

ESTTA Tracking number: **ESTTA345457**

Filing date: **05/03/2010**

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	BN Immunotherapeutics, Inc.
Granted to Date of previous extension	05/02/2010
Address	2425 Garcia Ave Mountain View, CA 94043 UNITED STATES

Attorney information	Edward A. Pennington HANIFY & KING, Professional Corporation 1055 Thomas Jefferson Street NW Suite 400 Washington, DC 20007 UNITED STATES eap@hanify.com, stp@hanify.com, ip-docketing@hanify.com
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**Applicant Information**

Application No	79048489	Publication date	11/03/2009
Opposition Filing Date	05/03/2010	Opposition Period Ends	05/02/2010
International Registration No.	0949517	International Registration Date	11/26/2007
Applicant	AmVac AG Metallstraße 4 CH-6300 Zug, SWITZERLAND		

**Goods/Services Affected by Opposition**

<p>Class 005. All goods and services in the class are opposed, namely: Pharmaceutical and veterinary preparations, namely, chemical, biochemical, molecular biological and biological preparations for the treatment of medical and hygienic diseases and conditions, namely, vaccines for the treatment of benign prostatic hyperplasia, prostatitis and inflammation related disorders; medicines for the treatment of benign prostatic hyperplasia, prostatitis and inflammation related disorders; vaccines, disinfectants for sanitary purposes; medical plasters, gauze and bandages for use as medical dressings; sanitary preparations for medical purposes; dietetic substances, namely, foods and sugars adapted for medical use</p>
<p>Class 010. All goods and services in the class are opposed, namely: Surgical apparatus and instruments for medical, dental and veterinary use</p>
<p>Class 042. All goods and services in the class are opposed, namely: Scientific and technological research services in the fields of chemical, biochemical, molecular biological and biological preparations for</p>

medical and hygienic purposes, medicines and vaccinations
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## Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

## Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	77577729	Application Date	09/24/2008
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	PROSTVAC		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: Vaccines and recombinant vectors of pox used to prepare vaccines and biological immunogens for use in humans		

U.S. Registration No.	2690689	Application Date	05/06/2002
Registration Date	02/25/2003	Foreign Priority Date	NONE
Word Mark	PROSTVAC		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1993/03/24 First Use In Commerce: 1993/09/08 Vaccines and recombinant vectors of pox used to prepare vaccines and biological immunogens for use in humans		

U.S. Application/	NONE	Application Date	NONE
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Registration No.			
Registration Date	NONE		
Word Mark	PROSTVAC		
Goods/Services	Vaccines and recombinant vectors of pox used to prepare vaccines and biological immunogens for use in humans		

Attachments	77577729#TMSN.jpeg ( 1 page )( bytes ) 76408665#TMSN.gif ( 1 page )( bytes ) Notice of Opposition - PROSTAVAC.pdf ( 59 pages )(2072532 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Edward A. Pennington/
Name	Edward A. Pennington
Date	05/03/2010



Research and Development Agreements (“CRADAs”). The PROSTVAC product, currently in late-stage clinical development, has the potential to significantly extend the lives of men with advanced prostate cancer where limited treatment options are available without affecting quality of life. NCI first used the PROSTVAC mark in commerce in 1993 for a specific therapeutic prostate cancer vaccine product it had developed. In September 1994, NCI entered into a CRADA with Therion to further develop the PROSTVAC product through clinical trials with the goal of eventually bringing the vaccine to market. Therion’s and NCI’s continuous and exclusive use of the PROSTVAC distinguished said product from the cancer vaccine products of others, thus providing common law trademark rights to the PROSTVAC mark. Through this continuous and exclusive use, the PROSTVAC mark became exclusively identified first with NCI and Therion then, beginning in August 2008, with NCI and BNIT for the prostate cancer vaccine.

2. On May 6, 2002, Therion filed application Serial No. 76/408,665 to register the mark PROSTVAC for “Vaccines and recombinant vectors of pox used to prepare vaccines and biological immunogens for use in humans” in International Class 005. Application Serial No. 76/408,665 issued as U.S. Reg. No. 2,690,689 on February 25, 2003. The date of first use in interstate commerce for U.S. Reg. No. 2,690,689 was September 8, 1993. Documents evidencing such actual use of the PROSTVAC mark in interstate commerce for the vaccine product described *supra* were timely filed with the United States Patent and Trademark Office (“USPTO”).

3. During the collaboration with Therion, NCI continued to use the PROSTVAC mark in connection with clinical trials and in scientific publications describing the advancement of the PROSTVAC product development. In late 2006, Therion filed for bankruptcy and

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