

ESTTA Tracking number: **ESTTA701616**

Filing date: **10/12/2015**

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	Gilead Sciences, Inc.
Granted to Date of previous extension	10/11/2015
Address	333 Lakeside Dr. Foster City, CA 94404 UNITED STATES

Attorney information	Lori F Mayall Gilead Sciences, Inc. 333 Lakeside Dr. Foster City, CA 94404 UNITED STATES trademarks@gilead.com, lori.mayall@gilead.com Phone:650-378-2184
----------------------	--

Applicant Information

Application No	86298066	Publication date	04/14/2015
Opposition Filing Date	10/12/2015	Opposition Period Ends	10/11/2015
Applicant	Ampio Pharmaceuticals, Inc. 5445 DTC Parkway, Suite 925 Greenwood Village, CO 80111 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 for the treatment of inflammation
--

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2852092	Application Date	04/18/2003
Registration Date	06/08/2004	Foreign Priority Date	NONE
Word Mark	EMTRIVA		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 005. First use: First Use: 2003/07/07 First Use In Commerce: 2003/07/07 Pharmaceutical preparations for the treatment of infectious conditions

Attachments	NOO re EMTHORA.pdf(164766 bytes)
-------------	-----------------------------------

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	/lfm/
Name	Lori F Mayall
Date	10/12/2015

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

In the matter of applications Serial No. 86/298,066
For the Trademark EMTHORA
Published in the Official Gazette on April 14, 2015

GILEAD SCIENCES, INC.,)	
)	
Opposer,)	
)	Opposition No.
v.)	
)	
AMPIO PHARMACEUTICALS, INC.)	
)	
Applicant.)	
<hr style="border: 0.5px solid black;"/>		

NOTICE OF OPPOSITION

Opposer Gilead Sciences Inc. (“Gilead” or “Opposer”), a Delaware corporation having its principal place of business at 333 Lakeside Dr., Foster City, California 94404, believes that it will be damaged by the issuance of registration for the mark EMTHORA (the “EMTHORA Mark” or “Applicant’s Mark”), as applied for in Application Serial No. 86/298,066, filed on June 2, 2014 by Ampio Pharmaceuticals, Inc., (“Applicant”). Applicant is, upon information and belief, a Delaware corporation with a mailing address of 5445 DTC Parkway, Suite 925, Greenwood Village, Colorado 80111.

As grounds for opposition, Gilead alleges that:

1. Gilead is one of the world’s largest biopharmaceutical companies, dedicated to discovering, developing and marketing medications to treat a variety of human diseases, ranging from HIV to liver disease to cardiovascular disease and other infectious diseases.
2. Gilead has been the market leader for the treatment of HIV infection for more than a decade. It provides HIV drugs to more than five million patients worldwide.

3. Gilead currently has eight HIV products, including EMTRIVA® (emtricitabine). EMTRIVA is an oral formulation of a nucleoside analog reverse transcriptase inhibitor, dosed once a day as part of combination therapy to treat HIV infection in adults. EMTRIVA was approved by the FDA and the EMA in 2003. In the United States and Europe, EMTRIVA is also available as an oral solution approved as part of combination therapy to treat HIV infection in children.

4. Since at least as early as July 7, 2003, Gilead has offered emtricitabine under its EMTRIVA mark (the “EMTRIVA Mark” or “Opposer’s Mark”).

5. Gilead owns the U.S. registration for the EMTRIVA Mark in connection with “[p]harmaceutical preparations for the treatment of infectious conditions” in class 5 at Registration No. 2,852,092. A true and correct copy of its registration certificate is attached hereto as Exhibit A and is incorporated by reference as though fully set forth herein.

6. The EMTRIVA Mark is a coined word and is inherently distinctive.

7. The EMTRIVA Mark receives immediate recognition within the HIV community and is well-known within that community.

8. On June 2, 2014, Applicant filed an intent-to-use application for the mark EMTHORA for: “[p]harmaceutical preparations for the treatment of inflammation” in class 5 (“Applicant’s Application”).

9. Applicant’s Mark was published in the *Official Gazette* on April 14, 2015.

10. Opposer’s first use in commerce date for the EMTRIVA Mark is well prior to Applicant’s filing date for Applicant’s Mark.

