

ESTTA Tracking number: **ESTTA244007**

Filing date: **10/21/2008**

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	Schering Corporation
Granted to Date of previous extension	10/22/2008
Address	2000 Galloping Hill Road Kenilworth, NJ 07033 UNITED STATES

Attorney information	David J. Kera Oblon, Spivak, McClelland, Maier, & Neustadt, P.C. 1940 Duke Street Alexandria, VA 22314 UNITED STATES tmdocket@oblon.com, dkera@oblon.com, bchapman@oblon.com, obarrett@oblon.com Phone:703-413-3000
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**Applicant Information**

Application No	77390748	Publication date	06/24/2008
Opposition Filing Date	10/21/2008	Opposition Period Ends	10/22/2008
Applicant	CTD Labs LLC 5407 Louetta Ste. E Spring, TX 77379 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 005. First Use: 2007/12/10 First Use In Commerce: 2008/01/02  
All goods and services in the class are opposed, namely: Dietary and nutritional supplements

**Grounds for Opposition**

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

U.S. Registration No.	2468349	Application Date	06/17/1999
Registration Date	07/10/2001	Foreign Priority Date	NONE
Word Mark	NOXAFIL		

Design Mark	<b>NOXAFIL</b>
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2000/11/15 First Use In Commerce: 2000/11/15 ANTIFUNGAL PREPARATION

U.S. Application No.	77007334	Application Date	09/25/2006
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	NOXAFIL
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Design Mark	
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Description of Mark	The mark consists of the terms NOXAFIL with a design element.
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Goods/Services	Class 005. First use: Antifungal preparations Class 016. First use: Printed materials, namely, booklets, pamphlets, brochures, leaflets, and newsletters related to fungal infections and antifungal preparations Class 044. First use: Medical and health information services, namely, providing information related to fungal infections and antifungal preparations; online information services, namely, providing information related to fungal infections and antifungal preparations
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Attachments	75731165#TMSN.gif ( 1 page )( bytes ) 77007334#TMSN.jpeg ( 1 page )( bytes ) 1246-333475US-noo.pdf ( 19 pages )(494756 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	/David J. Kera/ojb/
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Name	David J. Kera
Date	10/21/2008

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

In re:

Trademark: NOXAVOL

Application Serial No.: 77/390,748

Filing Date: February 7, 2008

Applicant: CTD Labs LLC

Published in the Official Gazette on  
June 24, 2008 in Volume 1331, No. 4  
at TM Page 436

_____	)
Schering Corporation,	)
	)
Opposer	)
	)
v.	)
	)
CTD Labs LLC,	)
	)
Applicant	)
_____	)

Opposition No.:  
U.S. Appln. Serial N.: 77/390,748  
Mark: NOXAVOL

Trademark Trial and Appeal Board  
U. S. Patent and Trademark Office  
P. O. Box 1451  
Alexandria, Virginia 22313-1451

**NOTICE OF OPPOSITION**

Schering Corporation, a corporation of the State of New Jersey, located at 2000 Galloping Hill Road, Kenilworth, New Jersey 07033, ("OPPOSER"), believes that it would be damaged by the registration of the trademark NOXAVOL of Application Serial No. 77/390,748 and hereby opposes the registration.

1. CTD Labs LLC, a limited liability company of the State of Texas, located at 5407 Louetta Road, Suite E, Spring, Texas 77379, filed Application Serial No. 77/390,748 to register NOXAVOL as a trademark for dietary and nutritional supplements under the provisions of 15 U.S.C. § 1051(a) on February 7, 2008 with a claim of first use on December 10, 2007.
2. Opposer is the owner of Registration No. 2,468,349 for the trademark NOXAFIL for antifungal preparation, which was issued on July 10, 2001.
3. Opposer attaches hereto a TARR report on Registration No. 2,468,349 and a printout from the Assignment database of the USPTO showing that no assignment has been recorded under the application number which corresponds to Registration No. 2,468,349. Applicant requests that the TARR report (Exhibit 1) and the Assignment report (Exhibit 2) be received in evidence as proof of the registration of NOXAFIL and ownership thereof by Opposer.
4. Opposer is also the applicant in Application Serial No. 77/007,334 filed on September 25, 2006 under the provisions of 15 U.S.C. § 1051(b) to register NOXAFIL & Design, as shown:

