

ESTTA Tracking number: **ESTTA395549**

Filing date: **02/28/2011**

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	Kythera Biopharmaceuticals, Inc.
Granted to Date of previous extension	02/27/2011
Address	27200 West Agoura Road Suite 200 Calabasas, CA 91301 UNITED STATES

Attorney information	Mark Feldman DLA Piper LLP (US) P.O. Box 64807 Chicago, IL 60664-0807 UNITED STATES ch.tm@dlapiper.com, mark.feldman@dlapiper.com, dana.davenport@dlapiper.com, sandra.pedersen@dlapiper.com
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**Applicant Information**

Application No	85006155	Publication date	08/31/2010
Opposition Filing Date	02/28/2011	Opposition Period Ends	02/27/2011
Applicant	Nutritional Therapeutics, Inc. 63 Mall Drive Commack, NY 11725 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 005. First Use: 2009/11/00 First Use In Commerce: 2010/02/15 All goods and services in the class are opposed, namely: Dietary and nutritional supplements, excluding pharmaceutical products
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**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. Application No.	77865166	Application Date	11/04/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	RENYSEL		

Design Mark	<h1>REVYSEL</h1>
Description of Mark	NONE
Goods/Services	Class 003. First use: Cosmetic preparations for skin renewal; cosmetic preparations for body contouring and reduction of fat Class 005. First use: Pharmaceutical preparations and products for a wide range of conditions and diseases

Attachments	77865166#TMSN.jpeg ( 1 page )( bytes ) 155 Notice of Opposition.pdf ( 4 pages )(12487 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	/sandra s. pedersen/
Name	Sandra S. Pedersen
Date	02/28/2011

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

KYTHERA BIOPHARMACEUTICALS, INC.,	)	
	)	Application No. 85006155
	)	
Opposer,	)	
	)	Opposition No. _____
v.	)	
	)	
NUTRITIONAL THERAPEUTICS, INC.,	)	REVACEL & Design
	)	
Applicant.	)	

**NOTICE OF OPPOSITION**

Kythera Biopharmaceuticals, Inc. (hereinafter "Opposer"), a corporation of the State of Delaware, having a principal place of business at 27200 West Agoura Road, Calabasas, California 91301, believes that it will be damaged by registration of the mark REVACEL & Design shown in U.S. Trademark Application Serial No. 85/006,155 (the "'155 Application"), filed on April 5, 2010, and hereby opposes the same.

As grounds for the opposition, Opposer alleges as follows:

1. Opposer is the owner of U.S. Application Serial No. 77/865,166 for the trademark REVYSEL for use on cosmetic preparations for skin renewal; cosmetic preparations for body contouring and reduction of fat in International Class 3, and pharmaceutical preparations and products for a wide range of conditions and diseases in International Class 5.

2. Applicant, Nutritional Therapeutics, Inc., ("Applicant") is the owner of the '155 Application, filed on April 5, 2010, for the mark REVACEL & Design for dietary and nutritional supplements, excluding cosmetic and pharmaceutical preparations and products, in International Class 5.

3. Opposer's application of November 4, 2009 for its REVYSEL mark pre-dates the April 5, 2010 filing date of the '155 Application and pre-dates the date of first use of the '155 Application.

4. The grant of a registration to Applicant for the REVACEL & Design mark as sought in the '155 Application should be denied on the grounds that Opposer, once its registration issues, will have prior rights in its REVYSEL mark. The mark sought to be registered by Applicant is confusingly similar to Opposer's REVYSEL mark, and the use of the REVACEL & Design mark by Applicant is likely to cause confusion or mistake in the minds of the public and to lead the public and prospective purchasers to believe that Applicant's goods are those of Opposer or are endorsed, sponsored or otherwise affiliated or connected with Opposer, or that Opposer's goods and services are associated with Applicant, all to the damage and injury of the purchasing public and to the damage and injury of Opposer.

5. The grant of a registration to Applicant for the REVACEL & Design mark as sought in the '155 Application, should be denied based on likelihood of confusion with Opposer's prior REVYSEL application.

WHEREFORE, Opposer respectfully requests that registration of the mark REVACEL & Design, shown in Application Serial No. 85/006,155, be refused under Section 2(d) of the Trademark Act of 1946 and that this Opposition be sustained.

February 28, 2011

Respectfully submitted,

          /sandra s. pedersen/            
Mark I. Feldman  
Sandra S. Pedersen  
Attorneys for Opposer  
DLA PIPER LLP (US)  
Post Office Box 64807  
Chicago, Illinois 60664-0807  
(312) 368-4000

CERTIFICATE OF SERVICE

Sandra S. Pedersen, an attorney for Opposer hereby certifies that a true and correct copy of the foregoing Notice of Opposition was served upon counsel for Applicant, KATHRYN DALLI, ESQ., TWOMEY, LATHAM, SHEA, KELLEY, DUBIN & QU, P.O. BOX 9398, RIVERHEAD, NY 11901-9398 on this 28th day of February 2011.

/sandra s. pedersen/  
Sandra S. Pedersen