

ESTTA Tracking number: **ESTTA1075495**

Filing date: **08/17/2020**

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	Brainlab AG		
Entity	Corporation	Citizenship	Germany
Address	OLOF-PALME-STRAÄ##E 9 MUNICH, 81829 GERMANY		
Attorney information	PATRICK F. CLUNK TUCKER ELLIS LLP 950 MAIN AVENUE SUITE 1100 CLEVELAND, OH 44113 UNITED STATES Primary Email: patrick.clunk@tuckerellis.com Secondary Email(s): steven.lauridsen@tuckerellis.com, kelsey.ewing@tuckerellis.com, trademarks@tuckerellis.com 2165925000		
Docket Number	013658-00783		

Applicant Information

Application No.	79276192	Publication date	07/28/2020
Opposition Filing Date	08/17/2020	Opposition Period Ends	08/27/2020
International Registration No.	1508444	International Registration Date	11/07/2019
Applicant	KARL STORZ SE & Co. KG DR. KARL-STORZ-STRAÄ#E 34 78532 TUTTIINGEN FED REP GERMANY		

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: Surgical, medical, dental and veterinary apparatus and instruments, namely, sliding sheath instruments in the nature of forceps and scissors; diagnostic apparatus for medical purposes, namely, palpation instruments for use in endoscopic surgery; medical endoscopes and endoscopic devices in the nature of endoscopic equipment for medical and surgical purposes; medical apparatus and instruments for use in thoracic surgery; surgical suture; medical and surgical instruments, in particular sliding shaft instruments, pliers, scissors, punches, handles, knives; surgical cutlery; medical apparatus, namely, dismountable surgical instruments for endoscopy</p>
<p>Class 016. First Use: 0 First Use In Commerce: 0</p>

All goods and services in the class are opposed, namely: Paper and cardboard, namely, file cases in the nature of paper file jackets, file folders, albums for photographs, slides and histological sections, stationery display cards, almanacs; printed matter, namely, books, manuals, booklets, leaflets, periodicals, newsletters, catalogs, magazines, journals, informational flyers, handbooks, paper signs, prospectuses, pamphlets, letters, pre-printed forms, photographs, and biological samples for use in microscopy in the field of medical technology, surgical technology, medicine, veterinary medicine, dental medicine, non-medical and medical endoscopy; brochures in the field of medical technology, surgical technology, medicine, veterinary medicine, dental medicine, non-medical and medical endoscopy; bookbinding articles, namely, bookbinding materials; photographs; stationery; printed instructional and teaching material except apparatus in the field of surgical technology, medical technology, medicine, veterinary medicine, dental medicine, medical and non-medical endoscopy, and medical-clinics; plastic materials for packaging, namely, plastic bags and plastic film for packaging; bags and pouches of paper, cardboard, or plastic for packaging and wrapping purposes; boxes, containers, and cartons of paper or cardboard for use in packaging and storage purposes; envelopes of paper, cardboard, or plastic for use in packaging, wrapping, and storage purposes; films and roll stock of paper, cardboard, or plastic for use in packaging, wrapping, and storage purposes; sheets of paper, cardboard, or plastic for use in packaging and wrapping purposes; packaging material of cardboard

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
--------------------------------------	----------------------------

