

ESTTA Tracking number: **ESTTA212009**

Filing date: **05/16/2008**

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	Aerocrine AB
Granted to Date of previous extension	05/18/2008
Address	Sundbybergsvagen 9, P.O. Box 1024 Solna, SE-17121 SWEDEN

Attorney information	Eric W. McCormick Duane Morris LLP 1540 Broadway New York, NY 10036 UNITED STATES gpgulia@duanemorris.com, ewmccormick@duanemorris.com
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**Applicant Information**

Application No	77192701	Publication date	11/20/2007
Opposition Filing Date	05/16/2008	Opposition Period Ends	05/18/2008
Applicant	Glaxo Group Limited Glaxo Wellcome House, Berkeley Avenue Greenford, Middlesex, UB60NN UNITED KINGDOM		

**Goods/Services Affected by Opposition**

Class 005. All goods and services in the class are opposed, namely: Pharmaceutical preparations and substances for the treatment of infectious diseases, blood disorders, pain, inflammation, sepsis, alopecia and obesity, and for the treatment of viral, metabolic, endocrine, musculoskeletal, cardiovascular, cardiopulmonary, genitourinary, sexual dysfunction, oncological, hepatological, ophthalmological, neurological, gastrointestinal, hormonal, dermatological and psychiatric related diseases and disorders, and for the treatment of damaged skin and tissue; and for vaccines
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	2401311	Application Date	10/08/1998
Registration Date	11/07/2000	Foreign Priority Date	NONE

Word Mark	AEROCRINE
Design Mark	
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 1998/04/23 First Use In Commerce: 1998/04/23 Computer hardware equipment, namely, computer, computer stand, monitors, and parts therefor; and recorded computer programs, namely, word processing and database management programs for use with patient diagnosis apparatus Class 010. First use: First Use: 1998/04/23 First Use In Commerce: 1998/04/23 Medical apparatus and instruments, namely, mouthpieces, filters, tubes, and parts and accessories therefor for analysis of exhaled breath for the determination of medical diseases and inflammation of the airways, bowel and urinary tract; nitrous oxide level indicators; oxygen level indicators and parts therefor; and computer programs, namely, recorded comparative data for analysis of patient breath for disease diagnosis

U.S. Registration No.	3119496	Application Date	01/20/2005
Registration Date	07/25/2006	Foreign Priority Date	NONE
Word Mark	AEROCRINE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 037. First use: Maintenance of medical apparatus and instruments Class 042. First use: Development and design of medical apparatus		

Attachments	75566902#TMSN.gif ( 1 page )( bytes ) 78551143#TMSN.jpeg ( 1 page )( bytes ) ARCRINENotice.pdf ( 4 pages )(354294 bytes )
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### 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	/Eric W. McCormick/
Name	Eric W. McCormick
Date	05/16/2008

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

In the matter of Trademark Application  
Serial No. 77/192701  
Published: November 20, 2007  
Mark: ARCRINE

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AEROCRINE AB,  
Opposer,  
  
v.  
  
GLAXO GROUP LIMITED,  
Applicant.

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**NOTICE OF OPPOSITION**

Opposer, Aerocrine AB, a corporation organized under the laws of Sweden, with an address at P.O. Box 1024, 171 21, Solna, Sweden (hereinafter "Opposer"), believes that it will be damaged by registration of the mark ARCRINE for "pharmaceutical preparations and substances for the treatment of infectious diseases, blood disorders, pain, inflammation, sepsis, alopecia and obesity, and for the treatment of viral, metabolic, endocrine, musculoskeletal, cardiovascular, cardiopulmonary, genitourinary, sexual dysfunction, oncological, hepatological, ophthalmological, neurological, gastrointestinal, hormonal, dermatological and psychiatric related diseases and disorders, and for the treatment of damaged skin and tissue; and for vaccines" as shown in Application Serial No. 77/192,701, and hereby opposes registration of same.

As grounds for opposition, Opposer alleges that:

1. Opposer Aerocrine AB is the owner of the trademark AEROCRINE® for "computer hardware equipment, namely, computer, computer stand, monitors, and parts therefor; and recorded computer programs, namely, word processing and database management programs for use with patient diagnosis apparatus" in Class 009; and "medical apparatus and instruments,

namely, mouthpieces, filters, tubes, and parts and accessories therefor for analysis of exhaled breath for the determination of medical diseases and inflammation of the airways, bowel and urinary tract; nitrous oxide level indicators; oxygen level indicators and parts therefor; and computer programs, namely, recorded comparative data for analysis of patient breath for disease diagnosis” in Class 010; and “maintenance of medical apparatus and instruments” in Class 037; and “development and design of medical apparatus” in Class 042.