The logo for NOXAFIL features a stylized, dark, curved shape resembling a wave or a partial 'N' to the left of the word 'NOXAFIL' in a bold, sans-serif font.

for antifungal preparations, in International Class 005; for printed materials, namely, booklets, pamphlets, brochures, leaflets, and newsletters related to fungal infections and antifungal preparations, in International Class 016; and for medical and health information services, namely, providing information related to fungal infections and antifungal preparations; online information services, namely, providing information related to fungal infections and antifungal preparations, in International Class 044. Application Serial No. 77/007,334 was allowed by a notice of allowance issued on May 29, 2007.

5. Opposer attaches as Exhibit 3 a TARR report on the NOXAFIL & Design Application Serial No. 77/007,334 and a report from the Assignment database of the USPTO showing that no assignment has been recorded for Application Serial No. 77/007,334. Opposer requests that the

TARR report (Exhibit 3) and the Assignment report (Exhibit 4) be received in evidence of proof of the pendency of the application in the name of Opposer.

6. Applicant cannot claim any right in NOXAVOL earlier than the filing date of Opposer's application to register NOXAFIL which issued into Registration No. 2,468,349.

7. Priority is not an issue in this opposition because of Opposer's ownership of Registration No. 2,468,349.

8. Applicant's claimed trademark NOXAVOL is confusingly similar in appearance and sound to Opposer's trademark NOXAFIL.

9. If the trademark NOXAFIL has any meaning and if the claimed trademark NOXAVOL has any meaning, the connotations of the two marks are similar.

10. The commercial impression generated by NOXAVOL is confusingly similar to the commercial impression generated by NOXAFIL.

11. The product identified by Opposer's trademark NOXAFIL is an oral antifungal preparation whose mode of administration is the same as the mode of administration of Applicant's product designated by its claimed trademark NOXAVOL.

12. Applicant's NOXAVOL goods are sold through the same channels of trade as are Opposer's NOXAFIL products to the same class of customers. Since the description of the NOXAVOL products in Application Serial No. 77/390,748 does not encompass pharmaceutical preparations available only on prescription, the NOXAVOL products could be sold without the intervention of any professional advice or counseling.

13. Purchasers of NOXAVOL products could believe that they are promoted, produced, sold, or authorized by Opposer.

14. The directions for use of Opposer's NOXAFIL oral suspension products, as printed on the carton, are "Take with a meal, or a nutritional supplement." Therefore, Opposer's NOXAFIL product could be ingested at the same time that Applicant's NOXAVOL dietary and nutritional supplement is ingested. The use of the NOXAFIL product and the NOXAVOL product by the same person at the same time would enhance the likelihood of confusion or mistake attending the use of the products and any inattention could result in a patient's ingesting a double dose of one product instead of a single dose of each product.

15. The close similarity in appearance, sound, and commercial impression between NOXAVOL and NOXAFIL and the close relationship between the trade channels, users, and circumstances of use of the products designated by the two trademarks would result in a likelihood of confusion or mistake.

16. The registration of NOXAVOL would be in violation of 15 U.S.C. § 1052(d) and would be in derogation of Opposer's superior rights in its trademark NOXAFIL.

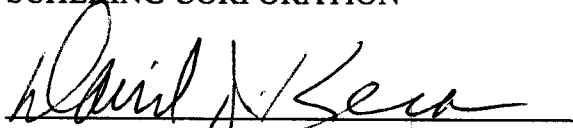
17. On information obtained from a reading of the specimen of record in the USPTO file of Serial No. 77/390,748, Opposer believes and therefore alleges that a product designated by Applicant's claimed trademark NOXAVOL was not sold in commerce, and therefore there was no *bona fide* use in the ordinary course of trade of NOXAVOL, prior to the filing of the application, for which reason Application Serial No. 77/390,748 is *void ab initio*.

18. Opposer requests that this opposition be sustained and that registration be refused on Application Serial No. 77/390,748.

