

ESTTA Tracking number: **ESTTA531297**

Filing date: **04/09/2013**

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	WESTCO SCIENTIFIC INSTRUMENTS, INC. d/b/a UNITY SCIENTIFIC
Granted to Date of previous extension	04/10/2013
Address	117 Old State Road Brookfield, CT 06804 UNITED STATES

Attorney information	Charles S. Murray, Jr. Thomas Horstemeyer, LLP 400 Interstate North Parkway, SE Suite 1500 Atlanta, GA 30339 UNITED STATES trademarks@thomashorstemeyer.com, carla.stone@thomashorstemeyer.com, chuck.murray@thomashorstemeyer.com, andrew.crain@thomashorstemeyer.com Phone:770-933-9500
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Applicant Information

Application No	85464914	Publication date	12/11/2012
Opposition Filing Date	04/09/2013	Opposition Period Ends	04/10/2013
Applicant	Thermo Fisher Scientific Inc. 81 Wyman Street Waltham, MA 02451 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 035. All goods and services in the class are opposed, namely: Facilitating, coordinating, arranging and scheduling the installation, maintenance and repair of laboratory instruments and equipment, excluding software for use in the collection, statistical analysis and management of clinical laboratory data; Promoting the services of others in the field of installation, maintenance and repair of laboratory instruments and equipment, excluding software for use in the collection, statistical analysis and management of clinical data</p>
<p>Class 037. All goods and services in the class are opposed, namely: Installation, maintenance and repair of laboratory instruments and equipment, excluding software for use in the collection, statistical analysis and management of clinical data</p>
<p>Class 041. All goods and services in the class are opposed, namely: Educational services, namely, providing training in the function, use, operation and care of laboratory instruments and equipment, excluding software for use in the collection, statistical analysis and management of clinical data</p>

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. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	UNITY, UNITY SCIENTIFIC, UNITY CARE, UNITY DIRECT, UNITY ASSIST, UNITY CERTIFIED, UNITY UNIVERSITY		
Goods/Services	Laboratory equipment, customer support services, technical support services, educational services, installation services, maintenance services, repair services, calibration services, certification services, and consulting services		

Attachments	01822608.PDF (6 pages)(197954 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	/Charles S. Murray, Jr./
Name	Charles S. Murray, Jr.
Date	04/09/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Westco Scientific Instruments, Inc.)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	
Thermo Fisher Scientific Inc.,)	Application No. 85464914
)	
Applicant)	

NOTICE OF OPPOSITION

In the matter of trademark application Serial No. 85464914, filed on November 8, 2011, and published for opposition in the Official Gazette on December 11, 2012 for the service mark UNITY, Opposer, Westco Scientific Instruments, Inc., a Connecticut corporation, having its principal place of business at 117 Old State Road Brookfield, Connecticut 06804 (hereinafter "Opposer") believes that it will be damaged by registration of said trademark UNITY. The grounds for opposition are as follows:

1. Applicant, Thermo Fisher Scientific Inc. (hereinafter "Applicant") seeks to register UNITY as a service mark for the following services:

Facilitating, coordinating, arranging and scheduling the installation, maintenance and repair of laboratory instruments and equipment, excluding software for use in the collection, statistical analysis and management of clinical laboratory data; Promoting the services of others in the field of installation, maintenance and repair of laboratory instruments and equipment, excluding software for use in the collection, statistical analysis and management of clinical data in International Class 35;

Installation, maintenance and repair of laboratory instruments and equipment, excluding software for use in the collection, statistical analysis and management of clinical data in International Class 37; and

Educational services, namely, providing training in the function, use, operation and care of laboratory instruments and equipment, excluding software for use in the collection, statistical analysis and management of clinical data in International Class 41.

2. Since long before Applicant filed its application, Opposer has offered and sold in commerce in the United States laboratory equipment and related services under the trade names and trademarks UNITY and UNITY SCIENTIFIC. One of the ways in which Opposer distinguishes itself from its competitors is through the offering of superior customer support, technical support, and educational services. Those services include installation, maintenance, repair, calibration, certification, educational services and consulting services. Opposer offers such services under the UNITY and UNITY SCIENTIFIC trade names as well as under a family of service marks consisting of or containing the term "UNITY," including, but not limited to: UNITY, UNITY SCIENTIFIC, UNITY CARE, UNITY DIRECT, UNITY ASSIST, UNITY CERTIFIED, and UNITY UNIVERSITY. Hereafter, Opposer's family of trademarks and service marks consisting of or containing the term "UNITY" shall be referred to as "Opposer's UNITY Marks."

