

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

LEO PHARMA A/S
Opposer,

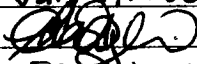
v.

LEV PHARMACEUTICALS, INC.
Applicant.

Opposition No. 91171694
Serial No. 76/636,322

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Commissioner for Trademarks, PO BOX 1451, Alexandria, Virginia 22313-1451 on:

Date: July 7, 2008
Signature: 
Name: ERIC D. KLEIN

**APPLICANT'S ANSWER, WITH COUNTERCLAIMS,
TO AMENDED NOTICE OF OPPOSITION**

Applicant Lev Pharmaceuticals, Inc. ("Applicant"), a Delaware corporation having its principal place of business at 675 Third Avenue, Suite 2200, New York, NY 10017 (formerly 122 East 42nd Street, Suite 2606, New York, NY 10168), by its attorneys Kramer Levin Naftalis & Frankel LLP, hereby answers the Amended Notice of Opposition (the "Notice") filed by opposer LEO Pharma A/S ("Opposer") against Application Serial No. 76/636,322 for the mark LEV PHARMA as follows:

1. Admitted.
2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Notice and on that basis denies



the same, with the sole exception that Applicant admits the copy of U.S. Reg. No. 1,777,615 submitted with Opposer's Reply to Applicant's Response to Motion for Leave to Amend Notice of Opposition incorporates the following identification of goods: pharmaceutical preparations; namely, antibiotic, antibacterial, diuretic, antihypertensive, vitamin, mineral supplement, hormone, anti-inflammatory, analgesic, anticoagulant, anesthetic, and cytostatic agent preparations.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the Notice and on that basis denies the same, with the sole exception that Applicant admits the copy of U.S. Reg. No. 1,782,361 submitted with Opposer's Reply to Applicant's Response to Motion for Leave to Amend Notice of Opposition incorporates the following identification of goods: pharmaceutical preparations; namely, antibiotic, antibacterial, diuretic, antihypertensive, vitamin, mineral supplement, hormone, anti-inflammatory, analgesic, anticoagulant, anesthetic, and cytostatic agent preparations.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Notice and on that basis denies the same.

5. Denied, with the sole exception that Applicant admits it did not itself (as opposed to one or more of its predecessors in interest) use the mark identified in its registration application Serial No. 76/636,322, "LEV PHARMA", in connection with research and development of pharmaceutical products prior to the date of its incorporation on January 14, 2005.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Notice and on that basis denies the same.

7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the Notice and on that basis denies the same.

8. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Notice and on that basis denies the same.

9. Denied, Opposer being referred to the official record of Application No. 74/228,851 for its full and complete terms, which record speaks for itself.

10. Denied, Opposer being referred to the official record of Application No. 74/228,850 for its full and complete terms, which record speaks for itself.

11. Denied.

12. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 of the Notice and on that basis denies the same.

13. Denied.

14. Denied, with the sole exception that Applicant admits its adoption of the designation "LEV PHARMA" as a trademark is without license or permission of LEO because no such license or permission is necessary.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

20. [This allegation is stricken pursuant to the Board's Order dated June 6, 2008 and, in any event, is denied.]

21. Denied, Opposer being referred to the official record of Application No. 76/636,322 for its full and complete terms, which record speaks for itself.

22. Admitted.

23. Admitted, with the proviso that the application papers were written by Kramer Levin Naftalis & Frankel LLP in consultation with Applicant. Insofar as replying to Opposer's allegations would involve a waiver of the attorney-client privilege or the attorney work product immunity, Applicant declines to make such waiver and ratifies its reliance on such privilege and immunity.

24. With the proviso that Applicant is not taking any substantive position as to whether its attorneys met their ethical obligations or gave competent advice as alleged by Opposer, this allegation is denied because it calls for an answer entailing conclusions of law, and an invasion of privileged communications between attorney and client. Insofar as replying to Opposer's allegations would involve a waiver of the attorney-client privilege or the attorney work product immunity, Applicant declines to make such waiver and ratifies its reliance on such privilege and immunity.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

AFFIRMATIVE DEFENSES

31. Opposer has failed to state a claim upon which relief can be granted.

32. Opposer is guilty of unclean hands.

COUNTERCLAIM FOR CANCELLATION OF U.S. REG. NO. 1,777,615

Counterclaimant Lev Pharmacueticals, Inc., herein referred to as "Applicant", hereby petitions for cancellation of U.S. Registration No. 1,777,615 on the following grounds:

GROUND I: FRAUD

33. Upon information and belief, LEO Pharma A/S, herein referred to as "Opposer", is guilty of fraud on the U.S. Patent and Trademark Office with respect to its pleaded U.S. Registration No. 1,777,615 for the mark LEO (the LEO Registration), which, on information and belief, is invalid because at the time that a Combined Declaration of Use in Commerce and Application for Renewal of Registration of Mark Under Sections 8 & 9 was executed and filed in support of the LEO registration, the mark covered by the LEO Registration was not then in use in commerce in the United States on or in connection with all of the goods recited in the LEO Registration.

34. Upon information and belief, the LEO Registration incorporates the following identification of goods: pharmaceutical preparations; namely, antibiotic, antibacterial, diuretic, antihypertensive, vitamin, mineral supplement, hormone, anti-inflammatory, analgesic, anticoagulant, anesthetic, and cytostatic agent preparations.

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