2. Opposer Aerocrine AB owns Registration Nos. 2,401,311 and 3,119,496 issued by the United States Patent and Trademark Office on November 7, 2000 and July 25, 2006, respectively, for the above identified goods and services. Both registrations are valid and subsisting. Copies of the ownership and status information for these registrations, which have been obtained from the U.S. Patent and Trademark Office database, are attached and are herein incorporated by reference into this pleading.

3. Registration No. 2,401,311 has become incontestable pursuant to §15 of the Lanham Act, 15 U.S.C. § 1065, meaning that, pursuant to §33(b) of the Lanham Act, 15 U.S.C. §1115(b), the registration is conclusive evidence of the validity of the registered mark and of the registration of the mark, of Aerocrine AB’s ownership of the mark, and of Aerocrine AB’s exclusive right to use the registered mark in commerce in connection with the goods specified in the registration.

4. Opposer has sold its computer hardware/software and medical apparatus under the AEROCRINE® trademark continuously in interstate commerce in the United States since at least as early as April 1998, long prior to any priority date on which Applicant can rely.

5. Applicant filed its application Serial No. 77/192,701 for the mark ARCRINE on May 30, 2007 under § 1(b) of the Lanham Act, 15 U.S.C. § 1051 (b).

6. Upon information and belief, Applicant has not filed an Amendment to Allege Use under § 1(c) of the Lanham Act, 15 U.S.C. § 1051 (c).

7. Upon information and belief, Applicant has not made any commercial use of the mark ARCRINE to date.

8. Opposer’s AEROCRINE® products and services are available and sold to consumers throughout the United States and the world.

9. Opposer continuously and extensively advertises and promotes its AEROCRINE® trademark and the goods and services sold under the mark throughout the United States.

10. As a result of Opposer's continuous and extensive use of the AEROCRINE® trademark, the mark has come to be recognized by the public as identifying Opposer as the source of the goods and services bearing the mark, and represents enormous goodwill belonging exclusively to Opposer.

11. Applicant's ARCRINE mark is nearly identical in appearance, sound and commercial impression to Opposer's AEROCRINE® mark, and the goods and services offered or purported to be offered under the respective marks are related.

12. Opposer believes it will be damaged by registration of Applicant's ARCRINE mark under §13 of the Lanham Act, 15 U.S.C. § 1063, because consumers, familiar with Opposer's mark AEROCRINE® are likely to believe, mistakenly, that Applicant or its goods emanate from, are sponsored or authorized by, or are otherwise associated or affiliated with Opposer, in violation of § 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

13. By reason of the foregoing, Opposer is likely to be harmed by the registration of the mark shown in Application Serial No. 77/192,701 and Applicant is therefore not entitled to registration for said mark.

**WHEREFORE**, Opposer respectfully requests that this Opposition be sustained and that the registration of the mark shown in Application Serial No. 77/192,701 be in all respects denied.

Respectfully submitted,

DUANE MORRIS LLP

By: 

Gregory P. Gulia, Esq.  
Eric W. McCormick, Esq.

Date: May 16, 2008

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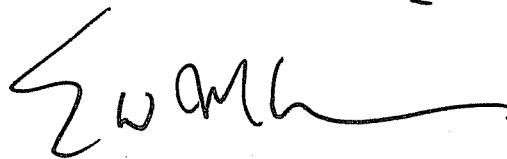
ATTORNEYS FOR OPPOSER

AEROCRINE AB

**CERTIFICATE OF SERVICE**

The undersigned Eric W. McCormick does hereby certify that on May 16, 2008 the foregoing Notice of Opposition is being deposited with the United States Postal Service, with sufficient postage as first class mail in an envelope addressed to the following attorney of record for Applicant:

Pamela A. May  
GlaxoSmithKline  
709 Swedeland Road  
UW2221  
King of Prussia, PA 19406

A handwritten signature in black ink, appearing to read 'E W McCormick', written over a horizontal line.

(Signature)