

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

EUROSURGICAL, S.A.	)	
Opposer,	)	Opposition No. 91157799
v.	)	Application. Serial No. 78008824
PATRICK BERTRANOU.	)	Mark: ZENITH
Applicant.	)	

03 DEC 15 PM 33

SUPPLEMENT TO MOTION TO VACATE APPLICANT'S TECHNICAL DEFAULT

The following is a Supplement to the Motion to Vacate Applicant's Technical Default of Applicant PATRICK BERTRANOU, by and through Counsel, regarding Opposition No. 91,157,799.

Applicant filed a Motion to Reopen Applicant's Time to File and Late Answer on November 12, 2003. Said motion was construed by the Board as a Motion to Vacate Applicant's Technical Default. Said motion was granted and Applicant's concurrently filed answer was accepted.

By letter of December 2, 2003, Cindy B. Greenbaum, TTAB Attorney, Applicant was given thirty days to submit copies of the complaints in the two pending civil actions referenced in the Motion, so that the Board may evaluate whether it is appropriate to suspend this proceeding pending the final determinations in the civil actions.

In response to the request of the Board, Applicant attaches copies of the first amended complaint in the Superior Court of California in Los Angeles (Case No. BC 276 958), filed January 23, 2003 [Exhibit A]; the complaint filed July 25, 2003, in the U.S. District Court of

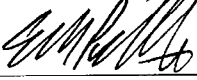
Delaware, in Wilmington (Civil Docket No. 03-CV-757) [Exhibit B]; and the most recent action which was filed following the Applicant's motion in this proceeding, the complaint filed November 14, 2003, in the U.S. District Court, Central District of California (Case No. CV03-8308) [Exhibit C]. See attached Exhibits A, B and C. Applicant, Patrick Bertranou, is the CEO and principal of Orthotec, LLC and Orthotec, Inc. See attached Exhibit D.

Applicant has complied with the request made by the letter from Cindy B. Greenbaum on December 2, 2003. See attached Exhibit E. Should any further information or exhibits be required, please do not hesitate to contact counsel for Applicant.

Opposer hereby appoints Erik M. Pelton, member of the Bar of the State of New Jersey, at Erik M. Pelton, Attorney at Law, 1408 North Fillmore Street, Suite 2, Arlington, Virginia 22201, to act as attorney in the matter of the opposition identified above, to prosecute said opposition, to transact all business in the Patent and Trademark Office, and in the United States courts connected with the opposition, to sign its name to all papers which are hereinafter to be filed in connection therewith, and to receive all communications relating to the same.

Respectfully Submitted,

PATRICK BERTRANOU  
CEO, ORTHOTEC, LLC

By:   
Erik M. Pelton, Esq.  
Attorney for Applicant

Erik M. Pelton, Attorney at Law  
1408 North Fillmore Street, Suite 2  
Arlington, Virginia 22201  
TEL: (703) 525-8009  
FAX: (703) 525-8089

Attachments:

Exhibit A: First amended complaint in the Superior Court of California in Los Angeles (Case No. BC 276 958), filed January 23, 2003

Exhibit B: Complaint filed July 25, 2003, in the U.S. District Court of Delaware, in Wilmington (Civil Docket No. 03-CV-757)

Exhibit C: Complaint filed November 14, 2003, in the U.S. District Court, Central District of California (Case No. CV03-8308)

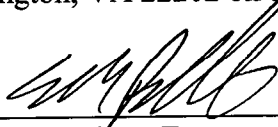
Exhibit D: Printout from California Business Portal for Orthotec, LLC

Exhibit E: December 2, 2003, letter from Board Attorney Cindy B. Greenbaum

CERTIFICATE OF DEPOSIT

I hereby certify that this Supplement to the Motion to Vacate Applicant's Technical Default is being deposited by hand delivery with the office of the Trademark Trial and Appeal Board, 9<sup>th</sup> Floor, 2900 Crystal Drive, South Tower, Arlington, VA 22202 on this the 19 of DECEMBER, 2003.

By:

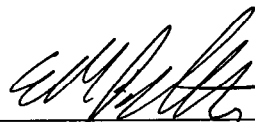
  
Erik M. Pelton, Esq.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the Supplement to Motion to Vacate Applicant's Technical Default was deposited as First Class mail with the United States Postal Service on DECEMBER 15, 2003, to the following:

James R. Hastings  
Collen IP  
The Holyoke-Manhattan Building  
80 South Highland Avenue  
Ossining, New York 10562

By:



Erik M. Pelton, Esq.  
Attorney for Applicant

Erik M. Pelton, Attorney at Law  
1408 North Fillmore Street, Suite 2  
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1 Michael J. Perry, Esq. (State Bar No. 123214)  
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**ORIGINAL FILED**

JAN 23 2003

5 Attorneys for Plaintiff and Cross-Defendant  
6 ORTHOTEC, LLC.

**LOS ANGELES  
SUPERIOR COURT**

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF LOS ANGELES**

11 ORTHOTEC, LLC., a Delaware  
12 Limited Liability Company,

13 Plaintiff,

14 vs.

15 EUROSURGICAL, S.A., a French  
16 Corporation, and DOES 1  
17 through 50,

18 Defendant.

19 AND RELATED CROSS-ACTION

CASE NO. BC 276958

FIRST AMENDED COMPLAINT

- 1. Breach of Contract;
- 2. Restitution of Forfeited Property;
- 3. Declaratory Relief;
- 4. Accounting;
- 5. Injunctive Relief;
- 6. Conversion;
- 7. Intentional Interference With Contract;
- 8. Negligent Interference With Contract
- 9. Breach of Contract;
- 10. Unfair Competition;
- 11. Indemnity;
- 12. State Trademark Infringement;
- 13. Dilution of Distinctive Quality of Trademarks and Trade Names;
- 14. Infringement of Trademarks and Trade Names to Enhance Commercial Value of Products; and
- 15. Specific Performance

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