

ESTTA Tracking number: **ESTTA549525**

Filing date: **07/19/2013**

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	TissueTech, Inc.
Granted to Date of previous extension	07/24/2013
Address	8305 NW 27th Street, Suite 101 Doral, FL 33122 UNITED STATES

Correspondence information	Matthew J. Bresnahan Esquire Wilson Sonsini Goodrich & Rosati 12235 El Camino Real, Suite 200 San Diego, CA 92130 UNITED STATES mbresnahan@wsgr.com, trademarks@wsgr.com, thoooper@wsgr.com Phone:8583502300
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Applicant Information

Application No	85602956	Publication date	03/26/2013
Opposition Filing Date	07/19/2013	Opposition Period Ends	07/24/2013
Applicant	Harbinger Medical Group L.L.C. 201 Settlers Trace Blvd Suite 4113 Lafayette, LA 70508 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. First Use: 2012/03/15 First Use In Commerce: 2012/04/15
All goods and services in the class are opposed, namely: Biological tissue grafts; Biological Amniotic tissue intended for subsequent implantation

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 No.	85865795	Application Date	03/04/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	AMNIOGUARD		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2010/09/30 First Use In Commerce: 2010/09/30 Human amniotic membrane tissue preparations intended for surgical implantation and dressings; Pharmaceutical preparations and substances for the treatment of damaged eye surface, skin and other tissue; Pharmaceutical preparations for wounds

Attachments	Notice of Opposition re AmnioGuard_.pdf(661201 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	/Matthew J. Bresnahan/
Name	Matthew J. Bresnahan
Date	07/19/2013

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

TISSUETECH, INC.,)	
)	
Opposer,)	Opposition No.
)	
v.)	
)	
HARBINGER MEDICAL GROUP, L.L.C.,)	<u>NOTICE OF OPPOSITION</u>
)	
Applicant.)	
)	
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Re: Mark: AMNIOGUARD
Serial No.: 85602956
Filed: April 19, 2012
Published: March 26, 2013

Opposer TissueTech, Inc. (“Opposer”), a corporation organized and existing under the laws of Florida, located at 8305 NW 27th Street, Suite 101, Doral, FL 33122, believes that it will be damaged by the registration of the mark shown in application Serial No. 85602956 (the “Application”), and hereby opposes the Application.

As grounds for the opposition, Opposer alleges that:

1. Opposer, founded in 2001, is an industry leader in regenerative tissue therapies using the amniotic membrane and components derived from the amniotic membrane for the treatment of damaged tissue.
2. Since at least as early as September 2010 and continuously since, Opposer has used the mark AMNIOGUARD in connection with biologic glaucoma shunt tube grafts. Attached hereto as Exhibits 1 and 2, are examples of Opposer’s use of the mark in commerce.
3. Opposer has offered its goods and services under the AMNIOGUARD mark in interstate commerce and has developed valuable goodwill with respect to it.

4. By virtue of the efforts and the expenditure of considerable sums for promotional and advertising activities, and by virtue of the excellence of its goods and services, Opposer has gained for its AMNIOGUARD mark a valuable reputation and has created in the minds of the public an association between, on the one hand, the AMNIOGUARD mark and, on the other hand, Opposer's goods and services.

5. On March 4, 2013, Opposer filed U.S. trademark application serial no. 85865795 with the U.S. Patent and Trademark Office ("USPTO") for the mark AMNIOGUARD, seeking protection of the mark with human amniotic membrane tissue preparations intended for surgical implantation and dressings, pharmaceutical preparations and substances for the treatment of damaged eye surface, skin and other tissue and pharmaceutical preparations for wounds in International Class 005. On June 19, 2013, the USPTO issued a suspension against Opposer's application, citing the Application as the sole basis.

6. On information and belief, Applicant Harbinger Medical Group, L.L.C., doing business as Tides Medical, ("Applicant") is a Delaware corporation with an address of 201 Settlers Trace Blvd, Suite 4113, Lafayette, LA 70508.

7. On information and belief, on April 19, 2012, Applicant filed the Application with the USPTO based on actual use of the mark in commerce.

8. On information and belief, Applicant did not use the applied-for mark in interstate commerce until April 15, 2012, and did not use the mark anywhere before March 15, 2012, according to Applicant's sworn allegations in the Application.

9. On information and belief, Applicant renders biological amniotic tissue for subsequent implantation under the applied-for mark. Attached hereto as Exhibit 3 is a true and accurate screenshot of Applicant's website at <http://tidesmedical.com/portfolio/amnioguard/> as it

appeared on July 2, 2013. The screen shot shows Applicant's listing for a biological amniotic tissue product offered under the AMNIOGUARD mark.

