

ESTTA Tracking number: **ESTTA703467**

Filing date: **10/20/2015**

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	FNC Medical Corporation
Granted to Date of previous extension	10/21/2015
Address	6000 Leland Street Ventura, CA 93003 UNITED STATES

Attorney information	Jeffrey L. Van Hoosear Knobbe, Martens, Olson & Bear, LLP 2040 Main Street, 14th Floor Irvine, CA 92614 UNITED STATES efiling@knobbe.com Phone:(949) 760-0404
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Applicant Information

Application No	86521466	Publication date	06/23/2015
Opposition Filing Date	10/20/2015	Opposition Period Ends	10/21/2015
Applicant	Genomma Lab Internacional, S.A.B. de C.V. 3-A Col. Juarez, 06600 MEXICO		

Goods/Services Affected by Opposition

Class 003. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: body creams and lotions

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. Registration No.	2470802	Application Date	10/21/1997
Registration Date	07/24/2001	Foreign Priority Date	NONE
Word Mark	DIABET-X		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 005. First use: First Use: 1997/08/15 First Use In Commerce: 1997/08/15 ANTI-MICROBIAL BODY CREAM FOR DIABETIC PATIENTS; ANTI-FUNGAL CREAM FOR DIABETICPATIENTS		
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U.S. Registration No.	2610009	Application Date	10/21/1997
Registration Date	08/20/2002	Foreign Priority Date	NONE
Word Mark	DIABET-X		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1997/08/00 First Use In Commerce: 1997/08/00 medicated personal hygiene and health care products for diabetic patients, namely, [skin powder,] hand cream, [foot soaking solutions,] shampoo, hair rinse, hair conditioners, [stump powder,] and body wash		

Attachments	2015-10-20 Notice of Opposition - FNCMED.068M.PDF(484375 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	/jvh/
Name	Jeffrey L. Van Hoosear
Date	10/20/2015

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

FNC Medical Corporation,

Opposer,

v.

Genomma Lab Internacional, S.A.B. de C.V.,

Applicant.

Opposition No. _____



Mark:

Serial No. 86/521,466

NOTICE OF OPPOSITION

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

Dear Sir or Madam: Opposer, FNC Medical Corporation, a California corporation, located and doing business at 6000 Leland Street, Ventura, California 93003 (hereinafter referred to as "Opposer"), believes that it will be damaged by the registration of the mark shown in Application No. 86/521,466 ("Applicant's Mark"), filed February 2, 2015 by Genomma Lab Internacional, S.A.B. de C.V., (hereinafter referred to as "Applicant"), for "body creams and lotions" in International Class 3 ("Applicant's Goods"), and hereby opposes the same.

A description of Applicant's application is as follows:

Mark:	DIABETTX and Design
Serial No.:	86/521,466
Filing Date	February 2, 2015
Publication Date:	June 23, 2015
Class:	3
Goods:	Body creams and lotions

As grounds for opposition, it is alleged that:

1. Since at least as early as 1997, Opposer has been using the DIABET-X mark (“Opposer’s Mark”) in connection with various personal care products for diabetic patients in Class 5. Said use of the DIABET-X mark has been valid and continuous, and has not been abandoned.

2. Through a substantial amount of advertising, promotion and sales, Opposer’s Mark has acquired extensive goodwill and consumer recognition prior to the February 2, 2015 filing date of Applicant’s Application No. 86/521,466. Prior to Applicant’s filing date, the purchasing public has come to associate Opposer’s Mark with Opposer.

3. Opposer is the owner of U.S. Trademark Registration No. 2,470,802, which registered on July 24, 2001, for the mark DIABET-X for “anti-microbial body cream for diabetic patients; anti-fungal cream for diabetic patients” in International Class 5. This registration is incontestable. A copy of this registration is attached hereto.

4. Opposer is the owner of U.S. Trademark Registration No. 2,610,009, which registered on August 20, 2002, for the mark DIABET-X for “medicated personal hygiene and health care products for diabetic patients, namely, hand cream, shampoo, hair rinse, hair conditioners, and body wash” in International Class 5. This registration is incontestable. A copy of this registration is attached hereto.

5. Opposer relies on the registrations set forth herein. Opposer’s registrations are valid, subsisting, unrevoked, uncanceled, and not abandoned. As such, these registrations constitute *prima facie* evidence of the validity of the registered marks, Opposer’s ownership of the marks shown therein, and Opposer’s exclusive right to use the registered marks in commerce in connection with the goods set forth therein, without condition or limitation. Said registrations also constitute notice to Applicant of Opposer’s claim of ownership of the marks shown therein, all as provided in Sections 7(b), 22 and 33(a) of the Trademark Act.

