

ESTTA Tracking number: **ESTTA588494**

Filing date: **02/20/2014**

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	Allergan, Inc.
Granted to Date of previous extension	03/05/2014
Address	2525 DUPONT DRIVE IRVINE, CA 92612 UNITED STATES

Attorney information	Kenneth L. Wilton Seyfarth Shaw LLP 2029 Century Park East, Suite 3500 Los Angeles, CA 90067-3021 UNITED STATES kwilton@seyfarth.com, hinchey_susan@allergan.com, kelko@seyfarth.com Phone:(310) 277-7200
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Applicant Information

Application No	85788460	Publication date	11/05/2013
Opposition Filing Date	02/20/2014	Opposition Period Ends	03/05/2014
Applicant	Western Holdings, LLC 1000 East William Street, Suite 204 Carson City, NV 89701 NV		

Goods/Services Affected by Opposition

Class 003. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Cosmetics
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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. Registration No.	4404095	Application Date	03/02/2012
Registration Date	09/17/2013	Foreign Priority Date	NONE
Word Mark	LYTERA		

Design Mark	<h1>LYTERA</h1>
Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 2013/01/31 First Use In Commerce: 2013/01/31 Cosmetic sunscreen preparations; cosmetics and cosmetic preparations; non-medicated skin care preparations, namely, skin brightening creams and serums; skin lighteners; skin whitening preparations

Attachments	85558710#TMSN.jpeg(bytes) Notice of Opposition.pdf(40878 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	/Kenneth L. Wilton/
Name	Kenneth L. Wilton
Date	02/20/2014

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

In the Matter of Application Serial No. 85/788,460
Published in the Official Gazette of November 5, 2013

ALLERGAN, INC.,

Opposer,

v.

WESTERN HOLDINGS, LLC,

Applicant.

Opposition No.

NOTICE OF OPPOSITION

Opposer Allergan, Inc. (“Opposer”) believes that it will be damaged by registration of the mark shown in Application Serial No. 85/788,460, and hereby opposes the same. As grounds for opposition, Opposer alleges as follows:

1. Opposer is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 2525 Dupont Drive, Irvine, California 92612. Opposer is, and has been, for many years engaged in the manufacture, development, sale and advertising of an extensive array of pharmaceutical products, medical devices, and over-the-counter products.

2. Since at least as early as January 31, 2013, Opposer and its predecessors-in-interest have marketed a non-medicated skin care preparation under the trademark LYTERA (the “LYTERA Mark”) in the United States (the “LYTERA Product”).

3. Opposer owns all right, title and interest in and to the LYTERA Mark, as well as the following United States registration of its LYTERA Mark on the Principal Register:

Registration No. 4,404,095, filed March 2, 2012 and issued September 17, 2013, for the mark LYTERA in International Class 3 for “cosmetic sunscreen preparations; cosmetics and cosmetic preparations; non-medicated skin care preparations, namely, skin brightening creams and serums; skin lighteners; skin whitening preparations.”

This registration is valid and subsisting. A copy of a current printout of information from the electronic database records of the USPTO showing the current status and title of this registration is attached hereto as Exhibit 1 and is incorporated by reference herein as if set forth in full.

4. Notwithstanding Opposer’s prior rights in and to the LYTERA Mark, Applicant, on information and belief, on November 27, 2012, filed an application, based on Section 1(b) of the United States Trademark Act (15 U.S.C. § 1051(b)), for registration of the trademark GLYTERRA (“Applicant’s Mark”) for “cosmetics” in International Class 3 (the “Opposed Application”).

5. The Opposed Application was published for opposition in the Trademark Official Gazette of November 5, 2013.

FIRST CLAIM FOR RELIEF
(Likelihood of Confusion With Registered Mark)

6. Opposer repeats and realleges the allegations in preceding paragraphs 1 through 5, inclusive, as if fully set forth herein.

7. The “GLYTERRA” mark shown in the Opposed Application so resembles Opposer’s registered LYTERA Mark as to be likely, when used on or in connection with the goods identified in the Opposed Application, to cause confusion, to cause mistake, or to deceive,

and Applicant's Mark is thus unregistrable under Section 2(d) of the United States Trademark Act, 15 U.S.C. § 1052(d).

