

ESTTA Tracking number: **ESTTA908028**

Filing date: **07/09/2018**

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	Said I. Hakky
Granted to Date of previous extension	07/14/2018
Address	8547 Merrimoor Blvd. East Largo, FL 33777-3145 UNITED STATES

Attorney information	Morton J. Rosenberg Rosenberg, Klein & Lee 3458 Ellicott Center Drive, Suite 101 Ellicott City, MD 21043 UNITED STATES Email: RKL@RKLPLAW.COM
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Applicant Information

Application No	86627956	Publication date	05/15/2018
Opposition Filing Date	07/09/2018	Opposition Period Ends	07/14/2018
Applicant	Boston Scientific Scimed, Inc. One Scimed Place Maple Grove, MN 55311 UNITED STATES		

Goods/Services Affected by Opposition

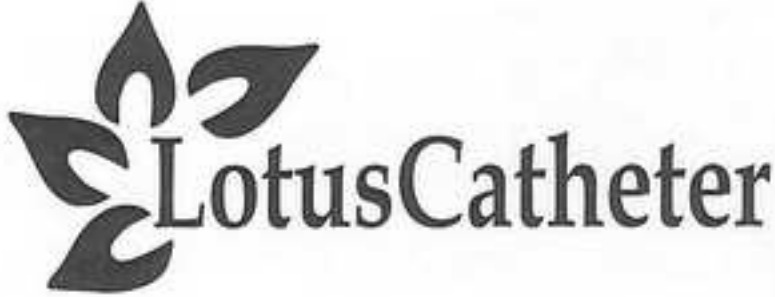
Class 010. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Medical devices and instruments for use in the treatment of cardiac, cardiovascular, and heart valve disease and disorders, namely, implantable heart valves, and implantable heart valve delivery systems for use in heart valve replacements

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
No use of mark in commerce before application or amendment to allege use was filed	Trademark Act Sections 1(a) and (c)
Dilution by blurring	Trademark Act Sections 2 and 43(c)

Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	87341273	Application Date	02/18/2017
Registration Date	NONE	Foreign Priority	NONE

		Date	
Word Mark	LOTUSCATHETER		
Design Mark			
Description of Mark	The mark consists of the wording "LOTUSCATHETER" in stylized form with four leaf-like designs partially surrounding the letter "L".		
Goods/Services	Class 010. First use: First Use: 2017/03/31 First Use In Commerce: 2017/03/31 MEDICAL CATHETERS		

Attachments	87341273#TMSN.png(bytes) 2493-50-OPP-NOTICE OF OPPOSITION-ASFILED-JUL9-2018.pdf(246744 bytes)
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Signature	/Nicole B. Rackiewicz/
Name	Nicole B. Rackiewicz
Date	07/09/2018

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

Said I. Hakky :
Opposer :
v. : Serial No. 86627956
Boston Scientific Scimed, Inc. :
Applicant :

NOTICE OF OPPOSITION

Opposer, Said I. Hakky, an individual having an address at 8547 Merrimoor Blvd., East Largo, Florida 33777-3145, believes that it would be damaged by the issuance of a registration for the trademark “LOTUS EDGE” filed for by Boston Scientific Scimed, Inc., a Minnesota Corporation, and therefore opposes Application No. 86627956 as to all of the applied-for goods in International Class 10. As grounds for this opposition, Opposer, by the undersigned Attorneys, hereby allege as follows:

(1) Opposer is the owner of Trademark Application Serial No. 87341273, an intent-to-use Application, filed at the USPTO on February 18, 2017.

(2) Application Serial No. 87341273 is directed to the mark



for “medical catheters” in International Class 10.

(3) An Office Action was issued on May 22, 2017 for Application Serial No. 87341273 requesting an amendment to the description of Opposer’s mark and alerting Opposer of two prior pending applications, namely, Serial Nos. 86627956 and 86304946.


(4) Opposer filed a response to the May 22, 2017 Office Action on June 12, 2017 amending the description of the mark as required and subsequently, on June 26, 2017, a second Office Action was issued suspending action on Opposer's Application based upon the prior filed applications, Serial Nos. 86627956 and 86304946.

(5) Application Serial No. 86304946 has been abandoned for failure to file a Statement of Use but Application Serial No. 86627956, which is the basis of this Opposition, remains pending.

(6) Application Serial No. 86627956 was published for Opposition on May 15, 2018.

