

ESTTA Tracking number: **ESTTA526382**

Filing date: **03/13/2013**

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	Auxilium Pharmaceuticals, Inc.
Granted to Date of previous extension	03/13/2013
Address	640 Lee Road Chesterbrook, PA 19087 UNITED STATES

Attorney information	JAMES R MEYER SCHNADER HARRISON SEGAL & LEWIS LLP 1600 MARKET STREET, SUITE 3600 PHILADELPHIA, PA 19103-7212 UNITED STATES trademarks@schnader.com
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Applicant Information

Application No	85643336	Publication date	11/13/2012
Opposition Filing Date	03/13/2013	Opposition Period Ends	03/13/2013
Applicant	House, Roy E. 19 Tingley Road Morristown, NJ 07960 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Dietary food supplements

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.	3785074	Application Date	09/13/2006
Registration Date	05/04/2010	Foreign Priority Date	NONE
Word Mark	XIAFLEX		

Design Mark	XIAFLEX
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2010/03/04 First Use In Commerce: 2010/03/04 pharmaceutical preparations, namely, collagenase enzyme used to treat fibroproliferative disease conditions such as Dupuytren's contracture, Peyronie's disease and Frozen Shoulder Syndrome also known as Adhesive Capsulitis

Attachments	76665957#TMSN.gif (1 page)(bytes) ZIATREX NOPP.pdf (5 pages)(165890 bytes) XIAFLEX.pdf (2 pages)(212664 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	/JAMES R MEYER/
Name	JAMES R MEYER, ESQ.
Date	03/13/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before the Trademark Trial and Appeal Board**

IN RE: Application No. 85643336
Trademark: ZIATREX & Design
Opposer: Auxilium Pharmaceuticals, Inc.
Applicant: Roy E. House
Published: November 13, 2012
Attorney Docket No: 0014521-0076/US

NOTICE OF OPPOSITION

Commissioner for Trademarks
Alexandria, VA 22313-1451

Dear Sir or Madam:

Auxilium Pharmaceuticals, Inc., a corporation of Delaware having offices at 640 Lee Road, Chesterbrook, PA 19087 (“Auxilium”), believes it will be damaged by the registration of the above identified mark (hereinafter “Applicant’s mark”), and having sought and obtained an extension of the time to file a Notice of Opposition, hereby opposes the same.

The grounds for the opposition are as follows:

1. Auxilium was founded in 1999 to develop and market pharmaceutical products that focus on urology and sexual health. While it remains dedicated to this founding principle, Auxilium’s mission has expanded to include the development and marketing of novel treatment options for many of society’s unmet medical needs.

2. Auxilium's wholly owned subsidiary, Auxilium US Holdings, LLC., is the owner of the XIAFLEX® trademark, which was applied for September 13, 2006 first used in March 2010.

3. The XIAFLEX® mark is registered with U.S. Trademark Office under Registration No. 3,785,074, issued May 4, 2010 for pharmaceutical preparations, namely collagenase enzyme used to treat fibroproliferative disease conditions such as Dupuytren's contracture, Peyronie's disease and Frozen Shoulder Syndrome also known as Adhesive Capsulitis in Class 5. A copy the '074 Registration is attached hereto as Exhibit 1 and incorporated herein by reference.

4. Registration 3,785,074 for Opposer's XIAFLEX® mark is valid and subsisting.

5. Auxilium US Holdings, LLC is the owner of other registrations including the XIAFLEX® mark, namely Registration No. 3,886,633, 3,862,018, 3,884,247 and 4,010,231.

6. On June 5, 2012, Applicant filed its Application SN 85643336 to register ZIATREX & Design as a trademark for dietary food supplements in Class 5.

7. There is no issue as to priority. Auxilium's rights in its XIAFLEX® mark were established long prior to the Applicant's application opposed herein and are senior to those of Applicant.

8. Applicant's ZIATREX mark is similar to Opposer's XIAFLEX® mark in sound, meaning and appearance.

9. Applicant's goods and services are related to Opposer's pharmaceutical preparations on which it uses its XIAFLEX® mark.

10. Applicant's goods and services will be sold and rendered through similar channels of trade in which Opposer is known and has an established reputation.

11. Applicant's use and registration of ZIATREX for the goods of the application herein opposed will likely cause confusion, mistake, or deceive consumers or members of the trade as to source or sponsorship of such goods.

By reason of the foregoing, Applicant's registration of ZIATREX for the goods of the application herein opposed would cause injury and damage to Auxilium.

WHEREFORE, Opposer prays that its opposition be sustained and that Application Serial No. 85643336 be refused.

Please address all correspondence to James R. Meyer, Esq. at the address below.

Respectfully submitted,

SCHNADER HARRISON SEGAL & LEWIS LLP



Dated: March 13, 2013

By:

James R. Meyer
1600 Market Street, Suite 3600
Philadelphia, PA 19103
(215) 751-2622 (voice)
trademarks@schnader.com (e-mail authorized)

ATTORNEYS FOR OPPOSER

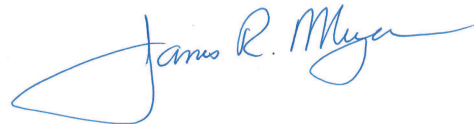
Exhibit 1

Certification Under 37 CFR 1.8

I hereby certify that this paper is being deposited with the United States Postal Service with sufficient postage as first-class mail under 37 CFR 1.8 on the date indicated below addressed to:

House, Roy E. House
19 Tingley Road
Morristown NEW JERSEY 07960

An additional copy is being sent by e-mail to Applicant.



Dated: March 13, 2013

JAMES R. MEYER



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XIAFLEX

Word Mark	XIAFLEX
Goods and Services	IC 005. US 006 018 044 046 051 052. G & S: pharmaceutical preparations, namely, collagenase enzyme used to treat fibroproliferative disease conditions such as Dupuytren's contracture, Peyronie's disease and Frozen Shoulder Syndrome also known as Adhesive Capsulitis. FIRST USE: 20100304. FIRST USE IN COMMERCE: 20100304
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Trademark Search Facility Classification Code	LETTER-3-OR-MORE XIA Combination of three or more letters as part of the mark SHAPES-MISC Miscellaneous shaped designs
Serial Number	76665957
Filing Date	September 13, 2006
Current Basis	1A
Original Filing Basis	1B
Published for Opposition	August 28, 2007
Registration Number	3785074
Registration Date	May 4, 2010
Owner	(REGISTRANT) AUXILIUM US HOLDINGS, LLC. LIMITED LIABILITY COMPANY DELAWARE 1105 N. MARKET STREET SUITE 1300 WILMINGTON DELAWARE 19801

Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record James R. Meyer
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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