

ESTTA Tracking number: **ESTTA334014**

Filing date: **02/24/2010**

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	Novartis AG
Granted to Date of previous extension	02/24/2010
Address	CH-4002 Basel Basel, SWITZERLAND

Attorney information	John P. Margiotta Fross Zelnick Lehrman & Zissu, P.C. 866 United Nations Plaza New York, NY 10017 UNITED STATES jm@fzlz.com Phone:212.813.5900
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Applicant Information

Application No	77757021	Publication date	10/27/2009
Opposition Filing Date	02/24/2010	Opposition Period Ends	02/24/2010
Applicant	Case Western Reserve University 10900 Euclid Avenue Cleveland, OH 441067020 UNITED STATES		


Goods/Services Affected by Opposition

<p>Class 041. All goods and services in the class are opposed, namely: Educating at university or colleges; Education services in the nature of courses at the university level; Providing continuing business education courses; Providing continuing dental education courses; Providing continuing legal education courses; Providing continuing medical education courses; Providing continuing nursing education courses</p>
<p>Class 042. All goods and services in the class are opposed, namely: Mechanical research; Medical research; Physics research; Providing medical and scientific research information in the field of clinical trials; Research in the field of chemistry; Research in the field of physics; Research relating to mechanical engineering; Scientific research; Scientific research and development; Scientific research in the field of genetics and genetic engineering</p>

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.	78657611	Application Date	06/24/2005
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	THINK WHAT'S POSSIBLE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 044. First use: First Use: 2001/00/00 First Use In Commerce: 2001/00/00 Medical services		

Attachments	78657611#TMSN.jpeg (1 page)(bytes) 10 02 24 - THINK BEYOND THE POSSIBLE OPPOSITION (F0587162).PDF (10 pages)(4204974 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	/John Margiotta/
Name	John P. Margiotta
Date	02/24/2010

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

In the Matter of Application Serial No. 77/757,021
Mark: THINK BEYOND THE POSSIBLE

-----X	
NOVARTIS AG,	:
Opposer,	:
against-	:
	:
	:
CASE WESTERN RESERVE	:
UNIVERSITY,	:
	:
Applicant.	:
-----X	

Opposition No. _____

NOTICE OF OPPOSITION

Opposer, Novartis AG, a Switzerland corporation located and doing business at CH-4002, Basel, Switzerland, believes that it would be damaged by registration of the mark THINK BEYOND THE POSSIBLE, Serial No. 77/757,021, published in the Official Gazette on November 25, 2009, and hereby opposes the same.

As grounds for the opposition, Opposer alleges as follows:

1. Opposer is the owner of the service mark THINK WHAT'S POSSIBLE in connection with medical services, counseling and educational services in connection with medical treatments, and pharmaceutical research and development. Opposer has used the mark THINK WHAT'S POSSIBLE in commerce since at least as early as 2001.
2. Novartis is the owner of the pending Application Serial No. 78/657,611 for THINK BEYOND THE POSSIBLE in connection with "medical services," in Class 44. A

printout from the United States Patent and Trademark Office's online databases reflecting this application is attached as Exhibit A.

3. Applicant has filed an application to register the mark THINK BEYOND THE POSSIBLE for "educating at university or colleges; education services in the nature of courses at the university level; providing continuing business education courses; providing continuing dental education courses; providing continuing legal education courses; providing continuing medical education courses; providing continuing nursing education courses" in Class 41; and for "mechanical research; medical research; physics research; providing medical and scientific research information in the field of clinical trials; research in the field of chemistry; research in the field of physics; research relating to mechanical engineering; scientific research; scientific research and development; scientific research in the field of genetics and genetic engineering" in Class 42, among services in other Classes.

4. Upon information and belief, Applicant has not yet used the THINK BEYOND THE POSSIBLE mark.

5. The mark THINK BEYOND THE POSSIBLE to be registered by Applicant is confusingly similar in sound, appearance, and commercial impression to Opposer's pending, long-used and well-known trademark THINK WHAT'S POSSIBLE. The services covered in Classes 41 and 42 of Applicant's application are closely related to the services offered by Opposer in connection with its THINK WHAT'S POSSIBLE mark such that consumer confusion is likely to result.

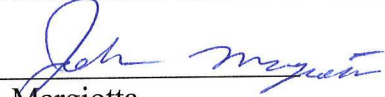
6. The registration of Applicant's mark in Classes 41 and 42 is inconsistent with Opposer's prior rights in the THINK WHAT'S POSSIBLE mark, and would destroy Opposer's investment and goodwill in its THINK WHAT'S POSSIBLE mark.