11. Applicant’s Mark is similar to Opposer’s Mark in appearance, sound, and commercial impression. The two marks share the same first three letters and the same last letter,

have exactly the same number of letters, and both marks have three syllables. Furthermore, there are only two marks at the entire USPTO register that are alive in Class 5 and begin with the identical “EMT” and end in “A.” Those two marks are the marks at issue in this opposition. A true and correct copy of the Saegis search results is attached hereto as Exhibit B.

12. The goods described in Applicant’s Application are the same as and/or related to goods identified in Opposer’s trademark registration for Opposer’s Mark.

13. Applicant’s Mark suggests an affiliation or connection between Applicant and Gilead and/or Applicant’s EMTHORA product and Gilead’s EMTRIVA product, where none exists.

14. Gilead is not affiliated or connected with Applicant or its goods; nor has Gilead endorsed or sponsored Applicant or its goods. Applicant applied for registration of Applicant’s Mark without the consent or agreement of Opposer.

15. Opposer has no control over the nature and quality of the goods that will be offered under the Applicant’s Mark and the value of Opposer’s Mark would be jeopardized by the registration of Applicant’s Mark.

16. Applicant’s Mark so resemble Opposer’s Mark as to be likely to cause confusion or to cause mistake or to deceive. Thus, Applicant’s Mark is unregistrable under 15 U.S.C. §1052.

17. Registration of Applicant’s Mark would be a further source of damage to Gilead because it would confer upon Applicant various statutory presumptions to which it is not entitled in view of Opposer’s prior registration of the EMTRIVA Mark.

WHEREFORE, Opposer prays that said application Serial No. 86/298,066 be rejected, that no registration be issued, and that this Opposition be sustained in favor of Opposer. This Notice of Opposition is submitted electronically.

Respectfully submitted,

Date: October 12, 2015

By: /s/ Lori F. Mayall
Lori F. Mayall, Esq.
Gilead Sciences, Inc.
333 Lakeside Dr.
Foster City, CA 94404
(650) 378-2184 telephone
(650) 578-9264 telefax
lori.mayall@gilead.com

CERTIFICATE OF TRANSMITTAL AND SERVICE

I hereby certify that this Notice of Opposition is being electronically transmitted in PDF format to the Trademark Trial and Appeal Board through the Electronic System for Trademark Trials and Appeals (ESTTA) on the date indicated below.

I hereby further certify that on the date indicated below, a true and correct copy of this Notice of Opposition was placed in the United States Mail, postage prepaid, addressed to the applicant and the correspondent for the subject application listed in the USPTO's online database as follows:

Ampio Pharmaceuticals, Inc.
5445 DTC Parkway, Suite 925
Greenwood Village, COLORADO 80111

and

Ira J. Levy
GOODWIN PROCTER LLP
620 Eighth Avenue
New York, NEW YORK 10018

Date: October 12, 2015

/s/ Lori F. Mayall
Lori F. Mayall

Exhibit A

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51, and 52

Reg. No. 2,852,092

United States Patent and Trademark Office

Registered June 8, 2004

**TRADEMARK
PRINCIPAL REGISTER**

EMTRIVA

GILEAD SCIENCES, INC. (DELAWARE COR-
PORATION)
333 LAKESIDE DRIVE
FOSTER CITY, CA 94404

FIRST USE 7-7-2003; IN COMMERCE 7-7-2003.

SN 78-239,710, FILED 4-18-2003.

FOR: PHARMACEUTICAL PREPARATIONS FOR
THE TREATMENT OF INFECTIOUS CONDITIONS,
IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

JERI J. FICKES, EXAMINING ATTORNEY

Exhibit B

Created on 2015/10/12 16:20 GMT

Strategy

Your Reference 2015/10/12

Selected Databases 1

Trademark Databases (1);
North America (1); U.S. Federal;

Criteria Options: *Active Only: on , Plurals: on , Cross References: on*

Q1 : 17 - Exact Trademark : **EMT**

Q2 : 116497 - International Classes : **5**

Q3 : 0 - Exact Trademark : **EMT**, International Classes : **5**

Q4 : 141 - Trademark : **EMT***

Q5 : 296396 - Trademark : ***A**

Q6 : 2 - Trademark : **EMT* *A**, International Classes : **5**

Search Date 2015/10/12 16:19 GMT

© 2015 Thomson CompuMark - All rights reserved.

