

ESTTA Tracking number: **ESTTA566123**

Filing date: **10/21/2013**

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	Bayer HealthCare LLC		
Entity	Corporation	Citizenship	Delaware
Address	100 Bayer Road Pittsburgh, PA 15205-9741 UNITED STATES		

Attorney information	PHILLIP BARENGOLTS PATTISHALL MCAULIFFE, NEWBURY, HILLIARD & GERALDSON LLP 200 SOUTH WACKER DRIVE, SUITE 2900 Chicago, IL 60606 UNITED STATES pb@pattishall.com, eo@pattishall.com, rm@pattishall.com Phone:312-554-8000		
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Registration Subject to Cancellation

Registration No	4363680	Registration date	07/09/2013
Registrant	DeLisio, Fred 21331 Bellini Drive Topanga, CA 90290 UNITED STATES		

Goods/Services Subject to Cancellation

Class 010. First Use: 2010/11/05 First Use In Commerce: 2010/11/05 All goods and services in the class are cancelled, namely: Vaporizers for medical purposes; Vaporizers for medical purposes, namely, an electronic device that delivers herbal vapors
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Grounds for Cancellation

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

U.S. Registration No.	653965	Application Date	12/24/1956
Registration Date	11/05/1957	Foreign Priority Date	NONE
Word Mark	ALBUSTIX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U006 (International Class 001). First use: First Use: 1956/11/09 First Use		

	In Commerce: 1956/11/09 PREPARATION FOR TESTING FOR ALBUMIN IN URINE, NOT FOR INTERNAL USE
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U.S. Registration No.	790907	Application Date	09/11/1964
Registration Date	06/15/1965	Foreign Priority Date	NONE
Word Mark	AZOSTIX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U006 (International Class 001). First use: First Use: 1964/08/19 First Use In Commerce: 1964/08/19 CHEMICAL REAGENTS FOR LABORATORY USE		

U.S. Registration No.	1115889	Application Date	08/07/1978
Registration Date	04/03/1979	Foreign Priority Date	NONE
Word Mark	CHEK-STIX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 1978/06/02 First Use In Commerce: 1978/06/02 CHEMICAL REAGENT TEST FOR ANALYSIS OF BODY FLUIDS		

U.S. Registration No.	627201	Application Date	07/11/1955
Registration Date	05/22/1956	Foreign Priority Date	NONE
Word Mark	CLINISTIX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U006 (International Class 001). First use: First Use: 1955/06/13 First Use In Commerce: 1955/06/13 PREPARATION FOR USE AS AN INDICATOR FOR DETERMINING THE PRESENCE OR ABSENCE OF SUGAR IN BODY FLUIDS		

U.S. Registration No.	668186	Application Date	10/18/1957
Registration Date	10/14/1958	Foreign Priority Date	NONE
Word Mark	COMBISTIX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U006 (International Class 001, 002, 003, 004, 005). First use: First Use: 1957/10/11 First Use In Commerce: 1957/10/11		

	REAGENT STRIPS, NOT FOR INTERNAL USE, FOR ANALYSIS OF BODY FLUIDS		
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U.S. Registration No.	672032	Application Date	03/17/1958
Registration Date	01/06/1959	Foreign Priority Date	NONE
Word Mark	DIASTIX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U006 (International Class 001). First use: First Use: 1958/01/30 First Use In Commerce: 1958/01/30 REAGENT STRIPS FOR ANALYSIS OF BODY FLUIDS		

U.S. Registration No.	656287	Application Date	12/17/1956
Registration Date	12/31/1957	Foreign Priority Date	NONE
Word Mark	GLUCOSTIX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U006 (International Class 001). First use: First Use: 1956/11/09 First Use In Commerce: 1956/11/09 PREPARATION, NOT FOR INTERNAL USE, FOR TESTING FOR GLUCOSE IN URINE		

