

ESTTA Tracking number: **ESTTA507827**

Filing date: **11/28/2012**

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	Edwards Lifesciences Corporation
Granted to Date of previous extension	11/28/2012
Address	One Edwards Way Trademark Administrator, Legal Dept. Irvine, CA 92614 UNITED STATES
Attorney information	Carlo Van den Bosch, Michelle Wisniewski Sheppard Mullin Richter & Hampton 650 Town Center Drive 4th Floor Costa Mesa, CA 92626 UNITED STATES uspto-tm-oc@sheppardmullin.com, mwisniewski@sheppardmullin.com, cvandenbosch@sheppardmullin.com Phone:714-513-5100

Applicant Information

Application No	85398081	Publication date	07/31/2012
Opposition Filing Date	11/28/2012	Opposition Period Ends	11/28/2012
Applicant	Semler Scientific, Inc. 2330 NW Everett St. Portland, OR 97210 UNITED STATES		

Goods/Services Affected by Opposition

Class 010. First Use: 2010/10/31 First Use In Commerce: 2010/10/31 All goods and services in the class are opposed, namely: medical apparatus and instruments, namely, a blood flow sensor and associated computer and printer hardware and software for non-invasively monitoring and diagnosing a patient's blood flow condition, all sold as a unit; and electrical apparatus, namely, an opto-electronic blood flow sensor and associated computer and printer hardware and software including a display for non-invasively monitoring and diagnosing a patient's blood flow condition, all sold as a unit

Grounds for Opposition

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

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3226922	Application Date	10/19/2005
-----------------------	---------	------------------	------------

Registration Date	04/10/2007	Foreign Priority Date	NONE
Word Mark	FLOTRAC		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 2005/04/18 First Use In Commerce: 2005/04/18 medical sensor, namely, a hemodynamic monitoring device		

Attachments	78736678#TMSN.jpeg (1 page)(bytes) Notice of Opposition.PDF (5 pages)(738689 bytes)
-------------	---

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	/mlw/
Name	Michelle Wisniewski
Date	11/28/2012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Edwards Lifesciences Corporation,
a Delaware Corporation,

Opposer,

v.

Semler Scientific, Inc.,
an Oregon Corporation,

Applicant.

OPPOSITION NO.: _____

NOTICE OF OPPOSITION

In re Application of Semler Scientific, Inc.:

Serial No.: 85/398,081
Filed: August 15, 2011
Trademark: **FLOCHEC**
Filing Basis: 1(a)
Published: July 31, 2012

Edwards Lifesciences Corporation, a Delaware corporation (“Edwards Lifesciences” or “Opposer”), having a mailing address of One Edwards Way, Irvine, California, 92614, believes that it may be damaged by registration of the mark **FLOCHEC** in connection with “medical apparatus and instruments, namely, a blood flow sensor and associated computer and printer hardware and software for non-invasively monitoring and diagnosing a patient’s blood flow condition, all sold as a unit; and electrical apparatus, namely, an opto-electronic blood flow sensor and associated computer and printer hardware and software including a display for non-invasively monitoring and diagnosing a patient’s blood flow condition, all sold

as a unit” in International Class 10. Therefore, Edwards Lifesciences opposes the application of Vascular Solutions, Inc. (“Applicant”), for the mark **FLOCHEC** in accordance with the provisions of Section 13 of the Trademark Act. (15 U.S.C. § 1063).

Applicant’s mark is described as follows:

Mark:	FLOCHEC
Serial No.:	85/398,081
Filed:	August 15, 2011
International Class:	10
Goods:	“Medical apparatus and instruments, namely, a blood flow sensor and associated computer and printer hardware and software for non-invasively monitoring and diagnosing a patient’s blood flow condition, all sold as a unit; and electrical apparatus, namely, an opto-electronic blood flow sensor and associated computer and printer hardware and software including a display for non-invasively monitoring and diagnosing a patient’s blood flow condition, all sold as a unit.”

The grounds for opposition are as follows:

1. Opposer owns the mark **FLOTRAC**[®] and corresponding federal registration No. 3,226,922 therefor in connection with a “medical sensor, namely, a hemodynamic monitoring device” in International Class 10 (the “Mark”).
2. Opposer is presently using and has continuously used the **FLOTRAC**[®] Mark since at least as early as April 18, 2005 in connection with medical devices in International Class 10.
3. Opposer uses the Mark on its medical devices, on product packaging, on invoices, via its Internet Website, in advertising and promotional materials, in conjunction with its services, and in other ways customary in the trade.

4. Opposer has used the Mark in channels of trade and geographic markets that have afforded Opposer notoriety and success.

5. Upon information and belief, Applicant did not use the mark **FLOCHEC** prior to Opposer's first use of the Mark in commerce.

6. Opposer uses the Mark to market its goods and services to consumers, and engages in extensive advertising and promotional efforts. By virtue of its efforts, and the expenditure of considerable sums for promotional activities, as well as the excellence of the quality of its goods and services, Opposer has gained a valuable reputation and goodwill through use of the Mark. Also by virtue of Opposer's efforts and the excellence of its goods and services for over six years, Opposer's Mark is now famous.

7. Opposer believes that it will be damaged by the registration of Applicant's proposed mark and opposes Applicant's application for the following reasons:

a. Applicant's proposed mark, **FLOCHEC**, is very similar to Opposer's Mark, and is used on related goods as well as goods within Opposer's natural zone of expansion. Both are used on products designed to monitor blood flow during medical and/or diagnostic procedures. Such similarity is likely to cause confusion, to cause mistake, and to deceive the public, injuring Opposer and the consuming public. Confusion is particularly important to avoid in connection with medical devices, such as Opposer's and Applicant's goods, because it could result in the use of improper equipment, the loss of time, or other mistakes that could negatively impact patient care. For that reason, greater care should be taken to avoid confusion in this case.

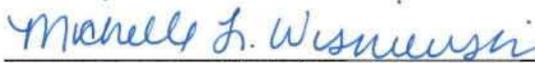
b. Applicant's use will also dilute the distinctive and famous nature of Opposer's Mark.

8. THEREFORE, Opposer prays that Applicant's proposed trademark for **FLOCHEC** be denied registration.

DATED: November 28, 2012

Respectfully submitted,

By



CARLO F. VAN DEN BOSCH
MICHELLE LAVOIE WISNIEWSKI

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
650 Town Center Drive, Fourth Floor
Costa Mesa, California 92626
Main Telephone: 714-513-5100
Main Facsimile: 714-513-5130
Direct Telephone: 714-424-8215

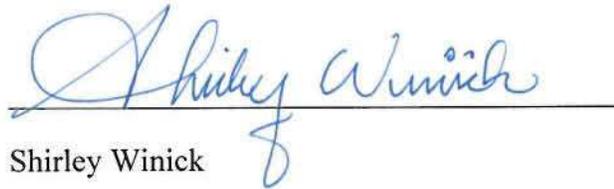
Attorneys for Opposer
EDWARDS LIFESCIENCES CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **NOTICE OF OPPOSITION** has been served on Vascular Solutions, Inc. by mailing said copy on November 28, 2012 via First Class Mail postage prepaid to:

James G. Stewart PC
335 North East 128th Avenue
Portland, Oregon 97230-2433

Dated: November 28, 2012


Shirley Winick