(7) Opposer filed an Amendment to Allege Use with the USPTO on June 11, 2018 alleging a first use in commerce date of at least as early as March 31, 2017 and providing specimens of the mark in use in commerce in connection with the goods.



(8) Opposer's  mark has been used consistently in commerce in the United States in connection with "catheters" since at least the first use date of March 31, 2017.

(9) Also on June 11, 2018, Opposer filed with the TTAB an Extension of Time to Oppose Applicant's "LOTUS EDGE" mark, Application Serial No. 86627956 giving Opposer until July 11, 2018 to file this Notice of Opposition.

(10) On July 2, 2018, Opposer received a Suspension Notice indicating that the Amendment to Allege Use filed on June 11, 2018 satisfies the filing requirements under 37 C.F.R. §2.76(c) and all statutory requirements. The July 2, 2018 correspondence also indicated

that Application No. 86304946 has been abandoned but the Examining Attorney re-suspended action on Opposer's application based upon Application Serial No. 86627956.

(11) Application Serial No. 86627956 was filed as an intent-to-use application at the USPTO on May 13, 2015.

(12) Upon information and belief, Applicant made no use in commerce in the United States of the mark in Application Serial No. 86627956 on or before its filing date of May 13, 2015.

(13) Upon information and belief, Applicant made no use in commerce in the United States of the mark in Application Serial No. 86627956 on or before March 31, 2017, the date of first use of Opposer's mark and therefore Opposer has priority.

(14) Upon information and belief, Applicant is currently making no use in commerce in the United States of the mark in Application Serial No. 86627956.

(15) The first word in Applicant's Mark and Opposer's Mark is the word "LOTUS" which is the distinctive and dominant portion of both Opposer's Mark and Applicant's Mark.

(16) The "LOTUS EDGE" mark for which Applicant seeks registration is thus similar in appearance, sound, meaning, connotation, and overall commercial impression to Opposer's mark.

(17) The applied-for goods listed in Application Serial No. 86627956 for Applicant's "LOTUS EDGE" mark are identical, at least in part, and otherwise highly similar to the goods

which are currently being sold in connection with Opposer's



mark.

(18) Opposer has invested considerable time and resources to developing its



brand and marketing the goods sold in connection with the mark.

Any use of a mark by another individual or entity including the word "LOTUS" in connection with medical devices, and specifically, catheters, would be damaging to Opposer.

(19) The respective goods marketed by Opposer and the goods claimed by Applicant in Serial No. 86627956 will be sold to potential consumers in the same or related channels of trade.

(20) Consumers familiar with Opposer's Mark will incorrectly assume that Opposer is the origin of goods offered in connection with Applicants Mark, that the respective goods emanate from the same source or that Applicant's use of LOTUS EDGE is somehow endorsed by Opposer or its affiliates, which it is not.

(21) Applicant's use and Registration of Opposer's Mark in connection with the goods identified in Applicant's Application is likely to cause consumers to become confused, mistaken, or deceived and to falsely suggest a connection with Opposer within the meaning of Section (2d) of the Trademark Act, 15 U.S.C. Section 1052(d).

(22) Applicant's use and Registration of Applicant's Mark will cause or is likely to cause dilution of the distinctive quality of Opposer's Mark within the meaning of Section 43(c) of the Trademark Act, 15 U.S.C. section 1125(c).

(23) Due to the highly related nature of the goods associated with the respective marks, consumers are likely to infer a relationship between the marks. Specifically, the use of "LOTUS EDGE" by Applicant is likely to cause the public to believe that the goods offered under the

respective marks emanate from the same source in violation of Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d).


(24) Opposer will be irreparably harmed by registration of the "LOTUS EDGE" mark in Application Serial No. 86627956.

Wherefore, Opposer respectfully requests that this Opposition proceeding be sustained and that the registration sought by Applicant with respect to Application Serial No. 86627956 be denied as to all of the applied-for goods listed in that application.

Respectfully submitted,
FOR: SAID I. HAKKY

DATE: July 9, 2018


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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that the foregoing has been electronically submitted to the United States Trademark Trial and Appeal Board by uploading a copy of this Notice of Opposition via ESTAA. Additionally, a courtesy copy of the foregoing is being served on the Opposer by e-mailing a true copy thereof to: Luke Dohmen, Esq., at trademarks@bsci.com and to Michelle Anderson at michelle.anderson@bsci.com on this 9th day of July 2018.


Nicole B. Rackiewicz