Opposer refers Applicant to responsive, non-privileged documents produced herewith at CF 00024913, which has been

designated "CONFIDENTIAL – TRADE SECRET/COMMERCIALY SENSITIVE" in accordance with the Stipulated Protective Order.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Interrogatory No. 9. Identify each trademark search, clearance search, investigation, or other inquiry conducted by, or on behalf of, Opposer or any of its predecessors-in-interests, including Medi-Flex, Inc., to determine the availability of Opposer's CHLORAPREP Marks and/or CHLORASHIELD Marks for each of Opposer's Goods, and the person(s) most knowledgeable about each search, investigation, or inquiry.

RESPONSE: Opposer objects to this interrogatory to the extent that it seeks information that is not in Opposer's possession, custody and/or control, and to the extent it seeks information protected by the attorney-client privilege. Responding further, Opposer has confirmed that its outside counsel conducted a trademark search on the CHLORASHIELD mark. Responding further, Opposer reserves the right to supplement this response as additional information becomes available.

[REDACTED]

Interrogatory No. 11. Identify, by stating the name, address, and account representative, all manufacturers, distributors, wholesalers, retailers, and/or other businesses, organizations, entities or Person(s) that produce, or have produced, sell, or have sold, Opposer's Goods under Opposer's Marks, if any.

RESPONSE: Objection. This Request is overly broad and unduly burdensome and seeks information not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this Request to the extent that it seeks documents that are not in Defendant's possession, custody and control. Defendant further objects to this Request to the extent it is seeking the production of commercially sensitive business information. Subject to

and without waiving any objections, Opposer states that CareFusion Corporation is the manufacturer of products sold under the CHLORAPREP mark and that products to be sold under the CHLORASHIELD mark will be manufactured by Avery Dennison. Responding further, and subject to Fed. R. Civ. Pro. 33(d), responsive, non-privileged documents are produced herewith, which may include documents that have been designated “CONFIDENTIAL – TRADE SECRET/COMMERCIALY SENSITIVE” in accordance with the Stipulated Protective Order.

Interrogatory No. 12. Describe in detail the demographics of the customers and prospective customers for each of Opposer’s Goods advertised, sold, and/or intended to be advertised or sold under Opposer’s Marks.

RESPONSE: Opposer’s CHLORAPREP products are used in hospitals by nurses, doctors, and other medical professionals.

Interrogatory No. 13. Describe in detail the channels of trade for each of Opposer’s Goods advertised, sold, and/or intended to be advertised or sold under Opposer’s Marks.

RESPONSE: Opposer’s CHLORAPREP products are sold through a number of approved distributors, including McKesson, Cardinal Health, and Owens & Minor. These distributors purchase CHLORAPREP products from CareFusion and then resell those products to hospitals. Opposer also sells products to approved kit manufacturers. These manufacturers buy CHLORAPREP applicators and then include those applicators as part of pre-packaged kits, such as vascular access insertion kits, that include several different types of products sold under different names and trademarks.

[REDACTED]

Interrogatory No. 15. Describe each means by which Opposer advertises, markets or promotes, or has advertised, marketed or promoted, the sale of Opposer’s Goods under Opposer’s Marks, including the types of media used.

RESPONSE: Products bearing Opposer’s CHLORAPREP trademark are advertised in trade journals and magazines, at trade shows, through direct marketing to users and purchasers of Opposer’s CHLORAPREP products and competing products, and through the distribution of collateral material by CareFusion’s sales force. CareFusion markets and

advertises its CHLORAPREP products through magazines and journals such as the *Operating Room Nursing Journal*, *Journal of Cardiovascular Nursing*, *Nephrology Nursing Journal*, *Fortune*, *Journal of Infusion Nursing*, *Healthcare Purchasing News* and *Infection Control Today*, and through the distribution of literature to over 5800 hospitals. CareFusion further provides collaborative materials through its sales force that describe the financial benefit of using CHLORAPREP products through its assistance in reducing infection risks and describe those benefits per procedure. CareFusion does web advertising, which includes photos and videos on the CareFusion website and web banners. CareFusion also posts videos on YouTube, which are accessible by searching “CareFusion Chloraprep” on the YouTube home page. CareFusion also promotes its CHLORAPREP products on its Facebook and Twitter sites.

[REDACTED]

Interrogatory No. 19. Identify each trade show at which Opposer has advertised Opposer’s Goods under and/or in connection with Opposer’s Marks and provide the dates and locations for each such trade show.

RESPONSE: Opposer objects to this interrogatory as overly broad and unduly burdensome. Opposer objects to this interrogatory to the extent it is asking for the “identification” of information that is more readily obtained from documents being produced in this matter. Subject to and without waiving any objections, Opposer states that it has promoted its CHLORAPREP products at the following tradeshows:

- APIC (Association for Professionals in Infection Control and Epidemiology)
- AORN (Association of Perioperative Registered Nurses)
- SHEA (Society for Healthcare Epidemiology of America)
- NTI (National Teaching Institute & Critical Care Exposition)
- INS (Infusion Nurses Society)
- AABB (American Association of Blood Banks)
- AACN (American Association of Critical-Care Nurses)
- NHIA (National Home Infusion Association)
- ANNA (American Nephrology Nurses Association)
- AVA (Association of Vascular Access)
- AAPS (American Academy of Orthopedic Surgeons)
- NAON (National Association of Orthopedic Nurses)
- ASCA (Ambulatory Surgery Center Association)

Responding further, and pursuant to Fed. R. Civ. Pro. 33(d), Opposer refers Applicant to representative, responsive, non-privileged representative documents produced herewith.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Interrogatory No. 26. Identify all protests, disputes, legal action, proceedings, arbitration, or mediation wherein Opposer's Marks are or were the subject of the dispute, legal action, proceedings, arbitration, or mediation, including, but not limited to, efforts to enforce Opposer's alleged rights in Opposer's Marks through cease-and-desist letters.

