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

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|------------------------|--|
| Proceeding | 91206212 |
| Party | Defendant entrotech, inc. |
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| Signature | /erin m hickey/ |
| Date | 12/04/2012 |
| Attachments | v Carefusion PO.pdf (11 pages)(424197 bytes) |

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

CAREFUSION 2200, INC.,

Opposer,

v.

ENTROTECH LIFE SCIENCES, INC.,

Applicant.

Opposition No. 91-206,212

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, Virginia 22313-1451

CONFIDENTIALITY AND PROTECTIVE ORDER

Opposer, Carefusion 2200, Inc. (“Opposer”), and Applicant, Entrotech Life Sciences, Inc. (“Applicant”), (individually a “Party” and collectively the “Parties”), agree to the following provisions for protecting the confidentiality of information that may be revealed during the above-identified proceeding:

1) Classes of Protected Information.

The Rules of Practice in Trademark Cases provide that all inter partes proceeding files, as well as the involved registration and application files, are open to public inspection. The terms of this Order are not to be used to undermine public access to files. When appropriate, however, a Party or non-party witness, on its own or through its attorney, may seek to protect the confidentiality of information, whether oral or documentary in nature, (“Protected Information”) by employing one of the following designations.

Confidential - Material to be shielded by the Board from public access.

Highly Confidential - Material to be shielded by the Board from public access and subject to agreed restrictions on access even as to the parties and/or their attorneys, except each Party may designate either an in-house counsel or a corporate designee who may have access.

Trade Secret/Commercially Sensitive - Material to be shielded by the Board from public access, restricted from any access by the Parties, but available for review by outside counsel for the Parties and, subject to the provisions of paragraph 4 and 5, by independent experts or consultants for the Parties.

2) Information Not to Be Designated as Protected.

Information may not be designated as subject to any form of protection if it (a) is, or becomes, public knowledge, as shown by publicly available writings, other than through violation of the terms of this document; (b) is acquired by a non-designating party or non-party witness from a third party lawfully possessing such information and having no obligation to the owner of the information; (c) was lawfully possessed by a non-designating party or non-party witness prior to the opening of discovery in this proceeding, and for which there is written evidence of the lawful possession; (d) is disclosed by a non-designating party or non-party witness legally compelled to disclose the information; or (e) is disclosed by a non-designating party with the approval of the designating party.

3) Access to Protected Information.

The provisions of this Order regarding access to Protected Information are subject to modification by written agreement of the Parties or their attorneys, or by motion filed with and approved by the Board.

Judges, attorneys, and other employees of the Board are bound to honor the Parties' designations of Protected Information, but are not required to sign forms acknowledging the terms and existence of this Order. Court reporters, stenographers, video technicians or others who may be employed by the Parties or their attorneys to perform services incidental to this proceeding will be bound only to the extent that the Parties or their attorneys make it a condition of employment or obtain agreements from such individuals, in accordance with the provisions of paragraph 4.

- **Parties** are defined as including individuals, officers of corporations, partners of partnerships, and management employees of any type of business organization.
- **Attorneys** for Parties are defined as including **in-house counsel** and **outside counsel**, including support staff operating under counsel's direction, such as paralegals or legal assistants, secretaries, and any other employees or independent contractors operating under counsel's instruction.

- **Independent experts or consultants** include individuals retained by a Party for purposes related to prosecution or defense of the proceeding but who are not otherwise employees of either the Party or its attorneys.
- **Non-party witnesses** include any individuals to be deposed during discovery or trial, whether willingly or under subpoena issued by a court of competent jurisdiction over the witness.

Parties and their **attorneys** shall have access to information designated as **Confidential**, subject to any agreed exceptions.

Outside counsel and either **an in-house counsel** or a **corporate designee** from each Party may have access to information designated as **Highly Confidential**.

Outside counsel, but not Parties or their in-house counsel, shall have access to information designated as **Trade Secret/Commercially Sensitive**.

