

ESTTA Tracking number: **ESTTA726100**

Filing date: **02/10/2016**

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	Anavex Life Sciences Corp.		
Entity	Corporation	Citizenship	Nevada
Address	51 West 52nd Street 7th Floor New York, NY 10019 UNITED STATES		

Attorney information	Thomas M. Saunders Novak Druce Connolly Bove + Quigg LLP 100 Cambridge Street Twenty-First Floor Boston, MA 02114 UNITED STATES dcdocketing@novakdruce.com, thomas.saunders@novakdruce.com		
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Applicant Information

Application No	86540771	Publication date	02/09/2016
Opposition Filing Date	02/10/2016	Opposition Period Ends	03/10/2016
Applicant	ANIVAX, INC. 1303 E University Blvd, #20701 Tucson, AZ 85719 UNITED STATES		

Goods/Services Affected by Opposition

Class 042. First Use: 2015/02/20 First Use In Commerce: 2015/02/20 All goods and services in the class are opposed, namely: Research and development of vaccines and medicines

Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	86768671	Application Date	09/25/2015
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ANAVEX		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2007/01/01 First Use In Commerce: 2007/01/01 Pharmaceutical preparations for the treatment of neurological conditions including Alzheimer's disease

U.S. Application No.	86768699	Application Date	09/25/2015
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ANAVEX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 2007/01/01 First Use In Commerce: 2007/01/01 Pharmaceutical research and development		

Attachments	86768671#TMSN.png(bytes) 86768699#TMSN.png(bytes) Opposition 02.10.2016.pdf(102196 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 Overnight Courier on this date.

Signature	/Thomas M. Saunders/
Name	Thomas M. Saunders
Date	02/10/2016

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

ANAVEX LIFE SCIENCES CORP.,

Opposer,

v.

**ANIVAX INC. DBA ANIVAX
CORPORATION ARIZONA,**

Applicant.

In the matter of Serial No.86/540771

For the mark ANIVAX

Published on February 9, 2016

Opposition No.: _____

NOTICE OF OPPOSITION

Anavex Life Sciences Corp., a Nevada corporation having its principal place of business at 51 West 52nd Street, 7th floor, New York, NY, 10019, believes it will be damaged by registration of the mark shown in Application Serial No. 86/540771 (the "Application") and hereby opposes the same pursuant to 15 U.S.C. § 1063.

The grounds for opposition are as follows:

1. Anavex Life Sciences Corp. (Opposer) is in the business of pharmaceutical research and development and developing pharmaceutical preparations for the treatment of neurological conditions including Alzheimer's disease. Since at least 2007, Anavex Life Sciences Corp. has continuously used the term ANAVEX in connection with its pharmaceutical research and development as the name of a specific drug, ANAVEX2-73, also termed ANAVEX.
2. Anivax Inc. DBA Anivax Corporation Arizona (Applicant) seeks to register ANIVAX as a trademark for research and development of vaccines and medicines in International Class 42.
3. The ANIVAX application was filed on February 20, 2015, and has been designated Serial No. 86/540771.

4. The ANIVAX application was published for opposition in the Official Gazette on February 9, 2016.
5. Anavex Life Sciences Corp. is the owner of Application Serial No. 86/768671 for the mark ANAVEX in connection with pharmaceutical preparations for the treatment of neurological conditions including Alzheimer's disease in International Class 5. The application was filed September 25, 2015, based on a date of first use at least as early as January 1, 2007.
6. On January 14, 2016, Application Serial No. 86/768671 for the mark ANAVEX received a notice of suspension in view of the ANIVAX application under Trademark Act Section 2(d) on the basis of a likelihood of confusion,
7. Anavex Life Sciences Corp. is the owner of Application Serial No. 86/768699 for the mark ANAVEX in connection with pharmaceutical research and development in International Class 42. The application was filed September 25, 2015, based on a date of first use at least as early as January 1, 2007.
8. On January 14, 2016, Application Serial No. 86/768699 for the mark ANAVEX received a notice of suspension in view of the ANIVAX application under Trademark Act Section 2(d) on the basis of a likelihood of confusion,
9. Anavex Life Sciences Corp. has been in the business of pharmaceutical research and development and developing pharmaceutical preparations under the ANAVEX name for the treatment of neurological conditions including Alzheimer's disease since at least January 1, 2007, an over eight years prior to Applicant's claimed first use in commerce of February 20, 2015. Examples of national and international use of the name ANAVEX in pharmaceutical business and research include the following nonlimiting examples.
 - a. On January 25, 2007 Anavex Life Sciences Corp. publically announced that Dr. Panos Kontzalis, of Basel, Switzerland, was appointed as Chief Executive Officer and member of the Board of Directors.
 - b. On January 31, 2007 Anavex Life Sciences Corp. announced that it acquired a portfolio of three patents and one patent application covering drug candidates indented to be further developed through commercialization targeting the areas of neurological diseases and cancer. The patents were assigned by Dr.

