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

Proceeding	91183343
Party	Defendant Fisher and Paykel Healthcare Limited
Correspondence Address	JOHN CLARKE HOLMAN JACOBSON HOLMAN PLLC 400 7TH ST NW WASHINGTON, DC 20004-2237 UNITED STATES
Submission	Answer
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Date	05/12/2008
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

DORNIER MEDTECH SYSTEMS GMBH,)	
)	
Opposer,)	
)	Opposition No. 91/183,343
v.)	Serial No. 77/083,654
)	Mark: OPUS
FISHER AND PAYKEL HEALTHCARE)	
LIMITED,)	
)	
Applicant.)	

ANSWER

Applicant, Fisher and Paykel Healthcare Limited," answers Opposer's Notice of Opposition as follows:

1. As to the allegations in the Introductory Paragraph, Applicant admits the following: (1) its name; (2) that it has sought to register the mark as shown in Serial No. 77/083,654 for use on the goods recited therein; and (3) the application and publication date. Applicant lacks sufficient knowledge or information upon which to form a belief as to the truth of the remaining allegations including those relating to Opposer's beliefs and therefore denies the same.

2. Applicant admits the allegations contained in Paragraph 1.

3. Applicant lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in Paragraph 2 and therefore denies it. the same.

4. Applicant lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in Paragraph 3 and therefore denies

the same.

5. Applicant lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in Paragraph 4 and therefore denies the same.

6. Applicant lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in Paragraph 5 and therefore denies the same.

7. Applicant lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in Paragraph 6 and therefore denies the same.

8. Applicant lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in Paragraph 7 and therefore denies the same.

9. Applicant lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in Paragraph 8 and therefore denies the same.

10. Applicant lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in Paragraph 9 and therefore denies the same.

11. Applicant lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in Paragraph 10 and therefore denies the same.

12. Applicant denies the allegations contained in Paragraph 11.

13. Applicant denies the allegations contained in Paragraph 12.
14. Applicant denies the allegations contained in Paragraph 13.

AFFIRMATIVE DEFENSES

In addition to the foregoing, Applicant asserts the following affirmative defenses.

15. The Notice of Opposition fails to state a claim upon which relief can be granted.
16. Opposer lacks standing to bring the claims set forth in the Notice of Opposition.
17. In accord with the Trademark Trial and Appeal Board's authority under 15 U.S.C. § 1068, Applicant requests a restriction to the identification of goods recited in its application, Serial No. 77/083,654. Please delete the current identification of goods in International Class 10 and enter the following: NASAL MASKS AND NASAL CANNULA FOR POSITIVE AIRWAY PRESSURE THERAPY; PARTS AND FITTINGS FOR THE AFOREMENTIONED GOODS, NAMELY, HEADGEAR, STRAPS, MASK FRAMES, MASK SWIVELS, AND NASAL PILLOWS. These goods are unlikely to be confused with the Opposer's mark as used on "medical apparatus, namely, patient examination and treatment tables, radiological apparatus for medical purposes and imaging systems."

WHEREFORE, Applicant requests that its application be amended to enter its restriction to its identification of goods, that judgment be entered in favor of the Applicant, and that the Notice of Opposition be dismissed in its entirety with prejudice.

Respectfully submitted,

By: /Robert S. Pierce/
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Robert S. Pierce
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Answer* was served on this 12th day of May 2008, by first class mail, postage prepaid, addressed to Holmes J. Hawkins III, King & Spalding, 1180 Peachtree Street, Atlanta, Georgia 30309, Attorney for the Opposer.

By: /Robert S. Pierce/
Robert S. Pierce