

ESTTA Tracking number: **ESTTA611491**

Filing date: **06/23/2014**

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	MEDACTA INTERNATIONAL S.A.
Granted to Date of previous extension	06/21/2014
Address	Strada Regina 6874 Castel San Pietro, SWITZERLAND

Attorney information	Allison R. Imber, Esq. Allen, Dyer, Doppelt, Milbrath & Gilchrist, P.A. 255 South Orange Avenue, Suite 1401 Orlando, FL 32801 UNITED STATES aimber@addmg.com Phone:407-841-2330
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Applicant Information

Application No	85845365	Publication date	04/22/2014
Opposition Filing Date	06/23/2014	Opposition Period Ends	06/21/2014
Applicant	Curexo Technology Corporation 47320 Mission Falls Court Fremont, CA 94539 UNITED STATES		

Goods/Services Affected by Opposition

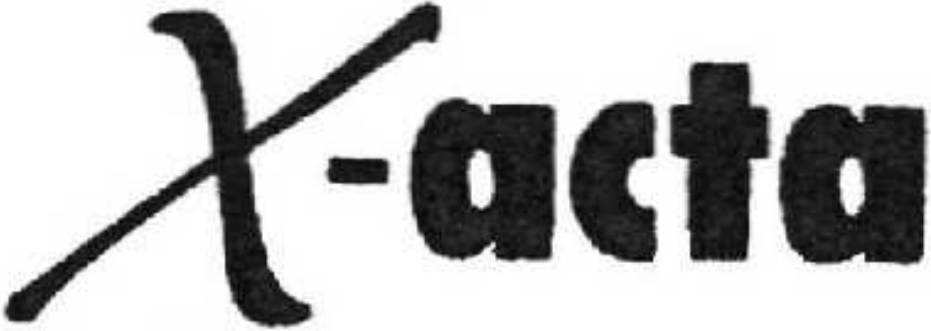
Class 010. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Medical apparatus and instruments for use in orthopedic surgery; Surgical and medical apparatus and instruments for use in orthopedic surgery; Surgical and medical apparatus and instruments for use in orthopedic total joint replacement surgery; Surgical robots

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. Application No.	79133557	Application Date	06/03/2013
Registration Date	NONE	Foreign Priority Date	01/08/2013
Word Mark	X-ACTA		

Design Mark	
Description of Mark	The mark consists of the stylized wording "X-ACTA".
Goods/Services	Class 010. First use: First Use: 0 First Use In Commerce: 0 Prostheses and orthopedic implants for hips, femurs, and knees, particularly rods, joints, whether cemented or not

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	X-ACTA		
Goods/Services	Prostheses and orthopedic implants for hips, femurs, and knees, particularly rods, joints, whether cemented or not		

Attachments	79133557#TMSN.jpeg(bytes) Notice of Opposition.pdf(272308 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	/Allison R. Imber/
Name	Allison R. Imber, Esq.
Date	06/23/2014

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

In the Matter of Trademark Application Serial No. 85/845365
For the Mark **XACTOS**
Published in the Official Gazette on April 22, 2014

Medacta International S.A.,

Opposer,

Opposition No. _____

vs.

Curexo Technology Corp.,

Applicant.

_____ /

NOTICE OF OPPOSITION

Medacta International S.A. (“Medacta”), a Swiss corporation located at Strada Regina, 6874 Castel San Pietro, Switzerland, believes that it will be damaged by the registration of the mark **XACTOS**, shown in U.S. Trademark Application Serial No. 85/845365 (the “Subject Application”), specified for use on “medical apparatus and instruments for use in orthopedic surgery; surgical and medical apparatus and instruments for use in orthopedic surgery; surgical and medical apparatus and instruments for use in orthopedic total joint replacement surgery; surgical robots” in International Class 10, as filed by Curexo Technology Corporation (“Applicant”) and published in the Official Gazette on April 22, 2014, and hereby opposes the same pursuant to a 30-day extension of time granted on May 19, 2014.

The grounds for the opposition are as follows:

1. Medacta is the owner of U.S. Trademark Application Serial No. 79/133557 (the “Medacta Application”) for the mark **X-ACTA Stylized** (the “**X-ACTA Mark**”) as specified for use on “prostheses and orthopedic implants for hips, femurs, and knees, particularly rods, joints,

whether cemented or not” in International Class 10. (Exhibit A, composite of true and correct copy of Medacta Application and TARR status page for same). The Medacta Application claims priority to International Registration No. 1169233 and has a priority date of January 8, 2013. (Exhibit B, true and correct copy of International Registration No. 1169233).

2. Applicant filed the Subject Application on February 8, 2013 on the basis of intent to use, seeking to register the mark **XACTOS** on “medical apparatus and instruments for use in orthopedic surgery; surgical and medical apparatus and instruments for use in orthopedic surgery; surgical and medical apparatus and instruments for use in orthopedic total joint replacement surgery; surgical robots” in International Class 10. To date, Applicant has not filed an Amendment to Allege Use, and, upon information and belief, is not yet using its mark in commerce on or in connection with the goods in question in the United States.

