

ESTTA Tracking number: **ESTTA341942**

Filing date: **04/12/2010**

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

Proceeding	91191601
Party	Plaintiff The Laryngeal Mask Company Limited
Correspondence Address	JAMES E. GRIFFITH FOLEY & LARDNER LLP 90 PARK AVENUE NEW YORK, NY 10016-1314 UNITED STATES jgreene@foley.com, kbargmann@foley.com, eschmalz@foley.com, newyorkipdocketing@foley.com
Submission	Motion to Extend
Filer's Name	Eric M. Schmalz
Filer's e-mail	ptomailmilwaukee@foley.com,eschmalz@foley.com
Signature	/Eric M. Schmalz/
Date	04/12/2010
Attachments	Motion for Extension of Time.pdf ( 4 pages )(123274 bytes ) Exhibit A - Letter re Deficient Discovery Responses.pdf ( 4 pages )(261399 bytes ) Exhibit B - Laryngeal - Interrog to Fortuna.pdf ( 8 pages )(574475 bytes ) Exhibit C - Laryngeal - Req for Prod.pdf ( 7 pages )(518160 bytes )



5. On March 5, 2010, Applicant provided Opposer with its discovery responses.

6. On March 23, 2010, Opposer prepared a letter to Applicant, pursuant to 37 C.F.R. § 2.120(c), discussing many responses tendered by Applicant which were incomplete or otherwise deficient. (See attached Ex. A.)

7. Opposer is currently considering retaining an expert witness to conduct a survey of consumers with respect to whether a likelihood of confusion between Opposer's products and Applicant's planned products exists.

8. Some of the information sought by Opposer in its discovery requests, identified in its March 23, 2010 letter, is needed by its survey expert in order to construct and conduct the proposed survey.

9. For example, complete responses to Interrogatories 9 and 10 (see attached Ex. B) will be necessary to ensure that Opposer's proposed survey includes the types of persons responsible for making the purchasing decision for Applicant's planned product. Additionally, responses to these requests will also indicate the manner in which purchases of Applicant's planned product will be made. Applicant's responses to these requests may have a bearing on the manner in which the survey questions are framed. Similarly, a complete response to Document Request 4 (see attached Ex. C) will be necessary to ensure that the survey adequately captures the differences between the parties' products, to the extent any exist.

10. On March 29, 2010, Opposer filed a motion to extend the time to provide its expert disclosures to April 12, 2010, as to which Applicant consented.

11. On April 9, 2010, Opposer sent a letter to Applicant requesting consent to extend the expert disclosure period for 90 days, so that the fact discovery issues that need to be resolved in advance of the taking of expert discovery, could be resolved with enough time for the

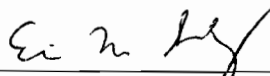
survey to be conducted. Should Opposer decide to go forward with the survey after receiving full responses to its written discovery requests, Opposer understands that the expert will need approximately six to eight weeks to formulate and conduct its survey, and then prepare a written report.

12. Opposer does not seek to extend the period for discovery, which will close on April 28, 2010. Rather, Opposer seeks additional time to enable Applicant to supplement its discovery responses or, if the parties cannot agree as to the sufficiency of Applicant's responses, to permit Opposer to file a motion to compel. Once Opposer possesses the information it has requested from Applicant, as to which it is fully entitled under the discovery rules, Opposer will be in a position to expeditiously make a decision with respect to the taking of a survey and, if such a survey is found to be necessary, to have its expert undertake the survey and prepare its report.

13. Although Opposer requested the consent of Applicant to this extension of time, no response was received from Applicant as to his consent.

Respectfully submitted,

FOLEY & LARDNER LLP

By:  \_\_\_\_\_

Jeffrey H. Greene  
James E. Griffith  
Kelly M. Bargmann  
Eric M. Schmalz  
Foley & Lardner LLP  
90 Park Avenue  
New York, NY 10016-1314

*Attorneys for Opposer*

Dated: April 12, 2010

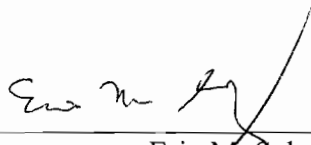
## CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **OPPOSER'S MOTION TO EXTEND TIME TO PROVIDE EXPERT DISCLOSURES** was deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to Applicant:

Dr. Anibal de Oliveira Fortuna  
Av. Alm. Cochrane, 83 apto. 161  
11040-001 Santos, SP Brazil

and sent to him via electronic mail at the address "anibal.fortuna@uol.com.br."

