

ESTTA Tracking number: **ESTTA409053**

Filing date: **05/13/2011**

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	MSP Singapore Company, LLC
Granted to Date of previous extension	05/18/2011
Address	600 North Bridge Road, Unit 10 - 03/10 Singapore, 188778 SINGAPORE
Attorney information	DEBRA A SHELINSKY GREENE MERCK & CO INC ONE MERCK DRIVE WHITEHOUSE STATION, NJ 08889-0100 UNITED STATES debra.greene@merck.com, TrademarkUS1@merck.com, lynn.brumfield@merck.com

Applicant Information

Application No	79075436	Publication date	01/18/2011
Opposition Filing Date	05/13/2011	Opposition Period Ends	05/18/2011
International Registration No.	1019675	International Registration Date	10/14/2009
Applicant	XELLIA PHARMACEUTICALS ApS Dalslandsgade 11 Copenhagen S, DK2300 DENMARK		

Goods/Services Affected by Opposition

<p>Class 001. All goods and services in the class are opposed, namely: Chemicals used in industry and science, namely, antibiotic, anti-infective, anti-viral, anti-fungal and anti-inflammatory active pharmaceutical ingredients for use in the pharmaceutical and veterinary industry; bulk chemicals for use in the manufacture of pharmaceutical and veterinary preparations</p>
<p>Class 005. All goods and services in the class are opposed, namely: Pharmaceutical and veterinary preparations, namely, anti-infective, anti-viral, antibiotic, anti-fungal and anti-inflammatory preparations in bulk and finished dosage form for medical and veterinary purposes, not for use as finished diagnostic preparations; sanitary preparations for medical purposes, not for use as finished diagnostic preparations; dietetic substances adapted for medical use, namely, foods; disinfectants for sanitary and medical purposes; preparations for destroying vermin; fungicides; herbicides</p>
<p>Class 010. All goods and services in the class are opposed, namely: Medical apparatus for introducing</p>

pharmaceutical preparations into the human body

Class 042.

All goods and services in the class are opposed, namely: Medical and scientific research services in the field of anti-infectives, anti-virals, antibiotics, anti-fungals and anti-inflammatories; pharmaceutical, pharmaceutical ingredient and chemical development services; chemical and pharmaceutical research services and pharmaceutical drug development services; design and development of computer software for use in relation to medical services

Grounds for Opposition

Priority and likelihood of confusion

Trademark Act section 2(d)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2787086	Application Date	08/30/2001
Registration Date	11/25/2003	Foreign Priority Date	NONE
Word Mark	ZETIA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2002/11/08 First Use In Commerce: 2002/11/08 Cardiovascular pharmaceutical preparations		

Attachments

XELLIA-US- opposition notice.pdf (5 pages)(22529 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 Overnight Courier on this date.

Signature	/debra shelinsky greene/
Name	DEBRA A SHELINSKY GREENE
Date	05/13/2011

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

In the matter of application Serial No. 79/075,436 published in the Official Gazette on January 18, 2011.

MSP Singapore Company, LLC

Opposer,

Opposition No. _____

v.

Xellia Pharmaceuticals ApS

Applicant,

NOTICE OF OPPOSITION

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

MSP Singapore Company, LLC, a limited liability company duly organized and existing under the laws of the State of Delaware, with its principal place of business located at 600 North Bridge Road, Unit 10 - 03/10, Parkview Square, Singapore 188778, believes it will be damaged by the registration of Application Serial No. 79/075,436 for the designation XELLIA as a trademark for "Chemicals used in industry and science, namely, antibiotic, anti-infective, anti-viral, anti-fungal and anti-inflammatory active pharmaceutical ingredients for use in the pharmaceutical and veterinary industry; bulk chemicals for use in the manufacture of pharmaceutical and veterinary preparations (Class 001); Pharmaceutical and veterinary preparations, namely, anti-infective, anti-viral, antibiotic, anti-fungal and anti-inflammatory preparations in bulk and finished dosage form for medical and veterinary purposes, not

for use as finished diagnostic preparations; sanitary preparations for medical purposes, not for use as finished diagnostic preparations; dietetic substances adapted for medical use, namely, foods; disinfectants for sanitary and medical purposes; preparations for destroying vermin; fungicides; herbicides (Class 005); Medical apparatus for introducing pharmaceutical preparations into the human body (Class 010); Medical and scientific research services in the field of anti-infectives, anti-virals, antibiotics, anti-fungals and anti-inflammatories; pharmaceutical, pharmaceutical ingredient and chemical development services; chemical and pharmaceutical research services and pharmaceutical drug development services; design and development of computer software for use in relation to medical services (Class 042)” (hereinafter “Applicant’s Goods and Services”) filed October 14, 2009 by Xellia Pharmaceuticals ApS and published in The Official Gazette of January 18, 2011, page TM 184, and having previously been granted an extension of time to oppose, hereby opposes the same.