Alexandre Vamvakides, of Paris, France, who was appointed as Chief Scientific Officer and member of the Board of Directors.

c. On April 2, 2007 Anavex Life Sciences Corp. announced that it entered into a research agreement with the department of Pharmacology and Biological Sciences at Paris 5 University-Rene Descartes, France, to investigate the neuroprotective action of Anavex's tetrahydrofuranic compound ANAVEX 19-144 (AE37Met) in transient focal cerebral ischemia animal models.

d. On May 23, 2007 Anavex Life Sciences Corp. announced that *in vivo* preclinical data presented in a poster at the 8e Colloque de la Société des Neurosciences meeting, Montpellier, France, showed that ANAVEX 1-41 and ANAVEX 2-73 were new potent muscarinic ligands with a high affinity for the sigma-1 receptor- suggest a possibly important neuroprotective and anti-amnesic efficacy in Alzheimer's Disease.

e. A poster presentation was made at Neuroscience from Nov. 3 through 7, 2007 in San Diego, Calif entitled "Anti-amnesic and neuroprotective activities of ANAVEX 2-73, a new aminotetrahydrofuran derivative acting as a mixed muscarinic/sigma-1 ligands, in pharmacological and pathological models of amnesia," including work by Dr. Alexandre Vamvakides, of Anavex Life Sciences Corp..

f. Dr. Alexandre Vamvakides, of Anavex Life Sciences Corp co-authored a paper in J Psychopharmacol. 2011 Aug;25(8):1101-17 entitled "Anti-amnesic and neuroprotective potentials of the mixed muscarinic receptor/sigma 1 (σ 1) ligand ANAVEX2-73, a novel aminotetrahydrofuran derivative."

g. A poster entitled "Mitochondrial protection is induced by the novel tetrahydrofuran derivative ANAVEX2-73 after ICV injection of oligomeric A β 25-35 peptide in mice, a nontransgenic Alzheimer's disease model" was presented at Neuroscience 2012, October 13-17, 2012, in New Orleans.

h. Anavex drugs were further the subject of "A Phase 1 Dose Escalation Study to Investigate Safety, Tolerability, and Pharmacokinetics of ANAVEX 2-73 in Healthy Male Subjects." Presented at CNS Summit 2014, Boca Raton, FL

- i. Further Anavex drug data entitled “Novel Anti-Seizure Compound ANAVEX 2-73 a Sigma-1 Receptor Agonist in Multiple Seizure Models” was presented at The American Epilepsy Society Annual Meeting 2015, Philadelphia, PA.
10. Anavex Life Sciences Corp.’s has been listed on the public exchanges (OTCBB:AVXL) since January of 2007 and on the NASDAQ exchange as of October of 2015.
11. Anavex Life Sciences Corp.’s common law priority date to ANAVEX precedes the Applicant’s claimed date of first use of ANIVAX, and, upon information and belief, precedes any priority date upon which Applicant may rely.
12. Anavex Life Sciences Corp. has priority over Applicant.
13. The pronunciation of ANIVAX and ANAVEX are virtually identical.
14. The spelling of ANIVAX and ANAVEX are quite similar with the differences being two vowel substitutions: an “I” for an “A” and an “A for an “E.”
15. Services identified by Applicant are virtually identical to services offered by Anavex Life Sciences Corp, namely medicines.
16. Anavex Life Sciences Corp. engages in research and drug development often in conjunction with universities and other academic institutions.
17. Anavex Life Sciences Corp. plans to sell its drugs to physicians, health care providers, drug distributors and to the general public.
18. On information and belief, channels of trade for Applicant’s goods include, at minimum, drug distributors and the general public.
19. Applicant’s proposed ANIVAX trademark so resembles Anavex Life Sciences Corp.’s ANAVEX mark when used in connection with the goods identified in the application to cause confusion, to cause mistake, or to deceive. Purchasers and prospective purchasers are likely to mistakenly believe that the goods Applicant offers under the ANIVAX trademark are produced, sponsored, endorsed, or approved by Anavex Life Sciences Corp, or are in some way affiliated, connected, or associated with Anavex Life Sciences Corp, all to the detriment of Anavex. Registration of Applicant’s mark, therefore, should be refused under 15 U.S.C. §§ 1502(d) and 1063.

WHEREFORE, pursuant to Section 13 of the Lanham Act, 15 U.S.C. § 1063, Anavex Life Sciences Corp. respectfully requests that Application Serial No. 86/540771 in International Class 42 be rejected and that registration of the mark therein for the goods therein specified be refused.

Please charge the opposition fee to deposit account No. 141437.

Respectfully Submitted,

Dated: February 10, 2016

By: Thomas M. Saunders/
Thomas M. Saunders
Attorney for Opposer

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