Dated: April 12, 2010

  
\_\_\_\_\_  
Eric M. Schmalz



FOLEY & LARDNER LLP

Exhibit A

March 23, 2010

ATTORNEYS AT LAW

321 NORTH CLARK STREET, SUITE 2800  
CHICAGO, IL 60654-5313  
312.832.4500 TEL  
312.832.4700 FAX  
foley.com

WRITER'S DIRECT LINE  
312.832.4930  
jgriffith@foley.com EMAIL

CLIENT/MATTER NUMBER  
091920-0111

VIA E-MAIL AND U.S. MAIL

Dr. Anibal de Oliveira Fortuna  
Av. Alm. Cochrane, 83 apto. 161  
11040-0001 Santos, SP  
Brazil

Re: Opposition No. 91191601 - Discovery Response Deficiencies

Dear Dr. Fortuna:

We have received your responses to The Laryngeal Mask Company's first set of written discovery. After reviewing your responses, we note that several of them are either incomplete or otherwise deficient. We have set forth below the items that we believe require supplementation under the discovery rules. Please provide revised responses and additional documents and things addressing each item by no later than April 2, 2010. This letter should be considered as our effort to resolve with you the issues described herein pursuant to 37 C.F.R. § 2.120(c).

1. Interrogatory Responses. The following Interrogatory Responses are incomplete or otherwise deficient:

a. Interrogatory No. 2 requests that Applicant identify each mark considered as an alternate choice to the C-LMA Mark and the reasons why each was rejected. The response to this Interrogatory does not provide the information requested, but instead describes the process through which the C-LMA mark was allegedly chosen. Applicant must supplement its response to Interrogatory No. 2 to identify any alternate marks that were considered and to provide reasons as to why such marks were rejected.

b. Interrogatory No. 5 requests that Applicant describe the circumstances under which Applicant first became aware of Opposer's marks, including but not limited to, the specific mark, the date, and the persons involved. Applicant's response makes only general mention of "LMA as a prefix," without specifically identifying which of the LMA Marks Applicant became aware of, the dates of such awareness, or the persons involved. We note that Applicant's fourth response to Opposer's First Request for Admissions admits that Applicant was aware of the LMA Marks by the time Application Ser. No. 78/448,067 was filed. Interrogatory No. 5 requires that Applicant provide the requested details as to that awareness.

c. Interrogatory No. 6 requests that Applicant identify all agreements signed between Opposer and Applicant, or any person affiliated with Applicant, in connection with the distribution of Opposer's laryngeal masks in Brazil, including the dates such agreements

BOSTON  
BRUSSELS  
CHICAGO  
DETROIT

JACKSONVILLE  
LOS ANGELES  
MADISON  
MIAMI

MILWAUKEE  
NEW YORK  
ORLANDO  
SACRAMENTO

SAN DIEGO  
SAN DIEGO/DEL MAR  
SAN FRANCISCO  
SHANGHAI

SILICON VALLEY  
TALLAHASSEE  
TAMPA  
TOKYO  
WASHINGTON, D.C.

# Exhibit A



FOLEY & LARDNER LLP

Dr. Anibal de Oliveira Fortuna

March 23, 2010

Page 2

were in effect, the parties to the agreement, the terms of the agreement and the nature of Applicant's affiliation with each relevant affiliated person. Applicant's response does not set forth the terms of any of the identified agreements, and only one of these agreements appears to have been included as part of Applicant's response to Opposer's First Request for Production. Please provide the terms of the other agreements identified in Applicant's response (or copies of those agreements). Further, please clarify Applicant's relationship with the entity Medtech (e.g., sole owner, officer, controlling shareholder). Applicant's response to Interrogatory No. 1 states that Applicant is "responsible" for Medtech, but does not state the capacity in which he bears that responsibility.

