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

Proceeding	91215035
Party	Plaintiff Vertex Pharmaceuticals Incorporated
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Signature	/Brandon T. Scruggs/
Date	08/05/2014
Attachments	Vertex Reply ISO Motion to Dismiss Applicant Counterclaims.pdf(170348 bytes) Exhibit 3 - Part 1 of 2-23-2009 Specimen from Reg 2704913.pdf(352189 bytes) Exhibit 3 - Part 2 of 2-23-2009 Specimen from Reg 2704913-2.pdf(3424410 bytes) Exhibit 3 - Part 3 of 2-23-2009 Specimen from Reg 2704913-3.pdf(3477762 bytes) Exhibit 3 - Part 4 of 2-23-2009 Specimen from Reg 2704913-4.pdf(5659330 bytes) Exhibit 4 - 5-17-2012 Specimen from Reg 2704913.pdf(1023080 bytes) Exhibit 5 - 4-01-2014 LF Tittimore to OMalley re VERIOX Opposition.pdf(533062 bytes)

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

In the Matter of Application:

Serial No.: 85/887,894

Filed: March 27, 2013

Applicant: CHD Bioscience, Inc.

Mark: VERIOX

For: All-purpose disinfectants for medical instruments, healthcare facility surfaces, and for coating medical bandages; irrigation solutions, namely, medical cleansers for wounds; coatings for surgical implants and medical devices, namely, antimicrobial coatings to prevent the growth of viruses, bacteria, spores, biofilms and fungus on various surfaces; antibacterial creams and ointments for use in dental procedures; pharmaceutical preparations for the treatment of pulmonary infections; all-purpose disinfectants (Cl. 5); coatings sold as an integral component for medical sutures, medical bandages and implantable medical devices (Cl. 10)

Published: December 24, 2013

VERTEX PHARMACEUTICALS)	
INCORPORATED,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91215035
)	
CHD BIOSCIENCE, INC.,)	
)	
Applicant.)	

**REPLY BRIEF IN SUPPORT OF
PLAINTIFF’S MOTION TO DISMISS APPLICANT’S COUNTERCLAIMS**

ARGUMENT

The Board should grant Opposer’s Motion to Dismiss the Applicant’s Counterclaims for several reasons. First, Applicant has neither accounted for nor has it addressed Opposer’s use of the VERTEX marks on products used in clinical tests, which is of public record in the USPTO prosecution histories for the registrations in question, and which is use in commerce. Second, Applicant’s allegations fail for the simple reason that Applicant has conceded that Opposer is

using the VERTEX marks with two commercial products, and this is sufficient for a house mark. Third, key aspects of Applicant's fraud allegations such as knowledge and intent are nothing more than conclusory assertions without sufficient factual allegations to support them. For all these reasons, Opposer's motion should be granted and Applicant's counterclaims should be dismissed.

A. Applicant's Key Fraud Allegations Are Too Conclusory and Therefore Applicant's Fraud Claims Must Be Dismissed

Applicant offers nothing more than conclusory statements to support its fraud allegations. Specifically, Applicant fails to offer sufficient facts to support its allegations that 1) Opposer knew its statements were false and 2) Opposer acted with deceptive intent. Applicant simply states in a conclusory fashion that Opposer knew the statements were false and that they were made with deceptive intent. Applicant, CHD Bioscience, Inc.'s Response to Plaintiff's Motion to Dismiss Applicant's Counterclaims, D.I. 9 (hereinafter "Applicant Opp."), at 7-8. Applicant does not cite any actual facts that support such an inference. *See id.*

The authority cited by Applicant is not on point. In *CTF Dev., Inc. v. Penta Hospitality, LLC*, C.A. No. 09-cv-02429-WHA, 2009 U.S. Dist. LEXIS 99538, at *4 (N.D. Cal. Oct. 26, 2009), CTF claimed in a trademark application that it used a mark as early as September 2008 for various hotel services. Hospitality's counterclaim for fraud alleged that CTF did not then and still does not use the mark in conjunction with all of those services. *Id.* at *14-15. The court held that this was sufficient to satisfy the *Iqbal* standard. *Id.* at *15. In *CTF*, there was a clear cut fact issue of whether CTF used the mark in conjunction with certain services it listed in its trademark application. CTF either used the mark in conjunction with those services or it did not. Unlike *CTF*, the issue here is both legal and factual: whether Opposer Vertex's use of the VERTEX mark (factual) is sufficiently "broad" enough to support a house mark (legal). Opposer and Applicant disagree on how many products are sufficient to support a house mark

and even disagree on the interpretation of the authority discussing the issue. Opposer counts clinical trial drugs; Applicant ignores clinical trial drugs. This is not a case about a clear cut fact issue like *CTF*.

