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Filing date: **05/06/2015**

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

Proceeding	91215699
Party	Plaintiff Boston Scientific Corporation, on behalf of itself and its subsidiaries, Asthmatx, Inc.
Correspondence Address	BRADLEY J WALZ WINTHROP & WEINSTINE PA CAPELLA TOWER SUITE 3500, 225 SOUTH SIXTH STREET MINNEAPOLIS, MN 55402 UNITED STATES trademark@winthrop.com, sbaird@winthrop.com, tsitzmann@winthrop.com, jbriley@winthrop.com
Submission	Testimony For Plaintiff
Filer's Name	Timothy Sitzmann
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Signature	/Timothy Sitzmann/
Date	05/06/2015
Attachments	Sitzmann Affidavit Introducing Evidence Pursuant to Stipulation and Non-Confidential Exhibits 26 and 27.pdf(3465633 bytes) Non-Confidential Exhibits 62-67 to Sitzmann Affidavit.pdf(1466260 bytes)

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

In the matter of Application Serial No.: 85/806,379
Filed: December 19, 2012
For the mark: HOLAIRA
Published in the Trademark Official Gazette on December 3, 2013

Boston Scientific Corp. and
Asthmatx, Inc.

Opposers,

v.

Opposition No. 91215699

Holaira, Inc.

Applicant.

AFFIDAVIT OF TIMOTHY D. SITZMANN

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine, or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that:

1. I am an attorney participating in the representation of Opposers Boston Scientific Corp. and Asthmatx, Inc. (“Opposers”) in the above-captioned matter (the “Opposition”).
2. The information contained in this Affidavit is based upon my personal knowledge.
3. Opposers and Holaira, Inc. (“Applicant”) entered into a stipulation regarding the submission of evidence in the Opposition (the “Stipulation”), which was executed by Opposers and Applicant on March 3, 2015 and March 6, 2015 respectively.
4. Attached as Exhibit 26 is a true and correct copy of the Stipulation.
5. The Parties stipulated that the following documents may be admitted into evidence through the declaration of a party’s counsel.

6. Attached as Exhibit 27 is a true and correct copy of the Expert Report of Geoffrey Nunberg Ph.D.

7. Attached as Exhibit 28 is a true and correct copy of a document entitled “IPS Six Degrees Confidential Backgrounder,” dated October 15, 2012.

8. Attached as Exhibit 29 is a true and correct copy of a document entitled “Working Session: Positioning/Messaging for TLD Therapy,” dated August 3, 2012.

9. Attached as Exhibit 30 is a true and correct copy of a document entitled “Presentation: The 25th Annual Piper Jaffray Healthcare Conference: Holaira,” undated.

10. Attached as Exhibit 31 is a true and correct copy of a document entitled “Six Degrees Sensory Branding Agency,” dated October 18, 2012.

11. Attached as Exhibit 32 is a true and correct copy of a document entitled “IPS: Innovative Pulmonary Solutions Competitive Audit,” dated November 5, 2012.

12. Attached as Exhibit 33 is a true and correct copy of a document entitled “Corporate Name,” dated January 2, 2013.

13. Attached as Exhibit 34 is a true and correct copy of a document entitled “Holaira Messaging Blueprint,” dated December 5, 2012.

14. Attached as Exhibit 35 is a true and correct copy of a document “General Messaging Blueprint,” dated December 19, 2012.

15. Attached as Exhibit 36 is a true and correct copy of a document entitled “Holaira Identity Concepts,” dated December 11, 2012.

16. Attached as Exhibit 37 is a true and correct copy of a document entitled “Six-Degrees Innovative Pulmonary Solutions Branding/Messaging Proposal,” dated October 8, 2012.

17. Attached as Exhibit 38 is a true and correct copy of an e-mail with the subject “Re: Primary Competitors?” dated October 24, 2012, 7:25 PM.

18. Attached as Exhibit 39 is a true and correct copy of an e-mail with the subject “Re: Brochures,” dated October 25, 2012, 12:34 PM.

19. Attached as Exhibit 40 is a true and correct copy of an e-mail with the subject “PowerPoint,” dated November 9, 2012, 5:32 PM.

20. Attached as Exhibit 41 is a true and correct copy of an e-mail with the subject “Messaging,” dated November 28, 2012, 3:00 PM.

21. Attached as Exhibit 42 is a true and correct copy of an e-mail with the subject “Re: Messaging,” dated November 28, 2012, 3:12 PM.

22. Attached as Exhibit 43 is a true and correct copy of an e-mail with the subject “Re: Messaging,” dated November 28, 2012, 5:27 PM

23. Attached as Exhibit 44 is a true and correct copy of an e-mail with the subject “Re: domain,” dated November 29, 2012, 6:20 PM.

24. Attached as Exhibit 45 is a true and correct copy of an e-mail with the subject “Re: Information regarding the registration of DNERVA.COM,” dated November 30, 2012, 1:01 PM.”

25. Attached as Exhibit 46 is a true and correct copy of an e-mail with the subject “Messaging Blueprint,” dated December 2, 2012, 10:54 AM.

26. Attached as Exhibit 47 is a true and correct copy of an e-mail with the subject “Re: Accepted: Messaging Blueprint, Comps,” dated December 4, 2012, 4:51 PM.

27. Attached as Exhibit 48 is a true and correct copy of an e-mail with the subject “Re: Information regarding the registration of TLDPROCEDURE.COM,” dated December 6, 2012, 11:24 AM.

28. Attached as Exhibit 49 is a true and correct copy of an e-mail with the subject “Re: Updated Timeline,” dated December 11, 2012, 12:10 PM.

29. Attached as Exhibit 50 is a true and correct copy of an e-mail with the subject “Roll out,” dated December 11, 2012, 1:12 PM.”

30. Attached as Exhibit 51 is a true and correct copy of an e-mail with the subject “Re: Updated Timeline,” dated December 11, 2012, 1:25 PM.

31. Attached as Exhibit 52 is a true and correct copy of an e-mail with the subject “Re: Link for Today’s Call,” dated December 11, 2012, 3:52 PM.

32. Attached as Exhibit 53 is a true and correct copy of an e-mail with the subject “ID Presentation,” dated December 11, 2012, 4:46 PM.

33. Attached as Exhibit 54 is a true and correct copy of a document entitled “Invoice #3584,” dated October 19, 2012.

34. Attached as Exhibit 55 is a true and correct copy of a document entitled “Invoice #3585,” dated October 19, 2012.

35. Attached as Exhibit 56 is a true and correct copy of a document entitled “Invoice #3586,” dated October 19, 2012.

36. Attached as Exhibit 57 is a true and correct copy of a document entitled “Invoice #3587,” dated October 19, 2012.

37. Attached as Exhibit 58 is a true and correct copy of a document entitled “Invoice #3588,” dated October 19, 2012.

38. Attached as Exhibit 59 is a true and correct copy of a document entitled “Invoice #3621,” dated November 21, 2012.

39. Attached as Exhibit 60 is a true and correct copy of a document entitled “IPS Brand Development Timeline,” dated October 26, 2012.

40. Attached as Exhibit 61 is a true and correct copy of a document entitled “IPS Brand Development Timeline,” dated December 10, 2012.

41. Attached as Exhibit 62 is a true and correct copy of a marketing brochure entitled “BT. Because your world is bigger than your asthma.”

42. Attached as Exhibit 63 is a true and correct copy of a marketing brochure entitled “Severe Asthma Control 365 Days a Year.”

43. Attached as Exhibit 64 is a true and correct copy of a website printout entitled “The Alair System.”

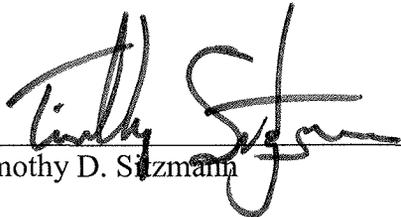
44. Attached as Exhibit 65 is a true and correct copy of a website printout entitled “About asthma, Bronchial Thermoplasty.”

45. Attached as Exhibit 66 is a true and correct copy of a website printout entitled “The procedure, Bronchial Thermoplasty.”

46. Attached as Exhibit 67 is a true and correct copy of a website printout entitled “Alair® Thermoplasty System Named ‘Best of What’s New.’”

FURTHER YOUR AFFIANT SAYETH NOT

Date: May 6 2015



Timothy D. Stizmann

Subscribed and sworn to before me

This 6th day of May, 2015.



Notary Public

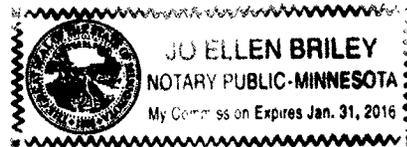


Exhibit 26

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

In the matter of Application Serial No.: 85/806,379
Filed: December 19, 2012
For the mark: HOLAIRA
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Boston Scientific Corp. and
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Opposition No. 91215699

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Applicant.

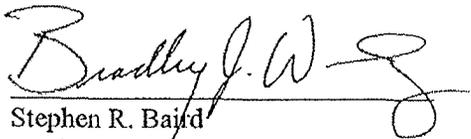
STIPULATION

Boston Scientific Corp. and Asthmatx, Inc. (collectively "Opposers") and Holaira, Inc. ("Applicant"), by and through their respective counsel, hereby enter into the following stipulation:

- 1) Applicant agrees to produce the Trademark Clearance Opinion letter for the HOLAIRA mark and the email communications associated with the Trademark Clearance Opinion letter that were transmitted to Lorraine Marshall-Wright as reflected on Applicant's privilege log as Document Nos. 1-3, as well as an email regarding a trademark search from Barbra J. Grahn to Kari Kubesh as reflected on Applicant's privilege log as Document No. 4 ("Clearance Opinion Documents"). The agreement to produce the Clearance Opinion Documents is contingent on Opposers' agreement to not move the Trademark Trial and Appeal Board to compel the production of these documents and not assert a subject matter waiver with respect to the attorney-client privilege. Applicant's production of the Clearance Opinion Documents shall not be construed as an admission that the attorney-client privilege has been waived or used to support such an argument. The preceding sentence notwithstanding, Applicant agrees not to assert the attorney-client privilege as a basis to object to the introduction into evidence of the Clearance Opinion Documents. Furthermore, Opposers agree not to depose Barbara Grahn or any other attorney identified in the Clearance Opinion Documents, and agree that conversations regarding these documents and the subject therein that Applicant had with counsel remain protected by the attorney-client privilege.

- 2) The parties agree that documents produced during the discovery period that were created by a party or Six Degrees are authentic, qualify as business records for purposes of FRE 803(6)(B), and may be introduced into evidence through the affidavit of a party's counsel, subject to any objections other than authenticity or objections cured by FRE 803(6)(B). For the avoidance of doubt, the Clearance Opinion Documents are documents produced during the discovery period and created by Applicant.
- 3) Applicant agrees that the Expert Report of Geoffrey Nunberg Ph.D is authentic and may be introduced into evidence, subject to any evidentiary objections other than authenticity and hearsay, through the affidavit of Opposers' counsel and will be treated the same as if Dr. Nunberg had given oral testimony. Applicant further agrees that it has waived its objection to Dr. Nunberg's Expert Report on the ground that it is hearsay. Notwithstanding the foregoing, Applicant does not waive, and specifically preserves, any other objection to the admissibility of Dr. Nunberg's testimony. Notwithstanding anything herein to the contrary, Holaira maintains its right to cross-examine Dr. Nunberg through oral testimony.

WINTHROP & WEINSTINE, P.A.



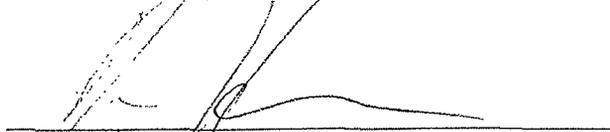
Stephen R. Baird
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*Attorneys for Opposers
Boston Scientific Corp. and
Asthmatx, Inc.*

Dated: March 3, 2015

OPPENHEIMER, WOLFF & DONNELLY, LLP



Barbara J. Grahm
Dennis Hansen

2000 Campbell Mithun Tower
222 South Ninth Street
Minneapolis, MN 55402
Telephone: (612) 607-7000
Facsimile: (612) 607-7100

*Attorneys for Applicant
Holaira, Inc.*

Dated: March 6, 2015

Exhibit 27

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

In the matter of Application Serial No.: 85/806,379
Filed: December 19, 2012
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Boston Scientific Corporation and
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Opposers,

v.

Opposition No. 91215699

Holaira, Inc.

Applicant.

Expert Report of Geoffrey Nunberg, Ph.D

Scope of Retention and Qualifications

Scope of Assignment

1. Winthrop & Weinstine, P.A. has retained me as an expert witness in the matter of *Boston Scientific Corporation and Asthmatx, Inc. v. Holaira, Inc.*, Opposition No. 91215699 before the Trademark Trial and Appeal Board. I have been asked to give my opinion on the overall commercial impression, in terms of sight, sound, and meaning, of the ALAIR and HOLAIRA marks.
2. In the course of preparing this opinion, I have reviewed the Notice of Opposition, the Answer to the Notice of Opposition, Holaira, Inc.'s Answer to Interrogatory No. 2, and Boston Scientific Corporation and Asthmatx, Inc.'s ("Opposers") Answer to Interrogatory No. 4, which are attached to my report as Exhibit B.
3. As I continue to review additional information, I reserve the right to supplement, revise, or further explain the opinions set forth in this report.

Qualifications

4. I hold a B.A. from Columbia University, an M.A. in Linguistics from the University of Pennsylvania and a Ph.D. in Linguistics from the City University of New York. I am currently an Adjunct Full Professor at the School of Information at the University of California at Berkeley, where I teach courses on language and on media and information technologies and serve also on the faculties of the Department of Linguistics and the Cognitive Science program. I have also held teaching positions at UCLA and Stanford University and have held Visiting Lectureships at the University of Rome, the University of Naples, and Princeton University. When on the linguistics faculty at Stanford, I taught graduate and undergraduate courses in semantics and pragmatics, lexicography, the structure of written language, and in other language-related areas. I worked for many years as Principal Scientist at the Xerox Palo Alto Research Center.
5. My principal areas of linguistic specialization are semantics, the study of the meanings of words and expressions, and the structure of written language. I have also taught courses in phonetics and have worked extensively in lexicography, the compilation of dictionaries.
6. I have published numerous papers in refereed journals and other publications on various aspects of linguistics. I have also written a number of general-interest articles on language and the law, chiefly for *American Lawyer* and *California Lawyer*, including articles on the use of dictionaries and linguistic evidence in legal proceedings.
7. I am Chairman Emeritus of the Usage Panel of the *American Heritage Dictionary* and have for many years been a consultant to the dictionary regarding matters of definition, usage, and other lexicographical questions. I have taught graduate-level courses in lexicography and related topics at Stanford University and at the Summer Institute of the Linguistic Society of America.
8. I have served as an expert witness in a number of civil, criminal, and trademark cases, and have been qualified as an expert in matters of word meaning and written language.

9. I am being compensated for my work on this matter at an hourly rate of \$500 for preparing this report and for deposition and trial testimony. I have attached my curriculum vitae, which includes a list of my publications and the cases in which I have given expert testimony in depositions or trials over the last four years, as Exhibit A to this report.
10. I am not an attorney and have no specialized legal training or expertise. In what follows I will speak only to the linguistic and lexicographic aspects of the marks in question with the understanding that these considerations are relevant to determining the similarity of the marks element in the likelihood of confusion analysis.

Pronunciation

Note: In what follows I use the following vowel symbols from the International Phonetic Alphabet: /a/ as in *cot*, *father*; /ə/ (“schwa”) as in *but*, *soda*; /æ/ as in *back*, *man*; /ɛ/ as *bet*, *said*; /e/ as in *bear* (or /ey/ as in *say*). An apostrophe in a word denotes that the following syllable is stressed, as in /ˈkɒlə/, “cola”; /əˈpiːz/, “appease.”

11. In Holaira, Inc.’s (“Applicant”) Answer to Interrogatory No. 2 (“Describe the pronunciation of Applicant’s Mark”), Applicant described the pronunciation of the HOLAIRA mark as follows:

“HOLAIRA is a combination of holo (prefix: whole, total, complete) and air, suggesting breath/breathing. Accordingly, HOLAIRA is pronounced as ‘whole-air-ah.’”

It is unlikely that this transcription captures what Applicant has in mind, since it would suggest that the final syllable is pronounced as /a/, as in *ma* or *spa*, rather than as /ə/; that is, that the name is supposed to rhyme with Italian *sera* or Spanish *pera*, which would sound forced and unnatural in English. I assume, therefore, that Applicant intends “ah” to represent an unstressed mid-central vowel; i.e., /ə/, so that the name rhymes with English *Sarah* or *era*, and so might be better transcribed informally as ending in -uh.

12. In any event, I assume for these purposes that the Applicant is not in a position to prescribe a unique pronunciation of the name. I will be concerned here with how a

member of the general public would be likely to pronounce it, as consistent with the Standard English rules that map between orthography and pronunciation.

