

ESTTA Tracking number: **ESTTA12891**

Filing date: **08/04/2004**

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

### Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

#### Opposer Information

<b>Name</b>	Allergan, Inc.		
<b>Entity</b>	Corporation	<b>Citizenship</b>	Delaware
<b>Address</b>	2525 Dupont Drive Irvine, CA 92612 UNITED STATES		

<b>Correspondence information</b>	Susan J. Hinchey Corporate Trademark Manager Allergan, Inc. 2525 Dupont Drive Irvine, CA 92612 UNITED STATES hinchey_susan@allergan.com Phone:714-246-5507
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#### Applicant Information

<b>Application No</b>	78320975	<b>Publication date</b>	08/03/2004
<b>Opposition Filing Date</b>	08/04/2004	<b>Opposition Period Ends</b>	09/02/2004
<b>Applicant</b>	BioCentric Laboratories, Inc.		

#### Goods/Services Affected by Opposition

Class 003. First Use: First Use In Commerce:  
All goods and services in the class are opposed, namely: Cosmetic

**Attachments**

SEATOX.pdf ( 5 pages )  
BOTOX-US-Cert.pdf ( 5 pages )

**Signature**

/MARTIN A. VOET/

**Name**

Martin A. Voet

**Date**

08/04/2004

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

In the matter of Trademark Application Serial No.: 78320975  
Published in the Official Gazette (Trademarks) on August 3, 2004

ALLERGAN, INC.,

Opposer,

v.

BIOCENTRIC LABORATORIES, INC.,

Applicant.

Opposition No.

**NOTICE OF OPPOSITION**

Box TTAB Fee  
Assistant Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513

Allergan, Inc., a corporation organized and existing under the laws of Delaware, located and doing business at 2525 Dupont Drive, Irvine, California 92612 ("Opposer"), believes it will be damaged by registration of the mark shown above in the above-identified application (the "Opposed Application") and hereby opposes the same.

As grounds of opposition, it is alleged that:

1. Opposer is, and has been, for many years engaged in the manufacture, development, sale and advertising of an extensive array of pharmaceutical, ophthalmic and

dermatological products. Since 1990, Opposer has marketed its pharmaceutical for the therapeutic treatment of neurological disorders and muscle dystonias under the trademark BOTOX<sup>®</sup> in the United States and globally. In 2002, Opposer started marketing its product under the BOTOX<sup>®</sup> mark for certain cosmetic indications.

2. Opposer owns all right, title and interest in and to the BOTOX<sup>®</sup> mark, as well as the following U.S. registrations of its BOTOX<sup>®</sup> mark on the Principal Register:

- A) Registration No. 1,692,384 granted June 9, 1992 for the mark BOTOX in International Class 5 for “pharmaceutical preparations; namely, ophthalmic muscle relaxants”;
- b) Registration No. 1,709,160 granted August 18, 1992 for the mark BOTOX in International Class 5 for “pharmaceutical preparations for the treatment of neurologic disorders”;
- C) Registration No. 2,510,675 granted November 20, 2001 for the mark BOTOX in International Class 5 for “pharmaceutical preparations for the treatment of neurological disorders, muscle dystonias, smooth muscle disorders, autonomic nerve disorders, headaches, wrinkles, hyperhydrosis, sports injuries, cerebral palsy, spasms, tremors and pain”.

All of these registrations are valid and subsisting, and Registration Nos. 1,692,384 and 1,709,160 have become incontestable. Copies of the certificates of registration for these registrations are attached.

3. From a time long prior to the filing of the Opposed Application, or any earlier date of actual use of the mark shown in the Opposed Application upon which Applicant can rely, Opposer has used the BOTOX<sup>®</sup> mark in commerce in the United States on and in connection

with the foregoing goods. Moreover, by virtue of the excellence of the products sold under the BOTOX<sup>®</sup> mark, the mark has developed a valuable reputation and has become famous in the United States. The valuable reputation and extensive goodwill associated with the BOTOX<sup>®</sup> mark is exemplified by the amount of sales of products under the mark for the years 1999 to 2003:

1999	\$ 175,800,000
2000	\$ 239,500,000
2001	\$ 309,500,000
2002	\$ 439,700,000
2003	<u>\$ 563,900,000</u>
Total:	\$1,728,400,000

4. Notwithstanding Opposer’s long prior rights in and to the BOTOX<sup>®</sup> trademark, Applicant, on information and belief, on October 30, 2003, filed the Opposed Application for registration of the trademark SEATOX for “Cosmetic” in International Class 3.

