

ESTTA Tracking number: **ESTTA568857**

Filing date: **11/04/2013**

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	Meso Scale Diagnostics, LLC
Granted to Date of previous extension	11/03/2013
Address	1601 Research Boulevard Rockville, MD 20850 UNITED STATES

Attorney information	Keith A. Weltsch Scully, Scott, Murphy & Presser, P.C. 400 Garden City Plaza Suite 300 Garden City, NY 11530 UNITED STATES kweltsch@ssmp.com, hmanthey@ssmp.com Phone:516-742-4343
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Applicant Information

Application No	85792881	Publication date	05/07/2013
Opposition Filing Date	11/04/2013	Opposition Period Ends	11/03/2013
Applicant	AvanSci Bio, L.L.C. Suite D Salt Lake City, UT 84119 UT		

Goods/Services Affected by Opposition

Class 009. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Cases fitted with dissecting instruments for scientific or research purposes

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2662396	Application Date	09/10/2001
Registration Date	12/17/2002	Foreign Priority Date	NONE
Word Mark	MESO SCALE DIAGNOSTICS		

Design Mark	MESO SCALE DIAGNOSTICS		
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1995/11/30 First Use In Commerce: 1995/11/30 RESEARCH AND DEVELOPMENT IN THE FIELDS OF ASSAYS, SELECTION, SCREENING, TESTING, IMAGING AND DIAGNOSTICS USING ELECTROCHEMILUMINESCENCE		

U.S. Registration No.	2714434	Application Date	09/10/2001
Registration Date	05/06/2003	Foreign Priority Date	NONE
Word Mark	MESO SCALE DISCOVERY		
Design Mark	MESO SCALE DISCOVERY		
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 2001/09/10 First Use In Commerce: 2001/09/10 RESEARCH AND DEVELOPMENT IN THE FIELDS OF ASSAYS, SELECTION, SCREENING, TESTING, IMAGING AND DIAGNOSTICS USING ELECTROCHEMILUMINESCENCE		

U.S. Registration No.	3630779	Application Date	10/23/2008
Registration Date	06/02/2009	Foreign Priority Date	NONE
Word Mark	WWW.MESOSCALE.COM		
Design Mark	WWW.MESOSCALE.COM		
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 2006/05/00 First Use In Commerce: 2006/05/00 Research and development in the fields of assays, selection, screening, testing, imaging and diagnostics using electrochemiluminescence		

U.S. Registration No.	3780112	Application Date	03/05/2009
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Registration Date	04/27/2010	Foreign Priority Date	NONE
Word Mark	MESO SCALE DEFENSE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 2006/06/00 First Use In Commerce: 2006/06/00 Research and development in the fields of assays, selection screening, testing, imaging and diagnostics using electrochemiluminescence		

Attachments	76310914#TMSN.gif(bytes) 76310909#TMSN.gif(bytes) 77599322#TMSN.jpeg(bytes) 77684455#TMSN.jpeg(bytes) Notice of Opposition.pdf(904076 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	/Keith A. Weltsch/
Name	Keith A. Weltsch
Date	11/04/2013

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

In the matter of Application Serial No. 85/792,881

Filed on December 3, 2012

For the Mark Mesodissection

Published in the *Official Gazette* (Trademark) on May 7, 2013

Meso Scale Diagnostics, LLC,)	
)	
Opposer,)	Opposition No.
)	
v.)	
)	
AvanSci Bio, L.L.C.,)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Meso Scale Diagnostics, LLC (“Opposer”), a Limited Liability Company duly organized and existing under the laws of Delaware and having its principal place of business in Rockville, Maryland believes that it will be damaged by registration of the mark shown in the application filed by AvanSci Bio, L.L.C. (“Applicant”) for the mark Mesodissection, having Serial No. 85/792,881 in International Class 9.

This Notice of Opposition has been timely filed, as application Serial No. 85/792,881 was published on May 7, 2013, with Opposer having filed two requests for extension of time until November 3, 2013, with today being November 4, 2013, the next business day after the currently extended deadline for Opposer to file a Notice of Opposition.

The grounds for opposition are as follows:

1. Applicant seeks to register the word mark Mesodissection, which has been accorded Serial No. 85/792,881 (“Applicant’s Mark”), as a trademark for “Cases fitted with dissecting instruments for scientific or research purposes” in International Class 9.

2. Opposer is the owner of multiple marks containing the word MESO therein, that were adopted, and for which use commenced by Opposer, prior to any date upon which Applicant can rely, and has adopted and continuously used such marks in conjunction with services that are related to the goods Applicant intends to offer, on or in connection with Applicant's Mark.

