

ESTTA Tracking number: **ESTTA696974**

Filing date: **09/21/2015**

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	Actelion Pharmaceuticals Ltd
Granted to Date of previous extension	09/20/2015
Address	Gewerbestrasse 16 Allschwil, CH-4123 SWITZERLAND

Domestic Representative	SCOTT D. WOLDOW Smith, Gambrell & Russell, LLP 1055 Thomas Jefferson St. NW, Suite 400 Washington, DC 20007 UNITED STATES swoldow@sgrlaw.com Phone:2022634300
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Applicant Information

Application No	86430015	Publication date	03/24/2015
Opposition Filing Date	09/21/2015	Opposition Period Ends	09/20/2015
Applicant	Eli Lilly and Company Lilly Corporate Center Indianapolis, IN 46285 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 005. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Pharmaceutical preparations, namely, pharmaceutical preparations for the treatment of alcohol use disorders, Alzheimer's, anxiety disorders, atherosclerosis, autoimmune diseases and disorders, blood disorders, bone and skeletal diseases and disorders, cancer, cardiovascular diseases, central nervous system diseases and disorders, cholesterol disorders, cystic fibrosis, dementia, dermatological diseases and disorders, diabetes, dyslipidemia, endocrine diseases and disorders, gastrointestinal diseases and disorders, hormonal diseases and disorders, inflammation and inflammatory diseases and disorders, kidney diseases and disorders, liver diseases and disorders, metabolic diseases and disorders, migraines, musclediseases and disorders, neurodegenerative diseases and disorders, neurological disorders, pain, pancreatic diseases and disorders, Parkinson's disease, psychiatric disorders, reproductive system diseases and disorders, sleep disorders, urological disorders; antidepressants; Diagnostic agents and substances for medical purposes; radiopharmaceutical diagnostic preparations for use in the diagnosis of neurodegenerative diseases</p>
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Grounds for Opposition

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

U.S. Registration No.	4738517	Application Date	09/17/2014
Registration Date	05/19/2015	Foreign Priority Date	04/28/2014
Word Mark	BATLADIF		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 005. First use: First Use: 0 First Use In Commerce: 0 Pharmaceutical preparations for the treatment of cardiovascular and pulmonary diseases; pharmaceutical preparations for the treatment of inflammatory diseases; pharmaceutical preparations for the treatment of cancer; pharmaceutical preparations for the treatment of auto-immune disorders; pharmaceutical preparations for the treatment of digital ulcers; pharmaceutical preparations for the treatment of glycolipid storage diseases; pharmaceutical preparations for the treatment of cerebrovascular diseases; pharmaceutical preparations for the treatment of diseases and disorders of the central nervous system and of the peripheral neurological system; pharmaceutical preparations for the treatment of gastrointestinal disorders; anxiolytics; anti-allergics; anti-infectives</p>		

Attachments	86397080#TMSN.png(bytes) TRADEMARK 1.PDF(177491 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	/SW/
Name	SCOTT D. WOLDOW
Date	09/21/2015

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

In the Matter of Application Serial No. 86/430015
Published: March 24, 2015

Actelion Pharmaceuticals Ltd)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	
Eli Lilly and Company)	
)	
Applicant.)	

NOTICE OF OPPOSITION

In the matter of the application of Eli Lilly Company for registration of the mark BATLIG, filed on October 21, 2014, identified by application Serial No. 86/430015, and published in the Official Gazette on March 24, 2015, Actelion Pharmaceuticals Ltd believes that it will be damaged by registration of the mark shown in Serial No. 86/430015, and hereby opposes registration.

Actelion Pharmaceuticals Ltd (hereinafter “Opposer”), a Société Anonyme, having offices located at Gewerbstrasse 16, Allschwil, Switzerland, CH-4123, believes that it will be damaged by registration of the mark BATLIG, Application Serial No. 86/430015 and hereby opposes the same.

The grounds for opposition are as follows.

1. Opposer is now and has been engaged in the pharmaceutical business.
2. Opposer manufactures pharmaceuticals and is in the business of pharmaceutical research and development, and provision of pharmaceutical information.
3. Opposer owns United States Registration No. 4,738,517 for the mark BATLADIF.
4. The BATLADIF trademark application was filed on September 17, 2014.
5. The BATLADIF trademark application designates a priority date of April 28, 2014.
6. The BATLADIF trademark registered on May 19, 2015 in association with “pharmaceutical preparations for the treatment of cardiovascular and pulmonary diseases; pharmaceutical preparations for the treatment of inflammatory diseases; pharmaceutical preparations for the treatment of cancer; pharmaceutical preparations for the treatment of autoimmune disorders; pharmaceutical preparations for the treatment of digital ulcers; pharmaceutical preparations for the treatment of glycolipid storage diseases; pharmaceutical preparations for the treatment of cerebrovascular diseases; pharmaceutical preparations for the treatment of diseases and disorders of the central nervous system and of the peripheral neurological system; pharmaceutical preparations for the treatment of gastrointestinal disorders; anxiolytics; anti-allergics; anti-infectives,” in Class 5.

