

ESTTA Tracking number: **ESTTA970165**

Filing date: **04/29/2019**

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	PolarityTE, Inc.
Granted to Date of previous extension	04/28/2019
Address	1960 S 4250 W Salt Lake City, UT 84104 UNITED STATES

Attorney information	Jessica Tam Cobalt LLP 1912 BONITA AVE Berkeley, CA 94704 UNITED STATES trademarks@cobaltlaw.com 510-841-9800
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Applicant Information

Application No	87471939	Publication date	10/30/2018
Opposition Filing Date	04/29/2019	Opposition Period Ends	04/28/2019
Applicant	Lonza Ltd. Lonzastrasse Visp, 3930 SWITZERLAND		

Goods/Services Affected by Opposition


Class 042. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Design and development services for the creation of bioprocessing and biomanufacturing facilities for the life sciences industry

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. Application No.	87919745	Application Date	05/14/2018
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	IBEX		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 042. First use: First Use: 0 First Use In Commerce: 0 Research and development of new biomedical products, namely, research and development in the field of biomedical and biotechnology research; biomedical research services; biotechnology research; scientific research for medical purposes in the field of pre-clinical research; providing assistance in pre-clinical study design and clinical trial preparation

Attachments	87919745#TMSN.png(bytes) Notice of Opposition IBEX .pdf(243928 bytes)
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Signature	/Jessica Tam/
Name	Jessica Tam
Date	04/29/2019

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

In the matter of Trademark Application

Serial No.: 87471939
Filed: Jun. 01, 2017
By: Lonza Ltd.
Published: Oct. 30, 2018
For the Trademark: IBEX – THE AGILE ADVANTAGE
International Class: 042

PolarityTE, Inc.,

Opposer,

v.

Lonza ltd.

Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

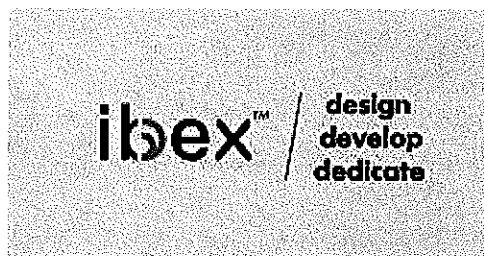
PolarityTE, Inc., a Nevada corporation, with its principle place of business at 123 N. Wright Brothers Drive, Salt Lake City, Utah 84116 (“PolarityTE” or “Opposer”), hereby timely opposes registration of the mark IBEX – THE AGILE DEVELOPMENT, as set forth in United States Patent and Trademark Office (“USPTO”) Application Serial No. 87471939, filed by Lonza Ltd., a Swiss corporation, with a principal place of business at Lonzastrasse Visp Switzerland 3930 (“Lonza” or “Applicant”). As grounds in support of this opposition, Opposer alleges that:

1. Opposer, PolarityTE, Inc., is a Nevada corporation with its principle place of business at 123 N. Wright Brothers Drive, Salt Lake City, Utah 84116.
2. Opposer is a biomedical technology company focused on biomedical research and biomedical product development throughout the United States and the world.

3. Opposer, itself and through its predecessors in interest, has adopted, used, is using and is the owner of the trademark IBEX for biomedical development and research. This use has been ongoing and continuous in the United States since at least 2003.
4. Opposer is also the owner of Application Ser. No. 87919745 for IBEX for “Research and development of new biomedical products, namely, research and development in the field of biomedical and biotechnology research; biomedical research services; biotechnology research; scientific research for medical purposes in the field of pre-clinical research; providing assistance in pre-clinical study design and clinical trial preparation” in International Class 042 (“Opposer’s Mark”).
5. On June 01, 2017, Applicant filed an application under Section 1(b) of the Trademark Act seeking to register the mark IBEX – THE AGILE ADVANTAGE for “Design and development services for the creation of bioprocessing and biomanufacturing facilities for the life sciences industry” in International Class 042. The USPTO assigned serial number 87471939 to the application (“Applicant’s Mark”).
6. On September 06, 2018, the USPTO issued a suspension notice against Opposer’s Mark, noting a potential likelihood of confusion refusal should Applicant’s Mark register.

