

ESTTA Tracking number: **ESTTA175269**

Filing date: **11/16/2007**

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

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	Merck & Co., Inc.
Granted to Date of previous extension	11/21/2007
Address	One Merck Drive, P.O. Box 100 Whitehouse Station, NJ 08889-0100 UNITED STATES

Attorney information	Debra A. Shelinsky Greene Merck & Co., Inc. One Merck Drive, P.O. Box 100 Whitehouse Station, NJ 08889-0100 UNITED STATES debra_greene@merck.com,lisa_hoffmann@merck.com Phone:908-423-5250
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**Applicant Information**

Application No	79027343	Publication date	07/24/2007
Opposition Filing Date	11/16/2007	Opposition Period Ends	11/21/2007
International Registration No.	0894564	International Registration Date	11/25/2005
Applicant	ANIDRAL S.r.l. Via Pietro Custodi, 12 I-28100 NOVARA ITALY		

**Goods/Services Affected by Opposition**

<p>Class 005. All goods and services in the class are opposed, namely: Pharmaceutical products comprising bacterial cultures for medical and veterinary use, in particular bacterial cultures in solid, dispersive, liquid and cream form, namely tablets, pills, capsules, granules, pessaries, dispersible powders, syrups, creams, oils, ointments, for the treatment and elimination of bacteria, fungi and viruses present on the skin and in the mucous membranes; pharmaceutical products comprising bacterial cultures for topical and oral use for the preventive and curative treatment of vaginal diseases and abnormalities; bacterial cultures for the preparation of pharmaceutical products for medical and veterinary use; bacterial cultures for the treatment and elimination of bacteria, fungi and viruses present on the skin and in the mucous membranes, for medical and veterinary use; bacterial cultures for the production of pharmaceutical products for topical and oral use for the preventive and curative treatment of vaginal diseases and abnormalities; microorganism cultures, in particular lactic bacteria having probiotic action on the human organism and on the animal species, bred for medical and veterinary use</p>
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## Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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## Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2376085	Application Date	11/16/1998
Registration Date	08/08/2000	Foreign Priority Date	NONE
Word Mark	CANCIDAS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1999/09/15 First Use In Commerce: 1999/09/15 Pharmaceutical preparations, namely, an antifungal		

Attachments	75589280#TMSN.gif ( 1 page )( bytes ) Cancidas v Candicyd US.pdf ( 6 pages )(24409 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/debra shelinsky greene/
Name	Debra A. Shelinsky Greene
Date	11/16/2007

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

In the matter of application Serial No. 79/027,343 published in the Official Gazette on July 24, 2007.

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Merck & Co., Inc.

Opposer,

Opposition No. \_\_\_\_\_

v.

Anidral S.R.I., Inc.

Applicant,  
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NOTICE OF OPPOSITION

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

MERCK & CO., INC., a corporation duly organized and existing under the laws of the State of New Jersey, with its principal place of business located at One Merck Drive, Whitehouse Station, New Jersey 08889-0100, believes it will be damaged by the registration of Application Serial No.79/027,343 for the designation CANDICYD as a trademark for "Pharmaceutical products comprising bacterial cultures for medical and veterinary use, in particular bacterial cultures in solid, dispersive, liquid and cream form, namely tablets, pills, capsules, granules, pessaries, dispersable powders, syrups, creams, oils, ointments, for the treatment and elimination of bacteria, fungi and viruses present on the skin and in the mucous membranes; pharmaceutical products comprising bacterial cultures for topical and oral use for the preventive and curative treatment of vaginal diseases and abnormalities; bacterial cultures for the preparation of

pharmaceutical products for medical and veterinary use; bacterial cultures for the treatment and elimination of bacteria, fungi and viruses present on the skin and in the mucous membranes, for medical and veterinary use; bacterial cultures for the production of pharmaceutical products for topical and oral use for the preventive and curative treatment of vaginal diseases and abnormalities; microorganism cultures, in particular lactic bacteria having probiotic action on the human organism and on the animal species, bred for medical and veterinary use” (hereinafter “Applicant’s Goods”) filed November 25, 2005 by Anidral S.R.I. and published in The Official Gazette of July 24, 2007, page TM 528, and having previously been granted an extension of time to oppose, hereby opposes the same.

