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Filing date: **07/25/2013**

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

Proceeding	91206448
Party	Plaintiff Virbac S.A.
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Signature	/Elizabeth K. Stanley/
Date	07/25/2013
Attachments	PUBLIC - Complete Resp to Mtn to Amend Ans.PDF(983532 bytes)

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

VIRBAC S.A.,

Opposer,

vs.

ZOETIS PRODUCTS LLC,

Applicant.

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Opposition No. 91206448

Mark: **ZOETIS**
(Serial No: 85/505,740)

Publication Date: July 10, 2012

**OPPOSER'S OPPOSITION TO APPLICANT'S
MOTION TO AMEND ITS ANSWER AND AFFIRMATIVE DEFENSES**

Opposer, Virbac S.A. ("**Virbac**" or "**Opposer**"), through the undersigned counsel, hereby opposes the Motion to Amend Zoetis Products LLC's Answer and Affirmative Defenses ("**Motion to Amend**") filed by Applicant Zoetis Products LLC's ("**Zoetis**" or "**Applicant**") on the grounds that the asserted claims of fraud and abandonment are futile and fail to state a plausible claim for relief.

I. Introduction

By its Motion to Amend, Applicant seeks to add an unfounded counterclaim for cancellation of Opposer's U.S. Registration No. 4,163,263 for the mark ZOLETIL on the grounds that (i) it was fraudulently obtained because Opposer did not have a bona fide intent to use ZOLETIL in the United States when it filed its application on April 4, 2011; and (ii) Opposer has abandoned its registration for ZOLETIL because Opposer has not used its mark in interstate commerce in the United States and does not intend to commence such use. These allegations are without merit and the proposed amendments to the Answer & Affirmative Defenses are futile. Opposer, who has used the ZOLETIL mark outside the United States for many years, has

submitted objective evidence to Applicant demonstrating that prior to and continuously since the filing of its application on April 4, 2011, Opposer has had a bona fide intent to use its ZOLETIL mark in commerce in the United States and has never abandoned the mark. As a result, Opposer has not engaged in any fraudulent conduct nor made any misleading representations of fact before the United States Patent and Trademark Office (“USPTO”). Furthermore, the pleaded factual content underlying Applicant’s fraud and abandonment counterclaims is incorrect, such that Applicant’s Amended Answer fails to state a claim for relief that is plausible on its face. Therefore, the Motion to Amend should be denied in its entirety.

II. Relevant Factual Background

1. Since at least as early as 1995, Virbac, on its own and through its various subsidiaries and affiliates around the world, has made use of the mark ZOLETIL. *See* ¶ 4 of the Declaration of Zahra Mouhoubi, attached hereto and incorporated by reference herein as “Exhibit A” (hereinafter the “Mouhoubi Decl.”). Specifically, Virbac’s ZOLETIL® branded product has now been available for more than 10 years in Europe, Latin America, Asia, and in the Pacific area. *See id.* The ZOLETIL product is also quite prevalent on the Internet, such that pertinent consumers in the United States have likely been exposed to Virbac’s use of the mark ZOLETIL. *See* Mouhoubi Decl. at ¶ 5.

2. [REDACTED]

3. On April 4, 2011, Opposer filed its application to register the word mark ZOLETIL with

the U.S. Patent and Trademark Office. *See* Mouhoubi Decl. at ¶ 7. At the time that this trademark application was filed, Opposer had a legitimate bona fide intent to use its ZOLETIL mark in the United States. *Id.* This application matured to registration on June 26, 2012, and is based on Opposer's French registration for the mark ZOLETIL, Reg. No. 95563857, which registered on March 15, 1995. *See* ¶ 5 of the Declaration of Elizabeth Stanley, attached hereto and incorporated by reference herein as "**Exhibit B**" (hereinafter the "**Stanley Decl.**"). On the date that this trademark registered and since this date, Opposer had and continues to have a legitimate bona fide intent to use its ZOLETIL mark in the United States. *See* Mouhoubi Decl. at ¶ 8.

