



The grounds for opposition are as follows:

1. Opposer G. D. Searle, LLC (hereinafter "Opposer Searle"), a Delaware limited liability company, has a principal place of business at 100 Route 206 North, Peapack, New Jersey 07977.

2. Upon information and belief, Applicant Dipro Diagnostic Products GmbH (hereinafter "Applicant Dipro Diagnostic") is a corporation organized under the laws of Austria with a business address of Industriezentrum NO-Sud 7 Objekt 38, 2355 Wr. Neudorf, Austria.

3. Opposer Searle is and has for many years been engaged in the development, manufacture and sale of prescription and over-the-counter pharmaceutical products and has built a large and successful business in the pharmaceutical field.

4. Opposer Searle owns U.S. Registration No. 1,772,191 issued on May 18, 1993 for the mark DAYPRO for "pharmaceuticals in the nature of anti-inflammatory analgesics agents." A copy of a printout from the U.S. Trademark Electronic Search System (TESS) bearing pertinent information regarding the registration is attached as Exhibit A. This registration is now incontestable.

5. The issuance date of Opposer Searle's registration for the mark DAYPRO predates the filing date of the application being opposed. Accordingly, priority is not in issue.

**Applicant Dipro Diagnostic and its DIPRO mark**

6. Applicant Dipro Diagnostic filed an intent-to-use application on January 13, 1999, claiming priority under Section 44(d), the priority date of which is December 10, 1998, to register the mark DIPRO and design for, among other things, "diagnostic pharmaceutical

substances for medical purposes, in particular to test for infectious diseases, rheumatism, human hemoglobin and substances in the blood normally analyzed with such test strips” in International Class 5.

7. Applicant Dipro Diagnostic’s application has been assigned Serial No. 75/620,751.

8. Applicant Dipro Diagnostic’s proposed DIPRO and design mark is substantially similar in sound and appearance to Opposer Searle’s pleaded DAYPRO mark. Moreover, both marks are comprised of only two syllables.

9. Upon information and belief, the diagnostic pharmaceutical substances proposed to be offered by Applicant Dipro Diagnostic under the mark DIPRO are closely related to the goods sold by Opposer Searle under its DAYPRO mark.

#### **Likelihood of Confusion**

10. Applicant Dipro Diagnostic’s proposed use of the mark DIPRO and design for the diagnostic pharmaceutical substances so nearly resembles Opposer Searle’s DAYPRO mark used for anti-inflammatory analgesic agents as to be likely to cause confusion, mistake or deception under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d).

11. If Applicant Dipro Diagnostic’s mark is registered, Applicant Dipro Diagnostic will receive a *prima facie* nationwide exclusive right to use its confusingly similar mark in commerce and, as such, would be damaging to Opposer Searle’s rights.

WHEREFORE, Opposer Searle believes that, as a result of its priority and the likelihood of confusion with Applicant Dipro Diagnostic's DIPRO mark and its identified Class 5 goods, Opposer Searle will be damaged by registration of the DIPRO mark and prays that this opposition be sustained and that Application Serial No. 75/620,751 be refused registration.

Enclosed please find a check in the amount of \$300.00 as payment for the requisite filing fee. Please charge any other fees that may be required to Deposit Account Number 08-3038. A duplicate copy of this Notice of Opposition is submitted herewith.

Please recognize as attorneys for Opposer in this proceeding J. Paul Williamson and George C. Pologeorgis and the law firm of Howrey, Simon, Arnold & White LLP, 1299 Pennsylvania Avenue, N.W., Washington D.C. 20004.

Please address all communications to J. Paul Williamson at the above address.

Respectfully submitted,



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