

ESTTA Tracking number: **ESTTA1014152**

Filing date: **11/07/2019**

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	Patient First Corporation		
Entity	Corporation	Citizenship	Virginia
Address	5000 Cox Road Glen Allen, VA 23060 UNITED STATES		

Attorney information	Belinda D. Jones Christian & Barton, LLP 909 East Main Street, Suite 1200 Richmond, VA 23219 UNITED STATES rmichaux@cblaw.com, bjones@cblaw.com, pbroadbent@cblaw.com, cmack@cblaw.com 8046974100		
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**Applicant Information**

Application No	88010256	Publication date	10/08/2019
Opposition Filing Date	11/07/2019	Opposition Period Ends	11/07/2019
Applicant	AMERICAN MEDICAL GROUP LLC 1698 Post Road East Westport, CT 06880 UNITED STATES		

**Goods/Services Affected by Opposition**

<p>Class 010. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: PROVIDING MEDICAL TESTING SERVICES IN THE FIELD OF BREAST CANCER, NAMELY, ASSESSING AND PREDICTING DISEASE AND RISK OF BREAST CANCER DISEASE BY IDENTIFYING RISK FACTORS OF BREAST CANCER DISEASE BY IDENTIFYING BIOLOGICAL MARKERS WHICH HAVE A CORRELATION TO BREAST CANCER DISEASE FOR MEDICAL DIAGNOSTIC PURPOSES</p>
<p>Class 042. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: PROVIDING MEDICAL TESTING SERVICES IN THE FIELD OF BREAST CANCER, NAMELY, ASSESSING AND PREDICTING DISEASE AND RISK OF BREAST CANCER DISEASE BY IDENTIFYING RISK FACTORS OF BREAST CANCER DISEASE BY IDENTIFYING BIOLOGICAL MARKERS WHICH HAVE A CORRELATION TO BREAST CANCER DISEASE</p>

**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act Section 2(d)
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Dilution by tarnishment	Trademark Act Sections 2 and 43(c)
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### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1460408	Application Date	02/09/1987
Registration Date	10/06/1987	Foreign Priority Date	NONE
Word Mark	PATIENT FIRST		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1986/11/19 First Use In Commerce: 1986/11/19 MEDICAL SERVICES		



U.S. Registration No.	4035334	Application Date	08/05/2008
Registration Date	10/04/2011	Foreign Priority Date	NONE
Word Mark	PATIENT FIRST		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1986/11/19 First Use In Commerce: 1994/01/07 Retail store services, namely, pharmacy services, retail drug store services, and medical, wellness and health-related merchandise store services, provided vi-applicant's stores		

U.S. Registration No.	4815860	Application Date	06/12/2014
Registration Date	09/22/2015	Foreign Priority Date	NONE
Word Mark	PATIENT FIRST		

Design Mark	<b>PATIENT FIRST</b>
Description of Mark	NONE
Goods/Services	Class 036. First use: First Use: 2012/02/28 First Use In Commerce: 2012/02/28 Providing customer bill payment services via the Internet Class 041. First use: First Use: 2010/05/20 First Use In Commerce: 2010/05/20 Educational services concerning health and medical issues, namely, an on-line newsletter, provided via a website and byemail

U.S. Registration No.	4941987	Application Date	06/12/2014
Registration Date	04/19/2016	Foreign Priority Date	NONE

Word Mark	PATIENT FIRST
Design Mark	<b>PATIENT FIRST</b>
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 2015/04/21 First Use In Commerce: 2015/04/21 Online portal featuring business records for use by patients and their personalrepresentatives Class 038. First use: First Use: 2015/04/21 First Use In Commerce: 2015/04/21 Online secure messaging for patient communication with medical service providers; online secure messaging for patient communication with medical service providers for the purpose of requesting prescription refills and referrals to other medical service providers; secure online delivery of patient-specific educational resources from medical service providersto patients Class 042. First use: First Use: 2015/04/21 First Use In Commerce: 2015/04/21 File sharing services, namely, providing a website featuring technology enabling patients and their personal representatives to upload and download electronic medical and business records Class 044. First use: First Use: 2015/04/21 First Use In Commerce: 2015/04/21 Online portal featuring medical recordsfor use by patients and their personal representatives and for patients and their personal representatives to share with