7. Opposer's ownership of United States Registration No. 4,738,517 has been valid and continuous and has not been abandoned.

8. Notwithstanding Opposer's rights in and to its trademark, Applicant on October 21, 2014, filed an application for registration of the mark BATLIG.

9. The BATLIG mark was approved for publication in association with "pharmaceutical preparations, namely, pharmaceutical preparations for the treatment of alcohol use disorders, Alzheimer's, anxiety disorders, atherosclerosis, autoimmune diseases and disorders, blood disorders, bone and skeletal diseases and disorders, cancer, cardiovascular diseases, central nervous system diseases and disorders, cholesterol disorders, cystic fibrosis, dementia, dermatological diseases and disorders, diabetes, dyslipidemia, endocrine diseases and disorders, gastrointestinal diseases and disorders, hormonal diseases and disorders, inflammation and inflammatory diseases and disorders, kidney diseases and disorders, liver diseases and disorders, metabolic diseases and disorders, migraines, muscle diseases and disorders, neurodegenerative diseases and disorders, neurological disorders, pain, pancreatic diseases and disorders, Parkinson's disease, psychiatric disorders, reproductive system diseases and disorders, sleep disorders, urological disorders; antidepressants; Diagnostic agents and substances for medical purposes; radiopharmaceutical diagnostic preparations for use in the diagnosis of neurodegenerative diseases," in Class 5.

10. The application was assigned Serial No. 86/430015 and was published for opposition in the Official Gazette on March 25, 2015.

11. Applicant's mark, BATLIG, when used in connection with the goods set forth in its application, is confusingly similar to Opposer's BATLADIF mark, as set forth and protected by Opposer's above-identified trademark registration.

12. Purchasers of Applicant's goods and Opposer's goods are likely to be confused, mistaken or deceived as to the source of the goods. Applicant's mark, in association with the products identified in its trademark application, is likely to cause confusion, mistake or deception when compared to Opposer's mark.

13. Applicant's mark and Opposer's marks are similar in sound and appearance such that when used on highly similar goods there would be a likelihood of confusion, mistake or deception.

14. Applicant's mark and Opposer's mark have a similar connotation and commercial impression due to the highly similar appearance and sound of the marks. The similarity of the marks in connotation and commercial impression is compounded when the highly similar nature of the medical and pharmaceutical goods are taken into consideration. These similarities increase the likelihood of confusion, mistake or deception.

15. The highly similar nature of the goods accentuates the similarity between the marks and exacerbates the likelihood of confusion regarding the marks and the likelihood of confusion as to sponsorship or affiliation.

16. Applicant and Opposer use, or will use, their respective marks in association with pharmaceutical preparations.

17. Applicant's goods and Opposer's goods are used, or will be used, in hospital, medical or healthcare settings.

18. Applicant's goods and Opposer's goods can be used by the same consumers.

19. Applicant and Opposer develop pharmaceutical products that can treat the same, or similar, diseases, illnesses or conditions.

20. Opposer will be damaged by the registration sought by Applicant because such registration will support and assist Applicant in the confusing and misleading use of the BATLIG mark, in violation of the prior and superior rights of Opposer.

21. Persons familiar with Opposer's mark would be likely to confuse Applicant's goods as a product made, sold, or sponsored by Opposer. Any such confusion in the trade would inevitably result in loss of sales to Opposer.

22. In addition to the harm identified in the preceding paragraphs, any defect, objection or fault found with Applicant's products marketed under the BATLIG mark would necessarily reflect badly upon and significantly injure the reputation which Opposer has established for its products.

23. Members of the healthcare profession, patient community and general public familiar with Opposer's BATLADIF product, upon encountering Applicant's product under the mark BATLIG, are likely to be confused or mistaken as to whether Applicant's products emanate from Actelion Pharmaceuticals Ltd or from a source connected with Actelion Pharmaceuticals Ltd.

24. Registration should be refused pursuant to Section 2(d) of the Trademark Act of 1946, as amended, 15 U.S.C. § 1052(d), on the grounds that Applicant's mark so resembles Opposer's mark as to cause confusion, mistake and/or deception, thereby damaging Opposer.

25. Information from the electronic database records of the United States Patent and Trademark Office showing the current status and title of United States Trademark Registration No. 4,738,517 is attached hereto as Exhibit A.

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant's mark, and prays that registration be denied.

Please charge Deposit Account No. 02-4300 for any additional fees that may be required.

Respectfully submitted,

SMITH, GAMBRELL & RUSSELL, LLP



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EXHIBIT A



United States Patent and Trademark Office

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BATLADIF

Word Mark BATLADIF

Translations The wording "BATLADIF" has no meaning in a foreign language.