4. Opposer's United States Certificate of Registration for ZOLETIL (U.S. Reg. No. 4163263) is prima facie evidence of the validity of the mark, Virbac's ownership of the mark, and its exclusive right to use the mark in commerce in connection with veterinary products. Less than fourteen (14) months have passed since Opposer's asserted registration issued.

5. On August 7, 2012, Opposer filed a Notice of Opposition against Applicant's pending application for the mark ZOETIS, on the basis of likelihood of confusion under Trademark Act § 2(d), 15 U.S.C. 1052(d). *See* Stanley Decl. at ¶ 4. In its Notice of Opposition, Opposer asserts that Applicant's mark, ZOETIS, is confusingly similar to Opposer's ZOLETIL mark, and that the registration of ZOETIS is likely to cause consumers to be confused, deceived, or misled into mistakenly believing that Applicant or Applicant's goods emanate from, are affiliated with, or otherwise related to Opposer, when in fact they are not. *See id.*

6. Applicant responded to the Notice of Opposition by filing an Answer and Affirmative Defenses on September 13, 2012.

7. This Opposition is currently in the early stages of discovery. The parties have exchanged

initial disclosures, served document requests and interrogatories, plus objections and responses to such discovery, along with some responsive documents.

8. On May 31, 2013, Opposer provided Applicant with certain documents responsive to Applicant's first set of discovery requests. *See Stanley Decl. at ¶ 6.*

9. By email dated July 5, 2013, Opposer's counsel made it clear to Applicant's counsel that given Virbac's location abroad, it was taking additional time and effort to collect responsive documents. *See Stanley Decl. at ¶ 7.*

10. Consequently, on July 18, 2013, Opposer supplemented its document production by providing Applicant with additional responsive documents. *See Stanley Decl. at ¶ 8.* Included in these documents were the following: (1) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]; and (2) [REDACTED]

[REDACTED] These

documents were designated as "Trade Secret/Commercially Sensitive" in accordance with the Board's Standard Protective Order. *Id.*

11. Discovery in this matter currently closes on August 25, 2013. However, the parties have agreed to extend the discovery and trial periods in this matter by 90 days in order to continue in their discovery efforts. A Stipulated Motion was filed with the Board on July 23, 2013.

12. Applicant is well aware that Opposer's efforts to obtain additional documents in response to Applicant's discovery requests are ongoing. *See Stanley Decl. at ¶ 7.* Yet, rather than await production and before any depositions have been taken, Applicant prematurely moved to amend its answer to assert baseless claims of fraud and abandonment, notwithstanding Virbac's long

and prior use of ZOLETIL mark on veterinary products around the world and representations that Opposer was still collecting documents.

III. Argument

A. Standard For Amending Pleadings.

In accordance with 37 CFR 2.107, and TBMP Rule 507.02, Rule 13(e) of the Federal Rules of Civil Procedure permits the amendment of pleadings to add an omitted counterclaim. *Lone Star Steakhouse & Saloon, Inc. v. Alpha of Virginia, Inc.*, 43 F.3d 922, 940-41, 33 U.S.P.Q.2d 1481, 1495 (4th Cir. 1995). However, the Board has recognized that a motion to amend may be denied when it has been unduly delayed, when allowing the motion would prejudice the nonmovant, when filed in bad faith, or when the amendment is futile. *See* TBMP Rule 507; *See also e.g., Leatherwood Scopes International Inc. v. Leatherwood*, 63 U.S.P.Q.2d 1699, 1702 (P.T.O. T.T.A.B.2002) (denying motion to amend because new claim is legally insufficient and proposed amendment would be futile); *Newport News Holdings Corp. v. Virtual City Vision, Inc.*, 650 F.3d 423, 98 U.S.P.Q.2d 1441, 1450-52 (4th Cir. 2011) (motion to amend denied due to undue delay and prejudice). In *Cowell v. Palmer Township*, 263 F.3d 286, 296 (3d Cir. 2001), the Third Circuit made clear that “leave to amend need not be granted when amending the complaint would clearly be futile.” The Court went on to deny leave to amend because amendments to the complaint would not have saved plaintiff’s claim, and the additional factual allegations by plaintiff were not enough to overcome the fact that the claim was futile. The same is true in the instant case.

