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

Proceeding	91208207
Party	Defendant Semler Scientific, Inc.
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Date	01/07/2013
Attachments	Answer Opp No 91208207.pdf (4 pages)(135825 bytes)

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

EDWARDS LIFESCIENCES CORPORATION,	:	
	:	
Opposer,	:	
	:	
v.	:	Opposition No. 91208207
	:	
SEMLER SCIENTIFIC, INC.,	:	Serial No. 85/398,081
	:	
Applicant.	:	

ANSWER TO NOTICE OF OPPOSITION

Applicant, Semler Scientific, Inc., by its attorneys, hereby submits its Answer to the Notice of Opposition filed by Edwards Lifesciences Corporation, in opposition to Application Serial No. 85/398,081 for the trademark FLOCHEC, as follows:

1. Opposer owns the mark FLOTRAC® and corresponding federal registration No. 3,226,922 therefor in connection with a "medical sensor, namely, a hemodynamic monitoring device" in International Class 10 (the "Mark").

ANSWER: Applicant is without sufficient knowledge to admit or deny the allegations of paragraph 1, and therefore denies the same.

2. Opposer is presently using and has continuously used the FLOTRAC® Mark since at least as early as April 18, 2005 in connection with medical devices in International Class 10.

ANSWER: Applicant is without sufficient knowledge to admit or deny the allegations of paragraph 2, and therefore denies the same.

3. Opposer uses the Mark on its medical devices, on product packaging, on invoices, via its Internet Website, in advertising and promotional materials, in conjunction with its services, and in other ways customary in the trade.

ANSWER: Applicant is without sufficient knowledge to admit or deny the allegations of paragraph 3, and therefore denies the same.

4. Opposer has used the Mark in channels of trade and geographic markets that have afforded Opposer notoriety and success.

ANSWER: Applicant is without sufficient knowledge to admit or deny the allegations of paragraph 4, and therefore denies the same.

5. Upon information and belief, Applicant did not use the mark FLOCHEC prior to Opposer's first use of the Mark in commerce.

ANSWER: Applicant is without sufficient knowledge to admit or deny the allegations of paragraph 5, and therefore denies the same.

6. Opposer uses the Mark to market its goods and services to consumers, and engages in extensive advertising and promotional efforts. By virtue of its efforts, and the expenditure of considerable sums for promotional activities, as well as the excellence of the quality of its goods and services, Opposer has gained a valuable reputation and goodwill through use of the Mark. Also by virtue of Opposer's efforts and the excellence of its goods and services for over six years, Opposer's Mark is now famous.

ANSWER: Applicant denies the allegations of paragraph 6.

7. Opposer believes that it will be damaged by the registration of Applicant's proposed mark and opposes Applicant's application for the following reasons:

- a. Applicant's proposed mark, FLOCHEC is very similar to Opposer's Mark, and is used on related goods as well as goods within Opposer's

natural zone of expansion. Both are used on products designed to monitor blood flow during medical and/or diagnostic procedures. Such similarity is likely to cause confusion, to cause mistake, and to deceive the public, injuring Opposer and the consuming public. Confusion is particularly important to avoid in connection with medical devices, such as Opposer's and Applicant's goods, because it could result in the use of improper equipment, the loss of time, or other mistakes that could negatively impact patient care. For that reason, greater care should be taken to avoid confusion in this case.

- b. Applicant's use will also dilute the distinctive and famous nature of Opposer's Mark.

ANSWER: Applicant denies the allegations of paragraph 7.

8. THEREFORE, Opposer prays that Applicant's proposed trademark for **FLOCHEC** be denied registration.

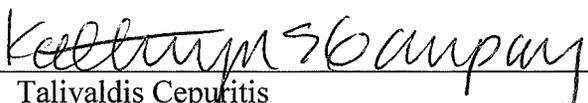
ANSWER: Applicant denies the allegations of paragraph 8.

WHEREFORE, Applicant denies that Opposer is entitled to the relief to which it prays for in the Notice of Opposition. Applicant respectfully requests that the Notice of Opposition be dismissed with prejudice.

Respectfully submitted,

SEMLER SCIENTIFIC, INC.

Date: January 7, 2013

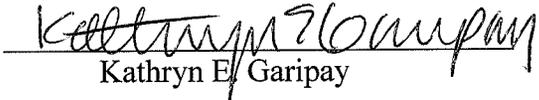
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **ANSWER TO NOTICE OF OPPOSITION** was served by mailing a copy of the same by First Class Mail, postage prepaid, to:

Carlo F. Van den Bosch
Michelle Lavoie Wisniewski
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
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Costa Mesa, California 92626

on this 7th day of January, 2013.


Kathryn E. Garipay