

ESTTA Tracking number: **ESTTA32649**

Filing date: **05/10/2005**

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	SCHERING CORPORATION
Granted to Date of previous extension	05/15/2005
Address	2000 GALLOPING HILL ROADK-6-1 M1030 KENILWORTH, NJ 07033-0530 UNITED STATES

Correspondence information	SCHERING CORPORATION 2000 GALLOPING HILL ROADK-6-1 M1030 KENILWORTH, NJ 07033-0530 UNITED STATES DKERA@OBLON.COM, tmdocket@oblon.com Phone:703-413-3000
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Applicant Information

Application No	76574664	Publication date	11/16/2004
Opposition Filing Date	05/10/2005	Opposition Period Ends	05/15/2005
Applicant	Novo Nordisk A/S Novo Alle DK-2880 Bagsvaerd,		

DENMARK

Goods/Services Affected by Opposition

Class 005.

All goods and services in the class are opposed, namely: Antidiabetic preparations for pulmonary administration

Class 010.

All goods and services in the class are opposed, namely: Medical device for pulmonary administration

Attachments	1246-263125us.pdf (3 pages)
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Signature	/david j. kera/ojb
Name	SCHERING CORPORATION
Date	05/10/2005

NOTICE OF OPPOSITION

Schering Corporation, a corporation of the State of New Jersey, located at 2000 Galloping Hill Road, Kenilworth, New Jersey 07033, believes it will be damaged by the registration of the trademark VIVENTIL and hereby opposes the same. As grounds of opposition, Opposer alleges:

1. The application to register VIVENTIL was filed on February 9, 2004 under Application Serial No. 76/574,664 by Novo Nordisk A/S pursuant to 15 U.S.C. § 1051(b). The goods identified in the VIVENTIL application are antidiabetic preparations for pulmonary administration, in International Class 005, and medical device for pulmonary administration, in International Class 010.

2. On information and belief, Applicant, Novo Nordisk A/S, has not used the trademark VIVENTIL in commerce. The earliest date which Applicant can claim is February 9, 2004.

3. Opposer, Schering Corporation, is the owner of the trademark PROVENTIL, which is registered under Registration No. 926,413, issued January 4, 1972 (twice renewed) for goods described as bronchodilator, in International Class 005.

4. Opposer's trademark PROVENTIL is used for a pharmaceutical preparation, specifically a bronchodilator, used for the treatment of asthma and for inhalers, which are the mode of administration for the bronchodilator.

5. Opposer has used its trademark PROVENTIL for the bronchodilator and for the inhalers since prior to the earliest date that can be claimed by Applicant.

6. Applicant's alleged trademark VIVENTIL is confusingly similar in appearance and sound to Opposer's trademark PROVENTIL.

7. Neither VIVENTIL nor PROVENTIL has any apparent meaning so there is no connotative difference to help distinguish the marks.

8. The goods identified in the VIVENTIL application are related to the goods identified in Opposer's registration and the goods for which Opposer has under prior use of its trademark PROVENTIL. Both sets of products are pharmaceutical preparations administered by inhalation through similar medical devices.

9. An error by a patient in using the wrong pharmaceutical preparation, which could be caused by the confusing similarity of the marks, could have very serious or even fatal consequences.

10. The use and registration of VIVENTIL is likely to cause confusion with the previously used and registered trademark PROVENTIL in violation of 15 U.S.C. § 1052(d) and in derogation of Opposer's prior and superior rights in PROVENTIL.

WHEREFORE, Opposer requests that the opposition be sustained and that registration to Applicant on Application Serial No. 76/574,664 be refused.

Respectfully submitted,

Schering Corporation

By:



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Date:

May 10, 2005

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