

on January 8, 2002. Opposers have timely obtained extensions of time to oppose out to May 8, 2002.

The grounds for opposition are as follows:

1. Opposer Pharmacia Corporation, a Delaware corporation, has a principal place of business at 100 Route 206, North Peapack, New Jersey 07977. Opposer Pharmacia & Upjohn Caribe, Inc., a Puerto Rican corporation and a wholly-owned subsidiary of Opposer Pharmacia Corporation, has a principal place of business at Road 696, Lot 14, Higuillar Industrial Park, Dorado, Puerto Rico 00646 (hereinafter Opposer Pharmacia Corporation and Opposer Pharmacia & Upjohn Caribe, Inc. will be collectively referred to as "Opposer Pharmacia," unless indicated otherwise).

2. Upon information and belief, Applicant Stratus Pharmaceuticals, Inc. (hereinafter "Applicant Stratus") is a corporation organized under the laws of the State of Florida with a business address of 14377 SW 142nd Street, Miami, Florida 33186.

3. Opposer Pharmacia is engaged in the development, manufacture and sale of prescription and over-the-counter pharmaceutical products and has built a large and successful business in the pharmaceutical field.

4. Opposer Pharmacia & Upjohn Caribe, Inc. owns Application Serial No. 75/603,337, filed on December 10, 1998, for the mark ZYVOX for a "pharmaceutical preparation, namely, an antibiotic" in International Class 5. A copy of a printout from the U.S. Trademark Electronic Search System (TESS) bearing pertinent information regarding the application is attached as Exhibit A.

5. The filing date of Opposer Pharmacia & Upjohn Caribe, Inc.'s application for the mark ZYVOX pre-dates the filing date and dates of claimed first use and first use in commerce of the application being opposed.

Applicant Stratus and its ZIOX mark

6. Applicant Stratus filed a use based application on June 14, 2001, claiming dates of first use anywhere of February 2, 2000 and first use in commerce of June 1, 2000, to register the mark ZIOX for "pharmaceutical preparations, namely, a topical debriding and deodorizing ointment for wound care" in International Class 5.

7. Applicant Stratus' alleged ZIOX mark is substantially similar in sound and appearance to Opposer Pharmacia & Upjohn Caribe, Inc.'s pleaded ZYVOX mark.

8. Upon information and belief, the pharmaceutical substances offered by Applicant Stratus under the mark ZIOX are related to the goods intended to be sold by Opposer Pharmacia under its ZYVOX mark.

Likelihood of Confusion

9. Applicant Stratus' use of the mark ZIOX for pharmaceutical preparations, namely, a topical debriding and deodorizing ointment for wound care so nearly resembles Opposer Pharmacia's ZYVOX mark for pharmaceutical preparation, namely, an antibiotic as to be likely to cause confusion, mistake or deception under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d).

10. If Applicant Stratus' mark is registered, Applicant Stratus will receive a *prima facie* nationwide exclusive right to use its confusingly similar mark in commerce and, as such, would be damaging to Opposer Pharmacia's rights.

WHEREFORE, Opposer Pharmacia believes that, as a result of its priority and the likelihood of confusion with Applicant Stratus' ZIOX mark and its identified goods, Opposer Pharmacia will be damaged by registration of the ZIOX mark and prays that this opposition be sustained and that Application Serial No. 78/069,088 be refused registration.

Please charge the requisite filing fee of \$600 and any other fees that may be required to Deposit Account Number 08-3038. A duplicate copy of this Notice of Opposition is submitted herewith.

Please address all communications to J. Paul Williamson at the address below.

Respectfully submitted,



J. Paul Williamson
George C. Pologeorgis
HOWREY SIMON ARNOLD & WHITE LLP
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 783-0800 - telephone
(202) 383-6610 - fax

Dated: May 8, 2002

Attorneys for Pharmacia Corporation and
Pharmacia & Upjohn Caribe, Inc.



UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Electronic Search System (TESS)

TESS was last updated on Wed May 8 04:33:19 EDT 2002

FTO HOME TRADEMARK TESS HOME NEW USER STRUCTURED FREE FORM BROWSE DICT BOTTOM HELP

Logout Please logout when you are done to release system resources allocated for you.

