

ESTTA Tracking number: **ESTTA458503**

Filing date: **02/24/2012**

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	SeaSpine, Inc.
Granted to Date of previous extension	02/26/2012
Address	2302 La Mirada Drive Vista, CA 92081 UNITED STATES

Attorney information	Thomas A. Runk Fulwider Patton LLP Howard Hughes Center 6060 Center Drive, Tenth Floor Los Angeles, CA 90045 UNITED STATES trunk@fulpat.com, nwhitlock@fulpat.com, DocketLA@fulpat.com Phone:310-824-5555
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Applicant Information

Application No	85276563	Publication date	08/30/2011
Opposition Filing Date	02/24/2012	Opposition Period Ends	02/26/2012
Applicant	SpineNet, LLC 1300 Minnesota Avenue Winter Park, FL 32789 UNITED STATES		

Goods/Services Affected by Opposition

Class 010. All goods and services in the class are opposed, namely: Medical devices and instruments, screwdrivers, osteosynthesis and arthrodesis equipment for the spinal column, related devices, namely, cages, spacers, spinal prosthesis, vertebral body replacement devices, osteosynthesis and arthrodesis equipment for the spinal column, namely, cages, spacers, spinal prosthesis, vertebral orthopedic body replacement devices, disc prosthesis; spinal implants for straightening and stabilization of the spinal column, enhancement or replacement device in the spinal anatomy; implants and tools, namely, poly-ether-ether-ketone anterior and posterior implants for stabilizing the spine; vertebral body replacement and fusion implants

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. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	DAYTONA		
Goods/Services	Spinal implants composed of artificial material and surgical and medical apparatus and instruments for use in spinal surgery		

U.S. Application No.		Application Date	
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	NONE		
Goods/Services			

Attachments	NoticeofOpposition.pdf (11 pages)(383910 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	/Thomas A. Runk/
Name	Thomas A. Runk
Date	02/24/2012

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

In the Matter of Application Serial No. 85/276,563
For the Trademark DAYTONA ACC
Application Filed on March 25, 2011/Published on August 30, 2011

SEASPINE, INC.)	
)	
Opposer)	
)	Opposition No. _____
v.)	
)	
SPINENET, LLC)	
)	
Applicant.)	
_____)	

NOTICE OF OPPOSITION

SEASPINE, INC., a Delaware corporation (hereinafter "Opposer"), located and doing business at 2302 La Mirada, Vista, CA 92081, United States, will be damaged by registration of the above-identified trademark application (hereinafter "Application"), in the name of SPINENET, LLC (hereinafter "Applicant"), with a last known address of 1300 Minnesota Avenue, Winter Park, FL 32789, United States, and hereby opposes registration of the same.

The grounds for opposition are as follows:

COUNT ONE

1. On March 25, 2011, Applicant filed the Application, which is a federal intent-to-use trademark application, under Serial No. 85/276,563 for the trademark DAYTONA ACC for the following goods:

Medical devices and instruments, screwdrivers, osteosynthesis and arthrodesis equipment for the spinal column, related devices, namely, cages, spacers, spinal prosthesis, vertebral body replacement devices, osteosynthesis and arthrodesis equipment for the spinal column, namely, cages, spacers, spinal prosthesis, vertebral orthopedic body replacement devices, disc prosthesis; spinal implants for straightening and stabilization of the spinal column, enhancement or replacement device in the spinal anatomy; implants and tools, namely poly-ether-ether-ketone anterior and posterior implants for stabilizing the spine; vertebral body replacement and fusion implants, in Class 10.

2. Opposer first used the DAYTONA trademark at least as early as July 28, 2010, when Opposer commenced shipping its goods consisting of spinal implants composed of artificial material and surgical and medical apparatus and instruments for use in spinal treatment in interstate commerce.

3. Opposer has filed U.S. Trademark Application serial no. 85/552,141 on February 24, 2012 for registration of the trademark DAYTONA on the principal register as a section 1.(a) "use" application having a first use date at least as early as July 28, 2010 for the goods of spinal implants composed of artificial material and surgical and medical apparatus and instruments for use in spinal surgery. A true and correct copy of the filing receipt and application for U.S. Trademark Application serial no. 85/552,141 are enclosed as Exhibit A.

4. As a result of Opposer's widespread use and expenditure of resources to promote the goods offered under the DAYTONA trademark, as well as Opposer's dedication to high quality goods, Opposer has acquired significant goodwill in the DAYTONA trademark. Opposer's DAYTONA trademark has come to represent the highest quality of goods, and consumers rely on Opposer's superior goods offered under the DAYTONA trademark.

5. The trademark in the Application so resembles Opposer's DAYTONA trademark, used in interstate commerce in the United States prior to the filing date of the Application, as to be likely to cause confusion, mistake or deception.

