ESTTA Tracking number: **ESTTA451653**

Filing date: **01/17/2012**

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

Proceeding	77486429
Applicant	Omega Alpha Pharmaceuticals Inc.
Applied for Mark	OMEGA ALPHA
Correspondence Address	Eugenia S. Hansen Hemingway & Hansen, LLP Suite 48001700 Pacific Avenue Dallas, TX 75201 UNITED STATES ghansen@hh-iplaw.com
Submission	Appeal Brief
Attachments	FinalBriefwith Signature.pdf (23 pages)(344685 bytes) TAB A Cover.pdf (1 page)(19977 bytes) Bayer Case for Tab A.pdf (7 pages)(243555 bytes)
Filer's Name	Eugenia S. Hansen
Filer's e-mail	ghansen@hh-iplaw.com,adavis@hh-iplaw.com
Signature	/es hansen/
Date	01/17/2012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Omega Alpha Pharmaceuticals Inc	)	
Trademark: OMEGA ALPHA (and design)	)	BEFORE THE
Serial No.: 77486429	)	TRADEMARK TRIAL
Filing Date: May 29, 2008	)	AND
Examining Attorney: Darryl M. Spruill	)	APPEAL BOARD
Address: Law Office 112	)	ON APPEAL

APPELLANT'S APPEAL BRIEF

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

INTRODUCTION

Appellant has appealed the trademark Examining Attorney's final refusal dated May 22, 2011. The final refusal of Appellant's application to register the trademark OMEGA ALPHA (and design) under 15 U.S.C. §1052(a)is based on the grounds that the mark consisted of or included deceptive matter in relation to the identified goods.

FACTS

Applicant/Appellant (hereinafter "Appellant") filed an application to register the mark OMEGA ALPHA (and design), in connection with goods classified in International Class 005 (IC 005) on May 8, 2008. After review by the United States Patent and Trademark Office ("USPTO") Examining Attorney, the only grounds for rejection were directed to the manner of identification of the goods, the claim of ownership to U.S. Registration 3,111,385, OMEGA ALPHA PHARMACEUTICALS, and to clarification of the filing basis. *See Official Action of 10/15/2008.* From April 15, 2009 through July 7, 2010, these three issues were the only issues raised.

On July 7, 2010, another official action was mailed, stating that after further consideration and review, an additional rejection based on 15 U.S.C. § 1052(a) had been added. *See Official Action of 7/7/2010*. The Examining Attorney included 58 attachments which pertained to searches conducted on the term "omega" and variations thereof. The full office action contains 87 pages.[1] Appellant responded to this Official Action on January 6, 2011. With this response, Appellant submitted Exhibit 1 (Article supporting the meaning of OMEGA ALPHA per the Greek letters) pp. 6-10; Exhibit 2

[1] Each page referenced herein will use the page number of the 87 pages.

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.