10. On information and belief, the Application was published in the Official Gazette on March 26, 2013, with the following recitation of services in International Class 005:

“Biological tissue grafts; Biological Amniotic tissue intended for subsequent implantation.”

11. Opposer has not authorized any use by Applicant of the applied-for mark or use of any mark confusingly similar or identical to the AMNIOGUARD mark. Opposer has not authorized any application for registration of the applied-for mark by Applicant. Applicant is not affiliated or connected with Opposer and has not been endorsed or sponsored by Opposer, nor has Opposer approved any of the goods or services offered or sold or intended to be sold by Applicant under the AMNIOGUARD mark.

12. The mark which Applicant seeks to register is identical to Opposer's own AMNIOGUARD mark such that Applicant's use and registration are likely to cause consumer confusion, mistake and/or deception as to the source or origin of Applicant's goods and services, and will injure and damage Opposer and the goodwill symbolized by the AMNIOGUARD mark.

13. The respective goods and services of Opposer and Applicant are sufficiently related that the public is likely to be confused, to be deceived, or to assume erroneously that Applicant's offerings are those provided by Opposer, or that Applicant is in some way connected with, sponsored by, or affiliated with Opposer, all to the detriment of Opposer.

14. Opposer's pending U.S. trademark application for AMNIOGUARD currently is suspended due to the Application.

WHEREFORE, Opposer prays that application Serial No. 85602956 be rejected, that no registration be issued to Applicant and that this opposition be sustained in favor of Opposer.

EXHIBIT 1



U.S. Patent No. 6,152,142 and 6,326,019

Instructions for Use

See Handling & Storage Instructions provided with each shipment; See Certificate of Analysis for Product Testing/Quality Information.

Description: AmnioGuard™ is human amniotic membrane that has been processed using patented technologies in a validated storage medium made of Dulbecco's Modified Eagle Medium/Glycerol (1:1) containing Ciprofloxacin and Amphotericin B. AmnioGuard™ has been cryopreserved to retain the natural biological properties of the amniotic membrane. As part of the process, the tissue has been frozen at -80°C in order to kill the allogeneic cells present and eliminate the possibility of graft rejection. This product is aseptically processed and tested negative for aerobic, anaerobic and fungal organisms.

Indications & Usage:

- AmnioGuard™ is cryopreserved amniotic membrane tissue (HCT/P) that is intended for use when a thicker amniotic membrane tissue with durable tensile strength is indicated.
- When AmnioGuard™ is used for tectonic support (such as protection of a Glaucoma Device Drainage tube) it serves to strengthen the cornea, conjunctiva, tenon or sclera because of its thickness and strong tensile strength.
- On the ocular surface, AmnioGuard™ acts as an anti-scarring, an anti-inflammatory, and anti-angiogenic agent, and supports epithelial adhesion and differentiation.
- Each package is intended for **single use only**.

Precautions:

- Contact Bio-Tissue immediately if the packaging is damaged.
- Once the outer foil pouch is opened, AmnioGuard™ should be used as soon as possible.
- Do not sterilize or re-sterilize the product. Do not autoclave before use.

Warnings:

- As with the use of any human tissue, although all screening and microbial testing results were satisfactory for this donor, the possibility of infectious agent transmission cannot be completely eliminated.
- Do not use on patients with a history of drug reactions to Ciprofloxacin or Amphotericin B.
- It is imperative that the graft is stored properly until transplantation.

Instructions:

- Allow AmnioGuard™ to thaw at room temperature in its original unopened product packaging until the medium changes from a solid to a liquid state.
- Open the outer foil peel pouch and aseptically retrieve and deliver the inner clear pouch to the sterile field.
- Open the clear inner peel pouch to retrieve the AmnioGuard™ product.
- Place the tissue on the surgical area to act as a covering or to deliver the therapeutic actions of AmnioGuard™
- After transplantation, complete the Donor & Recipient (DRI) Form and return to Bio-Tissue immediately. If the tissue is discarded, please record this on the DRI form.

Adverse Reactions: Any adverse event potentially attributable to the use of AmnioGuard™ must be reported promptly by the physician to Bio-Tissue by completing the Adverse Event Form provided with the product.

EXHIBIT 2



U.S. Patent No. PCT/US10/46675

Product Insert

Description: AmnioGuard™ is an ultra thick human amniotic membrane product with superior tensile strength. AmnioGuard™ is classified as a 'human tissue and cell-based product' (HCT/P). The cell activity in the tissue has been inactivated to eliminate the possibility of graft rejection while retaining the natural biologic properties. AmnioGuard™ is stored in a validated medium made of Dulbecco's Modified Eagle Medium/Glycerol (1:1) containing Ciprofloxacin and Amphotericin B.

