

ESTTA Tracking number: **ESTTA1084720**

Filing date: **09/28/2020**

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

Proceeding	91264312
Party	Defendant Karl Storz SE & Co. KG
Correspondence Address	CAROLINE E. BRYCE SHERIDAN ROSS P.C. 1560 BROADWAY, SUITE 1200 DENVER, CO 80202 UNITED STATES Primary Email: cbryce@sheridanross.com Secondary Email(s): 66a. 303-863-9700
Submission	Answer
Filer's Name	Caroline E. Bryce
Filer's email	cbryce@sheridanross.com, phirschman@sheridanross.com, pscha@sheridanross.com
Signature	/Caroline E. Bryce/
Date	09/28/2020
Attachments	Answer.pdf(120761 bytes )

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

In the Matter of Service Mark Application Serial No. 79/276,192  
Filed on November 7, 2019  
For the mark CLEVERCURVE  
Published in the *Official Gazette* on July 28, 2020

Brainlab AG,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91264312
	)	
Karl Storz SE & Co. KG,	)	
	)	
Applicant.	)	
<hr/>		

**ANSWER**

Applicant, Karl Storz SE & Co. KG, by and through its attorneys, hereby answers the allegations set forth in the Notice of Opposition as follows:

1. Applicant has insufficient knowledge or information as to the truth of the many allegations set forth in Paragraph 1 of the Notice of Opposition and, therefore, denies said allegations.
2. Applicant admits that the records of the United States Patent and Trademark Office for U.S. Registration No. 5,348,133 for “CURVE” reflect the allegations set forth in Paragraph 2 of the Notice of Opposition.
3. Applicant admits that the records of the United States Patent and Trademark Office for U.S. Registration No. 5,348,133 for “CURVE” reflect the allegations set forth in Paragraph 3 of the Notice of Opposition.
4. Paragraph 4 consists of a legal conclusion, to which no response is required. To the extent

Paragraph 4 contains factual allegations, Applicant has insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 4 of the Notice of Opposition and, therefore, denies said allegations.

5. Applicant denies the allegations in Paragraph 5 of the Notice of Opposition based on the large number of third party uses of CURVE in trademarks.

6. Applicant has insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 6 of the Notice of Opposition and, therefore, denies said allegations.

7. Applicant admits its name and address and the filing of U.S. Application No. 79/276,192 for “CLEVERCURVE” with an effective filing date of November 7, 2019, for the goods “surgical, medical, dental and veterinary apparatus and instruments; diagnostic apparatus for medical purposes; endoscopes and endoscopic devices for medical and surgical purposes; medical apparatus and instruments; surgical suture; medical and surgical instruments, in particular sliding shaft instruments, pliers, scissors, punches, handles, knives; surgical cutlery; dismountable surgical instruments for endoscopy” in Class 10 and “paper and cardboard, namely file cases, file folders, albums, display cards (stationery), almanacs; printed matter; brochures; brochures; bookbinding articles; photographs; stationery; instructional and teaching material (except apparatus); plastic materials for packaging; bags, pouches and goods of paper, cardboard or plastic for packaging, wrapping and storage purposes; packaging material of cardboard” in Class 16, and that these goods were amended through response to office action on June 11, 2020, to “surgical, medical, dental and veterinary apparatus and instruments, namely, sliding sheath instruments in the nature of forceps and scissors; diagnostic apparatus for medical purposes, namely, palpitation instruments for use in endoscopic surgery; medical endoscopes and endoscopic devices in the nature of endoscopic equipment for medical and surgical purposes;

