

ESTTA Tracking number: **ESTTA329077**

Filing date: **01/27/2010**

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	DAINIPPON SUMITOMO PHARMA CO., LTD.
Granted to Date of previous extension	01/27/2010
Address	6-8, Dosho-machi 2-chome Chuo-ku Osaka-shi, Osaka, 541-8524 JAPAN

Attorney information	Curtis B. Hamre Hamre, Schumann, Mueller & Larson, P.C. P.O. Box 2902 Minneapolis, MN 55402 UNITED STATES mail@hsml.com Phone:612.455.3800
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Applicant Information

Application No	77631052	Publication date	09/29/2009
Opposition Filing Date	01/27/2010	Opposition Period Ends	01/27/2010
Applicant	Acorda Therapeutics, Inc. 15 Skyline Drive Hawthorne, NY 10532 UNITED STATES		

Goods/Services Affected by Opposition


Class 005. All goods and services in the class are opposed, namely: Pharmaceutical and biological preparations used in the treatment of spinal cord injuries, multiple sclerosis and other neurological disorders or conditions
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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. Application No.	77349347	Application Date	12/11/2007
Registration Date	NONE	Foreign Priority Date	11/07/2007
Word Mark	AMRYA		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: Pharmaceutical preparations, namely, anticancer preparations, anticancer antibiotics, and pharmaceutical preparations for the treatment of cancer

Attachments	77349347#TMSN.jpeg (1 page)(bytes) signed NOO.pdf (6 pages)(126064 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	/Curtis B. Hamre/
Name	Curtis B. Hamre
Date	01/27/2010

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

Dainippon Sumitomo Pharma Co., Ltd.)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	
Acorda Therapeutics, Inc.)	Mark: AMAYA
)	
Applicant)	Serial No.: 77-631,052

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

NOTICE OF OPPOSITION

Dainippon Sumitomo Pharma Co., Ltd., a Japanese corporation, located and doing business at 6-8, Dosho-Machi 2-Chome, Chuo-Ku, Osaka-Shi, Osaka 541-8524, Japan, (hereinafter "Opposer"), believes it would be damaged and injured by registration of the mark AMAYA for "pharmaceutical and biological preparations used in the treatment of spinal cord injuries, multiple sclerosis and other neurological disorders or conditions" in International Class 5, as shown in Application Serial No. 77-631,052, filed on December 11, 2008, by Acorda Therapeutics, Inc. (hereinafter "Applicant"), published for opposition on September 29, 2009.

Opposer alleges, solely for the purpose of this proceeding, as grounds for Opposition, the following:

1. Applicant seeks to register AMAYA for "pharmaceutical and biological preparations used in the treatment of spinal cord injuries, multiple sclerosis and other

neurological disorders or conditions” in the United States in International Class 5, based upon intent to use.

2. Opposer produces and/or sells high-quality pharmaceutical products in the United States and worldwide, via its subsidiaries and licensees. Opposer engages in pharmaceutical research and development activities to achieve the goal of improved health.

3. Some of Opposer’s products may be used in the treatment of neurological disorders or conditions.

4. The AMAYA and AMRYA marks are associated with the same type of goods: pharmaceutical preparations available with a prescription. The goods are marketed to the same customers in the same trade channels. The marks are highly similar and have the same connotation.

5. Upon information and belief, Applicant has not used the AMAYA trademark anywhere in the United States, or in commerce, prior to the Applicant’s filing date.

6. Upon information and belief, Applicant is not currently using the AMAYA trademark anywhere in the United States, or in commerce.

7. Opposer is the owner of U.S. Trademark Serial No. 77-349,347 for AMRYA for “pharmaceutical preparations, namely, anticancer preparations, anticancer antibiotics, and pharmaceutical preparations for the treatment of cancer” in International Class 5. Opposer’s application is valid and subsisting.

8. Opposer's application is based on intent to use and foreign registration. Opposer's U.S. filing date for AMRYA is December 11, 2007, and Opposer's U.S. application claims priority from Japanese Trademark Registration No. 5128086 filed November 7, 2007. Opposer's rights in the AMRYA trademark predate Applicant's rights in the AMAYA trademark.

9. Opposer's AMRYA mark is inherently distinctive.

10. Upon information and belief, Applicant's goods are or will be offered to the same class of consumers as those that receive Opposer's goods, and are closely related to or directly competitive with those offered by Opposer.

11. By virtue of Opposer's subsidiary and licensee's efforts, and the expenditure of considerable sums for promotional activities, and by virtue of the excellence of Opposer's subsidiary and licensee's goods, Opposer has gained a valuable reputation for its products.

12. Applicant's AMAYA mark "so resembles a mark . . . previously used in the United States by another and not abandoned, as to be likely, when applied to the goods of the Applicant, to cause confusion, or to cause mistake, or to deceive." 15 U.S.C. §1052(d).

13. Applicant's AMAYA mark consists of deceptive matter and/or falsely suggests a connection with Opposer. 15 U.S.C. §1052(a).

14. Upon information and belief, Applicant adopted its AMAYA mark and applied to register the mark with actual and/or constructive prior notice of Opposer's trademark AMRYA.

15. Applicant adopted the AMAYA term and applied to register the mark without the approval, authorization or acquiescence of Opposer.

16. If the Applicant is permitted to use and register its mark, confusion in the trade resulting in damage and injury to Opposer would be caused and would result by reason of the substantial similarity between Applicant's AMAYA mark and Opposer's AMRYA mark.

17. If Applicant is granted registration of the mark herein opposed, it would thereby obtain at least a prima facie exclusive right to the use of its alleged mark. Such registration would be a source of further damage and injury to Opposer.

18. For the reasons set forth in the foregoing paragraphs, Applicant is not entitled to register its mark, and the application should be denied in accordance with Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d).

WHEREFORE, Opposer asks that its opposition to Serial No. 77-631,052 be sustained and that the registration of the AMAYA mark set forth therein be refused. Opposer requests that final judgment be entered in favor of Opposer (an intent-to-use-applicant) after Opposer obtains a U.S. registration for its AMRYA mark. Please direct all correspondence to the attention of Curtis B. Hamre:

Hamre, Schumann, Mueller & Larson P.C.
P.O. Box 2902-0902
Minneapolis, MN 55402
612.455.3800

Opposer hereby appoints Curtis B. Hamre, Reg. No. 29,165; Douglas P. Mueller, Reg. No. 30,300; James A. Larson, Reg. No. 40,443; and Sarah G. Voeller, as attorneys with the full power to represent the Opposer in connection with this opposition.

Please charge Deposit Account No. 50-3478 in the amount of \$300.00 for the required Notice of Opposition fee. Please charge any excess fees or credit any overpayment to the deposit account of Opposer's counsel: Deposit Account No. 50-3478.

Respectfully submitted,

Dainippon Sumitomo Pharma Co., Ltd.

By its attorneys,



Curtis B. Hamre
Sarah G. Voeller
Hamre, Schumann, Mueller & Larson P.C.
P.O. Box 2902
Minneapolis, MN 55402
612.455.3800

CERTIFICATE OF SERVICE

I hereby certify that this NOTICE OF OPPOSITION is being deposited with the United States Postal Service, first class mail, in an envelope addressed to Applicant:

Michael J. Leonard
Pepper Hamilton LLP
3000 Eighteenth and Arch Sts
3000 Two Logan Sq.
Philadelphia, PA 19103

on this 27th day of January, 2010.

