

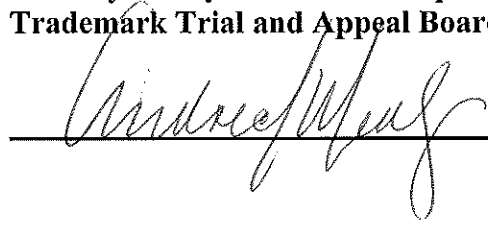
ESTTA Tracking number: **ESTTA341635**

Filing date: **04/09/2010**

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

Proceeding	91190284
Party	Plaintiff Graceway Pharmaceuticals, LLC
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Submission	Motion for Summary Judgment
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Signature	/Andrea J Mealey/
Date	04/09/2010
Attachments	Summary Judgment Motion and Memo.pdf ( 14 pages )(677282 bytes ) Exhibit A.pdf ( 3 pages )(71116 bytes ) Exhibit B.pdf ( 4 pages )(131758 bytes ) Exhibit C.pdf ( 4 pages )(109726 bytes ) Exhibit D.pdf ( 21 pages )(862016 bytes ) Exhibit E.pdf ( 10 pages )(338031 bytes ) Exhibit F.pdf ( 3 pages )(128534 bytes ) Exhibit G.pdf ( 3 pages )(131932 bytes ) Exhibit H.pdf ( 7 pages )(427778 bytes ) Exhibit I.pdf ( 38 pages )(1465057 bytes ) Exhibit J.pdf ( 15 pages )(751604 bytes )

I hereby certify that this correspondence is being deposited electronically with the Trademark Trial and Appeal Board on the date shown below.



Date: April 9, 2010

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

IN THE MATTER OF APPLICATION SERIAL NO. 77/653,491  
MARK: ALNARA

GRACEWAY PHARMACEUTICALS, LLC,  
OPPOSER

V.

ALNARA PHARMACEUTICALS, INC.,  
APPLICANT

OPPOSITION NO. 91190284

**OPPOSER'S MOTION FOR SUMMARY JUDGMENT**

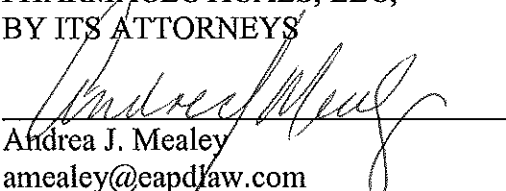
Opposer GRACEWAY PHARMACEUTICALS LLC, a Delaware limited liability company ("Opposer"), by and through its undersigned attorney, hereby moves for summary judgment pursuant to Rule 56, Fed. R. Civ. P., and Trademark Rule 2.127(e), sustaining this opposition against U.S. Trademark Application Serial No. 77/653,491 filed by Applicant ALNARA PHARMACEUTICALS, INC., a Delaware corporation ("Applicant") for the mark "ALNARA."

As set forth in the attached memorandum and exhibits, this Motion is made on the grounds that: (i) Opposer has priority of use; and (ii) Applicant's mark is confusingly similar to Opposer's "ALDARA" mark and will be used in connection with closely related goods, to be

offered in the same channels of trade to the same consumers and there thus exists a likelihood of confusion precluding registration of Applicant's mark under Section 2(d) of the Lanham Act. Accordingly, Opposer requests that it be awarded summary judgment sustaining its opposition against Application Serial No. 77/653,491 as a trial on the matter would entail unnecessary fees and waste the Board's scarce resources.

Dated: April 9, 2010

GRACEWAY  
PHARMACEUTICALS, LLC,  
BY ITS ATTORNEYS



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## II. PROCEDURAL AND FACTUAL BACKGROUND

Opposer acquired the trademark registration and the good will associated therewith for the mark ALDARA (the “ALDARA Mark”) from Opposer’s predecessor in interest, 3M Company (“3M”), in December 2006 pursuant to an asset purchase agreement. See Declaration of John A. A. Bellamy, attached hereto as Exhibit “A” (“Bellamy Dec.”) at ¶ 2. 3M’s predecessor in interest, Riker Laboratories, Inc., had filed an application to register the ALDARA Mark on September 14, 1994 and commenced use of the ALDARA Mark in commerce in October 1996. Id. at ¶ 4. The application for the ALDARA mark proceeded to registration on April 15, 1997. Thereafter Opposer and its predecessors have consistently advertised, sold, and provided pharmaceutical products under the mark “ALDARA” (the “ALDARA Mark”) in the United States. Id. at ¶ 5 and see Exhibit “B”, the TARR print out for the ALDARA registration. Since at least as early as October 30, 1996, Opposer, through its predecessors-in-interest, has had extensive, exclusive, and continued use of the ALDARA Mark in connection with, “pharmaceutical preparations, namely immunomodulators” (“Opposer’s Goods”). See Bellamy Dec. at ¶ 3.

On or about January 21, 2009, Applicant filed the subject Application Serial No. 77/653,491 (“ALNARA Application”) for the mark “ALNARA” (“ALNARA Mark”), in connection with “pharmaceutical preparations for the treatment of metabolic, endocrine, gastrointestinal, digestive, rheumatologic, urological, nephrology, inflammatory, pediatric, nutritional, immunologic, cardiovascular, dermatologic, hematologic, infectious, circulatory, pulmonary, oncologic, muscular and respiratory diseases and disorders,” in International Class 5 (“Applicant’s Goods”). See Exhibit “C” containing a TARR print out for the ALNARA Application attached hereto. The ALNARA Application was filed on an intent-to-use basis. Id.

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