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	5348133	Application Date	12/13/2009
Registration Date	12/05/2017	Foreign Priority Date	09/23/2009
Word Mark	CURVE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use: First Use: 0 First Use In Commerce: 0</p> <p>Computers; software, planning software, and computer programs for use in conducting and planning neurosurgical, orthopedic, trauma-specific, spinal, radio-therapeutic, radio-surgical, and ear, nose and throat surgical procedures; software, planning software, and computer programs for use in conducting and planning three-dimensionally registering and/or referencing patient location data; software, planning software, recognition software and computer programs for use in conducting, planning and recognition of referencing markings or referencing marker arrays attached to medical or surgical instruments or attached to patients for referencing or registering purposes which can be attached directly or via clamps to surgical instruments or apparatus using detachable adaptors; software, planning software, operating software and computer programs for use in conducting, planning and operation of medical or surgical pointers, namely, pointers for registering purposes comprising tactile or contact-signaling tips; data carriers featuring software, planning software and computer programs, namely, robot-assisted applications and applications for use in conducting and planning three-dimensionally registering and/or referencing patient location data for neurosurgical, orthopedic, trauma-specific, spinal, radio-therapeutic, radiosurgical, and ear, nose and throat surgical procedures surgery; data carriers featuring software, planning software and computer programs use in conducting and planning three-dimensionally registering and/or referencing patient location data; light pointers, laser light pointers, infrared light pointers for use in three-dimensionally registering and/or referencing patient location data by producing light markings; data carriers featuring software, planning software, recognition software and computer programs for use in conducting, planning, recognition and operation of referencing markings or referencing marker arrays attached to med-</p>		

	<p>ical or surgical instruments or attached to patients for referencing or registering purposes which can be attached directly or via clamps to surgical instruments or apparatus using detachable adaptors; data carriers featuring software, planning software, operating software and computer programs for use in conducting, planning and operation of medical or surgical pointers, namely, pointers for registering purposes comprising tactile or contact-signaling tips; electronic identifying or authorizing devices for using medical devices or treatment apparatus</p> <p>Class 010. First use: First Use: 0 First Use In Commerce: 0</p> <p>Electrical and electronic devices, namely, image-presenting devices for three dimensionally registering and /or referencing patient location data by producing light markings, namely, light reflection points by means of light emitters for neurosurgical, orthopedic, trauma-specific, spinal, radio-therapeutic, radio-surgical, namely, robot assisted applications and for ear, nose and throat surgery; medical and/or surgical robots for use with image-guided localization systems for surgical applications; neurosurgical, orthopedic, radio-therapeutic and radio-surgical instruments and apparatus; medical or surgical robots for robot-assisted neurosurgical, spinal, trauma-specific, orthopedic, radio-therapeutic and radio-surgical applications; medical equipment, namely, portable or mobile screens for displaying internal body structures on the basis of previously captured patient data sets; intra-operative, image-guided localization systems comprised of monitors and cameras for surgical applications for neurosurgical, orthopedic, stereotactic and radio-surgical applications in ear nose and throat surgery; medical apparatus and instruments for software controlled precision treatment for use in neurosurgery, orthopedics, radiotherapy, radiosurgery and in ear, nose and throat surgery; laser light pointers for medical purposes; infrared laser light pointers for medical purposes; medical referencing markings or referencing marker arrays attached to medical or surgical instruments or attached to patients directly or via clamps to surgical instruments or apparatus using detachable adaptors for referencing and/or registering purposes; medical or surgical pointers, namely, pointers for registering purposes comprising tactile or contact-signaling tips</p> <p>Class 042. First use: First Use: 0 First Use In Commerce: 0</p> <p>Design and development of software, planning software and computer programs for robot assisted neurosurgical, orthopedic, trauma-specific, spinal, radio-therapeutic and radio-surgical applications and for applications in ear, nose and throat surgery for others; Design and development of software, planning software and computer programs for three-dimensionally registering and/or referencing patient location data by producing light markings; Design and development of software, planning software, recognition software and computer programs for the processing of referencing markings or referencing marker arrays attached to medical or surgical instruments or attached to patients directly or via clamps to surgical instruments or apparatus using detachable adaptors for referencing and/or registering purposes; Design and development of software, planning software, operating software and computer programs for the operation of medical or surgical pointers, namely, pointers for registering purposes comprising tactile or contact-signaling tips</p>
--	--

Attachments	Brainlab Opposition of CLEVERCURVE.pdf(268508 bytes)
Signature	/Patrick F. Clunk/
Name	Patrick F. Clunk
Date	08/17/2020

TRADEMARK
Docket No. 013658-000783

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

BRAINLAB AG	Serial No. 79/276,192
Opposer,	Opposition No.
v.	
KARL STORZ SE & CO. KG	NOTICE OF OPPOSITION
Applicant.	

