

ESTTA Tracking number: **ESTTA374379**

Filing date: **10/21/2010**

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	Actelion Pharmaceuticals Ltd.		
Entity	Corporation	Citizenship	Switzerland
Address	Gewerbstrasse 16 Allschwil, CH-4123 SWITZERLAND		

Attorney information	Scott D. Woldow Smith, Gambrell & Russell, LLP 1130 Connecticut Avenue, NW Suite 1130 Washington, DC 20036 UNITED STATES sdwoldow@sgrlaw.com Phone:202-263-4300
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Applicant Information

Application No	85018725	Publication date	09/21/2010
Opposition Filing Date	10/21/2010	Opposition Period Ends	10/21/2010
Applicant	Teva Respiratory, LLC 425 Privet Road Horsham, PA 19044 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Inhalers filled with pharmaceutical preparations for the treatment of respiratory diseases and conditions
Class 010. All goods and services in the class are opposed, namely: Inhalers for therapeutic use sold empty

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.	2648305	Application Date	12/07/2000
Registration Date	11/12/2002	Foreign Priority Date	10/16/2000
Word Mark	TRACLEER		

Design Mark	TRACLEER
Description of Mark	NONE
Goods/Services	Class 005. First use: Pharmaceutical preparations for the treatment of cardiovascular, pulmonary, and inflammatory diseases [, as well as for the treatment of cancer]

Attachments	76177722#TMSN.gif (1 page)(bytes) TM Document.PDF (13 pages)(402690 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	/SW/
Name	Scott D. Woldow
Date	10/21/2010

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

In the Matter of Application Serial No. 85/018,725
Published: September 21, 2010

Actelion Pharmaceuticals Ltd.)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	
Teva Respiratory, LLC)	
)	
Applicant.)	

Commissioner for Trademarks
Box TTAB FEE
P.O. Box 1451
Alexandria, Virginia 22313-1451

Madam:

NOTICE OF OPPOSITION

In the matter of the application of Teva Respiratory, LLC, for registration of the mark TRUCLEAR, filed on April 20, 2010, identified by application Serial No. 85/018,725 and published in the Official Gazette on April 20, 2010, Actelion Pharmaceuticals Ltd. believes that it will be damaged by registration of the mark shown in Serial No. 85/018,725, and hereby opposes registration.

Actelion Pharmaceuticals Ltd. (hereinafter "Opposer"), a Corporation of Switzerland, having offices located at Gewerbstrasse 16, Allschwil, Switzerland, CH-4123, believes that it will be damaged by registration of the mark TRUCLEAR, Application Serial No. 85/018,725 and hereby opposes the same.

The grounds for opposition are as follows.

1. Opposer is now and has been engaged in the pharmaceutical business.
2. Opposer manufactures pharmaceuticals and is in the business of pharmaceutical research and development, clinical trials, and provision of pharmaceutical information.
3. Opposer is the owner of United States Registration No. 2,648,305 for the mark TRACLEER which registered on November 12, 2002, and is currently registered in association with "pharmaceutical preparations for the treatment of cardiovascular, pulmonary, and inflammatory diseases."
4. Opposer is now and has been using the TRACLEER mark in United States commerce in association with pharmaceutical preparations.
5. Opposer's ownership of United States Trademark Reg. No. 2,648,305 has been valid and continuous and has not been abandoned.
6. Opposer filed a Combined Declaration of Use & Incontestability under Sections 8 & 15 on September 2, 2008.
7. The Section 8 Declaration of Use was accepted by the United States Patent and Trademark Office and the Section 15 Declaration of Incontestability was acknowledged by the United States Patent and Trademark Office on September 13, 2008.

8. Opposer's mark is symbolic of extensive goodwill and consumer recognition built up by Opposer through substantial amounts of time and effort in advertising, promotion and sales of products thereunder.

9. Notwithstanding Opposer's rights in and to its trademark, Applicant on April 20, 2010, filed an application for registration of the mark TRUCLEAR.

10. The TRUCLEAR mark was approved for publication in association with "inhalers filled with pharmaceutical preparations for the treatment of respiratory diseases and conditions" in Class 5 and "inhalers for therapeutic use sold empty", in Class 10.

11. The application was assigned Serial No. 85/018,725 and was published for opposition in the Official Gazette on September 21, 2010.

12. Applicant's mark, TRUCLEAR, when used in connection with the goods set forth in its application, is confusingly similar to Opposer's TRACLEER mark, as set forth and protected by Opposer's above-identified trademark registration.

13. Purchasers of Applicant's goods and Opposer's goods are likely to be confused, mistaken or deceived as to the source of the goods. Applicant's mark, in association with the products identified in its trademark application, is likely to cause confusion, mistake or deception when compared to Opposer's mark.

14. Applicant's mark and Opposer's mark are similar in sound and appearance such that when used on highly similar goods there would be a likelihood of confusion, mistake or deception.

15. Applicant's mark and Opposer's mark have a similar connotation and commercial impression due to the highly similar appearance and sound of the marks. The similarity of the marks in connotation and commercial impression is compounded when the nearly identical

goods are taken into consideration. This similarity increases the likelihood of confusion, mistake or deception.

16. The highly similar nature of the goods accentuates the similarity between the marks and exacerbates the likelihood of confusion regarding the marks and the likelihood of confusion as to sponsorship or affiliation.

17. Applicant and Opposer use their respective marks in association with pharmaceuticals.

18. Applicant and Opposer use their respective marks in association with pharmaceuticals that treat respiratory and pulmonary conditions.

