

ESTTA Tracking number: **ESTTA106022**

Filing date: **10/25/2006**

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	Zimmer Technology, Inc.
Granted to Date of previous extension	10/25/2006
Address	150 N. Wacker Drive Suite 1200 Chicago, IL 60606 UNITED STATES

Attorney information	David R. Pruitt Baker & Daniels LLP 205 West Jefferson Boulevard South Bend, IN 46601 UNITED STATES sbteas@bakerd.com, david.pruitt@bakerd.com Phone:574-234-4149
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Applicant Information

Application No	78739171	Publication date	06/27/2006
Opposition Filing Date	10/25/2006	Opposition Period Ends	10/25/2006
Applicant	Pacesetter, Inc. 15900 Valley View Court Sylmar, CA 91432 UNITED STATES		

Goods/Services Affected by Opposition

Class 010. All goods and services in the class are opposed, namely: Medical instruments, namely pulse generators and implantable cardioverter defibrillators, cardiac stimulation leads, and parts and fittings therefor

Attachments	ZTI-L02751 - Notice of Opposition.pdf (2 pages)(88076 bytes)
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Signature	/David R. Pruitt/
Name	David R. Pruitt
Date	10/25/2006

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

ZIMMER TECHNOLOGY, INC.) U.S. Trademark Application Serial No. 78/739171
)
Opposer,)
)
v.) Opposition No.: _____
)
)
PACESETTER, INC.)
Applicant,)

NOTICE OF OPPOSITION

Zimmer Technology, Inc., a Delaware limited liability company, having a principal place of business at 150 North Wacker Drive, Suite 1200, Chicago, IL 60606 ("Opposer"), believes it would be damaged by the registration of the mark NEXGEN that is the subject of U.S. Trademark Application Serial No. 78/739,171 ("the '171 Application") and hereby opposes registration of same. In support of its opposition, Opposer states as follows:

1. Opposer is the owner of all right, title and interest in and to the trademark NEXGEN for use in conjunction with surgical devices.
2. Opposer is the owner of all right, title and interest in and to U.S. Trademark Registration No. 1,902,163 for the mark NEXGEN for use with surgical devices, namely, orthopedic knee prosthesis and instruments therefor ("surgical devices").
3. Opposer has used its NEXGEN mark in conjunction with the surgical devices since at least as early as March 25, 1994.
4. Through its long-standing use of the NEXGEN mark in conjunction with the surgical devices, the purchasing public has come to associate the term NEXGEN exclusively with Opposer.
5. Through its long-standing use of the NEXGEN mark in conjunction with the surgical devices, Opposer has developed exceedingly valuable goodwill in the NEXGEN mark.

6. Pacesetter, Inc. ("Applicant") has, through the '171 Application, sought to register the mark NEXGEN for "Medical instruments, namely pulse generators and implantable cardioverter defibrillators, cardiac stimulation leads, and parts and fittings therefor" ("Applicant's Goods").

7. There is no issue as to priority, as Opposer has used its NEXGEN mark prior to the filing date of the '171 Application.

8. There is no issue as to priority, as Opposer has used its NEXGEN mark prior to Applicant's use of the NEXGEN mark.

9. Opposer will be damaged by registration of the NEXGEN mark by Applicant because such registration will grant to Applicant *prima facie* evidence of the exclusive right to use the mark in conjunction with Applicant's Goods and such use would be likely to cause confusion or mistake or to deceive as to the affiliation, connection or association of Applicant with Opposer and as to the origin, sponsorship and approval of Applicant's goods, services and other commercial activities by Opposer.

10. Such confusion would cause irreparable harm to Opposer in that any defects or fault found with Applicant's goods, services or other commercial activities would erroneously be attributed to Opposer, thereby harming Opposer's reputation and damaging its substantial goodwill in the NEXGEN mark.

WHEREFORE, Opposer respectfully requests that the Board deny registration of Applicant's NEXGEN mark sought through the '171 Application and award Opposer all other relief to which it is entitled.

Respectfully submitted,



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