

ESTTA Tracking number: **ESTTA651246**

Filing date: **01/21/2015**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Santhera Pharmaceuticals Holding AG
Granted to Date of previous extension	01/21/2015
Address	Hammerstrasse 49 Liestal CH-4410, SWITZERLAND

Attorney information	Patrick J. Concannon Locke Lord LLP F.D.R. Station, P.O. Box 130 New York, NY 10150 UNITED STATES patrick.concannon@lockelord.com, trademark@lockelord.com, kelly.donahue@lockelord.com Phone:617-239-0419
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Applicant Information

Application No	86269204	Publication date	09/23/2014
Opposition Filing Date	01/21/2015	Opposition Period Ends	01/21/2015
Applicant	Majid M. Seraj, Pharm.D. 1849 W. Redlands Blvd., Suite 102 Redlands, CA 92373 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Pharmaceutical preparations acting on the central nervous system; Pharmaceutical preparations for use in chemotherapy; Pharmaceutical preparations, namely, an analgesic for human consumption taken orally; Pharmaceutical products for ophthalmological use; Pharmaceuticals, namely, psychotropics
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	85624062	Application Date	05/14/2012
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	CATENA
Design Mark	
Description of Mark	The mark consists of a circle design that contains a smaller circle to the right inside of the original circle. The circle design is followed by the word "CATENA".
Goods/Services	Class 001. First use: First Use: 0 First Use In Commerce: 0 chemicals for use in industry and science; reagents for scientific and medical research use Class 005. First use: First Use: 0 First Use In Commerce: 0 pharmaceutical preparations for the treatment of central nervous system-related conditions, neurological and muscular diseases, neuro-muscular diseases, muscular dystrophies, ataxias, amyotrophia, atrophy, ophthalmological diseases, and muscle wasting, cardiomyopathies, optic nerve degradation, neurological indications, memory loss, Lou Gehrig's disease, Parkinson's disease, Huntington's disease, spinal muscular atrophies, polyneuropathies, fibromyalgia, mononeuropathies, neuromuscular junction disorders, myotonia and myopathies Class 042. First use: First Use: 0 First Use In Commerce: 0 medical research; science research; medical and scientific research, namely, conducting clinical trials; computer programming for others for medical and science research purposes; scientific research for testing cell cultures and developing cellular test systems for evaluating new drugs and antibodies; developing test systems for detecting pharmacologically active compounds; animal model testing and research for neuro-muscular and ophthalmological diseases

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	SANTHERA		
Goods/Services	pharmaceuticals intended to treat central nervous system disorders		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	SANTHERA PHARMACEUTICALS		
Goods/Services	pharmaceuticals intended to treat central nervous system disorders		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	CATENA		
Goods/Services	pharmaceuticals intended to treat central nervous system disorders		

Attachments	85624062#TMSN.png(bytes) CANTHERA Notice of Opposition.pdf(330782 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/PJC/
Name	Patrick J. Concannon
Date	01/21/2015

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

In the Matter of Application Serial No. 86/269,204
Filed on May 1, 2014
For the Mark: CANTHERA
Published in the Official Gazette on September 23, 2014

Santhera Pharmaceuticals Holding AG)	Opposition No.: _____
)	
Opposer,)	
-v-)	
Dr. Majid M. Seraj,)	
Applicant.)	

BOX TTAB FEE
Assistant Commissioner for
Trademarks P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

Opposer, Santhera Pharmaceuticals Holding AG, a corporation organized and existing under the laws of Switzerland, having an address at Hammerstrasse 49, 4410 Liestal, Switzerland (“Santhera”), believes that it would be damaged by issuance of the proposed registration of the trademark CANTHERA in Application No. 86/269,204 (the “Application”) published in the Official Gazette on September 23, 2014 and filed by Dr. Majid M. Seraj, an individual (“Dr. Seraj”), and hereby opposes the Application.

As grounds for this Opposition, Santhera relies upon the rights developed by it and its affiliate Santhera Pharmaceuticals (USA), Inc. and alleges upon information and belief as follows:

Santhera's Marks

1. Santhera is a corporation organized and existing under the laws of Switzerland with its principal place of business in Liestal, Switzerland.

2. Santhera develops a range of innovative treatments and pharmaceutical products for mitochondrial and neuromuscular diseases, among others. In particular, Santhera's CATENA-branded pharmaceuticals, which are intended to treat central nervous system disorders (the "Opposer's Goods"), have been shipped to and within the United States for clinical trial purposes, commencing at least as early as March 5, 2012, and are also branded with the house marks SANTHERA and SANTHERA PHARMACEUTICALS.

