

ESTTA Tracking number: **ESTTA333990**

Filing date: **02/24/2010**

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	Ark Therapeutics Limited
Granted to Date of previous extension	02/28/2010
Address	79 New Cavendish Street London W1W 6XB, UNITED KINGDOM
Attorney information	Cynthia C. Weber Sughrue Mion, PLLC 2100 Pennsylvania Avenue NW Washington, DC 20037 UNITED STATES cweber@sughrue.com, llindquist@sughrue.com, mwhite@sughrue.com Phone:2026637927

Applicant Information

Application No	79058308	Publication date	09/01/2009
Opposition Filing Date	02/24/2010	Opposition Period Ends	02/28/2010
International Registration No.	0975870	International Registration Date	02/12/2008
Applicant	Galenica AG Untermattweg 8 CH-3001 Bern, SWITZERLAND		

Goods/Services Affected by Opposition

<p>Class 005. All goods and services in the class are opposed, namely: Pharmaceutical and veterinary preparations for the treatment of immunologic diseases, namely, auto immune diseases; pharmaceuticals for the treatment of acute or chronic conditions or consequences of or associated with acute or chronic renal disease, namely, acute renal insufficiency, intrinsic kidney disease, glomerulonephritis, tubular disorders, and tubulointerstitial diseases, vasculitis of the kidney, vascular injury to the kidney, infection related kidney disorders, kidney neoplasms, congenital and genetic disorders, cystic disorders of the kidney, systemic diseases affecting the kidney, drugs, contrast agents, and toxin damage to the kidney; pharmaceutical preparations for dialysis and conditions associated with dialysis; pharmaceutical preparations for transplantation and transplant related conditions affecting the kidney; preparations used to treat patients suffering from iron deficiency anemia; sanitary preparations for medical purposes, namely, parapharmaceutical products in the nature of surgical dressings and wound dressings; dietetic foods adapted for medical use, food for babies; medical plasters, materials for dressings, namely, surgical dressings and wound dressings; material for stopping teeth, dental wax; all purpose disinfectants</p>
--

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	78253570	Application Date	05/23/2003
Registration Date	NONE	Foreign Priority Date	05/22/2003
Word Mark	VITOR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: (Based on Intent to Use) PHARMACEUTICAL PREPARATIONS AND THERAPEUTIC AGENTS FOR TREATING MUSCLE WASTING; PHARMACEUTICAL PREPARATIONS AND THERAPEUTIC AGENTS FOR TREATING CANCER AND MUSCLE WASTING IN CANCER; PHARMACEUTICAL PREPARATIONS AND THERAPEUTIC AGENTS FOR TREATING LIPODYSTROPHY AND OTHER METABOLIC CONDITIONS ASSOCIATED WITH THE USE OF ANTI-HIV THERAPY; PHARMACEUTICAL PREPARATIONS AND THERAPEUTIC AGENTS FOR INCREASING THE EFFICIENCY OF MUSCLE CELL ENERGY PRODUCTION(Based on 44(d) Priority Application) PHARMACEUTICAL PREPARATIONS AND THERAPEUTIC AGENTS FOR TREATING MUSCLE WASTING; PHARMACEUTICAL PREPARATIONS AND THERAPEUTIC AGENTS FOR TREATING CANCER AND MUSCLE WASTING IN CANCER; PHARMACEUTICAL PREPARATIONS AND THERAPEUTIC AGENTS FOR TREATING LIPODYSTROPHY AND OTHER METABOLIC CONDITIONS ASSOCIATED WITH THE USE OF ANTI-HIV THERAPY; PHARMACEUTICAL PREPARATIONS AND THERAPEUTIC AGENTS FOR INCREASING THE EFFICIENCY OF MUSCLE CELL ENERGY PRODUCTION		

Attachments	400166B Notice of Opposition (February 24, 2010) VIFOR PHARMA.PDF (5 pages)(174123 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 First Class Mail on this date.

Signature	/Cynthia C. Weber/
Name	Cynthia C. Weber
Date	02/24/2010

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

In re the Matter of

Applicant: Galenica AG

Serial No.: 79/058,308

Mark: VIFOR PHARMA

Published: September 1, 2009

Ark Therapeutics Limited, <p style="text-align:center">v.</p> Galenica AG,	Opposer, Applicant.
---	--------------------------------

Opposition No.:

NOTICE OF OPPOSITION

Ark Therapeutics Limited, a company of the United Kingdom, with an address at 79 New Cavendish Street, London W1W 6XB, United Kingdom, believes that it will be damaged by registration of the mark VIFOR PHARMA shown in Application Serial No. 79/058,308 and hereby opposes same.