Brainlab AG, opposes the registration of CLEVERCURVE in Application Serial No. 79/276,192 in International Classes 010 and 016. Brainlab AG is the owner of United States Trademark Registration No. 5,348,133, for the prior mark CURVE. Over the last several years Brainlab AG has devoted substantial resources and money promoting products under its distinctive CURVE mark. Brainlab AG believes that there is likelihood of confusion between its established CURVE mark and Applicant's CLEVERCURVE mark. Indeed, both marks cover products in the same general fields and are marketed to the same class of consumers. Brainlab AG therefore opposes the registration of CLEVERCURVE on the basis of priority and likelihood of confusion.

As grounds for the opposition, Brainlab AG ("Opposer") alleges that:

1. Opposer is a German corporation having its principal place of business at Olof-Palme-Str. 9, 81829 Munich, Germany. Opposer is an innovator in the fields of surgery, radiotherapy, medical image sharing, and digitally integrated operating rooms, and has been

innovating for thirty years. Opposer is headquartered in Germany and has locations throughout the world, including the United States. Opposer produces radiosurgery/radiotherapy software and hardware that provide the ability to plan, monitor and deliver radiation treatment for patients with cancerous or functional diseases. Various software applications and hardware systems offer the advanced tools required for optimized treatment planning, monitoring and verification to achieve high precision throughout the whole course of the treatment.

2. Opposer owns United States Trademark Registration No. 5,348,133, which was registered on December 5, 2017, for CURVE for “Computers; software, planning software, and computer programs for use in conducting and planning neurosurgical, orthopedic, trauma-specific, spinal, radio-therapeutic, radio-surgical, and ear, nose and throat surgical procedures; software, planning software, and computer programs for use in conducting and planning three-dimensionally registering and/or referencing patient location data; software, planning software, recognition software and computer programs for use in conducting, planning and recognition of referencing markings or referencing marker arrays attached to medical or surgical instruments or attached to patients for referencing or registering purposes which can be attached directly or via clamps to surgical instruments or apparatus using detachable adaptors; software, planning software, operating software and computer programs for use in conducting, planning and operation of medical or surgical pointers, namely, pointers for registering purposes comprising tactile or contact-signaling tips; data carriers featuring software, planning software and computer programs, namely, robot-assisted applications and applications for use in conducting and planning three-dimensionally registering and/or referencing patient location data for neurosurgical, orthopedic, trauma-specific, spinal, radio-therapeutic, radiosurgical, and ear, nose and throat surgical procedures surgery; data carriers featuring software, planning software and computer programs

use in conducting and planning three-dimensionally registering and/or referencing patient location data; light pointers, laser light pointers, infrared light pointers for use in three-dimensionally registering and/or referencing patient location data by producing light markings; data carriers featuring software, planning software, recognition software and computer programs for use in conducting, planning, recognition and operation of referencing markings or referencing marker arrays attached to medical or surgical instruments or attached to patients for referencing or registering purposes which can be attached directly or via clamps to surgical instruments or apparatus using detachable adaptors; data carriers featuring software, planning software, operating software and computer programs for use in conducting, planning and operation of medical or surgical pointers, namely, pointers for registering purposes comprising tactile or contact-signaling tips; electronic identifying or authorizing devices for using medical devices or treatment apparatus” in International Class 009, “Electrical and electronic devices, namely, image-presenting devices for three dimensionally registering and /or referencing patient location data by producing light markings, namely, light reflection points by means of light emitters for neurosurgical, orthopedic, trauma-specific, spinal, radio-therapeutic, radio-surgical, namely, robot assisted applications and for ear, nose and throat surgery; medical and/or surgical robots for use with image-guided localization systems for surgical applications; neurosurgical, orthopedic, radio-therapeutic and radio-surgical instruments and apparatus; medical or surgical robots for robot-assisted neurosurgical, spinal, trauma-specific, orthopedic, radio-therapeutic and radio-surgical applications; medical equipment, namely, portable or mobile screens for displaying internal body structures on the basis of previously captured patient data sets; intra-operative, image-guided localization systems comprised of monitors and cameras for surgical applications for neurosurgical, orthopedic, stereotactic and radio-surgical applications in ear nose and throat