13. Applicant does not indicate on which syllable the stress is to be placed, a determination that in turn influences the pronunciation of the vowels. I believe that the natural stress will fall on the second syllable, for the following reasons:

In English, every multisyllabic word must have at least one primary stress.¹ In theory, there are two possibilities with HOLAIRA: the stress may fall either on the first syllable or the second. (In English, a primary stress cannot fall on the final /a/ or /ə/ of a trisyllabic word, as in cinemUH, CanadAH.) If the name were spelled, e.g., Holera or Hollera, the stress might fall on the first syllable, with the second syllable containing an unstressed reduced vowel /ə/. That is, Hollera or Holera might rhyme with *cholera*. (Note that in that case, the initial vowel might be pronounced either /o/ or /a/; dictionaries list both for most words beginning with *holo-*, such as *Holocene* or *hologram*, though some, such as *holocaust*, have only /a/). But when the name is spelled as Holaira, the pronunciation with initial stress would not be available, since the *-air* spelling does not permit the reduction to an unstressed /ə/ that a stress on the first syllable would require. (Thus if the name of the disease were spelled *cholaira*, we would be led to stress the second syllable rather than the first.)

14. Therefore I conclude that the natural pronunciation of the name HOLAIRA will have the stress fall on the second syllable, and that the first syllable would be unstressed. In that case, however, the vowel of the unstressed first syllable would be reduced to /ə/ in all but the most careful speech, as it is in words like *Polanski* and *polarity* (/pə'lænskiy/, /pə'lærətiy/), so that the name would normally be pronounced in isolation as /hə'lerə/ rather than /ho'lerə/.

15. Note that a further effect of the destressing of the first syllable is that the /h/ will often be suppressed in conversational speech, particularly when it is preceded by a

¹ A word can have a secondary stress, as well. Thus *apprehensive* has a primary stress on the third syllable and a secondary stress on the first, which could be transcribed as /æ²•prə•hen¹•sɪv/. Syllables adjacent to stressed syllables, however, can receive secondary stress only when they contain tense (long) vowels, which is not the case with Holaira.

word ending in a consonant.² (It should be borne in mind that the sound that corresponds to /h/ is produced simply by exhaling voicelessly, that is, aspirating, before a vowel.) Thus if we are walking past a classroom and hear the instructor say, “In this case we don’t expect to see much /ə’leyʃən/,” we may be unable to determine whether the instructor meant elation or halation, unless we know whether the class is in psychology or physics. Note on the other hand, that one may hear an /h/ before a word beginning with a vowel if it is pre-aspirated; one can see for oneself how “Elena” can sound like “Helena” (the saint, not the city) if the speaker is slightly out of breath. Thus the presence or absence of a word-initial /h/, particularly before an unstressed vowel, is not a feature one can reliably depend on to distinguish near-homonyms.

16. In Opposers’ Answer to Interrogatory No. 4, Opposers describe the pronunciation of the ALAIR mark as follows: Opposers’ Mark has been pronounced as “uh-lair,” “all-air,” and “ah-lair.”

Following the same logic I used in ¶15 above, I assume that the most likely pronunciation of this mark will be the first of these, “uh-lair,” with stress on the second syllable, that is, as /ə’ler/.

17. Thus in conversational speech the names HOLAIRA and ALAIR are actually near-homonyms, distinguished only by the presence of the unstressed final /ə/, which is itself often difficult to discern before a following vowel (contrast “I spoke to Donna and Mary” and “I spoke to Don and Mary,” which might easily be confused). That is, there is no salient phonetic feature that makes the two names clearly distinct.
18. I assume that a substantial proportion of the customers and users of these products will be among the many native Spanish-speakers in the health care industries. Spanish phonology has no /h/ in syllable-initial position, though a silent letter [h] may appear in some words (i.e., “hola” is pronounced /ola/). Such speakers are extremely likely to drop the /h/ in HOLAIRA, ensuring that it will be distinguished

² In some varieties of English, in fact, the pronunciation of /h/ is wholly optional when it introduces an unstressed syllable at the beginning of a word, as in *historical* (which explains why some varieties of English use the indefinite article *an* rather than *a* in phrases such as “an historical narrative”)

from ALAIR in their speech only by the final unstressed vowel (which they might pronounce either as /a/ or /ə/), which itself is liable to be elided in casual speech.

Orthography

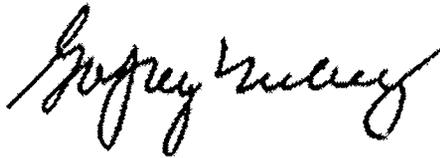
19. HOLAIRA and ALAIR share the sequence of letters LAIR, which corresponds to the stressed syllable of both words. People are more likely to pay attention to stressed syllables than to unstressed ones, which is why in casual speech they are far less likely to drop or slur an initial stressed syllable than an initial unstressed syllable in the process known by linguists as aphaeresis. For example, the unstressed initial syllable in *raccoon* and *opossum* was so widely dropped in casual speech that the forms *coon* and *possum* became alternate terms for the animals; cf also 'cause for because etc. By contrast, people do not often drop the stressed initial syllable of names like *crocodile*, *antelope* or *caterpillar*.
20. Syllable stress affects the way we perceive written words. Unstressed syllables are more prone to typing errors and misspellings than stressed syllables (see (Berkeel & Smedt, 1988)) and more likely to be misidentified (Drewnowski & Healy, 1982) and misremembered (Aitchison & Chiat, 1981). Inasmuch as all the orthographic features that differentiate HOLAIRA and ALAIR correspond to unstressed syllables, they will be less salient to readers than the common orthographic features that appear in the stressed syllable LAIR.

Meaning

21. Both HOLAIRA and ALAIR are neologisms that do not correspond to any English word, and would therefore be deemed fanciful marks. Each, however, contains the sequence -AIR-, which is associated with respiration; it is likely that consumers presented with a multiple choice question would assume these products are associated with respiratory problems rather, say, than with circulatory or renal issues. One assumes that the reason for picking those names was to provide customers with an idea as to the nature of the product and to help them remember the name—"the one with 'air' in it." But inasmuch as both products evoke the same English word, the possibilities for confusion are enhanced by the semantic associations of the syllable, in the same way that we are apt to confuse proper

names that share a syllable that corresponds to an English word, such as Redgrave and Redgate or Woodley and Woodbridge.

Conclusion: I conclude that the marks HOLAIRA and ALAIR convey similar overall commercial impressions in terms of sight, sound, and meaning.

A handwritten signature in black ink, appearing to read "Geoffrey Nunberg". The signature is written in a cursive, flowing style with some loops and flourishes.

Geoffrey Nunberg

November 3, 2014

REFERENCES

- Aitchison, J., & Chiat, S. (1981). Natural Phonology or Natural Memory? the Interaction Between Phonological Processes and Recall Mechanisms. *Language and Speech*, 24(4), 311-326.
- Berkel, B. v., & Smedt, K. D. (1988). Triphone Analysis: A Combined Method for the Correction of Orthographical and Typographical errors. Paper presented at the Proceedings of the second conference on Applied Natural Language Processing, Austin, Texas.
- Drewnowski, A., & Healy, A. (1982). Phonetic Factors in Letter Detection: A Reevaluation. *Memory & Cognition*, 10(2), 145-154.

9669620v2

EXHIBIT A

Geoffrey D. Nunberg

Curriculum Vitae

October 2014

School of Information,
South Hall
University of California at Berkeley
Berkeley CA 94720
nunberg@ischool.berkeley.edu
510-643-3894
<http://people.ischool.berkeley.edu/~nunberg/>

Education:

- 1972-1977 Department of Linguistics, Graduate Center, City University of New York.
January 1978: Ph.D. awarded
- 1971-1972 Department of Linguistics, Graduate School of Arts and Sciences,
University of Pennsylvania. 1972: M.A. awarded
- 1969-1971 School of General Studies, Columbia University. 1971: B.A. awarded
- 1962-1964 Columbia College, Columbia University

Positions:

- 2005- Adjunct Full Professor, School of Information, University of California at Berkeley
- 2004 Visiting lecturer, School of Information Management and Systems, University of California at Berkeley
- 2002-2003 Marta Sutton Weeks Fellow, Stanford Humanities Center
- 2001- Senior Researcher, Center for the Study of Language and Information, Stanford University
- 1999 Fulbright Distinguished Chair, University of Naples
- 1986-2001 Xerox Corporation, Corporate Research and Technology.
1995-2002, Principal Scientist, Xerox Palo Alto Research Center
1993-1995. Senior Research Scientist, Rank Xerox Research Centre, Grenoble, France
1986-1993, Senior Research scientist, Xerox Palo Alto Research Center
- 1988-present Consulting Full Professor, Department of Linguistics, Stanford University
- 1980-1985 Visiting Assistant Professor, Department of Linguistics, Stanford University.
Researcher, Center for the Study of Language and Information
- 1979-1980 Assistant Professor, Department of Linguistics, U.C.L.A.
- 1978-1979 Fulbright Lecturer, University of Rome
- 1977-1978 Postdoctoral Fellow, Institute for Human Learning, University of California at Berkeley
- 1976-1977 Instructor, Department of English, Brooklyn College of C.U.N.Y.
- 1975-1976 Instructor, Department of Anthropology, Hunter College of C.U.N.Y.

Other Affiliations:

- 2009 Member of Faculty, Linguistic Society of America Summer Institute, University of California at Berkeley
- 1984-2001 Associate, Center for the Study of Language and Information, Stanford University
- 1992-present Membre Associé, Institut Jean Nicod (Centre de Recherche en Epistémologie Appliquée) (CNRS), Paris
- 1991 Member of Faculty, Linguistic Society of America Summer Institute, University of California at Santa Cruz
- 1999-present Member of Board of Trustees, Center for Applied Linguistics
- 1999-2002 Member of Steering Committee, Coalition for Networked Information
- 1998-2003 Member of Scientific Board, Università degli Studi, San Marino
- 1998-2002 Member of Advisory Board, Ecole Nationale des Sciences de l'Information et des Bibliothèques, Lyon.
- 1987-1995 Affiliated Research Scientist, Institute for Research on Learning, Palo Alto, California

Fellowships, Grants, Awards, and Special Lectureships:

- 2007-08 Townsend Fellow, Townsend Humanities Center, University of California at Berkeley
- 2002-03 Martha Sutton Weeks fellowship, Stanford Humanities Center.
- 2002 Fellow, Council of the Humanities, Princeton University.
- 1999 Language and the Public Interest Prize, Linguistic Society of America
- 1998-99 Fulbright Distinguished Chair, University of Naples
- 1998 Harry Ransom Distinguished Visiting Humanities Professorship, University of Texas
- 1989 Xerox Corporate Research Group Award for Excellence in Science and Technology
- 1977-78 NIMH Postdoctoral Fellowship, Institute for Human Learning, University of California, Berkeley
- 1976-77 NSF Dissertation Grant

Areas of Specialization

Linguistics and Natural Language:

- Semantics and pragmatics, lexical semantics and lexicography
- Structures and genres of written language
- Normative grammar and language criticism
- Language policy (US and comparative)
- Text classification technologies
- Language and politics

Technology and communication (history and theory)

Courses Taught

Graduate and undergraduate courses in semantics and pragmatics, language policy, discourse analysis, structure and history of English, language and literature, language and politics, cultural implications of digital technologies, history of information technologies

Books and Monographs:

Language Matters (in prep)

Ascent of the A-Word, PublicAffairs, July 2012.

The Years of Talking Dangerously, PublicAffairs, 2009.

Talking Right, PublicAffairs. 2006.

Named as one of the ten best nonfiction books of 2006 by *Washington Monthly*.
Hungarian edition, 2009.

Going Nuclear: Language, Politics, and Culture in a Confrontational Age. Public Affairs, 2004.

Named as one of the ten best nonfiction books of 2004 by Amazon.com; one of ten best books of 2004 by the *San Jose Mercury News*; best language book of 2004 by the *Hartford Courant*; one of ten best language books of the year by the *Chicago Tribune* and the *Boston Globe*.

The Way We Talk Now, Houghton Mifflin, 2001.

The Future of the Book. (ed.). University of California Press. 1996. Published in Spanish as *El Futuro del Libro*, Ediciones Paidós, Barcelona.

Punctuation: An Exercise in the Linguistics of Written Language. CSLI and University of Chicago Press, 1990. Reprinted 1995. Second edition, 2001.

The Pragmatics of Reference (dissertation) Indiana University Linguistics Club, 1978.

Selected Articles, Commentaries and Shorter Publications:

Indexicality in Context (in prep)

What's proper about proper names? (in prep)

Slurs Aren't Special (Submitted to *Journal of Philosophy*)

Noted, *Chronicle of Higher Education Review*, Jan. 2013.

Exhibit A-Word, *The Los Angeles Times*, Sept. 22, 2012.

Do Jerks Make Better Leaders? *The Washington Post*, Sept. 7, 2012.

When a Dictionary Could Outrage, *The New York Times Book Review*, Sept. 23, 2011.

Counting on Google Books, *The Chronicle of Higher Education Review*, Dec. 16, 2010.

Google's Book Search: A Disaster for Scholars. *The Chronicle of Higher Education Review*, August 31, 2009; reprinted in Spanish in *Texturas* (Spain), Dec. 2009.

Disclosure of Work for Hire. *International Journal of Speech, Language, and the Law*, Volume 16, Number 2, 2010.

The Shadow of Language. *Versus: Review of semiotic studies*, 2009:103.

Thinking About the Government, *The American Prospect*, April, 2005.

Privatization and the English Language, *The American Prospect*, February, 2005.

- Indexical Descriptions and Descriptive Indexicals, in *Descriptions and Beyond: An Interdisciplinary Collection of Essays on Definite and Indefinite Descriptions and Other Related Phenomena*, Marga Reimer and Anne Bezuidenhout, eds., Oxford University Press, 2005.
- The Internet: A New Babel? in Tony Judt and Denis Lacorne, eds., *The Politics of Language: Language, Nation, and State*. Palgrave, 2004.
- The Bloody Crossroads of Grammar and Politics, in Stephen Pinker, ed., *Best Science and Nature Writing, 2004*. Houghton Mifflin, 2004.
- The Liberal Label, *The American Prospect*, September, 2003.
- The Pragmatics of Deferred Reference, article in *The Handbook of Pragmatics*, Laurence Horn and Gregory Ward, eds. Blackwell, 2003.
- Authoritativeness Grading, Estimation and Sorting (with Francine Chen and Ayman Farahat), in Proceedings of the Twenty-Fifth Annual International ACM-SIGIR Conference on Research and Development in Information Retrieval, 2002.
- Do You Know What it Means to Miss New Orleans? *Philology and Semantics: Linguistics and Philosophy*, 25, 5-6, December, 2002.
- Punctuation and Text-Category Indicators (with Edward Briscoe and Rodney Huddleston), chapter of *The Cambridge Grammar of English*, Rodney Huddleston and Geoffrey K. Pullum, eds., Cambridge University Press. 2002.
- The Internet Filter Farce. *The American Prospect*, January 1, 2001.
- Will the Internet Speak English? *The American Prospect*, March 27, 2000.
Reprinted in the *Guardian*, November 2000.
Reprinted in *The Economics of Language*, ed. D, Lamberton, Edward Elgar Publishing, to appear.
- Usage in the *American Heritage Dictionary*, introductory essay to the *American Heritage Dictionary*, Fourth Edition, 2000.
- The Persistence of English, introductory essay to the *Norton Anthology of English Literature*, Seventh edition, M. H. Abrams and Stephen Greenblatt, eds., Norton Publishing, 1999.
- Les Enjeux Linguistiques d'Internet, *Critique Internationale*, 1999, 4.
Reprinted in *Le Multilinguisme et le Traitement de L'information*, F. Segond, ed., Editions Hermes, 2002.
- Will Libraries Survive? *The American Prospect*, November-December, 1998.
- L'Avenir des Bibliothèques Numériques. Actes du Colloque, "Le livre a-t-il un avenir?," Doc Forum, Lyon, 1998
- Double Standards [the Ebonics controversy] *Natural Language and Linguistic Theory*, 15, 3. 1997.
- Lingo jingo: Why English-only is a mistake. *The American Prospect*, July, 1997.
Reprinted in Fred Pincus and Howard Erlich, eds., *Race and Ethnic Conflict: Contending Views on Prejudice, Discrimination, and Ethnviolence*, Westview Press, 1988.
Reprinted in Rebecca Wheeler, ed., *Language Alive*, Praeger, 1998.
Reprinted in Barbara Mori, ed. *STAND: Race and Ethnicity*, CourseWise Publishing, Bellevue, Ia, 1999.
- Automatic Classification of Genre (with Hinrich Schütze and Brett Kessler), Proceedings of The Annual Meeting, Association for Computational Linguistics, 1997.
- L'Amérique par la Langue. *Cahiers de Médiologie*, April, 1997.

