

ESTTA Tracking number: **ESTTA547633**

Filing date: **07/10/2013**

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

Proceeding	91206448
Party	Defendant Zoetis Products LLC
Correspondence Address	DALE CENDALI KIRKLAND & ELLIS LLP 601 LEXINGTON AVENUE NEW YORK, NY 10022 UNITED STATES dale.cendali@kirkland.com, bonnie.jarrett@kirkland.com
Submission	Motion to Amend/Amended Answer or Counterclaim
Filer's Name	Dale M. Cendali
Filer's e-mail	dale.cendali@kirkland.com, bonnie.jarrett@kirkland.com
Signature	/Dale M. Cendali/
Date	07/10/2013
Attachments	2013-07-10 Motion to Amend Zoetis' Answer and Affirmative Defenses.pdf(923135 bytes ) 2013-07-10 Declaration in Support of Motion to Amend Zoetis' Answer and Affirmative Defenses.pdf(3960326 bytes ) 2013-07-10 Zoetis' Amended Answer and Affirmative Defenses and Counterclaim for Cancellation.pdf(866006 bytes )

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

VIRBAC S.A.,  Opposer,  v.  ZOETIS PRODUCTS LLC  Applicant.	Opposition No.: 91206448  Mark: ZOETIS (Serial No. 85/505,740)
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UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**MOTION TO AMEND**  
**ZOETIS PRODUCTS LLC'S ANSWER AND AFFIRMATIVE DEFENSES**

Zoetis Products LLC ("Zoetis") hereby respectfully requests, pursuant to Fed. R. Civ. P. 15(a), 37 C.F.R. § 2.107, and Trademark Trial & Appeal Board Manual of Procedure ("TBMP") Rule 507, leave to amend its Answer and Affirmative Defenses to assert a counterclaim for cancellation of Opposer Virbac S.A.'s Registration No. 4,163,263 for ZOLETIL. Zoetis's proposed Amended Answer, Affirmative Defenses and Counterclaim is submitted herewith.

Zoetis's counterclaim for cancellation is based on facts learned from documents produced by Opposer in this proceeding. Specifically, Zoetis has learned that contrary to its representations to the Patent & Trademark Office ("PTO"), Opposer, who obtained its registration pursuant to Section 44(e), did not have a bona fide intent to use its ZOLETIL mark in the United States when it filed its trademark application. Registration No. 4,163,263 should

therefore be cancelled because it was fraudulently obtained. Moreover, because Opposer has never used its ZOLETIL mark in United States commerce and does not intend to commence such use, Registration No. 4,163,263 should therefore be cancelled because Opposer has abandoned the mark.

Opposer's lack of intent to use the ZOLETIL mark, both at the time of its representations to the PTO and thereafter is shown by Opposer's failure to produce a single document showing any such intent. These facts were not known to Zoetis when it filed its Answer and Affirmative Defenses, such that Zoetis could not bring the counterclaim at that time.

Zoetis first became aware that Opposer did not, and does not, have an intent to use ZOLETIL on or about May 31, 2013, when Opposer produced 97 pages of documents in response to Zoetis's document requests. Discovery is ongoing, and the close of discovery is October 25, 2013, so no prejudice will result from allowing Zoetis to amend its answer to add the cancellation counterclaim.

### **FACTS**

Opposer, a French corporation, has opposed registration of Zoetis's ZOETIS word mark in Class 5 on the ground that ZOETIS is confusingly similar to Opposer's ZOLETIL word mark. Opposer's registration for ZOLETIL is not based on use in United States commerce, but instead, is based on Opposer's French registration for the mark. *See Jarrett Decl.*, ¶ 4. Specifically, on April 4, 2011, Opposer filed its application to register ZOLETIL under Section 1(b). *See id.*, ¶ 5. On December 28, 2011, Opposer amended the basis for its registration to Section 44(e). *See id.*, ¶ 6.

Opposer has admitted in this proceeding that it has never sold any ZOLETIL-brand products in the United States, never advertised any ZOLETIL-brand products in the United

States, never issued any press releases to media in the United States that depicted the ZOLETIL mark, and does not use any domain names that include “zoetil.” *See* Jarrett Decl., Ex. 7.

Meanwhile, on December 29, 2011, Zoetis filed an application for ZOETIS under Section 1(b). *See* Jarrett Decl., ¶ 8. Opposer filed its opposition to Zoetis’s application on August 7, 2012, alleging that “Applicant’s use of [ZOETIS] . . . is likely to cause consumers to be confused, deceived or misled into the mistaken belief that Applicant’s goods emanate from, are affiliated with, or are otherwise related to Opposer, when in fact they are not.” *See* Notice of Opposition, dated Dec. 29, 2011, ¶ 6. Since Opposer filed its opposition, Zoetis has begun using its ZOETIS mark in United States commerce. *See* Jarrett Decl., ¶ 9.

On March 12, 2013, Zoetis served its First Set of Requests for Documents on Opposer. *See* Jarrett Decl., ¶ 10. Those requests sought, *inter alia*, documents relating to Opposer’s actual or contemplated use of the ZOLETIL mark in the United States; documents to or from any advertising agency, graphic design firm, or public relations firm related to the ZOLETIL mark; and market research related to the ZOLETIL mark. *See id.*, ¶ 11. Opposer’s responses to the requests were received on May 31, 2013. *See id.*, ¶ 12. In response to those requests, Virbac produced 97 pages of documents. *See id.*, ¶ 13. Those documents included documents related to (1) Opposer’s opposition to registration of the mark ZENOCTIL; and (2) the file wrapper for Opposer’s ZOLETIL mark. *See id.* Virbac has not produced a single document showing that it ever had any plans to use the ZOLETIL mark in United States commerce, despite agreeing to produce such documents if they exist. *See id.*, ¶ 14.

### **ARGUMENT**

Federal Rule of Civil Procedure 15(a) provides that leave to amend pleadings shall be freely given when justice so requires. “The Board . . . has recognized that amendments to

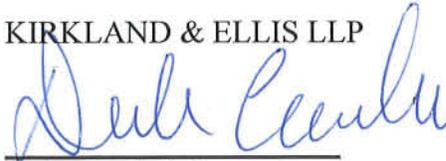
pleadings should be allowed with great liberality at any stage of the proceeding where necessary to bring about a furtherance of justice unless it is shown that entry of the amendment would violate settled law or be prejudicial to the rights of any opposing parties.” *See, e.g., Commodore Elecs. Ltd. v. CBM Kabushiki Kaisha*, 26 U.S.P.Q.2d 1503, 1504 (T.T.A.B. 1993) (granting leave to amend opposition to include allegation that applicant did not have a bona fide intent to use its mark, and noting that “the absence of any documentary evidence on the part of an applicant regarding such intent is sufficient to prove that the applicant lacks a bona fide intent to use its mark”).

Opposer will not be prejudiced by the requested amendment. This proceeding is still in the discovery stage and Zoetis sought leave to amend promptly. Specifically, Zoetis sought leave to amend shortly after receiving Opposer’s document production, and after giving Opposer the opportunity to respond to Zoetis’s letters asking whether Opposer would produce any additional documents. *See, e.g., Microsoft Corp. v. Qantel Bus. Sys. Inc.*, 16 U.S.P.Q.2d 1732, 1733-34 (T.T.A.B. 1990) (granting leave to amend cancellation petition where the “proceeding [was] still in the discovery stage”); *Marshall Field & Co. v. Mrs. Fields Cookies*, 11 U.S.P.Q.2d 1355, 1359 (T.T.A.B. 1989) (granting leave to file counter-claim for cancellation based on fraud because the “type of information [to support a fraud claim] ordinarily is only obtainable through discovery”). To the extent that Opposer needs to take any discovery to defend against Zoetis’s counterclaim, Opposer will have ample opportunity to do so.

For the foregoing reasons, Zoetis should be granted leave to file its proposed Amended Answer, Affirmative Defenses and Counterclaim.

Dated: July 10, 2013  
New York, New York

KIRKLAND & ELLIS LLP



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Dale Cendali, Esq.  
Bonnie L. Jarrett, Esq.  
Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, NY 10022  
Tel: (212) 446-4800  
Fax: (212) 446-4900

*Attorneys for Zoetis Products LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on July 10 2013, I caused copies of the foregoing **MOTION TO AMEND ZOETIS PRODUCTS LLC'S ANSWER AND AFFIRMATIVE DEFENSES** to be served via Federal Express and e-mail upon the following individuals:

Elizabeth Stanley  
Priscilla Dunckel  
Baker Botts LLP  
2001 Ross Avenue  
Suite 600  
Dallas, TX 75201-2980

Paul Reilly  
Baker Botts LLP  
30 Rockefeller Plaza  
New York, New York 10112-4498

Dated: July 10, 2013

  
Bonnie L. Jarrett

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

<p>VIRBAC S.A.,</p> <p style="text-align: center;">Opposer,</p> <p>v.</p> <p>ZOETIS PRODUCTS LLC</p> <p style="text-align: center;">Applicant.</p>	<p>Opposition No.: 91206448</p> <p>Mark: ZOETIS (Serial No. 85/505,740)</p>
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UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**DECLARATION OF BONNIE L. JARRETT IN SUPPORT OF MOTION TO AMEND  
ZOETIS PRODUCTS LLC'S ANSWER AND AFFIRMATIVE DEFENSES**

I, Bonnie L. Jarrett, declare as follows:

1. I am an associate at the law firm of Kirkland & Ellis LLP, counsel of record for the Applicant Zoetis Products LLC ("Zoetis"). I am licensed in the State of New York. I submit this declaration in support of Zoetis's Motion to Amend its Answer and Affirmative Defenses.
2. I have reviewed the pleadings, correspondence between the parties, written discovery, and documents produced by the parties in discovery in connection with this matter.
3. I also have reviewed publicly available documents and websites, namely U.S. Patent & Trademark Office ("PTO") records.
4. According to the PTO's records, Opposer's registration for ZOLETIL is not based on use in United States commerce, but instead, is based on Opposer's French registration for the

mark. A true and correct copy of the certificate for trademark Registration No. 4,163,263 is attached hereto as Exhibit 1.

5. According to the PTO's records, Opposer filed its application to register ZOLETIL under Section 1(b) on April 4, 2011. A true and correct copy of the Trademark/Service Mark Application, Principal Register, Serial No. 85/285,117 is attached hereto as Exhibit 2.

6. According to the PTO's records, on December 28, 2011, Opposer amended the basis for its registration to Section 44(e). A true and correct copy of the Opposer's December 28, 2011 Response to Office Action is attached hereto as Exhibit 3.

7. Opposer has admitted in this proceeding that it has never sold any ZOLETIL-brand products in the United States, never advertised any ZOLETIL-brand products in the United States, never issued any press releases to media in the United States that depicted the ZOLETIL mark, and does not use any domain names that include "zoetil." See Opposer's Responses to Requests for Admission Nos. 4, 5, 6, and 9, true and correct copies of which are attached hereto as Exhibit 4.

8. According to the PTO's records, on December 29, 2011, Zoetis filed an application for ZOETIS under Section 1(b). A true and correct copy of the Trademark/Service Mark Application, Principal Register, Serial No. 85/505,740 is attached hereto as Exhibit 5.

9. Since Opposer filed its opposition, Zoetis has begun using its ZOETIS mark in United States commerce.

10. On March 12, 2013, Zoetis served its First Set of Requests for Documents on Opposer.

11. Those requests sought, *inter alia*, documents relating to Opposer's actual or contemplated use of the ZOLETIL mark in the United States (Request for Production No. 5); documents to or from any advertising agency, graphic design firm, or public relations firm related to the ZOLETIL mark (Request for Production No. 28); and market research related to the ZOLETIL mark (Request for Production No. 30). A true and correct copy of Opposer's Objections and Responses to Applicant's First Set of Requests for Production to Opposer are attached hereto as Exhibit 6.

12. Opposer's responses to the requests were received on May 31, 2013.

13. In response to those requests, Virbac produced 97 pages of documents. Those documents included documents related to (1) Opposer's opposition to registration of the mark ZENOCTIL; and (2) the file wrapper for Opposer's ZOLETIL mark.

