

ESTTA Tracking number: **ESTTA562428**

Filing date: **10/01/2013**

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	Smiths Medical ASD, Inc
Granted to Date of previous extension	10/09/2013
Address	1265 Grey Fox Road St. Paul, MN 55112 UNITED STATES

Attorney information	Julia Anne Matheson Finnegan, Henderson, Farabow, Garrett & Dunner, LLP 901 New York Ave, NW Washington, DC 20001 UNITED STATES julia.matheson@finnegan.com, docketing@finnegan.com, Judy.Valusek@finnegan.com, jacob.mersing@finnegan.com Phone:202-408-4000
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Applicant Information

Application No	85906937	Publication date	06/11/2013
Opposition Filing Date	10/01/2013	Opposition Period Ends	10/09/2013
Applicant	Schmidt, Heidi 307 W. 14th Street Ellis, KS 67637 UNITED STATES		

Goods/Services Affected by Opposition

Class 010. All goods and services in the class are opposed, namely: Lighted oxygen supply tubing for home use with cannulas
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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. Registration No.	4373747	Application Date	10/12/2012
Registration Date	07/23/2013	Foreign Priority Date	NONE
Word Mark	ECHOGL0		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 010. First use: First Use: 2013/02/11 First Use In Commerce: 2013/02/11 Catheters

Attachments	10-1-13 Notice of Opposition - O-GLO 85906937.pdf(534714 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	/Julia Anne Matheson/
Name	Julia Anne Matheson
Date	10/01/2013

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

SMITHS MEDICAL ASD, INC. Opposer, v. HEIDI SCHMIDT, Applicant.	Opposition No. _____ Mark: O-GLO Serial No. 85906937 Filing Date: April 17, 2013
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NOTICE OF OPPOSITION

Smiths Medical ASD, Inc. ("Smiths"), believing that it will be damaged by the registration of Application Serial No. 85906937 for the mark O-GLO for "tubing for use with cannulas," opposes the application pursuant to 37 CFR § 2.101(b). Allegations with respect to Smiths are based on actual knowledge. Allegations with respect to Applicant Heidi Schmidt ("Schmidt") are based on information and belief.

Smiths and its ECHOGLO Mark

1. Smiths Medical ASD, Inc. is a corporation of Delaware with a principal place of business at 1265 Grey Fox Road, St. Paul, Minnesota 55112.
2. Smiths is a leading global provider of medical devices for the hospital, emergency, home and specialist environments. Its products are used during critical and intensive care, surgery, post-operative care during recovery, and in a series of high-end home infusion therapies.
3. On October 12, 2012, Smiths filed application Serial No. 85752562 for the mark ECHOGLO for "catheters." The application matured into Registration No. 4373747 on July 23, 2013. (Printouts from the PTO TESS and TSDR databases, including Assignment information, are attached as Exhibit A).

4. Smiths is currently using its ECHOGLO mark in commerce for catheters, and has used the mark for such goods since at least as early as February 11, 2013.

5. Since at least as early as its February 11, 2013 first use of its ECHOGLO name and mark, Smiths has advertised and promoted its ECHOGLO mark and goods.

Schmidt and Her O-GLO Application

6. Heidi Schmidt is an individual citizen of the United States with an address of 307 W. 14th Street, Ellis, Kansas 67637.

7. On April 17, 2013, Schmidt filed an intent-to-use application for the mark O-GLO for "tubing for use with cannulas" in Class 10. The application was assigned Serial No. 85906937.

8. On June 11, 2013, Application Serial No. 85906937 was published for opposition.

9. On July 1, 2013, Smiths timely filed a First 90 Day Request for Extension of Time to Oppose for Good Cause. The request was granted by TTAB, extending Smiths' deadline to oppose Application Serial No. 85906937 to October 9, 2013

10. On August 2, 2013, following settlement discussions between counsel for both parties, Schmidt filed a Voluntary Amendment seeking to amend the description of goods to the agreed upon description "lighted oxygen supply tubing for home use."

11. On September 27, 2013, the PTO's Office of Petitions issued a Post Publication Amendment refusal indicating Schmidt's proposed amendment was not acceptable because it designates goods that are broader in scope than the identification that was set forth in the application at publication. (Exhibit B).

