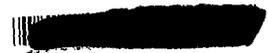


TTAB



03-17-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #01

BOX TTAB/FEE

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

EXOGEN INC.)
)
Opposer,)
)
v.)
)
JOHNSON & JOHNSON)
)
Applicant.)

Opposition No. _____
Serial No. 76/401,694
Mark: EXOJET

NOTICE OF OPPOSITION

Opposer Exogen Inc. believes that it will be harmed and damaged by the EXOJET mark identified in application Serial No. 76/401,694 filed by Applicant Johnson & Johnson, and Opposer therefore opposes that application. Opposer alleges the following for its Notice of Opposition against Applicant:

1. On April 23, 2002, Applicant filed an application to register the mark EXOJET. Applicant's mark was published in the "Official Gazette" on February 11, 2003. As published, Applicant's application to register the mark EXOJET covers "medical devices, namely, tissue and bone resectors, for use in arthroscopic surgery" in International Class 10.
2. Opposer is one of the leading providers of products used by physicians to help repair broken bones and promote muscular and skeletal healing.

3. Opposer has used the EXOGEN mark as a trademark in connection with a medical device for accelerating muscular and skeletal tissue healing in the United States since at least as early as April 15, 1997.

4. Opposer owns the following Federal Registrations for the EXOGEN mark and variations thereof:

- a. EXOGEN INC. (Reg. No. 1,904,306) for “medical device for accelerating muscular and skeletal tissue healing” in International Class 10;
- b. EXOGEN (Reg. No. 2,508,939) for “medical device for accelerating muscular and skeletal tissue healing” in International Class 10;
- c. EXOGEN 2000 (Reg. No. 2,211,871) for “medical device for accelerating muscular and skeletal tissue healing” in International Class 10;
- d. EXOGEN 2000 + (Reg. No. 2,599,317) for “medical device for accelerating muscular and skeletal tissue healing” in International Class 10; and
- e. EXOGEN 3000 (Reg. No. 2,456,257) for “medical device for accelerating muscular and skeletal tissue healing” in International Class 10.

Registration No 1,904,306 is incontestable and constitutes conclusive evidence of Opposer's exclusive right to use the registered mark in commerce in connection with the goods specified in that registration. Registration Nos. 2,508,939, 2,211,871, 2,599,317, and 2,456,257 constitute *prima facie* evidence of Opposer's exclusive right to use the registered marks in commerce in connection with the goods specified in those registrations.

5. By virtue of Opposer's continuous use of the EXOGEN mark since at least as early as April 15, 1993, and the fame associated with the EXOGEN mark, Opposer is also the owner of extensive common law rights in the EXOGEN mark.

6. Opposer's EXOGEN mark is symbolic of the extensive goodwill and recognition established and developed by Opposer as a result of the use of the EXOGEN mark in connection with medical devices since at least as early as April 15, 1993, and through Opposer's expenditure of substantial amounts of time, money, and effort in advertising and promoting its products.

7. Opposer's EXOGEN mark has acquired a high degree of recognition, fame, and distinctiveness throughout the United States as a symbol of the quality products associated with Opposer. The relevant public is uniquely aware of and identifies Opposer's EXOGEN mark with Opposer, and the products provided under Opposer's EXOGEN mark are understood by the relevant public to be uniquely those of Opposer.

8. Applicant's mark EXOJET is confusingly similar to Opposer's EXOGEN marks. Both EXOJET and EXOGEN are composed of three syllables, the first two syllables, EX- and -O- being identical. Furthermore, the third syllable of Applicant's EXOJET mark,

-JET, is phonetically and visually similar to the third syllable of Opposer's EXOGEN mark, -GEN.

9. The goods identified in Applicant's application and the goods provided by Opposer are closely related for at least the following reasons: the parties' respective goods are both International Class 10 medical devices, are both sold to medical professionals, and are both used in medical procedures.

10. Persons familiar with Opposer's EXOGEN mark or its products would be likely to believe erroneously that Applicant's EXOJET products are provided by Opposer or are authorized, licensed, endorsed, or sponsored by Opposer, and registration of Applicant's mark on the Principal Register would be inconsistent with Opposer's rights in Opposer's EXOGEN mark.

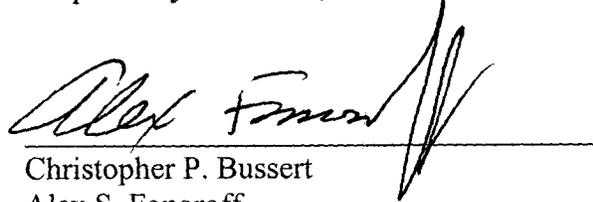
11. Opposer will be damaged by registration of the mark EXOJET by Applicant because the mark so resembles Opposer's EXOGEN mark as to be likely to cause confusion, mistake, and deception.

12. A duplicate copy of this Notice of Opposition and the required fee of \$300 are enclosed. The Commissioner is authorized to debit Kilpatrick Stockton LLP's deposit Account No. 11-0860 if there is any deficiency in the required fee.

WHEREFORE, Opposer requests that the Board refuse registration to the mark underlying application Serial No. 76/401,694 and that this Opposition be sustained in favor of Opposer.

Dated: March 12, 2003

Respectfully submitted,

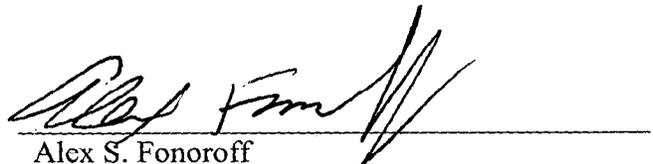


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Attorneys for Opposer
Exogen Inc.

CERTIFICATE OF MAILING

This is to certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Trademarks, Box TTAB—FEE, 2900 Crystal Drive, Arlington, Virginia 22202-3513, on this the 12th day of March 2003.



Alex S. Fonoroff



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March 12, 2003

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Box TTAB/Fee
2900 Crystal Drive
Arlington, Virginia 22202-3513

Re: Opposer: Exogen Inc.
 Applicant: Johnson & Johnson
 Mark: EXOJET
 Serial No.: 76/401,694

Ladies/Gentlemen:

Enclosed please find an original and two duplicates of a *Notice of Opposition* to be filed in connection with the above-referenced matter, together with the required filing fee.

The Commissioner is authorized to charge Kilpatrick Stockton LLP's Deposit Account No. 11-0860 if there is a deficiency in the enclosed filing fee.

Please acknowledge receipt of the enclosures by initialing and dating the enclosed postcard and returning it to me.

Thank you for your assistance.

Sincerely,

Alex S. Fonoroff

ASF/mcb
Enclosures

cc: Paul A. Revis, Esq. (w/enc.)
 Christopher P. Bussert, Esq. (w/o enc.)