8. Opposer will be damaged by registration of the mark shown in the Opposed Application because registration will give Applicant *prima facie* evidence of its ownership of, and its exclusive nationwide right to use, a mark that is confusingly similar to Opposer's LYTERA Mark.

SECOND CLAIM FOR RELIEF
(Likelihood of Confusion With Previously-Used Trademark)

9. Opposer repeats and realleges the allegations in preceding paragraphs 1 through 8, inclusive, as if fully set forth herein.

10. The "GLYTERRA" mark shown in the Opposed Application so resembles Opposer's previously used and not abandoned LYTERA Mark as to be likely, when used on or in connection with the goods identified in the Opposed Application, to cause confusion, to cause mistake, or to deceive, and Applicant's Mark is thus unregistrable under Section 2(d) of the United States Trademark Act, 15 U.S.C. § 1052(d).

11. Opposer will be damaged by registration of the mark shown in the Opposed Application because registration will give Applicant *prima facie* evidence of its ownership of, and its exclusive nationwide right to use, a mark that is confusingly similar to Opposer's previously used and not abandoned LYTERA Mark.

WHEREFORE, Opposer prays for judgment sustaining this opposition and refusing registration to Applicant of the mark shown in the Opposed Application.

Please charge any deficiency or credit any overpayment related to this Opposition to Deposit Account No. 50-2291, and direct all correspondence in connection with this opposition to the undersigned and, in addition, to:

EXHIBIT 1

Generated on: This page was generated by TSDR on 2014-02-20 16:51:16 EST

Mark: LYTERA

LYTERA

US Serial Number: 85558710
Application Filing Date: Mar. 02, 2012
US Registration Number: 4404095
Registration Date: Sep. 17, 2013
Filed as TEAS Plus: Yes
Currently TEAS Plus: Yes
Register: Principal
Mark Type: Trademark
Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.
Status Date: Sep. 17, 2013
Publication Date: Jul. 24, 2012
Notice of Allowance Date: Jun. 25, 2013

Mark Information

Mark Literal Elements: LYTERA
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

Goods and Services

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

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

For: Cosmetic sunscreen preparations; cosmetics and cosmetic preparations; non-medicated skin care preparations, namely, skin brightening creams and serums; skin lighteners; skin whitening preparations

International Class(es): 003 - Primary Class

U.S Class(es): 001, 004, 006, 050, 051, 052

Class Status: ACTIVE

Basis: 1(a)

First Use: Jan. 31, 2013

Use in Commerce: Jan. 31, 2013

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: ALLERGAN, INC.
Owner Address: 2525 DUPONT DRIVE
IRVINE, CALIFORNIA 92612
UNITED STATES
Legal Entity Type: CORPORATION
State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record - None
Correspondent

Correspondent Name/Address: JEFFREY L VAN HOOSEAR
KNOBBE MARTENS ET AL
2040 MAIN ST
FL 14
IRVINE, CALIFORNIA 92614

UNITED STATES

Phone: 714-246-5507

Fax: 714-796-9381

Correspondent e-mail: hinchey_susan@allergan.com

Correspondent e-mail Yes
Authorized:

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Sep. 17, 2013	REGISTERED-PRINCIPAL REGISTER	
Aug. 13, 2013	NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED	
Aug. 10, 2013	LAW OFFICE REGISTRATION REVIEW COMPLETED	70468
Aug. 02, 2013	ASSIGNED TO LIE	70468
Jul. 19, 2013	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Jul. 18, 2013	STATEMENT OF USE PROCESSING COMPLETE	65362
Jun. 25, 2013	USE AMENDMENT FILED	65362
Jul. 17, 2013	CASE ASSIGNED TO INTENT TO USE PARALEGAL	65362
Jun. 25, 2013	TEAS STATEMENT OF USE RECEIVED	
Jun. 25, 2013	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
May 16, 2013	TTAB RELEASE CASE TO TRADEMARKS	206556
May 16, 2013	OPPOSITION TERMINATED NO. 999999	206556
May 16, 2013	OPPOSITION DISMISSED NO. 999999	206556
Apr. 10, 2013	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Jan. 11, 2013	ATTORNEY REVOKED AND/OR APPOINTED	
Jan. 11, 2013	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Sep. 04, 2012	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
Sep. 04, 2012	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Aug. 15, 2012	OPPOSITION INSTITUTED NO. 999999	206556
Aug. 15, 2012	OPPOSITION PAPERS RECEIVED AT TTAB	
Jul. 24, 2012	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Jul. 24, 2012	PUBLISHED FOR OPPOSITION	
Jul. 04, 2012	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Jun. 14, 2012	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jun. 12, 2012	ASSIGNED TO EXAMINER	74645
Mar. 09, 2012	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Mar. 06, 2012	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: Aug. 10, 2013

Assignment Abstract Of Title Information

Summary

Total Assignments: 1

Registrant: ALLERGAN, INC.

