

ESTTA Tracking number: **ESTTA373027**

Filing date: **10/13/2010**

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	Novartis AG
Granted to Date of previous extension	10/13/2010
Address	4002 Basel, SWITZERLAND

Correspondence information	Maury M. Tepper, III Attorney of Record Tepper & Eyster, PLLC 3724 Benson Drive Raleigh, NC 27609 UNITED STATES mtepper@teiplaw.com Phone:9198618903
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**Applicant Information**

Application No	77893681	Publication date	06/15/2010
Opposition Filing Date	10/13/2010	Opposition Period Ends	10/13/2010
Applicant	Acella Pharmaceuticals, LLC 9005 Westside Parkway Alpharetta, GA 30009 UNITED STATES		

**Goods/Services Affected by Opposition**


Class 005. First Use: 2009/10/30 First Use In Commerce: 2009/10/30  
All goods and services in the class are opposed, namely: vitamin supplements as a component of prenatal vitamins

**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.	2678068	Application Date	07/12/2001
Registration Date	01/21/2003	Foreign Priority Date	06/25/2001
Word Mark	XOLAIR		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: pharmaceutical preparations for use in the treatment of rhinitis

U.S. Registration No.	2707154	Application Date	02/20/2002
Registration Date	04/15/2003	Foreign Priority Date	NONE
Word Mark	XOLAIR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: pharmaceutical preparations for use in the treatment of rhinitis		

U.S. Registration No.	3086141	Application Date	09/05/2003
Registration Date	04/25/2006	Foreign Priority Date	NONE
Word Mark	XOLAIR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2003/12/31 First Use In Commerce: 2003/12/31 Pharmaceutical preparations for the treatment of IgE-mediated disorders		

U.S. Registration No.	2998978	Application Date	07/02/2003
Registration Date	09/20/2005	Foreign Priority Date	NONE
Word Mark	XOLAIR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2003/07/07 First Use In Commerce: 2003/07/07 pharmaceutical preparations for use in the treatment of asthma		

Attachments	78073589#TMSN.gif ( 1 page )( bytes ) XOLAFIN Opposition.pdf ( 3 pages )(434822 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	/Maury M. Tepper, III/
Name	Maury M. Tepper, III
Date	10/13/2010

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

In the matter of Trademark Application Serial No. 77/893,681  
Filed December 15, 2009  
For the Mark **XOLAFIN**

Novartis AG,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No.
	)	
Acella Pharmaceuticals, LLC,	)	
	)	
Applicant.	)	

**NOTICE OF OPPOSITION**

Opposer Novartis AG, CH-4002, Basel, Switzerland, believes that it will be damaged by registration of the mark shown in Serial No. 77/893,681, and hereby opposes the same.

The grounds for opposition are as follows:

1. Applicant filed Application Serial No. 77/893,681 on or about December 15, 2009 to register the mark XOLAFIN in connection with "vitamin supplements as a component of prenatal vitamins" ("Applicant's Mark").
2. Opposer will be damaged by the registration of Applicant's Mark.
3. Opposer is the owner of the following: United States Trademark Reg. Nos. 2,678,068; 2,707,154; 3,086,141; 2,998,978 filed as early as July 12, 2001, for the mark XOLAIR in connection with "Pharmaceutical preparations for the treatment of rhinitis;" "Pharmaceutical preparations for the treatment of IgE-mediated disorders" and "Pharmaceutical preparations for the treatment of asthma" ("Opposer's Mark").
4. Opposer's Mark is in use in connection with an FDA-approved pharmaceutical preparation and is the subject of significant marketing efforts.

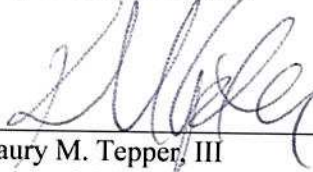
5. The filing date for Opposer's Mark (July 12, 2001), and the dates of first use for same (at least as early as 2003) are both prior to any priority date that Applicant can claim relating to Applicant's Mark.

6. Applicant's Mark so resembles Opposer's Mark as to be likely to cause confusion or to cause mistake or to deceive.

WHEREFORE, Opposer prays that said application Serial No. 77/893,681 be rejected, that no registration be issued, and that this Opposition be sustained in favor of Opposer.

This the 13th day of October, 2010.

Respectfully submitted,



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Attorneys for Opposer

**CERTIFICATE OF FILING**

I do hereby certify that on October 13, 2010, I filed via electronic means (ESTTA) this  
NOTICE OF OPPOSITION with the:

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

With a copy via First Class Mail to:

MARVIN ANDREW RIDDLE  
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ATLANTA, GA 30342-1380



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Amy L. Thompson, Senior Paralegal