6. The trademark in the Application is confusingly similar to Opposer's DAYTONA trademark in sound, sight, and overall commercial impression.

7. Applicant's goods are related to the goods provided in connection with Opposer's DAYTONA trademark, and/or represent a natural zone of expansion for Opposer, and such goods would travel and/or be promoted through the same channels of trade for sale to, and use by, the same class of purchasers.

8. Applicant's use of the trademark in the Application in connection with the goods described therein is likely to cause confusion, mistake, or deception as to the source of the origin of Applicant's goods in that the public, the trade, and others are likely to believe that Applicant's goods are the goods of Opposer or are in some way provided, sponsored, approved, licensed by, or affiliated with, or in some way legitimately connected to Opposer, all to Opposer's irreparable damage and injury.

COUNT TWO

9. Opposer repeats and realleges the allegations set forth in Paragraphs 1 through 8 as though set forth herein.

10. Opposer's DAYTONA trademark is distinctive and famous and became famous long prior to the date Applicant filed the Application.

11. Use of the trademark in the Application by Applicant causes dilution of the distinctive quality of Opposer's famous DAYTONA trademark.

12. Opposer will be damaged by the registration sought by Applicant because such registration would support and assist Applicant in the use of the subject trademark and thereby dilute Opposer's rights in its distinctive and famous DAYTONA trademark.

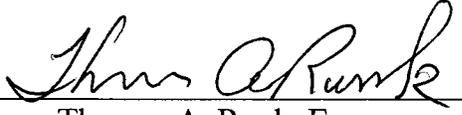
WHEREFORE, Opposer respectfully requests that this Opposition be sustained and Applicant's Application to register the subject trademark be denied in all respects.

Please recognize as attorney for Opposer in this proceeding Thomas A. Runk, who is a member of the State Bar of California, whose address is Fulwider Patton LLP,

Howard Hughes Center, 6060 Center Drive, Tenth Floor, Los Angeles, California 90045,
and whose telephone number is 310-824-5555.

Respectfully submitted,

Dated: February 24, 2012

By: 
Thomas A. Runk, Esq.
Fulwider Patton LLP
Howard Hughes Center
6060 Center Drive, Tenth Floor
Los Angeles, California 90045
Attorneys for Opposer
SeaSpine, Inc.

Enclosure: Exhibit A

EXHIBIT A

Your Trademark/Service Mark Application, Principal Register Was Submitted Successfully

Success! [View/Save E-Receipt as PDF file](#)

We have received your application and assigned serial number **85552141** to your submission. You can open and save a PDF version of the filing receipt by clicking on the button, above, and this will serve as your official confirmation copy. We will also separately send an e-mail summary of the form to "**DocketLA@fulpat.com**". For electronically-submitted applications, the USPTO will no longer mail an additional paper filing receipt. However, since e-mail is not always reliable, please print out and save this notice. If the USPTO later determines that no filing date was justified, your submission will be returned, and your filing fee will be refunded. You would then have the opportunity to cure the deficiency, and re-file the application. Thank you.

NOTE: Do **NOT** send a duplicate paper copy of this filing to the USPTO, as it will interfere with the proper processing of the electronic submission and will result in your being charged for two filings, neither of which can be refunded.

Thank you.

TEAS Support Team

STAMP: USPTO/BAS-12.48.27.190-20120224150347524767-85552141-4904db9344a2c7dd42851951c183b6ac13-CC-1403-20120223161735993107



Trademark Electronic Application System (TEAS) service
U.S. Patent and Trademark Office
Please refer questions or comments to: teas@USPTO.gov

Trademark Electronic Application System (TEAS) filing receipt

MARK: DAYTONA (Standard Characters, mark.jpg)

The literal element of the mark consists of DAYTONA.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

We have received your application and assigned serial number '85552141' to your submission. The summary of the application data, *bottom below*, serves as your official filing receipt.

In approximately 3 months, an assigned examining attorney will review your application to determine if all legal requirements are met. Currently, your mark is **not** registered and is considered a "pending" application. The overall process from the time of initial filing to registration or final refusal can take 13-18 months or even longer, depending on many factors; *e.g.*, the correctness of the original filing and the type of application filed. It is **CRITICAL** that you check the status of your application **at least every 3 - 4 months** and promptly contact the Office if a letter (an "Office action") or notice has issued for your application that you did not receive or do not understand. To check the status, please use <http://tarr.uspto.gov>. Do **not** submit status requests to TEAS@uspto.gov. Failure to respond timely to any Office action or notice may result in the abandonment of your application, requiring you to pay an additional fee to have your application revived even if you did not receive the Office action or notice.