U.S. Registration No.	762936	Application Date	04/17/1963
Registration Date	01/14/1964	Foreign Priority Date	NONE
Word Mark	HEMA-COMBISTIX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U006 (International Class 001). First use: First Use: 1963/02/21 First Use In Commerce: 1963/02/21 Reagent Strips for the Analysis of Body Fluids		

U.S. Registration No.	656285	Application Date	12/17/1956
Registration Date	12/31/1957	Foreign Priority Date	NONE
Word Mark	HEMASTIX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U006 (International Class 001). First use: First Use: 1956/11/09 First Use In Commerce: 1956/11/09		

	PREPARATION, NOT FOR INTERNAL USE, FOR TESTING FOR OCCULT BLOOD		
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U.S. Registration No.	930307	Application Date	11/20/1970
Registration Date	03/07/1972	Foreign Priority Date	NONE
Word Mark	KETO-DIASTIX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U006 (International Class 001). First use: First Use: 1970/10/14 First Use In Commerce: 1970/10/14 REAGANT STRIPS FOR ANALYSIS OF BODY FLUIDS		

U.S. Registration No.	656284	Application Date	12/17/1956
Registration Date	12/31/1957	Foreign Priority Date	NONE
Word Mark	KETOSTIX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U006 (International Class 001). First use: First Use: 1956/11/09 First Use In Commerce: 1956/11/09 PREPARATION, NOT FOR INTERNAL USE, FOR TESTING FOR KETONE BODIES IN URINE		

U.S. Registration No.	672033	Application Date	03/17/1958
Registration Date	01/06/1959	Foreign Priority Date	NONE
Word Mark	LABSTIX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U006 (International Class 001). First use: First Use: 1958/01/30 First Use In Commerce: 1958/01/30 REAGENT STRIPS FOR ANALYSIS OF BODY FLUIDS		

U.S. Registration No.	947477	Application Date	11/08/1971
Registration Date	11/21/1972	Foreign Priority Date	NONE
Word Mark	MULTISTIX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U006 (International Class 001). First use: First Use: 1971/09/10 First Use In Commerce: 1971/09/10		

CHEMICAL REAGENT TEST FOR [BLOOD AND] URINE			
U.S. Registration No.	1048353	Application Date	02/17/1976
Registration Date	09/21/1976	Foreign Priority Date	NONE
Word Mark	N-MULTISTIX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 1975/10/06 First Use In Commerce: 1975/10/06 CHEMICAL REAGENT TEST STRIP FOR PH, PROTEIN, GLUCOSE, KETONES, BILIRUBIN, BLOOD, NITRITE AND UROBILINOGEN IN URINE		
U.S. Registration No.	2489296	Application Date	02/22/2000
Registration Date	09/11/2001	Foreign Priority Date	NONE
Word Mark	MULTISTIX PRO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2000/10/24 First Use In Commerce: 2000/10/24 medical diagnostic reagents for the analysis of body fluids		
Attachments	Petition to Cancel MEDASTIX.pdf(15590 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	/Elisabeth K. O'Neill/
Name	Elisabeth K. O'Neill
Date	10/21/2013

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Registration No. 4,363,680: MEDASTIX

Date of Issue: July 9, 2013

BAYER HEALTHCARE LLC,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. _____
)	
FRED DELISIO,)	
)	
Registrant.)	

PETITION FOR CANCELLATION

Bayer HealthCare LLC ("Petitioner"), a Delaware limited liability company located and doing business at 100 Bayer Road, Pittsburgh, Pennsylvania 15205, believes it is and will continue to be damaged by the mark shown in Registration No. 4,363,680, and hereby petitions to cancel the same.