d. Interrogatory No. 7 requests that Applicant identify all trademark searches and/or investigations concerning the mark "LMA" or the "C-LMA" mark conducted by or on behalf of Applicant. Applicant's response indicates that Applicant conducted extensive searching, but the dates of such searches, persons who have knowledge of the results, and the location and custodian of documents evidencing such searches, as requested in this interrogatory, have not been provided.

e. Interrogatory Nos. 9 and 10 request that Applicant identify the manner in which sales of goods, such as Applicant's Goods, are conducted. Applicant's responses merely indicate some consumers to which Applicant's Goods may be offered and states that they will be offered through the "usual channels of trade customary for goods of this type," without identifying those channels of trade. The responses to these two Interrogatories must be amended to identify the person(s) who most commonly makes the purchasing decision for Applicant's Goods, the manner in which sales of such goods are conducted (e.g., customers place orders through third party catalogs directly from the manufacturer; customers purchase products through distributors), and the channels of distribution for Applicant's Goods.

2. Request for Admission Responses. Please correct the following incomplete or otherwise deficient responses:

a. Admission Request No. 1 asks Applicant to admit that Medtech is a former Brazilian distributor of Opposer's laryngeal masks sold under the mark "LMA." Applicant has denied this, but suggests that Applicant was a distributor for Opposer's predecessor in interest. Further, Applicant's explanation does not make clear whether Medtech distributed Opposer's laryngeal masks in Brazil under the "LMA" mark while it was acting as distributor. Applicant must supplement its response to Request No. 1 to either admit it or to clarify his denial on these points.

b. Admission Requests Nos. 11 and 12 ask Applicant to admit that Opposer has a reputation for marketing quality laryngeal masks in connection with its LMA Marks in the U.S. and worldwide. Applicant's denials are not responsive to the requests because they refer to the success of Opposer's business, which is irrelevant to the request. Rather, the Requests relate to Applicant's understanding of Opposer's reputation. Applicant must

## Exhibit A



FOLEY & LARDNER LLP

Dr. Anibal de Oliveira Fortuna

March 23, 2010

Page 3

supplement its responses to Requests Nos. 11 and 12 to admit or deny the statements as they relates to Applicant's understanding of Opposer's reputation.

c. Admission Request No. 17 asks Applicant to admit that Applicant intends to market laryngeal masks in connection with the C-LMA Mark in the U.S. Applicant has denied this, but has identified goods which incorporate laryngeal masks in his Application Ser. No. 78/448,067. If Applicant intends to distribute laryngeal masks as a component of his products, please so admit.

3. Document Production Responses. Please update your responses to the following items to provide all requested documents and things:

a. Production Request No. 1 seeks all documents and things relating to Applicant's distribution of Opposer's products sold under any LMA Mark. Applicant indicates that these documents are not "ready available." If such documents and things are within the possession, custody, or control of Applicant, Applicant's representatives or attorneys, or any member of Applicant's family, then they must be produced, even if a diligent search is required to locate them.

b. Production Request No. 3 seeks all documents and things relating to or referencing any availability search conducted by or for Applicant for the mark LMA, the mark C-LMA, or any other mark considered for adoption by Applicant within 12 months of Applicant's filing his application for C-LMA. The only documents produced in connection with this request appear to be taken from the public file wrapper for Application Ser. No. 78/448,067. No documents were produced that were responsive to Production Request No. 3. Please also provide all documents and things relating to or referencing the searches listed in this request, including but not limited to the extensive availability searching allegedly conducted by Applicant identified in response to Interrogatory No. 7, or state that no such documents exist.

c. Production Request No. 4 asks for all documents and things relating to or referencing the differences, functional, structural or otherwise between Applicant's Goods and Opposer's laryngeal masks. The only documents produced in connection with this request are U.S. Patent No. 7,040,322 B2 and a summary of that patent. This response is incomplete. Documents produced in response to this request should include, but not be limited to, information disclosure statements, responses to office actions, patent search reports and any other relevant documents.



