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

In Re Serial No. 76/463,019
filed September 10, 2002

Mark: **ERBITUX CETUXIMAB & Design**
Published: April 29, 2003 at TM 142

EXXON MOBIL CORPORATION,

Opposer,

v.

IMCLONE SYSTEMS INCORPORATED

Applicant.

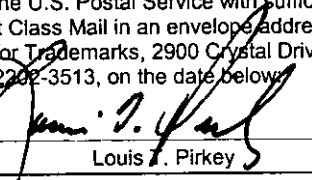
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11-17-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #78

Opposition No. _____

CERTIFICATE OF MAILING - 37 C.F.R. 1.8	
I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, on the date below.	
11/13/2003	
Date	Louis J. Pirkey

FIRST AMENDED NOTICE OF OPPOSITION

Exxon Mobil Corporation ("Opposer"), a New Jersey corporation having a principal place of business at 5959 Las Colinas Boulevard, Irving, Texas, 75039-2298, believes that it will be damaged by registration of the mark identified above, and hereby opposes same under the provisions of 15 U.S.C. § 1063. As grounds for opposition, Opposer asserts that:



1. Since at least as early as 1971, Opposer has continuously used the mark EXXON in a design form in which the X's are represented as an interlocking X design, such as in the famous EXXON Emblem, shown in, *inter alia*, U.S. Reg. No. 968,512. Since well prior to the filing of Applicant's application for registration of the mark ERBITUX CETUXIMAB & Design, Opposer has also continuously used the Interlocking X Design as a stand-alone mark, as shown in, *inter alia*, Reg. No. 1,384,919. Since at least as early as 2000, Opposer has continuously used the mark and






trade name "ExxonMobil" in a design form that incorporates the Interlocking X Design. These marks are hereinafter collectively referred to as Opposer's "Interlocking X Marks."

2. Opposer has used its Interlocking X Marks in connection with the sale and promotion of gasoline, motor oil, other petroleum products, chemical products, and various services. Opposer's chemical products sold under its Interlocking X Marks include chemicals used in the preparation of pharmaceuticals and various other products.

3. Opposer's Interlocking X Marks constitute a family of marks. Many of Opposer's Interlocking X Marks are used and promoted together, and are used on or in connection with related or complementary goods and services (e.g., petroleum products and automobile club services, chemical products and related computer software, and gasoline station and convenience store services). When used with such goods and services, relevant consumers recognize and rely upon Opposer's Interlocking X Marks as an indicator of origin.

4. Opposer is the owner of numerous United States Trademark Registrations covering its Interlocking X Marks, including the following:

Mark:	Reg. No.:	Reg. Date:	Goods/Services:
EXXON & Design 	968,512	9/18/1973	Petroleum and petroleum products —namely: industrial oils and greases, petroleum and mineral waxes, lubricants, hydrocarbon fuels, petroleum illuminants and crude oil
EXXONMOBIL EDUCATIONAL ALLIANCE & Design 	2,671,062	1/7/2003	Administration of a program that grants funding for public or private non-profit schools

Mark:	Reg. No.:	Reg. Date:	Goods/Services:
XX (stylized) 	1,384,919	3/4/1986	Motor oils
XX (stylized) 	1,412,809	10/14/1986	Neo decanoic acid used as a chemical intermediate in the following products: corrosion inhibitors, foam boosters and suppressants, fragrances, odorants, cosmetics, metal working fluids, synthetic soluble oils, metals extraction agents, pesticides, pharmaceuticals, plasticizers, vinyl stabilizers, surface active agents, synthetic lubricants, and the like
XX (stylized) 	1,415,453	11/4/1986	Solvents used in the following products: Adhesives, pharmaceuticals, fragrances, metal working fluids, pesticides, sealants, textile lubricants and the like
XX (stylized) 	2,149,419	4/7/1998	Chemicals for use in the manufacture of pesticides, herbicides, and fungicides
XX (stylized) 	2,305,494	1/4/2000	Gasoline

These registrations are currently valid and subsisting, and many of them have become incontestable under 15 U.S.C. § 1065. Copies of pages from the U.S. Patent and Trademark Office's Trademark Electronic Service System (TESS) for these registrations are attached hereto as Exhibit A.

5. Opposer also owns pending applications for registration of additional of its Interlocking X Marks, including Serial Nos. 75/933,349 and 75/859,548, each for the mark "ExxonMobil logo" as shown below:

ExxonMobil

Application Serial No. 75/983,349 was filed November 29, 1999, and covers a variety of goods, including “solvents used as a component in adhesives, pharmaceuticals, fragrances, metal working fluids, pesticides, sealants, lubricants.”

6. Opposer has invested many millions of dollars for more than three decades in advertising and promoting its Interlocking X Marks and the goods and services sold under those marks, with the result that the purchasing public has come to know, rely upon, and recognize the goods and services of Opposer by those marks. Opposer has established valuable goodwill in its Interlocking X Marks. Opposer’s Interlocking X Marks have become well known to members of the relevant consumer groups.

