

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

LEO Pharma A/S	:	Opposition No. 91171694
Opposer	:	Appl. No. 76/636,322
v.	:	
	:	
Lev Pharmaceuticals, Inc.	:	
Applicant	:	

**Opposer's Motion for Summary Judgment**

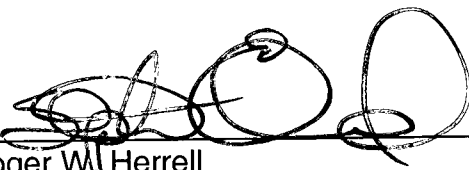
Pursuant to Federal Rule of Civil Procedure 56, Opposer, LEO Pharma A/S, by its undersigned attorneys, hereby moves for summary judgment in Opposition No. 91171694, filed by Opposer against registration of Application No. 76/636,322, filed by Applicant, Lev Pharmaceuticals, Inc..

The basis for this Motion is set forth in the accompanying Memorandum in Support of Opposer's Motion for Summary Judgment and the documentary Exhibits attached to the Memorandum.

Respectfully submitted,

Attorneys for Opposer  
LEO Pharma A/S

2/8/2008  
Date

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**Motion to Suspend Proceedings**

In view of Opposer's Motion For Summary Judgment, which is filed concurrently herewith, Opposer, LEO Pharma A/S, by its undersigned attorneys, hereby moves from an immediate suspension of discovery and any further proceedings herein pending disposition of the Motion For Summary Judgment. It is noted that the Motion For Summary Judgment, if granted, will be dispositive of this proceeding.

Respectfully submitted,

Attorneys for Opposer  
LEO Pharma A/S

2/8/2008  
Date

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**Memorandum in Support of Opposer's  
Motion for Summary Judgment**

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A	Page entitled "About Lev" from Lev Pharmaceuticals website
B	Investor Presentation, dated December 2007, from Lev Pharmaceuticals website, pgs 1,13,14,26,27,33
C	Page entitled "Lev Timeline" from Lev Pharmaceuticals website
D	Page entitled "Fundamentals – Annual Highlights" from Lev Pharmaceuticals website
E	Lev Pharmaceuticals Inc., Form 10-QSB Quarterly Report, filed with the Securities and Exchange Commission for Period Ending September 30, 2007, Financial Information Section (Pgs. 1-13)
F	Applicant's Specimen Submitted With Service Mark Application
G	Lev Pharmaceuticals Inc. Annual Report, dated March 30, 2007 (Pgs 1, 14-15)
H	Sinclair Oil Corp. V. Sumatra Kendrick, Opposition No. 91152940 (TTAB 2007)
I	Applicant's Service Mark Application
J	Applicant's Response to Opposer's First Set of Interrogatories
K	Lev Pharmaceuticals Inc. Form DEF 14C, filed with the Securities and Exchange Commission on January 26, 2005 (Pgs. 1, 2)
L	Lev Pharmaceuticals Inc. Annual Report, dated March 30, 2007 (Pgs F-20,21)

## **I. Factual Background**

Opposer, LEO Pharma A/S (“LEO Pharma”), was founded in 1908 and has been involved in the research, development, production and manufacturing of pharmaceutical products since its founding. LEO Pharma has obtained numerous trademarks around the world for pharmaceutical preparations, including U.S. Reg. No. 1,777,615 for the mark “LEO” and U.S. Reg. No. 1,782,361 for the mark “LEO” with a design.

Applicant, Lev Pharmaceuticals, Inc. (“Lev Pharmaceuticals”) is a start-up company founded in 2003 with the goal of developing and commercializing a line of products, including its lead product “Cinryze”. See Exhibits A and B. Since its founding, Lev Pharmaceuticals’ operations have focused on raising capital to fund operations and conducting research and development for its product to treat inflammatory disease. See Exhibit E, page numbers 6-7.

Lev Pharmaceuticals filed application No. 76/636,322 to register the service mark “LEV PHARMA” for “research and development of pharmaceutical products.” Lev Pharmaceuticals alleges a first use for performing services in commerce of March 19, 2003. Interestingly, however, Lev Pharmaceuticals represents in its records that the Company wasn’t even founded until July 2003. See Exhibit C, entitled “Lev Timeline”.

## **II. Summary**

Performing research and testing for your own product is not a registrable service. Yet that is exactly what Applicant is trying to do. Applicant’s own documents show

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