

THE PROTOCOL RELATING TO THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS

Notification of provisional refusal based on opposition according to article 5 and rule 17(3)

I National office notifying the opposition:

Danish Patent and Trademark Office
Helgeshøj Alle 81
DK-2630 Taastrup
Denmark

Telephone: + 45 43 50 80 00
Telefax: + 45 43 50 80 01

II Number of the international registration subject to the opposition **823874**

III Name and address of the holder of the international registration subject to the opposition:

Zentiva, a.s.
U Kabelovny 130
CZ-102 37 Praha 10 - Dolní Mecholupy,
Tjekkiet

IV Name and address of the opponent:

Pfizer Products Inc., a corporation of the State of Connecticut
Eastern Point Road
Groton
Connecticut 06340,
USA

V. Grounds for the opposition:

☒ Confusingly similar to the following mark(s) (see appendix):

☒ registered mark ☐ applied mark ☐ mark used in the course of trade

☐ Lack of distinctive character ☐ Company name(s) (see appendix) ☐ Other grounds

☐ Provisions of the Danish Trade Marks Act (enclosed): Sect. 23 cf. Sect 15

☐ The provisional refusal affects all goods and services covered by the designation

VI Grounds on which the refusal can be based according to the provisions of the Danish Trade marks Act:
Sect. 23 cf. Sect. 13, 14, 15 and 16.

VII The holder of the designation may request a review of the provisional refusal. The request must be received by the Danish Patent and Trademark Office no later than 4 months from the date of the provisional refusal. The request should be filed in Danish.

Please *note* that the opposed registration is subject to full examination by the Danish Patent and Trademark Office.

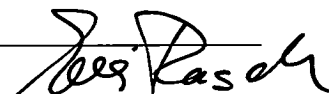
The final refusal may thus not affect all goods and services.

Please note that the final decision on the opposition can be appealed to the Danish Board of Appeal for Patents and Trademarks by either party within a period of 2 months from the date of the final decision.

VIII. Date of the provisional refusal: 4 April 2005

VIII. Signature by the Office: **The Danish Patent and Trademark Office**

Ellis Rasch



Number of continuation sheets **8**



BUDDE SCHOU OSTENFELD

Patent- og Varemærkestyrelsen
VAREMÆRKEAFDELINGEN
Helgeshøj Allé 81
2630 Taastrup

Frist: 26. marts 2009

29. marts 2005

Deres ref: MP823874
Vor ref: 122300/JM/VM

INDSIGELSESGBYR DKK 2500 BEDES TRUKKET PÅ KONTO PVS5

Indsigelse mod den danske del af int. registrering nr. MP823874 ZENRA
Indehaver: Zentiva, a.s., Tjekkiet
Varemærke: ZENRA
Indsiger: Pfizer Products Inc.

I medfør af varemærkelovens § 23, stk. 1, nedlægger vi hermed på vegne Pfizer Products Inc., Groton, Connecticut, USA,

INDSIGELSE

imod gyldigheden af den danske del af international varemærkeregistrering nr. MP823874 ZENRA, som offentliggjort i Dansk Varemærketidende af 26. januar 2005 for følgende varer:

Klasse 05: Medicines, pharmaceutical products for human use.

Indsigelsen baseres på vor klients danske varemærkeregistrering nr. VR 2002 03591 CENRAL og EU-varemærkeregistrering nr. 002563807 CENRAL, der begge dækker farmaceutiske og veterinærmedicinske præparater og substanser i klasse 5.

Eneretsbeskyttelse
Patenter Varemærker Designs
Patent and Trademark Practice
European Patent and Trademark Attorneys

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CVR nr: 21 47 77 37



Fuld varekollision er således til stede mellem vor klients bestående rettigheder og det nu bekendtgjorte mærke.

Det gøres samtidig gældende, at mærkerne ZENRA og CENRAL er forvekslelige, idet der foreligger både fonetisk og visuel lighed.

Begge mærker er fantasimærker, og ingen af mærkerne giver særlige associationer. Den lydmæssige lighed mellem mærkerne er praktisk taget identisk, idet tastavelsesordene

ZEN - RA

CEN - RAL

udtales med tryk på første stavelse, som er identisk i udtalelsen, idet Z foran E udtales som S, hvilket også gælder for C foran E.

Slutbogstavet l i indsigermærket er udvisket i udtalen på grund af trykket på første stavelse, som er identisk, samt at bogstavet R og vokalen A udtales klart i begge mærker.

Rytmen og vokalfølgen er identisk i begge mærker. Visuelt er der også lighed mellem mærkerne, idet det samtidig må tages i betragtning, at bogstavet Z er almindeligt forekommende i varemærker i klasse 5 for varer, som er omfattet af varefortegnelsen til den angrebne registrering. På grund af denne hyppighed vil der visuelt ikke tillægges større forskel mellem ZEN og CEN, der som ovenfor anført er identiske i udtalen af mærkerne.