Respectfully submitted,

SCHERING CORPORATION

By:

  
David J. Kera  
Beth A. Chapman  
Oblon, Spivak, McClelland,  
Maier & Neustadt, P.C.  
1940 Duke Street  
Alexandria, Virginia 22314  
(703) 413-3000  
fax (703) 413-2220  
e-mail: [tmdocket@oblon.com](mailto:tmdocket@oblon.com)

Date: October 21, 2008

Of Counsel:

Nancy L. Rowe, Esquire  
Sophie B. Anger, Esquire  
Schering-Plough Corporation  
K-6-1, Law Department  
2000 Galloping Hill Road  
Kenilworth, New Jersey 07033

DJK/ojb {I:\ATTY\DJK\1246-333475US-NOO.DOC}

# **EXHIBIT 1**

**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2008-10-20 17:21:45 ET**

**Serial Number: 75731165 Assignment Information      Trademark Document Retrieval**

**Registration Number: 2468349**

**Mark (words only): NOXAFIL**

**Standard Character claim: No**

**Current Status: A Section 8 affidavit has been accepted.**

**Date of Status: 2007-07-22**

**Filing Date: 1999-06-17**

**Transformed into a National Application: No**

**Registration Date: 2001-07-10**

**Register: Principal**

**Law Office Assigned: LAW OFFICE 105**

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov**

**Current Location: 830 -Post Registration**

**Date In Location: 2007-07-22**

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

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1. SCHERING CORPORATION

**Address:**

SCHERING CORPORATION  
2000 GALLOPING HILL ROAD  
KENILWORTH, NJ 070330530  
United States

**Legal Entity Type: Corporation**

**State or Country of Incorporation: New Jersey**

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**GOODS AND/OR SERVICES**

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**International Class: 005**

**Class Status: Active**

## ANTIFUNGAL PREPARATION

**Basis:** 1(a)**First Use Date:** 2000-11-15**First Use in Commerce Date:** 2000-11-15

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**ADDITIONAL INFORMATION**

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(NOT AVAILABLE)

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2007-07-22 - Section 8 (6-year) accepted

2007-07-11 - Assigned To Paralegal

2007-06-13 - Section 8 (6-year) filed

2007-06-13 - TEAS Section 8 Received

2006-10-10 - Case File In TICRS

2001-07-10 - Registered - Principal Register

2001-02-06 - Allowed for Registration - Principal Register (SOU accepted)

2001-02-02 - Statement of use processing complete

2000-11-22 - Amendment to Use filed

2001-01-27 - Extension 2 granted

2000-11-22 - Extension 2 filed

2000-06-30 - Extension 1 granted

2000-05-10 - Extension 1 filed

2000-03-21 - Notice of allowance - mailed

1999-12-28 - Published for opposition

1999-11-26 - Notice of publication

1999-09-20 - Approved for Pub - Principal Register (Initial exam)

1999-09-17 - Assigned To Examiner

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**ATTORNEY/CORRESPONDENT INFORMATION**

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**Attorney of Record**

NANCY L. ROWE

**Correspondent**

NANCY L. ROWE

SCHERING CORPORATION

K-6-1 M1030

2000 GALLOPING HILL ROAD

KENILWORTH NJ 07033-0530

Phone Number: 908 298-4000

Fax Number: 908 298-4817

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# **EXHIBIT 2**



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**Assignments on the Web > Trademark Query**

**No assignment has been recorded at the USPTO**

**For Serial Number: 75731165**

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350.  
Web interface last modified: October 18, 2008 v.2.0.2

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# **EXHIBIT 3**

**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2008-10-20 17:22:29 ET**

**Serial Number:** 77007334 [Assignment Information](#)      [Trademark Document Retrieval](#)

**Registration Number:** (NOT AVAILABLE)

**Mark**



**(words only):** NOXAFIL

**Standard Character claim:** No

**Current Status:** A request for the second extension of time to file a statement of use has been granted.

**Date of Status:** 2008-05-21

**Filing Date:** 2006-09-25

**The Notice of Allowance Date is:** 2007-05-29

**Transformed into a National Application:** No

**Registration Date:** (DATE NOT AVAILABLE)

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 116

**Attorney Assigned:**  
BROWN BARBARA TROFFKIN

**Current Location:** 700 -Intent To Use Section

**Date In Location:** 2008-05-15

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

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1. Schering Corporation

**Address:**

Schering Corporation  
K-6-1 M1030 2000 Galloping Hill Road  
Kenilworth, NJ 070330530  
United States  
**Legal Entity Type:** Corporation  
**State or Country of Incorporation:** New Jersey  
**Phone Number:** 908 298-4000  
**Fax Number:** 908 298-4817

