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Filing date: **10/02/2008**

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

Proceeding	91184497
Party	Plaintiff Calypso Medical Technologies, Inc.
Correspondence Address	Lynne E. Graybeal Perkins Coie LLP 1201 Third Avenue, Suite 4800 Seattle, WA 98101 UNITED STATES pctrademarks@perkinscoie.com, kbuckley@perkinscoie.com
Submission	Other Motions/Papers
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Date	10/02/2008
Attachments	CAREBEACON CONSENTED MOTION TO AMEND CONTINGENT WITHDRAWAL.pdf ( 12 pages )(710879 bytes )

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

CALYPSO MEDICAL TECHNOLOGIES,  
INC.

Opposer,

v.

ASCLEPIEIA, INC.

Applicant.

Opposition No.: 91184497

CONSENTED MOTION TO AMEND  
AND CONTINGENT WITHDRAWAL

Application Serial Nos.: 77045794,  
77045809, 77045806

International Classes: 9, 42, 44

Filing Date: November 16, 2006

Publication Date: December 11, 2007

Mark: CAREBEACON

Calypso Medical Technologies, Inc. ("Opposer") hereby moves to amend the descriptions in Application Nos. 77045809 and 77045806 as set forth below. The below amendments correct the current descriptions appearing at the uspto.gov website to be those in Defendant's CONSENTED REQUEST TO AMEND APPLICATION of June 30, 2008. In its Order of September 2, 2008 ("Order"), the Trademark Trial and Appeal Board correctly entered these amendments. However, the current uspto.gov site does not reflect the amendments in the Order. Therefore, Applicant requests these be corrected as follows (additions in red and bold, deletions struck through). Defendant consents to these amendments. Copies of the Order and CONSENTED REQUEST TO AMEND APPLICATION are attached.

**Application No. 77045809 in Class 42:** Application service provider featuring software to provide individuals with general health and fitness information and for use in conjunction with personalized health management kiosks consisting of touch screen, stylus-based or similar user interfaces and basic health instruments, namely, thermometers, blood pressure monitors, blood glucose meters, weight scales, body fat analyzers, cholesterol meters, universal and grip strength meters, audiometers and

pedometers; computer service, namely, acting as an application service provider in the field of health and fitness information management to host computer applications software for transmitting data and information on-line, via facsimile and telephone to an individual's physicians, family members and other authorized parties in conjunction with personalized health management kiosks consisting of touch screen, stylus-based or similar user interfaces and basic health instruments, namely thermometers, blood pressure monitors, blood glucose meters, weight scales, body fat analyzers, cholesterol meters, universal and grip strength meters, audiometers and pedometers

**Application No. 77045806 in Class 44:** Providing general health and fitness information over the Internet to individuals in conjunction with personalized health management kiosks consisting of touch screen, stylus-based or similar user interfaces and basic health instruments, namely, thermometers, blood pressure monitors, blood glucose meters, weight scales, body fat analyzers, cholesterol meters, universal and grip strength meters, audiometers and pedometers; providing general health and fitness information services, namely monitoring of an individual's vital signs, psychological, physiological, mental and physical condition, and tracking of an individual's medications and personal health history; providing general health and fitness information, namely, vital signs, psychological, physiological, mental and physical conditions of individuals, and information concerning the tracking of an individual's medications and personal health history captured remotely and transmitted on-line, via fax and telephone to physicians, family members and other authorized parties

Contingent upon the Trademark Trial and Appeal Board's acceptance and entry of the descriptions herein, Opposer hereby withdraws the above-captioned opposition without

prejudice.

Applicant, Asclepieia, Inc., through its attorney, has consented to this Motion. A proof of service by mail to Applicant's attorney accompanies this Motion.

DATED: October 8, 2008

<p><b>CERTIFICATE OF SERVICE</b></p> <p>I hereby certify that this CONSENTED MOTION TO AMEND AND CONTINGENT WITHDRAWAL is being deposited with the United States Postal Service with sufficient postage as first class mail on <u>Oct. 8</u>, 2008, in an envelope addressed to Correspondent For Applicant: RJ Heher, Fenwick &amp; West LLP, Silicon Valley Center, 801 California Street, Mountain View, CA 94041.</p> <p>Signature: <u><i>Ann Unckles</i></u></p> <p>Printed Name: <u>Ann Unckles</u></p>	<p>Respectfully submitted,</p> <p>PERKINS COIE LLP</p> <p><u><i>K Buckley</i></u></p> <p>Lynne E. Graybeal Kathleen J. Buckley Attorneys for Opposer 1201 Third Avenue, Suite 4800 Seattle, Washington 98101-3099 (206) 359-8000</p>
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UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

RECEIVED 09/02/08

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Mailed: September 2, 2008

Opposition No. 91184497

Calypso Medical  
Technologies, Inc.

v.

