

ESTTA Tracking number: **ESTTA494031**

Filing date: **09/12/2012**

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	MedExcel U.S.A., Inc.
Granted to Date of previous extension	09/29/2012
Address	484 Temple Hill Road New Windsor, NY 12553 UNITED STATES

Attorney information	Frank P. Presta Nixon & Vanderhye PC 901 North Glebe Road 11th Floor Arlington, VA 22203 UNITED STATES fpp@nixonvan.com, cgp@nixonvan.com, mec@nixonvan.com Phone:703-816-4041
----------------------	--

### Applicant Information

Application No	85557093	Publication date	07/31/2012
Opposition Filing Date	09/12/2012	Opposition Period Ends	09/29/2012
Applicant	Medxcel, LLC Suite 490 6325 Digital Way Indianapolis, IN 46278 UNITED STATES		

### Goods/Services Affected by Opposition

Class 035. First Use: 2012/01/19 First Use In Commerce: 2012/02/23 All goods and services in the class are opposed, namely: Holding company services, namely, providing business management and business administration services, and consolidating shared services, namely, office functions and human resources for subsidiaries and affiliates which provide products and services in the healthcare field; business incubation services in the nature of developing new business concepts and start-up businesses and business development services, namely, business advisory services, business consultancy and business information to businesses in the field of healthcare
--

### Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

### Mark Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	MedExcel (word mark)		
Goods/Services	hospital management services relating to emergency care and primary care		

Attachments	3359-12noticeopposition9-12-2012.pdf ( 5 pages )(184611 bytes )
-------------	---

### 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	/fpp/
Name	Frank P. Presta
Date	09/12/2012

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

In the matter of Application Serial No. 85/557093  
Published in the Official Gazette on July 31, 2012

3359-12

MEDEXCEL U.S.A., INC.	)	
	)	
Opposer,	)	
	)	Opposition No.
v.	)	
	)	
MEDXCEL, LLC	)	
	)	
Applicant.	)	

**Box TTAB FEE (or NO FEE)**  
Commissioner for Trademarks  
P.O. Box 1451  
Arlington, Virginia 22313-1451

**NOTICE OF OPPOSITION**

MedExcel U.S.A., Inc., a New York corporation, with a place of business at 484 Temple Hill Road, New Windsor, New York, 12553, believes that it will be damaged by the registration of the mark Medxcel and Design (hereinafter after "Applicant's Mark") for the services in Class 35 in Application Serial No. 85/557093, and hereby opposes the same.

As grounds for opposition, it is alleged that:

1. Application Serial No. 85/557093 was filed on March 1, 2012, to register Applicant's Mark based on use in commerce with a date of first use of January 19, 2012, and a date of first use in commerce of February 23, 2012 for the following services in Class 35:

Holding company services, namely, providing business management and business administration services, and consolidating shared services, namely, office functions and human resources for subsidiaries and affiliates which provide products and services in the healthcare field; business incubation services in the nature of developing new business concepts and start-up businesses and business development services, namely, business advisory services, business consultancy and business information to businesses in the field of healthcare.

2. On information and belief, Applicant has not used Applicant's Mark in commerce on any of the services in International Class 35 prior to the date of first use of January 19, 2012.

3. Opposer was the owner of Registration No. 2203212, dated November 10, 1998, for the mark MedExcel for hospital management services relating to emergency care and primary care. This registration was cancelled as a result of Opposer's inadvertent failure to file a timely declaration of use/renewal application.

4. Opposer filed new application Serial No. 85/726074 on September 11, 2012 to re-register its mark MedExcel for hospital management services relating to emergency care and primary care based on a date of first use in commerce of December 1, 1996.

5. Opposer's mark MedExcel has been used in commerce by Opposer and its predecessor in interest continuously from at least as early as December 1, 1996 on and in connection with hospital management services relating to emergency care and primary care.

6. By virtue of the marketing and providing of services under Opposer's mark MedExcel in commerce, the services with which Opposer's mark have been and are being used have acquired a favorable reputation reflected in a substantial amount of goodwill which will be severely impaired by the registration of Applicant's Mark for the services in Application Serial No. 85/557093.

7. Applicant's Mark Medxcel and Design is so similar to Opposer's mark MedExcel, when used in connection with the same or closely related services, e.g., management and business administration services in the field of healthcare, as to be very likely to cause confusion, mistake or lead to deception as to the source or origin of Applicant's services when provided under Applicant's Mark.

8. Applicant's services in the opposed Application Serial No. 85/557093 are the same as or very closely related to the services with which Opposer uses its mark MedExcel, and are provided and advertised through the same channels of trade and to the same classes of purchasers. Accordingly, confusion, mistake or deception are most likely, and many persons familiar with Opposer's mark MedExcel are likely to use Applicant's services under Applicant's Mark in the belief that the latter are services provided or authorized by Opposer.

9. Applicant's use of Applicant's Mark in connection with the services in the opposed Application Serial No. 85/557093 falsely suggests a connection with Opposer within the meaning of Section 2(a) of the Trademark Act, 15 U.S.C. 1052(a).

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.