Assignment 1 of 1

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: [4995/0216](#)

Pages: 37

Date Recorded: Apr. 01, 2013

Supporting Documents: [assignment-tm-4995-0216.pdf](#)

Assignor

Name: [SKINMEDICA, INC.](#)

Execution Date: Mar. 29, 2013

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Assignee

Name: [ALLERGAN, INC.](#)

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Address: 2525 DUPONT DRIVE
IRVINE, CALIFORNIA 92612

Correspondent

Correspondent Name: SUSAN J. HINCHEY

Correspondent Address: 2525 DUPONT DRIVE
IRVINE, CA 92612

Domestic Representative - Not Found

Proceedings

Summary

Number of Proceedings: 1

Type of Proceeding: Opposition

Proceeding Number: [91206556](#)

Filing Date: Aug 15, 2012

Status: Terminated

Status Date: May 16, 2013

Interlocutory Attorney: ROBERT COGGINS

Defendant

Name: Allergan, Inc.

Correspondent Address: JEFFREY L VAN HOOSEAR
KNOBBE MARTENS ET AL
2040 MAIN ST , FL 14
IRVINE CA , 92614
UNITED STATES

Correspondent e-mail: efiling@kmob.com , jvh@kmob.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
LYTERA	Registered	85558710	4404095

Plaintiff(s)

Name: Laverana GmbH & Co. KG

Correspondent Address: SUSAN NEUBERGER WELLER
MINTZ LEVIN COHN ET EL
701 PENNSYLVANIA AVE NW, STE 900
WASHINGTON DC , 20004
UNITED STATES

Correspondent e-mail: snweller@mintz.com , jddib@mintz.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
LAVERA	Renewed	75646981	2687717
LAVERA BASIS SENSITIV	Registered	77690979	3874214
LAVERA	Registered	77697439	4230293
LAVERA BODY SPA*	Abandoned - No Statement Of Use Filed	77690988	
LAVERA BABY & KINDER NEUTRAL	Registered	79066856	3799692
LAVERA NEUTRAL	Registered	79067710	3835200
LAVERA NATURKOSMETIK BIO . MIT PFLANZEN- INHALTSSTOFFEN . AUS EIGENER HERSTELLUNG	Registered	79085542	3988013

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Aug 15, 2012	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Aug 15, 2012	Sep 24, 2012
3	PENDING, INSTITUTED	Aug 15, 2012	
4	ANSWER AND COUNTERCLAIM (FEE)	Sep 24, 2012	
5	TRIAL DATES RESET	Sep 26, 2012	

6	STIPULATION FOR AN EXTENSION OF TIME	Oct 31, 2012
7	EXTENSION OF TIME GRANTED	Nov 06, 2012
8	STIPULATION FOR AN EXTENSION OF TIME	Nov 26, 2012
9	EXTENSION OF TIME GRANTED	Nov 28, 2012
10	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	Jan 22, 2013
11	EXTENSION OF TIME GRANTED	Feb 01, 2013
12	P MOT FOR EXT W/ CONSENT	Feb 22, 2013
13	EXTENSION OF TIME GRANTED	Mar 14, 2013
14	P MOT FOR EXT W/ CONSENT	Mar 26, 2013
15	TRIAL DATES RESET	Apr 17, 2013
16	STIP MOT TO DISMISS OPP AND CC	Apr 26, 2013
17	BD DECISION: DISMISSED W/ PREJ	May 16, 2013
18	TERMINATED	May 16, 2013

CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2014, I served this Notice of Opposition on the Applicant by mailing a copy thereof by First Class Mail, postage prepaid, addressed to Applicant's correspondence address of record as follows:

David R. Parkinson, Esq.
5742 W. Harold Gatty Dr.
Salt Lake City, UT 84116-3762

/Eleanor Elko/

Eleanor Elko