14. Virbac has not produced a single document showing that it ever had any plans to use the ZOLETIL mark in United States commerce, despite agreeing to produce such documents if they exist.

Dated: July 10, 2013  
New York, New York

  
Bonnie L. Jarrett, Esq.  
Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, NY 10022  
Tel: (212) 446-4800  
Fax: (212) 446-4900

**CERTIFICATE OF SERVICE**

I hereby certify that on July 10, 2013, I caused copies of the foregoing **DECLARATION OF BONNIE L. JARRETT IN SUPPORT OF MOTION TO AMEND ZOETIS PRODUCTS LLC'S ANSWER AND AFFIRMATIVE DEFENSES** to be served via Federal Express and e-mail upon the following individuals:

Elizabeth Stanley  
Priscilla Dunckel  
Baker Botts LLP  
2001 Ross Avenue  
Suite 600  
Dallas, TX 75201-2980

Paul Reilly  
Baker Botts LLP  
30 Rockefeller Plaza  
New York, New York 10112-4498

Dated: July 10, 2013

  
Bonnie L. Jarrett

**United States of America**  
United States Patent and Trademark Office

**ZOLETIL**

**Reg. No. 4,163,263**

VIRBAC S.A. (FRANCE SOCIÉTÉ ANONYME (SA)),  
1 ÈRE AVENUE, 2065 M-L.I.D.  
06516 CARROS, FRANCE

**Registered June 26, 2012**

**Corrected Aug. 28, 2012**

FOR: VETERINARY PRODUCTS, NAMELY, AN ANESTHETIC IN THE NATURE OF A  
GENERAL ANESTHETIC, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52)..

**Int. Cl.: 5**

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PAR-  
TICULAR FONT, STYLE, SIZE, OR COLOR.

**TRADEMARK**

OWNER OF FRANCE REG. NO. 95563857, DATED 3-15-1995, EXPIRES 3-8-2015.

**PRINCIPAL REGISTER**

SER. NO. 85-285,117, FILED 4-4-2011.



*David J. Kyffers*

Director of the United States Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL  
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE  
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

**Requirements in the First Ten Years\***

**What and When to File:**

***First Filing Deadline:*** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See* 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

***Second Filing Deadline:*** You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.\*  
*See* 15 U.S.C. §1059.

**Requirements in Successive Ten-Year Periods\***

**What and When to File:**

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.\*

**Grace Period Filings\***

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or  
reminder of these filing requirements.**

**\*ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See* 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See* 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

**NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.**

## Exhibit 2

PTO Form 1478 (Rev 9/2006)  
OMB No. 0651-0009 (Exp 12/31/2011)

# Trademark/Service Mark Application, Principal Register

Serial Number: 85285117

Filing Date: 04/04/2011

The table below presents the data as entered.

Input Field	Entered
<b>SERIAL NUMBER</b>	85285117
<b>MARK INFORMATION</b>	
*MARK	<a href="#">ZOLETIL</a>
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	ZOLETIL
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
<b>APPLICANT INFORMATION</b>	
*OWNER OF MARK	Virbac S.A.
*STREET	1 ère Avenue, 2065 m-L.I.D.
*CITY	06516 Carros
*COUNTRY	France
<b>LEGAL ENTITY INFORMATION</b>	
TYPE	société anonyme (sa)
STATE/COUNTRY WHERE LEGALLY ORGANIZED	France
<b>GOODS AND/OR SERVICES AND BASIS INFORMATION</b>	
INTERNATIONAL CLASS	010
*IDENTIFICATION	Veterinary products namely an anesthetic
FILING BASIS	SECTION 1(b)
<b>ATTORNEY INFORMATION</b>	

<b>NAME</b>	Bassam N. Ibrahim
<b>ATTORNEY DOCKET NUMBER</b>	1031059-000181
<b>FIRM NAME</b>	Buchanan Ingersoll & Rooney, PC
<b>STREET</b>	P.O. Box 1404
<b>CITY</b>	Alexandria
<b>STATE</b>	Virginia
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	22313-1404
<b>PHONE</b>	(703) 836-6620
<b>FAX</b>	(703) 836-2021
<b>EMAIL ADDRESS</b>	bassam.ibrahim@bipc.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>OTHER APPOINTED ATTORNEY</b>	B. Parker Livingston, Jr., Fred W. Hathaway, Holly M. Ford, Bruce McDonald, Bryce J. Maynard and Jennifer D'Angelo

#### **DOMESTIC REPRESENTATIVE INFORMATION**

<b>NAME</b>	Bassam N. Ibrahim
<b>FIRM NAME</b>	Buchanan Ingersoll & Rooney, PC
<b>STREET</b>	P.O. Box 1404
<b>CITY</b>	Alexandria
<b>STATE</b>	Virginia
<b>COUNTRY</b>	United States
<b>ZIP CODE</b>	22313-1404
<b>PHONE</b>	(703) 836-6620
<b>FAX</b>	(703) 836-2021
<b>EMAIL ADDRESS</b>	bassam.ibrahim@bipc.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes

#### **CORRESPONDENCE INFORMATION**

<b>NAME</b>	Bassam N. Ibrahim
<b>FIRM NAME</b>	Buchanan Ingersoll & Rooney, PC
<b>STREET</b>	P.O. Box 1404

<b>CITY</b>	Alexandria
<b>STATE</b>	Virginia
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	22313-1404
<b>PHONE</b>	(703) 836-6620
<b>FAX</b>	(703) 836-2021
<b>EMAIL ADDRESS</b>	bassam.ibrahim@bipc.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>FEE INFORMATION</b>	
<b>NUMBER OF CLASSES</b>	1
<b>FEE PER CLASS</b>	325
<b>*TOTAL FEE DUE</b>	325
<b>*TOTAL FEE PAID</b>	325
<b>SIGNATURE INFORMATION</b>	
<b>SIGNATURE</b>	NOT PROVIDED
<b>SIGNATORY'S NAME</b>	NOT PROVIDED
<b>SIGNATORY'S POSITION</b>	NOT PROVIDED
<b>DATE SIGNED</b>	NOT PROVIDED

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## Trademark/Service Mark Application, Principal Register

**Serial Number: 85285117**

**Filing Date: 04/04/2011**

### To the Commissioner for Trademarks:

**MARK:** ZOLETIL (Standard Characters, see [mark](#))

The literal element of the mark consists of ZOLETIL.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Virbac S.A., a société anonyme (sa) legally organized under the laws of France, having an address of

1 ère Avenue, 2065 m-L.I.D.  
06516 Carros  
France

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 010: Veterinary products namely an anesthetic

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

The applicant's current Attorney Information:

Bassam N. Ibrahim and B. Parker Livingston, Jr., Fred W. Hathaway, Holly M. Ford, Bruce McDonald, Bryce J. Maynard and Jennifer D'Angelo of Buchanan Ingersoll & Rooney, PC

P.O. Box 1404  
Alexandria, Virginia 22313-1404  
United States

The attorney docket/reference number is 1031059-000181.

The applicant hereby appoints Bassam N. Ibrahim of Buchanan Ingersoll & Rooney, PC

P.O. Box 1404  
Alexandria Virginia 22313-1404  
United States

as applicant's representative upon whom notice or process in the proceedings affecting the mark may be served.

The applicant's current Correspondence Information:

Bassam N. Ibrahim  
Buchanan Ingersoll & Rooney, PC  
P.O. Box 1404

Alexandria, Virginia 22313-1404  
(703) 836-6620(phone)  
(703) 836-2021(fax)  
bassam.ibrahim@bipc.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

RAM Sale Number: 8960  
RAM Accounting Date: 04/04/2011

Serial Number: 85285117  
Internet Transmission Date: Mon Apr 04 12:47:15 EDT 2011  
TEAS Stamp: USPTO/BAS-12.34.17.158-20110404124715728  
115-85285117-4804a34b0fdc94b5e794f1a1a  
4f3854f6-CC-8960-20110404124356131486

ZOLETIL

## Response to Office Action

**The table below presents the data as entered.**

Input Field	Entered
<b>SERIAL NUMBER</b>	85285117
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 115
<b>MARK SECTION (no change)</b>	
<b>GOODS AND/OR SERVICES SECTION (current)</b>	
<b>INTERNATIONAL CLASS</b>	010
<b>DESCRIPTION</b>	Veterinary products namely an anesthetic
<b>FILING BASIS</b>	Section 1(b)
<b>GOODS AND/OR SERVICES SECTION (proposed)</b>	
<b>INTERNATIONAL CLASS</b>	010
<b>TRACKED TEXT DESCRIPTION</b>	
<del>Veterinary products namely an anesthetic</del> ; <a href="#">Veterinary products, namely, an anesthetic in the nature of a general anesthetic</a>	
<b>FINAL DESCRIPTION</b>	
Veterinary products, namely, an anesthetic in the nature of a general anesthetic	
<b>FILING BASIS</b>	Section 1(b)
<b>FILING BASIS</b>	Section 44(e)
<b>FOREIGN REGISTRATION NUMBER</b>	95563857
<b>FOREIGN REGISTRATION COUNTRY</b>	France
<b>FOREIGN REGISTRATION DATE</b>	03/15/1995
<b>FOREIGN EXPIRATION DATE</b>	03/15/2015

<b>DATE FOREIGN REGISTRATION RENEWED (if applicable)</b>	03/08/2005
<b>FOREIGN REGISTRATION FILE NAME(S)</b>	
<b>ORIGINAL PDF FILE</b>	<a href="#">FRU0-68165127226-101821993_._Zoetil.reg.pdf</a>
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	<a href="#">\\TICRS\EXPORT11\IMAGEOUT11\852\851\85285117\xml4\ROA0009.JPG</a>
	<a href="#">\\TICRS\EXPORT11\IMAGEOUT11\852\851\85285117\xml4\ROA0010.JPG</a>
<b>STANDARD CHARACTERS OR EQUIVALENT</b>	YES
<b>ADDITIONAL STATEMENTS SECTION</b>	
<b>MISCELLANEOUS STATEMENT</b>	As required, Applicant submits herewith an executed Declaration verifying and attesting to the facts in the application as filed.
<b>SIGNATURE SECTION</b>	
<b>ORIGINAL PDF FILE</b>	<a href="#">HS_68165127226-101821993_._Zoetil.dec.pdf</a>
<b>CONVERTED PDF FILE(S) (3 pages)</b>	<a href="#">\\TICRS\EXPORT11\IMAGEOUT11\852\851\85285117\xml4\ROA0011.JPG</a>
	<a href="#">\\TICRS\EXPORT11\IMAGEOUT11\852\851\85285117\xml4\ROA0012.JPG</a>
	<a href="#">\\TICRS\EXPORT11\IMAGEOUT11\852\851\85285117\xml4\ROA0013.JPG</a>
<b>SIGNATORY'S NAME</b>	x
<b>SIGNATORY'S POSITION</b>	x
<b>RESPONSE SIGNATURE</b>	/Jennifer D'Angelo/
<b>SIGNATORY'S NAME</b>	Jennifer D'Angelo
<b>SIGNATORY'S</b>	Attorney for Applicant, State of Georgia bar member

<b>POSITION</b>	
<b>SIGNATORY'S PHONE NUMBER</b>	(703) 836-6620
<b>DATE SIGNED</b>	12/28/2011
<b>AUTHORIZED SIGNATORY</b>	YES
<b>FILING INFORMATION SECTION</b>	
<b>SUBMIT DATE</b>	Wed Dec 28 13:58:50 EST 2011
<b>TEAS STAMP</b>	USPTO/ROA-68.165.127.226-20111228135850545937-85285117-49018b4df6da244884d98dc9870350d6f7-N/A-N/A-20111228101821993372

PTO Form 1957 (Rev 9/2005)  
OMB No. 0651-0050 (Exp. 05/31/2014)

## Response to Office Action To the Commissioner for Trademarks:

Application serial no. **85285117** has been amended as follows:

### CLASSIFICATION AND LISTING OF GOODS/SERVICES

**Applicant proposes to amend the following class of goods/services in the application:**

**Current:** Class 010 for Veterinary products namely an anesthetic

Original Filing Basis:

**Filing Basis: Section 1(b), Intent to Use:** The applicant has had a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

### Proposed:

**Tracked Text Description:** ~~Veterinary products namely an anesthetic;~~ [Veterinary products, namely, an anesthetic in the nature of a general anesthetic](#)

Class 010 for Veterinary products, namely, an anesthetic in the nature of a general anesthetic

**Filing Basis: Section 1(b), Intent to Use:** The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

**Filing Basis: Section 44(e), Based on Foreign Registration:** Applicant has a bona fide intention to use the mark in commerce on or in connection with the identified goods and /or services, and submits a copy of [ France registration number 95563857 registered 03/15/1995 with a renewal date of 03/08/2005 and an

expiration date of 03/15/2015 ], and translation thereof, if appropriate. 15 U.S.C. Section 1126(e), as amended.