Hits Overview

Hit No.	Query	Trademark	Database	Status	International Class(es)	Owner Name
US-1	Q6	EMTHORA	U.S. Federal	PUBLISHED (PENDING) Intent to Use	5	AMPIO PHARMACEUTICALS, INC.
US-2	Q6	EMTRIVA	U.S. Federal	RENEWED (REGISTERED)	5	GILEAD SCIENCES, INC.

Full Text Record(s)

EMTHORA

U.S. Federal US-1-Q6

Image

EMTHORA

Trademark EMTHORA

Design Type BLOCK LETTERS

Database U.S. Federal

Application Number 86298066

Status PUBLISHED (PENDING)
Intent to Use

Status According to PTO (802) REQUEST FOR EXTENSION OF TIME TO FILE OPPOSITION

USPTO Status Date 11-MAY-2015

Application Date 02-JUN-2014

Published 14-APR-2015

International Class(es) 5 (Pharmaceuticals)

Goods and Services (INT. CL. 5) PHARMACEUTICAL PREPARATIONS FOR THE TREATMENT OF INFLAMMATION

Owner at Publication AMPIO PHARMACEUTICALS, INC.
DELAWARE CORPORATION
5445 DTC PARKWAY, SUITE 925
GREENWOOD VILLAGE, COLORADO 80111

Applicant AMPIO PHARMACEUTICALS, INC.
DELAWARE CORPORATION
5445 DTC PARKWAY, SUITE 925
GREENWOOD VILLAGE, COLORADO 80111

TTAB Information **Extension of Time to Oppose Number:** 86298066

Date: 11-MAY-2015

Outcome: NOT INSTITUTED, 11-MAY-2015

Potential Opposer: GILEAD SCIENCES, INC.

Correspondent:

LORI F MAYALL
GILEAD SCIENCES, INC.
333 LAKESIDE DR.
FOSTER CITY
CA
94404

Defendant: AMPIO PHARMACEUTICALS, INC.

Application Number: 86298066

Registration Number: 0000000

Mark: EMTHORA

Trademark Defendant Correspondent:

IRA J. LEVY
GOODWIN PROCTER LLP
620 EIGHTH AVENUE

NEW YORK
NY
10018

TTAB Entry: #4 REQUEST TO EXT. TIME TO OPPOSE GRANTED TO (DUE DATE), 10-AUG-2015

TTAB Entry: #3 REQ. FOR EXTENSION OF TIME TO OPPOSE, 10-AUG-2015

Filing Attorney IRA J. LEVY

Reference Number 127534209175

Correspondent Info IRA J. LEVY
GOODWIN PROCTER LLP
620 EIGHTH AVENUE
NEW YORK NY 10018

History 07-AUG-2015 ATTORNEY REVOKED AND/OR APPOINTED
07-AUG-2015 TEAS REVOKE/APPOINT ATTORNEY RECEIVED
11-MAY-2015 EXTENSION OF TIME TO OPPOSE RECEIVED
14-APR-2015 OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED
14-APR-2015 PUBLISHED FOR OPPOSITION
25-MAR-2015 NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED
07-MAR-2015 LAW OFFICE PUBLICATION REVIEW COMPLETED
02-MAR-2015 ASSIGNED TO LIE
11-FEB-2015 APPROVED FOR PUB - PRINCIPAL REGISTER
27-JAN-2015 TEAS/EMAIL CORRESPONDENCE ENTERED
26-JAN-2015 CORRESPONDENCE RECEIVED IN LAW OFFICE
26-JAN-2015 TEAS RESPONSE TO OFFICE ACTION RECEIVED
19-SEP-2014 NOTIFICATION OF NON-FINAL ACTION E-MAILED
19-SEP-2014 NON-FINAL ACTION E-MAILED
19-SEP-2014 NON-FINAL ACTION WRITTEN
13-SEP-2014 ASSIGNED TO EXAMINER
16-JUN-2014 NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM
05-JUN-2014 NEW APPLICATION ENTERED IN TRAM

