

ESTTA Tracking number: **ESTTA563429**

Filing date: **10/07/2013**

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 | Nevro Corp. |
| Granted to Date of previous extension | 10/06/2013 |
| Address | 4040 Campbell Avenue, Suite 210 Menlo Park, CA 94025 UNITED STATES |

| | |
|----------------------|---|
| Attorney information | Tracy-Gene G. Durkin Sterne, Kessler, Goldstein & Fox P.L.L.C. 1100 New York Avenue, NW Washington, DC 20005 UNITED STATES tm@skgf.com, tdurkin@skgf.com, jshirk@skgf.com Phone:(202) 371-2600 |
|----------------------|---|

Applicant Information

| | | | |
|------------------------|---|------------------------|------------|
| Application No | 85560536 | Publication date | 04/09/2013 |
| Opposition Filing Date | 10/07/2013 | Opposition Period Ends | 10/06/2013 |
| Applicant | NeuroMetrix, Inc. 62 Fourth Avenue Waltham, MA 02451 UNITED STATES | | |

Goods/Services Affected by Opposition

| |
|---|
| Class 010. All goods and services in the class are opposed, namely: Medical devices, namely, patient-wearable and patient-controlled devices that provide therapeutic dosing of transcutaneous electrical nerve stimulation to a patient for the purpose of relieving pain |
|---|

Grounds for Opposition

| | |
|--------------------------------------|----------------------------|
| Priority and likelihood of confusion | Trademark Act section 2(d) |
|--------------------------------------|----------------------------|

Mark Cited by Opposer as Basis for Opposition

| | | | |
|-----------------------|------------|-----------------------|------------|
| U.S. Registration No. | 4242293 | Application Date | 07/07/2009 |
| Registration Date | 11/13/2012 | Foreign Priority Date | NONE |
| Word Mark | SENZA | | |
| Design Mark | | | |

| | |
|---------------------|--|
| Description of Mark | NONE |
| Goods/Services | Class 010. First use: First Use: 2012/07/05 First Use In Commerce: 2012/07/05 Medical device, namely, an implantable electrical stimulation device for pain control |

| | |
|-------------|--------------------------------------|
| Attachments | 3317 013opt0 opp.pdf(1050311 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 | /Tracy Durkin/ |
| Name | Tracy-Gene G. Durkin |
| Date | 10/07/2013 |

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

| | |
|--|--|
| <p>NEVRO CORP.</p> <p style="text-align: center;">Opposer,</p> <p style="text-align: center;">v.</p> <p>NEUROMETRIX, INC.,</p> <p style="text-align: center;">Applicant.</p> | <p>Opposition No.:</p> <p>Mark: SENSUS Serial No.: 85560536 Filed: March 5, 2012</p> |
|--|--|

NOTICE OF OPPOSITION

Nevro Corp. ("Opposer"), a Delaware corporation having a principal place of business at 4040 Campbell Avenue, Suite 210, Menlo Park, California 94025, believes that it is being and will be damaged by registration of the above-identified mark shown in Application Serial No. 85560536 (the "'536 Application"), and having been granted an extension of time to oppose the '536 Application up to and including October 6, 2013, hereby opposes grant of the registration. As grounds for opposition, Opposer alleges that, upon actual knowledge with respect to Opposer's own acts, and upon information and belief as to other matters:

Opposer and its SENZA Mark

1. Since at least as early as July 5, 2012, Opposer has used the mark SENZA, in commerce, in connection with an electrical stimulation device for pain control.
2. As a result of such use of the SENZA Mark, Opposer has acquired valuable rights and goodwill in and for the SENZA Mark for an electrical stimulation device for pain control.

3. Opposer is the owner of U.S. Registration No. 4,242,293 for the SENZA Mark for a “medical device, namely, an implantable electrical stimulation device for pain control” in International Class 10 (the ‘293 Registration). The application that led to the ‘293 Registration was filed on July 7, 2009, which is prior to the filing date of any application for, or to any date that Applicant could allege use of, the SENSUS Mark. Print-outs of the USPTO’s TESS, TSDR and Assignment database records for the ‘293 Registration are attached as Exhibit A.

4. The ‘293 Registration is valid and subsisting and constitutes *prima facie* evidence of the validity of the SENZA Mark and the ‘293 Registration, and of Opposer's ownership of and exclusive right to use the SENZA Mark in commerce, and provides constructive notice of ownership thereof by Opposer.

Applicant and its Application for the SENSUS Mark

5. Upon information and belief, NeuroMetrix, Inc. ("Applicant"), is a Delaware corporation having a principal place of business at 62 Fourth Avenue, Waltham, Massachusetts 02451.

6. Applicant is the listed owner of Application Serial No. 85560536 filed March 5, 2012, for the mark SENSUS for “medical devices, namely, patient-wearable and patient-controlled devices that provide therapeutic dosing of transcutaneous electrical nerve stimulation to a patient for the purpose of relieving pain” in International Class 10.