Independent experts or consultants, non-party witnesses, and any other individual not otherwise specifically covered by the terms of this Order may be afforded access to **Confidential** or **Highly Confidential** information in accordance with the terms that follow in paragraph 4. Further, **independent experts or consultants** may have access to **Trade Secret/Commercially Sensitive** information if such access is agreed to by the Parties or ordered by the Board, in accordance with the terms that follow in paragraph 4 and 5.

4) Disclosure to Any Individual.

Prior to disclosure of Protected Information by any Party or its attorney to any individual not already provided access to such information by the terms of this Order, the individual shall be informed of the existence of this Order and provided with a copy to read. The individual will then be required to certify in writing, via the agreed-upon form of certification appended to this Order, that he/she has read and understood the Order and that the terms shall be binding on the individual. No individual shall receive any Protected Information until the Party or attorney proposing to disclose the information has received the signed certification from the individual. The Party or attorney receiving the executed certification shall retain the original.

5) Disclosure to Independent Experts or Consultants.

In addition to meeting the requirements of paragraph 4, any Party or attorney proposing to share Protected Information with an independent expert or consultant must also notify the Party who has designated the Protected Information. Notification must be personally served or forwarded by certified mail, return receipt requested, and shall provide notice of the name, address, occupation and professional background of the expert or independent consultant.

The Party or its attorney receiving the notice shall have ten (10) business days to object to disclosure of the Protected Information to the expert or independent consultant. If an objection is made, then the Parties must negotiate the issue before raising the issue before the Board. If the Parties are unable to settle their dispute, then it shall be the obligation of the Party or its attorney proposing disclosure to bring the matter before the Board with an explanation of the need for disclosure and a report on the efforts the Parties have made to settle their dispute. The Party objecting to disclosure will be expected to respond with its arguments against disclosure or its objections will be deemed waived.

6) Responses to Written Discovery.

Responses to interrogatories under Federal Rule 33 and requests for admissions under Federal Rule 36, and which the responding party reasonably believes to contain Protected Information shall be prominently stamped or marked with the appropriate designation from paragraph 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing party learns of its error, by informing all Parties in writing, of the error. The Parties should inform the Board only if necessary because of the filing of Protected Information not in accordance with the provisions of paragraph 12.

7) Production of Documents.

If a Party responds to requests for production under Federal Rule 34 by making copies and forwarding the copies to the requesting party, then the copies shall be prominently stamped or marked, as necessary, with the appropriate designation from paragraph 1. If the responding party makes documents available for inspection and copying by the requesting party, all documents shall be considered to be Protected Information during the course of inspection. After the requesting party informs the responding party what documents are to be copied, the responding party will be responsible for prominently stamping or marking the copies with the appropriate designation from paragraph 1.

a) Inadvertent Failure to Designate.

Any Party who inadvertently fails to designate information as “Trade Secret/Commercially Sensitive,” “Highly Confidential,” or “Confidential,” or otherwise wishes to change the designation of confidentiality, may later do so, and the receiving party shall treat such document/information as being so designated with confidentiality from the time the receiving party is notified in writing of the inadvertent failure to designate and/or the change in designation. The Parties agree that the inadvertent failure to designate a document/information as “Trade Secret/Commercially Sensitive,” “Highly Confidential,” or “Confidential” document/information by the designating party in producing discovery to the receiving party, regardless of whether the document/information included any confidentiality designation at the time of disclosure, shall not be treated as a waiver in whole or in part of a designating party’s claim of confidentiality, either as to the specific information disclosed or as to any other information relating thereto or on the same or related subject matter.

b) Inadvertent Production of Privileged Information.

In the event that privileged information is inadvertently produced, upon request of the producing party, the documents, together with all copies thereof, shall be returned immediately to the Party claiming privilege, any notes of the inadvertently produced privileged documents and/or any derivative documents created by the receiving party shall be destroyed, and any privileged information contained therein shall not be used in the proceeding by the discovering or receiving party, except by order of the Board, or by agreement of the Parties, or unless obtained thereafter through a subsequent express waiver of the privilege or through some other lawful means. Nothing shall prevent a Party from disputing that the production or privileged documents or other information was not inadvertent and/or that such claim of privilege is improper.

