

TTAB

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Mailed: June 19, 2006

Cicchitto, Jonathan P  
3604 Glen Ridge Lane  
Sarasota, FL 34233

**Cancellation No. 92045945**

Reg. No. 2852228

Mary L. Winburn  
Abbott Laboratories  
100 Abbott Park Road, D377 Bldg. AP6A-1  
Abbott Park, IL 60064-6008

Abbott Laboratories

v.

Cicchitto, Jonathan P

**DWAYNE BOWLING, LEAD LEGAL ASSISTANT:**

A petition, a copy of which is attached, has been filed to cancel the above-identified registration.

Proceedings will be conducted in accordance with the Trademark Rules of Practice.

**ANSWER IS DUE FORTY DAYS** after the mailing date hereof. (See Trademark Rule 2.196 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that affect the rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003); Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003). Notices concerning the rules changes, as well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), are available at [www.uspto.gov/web/offices/dcom/ttab/](http://www.uspto.gov/web/offices/dcom/ttab/).

The parties are particularly referred to Trademark Rule 2.126 pertaining to the form of submissions. Paper submissions, including but not limited to exhibits and depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.

**Discovery and testimony periods are set as follows:**

Discovery period to open:	July 09, 2006
Discovery period to close:	January 05, 2007
30-day testimony period for party in position of plaintiff to close:	April 05, 2007
30-day testimony period for party in position of defendant to close:	June 04, 2007
15-day rebuttal testimony period for plaintiff to close:	July 19, 2007

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

**NOTE:** The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). The notice is available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

**New Developments at the Trademark Trial and Appeal Board**

TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, and inter partes filings are now available at <http://estta.uspto.gov>. Images of TTAB proceeding files can be viewed using TTABVue at <http://ttabvue.uspto.gov>.

ESTTA Tracking number: **ESTTA85844**

Filing date: **06/16/2006**

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

**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

**Petitioner Information**

Name	Abbott Laboratories		
Entity	Corporation	Citizenship	Illinois
Address	100 Abbott Park Road Abbott Park, IL 60064-6008 UNITED STATES		

Correspondence information	Mary L. Winburn Senior Counsel Abbott Laboratories 100 Abbott Park Road D377 Bldg. AP6A-1 Abbott Park, IL 60064-6008 UNITED STATES mary.winburn@abbott.com, trademarks@abbott.com Phone:847-935-1246
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**Registration Subject to Cancellation**

Registration No	2852228	Registration date	06/08/2004
Registrant	Cicchitto, Jonathan P 3604 Glen Ridge Lane Sarasota, FL 34233 UNITED STATES		
Goods/Services Subject to Cancellation	Class 010. First Use: 2003/10/05 , First Use In Commerce: 2003/10/05 Goods/Services: Elastic/ Fleece Band to be worn on the head for headache relief		

Attachments	Headache Relief Band - Cancellation.pdf ( 1 page )(48691 bytes )
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Signature	/mary winburn/
Name	Mary L. Winburn
Date	06/16/2006

1. Upon information and belief, Registrant is the owner of record of Registration No. 2852228.
2. Said Registration was issued in International Class 10 for elastic fleece bandages to be worn on the head for headache relief.
3. Petitioner is the owner of record of U.S. Application No. 78/645971 for RELIEFBAND for use in connection with a medical device for the prevention and treatment of nausea in International Class 10.
4. Petitioner is and has been for many years engaged in the manufacturing and sale of medical devices. In connection therewith, Petitioner has used in interstate commerce the trademark RELIEFBAND since long prior to Registrant's date of first use of the trademark HEADACHE RELIEF BAND.
5. The trademark HEADACHE RELIEF BAND is confusingly similar to Petitioner's RELIEFBAND trademark, and its registration and continued use by Registrant on its goods is likely to cause confusion, deception and mistake.
6. Petitioner is likely to be damaged by continuance of said Registration because registration of Petitioner's RELIEFBAND mark will be refused by the Examining Attorney under Trademark Act Section 2(d), 15 U.S.C. §1052(d), based on a likelihood of confusion with said Registration.

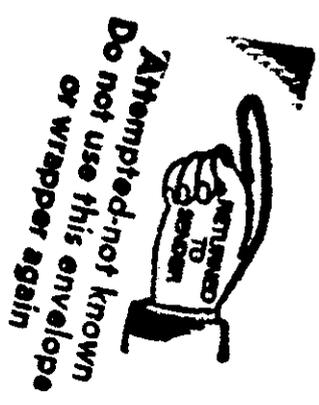
By reason of the foregoing, Petitioner is being damaged by said Registration and requests that said Registration be cancelled.

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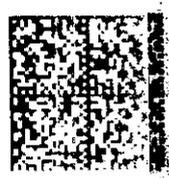
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