

ESTTA Tracking number: **ESTTA183601**

Filing date: **12/28/2007**

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	Arthrex, Inc.
Granted to Date of previous extension	12/29/2007
Address	1370 Creekside Blvd. Naples, FL 34108 UNITED STATES

Correspondence information	Karin H. Butchko Carlson, Gaskey & Olds, P.C. 400 W. Maple Road Suite 350 Birmingham, MI 48009 UNITED STATES kbutchko@cgolaw.com Phone:248-988-8360
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Applicant Information

Application No	78717996	Publication date	10/30/2007
Opposition Filing Date	12/28/2007	Opposition Period Ends	12/29/2007
Applicant	Zimmer Technology, Inc. Suite 1200 150 North Wacker Drive Chicago, IL 60606 UNITED STATES		

Goods/Services Affected by Opposition

Class 010. First Use: 2001/12/31 First Use In Commerce: 2001/12/31 All goods and services in the class are opposed, namely: Medical device, namely, an external fixation system for bone securement and stabilization comprised of aluminum, titanium; stainless steel or carbon fiber bone anchors,pins, rods, rings, wires and clamps
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2501225	Application Date	12/14/1998
Registration Date	10/30/2001	Foreign Priority Date	NONE
Word Mark	TRANSFIX		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 010. First use: First Use: 1997/06/24 First Use In Commerce: 1997/06/24 ARTHROSCOPIC SURGICAL IMPLANT COMPRISING ARTIFICIAL MATERIAL

Attachments	75605638#TMSN.gif (1 page)(bytes) NoticeOpposition.pdf (3 pages)(62208 bytes) ExhibitA.pdf (2 pages)(142248 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/karin h. butchko/
Name	Karin H. Butchko
Date	12/28/2007

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

Arthrex, Inc.,)	
)	
Opposer,)	Mark: TRANSFX
)	
v.)	Serial No.: 78/717,996
)	
Zimmer Technology, Inc.,)	Filing Date: September 21, 2005
)	
Applicant.)	Publication Date: October 30, 2007
)	

NOTICE OF OPPOSITION

Opposer Arthrex, Inc., a Florida corporation, located and doing business at 1370 Creekside Boulevard, Naples, Florida 34108, believes that it will be damaged by the registration of the trademark TRANSFX having Application Serial No. 78/717,996 filed on September 21, 2005 and therefore opposes the same. The Board granted an extension of time to oppose until December 29, 2007. As grounds for its opposition, Opposer, by its attorneys Carlson, Gaskey & Olds, P.C., alleges as follows:

1. Opposer owns United States Trademark Registration No. 2,501,225 registered on October 30, 2001 for TRANSFIX for use with “arthroscopic surgical implant comprising artificial material” in International Class 10. Opposer’s registration is valid and in full force and effect. Additionally, the registration has become incontestable. This registration serves as conclusive evidence of Opposer’s exclusive right to use the mark. A copy of a print-out from the United States Patent and Trademark Office website regarding this registration is attached as Exhibit A.

2. Opposer has used the trademark TRANSFIX since at least 1997, and before any date upon which Applicant can rely, in connection with its goods and is continuing to do so.

3. On information and belief, Applicant is a corporation with offices at 150 North Wacker Drive, Suite 1200, Chicago, Illinois 60606.

4. On information and belief, Applicant, Zimmer Technology, Inc., filed United States Trademark Application No. 78/717,996 on September 21, 2005 to register TRANSFX for use with “medical device, namely, an external fixation system for bone securement and stabilization comprised of aluminum, titanium; stainless steel or carbon fiber bone anchors, pins, rods, rings, wires and clamps” in International Class 10 and cited a date of first use of December 31, 2001.

5. Opposer has superior rights as compared to Applicant. Opposer has used and registered their TRANSFIX trademark prior to Applicant’s filing date of September 21, 2005 and first use date of December 31, 2001. Opposer has continuously used the trademark TRANSFIX through the United States for many years.

6. Applicant’s TRANSFX mark is similar in sight, sound and commercial impression to Opposer’s TRANSFIX mark and will be used on goods that are closely related to the goods listed in Opposer’s Registration No. 2,501,225 for TRANSFIX. The businesses to which Applicant markets and sells its goods are likely to be the same businesses to which Opposer markets its goods (such as hospitals).

7. Applicant’s TRANSFX mark so resembles Opposer’s TRANSFIX trademark as to be likely, when applied to the Applicant’s goods, to cause confusion, mistake, or to deceive as to the source of origin of Applicant’s goods.

8. Based on the similarities of the marks and the goods, consumers are likely to associate the goods sold by Applicant under the mark TRANSFX with Opposer or Opposer’s goods or to believe that Applicant’s goods are sponsored, endorsed or licensed by Opposer, or that there is some relationship between Applicant and Opposer.

9. Any use of the mark TRANSFX by Applicant is likely to cause confusion, cause mistake or deceive the public and cause the public to believe that the goods sold and offered under the TRANSFX mark emanate from or are otherwise sponsored by or endorsed by Opposer, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d).

By reason of the forgoing, Opposer will be damaged by the registration of the mark TRANSFX by the Applicant.

WHEREFORE, it is respectfully requested that this opposition be sustained and that the registration sought by Application Serial No. 78/717,996 be denied.

The Commissioner is authorized to charged Deposit Account 50-1482, in the name of Carlson, Gaskey & Olds, P.C., \$300.00 for the Opposition fee in one class. If any additional fees are due, however, the Commissioner is authorized to charge Deposit Account No. 50-1482, in the name of Carlson, Gaskey & Olds, P.C., for any additional fees or credit the account for any overpayment.

Respectfully submitted,

CARLSON, GASKEY & OLDS, P.C.

/Karin H. Butchko/
Registration No. 45,864
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Birmingham, Michigan 48009
(248) 988-8360

Dated: December 28, 2007



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Typed Drawing

Word Mark TRANSFIX

Goods and Services IC 010. US 026 039 044. G & S: ARTHROSCOPIC SURGICAL IMPLANT COMPRISING ARTIFICIAL MATERIAL. FIRST USE: 19970624. FIRST USE IN COMMERCE: 19970624

Mark Drawing Code (1) TYPED DRAWING

Serial Number 75605638

Filing Date December 14, 1998

Current Filing Basis 1A

Original Filing Basis 1A

Published for Opposition August 7, 2001

Registration Number 2501225

Registration Date October 30, 2001

Owner (REGISTRANT) Arthrex, Inc. CORPORATION FLORIDA 1370 Creekside Boulevard Naples FLORIDA 34108

Attorney of Record Charles P. LaPolla

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR).

Live/Dead

**Live/Dead
Indicator**

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