

TTAB

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



06-24-2002

U.S. Patent & TMO/™/TM Mail Rcpt Dt. #26

Opposition No.
Application Serial No. 78,007,068
Published: January 8, 2002

Pharmacia Corporation and
Pharmacia & Upjohn Caribe, Inc.

Opp # 151693

Opposers,

v.

Stratus Pharmaceuticals, Inc.

Applicant.

BOX TTAB/FEE
Commission for Trademarks
2900 Crystal Drive
Arlington, Va. 22202-3513

02 JUL -3 AM 8:38
TRADEMARK TRIAL AND
APPEAL BOARD

ANSWER

The Applicant, Stratus Pharmaceuticals, Inc. by and through undersigned counsel, files this Answer and states:

1. Applicant is without sufficient information to admit or deny the allegations of paragraph 1 of the Notice of Opposition (hereafter the "Opposition").
2. Applicant admits the allegations of paragraph 2 of the Opposition.
3. Applicant is without sufficient knowledge to admit or deny the allegations of paragraph 3 of the Opposition.
4. Applicant is without sufficient knowledge to admit or deny the allegations of paragraph 4 of the Opposition, except to note that the Opposer's product is an antibiotic, and is thus not in any way competitive with the Applicant's product, which is a debriding ointment.
5. Applicant is without sufficient knowledge to admit or deny the allegations of paragraph 5 of the Opposition.
6. Applicant admits the allegations of paragraph 6 of the Opposition.

3

7. Applicant denies the allegations of paragraph 7 of the Opposition. As additional answer to the allegations of said paragraph, Applicant would show the Board that on or about March 28, 2001, the United States Patent and Trademark Office, by John M. Gartner, Examining Attorney, entered a finding of "No Conflicting Marks Noted," as shown in Exhibit A hereto.

8. Applicant denies the allegations of paragraph 8 of the Opposition and further states that the respective products are not related, as further explained in paragraph 4 above.

9. Applicant denies the allegations of paragraph 9 of the Opposition.

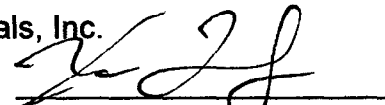
10. Applicant denies so much of paragraph 10 of the Opposition as suggests that the two marks in question are "confusingly similar."

NON-WAIVER OF RIGHTS UNDER CHAPTER 11

11. On or about February 26, 2002, Applicant filed for Chapter 11 protection in the Southern District of Florida, under case No. 02-11721-BKC-AJC. As detor-in-possession, Applicant does not waive its rights under 11 U.S.C. § 362.

WHEREFORE, Applicant prays that this Application be sustained and the Opposition be denied. Applicant further prays, in the alternative, that if the Board finds that Opposer is entitled to judgment, the Applicant be permitted to a registration of its mark with a restricted identification reflecting the nature of its goods as debriding ointments and not antibiotics.

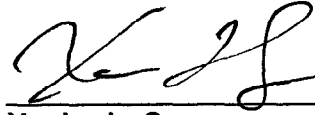
Respectfully submitted on this the 21st day of June, 2002, by Xavier L. Suarez, attorney for Applicant, Stratus Pharmaceuticals, Inc.


Xavier L. Suarez

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Answer was sent via U.S. mail on this the 21st day of June, 2002, to J. Paul Williamson of Howrey,

Simon, Arnold and White, LLP. 1299 Pennsylvania Avenue, N.W. Washington,
D.C. 20004, attorneys for Pharmacia Corporation.



Xavier L. Suarez
Florida Bar No. 0202797
2600 Douglas Rd
Suite 1108
Coral Gables, Fla. 33134
Tel.: (305) 442-9974
Fax: (305) 461-3628

EXHIBIT "A"

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO. 78/069088	APPLICANT Stratus Pharmaceuticals Inc		PAPER NO.
MARK ZIOX			ADDRESS: Commissioner for Trademarks 2900 Crystal Drive Arlington, VA 22202-3513 www.uspto.gov <small>If no fees are enclosed, the address should include the words "Box Responses - No Fee."</small>
ADDRESS Stratus Pharmaceuticals Inc 14377 SW 142ND ST MIAMI FL 33186-6727 FORM PTO-1025 (3-99)	ACTION NO. 01	Please provide in all correspondence: Filing Date, serial number, mark and Applicant's name. Mailing date of this Office action. Examining Attorney's name and Law Office number. Your telephone number and ZIP code.	
	MAILING DATE 08/28/01		
	REF. NO.		
U.S. DEPT. OF COMM. & TM OFFICE TRADEMARK LAW OFFICE 102 Serial Number: 78/069088 Mark: ZIOX **Please Place on Upper Right Corner** **of Response to Office Action ONLY **			

A PROPER RESPONSE TO THIS OFFICE ACTION MUST BE RECEIVED WITHIN 6 MONTHS FROM THE DATE OF THIS ACTION IN ORDER TO AVOID ABANDONMENT. For your convenience and to ensure proper handling of your response, a label has been enclosed. Please attach it to the upper right corner of your response. If the label is not enclosed, print or type the Trademark Law Office No., Serial No., and Mark in the upper right corner of your response.

RE: Serial Number: 78/069088 MARK: ZIOX

The assigned examining attorney has reviewed the referenced application and determined the following.

NO CONFLICTING MARKS NOTED

The examining attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under Trademark Act Section 2(d). 15 U.S.C. Section 1052(d). TMEP Section 1105.1.

IDENTIFICATION OF GOODS

The identification of goods is unacceptable as indefinite, because parentheses within an identification usually indicate deleted matter, and so should be removed. The applicant may adopt the following identification, if accurate. TMEP section 804.

"Pharmaceutical preparations, namely, a topical debriding and deodorizing ointment for wound care, in International Class 5."

The applicant may want to consult *The Acceptable Identification of Goods and Services Manual*, published by the U.S. Patent and Trademark Office which is available on-line at [www.uspto.gov/web/offices/tac/doc/gsmannual/](http://www.uspto.gov/web/offices/tac/doc/gsmmanual/). As set forth in the TMEP, this manual "sets out acceptable language for identifying goods and services of various types." TMEP sec. 804.04.

Please note that, while an application may be amended to clarify or limit the identification, additions to the identification are not permitted. 37 C.F.R. Section 2.71(a); TMEP section 804.09. Therefore, the applicant may not amend to include any goods that are not within the scope of goods set forth in the present identification.

MEANING INQUIRY

The applicant must indicate whether "ZIOX" has any significance in the relevant trade, any geographical significance or any meaning in a foreign language. 37 C.F.R. Section 2.61(b).


No set form is required for response to this Office action. The applicant must respond to each point raised. The applicant should simply set forth the required changes or statements and request that the Office enter them. The applicant must sign the response.

In all correspondence to the Patent and Trademark Office, the applicant should list the name and law office of the examining attorney, the serial number of this application, the mailing date of this Office action, and the applicant's telephone number.

PLEASE NOTE: Because it delays processing, submission of duplicate papers is discouraged. Unless specifically requested to do so by the Office, parties should not mail follow up copies of documents transmitted by fax. TMEP 702.04(e); Cf. *ITC Entertainment Group Ltd. V. Nintendo of America Inc.* 45 USPQ2d 2021 (TTAB 1998).

PLEASE NOTE: *All of the issues raised can be resolved by telephone.* The applicant may telephone the examining attorney, instead of submitting a written response, to expedite the application.

If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.


John M. Gartner
Examining Attorney
Law Office 102
(703) 308-9102 ext. 134