

ESTTA Tracking number: **ESTTA25219**

Filing date: **02/07/2005**

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 party opposes registration of the indicated application.

Opposer Information

Name	Zimmer Technology, Inc.
Granted to Date of previous extension	02/05/2005
Address	150 N. Wacker Drive Chicago, IL 60606 UNITED STATES

Attorney information	Gerard T. Gallagher Baker & Daniels 111 E. Wayne Street Suite 800 Fort Wayne, IN 46802 UNITED STATES sbteas@bakerd.com Phone:574-234-4149
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Applicant Information

Application No	76578699	Publication date	12/07/2004
Opposition Filing Date	02/07/2005	Opposition Period Ends	02/05/2005
Applicant	Shaffner, Richard L. 1624 Manhasset Farm Road Dunwoody, GA 30338		

UNITED STATES

Goods/Services Affected by Opposition

Class 010.

All goods and services in the class are opposed, namely: Cutter for trimming an orthopedic bone plate to size

Attachments	207476_1.pdf (3 pages)
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Signature	/Gerard T. Gallagher/
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Name	Gerard T. Gallagher
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Date	02/07/2005
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Zimmer Technology, Inc., a Delaware corporation, having a principal place of business at 150 North Wacker Drive, Suite 1200, Chicago, IL 60609 ("Opposer"), believes it would be damaged by the registration of the mark ZIM-TRIM that is the subject of U.S. Trademark Application Serial No. 76/578,699 ("the '699 Application") and hereby opposes registration of same. In support of its opposition, Opposer states as follows:

1. Opposer is the owner of all right, title and interest in and to the trademark ZIMMER for use in conjunction with a wide variety of orthopedic appliances, fracture equipment, surgical instruments and apparatuses, skin grafting kits, anti-embolism stockings and other instruments, products and devices for use in the orthopedic and medical fields (hereinafter collectively referred to as "Opposer's goods").

2. Opposer is the owner of all right, title and interest in and to the following U.S. Trademark registrations:

Registration No.	Goods
1,778,807	Full line of surgical instruments and apparatuses
1,633,088	Dermatone skin grafting kit comprised of a skin grafting instrument, width plates, and blades
1,437,895	Anti-embolism stockings
647,921	Orthopedic appliances and fracture equipment

3. Opposer has used its ZIMMER mark on and in connection with at least some of Opposer's goods since at least as early as May 1927.

4. Through its long-standing use of the ZIMMER mark on and in conjunction with Opposer's goods, the purchasing public has come to associate the term ZIMMER exclusively with Opposer.

5. Through its long-standing use of the ZIMMER mark on and in conjunction with Opposer's goods, Opposer has developed exceedingly valuable goodwill in the ZIMMER mark.

6. Opposer's ZIMMER mark is a "famous mark" as that term is used in 15 U.S.C. §1125(c).

7. Richard L. Shaffner ("Applicant") has, through the '699 Application, sought to register the mark ZIM-TRIM for a "cutter for trimming an orthopedic bone plate to size" ("Applicant's goods").

8. On information and belief, Applicant was aware of Opposer and Opposer's use of its ZIMMER mark on and in connection with, at a minimum, orthopedic appliances, prior to the filing date of the '699 Application.

9. There is no issue as to priority, as Opposer has used its ZIMMER mark prior to the filing date of the '699 Application.

10. There is no issue as to priority, as Opposer filed for and obtained each of the registrations listed in paragraph 2 above before the filing of the '699 Application.

11. There is no issue as to priority, as Opposer filed for and obtained each of the registrations listed in paragraph 2 above before Applicant began use of the ZIM-TRIM mark.

12. There is no issue as to priority, as Opposer has used its ZIMMER mark prior to Applicant's use of the ZIM-TRIM mark.

13. Opposer will be damaged by registration of the ZIM-TRIM mark by Applicant because such registration will grant to Applicant *prima facie* evidence of the exclusive right to use the mark in conjunction with Applicant's goods and such use would be likely to cause confusion or mistake or to deceive as to the affiliation, connection or association of Applicant with Opposer and as to the origin, sponsorship and approval of Applicant's goods, services and other commercial activities by Opposer.

14. Such confusion would cause irreparable harm to Opposer in that any defects or fault found with Applicant's goods, services or other commercial activities would erroneously be attributed to Opposer, thereby harming Opposer's reputation and damaging its substantial goodwill in the ZIMMER mark.

15. Opposer will be damaged by registration of the ZIM-TRIM mark by Applicant because such registration will grant to Applicant *prima facie* evidence of the exclusive right to use the mark in conjunction with Applicant's goods and such use would cause dilution of the distinctive quality of Opposer's famous ZIMMER mark.

WHEREFORE, Opposer respectfully requests that the Board deny registration of Applicant's ZIM-TRIM mark sought through the '699 Application and award Opposer all other relief to which it is entitled.