- The View from Section Z [Linguistics as a science] *Natural Language and Linguistic Theory*, 14, 2. 1996.
- Snowblind [On linguistic relativism]. *Natural Language and Linguistic Theory*, 14, 1. 1996
- Farewell to the Information Age, in *The Future of the Book*, Geoffrey Nunberg, ed., University of California Press, 1996.
- Gimcrack nation [Electronic discussion lists] *Natural Language and Linguistic Theory*, 13, 4. 1995.
Reprinted (as "To Delete or Not to Delete") in *Lingua Franca*, January, 1996.
- The Future of Multilingualism and Multilingual Technologies (with Annie Zaenen). In *Computational Linguistics in the Netherlands*, 1995.
- Les Langues du Discours Electronique. In Actes du colloque "Langues et Sciences en Europe", Roger Chartier and Pietro Corsi, eds., Ecole des Hautes Etudes en Sciences Sociales, Paris, November 1994.
Reprinted in *Alliages*, December 1995.
Reprinted in Italian, as Impigliati nella rete, *Sapere*, June, 1995.
- Angels in America [Linguistic nativism], *Natural Language and Linguistic Theory*, 13, 2. 1995.
- Meanings and Theories. In J.Klavans, ed., Proceedings of AAAI Symposium on the Lexicon, March 1995.
- A Touch of Crass: The popularizers we deserve, *Natural Language and Linguistic Theory*, 13, 1, 1995.
- Transfers of Meaning. *Journal of Semantics*, Winter, 1995.
- Les Télétheques. In Actes du Colloque "Va-t-on vivre par l'écran interposé?", Institut National de l'Audiovisuel, Paris, 1994, ed. Régis Debray.
- Idioms (with Ivan Sag and Thomas Wasow). *Language*, 70: 3, September, 1994.
- The Places of Books in the Age of Electronic Reproduction. *Representations* 24, Spring, 1993.
Reprinted in *Future Libraries*, R. Howard Bloch and Carla Hesse, eds., University of California Press, 1994.
- Indexicality and Deixis. *Linguistics and Philosophy*, 16: 1, 1993.
- Text, Form, and Genre. Screening Words: Proceedings of 8th Annual Conference of Waterloo Center for the New OED, University of Waterloo, 1992
- Systematic Polysemy in Lexicology and Lexicography (with Annie Zaenen). Hannu Tammola, Krista Varantola, Tarja Salmi-Tolonen and Jürgen Schopp, eds., Proceedings of Euralex II, University of Tampere, Tampere, Finland, 1992.
Reprinted in French translation in *Linguistique Française*, June, 1996
- Two Kinds of Indexicality. Chris Barker and David Dowty, eds. *Semantics and Linguistic Theory II*, Ohio State, 1992.
- Usage in the Dictionary. Introduction to the *American Heritage Dictionary*, Third Edition. Houghton Mifflin, 1992.
- Reimagining America. James Crawford, ed. *Language Loyalties. A Sourcebook on the Official-Language Movement*. The University of Chicago Press, 1992.
- The Official-English Movement. Karen Adams and Daniel Brink, eds., *Perspectives on Official English*, New York: Mouton, 1990.
- From Criticism to Reference. *International Journal of Lexicography*, 3:1. 1990.
- The Field of Linguistics. Publication of the Linguistic Society of America, 1990.

- Indexicality in Contexts. Xerox PARC Tech Report, 1990.
- What the Usage Panel Thinks. L. Michaels and C. Ricks, eds., *The State of the Language*. University of California Press, 1990.
- Linguists and the Official Language Movement. *Language*, 66:3, September, 1989.
- Common-Sense Semantics and the Lexicon. Proceedings of the Third Conference on Theoretical Issues in Natural-Language Processing, 1987.
- Prosaic and Poetic Metaphors. Proceedings of the Third Conference on Theoretical Issues in Natural-Language Processing, 1987.
- Contextualizing Individuation: "The same F." Papers from the Third West Coast Conference on Formal Linguistics, CSLI Publications, Stanford University, 1984.
- Idioms: An Interim Report (with Thomas Wasow and Ivan Sag). Proceedings of the Plenary Sessions, XIIIth International Congress of Linguists. Tokyo, 1982.
- English and Good English. Introduction to *The American Heritage Dictionary*, Second College Edition. Boston: Houghton-Mifflin, 1982.
- Validating Pragmatic Explanations. P. Cole, ed., *Radical Pragmatics*. New York: Academic Press, 1981.
- The Reversal of a Reported Merger in Eighteenth-Century English. W. Labov, ed., *Locating Language in Space and Time*. New York: Academic Press, 1980.
- Upper-class Speech in New York City. T. Shopen, ed., *Variation in the Structure and Use of English*. Boston: Newbury, 1980.
- The Non-uniqueness of Semantic Solutions: Polysemy. *Linguistics and Philosophy*, 3:1, 1979.
- Slang, Usage-conditions and l'Arbitraire du Signe. Papers from the Parasession on the Lexicon. Chicago: Chicago Linguistics Society, 1978.
- Inferring Quantification in Generic Sentences (with Chiahua Pan). Proceedings of the Eleventh Annual Meeting, Chicago Linguistic Society. Chicago: Chicago Linguistics Society, 1975.
- Syntactic Relations in Types and Tokens, in Proceedings of the Tenth Annual Meeting, Chicago Linguistic Society. Chicago: Chicago Linguistics Society, 1974.
- Two Problematic Mergers (with William Labov). W. Labov, M. Yaeger, and R. Steiner, *The Quantificational Study of Sound Change in Progress*. Philadelphia: U.S. Regional Survey, 1974.

Selected Book Reviews:

- Review of *The You Are What You Speak*, by Robert Lane Green, *The New York Times* Book Review, April 1, 2011.
- Review of *The Information*, by James Gleick, *The New York Times* Book Review, March 18, 2011.
- Review of *The Power of Babel*, by John McWhorter, the *Los Angeles Times* Book Review, February 24, 2002.
- Review of *Language and the Internet*, by David Crystal. *Nature*, January 15, 2002..
- Review of *The Scientific Voice*, by Scott Montgomery, *Science*, September 20, 1996. Reprinted in Katherine Livingstone, ed., *Scientifically Yours*. Groupe Lavoisier, Paris, 1997.
- Story time (commentary on "About Design," by J. S. Brown and Paul Duguid). *Human-Computer Interaction*, Winter, 1994.

Review of *Language of the Underworld*, by David Maurer. *The New York Times Book Review*, April 9, 1982.

Review of *The Psychology of Literacy*, by Sylvia Scribner and Michael Cole. *The New York Times Book Review*, December 13, 1981.

Review of *Beyond the Letter*, by Israel Scheffler. *The Philosophical Review*, 1981:2.

Review of *Forms of Talk*, by Erving Goffman. *The New York Times Book Review*, March 10, 1981.

Electronic Publications:

Time line of the history of information, for the Encyclopedia Britannica, CD-ROM version.

The Field of Linguistics: Web project for the Linguistic Society of America. Co-editor, with Thomas Wasow. See <http://www.lsadc.org/flxtitlepg.html>

Regular contributor to the blog Language Log and *The New Republic's* Open University blog.

General-Interest Articles and Regularly Appearing Features:

Regular op-ed pieces, *Los Angeles Times*, 2006-2007.

Regular commentaries on language and politics, Sunday *New York Times* Week in Review section, 2002-2006

Regular language commentaries, "Fresh Air," National Public Radio, 1989-present. Individual "Fresh Air" pieces published in various magazines in US and Europe.

"Letter from America" features, BBC4, 2004-2005

Bimonthly features on language and the law for *California Lawyer*, 2000-2002

"Topic... Comment." Quarterly column, *Natural Language and Linguistic Theory*. 1994-1998.

Other commentaries and opinion pieces in the *Washington Post*, the *Los Angeles Times*, the *San Jose Mercury News*, *Newsday*, the *San Francisco Chronicle*, and the *Chicago Tribune*.

General interest articles in *The Atlantic*, *Forbes ASAP*, *Fortune*, *American Lawyer*, and *The American Prospect*.

A number of these articles and commentaries are available at my Web pages at <http://www-csli.stanford.edu/~nunberg>

Patents and Patent Applications:

A method of determining the authoritativeness of texts using surface features of untagged texts, with Francine Chen and Ayman Farahat. US Patent application, 2002. (3 separate patents)

A method of automatically determining text genres using surface features of untagged texts, with Hinrich Schuetze. US Patent application, 1997.

Processing natural-language text using autonomous punctuational structure (first-named applicant, with Curtis Abbott and Brian Smith). US patent application 07/274,158 (1990) (Patent granted March 1991).

A method for manipulating digital data [natural-language structure editor] (first-named applicant, with Tayloe Stansbury, Curtis Abbott, and Brian Smith). European patent application 89312093.1-. (1989).

Selected Presentations:

- Slurs Aren't Special, American Philosophical Association, Pacific Meeting, March 20, 2013.
- Presentation, *Economist* conference on Big Data, June 2012
- On Having a Word, Humanities Center, University of Chicago, Nov. 3, 2011.
- Slurs without Semantics, Semantics Workshop, University of Chicago, Nov. 4, 2011.
Also at CNRS conference on Context and Interpretation, C erisy-la-Salle, France, June, 2011.
- What Future for the Book? UNESCO Conference on the future of the book, Monza, Italy, June, 2011.
- How the Language of Politics is Different, Distinguished Lecture, Symbolic Systems Program, Stanford University, May 3, 2010.
- Google Book Search: The Metadata Problem, Conference on Google Books, UC Berkeley, August 28, 2009.
- Electronic Philology, Computers and the Humanities Lecture Series, Brandeis University, March 6, 2009.
- Spatializations of Digital Discourse, Radcliffe Institute for Advanced Study, Harvard University, March 5, 2009.
- "Bad Words: Expressives and Demonstrations," invited talk, Institut Jean Nicod (Coll ege de France), Paris, June 13, 2008.
- Vulgar Civilities, Freeman Lecture, University of Massachusetts at Amherst, October 4, 2007.
- The Philology of Civility, Yale Humanities Center, October 3, 2007.
- The Counsel of Words, Barbara Gordon Lecture, Florida International University, March 5, 2007.
- The Future of English, Dean's Symposium Lecture, San Jose State University, April 19, 2007.
- Electronic Philology, Glasscock Center for the Humanities lecture, Texas A&M University, April 21, 2007.
- What Future for Scholarly Monographs?, keynote talk, International Forum of University Publishing, Guadalajara, Mexico, November 2006.
- Determining the Meanings of Words, invited talk, Conference on Language and Law, University of D usseldorf, Germany, May, 2006.
- What it Means to Speak the Same Language, invited talk, Cognitive Science Program, Rutgers University, March 2006.
- The Shadow Cast by Language upon Truth, keynote talk, Western Humanities Conference, UC Santa Cruz, Oct. 22, 2004
- Linguistic Issues in Trademark Law, invited talk at Midwest Intellectual Property Institute, Sept. 19, 2003.
- The Future of Propaganda, McClatchy Lecture, Stanford University Department of Communication, May 10, 2003.
- Building the Democratic Brand, presentation to U.S. Senate Democratic Caucus, Democratic Leadership Conference, May 1, 2003.
- Language in the Public Eye, plenary talk, American Association of Applied Linguistics, Washington, D.C., March, 2003.

- Language Questions and Questions of Language (two lectures), Princeton Humanities Council, November, 2002.
- Why "Literacy"? Keynote talk, Conference on "Reading Literacy," Harvard Humanities Center, April 12, 2002.
- Can There be an Electronic Dictionary?, invited talk, ATLAN conference, Paris, January 24, 2002.
- The Future of Paper, invited talk, Conference on "The Future of Paper as a Communications Medium," Stockholm, March 20-22, 2001.
- What Language for the Internet?, Keynote Address, Voice and Technology Forum, Santa Clara, CA December 12, 2000
- En Quête de l'Ordre des Livres Numériques, Annual UNESCO Lecture, University of Grenoble, May 10, 2000.
- The Order of Electronic Discourse, Invited Address, Victoria Library Association, Melbourne Australia, February 2000.
- Languages in a Wired World. Conference on "La politique de la langue," Centre d'Etudes et Recherches Internationales, Paris, October 2, 1998.
- The Future of Academic Publishing. Conference on "The Endangered Monograph," Berkeley Humanities Center, April 12, 1998.
- Le Papier et les Nouvelles Technologies de l'Impression. Conference on "Le devenir du papier moderne," Bibliothèque Nationale de France, December, 1997.
- L'Avenir de la Bibliothèque, DocForum, Lyon, November, 1997.
- Individual and Collective Semantics, Conference on the future of semantics, San Marino, November, 1997.
- The Compositionality of Idioms, International Congress of Linguists, Paris, July, 1997.
- Does Cyberspace have Boundaries? Panel on cyberspace and community. University of Indiana, 1997.
- Automatic Classification of Genre (with Hinrich Schütze and Brett Kessler), Annual Meeting, Association for Computational Linguistics, Madrid, 1997.
- Variation in Written-Language Category Structure, keynote talk, ACL Workshop on punctuation and written language, Santa Cruz, CA, June 28, 1996.
- Does the Book have a Future? Commonwealth Club of San Francisco, (broadcast on C-SPAN) June 4, 1996.
- Regular Polysemy and Lexical Representation, plenary talk, Conference on the Lexicon, Courmayeur, Italy, September 6, 1996.
- Underdetermination in the Lexicon, invited talk, conference on Lexical Underdetermination, Berlin, October 27, 1996.
- Are there Universal Language Rights? Invited talk, Conference on Language Legislation and Linguistic Rights, University of Illinois, to be held March 20-23, 1996.
- Language Standards and Language Science. Session on Language Standards and Language Science, Annual Meeting, American Association for the Advancement of Science. To be held February 28, 1996.
- The Technologies of Reputation, Keynote talk, Conference on Literature and Libraries, Columbia University, October 27, 1995.
- Maux d'Archive*: Preservation and access in electronic collections, CARL conference on "Retooling Academic Libraries for the Digital Age," San Francisco, October 21, 1995.

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- Les Langues du Discours Electronique. Colloquium on *Sciences et Langues en Europe*, Ecole des Hautes Etudes en Sciences Sociales, Paris, November 14, 1994.
- The once and Future Dictionary. Conference on Dictionaries and Information Technology, Grenoble, October 17-19, 1994.
- Farewell to the Information Age. Conference on the Future of the Book, San Marino, July 28, 1994.
- The Future of the Book. Keynote talk, Annual Meeting, American Association of University Presses, Washington, D. C., June 23, 1994.
- Information in its Place. Plenary talk, Annual meeting, American Society of Information Science, Portland, May 22, 1994.
- Remarques sur les Télêtheques, Conference "Va-t-on vivre par l'écran interposé?," University of the Sorbonne, Paris, April 15, 1994.
- Transferts de Signification, Cognitive Science Seminar, Centre de Recherche en Epistémologie Appliquée, CNRS, Paris, Jan 20, 1994.
- The Future of Information, Conference on The Electronic Book: A New Medium?, Grenoble, September 9, 1993.
- Meaning and Metaphor, Invited address, Association for Computational Linguistics, Columbus, Ohio, June 20, 1993.
- Taking Usage Seriously, Invited talk, Dictionary Society of North America, Las Vegas, May, 1993.
- On Predicate Transfer, Invited talk, Conference on Lexical Universals, Dagstuhl, Germany, April, 1993.
- Indexicality and Direct Reference, Conference on Context and Interpretation, Berkeley, March, 1993.
- Dirty Words. Paper given at Special Session of Dickens Society on "Dirt," Modern Language Association, New York City, December, 1992.
- Polysemy in Lexical Description. Conference on Computational Approaches to the Lexicon, Las Cruces, New Mexico; November 2, 1992.
- Text, Form, and Genre, 8th Annual Conference of Waterloo Center for the New OED, Waterloo, Ontario, October, 1992.
- The Shadow of Rruth, Conference on "Inscribing Grammar on Culture," Clark Library, Los Angeles, October, 1992.
- The Compositionality of Phrasal Idioms (with Ivan Sag and Thomas Wasow), Conference on Idioms, Tilburg, Netherlands, September 1992.
- Systematic Polysemy in Lexicology and Lexicography (with Annie Zaenen), Annual Meeting of the European Association of Lexicography (Euralex), Tampere, Finland, August, 1992.
- Indexicality and Deixis, Conference on the Pragmatics of What is Said, Centre de la Recherche en Epistémologie Appliquée, Paris, June, 1992.
- The Places of Books in the Age of Electronic Reproduction, Conference on Future Libraries, University of California, Berkeley, April, 1992.
- Two Kinds of Indexicality, Conference on Semantics and Linguistic Theory, Columbus, Ohio, April, 1992.
- Good Grammar and Good Taste: Eighteenth-century prescriptivism and theories of aesthetics, Annual Meeting, North American Association for the History of Linguistic Science, Philadelphia, January, 1992.