As grounds for the opposition, it is alleged that:

1. Ark Therapeutics Limited (hereinafter "Opposer") offers pharmaceutical preparations and related goods and services.
2. Opposer has applied to register the mark VITOR for class 5 goods identified as "pharmaceutical preparations and therapeutic agents for treating muscle wasting; pharmaceutical preparations and therapeutic agents for treating cancer and muscle wasting in cancer;

pharmaceutical preparations and therapeutic agents for treating lipodystrophy and other metabolic conditions associated with the use of anti-hiv therapy; pharmaceutical preparations and therapeutic agents for increasing the efficiency of muscle cell energy production; pharmaceutical preparations and therapeutic agents for treating muscle wasting; pharmaceutical preparations and therapeutic agents for treating cancer and muscle wasting in cancer; pharmaceutical preparations and therapeutic agents for treating lipodystrophy and other metabolic conditions associated with the use of anti-hiv therapy; pharmaceutical preparations and therapeutic agents for increasing the efficiency of muscle cell energy production.” Opposer’s application, Serial No. 78/253,570, is suspended pending receipt of a copy of the CTM application on which a portion of the application is based.

3. Opposer filed Application Serial No. 78/253,570 on May 23, 2003 based on its intent to use the mark in connection with all the goods listed in the application and based on claim of priority, Section 44(d), relying on CTM Application No. 003195732 with a filing date of May 22, 2003. Specifically, Opposer claimed priority under Section 44(d) for the following goods in its application: pharmaceutical preparations and therapeutic agents for treating muscle wasting; pharmaceutical preparations and therapeutic agents for treating cancer and muscle wasting in cancer; pharmaceutical preparations and therapeutic agents for treating lipodystrophy and other metabolic conditions associated with the use of anti-hiv therapy; pharmaceutical preparations and therapeutic agents for increasing the efficiency of muscle cell energy production.

4. The application herein opposed seeks to register the mark VIFOR PHARMA in International Class 5 for “Pharmaceutical and veterinary preparations for the treatment of immunologic diseases, namely, auto immune diseases; pharmaceuticals for the treatment of acute

or chronic conditions or consequences of or associated with acute or chronic renal disease, namely, acute renal insufficiency, intrinsic kidney disease, glomerulonephritis, tubular disorders, and tubulointerstitial diseases, vasculitis of the kidney, vascular injury to the kidney, infection related kidney disorders, kidney neoplasms, congenital and genetic disorders, cystic disorders of the kidney, systemic diseases effecting the kidney, drugs, contrast agents, and toxin damage to the kidney; pharmaceutical preparations for dialysis and conditions associated with dialysis; pharmaceutical preparations for transplantation and transplant related conditions affecting the kidney; preparations used to treat patients suffering from iron deficiency anemia; sanitary preparations for medical purposes, namely, parapharmaceutical products in the nature of surgical dressings and wound dressings; dietetic foods adapted for medical use, food for babies; medical plasters, materials for dressings, namely, surgical dressings and wound dressings; material for stopping teeth, dental wax; all purpose disinfectants". Applicant filed its application on February 12, 2008 through the Madrid Protocol. Application Serial No. 79/058,308 was published for opposition on September 1, 2009. Opposer timely filed extensions of time oppose which was granted until February 28, 2010.

5. The filing date of Opposer's Application Serial No. 78/253,570 predates any date upon which Applicant can rely, and Opposer's claim of priority under Section 44(d) in Application Serial No. 78/253,570 predates any date upon which Applicant can rely. Accordingly, Opposer has priority over Applicant in the United States.

6. Opposer believes and therefore alleges that the use and registration of the trademark VIFOR PHARMA by Applicant will damage Opposer, for the reasons, among others:

- a. That purchasers and persons in the trade will be confused or deceived as to the source and origin of Applicant's goods offered and sold under the mark VIFOR PHARMA; and
- b. Purchasers, persons in the trade and others will assume, contrary to fact, that Applicant's goods are associated with, sponsored by or otherwise related to Opposer.


7. Registration of the mark sought by Applicant in International Class 5 herein is barred by the provisions of Section 2(d) of the Trademark Act of 1946 for the reason that it consists of or comprises a mark which so resembles Opposer's mark in prior pending application Serial No. 78/253,570 as to be likely, when applied to the goods of Applicant, to cause confusion, mistake or deception.

WHEREFORE, Opposer respectfully prays that the registration sought by Applicant be refused and that this Opposition be sustained.

Please charge the \$300 opposition fee to the undersigned's Deposit Account No. 19-4880. Please charge any deficiency or credit any overpayment to Deposit Account No. 19-4880 as well.

Respectfully submitted,

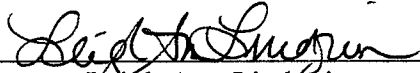
ARK THERAPEUTICS LIMITED

By: 
Cynthia Clarke Weber
Leigh Ann Lindquist
SUGHRUE MION, PLLC
2100 Pennsylvania Avenue, N.W.
Washington, D.C. 20037-3202
Phone: (202) 663-7927
Fax: (202) 331-4308
Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing NOTICE OF OPPOSITION has been mailed this 24th day of February, 2010, by first-class mail, postage prepaid to:

Lisa Adams
Nutter McClennen & Fish
155 Seaport Boulevard
Boston MA 02210



Leigh Ann Lindquist