Likelihood of Confusion, 15 U.S.C. §1052(d)

7. Opposer repeats and realleges each and every allegation set forth above.
8. Opposer has priority based on its pleaded valid and subsisting registration.

9. Applicant's SENSUS Mark is substantially similar in sound, appearance, connotation, and commercial impression to Opposer's SENZA Mark.

10. The goods recited in the '536 Application are substantially similar to the goods advertised, offered, and sold by Opposer, and to the goods identified in the '293 Registration.

11. Consumers of the goods identified in the '536 Application are likely to overlap with the consumers of Opposer's goods, and Applicant's goods are likely to travel in the same channels of trade as Opposer's goods.

12. Applicant's mark so resembles Opposer's SENZA Mark as to be likely, when used in connection with Applicant's goods in International Class 10, to cause confusion, or to cause mistake, or to deceive under Section 2(d) of the Lanham Act, as amended, 15 U.S.C. § 1052(d).

13. For these reasons, Opposer is being and will be damaged by registration of Applicant's SENSUS Mark shown in the '536 Application.

14. WHEREFORE, Opposer respectfully requests that this opposition be sustained in favor of Opposer, and that Application Serial No. 85560536 be refused registration.

A filing fee has been submitted electronically. If the filing fee is found to be insufficient for any reason, please charge such deficiency to our Deposit Account No. 190036.

Respectfully submitted,

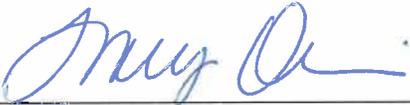
Dated: October 7, 2013

By: 
Tracy-Gene G. Durkin
STERNE, KESSLER, GOLDSTEIN & FOX PLLC
1100 New York Avenue, NW
Washington, DC 20005
Telephone: 202-371-2600
Facsimile: 202-371-2540
tm@skgf.com, tdurkin@skgf.com
Attorneys for Opposer
Nevro Corp.

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing NOTICE OF OPPOSITION was forwarded by regular U.S. mail, postage prepaid, on this 7th day of October, 2013, upon counsel for Applicant at the following address of record:

Mark J. Pandiscio
Robert M. Carley
Pandiscio & Pandiscio, P.C.
436 Boston Post Road
Weston, MA 02493
Phone: (781) 290-0060
Fax: (781) 290-4840
mail@pandisciolaw.com



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

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| <p>NEVRO CORP.</p> <p>Opposer,</p> <p>v.</p> <p>NEUROMETRIX, INC.,</p> <p>Applicant.</p> | <p>Opposition No.:</p> <p>Mark: SENSUS</p> <p>Serial No.: 85560536</p> <p>Filed: March 5, 2012</p> |
|--|--|

EXHIBIT A



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SENZA

Word Mark SENZA
Translations The English translation of "SENZA" in the mark is WITHOUT.
Goods and Services IC 010. US 026 039 044. G & S: Medical device, namely, an implantable electrical stimulation device for pain control. FIRST USE: 20120705. FIRST USE IN COMMERCE: 20120705
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 77775635
Filing Date July 7, 2009
Current Basis 1A
Original Filing Basis 1B
Published for Opposition April 27, 2010
Registration Number 4242293
Registration Date November 13, 2012
Owner (REGISTRANT) Nevro Corp. CORPORATION DELAWARE 4040 Campbell Avenue, Suite 210 Menlo Park CALIFORNIA 94025
Attorney of Record Tracy-Gene G. Durkin
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Mark: SENZA

SENZA

US Serial Number: 77775635 Application Filing Date: Jul. 07, 2009
US Registration Number: 4242293 Registration Date: Nov. 13, 2012
Register: Principal
Mark Type: Trademark
Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.
Status Date: Nov. 13, 2012
Publication Date: Apr. 27, 2010 Notice of Allowance Date: Jun. 22, 2010

Mark Information

Mark Literal Elements: SENZA
Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.
Mark Drawing Type: 4 - STANDARD CHARACTER MARK
Translation: The English translation of "SENZA" in the mark is WITHOUT.

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parentheses ((...)) identify any goods/services not claimed in a Section 15 affidavit of
- Asterisks "*" identify additional (new) wording in the goods/services.

For: Medical device, namely, an implantable electrical stimulation device for pain control

International Class(es): 010 - Primary Class

U.S Class(es): 026, 039, 044

Class Status: ACTIVE

Basis: 1(a)

First Use: Jul. 05, 2012

Use in Commerce: Jul. 05, 2012

Basis Information (Case Level)

| | | |
|--------------------|------------------------|-----------------|
| Filed Use: No | Currently Use: Yes | Amended Use: No |
| Filed ITU: Yes | Currently ITU: No | Amended ITU: No |
| Filed 44D: No | Currently 44D: No | Amended 44D: No |
| Filed 44E: No | Currently 44E: No | Amended 44E: No |
| Filed 66A: No | Currently 66A: No | |
| Filed No Basis: No | Currently No Basis: No | |

Current Owner(s) Information

Owner Name: Nevro Corp.
Owner Address: 4040 Campbell Avenue, Suite 210
Menlo Park, CALIFORNIA 94025
UNITED STATES
Legal Entity Type: CORPORATION State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Tracy-Gene G. Durkin Docket Number: 3317.0070000
Attorney Primary Email: TM@SKGF.COM Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: Tracy-Gene G. Durkin
Sterne, Kessler, Goldstein & Fox P.L.L.C.

