

ESTTA Tracking number: **ESTTA499390**

Filing date: **10/10/2012**

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	Texas Children's Hospital		
Entity	Non-profit corporation	Citizenship	Texas
Address	6621 Fannin St. Houston, TX 77030 UNITED STATES		

Attorney information	Jill McWhirter King & Spalding 1100 Louisiana St., Ste. 4000 Houston, TX 77002 UNITED STATES jmcwhirter@kslaw.com Phone:713.751.3239
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Applicant Information

Application No	85431881	Publication date	09/11/2012
Opposition Filing Date	10/10/2012	Opposition Period Ends	10/11/2012
Applicant	U.T. Physicians 6410 Fannin Street Houston, TX 77030 UNITED STATES		

Goods/Services Affected by Opposition

Class 044. All goods and services in the class are opposed, namely: Medical clinics
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Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	85693602	Application Date	08/02/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	TEXAS CHILDREN'S FETAL CENTER		

Design Mark	<h1>Texas Children's Fetal Center</h1>
Description of Mark	NONE
Goods/Services	Class 044. First use: First Use: 2007/05/13 First Use In Commerce: 2007/05/13 Medical services, namely, prenatal evaluation, diagnosis, fetal therapy, and fetal surgery

Attachments	85693602#TMSN.jpeg (1 page)(bytes) Opposition 101012.pdf (3 pages)(88395 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 Facsimile or email (by agreement only) on this date.

Signature	/Misty Barnett/
Name	Misty Barnett
Date	10/10/2012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Texas Children's Hospital, Inc.)	Opposition No. _____
Opposer,)	
)	
v.)	Serial No.: 85/431,881
)	Mark: Texas Fetal Center
U.T. Physicians)	
Applicant.)	

NOTICE OF OPPOSITION

Texas Children's Hospital, a non-profit corporation duly organized and existing under the laws of the State of Texas, with a mailing address of 6621 Fannin St., Houston, Texas 77030, believes that it will be damaged by the registration of the TEXAS FETAL CENTER mark shown in Application Serial No. 85,431,881, filed September 26, 2011 by U.T. Physicians, with a mailing address of 6410 Fannin Street, Houston, Texas 77030, and hereby opposes registration of the mark. The grounds for opposition are as follows:

1. By the application herein opposed, Applicant is seeking to obtain registration on the Principal Register of the trademark TEXAS FETAL CENTER, for:

International Class 44: Medical clinics

("Applicant's Mark"). This application (Serial No.: 85/431,881), based on Applicant's intent to use the mark in commerce, was filed September 26, 2011.

2. Applicant's Mark published for opposition on September 11, 2012. This Notice of Opposition is timely filed.
3. Since at least as early as May 13, 2007, Opposer has continuously offered medical services, namely, prenatal evaluation, diagnosis, fetal therapy, and fetal surgery under the mark TEXAS CHILDREN'S FETAL CENTER (the "TEXAS CHILDREN'S FETAL CENTER Mark").

4. On August 2, 2012, Opposer filed a U.S. Trademark Application to register the TEXAS CHILDREN'S FETAL CENTER Mark. The application was assigned serial number 85/693,602.
5. Opposer has continuously used the TEXAS CHILDREN'S FETAL CENTER Mark in connection with the promotion, advertising, and sale of its services since well before the filing date of Applicant's Mark.
6. As a result of Opposer's continuous use of the TEXAS CHILDREN'S FETAL CENTER Mark, its trademarks have developed and represent valuable goodwill inuring to the benefit of Opposer.
7. Opposer has priority of use over Applicant's Mark by virtue of having used the TEXAS CHILDREN'S FETAL CENTER Mark long before Applicant filed the application for Applicant's Mark, which is the constructive date of first use of Applicant's intent-to-use application.
8. Applicant's Mark is confusingly similar in appearance, sound, meaning, and commercial impression to Opposer's trademark TEXAS CHILDREN'S FETAL CENTER.
9. The services covered by the Applicant's Mark are closely related to Opposer's services.
10. Due to the nearly identical nature of Applicant's Mark and Opposer's TEXAS CHILDREN'S FETAL CENTER Mark, the closely-related nature of the services provided by the respective parties, consumers and potential consumers are likely to believe that Applicant's services originate from Opposer's, resulting in a likelihood of confusion in the marketplace and damage to the Opposer.
11. To add further confusion, around the same time that Applicant filed for the TEXAS FETAL CENTER mark, physicians working at Opposer's hospital and providing services under the TEXAS CHILDREN'S FETAL CENTER Mark left Opposer to join Applicant's hospital to provide services under the TEXAS FETAL CENTER mark.
12. In fact, Opposer is aware of several instances of actual confusion among the relevant public wherein Applicant was mistaken for the source of services offered under Opposer's TEXAS CHILDREN'S FETAL CENTER Mark and vice versa.
13. The services provided by Opposer under its TEXAS CHILDREN'S FETAL CENTER mark and the services intended by Applicant under its TEXAS FETAL CENTER mark will be promoted and sold in the same channels of trade to the same consumers or class of consumers.

14. The use and registration by Applicant of the mark TEXAS FETAL CENTER for Applicant's services is likely to cause confusion or to cause mistake or deception among consumers and potential consumers, with Opposer's previously used TEXAS CHILDREN'S FETAL CENTER Mark, again resulting in damage to Opposer.
15. Because of the highly-related nature of the services and the highly-similar nature of the marks in overall appearance, sound, meaning, and commercial impression, use and registration of the term TEXAS FETAL CENTER by Applicant is likely to cause confusion, mistake, or deception that Applicant's services are those of Opposer, or are otherwise endorsed, sponsored, or approved by Opposer causing further damage to Opposer.
16. If Applicant is granted registration of the Mark, Applicant would thereby obtain at least a prima facie exclusive right to the use of its alleged mark, which would be a source of further damage and injury to Opposer.
17. Registration of the mark shown in Application Serial No. 85/431,881 will result in damage to Opposer under the provisions of §2 (a) and §2(d) of the U.S. Trademark Act, 15 U.S.C. §1052, §1125 pursuant to the allegations stated above.

WHEREFORE, Opposer requests that registration of Application Serial No. 85/431,881 be denied and this Opposition be sustained.

Respectfully submitted:

Texas Children's Hospital

Date: October 10, 2012

By: Misty Barnett
Misty Barnett
Texas Children's Hospital
Assistant General Counsel

Please direct all correspondence to the attention of:

Jill McWhirter
King & Spalding
1100 Louisiana St., Ste. 4000
Houston, Texas 77002
Tel: 713.751.3239

Opposer hereby appoints: Jill McWhirter as its attorney with the full power to represent Opposer in connection with this proceeding.