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

Proceeding	91209134
Party	Plaintiff Johnson & Johnson
Correspondence Address	JOSEPH D LEWIS BARNES & THORNBURG LLP 1717 Pennsylvania Ave NW , SUITE 500 WASHINGTON, DC 20006 UNITED STATES jdlewis@btlaw.com, docketingtm-dc@btlaw.com
Submission	Opposition/Response to Motion
Filer's Name	Joseph D. Lewis
Filer's e-mail	jdlewis@btlaw.com
Signature	/JDL/
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Attachments	91209134 Opposition to Motion to Amend ID of Goods.pdf(107705 bytes )

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

<b>Johnson &amp; Johnson,</b>	)	
	)	
Opposer,	)	Opposition No. 91209134
	)	
v.	)	Mark: MICROFX
	)	
<b>Stryker Corporation,</b>	)	Serial No. 85571434
	)	
Applicant.	)	
_____	)	

**OPPOSITION TO MOTION  
TO AMEND IDENTIFICATION OF GOODS**

Opposer, Johnson & Johnson, hereby opposes Applicant’s Motion to Amend Its Identification of Goods. Applicant’s request does not meet the requirements that would permit the Board to enter the amendment over an opposer’s objection.

Applicant cites the case of *Drive Trademark Holdings LP v. Inofin*, 83 USPQ2d 1433 (TTAB 2007) to support its request. As was the case in *Drive Trademark Holdings LP*, the facts here “do not allow the Board either to exercise its discretion to enter the amendment now or to defer determination of the proposed amendment until final decision.”

Amendments sometimes are permitted by the Board where, like here, the requested amendment is limiting in nature, and within the scope of the description of goods in the application as published. However, even Applicant acknowledges that in order to have the amendment entered, it must consent to the entry of judgment with respect to the broader identification of goods.

Applicant has not consented to such judgment so as to remove from this proceeding issues pertaining to the broader range of goods. Instead, Applicant goes half way, and states *conditionally* that it *would be willing to consent* to entry of judgment, but *only* if it is granted a registration for the proposed narrower recitation. *See*, Motion at 5. This is hardly a sufficient consent as required by *Drive Trademark Holdings LP, supra*.

Indeed, Applicant expressly “reserves the right” to obtain a broader registration for the scope of goods as published. Motion at p. 5, n1. In the absence of an *unconditional* election by Applicant to accept judgment with respect to the broader range of goods, Opposer is entitled to proceed with trial as to the goods *as published*. There is no authority for the Board to amend the application, with Applicant arguing entitlement to its original, broader scope of goods.

Applicant argues that the proposed amendment would change the nature and character of its goods or restrict their trade channels and customers. Motion at p. 5. This conclusory statement is completely unsupported by any asserted facts. Moreover, it is contrary to the established record.

The proposed amended identification of goods is within the scope of the initial identification of goods; thus, their general character has not changed. The proposed goods still are “surgical instruments.”

Although the range of goods has been narrowed, there is no discernible difference as to the channels of trade, so as to avoid a likelihood of confusion. Indeed, Applicant has admitted that the goods on which it intends to use the Opposed Mark are intended for use by medical professionals in the field of orthopaedics (Answer, ¶ 11). This is the very same medical specialty to which the Opposer’s goods are directed. Thus, the proposed amendment

does not limit channels of trade in any meaningful way, and cannot serve to avoid a likelihood of confusion.

Nor would such an amendment serve to enable Applicant to terminate the co-pending Opposition No. 91209129 at this time. That opposition cannot be resolved unless and until Applicant permanently removes the broader range of goods from the opposed application. Unless and until Applicant does so, that proceeding must remain suspended.

For the foregoing reasons, Applicant has not shown entitlement to the requested amendment. Therefore, the Motion to Amend should be denied in its entirety.

Respectfully submitted,

**Johnson & Johnson**

By:   
Joseph D. Lewis  
**BARNES & THORNBURG LLP**  
1717 Pennsylvania Ave, N.W., Suite 500  
Washington, D.C. 20006  
(202) 289-1313

Attorney for Opposer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this Opposition to Motion to Amend Identification of Goods has been served on June 21, 2013, by depositing a copy of the same in the United States mail, first class postage prepaid and properly addressed to the attorney for Applicant at:

Gregg A. Paradise, Esq.  
Lerner, David, Littenberg, Krumholz & Mentlik, LLP  
600 South Avenue West, Suite 2  
Westfield, New Jersey 07090-1497

  
Joseph D. Lewis