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

### Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

#### Petitioner Information

Name	Utah Medical Products, Inc.		
Entity	Corporation	Citizenship	Utah
Address	7043 South 300 West Midvale, UT 84047 UNITED STATES		

Attorney information	Evan R. Witt Kirton & McConkie 60 East South Temple 1800 Eagle Gate Tower Salt Lake City, UT 84111 UNITED STATES ewitt@kmclaw.com, jwiggins@kmclaw.com Phone:8013283600
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#### Registration Subject to Cancellation

Registration No	3880429	Registration date	11/23/2010
Registrant	C. R. Bard, Inc. 730 Central Avenue Murray Hill, NJ 07974 UNITED STATES		

#### Goods/Services Subject to Cancellation

Class 010. First Use: 2009/11/13 First Use In Commerce: 2009/11/13 All goods and services in the class are cancelled, namely: Medical devices and apparatus, namely, vacuum assisted breast biopsy system and parts and fittings therefor
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#### Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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#### Mark Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	1775806	Application Date	07/01/1991
Registration Date	06/08/1993	Foreign Priority Date	NONE
Word Mark	FINESSE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 1991/12/00 First Use In Commerce: 1991/12/00		

	electrosurgical equipment; namely, electrosurgical generator and smoke evacuator devices
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Attachments	Filing_Doc_14397-15_Petition_Cancel.pdf ( 5 pages )(30871 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Evan R. Witt/
Name	Evan R. Witt
Date	02/17/2011



procedures include, but are not limited to, breast mastectomies, breast reconstructions, breast augmentations, breast reductions, and breast lifts. In addition, consumers use FINESSE marked goods in connection with medical devices that are used to perform biopsies including cervical biopsies, and biopsies which may involve breast skin or breast tissue. Petitioner has used the FINESSE mark in connection with these goods for many years, beginning at least as early as December 1991.

Description of Respondent's Registration: Filed on July 25, 2008, for the mark FINESSE; registered on the Principal Register, in Class 10 for "medical devices and apparatus, namely, vacuum assisted breast biopsy system and parts and fittings therefore," claiming first use of November 13, 2009.

As grounds for this cancellation, it is alleged that:

1. In 1991 Petitioner Utah Medical Products, Inc. began using the FINESSE mark in relation to medical devices used to provide women's health services.
2. Petitioner obtained U.S. Federal Trademark Registration No. 1,775,806 ("the '806 Registration") for the FINESSE mark as used in connection with electrosurgical equipment; namely, electrosurgical generators and smoke evacuator devices.
3. Petitioner manufactures and distributes through all major markets and jurisdictions in the United States and throughout the world a variety of medical devices in connection with its FINESSE trademark.
4. Petitioner uses the FINESSE mark in connection with a variety of other goods related to the electrosurgical devices including FINESSE branded filter packs, footswitches, internal filters and fuses. All of the goods sold in connection with the FINESSE mark are referred to collectively as the "FINESSE goods".
5. Medical professionals use the FINESSE goods, in connection with a variety of loop, ball and lesion electrodes, as well as needle electrodes, microdissection needle electrodes and electrosurgical scalpels.

6. Upon information and belief, the FINESSE goods and related goods and electrodes are so integrated that consumers, including medical professionals, understand the FINESSE goods are used to perform biopsies and breast procedures.

7. The FINESSE goods and the electrodes are complimentary such that the electrodes become operational when used in connection with a FINESSE electro-surgical generator.

8. In addition, it is common for other manufacturers' surgical electrodes to be used with Petitioner's FINESSE goods.

9. The FINESSE goods are used primarily by physicians, surgeons and other medical professionals to provide medical services to women and to perform women's health related services and medical procedures and surgeries including breast mastectomies, breast reconstructions, breast augmentations, breast reductions, and breast lifts.

10. The FINESSE goods are used by medical professionals in connection with medical devices that are used to perform women's health-specific biopsies including cervical biopsies as well as biopsies which may involve breast skin or breast tissue.

11. Certain of the FINESSE goods have FDA regulatory approval to market for use for certain biopsy procedures.

12. Petitioner sells the FINESSE goods to hospitals, ambulatory and outpatient surgery centers, physician offices, and physicians and surgeons,

13. Upon information and belief, many hospitals and multi-specialty physician groups and clinics use central purchasing departments resulting in several specialties using the same staff member to buy medical devices for gynecologists, radiologists, general surgeons or any other specialty practice that use the central purchasing service.

14. On July 25, 2008, Respondent C.R. Bard filed its application for the mark FINESSE and made first use of the mark November 13, 2009 in class 10 as used in connection with "medical devices and apparatus, namely, vacuum assisted breast biopsy system and parts and fittings therefore," hereinafter referred to as Respondent's breast biopsy system.

15. Upon information and belief, Respondent sells its breast biopsy system to hospitals, ambulatory/outpatient surgery centers, physician offices, and physicians and surgeons.

16. Upon information and belief Respondent's registration interferes with Petitioner's use of the FINESSE mark in connection with goods already sold in connection with the FINESSE.

17. Respondent's FINESSE mark is identical to Petitioner's mark.

18. Respondent's FINESSE mark is registered in the identical class of goods as Petitioner's mark.

19. Upon information and belief Respondent's FINESSE mark is used in connection with goods related to Petitioner's FINESSE goods.

20. Upon information and belief Respondent's breast biopsy system is sold in the same channels of trade as Petitioner's FINESSE goods.

21. Upon information and belief Respondent's breast biopsy system is sold to the same class of purchasers as Petitioner's FINESSE goods.

22. For many years prior to Respondent's first use, Petitioner used the FINESSE mark in connection with the FINESSE goods.

23. For many years prior to Respondent's first use, Petitioner's FINESSE goods have been used by medical professionals to perform surgical procedures related to women's health and specifically for women's biopsy procedures and breast surgery. Accordingly Petitioner is the senior user of the FINESSE mark in connection with surgical devices related to women's health and specifically for breast procedures and biopsy procedures.

24. Respondent's mark so resembles Petitioner's mark as to be likely, when applied to the goods of Petitioner's, to cause confusion or to cause mistake or to deceive and Respondent's registration should be cancelled, because Petitioner has priority of use.

DATED this 17th day of February, 2011.

KIRTON & McCONKIE

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