Det gøres således gældende, at mærkerne ZENRA og CENRAL fonetisk og visuelt er forvekslelige, og da mærkerne samtidig angår ligeartede kolliderende produkter, foreligger der varemærkeretlig forvekslelighed.

Vi skal derfor anmode styrelsen om at erklære, at designeringen af den internationale registrering MP823874 ZENRA er ugyldig.



Såfremt mærkeindehaver fremkommer med en udtalelse i sagen, anmoder vi om at få forelagt denne til eventuel udtalelse.

Gebyr for fremsættelse af indsigelsen bedes trukket på vor konto PVS5.

Med venlig hilsen
BUDDE, SCHOU & OSTENFELD A/S


Jytte Targas

Kopi af dette brev

Registerudskrift
(Extract of Register)

Endelig registreret

(111) Registreringsnr. : VR 2002 03591
(210) Ansøgningsnr. : VA 2002 03010

(151) Registreringsdato: 15. oktober 2002
(220) Ansøgningsdato : 31. juli 2002

(100) Reg.proc.slutdato: 17. juni 2003
(180) Fornyet til : 15. oktober 2012

(730) Indehaver : Pfizer Products Inc., a corporation of the State of Connecticut
Eastern Point Road
Groton
Connecticut 06340
USA

(740) Fuldmægtig : Budde, Schou & Ostfeld A/S
(750) Adresse : Vester Søgade 10
1601 København V
Danmark

(540) Mærke : CENRAL

(511) Klasser og : Klasse 05: Farmaceutiske og veterinærmedicinske præparater og substanser.
varefortegnelse

(300) Prioritet : 1. februar 2002
2291574
Storbritannien

Udskrift slut
(End of Extract)

Registerudskrift
(Extract of Register)

OHIM status: Registration Publication Done

(210) Sagsnummer	:	EU002563807	(151) EU registration date:	2003-10-10
			(442) EU publication date:	2002-10-28
			(220) EU date of filing:	2002-02-05
(730) Indehaver	:	PFIZER PRODUCTS INC. Eastern Point Road 06340 Groton, Connecticut USA		
(740) Fuldmægtig	:	Maria Josefa, Fernandez Marques		
(750) Adresse	:	Pfizerstr. 1 76139 Karlsruhe Tyskland Bettina, Lauer Pfizerstr. 1 76139 Karlsruhe Tyskland		
(540) Mærke	:	CENRAL		
(511) Klasser og varefortegnelse	:	Klasse 05: Farmaceutiske og veterinærmedicinske præparater og stoffer; alle ovennævnte varer indeholdt i klasse 5.		

Udskrift slut
(End of Extract)

Guidelines on oppositions

We will deal with the opposition in two phases:

- The hearing phase during which the opponent and the proprietor through us exchange arguments and material.
- The decision phase during which we review the arguments and the material and based on that make a decision.

The hearing phase.

Both parties have the right to express their opinions. The extent of the hearing depends on the complexity of the case.

Our part in the hearing phase is to make sure that the parties get the possibility of expressing their opinions and views. We will also guide on the elements we consider relevant. There will be at least one exchange of letters as the proprietor always will be given the possibility of commenting on the opposition.

We would like to inform you that the proprietor during the opposition process has the possibility of requesting the opponent to document that the mark has been in use in accordance with the regulations of requirement of use of The Danish Trade Marks Act. According to the regulations a mark must have been in use in this country within the last five years. A CTM must have been used in one of the member states within the last five years. The mark must have been used for the goods and/or services covered by the registration. Otherwise the registration will only be considered to cover the goods and services for which use has been documented.

The material submitted to us will be available to the public according to the regulations of The Danish Access to Public Administration Files Act. The material will also be sent to the other party for comments according to the regulations of The Administration Act.

In the hearing phase both parties must reply within the time limits laid down. The time limit may be extended after a specific evaluation and will usually be one to two months.

If the parties choose to negotiate on a settlement, we will make a further extension of the time limit if we are sure that both parties agree on the extension.

When we evaluate the case to be sufficient discussed, it is ready for decision and we will send a notifying letter to the parties. The decision will be forwarded within two months from this.

The decision.

When we make the decision, we review and evaluate the arguments and the material submitted by the parties. We will also examine the case ourselves, among other things regarding previous practice.

When making the decision, we evaluate the registration as a whole and can attach importance to issues which the parties have not discussed.

We will forward a reasoned decision to both parties. The party, with whom we do not fully agree, will also be informed of the possibilities of bringing the decision before The Board of Appeal for Patents and Trademarks.

Extract from the Danish Trade Marks Act

Grounds for refusal Section 13

- (1) For a trademark to be registered it shall be of the nature referred to in section 2, including a distinctive character.
- (2) The following trademarks shall not be registered:
 - (i) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of the goods or of rendering the services or other characteristics of the goods or services;
 - (ii) trademarks which consist exclusively of signs or indications which are customarily used to designate the goods or services in the current language or in the established practices of the trade.
- (3) Irrespective of the provisions of sub-sections (1) and (2) a trademark may be registered if, before the filing of the application in consequence of the use which has been made thereof, it has acquired a distinctive character.