Trademark EMTRIVA
Design Type WORD ONLY
Database U.S. Federal
Application Number 78239710
Registration Number 2852092
Status RENEWED (REGISTERED)
Affidavit Section REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED
Affidavit Date 20-JUN-2013
Status According to PTO (800) REGISTERED AND RENEWED
USPTO Status Date 20-JUN-2013
Application Date 18-APR-2003
Allowance Filed 24-FEB-2004
Published 02-DEC-2003
Declaration Approved 24-MAR-2004
Registration Date 08-JUN-2004
OG Renewal 23-JUL-2013
Renewed 08-JUN-2014
International Class(es) 5 (Pharmaceuticals)
Goods and Services (INT. CL. 5) PHARMACEUTICAL PREPARATIONS FOR THE TREATMENT OF INFECTIOUS CONDITIONS
International Class **International Class:** 05
First Used: 07-JUL-2003
In Commerce: 07-JUL-2003
Registrant GILEAD SCIENCES, INC.
DELAWARE CORPORATION
333 LAKESIDE DRIVE
FOSTER CITY, CALIFORNIA 94404
Owner at Publication GILEAD SCIENCES, INC.
DELAWARE CORPORATION
333 LAKESIDE DRIVE
FOSTER CITY, CALIFORNIA 94404
Applicant GILEAD SCIENCES, INC.
DELAWARE CORPORATION
333 LAKESIDE DRIVE
FOSTER CITY, CALIFORNIA 94404
Correspondent Info GRETCHEN R. STROUD
GILEAD SCIENCES INC.
333 LAKESIDE DRIVE
FOSTER CITY CA 94404
History 20-JUN-2013 NOTICE OF ACCEPTANCE OF SEC. 8 & 9 - E-MAILED
20-JUN-2013 REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)
20-JUN-2013 REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED
19-JUN-2013 TEAS SECTION 8 & 9 RECEIVED
19-JUN-2013 TEAS CHANGE OF CORRESPONDENCE RECEIVED
29-AUG-2009 REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.

25-AUG-2009 ASSIGNED TO PARALEGAL
20-AUG-2009 TEAS SECTION 8 & 15 RECEIVED
26-JUN-2009 ATTORNEY REVOKED AND/OR APPOINTED
26-JUN-2009 TEAS REVOKE/APPOINT ATTORNEY RECEIVED
08-JUN-2004 REGISTERED-PRINCIPAL REGISTER
24-MAR-2004 ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED
16-MAR-2004 STATEMENT OF USE PROCESSING COMPLETE
04-MAR-2004 USE AMENDMENT FILED
04-MAR-2004 PAPER RECEIVED
24-FEB-2004 NOA MAILED - SOU REQUIRED FROM APPLICANT
02-DEC-2003 PUBLISHED FOR OPPOSITION
12-NOV-2003 NOTICE OF PUBLICATION
29-SEP-2003 APPROVED FOR PUB - PRINCIPAL REGISTER
23-SEP-2003 EXAMINERS AMENDMENT E-MAILED
23-SEP-2003 ASSIGNED TO EXAMINER

Owner Index

EMTHORA AMPIO PHARMACEUTICALS, INC.
[Ref.US-1-Q6](#)

EMTRIVA GILEAD SCIENCES, INC.
[Ref.US-2-Q6](#)

File Dates

U.S. Federal Date Updated: 10-OCT-2015
OFFICIAL GAZETTE PUBLISHED ON: 06-OCT-2015
USPTO TEXT
COMPLETE FILINGS THROUGH: 05-OCT-2015
ADDITIONAL FILINGS THROUGH: 05-OCT-2015
APPLICATION DRAWING PAGES
COMPLETE FILINGS THROUGH: 05-OCT-2015
ADDITIONAL FILINGS THROUGH: 05-OCT-2015
IMAGES CODED THROUGH: 05-OCT-2015

Account Info

Date	Time	Description	List Price	Charge
2015/10/12	16:19:29	Custom Search View Hits - 2 hits - Trademark Plus with Image - Q6: Trademark : EMT* *A, International Classes : 5 - Database=U.S. Federal	\$5.90	\$0.00
			\$5.90	\$0.00