**Original PDF file:**

[FRU0-68165127226-101821993 . Zoletil.reg.pdf](#)

**Converted PDF file(s)** (9 pages)

[Foreign Registration-1](#)

[Foreign Registration-2](#)

[Foreign Registration-3](#)

[Foreign Registration-4](#)

[Foreign Registration-5](#)

[Foreign Registration-6](#)

[Foreign Registration-7](#)

[Foreign Registration-8](#)

[Foreign Registration-9](#)

The foreign registration that is the basis of the U.S. application under §44(e) of the Trademark Act (15 U.S.C. §1126(e)) includes a claim of standard characters or the country of origin's standard character equivalent.

**ADDITIONAL STATEMENTS**

**Miscellaneous Statement**

As required, Applicant submits herewith an executed Declaration verifying and attesting to the facts in the application as filed.

**SIGNATURE(S)**

**Declaration Signature**

**Original PDF file:**

[HS\\_68165127226-101821993 . Zoletil.dec.pdf](#)

**Converted PDF file(s)** (3 pages)

[Signature File1](#)

[Signature File2](#)

[Signature File3](#)

Signatory's Name: x

Signatory's Position: x

**Response Signature**

Signature: /Jennifer D'Angelo/ Date: 12/28/2011

Signatory's Name: Jennifer D'Angelo

Signatory's Position: Attorney for Applicant, State of Georgia bar member

Signatory's Phone Number: (703) 836-6620

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to

withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

Serial Number: 85285117

Internet Transmission Date: Wed Dec 28 13:58:50 EST 2011

TEAS Stamp: USPTO/ROA-68.165.127.226-201112281358505

45937-85285117-49018b4df6da244884d98dc98

70350d6f7-N/A-N/A-20111228101821993372

TRANSLATOR'S CERTIFICATE

The undersigned hereby verifies that she is proficient in English and French and that the attached is a true and accurate English translation of the Certificate of Registration and Certificate of Renewal for French Registration No. 95563857 for the mark ZOLETIL (word mark).

Date: Dec 19, 2011

By: Holly M Ford  
Holly M. Ford

FRENCH REPUBLIC  
NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY

**TRADEMARKS AND SERVICE MARKS**

**CERTIFICATE OF RENEWAL**

Intellectual Property Code  
Book IV: First title, first chapter  
Book VII: First title, Book VIII

The General Director of the National Institute of Industrial Property certifies that the trademark as reproduced here opposite has been renewed.

The renewal period is counted ten years from the expiration of the previous, or, in case of an associated filing, counted from the renewal declaration.

This renewal shall be published in the Industrial Property Official Bulletin.

**n° 05/34 Vol. II dated 26 August 2005**

The General Director of the  
National Institute of Industrial Property

VIRBAC S.A.  
Trademark Departmen  
BP 27  
06511 CARROS Cédex

Date of renewal declaration: 8 March 2005

**National No: 95563857**

**Filing date:** 15 March 1995  
**At:** I.N.P.I. Nice

**Declarant:** VIRBAC S.A. 1 ère Avenue, 2065 m-L.I.D., 06516 CARROS, No. Siren:  
417 350 311

**Professional representative:** VIRBAC S.A., Trademark Department, BP 27, 06511  
CARROS Cédex

**REGISTRATION CONCERNED**

**National No. or Registration No.:** 95563857

**French mark**

**Sign concerned:** ZOLETIL

**Date of filing:** 15 March 1995

**Number of bulletin in which the registrant was published:** 96/08

**Scope of Renewal**

**Renewal is for the entire products and services of the registration**

**Class of products or services:** 5



# MARQUES DE FABRIQUE, DE COMMERCE OU DE SERVICE

**Code de la propriété intellectuelle**

Livre IV : Titre premier, chapitre premier

Livre VII : Titre premier ; Livre VIII

## CERTIFICAT DE RENOUVELLEMENT

Le Directeur général de l'Institut national de la propriété industrielle certifie que l'enregistrement de la marque dont les références sont reproduites au verso a fait l'objet d'un renouvellement.

La nouvelle période de dix ans court à compter de l'expiration de la précédente ou, en cas de dépôt associé, à compter de la déclaration de renouvellement.

Ce renouvellement sera publié au Bulletin officiel de la propriété industrielle

**n° 05/34 Vol. II du 26 août 2005**

Le Directeur général de l'Institut  
national de la propriété industrielle

Benoît BATTISTELLI

INSTITUT  
NATIONAL DE  
LA PROPRIÉTÉ  
INDUSTRIELLE

SIEGE  
25 bis, rue de Saint-Petersbourg  
75600 PARIS Cédex 08  
Téléphone : 33 (0)1 53 04 53 04  
Télécopie : 33 (0)1 53 04 45 23  
www.inpi.fr



VIRBAC  
S.A.  
Département des Marques  
BP 27  
06511 CARROS Cedex

Date de la déclaration de renouvellement : 8 MARS 2005

Déclarant : VIRBAC, S.A., Société Anonyme, 1ère Avenue, 2065 m, L.I.D.,  
06516 CARROS, N° SIREN : 417 350 311

Mandataire ou destinataire de la correspondance  
VIRBAC, S.A., Département des Marques, BP 27, 06511 CARROS Cedex.

#### Enregistrement concerné

N° national ou N° d'enregistrement : 95 563 857

Marque française

Signe concerné : ZOLETIL

Date du dépôt : 15 MARS 1995

N° du bulletin dans lequel l'enregistrement a été publié : 96/08

#### Portée du renouvellement

Renouvellement effectué pour l'intégralité des produits et services de l'enregistrement concerné

Classes de produits et de services : 5.

FRENCH REPUBLIC  
NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY

**TRADEMARKS AND SERVICE MARKS**

**CERTIFICATE OF REGISTRATION**

Intellectual Property Code  
Book IV: First title, first chapter  
Book VII: First title, Book VIII

The General Director of the National Institute of Industrial Property certifies that the trademark as reproduced here opposite has been registered.

The registration takes effects from the date of filing for a renewable ten-year period and is indefinitely renewable.

This registration shall be published in the Industrial Property Official Bulletin.

**n° 96/08 NL Vol. II dated 23 February 1996**

The General Director of the  
National Institute of Industrial Property

VIRBAC S.A.  
Melle A. Robin  
BP 27  
06511 CARROS Cédex

**National No: 95563857**

**Filing date:** 15 March 1995

**At:** I.N.P.I. Nice

VIRBAC S.A. 1 ère Avenue, 2065 m-L.I.D., 06516 CARROS, No. Siren: 417 350 311

**Professional representative:** VIRBAC S.A., Melle A. Robin, BP 27, 06511 CARROS Cédex

## ZOLETIL

**Designated products or services:** Pharmaceutical, veterinary and sanitary preparations; disinfectants; herbicides and preparations for destroying vermin; dietetic substances adapted for medical use

**Class of products or services:** 5



# MARQUES DE FABRIQUE DE COMMERCE OU DE SERVICE

## Code de la propriété intellectuelle

Livre IV : Titre premier, chapitre premier

Livre VII : Titre premier ; Livre VIII

## CERTIFICAT D'ENREGISTREMENT

Le Directeur général de l'Institut national de la propriété industrielle certifie que la marque reproduite au verso a été enregistrée.

L'enregistrement produit ses effets à compter de la date de dépôt de la demande pour une période de dix ans indéfiniment renouvelable.

Cet enregistrement sera publié au Bulletin officiel de la propriété industrielle  
n° 96/08 NL Vol. II du 23 février 1996

Le Directeur général de l'Institut  
national de la propriété industrielle

Daniel HANGARD

INSTITUT  
NATIONAL DE  
LA PROPRIÉTÉ  
INDUSTRIELLE

SIÈGE  
26 bis, rue de Saint Petersburg  
75800 PARIS Cédex 08  
Téléphone : (1) 42 94 52 52  
Télécopie : (1) 42 93 59 30



VIRBAC S.A.  
Melle A. Robin  
BP 27  
06511 CARROS Cedex

**N°National : 95563857**

**Dépôt du :** 15 MARS 1995  
**à :** I.N.P.I. NICE

VIRBAC S.A., 1ère Avenue 2065 m - L.I.D., 06516 CARROS, N°  
SIREN : 417 350 311.

**Mandataire ou destinataire de la correspondance :**  
VIRBAC S.A. Melle A. Robin, BP 27, 06511 CARROS Cédex.

## **ZOLETIL**

**Produits ou services désignés :** Produits pharmaceutiques, vétérinaires et hygiéniques; désinfectants; préparations pour détruire les mauvaises herbes et des animaux nuisibles; produits diététiques à usage médical.

**Classes de produits ou services :** 5.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of :  
Virbac S.A. :  
Filed: April 4, 2011 :  
Serial No.: 85/285,117 :  
Mark: ZOLETIL :  
Attorney Docket: 1031059-000181 :

**DECLARATION**

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

Commissioner:

Supplementing the application papers filed on April 4, 2011, the undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this document, the above-identified application or any registration resulting therefrom, declares that: they are authorized to execute this application; they believe they are the owner of the mark sought to be registered and/or to be entitled to use such mark in commerce; that the mark is in use in commerce and was in use in commerce in connection with the goods listed in the application as of the filing date of the application; or that they have a bona fide intention to use the mark in commerce and had a bona fide intention to use the mark in commerce as of the filing date of the application or in connection with the goods listed in the application; to the best of their knowledge and belief, no other person, firm, corporation or association has the right to use said mark in commerce, either

in the identical form or in such near resemblance thereto as to be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive; to the best of their knowledge and belief, the facts set forth in the application are true and were true as of the filing date thereof; and all statements made herein of their own knowledge are true and all statements made on information and belief are believed to be true.

**POWER OF ATTORNEY**

Applicant hereby appoints Bassam N. Ibrahim, a member of the bars of the Commonwealth of Virginia, the state of Maryland and the District of Columbia, B. Parker Livingston, Jr., a member of the bars of the Commonwealth of Virginia and the District of Columbia, Fred W. Hathaway, a member of the bars of the District of Columbia, the State of Maine and the Commonwealth of Virginia, Bryce J. Maynard, a member of the bar of the Commonwealth of Virginia, Holly M. Ford, a member of the bar of the District of Columbia, and Jennifer M. D'Angelo, a member of the bar of the State of Georgia, and Bruce A. McDonald, a member of the bar of the District of Columbia, all having an address at Buchanan Ingersoll, P.C., 1737 King Street, Suite 500, Alexandria, Virginia 22314, its attorneys to prosecute this application to register, to transact all business in the Patent and Trademark Office in connection therewith, to receive the Certificate of Registration, and to represent it in all proceedings affecting the mark which may arise in the Patent and Trademark Office after the registration has been granted.

Address all correspondence to:

Bassam N. Ibrahim, Esq.  
Buchanan Ingersoll & Rooney PC  
1737 King Street  
Suite 500  
Alexandria, Virginia 22314

Serial No. 85/285,117

Direct all telephone calls to:

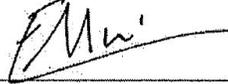
Bassam N. Ibrahim  
Telephone: (703)836-6620

E-mail address: [bassam.ibrahim@bipc.com](mailto:bassam.ibrahim@bipc.com)

**DESIGNATION OF DOMESTIC REPRESENTATIVE**

The above Applicant cancels all previous Designations of Domestic Representative hereby appoints Buchanan Ingersoll & Rooney PC, 1737 King Street, Suite 500, Alexandria, Virginia 22314, its designated domestic representative upon whom notices or process in proceedings in the U.S. Patent and Trademark Office affecting the mark may be served.