5. Upon information and belief, when Applicant adopted the mark shown in the Opposed Application, it was aware of Opposer’s well-known mark and adopted the mark shown in the Opposed Application for the purpose of suggesting an affiliation between it and Opposer through a license or otherwise.

6. The Opposed Application was given Serial No. 78320975 and the mark was published for opposition in the Trademark Official Gazette of August 3, 2004.

7. The SEATOX mark shown in the Opposed Application so resembles Opposer’s registered BOTOX<sup>®</sup> mark as to be likely, when used on or in connection with the goods identified in the Opposed Application, to cause confusion, to cause mistake, or to deceive, and



**Please direct all correspondence to:**

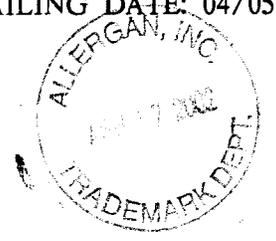
Susan J. Hinchey  
Corporate Trademark Manager  
ALLERGAN, INC.  
2525 Dupont Drive  
Irvine, California 92612  
Phone: (714) 246-5507  
E-mail: [hinchey\\_susan@allergan.com](mailto:hinchey_susan@allergan.com)



UNITED STATES DEPARTMENT OF COMMERCE  
 Patent and Trademark Office  
 OFFICE OF ASSISTANT COMMISSIONER FOR TRADEMARKS  
 2900 Crystal Drive  
 Arlington, Virginia 22202-3513

REGISTRATION NO: 1692384 SERIAL NO: 74126661  
 REGISTRATION DATE: 06/09/1992  
 MARK: BOTOX  
 REGISTRATION OWNER: ALLERGAN, INC.  
 CORRESPONDENCE ADDRESS:

MAILING DATE: 04/05/2002



ALLERGAN, INC.  
 2525 DUPONT DRIVE  
 IRVINE, CA 92612

**NOTICE OF ACCEPTANCE**

15 U.S.C. Sec. 1058(a)(3)

THE COMBINED AFFIDAVIT AND RENEWAL APPLICATION FILED FOR THE ABOVE-IDENTIFIED REGISTRATION MEETS THE REQUIREMENTS OF SECTION 8 OF THE TRADEMARK ACT, 15 U.S.C. Sec. 1058.

ACCORDINGLY, THE SECTION 8 AFFIDAVIT IS ACCEPTED.

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**NOTICE OF RENEWAL**

15 U.S.C. Sec. 1059(a)

THE COMBINED AFFIDAVIT AND RENEWAL APPLICATION FILED FOR THE ABOVE-IDENTIFIED REGISTRATION MEETS THE REQUIREMENTS OF SECTION 9 OF THE TRADEMARK ACT, 15 U.S.C. Sec. 1058.

ACCORDINGLY, THE REGISTRATION IS RENEWED.

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THE REGISTRATION WILL REMAIN IN FORCE FOR CLASS(ES):  
 005.

WILSON, JAMES D  
 PARALEGAL SPECIALIST  
 POST-REGISTRATION DIVISION  
 (703)308-9500

PLEASE SEE THE REVERSE SIDE OF THIS NOTICE FOR INFORMATION CONCERNING REQUIREMENTS FOR MAINTAINING THIS REGISTRATION

Int. Cl.: 5

Prior U.S. Cl.: 18

**United States Patent and Trademark Office**

**Reg. No. 1,692,384**

Registered June 9, 1992

**TRADEMARK  
PRINCIPAL REGISTER**

**BOTOX**

ALLERGAN, INC. (DELAWARE CORPORATION)  
2525 DUPONT DRIVE  
IRVINE, CA 92715

FIRST USE 9-0-1990; IN COMMERCE  
1-22-1992.

SN 74-126.661, FILED 12-21-1990.

FOR: PHARMACEUTICAL PREPARATIONS;  
NAMELY, OPHTHALMIC MUSCLE RELAX-  
ANTS, IN CLASS 5 (U.S. CL. 18).