- Le Varietà della Metafora, Conference on Topics in Semantic Theory, Università degli Studi, San Marino, December, 1991.
- The Teaching of Grammar: a historical overview, Special session on Linguistics in the K-12 Curriculum. Annual Meeting, Linguistic Society of America, Chicago, December 28, 1991.
- On Document Genres. Xerox Corporation Symposium on the Document, Stamford, CT, April 15, 1991.
- Usage and Naturalism, Meeting of American Dialect Society, Atlanta, October, 1990.
- Indexicality in Context, CNRS conference on Philosophie et les Sciences Cognitives, Cérisy-la-Salle, France, 1990.
- A survey of Prescriptive Attitudes (with Kristin Hanson), Annual Meeting, Linguistic Society of America, New Orleans, 1988.
- Linguistic Nationalism in the English tradition, Conference on Language Rights and Public Policy, Stanford University April 17-18, 1988.
- American Attitudes toward Second-Language Learning, Annual Meeting, Advocates for Language Learning, San Francisco, 1988.
- What the 'English-only' People are After, Colloquium on the Official Language movement, Roundtable Conference on Languages and Linguistics, Georgetown University, 1987.
- Common-Sense Semantics and Lexical Information, Third Conference on Theoretical Issues in Natural-Language Processing, Las Cruces, NM, 1987.
- Prosaic and Poetic Metaphors, Third Conference on Theoretical Issues in Natural-Language Processing, Las Cruces, NM, 1987.
- What we talk about when we talk about grammar, Annual Meeting, National Council of Teachers of English; Detroit, Michigan, 1985.
- Some Difficulties for Direct-Reference Theories. Conference on "Themes from Kaplan," Stanford University, April, 1984.
- Individuation in Context, Conference on Semantic Theory, Centro Di Studi Linguistici e Semiotici, Urbino, Italy, 1983.
- Why there is no syntax of words, Conference on Morphology and Linguistic Theory, Stanford University, 1983.
- Idiomacity in Argumentation for Transformational Grammar, (with Ivan Sag and Thomas Wasow), U.C.L.A. Conference on the Extended Standard Theory, 1982.
- 'The same F,' NSF-CNRS Seminar on Discourse Comprehension, Cadarache, France, June, 1982.
- The Compositionality of Idioms, (with Ivan Sag and Thomas Wasow), Annual Meeting, Linguistic Society of America, New York City, 1981.
- The Case for Prescriptive Grammar, Conference on New Ways of Analyzing Linguistic Variation, Ann Arbor, 1981.
- Langue* and Competence: The bases of idealization in linguistics," Colloquium on the Object of Linguistic Theory, Annual Meeting, Linguistic Society of America, San Antonio, 1980.
- What do We Mean by 'The Same Language'? Annual Meeting, Berkeley Linguistics Society, 1980.
- Deferred Interpretation and Direct Reference, Sloan Workshop on Semantics, Asilomar, California, 1980.

- Idealization in syntax and semantics, Conference on Pragmatics, Centro di Studi Linguistici e Semiotici, Urbino, 1979.
- La Metafora nel Lessico, Conference on Metaphor, D.A.M.S., University of Bologna, 1979.
- Methodology and Explanation in Sociolinguistics, First Berkeley Conference on Sociolinguistics, 1978.
- Sociolinguistics and Social History, Conference on Linguistic Variation, S.U.N.Y. at Binghamton, 1976.
- Lexical Ambiguity and Referential Indeterminacy, Annual Meeting, Linguistic Society of America, San Francisco, 1975.
- The Semantics of Parenthetical Verbs, Annual Meeting, Linguistic Society of America, New York City, 1974.
- English Pro-Complementizers, Annual Meeting, Linguistic Society of America, San Diego, 1973.
- The Quantificational Study of a Sound Change in Progress: Social and linguistic setting, Summer Meeting, Linguistic Society of America, Ann Arbor, 1973.

Invited Lectures:

LINGUISTICS DEPARTMENTS

- University of Arizona, 1988, 1997
- University of British Columbia, 1992
- Cambridge University, 1994, 1998
- University of California, Berkeley, 1979, 1987, 1993, 1997, 2006, 2013
- University of Chicago, 2011
- Edinburgh University 2002
- Florida International University, 2007
- Georgetown University, 1985, 2003
- University of Grenoble, 1994
- University of Illinois, 1989, 1995
- University of Kentucky, 1991
- University of California at Los Angeles, 1981, 1989
- University of California at San Diego, 1997
- Massachusetts Institute of Technology, 1986
- University of Massachusetts, 2007
- University of Naples, 1999
- California State University at Northridge, 2003
- Ohio State University, 1993
- University of Pennsylvania, 1986, 1992
- Pitzer College, 1995
- Princeton University, 2002
- University of Rome, La Sapienza, 1999
- Rutgers University, 2006
- San Jose State, 1995
- University of California, Santa Cruz, 1984, 1991

University of Southern California, 1987
Stanford University, numerous colloquia
University of Strasbourg, 1993
University of Texas at Austin, 1987, 1998
University of Washington, 2004

OTHER DEPARTMENTS AND PROGRAMS

Max-Plank-Gesellschaft, Arbeitsgruppe Strukturelle Grammatik, Berlin 1996
Cognitive Science Program, University of Illinois, 1989
Cognitive Science Program, University of Edinburgh, 1994
Cognitive Science (ICSC), University of Pennsylvania, 1996
Computer Science, Yale University, 1988
Computer Science, Brandeis University, 2009
Computer Science, University of Brighton, 1998
Computer Science, University of Pennsylvania, 1992
Communications, University of Grenoble, 2000
Communications, University of California at San Diego, 2002
Digital Libraries program, University of California, Berkeley, 1996
Digital Libraries program, Stanford University, 1996
English and Rhetoric, University of Southern California, 1987
English, Frei Universität, Berlin
English, University of California at Irvine, 1985
English, University of British Columbia, 1992
English, University of Michigan, 1986
English, Graduate Center of C.U.N.Y., 1998
English, University of California, Santa Cruz, 1984
English, University of Minnesota, 1979
Humanities Center, University of Chicago, 2011
Humanities Center, Yale University, 2007
Humanities Center, Texas A&M University, 2007
Humanities Center, Harvard University, 2003, 2009
Informatics, University of Edinburgh, 2002
Library Science, University of Texas, 1998
Library Science, University of Arizona, 1997
Library Science, University of California at Berkeley, 1992
Library Science, University of California at Los Angeles, 1999
Library Science, San Jose State, 1994
Library, Stanford University, 1992
School of Information Management and Systems, U. C. Berkeley, 1999, 2003
National Foreign Language Center, Washington D.C., 1988
Natural Language Group, Bell Laboratories, 1985
Philosophy, Stanford University, 1983, 1990

Philosophy, University of California at Berkeley, 1980, 2013
 Philosophy, University of Bologna, 1980
 Psychology, The American University, 1996
 Radcliffe Institute for Advanced Study, Harvard University, 2009
 Istituto di Psicologia, CNR, Rome, 1979, 1983
 CNRS, Groupe de Recherche sur la Cognition, Paris, 1992, 1994, 1998
 CNRS, Groupe de Recherche sur les Orthographes et Systèmes d'écriture, Paris, 1992
 American Association of University Presses, 1994, 1998
 DAMS, University of Bologna, 1999

Conferences, Conference Sessions, and Workshops Organized:

Panel on Information Access & Freedom in the Digital Age, School of Information, UC Berkeley, March 20, 2012.
 Books Tomorrow, UNESCO conference in Monza, Italy, July 5-7 2011, Member of organizing committee.
 The future of academic publishing. Workshop at annual meeting of American Association of University Presses, Berkeley, CA, October 14, 1998.
 Does the book have a future? University of California, San Francisco, April 23, 1996.
 Genre in Digital Documents. Track of Hawaii International Conference on Systems Science, Maui, Jan 5-7, 1997. Also organized this session for 1998, 1999.
 Fencing off the Public Sphere (Envelope technologies and fair use). Xerox PARC, May 5, 1996.
 Language Standards and Linguistic Science. Conference session, Annual Meeting, American Association for the Advancement of Science. To be held February 28, 1996.
 Conference on the Future of the Book, San Marino, July 28-30, 1994. Co-sponsored by Rank Xerox European Research Centre, Grenoble, and the Center for Cognitive and Semiotic Studies, San Marino. (Co-organizer with Patrizia Violi, University of Bologna.)
 Conference on The Electronic Book: A New Medium?, Grenoble, September 9-10, 1993. Co-sponsored by Rank Xerox European Research Centre and the Bibliothèque de France. Also subject of seminar presentation at RXRC inauguration, October 15, 1993.
 NSF Conference on Digital Libraries, Xerox Palo Alto Research Center, March 10-11, 1992. (Co-organizer, with David Levy, Xerox PARC, and Y. T. Chien, NSF.)
 Workshop on Linguistics and Lexicography, Center for the Study of Language and Information, Stanford University, April 18-19, 1991.
 Special session on Linguistics in the K-12 curriculum, Annual Meeting, Linguistic Society of America, Chicago, January 11, 1991. (Co-Organizer with Penelope Eckert, Institute for Research on Learning.)
 Conference on Language Rights and Public Policy, Stanford University, April 17-18, 1988. Sponsored by Californians United, ACLU, and NEA. (Co-organizer with Edward Chen, American Civil Liberties Union, and Martha Jimenez, MALDEF.)

Legal Expert and Consulting Work since 2009:

Elliot and Gillespie v. Google Inc., U.S. District Court, District of Arizona. Expert report for Defendant. (Trademark case, 2013)

Tiffany and Co. v. Costco Wholesale, U.S. District Court, Southern District of New York, Expert report for Defendant (Trademark case, 2013)

Academy of Motion Picture Arts and Sciences v. GoDaddy.com, U.S. District Court, Central District of California, Expert report for Defendant (Trademark case, 2013)

Christian Financial Institute of America v. CFA Institute, U.S. District Court, Western District of Texas (Trademark case, 2012)

The Hershey Company et al. v. Promotion in Motion, Inc., Kaye Scholer, attorneys. United States District Court, District of New Jersey (Trademark case, 2009)

Trademark Trial and Appeals Board, Patent and Trademark Office, 2010- (pro bono). Blackhorse v. Pro Football, Inc. Drinker Biddle & Reath, attorneys. (Trademark cancellation.)

Intel Corp. Consulting on trademark issues, 2010.

Other Professional and Public Activities:

Advisory Board, The Founders' Corpus (digital archive)

Commission for the Future the University of California Library, 2012-2013

Townsend Center for the Humanities, Faculty Advisory Committee. 2010-

Member of editorial board, *Representations*, 2008-

Member of Board of Trustees, Center for Applied Linguistics, 1999-2004

Member of Steering Committee, Coalition for Networked Information, 1999-2003

Referee of articles or manuscripts: *Language, Linguistic Inquiry, General Linguistics, Linguistics and Philosophy, Recherches Linguistiques, Natural Language and Linguistic Theory, Philosophical Review, Synthese*, Yale University Press, Cambridge University Press, Stanford University Press, Oxford University Press, University of Chicago Press, MIT Press, D. Reidel, Sage Publishing, Ohio State University Press

Perennial reviewer for various program committees (LSA, WCCFL, SALT, etc.),

Referee of grant proposals: National Science Foundation (sections on linguistics, computer science, AI and robotics, psychology); National Foreign Language Center; National Institute of Mental Health, National Endowment for the Humanities.

Executive Committee, National Coalition for Language Rights (co-founder) 1988-1994

Committee on Political and Social Concerns, Linguistic Society of America, 1990-1997

Usage Editor, *The American Heritage Dictionary*, second edition.

Usage Editor and Chair of Usage Panel, *The American Heritage Dictionary*, third and fourth editions. Ongoing consultancy with Houghton Mifflin.

Host of programs for City Arts and Lectures, San Francisco (broadcast on NPR), 2001-: Interviewees include Eavan Boland, A. S. Byatt, Robert Hass, Maxine Hong Kingston, Michael Ondaatje, Simon Winchester, Tobias Wolff.

EXHIBIT B

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

In the matter of Application Serial No.: 85/806,379
Filed: December 19, 2012
For the mark: HOLAIRA
Published in the *Trademark Official Gazette* on December 3, 2013

Boston Scientific Corporation and
Asthmatx, Inc.
Opposers,

v.

Opposition No. _____

Holaira, Inc.

Applicant.

NOTICE OF OPPOSITION

Boston Scientific Corporation and its wholly-owned and related company Asthmatx, Inc. (“Opposers”) believe that they will be damaged by registration of the HOLAIRA mark shown in Application Serial No. 85/806,379 (the “Application”) and hereby oppose the same.

The grounds for opposition are as follows:

1. Holaira, Inc. (“Applicant”) filed an intent-to-use based trademark application on December 19, 2012 seeking to register the proposed HOLAIRA mark in connection with “medical devices for treating obstructive lung diseases; medical apparatus and instruments for treating obstructive lung diseases” (“Applicant’s Goods”) in International Class 10.
2. Upon information and belief, Applicant has not yet used in commerce HOLAIRA as a trademark in connection with Applicant’s Goods.
3. On information and belief, Applicant cannot rely on any priority date for the proposed HOLAIRA mark earlier than the filing date of December 19, 2012.

4. Applicant's HOLAIRA mark was published for opposition in the *Trademark Official Gazette* on December 3, 2013. On December 10, 2013, Boston Scientific Corporation filed a request for an Extension of Time to Oppose the Application on behalf of itself and its subsidiaries. The Board granted this request on December 11, 2013, extending the filing period to February 1, 2014. On January 31, 2014 Boston Scientific Corporation filed a second request for an Extension of Time to Oppose the Application on behalf of itself and its subsidiaries. The Board granted this request on January 31, 2014, extending the filing period to April 2, 2014. This Notice of Opposition is therefore timely filed.

5. Opposer Asthmatx, Inc., is a wholly-owned and related company to Boston Scientific Corporation.

6. As a wholly-owned and related company, Asthmatx, Inc. is in privity with Boston Scientific Corporation, permitting both Opposers to jointly file this Opposition, pursuant to TBMP Sections 206.02 and 303.05(b).

7. Opposer Boston Scientific Corporation along with its wholly-owned and related company Asthmatx, Inc., is a leading developer, manufacturer, and marketer of medical devices in the United States and around the world.

8. Opposer Asthmatx, Inc. owns underlying common law rights and is the record owner of U.S. trademark registration number 2,856,168 for the ALAIR® mark in connection with "medical therapeutic devices for use in the treatment of pulmonary diseases, namely, catheters, probes, generators, bronchoscopes, and electrodes" ("Opposers' Goods") in International Class 10, with a first use date at least as early as August 9, 2001 ("the Class 10 Registration"). The Registration issued on the Principal Register on June 22, 2004, and it is incontestable. The filing date and nationwide constructive use date is December 3, 1999.

9. Opposer Asthmatx, Inc. owns underlying common law rights and is the record owner of U.S. trademark registration number 3,380,080 for the ALAIR® mark in connection with “Training and teaching in the field of surgery and treatment of pulmonary diseases, namely training and teaching in the use and operation of medical devices for bronchial surgery or treatment, and distribution of course materials, namely printed materials and electronic media, in connection therewith” (“Opposers’ Services”) in International Class 41, with a first use date at least as early as October 6, 2006 (“the Class 41 Registration”). The Class 41 Registration issued on the Principal Register on February 12, 2008, and it is incontestable. The filing date and nationwide constructive use date is October 11, 2006.

10. Two copies of Opposer Asthmatx, Inc.’s U.S. Registration No. 2,856,168 along with two copies of printouts from the Trademark Electronic Search System showing both the current status of and current title to the registration are attached hereto as Exhibit A.

11. Two copies of Opposer Asthmatx, Inc.’s U.S. Registration No. 3,380,080 along with two copies of printouts from the Trademark Electronic Search System showing both the current status of and current title to the registration are attached hereto as Exhibit B.

12. Opposers have expended considerable time and expense in promoting, advertising and popularizing the distinctive ALAIR® mark and the medical therapeutic devices and services offered in connection therewith. The relevant public has come to know, rely upon and recognize the ALAIR® mark as a strong indicator of the source, quality, and reputation of Opposers and their medical therapeutic devices and services.

13. Opposers have made continuous use of their ALAIR® mark in connection with medical therapeutic devices for use in the treatment of pulmonary diseases, namely, catheters, probes, generators, bronchoscopes, and electrodes.

14. Because of their incontestable status, Asthmatx, Inc.'s Class 10 Registration and Class 41 Registration (collectively, "the Registrations") provide conclusive evidence of the validity and distinctiveness of Asthmatx, Inc.'s ALAIR® mark as well as Asthmatx, Inc.'s exclusive right to use the ALAIR® mark in commerce for Opposers' Goods and Opposers' Services.

