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U.S. Patent & TMOfc/TM Mail Rcpt Dt. #40

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

Pharmacia Corporation and
& Pfizer Caribe Limited,

Opposers,

Opposition No. 91151693

vs.

Stratus Pharmaceuticals, Inc.

Applicant.



06-12-2006

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #40

APPLICANT'S MOTION TO COMPEL ANSWERS TO INTERROGATORIES

Pursuant to 37 C.F.R. § 2.120(e), Applicant Stratus Pharmaceuticals, Inc. moves for an order to compel Opposers Pharmacia Corporation and Pfizer Caribe to answer interrogatories served September 12, 2005. Ex. 1. Applicant's attorney has made a good faith effort to resolve objections raised by Opposer's attorneys, resulting in an agreement on March 28, 2006, that Applicant withdraw interrogatories 2, 3, and 4 and Opposer would answer the rest within two to three weeks of the date of the agreement. Ex. 2. Upon Opposer's failure to live up to this agreement, subsequently Opposer's attorney promised to answer the interrogatories by the end of May. Ex. 3. Further telephonic conferences have been held concerning this failure, but to date no answers have been received.

Inasmuch as the parties have agreed to the extent that Opposer needs to answer Applicant's interrogatories, Opposer has waived all objections and no further legal argument is required.

WHEREFORE, Applicant moves for an order compelling answers to its Interrogatories of September 12, 2005.

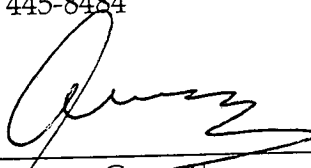
STATEMENT OF COMPLIANCE WITH RULE 120(e)

Applicant has made a good faith effort with Opposer to resolve the issue of the Opposer's failure to answer the interrogatories. Ex. 2 & 3.

Respectfully submitted,

SANCHELIMA & ASSOCIATES, P.A.
Attorneys for Defendant
235 S.W. Le Jeune Rd.
Miami, Florida 33134
Telephone: (305) 447-1617
Telecopier: (305) 445-8484

By: _____


Amaury Cruz, Esq.
(Fla. Bar No. 898244)

CERTIFICATE OF SERVICE

I hereby certify that this correspondence is being deposited with the United States Postal Service's and sent Via U. S First Class Mail pursuant to 37 C.F.R. § 1.10 in an envelope addressed to Opposer's counsel J. Paul Williamson, Fullbright & Jaworski L.L.P., Market Square, 801 Pennsylvania Avenue, N.W. Washington, D.C., on this 9th day of June, 2005.

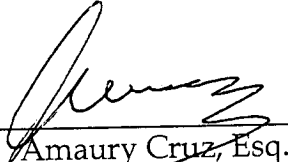

Amaury Cruz, Esq.

CERTIFICATE OF FIRST CLASS MAIL

I hereby certify that this correspondence is being deposited with the United States Postal Service's "First Class Post Office" to Addressee" service pursuant to 37 C.F.R. § 1.10 in an envelope addresses to the Assistant Commissioner of Trademarks, BOX: TTAB/ NO FEE, P.O. Box 1451, Alexandria, Virginia 22313-1451 on the above referenced date.

Date of Deposit: June 9, 2006 .

By: _____


Amaury Cruz, Esq.

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

Pharmacia Corporation and
& Pfizer Caribe Limited,

Opposers,

Opposition No. 156,693

vs.

Stratus Pharmaceuticals, Inc.

Applicant.

APPLICANT'S FIRST SET OF INTERROGATORIES

Pursuant to Federal Rule of Civil Procedure 33 and TTAB Manual Section 405, Applicant STRATUS PHARMACEUTICALS, INC. hereby requests the Opposers PHARMACIA CORPORATION and PFEIZER CARIBE LIMITED to answer the following interrogatories fully and separately in writing and under oath within thirty days of service.

DEFINITIONS

1. "You" and "your" refer to Opposers and each of their affiliates, attorneys, accountants, divisions, subdivisions, predecessors, directors, officers, employees, agents, representatives and all persons acting or purporting to act on its behalf.
2. "Document" means any writing or recording as defined in Rule 1001 of the Federal Rules of Evidence, including any drafts, revisions and



computer-readable material. If a document has been prepared in several copies which are not identical, or if the original identical copies are no longer identical by reason of subsequent notation or other modification of any kind whatsoever, including, but not limited to, notations on the backs of pages thereto, each non-identical copy is a separate document. "Document" shall also include any data compilation from which information can be obtained or translated if necessary by you through detection devices into reasonable usable form.

3. "Person" includes, without limitation, any natural person, proprietorship, corporation, partnership, trust, joint venture, association, organization, business entity or governmental agency.

4. "Relating to" and "relates to" mean, without limitation, relating to, constituting, concerning, mentioning, referring to, describing, summarizing, evidencing, listing, relevant to, demonstrating, or tending to prove, disprove, or explain.

