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

| | |
|------------------------|---|
| Proceeding | 91230833 |
| Party | Defendant Nant Holdings IP, LLC |
| Correspondence Address | MICHAEL J MCCUE LEWIS ROCA ROTHGERBER CHRISTITE LLP 3993 HOWARD HUGHES PKWY STE 600 LAS VEGAS, NV 89169 UNITED STATES TRADEMARKS-LASVEGAS@LRRRC.COM, MMCCUE@LRRRC.COM, ZGORDON@LRRRC.COM |
| Submission | Other Motions/Papers |
| Filer's Name | Michael J. McCue |
| Filer's e-mail | TRADEMARKS-LASVEGAS@LRRRC.COM |
| Signature | /Michael J. McCue/ |
| Date | 12/30/2016 |
| Attachments | OPPOSITION HHS MTN FOR SANCTIONS.pdf(225626 bytes) |

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

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES,

Opposer,

v.

NANT HOLDINGS IP, LLC,

Applicant.

Opposition No.: 91230833

Application Serial Nos. 86/891,907
86/920,849 and 86/921,078

APPLICANT’S OPPOSITION TO OPPOSER’S MOTION FOR SANCTIONS

Applicant Nant Holdings IP, LLC (“Applicant”) respectfully submits this opposition to the “Response to ‘Consent Motion to Suspend’ and Motion for Sanctions” (“Motion for Sanctions”) filed by Opposer U.S. Department of Health and Human Services (“HHS”) on December 28, 2016.

HHS filed this opposition proceeding on October 26, 2016, the same day on which its alleged licensor, the Board of Regents of the University of Texas, filed companion opposition proceedings and a civil action, styled *The University of Texas M.D. Anderson Cancer Center et al. v. Nanthealth, Inc. et al.*, Civil Action No. 4:16-cv-03155 (S.D. Tex.).

On November 30, 2016, Applicant’s counsel, Lewis Roca Rothgerber Christie LLP (“Lewis Roca”), asked Melanye K. Johnson, counsel of record for HHS, via email whether HHS would consent to extend the time for Applicant to answer the notice of opposition and/or suspend the opposition proceeding. In a responsive email dated December 5, 2016, Ms. Johnson stated “**HHS consents to a suspension of the TTAB proceedings.**” (Emphasis added.) Attached as Exhibit A is a true and correct copy of the email chain between Ms. Johnson and Tammy Bunch, Trademark Paralegal for Applicant’s counsel Lewis Roca reflecting Applicant’s request and

HHS' response. Accordingly, on December 28, 2016, Applicant filed its "Consent Motion to Suspend" indicating that HHS consented to the suspension. On December 28, 2016, the Board appropriately granted the motion.

Surprisingly, on December 28, 2016, Ms. Johnson filed HHS' Motion for Sanctions in which she claims that Applicant's counsel "never contacted" her for any consent to suspension. Ms. Johnson further states that HHS objects to "Applicant's counsel misrepresenting – basically, blatantly lying – to the Board by stating that Opposer consented to suspending these opposition proceedings." As indicated above and in Exhibit A, in response to Applicant's request, Ms. Johnson clearly, unequivocally, and in her own words stated that "**HHS consents to a suspension of the TTAB proceedings.**" See Exhibit A (emphasis added). While Ms. Johnson did send an email to Applicant's counsel, Michael McCue, on December 27, 2016, about scheduling an initial conference for early January, he was out of the office for vacation and his office handled the filing of the Consent Motion to Suspend in his absence. In any event, HHS' consent to suspension and the Board's order granting suspension obviates the need for an initial conference.

Accordingly, Applicant respectfully requests that the Board deny HHS' Motion for Sanctions.