B. Amendment of Answer is Futile and Unnecessary.

Here, the amendment of Applicant’s Answer to add a counterclaim for cancellation of Opposer’s registered ZOLETIL mark on the grounds of fraud and abandonment is futile,

unnecessary and unduly burdensome in that it will only complicate the issues, increases the burden and expense of this proceeding on the parties and the Board, and lead to unnecessary delay.

Opposers owns United States Trademark Registration No. 4163263 for the mark ZOLETIL covering veterinary products, namely, an anesthetic in the nature of a general anesthetic. The registration is based on Section 44(e) of the U.S. Trademark (Lanham) Act. Pursuant to Section 44(e), a foreign applicant of a country with whom the United States maintained certain treaty rights, such as France, is entitled to obtain a U.S. registration for a mark based on ownership of a registration in its home country without any use in the United States. *See* 15 U.S.C. § 1126(e). As a result, Opposer's Certificate of Registration serves as "prima facie evidence of the validity of the registered mark and of the registration of the mark, of the owner's ownership of the mark, and of the owner's exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the certificate..." 15 U.S.C. §1057(b). Applicant bears the burden of demonstrating that Opposer's registration is invalid and subject to cancellation. Applicant has not and cannot met that burden.

Opposer's registration for ZOLETIL issued less than fourteen months ago, so no presumption of abandonment can exist. Prior to filing its application to register ZOLETIL and since the issuance of U.S. Registration No. 4163263, Opposer has expended substantial time, effort and resources [REDACTED]

[REDACTED]. *See* Mouhoubi Decl. at ¶¶ 6-10. Notwithstanding Opposer's public use of the ZOLETIL mark in multiple jurisdictions, aside from the United States, for more than (10) years, and representations from Opposer that documents were being collected, Applicant refused to wait and prematurely sought to amend its Answer in an effort to assert a counterclaim for

cancellation of Opposer's registration on grounds of fraud and abandonment, casting Opposer in a negative light without foundation.

The purported underpinnings for Applicant's allegations of fraud and abandonment are the absence of any documentary evidence to support Opposer's intent to use its ZOLETIL mark in commerce in the United States and certain responses to Applicant's interrogatories and requests for admissions. *See* Applicant's Motion to Amend, p. 4. However, unlike in *Commodore Electronics Ltd. v. Cbm Kabushiki Kaisha Opposition*, 26 U.S.P.Q.2d 1503, 1504-07 (P.T.O. T.T.A.B.1993), which was cited by Applicant in support of its Motion to Amend, Opposer has submitted documents to Applicant which establishes that it had prior to, at the time it filed its application to register its mark and has a continued bona fide intent to use its ZOLETIL mark in the United States.

Specifically, Opposer produced: (1) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]; and (2) [REDACTED]

[REDACTED] *See* Stanley

Decl. at ¶ 8. [REDACTED] *See id.* [REDACTED]

[REDACTED]

[REDACTED] *See id.* at ¶¶ 5 & 8. [REDACTED]

[REDACTED] *See id.* This date is after the date that the Notice of Opposition was filed in this matter. *See id.* These documents provide objective proof that Opposer has a continuing intent to use its ZOLETIL mark in commerce and that Opposer never made any false or misleading statements to the USPTO in securing its valid registration for the ZOLETIL mark. While such materials may

have been produced after the instant motion, Applicant had clear and direct notice that Opposer would produce documents responsive to Applicant's requests. *See Stanley Decl.* at ¶ 7.

Opposer is continuing to gather relevant documents for production to Applicant in this matter, but at present, there are sufficient documents to support Opposer's bona fide intent to use the mark ZOLETIL in the United States, both prior and subsequent to the filing date of Opposer's application to register the mark. If the Motion to Amend is granted, the scope of discovery will be expanded, additional arguments will need to be developed and put before the Board, more issues will need to be addressed and decided by the Board, all requiring greater expenditures of time, effort and money. Such investment is unwarranted when Opposer has already provided documents demonstrating its bona fide intent to use the ZOLETIL mark. Applicant's Motion to Amend should be denied as it is prejudicial to Opposer and futile, causing undue burden on the parties and the Board by creating yet another satellite issue that detracts from the merits of this case, wasting time, effort and resources of all involved.