The Parties should inform the Board only if necessary because of the filing of Protected Information not in accordance with the provisions of paragraph 12.

8) Depositions.

Protected Information produced during a discovery deposition, or offered into evidence during a testimony deposition shall be orally noted as such by the producing or offering party at the outset of any discussion of the Protected Information, or otherwise on the record during the deposition. In addition, the documents containing any Protected Information must be prominently stamped or marked with the appropriate designation from paragraph 1.

During discussion of any non-documentary Protected Information, a Party may orally designate such information as Protected Information.

Deposition testimony may be designated on the record during the deposition as containing Protected Information of the categories specified in paragraph 1. If no such designation is made on the record, the transcript of any deposition and all exhibits or attachments shall be treated as Protected Information for 30 days following the date of service of the transcript by the Party that took the deposition. During that 30-day period, either Party may designate the portions of the transcript, and any specific exhibits or attachments, that are to be treated as Protected Information, by electing the appropriate designation from paragraph 1. Appropriate stampings or markings should be made during this time. If no such designations are made either on the record or during that 30-day period following the deposition, then the entire transcript and exhibits will be considered unprotected.

9) Filing Notices of Reliance.

When a Party or its attorney files a notice of reliance during the Party's testimony period, the Party or its attorney is bound to honor designations made by the other Party or its attorney, or any non-party witness who disclosed the information, so as to maintain the protected status of the information.

10) Briefs.

When filing briefs, memoranda, or declarations in support of a motion, or briefs at final hearing, the portions of these filings that discuss Protected Information, whether information of the filing party, or any adverse party, or any non-party witness, should be redacted. The rule of reasonableness for redaction is discussed in paragraph 12 of this Order.

11) Handling of Protected Information.

Disclosure of Protected Information under the terms of this Order is intended only to facilitate the prosecution or defense of this case. The recipient of any Protected Information disclosed in accordance with the terms of this Order is obligated to maintain the confidentiality of the information and shall exercise reasonable care in handling, storing, using or disseminating the information.

12) Redaction; Filing Material With the Board.

When a Party or its attorney must file Protected Information with the Board, or a brief that discusses Protected Information, the Protected Information and/or portion of the brief discussing the same should be redacted from the public filing. A rule of reasonableness should dictate how redaction is effected.

Redaction can entail merely covering a portion of a page of material when it is copied in anticipation of filing but can also entail the more extreme measure of simply filing the entire page under seal as one that contains or refers to primarily Protected Information. If only a sentence or short paragraph of a page of material contains or refers to Protected Information, covering that material when the page is copied would be appropriate. In contrast, if most of the material on the page contains or refers to Protected Information, then filing the entire page under seal would be more reasonable, even if some small quantity of non-confidential material is then withheld from the public record. Likewise, when a multi-page document is in issue, reasonableness would dictate that redaction of the portions or pages containing or referring to Protected Information be effected when only some small number of pages contain such material. In contrast, if almost every page of the document contains or refers to Protected Information, it may be more reasonable to simply submit the entire document under seal. **Occasions when a whole document or brief must be submitted under seal should be very rare.**

Protected Information, and pleadings, briefs or memoranda that reproduce, discuss or paraphrase such information, shall be filed with the Board under seal. The envelopes or containers shall be prominently stamped or marked with a legend in substantially the following form:

CONFIDENTIAL

This envelope contains documents or information that are subject to a protective order or agreement. The confidentiality of the material is to be maintained and the envelope is not to be opened, or the contents revealed to any individual, except by order of the Board.

13) Acceptance of Information; Inadvertent Disclosure.

