

ESTTA Tracking number: **ESTTA88359**

Filing date: **07/05/2006**

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	Leo Pharma A/S
Granted to Date of previous extension	07/05/2006
Address	Industriparken 55 Ballerup, DK-2750 DENMARK

Domestic Representative	Roger W. Herrell Attorney for Opposer Dann, Dorfman, Herrell and Skillman 1601 Market Street Suite 2400 Philadelphia, PA 19103-2307 UNITED STATES docketclerk@ddhs.com, rherrell@ddhs.com Phone:215-563-4100
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Applicant Information

Application No	76636322	Publication date	03/07/2006
Opposition Filing Date	07/05/2006	Opposition Period Ends	07/05/2006
Applicant	Lev Pharmaceuticals, Inc. 122 East 42nd Street, Suite 2606 New York, NY 10168 UNITED STATES		

Goods/Services Affected by Opposition

Class 042. First Use: 2003/03/19 First Use In Commerce: 2003/03/19
All goods and services in the class are opposed, namely: Research and development of pharmaceutical products

Attachments	Notice of Opposition.pdf (6 pages)(138890 bytes)
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Signature	/rwh/
Name	Roger W. Herrell
Date	07/05/2006

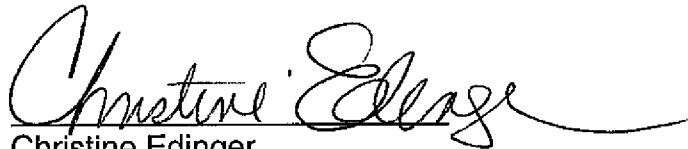
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Leo Pharma A/S	:	Opposition No.
Opposer	:	
	:	
	:	Appl. No. 76/636,322 (ITU)
	:	"LEV PHARMA"
	:	Published in OG
v.	:	March 7, 2006
	:	
Lev Pharmaceuticals, Inc	:	
	:	
Applicant	:	

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being electronically filed with the Electronic System for Trademark Trials and Appeals at the United States Patent and Trademark Office.

July 5, 2006
Date


Christine Edinger

NOTICE OF OPPOSITION

Leo Pharma A/S, a Denmark Joint Stock Company, having a place of business at Industriparken 55, DK-2750 Ballerup, Denmark (hereinafter "Opposer" or "LEO"), believes that it will be damaged by Application Serial No. 76/636,322, filed April 18, 2005, seeking registration on the Principal Register of the mark "LEV PHARMA" by Lev Pharmaceuticals, Inc. (hereinafter "Applicant") for the services of research and development of pharmaceutical products, and published for opposition in the March 7, 2006, Official Gazette, and Opposer hereby opposes the registration of the "LEV PHARMA" trademark under Section 13 of the Lanham Act, 15 U.S.C. §1063.

The grounds for opposition, on information and belief, are as follows:

1. Applicant, Lev Pharmaceuticals, Inc., seeks to register the mark "LEV PHARMA" for "research and development of pharmaceutical products" in International Class 042, as evidenced by the publication of said mark in the Official Gazette of March 7, 2006.

2. LEO is the owner of the registered trademark "LEO", U.S. Trademark Registration No. 1,777,615, registered June 22, 1993. The goods identified in the registration are pharmaceutical preparations; namely, antibiotic, antibacterial, diuretic, antihypertensive, vitamin, mineral supplement, hormone, anti-inflammatory, analgesic, anticoagulant, anesthetic, and cytostatic agent preparations.

3. LEO is also the owner of the registered trademark "LEO and Design", U.S. Trademark Registration No. 1,782,361, registered July 20, 1993. The goods identified in the registration are pharmaceutical preparations; namely, antibiotic, antibacterial, diuretic, antihypertensive, vitamin, mineral supplement, hormone, anti-inflammatory, analgesic, anticoagulant, anesthetic, and cytostatic agent preparations.

4. LEO is a Danish pharmaceutical company which manufactures and sells a wide range of pharmaceutical products in world market, including the United States. In addition, LEO has various license agreements with pharmaceutical companies in the United States to market LEO's pharmaceutical products.

5. On information and belief, Applicant has not used the trademark "LEV PHARMA" in connection with research and development of pharmaceutical products prior to March 19, 2003, which is the date of first use alleged in Applicant's application, Serial No. 76/636,322.

6. Since a date long before the filing of Applicant's Application, Serial No. 76/636,322, Opposer has used the trade names LEO, LEO PHARMA and LEO PHARMACEUTICAL PRODUCTS LTD. A/S, in connection with the marketing of pharmaceutical products in the United States and internationally, and such use is currently ongoing.

7. The use of the names LEO, LEO PHARMA and LEO PHARMACEUTICAL PRODUCTS LTD. A/S by Opposer in connection with marketing of pharmaceutical products has been valid and continuous since a date well in advance of Applicant's first use date and such use by Opposer has not been abandoned.

8. The trade names LEO, LEO PHARMA and LEO PHARMACEUTICAL PRODUCTS Ltd. A/S are symbolic of extensive goodwill and recognition generated through substantial effort in use and promotion of these trade names.

9. Opposer's registered trademark "LEO and Design" was granted on Application Serial No. 74/228,851, filed December 6, 1991, with a claim of priority under 15 U.S.C. 1126 (Lanham Act §44) based on Danish Registration No. VR02.350985, dated August 2, 1985.

10. Opposer's registered trademark "LEO and Design" was granted on Application Serial No. 74/228,850, filed December 6, 1991, with a claim of priority under 15 U.S.C. 1126 (Lanham Act §44) based on Danish Registration No. 2615-1984, dated July 20, 1984.

11. Opposer has used its registered trademarks "LEO" and "LEO and Design" and is still using said marks in connection with the marketing of pharmaceutical products and said use has not been abandoned.

12. Opposer's registered trademarks "LEO" and "LEO and Design" are symbolic of goodwill and recognition built up by Opposer based on considerable time and effort in use and promotion of those marks.

13. The trademark "LEV PHARMA" sought to be registered by Applicant, closely resembles one or more of LEO's trademarks and trade names "LEO", "LEO PHARMA" and "LEO PHARMACEUTICAL PRODUCTS LTD. A/S" and when applied to Applicant's activities, is likely to cause confusion, mistake, and/or deception, as proscribed by Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), resulting in damage and injury to Opposer, Opposer's reputation and goodwill and its valuable trade names, trademarks and business.

14. Applicant's adoption of the designation "LEV PHARMA" as a trademark is without license or permission of LEO and is likely to deceive persons by creating the erroneous impression that Applicant's services are related to Opposer and Opposer's goods or are connected in some way with Opposer or Opposer's goods, or are the same as Opposer's goods, and registration of Applicant's mark increases the likelihood of confusion between Opposer, Opposer's goods and Applicant's goods and services to the detriment of Opposer and the public, and any faults or imperfections in Applicant's services and goods marketed in association with the "LEV PHARMA" mark sought to be registered, will reflect adversely on Opposer and Opposer's goodwill and reputation and may disparage Opposer's goods unless this Opposition is sustained.

15. Applicant's mark, by reason of its similarity to Opposer's marks and trade names, will enable Applicant to gain a foothold in Opposer's market, by exploiting subliminal or subconscious association with Opposer and Opposer's well known marks and trade names.

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