6. Opposer also relies on its prior common law rights in Opposer's Mark in connection with its goods.

7. Opposer's dates of first use and the application filing dates of its above referenced registrations substantially precede the filing date of Applicant's Application.

8. In view of the similar nature of Opposer's Mark and Applicant's Mark, Opposer alleges that Applicant's Mark so resembles Opposer's Mark as to be likely to cause confusion, to cause mistake or to deceive under Section 2(d) of the Trademark Act. In view of Opposer's prior statutory and common law rights in its marks, Applicant is not entitled to the registration of Applicant's Mark pursuant to Section 2(d) of the Trademark Act.

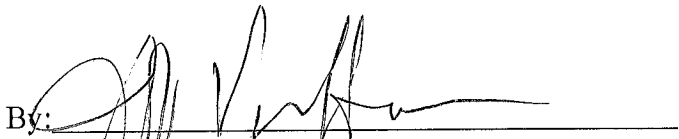
9. In addition, Applicant's use and registration of Applicant's Mark causes, and will cause, dilution of the distinctive quality of Opposer's Marks under Section 43(c) of the Trademark Act to the damage and injury of Opposer.

10. By reason of all the foregoing, Opposer will be gravely damaged by the registration of Applicant's Application, because registration of the mark would be in violation of Opposer's trademark rights.

WHEREFORE, Opposer prays that Application Serial No. 86/521,466 be rejected and stricken, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Respectfully submitted,
KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: Oct. 20, 2015

By: 
Jeffrey L. Van Hoosear
2040 Main Street
Fourteenth Floor
Irvine, CA 92614
(949) 760-0404
Attorneys for Opposer,
FNC Medical Corporation

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51 and 52

Reg. No. 2,470,802

United States Patent and Trademark Office

Registered July 24, 2001

**TRADEMARK
PRINCIPAL REGISTER**

DLABET-X

FNC MEDICAL CORPORATION (CALIFORNIA
CORPORATION)
1025 CINDY LANE
CARPENTERIA, CA 93013

FIRST USE 8-15-1997; IN COMMERCE 8-15-1997.

SER. NO. 75-376,992, FILED 10-21-1997.

FOR: ANTI-MICROBIAL BODY CREAM FOR
DIABETIC PATIENTS; ANTI-FUNGAL CREAM
FOR DIABETIC PATIENTS, IN CLASS 5 (U.S. CLS.
6, 18, 44, 46, 51 AND 52).

RONALD MCMORROW, EXAMINING ATTORNEY

Side - 1



**NOTICE OF ACCEPTANCE OF §8
DECLARATION AND §9 RENEWAL
MAILING DATE: Jun 9, 2011**

The declaration and renewal application filed in connection with the registration identified below meets the requirements of Sections 8 and 9 of the Trademark Act, 15 U.S.C. §§1058 and 1059. The declaration is accepted and renewal is granted. The registration remains in force.

For further information about this notice, visit our website at: <http://www.uspto.gov>. To review information regarding the referenced registration, go to <http://tarr.uspto.gov>.

REG NUMBER: 2470802
MARK: DIABET-X
OWNER: FNC Medical Corporation

Side - 2

UNITED STATES PATENT AND TRADEMARK OFFICE
COMMISSIONER FOR TRADEMARKS
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Cindy N. Nguyen
KNOBBE MARTENS OLSON & BEAR, LLP
2040 MAIN STREET, 14TH FLOOR
IRVINE, CA 92614



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Typed Drawing

Word Mark **DIABET-X**
 Goods and Services IC 005. US 006 018 044 046 051 052. G & S: ANTI-MICROBIAL BODY CREAM FOR DIABETIC PATIENTS; ANTI-FUNGAL CREAM FOR DIABETIC PATIENTS. FIRST USE: 19970815. FIRST USE IN COMMERCE: 19970815
 Mark Drawing Code (1) TYPED DRAWING
 Serial Number 75376992
 Filing Date October 21, 1997
 Current Basis 1A
 Original Filing Basis 1A
 Published for Opposition September 1, 1998
 Registration Number 2470802
 Registration Date July 24, 2001
 Owner (REGISTRANT) FNC Medical Corporation CORPORATION CALIFORNIA 6000 Leland Street Ventura CALIFORNIA 93003
 Attorney of Record Cindy N. Nguyen
 Type of Mark TRADEMARK
 Register PRINCIPAL
 Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20110609.
 Renewal 1ST RENEWAL 20110609
 Live/Dead Indicator LIVE

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Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51, and 52

Reg. No. 2,610,009

United States Patent and Trademark Office

Registered Aug. 20, 2002

**TRADEMARK
PRINCIPAL REGISTER**

DIABET-X

FNC MEDICAL CORPORATION (CALIFORNIA
CORPORATION)
1025 CINDY LANE
CARPENTERIA, CA 93013

FOR: MEDICATED PERSONAL HYGIENE AND
HEALTH CARE PRODUCTS FOR DIABETIC PA-
TIENTS, NAMELY, SKIN POWDER, HAND
CREAM, FOOT SOAKING SOLUTIONS, SHAMPOO,
HAIR RINSE, HAIR CONDITIONERS, STUMP POW-

DER, AND BODY WASH, IN CLASS 5 (U.S. CLS. 6, 18,
44, 46, 51 AND 52).