Indications:

- AmnioGuard™ is a thicker cryopreserved amniotic membrane tissue that is intended for use when durable tensile strength is indicated.
- When AmnioGuard™ is used for tectonic support (e.g. protection of a Glaucoma Drainage Device tube), it serves to strengthen the cornea, conjunctiva, tenon or sclera because of its thickness and tensile strength.
- AmnioGuard™ is for single use only.

Precautions:

- Do not use AmnioGuard™ if the packaging is damaged - Contact Bio-Tissue immediately if there is any abnormality observed in any area (e.g. labeling, packaging, shipping, missing information, etc).
- Once the outer foil pouch is opened, AmnioGuard™ should be used as soon as possible.
- Do not sterilize or re-sterilize the product. Do not autoclave before use.

Warnings:

- Do not use on patients with a history of drug reactions to Ciprofloxacin or Amphotericin B.
- As with the use of any human tissue, the possibility of infectious agent transmission cannot be completely eliminated although all screening and microbial testing results were satisfactory for this donor.
- It is imperative that the graft is stored properly until use.

Instructions:

- Allow AmnioGuard™ to thaw at room temperature in its original unopened packaging for at least 5-10 minutes.
- Open the outer foil peel pouch and aseptically present the inner clear pouch to the sterile field.
- Open the inner clear peel pouch to retrieve AmnioGuard™.
- Place the tissue on the surgical area to act as a covering.
- After transplantation, complete the Donor and Recipient Information Form and return to Bio-Tissue immediately. If the tissue is discarded, please record this on the Donor and Recipient Information Form.

Adverse Reactions: Any adverse event potentially attributable to the use of AmnioGuard™ must be reported promptly by the physician to Bio-Tissue by completing the **Adverse Event Form** provided with the product.

Also see **Handling & Storage Instructions** and **Certificate of Analysis** provided with each shipment

EXHIBIT 3



Home About Us Products Data Services

Products



AmnioGuard

Benefits of Tissue Healing

In vivo studies show that the properties of amniotic membrane help reduce scar tissue formation and scar attachment. For use as an in vivo wound covering in surgical applications, AmnioGuard provides an effective barrier and contributes to the three phases of the natural healing process:

Inflammatory Phase

Reduces inflammation at the wound site

Proliferation Phase

Provides a protective barrier; contains a combination of growth factors unique to placental tissue (Collagen types IV, V, and VII)

Remodeling Phase

Helps reduce scar tissue formation

Ordering Information

Customer Service: 800-486-7941 Email: info@tidesmedical.com

Unique Construct

AmnioGuard is a composite structure of amniotic membrane graft sheets carefully designed to optimize surgical performance and ease of use. The proprietary PURICH® Process protects the delicate amniotic during processing, leaving an intact collagen matrix. The result is a durable graft with natural barrier properties that gives surgeons a clear advantage.

- Contains a combination of growth factors unique to placental tissue
- Provides barrier protection
- Helps reduce scar tissue formation
- Enhances the normal wound healing process
- Reduces inflammation at the wound site

Tissue Offering

ITEM NUMBER	DESCRIPTION & SIZE
AGT-5160	16 mm diameter disk
AGT-5230	2 cm x 3 cm graft
AGT-5440	4 cm x 4 cm graft
AGT-5460	4 cm x 6 cm graft

CERTIFICATE OF SERVICE BY MAIL

I, Terry Hooper, declare:

I am employed in San Diego County. I am over the age of 18 years and not a party to the within action. My business address is 12235 El Camino Real, Suite 200, San Diego, CA 92130.

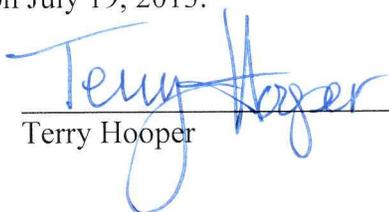
I am readily familiar with Wilson Sonsini Goodrich & Rosati's practice for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence would be deposited with the United States Postal Service on this date.

On this date, I served the **NOTICE OF OPPOSITION** on each entity listed below, by placing the document described above in an envelope addressed as indicated below, which I sealed. I placed the envelope for collection and mailing with the United States Postal Service on this day, following ordinary business practices at Wilson Sonsini Goodrich & Rosati.

HARBINGER MEDICAL GROUP L.L.C.
201 SETTLERS TRACE BLVD APT 4113
LAFAYETTE, LOUISIANA 70508-6791
UNITED STATES

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Diego, California on July 19, 2013.



Terry Hooper