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Filing date: **10/23/2023**

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

Proceeding no.	91287115
Party	Defendant Asteroid Therapeutics, Inc.
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Date	10/23/2023
Attachments	Answer to Notice of Opposition 10232023.pdf(131562 bytes)

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

Servier Pharmaceuticals, LLC,

Opposer,

v.

Asteroid Therapeutics, Inc.,

Applicant.

Opposition No. 91287115

Mark: **DESIGN MARK**

Serial No.: 97160359

Filing Date: 12/07/2021

Publication Date: 05/16/2023

Mark: **ASTEROID THERAPEUTICS**

Serial No.: 97160029

Filing Date: 12/07/2021

Publication Date: 06/06/2023

ANSWER TO NOTICE OF OPPOSITION

Applicant, Asteroid Therapeutics, Inc. (hereinafter “Applicant”), for its Answer to Notice of Opposition (“Opposition”) of Servier Pharmaceuticals, LLC (“Opposer”), states as follows:

1. Applicant admits the allegations contained in Paragraph 1 of the Notice of Opposition.

2. Applicant denies the allegations contained in Paragraph 2 of the Notice of Opposition and therefore denies the same.

3. Applicant admits the allegations contained in Paragraph 3 of the Notice of Opposition.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Notice of Opposition and therefore denies the same.

5. Applicant denies the allegations contained in Paragraph 5 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

Without admitting or acknowledging that Applicant bears any burden of proof as to any of them, Applicant asserts the following non-exclusive affirmative defenses.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

Opposer has failed to allege facts sufficient to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Lack of Standing)

Opposer has failed to allege grounds sufficient to establish its standing to maintain the Opposition.

THIRD AFFIRMATIVE DEFENSE

(No Likelihood of Confusion)

The Opposition is barred because there is no likelihood of confusion between Opposer's mark and Applicant's mark for the parties' respective goods.

FOURTH AFFIRMATIVE DEFENSE

(Non-Willful Conduct)

Any and all acts alleged to have been committed by Applicant were performed with lack of willful intent.

FIFTH AFFIRMATIVE DEFENSE

(Fair Use)

Applicant alleges on information and belief that the Opposition is barred by the fair use doctrine.

SIXTH AFFIRMATIVE DEFENSE

(Non-Exclusive Rights)

Applicant alleges on information and belief that the Opposition is barred because Opposer does not have exclusive rights to the marks at issue.

SEVENTH AFFIRMATIVE DEFENSE

(Release, Waiver, and Estoppel)

The Opposition is barred by the doctrines of release, waiver, and estoppel for which a reasonable opportunity for investigation or discovery is likely to provide evidentiary support.

EIGHTH AFFIRMATIVE DEFENSE

(Good Faith)

Any and all acts alleged to have been committed by Applicant were performed in good faith.

NINTH AFFIRMATIVE DEFENSE

(Restriction)

Applicant reserves its right to restrict its application and/or registration.

TENTH AFFIRMATIVE DEFENSE

(Reservation of Rights)

Applicant reserves the right to allege additional affirmative defenses as they may become known, or as they evolve during the litigation, and to amend this Answer accordingly.

PRAYER FOR RELIEF

WHEREFORE, Applicant prays that

- a. This Opposition proceeding be dismissed; and that
- b. Applicant's applications be allowed.

Dated: October 23, 2023

By: /s/ Gregory L. Hillyer
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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Answer to Notice of Opposition has been served on Opposer, Service Pharmaceuticals, LLC, by forwarding said copy on October 23, 2023, via email to:

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/s/ Gregory L. Hillyer
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