Any party may challenge the designation of any Protected Information by objecting to the designation as set forth in Paragraph 14. Acceptance by a Party or its attorney of Protected Information shall not constitute an admission that the information is, in fact, entitled to protection. Failure to identify information as Protected Information shall not constitute waiver of any right to designate the information as Protected Information upon discovery of the error.

14) Challenges to Designations of Information as Protected.

If the Parties or their attorneys disagree as to whether certain information should be considered Protected Information, they are obligated to negotiate in good faith regarding the designation by the disclosing party. If the Parties are unable to resolve their differences, the Party challenging the designation may make a motion before the Board seeking a determination of the status of the information.

A challenge to the designation of information as Protected Information must be made substantially contemporaneous with the designation, or as soon as practicable after the basis for challenge is known. When a challenge is made long after a designation of information as protected, the challenging party will be expected to show why it could not have made the challenge at an earlier time.

The Party designating information as protected will, when its designation is timely challenged, bear the ultimate burden of proving that the information should be protected.

15) Board's Jurisdiction; Handling of Materials After Termination.

The Board's jurisdiction over the Parties and their attorneys ends when this proceeding is terminated. A proceeding is terminated only after a final order is entered and either all appellate proceedings have been resolved or the time for filing an appeal has passed without filing of any appeal.

The Parties may agree that archival copies of evidence and briefs may be retained, subject to compliance with agreed safeguards. Otherwise, within 30 days after the final termination of this proceeding, the Parties and their attorneys shall return to each disclosing party the Protected Information disclosed during the proceeding. In the alternative, the disclosing party or its attorney may make a written request that such materials be destroyed rather than returned. However, each Party's outside counsel may retain archival copies of all attorney work product,

consultant work product, correspondence, expert reports, depositions and trial transcripts and exhibits, papers filed with the Board (including exhibits) and discovery responses (but not document production) containing or referring to Protected Information.

16) Other Rights of the Parties and Attorneys.


This Order shall not preclude the Parties or their attorneys from making any applicable claims of privilege during discovery or at trial. Nor shall the Order preclude the filing of any motion with the Board for relief from a particular provision of this Order or for additional protections not provided by this Order.

By Agreement of the Following, effective:

~~October 25, 2012~~

November 29, 2012

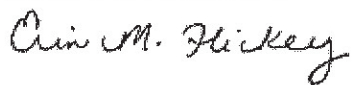
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CAREFUSION 2200, INC.,

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P.O. Box 1451
Alexandria, Virginia 22313-1451

**ACKNOWLEDGMENT OF ORDER PROTECTING CONFIDENTIALITY OF
INFORMATION REVEALED DURING BOARD PROCEEDING**

I, _____ [print name], declare that I have been provided with a copy of the Order regarding the disclosure of, and protection of, certain types of information and documents during and after the above-captioned opposition proceeding before the Trademark Trial and Appeal Board.

I have read the Order and understand its terms and provisions, by which I agree to be bound. Specifically, I agree to hold in confidence any information or documents disclosed to me in conjunction with any part I take in this proceeding. I understand and agree that signing this acknowledgment creates an enforceable contact with the parties to the above-captioned opposition that binds me to adhere to the terms of the above-referenced Order.

I declare under the penalty of perjury that these statements are true and correct.

[signature]

[print title, if applicable]

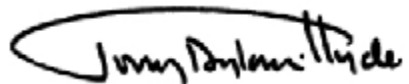
[date]

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing CONFIDENTIALITY AND PROTECTIVE ORDER has this 4th day of December 2012, been e-mailed (as agreed to by the parties) to the below-identified Attorney at his/her place of business:

Joseph R. Dreitler
Mary R. True
Dreitler True, LLC
137 E. State St.
Columbus, OH 43215

jdreitler@ustrademarklawyer.com
mtrue@ustrademarklawyer.com
ttrofino@ustrademarklawyer.com

A handwritten signature in black ink, enclosed in a large, horizontal oval. The signature reads "Anthony Dylan-Hyde" in a cursive, slightly slanted script.

Anthony Dylan-Hyde