7. Through Opposer’s extensive use and promotion of its Interlocking X Marks, these marks have become famous and consumers have come to recognize the marks as such, and to associate the marks uniquely with Opposer and its goods and services.

8. Application Serial No. 76/463,019 was filed on September 10, 2002, for the mark ERBITUX CETUXIMAB & Design (shown immediately below) for “pharmaceutical preparation, namely monoclonal antibody for the treatment of cancer” in International Class 5.



9. There is no issue as to priority. Opposer has priority based on its use and registration of its Interlocking X Marks in the United States. Applicant does not claim a date of first use, and Opposer used and registered its Interlocking X Marks, and those marks became famous, long before Applicant’s filing date of September 10, 2002.

10. Applicant's mark ERBITUX CETUXIMAB & Design is visually similar to Opposer's Interlocking X Marks.

11. Applicant's pharmaceutical preparation intended to be sold under the mark ERBITUX CETUXIMAB & Design is similar or related to the petroleum and chemical products that Opposer offers under its Interlocking X Marks, particularly Opposer's products that are used in the preparation of pharmaceuticals.

12. Additionally, Opposer's Interlocking X Marks are of sufficient fame and reputation among consumers such that when Applicant's mark ERBITUX CETUXIMAB & Design is used for the products identified in the application, a connection with Opposer would be presumed by consumers.

13. Because Applicant's mark ERBITUX CETUXIMAB & Design so resembles Opposer's Interlocking X Marks, individually and collectively, as to be likely, when used in connection with the claimed goods of Applicant, to cause confusion, or to cause mistake, or to deceive, registration should be refused under 15 U.S.C. § 1052(d).

14. Applicant's mark ERBITUX CETUXIMAB & Design, when used on the goods specified in the application herein opposed, would cause dilution of Opposer's famous Interlocking X Marks, individually and collectively, and registration should be refused under 15 U.S.C. § 1125(c).

15. Opposer has not given Applicant permission or approval to use or register the mark ERBITUX CETUXIMAB & Design.

16. Registration of Applicant's mark ERBITUX CETUXIMAB & Design on the Principal Register would be inconsistent with Opposer's rights under the aforementioned registrations, and its common-law rights, and would be damaging to Opposer.

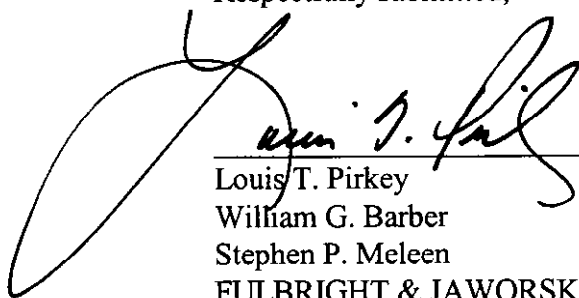
WHEREFORE, Opposer prays that Application Serial No. 76/463,019 be rejected, and that registration of the mark therein be refused.

A duplicate copy of this First Amended Notice of Opposition is being filed herewith. The filing fee required by 37 C.F.R. § 2.6(a)(17) was previously submitted with the Notice of Opposition filed on October 27, 2003. If there is an additional fee, the Commissioner is authorized to draw on the Deposit Account of Fulbright & Jaworski, Account No. 50-1212/EXCO:134/SPM. Please return the enclosed postcard to evidence receipt of this Opposition.

Respectfully submitted,

Date:

11/13/03



Louis T. Pirkey
William G. Barber
Stephen P. Meleen
FULBRIGHT & JAWORSKI L.L.P.
600 Congress Avenue, Suite 2400
Austin, Texas 78701
(512) 418-3000

ATTORNEYS FOR OPPOSER



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(TARR contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of the Internet Browser to return to TESS)



Word Mark EXXON

Goods and Services IC 004. US 015. G & S: PETROLEUM AND PETROLEUM PRODUCTS-NAMELY, INDUSTRIAL OILS AND GREASES, PETROLEUM AND MINERAL WAXES, LUBRICANTS, HYDROCARBON FUELS, PETROLEUM ILLUMINANTS AND CRUDE OIL. FIRST USE: 19711004. FIRST USE IN COMMERCE: 19711004

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 261112 261121

Serial Number 72407854

Filing Date November 16, 1971

Registration Number 0968512

Registration Date September 18, 1973

Owner (REGISTRANT) EXXON CORPORATION CORPORATION NEW JERSEY 5959
Las Colinas Boulevard Irving TEXAS 750392298

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record ROBERT D. RIPPE, JR.