	third parties		
U.S. Registration No.	4518756	Application Date	12/20/2012
Registration Date	04/22/2014	Foreign Priority Date	NONE
Word Mark	PATIENT FIRST		
Design Mark			
Description of Mark	The mark consists of the words "PatientFirst" in distinctive font; the words "Patient First" are white and on a green background.		
Goods/Services	Class 035. First use: First Use: 2001/11/30 First Use In Commerce: 2001/11/30 Retail store services, namely, pharmacy services, retail drug store services and medical, wellness and health-related merchandise store services Class 044. First use: First Use: 2001/11/30 First Use In Commerce: 2001/11/30 Medical services		
U.S. Registration No.	4518757	Application Date	12/20/2012
Registration Date	04/22/2014	Foreign Priority Date	NONE
Word Mark	PATIENT FIRST		
Design Mark			
Description of Mark	The mark consists of the words "PatientFirst" in distinctive font; the words "Patient First" are green.		
Goods/Services	Class 035. First use: First Use: 1998/11/12 First Use In Commerce: 1998/11/12 Retail store services, namely, pharmacy services, retail drug store services and medical, wellness and health-related merchandise store services Class 044. First use: First Use: 1998/11/12 First Use In Commerce: 1998/11/12 Medical services		
Attachments	77538900#TMSN.png( bytes ) 86307589#TMSN.png( bytes ) 86307704#TMSN.png( bytes ) 85807277#TMSN.png( bytes ) 85807278#TMSN.png( bytes ) PFC Notice of Opp.pdf(177700 bytes )		
Signature	/Belinda D. Jones/		

Name	Belinda D. Jones
Date	11/07/2019

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

**In re:**                    **Serial No. 88/010,256**

**For the Mark:**        **B-FIRST**

**Application Date:**   **June 21, 2018**

**Publication Date:**   **October 8, 2019**

<b>PATIENT FIRST CORPORATION,</b>	)	
	)	
<b>Opposer,</b>	)	<b>Opposition No.:</b> _____
	)	
v.	)	
	)	
<b>AMERICAN MEDICAL GROUP LLC,</b>	)	
	)	
<b>Applicant.</b>	)	

**NOTICE OF OPPOSITION**

Patient First Corporation (“Patient First” or “Opposer”), believes it will be damaged by registration of the word mark B-FIRST (the “Applied-for-Mark”) on the Principal Register as applied for in Application Serial No. 88/010,256 (the “Application”), filed by American Medical Group LLC (“Applicant”), and hereby opposes registration of same pursuant to Section 13 of the Lanham Act. 15 U.S.C. § 1063. The grounds for this opposition are as follows:

**PARTIES**

1. Patient First is a Virginia corporation whose principal place of business is located at 5000 Cox Road, Glen Allen, Virginia 23060.
  
2. According to the Application, Applicant is a Connecticut limited liability company whose address is 1698 Post Road East, Westport, Connecticut 06880.

## **THE APPLICATION**

3. Applicant applied to register the Applied-for-Mark on the Principal Register in connection with “providing medical testing services in the field of breast cancer, namely, assessing and predicting disease and risk of breast cancer disease by identifying risk factors of breast cancer disease by identifying biological markers which have a correlation to breast cancer disease for medical diagnostic purposes” in Class 10, and “providing medical testing services in the field of breast cancer, namely, assessing and predicting disease and risk of breast cancer disease by identifying risk factors of breast cancer disease by identifying biological markers which have a correlation to breast cancer disease” in Class 42.

4. The Application was filed on June 21, 2018, under Section 1(b) of the Lanham Act.

5. The Application was published for opposition on October 8, 2019. Accordingly, this notice of opposition is timely filed.

## **PATIENT FIRST’S PRIOR REGISTRATIONS, APPLICATION, AND USE**

6. Since at least as early as November 1986, Patient First has continuously used PATIENT FIRST to identify the source of and in connection with a broad range of health care services, including primary health care, preventative care, urgent care, and health care goods.

7. Patient First owns a federal registration for the word mark PATIENT FIRST for “medical services” in Class 42, Reg. No. 1,460,408 (the “408 Registration”). The 408 Registration is registered on the Principal Register and was issued on October 6, 1987. The 408 Registration is in full force and effect, and is incontestable under 15 U.S.C. § 1065.

8. Patient First owns a federal registration for the word mark PATIENT FIRST for “retail store services, namely, pharmacy services, retail drug store services, and medical,

wellness and health-related merchandise store services, provided via applicant's stores" in Class 35, Reg. No. 4,035,334 (the "334 Registration"). The 334 Registration is registered on the Principal Register and was issued on October 4, 2011. The 334 Registration is in full force and effect, and is incontestable under 15 U.S.C. § 1065.

9. Patient First owns a federal registration for the word mark PATIENT FIRST for "providing customer bill payment services via the Internet" in Classes 36 and "educational services concerning health and medical issues, namely, an on-line newsletter, provided via a website and by email" in Class 44, Reg. No. 4,815,860 (the "860 Registration"). The 860 Registration is registered on the Principal Register and was issued on September 22, 2015. The 860 Registration is in full force and effect.