12. On September 27, 2013, without discussions with Opposer, Schmidt filed a Post-Approval/Publication/Post-Notice of Allowance (NOA) Amendment to amend the description of goods to "lighted oxygen supply tubing for home use with cannulas." As of the date of this filing, the PTO has taken no action on Schmidt's September 27, 2013 amendment.

13. On September 30, 2013, in a telephone conversation with Applicant's counsel, counsel for Opposer requested a 60-day extension of the opposition period to allow the parties time to agree upon an additional amendment to Applicant's description of goods that could achieve an amicable resolution of the dispute. Counsel for Applicant declined to grant the requested extension. This opposition follows.

Likelihood of Confusion, 15 U.S.C. § 1052(d)

14. Smiths repeats and realleges each and every allegation set forth above.

15. Smiths has priority based on its valid and subsisting registration set forth in Paragraph 2 above. In addition, Smiths has priority based on its use of the ECHOGLO name and mark in commerce before Schmidt's O-GLO Application was filed and any date of first use that may be alleged by Schmidt.

16. The goods identified by the O-GLO Application overlap with those offered under Smiths name and mark and covered by Smiths' registration.

17. The mark shown in the O-GLO Application so resembles Smiths previously used and registered ECHOGLO name and mark as to be likely, when used in connection with the goods in the O-GLO Application, to cause confusion, to cause mistake, or to deceive under Section 2(d) of the Lanham Act, as amended, 15 U.S.C. § 1052(d).

18. For the foregoing reasons, Smiths will be damaged by the registration of the Schmidt's O-GLO Application Serial No. 85906937.

WHEREFORE, Smiths respectfully requests that registration Application Serial No. 85906937 be refused and this opposition be sustained.

This Notice of Opposition is submitted with payment for the filing fee. Any deficiency in the fee should be charged to Deposit Account No. 06-0916.

Respectfully submitted,

Date: October 1, 2013



Julia Anne Matheson
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.
901 New York Avenue N.W.
Washington, DC 20001-4413
Tel: 202.408.4000
Fax: 202.408.4400

Attorney for Opposer
Smiths Medical ASD, Inc.

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing NOTICE OF OPPOSITION was served by first class mail, postage prepaid, on this 1st day of October 2013, on Applicant and counsel for Applicant at the following addresses of record:

Heidi Schmidt
307 W. 14th Street,
Ellis, Kansas 67637

Caroline Kinsey
610 Abbot Road
East Lansing, Michigan 48823



Smiths Medical ASD, Inc. v. Heidi Schmidt
Mark: O-GLO
Serial No. 85906937

Exhibit A



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ECHOGLO

Word Mark	ECHOGLO
Goods and Services	IC 010. US 026 039 044. G & S: Catheters. FIRST USE: 20130211. FIRST USE IN COMMERCE: 20130211
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85752562
Filing Date	October 12, 2012
Current Basis	1A
Original Filing Basis	1B
Published for Opposition	February 12, 2013
Registration Number	4373747
Registration Date	July 23, 2013
Owner	(REGISTRANT) Smiths Medical ASD, Inc. CORPORATION DELAWARE 1265 Grey Fox Road St. Paul MINNESOTA 55112
Attorney of Record	Julia Anne Matheson
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Mark: ECHOGL0

ECHOGL0

US Serial Number: 85752562 Application Filing Date: Oct. 12, 2012
US Registration Number: 4373747 Registration Date: Jul. 23, 2013
Register: Principal
Mark Type: Trademark
Status: Registered, The registration date is used to determine when post-registration maintenance documents are due.
Status Date: Jul. 23, 2013
Publication Date: Feb. 12, 2013 Notice of Allowance Date: Apr. 09, 2013

Mark Information

Mark Literal Elements: ECHOGL0
Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.
Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [.] indicate deleted goods/services,
- Double parenthesis (()) identify any goods/services not claimed in a Section 15 affidavit of
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Catheters
International Class(es): 010 - Primary Class U.S Class(es): 026, 039, 044
Class Status: ACTIVE
Basis: 1(a)
First Use: Feb. 11, 2013 Use in Commerce: Feb. 11, 2013

Basis Information (Case Level)

Filed Use: No	Currently Use: Yes	Amended Use: No
Filed ITU: Yes	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: Smiths Medical ASD, Inc.
Owner Address: 1265 Grey Fox Road
St. Paul, MINNESOTA 55112
UNITED STATES
Legal Entity Type: CORPORATION State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record
Attorney Name: Julia Anne Matheson Docket Number: 11085.0290
Attorney Primary Email Address: docketing@finnegan.com Attorney Email Authorized: No

