

ESTTA Tracking number: **ESTTA238338**

Filing date: **09/23/2008**

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	Biogen Idec MA Inc.		
Entity	Corporation	Citizenship	Massachusetts
Address	14 Cambridge Center Cambridge, MA 02142 UNITED STATES		

Attorney information	Roberta Jacobs-Meadway Eckert Seamans Cherin & Mellott, LLC 50 S. 16th Street 22nd Floor Philadelphia, PA 19102 UNITED STATES rjacobsmeadway@eckertseamans.com, jmeadway@eckertseamans.com Phone:215-851-8522		
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**Applicant Information**

Application No	77476609	Publication date	09/16/2008
Opposition Filing Date	09/23/2008	Opposition Period Ends	10/16/2008
Applicant	Curemark, LLC Suite 1B 1234 Central Park Avenue Yonkers, NY 10704 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 005. All goods and services in the class are opposed, namely: pharmaceutical preparations for the treatment of pervasive developmental disorders, dysautonomia, and neurological disorders
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**Grounds for Opposition**

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

U.S. Application No.	77459140	Application Date	04/28/2008
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	LUMILANCE		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 005. First use: Pharmaceutical preparations for use in the prevention, diagnosis and treatment of oncological disorders; pharmaceutical preparations for use in the prevention, diagnosis and treatment of immunological disorders
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Attachments	77459140#TMSN.jpeg ( 1 page )( bytes ) NOTICE OF OPPOSITION SERIAL NO. 77-476,609 (LUMENENZ) (lumenenz).PDF ( 5 pages )(138001 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	/Roberta Jacobs-Meadway/
Name	Roberta Jacobs-Meadway
Date	09/23/2008

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING TRANSMITTED ELECTRONICALLY TO THE COMMISSIONER FOR TRADEMARKS - <http://esta.uspto.gov/filing-type.jsp>

By: Mary J. Baeenhofer

DATE: September 23, 2008

**BOX TTAB FEE**

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

**BIOGEN IDEC MA INC.**

Opposer,

v.

**CUREMARK, LLC**

Applicant.

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Opposition No. \_\_\_\_\_

**NOTICE OF OPPOSITION**

Honorable Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

In the matter of trademark Application Serial No. 77/476,609 for the mark LUMENENZ filed May 16, 2008 and published for opposition in the Official Gazette of September 16, 2008, Biogen Idec MA Inc., a Massachusetts corporation having an address of 14 Cambridge Center, Cambridge, MA 02142 ("Biogen Idec"), believes that it will be damaged by the registration of the mark shown in the above-identified application for the goods identified therein and hereby opposes the same. The grounds for opposition are as follows:

1. Curemark, LLC (hereinafter "Applicant") seeks to register LUMENENZ as a trademark for pharmaceutical preparations for the treatment of pervasive developmental disorders, dysautonomia, and neurological disorders.
2. The application herein opposed was filed May 16, 2008 on the basis of intent to use.

3. Biogen Idec itself and through its predecessors in interest and title and related companies (together, “Biogen Idec”) is and has been engaged in research and development of pharmaceutical preparations for more than twenty five years, and has built a significant and successful business in connection therewith.

4. Biogen Idec has applied to register LUMILANCE as a mark and intends to use such mark in commerce in connection with pharmaceutical preparations for use in the prevention, diagnosis and treatment of oncological and immunological disorders.

5. The application for registration of LUMILANCE was filed by Biogen Idec on April 28, 2008.

6. The LUMILANCE mark was published for purpose of opposition in the Official Gazette of September 23, 3008.

7. Biogen Idec’s LUMILANCE mark is inherently distinctive as applied to Biogen Idec’s pharmaceutical preparations.

8. Biogen Idec’s application for trademark registration of LUMILANCE on the basis of intent to use has an earlier filing date than Applicant’s application which is the subject of this proceeding. As both applications are predicated on intent to use, Biogen Idec’s first-filed application has priority over the later-filed application of Applicant.

9. In the application herein opposed, there are no restrictions on trade channels, so it must be assumed that the goods identified in the application will be promoted and sold through all trade channels to all customers appropriate for goods of that type, including sales through pharmacies.

10. Applicant’s mark is confusingly similar to Biogen Idec’s LUMILANCE mark in sound, appearance and overall commercial impression.

11. Applicant's mark and Biogen Idec's mark are each comprised of three syllables. The first syllable is identical and the second syllable has the same first letter and essentially the same sound and the third syllable is phonetically closely similar because of the short vowel sound followed by a blended consonant with a virtually indistinguishable sound (NZ and NCE).

12. The pharmaceutical preparations of Biogen Idec and the pharmaceutical preparations of Applicant as identified in the application herein opposed are closely related, since, *inter alia*, dysautonomia is linked to autoimmune disorders.

13. The goods of the sort identified in the application herein opposed are customarily marketed and sold through the same channels of trade as Biogen Idec employs.

14. The goods identified in the application herein opposed are such as are sold to and used by the same and overlapping classes of purchasers as those who sell and those who use Biogen Idec's preparations.

15. The Applicant's LUMENENZ trademark as applied to the goods set forth in the application herein opposed so resembles Biogen Idec's LUMILANCE mark as applied for that it is likely to cause confusion, mistake and/or deception.

16. If the Applicant is permitted to register LUMENENZ for the goods set forth in the application herein opposed, confusion of the relevant trade and public is likely to result, which is likely to damage and injure Biogen Idec.

17. Purchasers and prescribers and potential purchasers and prescribers would likely believe in error that Applicant's goods are offered by or in association with Biogen Idec, or that Biogen Idec has participated in the development of the goods, or that Biogen Idec and the Applicant are otherwise affiliated.


18. Any defect, objection to or fault found with the Applicant's goods sold under the LUMENENZ mark would necessarily reflect on and seriously injure the reputation that Biogen Idec has established for its pharmaceutical preparations and related services.

19. If the Applicant is granted a registration for the mark herein opposed, it would obtain thereby at least a *prima facie* exclusive right to use the mark. Such registration would be a source of damage and injury to Biogen Idec.

WHEREFORE, Biogen Idec MA Inc. prays that registration of the mark of Application Serial No. 77/476,609 for the goods identified therein be refused and that this Opposition be sustained.

Respectfully submitted,

Dated: 9/23/08

By:   
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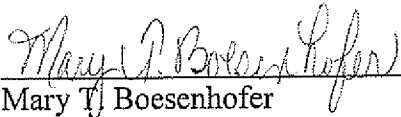
ATTORNEYS FOR OPPOSER

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the attached Notice of Opposition was served on counsel for Applicant on the date listed below via U.S. Mail:

Kristina M. Grasso, Esquire  
Kristina M. Grasso, Esquire, PLLC  
P.O. Box 162  
Milford, NH 03055

Dated: \_\_\_\_\_

  
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Mary T. Boesenhofer