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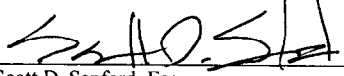
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

AstraZeneca AB,)
)
 Opposer,)
)
 v.)
)
 Vicuron Pharmaceuticals Inc.,)
)
 Applicant.)
)
 _____)
)
 Application Serial No. 78/273,463)
)
 Date of Publication: April 6, 2004)
)
 Mark: ECANDO)
)
 _____)

Opposition No. 91162601

CERTIFICATE OF MAILING

Express Mail Label No. EV 251121706 US
AMENDED ANSWER TO NOTICE OF OPPOSITION AND COUNTERCLAIMS
FOR CANCELLATION
I hereby certify that this document is being deposited with the United States Postal
Service as "Express Mail to Addressee" in an envelope addressed to: Commissioner for
Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451 on December 16, 2004.


Scott D. Sanford, Esq

**TRANSMITTAL LETTER TO AMENDED ANSWER TO NOTICE OF OPPOSITION
AND COUNTERCLAIMS FOR CANCELLATION**

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Sir:

Transmitted herewith for filing are the following:

- Amended Answer to Notice of Opposition and Counterclaims for Cancellation
- Return Receipt Postcard



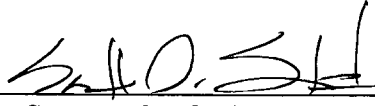
- Applicant Authorizes the U.S. Patent and Trademark Office to charge Deposit Account No. 50-0639 \$300.00 as required under 37 CFR §2.6(a)(16) in association with the counterclaims in this Answer.
- The Commissioner is hereby authorized to charge underpayment of any additional fees or credit any overpayment associated with this communication to Deposit Account No. 50-0639. A duplicate copy of this authorization is enclosed.

Please direct all correspondence concerning this request to the following address:

Scott D. Sanford, Esq.
O'MELVENY & MYERS LLP
Embarcadero Center West
275 Battery Street
San Francisco, California 94111-3305
Telephone: (415) 984-8700
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Respectfully submitted,

Date: December 16, 2004

By: 

Scott D. Sanford
Reg. No. 51,170

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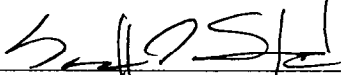
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Scott D. Sanford, Esq

**AMENDED ANSWER TO NOTICE OF OPPOSITION
AND COUNTERCLAIMS FOR CANCELLATION**

Vicuron Pharmaceuticals Inc. ("Applicant"), by its counsel, O'Melveny & Myers
LLP, hereby answers the Notice of Opposition (the "Notice") filed by AstraZeneca AB
("Opposer"), as follows:

1. Applicant admits the allegations contained in paragraph 1 of the Notice.
2. Applicant lacks knowledge or information sufficient to form a belief as to the
truth of the allegations contained in paragraph 2 of the Notice and therefore denies same.
3. Applicant admits that Opposer is listed as the owner of U.S. Registration No.
2,440,578 for the trademark EXANTA in connection with "pharmaceutical preparations for the
treatment of cardiovascular diseases" in the U.S. Patent and Trademark Office's ("USPTO")

TESS records. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 3 of the Notice and therefore denies all remaining allegations.

4. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Notice and therefore denies same.

5. Applicant denies that Opposer's trademark EXANTA possesses a high degree of inherent distinctiveness. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 5 of the Notice and therefore denies all remaining allegations.

6. Applicant admits that Opposer is listed as the owner of U.S. Application Serial No. 78/374,762 for the mark EXANTA-SC in connection with "pharmaceutical preparations for the treatment of cardiovascular diseases and disorders" in the USPTO's TESS records. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 6 of the Notice and therefore denies all remaining allegations.

7. Applicant denies the allegations contained in paragraph 7 of the Notice.

8. Applicant denies the allegations contained in paragraph 8 of the Notice.

9. The allegations contained in paragraph 9 of the Notice are conclusions of law as to which no responsive pleading is necessary. Applicant denies each and every such allegation contained in paragraph 9 of the Notice.

10. Applicant denies the allegations contained in paragraph 10 of the Notice.

11. Applicant admits that Opposer is listed as the owner of U.S. Application Serial No. 76/350,469 for the mark EXANTA PLUS in connection with "pharmaceutical preparations and substances for the prevention and treatment of diseases and disorders of the respiratory system, central nervous system, peripheral nervous system, cardiovascular system, gastrointestinal system; pharmaceutical preparations and substances for use in pain control, anesthesia, oncology, infection, inflammation, urology, gynecology; pharmaceutical preparations and substances for the treatment and prevention of diabetes" in the USPTO's TESS records.

