

ESTTA Tracking number: **ESTTA1034941**

Filing date: **02/11/2020**

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

| | |
|------------------------|--|
| Proceeding | 91253261 |
| Party | Defendant Talon Medical, LLC |
| Correspondence Address | JOSHUA G. GIGGER STOEL RIVES LLP 201 SOUTH MAIN STREET, SUITE 1100 SALT LAKE CITY, UT 84111 tm-slc@stoel.com no phone number provided |
| Submission | Answer |
| Filer's Name | Joshua G. Gigger |
| Filer's email | tm-slc@stoel.com |
| Signature | /Joshua G. Gigger/ |
| Date | 02/11/2020 |
| Attachments | Talon Medical - Brainlab Answer to Notice of Opposition-CARDI-OCURVE.pdf(101138 bytes) |

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

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|----------------------------|---|--------------------------------|
| BRAINLAB AG, |) | |
| |) | |
| Opposer, |) | Opposition No. 91253261 |
| |) | |
| v. |) | In Re App. Ser. No. 88/344,908 |
| |) | |
| TALON MEDICAL, LLC, |) | Mark: CARDIOCURVE |
| |) | |
| Applicant. |) | |
| |) | |
| |) | |
| |) | |

ANSWER TO NOTICE OF OPPOSITION

Applicant, Talon Medical, LLC (“Applicant”) hereby responds to and answers the Notice of Opposition (the “Notice”) filed by Opposer, Brainlab AG (“Opposer”), as follows:

With respect to the first unnumbered paragraph of the Notice, Applicant denies that there is a likelihood of confusion between the CURVE mark in Opposer’s Reg. No. 5,348,133 (the “Registration”) and the CARDIOCURVE mark in Applicant’s Ser. No. 88/344,908 (the “Application”). Applicant does not have sufficient information to admit or deny the remaining allegations in the first unnumbered paragraph of the Notice and, therefore, they are denied.

With respect to the second unnumbered paragraph of the Notice, Applicant believes that no response is required. To the extent that a response is required, Applicant does not have sufficient

information to admit or deny the allegations in the second unnumbered paragraph of the Notice and, therefore, they are denied.

With respect to the numbered paragraphs of the Notice, Applicant responds as follows:

1. Applicant does not have sufficient information to admit or deny the allegations in Paragraph 1 of the Notice and, therefore, they are denied.

2. Applicant does not have sufficient information to admit or deny the allegations in Paragraph 2 of the Notice and, therefore, they are denied.

3. Applicant does not have sufficient information to admit or deny the allegations in Paragraph 3 of the Notice and, therefore, they are denied.

4. Applicant does not have sufficient information to admit or deny the allegations in Paragraph 4 of the Notice and, therefore, they are denied.

5. Applicant does not have sufficient information to admit or deny the allegations in Paragraph 5 of the Notice and, therefore, they are denied.

6. Applicant does not have sufficient information to admit or deny the allegations in Paragraph 6 of the Notice and, therefore, they are denied.

7. Applicant admits the allegations in Paragraph 7 of the Notice.

8. Applicant does not have sufficient information to admit or deny the allegations in Paragraph 8 of the Notice and, therefore, they are denied.

9. Applicant denies the allegations in Paragraph 9 of the Notice.

10. Applicant denies the allegations in Paragraph 10 of the Notice.

11. Applicant denies the allegations in Paragraph 11 of the Notice.

12. Applicant denies the allegations in Paragraph 12 of the Notice.

Applicant believes that the unnumbered paragraph following Paragraph 12 of the Notice is legal conclusions or allegations that do not otherwise require a response. To the extent that a response is required, Applicant denies the allegations in the unnumbered paragraph following Paragraph 12 of the Notice.

AFFIRMATIVE DEFENSES

First Affirmative Defense
(No Likelihood of Confusion)

1. Applicant states that there is no likelihood of confusion with respect to Applicant's use of the CARDIOCURVE mark with the goods set forth in the Application and Opposer's use of the CURVE mark with the goods set forth in the Registration.

PRAYER FOR RELIEF

WHEREFORE, Applicant prays that the Board deny Opposer's opposition.

DATED: February 10, 2020

Respectfully submitted,

/Joshua G. Gigger/
Joshua G. Gigger (Utah State Bar #12100)
STOEL RIVES LLP
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Salt Lake City, Utah 84111
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Attorney for Talon Medical, LLC

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing

ANSWER TO NOTICE OF OPPOSITION on the following by email:

Patrick F. Clunk
Tucker Ellis LLP
950 Main Avenue Suite 1100
Cleveland, OH 44113
Patrick.clunk@tuckerellis.com
trademarks@tuckerellis.com

Dated this 10th day of February, 2020.

/Rachelle Turner/
Rachelle Turner