Record 1 out of 1

Check Status (TARR contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

Word Mark ZYVOX
Goods and Services IC 005. US 006 018 044 046 051 052. G & S: Pharmaceutical preparation, namely an antibiotic
Mark Drawing Code (1) TYPED DRAWING
Serial Number 75603337
Filing Date December 10, 1998
Filed ITU FILED AS ITU
Published for Opposition March 28, 2000
Owner (APPLICANT) PHARMACIA & UPJOHN CARIBE INC CORPORATION PUERTO RICO P.O. Box 1360 Dorado PUERTO RICO 006461360
Attorney of Record William G. Jameson
Section 44 Indicator SECT44
Priority Date September 18, 1998
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

FTO HOME TRADEMARK TESS HOME NEW USER STRUCTURED FREE FORM BROWSE DICT TOP HELP

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 05/08/2002 09:00:44 ET

Serial Number: 75603337

Registration Number: (NOT AVAILABLE)

Mark (words only): ZYVOX

Current Status: An opposition is now pending at the Trademark Trial and Appeal Board.

Date of Status: 2001-06-04

Filing Date: 1998-12-10

Registration Date: (DATE NOT AVAILABLE)

Law Office Assigned: TMEG Law Office 105

CURRENT APPLICANT(S)/OWNER(S)

1. PHARMACIA & UPJOHN CARIBE INC

Address:

PHARMACIA & UPJOHN CARIBE INC

P.O. Box 1360

Dorado, PR 006461360

United States

State or Country of Incorporation: Puerto Rico

Legal Entity Type: Corporation

GOODS AND/OR SERVICES

Pharmaceutical preparation, namely an antibiotic

International Class: 005

First Use Date:

First Use in Commerce Date:

Basis: 1(b)

ADDITIONAL INFORMATION

Foreign Application Number: 933747

Country: European Community Trademark Office

Foreign Filing Date: 1998-09-18

PROSECUTION HISTORY

2001-06-04 - Opposition instituted for Proceeding

2000-04-06 - Extension of time to oppose - Filed
2000-03-28 - Published for opposition
2000-02-25 - Notice of publication
1999-10-04 - Approved for Pub - Principal Register (Initial exam)
1999-08-09 - Communication received from applicant
1999-06-21 - Non-final action mailed
1999-06-17 - Case file assigned to examining attorney

CONTACT INFORMATION

Correspondent (Owner)

William G. Jameson (Attorney of record)

CYNTHIA SUMMERFIELD
PHARMACIA CORPORATION
100 ROUTE 206 NORTH
PEAPACK, NJ 07977
United States

Domestic Representative

WILLIAM G. JAMESON



TRADEMARK TRIAL AND APPEAL BOARD

1299 PENNSYLVANIA AVE., NW
WASHINGTON, DC 20004-2402
PHONE 202.783.0800
FAX 202.383.6610
A LIMITED LIABILITY PARTNERSHIP

02 MAY -9 AM 8:25

May 8, 2002

VIA HAND DELIVERY

BOX TTAB/ FEE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

FILE: 02709.0001

02 MAY -9 AM 8:25

Re: *Pharmacia Corporation and Pharmacia & Upjohn Caribe, Inc. v. Stratus Pharmaceuticals, Inc.*
Application Serial No. 78/069,088 (ZIOX)

Dear Sir/Madam:

Enclosed please find the following document for appropriate action by the Trademark Trial and Appeal Board:

1. Notice of Opposition in duplicate;
2. Authorization to deduct \$600.00 fee from Deposit Account 08-3038 referencing docket number 02709.0001; and
3. Return receipt postcard.

It is respectfully requested that the attached postcard be stamped with the date of filing of the above document, and that it be returned to our courier. Any fee deficiency or overpayment should be charged or credited to Deposit Account No. 08-3038 referencing file number 02709.0001. A duplicate copy of this letter is enclosed.

Very truly yours,

George C. Pologeorgis
George C. Pologeorgis

Enclosure

cc: Cynthia B. Summerfield, Esq.
J. Paul Williamson, Esq.