C. Applicant's Amended Answer is Not Plausible.

Applicant's proposed Amended Answer also fails to state a claim for relief that is plausible on its face in that the pleaded factual content in support of Applicant's claims of fraud and abandonment is false. "A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "While legal conclusions can provide the complaint's framework, they must be supported by factual allegations." *Id.* Additionally, when pleading fraud in the procurement of a trademark registration, Federal Rule of Civil Procedure 9(b) requires the party to "state with particularity the circumstances constituting fraud." FED. R. CIV. P. 9(b). In accordance with *In re Bose Corp.*, fraud is shown under the Lanham Act "only if

the applicant or registrant knowingly makes a false, material representation with the intent to deceive the PTO.” *In re Bose Corp.*, 91 USPQ2d 1938, 1491 (Fed. Cir. 2009).

Contrary to Applicant’s unfounded allegations in its Motion to Amend (*See* Applicant’s Motion to Amend, p. 4), Opposer has submitted evidence to Applicant which establishes that it had, prior to, and at the time it filed its application to register its mark, a legitimate bona fide intent to use its ZOLETIL mark in commerce. *See* Mouhoubi Decl. at ¶¶ 6-7. Further, Opposer has submitted evidence to Applicant that Opposer has a continued bona fide intent to use its ZOLETIL mark in the United States. *See* Mouhoubi Decl. at ¶¶ 8-10; *see e.g., Seidelmann Yachts, Inc. v. Pace Yacht Corp.*, 14 U.S.P.Q.2d 1497, 1501-04 (D.Md.1989) (“Because abandonment constitutes a forfeiture of a property interest, both non-use and intent not to resume use must be strictly proved. Therefore, the presumption of abandonment following from two years of non-use in [sic] rebuttable, if the owner of the mark presents facts that would negate the inference of an intent to abandon.”).

Applicant’s proposed counterclaims in its Amended Answer cannot in good faith be asserted. Certainly, the Applicant’s Amended Answer fails to demonstrate that Opposer made a knowingly false and/or misleading statement to the USPTO. How could it, when Opposer has made clear efforts [REDACTED] ZOLETIL product. Without question, the evidence of Virbac’s bona fide intent was and remains valid. Further, given its long use of the mark abroad and [REDACTED] [REDACTED], Opposer has and had no intent to abandon its mark in the United States or to deceive the USPTO into granting Opposer a U.S. trademark registration; a registration that is necessary to protect its brand in the United States. For these reasons, Applicant’s Amended Answer cannot stand as it is futile and unnecessary in that it will

only complicate the issues, increases the burden and expense of this proceeding on the parties and the Board, and lead to unnecessary delay.

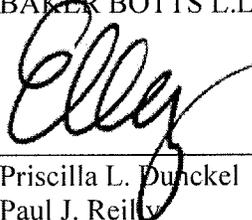
IV. Conclusion

Thus, for the foregoing reasons, Opposer respectfully requests that this Honorable Board deny Applicant's Motion to Amend in its entirety. If the Board wishes to engage in a conference call to resolve this matter pursuant to TBMP Rule 502.06(a), and 37 CFR § 2.120(i)(1), counsel for Opposer will gladly comply with such a request.

Respectfully submitted this the 25th day of July, 2013.

BAKER BOTTS L.L.P.

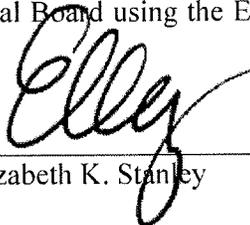
By: _____


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

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that on this 25th day of July, 2013, that the foregoing *Opposer's Response to Applicant's Motion to Amend Its Answer and Affirmative Defenses* is being electronically filed with the Trademark Trial and Appeal Board using the Electronic System for Trademark Trials and Appeals (ESTTA).