Given the law pertaining to house marks and clinical trial products, and the USPTO's acceptance of the specimens Vertex submitted, Opposer is justified in believing that it had sufficient use for a house mark. Even if Opposer was wrong (which it is not), Applicant has done no more than allege facts that attempt to show Opposer made a mistake. Applicant has failed to allege any willful intent to deceive the PTO. There is no fraud if a false misrepresentation is occasioned by an honest misunderstanding or inadvertence without a willful intent to deceive. *In re Bose Corp.*, 580 F.3d 1240, 1245 (Fed. Cir. 2009). Accordingly, Applicant's fraud counterclaim must be dismissed.

B. Applicant Has Neither Accounted for Nor Addressed Opposer's Use of the VERTEX Marks on Products Used in Clinical Testing, Which Is Use in Commerce, and Is of Public Record as Part of the USPTO Prosecution Histories for the Registrations at Issue

In its response to Opposer's motion to dismiss Applicant's counterclaims, Applicant makes no attempt at all to rebut or address Vertex's use of the VERTEX marks on clinical trial drugs. Indeed, the allegations in Applicant's counterclaims completely ignore this information, which Applicant was well aware of before filing its counterclaims. Further, the word "clinical" does not even appear in Opposer's response brief, much less the terms "clinical trial" or "clinical testing." Applicant considers only two Vertex products (KALYDECO and INCIVEK) because Applicant only looks to how many pharmaceutical products Vertex currently offers "for sale." Applicant's Counterclaim, D.I. 6, at ¶ 8. This completely ignores shipments of Vertex's drugs bearing the VERTEX marks in clinical testing. At least three of these clinical trial drugs are discussed in the very same document that Applicant itself incorporated into the pleadings by

attaching as an exhibit to its counterclaims.¹ See Exhibit A to Applicant’s Counterclaims, at 1, 9-10 (discussing clinical trial drugs VX-135, VX-509, and VX-787). Several more clinical trial drugs appear in the specimens filed with the USPTO for the registrations at issue.

A review of the specimens filed with the USPTO for Registrations 2,704,913 and 3,531,356 shows that Vertex has used the VERTEX mark consistent with the broad use required to support a house mark. See Exhibit 1 to Motion to Dismiss Applicant’s Counterclaims (specimens filed on April 28, 2008 for Registration No. 2,704,913 showing representative samples of the VERTEX mark used with AGENERASE² oral solution and INCEL injection vials as well as several clinical trial drugs designated VX-xxx); Exhibit 2 to Motion to Dismiss (specimens filed on Sept. 4, 2008 for Registration No. 3,531,356 showing VERTEX mark used with LEXIVA³ and several clinical trial drugs designated VX-xxx); Exhibit 3 (specimens filed on Feb. 23, 2009 for Registration No. 2,704,913); Exhibit 4 (specimens filed on May 17, 2012 for Registration No. 2,704,913). A summary of the specimens submitted to the USPTO appears in the following table, which includes several clinical trial products (designated VX-xxx):

Table I. Summary of Relevant Vertex Specimens Submitted		
Registration	Product Name	Pharmaceutical Preparation for:
2,704,913	AGENERASE	HIV
2,704,913	VX-497	preventing rejection by the immune system of other medicines
2,704,913	INCEL	cancer multi drug resistance inhibitor
2,704,913	VX-853	preventing rejection by the immune system of other medicines

¹ It is proper to consider material attached to the counterclaims when deciding a motion to dismiss under Fed. R. Civ. P. 12(b)(6). See *In re Bill of Lading Transmission & Processing System Patent Litigation*, 681 F.3d 1323, 1337 n.9 (Fed. Cir. 2012) (because plaintiff attached substantial material to amended complaints, district court was authorized to consider that material on a motion to dismiss); *General Mills, Inc. v. Kraft Foods Global, Inc.*, 487 F.3d 1368, 1371 n.1 (Fed. Cir. 2007) (considering settlement agreement attached to amended complaint on review of a motion to dismiss).