3. The Subject Application for the mark **XACTOS** identifies a mark that is very similar in sight, sound, connotation, and commercial impression to the **X-ACTA** Mark.

4. The Subject Application for the mark **XACTOS** identifies goods that are similar, if not identical, to those goods listed in the Medacta Application.

5. Upon information and belief, Applicant will be selling, and offering for sale, goods under the mark **XACTOS** through the same channels of trade and to the same classes of purchasers that would be utilized by Medacta in connection with the **X-ACTA** Mark noted in Paragraph 1 above.

6. The Medacta Application is entitled to a priority date of January 8, 2013 pursuant to Section 66(a) of the Trademark Act, which is prior to the February 8, 2013 filing date of the Subject Application and, upon information and belief, before Applicant used the mark **XACTOS**

in commerce on or in connection with the goods identified in the Subject Application in the United States.

7. The Subject Application should be denied registration because Applicant's mark as shown in the Subject Application is confusingly and deceptively similar to the mark shown in the Medacta Application, which is entitled to an earlier priority date, and because Applicant's mark is likely to cause confusion with the **X-ACTA** Mark as to the source of the goods.

8. If Applicant is granted the registration herein opposed, it would obtain at least a *prima facie* exclusive right to use the mark **XACTOS** for the goods shown in the Subject Application, thereby causing damage and injury to Medacta. Any defect, objection or fault found with Applicant's goods promoted under the mark **XACTOS** is likely to reflect upon Medacta and expose Medacta to liability.

WHEREFORE, Medacta respectfully requests that this opposition be sustained, and the Subject Application for the mark **XACTOS** be denied registration.

Respectfully submitted,

Dated: June 23, 2014

/Allison R. Imber/
David L. Sigalow, Esq.
Allison R. Imber, Esq.
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Orlando, Florida 32801
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Email: dsigalow@addmg.com,
aimber@addmg.com

**Attorneys for Opposer
Medacta International S.A.**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U. S. Mail on June 23, 2014, to:

Margaret C. McHugh, Esq.
Kilpatrick Townsend & Stockton LLP
Two Embarcadero Center, 8th Floor
San Francisco, CA 94111

/Michelle Rodriguez/

Michelle Rodriguez

EXHIBIT A

STATUS

DOCUMENTS

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Generated on: This page was generated by TSDR on 2014-06-23 14:38:32 EDT

Mark: X-ACTA



US Serial Number: 79133557

Application Filing Date: Jun. 03, 2013

Register: Principal

Mark Type: Trademark

Status: Application has been published for opposition. The opposition period begins on the date of publication.

Status Date: Apr. 15, 2014

Publication Date: Apr. 15, 2014

- Mark Information

[▲ Collapse All](#)

Mark Literal Elements: X-ACTA

Standard Character Claim: No

Mark Drawing Type: 5 - AN ILLUSTRATION DRAWING WITH WORD(S) /LETTER(S)/ NUMBER(S) INSTYLIZED FORM

Description of Mark: The mark consists of the stylized wording "X-ACTA".

Color(s) Claimed: Color is not claimed as a feature of the mark.

- Related Properties Information

International Registration 1169233
Number:

International Registration Jun. 03, 2013
Date:

4319332

Claimed Ownership of US Registrations:

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 incontestability; and
- Asterisks *.* identify additional (new) wording in the goods/services.

For: Prostheses and orthopedic implants for hips, femurs, and knees, particularly rods, joints, whether cemented or not

International Class(es): 010 - Primary Class

U.S Class(es): 026, 039, 044

Class Status: ACTIVE

Basis: 66(a)

Basis Information (Case Level)

Filed Use: No	Currently Use: No	Amended Use: No
Filed ITU: No	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: Yes	Currently 66A: Yes	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: MEDACTA INTERNATIONAL S.A.

Owner Address: Strada Regina
CH-6874 Castel San Pietro
SWITZERLAND

Legal Entity Type: CORPORATION

SWITZERLAND

State or Country Where
Organized:

= Attorney/Correspondence Information

Attorney of Record

Attorney Name: Allison R. Imber, Esq.

Docket Number: 60704

Attorney Primary Email aimber@addmg.com

Attorney Email Authorized: Yes

Address:

Correspondent

Correspondent Allison R. Imber, Esq.

