

ESTTA Tracking number: **ESTTA435007**

Filing date: **10/11/2011**

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	Forest Laboratories, Inc.
Granted to Date of previous extension	10/09/2011
Address	909 Third Avenue New York, NY 10022 UNITED STATES
Party who filed Extension of time to oppose	Forest Laboratories, Inc. formerly known as Trovis Pharmaceuticals LLC Trovis Pharmaceuticals LLC
Relationship to party who filed Extension of time to oppose	There is not enough room in the "Company" box to write "Forest Laboratories, Inc. formerly known as Trovis Pharmaceuticals LLC," but there is no intent to change the description from the name used to file the previous extensions.

Correspondence information	Christopher Serbagi Attorney The Serbagi Law Firm P.C. 488 Madison Avenue, New York, NY 10022 UNITED STATES madis48@earthlink.net Phone:212-593-2112
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Applicant Information

Application No	85201343	Publication date	04/12/2011
Opposition Filing Date	10/11/2011	Opposition Period Ends	10/09/2011
Applicant	Eli Lilly and Company Lilly Corporate Center Indianapolis, IN 46285 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 005. All goods and services in the class are opposed, namely: preparations for destroying vermin, namely, insecticides for use with livestock and livestock premises; veterinary preparations for the treatment, control and symptomatic relief of infectious and metabolic diseases of livestock; dietary food supplements for animals; antibacterial pharmaceuticals; production enhancement for livestock, namely, medicated feed and medicated water additives; medicated feed additives and medicated water additives for animals; diagnostic agents, preparations and substances to identify pathogens or residues of biological interest for veterinary use; pre-filled veterinary preparations for the prevention of immunological, bacterial, and infectious diseases</p>

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.	4007499	Application Date	08/12/2010
Registration Date	08/02/2011	Foreign Priority Date	NONE
Word Mark	VIIBRYD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2011/06/13 First Use In Commerce: 2011/06/13 Pharmaceutical preparations, namely, antidepressants		

Attachments	85105776#TMSN.jpeg (1 page)(bytes) VYBRIA Final Notice of Op. pdf.pdf (3 pages)(174532 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	/christopher Serbagi/
Name	Christopher Serbagi
Date	10/11/2011

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

In the matter of Application Serial No. 85/201,343
Mark: VYBRIA

FOREST LABORATORIES, INC.,)	
)	
Opposer,)	OPPOSITION NO.:
)	
v.)	
)	
ELI LILLY AND COMPANY,)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Opposer, Forest Laboratories, Inc., a Delaware corporation located and doing business at 909 Third Avenue, New York, New York 10022, believes that it will be damaged by registration of the mark shown in Serial No. 85/201,343, which was published in the *Official Gazette* on April 12, 2011, and hereby opposes the same:

As grounds for the opposition, Opposer alleges that:

1. Applicant filed intent-to-use Application Serial No. 85/201,343 on or about December 19, 2010 to register the proposed mark VYBRIA in connection with “Preparations for destroying vermin, namely, insecticides for use with livestock and livestock premises; veterinary preparations for the treatment, control and symptomatic relief of infectious and metabolic diseases of livestock; dietary food supplements for animals; antibacterial pharmaceuticals; production enhancement for livestock, namely, medicated feed and medicated water additives; medicated feed additives and medicated water additives for animals; diagnostic agents, preparations and substances to identify pathogens or residues of biological interest for

veterinary use; pre-filled veterinary preparations for the prevention of immunological, bacterial, and infectious diseases” in connection with Class 5 (the “Proposed Mark”).

2. Opposer will be damaged by the registration of the Proposed Mark.

3. Opposer is the owner of the following U.S. registration: VIIBRYD Reg. No. 4,007,499, filed on August 12, 2010 and registered on August 2, 2011 for “Pharmaceutical preparations, namely, antidepressants” in Class 5 (the “VIIBRYD Mark”). This registration is valid, subsisting, and in full force and effect, and constitutes evidence of the validity of the VIIBRYD Mark and of Opposer’s exclusive right to use it on the goods and services identified in the registration for the VIIBRYD Mark.

4. The VIIBRYD Mark is in use in connection with an FDA-approved prescription pharmaceutical, and has been the subject of significant marketing efforts.

5. The VIIBRYD Mark and the Proposed Mark are very similar in “sight, sound, and meaning.” The goods and services described in Applicant’s application are closely related to products and services offered by Opposer under the VIIBRYD Mark such that consumer confusion is likely to result.

6. Opposer’s VIIRBYD Mark has priority because Opposer filed its application for that mark on August 12, 2010, before any priority date that Applicant can claim relating to the Proposed Mark.

7. WHEREFORE, Forest requests that the Board sustain this Opposition and refuse registration of the mark VYBRIA (Serial No. 85/201,343) in Class 5.

THE SERBAGI LAW FIRM, P.C.
Attorney for Forest Laboratories, Inc.

Dated: October 11, 2011
New York, New York


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