The grounds for opposition are as follows:

1. Opposer is a leading research driven pharmaceutical products and services company which discovers, develops, manufactures and markets a broad range of innovative medical and pharmaceutical products and services designed to improve and preserve human health.
2. Since long prior to the filing date of the application herein opposed, Opposer has been a world business leader which distributes and sells medical and pharmaceutical preparations throughout the United States and the world.

3. Since long prior to the filing date of the application herein opposed, the trademark CANCIDAS has been used and continues to be used in interstate commerce for a “pharmaceutical preparations, namely, an antifungal”. Opposer is the owner on the Principal Register of the registered trademark CANCIDAS (Reg. No. 2,376,085) for “pharmaceutical preparations, namely, an antifungal”. Registration issued on August 8, 2000, is in full force and effect, and has become incontestable under the provisions of Section 15 of the Lanham Act (15 U.S.C. Section 1065).
4. Since long prior to the filing date of the application herein opposed, Opposer has distributed and offered for sale and sold pharmaceutical preparations bearing the trademark CANCIDAS which identifies and distinguishes its pharmaceutical preparations from those of others.
5. Since long prior to the filing date of the Applicant, Opposer has made use of the trademark CANCIDAS by applying it to labeling, packaging, product literature and other materials distributed in interstate commerce.
6. As a result of the quality of Opposer’s products and their widespread use in the healthcare industry, the trademark CANCIDAS has come to have great value to Opposer and the health care industry has come to use the mark to identify and distinguish Opposer’s goods from those of others.

7. Upon information and belief, Applicant filed its application to register the designation CANDICYD as a trademark on November 25, 2005 under Section 66(a) of the Trademark Law.
8. Upon information and belief, Applicant has made no use of the designation CANDICYD on or in connection with Applicants' goods identified in the application .
9. Upon information and belief, Applicants' goods to be offered for sale under the mark CANDICYD are related to the goods sold under Opposer's trademark(s).
10. Applicant's goods, identified to be offered for sale and for distribution under the designation CANDICYD are intended for the same or similar class of purchasers and users as those already familiar with Opposer's registered trademark CANCIDAS.
11. Applicant's designation CANDICYD so resembles Opposer's previously registered trademark CANCIDAS as to be likely, when applied to Applicant's goods, to cause confusion, to cause mistake and to deceive with consequent injury to Opposer and the public.

12. Opposer will be damaged by the registration sought by Applicant because such registration would support and assist Applicant in the confusing and misleading use of Applicant's mark, would be likely to cause confusion, or to cause mistake or to deceive or to cause confusion as to connection, association or sponsorship of the Opposer and would give color of exclusive statutory rights to Applicant.

WHEREFORE, Opposer respectfully requests that the opposition to the application for registration of the mark CANDICYD be sustained and that the registration sought by Applicant be refused. Please charge the requisite filing fee in the amount of \$300 from Deposit Account No. 13-2752 in the name of Merck & Co., Inc.

Opposer hereby appoints Debra A. Shelinsky Greene, Kevin M. Dugan, Susan C. Mattson and Robert Peverada, each members of the Bar of the State of New York, and a member of the Bar District of Columbia, or any of them, the addresses of each being c/o Merck & Co., Inc., One Merck Drive, P.O. Box 100, Whitehouse Station, New Jersey 08889-0100, to file the foregoing Notice of Opposition, to prosecute this opposition, with full powers of substitution and revocation, to make all alterations and amendments

therein, and to transact all business and acts in the United States Patent and Trademark Office in connection therewith.

Dated: Whitehouse Station, New Jersey  
November 16, 2007

Merck & Co., Inc.

BY: /debra shelinsky greene/  
Debra A. Shelinsky Greene

For: Opposer