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Filing date: **08/21/2023**

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	Merck Sharp & Dohme LLC
Granted to date of previous extension	08/20/2023
Address	126 EAST LINCOLN AVENUE RAHWAY, NJ 07065 UNITED STATES
Attorney information	CHRISTINA S. LOZA LOZA & LOZA, LLP 305 N. SECOND AVE., #127 UPLAND, CA 91786 UNITED STATES Primary email: tina-pt@lozaip.com 949-705-6777
Docket no.	MK-402

Applicant information

Application no.	90784943	Publication date	02/21/2023
Opposition filing date	08/21/2023	Opposition period ends	08/20/2023
International registration no.	NONE	International registration date	NONE
Applicant	VERAXA BIOTECH GMBH MEYERHOFSTRASSE 1 HEIDELBERG, 69117 GERMANY		

Goods/services affected by opposition

<p>Class 001. First Use: None First Use In Commerce: None All goods and services in the class are opposed, namely: Antibodies and the chemical modifications and conjugates thereof for medical research purposes and medical laboratory tests for medical research purposes; Immunoglobulins for medical research use; Structural proteins in the nature of proteins in raw material form and protein arrays for medical research purposes</p>
<p>Class 005. First Use: None First Use In Commerce: None All goods and services in the class are opposed, namely: Antibodies and the chemical modifications and conjugates thereof for medical diagnosis and treatment purposes and medical laboratory tests for medical diagnosis and treatment purposes; Immunoglobulins for medical use for the treatment and prevention of disease; Vaccines; Structural proteins in the nature of proteins in raw material form and protein arrays for medical diagnosis and treatment purposes; Veterinary preparations, namely, anti-cancer medication, anti-inflammatory medication, anti-pain medication in cream, powder, tablet</p>

and injectable form; Medical preparations, namely, diagnostic preparations, therapeutic preparations for medical use in the nature of anti-cancer medication, anti-inflammatory medication, anti-pain medication in cream, powder, tablet and injectable form; Pharmaceutical preparations, namely, anti-cancer preparations, anti-inflammatory preparations, anti-pain preparations, metabolic preparations for treating diabetes and obesity in cream, powder, tablet, and injectable form

Class 009. First Use: None First Use In Commerce: None
All goods and services in the class are opposed, namely: Opto-electronic apparatus and instruments and downloadable and recorded computer software and microfluid chips for conducting antibody, peptide or high-throughput active agent search with small inorganic or organic molecules for scientific research purposes

Class 010. First Use: None First Use In Commerce: None
All goods and services in the class are opposed, namely: Medical opto-electronic apparatus and instruments for conducting antibody, peptide or high-throughput active agent search with small inorganic or organic molecules for medical diagnosis and treatment purposes

Class 042. First Use: None First Use In Commerce: None
All goods and services in the class are opposed, namely: Scientific research conducted using high-throughput active agent search and bioinformatics methods; Drug discovery services; Research and testing services in the field of antibody active agent search services for scientific research purposes; Research, testing, and development services in the field of antibody modification and conjugate services for scientific research purposes; Research and testing services in the field of vaccine search services for scientific research purposes

Class 044. First Use: None First Use In Commerce: None
All goods and services in the class are opposed, namely: Medical services; Medical diagnosis tests, monitoring and reporting and medical screening services in the nature of medical active agent search services; Medical screening services in the nature of medical combing and medical active agent search of antibodies originating from patients; Personal medical information services

Grounds for opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)

Mark cited by opposer as basis for opposition

U.S. registration no.	4744146	Application date	04/15/2013
Register	Principal		
Registration date	05/26/2015	Foreign priority date	NONE
Word mark	ZERBAXA		
Design mark			
Description of mark	NONE		
Goods/services	Class 005. First use: First Use: Dec 22, 2014 First Use In Commerce: Dec 22, 2014 Pharmaceutical preparations, namely, antibiotics		

Attachments	MK-402 - VERAXA - Notice of Opposition - 8.21.2023.pdf(159490 bytes) MK-402 - VERAXA - Exhibit A.pdf(84832 bytes)
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Signature	/Christina S. Loza/
Name	CHRISTINA S. LOZA
Date	08/21/2023

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

In the Matter of Serial No. 90/784,943
Mark: VERAXA

MERCK SHARP & DOHME LLC,

Opposer,

v.

VERAXA BIOTECH GMBH,

Applicant.

Opposition No.

NOTICE OF OPPOSITION

Merck Sharp & Dohme LLC, a New Jersey corporation having a business address at 126 East Lincoln Ave., Rahway,, New Jersey 07065 (hereinafter “Opposer”), by and through its undersigned counsel, believes it will be damaged by the registration of the mark VERAXA (the “VERAXA Mark”), which is the subject of Application Serial No. 90/784,943 (the “Application”), filed with the United States Patent and Trademark Office on June 21, 2021, by VERAXA BIOTECH GMBH, a Gesellschaft Mit Beschränkter Haftung (GMBH) organized and existing in Germany, with an address of Meyerhofstrasse 1, Heidelberg, Germany 69117 (“Applicant”). The Application was published for opposition in the Official Gazette on February 21, 2023. Timely requests for extensions of time were filed and granted by the Trademark Trial and Appeal Board. Opposer requests that the registration of the VERAXA Mark be refused.

As grounds in support of this opposition, Applicant alleges as follows:

1. For over 130 years, Opposer has been a leading biopharmaceutical company that brings forward medicines and vaccines for many of the world’s most challenging diseases.

Opposer is engaged in the manufacture, marketing, distribution, and sale of a broad range of pharmaceutical and veterinary products worldwide.

2. Since at least December 22, 2014, Opposer, and through its predecessor in interest, has continuously used the mark ZERBAXA (the “ZERBAXA Mark”) in the United States, and worldwide, in connection with pharmaceutical preparations, namely, antibiotics.

3. During this time, Opposer has invested in advertising and promoting the ZERBAXA Mark in the United States and worldwide.

4. Opposer owns all right, title, and interest in and to the following U.S. Federal trademark registrations for the ZERBAXA Mark:

Trademark	Reg No.	Reg. Date	Class/Goods	Status
ZERBAXA	4,744,146	May 26, 2015	IC 005: Pharmaceutical preparations, namely, antibiotics	Renewed 2020 Section 8 & 15 Acknowledged and Accepted

5. The registration for the ZERBAXA Mark is valid, subsisting, and incontestable. A copy of the registration and printouts from the electronic database records of the United States Patent and Trademark Office showing the current status and title of the registration are attached hereto and incorporated herein by reference as Exhibit A.

6. Opposer also owns numerous foreign trademark registrations for the ZERBAXA Mark.

7. Opposer’s ZERBAXA Mark play a prominent role in the marketing, advertising, and sale of Opposer’s antibiotic products.

8. As a result of this substantial time, money, and effort spent by Opposer in promoting, marketing, and selling its antibiotic products featuring Opposer’s ZERBAXA Mark, this mark constitutes a valuable asset to Opposer and are widely recognized by consumers.

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