² AGENERASE and LEXIVA were drugs which Vertex developed with Glaxo and which were co-branded in the United States, bearing both Glaxo and VERTEX marks. Opposer Vertex has since sold its rights to the royalties for those products. See Exhibit A to Applicant’s Counterclaims, at 58-59, F-9, F-34.

³ See *supra*, n.2.

Table I. Summary of Relevant Vertex Specimens Submitted		
Registration	Product Name	Pharmaceutical Preparation for:
2,704,913	VX-745	rheumatoid arthritis
2,704,913	VX-148	preventing rejection by the immune system of other medicines
2,704,913	VX-702	rheumatoid arthritis
2,704,913	INCIVEK	hepatitis C (HCV)
2,704,913	KALYDECO	cystic fibrosis
2,704,913	LEXIVA	HIV
2,704,913	LEXIVA/AGENERASE	HIV
2,704,913	VX-770	cystic fibrosis
2,704,913	VX-765	HIV
2,704,913	VX-950	hepatitis C (HCV)
3,531,356	VX-770	cystic fibrosis
3,531,356	VX-765	HIV
3,531,356	VX-950	hepatitis C (HCV)
3,531,356	LEXIVA	HIV

Also submitted to the USPTO were excerpts from web pages that used the VERTEX mark and discussed various products, including several products in clinical trials (designated VX-xxx):

Table II. Summary of Relevant Vertex Website Info Submitted		
Registration	Product Name	Pharmaceutical Preparation for:
2,704,913	LEXIVA	HIV
2,704,913	VX-950	hepatitis C (HCV)
2,704,913	VX-500	hepatitis C (HCV)
2,704,913	VX-813	hepatitis C (HCV)
2,704,913	VX-883	bacterial infection
2,704,913	VX-770	cystic fibrosis
2,704,913	VX-809	cystic fibrosis
2,704,913	VX-680	cancer
2,704,913	VX-689	cancer
2,704,913	VX-944	cancer
2,704,913	VX-702	rheumatoid arthritis
2,704,913	VX-509	rheumatoid arthritis / inflammatory disease
2,704,913	VX-222	hepatitis C (HCV)
2,704,913	ALS-2200	hepatitis C (HCV)
2,704,913	ALS-2158	hepatitis C (HCV)
2,704,913	VX-809	cystic fibrosis

Table II. Summary of Relevant Vertex Website Info Submitted		
Registration	Product Name	Pharmaceutical Preparation for:
2,704,913	VX-661	cystic fibrosis
2,704,913	VX-509	rheumatoid arthritis / inflammatory disease
2,704,913	VX-765	epilepsy
2,704,913	VX-787	influenza
3,531,356	LEXIVA/TELZIR	HIV
3,531,356	VX-950	hepatitis C (HCV)
3,531,356	VX-500	hepatitis C (HCV)
3,531,356	VX-813	hepatitis C (HCV)
3,531,356	VX-883	bacterial infection
3,531,356	VX-770	cystic fibrosis
3,531,356	VX-809	cystic fibrosis
3,531,356	VX-680	cancer
3,531,356	VX-689	cancer
3,531,356	VX-944	cancer
3,531,356	VX-702	rheumatoid arthritis
3,531,356	VX-509	rheumatoid arthritis / inflammatory disease

Applicant’s response to Opposer’s motion to dismiss the counterclaims does not dispute that use of a mark on shipments of drugs for clinical testing is sufficient use in commerce to show a protectable trademark interest. Instead, Applicant’s allegations and its arguments in response to the motion to dismiss the counterclaims are limited to how many products Opposer Vertex offers “for sale.” *See* Applicant’s Counterclaims, D.I. 6, at ¶ 8; *see generally* Applicant Opp. The law is clear that the use of a mark in clinical trials will constitute use in commerce. *See* Opposer’s Memorandum in Support of Opposer’s Motion to Dismiss Applicant’s Counterclaims, D.I. 8, at 7-8 (citing cases).