RACHEL BLUE, EXAMINING ATTORNEY



UNITED STATES DEPARTMENT OF COMMERCE  
 Patent and Trademark Office  
 OFFICE OF ASSISTANT COMMISSIONER FOR TRADEMARKS  
 2900 Crystal Drive  
 Arlington, Virginia 22202-3513

REGISTRATION NO: 1709160 SERIAL NO: 74136930 MAILING DATE: 04/05/2002  
 REGISTRATION DATE: 08/18/1992  
 MARK: BOTOX  
 REGISTRATION OWNER: ALLERGAN, INC.  
 CORRESPONDENCE ADDRESS:

ALLERGAN, INC.  
 2525 DUPONT DRIVE  
 IRVINE, CA 92612

## NOTICE OF ACCEPTANCE

15 U.S.C. Sec. 1058(a)(3)

THE COMBINED AFFIDAVIT AND RENEWAL APPLICATION FILED FOR THE ABOVE-IDENTIFIED REGISTRATION MEETS THE REQUIREMENTS OF SECTION 8 OF THE TRADEMARK ACT, 15 U.S.C. Sec. 1058.

ACCORDINGLY, THE SECTION 8 AFFIDAVIT IS ACCEPTED.

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## NOTICE OF RENEWAL

15 U.S.C. Sec. 1059(a)

THE COMBINED AFFIDAVIT AND RENEWAL APPLICATION FILED FOR THE ABOVE-IDENTIFIED REGISTRATION MEETS THE REQUIREMENTS OF SECTION 9 OF THE TRADEMARK ACT, 15 U.S.C. Sec. 1058.

ACCORDINGLY, THE REGISTRATION IS RENEWED.

\*\*\*\*\*

THE REGISTRATION WILL REMAIN IN FORCE FOR CLASS(ES):  
 005.

WILSON, JAMES D  
 PARALEGAL SPECIALIST  
 POST-REGISTRATION DIVISION  
 (703)308-9500

PLEASE SEE THE REVERSE SIDE OF THIS NOTICE FOR INFORMATION CONCERNING REQUIREMENTS FOR MAINTAINING THIS REGISTRATION

Int. Cl.: 5

Prior U.S. Cl.: 18

**United States Patent and Trademark Office**

**Reg. No. 1,709,160**

Registered Aug. 18, 1992

**TRADEMARK  
PRINCIPAL REGISTER**

**BOTOX**

ALLERGAN, INC. (DELAWARE CORPORATION)  
2525 DUPONT DRIVE  
IRVINE, CA 92715

FIRST USE 9-0-1990; IN COMMERCE  
1-22-1992.

SN 74-136,930, FILED 2-6-1991.

FOR: PHARMACEUTICAL PREPARATIONS  
FOR THE TREATMENT OF NEUROLOGIC  
DISORDERS, IN CLASS 5 (U.S. CL. 18).

HOWARD B. LEVINE, EXAMINING ATTORNEY

**Int. Cl.: 5**

**Prior U.S. Cls.: 6, 18, 44, 46, 51 and 52**

**United States Patent and Trademark Office**

**Reg. No. 2,510,675**

**Registered Nov. 20, 2001**

**TRADEMARK  
PRINCIPAL REGISTER**

**BOTOX**

ALLERGAN, INC. (DELAWARE CORPORATION)  
2525 DUPONT DRIVE  
IRVINE, CA 92612

FOR: PHARMACEUTICAL PREPARATIONS FOR  
THE TREATMENT OF NEUROLOGICAL DISOR-  
DERS, MUSCLE DYSTONIAS, SMOOTH MUSCLE  
DISORDERS, AUTONOMIC NERVE DISORDERS,  
HEADACHES, WRINKLES, HYPERHYDROSIS,  
SPORTS INJURIES, CEREBRAL PALSY, SPASMS,

TREMORS AND PAIN, IN CLASS 5 (U.S. CLS. 6, 18,  
44, 46, 51 AND 52).

FIRST USE 9-30-1990; IN COMMERCE 1-22-1992.

OWNER OF U.S. REG. NOS. 1,692,384, 1,709,160  
AND OTHERS.

SER. NO. 78-041,618, FILED 1-3-2001.

JENNIFER KRISP, EXAMINING ATTORNEY