15. Opposer's nationwide constructive use date of December 3, 1999 for the Class 10 Registration predates Applicant's filing date of December 19, 2012 by more than thirteen (13) years.

16. The date of registration of June 22, 2004 for the Class 10 Registration predates Applicant's filing date of December 19, 2012 by more than eight (8) years.

17. Opposers have priority over the Application as a result of the Registrations and Opposers' earlier continuous use of the ALAIR® mark identified in the Class 10 Registration.

18. Opposers have priority of common law rights in the ALAIR® mark in connection with medical therapeutic devices for use in the treatment of pulmonary diseases, namely, catheters, probes, generators, bronchoscopes, and electrodes.

19. The nationwide constructive use date of October 11, 2006 for the Class 41 Registration predates Applicant's filing date of December 19, 2012 by more than six (6) years.

20. The date of registration of February 12, 2008 for the Class 41 Registration predates Applicant's filing date of December 19, 2012 by more than four (4) years.

21. Opposers have made continuous use of the ALAIR® mark in in connection with Opposers' Services.

22. Opposers have priority over the Application based on the earlier common law rights in the ALAIR® mark and as a result of Opposers' prior registration of the same as identified in the Class 10 Registration and the Class 41 Registration.

23. Upon information and belief, the ALAIR® mark is likely to be pronounced similar to Applicant's HOLAIRA mark.

24. Upon information and belief, the ALAIR® mark may be pronounced identical to the HOLAIR- portion of Applicant's HOLAIRA mark.

25. Upon information and belief, Applicant's HOLAIRA mark is confusingly similar in sound to the ALAIR® mark.

26. Applicant's HOLAIRA mark contains the identical letters LAIR, incorporating all but the initial letter 'A' of the ALAIR® mark.

27. Upon information and belief, Applicant's HOLAIRA mark is confusingly similar in sight to the ALAIR® mark.

28. Upon information and belief, there are sufficient similarities in sight, sound, and meaning between Applicant's proposed HOLAIRA mark and the ALAIR® mark such that the two marks create highly similar overall commercial impressions.

29. Applicant's Goods consist of medical devices, apparatus, and instruments for treating obstructive lung diseases and Opposers' Goods are medical devices for use in the treatment of pulmonary diseases, namely, catheters, probes, generators, bronchoscopes, and electrodes.

30. Applicant's Goods do not identify a specific type of "medical devices," "apparatus," or "instruments."

31. Because of the expansive identification of goods in the Application, Applicant's Goods are presumed to include all types of medical devices, apparatus, and instruments, including catheters, probes, generators, bronchoscopes, and electrodes.

32. Applicant's Goods are therefore identical in part to Opposers' Goods.

33. Applicant's Goods are used for the purpose of treating "obstructive lung diseases" and Opposers' Goods are used for "the treatment of pulmonary diseases."

34. Pulmonary is a medical term meaning "relating to, affecting, or occurring in the lungs."

35. Upon information and belief, both Applicant's Goods and Opposers' Goods are both used for the treatment of pulmonary diseases, also known as lung diseases.

36. Upon information and belief, Applicant's planned medical device for use under the proposed HOLAIRA mark is a "catheter-based" system.

37. Upon information and belief, Applicant's proposed HOLAIRA medical device will include bronchoscopes.

38. Upon information and belief, Applicant's proposed HOLAIRA medical device will include probes.

39. Upon information and belief, Applicant's proposed HOLAIRA medical device will include electrodes.

40. Upon information and belief, Applicant's Goods are the type of medical devices, instruments, and apparatuses that consumers would expect to be used in conjunction with, involved with, or otherwise closely related to Opposers' Services, namely, "training and teaching in the field of surgery and treatment of pulmonary diseases, namely, training and teaching in the use and operation of medical devices for bronchial surgery or treatment. . . ."

41. Upon information and belief, Applicant's Goods, Opposers' Goods, and Opposers' Services would be used or purchased by the same individuals or entities, namely, health care organizations, doctors and other medical professionals.

42. Upon information and belief, Applicant's Goods, Opposers' Goods, and Opposers' Services would be used or purchased by health care organizations, and doctors or other medical professionals who treat lung or pulmonary diseases.

43. Upon information and belief, Applicant's Goods, Opposers' Goods, and Opposers' Services would be used or purchased in similar procedures for similar patients.

44. Upon information and belief, Applicant's Goods, Opposers' Goods, and Opposers' Services would be purchased by the same health care organizations, hospitals and clinics.

45. Opposers' Registrations are unrestricted as to the channels of trade and thus the goods and services identified in the registrations are deemed to travel in all channels of trade.

46. The Application is unrestricted as to channels of trade and thus the goods identified in the Application are deemed to travel in all channels of trade.

47. The goods and services identified in Opposers' Registrations and in the Application therefore will travel in overlapping channels of trade.

48. The goods and services identified in Opposers' Registrations are unrestricted as to a particular class of consumer.

49. The goods identified in the Application are unrestricted as to a particular class of consumer.

50. The goods and services identified in Opposers' Registrations and in the Application are therefore directed toward the same classes of consumers.

51. Upon information and belief, Applicant's Goods will appeal to the same classes of consumers as Opposers' Goods.

52. Upon information and belief, the goods identified in Application are identical in-part as well as highly related to Opposers' Goods.

53. Upon information and belief, Applicant's Goods are highly related to Opposers' Services.

54. Applicant's proposed HOLAIRA mark so resembles the ALAIR® mark as to be likely, when used in connection with Applicant's proposed medical devices, apparatus, and instruments for treatment of lung diseases, to cause confusion, to cause mistake, or to deceive as to affiliation, source, or sponsorship with Opposers' medical devices for treatment of lung diseases identified in Opposers' Class 10 Registration and the services identified in the Class 41 Registration.

55. Registration of Applicant's HOLAIRA mark will result in a likelihood of confusion with Opposers based on Opposers' prior use and ownership of the ALAIR® mark and would therefore cause damage and harm to Opposers and their businesses.

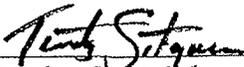
56. Because Applicant's HOLAIRA mark and the ALAIR® mark are highly similar in overall commercial impression and because Applicant's Goods, as identified in the Application are identical in-part and highly related to Opposers' Goods and Services, purchasers and prospective purchasers are likely to mistakenly believe that Applicant's medical devices, apparatus and instruments for treatment of pulmonary diseases to be offered under the Applicant's HOLAIRA mark are sponsored, endorsed, or approved by Opposers, or are in some other way affiliated, connected, or associated with Opposers, all to the detriment of Opposers. Registration of the mark shown in the Application should therefore be refused under 15 U.S.C. §§ 1052(d) and 1063.

WHEREFORE, Opposers request that the Trademark Trial and Appeal Board:

- 1) Sustain this Opposition;
- 2) Refuse registration of the HOLAIRA mark identified in Application Serial No. 85/806,379 for the goods identified in International Class 10; and
- 3) Grant Opposers any further relief the Board deems equitable.

Dated: April 1, 2014

WINTHROP & WEINSTINE, P.A.



Stephen R. Baird
Timothy D. Sitzmann
225 South Sixth Street, Suite 3500
Minneapolis, Minnesota 55402
(612) 604-6400 (Telephone)
(612) 604-6800 (Facsimile)

Attorneys for Boston Scientific Corporation
and Asthmatx, Inc.

Exhibit A

Int. Cl.: 10

Prior U.S. Cls.: 26, 39, and 44

Reg. No. 2,856,168

United States Patent and Trademark Office Registered June 22, 2004

TRADEMARK
PRINCIPAL REGISTER

ALAIR

ASTHMATX, INC. (CALIFORNIA CORPORATION)
1340 SPACE PARK WAY
MOUNTAIN VIEW, CA 94043

ELECTRODES, IN CLASS 10 (U.S. CLS. 26, 39 AND 44).

FIRST USE 8-9-2001; IN COMMERCE 8-9-2001.

FOR: MEDICAL THERAPEUTIC DEVICES FOR USE IN THE TREATMENT OF PULMONARY DISEASES, NAMELY, CATHETERS, PROBES, GENERATORS, BRONCHOSCOPES, AND

SN 75-863,338, FILED 12-3-1999.

RONALD AIKENS, EXAMINING ATTORNEY



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Typed Drawing

Word Mark	ALAIR
Goods and Services	IC 010. US 026 039 044. G & S: medical therapeutic devices for use in the treatment of pulmonary diseases, namely, catheters, probes, generators, bronchoscopes, and electrodes. FIRST USE: 20010809. FIRST USE IN COMMERCE: 20010809
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	75863338
Filing Date	December 3, 1999
Current Basis	1A
Original Filing Basis	1B
Published for Opposition	December 23, 2003
Registration Number	2856168
Registration Date	June 22, 2004
Owner	(REGISTRANT) ASTHMATX, INC. CORPORATION CALIFORNIA 888 Ross Drive, First Floor Sunnyvale CALIFORNIA 94089
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Michael T. Hess
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECTION 8(10-YR) 20140106.
Renewal	1ST RENEWAL 20140106
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Int. Cl.: 10

Prior U.S. Cls.: 26, 39, and 44

Reg. No. 2,856,168

United States Patent and Trademark Office

Registered June 22, 2004

TRADEMARK
PRINCIPAL REGISTER

ALAIR

ASTHMATX, INC. (CALIFORNIA CORPORATION)
1340 SPACE PARK WAY
MOUNTAIN VIEW, CA 94043

ELECTRODES, IN CLASS 10 (U.S. CLS. 26, 39 AND 44).

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Attorney of Record	Michael T. Hess
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECTION 8(10-YR) 20140106.
Renewal	1ST RENEWAL 20140106
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Exhibit B

Int. Cl.: 41

Prior U.S. Cls.: 100, 101 and 107

Reg. No. 3,380,080

United States Patent and Trademark Office

Registered Feb. 12, 2008

SERVICE MARK
PRINCIPAL REGISTER

ALAIR

ASTHMATX, INC. (CALIFORNIA CORPORATION)
1340 SPACE PARK WAY
MOUNTAIN VIEW, CA 94043

FOR: TRAINING AND TEACHING IN THE FIELD OF SURGERY AND TREATMENT OF PULMONARY DISEASES, NAMELY TRAINING AND TEACHING IN THE USE AND OPERATION OF MEDICAL DEVICES FOR BRONCHIAL SURGERY OR TREATMENT, AND DISTRIBUTION OF COURSE MATERIALS, NAMELY PRINTED MATERIALS AND ELECTRONIC MEDIA, IN CONNECTION THEREWITH. IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 10-6-2006; IN COMMERCE 10-6-2006.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 2,856,168.

SER. NO. 77-019,259, FILED 10-11-2006.

ROBIN MITTLER, EXAMINING ATTORNEY



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ALAIR

Word Mark	ALAIR
Goods and Services	IC 041. US 100 101 107. G & S: Training and teaching in the field of surgery and treatment of pulmonary diseases, namely training and teaching in the use and operation of medical devices for bronchial surgery or treatment, and distribution of course materials, namely printed materials and electronic media, in connection therewith. FIRST USE: 20061006. FIRST USE IN COMMERCE: 20061006
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	77019259
Filing Date	October 11, 2006
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	November 27, 2007
Registration Number	3380080
Registration Date	February 12, 2008
Owner	(REGISTRANT) Asthmatx, Inc. CORPORATION CALIFORNIA 888 Ross Drive, First Floor

Sunnyvale CALIFORNIA 94089
Attorney of Record Michael T. Hess
Prior Registrations 2856168
Type of Mark SERVICE MARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
Live/Dead Indicator LIVE

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Int. Cl.: 41

Prior U.S. Cls.: 100, 101 and 107

Reg. No. 3,380,080

United States Patent and Trademark Office

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SER. NO. 77-019,259, FILED 10-11-2006.

ROBIN MITTLER, EXAMINING ATTORNEY



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ALAIR

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Sunnyvale CALIFORNIA 94089
Attorney of Record Michael T. Hess
Prior Registrations 2856168
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Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
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May 10, 2014

Timothy D. Sitzmann, Esq.
Winthrop & Weinstine
Capella Tower, Suite 3500
225 South Sixth Street
Minneapolis, MN 55402-4629

Via First Class Mail

**RE: Opposition No. 91215699
HOLAIRA**

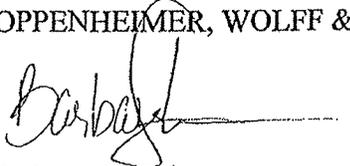
Dear Mr. Sitzmann:

Enclosed and served upon you is the Answer to Notice of Opposition in regard to the above-referenced matter.

Please contact me if you have any questions.

Very truly yours,

OPPENHEIMER, WOLFF & DONNELLY LLP



Barbara J. Grahn

BJG/kr
Enclosure

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

Application Serial No. 85806379
HOLAIRA
Filed December 19, 2012
Published in the *Official Gazette* on December 3, 2013

BOSTON SCIENTIFIC CORPORATION and
ASTHMATX, INC.

Opposers,

v.

Opposition No. 91215699

HOLAIRA, INC.,

Applicant.

ANSWER TO NOTICE OF OPPOSITION

Holaira, Inc. ("Applicant"), for its Answer to the Notice of Opposition filed by Boston Scientific Corporation and Asthmatx, Inc. ("Opposers") against the application for registration of the mark HOLAIRA, Serial No. 85806379, responds as follows:

Applicant denies each and every allegation of the Notice of Opposition which is not hereinafter specifically admitted.

1. Applicant admits that it filed application Serial No. 85806379 on December 19, 2012, and that the current identification of goods in the application is as stated in Paragraph 1.
2. Applicant states that it has used the HOLAIRA mark in commerce in connection with a clinical trial protocol. Whether Applicant has used the mark "as a trademark" references a legal conclusion to which no response is required. 2.
3. Asserts legal conclusion to which no response is required.

4. Applicant admits that its mark was published for opposition in the *Trademark Official Gazette* on December 3, 2013, but is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 and on that basis denies them.
5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5 and on that basis denies them.
6. Asserts a legal conclusion to which no response is required, but to the extent a response is required for any remaining non-legal allegations, Applicant is without sufficient information to admit or deny the remaining allegations of Paragraph 6 and on that basis denies them.
7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7 and on that basis denies them.
8. U. S. trademark Registration No. 2856168 speaks for itself, but Applicant is otherwise without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 8 and on that basis denies them.
9. U. S. trademark Registration No. 3380080 speaks for itself, but Applicant is otherwise without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 9 and on that basis denies them.
10. Applicant admits that two copies of the registration certificate and TESS record for U. S. Registration No. 2856168 were attached to the Notice of Opposition, but is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 10 and on that basis denies them.
11. Applicant admits that two copies of the registration certificate and TESS record for U. S. Registration No. 3380080 were attached to the Notice of Opposition, but is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 11 and on that basis denies them.

12. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 12 and on that basis denies them.
13. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 13 and on that basis denies them.
14. Asserts a legal conclusion to which no response is required, but to the extent a response is required for any remaining non-legal allegations, Applicant is without sufficient information to admit or deny the remaining allegations of Paragraph 14 and on that basis denies them.
15. Asserts a legal conclusion to which no response is required, but to the extent a response is required for any remaining non-legal allegations, Applicant is without sufficient information to admit or deny the remaining allegations of Paragraph 15 and on that basis denies them.
16. The registration and application speak for themselves, and Applicant is otherwise without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 16 and on that basis denies them.
17. Asserts a legal conclusion to which no response is required, but to the extent a response is required for any remaining non-legal allegations, Applicant is without sufficient information to admit or deny the remaining allegations of Paragraph 17 and on that basis denies them.
18. Asserts a legal conclusion to which no response is required, but to the extent a response is required for any remaining non-legal allegations, Applicant is without sufficient information to admit or deny the remaining allegations of Paragraph 18 and on that basis denies them.
19. Asserts a legal conclusion to which no response is required, but to the extent a response is required for any remaining non-legal allegations, Applicant is without sufficient information to admit or deny the remaining allegations of Paragraph 19 and on that basis denies them.

20. The registration and application speak for themselves, and Applicant is otherwise without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 20 and on that basis denies them.
21. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 21 and on that basis denies them.
22. Asserts a legal conclusion to which no response is required, but to the extent a response is required for any remaining non-legal allegations, Applicant is without sufficient information to admit or deny the remaining allegations of Paragraph 22 and on that basis denies them.
23. Denies.
24. Denies.
25. Denies.
26. Applicant admits its mark contains the letters "LAIR" but denies the remaining allegations of Paragraph 26.
27. Denies.
28. Denies.
29. Opposer's defines "Opposers' Goods" and "Applicant's Goods elsewhere in the Notice of Opposition. To the extent the descriptions of "Opposers' Goods" and "Applicant's Goods" in Paragraph 29 are intended to refer to something other than the defined terms, Applicant admits that the goods identified in its application and its intended goods are "medical devices for treating obstructive lung diseases; medical apparatus and instruments for treating obstructive lung diseases," but is without sufficient information to admit or deny the remaining allegations of Paragraph 29 and on that basis denies them.
30. Denies.