VIRBAC S.A.

By:  \_\_\_\_\_

Name: Eric Marée

Title: Chairman of the executive board

Date: December 14, 2011

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

VIRBAC S.A.,	§	
	§	
Opposer,	§	Opposition No. 91206448
	§	
vs.	§	Mark: <b>ZOETIS</b>
	§	(Serial No: 85/505,740)
ALPHARMA, LLC,	§	
	§	Publication Date: July 10, 2012
Applicant.	§	
	§	

**OPPOSER’S OBJECTIONS AND RESPONSES TO APPLICANT’S  
FIRST REQUESTS FOR ADMISSIONS TO OPPOSER**

Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Virbac S.A. (“**Opposer**”), through the undersigned counsel of record, hereby submits its objections and responses to Alpharma, LLC’s (“**Applicant**”) First Set of Requests for Admissions to Opposer (“**Request(s)**”), and states as follows:

**I.**  
**GENERAL OBJECTIONS**

In addition to the objections separately set forth in response to certain Requests, Opposer's responses are provided subject to the following general objections, which are hereby expressly incorporated by reference into each and every one of the specific responses below. The inclusion of any specific objection to a Request in the responses below is neither intended as, nor shall in any way be deemed, a waiver of any general objection or of any other specific objection made herein or that may be asserted at another date. In addition, the failure to include at this time any general or specific objection to such a Request is neither intended as, nor shall in

any way be deemed, a waiver of Opposer's right to assert that or any other objection at a later date.

1. Opposer objects to Applicant's definitions and Requests to the extent that they purport to impose duties or obligations on Opposer beyond those imposed by the Federal Rules of Civil Procedure or the Trademark Rules of Practice before the Honorable Trademark Trial and Appeal Board of the United States Patent and Trademark Office ("**Board**"), and to the extent that they seek to alter, expand or otherwise modify the obligations, requirements and definitions imposed by the Federal Rules of Civil Procedure or the Trademark Rules Practice before the Board.

2. Opposer objects to the Requests to the extent they call for information that is protected from discovery by the attorney-client privilege, the attorney work-product immunity, or any other applicable privilege or immunity from discovery (information, documents and communication protected from discovery by the attorney-client privilege or any other immunity will hereinafter be referred to as "privileged"). No privileged information, communication or documents will be provided in response to any Request.

3. Opposer objects to these Requests to the extent that they are duplicative or cumulative of one another.

4. Opposer objects to these Requests to the extent they are overly broad, unduly burdensome, and seek information that is not relevant to any issue in this proceeding and are not reasonably calculated to lead to the discovery of admissible evidence.

5. Opposer objects to these Requests to the extent that they are compound or multifarious, phrased disjunctively or conjunctively, and/or include subparts in such a manner that it is unduly burdensome, confusing or cannot be reasonably answered.

6. Opposer further objects to these Requests to the extent that they seek information that originated from Applicant or is publicly available because such information is obtainable from more convenient, less burdensome and less expensive sources pursuant to Federal Rule of Civil Procedure 26(b)(2).

7. Opposer further objects to these Requests to the extent that they are unlimited duration and/or scope and provide no limitation on the period of time for the information sought.

8. Opposer does not waive any of its potential claims by answering the succeeding requests.

9. Opposer specifically reserves its right to supplement its discovery responses pursuant to Federal Rule of Civil Procedure 26(e).

10. The responses reflect Opposer's best present knowledge based on its review and investigation of the facts to date. Opposer has not done any independent investigation of any third party use or registration of any mark for purposes of responding to these Requests and responds solely based on its present knowledge. Opposer's review and investigation is continuing and Opposer reserves the right to amend and supplement these responses, pursuant to the Federal Rules of Civil Procedure.

11. Specific reference to the general objections in one or more responses is not a waiver of such general objection with respect to responses that do not include such a specific reference. Notwithstanding the specific response to any request, Opposer does not waive any general objections made herein. Further, Opposer's failure to object to a request on a particular ground shall not be construed as a waiver of its rights to object on that ground or any additional ground at a later time.

**II.**  
**SPECIFIC OBJECTIONS AND RESPONSES TO REQUESTS FOR ADMISSION**

Subject to the foregoing general objections and without waiver thereof, or of any objection as to relevancy or admissibility, Opposer answers the following Requests as set forth and incorporated herein by reference for all purposes.

**ADMISSION REQUEST NO. 1:** Admit that OPPOSER is not aware of any instances of actual confusion as to the origin, sponsorship, affiliation, connection and/or association of OPPOSER'S PRODUCTS or the OPPOSER'S MARK, on the one hand, and ALPHARMA PRODUCTS or the ALPHARMA MARK, on the other hand.

**RESPONSE:** Opposer objects to this Request insofar as it requires Opposer to draw legal conclusions. Opposer object to this Request insofar as it improperly suggests that Opposer must establish actual confusion when the standard for sustaining an opposition is likelihood of confusion. Opposer object to this Request on the grounds that it is premature as this matter is in its early stages and discovery is just getting underway. Subject to and without waiving any of its objections, Opposer responds as follows: Opposer admits only that, at this time, it is unaware of any instances of actual confusion, but reserves its right to amend or supplement this Response; otherwise the remainder of this Request is Denied.

**ADMISSION REQUEST NO. 2:** Admit that OPPOSER has never used OPPOSER'S MARK in the United States.

**RESPONSE:** Opposer objects to this Interrogatory on the grounds that it is vague, ambiguous, incomprehensible, or otherwise lacks sufficient precision or particularity to permit a response. Subject to and without waiving any of its objections, Opposer responds as follows: Denied.

**ADMISSION REQUEST NO. 3:** Admit that OPPOSER has never used OPPOSER'S MARK in interstate commerce in the United States.

**RESPONSE:** Opposer objects to this Interrogatory on the grounds that it is vague, ambiguous, incomprehensible, or otherwise lacks sufficient precision or particularity to permit a response. Subject to and without waiving any of its objections, Opposer responds as follows: Denied.

**ADMISSION REQUEST NO. 4:** Admit that OPPOSER has never sold any of OPPOSER'S PRODUCTS in the United States.

**RESPONSE:** Subject to and without waiving any of its objections, Opposer responds as follows: Admitted.

**ADMISSION REQUEST NO. 5:** Admit that OPPOSER has never advertised any of OPPOSER’S PRODUCTS in the United States.

**RESPONSE:** Subject to and without waiving any of its objections, Opposer responds as follows: Opposer admits only that it has not specifically targeted the United States in its advertising for ZOLETIL products, but the remainder of the Request is otherwise Denied.

**ADMISSION REQUEST NO. 6:** Admit that OPPOSER has never issued any press releases to media in the United States that depicted OPPOSER’S MARK.

**RESPONSE:** Subject to and without waiving its objections, Opposer responds as follows: Admitted.

**ADMISSION REQUEST NO. 7:** Admit that there has never been any press coverage in the United States for OPPOSER’S PRODUCTS.

**RESPONSE:** Opposer object to this Request insofar as it calls for information that is not within its possession or control. Subject to and without waiving its objections, Opposer responds as follows: Opposer has made a reasonable inquiry but the information that it knows or can readily obtain is insufficient to enable it to admit or deny this Request.

**ADMISSION REQUEST NO. 8:** Admit that OPPOSER has never used OPPOSER’S MARK as a house mark.

**RESPONSE:** Opposer objects to this Request on the grounds that it is vague and ambiguous as it is unclear what is meant by “house mark” which is undefined.

**ADMISSION REQUEST NO. 9:** Admit that OPPOSER does not use any domain names that include “zoletil.”

**RESPONSE:** Opposer objects that this Request as it seeks information that is neither relevant to the subject matter involved in this matter, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, Opposer responds as follows: Admitted.

**ADMISSION REQUEST NO. 10:** Admit that U.S. Trademark Application Serial No. 85/505,740 for ZOETIS does not include anesthetics in the goods and services description.

**RESPONSE:** Opposer objects to this Request insofar as it is misleading and improperly suggests that the parties’ respective products need to be identical or share similar properties in order for there to be a likelihood of confusion, when it is well-established that goods of the

parties need not be similar or competitive, or even offered through the same channels of trade to support a holding of likelihood of confusion. Subject to and without waiving any objections, Opposer responds as follows: Admitted.

**ADMISSION REQUEST NO. 11:** Admit that the prefix “zo,” when used before a vowel, means animal.

**RESPONSE:** Opposer objects that this Request insofar as it calls for the dissection of the marks at-issue and seeks information that is neither relevant to the subject matter involved in this matter, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, Opposer responds as follows: Opposer has made a reasonable inquiry but the information that it knows or can readily obtain is insufficient to enable it to admit or deny the Request.

**ADMISSION REQUEST NO. 12:** Admit that “zoetic” means of or relating to life.

**RESPONSE:** Opposer objects that this Request insofar that it is neither relevant to the subject matter involved in this matter, nor reasonably calculated to lead to the discovery of admissible evidence given that the term “zoetic” is not at-issue in this matter. Subject to and without waiving its objections, Opposer responds as follows: Opposer has made a reasonable inquiry but the information that it knows or can readily obtain is insufficient to enable it to admit or deny the Request.

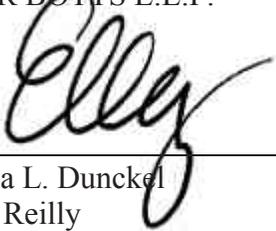
**ADMISSION REQUEST NO. 13:** Admit that third parties have obtained registrations from the PTO for trademarks that begin with “zo” for VETERINARY PREPARATIONS.

**RESPONSE:** Opposer objects that this Request insofar it calls for the dissection of the marks at-issue and is neither relevant to the subject matter involved in this matter, nor reasonably calculated to lead to the discovery of admissible evidence given that the term “zo” is not at-issue in this matter. Subject to and without waiving its objections, Opposer responds as follows: Opposer has made a reasonable inquiry but the information that it knows or can readily obtain is insufficient to enable it to admit or deny the Request.

Respectfully submitted this 31st day of May, 2013.

BAKER BOTTS L.L.P.

By: \_\_\_\_\_

  
Priscilla L. Dunkel  
Paul J. Reilly  
Elizabeth K. Stanley  
2001 Ross Avenue, Suite 600  
Dallas, Texas 75201-2980  
Tel: 214.953.6618  
Fax: 214.661.4899  
Email: [priscilla.dunkel@bakerbotts.com](mailto:priscilla.dunkel@bakerbotts.com)  
[paul.reilly@bakerbotts.com](mailto:paul.reilly@bakerbotts.com)  
[elizabeth.stanley@bakerbotts.com](mailto:elizabeth.stanley@bakerbotts.com)  
[daltmdept@bakerbotts.com](mailto:daltmdept@bakerbotts.com)

**ATTORNEYS FOR OPPOSER  
VIRBAC S.A.**

**CERTIFICATE OF SERVICE**

I hereby certify on this 31st day of May, 2013, I served, via email and Certified Mail Return Receipt Requested, a true and correct copy of the foregoing *Opposer's Objections and Responses to Applicant's First Requests for Admissions to Opposer* to:

Dale M. Cendali  
Bonnie L. Jarrett  
Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, NY 10022  
[dale.cendali@kirkland.com](mailto:dale.cendali@kirkland.com)  
[bonnie.jarrett@kirkland.com](mailto:bonnie.jarrett@kirkland.com)

  
\_\_\_\_\_  
Elizabeth K. Stanley

**Trademark/Service Mark Application, Principal Register****TEAS Plus Application**

Serial Number: 85505740

Filing Date: 12/29/2011

*NOTE: Data fields with the \* are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.*

The table below presents the data as entered.

