

ESTTA Tracking number: **ESTTA214321**

Filing date: **05/29/2008**

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	Baylor University
Granted to Date of previous extension	05/31/2008
Address	P.O. Box 97034 Waco, TX 76798-7034 UNITED STATES

Attorney information	William G. Barber Pirkey Barber LLP 600 Congress Ave., Suite 2120 Austin, TX 78701 UNITED STATES bbarber@pirkeybarber.com, wlarson@pirkeybarber.com, eolson@pirkeybarber.com, tmcentral@pirkeybarber.com
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Applicant Information

Application No	77134544	Publication date	04/01/2008
Opposition Filing Date	05/29/2008	Opposition Period Ends	05/31/2008
Applicant	Masimo Corporation 40 Parker Irvine, CA 92618 UNITED STATES		

Goods/Services Affected by Opposition

Class 010. All goods and services in the class are opposed, namely: Medical devices, namely, patient monitors and patient sensors
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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.	3091555	Application Date	01/06/2005
Registration Date	05/09/2006	Foreign Priority Date	NONE
Word Mark	BCM BAYLOR COLLEGE OF MEDICINE		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 041. First use: First Use: 2004/12/31 First Use In Commerce: 2004/12/31 Educational services in the nature of providing instruction and training in the field of medicine and biological science and distributing course materials in connection therewith Class 042. First use: First Use: 2004/12/31 First Use In Commerce: 2004/12/31 Medical and scientific research Class 044. First use: First Use: 2004/12/31 First Use In Commerce: 2004/12/31 Medical services and medical counseling

U.S. Registration No.	3080882	Application Date	01/06/2005
Registration Date	04/11/2006	Foreign Priority Date	NONE
Word Mark	BCM BAYLOR COLLEGE OF MEDICINE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2005/03/15 First Use In Commerce: 2005/03/15 Educational services in the nature of providing instruction and training in the field of medicine and biological science and distributing course materials in connection therewith Class 042. First use: First Use: 2005/03/15 First Use In Commerce: 2005/03/15 Medical and scientific research Class 044. First use: First Use: 2005/03/15 First Use In Commerce: 2005/03/15 Medical services and medical counseling		

Attachments	78543084#TMSN.jpeg (1 page)(bytes) 78543086#TMSN.jpeg (1 page)(bytes) nop 159.pdf (5 pages)(361365 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	/WCL/
Name	Wendy C. Larson
Date	05/29/2008



2008 *U.S. News & World Report* ranks BCM the 13th best medical school for research and 7th for primary care. BCM has affiliations with eight teaching hospitals, and currently trains more than 3,000 students, residents and post-doctoral fellows.

3. In addition to providing medical education, patient care and treatment, BCM develops medical technologies available for license. In 2007, BCM's technologies and related activities brought in over \$11 million in income to Licensee. For example, BCM currently offers for license medical devices, laboratory devices, diagnostic tools, and screening technologies, among many others, all offered under the BCM mark.

4. Opposer's mark BCM is inherently distinctive, serving to identify and indicate the source of Licensee's goods and services to the consuming public, and to distinguish Licensee's goods and services from those of others.

5. Additionally, as a result of Licensee's use and promotion of the mark BCM, the mark has become distinctive and is recognized by consumers. Opposer and Licensee have invested significant effort and resources in advertising and promoting the BCM mark and the goods and services sold under that mark, with the result that the purchasing public has come to know, rely on, and recognize the goods and services of Licensee by that mark. Opposer and Licensee have established valuable goodwill in the mark BCM in the medical field.

6. In addition to its extensive common law rights, Opposer is the owner of two United States Trademark Registrations shown in the following chart.

Mark	Registration No.	Registration Date	Goods & Services
	3,091,555	5/9/06	Educational services in the nature of providing instruction and training in the field of medicine and biological science and distributing course materials in connection therewith; Medical and scientific research; Medical services and medical counseling.
	3,080,882	4/11/06	Educational services in the nature of providing instruction and training in the field of medicine and biological science and distributing course materials in connection therewith; Medical and scientific research; Medical services and medical counseling.

Each of the registrations listed in the chart above is valid and subsisting.

7. Applicant Masimo Corporation is a Delaware corporation with a business address of 40 Parker, Irvine, California 92618. Applicant filed Application Serial No. 77/134,544 (the “Application”) on an intent-to-use basis pursuant to 15 U.S.C. § 1051(b) on March 19, 2007 for the mark BCM for “Medical devices, namely, patient monitors and patient sensors” in class 10.

8. Opposer has priority based on its prior use and registration of its mark BCM in the United States.

9. Applicant’s mark BCM is identical to Opposer’s mark BCM, and the goods in the Application are highly related to the goods and services offered by Licensee under the mark BCM.

10. Neither Opposer nor Licensee has given Applicant permission or approval to use or register the mark BCM.

11. Applicant's mark BCM so resembles Opposer's mark BCM as to be likely, when used on or in connection with the identified goods of Applicant, to cause confusion, or to cause mistake, or to deceive. Registration therefore should be refused under 15 U.S.C. § 1052(d).

12. Registration of Applicant's mark BCM on the Principal Register would be inconsistent with Opposer's rights under the aforementioned registrations and common law and would be damaging to Opposer and Licensee.

WHEREFORE, Opposer prays that Application Serial No. 77/134,544 be rejected, and that registration of the mark therein be refused.

This Notice of Opposition is being filed electronically, along with the filing fee required by 37 C.F.R. § 2.6(a)(17). The Commissioner is authorized to draw on the Deposit Account of Pirkey Barber LLP, Account No. 50-3924/BAYL:159/LTP, if there is any problem with the processing of the electronically submitted fee.

Date: 5/29/08

Respectfully submitted,

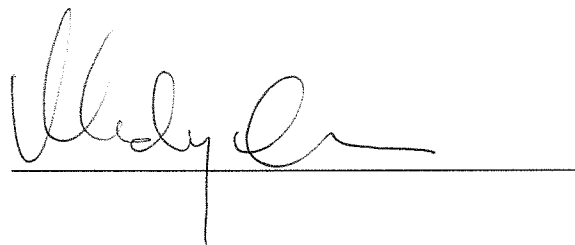


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ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing NOTICE OF OPPOSITION was served by first class mail on May 29, 2008 upon Applicant's attorney:

Deborah S. Shepherd
Knobbe Martens Olson & Bear LLP
2040 Main Street, 14th Floor
Irvine, CA 92614

A handwritten signature in cursive script, appearing to read "Deborah S. Shepherd", is written above a horizontal line. The signature is fluid and somewhat stylized.