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Filing date: **11/13/2012**

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

Proceeding	91206892
Party	Plaintiff AngioDynamics, Inc.
Correspondence Address	GARY H FECHTER MCCARTER & ENGLISH LLP 245 PARK AVENUE, 27TH FLOOR NEW YORK, NY 10167 UNITED STATES gfechter@mccarter.com, dlynch@mccarter.com
Submission	Motion to Consolidate
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Signature	/ghf/
Date	11/13/2012
Attachments	Consented Motion to Consolidate.pdf (3 pages)(67064 bytes) Brief in Support of Consented Motion to Consolidate.pdf (3 pages)(128052 bytes)

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

AngioDynamics, Inc.)	Mark: THE SMART CATHETER COMPANY
)	Serial No. 85/265,083
Opposer,)	
)	Opposition No. 91206892
v.)	
)	Mark: SMART CATHETER
Teleflex Incorporated)	Serial No. 85/265,074
Applicant.)	
)	Opposition No. 91206708

**CONSENTED TO MOTION TO CONSOLIDATE PENDING
INTER-PARTES PROCEEDINGS AND MOTION FOR
EXTENSION OF DISCOVERY AND TRIAL DATES**

Opposer, AngioDynamics, Inc., by its attorneys, McCarter & English, LLP, moves to consolidate the above-captioned proceedings for purposes of trial and pre-trial proceedings. Opposer further moves that all discovery and trial dates in the Consolidated Proceeding be set as set forth in Opposition No 91206892, namely:

Discovery Opens: 11/15/2012
Initial Disclosures Due: 12/15/2012
Expert Disclosures Due: 4/14/2013
Discovery Closes: 5/14/2013
Plaintiff's Pretrial Disclosures: 6/28/2013
Plaintiff's 30-day Trial Period Ends: 8/12/2013
Defendant's Pretrial Disclosures: 8/27/2013
Defendant's 30-day Trial Period Ends: 10/11/2013
Plaintiff's Rebuttal Disclosures: 10/26/2013
Plaintiff's 15-day Rebuttal Period Ends: 11/25/2013

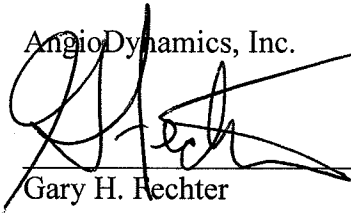
Applicant, Teleflex Incorporated, has consented to this motion.

Dated: November 13 2012

Respectfully submitted,

AngioDynamics, Inc.

By:



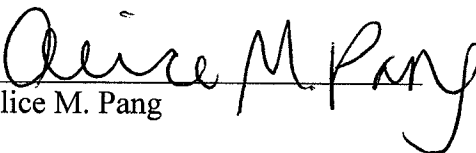
Gary H. Rechter
Lori J. Shyavitz
McCarter & English, LLP
245 Park Ave., 27th Floor
New York, NY 10167
Phone (212) 609-6800

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consented to Motion to Consolidate Pending Inter-Partes Proceeding and Motion for Extension of Discovery and Trial Dates and supporting brief has been served via regular mail upon the Applicant's attorneys of record at the address listed below, on November 13, 2012:

John H. Weber
Kelu Sullivan
Baker & Hostetler LLP
Washington Square
1050 Connecticut Ave, N.W. Suite 1100
Washington D.C. 20036-5304



Alice M. Pang

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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)	Serial No. 85/265,083
Opposer,)	
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)	Mark: SMART CATHETER
Teleflex Incorporated)	Serial No. 85/265,074
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)	Opposition No. 91206708

**BRIEF IN SUPPORT OF CONSENTED TO MOTION TO
CONSOLIDATE PENDING INTER-PARTES PROCEEDINGS AND
MOTION FOR EXTENSION OF DISCOVERY AND TRIAL DATES**

On August 27, 2012 the Board instituted Opposition No. 91206708, wherein Opposer opposed Applicant's mark SMART CATHETER. On September 6, 2012 the Board instituted Opposition No. 91206892, wherein Opposer opposed Applicant's mark THE SMART CATHETER COMPANY. The basis of Opposer's two oppositions is Opposer's ownership of a family of "SMART" marks in the medical device class.

The Trademark Trial and Appeal Board Manual of Procedure ("TBMP") provides that "[w]hen cases involving common questions of law or fact are pending before the Board, the Board may order consolidation of the cases." TBMP §511. The two oppositions involve common questions of law and fact, as both proceedings are based on the parties' competing claims of prior rights in the term "SMART". Thus, the Board should order consolidation of the proceedings.

When determining whether or not proceedings should be consolidated, the Board "will

weigh savings in time, effort and expense, which may be gained from consolidation, against any prejudice or inconvenience that may be caused thereby.” *Id.* If the proceedings herein were consolidated, the parties and the Board would save time, effort and expense, as the discovery phase of the proceeding would be more efficient, the parties would not have to address two separate discovery and trial schedules, and the parties could address common issues of law or fact throughout the proceeding, where applicable. Further, consolidation of these proceedings would not cause prejudice or inconvenience.

The discovery in both oppositions will be virtually identical. Both parties will likely request and produce the same documents and will likely rely upon most, if not all, of the same witnesses in both proceedings. If the proceedings are consolidated, the parties will only be required to produce documents once and potential witnesses would only need to be available to testify on one occasion, saving both the parties and the Board considerable time and effort.

Moreover, consolidation is still warranted even though the goods and services at issue are not identical. *See G-Mar Dev. Corp. v. Tully’s Coffee Corp.*, 46 U.S.P.Q.2d 1797, 1798 (TTAB 1998) (consolidating oppositions challenging applications for “coffee” in class 30 and “retail coffee store services; cafe services” in class 42); *Regatta Sport, Ltd. v. Telux-Pioneer, Inc.*, 20 U.S.P.Q.2d 1154, 1156 (TTAB 1991) (stating that the Board may consolidate proceedings involving watches and wearing apparel). The goods at issue in both proceedings both concern medical catheters and are, thus, related. Thus, consolidation is proper.

Even if there are issues that are distinct to a particular SMART-formative application, the Board decides the cases on their individual merits. “Consolidated cases do not lose their separate

identity because of consolidation.” TBMP § 511; *Wright & Miller* at § 2382. “Each proceeding retains its separate character and requires entry of a separate judgment.” TBMP § 511.

Since both oppositions involve the same parties, common questions of law and fact and will not prejudice or inconvenience the parties, consolidation is warranted. Consolidation of these proceedings is also appropriate because it will promote judicial economy, as well as save the parties significant time, effort and expense to resolve the proceedings. Accordingly, the Board should grant AngioDynamic Inc.’s Consented to Motion to Consolidate.

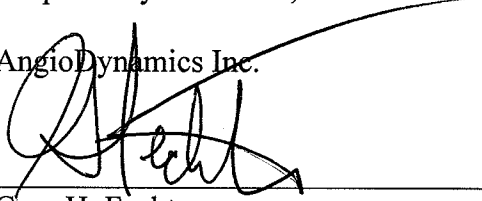
Given that consolidation of the proceedings is warranted, and no extension of the deadlines in the proposed Consolidated Proceeding is necessary due to the fact that Opposer is proposing that the dates set out in Opposition No. 91206892 be utilized for the proposed Consolidated Proceeding, Opposer moves for the proposed Consolidation of Opposition No. 91206892 with Opposition No. 91206708.

Dated: November 13, 2012

Respectfully submitted,

AngioDynamics Inc.

By:



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