## Exhibit A

**FOLEY**

FOLEY & LARDNER LLP

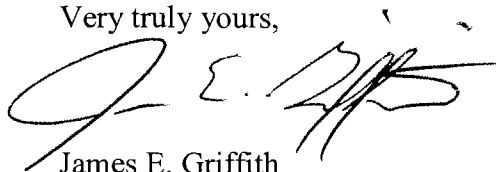
Dr. Anibal de Oliveira Fortuna

March 23, 2010

Page 4

We look forward to promptly receiving your revised responses and additional documents and things.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. E. Griffith", with a stylized flourish at the end.

James E. Griffith

cc: Jeffrey H. Greene  
Kelly M. Bargmann  
Eric M. Schmalz



## Exhibit B

2. If an Interrogatory has subparts, each part must be answered separately and in full. If any aspect of any Interrogatory cannot be answered in full, answer to the extent possible, specify the reason for Applicant's inability to answer the remainder, and state whatever information and knowledge Applicant has regarding the unanswered portion.

3. These Interrogatories are continuing and the Answers thereto must be supplemented promptly.

4. For each Request to which Applicant does not fully respond because of a claim that the information is privileged:

- a. State the nature of the claim of privilege;
- b. State all facts relied upon in support of the claim of privilege;
- c. Identify the date of all documents related to the claim of privilege;
- d. Identify all persons having knowledge of any facts related to the claim of privilege; and
- e. Identify all events, transactions, or occurrence related to the claim of privilege.

5. If an Interrogatory Answer, or any portion of it, is incomplete due to an incomplete investigation, or for another reason, the Interrogatory should be answered as completely as possible based upon the investigation completed to date, along with the following additional information:

- a. The nature and extent of the investigation completed to date;
- b. The nature and extent of the investigation intended to complete the Response to the Interrogatory; and
- c. The date by which Applicant expects to complete the investigation so that the Interrogatory can be answered in full.

## Exhibit B

6. Applicant is requested to preserve all information, documents, and things in any form or medium that may be relevant to the subject matter of this action.

### DEFINITIONS

1. The term “document” shall mean any writing or recording, including, but not limited to, the original and any copy of electronic mail (a.k.a. email), books, records, reports, tape recordings, transcripts of tape recordings, data cards, memoranda or notes of conversations and meetings, notes, letters, telegrams, cables, telexes, diaries, logs, graphs, charts, contracts, releases, studies, drawings, canceled checks, summaries, booklets, circulars, bulletins, instructions, minutes, bills, questionnaires, invoices, disks, correspondence, financial statements, and drafts of any of the foregoing, computer data, however stored, as well as any other tangible thing on which information is recorded in writing, sound, or through other means.

2. The term “thing” shall mean all tangible objects, other than documents, of any type, composition, construction, or nature.

3. The term “entity” means a partnership, corporation, proprietorship, association, government, or any other government or business organization, whether formal or informal.

4. The terms “trademark” or “mark” includes trademarks, service marks, collective marks, certification marks, and trade names as defined in 15 U.S.C. § 1127.

5. The term “identify” or “identification,” when used in reference to an individual person, means to state his or her full name, present address, home and business telephone numbers, and his present position and business affiliation. When used in reference to a person other than an individual person, “identify” or “identification” means to state whether such a person is a corporation, partnership, or other organization, and the name, present and last known address, telephone number, and principal place of business. Once any person has been identified

## Exhibit B

properly, it shall be sufficient thereafter when identifying that person to state his, her, or its name only.

6. The term “identify” or “identification,” when used in reference to a document, means to state the date, the author (or, if different, the signer or signers), the addressee, and the type of document (e.g., letter, memoranda, telegram, chart, etc.). If any such document was, but is no longer, in Applicant’s possession or subject to Applicant’s control, state when disposition was made of it and the reason for such disposition. Instead of identifying any document, a true and correct copy thereof may be annexed to and incorporated in the Answers to these Interrogatories.

7. The terms “person” and “persons” means every individual, corporation, partnership, joint venture, trust, or any other entity encompassed within the usual and customary meaning of “person” or “persons” or otherwise encompassed within this definition.

8. The terms “relates to,” “relating to,” “referring to,” and “refers to,” shall mean comprising, constituting, containing, embodying, identifying, stating, dealing with, directly or indirectly mentioning or describing, pertaining to, being connected with, reflecting upon, or resulting from the subject matter discussed.

