

ESTTA Tracking number: **ESTTA79462**

Filing date: **05/04/2006**

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

Proceeding	91164559
Party	Defendant PeriodonTx Laboratories, Inc. PeriodonTx Laboratories, Inc. 224 W. Washington Street NetPort Center Suite 201 Sequim, WA 983823338
Correspondence Address	Jacques M. Dulin, Esq. INNOVATION LAW GROUP, LTD. 237 N. Sequim Avenue SEQUIM, WA 98382-3456 UNITED STATES dulin@innovationlaw.com
Submission	Withdrawal Of Appplication
Filer's Name	Jacques M. Dulin, Esq.
Filer's e-mail	betty@innovationlaw.com
Signature	/Jacques M. Dulin/
Date	05/04/2006
Attachments	Consent to Withdraw 5-4-06.pdf ( 1 page )(15193 bytes ) Bayer Signed Settlement 91164559.pdf ( 4 pages )(169156 bytes )

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

In re: Application No.76/563,879

For the Mark: BreathsTx

Filed on: December 5, 2003

\_\_\_\_\_  
Bayer HealthCare LLC, Opposer )

v. )

PeriodonTx Laboratories Inc., Applicant, )  
\_\_\_\_\_)

Opposition No. 91164559

Submittal of Written Consent to Withdrawal

In response to the mailing from Amy Mateleski, Paralegal Specialist, we attach a copy of the Settlement Agreement, executed by Defendant and Plaintiff. Note that in Point 3 of the Settlement, Bayer has agreed to PeriodonTx's abandonment (withdrawal) of the application in favor of the new filing.

We trust that this will satisfy the requirement of Trademark Rule 2,135.

Applicant,

PeriodonTx Laboratories, Inc.

/Jacques M. Dulin/

Jacques M. Dulin, Esq., Reg. No. 24, 067

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Encl. Bayer Signed Settlement of 2/16/06

1 of 2  
Duplicate Originals

AGREEMENT

This is an Agreement between Bayer HealthCare LLC ("Bayer"), a Delaware limited liability company with a location in Pittsburgh, Pennsylvania, and PeriodonTx Laboratories, Inc. ("PeriodonTx"), a Washington corporation located and doing business in Sequim, Washington. It is effective when it has been executed by PeriodonTx ("Effective Date").

WHEREAS, PeriodonTx began using and applied to register "BreathsTx" in the form BREATHSTX in connection with "moist, medicated cotton rolls for treatment of adverse oral conditions including halitosis, gingivitis and periodontitis" (Application Ser. No. 76/563,879, the "Application");

WHEREAS, Bayer has objected to PeriodonTx's use of BREATHSTX based on its STIX family of marks, as shown in Exhibit A hereto, and filed Opposition No. 91164559 against the Application; and

WHEREAS, the parties desire to amicably resolve and settle the aforementioned trademark issues subject to the terms set forth below;

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements set forth herein, the parties agree as follows:

1. PeriodonTx shall cease all use of "BreathsTx" in the form BREATHSTX within thirty (30) days of the Effective Date.
2. Bayer does not and will not object to PeriodonTx's use and/or registration of "Breath's»Tx" in any form.
3. PeriodonTx will immediately request to amend the Application to "Breath's»Tx". If PeriodonTx's amendment is rejected, PeriodonTx will file a new application for "Breath's»Tx", and will thereafter promptly abandon the Application.
4. Except as otherwise provided herein, PeriodonTx shall not in the future use or apply to register: (a) the mark BREATHSTX in any form, it being understood that the mark "Breath's»Tx" in any form is not any form of the mark "BREATHSTX"; (b) any mark using STX in place of the STIX suffix for any mark shown in Exhibit A; or (c) any mark using the suffix STIX in connection with clinical diagnostic tests or equipment.

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5. PeriodonTx represents and warrants that it has not: (a) used any marks incorporating the suffixes STX or STIX, other than the mark BREATHSTX; or (b) registered or applied to register with any governmental agency or domain name registry any mark using the suffixes STX or STIX, other than "breathstx.com".

6. Each party releases the other from any and all claims it may have against the other relating to the subject matter of this Agreement.

7. This Agreement constitutes the entire agreement between the parties with respect to the subject matter contained herein, and all prior agreements, understandings and negotiations are merged into this agreement. This Agreement may not be modified except in writing signed by the parties.

8. Waiver of any breach of this Agreement shall be ineffective unless in writing signed by the party waiving compliance, and shall not be considered a waiver of any other breach.

9. This Agreement shall be applicable worldwide and shall be binding on the parties and their successors, assigns, affiliates, subsidiaries, officers, servants, employees, agents, representatives, licensees and all parties in active concert or participation with any of them.

10. The parties represent and warrant that they have full authority to enter into this Agreement.

11. The rule of construction that interprets contracts against the drafter shall not apply to this Agreement.

12. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one agreement.

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**BAYER HEALTHCARE LLC**

By: T. E. Valeri

Title: SVP

Date: 2/16/08

**PERIODONTX LABORATORIES, INC.**

By: Thomas M. Dulin

Title: President

Date: 12-20-05

**REVIEWED BY  
LAW & PATENTS**

KS

<b>MARK</b>	<b>REG. NO.</b>	<b>REG. DATE</b>
ALBUSTIX	653,965	November 5, 1957
AZOSTIX	790,907	June 15, 1965
BILI-LABSTIX	918,748	August 24, 1971
CHEK-STIX	1,115,889	April 3, 1979
CLINISTIX	627,201	May 22, 1956
COMBISTIX	668,186	October 14, 1958
DIASTIX	672,032	January 6, 1959
GLUCOSTIX	1,161,531	July 21, 1981
HEMA-COMBISTIX	762,936	January 14, 1964
HEMASTIX	656,285	December 31, 1957
KETO-DIASTIX	930,307	March 7, 1972
KETOSTIX	656,284	December 31, 1957
LABSTIX	672,033	January 6, 1959
MICROSTIX	965,355	August 7, 1973
MULTISTIX	947,477	November 21, 1972
N-MULTISTIX	1,048,353	September 21, 1976
MULTISTIX PRO	2,489,296	September 11, 2001
URISTIX	668,184	October 14, 1958

*JMD*  
12/20/05

**EXHIBIT A**