medical apparatus and instruments for use in thoracic surgery; surgical suture; medical and surgical instruments, in particular sliding shaft instruments, pliers, scissors, punches, handles, knives; surgical cutlery; medical apparatus, namely, dismountable surgical instruments for endoscopy” in Class 10 and “paper and cardboard, namely, file cases in the nature of paper file jackets, file folders, albums for photographs, slides and histological sections, stationery display cards, almanacs; printed matter, namely, books, manuals, booklets, leaflets, periodicals, newsletters, catalogs, magazines, journals, informational flyers, handbooks, paper signs, prospectuses, pamphlets, letters, pre-printed forms, photographs, and biological samples for use in microscopy in the field of medical technology, surgical technology, medicine, veterinary medicine, dental medicine, non-medical and medical endoscopy; brochures in the field of medical technology, surgical technology, medicine, veterinary medicine, dental medicine, non-medical and medical endoscopy; bookbinding articles, namely, bookbinding materials; photographs; stationery; printed instructional and teaching material except apparatus in the field of surgical technology, medical technology, medicine, veterinary medicine, dental medicine, medical and non-medical endoscopy, and medical clinics; plastic materials for packaging, namely, plastic bags and plastic film for packaging; bags and pouches of paper, cardboard, or plastic for packaging and wrapping purposes; boxes, containers, and cartons of paper or cardboard for use in packaging and storage purposes; envelopes of paper, cardboard, or plastic for use in packaging, wrapping, and storage purposes; films and roll stock of paper, cardboard, or plastic for use in packaging, wrapping, and storage purposes; sheets of paper, cardboard, or plastic for use in packaging and wrapping purposes; packaging material of cardboard” in Class 16.

8. Applicant has insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 8 of the Notice of Opposition and, therefore, denies said allegations.

9. Applicant denies the allegations in Paragraph 9 of the Notice of Opposition.
10. Applicant denies the allegations in Paragraph 10 of the Notice of Opposition.
11. Paragraph 11 consists of a legal conclusion, to which no response is required. To the extent Paragraph 11 contains factual allegations, Applicant denies the allegations in Paragraph 11 of the Notice of Opposition.
12. Applicant denies the allegations in Paragraph 12 of the Notice of Opposition.

### **APPLICANT'S ARGUMENTS**

1. There is no likelihood of confusion, mistake or deception between Opposer's Mark CURVE and Applicant's Mark CLEVERCURVE.
2. Opposer's right in its CURVE mark are of narrow or limited scope because of numerous third party uses.
3. Applicant hereby gives notice that it may rely on any other defenses that may become available or appear proper during discovery, and hereby reserves its right to amend this Answer to assert any such defenses.

WHEREFORE, Applicant respectfully requests Opposition No. 91264312 be dismissed and U.S. Application No. 79/276,192 be approved for registration.

Respectfully Submitted,

Date: September 28, 2020 September 28, 2020

By: /s/Caroline E. Bryce

Caroline E. Bryce

Pamela N. Hirschman

Paul Sung Cha

Attorneys for Opposer

Sheridan Ross P.C.

1560 Broadway, Suite 1200

Denver, Colorado 80202-5141

Phone: (303) 863-9700

Fax: (303) 863-0223

[cbryce@sheridanross.com](mailto:cbryce@sheridanross.com)

[phirschman@sheridanross.com](mailto:phirschman@sheridanross.com)

[pscha@sheridanross.com](mailto:pscha@sheridanross.com)

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this September 28, 2020, a true and correct copy of the foregoing ANSWER was emailed to the address below:

**OPPOSER’S ATTORNEY OF RECORD**

Steven E. Lauridsen  
Patrick F. Clunk  
TUCKER ELLIS, LLP  
950 Main Avenue, Suite 1100  
Cleveland, OH 44113  
(216) 592-5000  
[patrick.clunk@tuckerellis.com](mailto:patrick.clunk@tuckerellis.com)  
[steven.lauridsen@tuckerellis.com](mailto:steven.lauridsen@tuckerellis.com)  
[kelsey.ewing@tuckerellis.com](mailto:kelsey.ewing@tuckerellis.com)  
[trademarks@tuckerellis.com](mailto:trademarks@tuckerellis.com)

/s/Caroline E. Bryce  
Caroline E. Bryce  
Pamela N. Hirschman  
Paul Sung Cha  
Attorneys for Applicant  
Sheridan Ross P.C.  
1560 Broadway, Suite 1200  
Denver, CO 80202  
Phone: (303) 863-9700  
Fax: (303) 863-0223  
[cbryce@sheridanross.com](mailto:cbryce@sheridanross.com)  
[phirschman@sheridanross.com](mailto:phirschman@sheridanross.com)  
[pscha@sheridanross.com](mailto:pscha@sheridanross.com)