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

Proceeding	91196900
Party	Defendant Acella Pharmaceuticals, LLC
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Date	01/21/2011
Attachments	012111-7 Answer to Notice of Opposition XOLAFIN.pdf (4 pages)(109014 bytes)

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

In the matter of Application Serial. No. 77/893,681
TM: XOLAFIN

NOVARTIS AG)	
)	
Opposer,)	
)	Opposition No. 91196900
v.)	
)	
ACELLA PHARMACEUTICALS, LLC)	
)	
Applicant.)	

ANSWER TO NOTICE OF OPPOSITION

Comes now the applicant, Acella Pharmaceuticals, LLC (“Applicant”), and submits its Answer to the Notice of Opposition filed by Novartis AG (“Opposer”) against Applicant’s application for registration of the mark XOLAFIN, Serial No. 77/893,681, filed December 15, 2009, and published in the Official Gazette on June 15, 2010, by numbered paragraphs as follows:

1. Admitted.
2. Denied.
3. Applicant admits that the Federal Trademark Registrations listed in Paragraph 3 of Opposer’s Notice of Opposition are listed in the records of the United States Patent and Trademark Office as “live” registrations as of January 21, 2011 and are shown as being owned in the name of Opposer. Applicant states that the contents of the Federal Trademark Registrations listed in Paragraph 3 of Opposer’s Notice of Opposition speak for themselves. Applicant denies the allegations of this Paragraph to the extent that they mischaracterize Opposer’s registrations or are being alleged as evidence of any facts stated therein.

4. Applicant is without sufficient information to admit or deny the allegations of Paragraph 4 of Opposer's Notice of Opposition, therefore, the allegations are denied.

5. Applicant is without sufficient information to admit or deny the allegations of Paragraph 5 of Opposer's Notice of Opposition, therefore, the allegations are denied.

6. Denied.

Applicant denies that Opposer is entitled to any of the relief sought in the Notice of Opposition or to any relief whatsoever. Each and every allegation contained in the Notice of Opposition which has not heretofore been specifically admitted or denied is generally denied.

AFFIRMATIVE DEFENSES

1. The Notice of Opposition fails to state a claim upon which relief may be granted.

2. The overall impression created by Applicant's XOLAFIN mark and Opposer's asserted marks in the marketplace do not create a likelihood of confusion or a tendency to cause mistake or to deceive, due among other things to the differences in the marks, the differences in the goods, the differences with respect to the trade channels, and the differences in and sophistication of the customers.

3. The overall impression created by Applicant's XOLAFIN mark and Opposer's asserted marks in the marketplace do not create a likelihood of dilution or blurring, due among other things to the differences in the marks, the differences in the goods, the differences with respect to the trade channels, and the differences in and sophistication of the customers.

WHEREFORE, having fully answered, Applicant denies that Opposer could or would be damaged by the allowance of the present application for trademark registration and prays that the Notice of Opposition be dismissed and a certificate of registration granted to Applicant in due course.

Respectfully submitted,

MILLER & MARTIN PLLC

By: Charles W. Forlidas

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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that the preceding Answer to Notice of Opposition is being electronically filed with the United States Patent Office through its ESTTA electronic filing system on this 21st day of January, 2011.

Charles W. Forlidas
Charles W. Forlidas

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Answer to Notice of Opposition has been served on Opposer's attorney by mailing a copy thereof via First Class Mail, postage prepaid, on this 21st day of January, 2011 addressed as follows:

Maury M. Tepper, III
Tepper & Eyster, PLLC
3724 Benson Drive
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By: Charles W. Forlidas
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