

ESTTA Tracking number: **ESTTA923908**

Filing date: **09/24/2018**

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	Sunovion Pharmaceuticals Inc.
Granted to Date of previous extension	09/22/2018
Address	84 Waterford Drive Marlborough, MA 01752 UNITED STATES

Attorney information	Michael J. Bevilacqua, Esquire Wilmer Cutler Pickering Hale and Dorr LLP 60 State Street Boston, MA 02109 UNITED STATES whiptrademark@wilmerhale.com, michael.bevilacqua@wilmerhale.com, barbara.barakat@wilmerhale.com 617-526-6448
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Applicant Information

Application No	87824294	Publication date	07/24/2018
Opposition Filing Date	09/24/2018	Opposition Period Ends	09/22/2018
Applicant	Xogenex LLC 20358 Seneca Meadows Parkway Germantown, MD 20876 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Biochemicals for treatment of cardiovascular disease and disorders, namely, nucleic acids for treatment of cardiovascular diseases and disorders
Class 042. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Biomedical and scientific research in the field of treatment of cardiovascular disease and disorders; product development of biochemicals for treatment of cardiovascular disease and disorders, namely, product development of nucleic acids for treatment of cardiovascular diseases and disorders

Grounds for Opposition


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

U.S. Registration No.	2350721	Application Date	04/14/1998
Registration Date	05/16/2000	Foreign Priority Date	NONE
Word Mark	XOPENEX		
Design Mark	XOPENEX		
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1999/04/16 First Use In Commerce: 1999/04/16 pharmaceutical preparations and substances for treatment of respiratory disorders		

U.S. Registration No.	3651698	Application Date	03/22/2007
Registration Date	07/07/2009	Foreign Priority Date	NONE
Word Mark	XOPENEX		
Design Mark	<i>Xopenex</i>		
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2006/06/22 First Use In Commerce: 2006/06/22 Pharmaceutical preparations and substances for treatment of respiratory disorders		

U.S. Registration No.	3655211	Application Date	03/22/2007
Registration Date	07/14/2009	Foreign Priority Date	NONE
Word Mark	XOPENEX		

Design Mark	
Description of Mark	The color blue appears in the wording "XOPENEX"
Goods/Services	Class 005. First use: First Use: 2006/06/22 First Use In Commerce: 2006/06/22 Pharmaceutical preparations and substances for treatment of respiratory disorders

U.S. Registration No.	3124312	Application Date	11/26/2003
Registration Date	08/01/2006	Foreign Priority Date	NONE
Word Mark	XOPENEX HFA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2005/11/16 First Use In Commerce: 2005/11/16 pharmaceutical preparations for the treatment of respiratory conditions		

Attachments	75468045#TMSN.png(bytes) 77138201#TMSN.png(bytes) 77138209#TMSN.png(bytes) 78333582#TMSN.png(bytes) notice of opposition xogenex.pdf(79951 bytes)
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Signature	/barbara a. barakat/
Name	Barbara A. Barakat, Esq.

Date	09/24/2018
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 87824294

Published in the Official Gazette at TM 5386 on July 24, 2018

Sunovion Pharmaceuticals, Inc.,)	
)	
Opposer)	
)	
v.)	Opposition No.
)	
Xogenex LLC,)	
)	
Applicant)	

BOX TTAB/FEE
Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

NOTICE OF OPPOSITION

Sunovion Pharmaceuticals, Inc., (hereinafter “Opposer”), a corporation organized and existing under the laws of Delaware, located and doing business at 84 Waterford Drive, Massachusetts 01752, believes that it will be damaged by the registration of the trademark “XOGENEX” as shown in Application Serial No. 87824294, filed March 7, 2018, by Xogenex LLC (hereinafter “Applicant”), and hereby opposes the same.

As grounds for opposition, it is alleged that:

1. Applicant seeks registration on the Principal Register of the trademark “XOGENEX” for use in connection with biochemicals for treatment of cardiovascular disease

and disorders, namely, nucleic acids for treatment of cardiovascular diseases and disorders and biomedical and scientific research in the field of treatment of cardiovascular disease and disorders; product development of biochemicals for treatment of cardiovascular disease and disorders, namely, product development of nucleic acids for treatment of cardiovascular diseases and disorders (hereinafter “Applicant’s Mark”), as evidenced by the publication of said trademark in the July 24, 2018 issue of the Official Gazette.

2. Opposer adopted the mark ‘XOPENEX,” at least as early as April 16, 1999 in connection with pharmaceutical preparations and substances for treatment of respiratory disorders, and has been using the marks in connection with those goods ever since. Such use has been valid and continuous since the date of first use and has not been abandoned.

3. Opposer is the owner of the following United States registrations:
U.S. Reg. No. 2350721 for the mark XOPENEX, issued May 16, 2000;
U.S. Reg. No. 3651698 for the mark XOPENEX Stylized, issued July 7, 2009;
U.S. Reg. No. 3655211 for the mark XOPENEX Stylized, issued July 14, 2009; and
U.S. Reg. No. 3124312 for the mark XOPENEX HFA, issued August 1, 2006,
(hereinafter “Opposer’s Marks”).

4. Opposer registered the domain name <xopenex.com> on May 8, 1998 and has used the domain name ever since.

5. Opposer used the trademark “XOPENEX” in interstate commerce on its goods almost 20 years prior to the filing date of the Applicant’s application, March 7, 2018.

6. Applicant’s Mark begins with the same 2 letters as Opposer’s mark XOPENEX, “XO” and ends with the same 4 letters as Opposer’s mark XOPENEX, “ENEX.”

7. The only difference between Applicant's Mark and Opposer's mark XOPENEX is the single letter "G" in the middle of Applicant's Mark.

8. Applicant's Mark is almost identical to, and therefore is confusingly similar to, Opposer's Marks.

9. The goods which are identified in Opposer's registrations for Opposer's Marks are closely related to the goods and services identified in the Applicant's application to register "XOGENEX," and on information and belief, will be marketed through the same or similar channels of trade or to the same or similar class of consumers.

10. By reason of Opposer's extensive use of the "XOPENEX" mark, the public will believe that the Applicant's use of its mark "XOGENEX" is sponsored or approved by Opposer and that the quality of the goods and services bearing the Applicant's Mark has been approved and/or maintained by Opposer.

11. In view of these similarities, Applicant's use of the mark "XOGENEX" is likely to cause confusion, mistake, or deception with respect to Opposer's Marks and to damage the goodwill represented and symbolized by the marks.

12. Based on the foregoing, Applicant's registration of the mark "XOGENEX" on the Principal Register of the United States Patent and Trademark Office would clearly cause injury and damage to the Opposer.

WHEREFORE, Opposer prays that this opposition be sustained and that registration of Applicant's mark "XOGENEX" as shown in Application Serial No. 87824294 be refused.

Respectfully submitted,

SUNOVION PHARMACEUTICALS, INC.

/barbara a. barakat/

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Barbara A. Barakat
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September 24, 2018