Applicant cannot simply bury its head in the sand on the issue of Opposer’s clinical trial drugs. Applicant has no excuse for such willful ignorance. Before Applicant filed its counterclaims on May 2, 2014, counsel for Opposer put Applicant on notice that “the VERTEX marks have been used on additional pharmaceutical preparations” other than just KALYDECO

and INCIVEK, “including, for example, AGENERASE and LEXIVA⁴ for treatment of HIV, as well as on other pharmaceutical preparations provided to patients during clinical research trials.” Exhibit 5 (letter from Lisa Tittlemore to John O’Malley, dated April 1, 2014). Additionally, use of the VERTEX marks with Vertex’s clinical trial drugs is a matter of public record: Applicant would have seen this had Applicant looked at the specimens for the very registrations Applicant accuses of being fraudulent. Specimens submitted to the USPTO are part of the public record. *See, e.g.*, TMEP § 904 (“Interested parties ... may view and print images of the specimens in an application or registration file ... Furthermore, once filed, specimens remain part of the [public] record and will not be returned.”).⁵

Applicant’s allegations that Opposer Vertex only offers two products “for sale” are insufficient given that Opposer’s use of its marks on other products must be considered, e.g., shipments of clinical trial drugs. Applicant fails to allege that Vertex did not use the VERTEX mark on these other products. Therefore, the allegations in Applicant’s counterclaims must fail as a matter of law because Applicant’s counterclaims fail to address the use of the VERTEX marks in clinical trials; these uses are part of the public record and were brought to Applicant’s attention prior to the filing of its counterclaims.

C. Opposer Vertex’s Current Two Commercial Products Are Sufficient For a House Mark

Applicant fails to rebut Opposer Vertex’s argument that Vertex’s current two commercial products are sufficient to support a house mark. Applicant falsely claims that *In re Astra Merck*, 50 U.S.P.Q.2d 1216, 1999 WL 221657 (TTAB 1998) is “not citable” and therefore that it “should be given no weight.” Applicant Opp. at 10 (emphasis in original). It is true that *In re*

⁴ *See supra*, n.2.

⁵ The Board may consider matters of public record on a motion to dismiss. *See e.g., Sebastian v. U.S.*, 185 F.3d 1368, 1374 (Fed. Cir. 1999) (holding that in deciding whether to dismiss complaint under Rule 12(b)(6), matters of public record may be considered).

Astra Merck was designated as non-precedential. 50 U.S.P.Q.2d 1216, 1999 WL 221657. However, while decisions designated as non-precedential are not binding upon the TTAB, they may be cited for their persuasive value. TMEP § 705.05; TBMP § 101.03. Indeed, the Trademark Manual of Examining Procedure cites *In re Astra Merck*. TMEP § 1402.03(c).⁶ Thus, *In re Astra Merck* is citable and should be given its proper persuasive weight.

Applicant accuses Opposer of erroneously citing the petitioner's arguments in *In re Astra Merck* as the reasoning of the Board. Applicant Opp. at 11-12. This argument is nothing more than a red herring. Even if the passage disputed by the Applicant were disregarded, the facts of the case and the reasoning of the Board still stand. In *In re Astra Merck*, the mark in question was used on only three drugs. 50 U.S.P.Q.2d 1216, 1999 WL 221657, at *1. In its reasoning *after* the disputed passage, the Board explicitly states: "Because applicant consistently uses its mark on each and every one of its [three] pharmaceuticals, the asserted mark is, by definition, a house mark." *Id.* at *3. Applicant's opposition brief completely ignores this statement by the Board. Applicant Opp. at 11-12. In light of *In re Astra Merck*, two or three drug products are sufficient for a house mark. *See In re Astra Merck*, 50 U.S.P.Q.2d 1216, 1999 WL 221657, at *1, *3.

CONCLUSION

In light of the foregoing, justice requires that the Board grant Opposer's Motion to Dismiss the Applicant's Counterclaims.

⁶ *In re Astra Merck* has also been cited in the TBMP and by other opinions of the Board, albeit for unrelated points of law. *See* TBMP § 1208.04, at Note 3; *In re Rieker Holding AG*, 2007 WL 2698306, at *3 n.10 (TTAB 2007); *In re Wieland Dental + Technik GMBH & Co.*, 2007 WL 1697334, at *3 (TTAB 2007).

Dated: Boston, Massachusetts

August 5, 2014

VERTEX PHARMACEUTICALS
INCORPORATED

By its attorneys,

/s/ Brandon T. Scruggs

Lisa M. Titemore

Steven A. Abreu

Brandon T. Scruggs

SUNSTEIN KANN MURPHY & TIMBERS LLP

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Boston, Massachusetts 02110-1618

(617) 443-9292

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing document has been served by both first class mail and email on August 5, 2014 to Applicant's Representative of Record, Mr. John J. O'Malley, Volpe and Koenig P.C., 30 South 17th Street, 18th Floor, Philadelphia, PA 19103, jomalley@vklaw.com.