Input Field	Entered
<b>TEAS Plus</b>	<b>YES</b>
<b>MARK INFORMATION</b>	
*MARK	<a href="#">ZOETIS</a>
*STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	ZOETIS
*MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
<b>REGISTER</b>	Principal
<b>APPLICANT INFORMATION</b>	
*OWNER OF MARK	Alpharma, LLC
*STREET	5 Giralda Farms
*CITY	Madison
*STATE (Required for U.S. applicants)	New Jersey
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	07940
PHONE	212.733.5211
FAX	212.573.2273

<b>LEGAL ENTITY INFORMATION</b>	
*TYPE	LIMITED LIABILITY COMPANY
* STATE/COUNTRY WHERE LEGALLY ORGANIZED	Delaware
<b>GOODS AND/OR SERVICES AND BASIS INFORMATION</b>	
*INTERNATIONAL CLASS	005
*IDENTIFICATION	Veterinary preparations for <b>the prevention and treatment of parasitic infections, inflammation and inflammatory diseases, respiratory and infectious diseases, immunological, bacterial, viral and fungal diseases, osteoporosis, cardiovascular disease, central nervous system diseases and disorders, urological, urogenital and urinary disorders, gastrointestinal disorders, musculoskeletal disorders, allergies, diabetes, hypertension, stroke, cancer, blood, pain, obesity, digestive disorders, ophthalmological disorders, behavioral disorders, reproductive disorders, dermatological disorders, tooth decay, tooth sensitivity, gingivitis, halitosis and periodontal disease and for skin and tissue repair and to lower cholesterol; nutritional additives and food supplements for medical purposes; veterinary vaccines and substances, diagnostic kits for use in disease testing, diagnostic preparations for medical and veterinary use, all of the foregoing for treating felines, canines, bovines, porcines, equines, llamas, rabbits, rodents, birds, ferrets, poultry, goats, sheep and aquatic animals</b>
*FILING BASIS	SECTION 1(b)
<b>ADDITIONAL STATEMENTS INFORMATION</b>	
*TRANSLATION (if applicable)	
*TRANSLITERATION (if applicable)	
*CLAIMED PRIOR REGISTRATION (if applicable)	
*CONSENT (NAME/LIKENESS) (if applicable)	

<b>*CONCURRENT USE CLAIM</b> (if applicable)	
<b>ATTORNEY INFORMATION</b>	
<b>NAME</b>	Jane Ungaro
<b>ATTORNEY DOCKET NUMBER</b>	ZOETIS / US
<b>FIRM NAME</b>	Pfizer Inc
<b>STREET</b>	150 East 42nd Street
<b>CITY</b>	New York
<b>STATE</b>	New York
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	10017
<b>PHONE</b>	212.733.5211
<b>FAX</b>	212.573.2273
<b>EMAIL ADDRESS</b>	deadlinesipnyo@pfizer.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>OTHER APPOINTED ATTORNEY</b>	Tiffany Trunko, Matthew Pater, Seana Smith, Heather McDonald, Katrina Edge, Richard Friedman, Sudipta Rao and Michele Farber
<b>CORRESPONDENCE INFORMATION</b>	
<b>*NAME</b>	Jane Ungaro
<b>FIRM NAME</b>	Pfizer Inc
<b>*STREET</b>	150 East 42nd Street
<b>*CITY</b>	New York
<b>*STATE</b> (Required for U.S. applicants)	New York
<b>*COUNTRY</b>	United States
<b>*ZIP/POSTAL CODE</b>	10017
<b>PHONE</b>	212.733.5211
<b>FAX</b>	212.573.2273
<b>*EMAIL ADDRESS</b>	deadlinesipnyo@pfizer.com
<b>*AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>FEE INFORMATION</b>	

<b>NUMBER OF CLASSES</b>	1
<b>FEE PER CLASS</b>	275
<b>*TOTAL FEE PAID</b>	275
<b>SIGNATURE INFORMATION</b>	
<b>* SIGNATURE</b>	/jane ungaro/
<b>* SIGNATORY'S NAME</b>	Jane Ungaro
<b>* SIGNATORY'S POSITION</b>	Senior Corporate Counsel - Trademarks
<b>SIGNATORY'S PHONE NUMBER</b>	212.733.5211
<b>* DATE SIGNED</b>	12/29/2011

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## Trademark/Service Mark Application, Principal Register

### TEAS Plus Application

**Serial Number: 85505740**

**Filing Date: 12/29/2011**

#### To the Commissioner for Trademarks:

**MARK:** ZOETIS (Standard Characters, see [mark](#))

The literal element of the mark consists of ZOETIS.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Alpharma, LLC, a limited liability company legally organized under the laws of Delaware, having an address of

5 Giralda Farms  
Madison, New Jersey 07940  
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

#### **For specific filing basis information for each item, you must view the display within the Input Table.**

International Class 005: Veterinary preparations for the prevention and treatment of parasitic infections, inflammation and inflammatory diseases, respiratory and infectious diseases, immunological, bacterial, viral and fungal diseases, osteoporosis, cardiovascular disease, central nervous system diseases and disorders, urological, urogenital and urinary disorders, gastrointestinal disorders, musculoskeletal disorders, allergies, diabetes, hypertension, stroke, cancer, blood, pain, obesity, digestive disorders, ophthalmological disorders, behavioral disorders, reproductive disorders, dermatological disorders, tooth decay, tooth sensitivity, gingivitis, halitosis and periodontal disease and for skin and tissue repair and to lower cholesterol; nutritional additives and food supplements for medical purposes; veterinary vaccines and substances, diagnostic kits for use in disease testing, diagnostic preparations for medical and veterinary use, all of the foregoing for treating felines, canines, bovines, porcines, equines, llamas, rabbits, rodents, birds, ferrets, poultry, goats, sheep and aquatic animals

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

The applicant's current Attorney Information:

Jane Ungaro and Tiffany Trunko, Matthew Pater, Seana Smith, Heather McDonald, Katrina Edge, Richard Friedman, Sudipta Rao and Michele Farber of Pfizer Inc

150 East 42nd Street  
New York, New York 10017  
United States

The attorney docket/reference number is ZOETIS / US.

The applicant's current Correspondence Information:

Jane Ungaro  
Pfizer Inc  
150 East 42nd Street  
New York, New York 10017  
212.733.5211(phone)  
212.573.2273(fax)  
deadlinesipnyo@pfizer.com (authorized)

A fee payment in the amount of \$275 has been submitted with the application, representing payment for 1 class(es).

### **Declaration**

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /jane ungaro/ Date Signed: 12/29/2011

Signatory's Name: Jane Ungaro

Signatory's Position: Senior Corporate Counsel - Trademarks

RAM Sale Number: 1478

RAM Accounting Date: 12/30/2011

Serial Number: 85505740

Internet Transmission Date: Thu Dec 29 15:22:36 EST 2011

TEAS Stamp: USPTO/FTK-148.168.127.10-201112291522361

05753-85505740-490985a6fa136f3c34d4fcd51

2368c28-DA-1478-20111229143446841753

ZOETIS

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

VIRBAC S.A.,	§	
	§	
Opposer,	§	Opposition No. 91206448
	§	
vs.	§	Mark: <b>ZOETIS</b>
	§	(Serial No: 85/505,740)
ALPHARMA, LLC,	§	
	§	Publication Date: July 10, 2012
Applicant.	§	
	§	

**OPPOSER’S OBJECTIONS AND RESPONSES TO APPLICANT’S  
FIRST SET OF REQUESTS FOR PRODUCTION TO OPPOSER**

Pursuant to Rules 26 and 34 of the Fed. R. Civ. P., and Trademark Rule of Practice 2.120(d), 37 C.F.R. § 2.120(d), Opposer Virbac S.A. (“**Opposer**”), through the undersigned counsel of record, submits the following objections and responses to Alpharma, LLC’s (“**Applicant**”) First Set of Requests for Production to Opposer (“**Requests**”).

**I.**  
**GENERAL OBJECTIONS**

In addition to the objections separately set forth in response to each of the Requests below, the following responses are provided subject to the following General Objections, which are hereby expressly incorporated by reference into each and every one of the specific responses below.

The inclusion of any specific objection in response to each of the Requests below is neither intended as, nor shall in any way be deemed, a waiver of any General Objection or of any other specific objection made herein or that may be asserted at another date. In addition, the failure to include at this time any general or specific objection to a Request is neither intended as, nor shall in any way be deemed, a waiver of Opposer’s right to assert that or any other objection at a later date.

1. Opposer objects to these Requests to the extent that they seek to impose duties or obligations on Opposer beyond those imposed by the Federal Rules of Civil Procedure or the rules of the Trademark Trial and Appeal Board (“**Board**”).

2. Opposer objects to these Requests insofar as they are vague, ambiguous, over broad, unduly burdensome, duplicative, cumulative or otherwise unclear as to the precise

information sought, and/or seek documents and/or information that are neither relevant to the subject matter involved in this action, nor reasonably calculated to lead to the discovery of admissible evidence.

3. Opposer objects to these Requests to the extent that they call for the production of documents and information that are protected from discovery by the attorney-client privilege, the attorney work-product immunity doctrine, or any other privilege, protection or immunity applicable under the governing law. Should Opposer inadvertently produce any privileged document, Opposer expressly reserves the right to withdraw the document and assert the privilege.

4. In accordance with Fed. R. Civ. P. 26(b)(5), Opposer will, at a later time, provide sufficient information to identify documents withheld on the basis of the attorney-client privilege, the attorney work-product immunity doctrine or any other applicable privilege, protection or immunity.

5. Opposer objects to these Requests as overly broad and/or unduly burdensome to the extent they fail to specify a time period or to the extent they cover an excessive period of time.

6. Opposer objects to these Requests to the extent that it they are duplicative or cumulative of one another.

7. Opposer objects to these Requests insofar as they seek documents and information that are not in the possession, custody or control of Opposer.

8. Opposer objects to these Requests insofar as they call for the production of documents and information already in the possession, custody or control of Applicant, or which are otherwise equally available, or more available, to Applicant.

9. Opposer objects to these Requests to the extent that they call for the production of documents relating to, concerning or containing confidential, proprietary business information, trade secrets or other confidential research, development, or commercial information of Opposer or its employees absent the entry of a suitable protective order by the Board or the execution of a confidentiality agreement between the parties hereto.

10. Opposer's failure to object to a Request on a particular ground shall not be construed as a waiver of its right to object on that ground or any additional ground at a later time. Pursuant to Rule 26(e) of the Fed. R. Civ. P., Opposer reserves the right to supplement and/or amend its objections and responses subject to its General Objections above and specific objections below.

**II.**  
**SPECIFIC OBJECTIONS AND RESPONSES TO REQUESTS**

Subject to the foregoing general objections and without waiver thereof, or of any objection as to relevancy or admissibility, Opposer answers the following Requests as set forth and incorporated herein by reference for all purposes.

**REQUEST NO. 1:**

All DOCUMENTS and COMMUNICATIONS CONCERNING or REFERRING AND RELATING TO the OPPOSER'S sales, marketing and/or distribution of the OPPOSER'S PRODUCTS in the United States.

**RESPONSE:** Opposer objects to this Request insofar as it is overly broad, unlimited in time, vague and unclear as to the precise documents sought and/or calls for documents and information that are neither relevant to the subject matter involved in this action nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any of its objections, Opposer responds as follows: documents responsive to this Request, to the extent that they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure.

**REQUEST NO. 2:**

DOCUMENTS sufficient to show the date that OPPOSER first used the OPPOSER'S MARK in the United States.

**RESPONSE:** Subject to and without waiving any of its objections, Opposer responds as follows: documents responsive to this Request, to the extent that they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure.

**REQUEST NO. 3:**

DOCUMENTS sufficient to show the date that OPPOSER first used the OPPOSER'S MARK in interstate commerce in the United States.

**RESPONSE:** Opposer objects to the Request insofar as it is cumulative of Request No. 2. Subject to and without waiving any of its objections, Opposer responds as follows: documents responsive to this Request, to the extent that they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure; see also Response to Request No. 2.

**REQUEST NO. 4:**

DOCUMENTS sufficient to show the date that OPPOSER first used the OPPOSER'S MARK in the United States.

**RESPONSE:** Opposer objects to this Request insofar as it is duplicative of Applicant's Request for Production No. 2. Subject to and without waiver of the foregoing objections, Opposer responds as follows: see response to Request No. 2.

