

ESTTA Tracking number: **ESTTA357370**

Filing date: **07/12/2010**

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	Eleos Inc.		
Entity	Corporation	Citizenship	Delaware
Address	One Valmont Plaza Suite 301 Omaha, NE 68154 UNITED STATES		

Attorney information	Stephen R. Baird Winthrop & Weinstine 225 South 6th Street Suite 225 Minneapolis, MN 55402 UNITED STATES sbaird@winthrop.com, kbrennan@winthrop.com, trademark@winthrop.com Phone:(612) 604-6400		
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Applicant Information

Application No	77923215	Publication date	06/15/2010
Opposition Filing Date	07/12/2010	Opposition Period Ends	07/15/2010
Applicant	Molecular Insight Pharmaceuticals, Inc. 160 Second Street Cambridge, MA 02142 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Pharmaceutical compositions for diagnosing and treating cancers
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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.	3473293	Application Date	04/23/2007
Registration Date	07/22/2008	Foreign Priority Date	NONE
Word Mark	AEZEA		

Design Mark	AEZEA
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2007/07/05 First Use In Commerce: 2008/02/21 Pharmaceutical preparations for use in oncology; anti-cancer preparations; pharmaceutical preparations for medical use to inhibit production of the p53 protein in humans

Attachments	77163575#TMSN.jpeg (1 page)(bytes) Eleos Oppos.pdf (5 pages)(190720 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	/Karen A. Brennan/
Name	Karen A. Brennan
Date	07/12/2010

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

In the matter of Application Ser. No.: 77/923,215
Filed: January 29, 2010
For the mark: AZEDRA
Published in the Trademark Official Gazette on June 15, 2010

Eleos Inc.,

Opposer,

v.

Opposition No. _____

Molecular Insight Pharmaceuticals, Inc.,

Applicant.

NOTICE OF OPPOSITION

Eleos Inc. (“Opposer”), believes that it will be damaged by registration of the mark shown in Application Serial No. 77/923,215 (the “Application”) in International Class 5 and hereby opposes the same.

The grounds for opposition are as follows:

1. Molecular Insight Pharmaceuticals, Inc. (“Applicant”) seeks to register AZEDRA as a trademark for “pharmaceutical compositions for diagnosing and treating cancers” in International Class 5 (“Applicant’s Mark” or “Applicant’s AZEDRA Mark”).

2. Applicant’s AZEDRA Mark was published for opposition in the Trademark Official Gazette on June 15, 2010.

3. Opposer is focused on improving the lives of medical patients through the development and commercialization of pharmaceutical products and services, including, therapeutic treatments for cancer patients such as preparations for use in oncology, anti-cancer

preparations, and related goods. Opposer adopted, has used, and continues to use the trademark AEZEA® in connection with pharmaceutical preparations. These goods are identical to or overlap with Applicant's goods set forth in Paragraph 1.

4. Opposer has adopted and has continuously used the AEZEA trademark in connection with pharmaceutical preparations since at least as early as July 2007.

5. In addition to owning common law rights in the AEZEA trademark, Opposer is the owner of a federal trademark registration for the AEZEA mark in connection with goods in International Class 5.

6. Opposer is the owner of United States Trademark Registration No. 3,473,293 for the mark AEZEA® in connection with "Pharmaceutical preparations for use in oncology; anti-cancer preparations; pharmaceutical preparations for medical use to inhibit production of the p53 protein in humans," in International Class 5, claiming a first use date at least as early as July 5, 2007. The Registration was issued on the Principal Register on July 22, 2008. The filing date and nationwide constructive first use date for this Registration is April 23, 2007. A copy of Opposer's registration is attached hereto as Exhibit A.

7. Opposer commenced use of its AEZEA trademark in commerce three and half years prior to the January 29, 2010 priority date of the Application and has constructive use of the AEZEA mark dating to July 5, 2007. Opposer has continuously used in commerce, from the dates set forth in the corresponding registration, its AEZEA trademark. Consequently, Opposer's registration has priority over the Application as a result of Opposer's registration, earlier actual and constructive use of its federally registered AEZEA mark.

8. The goods upon which Applicant seeks to apply its proposed AZEDRA mark are identical and/or closely related to Opposer's goods offered under its AEZEA mark, and would

travel and be promoted through the same channels of trade as the goods offered under Opposer's AEZEA mark.

9. Both the AEZEA trademark and the AZEDRA trademark and the pharmaceuticals offered or intended to be offered under those marks are directed or intended to be directed to patients suffering from cancer or medical professionals who treat or care for cancer patients, among others.

10. Applicant's proposed AZEDRA mark so resembles Opposer's AEZEA mark as to be likely, when used on or in connection with the goods described in Paragraph 1, to cause confusion, mistake, or to deceive.

11. Applicant's proposed AZEDRA mark is highly similar to Opposer's AEZEA mark.

12. AEZEA has five letters, AZEDRA has six letters.

13. Both AZEDRA and AEZEA contain three syllables.

14. AZEDRA and AEZEA both begin and end with the letter "A."

15. AZEDRA and AEZEA both include the middle syllable "ZE."

16. AZEDRA and AEZEA both include the first syllable having a long "A" sound.

17. AZEDRA and AEZEA both include the last syllable having short "A" sound.

18. The net effect of these similarities upon viewing Applicant's AZEDRA mark is to stimulate recall of, and cause likely confusion with, Opposer's AEZEA mark.

19. These significant similarities cause Opposer's AEZEA mark and Applicant's AZEDRA mark to visually appear and phonetically sound similar.

20. The likelihood of confusion that would result if Applicant's Mark achieved registration would be particularly damaging to Opposer, and the public as a whole, because the

consequence of any likelihood of confusion is potentially quite serious in the field of pharmaceuticals and medical compositions.

21. Given the possibly dire results of any resulting confusion between the AEZEA and the proposed AZEDRA mark, an extra measure of care should be taken to prevent any possible confusion.

22. Given the clear visual and phonetic similarities between the marks in question and the close similarity between the goods offered under the respective marks, purchasers and prospective purchasers are likely to mistakenly believe that the goods Applicant offers in the United States under the proposed AZEDRA mark are sponsored, endorsed or approved by Opposer, or are in some way affiliated, connected or associated with Opposer, all to the detriment of Opposer. Registration of the Application should therefore be refused under 15 U.S.C. §1052(d) and 1063.

23. Registration of the proposed AZEDRA mark would additionally be a source of damage to Opposer as it would confer upon the Applicant various statutory presumptions to which it is not entitled in view of Opposer's prior use and registration of the AEZEA mark.

WHEREFORE, Opposer respectfully requests that the Trademark Trial and Appeal Board sustain its opposition, refuse registration of Application Serial No. 77/923,215, and grant any other relief that may be just and equitable.

Dated: July 12, 2010

WINTHROP & WEINSTINE, P.A.



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