3. Opposer is the owner of U.S. Registration No. 2,662,396 for the mark MESO SCALE DIAGNOSTICS which is registered for use in connection with "research and development in the fields of assays, selection, screening, testing, imaging and diagnostics using electrochemiluminescence", which was filed and registered earlier than any date upon which Applicant may rely. Opposer attaches as Exhibit "A" a printout of the registration details from the U.S. Patent and Trademark Office for Opposer's MESO SCALE DIAGNOSTICS mark indicating that Opposer is the owner of the same, and that said registration is live and subsisting.

4. Opposer is also the owner of U.S. Registration No. 2,714,434 for the mark MESO SCALE DISCOVERY which is registered for use in connection with "research and development in the fields of assays, selection, screening, testing, imaging and diagnostics using electrochemiluminescence", which was filed and registered earlier than any date upon which Applicant may rely. Opposer attaches as Exhibit "B" a printout of the registration details from the U.S. Patent and Trademark Office for Opposer's MESO SCALE DISCOVERY mark indicating that Opposer is the owner of the same, and that said registration is incontestable, live and subsisting.

5. Opposer is also the owner of U.S. Registration No. 3,630,779 for the mark WWW.MESOSCALE.COM which is registered for use in connection with "research and development in the fields of assays, selection, screening, testing, imaging and diagnostics using electrochemiluminescence", which was filed and registered earlier than any date upon which Applicant may rely. Opposer attaches as Exhibit "C" a printout of the registration details for

Opposer's WWW.MESOSCALE.COM mark indicating that Opposer is the owner of the same, and that said registration is live and subsisting.

6. Opposer is also the owner of U.S. Registration No. 3,780,112 for the mark MESO SCALE DEFENSE which is registered for use in connection with "Research and development in the fields of assays, selection, screening, testing, imaging and diagnostics using electrochemiluminescence", which was filed and registered earlier than any date upon which Applicant may rely. Opposer attaches as Exhibit "D" a printout of the registration details for Opposer's MESO SCALE DEFENSE mark indicating that Opposer is the owner of the same, and that said registration is live and subsisting.

7. Opposer's MESO SCALE DIAGNOSTICS, MESO SCALE DISCOVERY, MESO SCALE DEFENSE and WWW.MESOSCALE.COM marks set out in this Notice of Opposition are collectively referred to as Opposer's Meso Marks.

8. Opposer's Meso Marks are symbolic of the extensive goodwill and consumer recognition built up through significant sales and promotion of products and services bearing, and/or utilizing, Opposer's Meso Marks.

9. Opposer's Meso Marks are all inherently distinctive.

10. Opposer has so used Opposer's Meso Marks in the United States and throughout the world that said marks have acquired distinctiveness long prior to any date upon which Applicant can rely.

11. Applicant's Mesodissection mark has a highly similar appearance and commercial impression as compared to each of Opposer's Meso Marks.

12. Applicant's Mesodissection mark shares the same "MESO" wording which is encompassed within all of Opposer's Meso Marks.

13. Applicant's Mesodissection mark is confusingly similar to each and every one of Opposer's MESO Marks.

14. Applicant's Mesodissection mark is so similar to each and every one of Opposer's Meso Marks, that consumers will be falsely led to believe that Applicant's Mark is affiliated with and sponsored by Opposer, when it is not.

15. The goods covered by Applicant's Mesodissection mark filed under U.S. Serial No. 85/792,881, are very highly related to the services that Opposer offers for sale, offers, or provides, on or in connection with Opposer's Meso Marks.

16. Applicant's Mesodissection mark so resembles Opposer's Meso Marks as to cause confusion, mistake or deception with the same within the meaning of Section 2(d) of the Lanham Act.

17. Given Opposer's longstanding and prior rights in and to Opposer's Meso Marks, conferring exclusive nationwide rights upon Applicant for the mark Mesodissection would be improper, and would interfere with Opposer's prior rights.

Opposer hereby requests that the required \$300 fee proscribed under 37 C.F.R. §2.6 be withdrawn from Deposit Account No. 19-1013 to oppose Applicant's Mesodissection mark filed under Serial No. 85/792,881.

WHEREFORE, this Opposer, Meso Scale Diagnostics, LLC, believes and alleges that it will be damaged by registration of the Mesodissection mark filed under Serial No. 85/792,881 as aforesaid and prays that judgment in the present opposition be entered in favor of Opposer and that registration of U.S. Application Serial No. 85/792,881 be refused.

