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Filing date: **03/31/2008**

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

Proceeding	91180640
Party	Plaintiff NBTY, Inc.
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Submission	Other Motions/Papers
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Date	03/31/2008
Attachments	NBTYOsteotechStipAmendDismiss.pdf ( 2 pages )(59719 bytes )

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

In the Matter of Trademark Application:

Applicant : Osteotech, Inc.  
Serial No. : 77/156,615  
Filed : April 13, 2007  
Mark : A-FLEX  
Int'l Class : 005  
For : Allograft material, namely, demineralized human bone  
: for surgical implants  
Published : October 9, 2007

-----X  
NBTY, Inc., :  
:   
Opposer, :  
:   
v. : **Opposition No.: 91/180,640**  
:   
Osteotech, Inc., :  
:   
Applicant. :  
-----X

**STIPULATED MOTION TO AMEND APPLICATION AND STIPULATED  
CONTINGENT MOTION TO DISMISS WITH PREJUDICE**

Applicant, Osteotech, Inc., with the consent of Opposer, NBTY, Inc., hereby moves to amend Application Serial No. 77/156,615, which is the subject of this proceeding, so that the description of goods and services will read as follows:

**International Class 005:**

“Allograft materials, namely, demineralized human bone for surgical implants, excluding vitamins, minerals, nutritional supplements, and joint care supplements.”

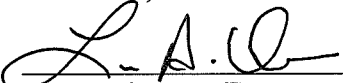
Approval by the Board of this stipulated amendment is respectfully requested because it limits the scope of the goods and services.

Opposer, with the consent of Applicant, hereby moves to dismiss the Notice of Opposition and this Opposition No. 91/180,640, with prejudice, contingent on the Board's prior acceptance and entry of the foregoing stipulated amendment.

The parties also jointly move that this opposition proceeding remain suspended until the Board's ruling on this motion, and that, if the motion is denied for any reason, the Board set new discovery and trial dates.

STIPULATED AND CONSENTED TO BY APPLICANT:

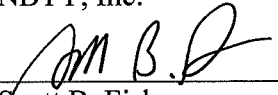
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Date: 3/19/08

STIPULATED AND CONSENTED TO BY OPPOSER:

Jaspan Schlesinger Hoffman LLP  
Attorneys for Opposer  
NBTY, Inc.

By:   
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Date: 3/31/08