Asclepieia, Inc.

**Elizabeth A. Dunn, Attorney:**

On June 30, 2008, applicant filed a proposed amendment to its application Serial Nos. 77045794 which features only Int. Cl. 9, 77045806 which features only Int. Cl. 44, and 77045809 which features only Int. Cl. 42, with opposer's consent.

By the proposed amendment applicant seeks to change the identification of goods and services as follows:

International Class 9 for Application Serial No. 77045794

from "Computer software to provide health, fitness and medical information; computer software to capture and transmit health and medical information; computer software to permit communication from medical instruments and devices that measure an individual's vital signs, medical, psychological, physiological, mental and physical condition, track an individual's medications and personal health history; computer software for providing health-related training exercises to global communications networks and similar networks"

to "Computer software to provide individuals with general health and fitness information and for use in conjunction with personalized health management kiosks consisting of touch screen, stylus-based or similar user interfaces and basic health instruments, namely, thermometers, blood pressure monitors, blood glucose meters, weight scales, body fat analyzers, cholesterol meters, universal and grip strength meters, audiometers and pedometers; computer software for providing health-related training exercises via global communications networks and similar networks."

International Class 42 for Application Serial No. 77045809

from "Application service provider, namely, hosting computer software applications of others; application service provider featuring software to transmit medical and health information of individuals captured via medical instruments and devices to others on-line, via facsimile and telephone; computer service, namely, acting as an application service provider in the field of medical information management, hosting computer application software for transmitting data and information on-line, via facsimile and telephone to the individual's physicians, family members and other authorized parties; providing on-line non-downloadable computer software to transmit data captured remotely from medical instruments and devices in the field of medical and health information of individuals"

to "Application service provider featuring software to provide individuals with general health and fitness information and for use in conjunction with personalized health management kiosks consisting of touch screen, stylus-based or similar user interfaces and basic health instruments, namely, thermometers, blood pressure monitors, blood glucose meters, weight scales, body fat analyzers, cholesterol meters, universal and grip strength meters, audiometers and pedometers; computer service, namely, acting as an application service provider in the field of health and fitness information management to host computer applications software for transmitting data and information on-line, via facsimile and telephone to an individual's physicians, family members and other authorized parties in conjunction with personalized health management kiosks consisting of touch screen, stylus-based or similar user interfaces and basic health instruments, namely thermometers, blood pressure monitors, blood glucose meters, weight scales, body fat analyzers, cholesterol meters, universal and grip strength meters, audiometers and pedometers."

International Class 44 for Application Serial No. 77045806

from "Providing health and medical information over the internet; providing health and medical information services, namely, medical monitoring of an individual's vital signs, medical, psychological, physiological, mental and physical condition, tracking of an individual's medications and personal health history; providing medical and health information, namely, vital signs, medical, psychological, physiological, mental and physical conditions of individuals, and medical information concerning the tracking of an individual's medications and personal health history captured remotely and transmitted on-line, via fax and telephone to physicians, family members, and other authorized parties; managed health care services"

to "Providing general health and fitness information over the internet to individuals in conjunction with personalized health management kiosks consisting of touch screen, stylus-based or similar user interfaces and basic health instruments, namely, thermometers, blood pressure monitors, blood glucose meters, weight scales, body fat analyzers, cholesterol meters, universal and grip strength meters, audiometers and pedometers; providing general health and fitness information services, namely monitoring of an individual's vital signs, psychological, physiological, mental and physical condition, and tracking of an individual's medications and personal health history; providing general health and fitness information, namely, vital signs, psychological, physiological, mental and physical conditions of individuals, and information concerning the tracking of an individual's medications and personal health history captured remotely and transmitted on-line, via fax and telephone to physicians, family members and other authorized parties."

Inasmuch as the amendment is clearly limiting in nature as required by Trademark Rule 2.71(b), and because opposer consents thereto, it is approved and entered. See Trademark Rule 2.133(a).

If this resolves the dispute herein, opposer is allowed until thirty days from the mailing date of this order to file a withdrawal of the opposition, failing which the opposition

will go forward on the application as amended. See Trademark Rule 2.106(c).

