

ESTTA Tracking number: **ESTTA193435**

Filing date: **02/19/2008**

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	Ivax Corporation
Granted to Date of previous extension	02/17/2008
Address	4400 Biscayne Boulevard Miami, FL 33137 UNITED STATES

Attorney information	Lisa A. Pieroni Kirschstein, Ottinger, Israel & Schiffmiller 489 Fifth Avenue New York, NY 10017 UNITED STATES lap@kirschsteinlaw.com Phone:212-697-3750
----------------------	---

Applicant Information

Application No	78886911	Publication date	08/21/2007
Opposition Filing Date	02/19/2008	Opposition Period Ends	02/17/2008
Applicant	Wyeth Five Giralda Farms Madison, NJ 07940 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Veterinary vaccines
--

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3220362	Application Date	04/03/2001
Registration Date	03/20/2007	Foreign Priority Date	NONE
Word Mark	IVAX		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 016. First use: First Use: 2004/01/02 First Use In Commerce: 2004/01/02 Manuals and pamphlets setting forth guidelines for monitoring patients taking antipsychotic medication Class 041. First use: First Use: 2003/06/00 First Use In Commerce: 2003/06/00 Educational services, namely, conducting on-line and in person seminars, classes, lectures and workshops on the subject of pharmaceuticals Class 042. First use: First Use: 2003/06/00 First Use In Commerce: 2003/06/00 Pharmaceutical program monitoring patients taking anti-psychotic medication

U.S. Registration No.	2986008	Application Date	04/03/2001
Registration Date	08/16/2005	Foreign Priority Date	NONE
Word Mark	IVAX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 2002/01/00 First Use In Commerce: 2002/01/00 Scientific instrumentation and electrical apparatus for medical and tehcnical use, namely, immunoassay test systems; metered dose inhalers for therapeutic use, sold empty; medical diagnostic and treatment imaging devices and sterilization units for medical instruments		

U.S. Registration No.	2884993	Application Date	04/03/2001
Registration Date	09/14/2004	Foreign Priority Date	NONE
Word Mark	IVAX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2002/01/00 First Use In Commerce: 2002/01/00 Full line of human pharmaceutical preparations, dietary supplements, herbal, nutritional, and vitamin supplements; preparations for treating cancer; antibiotics; biochemical diagnostic reagents for medical use		

U.S. Registration No.	2834931	Application Date	05/17/2001
Registration Date	04/20/2004	Foreign Priority Date	NONE
Word Mark	IVAX PHARMACEUTICALS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2001/01/00 First Use In Commerce: 2001/01/00 FULL LINE OF HUMAN AND VETERINARY PHARMACEUTICAL PREPARATIONS; DIETARY SUPPLEMENTS; HERBAL, NUTRITIONAL, AND VITAMIN SUPPLEMENTS; PHARMACEUTICAL PREPARATIONS FOR TREATING CANCER; ANTIBIOTICS		

Attachments	76237917#TMSN.gif (1 page)(bytes) 76977567#TMSN.gif (1 page)(bytes) 76976239#TMSN.gif (1 page)(bytes) 76258697#TMSN.gif (1 page)(bytes) Opposition by Ivax.pdf (1 page)(497545 bytes)
-------------	--

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Facsimile or email (by agreement only) on this date.

Signature	/Lisa A. Pieroni/
Name	Lisa A. Pieroni
Date	02/19/2008

Opposer Ivax Corporation, a Florida corporation located and doing business at 4400 Biscayne Boulevard, Florida, 33137, believes that it will be damaged by registration of the mark shown in Application Serial No. 78/886911 and hereby opposes the same. As grounds for this opposition, it is alleged that:

1. Opposer is now, and at all times pertinent hereto has been, engaged in the business of research, development, manufacture and marketing of branded and generic pharmaceutical and veterinary products in the U.S. and internationally. Many years before the filing of Application Serial No. 78/886911, Opposer adopted and used the IVAX trade name and trademark in connection with the advertising, offering for sale and sale of the aforementioned products in interstate commerce throughout the United States and internationally.

2. Opposer filed Application Serial No. 78/886911 on May 18, 2006 for the CALICIVAX mark for goods in Class 5, namely, veterinary vaccines.

3. By virtue of Opposer's continuous use of its IVAX trade name and trademark on goods and in connection with its services throughout the United States, Opposer's IVAX mark has become distinctive of Opposer's products and services as indicating the source or origin of said products and services to consumers and the trade.

4. The goods identified by Applicant as those to which it intends to apply the mark CALICIVAX, namely, "veterinary vaccines," are in the same class of products as those to which Opposer has applied the trademark IVAX.

5. Applicant's trademark CALICIVAX opposed herein is nearly identical in sound, appearance and connotation to the IVAX trademark previously and currently used, registered and applied for by Opposer, that it is likely that when Applicant's said mark is applied to the goods of Applicant, confusion or mistake among purchasers and potential purchasers will result and consumers and the trade are likely to believe that Applicant's trademark CALICIVAX and any products sold thereunder are associated with or sponsored by Opposer.

6. Because of the confusion, mistake and deception which is likely to result from the concurrent use of Opposer's trademark IVAX and Applicant's nearly identical trademark CALICIVAX in connection with related goods, Opposer's business and reputation will be seriously damaged and its rights under its aforesaid trademark will be impaired by registration of the mark published. In addition, Opposer's rights in its said trademark will be diluted by registration of the mark published.

WHEREFORE, Opposer demands judgment sustaining this opposition and adjudging that the Applicant is not entitled to the registration of the trademark for which it has filed Application Serial No. 78/886911.