

ESTTA Tracking number: **ESTTA636634**

Filing date: **11/03/2014**

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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Date	11/03/2014
Attachments	Vertex Answer to CHD Counterclaims.pdf(68410 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

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

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**PLAINTIFF’S ANSWER TO  
APPLICANT’S COUNTERCLAIMS**

Opposer Vertex Pharmaceuticals, Inc. (“Opposer” or “Vertex”), owner of Federal Trademark Registration Nos. 2,704,913 and 3,531,356 for the mark VERTEX (hereinafter “Opposer’s Mark”), hereby files this Answer to the Counterclaims to Notice of Opposition filed on May 2, 2014 (“CHD’s Counterclaims”) by CHD Bioscience, Inc. (“Applicant” or “CHD”).

1. Admitted.
2. Admitted.

3. CHD's Counterclaims paragraph 3 states a legal conclusion to which no response is required. Further, the term "pharmaceutical products" is undefined. To the extent that a response is required, Vertex denies the allegations in the Counterclaim's paragraph 3.

4. Denied.

5. Admitted.

6. With respect to the allegations in CHD's Counterclaims paragraph 6, Vertex admits that Applicant's quoted text comes from Vertex's 2013 Annual Report, but denies any remaining allegations to which a response is deemed necessary.

7. With respect to the allegations in CHD's Counterclaims paragraph 7, Vertex admits that it began selling KALYDECO, a pharmaceutical preparation for the treatment of cystic fibrosis, in 2012, and INCIVEK, a pharmaceutical preparation for the treatment of viral diseases, in 2011. Vertex denies the remaining allegations.

8. With respect to the allegations in CHD's Counterclaims paragraph 8, Vertex admits that it does not currently sell any pharmaceutical preparations other than KALYDECO and INCIVEK, but denies the allegations to the extent that the allegations could be construed to cover products sold in the past, or products distributed as part of clinical trials, or co-branded products sold by a business partner.

9. Admitted.

10. Admitted.

11. Denied.

12. Denied.

13. Denied.

14. Denied.

**Count I**

15. As to the allegations in CHD's Counterclaims paragraph 15, Vertex incorporates herein its responses to CHD's Counterclaims paragraphs 1-14 as if fully set forth here.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

20. Denied.

**Count II**

21. As to the allegations in CHD's Counterclaims paragraph 21, Vertex incorporates herein its responses to CHD's Counterclaims paragraphs 1-20 as if fully set forth here.

22. Denied.

23. Denied.

24. Denied.

25. Denied.

**AFFIRMATIVE DEFENSES**

1. Applicant has failed to state a claim upon which relief can be granted.
2. Applicant's counterclaims are barred by the doctrine of unclean hands.
3. Applicant's counterclaims are barred, precluded, or limited by estoppel.

WHEREFORE, Opposer Vertex requests entry of judgment dismissing CHD's Counterclaims in their entirety.

Dated: Boston, Massachusetts

November 3, 2014

VERTEX PHARMACEUTICALS  
INCORPORATED

By its attorneys,

/s/ Brandon T. Scruggs  
Lisa M. Tittlemore  
Steven A. Abreu  
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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 November 3, 2014 to Applicant's Representative of Record, Mr. John J. O'Malley, Volpe and Koenig P.C., 30 South 17<sup>th</sup> Street, 18<sup>th</sup> Floor, Philadelphia, PA 19103, [jomalley@vklaw.com](mailto:jomalley@vklaw.com).

/s/ Brandon T. Scruggs  
Brandon T. Scruggs

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