

ESTTA Tracking number: **ESTTA600943**

Filing date: **04/28/2014**

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		
Entity	Limited Liability Company	Citizenship	Delaware
Address	100 Bayer Road Pittsburgh, PA 15205 UNITED STATES		

Attorney information	Richard J. Groos FULBRIGHT & JAWORSKI LLP 98 San Jacinto Blvd. Suite 1100 Austin, TX 78701 UNITED STATES aoipdocket@nortonrosefulbright.com, brandon.ress@nortonrosefulbright.com Phone:5124745201		
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### Applicant Information

Application No	86096315	Publication date	04/08/2014
Opposition Filing Date	04/28/2014	Opposition Period Ends	05/08/2014
Applicant	Wotring, Robert 222 Bryant Street Palo Alto, CA 94301 UNITED STATES		

### Goods/Services Affected by Opposition

Class 005. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Pharmaceutical preparations to provide relief from acute and daily symptoms of diarrhea, constipation, abdominal pain, gas, bloating, heartburn, and nausea
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### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1536042	Application Date	05/05/1988
Registration Date	04/25/1989	Foreign Priority Date	NONE
Word Mark	ALEVE		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 1988/04/25 First Use In Commerce: 1988/04/25 ANTI-INFLAMMATORY, ANALGESIC, AND ANTIPYRETIC PHARMACEUTICAL PREPARATIONS

U.S. Registration No.	3287780	Application Date	02/13/2007
Registration Date	09/04/2007	Foreign Priority Date	NONE

Word Mark	ALEVE
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Design Mark	
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Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2000/07/31 First Use In Commerce: 2000/07/31 Pharmaceutical antitussive-cold preparations; Preparations for treating colds

Attachments	77105868#TMSN.jpeg( bytes ) BHCC30_Notice of Opposition - ALIVA.pdf(723659 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	/Brandon M. Ress/
Name	Brandon M. Ress
Date	04/28/2014

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

In the matter of Application Serial No. 86/096,315

By Robert Wotring for the Mark: ALIVA

Filed on October 21, 2013, Published in the *Official Gazette* on April 8, 2014

BAYER HEALTHCARE LLC,  
Opposer,

v.

ROBERT WOTRING,  
Applicant.

Opposition No. \_\_\_\_\_

**NOTICE OF OPPOSITION**

Bayer Healthcare LLC (“Opposer”), a Delaware limited liability company having a principal place of business at 100 Bayer Road, Pittsburgh, Pennsylvania 15205, believes that it will be damaged by registration of the mark “ALIVA” as shown in Application Serial No. 86/096,315 for goods in International Class 5 (the “Application”) and hereby opposes the same.

As the grounds of Opposition, Opposer alleges that:

1. Robert Wotring (“Applicant”) filed an application to register the mark “ALIVA” on the basis of intention to use for “pharmaceutical preparations to provide relief from acute and daily symptoms of diarrhea, constipation, abdominal pain, gas, bloating, heartburn, and nausea” in International Class 5 as evidenced by the publication of such mark in the *Official Gazette* on April 8, 2014.
2. Through its predecessors-in-interest, Opposer has, since at least as early as April 25, 1988, used the mark ALEVE in connection with products related to the treatment of pain,

and in connection with preparations for treating colds since as early as 2000. Opposer is the owner of, among others, an incontestable registration for the trademark “ALEVE” (United States Registration No. 1,536,042, registered April 25, 1989) for “anti-inflammatory, analgesic and antipyretic pharmaceutical preparations” in Class 5 and a registration for the trademark “ALEVE” (United States Registration No. 3,287,780, registered September 4, 2007) for “pharmaceutical antitussive-cold preparations; preparations for treating colds” in Class 5. Printouts of the TSDR database information for these registrations are attached as Exhibit A.

3. By virtue of promotional and advertising activities and the excellence of its goods, Opposer has gained for its mark “ALEVE” a most valuable reputation and has created, in the minds of the buying public, an exclusive association between “ALEVE” and its goods.

4. Applicant’s alleged mark is confusingly similar to Opposer’s ALEVE mark in appearance, sound, connotation, and commercial impression. Upon information and belief, Applicant’s proposed mark is intended to be used for goods which are identical, similar and/or related to the goods in connection with which Opposer has used its “ALEVE” mark and are sold to substantially the same class of customers through the same channels of trade.

5. Priority is not an issue. Opposer has used the “ALEVE” mark prior to the Applicant’s application date of October 21, 2013, or any date of first use Applicant can claim.

6. Opposer filed its applications for “ALEVE” prior to the filing date of the opposed application.

7. Use by Applicant of the alleged trademark “ALIVA” is without Opposer's consent or permission.

8. The mark that Applicant seeks to register so resembles Opposer’s “ALEVE” mark as to be likely, when used on or in connection with Applicant’s goods, to cause confusion, or to

cause mistake, or to deceive. Purchasers and prospective purchasers are likely to falsely believe that Applicant's goods offered under Applicant's Mark are sponsored, endorsed, or approved by Opposer, or are in some way affiliated, connected or associated with Opposer. Furthermore, any defect, objection or fault found with Applicant's goods offered and sold under its "ALIVA" mark would be likely to reflect upon and seriously injure the reputation that Opposer has established for its goods offered under its "ALEVE" mark. Registration therefore should be refused under 15 U.S.C. § 1052(d).

9. The mark "ALEVE" is distinctive and famous throughout the United States, and has become closely associated with the goods of Opposer. The "ALEVE" mark became famous prior to the filing of Applicant's application for "ALIVA."

10. The trademark proposed for registration by Applicant, namely, "ALIVA," is likely to cause dilution by blurring and dilution by tarnishment of Opposer's "ALEVE" mark, and also reduces the capacity of the famous "ALEVE" mark to identify the goods of Opposer.

11. If Applicant is granted the registration herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of its alleged mark. Such registration would be a source of damage and injury to Opposer.

WHEREFORE, Bayer Healthcare LLC prays that Application Serial No. 86/096,315 be rejected, and that registration of the mark therein be refused and that the opposition be sustained.

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