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**GOODS AND/OR SERVICES**

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**International Class:** 005  
**Class Status:** Active  
Antifungal preparations  
**Basis:** 1(b)  
**First Use Date:** (DATE NOT AVAILABLE)  
**First Use in Commerce Date:** (DATE NOT AVAILABLE)

**International Class:** 016  
**Class Status:** Active  
Printed materials, namely, booklets, pamphlets, brochures, leaflets, and newsletters related to fungal infections and antifungal preparations  
**Basis:** 1(b)  
**First Use Date:** (DATE NOT AVAILABLE)  
**First Use in Commerce Date:** (DATE NOT AVAILABLE)

**International Class:** 044  
**Class Status:** Active  
Medical and health information services, namely, providing information related to fungal infections and antifungal preparations; online information services, namely, providing information related to fungal infections and antifungal preparations  
**Basis:** 1(b)  
**First Use Date:** (DATE NOT AVAILABLE)  
**First Use in Commerce Date:** (DATE NOT AVAILABLE)

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**ADDITIONAL INFORMATION**

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**Color(s) Claimed:** Color is not claimed as a feature of the mark.

**Description of Mark:** The mark consists of the terms NOXAFIL with a design element.

**Design Search Code(s):**

26.01.21 - Circles that are totally or partially shaded.

26.17.09 - Bands, curved; Bars, curved; Curved line(s), band(s) or bar(s); Lines, curved

**Prior Registration Number(s):**

2468349

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2008-05-21 - Extension 2 granted

2008-05-08 - Extension 2 filed

2008-05-08 - TEAS Extension Received

2007-11-15 - Extension 1 granted

2007-10-31 - Extension 1 filed

2007-10-31 - TEAS Extension Received

2007-10-23 - Attorney Revoked And/Or Appointed

2007-10-23 - TEAS Revoke/Appoint Attorney Received

2007-05-29 - Notice of allowance - mailed

2007-03-06 - Published for opposition

2007-02-14 - Notice of publication

2007-01-19 - Law Office Publication Review Completed

2007-01-17 - Amendment From Applicant Entered

2007-01-17 - Communication received from applicant

2007-01-17 - Assigned To LIE

2006-12-15 - PAPER RECEIVED

2006-12-13 - Approved for Pub - Principal Register (Initial exam)

2006-12-06 - Assigned To Examiner

2006-10-03 - Notice Of Design Search Code Mailed

2006-10-02 - New Application Entered In Tram

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**ATTORNEY/CORRESPONDENT INFORMATION**

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**Attorney of Record**

NANCY L. ROWE

**Correspondent**

NANCY L. ROWE

SCHERING CORPORATION

K-6-1 M1030

2000 GALLOPING HILL ROAD

KENILWORTH NJ 07033-0530

Phone Number: 908 298-4000

Fax Number: 908 298-4817

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# **EXHIBIT 4**



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**Assignments on the Web > Trademark Query**

**No assignment has been recorded at the USPTO**

**For Serial Number: 77007334**

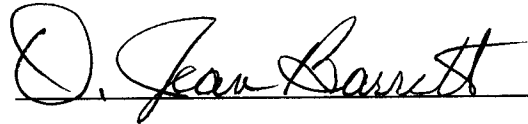
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Web interface last modified: October 18, 2008 v.2.0.2

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing **NOTICE OF OPPOSITION** was served on Applicant, this 21<sup>st</sup> day of October, 2008, by sending same via First Class mail, postage prepaid, to:

CTD Labs LLC  
5407 Louetta Road  
Suite E  
Spring, Texas 77379-7995

  
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