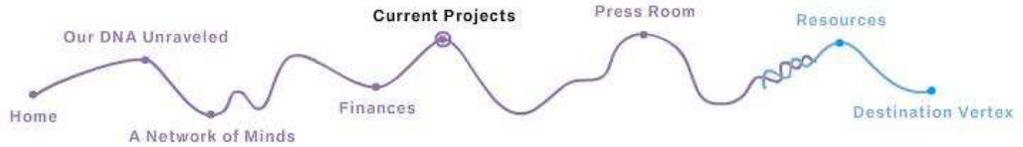
/s/ Brandon T. Scruggs

Brandon T. Scruggs

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EXHIBIT

3



Current Projects

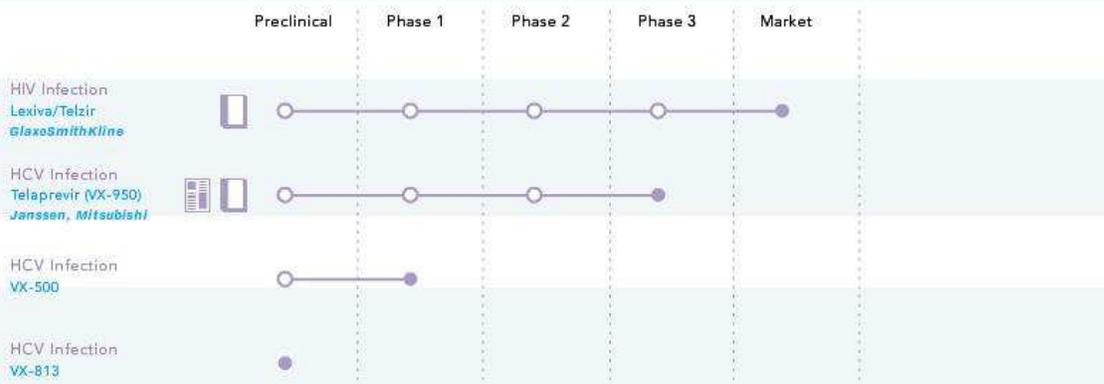
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The opportunity to redefine the treatment of major diseases is what drives everyone at Vertex. Our development portfolio represents the fruit of these efforts. Spend some time here and look around. Click on the pipeline chart to get information on our development programs and links to selected published articles. Go further and see how, just maybe, disease challenges may be overcome with innovation.

- Drug Candidates
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Development Pipeline

Click on product or disease for more information. Mouse over chart for more information.



HCV Infection
VX-813



Bacterial Infection
VX-883



Cystic Fibrosis
VX-770
CF Foundation



Cystic Fibrosis
VX-809
CF Foundation



Cancer
MK-0457 (VX- 680)
Merck



Cancer
VX-689
Merck



Cancer
AVN-944 (VX-944)
Avalon



Rheumatoid Arthritis
VX-702



Inflammatory Diseases
VX-509



Vertex Clinical Study Protocol VX06-770-101

" For Clinical Trial Use Only "

"Caution New Drug - Limited by Federal law to investigational use."

Investigational Drug. To be used by Qualified Investigator Only

KEEP OUT OF REACH OF CHILDREN.

Store refrigerated. Keep bottle tightly closed.

Contains: 35 Placebo tablets

Lot/Batch No.: XXXX

VERTEX™

Study Sponsor.

Vertex Pharmaceuticals Incorporated

130 Waverly Street, Cambridge, MA 02139 USA

1 617 444 6777

Protocol Number / Numéro de protocole: VX04-765-301

Kit Number: / Nécessaire n°: XXXX Contents: 60 tablets / Contenu: 60 comprimés

Lot No.: / Lot n°: XXXX

Expiry Date: / Date de péremption: XX-XXXX

Bottle #2 "VX-765, 300 mg Tablets" or "Placebo Tablets" for Oral Administration

Bouteille n°2 << VX-765, comprimés de 300mg >> ou << Comprimés placebos >> pour administration par voie orale

Directions: Take two tablets from bottle #2 by mouth every 8 hours, as directed by the study physician.

Mode d'emploi: Prendre deux comprimés de la bouteille n° 2 par la bouche, à toutes les 8 heures, selon les indications du médecin de l'étude.

"Caution New Drug - Limited by US Law to Investigational Use."

"Caution Investigational Drug - To be used by Qualified Investigators Only."