Prior Registrations 0902044;AND OTHERS
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
Renewal 1ST RENEWAL 19930823
Live/Dead Indicator LIVE

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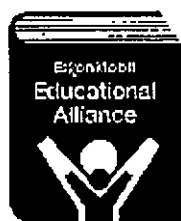
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Word Mark	EXXONMOBIL EDUCATIONAL ALLIANCE
Goods and Services	IC 036. US 100 101 102. G & S: Administration of a program that grants funding for public or private non-profit schools. FIRST USE: 20000816. FIRST USE IN COMMERCE: 20000816
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	020102 020131 020505 020524 200501
Serial Number	76150374
Filing Date	October 19, 2000
Published for Opposition	November 13, 2001
Registration Number	2671062
Registration Date	January 7, 2003
Owner	(REGISTRANT) Exxon Mobil Corporation CORPORATION NEW JERSEY 5959 Las Colinas Boulevard Irving TEXAS 750392298
Attorney of Record	Robert D Rippe Jr
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "EDUCATIONAL

ALLIANCE" APART FROM THE MARK AS SHOWN
Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Word Mark	XX
Goods and Services	IC 004. US 015. G & S: MOTOR OILS. FIRST USE: 19850319. FIRST USE IN COMMERCE: 19850319
Mark Drawing Code	(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
Serial Number	73552203
Filing Date	August 6, 1985
Published for Opposition	December 10, 1985
Registration Number	1384919
Registration Date	March 4, 1986
Owner	(REGISTRANT) EXXON CORPORATION CORPORATION NEW JERSEY 225 EAST JOHN W. CARPENTER FREEWAY IRVING TEXAS 750622298
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	WILLIAM R. COHRS
Prior Registrations	0959650;0960179
Type of Mark	TRADEMARK

Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
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Goods and Services IC 001. US 006. G & S: NEO DECANOIC ACID USED AS A CHEMICAL INTERMEDIATE IN THE FOLLOWING PRODUCTS: CORROSION INHIBITORS, FOAM BOOSTERS AND SUPPRESSANTS, FRAGRANCES, ODORANTS, COSMETICS, METAL WORKING FLUIDS, SYNTHETIC SOLUBLE OILS, METALS EXTRACTION AGENTS, PESTICIDES (BIOCIDES, DEFOLIANTS, HERBICIDES, INSECTICIDES, FUNGICIDES, REPELLANTS), PHARMACEUTICALS, PLASTICIZERS, VINYL STABILIZERS, SURFACE ACTIVE AGENTS, SYNTHETIC LUBRICANTS, AND THE LIKE. FIRST USE: 19850726. FIRST USE IN COMMERCE: 19850726

Mark Drawing Code (5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Serial Number 73582326

Filing Date February 10, 1986

Published for Opposition July 22, 1986

Registration Number 1412809

Registration Date October 14, 1986

Owner (REGISTRANT) EXXON CORPORATION CORPORATION NEW JERSEY 225

EAST JOHN W. CARPENTER FREEWAY IRVING TEXAS 750622298

Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record DEE ANN WELDON-WILSON
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
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Word Mark	XX
Goods and Services	IC 001. US 006. G & S: SOLVENTS USED IN THE FOLLOWING PRODUCTS; ADHESIVES, PHARMACEUTICALS, FRAGRANCES, METAL WORKING FLUIDS, PESTICIDES, SEALANTS, TEXTILE LUBRICANTS AND THE LIKE. FIRST USE: 19850617. FIRST USE IN COMMERCE: 19850617
Mark Drawing Code	(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
Serial Number	73549473
Filing Date	July 22, 1985
Published for Opposition	August 12, 1986
Registration Number	1415453
Registration Date	November 4, 1986
Owner	(REGISTRANT) EXXON CORPORATION CORPORATION NEW JERSEY 5959 LAS COLINAS BOULEVARD IRVING TEXAS 750392298
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	ROBERT D RIPPE JR

Prior Registrations 0959650;0960179;1384919
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
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Word Mark	XX
Goods and Services	IC 001. US 001 005 006 010 026 046. G & S: chemicals for use in the manufacture of pesticides, herbicides and fungicides. FIRST USE: 19930118. FIRST USE IN COMMERCE: 19930118
Mark Drawing Code	(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
Serial Number	75275677
Filing Date	April 11, 1997
Published for Opposition	January 13, 1998
Registration Number	2149419
Registration Date	April 7, 1998
Owner	(REGISTRANT) EXXON MOBILE CORPORATION CORPORATION NEW JERSEY 5959 Las Colinas Boulevard Irving TEXAS 750392298
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	MELODY L. SCHOTTLE
Type of Mark	TRADEMARK

Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
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Word Mark	XX
Goods and Services	IC 004. US 001 006 015. G & S: GASOLINE. FIRST USE: 19870619. FIRST USE IN COMMERCE: 19870619
Mark Drawing Code	(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
Serial Number	75474257
Filing Date	April 24, 1998
Published for Opposition	October 12, 1999
Registration Number	2305494
Registration Date	January 4, 2000
Owner	(REGISTRANT) Exxon Corporation CORPORATION NEW JERSEY 5959 Las Colinas Boulevard Irving TEXAS 750392298
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	ROBERT D RIPPE JR
Prior Registrations	1384919;1412809;2149419
Type of Mark	TRADEMARK
Register	PRINCIPAL

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