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

Proceeding	91176335
Party	Defendant Merck KGaA Merck KGaA Frankfurter Strasse 250 DEX Darmstadt, 64293
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Date	04/02/2007
Attachments	Answer_to_Notice_of_Opposition.pdf ( 6 pages )(52236 bytes )

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

In the matter of Application Serial No. 78/899,450  
For the trademark TARGETING CANCER FOR BETTER LIVES  
Published in the Official Gazette on November 21, 2006

DENDREON CORPORATION,	)	
Opposer,	)	
	)	
vs.	)	Opposition No. 91176335
	)	
	)	
MERCK KGAA,	)	
Applicant.	)	

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**ANSWER TO NOTICE OF OPPOSITION**

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Applicant Merck KGaA (“Merck”), in answer and response to the Notice of Opposition of Opposer, Dendreon Corporation (“Dendreon”), alleges and says the following:

**FIRST DEFENSE**

The Notice of Opposition fails to state a basis for the relief sought.

**SECOND DEFENSE**

Specifically responding to the enumerated paragraphs of the Notice of Opposition, Merck answers as follows:

1. Merck admits, upon information and belief, that Dendreon was founded in 1992 and is a biotechnology company that works on the discovery, development and commercialization of anti-cancer pharmaceutical products. Merck lacks sufficient information to form a belief as to the remaining allegations of this paragraph, and the same are therefore denied.

2. It is admitted that Merck is a German corporation and that Merck has applied to register, on an intent-to-use basis the mark TARGETING CANCER FOR BETTER LIVES in connection with “pharmaceutical preparations in the field of oncology” in International Class 5. Except as expressly admitted herein, the allegations of this paragraph are denied.

3. Merck admits that it is developing pharmaceutical preparations consisting of many different types of anti-cancer compounds, some of which include cancer vaccines, monoclonal antibodies, angiogenesis inhibitors, and immunocytokines, as well as more traditional cancer treatments. Except as expressly admitted herein, the allegations of this paragraph are denied.

4. Merck admits that the phrase “targeting cancer” is sometimes used to refer to any anti-cancer compound and to the business strategy of providing goods and services in the oncology field. Merck further admits that the phrase “targeted cancer therapies” are used to refer to anti-cancer compounds which, based on their intended mode of operation when used alone or in conjunction with traditional cancer therapies, generally attack cancerous cells and not non-cancerous cells. Merck lacks sufficient information to form a belief as to whom Dendreon is referring in the allegations regarding medical writers, oncology researchers, and others in the field of oncology, and these allegations are therefore denied. Except as expressly admitted herein, the allegations of this paragraph are denied.

5. Merck admits that this paragraph refers to materials generated by Merck, the content of which speaks for itself. Merck further admits that it intends to use the mark TARGETING CANCER FOR BETTER LIVES in conjunction with the goods and services it will offer in the oncology area. Merck further admits that part, but not all of its oncology research and development focuses on anti-cancer compounds which, based on their intended

mode of operation when used alone or in conjunction with traditional cancer therapies, generally attack cancerous cells and not non-cancerous cells, and that the related therapies are intended to improve the survival rates and quality of life of cancer patients. Except as expressly admitted herein, the allegations of this paragraph are denied.

6. The allegations of this paragraph are denied.

7. The allegations of this paragraph are denied.

8. Merck admits that Dendreon's TARGETING CANCER, TRANSFORMING LIVES mark is confusingly similar to Merck's previously registered TARGETING CANCER FOR BETTER LIVES mark. Merck further admits that it has filed an Opposition to prevent registration of Dendreon's confusingly similar mark in International Class 5 (Opposition No. 91171083). Except as expressly admitted herein, the allegations of this paragraph are denied.

9. The allegations contained in this paragraph constitute a prayer for relief, to which no response is required. To the extent a response is deemed required, the allegations of this paragraph are denied.

10. The allegations contained in this paragraph constitute an identification of counsel for Dendreon, to which no response is required. To the extent a response is deemed required, the allegations of this paragraph are admitted upon information and belief.

11. The allegations contained in this paragraph constitute a statement that Dendron has tendered the filing fee for the present opposition, to which no response is required. To the extent a response is deemed required, the allegations of this paragraph are admitted upon information and belief.

### **THIRD DEFENSE**

Dendreon lacks standing to oppose Merck's application because it lacks rights sufficient to support an opposition to Merck's mark.

### **FOURTH DEFENSE**

Merck is entitled to a reasonable zone of expansion of its Mark in International Class 5 based on the oncology goods and services already offered by Merck in International Classes 9, 16, 42, and 44, which are clearly related to Merck's ultimate goal of providing pharmaceutical preparations in the field of oncology.

### **FIFTH DEFENSE**

Dendreon's Notice of Opposition is barred by waiver, laches, and estoppel.

### **ADDITIONAL DEFENSES**

Merck reserves the right to assert any additional defenses as may be warranted or as may be revealed by additional information received in discovery.

### **PRAYER FOR RELIEF**

WHEREFORE, Applicant Merck KGaA respectfully prays that the Notice of Opposition be dismissed in its entirety, that a Notice of Allowance be issued for the mark TAGETING CANCER FOR BETTER LIVES in International Class 5, and that the Trademark Trial and Appeal Board grant such other and further relief as it deems just and proper.

Respectfully submitted this 2nd day of April, 2007.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By:                     /David A. Harlow/  
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CERTIFICATE OF SERVICE

It is hereby certified that the foregoing Answer to Notice of Opposition has been served this day by first class mail by depositing copies thereof in a depository under the exclusive care and custody of the United States Postal Service in postage prepaid envelopes and properly addressed as follows:

Susan D. Berney-Key, Esq.  
Britt Anderson, Esq.  
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This the 2nd day of April, 2007.

NELSON MULLINS RILEY & SCARBOROUGH LLP

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