<< Attention - drogue nouvelle - utilisation restreinte aux fins de recherche en vertu des lois des États-Unis >>

<< Attention - drogue expérimentale - utilisation réservée aux chercheurs qualifiés. >>

Store below 86° Fahrenheit (30° Celsius)

Garder à une température inférieure à 30° Celsius

KEEP OUT OF REACH OF CHILDREN.

GARDER HORS DE LA PORTÉE DES ENFANTS.

Study Sponsor/Commanditaire de l'étude:

Vertex Pharmaceuticals Incorporated

130 Waverly Street

Cambridge, MA 02139 USA

Manufactured by/Fabriqué par:

Mélicis

1240 Sugg Parkway

Greenville, NC 27834 USA

**VERTEX**

Vertex Clinical Study Protocol VX06-770-002

Contains: 35 VX-770, 50mg, tablets

Directions: For administration as detailed in Vertex Clinical Study Protocol VX06-770-002

" For Clinical Trial Use Only "

"Caution New Drug - Limited by Federal law to investigational use."

KEEP OUT OF REACH OF CHILDREN.

Store refrigerated. Keep bottle tightly closed.

Allow 1 hour after removal from refrigerator before opening.

Lot/Batch No.: XXXX

Manufactured by:
Aptuit
10245 Hickman Mills Dr.
Kansas City, MO 64137



Study Sponsor:
Vertex Pharmaceuticals Incorporated
130 Waverly Street,
Cambridge, MA 02139 USA

Vertex Clinical Study
Protocol VX05-950-104



I. XXXXX

II. 16547

III. 02/2007



IV. _____ V. _____

VI. _____

VII. _____

Vertex Pharmaceuticals Incorporated
130 Waverly Street
Cambridge, MA 02139 USA

L146008

VX07-950-108

Vertex Pharmaceuticals Incorporated
130 Waverly Street,
Cambridge, Massachusetts 02139, USA
+1 617 444 6777



- (I) VX07-950-108
- (II) _____
- (III) _____
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- (V) _____
- (VI) 209681
- (VII) 08/2010
- (VIII) 2007-004720-20

Polish.....	1
German (Germany, Austria).....	2
Hebrew (Israel).....	3
Italian.....	4
French (France).....	5
French (Canada).....	6
Spanish (Spain).....	7
Spanish (Argentina).....	8
English (Australia).....	9
English (UK).....	10
English (US).....	11

#3



Tell your patients about the
Patient Support Coupon Card.
 They may receive up to \$50 off
 their out-of-pocket costs for 2 years.*

*Subject to eligibility. Restrictions apply.

Information for the Healthcare Provider
 Healthcare provider, please do the following:

1. Write and sign a prescription for LEXIVA.
2. If you write refills, please include a prescription to address LEXIVA on the same visit as your patient's first visit. If you are unable to do this, please contact your patient's provider for assistance.

Information for the Patient
 To receive up to \$50 off a visit for LEXIVA, present this card to your healthcare provider at the time of your visit. The amount you receive will be based on your prescription and eligibility to use this card. You must use this card for each visit. This card is valid for a period of two years from the date of activation.

LEXIVA
 fosamprenavir calcium
 700 MG TABLETS

Ask your doctor or pharmacist about the **Patient Support Card** and you may receive up to \$50 off your out-of-pocket costs for 2 years.*

*Subject to eligibility. Restrictions apply.



LEXIVA[®]

fosamprenavir calcium
700 MG TABLETS

Information for the Healthcare Provider
Healthcare Provider, please do the following:

1. Give out to eligible patients.
2. If you have a patient who is not eligible for Lexiva, please do not give them a Patient Support Card. A prescription for Lexiva is not required to use a Patient Support Card for Lexiva.

Information for the Patient

To receive this card, you must be a patient of a healthcare provider who prescribes Lexiva. The amount you pay for Lexiva may vary depending on your insurance plan and your location. This card is valid for 2 years from the date of issue.

PATIENT SUPPORT CARD*

Use this card to receive up to \$50 off your out-of-pocket costs for Lexiva. This card is valid for 2 years from the date of issue.

Lexiva is a registered trademark of Vertex Pharmaceuticals, Inc. © 2007 Vertex Pharmaceuticals, Inc. All rights reserved.