1100 New York Avenue, NW
Washington, DISTRICT OF COLUMBIA 20005
UNITED STATES

Phone: (202) 371-2600

Fax: (202) 371-2540

Correspondent e-mail: TM@SKGF.COM tdurkin@skgf.com jshirk@skgf.com
on

Correspondent e-mail Yes
Authorized:

Domestic Representative - Not Found

Prosecution History

| Date | Description | Proceeding Number |
|---------------|---|-------------------|
| Mar. 29, 2013 | ATTORNEY REVOKED AND/OR APPOINTED | |
| Mar. 29, 2013 | TEAS REVOKE/APPOINT ATTORNEY RECEIVED | |
| Nov. 13, 2012 | REGISTERED-PRINCIPAL REGISTER | |
| Oct. 12, 2012 | NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED | |
| Oct. 11, 2012 | LAW OFFICE REGISTRATION REVIEW COMPLETED | 70997 |
| Oct. 04, 2012 | ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED | |
| Sep. 18, 2012 | NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED | |
| Sep. 17, 2012 | STATEMENT OF USE PROCESSING COMPLETE | 76985 |
| Sep. 13, 2012 | USE AMENDMENT FILED | 76985 |
| Sep. 17, 2012 | EXTENSION 5 GRANTED | 76985 |
| Sep. 13, 2012 | EXTENSION 5 FILED | 76985 |
| Sep. 13, 2012 | TEAS EXTENSION RECEIVED | |
| Sep. 13, 2012 | TEAS STATEMENT OF USE RECEIVED | |
| Jun. 26, 2012 | NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED | |
| Jun. 25, 2012 | EXTENSION 4 GRANTED | 76985 |
| Jun. 21, 2012 | EXTENSION 4 FILED | 76985 |
| Jun. 21, 2012 | TEAS EXTENSION RECEIVED | |
| Dec. 31, 2011 | NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED | |
| Dec. 30, 2011 | EXTENSION 3 GRANTED | 76985 |
| Dec. 20, 2011 | EXTENSION 3 FILED | 76985 |
| Dec. 20, 2011 | TEAS EXTENSION RECEIVED | |
| Jun. 23, 2011 | NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED | |
| Jun. 22, 2011 | EXTENSION 2 GRANTED | 76985 |
| Jun. 20, 2011 | EXTENSION 2 FILED | 76985 |
| Jun. 22, 2011 | CASE ASSIGNED TO INTENT TO USE PARALEGAL | 76985 |
| Jun. 20, 2011 | TEAS EXTENSION RECEIVED | |
| Dec. 14, 2010 | NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED | |
| Dec. 10, 2010 | EXTENSION 1 GRANTED | 98765 |
| Dec. 10, 2010 | EXTENSION 1 FILED | 98765 |
| Dec. 10, 2010 | TEAS EXTENSION RECEIVED | |
| Sep. 01, 2010 | APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED | 88888 |
| Sep. 01, 2010 | TEAS CHANGE OF OWNER ADDRESS RECEIVED | |
| Jun. 22, 2010 | NOA E-MAILED - SOU REQUIRED FROM APPLICANT | |
| Apr. 27, 2010 | OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED | |
| Apr. 27, 2010 | PUBLISHED FOR OPPOSITION | |
| Mar. 19, 2010 | LAW OFFICE PUBLICATION REVIEW COMPLETED | 70997 |
| Mar. 15, 2010 | APPROVED FOR PUB - PRINCIPAL REGISTER | |
| Mar. 08, 2010 | TEAS/EMAIL CORRESPONDENCE ENTERED | 70997 |
| Mar. 08, 2010 | CORRESPONDENCE RECEIVED IN LAW OFFICE | 70997 |
| Mar. 08, 2010 | ASSIGNED TO LIE | 70997 |

| | | |
|---------------|--|-------|
| Feb. 11, 2010 | TEAS RESPONSE TO OFFICE ACTION RECEIVED | |
| Sep. 19, 2009 | NOTIFICATION OF NON-FINAL ACTION E-MAILED | 6325 |
| Sep. 19, 2009 | NON-FINAL ACTION E-MAILED | 6325 |
| Sep. 19, 2009 | NON-FINAL ACTION WRITTEN | 83174 |
| Sep. 16, 2009 | ASSIGNED TO EXAMINER | 83174 |
| Jul. 10, 2009 | NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM | |
| Jul. 10, 2009 | NEW APPLICATION ENTERED IN TRAM | |

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Oct. 11, 2012



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