

ESTTA Tracking number: **ESTTA15183**

Filing date: **09/15/2004**

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

<b>Name</b>	Pacesetter, Inc. doing business as St. Jude Medical Cardiac Rhythm Management Division
<b>Granted to Date of previous extension</b>	09/22/2004
<b>Address</b>	Pacesetter, Inc. doing business as St. Jude Medical Cardiac Rhythm Management 15900 Valley View Court Sylmar, CA 91342 UNITED STATES
<b>Relationship to party who filed Extension of time to oppose</b>	The name of the opposer field has an 80 character limit and Division did not fit in the name of the opposer field.

<b>Attorney information</b>	Steven M. Mitchell Pacesetter, Inc. doing business as St. Jude Medical Cardiac Rhythm Management Division 15900 Valley View Court Sylmar, CA 91342 UNITED STATES smeltzer@sjm.com Phone:818-493-2170
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#### Applicant Information

<b>Application No</b>	76535840	<b>Publication date</b>	05/25/2004
<b>Opposition Filing Date</b>	09/15/2004	<b>Opposition Period Ends</b>	09/22/2004
<b>Applicant</b>	Cardiac Pacemakers, Inc.		

### Goods/Services Affected by Opposition

Class 010.

All goods and services in the class are opposed, namely: Implantable cardiac rhythm management devices capable of sensing heart activity and providing pacing and defibrillating therapy as needed

Opposition pending against 76536437 and Opposition pending against 76535842

<b>Attachments</b>	Notice of Opp Statement 76535840 Pacer+.pdf ( 3 pages ) Exhibit A - Inside Baltimore.pdf ( 1 page )
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<b>Signature</b>	/steven m. mitchell/
<b>Name</b>	Steven M. Mitchell
<b>Date</b>	09/15/2004

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

In re the Matter of Application Serial No.	)	
76/535,840	)	
	)	
Published in the OFFICIAL GAZETTE on	)	
March 25, 2004	)	
	)	
<b>PACESETTER, INC. doing business as</b>	)	Opposition No.: <u>Unknown (Unassigned)</u>
<b>ST. JUDE MEDICAL CARDIAC</b>	)	
<b>RHYTHM MANAGEMENT DIVISION</b>	)	
Opposer	)	
v.	)	
<b>CARDIAC PACEMAKERS, INC.</b>	)	
Applicant	)	

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BOX TTAB  
FEE  
Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

**NOTICE OF OPPOSITION**

PACESETTER, INC., doing business as ST. JUDE MEDICAL CARDIAC RHYTHM MANAGEMENT DIVISION, a corporation organized and existing under the laws of the State of Delaware, believes that it will be damaged by registration of the mark shown in Serial No. 76/535,840 in Class 10 (medical apparatus) and hereby opposes the same.

As grounds of opposition, it is alleged that:

1. Opposer develops, manufactures and distributes cardiovascular medical devices for the global cardiac rhythm management, cardiac surgery and cardiology and vascular access therapy areas.

2. Applicant seeks to register PACER+ as a trademark “for implantable cardiac rhythm management devices capable of sensing heart activity and providing pacing and defibrillating therapy as needed”.
3. Opposer and others in the industry use variations on the term PACER for cardiac rhythm management devices.
4. The term PACER and variations, including the term PACER+, are generic terms in the medical technology industry used in connection with cardiac rhythm management devices.
5. As a generic term and/or a variation on a generic term, PACER+ is not registrable under the Lanham Act.
6. In the alternative, PACER+, as a variation on a generic term, is a merely descriptive term in the medical industry when applied to and used in connection with cardiac rhythm management devices, and PACER+ has not acquired secondary meaning or become distinctive of the goods identified in the involved application.
7. The term PACER has been adopted by the medical community as a generic term, as shown on the following article:

Title of Article	Author	Source	Date	Page No.
FDA OKs Pacer, Rejects Other Device	Inside Baltimore News Article	Inside Baltimore	2001	<a href="http://www.insidebaltimore.com/news/health">www.insidebaltimore.com/news/health</a> ; line 13

Copy of the foregoing article is attached hereto as Exhibit A.

8. If Applicant is permitted to use and register the term PACER+, as specified in the application herein opposed, confusion in trade resulting in damage and injury to Opposer would be caused and would result by reason of the use of a generic or merely descriptive term as a mark.
9. If Applicant is granted the registration herein opposed, it would thereby obtain at least a prima facie exclusive right to the use of its mark. Such registration would be a source of damage and injury to Opposer by, among other things, interfering with Opposer’s right to use variations on the term PACER for cardiac rhythm management devices.

WHEREFORE, Opposer prays that the application Serial No. 76/535,840 be rejected, and that the mark therein sought for the goods herein specified in International Class 10 be denied and refused.

Respectfully submitted,

Dated: September 15, 2004

By /Steven M. Mitchell/

Steven M. Mitchell  
Registration No. 31,857  
Attorney for Opposer

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