**NEWS FROM THE TTAB:**

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:

<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>  
[http://www.uspto.gov/web/offices/com/sol/notices/72fr42242\\_FinalRuleChart.pdf](http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf)

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>



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

In the matter of Trademark Application Serial Nos. 77/045,794, 77/045,809, 77/045,806

Mark: CAREBEACON in International Classes: 9, 42, 44

Filed: November 16, 2006

Published: December 11, 2007

DOCKETED TO IP MASTER  
7-15-08  Deadline **DF**  
7-30-08  Follow up  
8-15-08  Previously

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Calypso Medical Technologies, Inc. )  
Opposer, )

vs. )

Asclepieia, Inc. )  
Applicant. )  
\_\_\_\_\_ )

Opposition No. 91184497

Box TTAB NO FEE  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

CONSENTED REQUEST TO AMEND APPLICATION

Pursuant to 37 CFR Section 2.133(a), Applicant, Asclepieia, Inc., by and through its attorneys,  
hereby requests amendment of the identification of services in Application Serial Nos.  
77/045,794, 77/045,809 and 77/045,806, such that the identification of goods reads as follows:

International Class 9: "Computer software to provide individuals with general health and fitness information and for use in conjunction with personalized health management kiosks consisting of touch screen, stylus-based or similar user interfaces and basic health instruments, namely, thermometers, blood pressure monitors, blood glucose meters, weight scales, body fat analyzers, cholesterol meters, universal and grip strength meters,

audiometers and pedometers; computer software for providing health-related training exercises via global communications networks and similar networks”

International Class 42: “Application service provider featuring software to provide individuals with general health and fitness information and for use in conjunction with personalized health management kiosks consisting of touch screen, stylus-based or similar user interfaces and basic health instruments, namely, thermometers, blood pressure monitors, blood glucose meters, weight scales, body fat analyzers, cholesterol meters, universal and grip strength meters, audiometers and pedometers; computer service, namely, acting as an application service provider in the field of health and fitness information management to host computer application software for transmitting data and information on-line, via facsimile and telephone to an individual's physicians, family members and other authorized parties in conjunction with personalized health management kiosks consisting of touch screen, stylus-based or similar user interfaces and basic health instruments, namely thermometers, blood pressure monitors, blood glucose meters, weight scales, body fat analyzers, cholesterol meters, universal and grip strength meters, audiometers and pedometers”

International Class 44: “Providing general health and fitness information over the internet to individuals in conjunction with personalized health management kiosks consisting of touch screen, stylus-based or similar user interfaces and basic health instruments, namely, thermometers, blood pressure monitors, blood glucose meters, weight scales, body fat analyzers, cholesterol meters, universal and grip strength meters, audiometers and pedometers; providing general health and fitness information services, namely monitoring of an individual's vital signs, psychological, physiological, mental and physical condition, and tracking of an individual's medications and personal health history; providing general health and fitness information, namely, vital signs, psychological, physiological, mental and physical conditions of individuals, and information concerning the tracking of an individual's medications and personal health

history captured remotely and transmitted on-line, via fax and telephone to physicians, family members and other authorized parties”

Opposer, Calypso Medical Technologies, Inc., through its attorney, has consented to the requested amendment. A Proof of Service by Mail to Opposer’s attorney accompanies this Request.

Respectfully submitted,

ASCLEPIEIA, INC

Dated: June 27, 2008



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R.J. Heher, Esq.  
Attorney for Applicant  
FENWICK & WEST LLP  
Silicon Valley Center  
801 California Street  
Mountain View, CA 94041  
(650) 988-8500

PROOF OF SERVICE BY MAIL

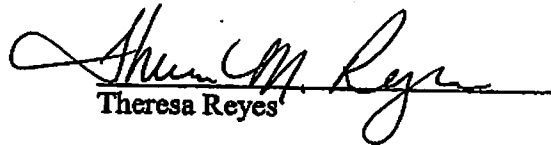
I declare that:

I am employed in the County of Santa Clara, California.

I am over the age of eighteen years and not a party to the within cause; my business address is Silicon Valley Center, 801 California Street, Mountain View, California 94041. On the date indicated below, I served the within CONSENTED REQUEST TO AMEND APPLICATION, on the interested parties in said cause, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Mountain View, California, addressed as follows:

Lynne E. Graybeal  
Perkins Coie LLP  
1201 Third Avenue, Suite 4800  
Seattle, WA 98101

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at Mountain View, California, this 30<sup>th</sup> day of June, 2008.

  
Theresa Reyes



United States Patent and Trademark Office

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PERKINS COIE LLP



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PERKINS COIE LLP

ESTTA Tracking number: **ESTTA221358**

Filing date: **06/30/2008**

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

<b>Proceeding</b>	91184497
<b>Party</b>	Defendant Asclepieia, Inc.
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<b>Submission</b>	Motion to Amend Application
<b>Filer's Name</b>	R.J. Heher, Esq.
<b>Filer's e-mail</b>	trademark@fenwick.com
<b>Signature</b>	/R.J. Heher/
<b>Date</b>	06/30/2008
<b>Attachments</b>	Request to Amend Application (Opp No. 91184497).pdf ( 4 pages ) (125794 bytes )

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