**REQUEST NO. 5:**

All DOCUMENTS CONCERNING or REFERRING AND RELATING TO OPPOSER'S actual or contemplated use of the OPPOSER'S MARK in the United States, including, but not limited to, manner of use, date of first use, length of use, exclusiveness of use, and geographical location of use.

**RESPONSE:** Opposer objects to this Request insofar as it is overly broad, unlimited in time, vague and unclear as to the precise documents sought and/or calls for documents and information that are neither relevant to the subject matter involved in this action nor reasonably calculated to lead to the discovery of admissible evidence. Opposer objects to this Request to the extent that it seeks production of documents protected from discovery by the attorney-client privilege, the attorney work-product immunity doctrine and/or any other applicable privilege, protection or immunity; such documents shall not be produced. Subject to and without waiving any of its objections, Opposer responds as follows: documents responsive to this Request, to the extent that they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure.

**REQUEST NO. 6:**

All DOCUMENTS CONCERNING or REFERRING AND RELATING TO OPPOSER'S interest in OPPOSER'S MARK, including, but not limited to, any assignment agreements or license agreements.

**RESPONSE:** Opposer objects to this Request insofar as it is overly broad, vague, ambiguous, and unclear as to the precise documents sought, particularly, in light of the term "interest", and/or calls for documents and information that are neither relevant to the subject matter involved in this action nor reasonably calculated to lead to the discovery of admissible evidence. Opposer objects to this Request to the extent that it seeks production of documents protected from discovery by the attorney-client privilege, the attorney work-product immunity doctrine and/or any other applicable privilege, protection or immunity; such documents shall not be produced. Subject to and without waiving any of its objections, Opposer responds as follows: documents responsive to this Request, to the extent that they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure.

**REQUEST NO. 7:**

All DOCUMENTS and COMMUNICATIONS CONCERNING or REFERRING AND RELATING TO the OPPOSER'S MARK, APPLICANT, APPLICANT'S MARK, Zoetis Inc., or this proceeding.

**RESPONSE:** Opposer objects to this Request insofar as it is overly broad, unduly burdensome, unlimited in time, vague, ambiguous, and unclear as to the precise documents sought, and/or

calls for documents and information that are neither relevant to the subject matter involved in this action nor reasonably calculated to lead to the discovery of admissible evidence. Opposer objects to this Request to the extent that it seeks production of documents protected from discovery by the attorney-client privilege, the attorney work-product immunity doctrine and/or any other applicable privilege, protection or immunity; such documents shall not be produced.

**REQUEST NO. 8:**

All COMMUNICATIONS with third parties CONCERNING or REFERRING AND RELATING TO OPPOSER'S MARK.

**RESPONSE:** Opposer objects to this Request insofar as it is overly broad, unduly burdensome, unlimited in time, vague, ambiguous, and unclear as to the precise documents sought and/or calls for documents and information that are neither relevant to the subject matter involved in this action nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any of its objections, Opposer responds as follows: representative documents responsive to this Request, to the extent that they exist, relating to use of Opposer's Mark will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure.

**REQUEST NO. 9:**

All COMMUNICATIONS with third parties CONCERNING or REFERRING AND RELATING TO APPLICANT, APPLICANT'S MARK, Zoetis Inc., or this proceeding.

**RESPONSE:** Opposer objects to this Request insofar as it is overly broad, unduly burdensome, unlimited in time, vague, ambiguous, and unclear as to the precise documents sought and/or calls for documents and information that are neither relevant to the subject matter involved in this action nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any of its objections, Opposer responds as follows: documents responsive to this Request, to the extent that they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure.

**REQUEST NO. 10:**

Representative samples of OPPOSER'S PRODUCTS bearing the OPPOSER'S MARK as such products are advertised, marketed, distributed, offered for sale, or sold in the United States.

**RESPONSE:** Opposer objects to this request insofar as it is cumulative of Request Nos. 1, 2, 3 and 4. Subject to and without waiving any of its objections, Opposer responds as follows: see Responses to Requests Nos. 1, 2, 3 and 4

**REQUEST NO. 11:**

All DOCUMENTS CONCERNING or REFERRING AND RELATING TO the enforcement of the OPPOSER'S MARK against third parties in the United States, including, but

not limited to, any claim, demand, complaint, action, notice of opposition, petition for cancellation, or cease and desist letter.

**RESPONSE:** Opposer objects to this Request insofar as it is overly broad, unlimited in time, and/or calls for documents and information that are neither relevant to the subject matter involved in this action nor reasonably calculated to lead to the discovery of admissible evidence. Opposer objects to this Request to the extent that it seeks production of documents protected from discovery by the attorney-client privilege, the attorney work-product immunity doctrine and/or any other applicable privilege, protection or immunity; such documents shall not be produced. Subject to and without waiving any of its objections, Opposer responds as follows: documents responsive to this Request, to the extent that they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure.

**REQUEST NO. 12:**

All DOCUMENTS CONCERNING or REFERRING AND RELATING TO the policing of the OPPOSER'S MARK against third parties in the United States.

**RESPONSE:** . Opposer objects to this Request insofar as it is overly broad, unlimited in time, and/or calls for documents and information that are neither relevant to the subject matter involved in this action nor reasonably calculated to lead to the discovery of admissible evidence. Opposer objects to this Request to the extent that it seeks production of documents protected from discovery by the attorney-client privilege, the attorney work-product immunity doctrine and/or any other applicable privilege, protection or immunity; such documents shall not be produced. Opposer objects to this requests insofar as it is cumulative of Request No. 11. Subject to and without waiving any of its objections, Opposer responds as follows: See Response to Request No. 11.

**REQUEST NO. 13:**

All DOCUMENTS CONCERNING or REFERRING AND RELATING TO any filing, submission, application for registration and/or any registration of the OPPOSER'S MARK in the United States.

**RESPONSE:** Opposer objects to this Request insofar as it is overly broad, unlimited in time, vague, ambiguous, and unclear as to the precise documents sought, and/or calls for documents and information that are neither relevant to the subject matter involved in this action nor reasonably calculated to lead to the discovery of admissible evidence. Opposer objects to this Request to the extent that it seeks production of documents protected from discovery by the attorney-client privilege, the attorney work-product immunity doctrine and/or any other applicable privilege, protection or immunity; such documents shall not be produced. Subject to and without waiving any of its objections, Opposer responds as follows: documents responsive to this Request, to the extent that they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure.

**REQUEST NO. 14:**

All DOCUMENTS CONCERNING or REFERRING AND RELATING TO the use in the United States of trademarks, trade names, trade dress, service marks, design marks, word marks, images, logos, designs, and matter by third parties in connection with products and/or services that begin with the letters “ZO” for VETERINARY ANESTHETICS.

**RESPONSE:** Opposer objects to this Request insofar as it is overly broad, unduly burdensome, unlimited in time, vague, ambiguous, and unclear as to the precise documents sought, and/or calls for documents and information that are neither relevant to the subject matter involved in this action nor reasonably calculated to lead to the discovery of admissible evidence. Opposer objects to this Request insofar as it seeks documents and information that is not in the possession, custody or control of Opposer, and/or calls for the production of documents and information already in the possession, custody or control of Applicant, or which are otherwise equally available, or more available, to Applicant. Opposer objects to this Request to the extent that it seeks production of documents protected from discovery by the attorney-client privilege, the attorney work-product immunity doctrine and/or any other applicable privilege, protection or immunity; such documents shall not be produced.

**REQUEST NO. 15:**

All DOCUMENTS CONCERNING or REFERRING AND RELATING TO the use in the United States of trademarks, trade names, trade dress, service marks, design marks, word marks, images, logos, designs, and matter by third parties in connection with products and/or services that begin with the letters “ZO” for VETERINARY PREPARATIONS.

**RESPONSE:** Opposer objects to this Request insofar as it is overly broad, unduly burdensome, unlimited in time, vague, ambiguous, and unclear as to the precise documents sought, and/or calls for documents and information that are neither relevant to the subject matter involved in this action nor reasonably calculated to lead to the discovery of admissible evidence. Opposer objects to this Request insofar as it seeks documents and information that is not in the possession, custody or control of Opposer, and/or calls for the production of documents and information already in the possession, custody or control of Applicant, or which are otherwise equally available, or more available, to Applicant. Opposer objects to this Request to the extent that it seeks production of documents protected from discovery by the attorney-client privilege, the attorney work-product immunity doctrine and/or any other applicable privilege, protection or immunity; such documents shall not be produced. Opposer objects to this Request insofar as it is duplicative or cumulative of Request No. 14. Subject to and without waiving any of its objections, Opposer responds as follows: See Response to Request No. 14.

**REQUEST NO. 16:**

All DOCUMENTS CONCERNING or REFERRING AND RELATING TO any agreements or licenses with any PERSON who has purchased or distributed products bearing the OPPOSER’S MARK in the United States (excluding individual consumers), including, but not limited to, all DOCUMENTS CONCERNING or REFERRING AND RELATING TO (a) the number of units of OPPOSER’S PRODUCTS distributed, licensed or sold by OPPOSER to such

PERSONS; (b) the sales, in dollars, of OPPOSER'S PRODUCTS distributed, licensed or sold by OPPOSER to such PERSONS; (c) the number of units of OPPOSER'S PRODUCTS distributed, licensed or sold by such PERSONS; (d) the sales, in dollars, of OPPOSER'S PRODUCTS distributed, licensed or sold by such PERSONS; and (e) invoices, purchase orders, account statements and/or royalty statements related to any such PERSON'S purchase, sale, license or distribution of OPPOSER'S PRODUCTS.

**RESPONSE:** Opposer objects to this Request insofar as it is overly broad, unlimited in time, and/or calls for documents and information that are neither relevant to the subject matter involved in this action nor reasonably calculated to lead to the discovery of admissible evidence. Opposer objects to this Request to the extent that it seeks production of documents protected from discovery by the attorney-client privilege, the attorney work-product immunity doctrine and/or any other applicable privilege, protection or immunity; such documents shall not be produced. Opposer objects to this Request insofar as it is cumulative of Request Nos. 1-4 and 8. Subject to and without waiving any of its objections, Opposer responds as follows: documents responsive to this Request, to the extent that they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure; see also Response to Request Nos. 1-4 and 8.

**REQUEST NO. 17:**

All DOCUMENTS CONCERNING or REFERRING AND RELATING TO any agreement, arrangement, license, or other understanding with any other PERSON or company CONCERNING or REFERRING AND RELATING TO the use of OPPOSER'S MARK in the United States.

**RESPONSE:** Opposer objects to this Request insofar as it is overly broad, unlimited in time, and/or calls for documents and information that are neither relevant to the subject matter involved in this action nor reasonably calculated to lead to the discovery of admissible evidence. Opposer objects to this Request to the extent that it seeks production of documents protected from discovery by the attorney-client privilege, the attorney work-product immunity doctrine and/or any other applicable privilege, protection or immunity; such documents shall not be produced. Opposer objects to this request insofar as it is cumulative of Request No. 16. Subject to and without waiving any of its objections, Opposer responds as follows: documents responsive to this Request, to the extent that they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure; see Response to Request No 16.

**REQUEST NO. 18:**

All DOCUMENTS CONCERNING or REFERRING AND RELATING TO any restriction, limitation, or change in the manner of use of OPPOSER'S MARK in the United States.

**RESPONSE:** Opposer objects to this Request insofar as it is vague, ambiguous, unclear as to the precise information sought, unlimited in time, and/or calls for documents and information that are neither relevant to the subject matter involved in this action nor reasonably calculated to lead to the discovery of admissible evidence. Opposer objects to this Request to the extent that it seeks production of documents protected from discovery by the attorney-client privilege, the

attorney work-product immunity doctrine and/or any other applicable privilege, protection or immunity; such documents shall not be produced. Subject to and without waiving any of its objections, Opposer responds as follows: documents responsive to this Request, to the extent that they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure.

**REQUEST NO. 19:**

DOCUMENTS sufficient to show monthly and annual sales in the United States, in units and dollars, of any of the OPPOSER'S PRODUCTS from 1995 to the present.