Goods and Services IC 005. US 006 018 044 046 051 052. G & S: Pharmaceutical preparations for the treatment of cardiovascular and pulmonary diseases; pharmaceutical preparations for the treatment of inflammatory diseases; pharmaceutical preparations for the treatment of cancer; pharmaceutical preparations for the treatment of auto-immune disorders; pharmaceutical preparations for the treatment of digital ulcers; pharmaceutical preparations for the treatment of glycolipid storage diseases; pharmaceutical preparations for the treatment of cerebrovascular diseases; pharmaceutical preparations for the treatment of diseases and disorders of the central nervous system and of the peripheral neurological system; pharmaceutical preparations for the treatment of gastrointestinal disorders; anxiolytics; anti-allergics; anti-infectives

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 86397080

Filing Date September 17, 2014

Current Basis 44E

Original Filing Basis 44D

Published for Opposition March 3, 2015

Registration 4738517

Number**Registration Date** May 19, 2015**Owner** (REGISTRANT) Actelion Pharmaceuticals Ltd société anonyme (sa) SWITZERLAND Gewerbestrasse 16 Allschwil SWITZERLAND CH-4123**Attorney of Record** Scott D. Woldow**Priority Date** April 28, 2014**Type of Mark** TRADEMARK**Register** PRINCIPAL**Live/Dead Indicator** LIVE[TESS HOME](#)[NEW USER](#)[STRUCTURED](#)[FREE FORM](#)[Browse Dict](#)[SEARCH OG](#)[TOP](#)[HELP](#)[|.HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)

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Mark: BATLADIF

BATLADIF

US Serial Number: 86397080 **Application Filing Date:** Sep. 17, 2014
US Registration Number: 4738517 **Registration Date:** May 19, 2015
Register: Principal
Mark Type: Trademark
Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.
Status Date: May 19, 2015
Publication Date: Mar. 03, 2015

Mark Information

Mark Literal Elements: BATLADIF
Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.
Mark Drawing Type: 4 - STANDARD CHARACTER MARK
Translation: The wording "BATLADIF" has no meaning in a foreign language.

Foreign Information

Priority Claimed: Yes
Foreign Application Number: 55075/2014 **Foreign Application Filing Date:** Apr. 28, 2014
Foreign Registration Number: 658290 **Foreign Registration Date:** May 08, 2014
Foreign Application/Registration Country: SWITZERLAND **Foreign Expiration Date:** Apr. 28, 2024

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *.* identify additional (new) wording in the goods/services.

For: Pharmaceutical preparations for the treatment of cardiovascular and pulmonary diseases; pharmaceutical preparations for the treatment of inflammatory diseases; pharmaceutical preparations for the treatment of cancer; pharmaceutical preparations for the treatment of auto-immune disorders; pharmaceutical preparations for the treatment of digital ulcers; pharmaceutical preparations for the treatment of glycolipid storage diseases; pharmaceutical preparations for the treatment of cerebrovascular diseases; pharmaceutical preparations for the treatment of diseases and disorders of the central nervous system and of the peripheral neurological system; pharmaceutical preparations for the treatment of gastrointestinal disorders; anxiolytics; anti-allergics; anti-infectives

International Class(es): 005 - Primary Class **U.S Class(es):** 006, 018, 044, 046, 051, 052
Class Status: ACTIVE
Basis: 44(e)

Basis Information (Case Level)

Filed Use: No	Currently Use: No	Amended Use: No
Filed ITU: No	Currently ITU: No	Amended ITU: No
Filed 44D: Yes	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: Yes	Amended 44E: Yes
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: Actelion Pharmaceuticals Ltd

Owner Address: Gewerbestrasse 16
Allschwil CH-4123
SWITZERLAND

Legal Entity Type: société anonyme (sa)

State or Country Where Organized: SWITZERLAND

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Scott D. Woldow
Attorney Primary Email Address: swoldow@sgrlaw.com
Docket Number: 032896.082
Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: SCOTT D. WOLDOW
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Domestic Representative

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Domestic Representative e-mail Authorized: Yes

Prosecution History

Date	Description	Proceeding Number
May 19, 2015	REGISTERED-PRINCIPAL REGISTER	
Mar. 03, 2015	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Mar. 03, 2015	PUBLISHED FOR OPPOSITION	
Feb. 11, 2015	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Jan. 29, 2015	LAW OFFICE PUBLICATION REVIEW COMPLETED	77976
Jan. 26, 2015	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jan. 25, 2015	TEAS/EMAIL CORRESPONDENCE ENTERED	77976
Jan. 25, 2015	CORRESPONDENCE RECEIVED IN LAW OFFICE	77976
Jan. 16, 2015	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Dec. 29, 2014	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Dec. 29, 2014	NON-FINAL ACTION E-MAILED	6325
Dec. 29, 2014	NON-FINAL ACTION WRITTEN	82417
Dec. 29, 2014	ASSIGNED TO EXAMINER	82417
Oct. 16, 2014	APPLICANT AMENDMENT PRIOR TO EXAMINATION - ENTERED	77976
Oct. 15, 2014	ASSIGNED TO LIE	77976
Oct. 10, 2014	TEAS VOLUNTARY AMENDMENT RECEIVED	
Sep. 30, 2014	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Sep. 29, 2014	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: May 19, 2015

