

ESTTA Tracking number: **ESTTA1342620**
Filing date: **02/27/2024**

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	Kap Medical
Granted to date of previous extension	02/28/2024
Address	1395 PICO STREET CORONA, CA 92881 UNITED STATES

Correspondence information	JAMES J. SAUL FAEGRE DRINKER BIDDLE & REATH LLP 320 SOUTH CANAL STREET, SUITE 3300 CHICAGO, IL 60606 UNITED STATES Primary email: trademarkdocketing@faegredrinker.com Secondary email(s): james.saul@faegredrinker.com, susan.mazurek@faegredrinker.com, claire.plante@faegredrinker.com 3123565053
----------------------------	--

Applicant information

Application no.	97710567	Publication date	10/31/2023
Opposition filing date	02/27/2024	Opposition period ends	02/28/2024
Applicant	EZ Way, Inc. 807 EAST MAIN ST. CLARINDA, IA 51632 UNITED STATES		

Goods/services affected by opposition

Class 010. First Use: None First Use In Commerce: None All goods and services in the class are opposed, namely: Apparatus operated by caregivers to move patients from recumbent positions and to transport patients

Grounds for opposition

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

Marks cited by opposer as basis for opposition

U.S. registration no.	5013577	Application date	11/03/2014
Register	Principal		
Registration date	08/02/2016	Foreign priority date	NONE

Word mark	INTELLIMATT
Design mark	
Description of mark	NONE
Goods/services	Class 010. First use: First Use: Dec 2015 First Use In Commerce: Dec 2015 Specialty support surfaces, namely, supports for general medical use in the form of mattresses, mats, pads, seats, cushions, pillows and therapeutic overlays; compression cuffs; medical products, namely, bed frames

U.S. registration no.	5013578	Application date	11/03/2014
Register	Principal		
Registration date	08/02/2016	Foreign priority date	NONE
Word mark	INTELLIMATT		
Design mark			
Description of mark	The mark consists of a stylized letter "i" centered to the left of the stylized letters "NTELLIMATT" which appear below a figure of a person laying on a bed.		
Goods/services	Class 010. First use: First Use: Dec 2015 First Use In Commerce: Dec 2015 Specialty support surfaces, namely, supports for general medical use in the form of mattresses, mats, pads, seats, cushions, pillows and therapeutic overlays; compression cuffs; medical products, namely, bed frames		

Related proceedings	ESTTA1342618
---------------------	--------------

Attachments	Notice of Opposition EZ INTELLILIFT.pdf(197669 bytes)
-------------	--

Signature	/James J. Saul/
Name	JAMES J. SAUL
Date	02/27/2024

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

In the Matter of Serial No.: 97710567

For the Mark: EZ INTELLILIFT

Filed: December 9, 2022

Published: October 31, 2023

KAP Medical,)	
)	Opposition No. _____
Opposer,)	
)	
v.)	<u>NOTICE OF OPPOSITION</u>
)	
EZ Way, Inc.,)	
)	
Applicant.)	
)	

Opposer KAP Medical ("KAP Medical") is a California corporation having its principal place of business at 1395 Pico Street, Corona, California 92881, United States.

KAP Medical believes that it will be damaged by the registration of the mark in Trademark Application Serial No. 97710567 (the "Subject Application"), and hereby opposes the same.


As grounds of this opposition, it is alleged that:

1. KAP Medical is a California-based designer and manufacturer of state-of-the-art therapeutic support surfaces and other medical electronic products.
2. KAP Medical's products include the INTELLIMATT® smart support surface, which allows patients to rest and recover on an advanced mattress system that continuously

monitors and adjusts for their comfort levels. An image of one such INTELLIMATT® product is displayed below:



3. KAP Medical is the owner of U.S. federal trademark registrations for INTELLIMATT (U.S. Reg. No. 5,013,577) and INTELLIMATT & Design (U.S. Reg. No. 5,013,578) (together, the “INTELLIMATT Marks”), as detailed below:

Mark	Reg. No.	Reg. Date	International Class Goods/Services
INTELLIMATT	5013577	8/2/2016	Class 10: Specialty support surfaces, namely, supports for general medical use in the form of mattresses, mats, pads, seats, cushions, pillows and therapeutic overlays; compression cuffs; medical products, namely, bed frames
	5013578	8/2/2016	Class 10: Specialty support surfaces, namely, supports for general medical use in the form of mattresses, mats, pads, seats, cushions, pillows and therapeutic overlays; compression

Mark	Reg. No.	Reg. Date	International Class Goods/Services
			cuffs; medical products, namely, bed frames

4. KAP Medical has developed substantial goodwill and brand equity in the INTELLIMATT Marks through their continuous, extensive, and conspicuous use while promoting its products.

5. The INTELLIMATT Marks are incontestable pursuant to 15 U.S.C. § 1065.

6. KAP Medical’s rights in the INTELLIMATT Marks for use in connection with specialty support surfaces and medical products date back to 2014.

7. On November 29, 2023, KAP Medical timely filed its first request for a 90-day extension of time to oppose the Subject Application. The Board granted the extension the same day, with KAP Medical having until February 28, 2024, to oppose.

8. Upon information and belief, the Applicant, EZ Way, Inc., is an Iowa corporation with an address at 807 East Main St., Clarinda, Iowa, 51632.

9. On December 9, 2022, Applicant filed the Subject Application to register the mark EZ INTELLILIFT based on its intent to use the mark in connection with an “[a]pparatus operated by caregivers to move patients from recumbent positions and to transport patients” in International Class 10.

10. KAP Medical filed, registered, and used the INTELLIMATT Marks prior to the filing date of the Subject Application. KAP Medical’s rights in the INTELLIMATT Marks have priority over any rights Applicant can claim in the mark EZ INTELLILIFT.

11. The goods listed in the INTELLIMATT Marks’ registrations referenced above and the goods claimed in the Subject Application are either identical or closely related.

12. The EZ INTELLILIFT mark claimed in the Subject Application so resembles KAP Medical's INTELLIMATT Marks, especially with regard to visual appearance, phonetic expression, and syllable count, as to be likely, when used in connection with the goods identified in the Subject Application, to cause confusion, to cause mistake, and/or to deceive.

13. The mark in the Subject Application cannot be registered consistent with Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

WHEREFORE, KAP Medical believes that it would be damaged by registration of the mark shown in the Subject Application, prays that Application No. 97710567 be rejected, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of KAP Medical.

The requisite filing fee of \$600.00 is submitted herewith. If the amount submitted is determined to be incorrect, the Commissioner may charge any additional fees or credit any over payment to Deposit Account No. DA060029.

Dated: February 27, 2024

FAEGRE DRINKER BIDDLE & REATH LLP

By: s/ James J. Saul
James J. Saul
320 S. Canal Street, Suite 3300
Chicago, Illinois 60606
Telephone: (312) 569 1000
Facsimile: (312) 569 3000
james.saul@faegredrinker.com

David F. Gomez
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402
Telephone: (612) 766-7000
Facsimile: (612) 766-1600
david.gomez@faegredrinker.com

Attorneys for KAP Medical