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

Proceeding	91219769
Party	Defendant NXThera, Inc.
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Submission	Answer
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Date	04/24/2015
Attachments	M250398 Answer to Notice of Opposition for RESTOR Trademark Applica- tion.pdf(41473 bytes)

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

In re U.S. Trademark Application Ser. No. 86/075,496
Mark: **RESTÖR**
Application Date: September 26, 2013

Novartis AG,)	
)	
Opposer,)	Opposition No. 91219769
)	
v.)	Applicant's File: M250398
)	
NXThera, Inc.,)	
)	
Applicant.)	

ANSWER TO NOTICE OF OPPOSITION

NXThera, Inc. ("Applicant"), for its Answer to the Notice of Opposition filed by Novartis AG ("Opposer") on December 15, 2014, states as follows:

1. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 1 of the Notice of Opposition, and therefore denies these allegations.

2. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 2 of the Notice of Opposition, and therefore denies these allegations.

3. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 3 of the Notice of Opposition, and therefore denies these allegations.

4. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 4 of the Notice of Opposition, and therefore denies these allegations.

5. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 5 of the Notice of Opposition, and therefore denies these allegations.

6. Applicant admits that USPTO records indicate that U.S. Trademark Reg. No. 2,772,538 relates to a registration for the mark RESTOR in connection with “intraocular lenses,” and U.S. Trademark Reg. No. 4,513,350 relates to a registration for the mark IQ RESTOR in connection with “ophthalmic surgical instruments and apparatus; intraocular lenses.” Applicant further admits that USPTO records identify Opposer as the owner of record of these registrations. Applicant further admits that USPTO records indicate that Opposer has filed and the USPTO has acknowledged a Declaration of Incontestability relating to Reg. No. 2,772,538, but Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegation that this registration is incontestable, and therefore denies the allegation.

7. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 7 of the Notice of Opposition, and therefore denies these allegations.

8. Applicant admits that it filed its trademark application on September 26, 2013, and that the identification of goods and serial number set forth in Paragraph 8 of the Notice of Opposition are correct.

9. Although Paragraph 9 of the Notice of Opposition constitutes a legal conclusion to which no response is necessary, Registrant nonetheless denies the allegations.

10. Applicant admits the truth of the allegations set forth in Paragraph 10 of the Notice of Opposition, but denies that Applicant had any obligation, legal or otherwise, to obtain consent from Opposer.

11. Applicant denies the truth of the allegations set forth in Paragraph 11 of the Notice of Opposition.

APPLICANT'S AFFIRMATIVE DEFENSES

Applicant reserves the right to amend its Answer to add affirmative defenses or counterclaims that are not now known but may later become known through discovery or other means.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed with prejudice.

Dated: April 24, 2015

DORSEY & WHITNEY LLP

By /Jeffrey R. Cadwell/
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***Attorneys for Applicant,
NXThera, Inc.***

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **ANSWER TO NOTICE OF OPPOSITION** has been served via electronic mail by agreement of the parties to Counsel for Opposer, Jonathan S. Jennings and Elisabeth K. O'Neill of Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP, 200 South Wacker Drive, Suite 2900, Chicago, Illinois 60606, this 24th day of April 2015.

/Jeffrey R. Cadwell/
Jeffrey R. Cadwell,
Attorney for Applicant

CERTIFICATE OF ELECTRONIC DEPOSIT

I hereby certify that a true and complete copy of the foregoing **ANSWER TO NOTICE OF OPPOSITION** is being electronically deposited on this 24th day of April 2015, via the Electronic System for Trademark Trials and Appeals website.

/Jeffrey R. Cadwell/
Jeffrey R. Cadwell,
Attorney for Applicant