1 TTAB

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

Dade Behring Inc.,

Opposer,

v.

Roche Molecular Systems, Inc.

Applicant.

Opposition No.

05-02-2003

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #22

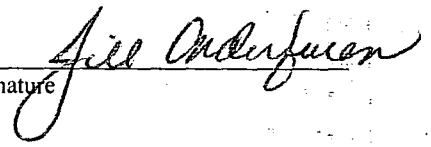
Date of Deposit: April 28, 2003

I hereby certify that this paper is being deposited with the United States Postal Service as First Class mail pursuant to 37 C.F.R. §1.10 on the date indicated above and is addressed to:

BOX 5 - TTAB
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

06/04/2003 KGIBBONS 00000067 76350205
01 FC:6402 600.00 OP

Jill Anderfuren
Name of Person Mailing Paper



Signature

April 28, 2003
Date

BOX 5 - TTAB
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Sir:

Void date: 06/04/2003 KGIBBONS
06/04/2003 KGIBBONS 00000023 76350205
01 FC:6402 -300.00 OP

NOTICE OF OPPOSITION

In the matter of Trademark Application Serial No. 76/350,205, filed December 18, 2001 and published for opposition in the Official Gazette on January 28, 2003.

06/04/2003 KGIBBONS 00000023 76350205
01 FC:6402 300.00 OP

Dade Behring Inc., a corporation duly organized and existing under the laws of the State of Delaware and having its principal office and place of business at 1717 Deerfield Road, Deerfield, IL 60015 (hereinafter referred to as "Opposer"), believes that it will be damaged by registration of the mark shown in Serial No. 76/350,2052 and hereby opposes the same.

As grounds of opposition, it is alleged that:

1) For many years Opposer (and its predecessors in interest) has been, and now is, actively engaged in the manufacture, distribution, and sale of various goods in the clinical laboratory and medical diagnostics and testing fields.

2) At least as early as 1985, Opposer (through its predecessors in interest) began using the mark FLEX on or in connection with "Diagnostic reagent cartridges for clinical laboratory medical use in International Class 5". Opposer's FLEX product has been sold continuously in commerce since that time. A current packaging label template for goods sold under the FLEX mark is attached as Exhibit A, and a copy of the packaging insert used for FLEX goods is attached as Exhibit B.

3) Opposer is the owner of U.S. Trademark Registration No. 2,270,686, issued August 17, 1999, for the trademark FLEX for "Diagnostic reagent cartridges for clinical laboratory medical use in International Class 5". A copy of this registration is attached hereto as Exhibit C.

4) The mark AMPLIFLEX sought to be registered by Applicant has a main identical component, the goods to be sold under Applicant's AMPLIFLEX mark are similar, related to the goods in Opposer's FLEX registration, and therefore, the mark AMPLIFLEX is confusingly similar to Opposer's mark FLEX. On information and belief, Applicant's

AMPLIFLEX goods are or will be sold through the same or similar channels of trade and to the same types of purchasers as Opposer's FLEX goods.

5) The use by Applicant of the mark AMPLIFLEX on the goods as listed in Serial No. 76/350,205 is likely to cause confusion in the minds of purchasers and users of Applicant's goods who, on seeing the mark AMPLIFLEX, will believe that Applicant's products originate with, are connected with, or are somehow associated with Opposer.

WHEREFORE, Opposer, Dade Behring Inc., prays that this opposition be sustained and that registration of the mark shown in Serial No. 76/350,205 be denied. A check in the amount of $600 for the filing fee for this opposition is attached; please charge any credit our deficiency associated with the filing of this Notice to our deposit account, No. 04-0010.

Opposer hereby appoints Cynthia G. Tymeson and Louise S. Pearson of the corporation Dade Behring Inc., whose address is 1717 Deerfield Road, P.O. Box 778, Deerfield, Illinois 60015-0778, along with Jill Anderfuren, Richard B. Hoffman, Richard M. LaBarge, Michael R. Graham, Beau D. Barberis, Gregory J. Chinlund, and Alisa C. Simmons of Marshall, Gerstein & Borun, 6300 Sears Tower, 233 South Wacker Drive, Chicago, Illinois 60606-6357, its attorneys with full power of substitution and revocation to prosecute this opposition and to transact all business in the Patent and Trademark Office in connection therewith.