The grounds for opposition are as follows:

1. Opposer is a leading research driven pharmaceutical products and services company which discovers, develops, manufactures and markets a broad range of innovative medical and pharmaceutical products and services designed to improve and preserve human health.
2. Since long prior to the filing date of the application herein opposed, Opposer has been a world business leader which distributes and sells medical and pharmaceutical preparations throughout the United States and the world.

3. Since long prior to the filing date of the application herein opposed, the Opposer has used and continues to use the trademark ZETIA for cardiovascular pharmaceutical preparations. Opposer is the owner on the Principal Register of the registered trademark ZETIA (Reg. No. 2,787,086) for “cardiovascular pharmaceutical preparations”. Registration issued on November 25, 2003, is in full force and effect, and has become incontestable under the provisions of Section 15 of the Lanham Act (15 U.S.C. Section 1065).
4. Since long prior to the filing date of the application herein opposed, Opposer has distributed and offered for sale and sold pharmaceutical preparations bearing the trademark ZETIA which identifies and distinguishes its pharmaceutical preparations from those of others.
5. Since long prior to the filing date of the Applicant, Opposer has made use of the trademark ZETIA by applying it to labeling, packaging, product literature and other materials distributed by Opposer in interstate commerce.
6. As a result of the quality of Opposer’s products and their widespread use in the healthcare industry, the trademark ZETIA has come to have great value to Opposer and the health care industry has come to use the mark to identify and distinguish Opposer’s goods from those of others.
7. Upon information and belief, Applicant filed its application to register the designation XELLIA as a trademark on October 14, 2009 under Section 66(a) of the Trademark Law.

8. Upon information and belief, Applicant has made no use in the United States of the designation XELLIA on or in connection with Applicant's Goods and Services identified in the application.
9. Upon information and belief, Applicant's Goods and Services to be offered for sale under the mark XELLIA are related to the goods on and in connection with which Opposer uses its registered trademark ZETIA.
10. Applicant's Goods and Services , identified to be offered for sale and for distribution under the designation XELLIA are intended for the same or similar class of purchasers and users as those already familiar with Opposer's registered trademark ZETIA.
11. Applicant's designation XELLIA so resembles Opposer's previously used, registered trademark ZETIA as to be likely, when applied to Applicant's Goods and Services , to cause confusion, to cause mistake and to deceive with consequent injury to Opposer and the public.
12. Opposer will be damaged by the registration sought by Applicant because such registration would support and assist Applicant in the confusing and misleading use of Applicant's mark, would be likely to cause confusion, or to cause mistake or to deceive or to cause confusion as to connection, association or sponsorship of the Opposer and would give color of exclusive statutory rights to Applicant.

WHEREFORE, Opposer respectfully requests that the opposition to the application for registration of the mark XELLIA be sustained and that the registration

sought by Applicant be refused. Please charge the requisite filing fee in the amount of \$1200 from Deposit Account No. 13-2752 in the name of Merck & Co., Inc.

Opposer hereby appoints Debra A. Shelinsky Greene and Sophie B. Anger, each members of the Bar of the State of New York, Robert Peverada, a member of the Bar of the District of Columbia, and Nancy L. Rowe, a member of the Bar of the State of New Jersey, or any of them, the addresses of each being c/o Merck & Co., Inc., One Merck Drive, P.O. Box 100, Whitehouse Station, New Jersey 08889-0100, to file the foregoing Notice of Opposition, to prosecute this opposition, with full powers of substitution and revocation, to make all alterations and amendments therein, and to transact all business and acts in the United States Patent and Trademark Office in connection therewith.

Dated: Whitehouse Station, New Jersey
May 13, 2011

By: /debra shelinsky greene/
Debra A. Shelinsky Greene

For: Opposer