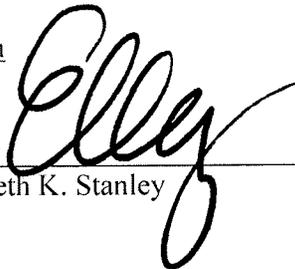


Elizabeth K. Stanley

CERTIFICATE OF SERVICE

I hereby certify on this the 25th day of July, 2013, I served, via email and Certified Mail Return Receipt Requested, a true and correct copy of the foregoing *Opposer's Response to Applicant's Motion to Amend Its Answer and Affirmative Defenses*. to:

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



Elizabeth K. Stanley

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

VIRBAC S.A.,

Opposer,

vs.

ZOETIS PRODUCTS LLC,

Applicant.

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Opposition No. 91206448

Mark: **ZOETIS**
(Serial No: 85/505,740)

Publication Date: July 10, 2012

**EXHIBIT A TO OPPOSER'S OPPOSITION TO APPLICANT'S MOTION TO AMEND
ITS ANSWER AND AFFIRMATIVE DEFENSES**

**EXHIBIT FILED UNDER SEAL PURSUANT TO BOARD'S STANDARD
PROTECTIVE ORDER AND TTAB RULE 502.02(c)**

DECLARATION OF ZAHRA MOUHOUBI

**CONFIDENTIAL
TRADE SECRET/COMMERCIALLY SENSITIVE**

This filing submitted through ESTTA's confidential filing system contains documents or information that are subject to the Board's Standard Protective Order. The confidentiality of the material is to be maintained and the filing is not to be opened, or the contents revealed to any individual, except by order of the Board.

Virbac S.A. v. Zoetis Products, LLC
Opp. Proceeding No. 91206448

Exhibit A

Declaration of Zahra Mouhoubi

EXHIBIT A

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

VIRBAC S.A.,

Opposer,

vs.

ZOETIS PRODUCTS LLC,

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Opposition No. 91206448

Mark: **ZOETIS**
(Serial No: 85/505,740)

Publication Date: July 10, 2012

DECLARATION OF ZAHRA MOUHOUBI

I, ZAHRA MOUHOUBI, hereby declare as follows:

1. I am over the age of eighteen and competent to make this Declaration. The facts stated in this Declaration are within my personal knowledge and are true and correct. I am competent to testify about all matters on which I am offering evidence herein.

2. My name is Zahra Mouhoubi. I am the Legal Counsel and Head of Trademark, Communication, Advertising Unit of Virbac S.A. (hereinafter "**Virbac**").

3. I am submitting this Declaration in support of Virbac's Opposition to Applicant Zoetis Products, LLC's Motion to Amend Its Answer and Affirmative Defenses.

4. Since at least as early as 1995, Virbac has offered an anesthetic for use on companion animals, zoo animals, livestock and wildlife under the brand name ZOLETIL in markets across Europe, Latin America, Asia and the Pacific Rim.

5. Simple Internet searches for "ZOLETIL," using www.Google.com, produce voluminous results for Virbac's anesthetic sold under brand name ZOLETIL, such that it is

reasonable to conclude that U.S. customers have been exposed to Virbac's ZOLETIL branded product.

6. [REDACTED]

[REDACTED] Virbac had and continues to have intent to use its ZOLETIL mark and branded products in the United States.

7. Virbac filed an application to register the word mark ZOLETIL with the United States Patent and Trademark Office on April 4, 2011. At the time of the filing of this application, Virbac had and continues to have intent to use the ZOLETIL mark and branded products in the United States.

8. Virbac's ZOLETIL trademark application in the U.S. registered on June 26, 2012. At the time that this mark registered and since this date, Virbac had and continues to have intent to use the ZOLETIL mark and branded products in the United States.

9. [REDACTED]

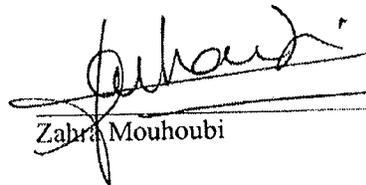
[REDACTED] Attached hereto and incorporated by reference herein as "Exhibit A-2" is a true and correct copy [REDACTED]

10. Since at least as early as January 2011, Virbac has had intent to use its ZOLETIL mark and branded products in the U.S., and continues to have current intent to use the ZOLETIL

mark and branded products in the United States. [REDACTED]

11. I declare under penalty of perjury under the laws of the United States of America that the contents of the foregoing declaration are true and correct.