Opposer hereby appoints the following attorney, to whom all correspondence should be addressed, to prosecute this Opposition and transact all business in the Patent and Trademark Office connected therewith:

Please address all correspondence to:

Keith A. Weltsch
SCULLY, SCOTT, MURPHY & PRESSER
400 Garden City Plaza
Suite 300
Garden City, New York 11530
Telephone: (516) 742-4343

Respectfully submitted,

Meso Scale Diagnostics, LLC

Dated: November 4, 2013

By: 
Keith A. Weltsch
SCULLY, SCOTT, MURPHY & PRESSER
400 Garden City Plaza
Suite 300
Garden City, New York 11530
Telephone: (516) 742-4343
Facsimile: (516) 742-4366
General Email: intprop@ssmp.com

COUNSEL FOR OPPOSER

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Opposition is being deposited with the United States Postal Service as first class mail, postage prepaid to Applicant on this 4th day of November as follows:

Mr. Zachary Miles
AvanSci Bio, L.L.C.
1290 West 2320 South, Suite D
Salt Lake City, Utah 84119


Keith A. Weltsch

Exhibit "A"



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Typed Drawing

Word Mark	MESO SCALE DIAGNOSTICS
Goods and Services	IC 042. US 100 101. G & S: RESEARCH AND DEVELOPMENT IN THE FIELDS OF ASSAYS, SELECTION, SCREENING, TESTING, IMAGING AND DIAGNOSTICS USING ELECTROCHEMILUMINESCENCE. FIRST USE: 19951130. FIRST USE IN COMMERCE: 19951130
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	76310914
Filing Date	September 10, 2001
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	September 24, 2002
Registration Number	2662396
International Registration Number	1054305
Registration Date	December 17, 2002
Owner	(REGISTRANT) Meso Scale Diagnostics, LLC LIMITED LIABILITY COMPANY DELAWARE 9238 GAITHER ROAD Gaithersburg MARYLAND 20877
Attorney of Record	Keith A. Weltsch
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "DIAGNOSTICS" APART FROM THE MARK AS SHOWN
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Affidavit Text	SECT 8 (6-YR). SECTION 8(10-YR) 20130119.
Renewal	1ST RENEWAL 20130119
Live/Dead Indicator	LIVE

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Exhibit “B”



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Typed Drawing

Word Mark	MESO SCALE DISCOVERY
Goods and Services	IC 042. US 100 101. G & S: RESEARCH AND DEVELOPMENT IN THE FIELDS OF ASSAYS, SELECTION, SCREENING, TESTING, IMAGING AND DIAGNOSTICS USING ELECTROCHEMILUMINESCENCE. FIRST USE: 20010910. FIRST USE IN COMMERCE: 20010910
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	76310909
Filing Date	September 10, 2001
Current Basis	1A
Original Filing Basis	1B
Published for Opposition	March 19, 2002
Registration Number	2714434
International Registration Number	1054306
Registration Date	May 6, 2003
Owner	(REGISTRANT) Meso Scale Diagnostics, LLC LIMITED LIABILITY COMPANY DELAWARE 9238 Gaither Road Gaithersburg MARYLAND 20877
Attorney of Record	Keith A. Weltsch
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20130602.
Renewal	1ST RENEWAL 20130602
Live/Dead Indicator	LIVE

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Exhibit "C"



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WWW.MESOSCALE.COM

Word Mark	WWW.MESOSCALE.COM
Goods and Services	IC 042. US 100 101. G & S: Research and development in the fields of assays, selection, screening, testing, imaging and diagnostics using electrochemiluminescence. FIRST USE: 20060500. FIRST USE IN COMMERCE: 20060500
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Trademark Search Facility Classification Code	LETS-1 WWW A single letter, multiples of a single letter or in combination with a design NOTATION-SYMBOLS Notation Symbols such as Non-Latin characters,punctuation and mathematical signs,zodiac signs,prescription marks
Serial Number	77599322
Filing Date	October 23, 2008
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	March 17, 2009
Registration Number	3630779
Registration Date	June 2, 2009
Owner	(REGISTRANT) Meso Scale Diagnostics, LLC LIMITED LIABILITY COMPANY DELAWARE 9238 Gaither Road Gaithersburg MARYLAND 20877
Attorney of Record	Keith A. Weltsch
Prior	2662396;2714434

Exhibit “D”



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MESO SCALE DEFENSE

Word Mark	MESO SCALE DEFENSE
Goods and Services	IC 042. US 100 101. G & S: Research and development in the fields of assays, selection screening, testing, imaging and diagnostics using electrochemiluminescence. FIRST USE: 20060600. FIRST USE IN COMMERCE: 20060600
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	77684455
Filing Date	March 5, 2009
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	February 9, 2010
Registration Number	3780112
Registration Date	April 27, 2010
Owner	(REGISTRANT) Meso Scale Diagnostics, LLC LIMITED LIABILITY COMPANY DELAWARE 9238 Gaither Road Gaithersburg MARYLAND 20877
Attorney of Record	Keith A. Weltsch
Prior Registrations	2662396;2714434
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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