7. The mark THINK BEYOND THE POSSIBLE sought to be registered by Applicant in Class 41 and 42 is so similar to Opposer's THINK WHAT'S POSSIBLE mark as to be likely to cause confusion, or to cause mistake, or to deceive the purchasing public by creating the erroneous impression that Applicant's Class 41 and Class 42 applied-for services are authorized, licensed or sponsored by Opposer, or in some other way connected with Opposer, all to Opposer's great injury and harm. As such, any such use or registration of the mark THINK BEYOND THE POSSIBLE in connection with the services identified in Classes 41 and 42 by Applicant would violate Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

8. WHEREFORE, Opposer requests that its Notice of Opposition be granted and that Application Serial No. 77/757,021 be denied in Classes 41 and 42.


Dated: New York, New York
February 24, 2010

Respectfully submitted,
FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By: 
John P. Margiotta
Attorneys for Opposer
866 United Nations Plaza
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CERTIFICATE OF SERVICE

The undersigned, counsel for Opposer Novartis AG, hereby certifies that a true and correct copy of the attached **NOTICE OF OPPOSITION with Exhibit A** was served via first-class mail, postage prepaid, upon Applicant's correspondent, Peter Poulos, 10900 Euclid Avenue, Cleveland, Ohio 44106-7020., on this 24th day of February, 2010.



John P. Margiotta

EXHIBIT A



United States Patent and Trademark Office

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THINK WHAT'S POSSIBLE

Word Mark	THINK WHAT'S POSSIBLE
Goods and Services	IC 044. US 100 101. G & S: Medical services. FIRST USE: 20010000. FIRST USE IN COMMERCE: 20010000
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	78657611
Filing Date	June 24, 2005
Current Filing Basis	1B
Original Filing Basis	1B
Published for Opposition	October 10, 2006
Owner	(APPLICANT) Novartis AG CORPORATION SWITZERLAND CH-4002 Basel SWITZERLAND
Attorney of Record	Nancy Sabarra
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Serial Number: 78657611 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: (NOT AVAILABLE)

Mark

THINK WHAT'S POSSIBLE

(words only): THINK WHAT'S POSSIBLE

Standard Character claim: Yes

Current Status: A non-final refusal of the Statement of Use filed for this application has been mailed.

Date of Status: 2009-12-28

Filing Date: 2005-06-24

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 114

Attorney Assigned:
FENNESSY EDWARD JOHN

Current Location: M5X -TMO Law Office 114 - Examining Attorney Assigned

Date In Location: 2009-12-28

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Novartis AG

Address:

Novartis AG
CH-4002
Basel
Switzerland

Legal Entity Type: Corporation

State or Country of Incorporation: Switzerland

GOODS AND/OR SERVICES

International Class: 044

Class Status: Active

Medical services

Basis: 1(b)

First Use Date: 2001-00-00

First Use in Commerce Date: 2001-00-00

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2009-12-28 - Non-final action mailed

2009-12-28 - SU - Non-Final Action - Written

2009-12-07 - Statement of use processing complete

2009-12-03 - Amendment to Use filed

2009-12-03 - TEAS Statement of Use Received

2009-07-23 - Extension 5 granted

2009-06-30 - Extension 5 filed

2009-07-23 - Case Assigned To Intent To Use Paralegal

2009-06-30 - TEAS Extension Received

2008-12-12 - Extension 4 granted

2008-12-12 - Extension 4 filed

2008-12-12 - TEAS Extension Received

2008-06-25 - Extension 3 granted

2008-06-20 - Extension 3 filed

2008-06-20 - TEAS Extension Received
2008-01-09 - Extension 2 granted
2007-12-17 - Extension 2 filed
2007-12-17 - TEAS Extension Received
2007-06-29 - Extension 1 granted
2007-06-29 - Extension 1 filed
2007-06-29 - TEAS Extension Received
2007-01-02 - Noa Mailed - SOU Required From Applicant
2006-10-10 - Published for opposition
2006-09-20 - Notice of publication
2006-08-28 - Law Office Publication Review Completed
2006-08-25 - Assigned To LIE
2006-08-18 - Approved for Pub - Principal Register (Initial exam)
2006-08-10 - Amendment From Applicant Entered
2006-07-20 - Communication received from applicant
2006-07-20 - PAPER RECEIVED
2006-01-18 - Non-final action mailed
2006-01-18 - Non-Final Action Written
2006-01-17 - Assigned To Examiner
2005-06-28 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Nancy Sabarra

Correspondent

Nancy Sabarra

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