Dade Behring Inc.

Date: April 28, 2003

By Jill Anderfuren
Jill Anderfuren
By One of its Attorneys

Contact: Jill Anderfuren

Marshall, Gerstein & Borun
6300 Sears Towr
233 South Wacker Drive
Chicago, IL 60606
(312) 474-6300

6 1/2" (6.50) Final Size

Exhibit A
Page 1 of 1

5 1/2" (5.50) Final Size

DADE BEHRING

Dimension® clinical chemistry system

Flex® reagent cartridge

IVD

2°C 8°C

C

LOT

EXP
YYYY-MM-DD

Dade Behring Inc.
Newark, DE 19714, U.S.A.

PN 717205.005
2000-07-06

Dimension® Flex® Cartridge Wrapper Template - Corrosive
PN 717205.005 Issued 2000-07-06
Print 100% PMS 3295, PMS Black

REF DF95A

DADE BEHRING

Dimension® clinical chemistry system

Flex® reagent cartridge

THC

Syva OnBoard.

Urine Cannabinoids Screen Flex® reagent cartridge

Intended Use: *The THC Flex® reagent cartridge used on the Dimension® clinical chemistry system provides reagents for an in vitro diagnostic test intended for the qualitative and semi-quantitative determination of cannabinoids in human urine. Measurements obtained with the THC method are used in the diagnosis and treatment of cannabinoids use or overdose.*

The THC method provides only a preliminary analytical test result. A more specific alternate chemical method must be used in order to obtain a confirmed analytical result. Gas chromatography/mass spectrometry (GC/MS) is the preferred confirmatory method.[1,2] Other chemical confirmation methods are available. Clinical consideration and professional judgment should be applied to any drug of abuse test result, particularly when preliminary positive results are used.

Marijuana is a mixture of dried leaves and flowering tops of the plant *Cannabis sativa L.* The agents that produce the hallucinogenic and other biological effects of marijuana are called cannabinoids.

- Specimens may be encountered that display turbidity. It is recommended that such specimens be centrifuged before analysis.
- No additives or preservatives are required.
- Boric acid should not be used as a preservative.
- Specimens should be within the pH range of 5-8. Specimens with a pH outside this range should be adjusted to this range by the addition of 1N HCl or 1N NaOH before analysis.
- Specimens should be at a temperature of 20 – 25 °C (68 -77°F) before analysis.
- Adulteration of the urine specimen may cause erroneous results. If adulteration is suspected, obtain a fresh specimen.
- Human urine specimens should be handled and treated as if they are potentially infectious.

Concentration of Compounds Showing Negative THC Results at 50 ng/mL Cutoff

Each of the following compounds was added to drug free urine and gave negative THC results at the 50 ng/mL cutoff:

Materials needed:
THC Flex® reagent cartridge, Cat. No. DF95A
Syva Emit® Calibrator Level 0 Cat. 9A509UL 0 ng/mL 11-nor-Δ^9-THC-9-COOH
Syva Emit® Calibrator Level 2 Cat. 9A549UL 20 ng/mL 11-nor-Δ^9-THC-9-COOH
Syva Emit® Calibrator Level 3 Cat. 9A569UL 50 ng/mL 11-nor-Δ^9-THC-9-COOH
Syva Emit® Calibrator Level 4 Cat. 9A589UL 100 ng/mL 11-nor-Δ^9-THC-9-COOH

Procedure: The THC Flex® reagent cartridge, Cat. No. DF95A, is required to perform the THC test. This test is automatically performed on the Dimension® clinical chemistry system after the method is calibrated (see Reference Material in Calibration section below).

Test Steps

Sampling, reagent delivery, mixing, processing, and printing of results are automatically performed by the Dimension® system. For details of this processing, refer to your Dimension® system manual.

NOTE: Sample cups must be filled consistently with 1.0 mL of sample, control or calibrator using an automatic pipette. Plastic transfer pipettes should not be used. This helps maintain a constant cup surface to sample volume ratio and minimizes drug loss from the sample due to adherence of drugs to the cup surface.