Section 14 Furthermore, the following shall not be registered:

- (i) trademarks which are contrary to law, public order or morality;
- (ii) trademarks which are liable to mislead the public, for instance as to the nature, quality or geographical origin of the goods or services;
- (iii) trademarks which have not been authorized by the competent authorities and are to be refused pursuant to Article 6ter of the Paris Convention for the Protection of industrial Property, and trademarks which include badges, emblems and escutcheons which are of public interest, unless the consent of the appropriate authority to their registration has been given;
- (iv) trademarks which without permission consist of or contain an element which can be construed as a personal name or company name to which another party has a legal title, or as a portrayal provided allusion is not made to persons long dead, or which without permission contain a distinctive name of or a picture of the real property of another party;
- (v) trademarks which without permission consist of or contain an element which can be construed as a distinctive title of the protected literary or artistic work of another party or which infringe the copyright in such works or the right to a photograph of another party or the industrial property rights of another party.

Section 15

- (1) A trademark shall not be registered if:
 - (i) it is identical with an earlier trademark, and the goods or services for which the trademark is sought registered are identical with the goods or services for which the earlier trademark is protected, or
 - (ii) there exists a likelihood of confusion including a likelihood of association with the earlier trademark, because the later trademark is identical with or similar to the earlier trademark and the goods or services are identical or similar.
- (2) For the purpose of subsection (1) earlier trademarks mean:
 - (i) marks of the following categories in respect of which the date of application for registration is earlier than the date of application for registration of the trademark, taking account, where appropriate, of the priorities claimed in respect of those marks:
 - (a) Community trademarks;
 - (b) Trademarks registered in this country, or
 - (c) Trademarks registered under international agreements and having effect in this country;
 - (ii) Community trademarks which claim seniority, in accordance with the Regulation on the Community trademark, in relation to a trademark referred to under (i)b) and c), even if the latter trademark has been surrendered or has lapsed;
 - (iii) Applications for trademarks referred to under (i) and (ii), subject to their registration;
 - (iv) Trademarks which, on the date of application for registration of the trademark, or, where appropriate, of the priority claimed in respect of the application for registration of the trademark, are well known in this country, in the sense in which the words "well known" are used in Article 6bis of the Paris Convention.
- (3) A trademark shall, furthermore, not be registered if:
 - (i) it is identical with or similar to an earlier Community trademark, cf. Subsection (2) and is sought registered for goods or services which are not similar to those for which the earlier Community trademark is registered, provided that the earlier Community trademark is well known in the European Union and the use of the later trademark will take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier Community trademark;
 - (ii) it is identical with or similar to a "well known" trademark, cf. Subsection (2) (iv), and is sought registered for goods or services which are not similar to those for which the earlier trademark is well known, provided that the use of the later trademark may lead to a likelihood of association between the marks, and the use will take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trademark, or
 - (iii) it is identical with or only insignificantly distinct from a trademark, which at the date of filing of the application for registration or, where appropriate, of the priority claimed in respect of the application for registration, has commenced to be used in another country and is still in use there for goods or services which are identical with or similar to those

for which the later trademark is sought registered, and the applicant at the date of the filing had, or should have had, knowledge of the foreign trademark.

- (4) A trademark shall moreover not be registered if:
- (i) the trademark is identical with or similar to an earlier Danish trademark within the meaning of subsection (2) and is sought registered for goods or services which are not similar to those for which the earlier trademark is registered, where the earlier trademark is well known in this country and where the use of the later trademark would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trademark, or
 - (ii) in consequence of use in this country a right has been acquired to an identical or confusingly similar trademark or to another identical or confusingly similar sign used in the course of trade prior to the date of filing of the application for registration of the later trademark, or, where appropriate, of the priority claimed in respect of the application for registration of the later trademark, if the proprietor of the earlier right can prohibit the use of the later trademark.
- (5) A trademark shall not be excluded from registration pursuant to the provisions of subsections (1) to (4) where the proprietor of the earlier trademark or other earlier rights consents to the registration of the later trademark.

Opposition

Section 23

- (1) When the registration has been published, opposition may be filed against the validity of the registration. The opposition, which shall be reasoned, shall be filed with the Patent Office within two months from the date of publication. A fee, the amount of which shall be fixed by the Minister of Business and Industry, shall accompany the opposition.
- (2) If opposition has been filed, the Patent Office shall examine the registration in accordance with section 20. Section 28 (5) shall also apply during the examination. The proprietor of the registered right shall be notified of the opposition and be given an opportunity to submit his observations.
- (3) If the registration is maintained, the person having filed the opposition and the proprietor of the right shall be given notice hereof.
- (4) If the registration is declared void in part or in full, the decision to that effect shall be published when it is final.