**RESPONSE:** Opposer objects to this Request insofar as it is overly broad, unlimited in time, and/or calls for documents and information that are neither relevant to the subject matter involved in this action nor reasonably calculated to lead to the discovery of admissible evidence. Opposer objects to this Request to the extent that it seeks production of documents protected from discovery by the attorney-client privilege, the attorney work-product immunity doctrine and/or any other applicable privilege, protection or immunity; such documents shall not be produced. Opposer objects to this request insofar as it is cumulative of Request No. 16. Subject to and without waiving any of its objections, Opposer responds as follows: documents responsive to this Request, to the extent that they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure; see Response to Request No 16.

**REQUEST NO. 20:**

DOCUMENTS sufficient to show monthly and annual revenues, expenses and profits from the sale of the OPPOSER'S PRODUCTS in the United States from 1995 to the present.

**RESPONSE:** Opposer objects to this Request insofar as it is overly broad, unlimited in time, and/or calls for documents and information that are neither relevant to the subject matter involved in this action nor reasonably calculated to lead to the discovery of admissible evidence. Opposer objects to this Request to the extent that it seeks production of documents protected from discovery by the attorney-client privilege, the attorney work-product immunity doctrine and/or any other applicable privilege, protection or immunity; such documents shall not be produced. Opposer objects to this request insofar as it is cumulative of Request No. 16. Subject to and without waiving any of its objections, Opposer responds as follows: documents responsive to this Request, to the extent that they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure; see Response to Request No 16.

**REQUEST NO. 21:**

DOCUMENTS sufficient to show the channels of trade through which and/or the geographic areas in the United States in which the OPPOSER'S PRODUCTS have been or presently are marketed, advertised, distributed, licensed or sold.

**RESPONSE:** Subject to and without waiving any of its objections, Opposer responds as follows: documents responsive to this Request, to the extent that they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure.

**REQUEST NO. 22:**

DOCUMENTS sufficient to show all advertising, marketing or promotions depicting the OPPOSER'S MARK in the United States, including, but not limited to (a) copies of all ADVERTISEMENTS, (b) DOCUMENTS sufficient to show the dates all ADVERTISEMENTS appeared, (c) in what outlet the ADVERTISEMENTS appeared, (d) the circulation of each ADVERTISEMENT, and (e) the cost of each ADVERTISEMENT.

**RESPONSE:** Opposer objects to this Request insofar as it is overly broad, unduly burdensome, and unlimited in time. . Subject to and without waiving any of its objections, Opposer responds as follows: documents responsive to this Request, to the extent that they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure.

**REQUEST NO. 23:**

DOCUMENTS sufficient to identify all ADVERTISEMENTS, including search engine key-word advertising, or pay-for-click advertising CONCERNING or REFERRING AND RELATING TO APPLICANT'S MARKS, and the dates and specified locations where the ADVERTISEMENTS were displayed.

**RESPONSE:** Opposer objects to this Request insofar as it is overly broad, unduly burdensome, unlimited in time. Opposer objects to this Request insofar as it seeks documents and information that are not in the possession, custody or control of Opposer, and/or calls for the production of documents and information already in the possession, custody or control of Applicant, or which are otherwise equally available, or more available, to Applicant. Subject to and without waiving any of its objections, Opposer responds as follows: documents responsive to this Request, to the extent that they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure.

**REQUEST NO. 24:**

DOCUMENTS sufficient to identify all ADVERTISEMENTS, including search engine key-word advertising, or pay-for-click advertising CONCERNING or REFERRING AND RELATING TO OPPOSER'S MARK, and the dates and specified locations where the ADVERTISEMENTS were displayed.

**RESPONSE:** Opposer objects to this Request insofar as it is overly broad, unduly burdensome, unlimited in time, and/or is cumulative of Request No. 22. Subject to and without waiving any of its objections, Opposer responds as follows: documents responsive to this Request, to the extent that they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure; see also Response to Request No. 22.

**REQUEST NO. 25:**

All contracts or agreements between OPPOSER and any third party regarding the ADVERTISEMENT of OPPOSER'S PRODUCTS in the United States.

**RESPONSE:** Subject to and without waiving any of its objections, Opposer responds as follows: documents responsive to this Request, to the extent that they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure.

**REQUEST NO. 26:**

DOCUMENTS sufficient to show OPPOSER'S annual expenditures, each year, for the ADVERTISING and/or marketing of the OPPOSER'S PRODUCTS in the United States.

**RESPONSE:** Subject to and without waiving any of its objections, Opposer responds as follows: documents responsive to this Request, to the extent that they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure.

**REQUEST NO. 27:**

All press releases sent to United States media CONCERNING or REFERRING AND RELATING TO OPPOSER'S MARK or OPPOSER'S PRODUCTS.

**RESPONSE:** Subject to and without waiving any of its objections, Opposer responds as follows: documents responsive to this Request, to the extent that they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure.

**REQUEST NO. 28:**

All DOCUMENTS to or from any advertising agency, graphic design firm, public relations firm, their respective employees or agents or artists, CONCERNING or REFERRING AND RELATING TO OPPOSER'S MARK or OPPOSER'S PRODUCTS.

**RESPONSE:** Opposer objects to this Request insofar as it is overly broad, unlimited in time, and/or calls for documents and information that are neither relevant to the subject matter involved in this action nor reasonably calculated to lead to the discovery of admissible evidence. Opposer objects to this Request insofar as it seeks documents and information that is not in the possession, custody or control of Opposer. Subject to and without waiving any of its objections, Opposer responds as follows: documents responsive to this Request, to the extent that they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure.

**REQUEST NO. 29:**

All DOCUMENTS CONCERNING or REFERRING AND RELATING TO press coverage of the OPPOSER'S MARK and/or the OPPOSER'S PRODUCTS in the United States.

**RESPONSE:** Opposer objects to this Request insofar as it is overly broad, unduly burdensome, and/or unlimited in time. Subject to and without waiving any of its objections, Opposer responds as follows: documents responsive to this Request, to the extent that they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure.

**REQUEST NO. 30:**

All DOCUMENTS CONCERNING or REFERRING AND RELATING TO MARKET RESEARCH CONCERNING or REFERRING AND RELATING TO the OPPOSER'S MARK.

**RESPONSE:** Opposer objects to this Request insofar as it is overly broad, unlimited in time and scope, vague, ambiguous, and unclear as to the precise documents sought and/or calls for documents and information that are neither relevant to the subject matter involved in this action nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any of its objections, Opposer responds as follows: documents responsive to this Request, to the extent that they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure.

**REQUEST NO. 31:**

All DOCUMENTS CONCERNING or REFERRING AND RELATING TO ALPHARMA, the ALPHARMA PRODUCTS or the ALPHARMA MARK.

**RESPONSE:** Opposer objects to this Request insofar as it is overly broad, unlimited in time and scope, vague, ambiguous, and unclear as to the precise documents sought and/or calls for documents and information that are neither relevant to the subject matter involved in this action nor reasonably calculated to lead to the discovery of admissible evidence. Opposer objects to this Request insofar as it seeks documents and information that is not in the possession, custody or control of Opposer, and/or calls for the production of documents and information already in the possession, custody or control of Applicant, or which are otherwise equally available, or more available, to Applicant. Opposer objects to this Request to the extent that it seeks production of documents protected from discovery by the attorney-client privilege, the attorney work-product immunity doctrine and/or any other applicable privilege, protection or immunity; such documents shall not be produced. Subject to and without waiving any of its objections, Opposer responds as follows: documents responsive to this Request, to the extent that they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure.

**REQUEST NO. 32:**

All DOCUMENTS CONCERNING or REFERRING AND RELATING TO actual or potential confusion as to origin, sponsorship, affiliation, connection and/or association of the OPPOSER'S PRODUCTS or the OPPOSER'S MARK, on the one hand, and ALPHARMA PRODUCTS or the ALPHARMA MARK, on the other hand.

**RESPONSE:** Opposer objects to this Request insofar as it is misleading and improperly suggests that Opposer must establish actual confusion when the standard for sustaining an

opposition is likelihood of confusion. Opposer objects to this Request on the grounds that it is premature as this matter is in its early stages and discovery is just getting underway. Opposer objects to this Request insofar as it seeks documents and information that is not in the possession, custody or control of Opposer, and/or calls for the production of documents and information already in the possession, custody or control of Applicant, or which are otherwise equally available, or more available, to Applicant. Opposer objects to this Request to the extent that it seeks production of documents protected from discovery by the attorney-client privilege, the attorney work-product immunity doctrine and/or any other applicable privilege, protection or immunity; such documents shall not be produced. Subject to and without waiving any of its objections, Opposer responds as follows: documents responsive to this Request, to the extent that they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure.

**REQUEST NO. 33:**

All DOCUMENTS CONCERNING or REFERRING AND RELATING TO misdirected mail, e-mail, telephone calls, orders or inquiries CONCERNING or REFERRING AND RELATING TO any association between the OPPOSER, the OPPOSER'S PRODUCTS, or the OPPOSER'S MARK, on the one hand, and ALPHARMA, the ALPHARMA PRODUCTS or the ALPHARMA MARK, on the hand.

**RESPONSE:** Opposer objects to this Request on the grounds that it is premature as this matter is in its early stages and discovery is just getting underway. Opposer objects to this Request to the extent that it seeks production of documents protected from discovery by the attorney-client privilege, the attorney work-product immunity doctrine and/or any other applicable privilege, protection or immunity; such documents shall not be produced. Opposer objects to this request to the extent it is cumulative or Request No. 32. Subject to and without waiving any of its objections, Opposer responds as follows: documents responsive to this Request, to the extent that they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure; see also Response to Request No. 32.

**REQUEST NO. 34:**

Any and all COMMUNICATIONS, whether oral or written, received by the OPPOSER from any PERSON that suggest, implies or infers any connection or association between the OPPOSER, the OPPOSER'S PRODUCTS, or the OPPOSER'S MARK, on the one hand, and ALPHARMA, the ALPHARMA PRODUCTS, or the ALPHARMA MARK, on the other hand, or that inquires as to whether there is or may be any such connection or association.

**RESPONSE:** Opposer objects to this Request on the grounds that it is premature as this matter is in its early stages and discovery is just getting underway. Opposer objects to this Request to the extent that it seeks production of documents protected from discovery by the attorney-client privilege, the attorney work-product immunity doctrine and/or any other applicable privilege, protection or immunity; such documents shall not be produced. Opposer objects to this request to the extent it is cumulative or Request No. 32. Subject to and without waiving any of its objections, Opposer responds as follows: documents responsive to this Request, to the extent that

they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure; see also Response to Request No. 32.

**REQUEST NO. 35:**

DOCUMENTS sufficient to show the market in the United States for OPPOSER'S PRODUCTS, including, but not limited to, the characteristics and demographics of the market, its size and geographic location, the number of customers constituting the market, the number of customers who have purchased OPPOSER'S PRODUCTS in the United States, the age, gender, size, household income, education level, and sophistication of the customer base, and the level of care employed by customers in making purchasing decisions.

**RESPONSE:** Subject to and without waiving any of its objections, Opposer responds as follows: documents responsive to this Request, to the extent that they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure.

**REQUEST NO. 36:**

All DOCUMENTS CONCERNING or REFERRING AND RELATING TO any SURVEY CONCERNING the OPPOSER'S MARK or the OPPOSER'S PRODUCTS.

**RESPONSE:** Opposer objects to this Request insofar as it is overly broad, unlimited in time and scope, and/or calls for documents and information that are neither relevant to the subject matter involved in this action nor reasonably calculated to lead to the discovery of admissible evidence. Opposer objects to this Request to the extent that it seeks production of documents protected from discovery by the attorney-client privilege, the attorney work-product immunity doctrine and/or any other applicable privilege, protection or immunity; such documents shall not be produced. Subject to and without waiving any of its objections, Opposer responds as follows: Opposer is unaware of any documents responsive to this Request at this time..

**REQUEST NO. 37:**

All DOCUMENTS CONCERNING or REFERRING AND RELATING TO the alleged likelihood of confusion between the OPPOSER'S MARK and the ALPHARMA MARK.