RESPONSE:

- 1) *Medi-Flex, Inc. v. Nice-Pak Products, Inc. and Professional Disposables, Inc.*, Case No. 2:06-cv-02015 (D. Kansas)
- 2) *Medi-Flex, Inc. v. Nice-Pak Products, Inc.*, Opposition No. 91168116 (TTAB 2005)
- 3) June 14, 2012 cease & desist letter to Arrow International Investment Corp.
- 4) *CareFusion 2200, Inc. v. Entrotech Life Sciences, Inc.*, Opposition No. 91206 212

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] - [REDACTED]
[REDACTED]
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[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED] - [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

Interrogatory No. 37. Identify by Registration No. or Application Serial No. all trademarks or service marks either registered or applied for with the United States Patent and Trademark Office of which Opposer is aware that contain the letter string “CHLOR” or “CHLO.”

RESPONSE: Opposer objects to this interrogatory as seeking information that is overly broad and unduly burdensome inasmuch as there is no international class restriction on the request, and because the information is readily obtainable from public records.

Interrogatory No. 38. Identify all uses in United States commerce of trademarks, service marks, or other designations of which Opposer is aware that contain the letter string “CHLOR” or “CHLO.”

RESPONSE: Opposer objects to this interrogatory as overly broad and unduly burdensome inasmuch as there is no restriction as to the types of goods and or services.

[REDACTED] - [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] - [REDACTED]

[REDACTED]

[REDACTED]

Dated: July 15, 2013

Respectfully submitted,

/s/ Joseph R. Dreitler

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*Attorneys for Opposer
CareFusion 2200, Inc.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of **OPPOSER's RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES** has been served by electronic mail upon Applicant's attorney of record in this proceeding on this 16h day of July 2013, at the following email address:

Lisa M. Martens martens@fr.com
Erin M. Hickey hickey@fr.com
Fish & Richardson PC
12390 El Camino Real
San Diego, CA 92130

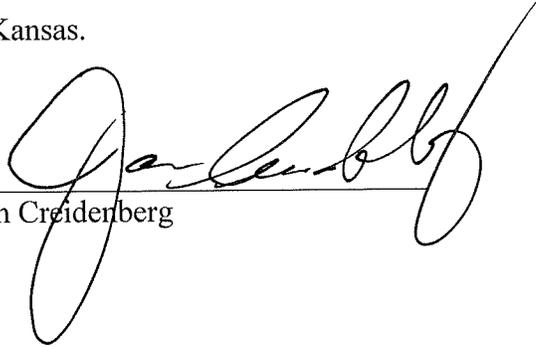
Mary R. True

VERIFICATION

I, Jan Creidenberg, VP, Marketing Management, Infection Prevention, at CareFusion, have read the foregoing Responses and Objections to Applicant's First Set of Interrogatories made by Opposer CareFusion 2200, Inc. I am a representative of the responding party and am authorized to make this verification on its behalf. No single person has knowledge of all of the matters stated in these responses. Although I do not have personal knowledge of all of the facts stated in these responses, upon information and belief, the matters stated are true and correct to the best of my knowledge.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on May 29, 2013 in Leawood, Kansas.

By:



Jan Creidenberg

EXHIBIT D2

**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**
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CAREFUSION 2200, INC.,

Opposer,

v.

ENTROTECH LIFE SCIENCES, INC. (by
assignment from ENTROTECH, INC.),

Applicant.

Opposition No.: 91-206,212

**OPPOSER'S RESPONSE TO APPLICANT'S
FIRST REQUEST FOR ADMJISSION**

Pursuant to Rule 36 of the Federal Rules of Civil Procedure and Rule 2.1160 of the Trademark Rules of Practice, Opposer CareFusion 2200, Inc. ("Opposer") makes the following response to Applicant Entrotech Life Sciences, Inc.'s ("Applicant") First Request for Admission:

REQUEST NO. 1:

Admit that all documents produced by Opposer in this Combined Opposition Proceeding No. 91-206,212 are true and correct copies of the originals.

RESPONSE:

Admitted

Dated: January 7, 2015

Respectfully submitted,

/s/ Mary R. True

Joseph R. Dreitler

Mary R. True

DREITLER TRUE LLC

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mtrue@ustrademarklawyer.com

Attorneys for Opposer

CareFusion 2200, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of **OPPOSER'S RESPONSE TO APPLICANT'S FIRST REQUEST FOR ADMISSION** has been served by electronic mail upon Applicant's attorney of record in this proceeding on this 7th day of January 2015, at the following email address:

Erin M. Hickey hickey@fr.com
Fish & Richardson PC
12390 El Camino Real
San Diego, CA 92130

Mary R. True
Mary R. True

CERTIFICATE OF SERVICE

I hereby certify that, on this 21st day of May, 2015, a true and correct copy of **APPLICANT'S NOTICE OF RELIANCE** has been served by electronic mail upon Opposer's attorneys of record in this proceeding at the following electronic addresses:

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

/s/ April R. Morris
April R. Morris