3. Accordingly, Santhera owns common law trademark rights in SANTHERA, SANTHERA PHARMACEUTICALS and CATENA in connection with the Opposer's Goods by virtue of its source-identifying use of SANTHERA, SANTHERA PHARMACEUTICALS and CATENA in commerce in connection with its clinical trials of the Opposer's Goods in the ordinary course of business. Upon information and belief, Santhera established such common law rights in its SANTHERA, SANTHERA PHARMACEUTICALS and CATENA marks prior to any date of first use or priority date upon which Dr. Seraj can rely in relation to the mark CANTHERA.

4. Santhera owns Application No. 85/624,062 for the mark CATENA & Design, which covers a range of goods and services including:

"Pharmaceutical preparations for the treatment of central nervous system-related conditions, neurological and muscular diseases, neuro-muscular diseases, muscular dystrophies, ataxias, amyotrophia, atrophy, ophthalmological diseases; muscle wasting, cardiomyopathies, optic nerve degradation, neurological indications, memory loss, Lou Gehrig's disease, Parkinson's disease, Huntington's disease, spinal muscular atrophies,

polyneuropathies, fibromyalgia, mononeuropathies, neuromuscular junction disorders, myotonia and myopathies; reagents for medical use” in International Class 5.

This application was filed on May 14, 2012, thus Santhera enjoys a constructive priority date for its CATENA mark that predates the filing date of Applicant’s CANTHERA application at issue here.

5. Santhera and its affiliate Santhera Pharmaceuticals (USA), Inc., have expended substantial amounts of time and effort in developing, commercializing and testing Opposer’s Goods under its SANTHERA, SANTHERA PHARMACEUTICALS and CATENA marks. As a result of such activities and Santhera’s use of SANTHERA, SANTHERA PHARMACEUTICALS and CATENA in the ordinary course of business in connection with its clinical trials, the relevant public has come to associate and identify SANTHERA, SANTHERA PHARMACEUTICALS and CATENA exclusively with Santhera, and the marks have attained consumer recognition. Santhera derives substantial goodwill from such identification by consumers.

Applicant’s Mark

6. Santhera hereby incorporates by reference the allegations in Paragraphs 1 through 5 hereof as if fully set forth herein.

7. Upon information and belief, Dr. Seraj is an individual with a mailing address of 1849 W. Redlands Boulevard, Suite 102, Redlands, California 92373.

8. Dr. Seraj filed his intent to use Application on March 1, 2014. The Application covers:

“Pharmaceutical preparations acting on the central nervous system; pharmaceutical preparations for use in chemotherapy; pharmaceutical preparations,

namely, an analgesic for human consumption taken orally; pharmaceutical products for ophthalmological use; pharmaceuticals, namely, psychotropics” in International Class 5.

Count I: Likelihood of Confusion

9. Santhera hereby incorporates by reference the allegations in Paragraphs 1 through 8 hereof as if fully set forth herein.

10. The CANTHERA mark, as set forth in the Application, is highly similar in sight, sound, connotation, and overall commercial impression to Santhera's SANTHERA and SANTHERA PHARMACEUTICALS marks. Dr. Seraj has merely replaced the “S” in Santhera’s mark with the similar letter “C”. The CANTHERA mark is closely similar in appearance to and is nearly identical phonetically to Santhera’s SANTHERA mark, which is further compounded by the fact that consumers may pronounce the “C” element as having a similar “S” sound. The word “santhera” is a coined, highly distinctive element that makes a strong impression on the relevant consumers, who thus would be likely to remember the SANTHERA mark when encountering the applied for CANTHERA mark. CANTHERA and SANTHERA share the same amount of syllables and rhyme. Accordingly, the SANTHERA mark should be afforded broad trademark protection. For all of the above reasons, the respective marks CANTHERA and SANTHERA are confusingly similar on their whole.

11. The CANTHERA mark both is visually and phonetically similar to Santhera’s CATENA mark, in which Santhera owns prior common law rights, and to Santhera’s earlier applied-for CATENA & Design mark. The dominant and phonetically identical “CA” element combined with a central “T” sound and “A” suffix renders the marks phonetically and visually similar. When viewed as a whole, CANTHERA and CATENA are confusingly similar.

