

ESTTA Tracking number: **ESTTA318356**

Filing date: **11/23/2009**

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	Bayer HealthCare LLC
Granted to Date of previous extension	11/25/2009
Address	100 Bayer Road Pittsburgh, PA 15205 UNITED STATES

Attorney information	Beth Goldman Orrick Herrington & Sutcliffe LLP 405 Howard Street San Francisco, CA 94105 UNITED STATES ipprosecutionsf@orrick.com, cbush@orrick.com Phone:415-773-5700
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Applicant Information

Application No	77701134	Publication date	07/28/2009
Opposition Filing Date	11/23/2009	Opposition Period Ends	11/25/2009
Applicant	Biogen Idec MA Inc. 14 Cambridge Center Cambridge, MA 02142 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Pharmaceutical preparations for the treatment of cardiovascular disorders

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1536042	Application Date	05/05/1988
Registration Date	04/25/1989	Foreign Priority Date	NONE
Word Mark	ALEVE		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 1988/04/25 First Use In Commerce: 1988/04/25 ANTI-INFLAMMATORY, ANALGESIC, AND ANTIPYRETIC PHARMACEUTICAL PREPARATIONS

U.S. Registration No.	3287780	Application Date	02/13/2007
Registration Date	09/04/2007	Foreign Priority Date	NONE

Word Mark	ALEVE
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Design Mark	
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Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2000/07/31 First Use In Commerce: 2000/07/31 Pharmaceutical antitussive-cold preparations; Preparations for treating colds

Attachments	77105868#TMSN.jpeg (1 page)(bytes) LIXALEV.PDF (5 pages)(121666 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	/ChelseaaBush/
Name	Chelseaa Bush
Date	11/23/2009

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

In the Matter of Application Serial No. 77/701134
Published in the *Official Gazette* on July 28, 2009
Trademark: **LIXALEV**

Bayer HealthCare LLC,

Opposer,

v.

Biogen Idec MA Inc.,

Applicant.

NOTICE OF OPPOSITION

Bayer HealthCare LLC (“Opposer”), a Delaware limited liability company having a principal place of business at 100 Bayer Road, Pittsburgh, Pennsylvania 15205, believes it will be damaged by registration of the mark LIXALEV shown in Serial No. 77/701134 in International Class 5 and hereby opposes the same.

As grounds for opposition, Opposer alleges:

1. Biogen Idec MA Inc. (“Applicant”), has an application to register the mark LIXALEV for "pharmaceutical preparations for the treatment of cardiovascular disorders" in International Class 5 as evidenced by the publication of such mark in the *Official Gazette* on July 28, 2009.

2. Applicant is, upon information and belief, a Massachusetts corporation with an address at 14 Cambridge Center, Cambridge, Massachusetts 02142.

3. Opposer has, since at least as early as April 25, 1988, used the mark ALEVE in connection with pharmaceutical preparations. Opposer is the owner of, among others, an incontestable registration for the trademark ALEVE (United States Registration No. 1,536,042, registered April 25, 1989) for “anti-inflammatory, analgesic, and antipyretic pharmaceutical preparations” in Class 5 and a registration for the trademark ALEVE (United States Registration No. 3287780, registered September 4, 2007) for "pharmaceutical antitussive-cold preparations; preparations for treating colds."

4. There is no issue as to priority. Upon information and belief, Applicant has not used the mark LIXALEV on its goods prior to March 27, 2009, as is evidenced by Applicant’s filing of its application on an intent-to-use basis on that date. The date of first registration and use of the ALEVE mark is thus well before the first use of Applicant’s LIXALEV mark, if any, and Opposer’s ALEVE mark therefore has priority over Applicant’s LIXALEV application.

5. Opposer has sold its goods under the mark ALEVE throughout the United States and has developed exceedingly valuable goodwill with respect to the mark ALEVE.

6. By virtue of its efforts and the expenditure of considerable sums for promotional and advertising activities and by virtue of the excellence of its goods,

Opposer has gained for its mark ALEVE a most valuable reputation and has created, in the minds of the buying public, an exclusive association between ALEVE and its goods.

7. The trademark proposed for registration by Applicant, namely, LIXALEV, is likely to be confused with Opposer's mark, ALEVE, because the marks are similar in appearance, sound and overall commercial impression.

8. Applicant seeks to register LIXALEV as a mark in connection with goods that are related to the goods of Opposer and such use so nearly resembles Opposer's use as to be likely to cause confusion, to cause mistake or to deceive within the meaning of 15 U.S.C. § 1052(d).

9. If Applicant is permitted to use and register the LIXALEV mark for its goods as specified in the opposed application, confusion in trade resulting in damage and injury to Opposer would be caused and would result by reason of the fact that Applicant's mark is confusingly similar to Opposer's mark. Persons familiar with Opposer's ALEVE mark would be likely to buy Applicant's LIXALEV goods as goods offered and sold by Opposer. Furthermore, any defect, objection, or fault found with Applicant's goods marketed under the LIXALEV mark would be likely to reflect upon and seriously injure the reputation that Opposer has established for its goods offered under its ALEVE mark.

10. The mark ALEVE is distinctive and famous throughout the United States, and has become closely associated with the goods of Opposer. The ALEVE mark became famous prior to the filing of Applicant's application for LIXALEV.

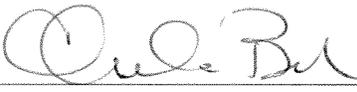
11. The trademark proposed for registration by Applicant, namely, LIXALEV, is likely to cause dilution by blurring and dilution by tarnishment of Opposer's ALEVE mark, and also reduces the capacity of the famous ALEVE mark to identify the goods of Opposer.

12. If Applicant is granted the registration herein opposed, such registration would be a source of damage and injury to Opposer.

WHEREFORE, Opposer prays that the opposition be sustained and that the application be refused for registration.

Respectfully submitted,
ORRICK HERRINGTON & SUTCLIFFE LLP

Dated: November 3, 2009

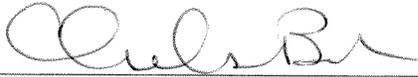
By: 
Beth M. Goldman
Chelseaa E.L. Bush
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405 Howard Street
San Francisco, CA 94105
415-773-5700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Notice of Opposition was served by First Class Mail, on November 23, 2009, on Applicant at the following address:

Brenda Campbell
Biogen Idec MA Inc.
14 Cambridge Center
Cambridge, MA 02142-1481

Dated: November 23, 2009

By: 
Chelsea E. L. Bush
Attorneys for Opposer
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