Applicant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 11 of the Notice and therefore denies all remaining allegations.

12. Applicant denies the allegations contained in paragraph 12 of the Notice.
13. Applicant denies the allegations contained in paragraph 13 of the Notice.
14. Applicant denies the allegations contained in paragraph 14 of the Notice.
15. Applicant denies the allegations contained in paragraph 15 of the Notice.

AFFIRMATIVE DEFENSES

16. Opposer's claims are barred by fraud in the procurement of U.S. Registration No. 2,440,578. Opposer filed U.S. Application Serial No. 75/875,761 (the "'761 Application") seeking to register EXANTA for use in connection with "pharmaceutical preparations for the treatment of cardiovascular diseases." Opposer falsely represented to the USPTO that the '761 Application validly relied on ownership of Swedish Registration No. 312,187 as a basis for registration of EXANTA on the Principal Register in the United States under Section 44(e). At the time of filing the '761 Application, Opposer knew or should have known that this representation to the USPTO was false. Opposer's false representation to the USPTO allowed Opposer to obtain U.S. Registration No. 2,440,578 for EXANTA without having to demonstrate proof of use of EXANTA "in commerce."

17. Opposer's claims are barred by the doctrine of unclean hands.
18. Opposer's claims are barred on the basis that the mark EXANTA has been abandoned.
19. There is no likelihood of confusion caused by Applicant's use of the term ECALTA.
20. Opposer's claims are barred on the basis that U.S. Registration No. 2,440,578 is invalid.

COUNTERCLAIMS

For its counterclaims against Opposer, Applicant alleges as follows:

FACTS RELEVANT TO ALL COUNTERCLAIMS

21. U.S. Application Serial No. 75/875,761 (the "'761 Application") was filed with the U.S. Patent and Trademark Office ("USPTO") on December 20, 1999 seeking to register EXANTA for use in connection with "pharmaceutical preparations for the treatment of cardiovascular diseases" in International Class 5.

22. In the '761 Application, Opposer represented to the USPTO that the Applicant has a bona fide intent to use EXANTA in commerce on or in connection with the goods listed in the '761 Application – relying on Section 1(b).

23. On January 19, 2000, Opposer filed a Pre-Examination Amendment with the USPTO - amending the '761 Application by adding Section 44(e) as a basis for registration.

24. An Applicant who adds or substitutes Section 44(e) as a basis must verify that the Applicant had a bona fide intention to use the mark in commerce on or in connection with the goods listed in the application.

25. The Pre-Examination Amendment filed by Opposer deleted Section 1(b) as a basis for registration.

26. Opposer represented to the USPTO that the '761 Application relied on ownership of Swedish Registration No. 312,187 as a basis for registration of EXANTA on the Principal Register in the United States under Section 44(e).

27. Swedish Registration No. 312,187 corresponds to the mark EXANTA for use in connection with "pharmaceutical, veterinary - medical and sanitary preparations (for medical purposes); dietetic substances for medical use. Foodstuffs for babies; plasters and bandage materials; materials for filling and impression of teeth; disinfectants; preparations for extermination of noxious animals and vermin; fungus and weed killing agents" in International Class 005.

28. The description of goods listed in U.S. Application Serial No. 75/875,761 for EXANTA are not included in, or in the alternative are broader in scope than, the goods listed in Swedish Registration No. 312,187.

29. The USPTO's TESS records indicate that the U.S. Application Serial No. 75/875,761 issued as U.S. Registration No. 2,440,578 on April 3, 2001, claiming benefit under Section 44(e).

30. Opposer filed a trademark application for EXANTA with the USPTO on

31. Opposer is listed as the owner of U.S. Registration No. 2,440,578 for EXANTA for use in connection with "pharmaceutical preparations for the treatment of cardiovascular diseases" in the USPTO's TESS records.

32. Upon information and belief, Opposer has not used the mark EXANTA in commerce in the United States in connection with pharmaceutical preparations for the treatment of cardiovascular diseases.

33. Upon information and belief, Opposer has not used the mark EXANTA in commerce in the United States for at least three consecutive years.

