

ESTTA Tracking number: **ESTTA192442**

Filing date: **02/13/2008**

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	Baxter International Inc.
Granted to Date of previous extension	02/20/2008
Address	One Baxter Parkway Deerfield, IL 60015 UNITED STATES

Attorney information	Tamara A. Head Dineff Trademark Law Limited 160 N. Wacker Drive Chicago, IL 60606 UNITED STATES tmlaw@dineff.com Phone:3123381000
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Applicant Information

Application No	77158764	Publication date	10/23/2007
Opposition Filing Date	02/13/2008	Opposition Period Ends	02/20/2008
Applicant	Aderans Research Institute, Inc. East Tower Penthouse 9100 Wilshire Boulevard Beverly Hills, CA 90212 UNITED STATES		

Goods/Services Affected by Opposition

Class 010. All goods and services in the class are opposed, namely: Medical devices, specifically injection devices for the delivery of cells, solutions, suspensions, fluids and substances into a patient
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Grounds for Opposition

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

U.S. Registration No.	3340928	Application Date	09/17/2004
Registration Date	11/20/2007	Foreign Priority Date	NONE
Word Mark	AVIVA		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 005. First use: First Use: 2006/11/29 First Use In Commerce: 2006/11/29 Pre-filled plastic containers for admixture and delivery of drugs and parenteral fluids Class 010. First use: First Use: 2006/11/29 First Use In Commerce: 2006/11/29 Empty plastic containers and administration tubing for admixture and delivery of drugs and parenteral fluids

U.S. Registration No.	3332069	Application Date	02/17/2006
Registration Date	11/06/2007	Foreign Priority Date	NONE
Word Mark	AVIVA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2006/11/29 First Use In Commerce: 2006/11/29 PRE-FILLED PLASTIC CONTAINERS FOR ADMIXTURE AND DELIVERY OF DRUGS AND PARENTERAL FLUIDS Class 010. First use: First Use: 2006/11/29 First Use In Commerce: 2006/11/29 EMPTY PLASTIC CONTAINERS AND ADMINISTRATION TUBING FOR ADMIXTURE AND DELIVERY OF DRUGS AND PARENTERAL FLUIDS		

Attachments	78485662#TMSN.jpeg (1 page)(bytes) 78817245#TMSN.jpeg (1 page)(bytes) Notice of Opposition against ARIVA.pdf (5 pages)(136448 bytes) Exhibit A AVIVA Registration No. 3340928.pdf (1 page)(23497 bytes) Exhibit B AVIVA & DESIGN Registration No. 3332069.pdf (1 page)(31735 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 Overnight Courier on this date.

Signature	/tamarahead/
Name	Tamara A. Head
Date	02/13/2008

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

In the matter of application Serial No. 77/158764
For the mark **ARIVA**
Published in the "Official Gazette" of October 23, 2007

)	
Baxter International Inc.)	
Opposer,))	
vs.)	Opposition No. N.A.
)	
Aderans Research Institute, Inc.)	
Applicant,))	
)	

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

Baxter International Inc. (hereinafter referred to as "Opposer"), a corporation organized under the laws of the State of Delaware, having its address at One Baxter Parkway, Deerfield, Illinois 60015, believes that it will be damaged by the registration of the mark ARIVA shown in Serial Number 77/158764 in International Class 10 in the name of Aderans Research Institute, Inc. (hereinafter referred to as "Applicant"), and hereby opposes same in accordance with 15 U.S.C. § 1063 and 37 C.F.R. § 2.101.

As grounds of opposition, it is alleged that:

1. Opposer, a global healthcare company for over seventy-five years, is the owner of the trademarks AVIVA, Registration No. 3340928, covering "*pre-filled plastic containers for admixture and delivery of drugs and parenteral fluids*" in Class 5 and "*empty plastic*

containers and administration tubing for admixture and delivery of drugs and parenteral fluids” in Class 10; and AVIVA & CRESCENT DESIGN, Registration No. 3332069, covering “*pre-filled plastic containers for admixture and delivery of drugs and parenteral fluids*” in Class 5 and “*empty plastic containers and administration tubing for admixture and delivery of drugs and parenteral fluids*” in Class 10 (hereinafter referred to as the “AVIVA Marks”). Opposer has continuously used the AVIVA Marks in commerce since at least as early as November 29, 2006.