Please view all incoming and outgoing correspondence at <http://portal.uspto.gov/external/portal/tow>. If your status check reveals an issued Office action or notice that you did not receive, immediately view the action/notice through the USPTO website. The USPTO does not extend filing deadlines due to a failure to receive USPTO mailings/e-mailings. You must ensure that you update your record if your mail and/or e-mail address changes, using the form available at <http://www.uspto.gov/teas/eTEASpageE.htm>.

If you discover an error in the application data, you may file a Voluntary Amendment, at <http://www.uspto.gov/trademarks/teas/miscellaneous.jsp>. Do **not** submit any proposed amendment to TEAS@uspto.gov, because the technical support team may not make any data changes. **NOTE:** You must wait approximately 7-10 days to submit any Voluntary Amendment, to permit initial upload of your serial number into the USPTO database. The acceptability of any Voluntary Amendment will only be determined once regular examination begins, since the assigned examining attorney must decide whether the change proposed in the amendment is permissible. **Not all errors may be corrected;** *e.g.*, if you submitted the wrong mark, if the proposed correction would be considered a material alteration to your original filing, it will not be accepted, and your only recourse would be to file a new application (with **no** refund for your original filing).

Since your application filing has already been assigned a serial number, please do **not** contact TEAS@uspto.gov to request cancellation. The USPTO will only cancel the filing and refund your fee if upon review we determine that the application did not meet minimum filing requirements. **The fee is a processing fee that the USPTO does not refund, even if your mark does not proceed to registration.** **NOTE:** The only "exception" to the above is if you inadvertently file duplicate applications specifically because of a *technical glitch* and not merely a misunderstanding or mistake; *i.e.*, if you believe that the first filing did not go through because no confirmation was received and

then immediately file again, only to discover later that both filings were successful, then the technical support team at TEAS@uspto.gov can mis-assign and refund one of the filings.

WARNING: You may receive unsolicited communications from companies requesting fees for trademark related services, such as monitoring and document filing. Although solicitations from these companies frequently display customer-specific information, including USPTO serial number or registration number and owner name, companies who offer these services are not affiliated or associated with the USPTO or any other federal agency. The USPTO does not provide trademark monitoring or any similar services. For general information on filing and maintenance requirements for trademark applications and registrations, including fees required by law, please consult the USPTO website.

APPLICATION DATA: Trademark/Service Mark Application, Principal Register

The applicant, SeaSpine, Inc., a corporation of Delaware, having an address of
2302 La Mirada
Vista, California 92081
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 010: Spinal implants composed of artificial material and surgical and medical apparatus and instruments for use in spinal surgery

In International Class 010, the mark was first used by the applicant or the applicant's related company or licensee at least as early as 07/28/2010, and first used in commerce at least as early as 07/28/2010, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) label used on goods.

Specimen-1 [SPE0-124827190-161735993_._P1000183.pdf]

The applicant's current Attorney Information:

Thomas A. Runk and all other attorneys of Fulwider Patton LLP
6060 Center Drive, Tenth Floor
Los Angeles, California 90045
United States

The attorney docket/reference number is INTEG5-87849.

The applicant's current Correspondence Information:

Thomas A. Runk
Fulwider Patton LLP
6060 Center Drive, Tenth Floor
Los Angeles, California 90045
310-824-5555(phone)

310-824-9696(fax)

A fee payment in the amount of \$325 will be submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Declaration Signature

Signature: /s/ Kathryn Lamping Date: 02/24/2012

Signatory's Name: Kathryn Lamping

Signatory's Position: Assistant Secretary

Thank you,

The TEAS support team

Fri Feb 24 15:03:47 EST 2012

STAMP: USPTO/BAS-12.48.27.190-20120224150347524767-85552141-4904db9344a2c7dd42851951c183b6ac13-CC-1403-20120223161735993107

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Application Filed on March 25, 2011/Published on August 30, 2011

SEASPINE, INC.)
)
 Opposer)
)
 v.)
)
 SPINENET, LLC)
)
 Applicant.)
 _____)

Opposition No. _____

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA)
)
 COUNTY OF LOS ANGELES)

ss:

- I, Michell Rudacille, am employed in the county aforesaid; I am over the age of 18 years and not a party to the within action; my business address is 6060 Center Drive, Tenth Floor, Los Angeles, California 90045.
- On February 24, 2012, I certify that a true and complete copy of the foregoing document described as: **NOTICE OF OPPOSITION**, has been served on the parties in this action at the following address via U.S. Mail, postage prepaid:

Brian S. Steinberger
Law Offices of Brian S. Steinberger, P.A.
101 Brevard Avenue
Cocoa, FL 32922-7904

- I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U.S. Postal Service on that same day, with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business.

Executed on **February 24, 2012**, at Los Angeles, California.



Michell Rudacille