**RESPONSE:** Opposer objects to this Request insofar as it is overly broad, unlimited in time and scope, vague, ambiguous and unclear as to the precise documents sought. Opposer objects to this Request on the grounds that it is premature as this matter is in its early stages and discovery is just getting underway. Opposer objects to this Request to the extent that it seeks production of documents protected from discovery by the attorney-client privilege, the attorney work-product immunity doctrine and/or any other applicable privilege, protection or immunity; such documents shall not be produced. Subject to and without waiving any of its objections, Opposer responds as follows: documents responsive to this Request, to the extent that they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure.

**REQUEST NO. 38:**

DOCUMENTS sufficient to identify the PERSONS that offer, or have offered, the OPPOSER'S PRODUCTS in the United States from 1995 to the present.

**RESPONSE:** Subject to and without waiving any of its objections, Opposer responds as follows: documents responsive to this Request, to the extent that they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure.

**REQUEST NO. 39**

All DOCUMENTS CONCERNING or REFERRING AND RELATING TO the value or strength of the OPPOSER'S MARK in each year from 1995 to the present.

**RESPONSE:** Opposer objects to this Request insofar as it is overly broad in time, vague, ambiguous and unclear as to the precise documents sought Subject to and without waiving any of its objections and insofar as it comprehends this Request, Opposer responds as follows: documents responsive to this Request, to the extent that they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure.

**REQUEST NO. 40**

All DOCUMENTS CONCERNING or REFERRING AND RELATING TO any expert witnesses in this proceeding, including, but not limited to, COMMUNICATIONS that: (i) relate to compensation for any such witness's study or testimony; (ii) identify facts or data that OPPOSER'S attorney provided and that such expert considered in forming the opinions to be expressed; and (iii) identify assumptions that OPPOSER'S attorney provided and that such expert relied on in forming the opinions to be expressed, as provided by Federal Rule of Civil Procedure 26(b)(4)(C) and the Trademark Rules.

**RESPONSE:** Opposer objects to this Request on the grounds that it is premature in that it has not yet selected expert witness(es) who will testify at trial of this matter. Opposer objects to this Request to the extent that it seeks production of documents protected from discovery by the attorney-client privilege, the attorney work-product immunity doctrine and/or any other applicable privilege, protection or immunity; such documents shall not be produced. Subject to and without waiving any of its objections, Opposer has no documents responsive to this Request at this time.

**REQUEST NO. 41**

All DOCUMENTS on which OPPOSER intends to support its claims in this proceeding.

**RESPONSE:** Opposer objects to this Request as premature in that discovery is not complete and Opposer has not determined all of the documents and information on which it intends to support its claims in this Opposition proceeding. Subject to and without waiving any of its objections, Opposer responds as follows: documents responsive to this Request, to the extent that they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure.

**REQUEST NO. 42**

All DOCUMENTS CONCERNING or REFERRING AND RELATING TO OPPOSER'S statements in the OPPOSITION.

**RESPONSE:** Opposer objects to this Request to the extent that it seeks production of documents protected from discovery by the attorney-client privilege, the attorney work-product immunity doctrine and/or any other applicable privilege, protection or immunity; such documents shall not be produced. Subject to and without waiving any of its objections, Opposer responds as follows: documents responsive to this Request, to the extent that they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure.

**REQUEST NO. 43**

All DOCUMENTS relied upon or otherwise consulted in preparing OPPOSER'S INTERROGATORY RESPONSES.

**RESPONSE:** Opposer objects to this Request to the extent that it seeks production of documents protected from discovery by the attorney-client privilege, the attorney work-product immunity doctrine and/or any other applicable privilege, protection or immunity; such documents shall not be produced. Subject to and without waiving any of its objections, Opposer responds as follows: documents responsive to this Request, to the extent that they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure.

**REQUEST NO. 44**

All DOCUMENTS relied upon or otherwise consulted in preparing OPPOSER'S RESPONSE TO REQUESTS FOR ADMISSION.

**RESPONSE:** Opposer objects to this Request to the extent that it seeks production of documents protected from discovery by the attorney-client privilege, the attorney work-product immunity doctrine and/or any other applicable privilege, protection or immunity; such documents shall not be produced. Subject to and without waiving any of its objections, Opposer responds as follows: documents responsive to this Request, to the extent that they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure.

**REQUEST NO. 45**

All DOCUMENTS relied upon or otherwise consulted in preparing OPPOSER'S INITIAL DISCLOSURES.

**RESPONSE:** Opposer objects to this Request to the extent that it seeks production of documents protected from discovery by the attorney-client privilege, the attorney work-product immunity doctrine and/or any other applicable privilege, protection or immunity; such documents shall not be produced. Subject to and without waiving any of its objections, Opposer

responds as follows: documents responsive to this Request, to the extent that they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure.

**REQUEST NO. 46**

All DOCUMENTS CONCERNING OPPOSER'S document retention policy.

**RESPONSE:** Opposer objects to this Request to the extent that it seeks production of documents protected from discovery by the attorney-client privilege, the attorney work-product immunity doctrine and/or any other applicable privilege, protection or immunity; such documents shall not be produced. Subject to and without waiving any of its objections, Opposer responds as follows: documents responsive to this Request, to the extent that they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure.

**REQUEST NO. 47**

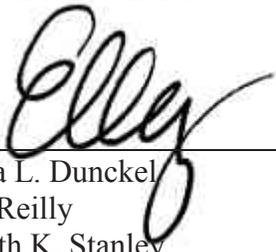
All DOCUMENTS CONCERNING OPPOSER'S policies or practices for receiving, handling, responding to, archiving, or storing communications from consumers.

**RESPONSE:** Opposer objects to this Request insofar as it is overly broad, unduly burdensome, unlimited in time, and/or calls for documents and information that are neither relevant to the subject matter involved in this action nor reasonably calculated to lead to the discovery of admissible evidence. Opposer objects to this Request to the extent that it seeks production of documents protected from discovery by the attorney-client privilege, the attorney work-product immunity doctrine and/or any other applicable privilege, protection or immunity; such documents shall not be produced. Subject to and without waiving any of its objections, Opposer responds as follows: documents responsive to this Request, to the extent that they exist, will be produced in accordance with Rule 34 of the Federal Rules of Civil Procedure.

Respectfully submitted this 31st day of May, 2013.

BAKER BOTTS L.L.P.

By: \_\_\_\_\_

  
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**ATTORNEYS FOR OPPOSER  
VIRBAC S.A.**

**CERTIFICATE OF SERVICE**

I hereby certify on this 31st day of May, 2013, I served, via email and Certified Mail Return Receipt Requested, a true and correct copy of the foregoing *Opposer's Objections and Responses to Applicant's First Set of Requests for Production to Opposer* to:

Dale M. Cendali  
Bonnie L. Jarrett  
Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, NY 10022  
[dale.cendali@kirkland.com](mailto:dale.cendali@kirkland.com)  
[bonnie.jarrett@kirkland.com](mailto:bonnie.jarrett@kirkland.com)

\_\_\_\_\_  
Elizabeth K. Stanley





4. Applicant denies the allegations in paragraph 4 of the Notice of Opposition.

5. Applicant lacks information sufficient to admit or deny the allegations in paragraph 5 of the Notice of Opposition.

6. Applicant lacks information sufficient to admit or deny the allegations in the first sentence of paragraph 6 of the Notice of Opposition. Applicant denies the allegations in the second sentence of paragraph 6 of the Notice of Opposition.

7. Applicant admits that Opposer has not given Applicant permission or approval to use or register the applied-for Mark, and further asserts that no such approval is necessary for Applicant to lawfully use and register the applied-for mark.

8. Applicant denies the allegations in paragraph 8 of the Notice of Opposition.

9. Applicant denies the allegations in paragraph 9 of the Notice of Opposition.

#### **AFFIRMATIVE DEFENSES**

Applicant asserts the following defenses to the Notice of Opposition. By alleging the defenses set forth below, Applicant does not assert or admit that it has the burden of proof and/or persuasion with respect to any of these defenses.

#### **FIRST DEFENSE**

The Notice of Opposition fails, in whole or in part, to state a claim upon which relief may be granted.

#### **SECOND DEFENSE**

Opposer is not entitled to relief because there is no likelihood of confusion between Applicant's mark and Opposer's mark.

Applicant reserves the right to assert additional affirmative defenses in the event discovery or further analysis reveals additional presently unknown or unstated affirmative defenses.

**COUNTERCLAIM FOR CANCELLATION OF REGISTRATION NO. 4,163,263**

Zoetis counterclaims for cancellation of Opposer's U.S. Trademark Registration No. 4,163,263 for the mark ZOLETIL (the "Foreign Use-Based Registration"). The grounds for cancellation are as follows:

1. Opposer is a French corporation, with a principal place of business in Carros, France.
2. The Foreign Use-Based Registration is not based on use in United States commerce.
3. The Foreign Use-Based Registration is based on Opposer's French registration for the ZOLETIL word mark.
4. On April 4, 2011, Opposer filed its application to register ZOLETIL for "veterinary products, namely, an anesthetic in the nature of a general anesthetic," pursuant to 15 U.S.C. § 1051(b).
5. On December 28, 2011, Opposer amended the basis for its registration to 15 U.S.C. § 1126(e).
6. Opposer has never sold any ZOLETIL-brand products in the United States.
7. Opposer has never advertised any ZOLETIL-brand products in the United States.
8. Opposer has never issued any press releases to media in the United States that depicted the ZOLETIL mark.
9. Opposer does not use any domain names that include "zoetil."

10. Opposer has not produced any documents showing that it intended to use the ZOLETIL mark in United States commerce, despite agreeing to produce such documents if they exist.

11. Opposer knowingly and falsely represented to the U.S. Patent & Trademark Office (the "PTO") that it had a bona fide intention to use the mark in United States commerce on or in connection with the identified goods and/or services.

12. The PTO relied upon Opposer's false representation when it issued the Foreign Use-Based Registration to Opposer.

13. Opposer has not produced any documents showing that it intends to commence use of the ZOLETIL mark in United States commerce, despite agreeing to produce such documents if they exist.

14. Opposer has not produced any documents showing that it has ever used the ZOLETIL mark in United States commerce, despite agreeing to produce such documents if they exist.

15. Zoetis is harmed by the Foreign Use-Based Registration because, *inter alia*, Opposer is using such registration as a basis to oppose Zoetis's U.S. Trademark Application Serial No.85/505,740 in this proceeding and delaying registration of the mark shown in that application.

16. The Foreign Use-Based Registration should be cancelled for fraud and/or false representations to the PTO that were material and resulted in and caused the Foreign Use-Based Registration to issue.

17. The Foreign Use-Based Registration should be cancelled because Opposer has not used the ZOLETIL mark in United States commerce and does not intend to commence such use,

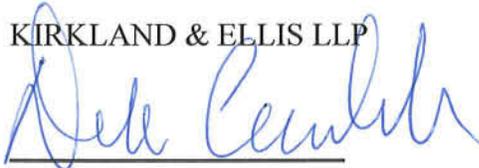
and has thus abandoned the mark.

**PRAYER FOR RELIEF**

WHEREFORE, Applicant requests judgment as follows:

1. Opposer's Notice of Opposition be dismissed and Applicant's mark be allowed to proceed to registration;
2. Respondent's Registration No. 4,163,263, be cancelled in its entirety;
3. Applicant be awarded its costs incurred herein; and
4. For any other relief the Board deems appropriate.

Dated: July 10, 2013  
New York, New York

KIRKLAND & ELLIS LLP  


Dale Cendali, Esq.  
Bonnie L. Jarrett, Esq.  
Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, NY 10022  
Tel: (212) 446-4800  
Fax: (212) 446-4900

*Attorneys for Zoetis Products LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on July 10, 2013, I caused copies of the foregoing **MOTION TO AMEND ZOETIS PRODUCTS LLC'S ANSWER AND AFFIRMATIVE DEFENSES** to be served via Federal Express and e-mail upon the following individuals:

Elizabeth Stanley  
Priscilla Dunckel  
Baker Botts LLP  
2001 Ross Avenue  
Suite 600  
Dallas, TX 75201-2980

Paul Reilly  
Baker Botts LLP  
30 Rockefeller Plaza  
New York, New York 10112-4498

Dated: July 10, 2013

  
Bonnie L. Jarrett