

ESTTA Tracking number: **ESTTA434756**

Filing date: **10/10/2011**

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	Merck Sharp & Dohme Corp.
Granted to Date of previous extension	10/12/2011
Address	One Merck Drive Whitehouse Station, NJ 08889-0100 UNITED STATES

Attorney information	Debra A. Shelinsky Greene Merck Sharp & Dohme Corp. One Merck Drive Whitehouse Station, NJ 08889-0100 UNITED STATES TrademarkUS@merck.com, debra_greene@merck.com Phone:732-594-1657
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Applicant Information

Application No	85234691	Publication date	06/14/2011
Opposition Filing Date	10/10/2011	Opposition Period Ends	10/12/2011
Applicant	Core Oncology, Inc. Island Corporate Center, Suite 650 7525 SE 24th Street Mercer Island, WA 98040 UNITED STATES		

Goods/Services Affected by Opposition

Class 010. All goods and services in the class are opposed, namely: Localizing and stabilizing template and armature for breast microseed treatment
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2417822	Application Date	05/15/1997
Registration Date	01/02/2001	Foreign Priority Date	NONE
Word Mark	EMEND		

Design Mark	EMEND
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2000/06/12 First Use In Commerce: 2000/06/12 antiemetic preparations

Attachments	75292656#TMSN.gif (1 page)(bytes) Notice of Opposition - EMEND v. ARTEMEND.pdf (9 pages)(82314 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	/debra shelinsky greene/
Name	Debra A. Shelinsky Greene
Date	10/10/2011

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

In the matter of Trademark Application Serial No. 85/234691
Filed February 4, 2011
For the Trademark: ARTEMEND

Merck Sharp & Dohme Corp.

Opposer,

Opposition No. _____

v.

Core Oncology

Applicant,

Notice of Opposition

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

Merck Sharp & Dohme Corp, a subsidiary of Merck & Co.,
Inc., a corporation duly organized and existing under the
laws of the State of New Jersey, with its principal place of
business located at One Merck Drive, Whitehouse Station, New
Jersey 08889-0100, believes it will be damaged by the
registration of Application Serial No. 85/234691 for the
designation ARTEMEND as a trademark for "Localizing and
stabilizing template and armature for breast microseed

treatment (hereinafter "Applicant's goods") filed February 4, 2011 by Core Oncology and published in The Official Gazette of June 14, 2011, page 591, 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 trademark EMEND has been used and continues to be used in interstate commerce for "antiemetic preparations". Opposer is the owner on the Principal Register of the registered trademark EMEND (Reg. No. 2,417,822) for "antiemetic preparations". Registration issued on January 2, 2001, 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 EMEND 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 EMEND by applying it to labeling, packaging, product literature and other materials distributed in interstate commerce.
6. As a result of the quality of Opposer's products and their widespread use in the health care industry, the trademark EMEND 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 ARTEMEND as a trademark on February 4, 2011 and under Section 1(b) of the Trademark Law on the basis of intent to use in interstate commerce.

8. Upon information and belief, Applicant has made no use of the designation ARTEMEND on or in connection with Applicants' goods identified in the application.
9. Upon information and belief, Applicant's goods to be offered for sale under ARTEMEND are related to the goods sold under Opposer's EMEND trademark.
10. Applicant's goods identified to be offered for sale and for distribution under the designation ARTEMEND are intended for the same or similar class of purchasers and users as those already familiar with Opposer's registered trademark EMEND.
11. Applicant's designation ARTEMEND so resembles Opposer's previously registered trademark EMEND as to be likely, when applied to Applicant's goods, 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 ARTEMEND be sustained and that the registration sought by Applicant be refused.

Opposer hereby appoints Debra A. Shelinsky Greene, Sophie B. Anger, each members of the Bar of the State of New York and Nancy L. Rowe, member of the Bar of the State of New Jersey, or any of them, the addresses of each being c/o Merck & Co., Inc., 126 E. Lincoln Avenue, P. O. Box 2000, Rahway, New Jersey 07065-0900, 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.

This 10th day of October, 2011.

Respectfully submitted,

By /debra shelinsky greene/
Debra A. Shelinsky Greene
Counsel, Trademarks and Copyrights
Merck & Co., Inc.
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Opposer

Notice of Opposition

Serial No. 85/234691

Page 9

CERTIFICATE OF FILING

I do hereby certify that on October 10, 2011, I filed via electronic means (ESSTA) 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:

Paul A. McLean
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2000 University Avenue
East Palo Alto, CA 94303-2214



Florence Niel Henits - Senior Paralegal