10. Patient First owns a federal registration for the word mark PATIENT FIRST for the following services: "online portal featuring business records for use by patients and their personal representatives and for patients and their personal representatives to share with third parties" in Class 35; "online secure messaging for patient communication with medical service providers; online secure messaging for patient communication with medical service providers for the purpose of requesting prescription refills and referrals to other medical service providers; secure online delivery of patient-specific educational resources from medical service providers to patients" in Class 38; "file sharing services, namely, providing a website featuring technology enabling patients and their personal representatives to upload and download electronic medical and business records" in Class 42; and "online portal featuring medical records for use by patients and their personal representatives and for patients and their personal representatives to share with third parties" in Class 44, Reg. No. 4,941,987 (the "987 Registration"). The 987



Registration is on the Principal Register and was issued on April 19, 2016. The 987 Registration is in full force and effect.

11. Patient First owns a federal registration for the following design mark

The logo for Patient First, featuring the words "Patient First" in a bold, teal, sans-serif font.

for “Retail store services, namely, pharmacy services, retail drug store services and medical, wellness and health-related merchandise store services” in Class 35 and “medical services” in Class 44, Reg. No. 4,518,757 (the “757 Registration”). The 757 Registration is on the Principal Register and was issued on April 22, 2014. The 757 Registration is in full force and effect, and is incontestable under 15 U.S.C. § 1065.

12. Patient First owns a federal registration for the following design mark:

The logo for Patient First, featuring the words "Patient First" in a bold, white, sans-serif font set against a teal rectangular background.

for “Retail store services, namely, pharmacy services, retail drug store services and medical, wellness and health-related merchandise store services” in Class 35 and “medical services” in Class 44, Reg. No. 4,518,756 (the “756 Registration”). The 756 Registration is on the Principal Register and was issued on April 22, 2014. The 756 Registration is in full force and effect, and is incontestable under 15 U.S.C. § 1065.

13. The foregoing trademarks and service marks are hereinafter collectively referred to as the “Patient First Marks.”

14. Patient First has been using the Patient First Marks in commerce in connection with printed educational materials since at least as early as April 30, 2005, and is the owner of common law trademark rights arising from such use that pre-date the filing of the Application.

15. Patient First has been using the Patient First Marks in commerce in connection with on-line newsletter services concerning health and medical issues since at least as early as May 20, 2010, and is the owner of common law trademark rights arising from such use that pre-date the filing of the Application.

16. Patient First has been using the Patient First Marks in commerce in connection with educational services concerning health and medical issues, namely, information provided via social media since at least as early as August 31, 2011, and is the owner of common law trademark rights arising from such use that pre-date the filing of the Application.

17. Patient First has been using the Patient First Marks in commerce in connection with online business records and payment services since at least as early as February 26, 2012, and is the owner of common law trademark rights arising from such use that pre-date the filing of the Application.

18. As a result of Opposer's prevalent use of the registered and common law Patient First Marks, its efforts and expenditures for promotional activities, and by virtue of the excellence of Patient First's goods and services, the health care industry, including health care providers, vendors, suppliers and insurers, and the public have come to associate the Patient First Marks with Opposer.

19. Opposer has strong relationships with providers of medical goods and services in fields that are sometimes beyond the scope of the Patient First goods and services. Opposer and the Patient First Marks are well known by providers of medical and health-related goods and

services. Thus, any use of a mark that is confusingly similar to the Patient First Marks to brand the sale of any medical or health-related goods or services, whether such mark usage is directed to consumers or to businesses in the health and/or medical industries, is likely to cause confusion as to the source of such goods and services among consumers, business referral sources, and current and potential business partners, which confusion would be damaging to Patient First and the Patient First Marks.

20. At times, Opposer partners with hospitals in opening and operating medical centers using the Patient First Marks, usually as joint ventures or under other collaborative agreements with hospital systems. Opposer's family of Patient First Marks are seemingly famous in the hospital community.

21. In addition, Opposer partners with hospitals, other health care providers, and/or third party health insurers in affordable care organizations, clinically integrated networks, and patient medical homes in order to more efficiently and effectively manage the delivery of health care services to patients. Opposer's family of Patient First Marks are thus generally famous in the health care community.

22. Opposer's rights in and to the Patient First Marks have priority over Applicant's would-be rights in and to the Applied-for-Mark. Opposer's use of the Patient First Marks began long before the filing date of the Application or any other date of first use that can be relied upon by Applicant as it relates to its Applied-for-Mark. Furthermore, the filing and registrations dates of Opposer's registrations and pending application precede the filing date of the Application.

23. Contrary to Opposer's well established rights in and to the Patient First Marks, Applicant filed the Application to register the Applied-for-Mark for goods in Class 10 and

services in Class 42. The Application, however, incomprehensibly identifies the goods and services for both classes as “medical testing services.”

