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

Proceeding	91216039
Party	Defendant Cardiox Corporation
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Submission	Answer
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Date	06/02/2014
Attachments	AnswerCardioDxOpp.pdf(136968 bytes)

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

In the Matter of Application of

Applicant: Cardiox Corporation
Mark: CARDIOX
in International Class 10
Application No.: 85/794,852
Filed: December 5, 2012
Published for Opposition: December 24, 2013

CardioDx, Inc.,

Opposer,

v. Opposition No. 91216039

Cardiox Corporation,

Applicant.

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

Applicant, Cardiox Corporation, for its Answer to the Notice of Opposition filed by CardioDx Inc., opposing Cardiox Corporation's application for registration of the mark CARDIOX, the subject of Application Serial No. 85/794,852 filed December 5, 2012 and published in the Official Gazette on December 24, 2013, denies that Opposer will be damaged by the registration of Applicant's mark. Cardiox Corporation answers each of the paragraphs of Opposer's Notice of Opposition as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averment set forth in paragraph 1 of the Notice of Opposition.

2. Applicant admits that Cardiox Corporation is a Delaware Corporation with a place of business at 4100 Horizons Drive, Suite 100, Columbus, Ohio 43220 intending to sell medical apparatuses, appliances, and instruments specific to the cardiac field.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averment set forth in paragraph 3 of the Notice of Opposition.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averment set forth in paragraph 4 as it relates to the common law rights allegedly acquired by Opposer in CARDIODX as a trade name and trademark. Applicant admits that the remaining averments set forth in paragraph 4 of the Notice of Opposition.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averment set forth in paragraph 5 as it relates to Opposer's ability to demonstrate that the mark CARDIODX has acquired distinctiveness through exclusive and continues use of the mark for more than six years. Applicant admits the remaining averments set forth in paragraph 5 of the Notice of Opposition.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averment set forth in paragraph 6 of the Notice of Opposition.

7. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averment set forth in paragraph 7 of the Notice of Opposition.

8. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averment set forth in paragraph 8 of the Notice of Opposition.

9. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averment set forth in paragraph 9 of the Notice of Opposition.

10. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averment set forth in paragraph 10 of the Notice of Opposition.

11. Applicant admits the averment set forth in paragraph 11 of the Notice of Opposition.

12. Applicant admits the averment set forth in paragraph 12 of the Notice of Opposition.

13. Applicant admits the averment set forth in paragraph 13 of the Notice of Opposition.

14. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averment set forth in paragraph 14 as it relates to Opposer's use in commerce as early as July 13, 2007. Applicant admits the averment set forth in paragraph 14 as it relates to the basis upon which Applicant's trademark application was filed. Applicant denies the remaining averments set for in paragraph 14 of the Notice of Opposition.

15. Applicant denies the averment set forth in paragraph 15 that Applicant's pending Application No. 85/794,852 for the mark CARDIOX so resembles a mark or trade name previously used in the United States by CardioDx, Inc., as to be likely, when used on or in connection with the goods or services of the Applicant, to cause confusion, or to cause mistake, or to deceive. Applicant denies the averment set forth in paragraph 15 that Applicant and Opposer's marks sound nearly identical.

16. Applicant denies the averment set forth in paragraph 16 of the Notice of Opposition.

17. Applicant denies the averment set forth in paragraph 17 of the Notice of Opposition.

18. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averment set forth in paragraph 18 as it relates to Opposer's first use in commerce. Applicant admits the averment set forth in paragraph 18 as it relates to the Applicant's Section 1(b) application filed on December 5, 2012.

19. Applicant denies the averment set forth in paragraph 19 of the Notice of Opposition.

20. Applicant denies the averments set forth in paragraph 20 of the Notice of Opposition.

21. Applicant denies any remaining averments set forth in the Notice of Opposition and requests that the Notice of Opposition be dismissed in its entirety.

FIRST AFFIRMATIVE DEFENSES

There is no likelihood of confusion, mistake or deception because, inter alia, Applicant's mark and Opposer's mark are not confusingly similar.

SECOND AFFIRMATIVE DEFENSE

There is no likelihood of confusion, mistake or deception because, inter alia, Applicant's and Opposer's goods and services are distinct and appeal to different consumers.

THIRD AFFIRMATIVE DEFENSE

The Notice of Opposition should be dismissed because Opposer does not have prior use of the CARDIODX mark over Applicant's use of CARDIOX because Applicant's CARDIOX mark has been in use since at least 1996.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed in its entirety, and that application Serial No. 85/794,852 be allowed to proceed on to registration.

Respectfully submitted,

Cardiox Corporation

Date: June 2, 2014

By: _____

Robert J. Morgan
Porter, Wright, Morris & Arthur
41 South High Street
Columbus, Ohio 43215
(614) 227–2000

Attorney for Applicant
Cardiox Corporation.

CERTIFICATE OF FILING BY THE
ELECTRONIC SYSTEM FOR TRADEMARK TRIALS AND APPEALS

I hereby certify that APPLICANT'S ANSWER TO NOTICE OF OPPOSITION is being electronically filed through the Electronic System for Trademark Trials and Appeals on this 2nd day of June, 2014.

By: _____

Robert J. Morgan
Porter, Wright, Morris & Arthur
41 South High Street
Columbus, Ohio 43215
(614) 227–2000

Attorney for Applicant
Cardiox Corporation

CERTIFICATE OF SERVICE

I hereby certify that the foregoing APPLICANT'S ANSWER TO NOTICE OF OPPOSITION was mailed by first-class mail, postage pre-paid, on this 2nd day of June, 2014, to:

Lisa Greenwald-Swire
Fish & Richardson P.C.
500 Arguello Street, Suite 500
Redwood City, CA 94063

By: _____

Robert J. Morgan
Porter, Wright, Morris & Arthur
41 South High Street
Columbus, Ohio 43215
(614) 227–2000

Attorney for Applicant
Cardiox Corporation.