31. Asserts a legal conclusion to which no response is required, but to the extent a response is required for any remaining non-legal allegations, Applicant is without sufficient information to admit or deny the remaining allegations of Paragraph 31 and on that basis denies them.
32. Denies.
33. Applicant admits that its goods are intended for use in treating obstructive lung diseases, but is without sufficient information to admit or deny the remaining allegations of Paragraph 33 and on that basis denies them.
34. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 34 and on that basis denies them.
35. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 35 and on that basis denies them.
36. Applicant admits that its proposed goods, when available, may make use of a catheter, but denies any remaining allegations of Paragraph 36, and specifically denies that its proposed goods are similar or related to any goods offered by Opposers under the ALAIR mark.
37. Denies.
38. Denies.
39. Applicant states its proposed goods, when available, may contain an electrode, but denies any remaining allegations of Paragraph 39, and specifically denies that its proposed goods are similar or related to any goods offered by Opposers under the ALAIR mark.
40. Denies.
41. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 41 and on that basis denies them.
42. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 42 and on that basis denies them.

43. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 43 and on that basis denies them.
44. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 44 and on that basis denies them.
45. Asserts a legal conclusion to which no response is required, but to the extent a response is required for any remaining non-legal allegations, Applicant is without sufficient information to admit or deny the remaining allegations of Paragraph 45 and on that basis denies them.
46. Asserts a legal conclusion to which no response is required, but to the extent a response is required for any remaining non-legal allegations, Applicant is without sufficient information to admit or deny the remaining allegations of Paragraph 46 and on that basis denies them.
47. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 47 and on that basis denies them.
48. Opposers' registrations speak for themselves and Applicant is otherwise without knowledge or information sufficient to form a belief as to the truth of any remaining allegations of Paragraph 48 and on that basis denies them.
49. The application speaks for itself and Applicant is otherwise without knowledge or information sufficient to form a belief as to the truth of any remaining allegations of Paragraph 49 and on that basis denies them.
50. Denies.
51. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 51 and on that basis denies them.
52. Denies.
53. Denies.
54. Denies.

55. Denies.

56. Denies.

AFFIRMATIVE DEFENSES

1. Opposers' Notice of Opposition, in whole or in part, fails to state a claim upon which relief can be granted.

2. Opposers have failed to state a valid claim of likelihood of confusion.

3. Opposers have failed to state a valid claim of confusion as to affiliation, source, sponsorship, endorsement, approval, connection or association.

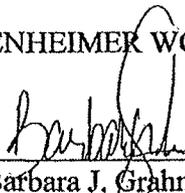
Applicant reserves the right to assert any and all other affirmative defenses of which it becomes aware during the pendency of this matter.

WHEREFORE, Applicant respectfully requests that the Notice of Opposition be dismissed with prejudice and on the merits, and that Applicant's application be allowed.

Respectfully submitted,

OPPENHEIMER WOLFF & DONNELLY LLP

By



Barbara J. Grahn
Oppenheimer Wolff & Donnelly
222 South Ninth Street, Suite 2200
Minneapolis, Minnesota 55402
Telephone: (612) 607-7000

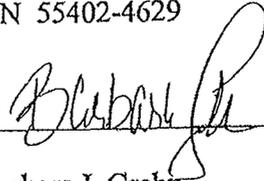
Dated: May 10, 2014

ATTORNEYS FOR APPLICANT

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of May, 2014, I served a true and correct copy of the foregoing Answer to Notice of Opposition on counsel of record by depositing a true and correct copy thereof in the United States mail in a sealed envelope with postage thereon fully prepaid, addressed as follows:

Timothy D. Sitzmann, Esq.
Winthrop & Weinstine
Capella Tower, Suite 3500
225 South Sixth Street
Minneapolis, MN 55402-4629



Barbara J. Grahm

ANSWER: Holaira objects to this Interrogatory as vague, ambiguous, and overly broad as to the terms "involved in," "selection," "clearance," and "adoption. Subject to and without waiving the foregoing general and specific objections, the following individuals played a role in selecting Applicant's mark: Lorraine Wright, Holaira Marketing Consultant; Dennis Wahr, Holaira Chief Executive Officer; Dr. Martin Mayse, Holaira Chief Technology Officer; Steve Dimmer, Former Holaira Chief Executive Officer; Mark Laverman, Six Degrees Branding; Frank Schab, Six Degrees Branding; Scott Grant, Holaira Vice President International Development.

INTERROGATORY NO. 2: Describe the pronunciation of Applicant's Mark.

ANSWER: Holaira is a combination of holo (prefix: whole, total, complete) and air, suggesting breath/breathing. Accordingly, Holaira is pronounced as "whole-air-ah."

INTERROGATORY NO. 3: Describe your process for selecting Applicant's Mark including, but not limited to, any alternative marks that were considered.

ANSWER: Holaira objects to this Interrogatory as vague, ambiguous, and unduly burdensome. Holaira also objects to this Interrogatory to the extent it seeks information or documents protected from disclosure by the Attorney-Client Privilege or Work-Product Doctrine. Subject to and without waiving the foregoing general and specific objections, Holaira engaged Six Degrees Branding to assist in rebranding the company. The process included a meeting wherein the participants brainstormed a number of different name options. The options were further analyzed and critiqued, including analysis of trademark issues. Pursuant to Federal Rule of Civil Procedure 33(d), Holaira will produce non-privileged documents that reflect Holaira's process for selecting Applicant's Mark and alternatives considered.

INTERROGATORY NO. 4: Describe your process for clearing Applicant's Mark including, but not limited to, whether Opposers' Mark was revealed in any search.

ANSWER: Holaira objects to this Interrogatory as vague, ambiguous, and unduly burdensome. Holaira also objects to this Interrogatory to the extent it seeks information or documents protected from disclosure by the Attorney-Client Privilege or Work-Product Doctrine. Subject to and without waiving the foregoing general and specific objections, Holaira's counsel performed trademark searches, analyzed those searches, and communicated findings to Holaira. Pursuant to Federal Rule of Civil Procedure 33(d), Holaira will produce non-privileged documents reflecting the searches performed.

INTERROGATORY NO. 5: If Opposers' Mark was revealed in any clearance search, what was your basis for concluding that the Applicant's Mark was sufficiently dissimilar to Opposers' Mark.

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

In the matter of Application Serial No.: 85/806,379
Filed: December 19, 2012
For the mark: HOLAIRA
Published in the *Trademark Official Gazette* on December 3, 2013

Boston Scientific Corporation and
Asthmatx, Inc.

Opposers,

v.

Opposition No. 91215699

Holaira, Inc.

Applicant.

**OPPOSERS' ANSWERS TO HOLAIRA, INC.'S
FIRST SET INTERROGATORIES**

TO: Applicant Holaira, Inc. and its attorneys Oppenheimer Wolff & Donnelly LLP, Barbara J. Grahn, Esq. and Dennis E. Hansen, Esq., Campbell Mithun Tower, 222 South Ninth Street, Suite 2000, Minneapolis, Minnesota 55402-3338.

Boston Scientific Corporation and Asthmatx, Inc. ("Opposers") hereby answer and object to Holaira, Inc.'s ("Applicant") First Set of Interrogatories ("Interrogatories"), as follows:

GENERAL OBJECTIONS

1. Opposers object generally to Applicant's Interrogatories and to the definitions contained therein to the extent they seek information protected from disclosure by the attorney-client privilege and the work product doctrine.

2. Opposers object generally to Applicant's Interrogatories and to the definitions contained therein to the extent that they purport to call for information or documents not in the possession, custody, or control of Opposers.

3. Opposers object generally to Applicant's Interrogatories and to the definitions contained therein to the extent they seek information beyond that required by the Federal Rules of Civil Procedure or other applicable rules.

4. Opposers object generally to Applicant's Interrogatories to the extent they seek information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

5. Opposers object generally to Applicant's Interrogatories to the extent they seek information already in Applicant's knowledge, possession, custody, or control.

6. Opposers object generally to Applicant's Interrogatories to the extent they purport to require Opposers to locate or identify information that is not within its possession, custody, or control.

7. Opposers object generally to Applicant's Interrogatories to the extent they seek to discover Opposers' confidential, proprietary, and/or trade secret information.

8. The foregoing General Objections are applicable to and included in Opposers' objections to each and every one of Applicant'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.

ANSWERS TO INTERROGATORIES

INTERROGATORY NO 1: Identify each Person who has knowledge of the facts or claims alleged in the Notice of Opposition, and for each person identified, describe the facts or knowledge he or she possesses.

ANSWER: Opposers object to this Interrogatory on the ground that the reference to "knowledge of the facts or claims alleged in the Notice of Opposition" is vague.

INTERROGATORY NO 2: Identify the Person or Persons with primary responsibility and knowledge regarding the marketing, advertising, and packaging of Opposers' Products and Services.

ANSWER: Karen Passafaro and Beran Rose have primary responsibility and knowledge regarding marketing, advertising, and packaging of Opposers' Products and Services.

INTERROGATORY NO 3: Identify the Person or Persons with primary responsibility and knowledge regarding the policing and enforcement of Opposers' Mark.

ANSWER: Cathleen Dyer, Kurt Lockwood, and Michelle Anderson.

INTERROGATORY NO 4: Describe the pronunciation of Opposers' Mark.

ANSWER: Opposers' Mark has been pronounced as "uh-lair," "all-air," and "ah-lair."

INTERROGATORY NO 5: Identify the dates on which Opposers first began advertising and selling Opposers' Products and Services in the United States.

ANSWER: Opposers object to this Interrogatory on the grounds that it is irrelevant and seeks information that is unlikely to lead to the discovery of admissible evidence. In Applicant's Responses to Opposers' First Set of Requests for Admissions, Applicant admitted that it has not used Applicant's Mark in commerce prior to December 19, 2012. Additionally, Opposers' Registration Nos. 2856168 and 3380080 are of record and were registered, respectively, on June 22, 2004 and February 12, 2008.

INTERROGATORY NO 6: Identify when and under what circumstances Opposers became aware of any third parties, besides Holaira, selling product(s) for treating the pulmonary system or pulmonary conditions or illnesses utilizing a mark that incorporates the letters a, i, [sic] and r in sequential order ("air"), by stating:

- (a) the identity of the third party using the mark;
- (b) when Opposers became aware of the use of the third party's use of the mark;
- (c) whether Opposers objected to the use of such third party mark, and if so, the form of such objection; and
- (d) the outcome of any dispute over such third party mark.

ANSWER: Opposers object to this Interrogatory on the ground that the reference to "illnesses" is overly broad and it seeks information that is irrelevant and unlikely to lead to the

discovery of admissible evidence. Without waiving these objections, Opposers answer as follows:

- 1a. Reckitt Benckiser LLC and an Intent-to-Use application for the mark ALLAIRE.
 - 1b. Opposers are still investigating this subpart and will supplement when responsive information is discovered.
 - 1c. Yes, Opposers filed a Notice of Opposition.
 - 1d. Reckitt Benckiser LLC abandoned the application with prejudice.
-
- 2a. Glaxo Group Limited's use of ADVAIR.
 - 2b. Opposers are still investigating this subpart and will supplement when responsive information is discovered.
 - 2c. No.
 - 2d. Not applicable, see above answer to 2c.
-
- 3a. Merck & Co.'s use of SINGULAIR
 - 3b. Opposers are still investigating this subpart and will supplement when responsive information is discovered.
 - 3c. No.
 - 3d. Not applicable, see above answer to 3c.
-
- 4a. Riker Laboratories, Inc.'s use of MAXAIR.
 - 4b. Opposers are still investigating this subpart and will supplement when responsive information is discovered.
 - 4c. No.
 - 4d. Not applicable, see above answer to 4c.
-
- 5a. Novartis AG's use of XOLAIR.
 - 5b. Opposers are still investigating this subpart and will supplement when responsive information is discovered.
 - 5c. No.

5d. Not applicable, see above answer to 5c.

INTERROGATORY NO 7: Identify and Describe in detail all efforts that Opposers have made to enforce the Opposers' rights in Opposers' Marks against third parties, other than Holaira.

ANSWER: The burden of deriving or ascertaining the answer to this Interrogatory is substantially the same for Applicant as it is for Opposers. Therefore, pursuant to F.R.C.P. 33(d), Opposers have produced documents bates numbered: _____ .

INTERROGATORY NO 8: Identify each instance you are aware of in which a person has been confused, deceived, or mistaken about, or suggested to made [sic] any inquiry about, a connection, association, affiliation, endorsement, sponsorship, or relationship of any kind between Holaira or Holaira's Products on the one hand, and Opposers or Opposers' Products and Services on the other, by stating for each instance: (1) the date of such instance and identity of the person or entity inquiring about association or confusion; (b) Opposers' employee or agent to whom the inquiry was received or reported; and (c) the nature of the inquiry.

ANSWER: Opposers object to this Interrogatory on the ground that it seeks information that is irrelevant and unlikely to lead to the discovery of admissible evidence. Applicant's Mark was filed on an intent-to-use basis and Applicant's Answer to Interrogatory No. 7 confirms that Applicant has not used Applicant's Mark in connection with Applicant's Goods in the United States.

INTERROGATORY NO 9: Describe the typical purchasing process for persons or individuals purchasing Opposers' Products and Services, including, without limitation, identifying the purchasing Person and all Persons involved in the purchasing decision and describing each Person's respective role.

ANSWER: Opposers object to this Interrogatory on the ground that the reference to "typical purchasing process" is vague. Without waiving this objection, there are a number of Persons that play a role in the purchasing process. Potential patients, physicians, hospitals, clinics, and related health care entities learn of Opposers' Products and Services through Opposers' marketing and advertising or through word of mouth. Patients may visit Opposers'

website or contact their physician or doctor to discuss Opposers' Products and Services. Doctors who learn of Opposers' Products and Services through Opposers' marketing and advertising or through word of mouth may contact Opposers for additional information, or may request the ALAIR® treatment from their hospital, clinic or health care entity. As a result of Opposers' marketing and advertising, or through word of mouth, patient request, or a doctor or physician request, a hospital, clinic, or health care entity may choose to purchase Opposers' Products and Services. Opposers may make initial contact with a hospital, clinic, or health care entity or the hospital, clinic, or health care entity may contact Opposers to obtain additional information. If the hospital, clinic, or health care entity chooses to purchase Opposers' Products and Services, Opposers sell the Products and Services to the hospital, clinic, or health care entity. Each individual patient makes the ultimate decision as to whether to pursue the treatment offered in connection with Opposers' Products and Services.

INTERROGATORY NO 10: Describe Opposers' marketing efforts related to Opposers' Products and Services, including, without limitation, an identification of the types of individuals and entities targeted by Opposers' marketing efforts and a description of the specific marketing efforts undertaken.

ANSWER: Opposers' marketing and advertising efforts target a wide variety of individuals and entities, including patients, hospitals, clinics, doctors, physicians, and other health care professionals and entities. Opposers utilize direct mail, email marketing, internet marketing, websites, website surveys, patient events, patient programs, question and answer sessions, trade shows, presentations, patient interviews, advertising in medical, trade, scientific, and clinical journals, press releases, promotion through traditional print and broadcast media, and other in-person events targeted toward patients, physicians, doctors, and health care entities. Opposers have also created DVDs, brochures, and other informational material that are available at Opposers' websites, from doctors, from hospitals, clinics, health care entities, and at in-person

programs, presentations, and similar events. Opposers market and advertise Opposers' Products and Services in connection with both the ALAIR® mark and Opposers' BRONCHIAL THERMOPLASTY® mark in a manner that creates a direct association between the both marks and Opposers' Products and Services in the minds of patients, doctors, physicians, and health care entities.

INTERROGATORY NO 11: Identify each Person who provided information for the answers to these interrogatories, and for each Person identified, identify the information provided.

ANSWER: Kurt Lockwood, Cathleen Dyer, and Karen Passafaro with the assistance of counsel.

INTERROGATORY NO 12: Identify the Person(s) most knowledgeable about any market research, investigations, reports, surveys, or studies relating or referring to Opposers' Mark.

ANSWER: Opposers object to this Interrogatory on the ground that it is cumulative of Interrogatory No. 2.

INTERROGATORY NO 13: With respect to Opposers' Mark, state:

- (a) the Identity of the Person(s) responsible for Opposers' conception, selection, and adoption of Opposers' Mark;
- (b) the reason(s) for selecting and adopting the mark; and
- (c) whether Opposers conducted a trademark search relating to such mark and, if so, Identify the Person(s) who conducted the search.

ANSWER: Opposers object to this Interrogatory on the ground that subsection (a) with respect to the identity of Persons are cumulative of Interrogatory No. 2. Without waiving Opposers' objections to this Interrogatory, Opposers answer with respect to (b) that the mark was selected because it connotes the phrase "all air" which suggests that Opposers' Products and Services make it easier to breathe; and with respect to (c), pursuant to F.R.C.P. 33(d), Opposers have produced documents bates numbered _____.