3. Opposer operates a website at the URL <http://www.unityscientific.com>, at which Opposer provides information on, markets, promotes, and sells Opposer's products and services ("Opposer's Website"). Opposer's UNITY and UNITY SCIENTIFIC trade names, as well as Opposer's UNITY Marks, appear throughout Opposer's Website in connection with the marketing, promotion and sale of Opposer's products and services.

4. Opposer's first use of its UNITY and UNITY SCIENTIFIC trade names and its first use of each of Opposer's UNITY Marks in connection with Opposer's products

and services predates the filing date of Applicant's subject application to register the mark UNITY.

5. By virtue of Opposer's use in commerce of the trade names UNITY and UNITY SCIENTIFIC in connection with Opposer's products and services, and by virtue of Opposer's use of Opposer's UNITY Marks in connection with Opposer's goods and/or services, the relevant consuming public, including the trade, have come to associate said products and services offered and sold under Opposer's UNITY Marks with Opposer alone.

6. Applicant's mark, UNITY, as applied to the services listed in Application No. 85464914, so resembles Opposer's UNITY and UNITY SCIENTIFIC trade names and Opposer's UNITY Marks as applied to Opposer's products and services that it is likely to cause confusion, mistake and/or deception of the relevant public, including consumers and the trade, in violation of section 2(d) of the Trademark Act, 15 USC § 1052(d).

7. Customers and potential customers, upon seeing the mark UNITY in conjunction with the Applicant's Services are likely to believe in error that such services are offered for sale and sold by or in association and/or affiliation with or under license or sponsorship from Opposer or that Applicant has purchased Opposer.

8. Any persons familiar with Opposer's products and services would be likely to purchase or use Applicant's services offered under the UNITY mark in the mistaken belief that such services are sourced from, sponsored by, offered by, offered under license from Opposer or otherwise affiliated with Opposer.

9. Any defect with, objection to, or fault found with such services under the UNITY mark would necessarily reflect upon and seriously injure the reputation and goodwill that Opposer has established for Opposer's products and services sold in connection with its UNITY and UNITY SCIENTIFIC trade names and with Opposer's UNITY Marks.

10. In the alternative, because Applicant is much larger than Opposer and spends much more time and money promoting, marketing and advertising its goods and services, potential customers not already familiar with Opposer and its goods and services are likely to be exposed to Applicant's use of its UNITY service mark without knowledge of Opposer's longstanding prior use of its UNITY and UNITY SCIENTIFIC trade names and Opposer's UNITY Marks. Such potential customers are likely to believe in error that Opposer's use of Opposer's trade names and Opposer's UNITY Marks is junior to Applicant's use of its UNITY mark and is merely an attempt to trade on the goodwill and reputation associated with Applicant's UNITY mark. Such mistaken beliefs will injure the reputation and goodwill that Opposer has established for Opposer's products and services used in connection with its UNITY and UNITY SCIENTIFIC trade names and with Opposer's UNITY Marks. As such, Applicant's use and/or intended use of its UNITY mark in connection with Applicant's services is likely to cause confusion, mistake and/or deception of the relevant public, including consumers and the trade, in violation of section 2(d) of the Trademark Act, 15 USC § 1052(d).

11. If Applicant is permitted to register the mark UNITY for the services listed in Applicant's application, confusion of the relevant public, including consumers and the

trade, is likely to result, such confusion resulting in damage and injury, including irreparable damage and injury to Opposer.

12. If Applicant is granted a registration for the mark herein opposed, it would obtain thereby a prima facie exclusive right to use the mark, and such registration would be a source of damage and injury to Opposer, including, inter alia, interfering with Opposer's right of natural expansion/extension, directly or through licensing.

WHEREFORE, Opposer prays that registration of the mark of Application No. 85464914 be refused and that this opposition be sustained.



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Attorneys for Opposer Westco
Scientific Instruments, Inc.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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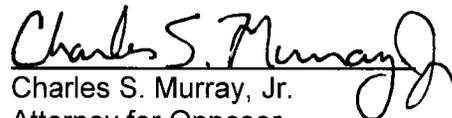
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Notice of Opposition has been served by first class mail, postage prepaid, this 9th day of April, 2013 upon Applicant at the following address:

Thermo Fisher Scientific Inc.
Office of the General Counsel
81 Wyman Street
Waltham, MASSACHUSETTS 02451
UNITED STATES

and upon Applicant's counsel at the following address:

Michael D. Fishman
RADER, FISHMAN & GRAUER PLLC
39533 Woodward Ave Ste 140
Bloomfield Hills, MICHIGAN 48304-5098


Charles S. Murray, Jr.
Attorney for Opposer