24. Opposer will be damaged by registration of the Applied-for-Mark because (i) the Applied-for-Mark is confusingly similar to the Patient First Marks in which Opposer has established priority and significant trademark rights, and (ii) the Applied-for-Mark would dilute the distinctive nature of the Patient First Marks, which are incontestable.

### **STANDING**

25. Patient First will be damaged by the registration of the Applied-for-Mark because such registration will support and assist Applicant in the confusing and misleading use of the Applied-for-Mark, and may give an appearance of exclusive statutory rights to Applicant.

26. Use by Applicant of the Applied-for-Mark will cause the distinctiveness of the Patient First Marks to be damaged and would thereby damage Patient First and the goodwill associated with the Patient First Marks.

27. Likelihood of damage to Patient First’s goodwill in the Patient First Marks is enhanced because prospective customers and patients who encounter any poor performance of Applicant’s goods or services will likely attribute those shortcomings to Patient First.

28. Applicant filed to register the Applied-for-Mark in violation and derogation of the prior, superior, and exclusive rights of Patient First.

### **COUNT I – LIKELIHOOD OF CONFUSION**

29. Opposer incorporates the preceding paragraphs 1 through 28 as if fully set forth herein.

30. The Applied-for-Mark is confusingly similar to the Patient First Marks.

31. Applicant will presumably target usage of the Applied-for-Mark at general consumers, who also are Opposer's target audience and potential customers. The Applied-for-Mark and the Patient First Marks have the potential to be seen in the same health care channels of commerce. Opposer has expended considerable time, effort, and expense in using, promoting, and advertising the Patient First Marks, which establish Opposer as the source of origin and quality of its goods and services.

32. Applicant's use of a confusingly similar mark in commerce is likely to cause confusion, deception, and mistake as to source, by creating the false and misleading impression that Applicant's services are associated or connected with Opposer, or have the sponsorship, endorsement, or approval of Opposer, which is false.

33. Opposer will be damaged by registration of the Applied-for Mark because it will cause confusion, mistake, and deception as to source, with consequent irreparable damage to Opposer's business and goodwill.

34. Opposer has not given Applicant permission or approval to register or use the Applied-for Mark.

35. The Patient First Marks owned by Opposer constitute a family of marks and are entitled to greater protection from likelihood of confusion under TMEP § 1207.01(d).

36. Despite claiming goods in Class 10, the nature of and language used to describe the goods suggest that the Applicant intends to offer "medical testing services" rather than any medical device. Indeed, but for the addition of the terminal phrase "for medical diagnostic purposes," the description of goods for Class 10 is identical to the description of services for Class 42. Applicant has failed to sufficiently identify its goods in Class 10 as required by TMEP

§ 1204. But even if Applicant's description of its goods in Class 10 were not indefinite, it would not minimize the likelihood of confusion with Opposer's goods and services.

37. For the foregoing reasons, Opposer will be injured by the registration of the Applied-for-Mark and the Application should be refused pursuant to 2(d) of the Lanham Act, on the grounds that the overall commercial impression of the Applied-for-Mark so closely resembles the Patient First Marks, consumer confusion is likely. Any doubt as to a likelihood of confusion must be resolved in favor of the Opposer, as the owner of prior registrations.

### **COUNT II – DILUTION**

38. Opposer incorporates the preceding paragraphs 1 through 37 as if fully set forth herein.

39. The Patient First Marks are strong, distinctive, and famous marks marketed to the general public. Opposer has built up decades of name recognition and goodwill, as alleged above. Opposer has expended substantial financial resources to maintain such recognition and goodwill.

40. Registration of the Applied-for-Mark or its use by Applicant would allow Applicant to trade on the goodwill and consumer recognition that Opposer has established in the Patient First Marks, and it would dilute the distinctive nature of Opposer's famous and incontestable registered marks.

41. For the foregoing reasons, registration of the Applied-for-Mark should be refused under Section 43(c) of the Trademark Act in view of the well-established fame of Opposer's registered and incontestable marks.

WHEREFORE, Patient First Corporation has standing to bring this opposition and believes it will be damaged by the registration of the Applied-for-Mark, and respectfully requests

that this Notice of Opposition be sustained, and that Application Ser. No. 88/010,256 be denied registration in its entirety and abandoned.

Date: November 7, 2019

Respectfully submitted,

PATIENT FIRST CORPORATION  
By Counsel

/s/Belinda D. Jones

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*Counsel for Opposer*

**CERTIFICATE OF SERVICE**

I certify that on November 7, 2019, I caused a copy of the foregoing notice to be served by first class mail, postage prepaid, to the following:

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