

**UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451**

Mailed: August 3, 2011

Opposition No. 91196900

Novartis AG

v.

Acella Pharmaceuticals, LLC

**Robert H. Coggins,
Interlocutory Attorney:**

On July 14, 2011, applicant filed a stipulated, proposed amendment to application Serial No. 77893681, and a withdrawal with prejudice of the opposition contingent upon entry of the amendment. By the proposed amendment applicant seeks to amend the mark by substituting the letter Z for the letter X such that the mark would change from XOLAFIN to ZOLAFIN.

Trademark Rule 2.72(a) states that an applicant may amend the drawing of the mark only if the proposed amendment does not materially alter the mark on the drawing filed with the original application, and the specimens of record support the proposed amendment. The proposed amendment from XOLAFIN to ZOLAFIN is unacceptable under Trademark Rule 2.72(a)(2) because it materially alters the drawing of the mark filed with the original application, and is unacceptable under

Trademark Rule 2.72(a)(1) because the specimen of record does not support use of the mark in the proposed amendment.

As to the issue under Trademark Rule 2.72(a)(2), the motion argues, *inter alia*, that the substitution of the letter "Z" for the letter "X" in the mark XOLAFIN does not materially alter the mark because the letters "X" and "Z" are phonetic equivalents, such a substitution would not change the sound of the mark, neither XOLAFIN nor ZOLAFIN is a recognized word, and the letters "X" and "Z" are obscure. Although applicant cites three cases to support the amendment, applicant did not cite a case specifically on point (i.e., where a single letter was substituted for another). Inasmuch as XOLAFIN and ZOLAFIN are not recognized words, there can be no "correct" pronunciation for them and therefore no affirmative statement that use of an "X" or "Z" would lead to identical pronunciations. See *Centraz Industries Inc. v. Spartan Chemical Co.*, 77 USPQ2d 1698, 1701 (TTAB 2006) (there "is no correct pronunciation of a trademark, and it obviously is not possible for a trademark owner to control how purchasers will vocalize its mark"). See also *In re Teradata Corporation*, 223 USPQ 361, 362 (TTAB 1984) ("as we have said many times, there is no 'correct' pronunciation of a trademark"). Moreover, applicant did not provide any support for its contention that the letters "X" and "Z" are "obscure," or that the letters "X" and "Z" either can be or always are phonetic equivalents.

As to the issue under Trademark Rule 2.72(a)(1), the motion is silent.

Accordingly, applicant's motion to amend is denied. The contingency in opposer's withdrawal not having been met, the opposition is not withdrawn.

Dates remain as set. For the parties' convenience, those dates are as follows:

Discovery Closes	8/20/2011
Plaintiff's Pretrial Disclosures	10/4/2011
Plaintiff's 30-day Trial Period Ends	11/18/2011
Defendant's Pretrial Disclosures	12/3/2011
Defendant's 30-day Trial Period Ends	1/17/2012
Plaintiff's Rebuttal Disclosures	2/1/2012
Plaintiff's 15-day Rebuttal Period Ends	3/2/2012

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125. Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.