5. "And" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

6. The use of the singular includes the plural, and vice versa.

7. The use of one gender includes all others, appropriate in the context.

8. "Identify" means and requires you to state:

(a) With respect to a person, his or her name, address, telephone number, employer and job title.

(b) With respect to a document, the name and address of its author or maker, the names and addresses of all persons who were addressees, the date on which it was created or made, the nature of the document and the substance of the information or communication set forth in the document.

(c) With respect to a tangible or demonstrative thing, a sufficiently graphic description to distinguish it from other tangible or demonstrative things of the same class or type.

(d) With respect to conversations and written or oral communications:

(i) The date on which each conversation or communication occurred

(ii) The persons making such conversation or communication

(iii) The substance of the conversation or communication

(iv) The names and addresses of every person present when the conversation or communication occurred

(v) The place where the conversation occurred.

INSTRUCTIONS

1. If you discover new information, you are obligated to supplement your responses to these interrogatories no later than thirty days after the discovery of the further information and in no event later than fifteen days before the first day of trial.

2. If you object to furnishing any information requested by these interrogatories on the grounds of privilege, work product or otherwise, your response should state the existence of the information, document or communication, identify the specific grounds on which your objection is based, and identify the information objected to by furnishing its date, participants (*e.g.*, names of speakers, authors, addressees) and a general description of the nature, rather than the substance, of the purportedly privileged information. If the information objected to contains relevant non-objectionable matter, you should disclose it.

3. The relevant time period of these interrogatories is from the date of formation of conception of the mark ZYVOX to the present, and shall include all

information which relates or refers to this period, unless another time or period of time is specifically referred to in an interrogatory or implied by the context.

4. If you cannot furnish exact data, such as dates, periods or amounts, supply estimated data to the extent possible and indicate that the data is estimated.

INTERROGATORIES

1. Identify each person making and assisting with your Interrogatory responses, including each person's name, age, address, occupation, current title and relationship to Opposers.
2. Identify all officers, directors and shareholders or equivalent of Opposers.
3. For all persons identified above, state whether he or she has been the subject of a criminal indictment, information or equivalent, or prosecution. If so, please set forth the relevant information with details and specificity.
4. For all persons identified above, state whether he or she has been the subject of an administrative investigation or has been sanctioned by a professional or administrative body. If so, please set forth the relevant information with details and specificity.
5. Set forth with details and specificity when, where, why, and by whom Opposers have been sanctioned, fined or warned by any administrative, juridical, judicial or quasi-judicial body.

6. Identify all persons with knowledge of the relevant and material facts in this matter. For each such person, set forth with detail and specificity what the person knows.
7. Identify with details and specificity the substance of any conversations involving Opposers' agents, officers, directors or employees, not privileged, concerning the issues in this matter.
8. Set forth with details and specificity all facts supporting the substantive averments in the Notice of Opposition.
9. Set forth with details and specificity how, where, when and by whom Opposers determine the quality of the products covered by its ZYVOX mark.
10. Specify with particularity the basis of Opposers' claims by reference to the test for likelihood of confusion, as set forth in *Polaroid v. Polarad Electronics Corporation*, 287 F.2d 492 (2d Cir. 1961).
11. Describe in detail the circumstances of Opposers' alleged first use of the mark ZYVOX.
12. List all items that Opposers have ever offered for sale under the mark ZYVOX.
13. Identify each third party that Opposers are aware of who have used the term ZYVOX or a similar term alone or in combination with another as a trademark.
14. Specify when Opposers first learned of Applicant's use of the mark ZIOX.
15. Identify the persons on behalf of Opposers whose job relates to policing the use of the mark ZYVOX or similar terms.

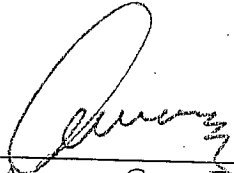
16. Identify all persons who were consulted in formulating the responses to these interrogatories.
17. Identify the persons most knowledgeable about (a) applicant's use of the term ZIOX; (b) Opposers' use of the term ZYVOX; (c) the selection and adoption of the mark ZYVOX; (d) the Opposers' promotional activities using the mark ZYVOX; (e) the Opposers' expenditures to promote its goods using the mark ZYVOX; (f) the Opposers' sales of ZYVOX products; (g) any of the elements in the analysis of likelihood of confusion according to *Polaroid v. Polarad, supra*.
18. For each person identified above, set forth with details and specificity what the person knows.
19. Identify any period in which Opposers have discontinued the use of ZYVOX.
20. Since the date of first use to the present, state the annual amount spent by Opposers to promote sales using the mark ZYVOX.
21. Since the date of first use to the present, state the amount of annual sales by Opposers for all items under the mark ZYVOX.
22. Identify all instances of actual confusion involving the term ZYVOX and any other term.
23. Set forth with details and specificity when, where, how, by whom and the circumstances under which Opposers first learned of Applicant's use of the designation ZIOX.
24. Set forth with particularity the evidentiary basis for the assertion of likelihood of confusion.
25. Identify the target consumers; users, or buyers of ZYVOX products.

