

ESTTA Tracking number: **ESTTA1097527**

Filing date: **11/24/2020**

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	Otsuka Pharmaceutical Co., Ltd.
Granted to Date of previous extension	11/29/2020
Address	2-9, KANDA-TSUKASAMACHI CHIYODA-KU TOKYO, 101-8535 JAPAN
Attorney information	HAROLD MILSTEIN SHEPPARD MULLIN RICHTER & HAMPTON LLP 379 LYTTON AVENUE PALO ALTO, CA 94301 UNITED STATES Primary Email: svtmdocketing@sheppardmullin.com 650-815-2600
Docket Number	

Applicant Information

Application No.	88791609	Publication date	06/02/2020
Opposition Filing Date	11/24/2020	Opposition Period Ends	11/29/2020
Applicant	ELANCO US INC. 2500 INNOVATION WAY GREENFIELD, IN 46140 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 005. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Veterinary preparations, namely, vaccines, oral and injectable antimicrobial preparations for the treatment and control of infectious diseases in food producing animals and livestock; veterinary preparations for enhancing reproduction in livestock; immunorestorative biopharmaceuticals for the prevention and treatment of viral, infectious, and metabolic diseases in animals; medicated animal feed and water additives in the nature of dietary supplements for production enhancement for livestock; veterinary preparations for controlling and destroying vermin, namely, ectoparasiticides, insecticides and parasiticides; veterinary hormone preparations and hormone preparations in the nature of biological implants for animals, namely, progesterone, estrogen and testosterone; veterinary preparations for food safety, food animal processing and food animal processing aids, namely, bacteriophage, antimicrobials and vaccines to reduce levels of food borne pathogens carried in or on livestock, poultry or meat; veterinary preparations for companion animals, namely, to treat parasitic infections, diabetes, endocrine disorders, obesity, blood disorders, dental and oral diseases, pain, inflammation, gastrointestinal disorders, central nervous system dis-</p>
--

orders, neurological and neurodegenerative disorders, cardiovascular conditions, dermatologic conditions, urogenital and urinary conditions, osteoarthritis, otitis, wound healing, infections, allergy atopic conditions, liver diseases and disorders; veterinary preparations for companion animals for nonsurgical sterilization, namely, hormones for the control and prevention of reproductive functions; veterinary preparations for treating and preventing fleas on companion animals; veterinary preparations, namely, vaccines for companion animals including horses; veterinary preparations to control infectious diseases and parasites in fish, namely, vaccines, parasiticides and insecticides

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.	4911463	Application Date	04/24/2015
Registration Date	03/08/2016	Foreign Priority Date	10/27/2014
Word Mark	ONMETIO		
Design Mark			
Description of Mark	The mark consists of the stylized wording "ONMETIO".		
Goods/Services	Class 005. First use: First Use: 0 First Use In Commerce: 0 Pharmaceutical compositions for treating cancer and immune disorders; pharmaceutical preparations for treating cancer and immune disorders		

Attachments	Otsuka- Notice of Opposition against OMEVIO.pdf(61043 bytes)
-------------	---

Signature	/ChelseaaBush/
Name	Chelseaa Bush
Date	11/24/2020

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

OTSUKA PHARMACEUTICAL CO., LTD.,

Opposer,

v.

ELANCO US INC.

Applicant.

Opposition No. _____

Serial No. 88791609

Mark: OMEVIO

Filed: February 10, 2020

Published: June 2, 2020

NOTICE OF OPPOSITION

Opposer, Otsuka Pharmaceutical Co., Ltd. ("Opposer"), a corporation organized and existing under the laws of Japan, having an address at 2-9, Kanda-Tsukasamachi, Chiyoda-ku Tokyo 101-8535 Japan, believes that it will be damaged by registration of the mark OMEVIO shown in Application Serial No. 88791609 for goods in International Classes 5, filed February 10, 2020, by Applicant, Elanco US Inc., a corporation organized and existing under the laws of Delaware, having an address at 2500 Innovation Way, Greenfield, Indiana 46140 ("Applicant"), and hereby opposes the same.