surgery; medical apparatus and instruments for software controlled precision treatment for use in neurosurgery, orthopedics, radiotherapy, radiosurgery and in ear, nose and throat surgery; laser light pointers for medical purposes; infrared laser light pointers for medical purposes; medical referencing markings or referencing marker arrays attached to medical or surgical instruments or attached to patients directly or via clamps to surgical instruments or apparatus using detachable adaptors for referencing and/or registering purposes; medical or surgical pointers, namely, pointers for registering purposes comprising tactile or contact-signaling tips” in International Class 010, and “Design and development of software, planning software and computer programs for robot assisted neurosurgical, orthopedic, trauma-specific, spinal, radio-therapeutic and radio-surgical applications and for applications in ear, nose and throat surgery for others; Design and development of software, planning software and computer programs for three-dimensionally registering and/or referencing patient location data by producing light markings; Design and development of software, planning software, recognition software and computer programs for the processing of referencing markings or referencing marker arrays attached to medical or surgical instruments or attached to patients directly or via clamps to surgical instruments or apparatus using detachable adaptors for referencing and/or registering purposes; Design and development of software, planning software, operating software and computer programs for the operation of medical or surgical pointers, namely, pointers for registering purposes comprising tactile or contact-signaling tips” in International Class 042. The CURVE registration is valid and subsisting on the Principal Register. Attached as Exhibit 1 is a printout from the United States Patent and Trademark Office TESS database showing the current status and title of the registration as of August 9, 2020.

3. Opposer filed for the CURVE mark on December 13, 2009 and received its registration on December 5, 2017. The 5,348,133 registration claims a priority date of September 23, 2009.

4. As a result of its widespread, continuous, and exclusive use of the CURVE mark to identify Opposer as the source of the goods and services sold and offered in connection with the CURVE mark, Opposer owns valid and subsisting federal statutory and common law rights to the CURVE mark.

5. Opposer's CURVE mark is distinctive to both the consuming public and members of Opposer's trade.

6. Opposer has expended substantial time, money, and resources marketing, advertising, and promoting the goods and services sold under the CURVE mark, and the goods and services Opposer offers under the CURVE mark are of high quality.

7. Applicant, KARL STORZ SE & Co. KG, with an address at Dr. Karl-Storz-Straße 34, 78532 Tuttlingen, Germany, on November 7, 2019 filed trademark Application Serial No. 79/276,192 to register the proposed mark CLEVERCURVE for "Surgical, medical, dental and veterinary apparatus and instruments, namely, sliding sheath instruments in the nature of forceps and scissors; diagnostic apparatus for medical purposes, namely, palpitation instruments for use in endoscopic surgery; medical endoscopes and endoscopic devices in the nature of endoscopic equipment for medical and surgical purposes; medical apparatus and instruments for use in thoracic surgery; surgical suture; medical and surgical instruments, in particular sliding shaft instruments, pliers, scissors, punches, handles, knives; surgical cutlery; medical apparatus, namely, dismountable surgical instruments for endoscopy" in International Class 010, and for "Paper and cardboard, namely, file cases in the nature of paper file jackets, file folders, albums for

