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

Proceeding	91270249
Party	Defendant Bluebird Bio, Inc.
Correspondence Address	CHRISTOPHER K ALBERT HAMILTON BROOK SMITH & REYNOLDS PC 530 VIRGINIA RD PO BOX 9133 CONCORD, MA 01742-9133 UNITED STATES Primary Email: trademarks@hbsr.com 978-341-0036
Submission	Answer
Filer's Name	Christopher K. Albert
Filer's email	christopher.albert@hbsr.com , trademarks@hbsr.com
Signature	/Christopher K. Albert/
Date	09/10/2021
Attachments	Answer and Affirmative Defenses of bluebird bio.pdf(118967 bytes)

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

Spark Therapeutics, Inc.,

Opposer,

v.

bluebird bio, Inc.,

Applicant.

Cancellation No.: 91/270,249

Serial No.: 79/301,139

Mark: I AM THE SPARK

ANSWER AND AFFIRMATIVE DEFENSES OF BLUEBIRD BIO, INC.

Applicant, bluebird bio, Inc., a corporation under the laws of Delaware with a place of business at 60 Binney Street, Cambridge, Massachusetts, 02142, submits its Answer and Separate Defenses to Spark Therapeutics, Inc.'s ("Opposer") Notice of Opposition filed on June 30, 2021, and in accordance with the Board's Notice of Institution dated July 2, 2021, and extension of time granted on August 5, 2021. Applicant denies the allegations and characterizations in Opposer's Notice of Opposition unless expressly admitted in the following paragraphs:

1. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1, and therefore denies the same.
2. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2, and therefore denies the same.
3. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3, and therefore denies the same.

4. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4, and therefore denies the same.

5. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5, and therefore denies the same.

6. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6, and therefore denies the same.

7. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7, and therefore denies the same.

8. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8, and therefore denies the same.

9. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9, and therefore denies the same.

10. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10, and therefore denies the same.

11. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11, and therefore denies the same.

12. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12, and therefore denies the same.

13. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13, and therefore denies the same.

14. Applicant admits the allegations of paragraph 14.

15. Applicant admits that bluebird bio (UK) Ltd. filed an application for international registration for I AM THE SPARK in classes 35 and 41, which issued as Registration No.

1,567,960 and was subsequently assigned to Applicant. Applicant denies that the identification of services in paragraph 15 is the identification of services at the time that bluebird bio (UK) Ltd. filed the application for international registration. Applicant otherwise denies the allegation of paragraph 15.

16. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16 regarding Opposer's alleged use. Applicant admits that the filing basis for US App. Ser. No. 79/301,139 is Section 66(a) of the Lanham Act, based on International Registration No. 1567960, which claims priority to United Kingdom App. No. UK00003469817, filed on February 25, 2020.

17. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17, and therefore denies the same.

18. Applicant denies the allegations of paragraph 18.

19. Applicant denies the allegations of paragraph 19.

20. Applicant denies the allegations of paragraph 20.

21. Applicant denies the allegations of paragraph 21.

22. Applicant denies the allegations of paragraph 22.

23. Applicant denies the allegations of paragraph 23.

24. Applicant denies the allegations of paragraph 24.

25. Applicant denies that allowing App. Ser. No. 79/301,139 to register would injure Opposer.

26. Applicant admits that its use of I AM THE SPARK or any other variant of the SPARK Marks is without permission of Opposer, but denies that any permission from Opposer is required. Applicant denies the remaining allegations of paragraph 26.

27. Applicant denies the allegations of paragraph 27.

AFFIRMATIVE DEFENSES

1. There is no likelihood of confusion, mistake or deception between the applied for mark and Opposer's marks.

2. Applicant's application was examined by the United States Patent and Trademark Office, which did not find a likelihood of confusion between I AM THE SPARK and any registration allegedly owned by Opposer.

3. Opposer filed U.S. Trademark Application No. 87/614,019 for SPARK THERAPEUTICS GENERATION PATIENT SERVICES and 87/614,036 for SPARK THERAPEUTICS GENERATION PATIENT SERVICES & Design. Both applications sought registration of the marks for informational services (Class 36) and for patient and health care coordination services (Class 44). The Trademark Examining Attorney refused registration of both marks pursuant to Trademark Act Section 2(d), 15 U.S.C. § 1052(d), on the ground of likelihood of confusion in view of Registration No. 4,126,694 for SPARQ & Design in Class 44. The Trademark Trial and Appeal Board affirmed the Examiner's refusal to register. Opposer is estopped from asserting a position contrary to the prior decisions of the United States Patent and Trademark Office.

4. Applicant reserves all separate defenses and any other defenses that may now exist or in the future become available from discovery or other investigation during this Opposition.

WHEREFORE, Applicant respectfully requests that the Board dismiss the Opposition with prejudice.

Dated: September 10, 2021

Respectfully submitted,

/Christopher K. Albert/

Christopher K. Albert

John L. DuPré

HAMILTON, BROOK, SMITH & REYNOLDS,
P.C.

530 Virginia Road

P.O. Box 9133

Concord, Massachusetts 01742-9133

Telephone: (978) 341-0036

Attorneys for Petitioner

christopher.albert@hbsr.com

john.dupre@hbsr.com

Attorneys for bluebird bio, Inc.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served on Opposer, Spark Therapeutics, Inc., through its attorneys of record via email to:

Susan A. Smith
BALLARD SPAHR LLP
1909 K Street, NW
12th Floor
Washington, DC 20006-1157
Telephone: 202.661.2247
Facsimile: 202.661.2299
SmithS@ballardspahr.com
TMDocketing@ballardspahr.com

Robert R. Baron, Jr.
BALLARD SPAHR LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
Telephone: 215.864.8335
Facsimile: 215.864.8999
Baron@ballardspahr.com

Maxwell C. Preston
BALLARD SPAHR LLP
1675 Broadway, 19th Floor
New York, NY 10019-5820
Telephone: 646.346.8004
Facsimile: 212.223.1942
PrestonM@ballardspahr.com

Dated: September 10, 2021

/Christopher K. Albert/
Christopher K. Albert