

ESTTA Tracking number: **ESTTA273123**

Filing date: **03/19/2009**

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.		
Entity	Corporation	Citizenship	New Jersey
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 Phone:908-423-5250		
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Applicant Information

Application No	77489767	Publication date	02/24/2009
Opposition Filing Date	03/19/2009	Opposition Period Ends	03/26/2009
Applicant	Emergent BioSolutions Inc. Suite 400 2273 Research Boulevard Rockville, MD 20850 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Pharmaceutical preparations, namely, vaccines, immunotherapeutics, biologics and immunobiotics for prophylactic and therapeutic purposes for the treatment of cancer, allergies, infectious diseases and disorders related to immune modulated diseases and inflammatory conditions; vector preparations for use in making recombinant viruses which are then used in vaccines and vector preparations for direct use in making vaccines

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.	1403736	Application Date	12/20/1985
Registration Date	08/05/1986	Foreign Priority Date	NONE
Word Mark	MEVACOR		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 1985/11/25 First Use In Commerce: 1985/11/25 MEDICINAL PREPARATION FOR USE IN HYPERCHOLESTEROLEMIA THERAPY

Attachments	Mevacor v Mvator us.pdf (5 pages)(23220 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 Overnight Courier on this date.

Signature	/debra shelinsky greene/
Name	Debra A. Shelinsky Greene
Date	03/19/2009

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

In the matter of application Serial No. 77/489767 published in the Official Gazette
on February 24, 2009.

Merck & Co., Inc.

Opposer,

Opposition No. _____

v.

Emergent BioSolutions Inc.

Applicant,

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. 77/489,767 for the designation MVATOR as a trademark for "Pharmaceutical preparations, namely, vaccines, immunotherapeutics, biologics and immunobiotics for prophylactic and therapeutic purposes for the treatment of cancer, allergies, infectious diseases and disorders related to immune modulated diseases and inflammatory conditions; vector preparations for use in making recombinant viruses which are then used in vaccines and vector preparations for direct use in making vaccines (hereinafter "Applicant's Goods") filed June 3, 2008 by

Emergent BioSolutions Inc. and published in The Official Gazette of February 24, 2009, page 309, 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 MEVACOR has been used and continues to be used in interstate commerce for a “medicinal preparation for use in hypercholesterolemia therapy”. Opposer is the owner on the Principal Register of the registered trademark MEVACOR (Reg. No. 1,403,736) for “medicinal preparation for use in hypercholesterolemia therapy”. Registration issued on August 5, 1986, 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 MEVACOR 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 MEVACOR 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 MEVACOR 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 MVATOR as a trademark on June 3, 2008 and under Section 1(b) of the Trademark Law on the basis of intent to use in interstate commerce.
8. Upon information and belief, Applicant has made no use of the designation MVATOR on or in connection with Applicants' goods identified in the application.

9. Upon information and belief, Applicant's goods to be offered for sale under the mark MVATOR are related to the goods sold under Opposer's MEVACOR trademark.
10. Applicant's goods, identified to be offered for sale and for distribution under the designation MVATOR are intended for the same or similar class of purchasers and users as those already familiar with Opposer's registered trademark MEVACOR.
11. Applicant's designation MVATOR so resembles Opposer's previously registered trademark MEVACOR 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 MVATOR 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, Susan C. Mattson, each members of the Bar of the State of New York, and Robert Peverada, a member of the Bar of 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
March 19, 2009

Merck & Co., Inc.

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

For: Opposer