photographs, slides and histological sections, stationery display cards, almanacs; printed matter, namely, books, manuals, booklets, leaflets, periodicals, newsletters, catalogs, magazines, journals, informational flyers, handbooks, paper signs, prospectuses, pamphlets, letters, pre-printed forms, photographs, and biological samples for use in microscopy in the field of medical technology, surgical technology, medicine, veterinary medicine, dental medicine, non-medical and medical endoscopy; brochures in the field of medical technology, surgical technology, medicine, veterinary medicine, dental medicine, non-medical and medical endoscopy; bookbinding articles, namely, bookbinding materials; photographs; stationery; printed instructional and teaching material except apparatus in the field of surgical technology, medical technology, medicine, veterinary medicine, dental medicine, medical and non-medical endoscopy, and medical clinics; plastic materials for packaging, namely, plastic bags and plastic film for packaging; bags and pouches of paper, cardboard, or plastic for packaging and wrapping purposes; boxes, containers, and cartons of paper or cardboard for use in packaging and storage purposes; envelopes of paper, cardboard, or plastic for use in packaging, wrapping, and storage purposes; films and roll stock of paper, cardboard, or plastic for use in packaging, wrapping, and storage purposes; sheets of paper, cardboard, or plastic for use in packaging and wrapping purposes; packaging material of cardboard” in International Class 016.

8. Opposer’s CURVE mark has priority over the proposed mark because Opposer’s priority date predates the Applicant’s filing date or any other date on which the Applicant may rely for purposes of priority.

9. Applicant’s proposed mark CLEVERCURVE is confusingly similar to Opposer’s CURVE mark as both marks are similar in their entireties as to appearance, sound, connotation and commercial impression.

10. The goods covered by Applicant's Application Serial No. 79/276,192 are related to the goods Opposer offers under its CURVE mark and would be offered in the same channels of trade.

11. The proposed mark is barred from registration because it consists of or comprises a mark which so resembles Opposer's previously used and registered – and not abandoned – CURVE mark as to be likely, when used in connection with the alleged goods of Applicant, to cause confusion, mistake, or deception within the meaning of 15 U.S.C. § 1052(d).

12. If Applicant's application is allowed to proceed to registration, likelihood of confusion, damage, and/or other injury to Opposer will occur.

Opposer requests that this Opposition be sustained and that registration of Application Serial No. 79/276,192 be refused in its entirety.

Respectfully submitted,

TUCKER ELLIS, LLP

Date: August 17, 2020

By /s/Steven E. Lauridsen

Steven E. Lauridsen

Patrick F. Clunk

Attorneys for Opposer

950 Main Avenue, Suite 1100

Cleveland, OH 44113

(216) 592-5000

EXHIBIT 1



TESS was last updated on Sun Aug 9 03:59:23 EDT 2020

[TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DICT](#) [SEARCH OG](#) [BOTTOM](#) [HELP](#)[Logout](#) Please logout when you are done to release system resources allocated for you.**Record 1 out of 1**[TSDR](#)[ASSIGN Status](#)[TTAB Status](#)*(Use the "Back" button of the Internet Browser to return to TESS)*