FIRST USE 8-0-1997; IN COMMERCE 8-0-1997.

SN 75-376,768, FILED 10-21-1997.

RONALD MCMORROW, EXAMINING ATTORNEY

From: TMOfficialNotices@USPTO.GOV
Sent: Friday, September 7, 2012 11:01 PM
To: efilling@knobbe.com
Subject: Trademark RN 2610009: Official Notice of Acceptance and Renewal under Sections 8 and 9 of the Trademark Act

Serial Number: 75376768
Registration Number: 2610009
Registration Date: Aug 20, 2002
Mark: DIABET-X
Owner: FNC Medical Corporation

Sep 7, 2012

NOTICE OF ACCEPTANCE UNDER SECTION 8

The declaration of use or excusable nonuse filed for the above-identified registration meets the requirements of Section 8 of the Trademark Act, 15 U.S.C. §1058. **The Section 8 declaration is accepted.**

NOTICE OF REGISTRATION RENEWAL UNDER SECTION 9

The renewal application filed for the above-identified registration meets the requirements of Section 9 of the Trademark Act, 15 U.S.C. §1059. **The registration is renewed.**

The registration will remain in force for the class(es) listed below for the remainder of the ten-year period, calculated from the registration date, unless canceled by an order of the Commissioner for Trademarks or a Federal Court.

Class(es):
005

TRADEMARK SPECIALIST
POST-REGISTRATION DIVISION
571-272-9500

REQUIREMENTS FOR MAINTAINING REGISTRATION IN SUCCESSIVE TEN-YEAR PERIODS

WARNING: Your registration will be canceled if you do not file the documents below during the specified time periods.

What and When to File: You must file a declaration of use (or excusable nonuse) and an application for renewal between every 9th and 10th-year period, calculated from the registration date. See 15 U.S.C. §§1058, 1059.

Grace Period Filings

The above documents will be considered as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

*****The USPTO WILL NOT SEND ANY FURTHER NOTICE OR REMINDER OF THESE REQUIREMENTS. THE**

REGISTRANT SHOULD CONTACT THE USPTO ONE YEAR BEFORE THE EXPIRATION OF THE TIME PERIODS SHOWN ABOVE TO DETERMINE APPROPRIATE REQUIREMENTS AND FEES.**

To view this notice and other documents for this application on-line, go to <http://tdr.uspto.gov/search.action?sn=75376768>.
NOTE: This notice will only be available on-line the next business day after receipt of this e-mail.



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Typed Drawing

Word Mark DIABET-X

Goods and Services IC 005. US 006 018 044 046 051 052. G & S: medicated personal hygiene and health care products for diabetic patients, namely, [skin powder,] hand cream, [foot soaking solutions,] shampoo, hair rinse, hair conditioners, [stump powder,] and body wash. FIRST USE: 19970800. FIRST USE IN COMMERCE: 19970800

Mark Drawing Code (1) TYPED DRAWING

Serial Number 75376768

Filing Date October 21, 1997

Current Basis 1A

Original Filing Basis 1B

Published for Opposition September 1, 1998

Registration Number 2610009

Registration Date August 20, 2002

Owner (REGISTRANT) FNC Medical Corporation CORPORATION CALIFORNIA 1025 Cindy Lane Carpentaria CALIFORNIA 93013

Attorney of Record Jeffrey Van Hoosear

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20120907.

Renewal 1ST RENEWAL 20120907

Live/Dead Indicator LIVE

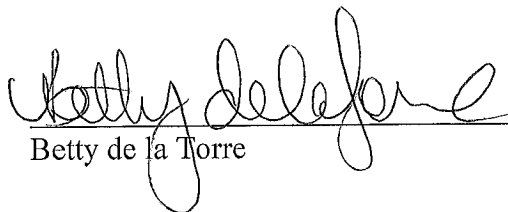
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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing Notice of Opposition upon Applicant's counsel by depositing one copy thereof in the United States Mail, first-class postage prepaid, on October 20, 2015, addressed as follows:

Paul F. Kilmer
HOLLAND & KNIGHT LLP
800 17th St NW Ste 1100
Washington, District Of Columbia 20006-3962


Betty de la Torre

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