Correspondent
Correspondent Name/Address: JULIA ANNE MATHESON
FINNEGAN HENDERSON FARABOW GARRETT et al
901 NEW YORK AVE NW

WASHINGTON, DISTRICT OF COLUMBIA 20001-4432
UNITED STATES

Phone: 202.408.4020

Fax: 202.408.4400

Correspondent e-mail: docketing@finnegan.com

Correspondent e-mail Yes
Authorized:

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Jul. 23, 2013	REGISTERED-PRINCIPAL REGISTER	
Jun. 20, 2013	NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED	
Jun. 19, 2013	LAW OFFICE REGISTRATION REVIEW COMPLETED	69712
Jun. 17, 2013	ASSIGNED TO LIE	69712
May 31, 2013	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
May 13, 2013	STATEMENT OF USE PROCESSING COMPLETE	65362
Apr. 19, 2013	USE AMENDMENT FILED	65362
May 09, 2013	CASE ASSIGNED TO INTENT TO USE PARALEGAL	65362
Apr. 19, 2013	TEAS STATEMENT OF USE RECEIVED	
Apr. 09, 2013	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
Feb. 12, 2013	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Feb. 12, 2013	PUBLISHED FOR OPPOSITION	
Jan. 23, 2013	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Dec. 29, 2012	APPROVED FOR PUB - PRINCIPAL REGISTER	
Dec. 28, 2012	ASSIGNED TO EXAMINER	81855
Oct. 18, 2012	NOTICE OF PSEUDO MARK MAILED	
Oct. 17, 2012	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Oct. 16, 2012	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Jun. 19, 2013

Smiths Medical ASD, Inc. v. Heidi Schmidt
Mark: O-GLO
Serial No. 85906937

Exhibit B

UNITED STATES PATENT AND TRADEMARK OFFICE

U. S. APPLICATION SERIAL NUMBER: 85/906937

85906937

CORRESPONDENCE ADDRESS:

Caroline Kinsey
610 Abbot Road
East Lansing MI 48823

RETURN ADDRESS:

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

MARK:

O-GLO

ISSUE/MAILING DATE:

September 27, 2013

APPLICANT:

Schmidt, Heidi

CORRESPONDENT'S REFERENCE/DOCKET NO :

N/A

CORRESPONDENT'S EMAIL ADDRESS :

ckinsey@law.msu.edu

POST PUBLICATION AMENDMENT REFUSED

Dear Ms. Kinsey:

The assigned paralegal has reviewed the requested post publication amendment filed on August 2, 2013 and determined the following.

The identification in the proposed amendment is not acceptable because it designates goods that are broader in scope than the identification that was set forth in the application at publication. *See* 37 C.F.R. §2.71(a); *Trademark Manual of Examining Procedure* (TMEP) §§1402.06, 1402.06(a), and 1402.07. While an application may be amended to clarify or limit the identification, additions to the identification are not permitted. 37 C.F.R. §2.71(a); TMEP §§1402.06 and 1402.07.

The application will be returned to processing without entry of the requested amendment.

Applicant's only recourse is to file a petition to the Director requesting that jurisdiction be restored to the examining attorney to consider the merits of the amendment. 37 C.F.R. §§2.84 and 2.146. The requirements for filing a petition include a \$100 petition fee and a verified statement of the facts signed by the individual petitioner, someone with legal authority to bind a juristic petitioner (e.g., a corporate officer or general partner of a partnership), or a practitioner authorized to practice before the USPTO pursuant to

37 C.F.R. §11.14. In the case of joint petitioners who are not represented by a qualified practitioner, all must sign. 37 C.F.R. §§2.146(c) and 2.193(e)(5)(ii); TMEP §1705.07.

However, it is likely that the examining attorney will deny the amendment even if the petition is granted and jurisdiction is restored. In addition, please note that if the petition is received after it is too late to withdraw the application from issuance of a registration, the petition will be dismissed without consideration on the merits.

Sincerely,

/Lisa Wallace/
Paralegal Specialist
Office of Petitions
(571) 272-9582

To check the status of your application at any time, visit the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>.

For general and other useful information about trademarks, you are encouraged to visit the USPTO web site at <http://www.uspto.gov/main/trademarks.htm>.