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

Proceeding	91173802
Party	Defendant Edwards Lifesciences AG Edwards Lifesciences AG Speirstrasse 5 , CH
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Date	01/16/2007
Attachments	156 Answer to Notice of Opposition.pdf (5 pages)(175373 bytes)

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

In the matter of Trademark Application Serial No. 78/699,870
Published in the Official Gazette on May 9, 2006
International Class: 010
Filed: August 24, 2005
Mark: **LIFESTENT FLEXSTAR**

NMT MEDICAL, INC., Opposer, v. EDWARDS LIFESCIENCES, AG, Applicant.	Opposition No. 91173802 **ANSWER TO NOTICE OF OPPOSITION**

In response to the Notice of Opposition, dated November 6, 2006, Edwards Lifesciences AG, ("Applicant"), answers the Notice of Opposition filed by NMT Medical, Inc., ("Opposer") as follows:

ANSWER TO NOTICE OF OPPOSITION

Applicant seeks to register the mark LIFESTENT FLEXSTAR, in pending United States Trademark Application Serial No. 78/699,870, filed on August 24, 2005, in International Class 10 for "[m]edical devices, namely, stents," which published in the Official Gazette on May 9, 2006 ("Applicant's Mark"). Applicant lacks knowledge or information sufficient to form a basis to admit or deny that Opposer is a Delaware corporation, having a place of business at 27 Wormwood St., Boston, Massachusetts, 02210 and, therefore denies the same. Applicant denies

that Opposer will be damaged by the registration of Applicant's Mark and any and all other allegations of the opening paragraph of the Notice of Opposition.

Applicant hereby answers Opposer's grounds for opposition as follows:

1. Applicant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations of paragraph 1 of the Opposition, and therefore denies the same.

2. Applicant admits the allegations of paragraph 2 of the Opposition.

3. Based on the United States Patent and Trademark records, Applicant admits that Registration No. 2,613,300 is for the mark STARFLEX ("Opposer's Mark"). Applicant is without sufficient knowledge or information to admit or deny the remaining allegations of paragraph 3 of the Opposition, and therefore denies the same.

4. Applicant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations of paragraph 4 of the Opposition, and therefore denies the same.

5. Applicant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations of paragraph 5 of the Opposition, and therefore denies the same.

6. Applicant admits the allegations of paragraph 6 of the Opposition.

7. Applicant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations of paragraph 7 of the Opposition, and therefore denies the same.

8. Applicant denies the allegations of paragraph 8 of the Opposition.

9. Applicant denies that the goods identified in Applicant's Mark are confusingly similar to the goods described in Opposer's Registration No. 2,613,300. Applicant denies that that prospective purchasers and others are likely to be confused as to whether the goods sold under the LIFESTENT FLEXSTAR trademark emanate from or are in some way affiliated with, sponsored, or approved by Opposer, or are otherwise related to Opposer or Opposer's goods and services. Applicant denies that Opposer will be damaged through Applicant's use of Applicant's Mark. Applicant is without sufficient information to form a belief as to the truth or falsity of the remaining allegations of paragraph 9 of the Opposition, and therefore denies the same.

10. Applicant denies the allegations of paragraph 10 of the Opposition.

AFFIRMATIVE DEFENSES

By way of defense to the allegations set forth in the Consolidated Notice of Opposition, Applicant asserts the following:

FIRST AFFIRMATIVE DEFENSE

Opposer's Notice of Opposition fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Opposer is not likely to be damaged by registration of Applicant's Mark, and therefore, lacks standing to oppose registration of the same.

THIRD AFFIRMATIVE DEFENSE

Applicant's use of Applicant's Mark will not mistakenly be thought by the public to derive from the same source as Opposer's goods, nor will such use be thought by the public to be a use by Opposer or with Opposer's authorization or approval.

FOURTH AFFIRMATIVE DEFENSE

Applicant's Mark is sufficiently distinctive and different from Opposer's Mark to avoid confusion, deception or mistake as to the source, sponsorship, approval, affiliation, or association of Applicant's goods.

FIFTH AFFIRMATIVE DEFENSE

Applicant's Mark, when used in connection with Applicant's goods, is not likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Applicant with Opposer, or as to the origin, sponsorship, or approval of Applicant's goods by Opposer.

SIXTH AFFIRMATIVE DEFENSE

The mark "STARFLEX" is widely and commonly used by multiple third parties as a trademark, and hence is weak. Accordingly, Opposer's purported rights in its mark extend no further than to the specific mark that Opposer alleges it owns. Applicant's Mark is beyond the narrow scope of protection granted by Opposer's Mark.

SEVENTH AFFIRMATIVE DEFENSE

The common elements between Applicant's Mark and Opposer's Mark are the terms "STAR" and "FLEX." These terms are frequently used in a wide variety of trademarks, further limiting the scope and protection of Opposer's Mark. Applicant's Mark is beyond the narrow scope of protection granted by Opposer's Mark.

RELIEF REQUESTED

In view of the foregoing, Applicant respectfully requests that the relief requested by Opposer be denied, that the Opposition be dismissed with prejudice, and that registration of Applicant's Marks be granted.

DATED this 16th day of January, 2007.

By:
RICHARD C. GILMORE, Reg. No. 37,335

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **ANSWER TO NOTICE OF OPPOSITION** was served on Opposer by mailing a true copy thereof to its attorney of record, by First Class Mail, postage prepaid this 16th day of January, 2007, in an envelope addressed as follows:

Ronda P. Moore
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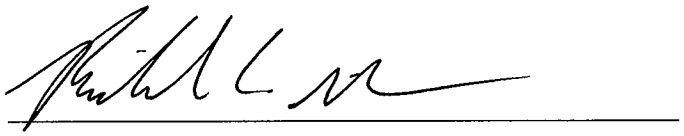

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