

ESTTA Tracking number: **ESTTA101882**

Filing date: **09/29/2006**

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 | I-Flow Corporation |
| Granted to Date of previous extension | 10/01/2006 |
| Address | 20202 Windrow Drive Lake Forest, CA 92630 UNITED STATES |

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|----------------------|---|
| Attorney information | Elenore Niu Knobbe, Martens, Olson & Bear LLP 2040 Main StreetFourteenth Floor Irvine, CA 92614 UNITED STATES efiling@kmob.com |
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Applicant Information

| | | | |
|------------------------|--|------------------------|------------|
| Application No | 78506252 | Publication date | 04/04/2006 |
| Opposition Filing Date | 09/29/2006 | Opposition Period Ends | 10/01/2006 |
| Applicant | AEROGEN, INC. SUITE 100 2071 STIERLIN COURT MOUNTAIN VIEW, CA 94043 UNITED STATES | | |

Goods/Services Affected by Opposition

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|--|
| Class 010. All goods and services in the class are opposed, namely: MEDICAL APPARATUS, NAMELY AEROSOL GENERATORS CONSISTING OF AN ELECTRONIC MICROPUMP FOR CREATING AEROSOL PREPARATIONS FOR USE IN INHALERS, NEBULIZERS AND AEROSOL DISPENSERS USED IN THE TREATMENT OF RESPIRATORY CONDITIONS |
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|-------------|--|
| Attachments | Document.pdf (3 pages)(95434 bytes) |
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|-----------|-----------------------|
| Signature | /Steven J. Nataupsky/ |
| Name | Steven J. Nataupsky |
| Date | 09/29/2006 |

IFLOW.233M

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

I-Flow Corporation,
Opposer,

v.

Aerogen, Inc.,

Applicant.

Serial No. 78/506,252

I hereby certify that this correspondence and all marked attachments are being electronically filed with the Trademark Trial and Appeal Board through their web site located at <http://estta.uspto.gov> on

September 29, 2006

(Date)


Steven J. Nataupsky

NOTICE OF OPPOSITION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Sir or Madam:

Opposer, I-Flow Corporation, located and doing business at 20202 Windrow Drive, Lake Forest, California 92630 (hereinafter referred to as "Opposer"), believes that it is or will be damaged by the registration of the mark shown in Serial No. 78/506,252 filed by Aerogen, Inc. (hereinafter referred to as "Applicant") and therefore opposes the same.

A description of Applicant's mark is as follows:

| | |
|-------------------|--|
| Mark: | LIFE, ONQ |
| Serial No.: | 78/506,252 |
| Filing Date: | October 26, 2004 |
| Publication Date: | April 4, 2006 |
| Class: | 10 |
| Goods: | Medical apparatus, namely aerosol generators consisting of an electronic micropump for creating aerosol preparations for use in inhalers, nebulizers |

and aerosol dispensers used in the treatment of respiratory conditions

As grounds for Opposition, it is alleged:

1. Since at least as early as 1998 and well before Applicant filed its intent-to-use based application, Opposer has used on a national basis the mark ^{ON-Q} in connection with medical devices.

2. Opposer is the owner of and relies on its following federal registration for the mark ^{ON-Q}®:

| | |
|--------------------|--|
| Mark: | ^{ON-Q} |
| Registration No.: | 2,411,205 |
| Class: | 10 |
| Goods: | Medical devices, namely, infusion pumps, administration sets, catheters and syringes |
| First Use: | November 5, 1998 |
| Registration Date: | December 5, 2000 |

3. Opposer is the owner of and relies upon the United States Patent and Trademark Office registration as specified in paragraph 2 above. This registration, being valid, subsisting and unrevoked constitutes *prima facie* evidence of the validity of the registered mark and of the registration thereof, and Opposer's ownership of the mark shown therein and Opposer's exclusive right to use the mark in commerce in connection with the goods set forth therein, without condition or limitation; it also constitutes notice to Applicant of Opposer's claim of ownership of the mark shown therein; all as provided in Sections 7(b), 22 and 33(a) of the Trademark Act of 1946 as amended.

4. The registration specified in paragraph 2 above is derived from an application filed in the United States Patent and Trademark Office on a date prior to the date of filing of Applicant's application. Said registered mark of Opposer is valid and subsisting. In view of the similarity of the respective marks and the similar nature of the goods of the respective parties, Applicant's mark so resembles Opposer's registered mark so as to be likely to cause confusion or to cause mistake or to deceive.

5. Opposer's use of its ^{ON-Q}® mark has been valid and continuous since at least as early as the date of first use specified in the registration and has not been abandoned. Said ^{ON-Q}® mark of Opposer is symbolic of extensive goodwill and consumer recognition built by Opposer through substantial amounts of time and effort in advertising and promotion. In view of the similarity of the respective marks and the related goods of the respective marks, Applicant's mark so resembles Opposer's mark used in commerce so as to be likely to cause confusion or to cause mistake or to deceive.

WHEREFORE, Opposer prays that Application Serial No. 78/506,252 be rejected and stricken, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: September 27, 2006

By: _____

Steven J. Nataupsky

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Attorneys for Opposer, I-Flow Corporation

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