INTERROGATORY NO 14: Describe in detail what the Opposers believe are the differences between Opposers' Mark and Holaira's Mark.

ANSWER: The differences between Opposers' Mark and Holaira's Mark are minimal. Visually, Holaira's Mark incorporates the entirety of Opposers' ALAIR mark, but transposes the initial A- to the end of Holaira's Mark. The Holaira Mark adds an H and an O to Opposers' Mark. Phonetically, the Holaira Mark sounds like "uh-lair-uh," making the only phonetic difference between Opposers' Mark and Holaira's Mark is the addition of the terminal 'uh' sound.

INTERROGATORY NO 15: Describe in detail the sales and distribution process for Opposers' Products and Services.

ANSWER: Opposers object to this Interrogatory on the ground that it is cumulative of Interrogatory No. 9.

INTERROGATORY NO 16: Identify the price charged to customers for each of Opposers' Products and Services.

ANSWER: See Opposers' Confidential Answers to Interrogatories.

INTERROGATORY NO 17: Identify and describe the advertising channels and sales channels used by Opposers for Opposers' Products and Services.

ANSWER: Opposers object to this Interrogatory on the ground that it is cumulative of Interrogatory No. 10.

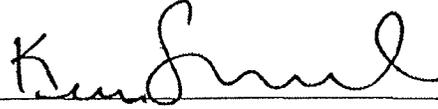
INTERROGATORY NO 18: Identify each witness You expect will testify during Your testimony period, and for each witness identified, Describe the facts regarding which You anticipate the witness will testify and, with respect to expert witnesses, the opinion each witness will present and the basis for the opinion.

ANSWER: Opposers object to this Interrogatory with respect to expert witnesses on the ground that it is premature. Opposers will disclose any expert it intends to rely on pursuant to the Board's Institution Order. Without waiving these objections, Opposers have not identified the witnesses they expect will testify.

AS TO ANSWERS:

Dated: Sept. 10, 2014

BOSTON SCIENTIFIC CORPORATION



By: Kurt W. Lockwood

Its: Assistant Secretary

ASTHMATX, INC.

Dated: Sept. 10, 2014



By: Vance R. Brown

Its: Director

AS TO OBJECTIONS:

Dated: _____, 2014

WINTHROP & WEINSTINE, P.A.

Stephen R. Baird
Bradley J. Walz
Timothy D. Sitzmann

3500 Capella Tower
225 South Sixth Street
Minneapolis, MN 55402
(612) 604-6400 (Telephone)
(612) 604-6800 (Facsimile)
*Attorneys for Opposers Boston Scientific
Corporation and Asthmatx, Inc.*

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

In the matter of Application Serial No.: 85/806,379
Filed: December 19, 2012
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Boston Scientific Corporation and
Asthmatx, Inc.

Opposers,

v.

Opposition No. 91215699

Holaira, Inc.

Applicant.

CERTIFICATE OF SERVICE BY HAND DELIVERY

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Wayne W. Marshall, of the City of Minneapolis, County of Hennepin, in the State of Minnesota, says that on the 7th day of November, 2014, he personally served by hand delivery, a true and correct copy of Opposers':

1. Expert Disclosure of Geoffrey Nunberg, Ph.D; and
2. Expert Report of Geoffrey Nunberg, Ph.D.

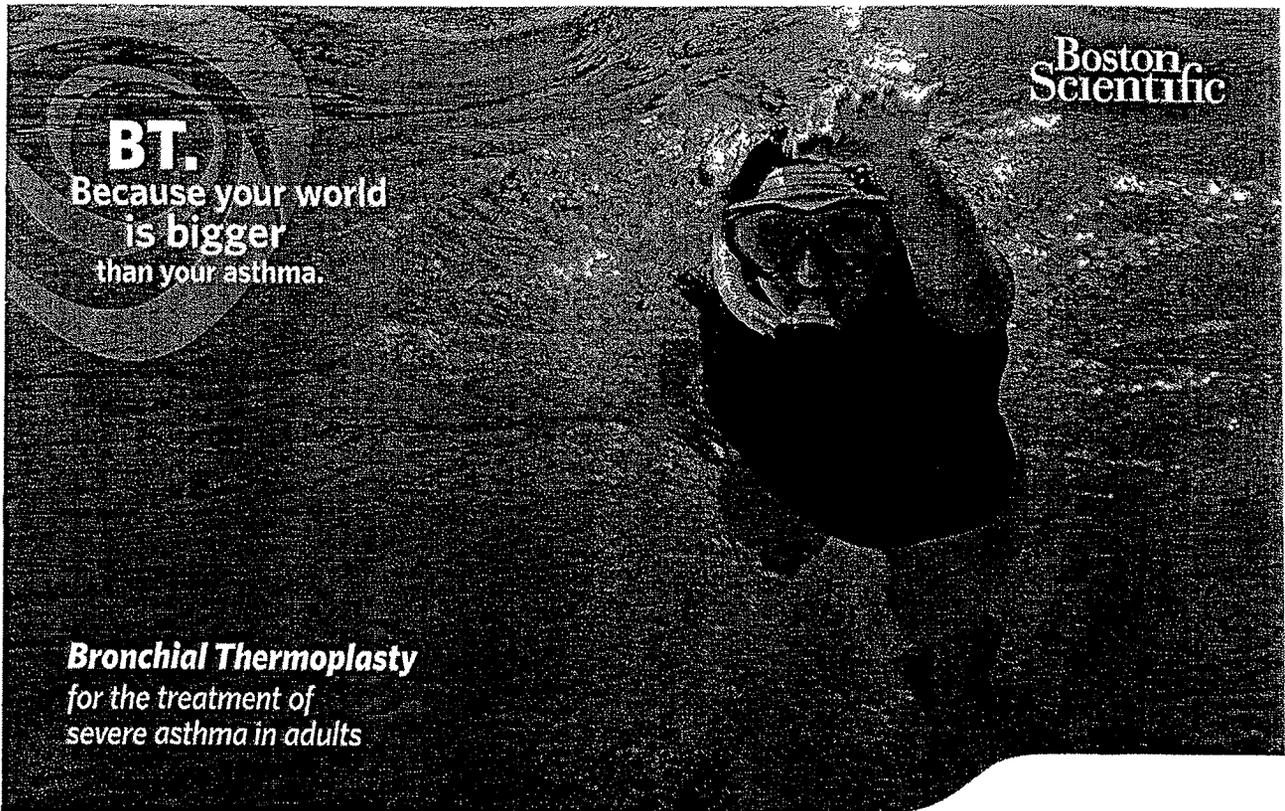
in the above-captioned action to the following last known address of record for Applicant, to-wit:

Barbara J. Grahn
Dennis E. Hansen
OPPENHEIMER WOLFF & DONNELLY LLP
200 Campbell Mithun Tower
222 South Ninth Street
Minneapolis, MN 55402-3338



Wayne W. Marshall

Exhibit 62



Are you ready for a fuller life with
fewer asthma attacks?

Perhaps it's time to look
beyond medication alone.

 **Bronchial
Thermoplasty**

It's not a medication— it's revolutionary relief for severe asthma

Are you

- taking multiple asthma medications but still having asthma attacks?
- adjusting your lifestyle to avoid asthma triggers?
- missing work, school, or daily activities because of asthma?

If the answer is yes, you might be a candidate for Bronchial Thermoplasty (BT) delivered by the Alair™ System. It's a safe outpatient procedure that provides a long-lasting reduction in asthma attacks for people with severe asthma.¹ Fewer asthma attacks means less need for the associated oral steroid treatment and its side effects.

BT is clinically proven to work. In a clinical study, patients with severe asthma who were treated with BT experienced:

32% decrease in severe asthma attacks²

84% reduction in asthma-related emergency room visits²

66% fewer days lost from work, school, and daily activities due to asthma²

Additionally:

79% of patients who were treated with BT reported a significant improvement in their asthma-related quality of life²

Reductions in asthma attacks, emergency room visits, and hospitalizations were shown to extend through a 2-year follow-up period.¹

BT, delivered by the Alair System, is a safe outpatient procedure

- As with any procedure, there are risks, and individual results may vary.
- The most common side effect of BT is a temporary worsening of respiratory-related symptoms. These events typically occur within one day of the BT procedure and usually resolve within a week with proper care.
- There is a small risk (3.4% per procedure) that symptoms may require hospitalization.

BT is indicated for the treatment of severe asthma in people 18 years and older whose asthma is not well controlled with inhaled corticosteroids and long-acting beta-agonists.

How BT is performed

- During the procedure a tiny, carefully controlled device delivers mild heat to the smooth muscle of the airways in your lungs.
- No incision is needed, because the procedure is performed with a bronchoscope inserted through the nose or mouth.
- When your BT treatment is complete, you will return to your regular asthma-treating doctor to continue managing your asthma.

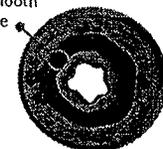
BT reduces asthma attacks by reducing airway smooth-muscle tissue

- People who have asthma have more airway smooth-muscle tissue surrounding their airways than people who don't have asthma.³⁻⁵
- During an asthma attack, this excess tissue constricts the airways, making it harder to breathe.⁴
- Asthma medicines help open up the airways, but these medicines don't always work well in people who have severe asthma.⁴
- BT is an add-on therapy that supplements your current asthma medications.

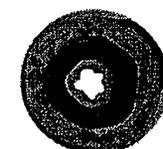
Airway cross sections



Normal patient



Patient with asthma



Patient with asthma attack

Treatment with BT actually reduces the amount of excess smooth-muscle tissue in the airways. With less of this tissue, the airways constrict less, reducing asthma attacks and making breathing easier.²

NOW AVAILABLE from Boston Scientific
for the treatment of severe asthma in adults



Is asthma limiting your life?

You may be a candidate for Bronchial Thermoplasty (BT).

Take a short quiz, hear patient stories, and find a
BT Clinic near you by visiting **BTforAsthma.com**.

Brief Statement of Relevant Indications for Use, Contraindications, Warnings, and Adverse Events: The Alair™ Bronchial Thermoplasty System is indicated for the treatment of severe persistent asthma in patients 18 years and older whose asthma is not well controlled with inhaled corticosteroids and long-acting beta-agonists. The Alair System is not for use in patients with an active implantable electronic device or known sensitivity to medications used in bronchoscopy. Previously treated airways of the lung should not be treated with the Alair System. Patients should be stable and suitable to undergo bronchoscopy. The most common side effect of BT is an expected transient increase in the frequency and worsening of respiratory-related symptoms. Rx only.

CAUTION: Law restricts this device to sale by or on the order of a physician. Indications, contraindications, precautions, and warnings can be found with product labeling.

References: 1. Castro M, et al. *Ann Allergy Asthma Immunol.* 2011;107:65-70. 2. Castro M, et al, for the AIR2 Trial Study Group. *Am J Respir Crit Care Med.* 2010;181:116-124. 3. Woodruff PG, et al. *Am J Respir Crit Care Med.* 2004;169:1001-1006. 4. Cox PG, et al. *Eur Respir J.* 2004;24:659-663. 5. Wexler ME. *Allergy Asthma Proc.* 2008;29:1-6.

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What is Bronchial Thermoplasty?

Bronchial Thermoplasty (BT) is a safe outpatient bronchoscopy procedure that uses mild heat to reduce excessive smooth muscle in the airways, which helps reduce severe asthma attacks.

How does BT work?

People with severe asthma have an excess of smooth muscle tissue lining their airways. During an asthma attack, this muscle constricts the airways, making breathing difficult. BT reduces the amount of excess muscle and helps minimize the narrowing of your airways during an asthma attack.

What are the benefits and risks of BT?

In a clinical trial, almost 79% of patients treated with BT reported significant improvements in their asthma-related quality of life—including a reduction in asthma attacks, ER visits and hospitalizations for respiratory symptoms, and fewer days lost from work, school, and other daily activities due to asthma. As with any procedure, there are risks, and individual results may vary. The most common side effect of BT is temporary worsening of respiratory-related symptoms (within 1 to 7 days). There is a small risk (3.4%) of these symptoms requiring hospitalization.

Am I a candidate for BT?

BT delivered by the Alair™ System is approved by the FDA for the treatment of severe asthma in patients 18 years and older whose asthma is not well controlled with inhaled corticosteroids and long-acting beta-agonists such as Advair™, Symbicort™, and Dulera™. Further evaluation with your physician or a physician trained in BT will help determine whether you are a candidate who may benefit from this procedure.

What will happen during the procedure?

To ensure safety and optimal results every step of the way, BT is typically performed under moderate sedation in three separate sessions scheduled three weeks apart. Each session lasts about an hour and focuses on a different part of the lung to ensure all of the affected areas are treated. The device is introduced into your airways through a bronchoscope that is inserted into your mouth or nose, so no incision is required. After the procedure, you will be monitored for 2 to 4 hours and discharged on the same day. The treating physician will provide you with more details on what to expect during and after the procedure.

Who performs BT?

BT is performed at an outpatient hospital facility by a pulmonologist who is specially trained to perform bronchoscopy procedures and BT. To find a BT Clinic and treating physician near you, visit: www.BTforAsthma.com/physician-locator.

Will I be able to stop taking my asthma medications?

BT does not replace your current daily maintenance medication, but instead works with it to provide long-term stability in your asthma symptoms and lessen severe asthma attacks requiring oral steroids (prednisone).

Is BT covered by insurance?

Coverage policies and payment vary by payer. Your BT physician/staff will work with you to request coverage of your BT procedure.

How can I learn more about BT?

To learn more about BT, and to find a BT Clinic and treating physician near you, visit www.BTforAsthma.com.

Brief Statement of Relevant Indications for Use, Contraindications, Warnings, and Adverse Events: The Alair™ Bronchial Thermoplasty System is indicated for the treatment of severe persistent asthma in patients 18 years and older whose asthma is not well controlled with inhaled corticosteroids and long-acting beta-agonists. The Alair System is not for use in patients with an active implantable electronic device or known sensitivity to medications used in bronchoscopy. Previously treated airways of the lung should not be retreated with the Alair System. Patients should be stable and suitable to undergo bronchoscopy. The most common side effect of BT is an expected transient increase in the frequency and worsening of respiratory-related symptoms. Rx Only.

CAUTION: Law restricts this device to sale by or on the order of a physician. Indications, contraindications, precautions, and warnings can be found with product labeling.



BT Clinic Activation • Patient Education

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Exhibit 63

Severe Asthma Control 365 Days a Year.

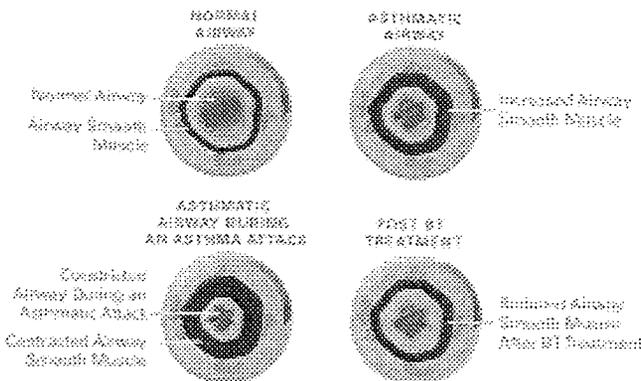
 Now FDA Approved

BRONCHIAL THERMOPLASTY (BT) DELIVERED BY THE ALAIR® SYSTEM IS A BRONCHOSCOPIC PROCEDURE FOR LONG LASTING CONTROL OF SEVERE ASTHMA 365 DAYS A YEAR.

HOW DOES IT WORK?

BT is a bronchoscopy based procedure that uses radiofrequency (RF) energy (or heat) to reduce the amount of excess airway smooth muscle (ASM) present in the airways and limit its ability to contract and narrow the airway. A complete BT treatment is performed in three outpatient procedural visits, each scheduled approximately three weeks apart.

AIRWAY CROSS SECTIONS



WHO IS APPROPRIATE FOR BT?

- BT is a new procedure indicated for the treatment of severe persistent asthma in patients 18 years and older whose asthma is not well controlled with inhaled corticosteroids and long acting beta agonists
- BT should only be performed in patients safely able to undergo bronchoscopy

THE ALAIR SYSTEM

Alair Catheter

A single-use device designed to be delivered through the working channel of a standard bronchoscope

- Expandable electrode array with four 6 mm electrodes that deliver RF energy to airways 2-3 mm in diameter and extend to main stem bronchi
- Requires a 2.0 mm working channel diameter bronchoscope

Alair Radiofrequency Controller

Designed with proprietary control parameters and algorithms to deliver the correct intensity and duration of thermal energy sufficient to reduce excess ASM, while limiting long term impact to surrounding tissue.