Signed this the 24 day of July, 2013.


Zahra Mouhoubi

Virbac S.A. v. Zoetis Products, LLC
Opp. Proceeding No. 91206448

Exhibit A-1

Confidential Portion

January 17, 2011 Document

Confidential materials filed under seal.

Exhibit consists of two (2) pages.

Virbac S.A. v. Zoetis Products, LLC
Opp. Proceeding No. 91206448

Exhibit A-2

Confidential Portion

May 7, 2013 Document

Virbac S.A. v. Zoetis Products, LLC
Opp. Proceeding No. 91206448

Confidential materials filed under seal.

Exhibit consists of eleven (11) pages.

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

VIRBAC S.A.,

Opposer,

vs.

ZOETIS PRODUCTS LLC,

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Opposition No. 91206448

Mark: **ZOETIS**
(Serial No: 85/505,740)

Publication Date: July 10, 2012

**EXHIBIT B TO OPPOSER'S OPPOSITION TO APPLICANT'S MOTION TO AMEND
ITS ANSWER AND AFFIRMATIVE DEFENSES**

**EXHIBIT FILED UNDER SEAL PURSUANT TO BOARD'S STANDARD
PROTECTIVE ORDER AND TTAB RULE 502.02(c)**

**CONFIDENTIAL
TRADE SECRET/COMMERCIALY SENSITIVE**

This filing submitted through ESTTA's confidential filing system contains documents or information that are subject to the Board's Standard Protective Order. The confidentiality of the material is to be maintained and the filing is not to be opened, or the contents revealed to any individual, except by order of the Board.

EXHIBIT B

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

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

DECLARATION OF ELIZABETH K. STANLEY

I, ELIZABETH K. STANLEY, hereby declare as follows:

1. I am over the age of eighteen and competent to make this Declaration. The facts stated in this Declaration are within my personal knowledge and are true and correct.
2. I am an attorney with the law firm of Baker Botts L.L.P. and am licensed to practice in the State of Texas. I am counsel for Opposer, Virbac S.A. ("**Opposer**" or "**Virbac**") in the above-referenced proceeding. I am familiar with the facts in this matter and submit this Declaration for the purpose of providing information based on my personal knowledge in support of Opposer's Opposition to Applicant's Motion to Amend its Answer and Affirmative Defenses as served by Applicant, Zoetis Products LLC ("**Applicant**").
3. I have reviewed the pleadings, correspondence between the parties, written discovery, and some of the relevant documents produced by the parties in connection with this matter. I also have reviewed publicly available documents, namely the records on file with the U.S. Patent & Trademark Office ("**USPTO**") at www.USPTO.gov.

4. According to USPTO records and my personal knowledge, Opposer's Notice of Opposition against Applicant's application to register the mark ZOETIS (U.S. Appln. No. 85/505,740) was filed with the Trademark Trial and Appeal Board ("**the Board**") on August 7, 2012. In its Notice of Opposition, Opposer assert that Applicant's mark, ZOETIS, is confusingly similar to Opposer's ZOLETIL mark, and that registration of ZOETIS is likely to cause consumers to be confused, deceived, or mislead into mistakenly believing that Applicant or Applicant's goods emanate from, are affiliated with, or otherwise related to Opposer, when in fact they are not.