26. For each item offered by Opposers under the mark ZYVOX, describe with particularity the level of sophistication of target consumers, users, or buyers.
27. For each item offered by Opposers under the mark ZYVOX, describe with particularity the circumstances under which the mark is encountered by the target consumers, users, or buyers.
28. For each item offered by Opposers under the mark ZYVOX, specify its suggested retail price range.
29. Set forth with detail and specificity any quality control standards Opposers apply to products bearing the mark ZYVOX.
30. Identify all persons knowledgeable about any communications between Opposers and the FDA or other regulatory agencies concerning ZYVOX.
31. For each person identified above, set forth with details and specificity the substance of the person's knowledge.
32. Identify the person with most knowledge about Opposer's advertising agency activities concerning ZYVOX.
33. Identify the persons at Opposers' advertising agencies with most knowledge about Opposer's advertising activities concerning ZYVOX.
34. For each person identified above, set forth with details and specificity the substance of the person's knowledge.
35. Identify the areas of distribution of the products bearing the mark ZYVOX.
36. Set forth the level of expertise of the purchasers or customers of ZYVOX products.

37. Identify any documents relevant to the issues in this case that were not encompassed by the Applicant's First and Second Request for Production.

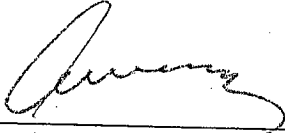
Respectfully submitted,

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By: 
Amaury Cruz, Esq.
(Fla. Bar No. 898244)

CERTIFICATE OF SERVICE

I hereby certify that this correspondence is being faxed and deposited with the United States Postal Service's and sent Via U. S First Class Mail pursuant to 37 C.F.R. § 1.10 in an envelope addressed to Opposers' counsel J. Paul Williamson, Fulbright & Jaworski L.L.P., Market Square, 801 Pennsylvania Avenue, N.W. Washington, D.C., on this 12th day of September, 2005.


Amaury Cruz, Esq.

From: "Williamson, J. Paul" <pwilliamson@fulbright.com>
Subject: PHR/US/ZYVOX - Opposition to ZIOX by Stratus Pharmaceuticals; PHRC:411
Date: March 28, 2006 2:46:51 PM EST
To: cruz@sanchelima.com

Dear Amaury

We write to confirm the telephone conversation we just completed on discovery issues.

We agreed to push back all dates for the opposition by 3 months. You will file the paper with the Board.

You agreed to pull my letter of Dec. 8, 2005 which set out our issues with the discovery responses of Stratus and to follow-up with us promptly on what Stratus intends to do in response.

We agreed to re-copy and serve the documents we previously served on Mr. Suarez back in 2002, as you cannot find that those documents ever made it to your office.

On the Stratus Document Request 17, you agreed you were looking for documents that reflect actual confusion, deception or mistake and we agreed to produce any such documents that are identified.

On our position that there were interrogatories in excess of 75, you agreed to limit Interrogatory 1 to just names of the people who assisted with interrogatory responses, and you withdrew interrogatory nos 2, 3 and 4. We therefore agreed to respond as appropriate to the remaining interrogatories.

We agreed to try to produce documents in response to the Second Set of Document Requests from Stratus and to respond to the Interrogatories within 2 to 3 weeks.

If I have not, in your view, properly characterized any of our understandings, please let me know right away.

We look forward to your response to our December 8 letter.

Regards,

Paul Williamson

J. Paul Williamson
FULBRIGHT & JAWORSKI L.L.P.
801 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2623
Direct Dial: 202-662-4545
Facsimile: 202-662-4643
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From: "Williamson, J. Paul" <pwilliamson@fulbright.com>
Subject: **Pharmacia v. Stratus discovery (ZYVOX v ZIOX); PHRC:411**
Date: May 18, 2006 8:11:35 AM EDT
To: "Amaury Cruz, Esq." <cruz@sanchelima.com>

Dear Amaury

You are right and I appreciate the patience you and your client have shown. I have been out of pocket for much of the last two weeks.

We have copied the documents to be produced and will be getting them numbered today, so I hope to send them out tomorrow. We are also following up on whether there are any more documents.

The interrogatory responses are being worked on and we hope to have those to you by the end of the month.

Of course, we will accommodate Stratus on any extensions it may need in light of our delay.

I don't mean to diminish the need for us to provide you with the required discovery by asking, but can you also let us know where things stand with the follow-ups you are making on our discovery questions?

Regards,

Paul

J. Paul Williamson
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FULBRIGHT & JAWORSKI L.L.P.

-----Original Message-----

From: Amaury Cruz, Esq. [<mailto:cruz@sanchelima.com>]
Sent: Wednesday, May 17, 2006 3:00 PM
To: Williamson, J. Paul



Subject: Pharmacia v. Stratus discovery

Paul, it's been more than three week since you requested three more weeks to respond to the discovery from Status. Let me know what's going on, please.