CURVE

Word Mark CURVE

Goods and Services IC 009. US 021 023 026 036 038. G & S: Computers; software, planning software, and computer programs for use in conducting and planning neurosurgical, orthopedic, trauma-specific, spinal, radio-therapeutic, radio-surgical, and ear, nose and throat surgical procedures; software, planning software, and computer programs for use in conducting and planning three-dimensionally registering and/or referencing patient location data; software, planning software, recognition software and computer programs for use in conducting, planning and recognition of referencing markings or referencing marker arrays attached to medical or surgical instruments or attached to patients for referencing or registering purposes which can be attached directly or via clamps to surgical instruments or apparatus using detachable adaptors; software, planning software, operating software and computer programs for use in conducting, planning and operation of medical or surgical pointers, namely, pointers for registering purposes comprising tactile or contact-signaling tips; data carriers featuring software, planning software and computer programs, namely, robot-assisted applications and applications for use in conducting and planning three-dimensionally registering and/or referencing patient location data for neurosurgical, orthopedic, trauma-specific, spinal, radio-therapeutic, radiosurgical, and ear, nose and throat surgical procedures surgery; data carriers featuring software, planning software and computer programs use in conducting and planning three-dimensionally registering and/or referencing patient location data; light pointers, laser light pointers, infrared light pointers for use in three-dimensionally registering and/or referencing patient location data by producing light markings; data carriers featuring software, planning software, recognition software and computer programs for use in conducting, planning, recognition and operation of referencing markings or referencing marker arrays attached to medical or surgical instruments or attached to patients for referencing or registering purposes which can be attached directly or via clamps to surgical instruments or apparatus using detachable adaptors; data carriers featuring software, planning software, operating software and computer programs for use in conducting, planning and operation of medical or surgical pointers, namely, pointers for registering purposes comprising tactile or contact-signaling tips; electronic identifying or authorizing devices for using medical devices or treatment apparatus

IC 010. US 026 039 044. G & S: Electrical and electronic devices, namely, image-presenting devices for three dimensionally registering and /or referencing patient location data by producing light markings, namely, light reflection points by means of light emitters for neurosurgical, orthopedic, trauma-specific, spinal, radio-therapeutic, radio-surgical, namely, robot assisted applications and for ear, nose and throat surgery; medical and/or surgical robots for use with image-guided localization systems for surgical applications; neurosurgical, orthopedic, radio-therapeutic and radio-surgical instruments and apparatus; medical or surgical robots for robot-assisted neurosurgical, spinal, trauma-specific, orthopedic, radio-therapeutic and radio-surgical applications; medical equipment, namely, portable or mobile screens for displaying internal body structures on the basis of previously captured patient data sets; intra-operative, image-guided localization systems comprised of monitors and cameras for surgical applications for neurosurgical, orthopedic, stereotactic and radio-surgical applications in ear nose and throat surgery; medical apparatus and instruments for software controlled precision treatment for use in neurosurgery, orthopedics, radiotherapy, radiosurgery and in ear, nose and throat surgery; laser light pointers for medical purposes; infrared laser light pointers for medical purposes; medical referencing markings or referencing marker arrays attached to medical or surgical instruments or attached to patients directly or via clamps to surgical instruments or apparatus using detachable adaptors for referencing and/or registering purposes; medical or surgical pointers, namely, pointers for registering purposes comprising tactile or contact-signaling tips

IC 042. US 100 101. G & S: Design and development of software, planning software and computer programs for robot assisted neurosurgical, orthopedic, trauma-specific, spinal, radio-therapeutic and radio-surgical applications and for applications in ear, nose and throat surgery for others; Design and development of software, planning software and computer programs for three-dimensionally registering and/or referencing patient location data by producing light markings; Design and development of software, planning software, recognition software and computer programs for the processing of referencing markings or referencing marker arrays attached to medical or surgical instruments or attached to patients directly or via clamps to surgical instruments or apparatus using detachable adaptors for referencing and/or registering purposes; Design and development of software, planning software, operating software and computer programs for the operation of medical or surgical pointers, namely, pointers for registering purposes comprising tactile or contact-signaling tips

Standard Characters Claimed**Mark Drawing Code** (4) STANDARD CHARACTER MARK**Serial Number** 77892270**Filing Date** December 13, 2009**Current Basis** 44E**Original Filing Basis** 1B;44D**Published for Opposition** September 19, 2017**Registration Number** 5348133**Registration Date** December 5, 2017**Owner** (REGISTRANT) BrainLAB AG aktiengesellschaft FED REP GERMANY Olof-Palme-Str. 9 Munich FED REP GERMANY 81829**Attorney of** Patrick F. Clunk

Record
Priority Date September 23, 2009
Type of Mark TRADEMARK. SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

[TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DICT](#) [SEARCH OG](#) [TOP](#) [HELP](#)

[HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)