19. Applicant and Opposer develop pharmaceutical products that can treat the same, or similar, diseases, illnesses or conditions.

20. If Applicant is permitted to register its mark, TRUCLEAR, and uses the mark in commerce in association with the goods specified in its trademark application, confusion in the trade resulting in damage and injury to Opposer would be caused and would result by reason of the similarity between Applicant's mark and Opposer's mark.

21. Persons familiar with Opposer's mark would be likely to confuse Applicant's goods as a product made, sold, or sponsored by Opposer. Any such confusion in the trade would inevitably result in loss of sales to Opposer.

22. In addition to the harm identified in the preceding paragraphs, any defect, objection or fault found with Applicant's products marketed under the TRUCLEAR mark would necessarily reflect badly upon and significantly injure the reputation which Opposer has established for its products.

23. Members of the healthcare profession, patient community and general public familiar with Opposer's TRACLEER products, upon encountering applicant's products under the mark TRUCLEAR, are likely to be confused or mistaken as to whether Applicant's products emanate from Actelion Pharmaceuticals Ltd. or from a source connected with Actelion Pharmaceuticals Ltd., potentially resulting in serious injury or possibly death.

24. A printout of information from the electronic database records of the United States Patent and Trademark Office showing the current status and title of Trademark Registration No. 2,648,305 is attached hereto as Exhibit A and is made part of the record.

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant's mark, and prays that registration be denied.

Please charge Deposit Account No. 02-4300 for any additional fees that may be required.

Respectfully submitted,

SMITH, GAMBRELL & RUSSELL, LLP



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EXHIBIT A



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Typed Drawing

Word Mark	TRACLEER
Goods and Services	IC 005. US 006 018 044 046 051 052. G & S: Pharmaceutical preparations for the treatment of cardiovascular, pulmonary, and inflammatory diseases [, as well as for the treatment of cancer]
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	76177722
Filing Date	December 7, 2000
Current Filing Basis	44E
Original Filing Basis	1B;44D
Published for Opposition	August 20, 2002
Change In Registration	CHANGE IN REGISTRATION HAS OCCURRED
Registration Number	2648305
Registration Date	November 12, 2002
Owner	(REGISTRANT) Actelion Pharmaceuticals Ltd. CORPORATION SWITZERLAND Gewerbestrasse 16 CH-4123 Allschwil SWITZERLAND
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Scott D. Woldow
Priority Date	October 16, 2000
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR).
Live/Dead Indicator	LIVE

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Serial Number: 76177722 Assignment Information Trademark Document Retrieval

Registration Number: 2648305

Mark (words only): TRACLEER

Standard Character claim: No

Current Status: Section 8 and 15 affidavits have been accepted and acknowledged.

Date of Status: 2008-09-13

Filing Date: 2000-12-07

Transformed into a National Application: No

Registration Date: 2002-11-12

Register: Principal

Law Office Assigned: LAW OFFICE 105

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: (NOT AVAILABLE)

Date In Location: 2010-10-13

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

1. Actelion Pharmaceuticals Ltd.

Address:

Actelion Pharmaceuticals Ltd.

Gewerbestrasse 16

CH-4123 Allschwil

Switzerland

Legal Entity Type: Corporation

State or Country of Incorporation: Switzerland

GOODS AND/OR SERVICES

International Class: 005

Class Status: Active

Pharmaceutical preparations for the treatment of cardiovascular, pulmonary, and inflammatory diseases

Basis: 44(e)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

Foreign Application Number: 12321/2000

Foreign Registration Number: 477630

Foreign Registration Date: 2000-10-30

Country: Switzerland

Foreign Filing Date: 2000-10-16

Foreign Expiration Date: 2010-10-16

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

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

2010-08-06 - Section 7 amendment filed

2010-08-23 - Section 7 amendment issued

2010-08-06 - TEAS Section 7 Request Received

2010-07-29 - Attorney Revoked And/Or Appointed

2010-07-29 - TEAS Revoke/Appoint Attorney Received

2008-09-13 - Section 8 (6-year) accepted & Section 15 acknowledged

2008-09-05 - Assigned To Paralegal

2008-09-02 - TEAS Section 8 & 15 Received

2008-02-26 - Case File In TICRS

2006-08-30 - Review Of Correspondence Complete

2006-08-21 - PAPER RECEIVED

2002-11-12 - Registered - Principal Register
2002-08-20 - Published for opposition
2002-07-31 - Notice of publication
2001-10-03 - Section 44(d) claim - Deleted
2002-03-05 - Approved For Pub - Principal Register
2002-03-05 - Assigned To Examiner
2002-02-28 - Assigned To Examiner
2001-10-03 - Communication received from applicant
2001-04-20 - Non-final action mailed
2001-04-04 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

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Filing Dt: 12/07/2000

Reg #: [2648305](#)

Reg. Dt: 11/12/2002

Registrant: Actelion Pharmaceuticals Ltd.

Mark: TRACLEER

Assignment: 1Reel/Frame: [2406/0958](#)

Received: 12/12/2001

Recorded: 12/03/2001

Pages: 3

Conveyance: ASSIGNS THE ENTIRE INTEREST

Assignor: [ACTELION, LTD.](#)

Exec Dt: 10/23/2001

Entity Type: CORPORATION

Citizenship: SWITZERLAND

Entity Type: CORPORATION

Citizenship: SWITZERLAND

Assignee: [ACTELION PHARMACEUTICALS, LTD.](#)

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Correspondent: ABELMAN, FRAYNE & SCHWAB

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