2. Opposer’s registrations are valid, subsisting, and provide *prima facie* evidence of Opposer’s ownership of the AVIVA Marks, their validity, and of Opposer’s exclusive right to use the AVIVA Marks in commerce. See attached hereto as Exhibits A and B copies of the Certificates of Registration Nos. 3340928 and 3332069.

3. Opposer has engaged in extensive advertising and generated high sales of its products under the AVIVA Marks. As a result thereof, consumers have come to recognize and associate the AVIVA Marks with Opposer and Opposer has acquired substantial goodwill in the AVIVA Marks.

4. Applicant seeks to register ARIVA as a trademark for “*medical devices, specifically injection devices for the delivery of cells, solutions, suspensions, fluids and substances into a patient*” in Class 10 (hereinafter referred to as “Applicant’s Mark”), as evidenced by the publication of said mark in the *Official Gazette* of the October 23, 2007 issue.

5. There is no issue as to priority. The filing date of Applicant’s Mark is subsequent to the first use date of the AVIVA Marks, subsequent to the issuance date of Opposer’s U.S. registrations for the AVIVA Marks, subsequent to the introduction and use of the AVIVA Marks to the purchasing public and Applicant has yet to commence use of its mark in commerce.

6. Applicant's Mark is confusingly similar to the AVIVA Marks within the meaning of Section 2(d) of the Lanham Act, 15 U.S.C. 1052 (d). The trademark proposed under Serial No. 77/158764 is confusingly similar to the AVIVA Marks in appearance, sound and connotation and, consequently, in its overall commercial impression. Applicant's Mark consists of the literal element ARIVA, which is almost identical to the AVIVA Marks, AVIVA and AVIVA & CRESCENT DESIGN. A person "having a general recollection" of the AVIVA Marks would be likely, upon seeing Applicant's Mark, to assume that the AVIVA Marks and Applicant's Mark emanate from the same source or connected sources, that there exist an affiliation, connection or association between Opposer and the Applicant.

7. Since the application has been applied for goods that are very similar to Opposer's goods, the marks are likely to travel in the same channels of trade and are likely to target the same markets and consumers, who will encounter the respective marks in the market place and will likely be confused as to the source of the goods and services.

8. Applicant's Mark is likely, when applied to Applicant's goods and services, to cause confusion, and mistake and to deceive as to the affiliation, connection, or association of Applicant with Opposer, or as to the origin, sponsorship, or approval of Applicant's goods, services, or commercial activities, with consequent injury to Opposer, the consumer and the trade.

9. If Applicant is permitted to use and register its mark for its goods, as specified in the application herein opposed, confusion resulting in damage and injury to Opposer will likely occur. Persons familiar with the AVIVA Marks are likely to believe that some relationship exists between Applicant and Opposer or that Applicant's and Opposer's goods may somehow be connected.

10. If Applicant were granted the registration herein opposed it would thereby obtain at least a *prima facie* exclusive right to the use of its mark. Such registration would be a source of damage and injury to Opposer.

WHEREFORE, Opposer prays that this opposition be sustained and that Application Number 77/158764 be refused according to Section 2(d) of the Lanham Act, 15 U.S.C. 1052(d), and for such other and further relief as the Commissioner of Patents and Trademarks shall deem proper and required by the Principles of Equity and Good Conscience.

The fee required in Section 2.6(a)(17) in the amount of \$300.00 per class is enclosed herewith.

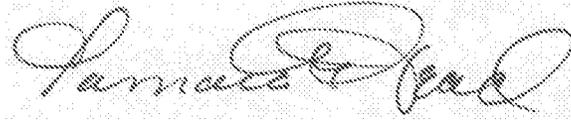
Baxter International Inc.
By and through its attorney

A handwritten signature in cursive script, appearing to read "Tamara A. Head", is positioned above a horizontal line. The signature is written in black ink on a light-colored background.