Count 1: Likelihood of Confusion and Priority

7. Applicant’s Mark IBEX – THE AGILE ADVANTAGE contains Opposer’s Mark IBEX in its entirety.
8. Applicant’s Mark is substantially similar to Opposer’s Mark in sound and appearance.
9. Applicant consistently shortens its mark to IBEX in its advertisements and on its website, which is identical to Opposer’s Mark:



10. Opposer's Mark has priority through its use in commerce at least 14 years prior to Applicant's filing date of June 01, 2017.
11. Applicant's services are substantially related to Opposer's services, if not near identical to Opposer's services.
12. Applicant's own website demonstrates that research and development of biomedical products are offered along with and in addition to design and development services for bio manufacturing facilities. Applicant's website advertises the following services under one mark: "Benefit from our [...] bioprocess platform and a holistic development strategy", "Clinical and commercial production are under the same roof", and "tailored to suit mammalian and microbial production".

design

Product lifecycle management at a single site, from the very beginning

Ibex™ Design is our offering for your preclinical and IND needs through to clinical phase I. It includes a pioneering fixed price gene-to-vial package, with delivery of drug product within 12 months and at least 1 kg drug substance. To further increase predictability for you, we offer a manufacturing slot reserved for your clinical resupply. Benefit from our proven GS Gene Expression System® bioprocess platform and a holistic development strategy with the endpoint in mind.

develop

Seamless transition from clinical to commercial manufacturing

Accelerate your market readiness with Ibex™ Develop. From the start of process characterization, we can help you to achieve your BLA submission in just 22 months. Clinical and commercial production are under the same roof, which simplifies comparability requirements and eliminates the need for tech transfers between sites. Our regulatory experience, illustrated by seven fast track BLA submissions we helped prepare in 2012-17, could help you to de-risk your filing.

dedicate

A fully customized commercial supply solution, exclusive for your product or portfolio

Our innovative, high-responsive supply solution Ibex™ Dedicate allows you to delay your capacity build decisions and better manage investment risk. A pre-built wing and faster ramp-up save you up to 30 months total time to market. Flexible ownership and operating models give you freedom of choice, in combination with a technology-agnostic solution that can be tailored to suit mammalian and microbial production, vaccines, and cell and gene therapy.

13. The respective services of the parties travel in the same channels of trade, are purchased by the same class of consumers, and are marketed together.
14. Opposer is not connected or affiliated with the Applicant and its alleged services, nor has Opposer endorsed or sponsored the Applicant or its services.
15. Applicant's IBEX – THE AGILE ADVANTAGE mark so resembles Opposer's IBEX mark as to be likely, when applied to the services of the Applicant, to cause confusion, mistake, or deception to consumers.
16. For the reasons set forth above, Applicant's Mark should be denied pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. §§1052(d).

WHEREFORE, Opposer respectfully requests that its Notice of Opposition be sustained, and that Application Serial No. 87471939 be refused.

The fee required under 37 C.F.R. §2.6(a)(17) is being paid electronically concurrently with the filing of this Notice of Opposition.

Respectfully submitted,

COBALT LLP

Date: April 29, 2019

By: /Jessica Tam/
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Tsan Abrahamson

Attorneys for Opposer.

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CERTIFICATE OF TRANSMISSION

I certify that on the day of April 29, 2019, that the foregoing NOTICE OF OPPOSITION is being electronically transmitted via the Electronic System for Trademark Trials and Appeals ("ESTTA") at <http://estta.uspto.gov/>.

By: /s/ Jessica Tam
Jessica Tam, Esq.
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the day of April 29, 2019, a true and correct copy of the foregoing **NOTICE OF OPPOSITION** is being served by electronic mail and U.S. First Class Mail in an envelope, postage pre-paid, to the Applicant and correspondent on record as shown below:

LONZA LTD
ROTTENSTRASSE 6
3930 VISP
SWITZERLAND

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Norma Black