

ESTTA Tracking number: **ESTTA330074**

Filing date: **02/02/2010**

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

Proceeding	91193173
Party	Defendant Galenica AG
Correspondence Address	Troller Hitz Troller & Partner MÄ¼nstergasse 38 CH-3011 Bern, SWITZERLAND
Submission	Answer
Filer's Name	Lisa Adams
Filer's e-mail	ladams@nutter.com, docket@nutter.com
Signature	/Lisa Adams/
Date	02/02/2010
Attachments	Answer.pdf (4 pages)(104465 bytes)

3. Applicant admits that records of the United States Trademark Office indicate that Opposer owns rights to U.S. Trademark Registration No. 2,459,907 for VIROPHARMA and U.S. Trademark Registration No. 2,457,511 for VIROPHARMA INCORPORATED (and Design). Applicant otherwise is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 3 and therefore denies same.

4. To the extent paragraph 4 contains conclusions of law, no response is required. Furthering answering, Applicant admits that the records of the United States Patent and Trademark Office do not indicate that Opposer's marks have been transferred, cancelled, or abandoned. Applicant otherwise is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 4 and therefore denies same.

5. Admitted.

6. Admitted.

7. Denied.

8. Denied.

9. Denied.

10. Denied.

11. Denied.

12. Applicant admits that Opposer registered the pled marks. Answering further, Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 12 regarding Opposer's use of its VIROPHARMA marks and therefore denies same. Applicant otherwise denies the remaining averments of this paragraph.

13. Denied.

14. Denied.

15. Denied.

FIRST AFFIRMATIVE DEFENSE

Opposer cannot demonstrate that it will be damaged as a result of the registration of Applicant's VIFOR PHARMA trademark.

SECOND AFFIRMATIVE DEFENSE

There is no likelihood of confusion, mistake, or deception because *inter alia* Applicant's mark and Opposer's pled marks are not confusingly similar.

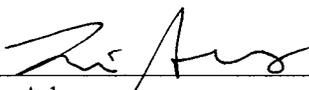
THIRD AFFIRMATIVE DEFENSE

Applicant is entitled to registration of its VIFOR PHARMA trademark for at least those goods and services in Class 005, Class 035, Class 039, Class 041, Class 042, and Class 045.

GALENICA AG,

By its attorneys,

Date: February 2, 2010



Lisa Adams
NUTTER MCCLENNEN & FISH LLP
Seaport West
155 Seaport Boulevard
Boston, Massachusetts 02210-2604
(617) 439-2550
(617) 310-9550 (Fax)

Opposition No.: 91/193,173
Opposer: VIROPHARMA INCORPORATED
Attorney Docket No. 109120-3

Trademark Serial No.: 79/058,308
Applicant: GALENICA AG
Mark: VIFOR PHARMA

CERTIFICATE OF SERVICE

I, Lisa Adams, certify that on February 2, 2010, I served a copy of the foregoing document by facsimile with confirmation copy to be sent by overnight courier to counsel for Opposer VIROPHARMA INCORPORATED:

Anita B. Polott
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Ave., N.W.
Washington, D.C. 20004
Facsimile: (202) 739-3001



Lisa Adams

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