12. Furthermore, the Trademark Trial and Appeal Board recognizes a “doctrine of greater care” in pharmaceutical cases due to the potential danger associated with falsely

mistaking one pharmaceutical product for another. The threshold of proof required to demonstrate a likelihood of confusion for pharmaceutical and medicinal products is lowered to provide greater protection to consumers. *See, Schering Corp v. Alza Corp*, U.S.P.Q. 504, 509 (TTAB 1980). Particularly due to this lower evidentiary standard, confusion between Santhera's SANTHERA, SANTHERA PHARMACEUTICALS and CATENA marks and Applicant's CANTHERA should be deemed likely.

13. The Opposer's Goods, which are transported in commerce by Santhera under its SANTHERA, SANTHERA PHARMACEUTICALS and CATENA marks, are either directly overlapping or closely related (and thus must be presumed absent explicit limitations not applicable here to be traveling in the same channels of trade), and target the same audiences. Santhera's drug, like the drug that CANTHERA would identify, acts on the central nervous system, including ophthalmic conditions, and Santhera's drug, like the drug that Dr. Seraj would use CANTHERA to identify, is taken orally. These practical similarities between the respective products contribute to an overall likelihood of confusion.

14. Because Dr. Seraj's and Santhera's marks are confusingly similar, because Dr. Seraj's and the Opposer's Goods overlap or are closely related and treat the same or similar medical conditions, and because the respective goods travel through the same channels of trade and target the same audience, there is a strong likelihood that the public will believe that Dr. Seraj's CANTHERA used in connection with the subject goods emanates from, is associated with, is connected to or is sponsored by Santhera. Accordingly, consumer confusion is likely between the SANTHERA, SANTHERA PHARMACEUTICALS and CATENA marks and the CANTHERA mark in the Application.

15. Accordingly, Dr. Seraj's CANTHERA mark in the Application is likely to cause confusion, mistake, or to deceive the public into believing that Dr. Seraj's goods emanate from

or are somehow affiliated or associated with, connected to or sponsored by Santhera, in violation of Section 2(d) of the Lanham Act.

16. Santhera's date of first use in commerce of the SANTHERA, SANTHERA PHARMACEUTICALS and CATENA marks, March 5, 2012, predates the filing date of Applicant's CANTHERA application, May 1, 2014. Upon information and belief, Santhera's proprietary rights in its SANTHERA, SANTHERA PHARMACEUTICALS and CATENA marks have priority over Dr. Seraj's use or constructive use priority relating to the CANTHERA mark.

17. If Dr. Seraj is permitted to register or use the CANTHERA mark, there would be likelihood of confusion as to the source of Dr. Seraj's goods, resulting in damage and injury to Santhera.

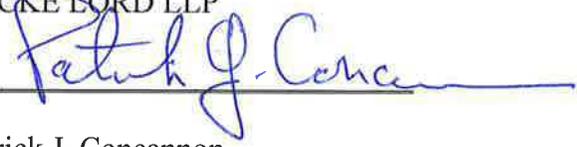
18. Santhera would be damaged by Dr. Seraj's proposed registration of the CANTHERA mark because such registration would support and assist Dr. Seraj in the confusing and misleading use of CANTHERA and would give color of rights to Dr. Seraj in violation of Santhera's prior and superior statutory and common law rights in its SANTHERA, SANTHERA PHARMACEUTICALS and CATENA marks.

WHEREFORE, Santhera prays that this Opposition be sustained and that the application for registration of the subject CANTHERA mark be in all respects denied.

Dated: January 21, 2015

Respectfully submitted,

LOCKE LORD LLP

By: 

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Attorneys for Opposer

CERTIFICATE OF ELECTRONIC MAILING

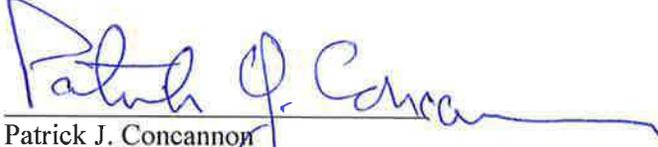
I hereby certify that the foregoing Notice of Opposition is being submitted electronically through the Trademark Trial and Appeal Board's ESTTA System on this 21st day of January 2015.


Patrick J. Concannon

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing NOTICE OF OPPOSITION is being deposited with the U.S. Postal Service with sufficient postage as first class mail this 21st day of January 2015 in an envelope addressed to Applicant at the following address:

Dr. Majid M. Seraj
1849 W. Redlands Boulevard, Suite 102
Redlands, California 92373-3127


Patrick J. Concannon