As grounds for opposition, Opposer alleges that:

1. Opposer is a pharmaceutical company focused on the development and commercialization of innovative pharmaceutical products in a number of different areas, including neuroscience, oncology, and cardio-renal therapeutic areas. Opposer is the owner of a U.S. Trademark Registration for the trademark ONMETIO at Registration No. 4911463, registered March 8, 2016, with a priority date of October 27, 2014, for "Pharmaceutical

compositions for treating cancer and immune disorders; pharmaceutical preparations for treating cancer and immune disorders” in Class 5 (the “ONMETIO Mark”).

2. Opposer’s registration for the ONMETIO Mark listed above is valid, subsisting, and in full force and effect.

3. On February 10, 2020, Applicant filed an intent-to-use application at Serial No. 88791609 with the U.S. Patent and Trademark Office to register OMEVIO in connection with “veterinary preparations, namely, vaccines, oral and injectable antimicrobial preparations for the treatment and control of infectious diseases in food producing animals and livestock; veterinary preparations for enhancing reproduction in livestock; immunorestorative biopharmaceuticals for the prevention and treatment of viral, infectious, and metabolic diseases in animals; medicated animal feed and water additives in the nature of dietary supplements for production enhancement for livestock; veterinary preparations for controlling and destroying vermin, namely, ectoparasiticides, insecticides and parasiticides; veterinary hormone preparations and hormone preparations in the nature of biological implants for animals, namely, progesterone, estrogen and testosterone; veterinary preparations for food safety, food animal processing and food animal processing aids, namely, bacteriophage, antimicrobials and vaccines to reduce levels of food borne pathogens carried in or on livestock, poultry or meat; veterinary preparations for companion animals, namely, to treat parasitic infections, diabetes, endocrine disorders, obesity, blood disorders, dental and oral diseases, pain, inflammation, gastrointestinal disorders, central nervous system disorders, neurological and neurodegenerative disorders, cardiovascular conditions, dermatologic conditions, urogenital and urinary conditions, osteoarthritis, otitis, wound healing, infections, allergy atopic conditions, liver diseases and disorders; veterinary preparations for companion animals for nonsurgical sterilization, namely, hormones for the

control and prevention of reproductive functions; veterinary preparations for treating and preventing fleas on companion animals; veterinary preparations, namely, vaccines for companion animals including horses; veterinary preparations to control infectious diseases and parasites in fish, namely, vaccines, parasiticides and insecticides” in Class 5.

4. Applicant’s application Serial No. 88791609 was published for opposition on June 2, 2020. Opposer filed a 90-day extension of time to oppose the application on July 2, 2020 and then filed a 60-day extension of time to oppose the application on September 28, 2020 with Applicant’s consent.

5. Upon information and belief, Applicant has not used the mark OMEVIO on its goods in the United States prior to February 10, 2020, as evidenced by Applicant’s filing of its application based on intent-to-use on that date. Opposer’s OMEVIO Mark therefore has priority over Applicant’s mark because Opposer’s ONMETIO registration has a priority date of October 27, 2014 which is well before Applicant’s intent-to-use filing date for OMEVIO.

6. Opposer’s ONMETIO Mark is an inherently distinctive and strong mark, serving to distinguish the source of Opposer's goods.

7. Applicant's OMEVIO mark is highly similar in appearance, sound, and commercial impression to Opposer’s ONMETIO Mark.

8. Applicant seeks to register the OMEVIO mark in connection with goods that are related to the goods Opposer has registered under its ONMETIO Mark. Applicant's registration and use of the ONMEVIO mark in connection with the goods set forth in application Serial No. 88791609 are likely to cause confusion, to cause mistake, and to deceive customers, potential customers, and others as to the source of its goods. Such confusion will cause harm to Opposer and the consuming public. Persons familiar with Opposer’s ONMETIO Mark would be likely to