5. According to USPTO records, Opposer filed its application to register the mark ZOLETIL with the USPTO on April 4, 2011. This application was assigned U.S. Application Serial No. 85/285,117. On June 26, 2012, the USPTO granted registration of ZOLETIL to Opposer and assigned the mark Registration No. 4,163,263. This registration is based upon Opposer's French Registration No. 95563857, for ZOLETIL, which registered on March 15, 1995. A true and correct copy of the certificate issued for U.S. Registration No. 4,163,263 is attached hereto and incorporated by reference herein as "**Exhibit B-1.**"

6. On May 31, 2013, I served on Applicant's counsel certain documents responsive to Applicant's First Set of Requests for Production to Opposer, namely Bates labeled document Nos. VIRBAC 000001 - 000097. A true and correct copy of the letter enclosing this document production is attached hereto and incorporated by reference herein as "**Exhibit B-2.**"

7. In an email dated July 5, 2013, I conveyed to counsel for Applicant that given Opposer's location abroad, it was taking additional time and effort to collect responsive documents, but that Opposer was continuing in its attempts to locate relevant documents. A true

and correct copy of this email to Applicant's counsel is attached hereto and incorporated by reference herein as "Exhibit B-3."

8. On July 18, 2013, I served additional documents responsive to Applicant's First Set of Requests for Production to Opposer on counsel for Applicant, namely Bates labeled document Nos. VIRBAC 000098 - 00175. Included in these documents were: (1) [REDACTED]

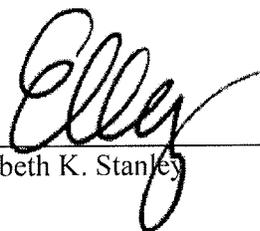
[REDACTED]
[REDACTED]
[REDACTED];

and (2) [REDACTED]

[REDACTED] A true and correct copy of the letter serving these documents is attached hereto and incorporated by reference herein as "Exhibit B-4." These documents were designated as "Trade Secret/Commercially Sensitive" in accordance with the Board's Standard Protective Order.

9. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

EXECUTED on this the 25th day of July, 2013 in Dallas, Texas.



Elizabeth K. Stanley

Virbac S.A. v. Zoetis Products, LLC
Opp. Proceeding No. 91206448

Exhibit B-1

Copy of U.S. Registration No. 4,163,263 for ZOLETIL

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. Kappas

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>.

Virbac S.A. v. Zoetis Products, LLC
Opp. Proceeding No. 91206448

Exhibit B-2

May 31, 2013 - Cover letter to opposing counsel enclosing production

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Exhibit B-2

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MOSCOW
NEW YORK
PALO ALTO
RIYADH
WASHINGTON

May 31, 2013

Via Email &
C.M.R.R.R. # 7006 0100 003 0840 2669

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elizabeth.stanley@bakerbotts.com

Re: *Virbac S.A. v. Alpharma, LLC*
Trademark Opposition No: 91206448
Opposed Mark: ZOETIS (Appln. No. 85/505,740)
Our File: 026730.0866

Dear Counsel:

Enclosed please find the following documents in connection with the above-referenced Opposition Proceeding:

1. Opposer Virbac S.A.'s Objections and Responses to Applicant's First Set of Interrogatories to Opposer;
2. Opposer Virbac S.A.'s Objections and Responses to Applicant's First Set of Requests for Production to Applicant;
3. Opposer Virbac S.A.'s Objections and Responses to Applicant's First Requests for Admissions to Applicant;
4. Opposer Virbac S.A.'s Objections to Applicant's March 12 Notice of Deposition of Zahra Mouhoubi;
5. Opposer Virbac S.A.'s Objections to Applicant's March 12 Notice of Deposition of Olivier Elfassy;
6. Opposer Virbac S.A.'s Objections to Applicant's March 12 Notice of Rule 30(b)(6) Deposition of Virbac S.A., and
7. Opposer's production documents labeled VIRBAC 000001 - VIRBAC 000097.

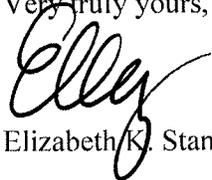
BAKER BOTTS LLP

- 2 -

May 31, 2013

Please let me know if you have any questions, or if you would like to discuss.

Very truly yours,

A handwritten signature in black ink, appearing to read "Elley", written over the typed name Elizabeth K. Stanley.