9. The term “Applicant” shall mean the applicant in this Opposition, Anibal De Oliveira Fortuna.

10. The term “Opposer” shall mean The Laryngeal Mask Company Ltd., its predecessors in interest, its subsidiaries and related organizations, and the officers, employees, directors, officials, agents, and representatives thereof.

11. The term “C-LMA Mark” shall refer to Applicant’s mark C-LMA.

## Exhibit B

12. The term “Applicant’s Goods” shall refer to the goods identified in U.S. Serial No. 78/448,067, namely, a “medical device used to ventilate patients, namely, a supraglottic laryngeal mask combined with a cuffed esophageal tube.”

13. The term “LMA Marks” shall refer to Opposer’s registered marks comprising or containing the element “LMA” for laryngeal masks on the Principal Register:

<b>Mark</b>	<b>Registration Number</b>	<b>Filing Date</b>	<b>Registration Date</b>	<b>First Use Date</b>	<b>Status</b>
LMA	2,506,914	February 7, 2001	November 13, 2001	December 11, 1992	Incontestable
LMA & Design	1,854,088	September 15, 1992	September 13, 1994	December 11, 1992	Incontestable
LMA-UNIQUE	2,133,294	June 12, 1996	January 27, 1998	June 27, 1997	Incontestable
LMA-FASTRACH	2,173,557	June 12, 1996	July 14, 1998	March 5, 1998	Incontestable
LMA-CLASSIC	2,220,745	June 12, 1996	January 26, 1999	February 23, 1998	Incontestable
LMA-PROSEAL	2,518,267	August 20, 1999	December 11, 2001	August 15, 2000	Incontestable
LMA CTRACH	3,234,339	June 29, 2004	April 24, 2007	November 29, 2004	Registered

14. The terms “and” and “or” shall be construed disjunctively or conjunctively as necessary in order to bring within the scope of each Request all documents or things that might otherwise be construed to be outside its scope.

### INTERROGATORIES

1. Identify and describe Applicant’s business and its operations.
2. Identify each mark that Applicant considered in his selection of the C-LMA Mark as an alternate choice to the C-LMA Mark and the reasons each was rejected.
3. Identify each person who participated in the selection of the C-LMA Mark.
4. Identify each person who has manufactured Applicant’s Goods sold under the C-LMA Mark, and the dates of manufacture for each.

## Exhibit B

5. Describe the circumstances under which Applicant first became aware of any of Opposer's LMA Marks, including, but not limited to, the specific mark, the date, and the persons involved.
6. Identify any agreements between Opposer and Applicant or any person affiliated with Applicant in connection with the distribution of Opposer's laryngeal masks in Brazil, including the dates such agreement(s) were in effect, the parties to the agreement, the terms of the agreement, and, if the agreement was between Opposer and a person affiliated with Applicant, the nature of Applicant's affiliation with that person.
7. Identify all trademark searches and/or investigations concerning the mark "LMA" or the C-LMA Mark conducted by or on behalf of Applicant. For each search or investigation identified, set forth the date(s) of such search and/or investigation; identify each person who has knowledge of the result of such search and/or investigation; and identify the location and custodian of any documents concerning any such search and/or investigation.
8. Identify all persons, other than Opposer, that have used a mark consisting of or incorporating the term "LMA" for laryngeal masks in the United States.
9. Describe the market for Applicant's Goods, including but not limited to an identification of the class of potential purchasers of Applicant's Goods and the manner in which sales of such goods is conducted.
10. Describe the intended channels of distribution for Applicant's Goods.
11. Identify each person whom Applicant intends to call on to give evidence as a lay witness in this matter.
12. Identify each person whom Applicant intends to call on to give evidence as an expert witness in this matter and, for each such person, state:

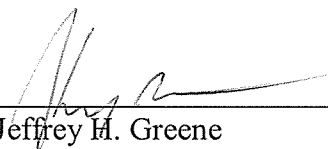
## Exhibit B

- a. The subject matter on which the expert is expected to testify;
- b. The substance of the facts and opinions to which the expert is expected to testify;
- c. The documents and things supplied to or used by the expert in conducting his or her analysis; and
- d. The grounds for each such opinion of each expert.