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Ask your doctor or pharmacist about the Patient Support Coupon Card and you may receive up to \$50 off your out-of-pocket costs for each prescription for 2 years.*

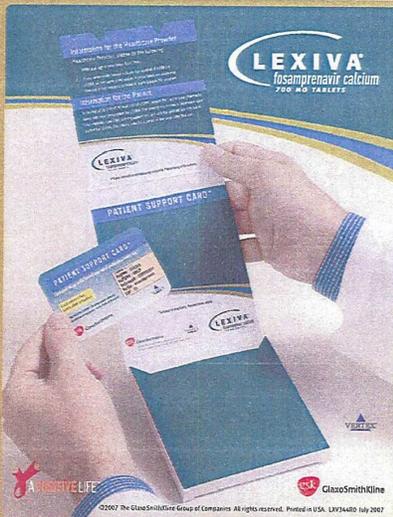


*Subject to eligibility. Restrictions apply.



Ask your doctor or pharmacist about the Patient Support Coupon Card and you may receive up to \$50 off your out-of-pocket costs for each prescription for 2 years.*

*Subject to eligibility. Restrictions apply.



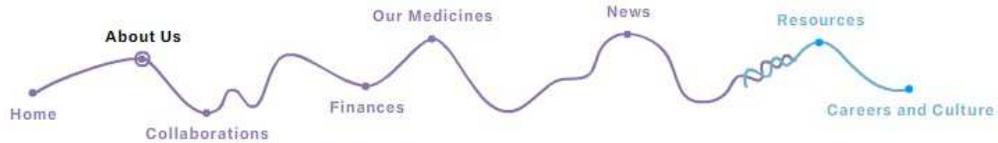
Ask your doctor or pharmacist about the Patient Support Coupon Card and you may receive up to \$50 off your out-of-pocket costs for each prescription for 2 years.*

*Subject to eligibility. Restrictions apply.

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EXHIBIT

4



About Us

New to Vertex? Or have you been following us for a while? Whatever the case, you should know what makes Vertex different. It defies a simple description. It's a way of thinking and working that's deeply ingrained within our organization. Allow us to elaborate.

[Executive Team](#) ▶

[Board of Directors](#) ▶

About Us

Vertex creates new possibilities in medicine. Our team discovers, develops and commercializes innovative therapies so people with serious diseases can lead better lives.

Vertex scientists and our collaborators are working on new medicines to advance the treatment of hepatitis C, cystic fibrosis, epilepsy and other life-threatening diseases.

Vertex isn't a conventional pharmaceutical company. Each and every person at Vertex is driven by a passion for fearless innovation and a bold desire to transform the lives of millions with new medicines. Vertex has ongoing worldwide research programs and sites in the U.S., U.K. and Canada and employs over 1800 people.

For more information and to view Vertex's press releases, please visit our [News Section](#).

Worldwide Locations

[Cambridge, MA, USA](#) (Headquarters)

[San Diego, CA, USA](#)

[Abingdon, Oxfordshire, UK](#)

[Laval \(Quebec\), Canada](#)

[Coralville, IA, USA](#)

Stock Ticker

Vertex's is a common stock is traded on the NASDAQ Global Select Market under the symbol VRTX. For more information, please visit the [Investor Relations](#) section.

Community – A Strategic Approach to Giving

Vertex's Community Relations initiatives connect the company with local and global communities through innovative activities that champion the Vertex values. Vertex is fortunate to be a part of many communities worldwide. We believe in advancing math and science education for children, building alliances and collaborations with local community organizations and supporting local community organizations where our employees live and work.

Grants Program

Vertex considers grant requests for support of various educational programs and provides donations to non-profit agencies and charities. We also provide organizational sponsorships, corporate memberships and funds in support of patient initiatives. For more information, please visit the [Grants Program](#) section.

Collaboration

Our pursuit of breakthrough discovery is boundless. Vertex has established a global network that connects more than 500 of the world's leading researchers, academic centers and companies in open collaboration. Together, Vertex and our collaborators challenge the unknown and extend the reach of science.

ATTENTION PHARMACIST: Dispense per prescription

NDC 51167-100-01



INCIVEK™
(telaprevir)
Tablets
375 mg



Manufactured for Vertex Pharmaceuticals Incorporated, Cambridge, MA 02139
©2011 Vertex Pharmaceuticals Incorporated

60813

kalydeco
(ivacaftor) tablets

150 mg



Manufactured for
Vertex Pharmaceuticals Incorporated
Cambridge, MA 02139

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Vertex Pharmaceuticals Incorporated.

