

ESTTA Tracking number: **ESTTA793171**

Filing date: **01/04/2017**

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	Gilead Sciences, Inc.
Granted to Date of previous extension	01/04/2017
Address	333 Lakeside Dr. Foster City, CA 94401 UNITED STATES
Attorney information	Lori F Mayall Gilead Sciences, Inc. 333 Lakeside Dr. Foster City, CA 94401 UNITED STATES trademarks@gilead.com, lori.mayall@gilead.com Phone:650-378-2184

Applicant Information

Application No	86974388	Publication date	09/06/2016
Opposition Filing Date	01/04/2017	Opposition Period Ends	01/04/2017
Applicant	Vir Biotechnology, Inc. c/o ARCH Venture Partners Chicago, IL 60631 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: Anti-viral drugs

Grounds for Opposition

The mark is merely descriptive	Trademark Act Section 2(e)(1)
The mark is generic	Trademark Act Sections 1, 2 and 45

Attachments	NOO re VIR.BIO Final w Exhibits.pdf(826233 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/lfm/
Name	Lori F Mayall
Date	01/04/2017

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

In the matter of applications Serial No. 86/974,388
For the Trademark VIR.BIO
Published in the Official Gazette on September 6, 2016

GILEAD SCIENCES, INC.,)	
)	
Opposer,)	
)	Opposition No.
v.)	
)	
VIR BIOTECHNOLOGY, INC.,)	
)	
Applicant.)	
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NOTICE OF OPPOSITION

Opposer Gilead Sciences Inc. (“Gilead” or “Opposer”), a Delaware corporation having its principal place of business at 333 Lakeside Dr., Foster City, California 94404, believes that it will be damaged by the issuance of registration for the trademark VIR.BIO (the “VIR.BIO Mark” or “Applicant’s Mark”), as applied for in Application Serial No. 86/974,388, filed on April 13, 2016 by Vir Biotechnology, Inc. (“Applicant”) on an intent-to-use basis. Applicant is, upon information and belief, a Delaware corporation with a mailing address of c/o ARCH Venture Partners, 8725 W. Higgins Rd., Suite 290, Chicago, Illinois 60631.

As grounds for opposition, Gilead alleges that:

1. Gilead is one of the world’s largest biopharmaceutical companies, dedicated to discovering, developing and marketing medications to treat a variety of human diseases, ranging from HIV to liver disease to cardiovascular disease and other infectious diseases, as well as other areas of unmet medical need.

2. Gilead commercializes antiviral drugs such as TRUVADA® (emtricitabine/tenofovir disoproxil fumarate), GENVOYA® (elvitegravir/cobicistat/emtricitabine/tenofovir alafenamide), and HARVONI® (ledipasvir/sofosbuvir).

3. On April 13, 2016, Applicant filed an application for the mark VIR.BIO for: “Anti-viral drugs” in class 5 on an intent-to-use basis (“Applicant’s Application”).

4. Applicant’s Mark was published in the *Official Gazette* on September 6, 2016, and Opposer has timely filed for, and the Trademark Trial and Appeal Board has granted, an extension of time to file an opposition until January 4, 2017.

5. “VIR” is a frequently-used stem appearing in *international nonproprietary names* (INNs) (also known as “generic names”) and designates that the particular pharmaceutical compound is an antiviral. See Exhibit A, page 8.

6. INNs adopted by the World Health Organization for antiviral drugs contain the “-VIR-” stem, such as entecavir, paritaprevir, sofosbuvir and tenofovir.

7. “VIR” means antiviral.

8. “VIR” lacks distinctiveness when used in connection with antiviral drugs.

9. “BIO” is commonly used as an abbreviation for “biotechnology.”

10. Antiviral drugs are a common category of products developed by biotechnology companies.

11. “BIO” is also commonly used as an abbreviation for “biological,” which is defined as “[a] therapeutic substance, such as a vaccine or drug, derived from biological sources.” See Exhibit B, page 2.

12. “.BIO” is a top level domain (TLD) used for life sciences websites, including websites relating to biology and biotechnology.

13. On information and belief, Applicant registered the domain name <vir.bio> to be used in connection with its anti-viral drug company.

14. TLDs function to indicate an address on the World Wide Web, and, therefore, generally serve no source-indicating function. TMEP 1209.03(m).

15. “.BIO” is generic and lacks distinctiveness when used in connection with antiviral drugs.

16. The terms in Applicant’s Mark, “VIR” and “.BIO,” retain their generic, or, at most, descriptive significance in relation to antiviral drugs.

17. Applicant’s Mark, if used in connection with “anti-viral drugs” would be generic, or, at most, merely descriptive of such goods.

18. If Applicant obtains the registration herein opposed, it would obtain a prima facie exclusive right to use the VIR.BIO Mark.

19. If Applicant obtains the registration herein opposed, Opposer (and others) would be damaged and injured as its use of “Vir Bio” or a similar term that incorporates the generic terms “vir” and/or “bio” to accurately describe and/or identify its antiviral drugs may subject it to an infringement suit.

20. Registration should, therefore, be refused pursuant to Section 2(e)(1) of the Trademark Act of 1946, as amended, 15 U.S.C. § 1052(e)(1), on the grounds that Applicant’s VIR.BIO Mark is generic, or, at best, merely descriptive.

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