

ESTTA Tracking number: **ESTTA284227**

Filing date: **05/15/2009**

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	Genmab A/S
Granted to Date of previous extension	05/17/2009
Address	Toldbodgade 33 Copenhagen, DK-1253 DENMARK

Attorney information	Keith E. Danish Hiscock & Barclay, LLP Seven Times Square New York, NY 10036 UNITED STATES trademarks@hblaw.com, kdanish@hblaw.com Phone:(212) 784-5800
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Applicant Information

Application No	77547900	Publication date	11/18/2008
Opposition Filing Date	05/15/2009	Opposition Period Ends	05/17/2009
International Registration No.	NONE	International Registration Date	NONE
Applicant	Novartis AG CH-4002 Basel, SWITZERLAND		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: vaccines for human use

Grounds for Opposition

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

U.S. Registration No.	3468170	Application Date	06/21/2007
Registration Date	07/15/2008	Foreign Priority Date	12/22/2006
Word Mark	GENBRIA		

Design Mark	GENBRIA
Description of Mark	NONE
Goods/Services	Class 005. First use: Pharmaceutical preparations and substances for the treatment of cancer, AIDS (acquired immune deficiency syndrome) and other infectious diseases, immune and autoimmune diseases, inflammatory diseases, neurodegenerative diseases and cardiovascular diseases

Attachments	79040578#TMSN.gif (1 page)(bytes) SKMBT_60009051511500.pdf (9 pages)(258957 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	/keith e. danish/
Name	Keith E. Danish
Date	05/15/2009

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

*In the Matter of Application Serial No. 77/547,900
Published in the Official Gazette of November 18, 2008*

Atty. Ref.: 720214.3037017

----- :
Genmab A/S :

Opposer, :

Opposition No.:

-against- :

Novartis AG, :

Applicant :
----- :

I hereby certify that this paper or fee is being transmitted to the United States Patent and Trademark Office Trademark Trial and Appeal Board using the Electronic System for Trademark Trials and Appeals (ESTTA) on the date indicated below:

Signature


Keith E. Danish

Date:

May 15, 2009

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

Genmab A/S, a Danish public limited company, with a place of business located at Toldbodgade 33, Copenhagen K, Denmark DK-1253 [hereinafter "Opposer"], believes that it will be damaged by registration of the proposed trademark "MENBRIA" and hereby opposes same.

As grounds for opposition, it is alleged that:

1. Novartis AG [hereinafter "Applicant"] has filed an application in the United States Patent and Trademark Office, Serial No. 77/547,900, filed August 15, 2008, for

Atty. Ref.:	720214.3037017	Mark:	MENBRIA
		Ser. No.:	77/547,900

registration of the alleged trademark “MENBRIA” on the Principal Register in respect of “vaccines for human use” (Int’l. Cl. 5), on the basis of a corresponding Swiss registration of said mark.

2. Upon information and belief, applicant did not use its alleged trademark anywhere in the United States of America, or in commerce, prior to the filing date of the aforementioned application.

3. Opposer has registered the trademark “GENBRIA” on the Principal Register of the United States Patent and Trademark Office, Reg. No. 3,468,170, dated July 15, 2008, in respect of “pharmaceutical preparations and substances for the treatment of cancer, AIDS (acquired immune deficiency syndrome) and other infectious diseases, immune and autoimmune diseases, inflammatory diseases, neurodegenerative diseases and cardiovascular diseases” (Int’l. Cl. 5). Said registration is valid and subsisting, and Opposer hereby gives notice, in accordance with Trademark Rule 2.122(d)(1), that it will rely on said registration as evidence on its behalf in this proceeding. Attached to this Notice of Opposition is a status copy of said registration from the “TARR” database of the United States Patent and Trademark Office, along with a copy of the assignment records showing that no assignment of the registration has been recorded.

4. There is no issue of priority since the filing date of Applicant’s “MENBRIA” trademark application is subsequent to the filing date of Opposer’s aforementioned trademark registration, which is valid and subsisting.

5. Opposer’s pleaded trademark possesses a high degree of inherent distinctiveness and represents an extremely valuable asset and symbol of the goodwill of its business by identifying goods which have their source of origin exclusively with Opposer, and by distinguishing such goods from those of others.

Atty. Ref.:	720214.3037017	Mark:	MENBRIA
		Ser. No.:	77/547,900

6. Applicant's alleged trademark "MENBRIA" is confusingly similar to Opposer's pleaded trademark "GENBRIA" in sound, appearance and/or commercial impression.

7. Under the "doctrine of greater care", Applicant had a duty to adopt a trademark for its aforementioned products which is clearly distinguishable from Opposer's trademark for related pharmaceutical products.

8. Under the "doctrine of greater care", Applicant's alleged trademark is likely to cause pre-purchase and/or post-purchase confusion, mistake and/or deception with respect to Opposer's pleaded trademark.

9. Applicant's identification of goods, i.e., "vaccines for human use", encompasses vaccines for treatment of all types of diseases.

10. The respective products of the Opposer and the Applicant are closely related and/or complementary, are likely to travel through the same channels of trade for sale to or use by the same general class of purchasers, and are likely to be sold and/or administered by the same types of personnel.