34. The Food and Drug Administration ("FDA") failed to approve Opposer's New Drug Application for ximelagatran for use in the United States. AstraZeneca AB website, *FDA Advisory Committee Recommends Further Data to Support Approval of AstraZeneca's Oral Anticoagulant EXANTA (ximelagatran)* (visited November 22, 2004) <http://www.astrazeneca.com/pressrelease/3025.aspx>; *AstraZeneca Receives Action Letter from FDA for EXANTA (ximelagatran)* (visited November 22, 2004) <http://www.astrazeneca.com/pressrelease/3285.aspx>.

35. Upon information and belief, EXANTA is the trade name chosen by Opposer for ximelagatran in the United States.

36. Upon information and belief, Opposer cannot use EXANTA in commerce in the United States for use in connection with "pharmaceutical preparations for the treatment of cardiovascular diseases" until the FDA approves ximelagatran for use in the United States.

**FIRST COUNTERCLAIM
CANCELLATION OF OPPOSER'S REGISTRATION –
FRAUD IN THE PROCUREMENT OF THE REGISTRATION**

37. U.S. Application Serial No. 75/875,761 relies on ownership of Swedish Registration No. 312,187 as a basis for registration of EXANTA on the Principal Register in the United States under Section 44(e).

38. The description of goods listed in U.S. Registration No. 2,440,578 for EXANTA are not included in, or in the alternative are broader in scope than, the goods listed in Swedish Registration No. 312,187.

39. At the time of filing U.S. Application Serial No. 75/875,761, Opposer knew or should have known that the representation to the USPTO that U.S. Application Serial No. 75/875,761 could claim a benefit under Section 44(e) was false.

40. Opposer's false representation to the USPTO allowed Opposer to obtain U.S. Registration No. 2,440,578 for EXANTA without having to demonstrate proof of use of EXANTA in commerce.

41. Opposer's Pre-Examination Amendment deleted Section 1(b) as a basis for registration. An application based on Section 44(e) must include the Applicant's verified statement that it has a bona fide intention to use the mark in commerce on or in connection with the goods identified in the application.

42. Opposer's mark EXANTA should be cancelled on the basis that Opposer fraudulently procured registration of EXANTA and the registration for such mark should be stricken from the Principal Register.

**SECOND COUNTERCLAIM
CANCELLATION OF OPPOSER'S REGISTRATION –
ABANDONMENT THROUGH NON-USE OF THE MARK**

43. Opposer cannot use EXANTA for use in connection with "pharmaceutical preparations for the treatment of cardiovascular diseases" until the Food and Drug Administration ("FDA") approves ximelagatran for use in the United States.

44. The FDA has not approved Opposer's New Drug Application for ximelagatran for use in the United States.

45. Opposer has not used EXANTA in commerce in the United States for at least three consecutive years.

46. Opposer's mark should be cancelled on the basis of abandonment and the registration for such mark should be stricken from the Principal Register..

According to 37 C.F.R. §2.111(a), a cancellation proceeding must be accompanied by the required fee set forth under 37 C.F.R. §2.6(a)(16), which is \$300 per class. Applicant authorizes the U.S. Patent and Trademark Office to charge Deposit Account No. 50-0639 for the fee associated with Applicant's counterclaims to cancel Opposer's mark.

WHEREFORE, Applicant, by its undersigned attorneys, prays for judgment as follows:

- (1) The Notice filed by Opposer be denied by the Trademark Trial and Appeal Board;
- (2) That Opposer's mark EXANTA (Registration No. 2,440,578) be cancelled; and
- (3) For such other relief as the Board may deem just and proper.

Respectfully submitted,

O'Melveny & Myers LLP

By:


Mark E. Miller

Claudia E. Ray

Scott D. Sanford

O'Melveny & Myers LLP

275 Battery Street

San Francisco, California 94111

(415) 984-8700

Attorneys for Applicant

Vicuron Pharmaceuticals Inc.

Dated: December 16, 2004

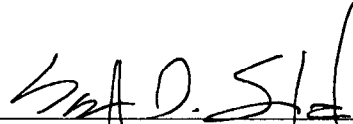
To: Keith E. Danish, Esq.
Kirkpatrick & Lockhart LLP
599 Lexington Avenue
New York, New York 10022-6030

Attorneys for Opposer
AstraZeneca AB

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the within AMENDED ANSWER TO NOTICE OF OPPOSITION AND COUNTERCLAIMS FOR CANCELLATION was served via the United States Post Office's "Express Mail to Addressee" service this 16th day of December, 2004, upon counsel for Opposer at the following address:

Keith E. Danish, Esq.
Kirkpatrick & Lockhart LLP
599 Lexington Avenue
New York, New York 10022-6030



Scott D. Sanford, Esq.

SF1:570431.1