

ESTTA Tracking number: **ESTTA373502**

Filing date: **10/15/2010**

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	Bayer HealthCare LLC
Granted to Date of previous extension	10/17/2010
Address	100 Bayer Road Pittsburgh, PA 15205 UNITED STATES

Attorney information	Joseph N. Welch II Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP 311 South Wacker Drive Suite 5000 Chicago, IL 60606 UNITED STATES jnw@pattishall.com, pb@pattishall.com, stl@pattishall.com, ijb@pattishall.com, lrb@pattishall.com Phone:(312) 554-8000
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**Applicant Information**

Application No	77726529	Publication date	04/20/2010
Opposition Filing Date	10/15/2010	Opposition Period Ends	10/17/2010
Applicant	Gidget Marks, LLC 21882 Bellcroft Drive Lake Forest, CA 92630 UNITED STATES		

**Goods/Services Affected by Opposition**


<p>Class 005. All goods and services in the class are opposed, namely: Vitamin and mineral supplements, nutritional supplements, food supplements, herbal supplements, herbal tea for medicinal purposes, meal replacement drinks and powder, nutritional fortified water and beverages, nutritional energy bars as meal replacements, nasal spray preparations, nose drops, eye drops, cough drops, cough syrups, cough and throat lozenges, medicated lotions for skin, hair, sunburn, face and body, topical first aid gel, medicated shampoo, muscle relaxants, sedatives, aspirin, ibuprofen for use as an oral analgesic, appetite suppressants, pharmaceutical preparations for the treatment of angina, diabetes and insomnia, eye washes, contact lens cleaning solutions, muscle soaks, carpet, room and shoe deodorizers and disinfectants for hygienic purposes; air fresheners, car deodorizers, moth balls; sanitary preparations for medical use and household use; food for babies; feeding preparations and nutritional formulas, namely, infant formulas; nutritional, mineral, homeopathic, supplements in the form of dietary, nutritional, mineral and/or homeopathic supplements for babies, toddlers, children, and teens; medicines for babies, toddlers, children and teens, namely, pharmaceutical preparations for skin disorders, pharmaceutical preparations for treating colds, medicated diaper rash ointments, balms and lotions; medical plasters; materials for dressings, namely, bandages for dressings, burn dressings; medicated bath preparations; therapeutic preparations for the bath for medical purposes;</p>
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bath salts for medical purposes; disinfectants for hygiene purposes; first-aid kits, medicated ointments, namely, antibiotic, diaper rash, anti-inflammatory ointments; dietetic foods adapted for medical use; dental wax, medicated pre-moistened wipes, gels, lotions, and pads impregnated with acne medication

## Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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## Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	77640093	Application Date	12/26/2008
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	DIDGET		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2009/08/17 First Use In Commerce: 2010/04/02 Medical diagnostic reagents for the analysis of body fluids Class 010. First use: First Use: 2009/08/17 First Use In Commerce: 2010/04/02 Medical diagnostic kits comprising medical diagnostic instruments for the analysis of body fluids and video game software sold as a unit; medical devices for obtaining blood samples		

U.S. Application No.	77704276	Application Date	04/01/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	DIDGET		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 010. First use: First Use: 2009/08/17 First Use In Commerce: 2010/04/02 medical diagnostic instruments for the analysis of body fluids

Attachments	77640093#TMSN.jpeg ( 1 page )( bytes ) 77704276#TMSN.jpeg ( 1 page )( bytes ) Notice of Opposition Against GIDGET (App. Ser. No. 77726529) -- 2010.10.15.pdf ( 4 pages )(30268 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	/Ian Block/
Name	Ian J. Block
Date	10/15/2010

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

In the matter of Application Serial No. 77/726,529: GIDGET

Published in the *Official Gazette* on April 20, 2010  
in Classes 2, 4, 5, 6, 8, 11, 15, 18, 20, 26, 27, 29, 30, 31, 32, 33, 35, 38

BAYER HEALTHCARE LLC,	)	
	)	
Opposer,	)	Opposition No. _____
	)	
v.	)	
	)	
GIDGET MARKS, LLC,	)	
	)	
Applicant.	)	

**NOTICE OF OPPOSITION**

Bayer HealthCare LLC, a Delaware limited liability company having offices in Pittsburgh, Pennsylvania, believes it will be damaged by registration of the mark shown at Application Serial No. 77/726,529 (the "Application") for the goods identified in Class 5 therein and files this Notice of Opposition pursuant to 37 C.F.R. § 2.104. The grounds for opposition are stated below.

1. Opposer and its predecessors have for many years been engaged in the manufacture, distribution, advertising and sale of products in the medical and healthcare fields, including diagnostic testing kits used in the care and treatment of diabetes, among many others.

2. On December 26, 2008, prior to the date on which Applicant filed the Application, Opposer filed an application to register DIDGET (App. Ser. No. 77/640,093) with the United States Patent and Trademark Office ("USPTO") for "medical diagnostic reagents for the analysis of body fluids" in Class 5 and "medical diagnostic kits comprising medical

diagnostic instruments for the analysis of body fluids and video game software sold as a unit; medical devices for obtaining blood samples" in Class 10.

3. On April 1, 2009, also prior to the date on which Applicant filed the Application, Opposer filed an application to register DIDGET (App. Ser. No. 77/704,276) with the USPTO for "medical diagnostic instruments for the analysis of body fluids" in Class 10.

4. Opposer has used its DIDGET mark since at least as early as August 17, 2009, and has used the mark in commerce since at least as early as April 2, 2010.

5. Upon information and belief, neither Applicant nor any predecessor or related company of Applicant has a claim of right in the mark GIDGET for the goods identified in the Application in Class 5 prior to April 30, 2009, the date on which Applicant filed its intent-to-use Application.

6. The proposed use of the GIDGET mark for the goods identified in Class 5 of the Application is likely to cause confusion, mistake or deception as to the source of origin, sponsorship or approval of Applicant's goods in that purchasers are likely to believe that Applicant's goods are Opposer's goods, or are in some way legitimately connected with, licensed or approved by the Opposer.

7. Applicant's proposed use of the mark shown in the Application is without Opposer's consent or permission.

WHEREFORE, registration by Applicant of the Application for the goods identified in Class 5 would be damaging to Opposer, Opposer respectfully requests that its opposition be

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