Respectfully submitted,

FOLEY & LARDNER LLP

Dated: New York, New York  
January 28, 2010

By:   
Jeffrey M. Greene  
James E. Griffith  
Kelly M. Bargmann  
Eric M. Schmalz  
90 Park Avenue  
New York, NY 10016-1314

*Attorneys for Applicant*



## Exhibit B

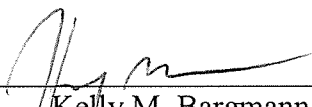
### CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **OPPOSER THE LARYNGEAL MASK COMPANY LTD.'S FIRST INTERROGATORIES TO APPLICANT ANIBAL DE OLIVEIRA FORTUNA** was deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to Applicant:

Dr. Anibal de Oliveira Fortuna  
Av. Alm. Cochrane, 83 apto. 161  
11040-001 Santos, SP Brazil

And sent to him via electronic mail at the address "anibal.fortuna@uol.com.br."

Dated: January 28, 2010

  
\_\_\_\_\_  
Kelly M. Bargmann



# Exhibit C

## INSTRUCTIONS

1. This First Request for Production of Documents and Things (“First Request”) seeks answers, information and identification known to or by Applicant (individually, “Requests”). In answering this First Request, Applicant is required to furnish all information that is available to him or subject to his reasonable inquiry, including information in the possession of any member of his family, his attorneys, accountants, agents, advisors, or other persons directly or indirectly employed by or connected with Applicant or Applicant's attorneys and anyone else otherwise subject to Applicant's control.
2. In responding to this First Request, Applicant must make a diligent search of Applicant's records and of other papers and materials in Applicant's possession, custody, or control or available to Applicant, Applicant's attorneys, Applicant's representatives, or any member of Applicant's family.
3. If a Request has subparts, each part must be responded to separately and in full.
4. Applicant's responsibility to respond to this First Request is continuing and documents responsive thereto, whenever or wherever found, must be produced promptly to Opposer's counsel.
5. For each Request to which Applicant does not fully respond because of a claim that a document is privileged:
  - a. State the nature of the claim of privilege;
  - b. State the date of the document.
  - c. Provide a general description of the type of document and the subject matter to which it pertains.
  - d. State all facts relied upon in support of the claim of privilege including, where applicable, the author and recipient(s) of the document;

## Exhibit C

- e. Identify the date of all documents related to the claim of privilege;
  - f. Identify all persons having knowledge of any facts related to the claim of privilege; and
  - g. Identify all events, transactions, or occurrences related to the claim of privilege.
6. If any responsive document or thing has been destroyed, identify the contents of each document or thing, including its date and subject matter, the location of any copies of the document, the author(s) and recipient(s) of the document, the date of destruction, the purpose for the destruction, and the name of the person who ordered, observed, or authorized the destruction.
7. If a response to a Request, or any portion of it, is incomplete due to an incomplete investigation, or for another reason, the Request should be answered and responded to as completely as possible based upon the investigation completed to date, along with the following additional information:
- a. The nature and extent of the investigation performed to date;
  - b. The nature and extent of the investigation intended to complete the Response; and
  - c. The date by which Applicant expects to complete the investigation so that the Request can be answered in full.
8. Applicant is requested to preserve all information, documents, and things in any form or medium that may be relevant to the subject matter of this action.

### DEFINITIONS

1. The term “document” shall mean any writing or recording, including, but not limited to, the original and any copy of electronic mail (a.k.a. email), books, records, reports, tape recordings, transcripts of tape recordings, data cards, memoranda or notes of conversations and meetings, notes, letters, telegrams, cables, telexes, diaries, logs, graphs, charts, contracts,

## Exhibit C

releases, studies, drawings, canceled checks, summaries, booklets, circulars, bulletins, instructions, minutes, bills, questionnaires, invoices, disks, correspondence, financial statements, and drafts of any of the foregoing, computer data, however stored, as well as any other tangible thing on which information is recorded in writing, sound, or through other means.

2. The term “thing” shall mean all tangible objects, other than documents, of any type, composition, construction, or nature.

3. The terms “trademark” or “mark” includes trademarks, service marks, collective marks, certification marks, and trade names as defined in 15 U.S.C. § 1127.