69266

150 mg
kalydeco
(ivacaftor) tablets

NDC 51167-200-02

NDC 51167-200-02

Rx only

kalydeco
(ivacaftor) tablets

150 mg

60 tablets

Inactive ingredients: artificial grape-bubblegum flavor, calcium chloride dihydrate, hypromellose, methylparaben, natural peppermint flavor, polysorbate 80, propylene glycol, propylparaben, purified water, and sucralose.

This Patient Information has been approved by the U.S. Food and Drug Administration.

LEXIVA and AGENERASE are registered trademarks of ViiV Healthcare.

The brands listed are trademarks of their respective owners and are not trademarks of ViiV Healthcare. The makers of these brands are not affiliated with and do not endorse ViiV Healthcare or its products.

Manufactured for:



ViiV Healthcare

Research Triangle Park, NC 27709



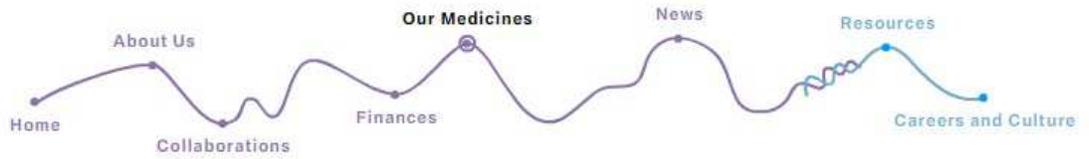
Vertex Pharmaceuticals Incorporated
Cambridge, MA 02139



by: **GlaxoSmithKline**

GlaxoSmithKline

Research Triangle Park, NC 27709



Our Medicines

- Approved Medicines
- Drug Candidates
- Pipeline
 - VX-222
 - VX-809
 - VX-509
 - VX-765
- Clinical Trials
- Investigator Database
- Press Releases

DRUG CANDIDATES

HEPATITIS C

	Phase 1	Phase 2	Phase 3
VX-222 (Polymerase Inhibitor)	█	█	
ALS-2200 (Nucleotide analogues)	█		
ALS-2158 (Nucleotide analogues)	█		

CYSTIC FIBROSIS

VX-809 (CFTR Corrector)	Fast Track & Orphan Drug		
VX-661 (CFTR Corrector)	█	█	

IMMUNE-MEDIATED INFLAMMATORY DISEASE

VX-509 (JAK3 Inhibitor)	█	█	
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EPILEPSY

VX-765 (Caspase-1 Inhibitor)	█	█	
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INFLUENZA

VX-787	█		
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Vertex Clinical Study Protocol VX06-770-002

Contains: 35 VX-770, 50mg, tablets

Directions: For administration as detailed in Vertex Clinical Study Protocol VX06-770-002

" For Clinical Trial Use Only "

"Caution New Drug - Limited by Federal law to investigational use."

KEEP OUT OF REACH OF CHILDREN.

Store refrigerated. Keep bottle tightly closed.

Allow 1 hour after removal from refrigerator before opening.

Lot/Batch No.: XXXX

Manufactured by:
Aptuit
10245 Hickman Mills Dr.
Kansas City, MO 64137



Study Sponsor:
Vertex Pharmaceuticals Incorporated
130 Waverly Street,
Cambridge, MA 02139 USA

EXHIBIT

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LISA M. TITTEMORE
T 617 443 9292 X274
LTITTEMORE@SUNSTEINLAW.COM

April 1, 2014

Via Email

John O'Malley
Volpe and Koenig P.C.
30 South 17th Street, 18th Floor
Philadelphia, PA 19103

Re: VERIOX Opposition, No. 91215035
Our File: 1618/5109

Dear Mr. O'Malley:

We are in receipt of your letter of March 28, 2014. We appreciate your client's offer to amend its application, and will discuss this proposal with our client.

You are under a misapprehension regarding our client's trademark registrations, which are based upon use of its VERTEX marks with pharmaceutical preparations beyond the KALYDECO and INCIVEK products. The VERTEX marks have been used on additional pharmaceutical preparations, including, for example, AGENERASE and LEXIVA for treatment of HIV, as well as on other pharmaceutical preparations provided to patients during clinical research trials. You are accordingly on notice that your client has no basis for a claim of fraud on the USPTO or to seek a limitation of the goods description.

As a routine courtesy, we will agree to a 30 day extension of time for your client to file its Answer.

John O'Malley
Volpe and Koenig
April 1, 2014
Page 2

Sincerely,

A handwritten signature in cursive script, appearing to read "Lisa M. Tittlemore". The signature is written in black ink and is positioned above the printed name.

Lisa M. Tittlemore

2077034