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Filing date: **01/12/2015**

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

| | |
|------------------------|---|
| Proceeding | 91218760 |
| Party | Plaintiff Vertex Pharmaceuticals Incorporated |
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| Submission | Answer to Counterclaim |
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| Signature | /Brandon T. Scruggs/ |
| Date | 01/12/2015 |
| Attachments | Vertex Answer to CHD Counterclaims 577 App.pdf(88170 bytes) |

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

In the Matter of Application:

Serial No.: 86/073,577
Filed: Sept. 24, 2013
Applicant: CHD Bioscience, Inc.
Mark: VERIOX
For:

Chemical ingredients in the nature of antimicrobial substances and preparations for medical purposes for treating, inhibiting and preventing viruses, fungus, mold, bacteria, spores and biofilms; chemical ingredients in the nature of antimicrobial substances sold as a component ingredient of antimicrobial coatings to treat, inhibit and prevent the growth of viruses, fungus, mold, bacteria, spores and biofilms on various surfaces; chemical ingredients in the nature of antimicrobial substances sold as a component ingredient of biostatic antimicrobial preparations for treating, inhibiting and preventing viruses, fungus, mold, bacteria, spores and biofilms; chemical ingredients in the nature of antimicrobial substances sold as a component ingredient of pharmaceutical preparations for the treatment of pulmonary infections; chemical ingredients in the nature of antimicrobial substances sold as a component ingredient of antimicrobial creams and ointments for treating, inhibiting and preventing viruses, fungus, mold, bacteria, spores and biofilms; chemical ingredients in the nature of antimicrobial substances sold as a component ingredient of irrigation solutions, namely, medical cleansers for wounds; surgical implants comprising living tissue impregnated with an antimicrobial treatment; surgical implants comprising living tissue coated with an antimicrobial treatment; coatings sold as an integral component of medical bandages for skin wounds; coatings sold as an integral component of surgical implants comprising living tissue; Antimicrobial preparations for treating, inhibiting and preventing viruses, fungus, mold, bacteria, spores and biofilms; antimicrobial coatings to treat, inhibit and prevent the growth of viruses, fungus, mold, bacteria, spores and biofilms on various surfaces; biostatic antimicrobial preparations for treating, inhibiting and preventing viruses, fungus, mold, bacteria, spores and biofilms; antimicrobial creams and ointments for treating, inhibiting and preventing viruses, fungus, mold, bacteria, spores and biofilms; antimicrobial creams and ointments for treating, inhibiting and preventing viruses, fungus, mold, bacteria, spores and biofilms for use in dental procedures; microfiber towels impregnated with an antimicrobial treatment; medical bandages impregnated with an antimicrobial treatment (Cl. 5)

Published: Sept. 9, 2014

VERTEX PHARMACEUTICALS
INCORPORATED,

Opposer,

v.

CHD BIOSCIENCE, INC.

Applicant.

Opposition No. 91218760

**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 November 18, 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

January 12, 2015

VERTEX PHARMACEUTICALS
INCORPORATED

By its attorneys,

/s/ Brandon T. Scruggs
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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing document has been served by email as per the parties' agreement on January 12, 2015 to Applicant's Representative of Record, Mr. John J. O'Malley, jomalley@vklaw.com.

/s/ Brandon T. Scruggs
Brandon T. Scruggs

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