11. Applicant's alleged trademark is calculated and/or likely to cause pre-purchase and/or post-purchase confusion, mistake or deception of purchasers or members of the public as to the respective marks of the Opposer and the Applicant, and also as to the source of origin or sponsorship of the goods for which such marks are used, or are intended to be used.

12. Applicant's alleged trademark is calculated or likely to cause irreparable loss, injury and/or damage to Opposer's business and to the goodwill thereto appertaining as symbolized and recognized by its aforementioned trademark.

13. Applicant's alleged trademark is a colorable imitation or misappropriation of Opposer's pleaded trademark, which will enable Applicant to reap where it has not sown by

Atty. Ref.:	720214.3037017	Mark:	MENBRIA
		Ser. No.:	77/547,900

trading on the goodwill of Opposer's business as symbolized and recognized by its aforementioned trademark.

14. Applicant's alleged trademark consists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of Applicant, to cause confusion, or to cause mistake, or to deceive.

IN CONCLUSION, Opposer, by its undersigned attorneys, prays that its opposition to Application Serial No. 77/547,900 be sustained and that the Trademark Trial and Appeal Board grant any and all further relief to Opposer that the Board finds to be necessary and just in the circumstances.

The opposition filing fee of \$300.00 is being paid by credit card, but the Commissioner is authorized to charge Deposit Account No. **503010** for any other fees required to be paid in connection with this proceeding.

Respectfully submitted,

GENMAB A/S

Dated: May 15, 2009

By: _____



Mark I. Peroff
Keith E. Danish

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Attorneys for Opposer

Atty. Ref.:	720214.3037017	Mark:	MENBRIA
		Ser. No.:	77/547.900

CERTIFICATE OF SERVICE

I hereby certify that on this the 15th day of May, 2009, I served a true and correct copy of the foregoing **NOTICE OF OPPOSITION**, via First Class U.S. Mail, postage prepaid, upon the applicant's attorney:

Nancy Sabarra, Esq.
Fross Zelnick Lehrman & Zissu PC
866 United Nations Plaza
New York, New York 10017-1822

Dated: May 15, 2009

By: Carol J. Diaz
Carol J. Diaz

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2009-05-15 09:53:22 ET

Serial Number: 79040578 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 3468170

Mark

GENBRIA

(words only): GENBRIA

Standard Character claim: Yes

Current Status: Registered.

Date of Status: 2008-07-15

Filing Date: 2007-06-21

Transformed into a National Application: No

Registration Date: 2008-07-15

Register: Principal

Law Office Assigned: LAW OFFICE 116

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 650 -Publication And Issue Section

Date In Location: 2008-07-15

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Genmab A/S

Address:

Genmab A/S
Toldbodgade 33 DK-1253 Copenhagen K
Denmark

Legal Entity Type: AKTIESELSKAP (A/S)

State or Country Where Organized: Denmark

GOODS AND/OR SERVICES

International Class: 005

Class Status: Active

Pharmaceutical preparations and substances for the treatment of cancer, AIDS (acquired immune deficiency syndrome) and other infectious diseases, immune and autoimmune diseases, inflammatory diseases, neurodegenerative diseases and cardiovascular diseases

Basis: 66(a)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

Translation: The term GENBRIA in the mark has no meaning in a foreign language.

MADRID PROTOCOL INFORMATION

International Registration Number: 0929643

International Registration Date: 2007-06-21

Priority Claimed: Yes

Date of Section 67 Priority Claim: 2006-12-22

International Registration Status: Request For Extension Of Protection Processed

Date of International Registration Status: 2007-08-09

International Registration Renewal Date: 2017-06-21

Notification of Designation Date: 2007-08-09

Date of Automatic Protection: 2009-02-09

Date International Registration Cancelled: (DATE NOT AVAILABLE)

First Refusal: Yes

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2008-11-03 - Final Disposition Notice Sent To IB

2008-11-03 - Final Disposition Processed

2008-10-16 - Final Disposition Notice Created, To Be Sent To IB

2008-07-15 - Registered - Principal Register

2008-04-29 - Published for opposition

2008-04-09 - Notice of publication

2008-03-25 - Law Office Publication Review Completed

2008-03-25 - Assigned To LIE

2008-03-10 - Approved for Pub - Principal Register (Initial exam)
2008-02-15 - Teas/Email Correspondence Entered
2008-02-14 - Communication received from applicant
2008-02-14 - TEAS Response to Office Action Received
2008-02-14 - TEAS Change Of Correspondence Received
2007-09-14 - Refusal Processed By IB
2007-08-27 - Non-Final Action Mailed - Refusal Sent To IB
2007-08-27 - Refusal Processed By MPU
2007-08-26 - Non-Final Action (Ib Refusal) Prepared For Review
2007-08-25 - Non-Final Action Written
2007-08-21 - Assigned To Examiner
2007-08-10 - New Application Entered In Tram
2007-08-09 - Sn Assigned For Sect 66a Appl From IB

ATTORNEY/CORRESPONDENT INFORMATION

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United States Patent and Trademark Office

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No assignment has been recorded at the USPTO

For Serial Number: 79040578

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350.
Web interface last modified: October 18, 2008 v.2.0.2

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