Dated this 30th day of December, 2016.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By:  _____

Michael J. McCue
3993 Howard Hughes Pkwy., Suite 600
Las Vegas, Nevada 89169
Tel: 702-949-8200
Fax: 702-949-8363
mmccue@LRRC.com

Attorneys for Applicant Nant Holdings IP, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing **APPLICANT'S OPPOSITION TO OPPOSER'S MOTION FOR SANCTIONS** has been served upon Opposer's counsel by mailing a copy thereof on December 30, 2016, via United States mail, first-class postage prepaid, to:

Melanye K. Johnson
HHS Office of the General Counsel, NIH Branch
31 Center Dr., Suite 2B-50, MSC 2111
Bethesda, MD 20892-2111
UNITED STATES
johnsonmk@mail.nih.gov, dichter@od.nih.gov

Emily Baxter
An employee of Lewis Roca Rothgerber Christie LLP

Exhibit A

Exhibit A

Baxter, Emily

From: Bunch, Tammy
Sent: Monday, December 05, 2016 8:35 AM
To: Johnson, Melanye (NIH/OD) [E]
Cc: NANT; Dichter, Cheryl (NIH/OD) [E]
Subject: Re: CANCER MOONSHOT - OPPOSITION (91230833)

Thank you.

Sent from my iPhone

On Dec 5, 2016, at 8:34 AM, Johnson, Melanye (NIH/OD) [E] <johnsonmk@od.nih.gov> wrote:

Dear Ms. Bunch,

HHS consents to a suspension of the TTAB proceedings.

Regards,

Melanye K. Johnson, J.D.
Senior Attorney
U.S. Department of Health and Human Services
Office of the General Counsel
Public Health Division
National Institutes of Health Branch
31 Center Drive, Suite 2B-50, MSC 2111
Bethesda, Maryland 20892-2111
Main: (301) 496-6043
Fax: (301) 402-1034
johnsonmk@od.nih.gov

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From: Johnson, Melanye (NIH/OD) [E]
Sent: Friday, December 02, 2016 4:48 PM
To: 'Bunch, Tammy' <TBunch@lrrc.com>
Cc: NANT <NANT@lrrc.com>; Dichter, Cheryl (NIH/OD) [E] <dichterc@od.nih.gov>
Subject: RE: CANCER MOONSHOT - OPPOSITION (91230833)

Dear Ms. Bunch,

Thank you for your email message. I am waiting for a response from my client with respect to Nant's request. I will respond no later than Monday, December 5.

Regards,

Melanye K. Johnson, J.D.

Senior Attorney
U.S. Department of Health and Human Services
Office of the General Counsel
Public Health Division
National Institutes of Health Branch
31 Center Drive, Suite 2B-50, MSC 2111
Bethesda, Maryland 20892-2111
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Fax: (301) 402-1034
johnsonmk@od.nih.gov

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From: Bunch, Tammy [<mailto:TBunch@lrrc.com>]
Sent: Thursday, December 01, 2016 5:13 PM
To: Johnson, Melanye (NIH/OD) [E] <johnsonmk@od.nih.gov>; Dichter, Cheryl (NIH/OD) [E] <dichterc@od.nih.gov>
Cc: NANT <NANT@lrrc.com>
Subject: RE: CANCER MOONSHOT - OPPOSITION (91230833)

Hi Melayne, Just wanted to touch base regarding our email below. Thank you!

Tammy

From: Bunch, Tammy
Sent: Wednesday, November 30, 2016 4:41 PM
To: 'johnsonmk@mail.nih.gov'; 'dichterc@od.nih.gov'
Cc: NANT
Subject: CANCER MOONSHOT - OPPOSITION (91230833)

Re: U.S. Department of Health and Human Services v. Nant Holdings IP, LLC
Marks: CANCER MOONSHOT 2020
CANCER MOONSHOT 2020 FOUNDATION
CANCER MOONSHOT NETWORK NEWS
Opposition No.: 91230833

Melayne,

As you know, Nant's Answer is due December 5, 2016 in connection with the above matter. Please let us know if you would be willing to grant a 30 day extension of time to answer and/or agree to suspend the TTAB proceedings.

Thank you.

Tammy

Tammy L. Bunch
Paralegal
702.949.8285 office
702.949.8376 fax
tbunch@lrrc.com

<image001.png>
Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
lrrc.com

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