Name/Address: Allen, Dyer, Doppelt, Milbrath & Gilchrist, P.A.
255 South Orange Avenue, Suite 1401
Orlando, FLORIDA 32801
UNITED STATES

Phone: 407-841-2330

Fax: 407-841-2343

Correspondent e-mail: aimber@addmg.com

Correspondent e-mail Yes
Authorized:

Domestic Representative - Not Found

▾ Prosecution History

Date	Description	Proceeding Number
Jun. 13, 2014	NOTIFICATION PROCESSED BY IB	
Apr. 15, 2014	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Apr. 15, 2014	PUBLISHED FOR OPPOSITION	
Apr. 03, 2014	NEW REPRESENTATIVE AT IB RECEIVED	
Mar. 26, 2014	NOTIFICATION OF POSSIBLE OPPOSITION SENT TO IB	
Mar. 26, 2014	NOTICE OF START OF OPPOSITION PERIOD CREATED, TO BE SENT TO IB	

Mar. 26, 2014	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Mar. 12, 2014	LAW OFFICE PUBLICATION REVIEW COMPLETED	66213
Mar. 11, 2014	ASSIGNED TO LIE	66213
Feb. 24, 2014	APPROVED FOR PUB - PRINCIPAL REGISTER	
Feb. 22, 2014	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Feb. 21, 2014	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Feb. 21, 2014	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Jan. 30, 2014	ATTORNEY REVOKED AND/OR APPOINTED	
Jan. 30, 2014	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Oct. 15, 2013	REFUSAL PROCESSED BY IB	
Sep. 25, 2013	NON-FINAL ACTION MAILED - REFUSAL SENT TO IB	
Sep. 25, 2013	REFUSAL PROCESSED BY MPU	68359
Sep. 24, 2013	NON-FINAL ACTION (IB REFUSAL) PREPARED FOR REVIEW	
Sep. 23, 2013	NON-FINAL ACTION WRITTEN	81112
Sep. 17, 2013	ASSIGNED TO EXAMINER	81112
Aug. 07, 2013	APPLICATION FILING RECEIPT MAILED	
Aug. 03, 2013	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Aug. 01, 2013	SN ASSIGNED FOR SECT 66A APPL FROM IB	

- International Registration Information (Section 66a)

International Registration 1169233
Number:

Priority Claimed Flag: Yes

Intl. Registration Status: REQUEST FOR EXTENSION OF PROTECTION PROCESSED

International Registration Jun. 03, 2013
Date:

Date of Section 67 Priority Jan. 08, 2013
Claim:

Date of International Aug. 01, 2013
Registration Status:

Notification of Designation Aug. 01, 2013
Date:

Date of Automatic Feb. 01, 2015
Protection:

International Registration Jun. 03, 2023
Renewal Date:

First Refusal Flag: Yes

TM Staff and Location Information

TM Staff Information

TM Attorney: HUSSAIN, TASNEEM

Law Office Assigned: LAW OFFICE 118

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Mar. 12, 2014

Assignment Abstract Of Title Information - Click to Load

Proceedings - Click to Load

EXHIBIT B

CERTIFICAT D'ENREGISTREMENT

Le Bureau international de l'Organisation Mondiale de la Propriété Intellectuelle (OMPI) certifie que les indications figurant dans le présent certificat sont conformes aux inscriptions portées au registre international tenu en vertu de l'Arrangement et du Protocole de Madrid.

Reproduction de la marque



Numéro d'enregistrement **1 169 233**
Date d'enregistrement **3 juin 2013**
Date d'échéance **3 juin 2023**
Nom et adresse du titulaire **MEDACTA INTERNATIONAL S.A.**
Strada Regina, CH-6874 Castel San Pietro (Suisse)
Classification des éléments figuratifs **27.5**

Liste des produits et services NCL(10-2013) **10 Prothèses, implantations orthopédiques, telles que hanches, fémurs, genoux, notamment tiges, joints, cimentés ou non.**
Enregistrement de base **Suisse, 08.01.2013, 644638**
Données relatives à la priorité selon la Convention de Paris **Suisse, 08.01.2013, 644638**
Désignations selon l'Arrangement de Madrid **Algérie**
Désignations selon le Protocole de Madrid **Australie, Danemark, Estonie, États-Unis d'Amérique, Finlande, Grèce, Irlande, Islande, Japon, Lituanie, Norvège, Oman, République de Corée, Royaume-Uni, Singapour, Suède, Turquie**
Désignations selon le Protocole de Madrid en vertu de l'article 9sexies **Albanie, Allemagne, Autriche, Benelux, Bulgarie, Chine, Chypre, Croatie, Cuba, Espagne, Ex-République yougoslave de Macédoine, Fédération de Russie, France, Hongrie, Italie, Lettonie, Monténégro, Pologne, Portugal, République arabe syrienne, République islamique d'Iran, République tchèque, Roumanie, Serbie, Slovaquie, Ukraine**
Déclaration d'intention d'utiliser la marque **États-Unis d'Amérique, Irlande, Royaume-Uni, Singapour**
Date de notification **01.08.2013**

CERTIFICAT D'ENREGISTREMENT

(suite) 1 169 233

Langue de Français
la demande internationale

Ásta Valdimarsdóttir

Ásta Valdimarsdóttir
Chef du Service des opérations
Service d'enregistrement Madrid
Secteur des marques et des dessins et
modèles

Genève, le 1 août 2013