

ESTTA Tracking number: **ESTTA644486**

Filing date: **12/15/2014**

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	Novartis AG
Granted to Date of previous extension	12/14/2014
Address	CH-4002 Basel, CH-4002 SWITZERLAND

Attorney information	Jonathan S. Jennings Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP 200 South Wacker Drive Suite 2900 Chicago, IL 60606 UNITED STATES jsj@pattishall.com, eo@pattishall.com, jin@pattishall.com Phone:312-554-8000
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Applicant Information

Application No	86075496	Publication date	06/17/2014
Opposition Filing Date	12/15/2014	Opposition Period Ends	12/14/2014
Applicant	NXThera, Inc. Suite 138 Maple Grove, MN 55369 UNITED STATES		

Goods/Services Affected by Opposition

Class 010. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Medical Devices for Use in Treating Kidney Cancer and Other Kidney Conditions; Medical Devices Comprised of Energy Control Systems, an Energy Supply, an Electronic Control Unit, and a Fluid Supply Unit, All Sold as a Unit and All for Use in Treating Kidney Cancer and Other Kidney Conditions
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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.	2772538	Application Date	04/27/2000
Registration Date	10/07/2003	Foreign Priority Date	NONE
Word Mark	RESTOR		

Design Mark	RESTOR		
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 2003/07/03 First Use In Commerce: 2003/07/03 Intraocular lenses		

U.S. Registration No.	4513350	Application Date	11/16/2012
Registration Date	04/15/2014	Foreign Priority Date	NONE

Word Mark	IQ RESTOR		
Design Mark	IQ RESTOR		
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 0 First Use In Commerce: 0 Ophthalmic surgical instruments and apparatus; intraocular lenses		

Attachments	78005941#TMSN.png(bytes) 85780938#TMSN.png(bytes) NOTICE OF OPPOSITION - RESTOR 86075496.pdf(21477 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	/Elisabeth K. O'Neill/
Name	Elisabeth K. O'Neill
Date	12/15/2014

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

In The Matter of Application Serial No. 86/075,496 – RESTOR

Published in the *Official Gazette* on June 17, 2014

NOVARTIS AG,)	
)	
Opposer,)	Opposition No.
)	
v.)	
)	
NXTHERA, INC.,)	
)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Novartis AG (“Opposer”), a Swiss corporation having offices in Basel, Switzerland, believes it will be damaged by registration of the mark shown at Application Ser. No. 86/075,496 (the “Application”), and files this notice of opposition pursuant to 37 C.F.R. § 2.104. The grounds for opposition are stated below.

1. For many years, Opposer has been engaged in the manufacture, distribution, advertising, and sale of a wide variety of surgical, pharmaceutical, medical, and vision care products, including products used to treat kidney cancer.
2. Opposer offers information on kidney cancer, including the treatment of the disease, to consumers in the United States.
3. Since long before the filing date of the Application opposed herein, Opposer and its predecessors- in-interest have used the trademark RESTOR (including in the form IQ RESTOR) (hereinafter, the “RESTOR mark”) in commerce throughout the United States in

connection with the manufacture, advertising, promotion, and sale of ophthalmic surgical instruments and apparatus and intraocular lenses.

4. Since long before the filing date of the Application opposed herein, Opposer and its predecessors-in-interest have sold substantial quantities of ophthalmic surgical instruments and apparatus and intraocular lenses under the RESTOR mark in the United States.

5. Since long before the application date listed in the Application, Opposer and its predecessors-in-interest have spent substantial sums of money to advertise and promote the aforesaid goods sold under the RESTOR mark in the United States.

6. Opposer owns an incontestable registration in the United States Patent and Trademark Office for its RESTOR mark for "intraocular lenses," Reg. No. 2,772,538, and a registration for IQ RESTOR for "ophthalmic surgical instruments and apparatus; intraocular lenses," Reg. No. 4,513,350.

7. By virtue of the aforesaid extensive advertising, promotion, and sales of intraocular lenses under the RESTOR mark, Opposer and its predecessors-in-interest have built up, and Opposer now owns, valuable goodwill in this mark.

8. On September 26, 2013, Applicant filed an application to register the trademark RESTÖR for "medical devices for use in treating kidney cancer and other kidney conditions; medical devices comprised of energy control systems, an energy supply, an electronic control unit, and a fluid supply unit, all sold as a unit and all for use in treating kidney cancer and other kidney conditions," Application Serial No. 86/075,496.

9. Applicant's proposed use and registration of the RESTÖR mark are likely to result in confusion, mistake, or deception with Opposer, its RESTOR mark, or in the mistaken belief that Applicant or Applicant's identified goods sold under the RESTÖR mark are in some way

CERTIFICATE OF ELECTRONIC TRANSMISSION

I, Elisabeth O'Neill, hereby certify that this **NOTICE OF OPPOSITION** is being electronically transmitted to the United States Patent and Trademark Office on this 15th day of December, 2014.

/s/ Elisabeth K. O'Neill _____

CERTIFICATE OF SERVICE

I, Elisabeth O'Neill, hereby certify that a copy of the foregoing **NOTICE OF OPPOSITION** was served upon Jeffrey Cadwell, Dorsey & WhitneyLLP, 50 S. 6th Street, Suite 1500, Minneapolis, MN 55402, via first class mail, postage pre-paid, with a courtesy copy by email to cadewell.jeffrey@dorsey.com on this 15th day of December, 2014.

/s/ Elisabeth K. O'Neill _____