

ESTTA Tracking number: **ESTTA22762**

Filing date: **01/06/2005**

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 parties oppose registration of the indicated application.

Opposers Information

Name	Medtronic, Inc.		
Entity	Corporation	Citizenship	Minnesota
Address	710 Medtronic Parkway Minneapolis, MN 55432 UNITED STATES		

Name	Pacesetter, Inc. d/b/a St. Jude Cardiac Rhythm Management Division		
Entity	Corporation	Citizenship	Delaware
Address	15900 Valley View Court Sylmar, CA 91342 UNITED STATES		

Attorney information	Lora Esch Mitchell Fredrikson & Byron, P.A. 200 South Sixth Street Minneapolis, MN 55402 UNITED STATES ip@fredlaw.com, lmittchell@fredlaw.com, dkarau@fredlaw.com Phone:(612)492-7000		
-----------------------------	--	--	--

Applicant Information

Application No	76535841	Publication date	12/14/2004
Opposition	01/06/2005	Opposition	01/13/2005

Filing Date		Period Ends	
Applicant	Cardiac Pacemakers, Inc. 4100 Hamline Avenue No. St. Paul, MN 551125798 UNITED STATES		

Goods/Services Affected by Opposition

Class 010.

All goods and services in the class are opposed, namely: Cardiac rhythm management devices capable of sensing heart activity and providing pacing and defibrillating therapy as needed

Related Proceedings	Opposition Nos. 91161444, 91161441, 91161204, 91162106, 91161126, 91161301
----------------------------	---

Attachments	medtronicnotice.pdf (4 pages)
--------------------	---------------------------------

Signature	/Lora Mitchell/
Name	Lora Esch Mitchell
Date	01/06/2005

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

In the Matter of Trademark Serial No. 76/535,841
For the Mark: PACERPLUS
Filed: July 30, 2003
Published: December 14, 2004

Medtronic, Inc., and

Pacesetter, Inc. doing business as
St. Jude Medical Cardiac Rhythm
Management Division,

Opposers,

Opposition No. _____

v.

Cardiac Pacemakers, Inc.,

Applicant.

NOTICE OF OPPOSITION

This opposition is made to the application of Applicant, Cardiac Pacemakers, Inc., for registration of the mark PACERPLUS, Application Serial No. 76/535,841, published on December 14, 2004. Opposers, Medtronic, Inc., (“Medtronic”) and Pacesetter, Inc. doing business as St. Jude Medical Cardiac Rhythm Management Division (“St. Jude”), believe they will be damaged by the registration of the mark shown in the application, and hereby oppose the same. As grounds for its opposition, Opposers allege as follows:

1. Medtronic is a Minnesota corporation with its principal place of business at 710 Medtronic Parkway, Minneapolis, Minnesota 55432-5604.

2. St. Jude is a Delaware corporation with its principal place of business at 15900 Valley View Court, Sylmar, California 91342.

3. Opposers develop, manufacture and distribute broad lines of cardiovascular medical devices for the global cardiac rhythm management, cardiac surgery and cardiology and vascular access therapy areas.

4. On information and belief, Applicant is a Minnesota corporation with its principal place of business at 4100 Hamline Avenue No., St. Paul, Minnesota 55112-5798.

5. Opposers and others in the industry, use variations on the term PACER for cardiac rhythm management devices.

6. Applicant seeks to register PACERPLUS as a trademark for “cardiac rhythm management devices capable of sensing heart activity and providing pacing and defibrillating therapy as needed.”

7. The term PACER and variations, including the term PACERPLUS, are generic terms in the medical technology industry used in connection with cardiac rhythm management devices, as evidenced by the article attached as Exhibit A.

8. As a generic term and/or a variation on a generic term, PACERPLUS is incapable and ineligible for registration on either the Principal or Supplemental registers.

9. In the alternative, PACERPLUS, as a variation on a generic term, is merely a descriptive term in the medical industry when applied to and used in connection with cardiac rhythm management devices, and PACERPLUS has not acquired secondary meaning or become distinctive of the goods identified in the involved application.

10. Registration of the PACERPLUS mark will cause damage to Opposers by, among other things, interfering with Opposers’ rights to use variations on the term PACER for cardiac

rhythm management devices and by causing confusion in the industry. If Applicant is granted the registration opposed herein, it would thereby obtain at least a prima facie exclusive right to the use of its mark.

WHEREFORE, registration by Applicant of the aforesaid trademark for the aforesaid goods would be damaging to Opposers.

THEREFORE, Opposers respectfully request that the application for registration be denied.

Please address all communication to Lora Mitchell, Fredrikson & Byron, P.A., Suite 4000, 200 South Sixth Street, Minneapolis, Minnesota, 55402-1425.

Dated: January 5, 2005

_____/ Lora Mitchell/
Dean R. Karau
Lora Mitchell
FREDRIKSON & BYRON, P.A.
Suite 4000
200 South Sixth Street
Minneapolis, Minnesota 55402-1425
Tel.: (612) 492-7000
Fax: (612) 492-7077

Attorneys for Opposers

#3061855\1

August 13, 2004

HEALTH NEWS

FDA OKs Pacer, Rejects Other Device

A government advisory panel voted to approve a pacemaker for people with congestive heart failure, but rejected a different device that included a defibrillator.

The panel of outside experts voted 7-0 in favor of approving Medtronic Corp.'s InSync heart pacing device for people suffering congestive heart failure.

In recommending approval, the committee urged some labeling changes and said approval should be conditional on continued follow-up of participants in the clinical trials.

Earlier in the day the group concluded 6-to-2 that Contak CD, made by Guidant Corp., didn't meet the necessary effectiveness standards.

The FDA is not required to follow the recommendations of its advisory panels, but it most often does so.

The Guidant machine combines a defibrillator with an electrical device that helps regulate the beating of the heart. It's designed to assist people with failing hearts and can detect unusual rhythms and stimulate the heart with electrical pulses to restore proper beating. The company had sought approval for use of Contak CD in patients with congestive heart failure.

Some heart pacers with defibrillators are on the market, such as that recently implanted in Vice President Dick Cheney, but his device does not have the type of heart regulator that the Guidant machine includes.

Earlier this year, Guidant drew criticism from the FDA for claims it made about its device in a press release. Later, however, the FDA said an agency spokeswoman went too far in that criticism.

More Health News...

*Copyright 2001 The Associated Press.
All Rights Reserved.*



©2001 The E.W. Scripps Co.