4. The terms “relates to,” “relating to,” “referring to,” and “refers to,” shall mean comprising, constituting, containing, embodying, identifying, stating, dealing with, directly or indirectly mentioning or describing, pertaining to, being connected with, reflecting upon, or resulting from the subject matter discussed.

5. The term “Applicant” shall mean the applicant in this Opposition, Anibal De Oliveira Fortuna.

6. The term “Opposer” shall mean The Laryngeal Mask Company Ltd., its predecessors in interest, its subsidiaries and related organizations, and the officers, employees, directors, officials, agents, and representatives thereof.

7. The term “C-LMA Mark” shall refer to Applicant’s mark C-LMA.

8. The term “Applicant’s Goods” shall refer to the goods identified in U.S. Serial No. 78/448,067, namely, “medical device used to ventilate patients, namely, a supraglottic laryngeal mask combined with a cuffed esophageal tube.”

9. The term “LMA Marks” shall refer to Opposer’s registered marks comprising or containing the element “LMA” for laryngeal masks on the Principal Register:

## Exhibit C

<b>Mark</b>	<b>Registration Number</b>	<b>Filing Date</b>	<b>Registration Date</b>	<b>First Use Date</b>	<b>Status</b>
LMA	2,506,914	February 7, 2001	November 13, 2001	December 11, 1992	Incontestable
LMA & Design	1,854,088	September 15, 1992	September 13, 1994	December 11, 1992	Incontestable
LMA-UNIQUE	2,133,294	June 12, 1996	January 27, 1998	June 27, 1997	Incontestable
LMA-FASTRACH	2,173,557	June 12, 1996	July 14, 1998	March 5, 1998	Incontestable
LMA-CLASSIC	2,220,745	June 12, 1996	January 26, 1999	February 23, 1998	Incontestable
LMA-PROSEAL	2,518,267	August 20, 1999	December 11, 2001	August 15, 2000	Incontestable
LMA CTRACH	3,234,339	June 29, 2004	April 24, 2007	November 29, 2004	Registered

10. The terms “and” and “or” shall be construed disjunctively or conjunctively as necessary in order to bring within the scope of each Request all documents or things that might otherwise be construed to be outside its scope.

### REQUESTS

1. All documents and things relating to Applicant’s distribution of Opposer’s products sold under any LMA Mark.
2. All documents and things which Applicant will use as evidence in this proceeding.
3. All documents and things relating to or referencing any availability search conducted by or for Applicant for the mark LMA, the mark C-LMA, or any other mark considered for adoption by Applicant within 12 months of Applicant’s filing his application for C-LMA (Ser. No. 78/448,067).
4. All documents and things relating to or referencing the differences, functional, structural or otherwise, between Applicant’s Goods and Opposer’s laryngeal masks, including, but not limited to, relevant documents filed by Applicant in connection with U.S. Patent No. 7,040,322 B2.

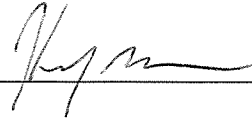
## Exhibit C

Respectfully submitted,

FOLEY & LARDNER LLP

Dated: New York, New York  
January 28, 2010

By: \_\_\_\_\_



Jeffrey H. Greene  
James E. Griffith  
Kelly M. Bargmann  
Eric M. Schmalz  
Foley & Lardner LLP  
90 Park Avenue  
New York, NY 10016-1314

*Attorneys for Opposer*

## Exhibit C

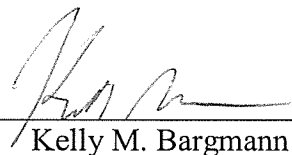
### CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **OPPOSER THE LARYNGEAL MASK COMPANY LTD.'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS TO APPLICANT ANIBAL DE OLIVEIRA FORTUNA** was deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to Applicant:

Dr. Anibal de Oliveira Fortuna  
Av. Alm. Cochrane, 83 apto. 161  
11040-001 Santos, SP Brazil

and sent to him via electronic mail at the address "anibal.fortuna@uol.com.br."

Dated: January 28, 2010

  
\_\_\_\_\_  
Kelly M. Bargmann