Test Conditions

- Sample Volume: 13 µL
- Flush Volume (Purified Water): 10 µL
- Reagent 1 (Antibody,NAD,G6P)Volume: 245 µL
- Reagent 2 (Enzyme Conjugate) Volume: 105 µL
- Test Temperature: 37° C
- Wavelength: 340 and 600 nm
- Type of Measurement: Rate

Limitations of Procedure:

- NEGATIVE results for specimens with concentrations below the assay range may be accompanied by an "assay range" or by a "below assay range" message. These results should be reported as NEGATIVE.
- POSITIVE results for specimens with concentrations above the assay range may be accompanied by an "assay range" or by an "above assay range" message. These results should be reported as POSITIVE.
- A positive result indicates the likely presence of cannabinoids but does not indicate or measure intoxication.
- The presence of cannabinoids in urine is only an indication of recent exposure to or use of cannabinoids.
- The psychological and physiological effects of cannabinoids do not necessarily correlate with urinary concentration.
- A positive THC result indicates the likely presence of drug and its metabolites. The THC method cannot fully quantitate the concentration of individual components.
- Interpretation of results must take into account that urine concentrations vary extensively with fluid intake, and other biological variables.
- *Autodilution (AD): This feature is only available for samples tested in the semi-quantitative mode. Refer to your Dimension® system manual.*
- There is a possibility that other substances and/or factors not listed above may interfere with the test and cause false results, e.g., technical or procedural errors.

Bibliography/Literatur/Bibliographie/Bibliografia/Bibliografía:

1. Emit® II Plus Cannabinoid Assay Package Insert Sheet, 2000.
2. Hawks, RL, Chiang. CN, Urine testing for drugs of abuse, NIDA Research Monograph 73, U.S. Government Printing Office, Washington, DC 20402,1986:24-29.
3. Burtis CA, Ashwood ER. Tietz *Textbook of Clinical Chemistry*, W.B. Saunders Co., Philadelphia. PA 1999,Third edition pp 39–41 (Biological Hazards), pp 1191-1193 (Drugs of Abuse).
4. Baselt RC, Cravey RH. Disposition of Toxic Drugs and Chemicals in Man. 4th ed. Chemical Toxicology Institute; Foster City, California,1995:450.

Symbols Key
Symbolschlüssel
Explication des Symboles
Interpretazione simboli
Clave de los Símbolos

	Manufactured by / Hergestellt von / Fabriqué par/ Prodotto da / Fabricado por
EC REP	Authorized Representative / Bevollmächtigter/ Mandataire / Rappresentanza autorizzata/ Representante Autorizado
IVD	*In Vitro* Diagnostic Medical Device / *In Vitro* Diagnosticum / Dispositif Médical Diagnostic *In Vitro*/ Dispositivo Medico per Diagnostica *in Vitro* / Producto sanitario para el Diagnóstico *In Vitro*

The United States of America

CERTIFICATE OF REGISTRATION
PRINCIPAL REGISTER

The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.

The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office, that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents and Trademarks, and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.

A copy of the Mark and pertinent data from the application are a part of this certificate.

This registration shall remain in force for TEN (10) years, unless terminated earlier as provided by law, and subject to compliance with the provisions of Section 8 of the Trademark Act of 1946, as Amended.

Acting Commissioner of Patents and Trademarks

Exhibit C
Page 1 of 2

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51 and 52

Reg. No. 2,270,686

United States Patent and Trademark Office

Registered Aug. 17, 1999

TRADEMARK
PRINCIPAL REGISTER

FLEX

DADE BEHRING INC. (DELAWARE CORPORATION)
1717 DEERFIELD ROAD
DEERFIELD, IL 60015

FOR: DIAGNOSTIC REAGENT CARTRIDGES FOR CLINICAL LABORATORY MEDICAL USE, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 7-0-1985; IN COMMERCE 7-0-1985.

SER. NO. 75-508,944, FILED 6-26-1998.

TINA L. SNAPP, EXAMINING ATTORNEY

Exhibit C
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