

ESTTA Tracking number: **ESTTA637461**

Filing date: **11/06/2014**

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

Proceeding	91218607
Party	Defendant B & D Dental Corp.
Correspondence Address	ERIC E. WESTERBERG THORPE NORTH AND WESTERN, LLP 8180 S 700 E STE 350 SANDY, UT 84070-0561 trademarkdocket@tnw.com
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Signature	/Eric E. Westerberg/
Date	11/06/2014
Attachments	Neoss Answer.pdf(14591 bytes)

Registration Subject to the filing

Registration No	4081623	Registration date	01/10/2012
International Registration No.	NONE	International Registration Date	NONE
Registrant	Neoss Limited Windsor House, Cornwall Road, Harrogate North Yorkshire, HG12PW UNITED KINGDOM		

Goods/Services Subject to the filing

Class 010. First Use: 0 First Use In Commerce: 0 All goods and services in the class are requested, namely: Dental apparatus and instruments, namely, artificial teeth; dental implants; dental implant apparatus, namely, dental drills; dental bridges; dental crowns; dental drill bits; dental moulding apparatus, namely, picks and burrs; dental prostheses; dental tools, namely, osteotomes
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Mark: ORIGIN PROACTIVE
U.S. Trademark Application Number 86/186,888

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

Neoss Limited Opposer, v. B & D Dental Corp. Applicant.	Opposition No. 91218607
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ANSWER AND COUNTERCLAIM

B & D Dental Corp. (hereinafter “B & D” or “Applicant”), a corporation existing under the laws of the State of Utah, having a principal place of business at 2371 S. Presidents Dr., Suite E, West Valley City, UT 84120, responds to Neoss Limited’s, (hereinafter “Petitioner”) Notice of Opposition to the mark ORIGIN PROACTIVE (App. No. 86/186,888) as follows:

1. Petitioner is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 1 of the Notice of Opposition, and therefore denies the same.
2. Petitioner is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 2 of the Notice of Opposition, and therefore denies the same.

3. Petitioner is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 3 of the Notice of Opposition, and therefore denies the same.

4. Petitioner is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 4 of the Notice of Opposition, and therefore denies the same.

5. Petitioner is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 5 of the Notice of Opposition, and therefore denies the same.

6. Petitioner is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 6 of the Notice of Opposition, and therefore denies the same.

7. Petitioner is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 7 of the Notice of Opposition, and therefore denies the same.

8. Petitioner is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 8 of the Notice of Opposition, and therefore denies the same.

9. Petitioner is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 9 of the Notice of Opposition, and therefore denies the same.

10. Petitioner is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 10 of the Notice of Opposition, and therefore denies the same.

11. Applicant admits that on or about February 6, 2014 it filed an application for the mark ORIGIN PROACTIVE and that the application speaks for itself. Applicant denies all other averment in paragraph 11 of the Notice of Opposition.

12. Deny.

13. Deny.

14. Applicant denies any preceding allegations not already specifically admitted or

denied.

15. Deny.

16. Deny.

17. Deny.

18. Deny.

19. Deny.

Any remaining allegations do not require an admission or denial by Applicant. To the extent a response is required, the allegations are denied. Unless specifically admitted herein, all allegations are denied. Applicant further denies that Petitioner is entitled to any relief, including the relief requested in the Notice of Opposition.

WHEREFORE, Applicant respectfully requests that Opposition No. 92059149 be dismissed with Prejudice.

AFFIRMATIVE DEFENSES

Applicant alleges the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

Petitioner's claims are barred by the doctrines of estoppel and/or unclean hands.

SECOND AFFIRMATIVE DEFENSE

Petitioner's claims are barred by the doctrines of waiver and/or acquiescence.

There may be additional affirmative defenses to the Petitioner's claims that are currently unknown to Applicant. Therefore, Applicant reserves the right to amend this Answer to allege additional affirmative defenses in the event discovery of other information indicates they are appropriate and/or to file an appropriate Counterclaim against Petitioner.

COUNTERCLAIMS

1. Opposer claims ownership to Reg. No. 4,081,623 for the mark NEOSS PROACTIVE. Upon information and belief, the registration was filed under Section 44(e) based on a foreign registration for NEOSS PROACTIVE.
2. Upon information and belief, Opposer never had a bona fide intent to use the mark in commerce on or in connection with the goods and services listed in the application.
3. Because Opposer never had a bona fide intent to use NEOSS PROACTIVE in United States commerce in connection with all the goods and services listed in the application and resulting registration, the registration was invalidly obtained and should be cancelled.
4. Upon information and belief, Opposer has never used NEOSS PROACTIVE in United States commerce in conjunction with all the goods and services set forth in the registration.
5. Upon information and belief, Opposer has not used its mark in the United States commerce within the last three years, if ever, and has abandoned any rights in the mark NEOSS PROACTIVE.
6. Upon information and belief, any use of NEOSS PROACTIVE in United States commerce in conjunction with the goods and services set forth in the registration by Opposer is de minimus and Opposer has therefore abandoned the mark.
7. Upon information and belief, the continued registration of NEOSS PROACTIVE causes injury to Applicant.
8. Because Opposer has abandoned NEOSS PROACTIVE Reg. No. 4,081,623, the registration should be cancelled.

WHEREFORE, Applicant requests that Registration Number 4,081,623 be cancelled.

DATED this 6th day of November, 2014.

Respectfully submitted,

THOPRE NORTH & WESTERN, LLP

/Eric E. Westerberg/

Peter M. de Jonge

Jed H. Hansen

Eric E. Westerberg

*Attorneys for Applicant, B & D Dental
Corp.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **Answer and Counterclaims** was served upon the Opposer at the following by the methods indicated below:

William C. Wright
Epstein Drangle LLP
60 East 42nd Street, Suite 2410
New York, NY 10165

- Electronic Mail
- United States Mail, First Class
- Overnight Delivery
- Fax Transmission

DATED this 6th day of November, 2014.

/Kelley Warner/
Kelley Warner