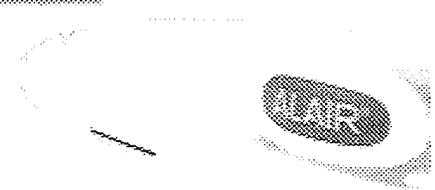
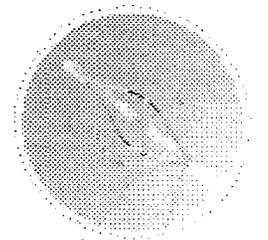
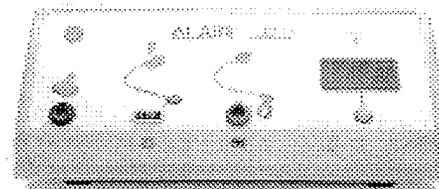


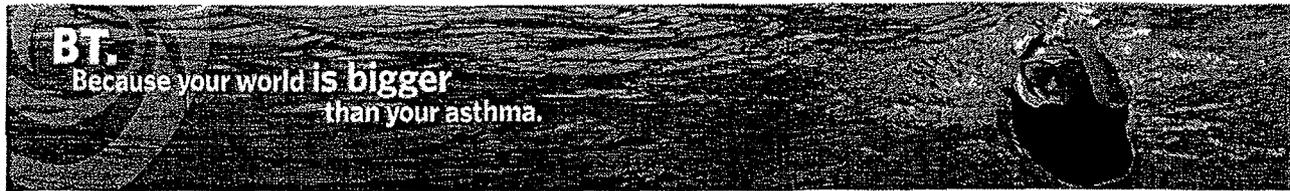
Exhibit 64



BRONCHIAL THERMOABLATION REAL PEOPLE, REAL RESULTS ARE YOU A BT CANDIDATE?

UNITED STATES

FIND A BT CLINIC Zip Code



Overview for Physicians

Performing BT

The Alair™ System

Clinical Studies

AIR2 Trial

RISA Trial

Bibliography

Home > Healthcare Professionals > The Alair™ System

The Alair™ System

Bronchial Thermoablation (BT) delivered by the Alair System comprises 2 primary components, the Alair Catheter and the Alair Radiofrequency (RF) Controller.

Alair Catheter

The sterile, single-use, disposable device is designed with a proprietary set of control parameters and algorithms to deliver therapeutic RF energy to the airways via a standard bronchoscope.

The Alair Catheter consists of:

Catheter Shaft: The catheter shaft which is inserted through the working channel of a bronchoscope

Catheter Handle: A handle that is used to control the deployment of the electrode array

Proximal Catheter Shaft Mark: Notifies user when the catheter is about to exit the distal end of the bronchoscope

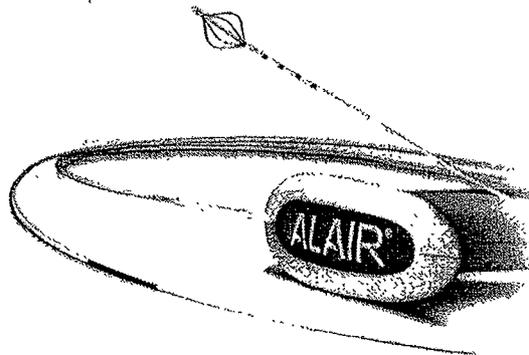
Catheter Electrical Cable: An electrical cable that connects to the Alair RF Controller

Electrode Array: An electrode array at the distal tip of the catheter consisting of 4 electrodes evenly spaced circumferentially

5 mm Electrodes: Exposed portions of the array that delivers RF energy

5 mm Catheter Shaft Marks: Measurement marks to assist in providing contiguous (adjacent but not overlapping) activations of the electrodes

1.5 mm Atraumatic Distal Tip: Used to measure airway size for treatment



The electrode array has four stainless steel wire legs. Each leg is insulated, leaving a 5 mm long exposed area at the center of the leg that is the active electrode, or energy-delivering region. Visual contrast between the insulation and the exposed active electrode provides visual feedback to the user during bronchoscopy.

Alair Radiofrequency (RF) Controller

The Alair RF Controller provides temperature-controlled delivery of RF energy to the Alair Catheter. RF technology has a long history of safe use for medical purposes.

The Alair RF Controller is designed with a proprietary set of control parameters and algorithms to deliver the correct intensity and duration of thermal energy sufficient to reduce the mass of airway smooth muscle tissue, while limiting long-term impact to surrounding tissues.

The Alair RF Controller:

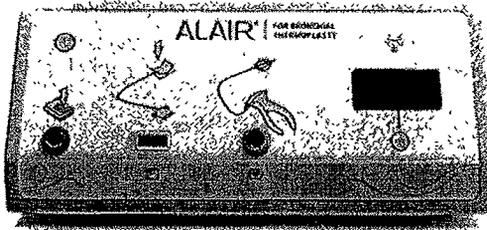
- Is reusable and provided non-sterile

- Delivers low-power (18 watts maximum), temperature-controlled RF energy to the airway at a treatment temperature setting of 65°C for duration of 10 seconds

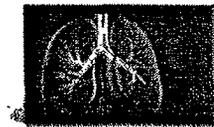
- Automatically limits the energy delivered in any activation to a maximum of 120 joules

- Includes safety algorithms that automatically shut off the RF Controller output in the event that atypical energy delivery is detected

- Incorporates hardware and software that limit current, voltage, power and temperature at any time during an activation, as well as the total energy administered during each activation



Numerous safety features have been incorporated into the design of the Alair RF Controller and Alair Catheter to minimize the chance of unintended over-treatment. These features have been developed and tested through extensive pre-clinical studies.



See how BT works

View an animation of the BT procedure in: [English](#), [Français](#), [Deutsch](#), [Italiano](#), or [Español](#).

[Find out why physicians are excited about bringing BT to patients with severe asthma.](#)

Exhibit 65

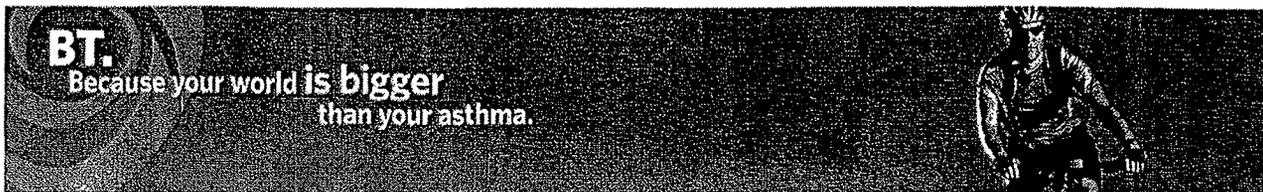


NEW 5 YEAR DATA For Health Care Professionals

UNITED STATES

BRONCHIAL THERMOPLASTY REAL PEOPLE, REAL RESULTS ARE YOU A BT CANDIDATE?

FIND A BT CLINIC Zip Code



Take the Asthma Impact Survey

Are you a BT candidate?

About asthma

Current treatment options



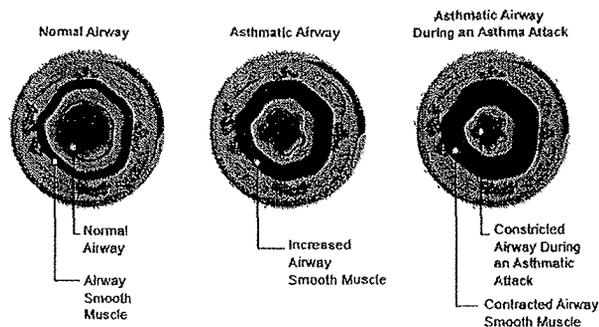
Ready for a life less defined by asthma? Get the support and information you need!

START HERE

By submitting, I agree to receive occasional, relevant information about BT

Home > Are you a BT candidate? > About asthma

About asthma



Asthma can be unpredictable and can limit many aspects of your life from physical activity to work, school, and time spent with friends and family. Some 25 million Americans have asthma, and 5%-10% of these patients are diagnosed with severe asthma.

Severe asthma can have a dramatic impact on a person's quality of life:

In 2008, affected adults missed an average of 5 days of work due to asthma.¹

On average, a person will spend 4 days in the hospital each time they are admitted for asthma treatment.²

Patients who are severely affected by asthma are 4 times as likely to experience negative outcomes, such as emergency room visits and use of oral steroids.³

Severe asthma is identified as symptoms that are not well controlled despite the combined use of inhaled corticosteroids and long-acting beta-agonists such as Advair[®], Dulera[®], or Symbicort[®].

Patients with severe asthma experience frequent symptoms such as coughing, wheezing, shortness of breath, chest tightness, mucus production, and exacerbations (asthma attacks) caused by a narrowing of the lungs' airways.⁴

What happens when airways are narrowed?

The muscle that circles the airways is called airway smooth muscle. This muscle tissue is thicker in people who have asthma.^{4,5}

Contraction of this excess airway smooth muscle, swelling or inflammation of the airways, and excess mucus can cause airways to become narrower.⁴

Narrowed airways cause shortness of breath, chest tightness, wheezing, and coughing.⁴

How does Bronchial Thermoplasty (BT) help?

BT, delivered by the Alair[®] System, is an outpatient procedure that uses mild heat to safely reduce the amount of excess smooth-muscle tissue in the airways. This limits the ability of airways to contract or narrow.

In a clinical trial, patients treated with BT had fewer asthma attacks and asthma-related emergency room visits, and experienced a significant improvement in asthma-related quality of life.⁶

Patients treated with BT continue to take their daily maintenance asthma medication to control airway inflammation

References:

1. Asthma in the US, Centers for Disease Control and Prevention. <http://www.cdc.gov/vitalsigns/asthma/>. 2012.
2. National hospital discharge survey, Centers for Disease Control 2009.
3. Schatz M, et al. *J Allergy Clin Immunol.* 2011;128;1:44-49.e1.
4. Cox P, et al. *Eur Respir J* 2004;24:659-663.
5. Woodruff P, et al. *Am J Respir Crit Care Med* 2004;169:1001-1006.
6. Castro M, et al, for the AIR2 Trial Study Group. *Am J Respir Crit Care Med.* 2010;181.116-124

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Exhibit 66



NEW 5 YEAR DATA For Health Care Professionals

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Proven benefits

About Bronchial Thermoplasty

Asthma and your airways

How BT is performed



Ready for a life less defined by asthma? Get the support and information you need!

START HERE

By submitting, I agree to receive occasional, relevant information about BT

Home > Bronchial Thermoplasty > How BT is performed

Quick facts about the Bronchial Thermoplasty (BT) procedure

BT, delivered by the Alair® System, is a safe outpatient procedure performed in 3 sessions to ensure safety and optimal results every step of the way. The sessions are typically scheduled 3 weeks apart.

The procedure is performed by a specially trained pulmonologist, using a device called the Alair System.

Each session is routinely performed under moderate sedation and typically takes less than an hour to complete.

No incision is needed, because the procedure is performed with a bronchoscope inserted through the mouth or nose. A bronchoscope is a long, flexible tube with a camera on one end that allows the physician to see inside the airways.

The BT device applies mild heat inside the airways to reduce excessive smooth muscle. The reduction in muscle tissue helps minimize airway constriction.

The first session treats the airways in the right lower lobe of the lungs, the second treats the airways in the left lower lobe, and the third procedure treats the airways in both upper lobes of the lungs.

Following each procedure, you will be monitored to ensure your breathing, heart rate, blood pressure, level of oxygen in the blood, and lung function tests are near normal levels.

After all 3 procedures are performed, the treatment is complete. You will return to your regular doctor to continue managing your asthma.

Your BT treatment will be delayed if you currently have any of the following conditions:

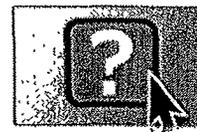
You have an active respiratory infection.

You have a bleeding disorder.

You've had an asthma attack in the past 14 days.

You've had an increased or decreased dose of oral steroids for asthma in the past 14 days.

Your doctor says you cannot stop taking the following medications prior to the BT procedure: anticoagulants, antiplatelet agents, aspirin, or non-steroidal anti-inflammatory medications (NSAIDS).



How much does asthma limit your choices?

Take this short quiz to find out.



Learn more about BT with this FREE DVD for patients with asthma.



"It's amazing to see the difference. I feel like the sky's the limit."

Hear patients with severe asthma talk about life before and after BT.

Exhibit 67



NEW 5 YEAR DATA For Health Care Professionals

UNITED STATES

BRONCHIAL THERMOPLASTY REAL PEOPLE, REAL RESULTS ARE YOU A BT CANDIDATE?

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Alair® Bronchial Thermoplasty System Named “Best of What’s New” By Popular Science

NATICK, Mass. (Nov. 17, 2010)

Boston Scientific Corporation (NYSE: BSX) today announced that its newly acquired subsidiary, Asthmatx, Inc., was awarded the 2010 *Popular Science* “Best of What’s New” Award in the Health category for its Alair® Bronchial Thermoplasty System. The awards recognize breakthrough products and technologies that represent a significant leap forward in their respective categories.

“For 23 years, *Popular Science* has honored the innovations that surprise and amaze us — those that make a positive impact on our world today and challenge our views of what’s possible in the future,” said Mark Jannot, Editor-in-Chief of *Popular Science*. “The Best of What’s New Award is the magazine’s top honor, and the 100 winners — chosen from among thousands of entrants — represent the highest level of achievement in their fields.”

“Asthmatx is honored to have received the Best of What’s New Award for our Alair System as recognition of our work toward improving the current standard of care for adult patients with severe asthma,” said Glen French, Chief Executive Officer of Asthmatx. “We are pleased that *Popular Science* has recognized this first-of-its-kind interventional treatment option for its potential to improve the quality of life in patients with severe asthma while helping to substantially reduce medical costs.”

The Alair System, which received U.S. Food and Drug Administration approval in April, is a bronchoscopic procedure routinely performed under moderate sedation with patients typically returning home the same day. It delivers thermal energy to the airway wall in a precisely controlled manner to reduce excessive airway smooth muscle. The procedure is designed to decrease the ability of the airways to constrict, thereby reducing the frequency and severity of asthma attacks. Clinical data show bronchial thermoplasty is safe and effective in the management of severe persistent asthma in patients 18 years and older whose asthma is not well controlled with drugs (inhaled medications).

About Asthma

Asthma is one of the most common and costly diseases in the world. The prevalence of asthma has grown in recent decades, and there is no cure. According to the Asthma and Allergy Foundation of America, more than 20 million Americans have asthma. Managing asthma consumes more than \$18 billion of health care resources each year in the U.S. Uncontrolled asthma results in approximately 10 million unscheduled physician office visits, 2 million emergency rooms visits, 500,000 hospitalizations and 4,000 deaths annually in the U.S. Five to 10 percent of those suffering from asthma in the U.S. are diagnosed with severe persistent asthma.

About Asthmatx

Asthmatx Inc., a Boston Scientific Company, is focused on helping patients breathe easier. Asthmatx has developed a catheter-based outpatient procedure that provides long-lasting and improved asthma control for adult severe asthma patients. For more information, please visit www.BTforAsthma.com or www.bronchialthermoplasty.com.

About Boston Scientific

Boston Scientific is a worldwide developer, manufacturer and marketer of medical devices whose products are used in a broad range of interventional medical specialties. For more information, please visit: www.bostonscientific.com.

Cautionary Statement Regarding Forward-Looking Statements

This press release contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Forward-looking statements may be identified by words like “anticipate,” “expect,” “project,” “believe,” “plan,” “estimate,” “intend” and similar words. These forward-looking statements are based on our beliefs, assumptions and estimates using information available to us at the time and are not intended to be guarantees of future events or performance. These forward-looking statements include, among other things, statements regarding new product launches and launch cadence, regulatory approvals, clinical trials, product performance and competitive offerings. If our underlying assumptions turn out to be incorrect, or if certain risks or uncertainties materialize, actual results could vary materially from the expectations and projections expressed or implied by our forward-looking statements. These factors, in some cases, have affected and in the future (together with other factors) could affect our ability to implement our business strategy and may cause actual results to differ materially from those contemplated by the statements expressed in this press release. As a result, readers are cautioned not to place undue reliance on any of our forward-looking statements.

Factors that may cause such differences include, among other things: future economic, competitive, reimbursement and regulatory conditions; new product introductions; demographic trends; intellectual property; litigation; financial market conditions; and, future business decisions made by us and our competitors. All of these factors are difficult or impossible to predict accurately and many of them are beyond our control. For a further list and description of these and other important risks and uncertainties that may affect our future operations, see Part I, Item 1A – *Risk Factors* in our most recent Annual Report on Form 10-K filed with the Securities and Exchange Commission, which we may update in Part II, Item 1A – *Risk Factors* in Quarterly Reports on Form 10-Q we have filed or will file hereafter. We disclaim any intention or obligation to publicly update or revise any forward-looking statements to reflect any change in our expectations or in events, conditions, or circumstances on which those expectations may be based, or that may affect the likelihood that actual results will differ from those contained in the forward-looking statements. This cautionary statement is applicable to all forward-looking statements contained in this document.

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ENDO-142305-AE April 2014