Tamara A. Head
DINEFF TRADEMARK LAW LIMITED
160 N. Wacker
Chicago, Illinois 60606
Phone (312) 338-1000
Facsimile (312) 338-1500
tmlaw@dineff.com
Dated: February 13, 2008

Certificate of Service

I hereby certify that a copy of the foregoing NOTICE OF OPPOSITION was mailed via Courier to Mr. Charles Vorndran of Pabst Patent Group LLP at 400 Colony Square, Suite 1200, 1201 Peachtree Street, Atlanta GA 30361, this 13th day of February, 2008.

A handwritten signature in cursive script, appearing to read "Tamara A. Head". The signature is rendered in a dotted or stippled font style.

Tamara A. Head
DINEFF TRADEMARK LAW LIMITED
160 N. Wacker
Chicago, Illinois 60606
Phone (312) 338-1000
Facsimile (312) 338-1500
tmlaw@dineff.com
Dated: February 13, 2008

Int. Cls.: 5 and 10

Prior U.S. Cls.: 6, 18, 26, 39, 44, 46, 51, and 52

United States Patent and Trademark Office

Reg. No. 3,340,928

Registered Nov. 20, 2007

**TRADEMARK
PRINCIPAL REGISTER**

AVIVA

BAXTER INTERNATIONAL INC. (DELAWARE CORPORATION)
ONE BAXTER PARKWAY
DEERFIELD, IL 60015

FOR: PRE-FILLED PLASTIC CONTAINERS FOR ADMIXTURE AND DELIVERY OF DRUGS AND PARENTERAL FLUIDS, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 11-29-2006; IN COMMERCE 11-29-2006.

FOR: EMPTY PLASTIC CONTAINERS AND ADMINISTRATION TUBING FOR ADMIXTURE AND

DELIVERY OF DRUGS AND PARENTERAL FLUIDS, IN CLASS 10 (U.S. CLS. 26, 39 AND 44).

FIRST USE 11-29-2006; IN COMMERCE 11-29-2006.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 78-485,662, FILED 9-17-2004.

ANNE E. GUSTASON, EXAMINING ATTORNEY

Int. Cls.: 5 and 10

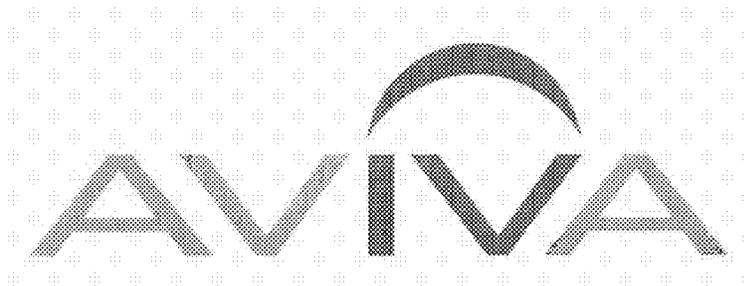
Prior U.S. Cls.: 6, 18, 26, 39, 44, 46, 51, and 52

United States Patent and Trademark Office

Reg. No. 3,332,069

Registered Nov. 6, 2007

**TRADEMARK
PRINCIPAL REGISTER**



BAXTER INTERNATIONAL INC. (DELAWARE CORPORATION)
DF2-1E
ONE BAXTER PARKWAY
DEERFIELD, IL 60015

FOR: PRE-FILLED PLASTIC CONTAINERS FOR ADMIXTURE AND DELIVERY OF DRUGS AND PARENTERAL FLUIDS, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 11-29-2006; IN COMMERCE 11-29-2006.

FOR: EMPTY PLASTIC CONTAINERS AND ADMINISTRATION TUBING FOR ADMIXTURE AND DELIVERY OF DRUGS AND PARENTERAL FLUIDS, IN CLASS 10 (U.S. CLS. 26, 39 AND 44).

FIRST USE 11-29-2006; IN COMMERCE 11-29-2006.

SN 78-817,245, FILED 2-17-2006.

JORDAN BAKER, EXAMINING ATTORNEY