Elizabeth K. Stanley

EKS:ckp
Enclosures

Virbac S.A. v. Zoetis Products, LLC
Opp. Proceeding No. 91206448

Exhibit B-3

July 5, 2013 - Communication between counsel concerning discovery

Porterfield, Cecily

Subject: FW: Virbac SA v. Zoetis Products LLC: correspondence

From: Stanley, Elizabeth
Sent: Friday, July 05, 2013 11:55 AM
To: 'Jarrett, Bonnie L.'; Dunckel, Priscilla; Reilly, Paul J.
Cc: Cendali, Dale; Kohn, Felicity S.
Subject: RE: Virbac SA v. Zoetis Products LLC: correspondence

Dear Bonnie,

I hope you had a great 4th of July.

This email responds to your letters dated June 27th, and July 1st. Virbac is continuing to search its files for potentially responsive documents for production in this matter. Given that our client is located abroad, this process is taking more time than initially anticipated. We will update you as soon as we have identified a date that Virbac expects to complete its document production.

Further, with regard to your proposal regarding the parties' exchange of privilege logs, this proposal appears acceptable for the time being, however, we would like to revisit this issue in the future once we are further along in the discovery process.

As always, please feel free to contact me should you have any questions.

Kind regards,
Elizabeth

Elizabeth K. Stanley
Associate Attorney
BAKER BOTTS L.L.P.
2001 Ross Avenue, Suite 600
Dallas, Texas 75201-2980
Direct Dial: 214.953.6926
Fax: 214.661.4926
elizabeth.stanley@bakerbotts.com

From: Jarrett, Bonnie L. [mailto:bonnie.jarrett@kirkland.com]
Sent: Monday, July 01, 2013 3:10 PM
To: Stanley, Elizabeth; Dunckel, Priscilla; Reilly, Paul J.
Cc: Cendali, Dale; Kohn, Felicity S.
Subject: Virbac SA v. Zoetis Products LLC: correspondence

Dear Counsel:

Please see the attached correspondence.

Regards,

7/25/2013

Bonnie

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IRS Circular 230 Disclosure:

To ensure compliance with requirements imposed by the U.S. Internal Revenue Service, we inform you that any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, by any taxpayer for the purpose of (1) avoiding tax-related penalties under the U.S. Internal Revenue Code or (2) promoting, marketing or recommending to another party any tax-related matters addressed herein.

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Virbac S.A. v. Zoetis Products, LLC
Opp. Proceeding No. 91206448

Exhibit B-4

July 18, 2013 - Cover letter to opposing counsel enclosing supplemental
production

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EXHIBIT B-4
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HONG KONG WASHINGTON

July 18, 2013

Via Email &
C.M.R.R.R. # 7006 0100 0003 0840 2683

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elizabeth.stanley@bakerbotts.com

Re: *Virbac S.A. v. Zoetis Product, LLC (f/k/a Alpharma, LLC)*
Trademark Opposition No: 91206448
Opposed Mark: ZOETIS (Appln. No. 85/505,740)
Our File: 026730.0866

Dear Counsel:

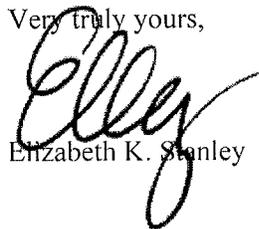
In connection with the above-referenced Opposition Proceeding, enclosed please find Opposer Virbac S.A.'s supplemental document production Bates labeled VIRBAC 000098 - VIRBAC 000175.

Please note that Opposer is continuing to search its files for documents potentially responsive for production in this matter. As stated in my email on July 5th, given that our client is located abroad, this process is taking more time than initially anticipated. As you know, discovery currently closes in this matter on August 25, 2013. Thus, we request that you agree to extend the discovery period in this matter by 90 days. Please let us know if you agree to this request.

Assuming you do not object to the above extension request, please provide five (5) available dates for the deposition of Zoetis' 30(b)(6) during the time period between August 26th - September 20th. The topics that will be covered during this deposition are those which were initially set forth in Virbac's Notice of Deposition of Alpharma's 30(b)(6), which was served on February 22, 2013.

Please let me know if you have any questions, or if you would like to discuss.

Very truly yours,



Elizabeth K. Stanley

EKS:ckp
Enclosures