The grounds for the opposition are as follows:

1. Petitioner and its predecessors and licensees have for many years been engaged in the manufacture, distribution, advertising and sale of products in the medical and healthcare fields, including diagnostic tests and related equipment such as reagent test strips.
2. Since long prior to the priority date of Registration No. 4,363,680, Petitioner and its predecessors and licensees have used the suffix STIX as the salient part of a family of marks in connection with the advertising and sale of its medical and diagnostic tests and equipment and related products.
3. Petitioner and its predecessors have registered the aforesaid family of STIX trademarks in the United States Patent and Trademark Office, including:

<u>TRADEMARK</u>	<u>REGISTRATION NO.</u>	<u>REGISTRATION DATE</u>
ALBUSTIX	653,965	November 5, 1957
AZOSTIX	790,907	June 15, 1965
CHEK-STIX	1,115,889	April 3, 1979
CLINISTIX	627,201	May 22, 1956
COMBISTIX	668,186	October 14, 1958
DIASTIX	672,032	January 6, 1959
GLUCOSTIX	656,287	December 31, 1957
HEMA-COMBISTIX	762,936	January 14, 1964
HEMASTIX	656,285	December 31, 1957
KETO-DIASTIX	930,307	March 7, 1972
KETOSTIX	656,284	December 31, 1957
LABSTIX	672,033	January 6, 1959
MICROSTIX	965,355	August 7, 1973
MULTISTIX	947,477	November 21, 1972
N-MULTISTIX	1,048,353	September 21, 1976
MULTISTIX PRO	2,489,296	September 11, 2001

Said registrations are valid and subsisting, and each registration is incontestable in accordance with the provisions of the Federal Trademark Act (15 U.S.C. §§ 1065, 1115(b)), and said marks and registrations are now owned by Petitioner.

4. By virtue of Petitioner's and its predecessors' and licensees' extensive sales, advertising and promotion of products under the STIX family of trademarks, Petitioner and its predecessors have built up and Petitioner now owns valuable goodwill symbolized by its aforesaid family of STIX marks.

5. The use by Registrant of the trademark MEDASTIX for a "vaporizers for medical purposes; vaporizers for medical purposes, namely, an electronic device that delivers herbal vapors" is likely to result in confusion with Petitioner's STIX family of trademarks, or in the belief that Registrant

or its MEDASTIX products are in some way legitimately connected with, licensed or approved by Petitioner.

6. Upon information and belief, neither Registrant nor any predecessor or related company of Registrant has a claim of right in the mark MEDASTIX prior to November 5, 2010, the first use date listed in the application that matured into Registration No. 4,363,680.

7. Registrant's use and registration of the trademark MEDASTIX is without Petitioner's consent or permission and is with full knowledge of Petitioner's rights in its STIX family of marks.

WHEREFORE, registration by Registrant of MEDASTIX for the aforesaid goods is damaging to Petitioner and Petitioner prays for cancellation of Registration No. 4,363,680.

Petitioner herein submits the requisite filing fee in the amount of \$300. Please debit any deficiency or credit any overpayment to, Deposit Account No. 16-0650. Please address all correspondence to Phillip Barengolts, Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP, 200 South Wacker Drive, Suite 2900, Chicago, Illinois 60606.

PATTISHALL, McAULIFFE, NEWBURY,
HILLIARD & GERALDSON LLP

Dated: October 21, 2013

By Elisabeth K. O'Neill
Phillip Barengolts
Elisabeth K. O'Neill
200 South Wacker Drive
Suite 2900
Chicago, Illinois 60606
(312) 554-8000

Attorneys for Bayer HealthCare LLC

CERTIFICATE OF SERVICE

I, Elisabeth K. O'Neill, hereby certify that a copy of the foregoing **PETITION FOR CANCELLATION** was served upon:

Raj Abhyanker
Raj Abhyanker, P.C.
1580 W. El Camino Real, Suite 8
Mountain View, CA 94040-2462

via first class mail, postage pre-paid, on this 21st day of October, 2013.

_____/Elisabeth K. O'Neill/_____

CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that this **PETITION FOR CANCELLATION** is being electronically transmitted to the Patent and Trademark Office on October 21, 2013.

_____/Elisabeth K. O'Neill/_____
