

ESTTA Tracking number: **ESTTA69742**

Filing date: **03/07/2006**

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	Inamed Corporation		
Entity	Corporation	Citizenship	Delaware
Address	5540 Ekwill Street Santa Barbara, CA 93111 UNITED STATES		

Attorney information	John M. Kim IP Legal Advisors, P.C. 600 West Broadway Suite 1520 San Diego, CA 92101 UNITED STATES jkim@ipla.com Phone:6195151489
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Applicant Information

Application No	78456841	Publication date	02/21/2006
Opposition Filing Date	03/07/2006	Opposition Period Ends	03/23/2006
Applicant	Medicis Aesthetics Holdings Inc. 8125 North Hayden Road Scottsdale, AZ 85258 UNITED STATES		

Goods/Services Affected by Opposition

Class 003. All goods and services in the class are opposed, namely: Non-medicated preparations for tissue augmentation
Class 005. All goods and services in the class are opposed, namely: Pharmaceutical preparations, namely, dermatological preparations for use in augmentation of tissue; tissue augmentation kits consisting of syringes prefilled with tissue augmenting preparations and instruction manuals and pre-recorded instructional audio tapes, video tapes, audio discs and video discs sold therewith
Class 041. All goods and services in the class are opposed, namely: Providing medical education classes and seminars in the field of aesthetic enhancement

Attachments	Notice of Opposition to Medicis SUBQ.pdf (4 pages) Exhibit A.pdf (4 pages) Exhibit B.pdf (1 page)
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Signature	/John M. Kim/
Name	John M. Kim

Date	03/07/2006
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3. The Applicant's Mark "subq" is merely a slight misspelling of the descriptive word "subcu," which is commonly understood in the medical community to be an abbreviation for and synonymous with the word "subcutaneous." In fact, the definition for "subcu" found in a reputable online medical dictionary website (www.medicinenet.net) authored by Webster's New World Medical Dictionary defines "subcu" as follows: "Subcu: Abbreviation for subcutaneous...Subcutaneous means under the skin. It implies just under the skin." There are also numerous results for the word "subcu," when the term is searched through Google, which provides additional support for the proposition that subcu is commonly understood to mean subcutaneous. Attached hereto as Exhibit A is a true and correct copy of a printout of the website definition found on www.medicinenet.net for "subcu" and a printout of a Google search showing the results for "subcu."

4. The Applicant has merely taken a highly descriptive term and slightly changed the spelling by replacing "cu" with the letter "q;" however, the wording "subcu" and "subq" are phonetically identical and the wording "subq" would be immediately recognized by consumers, which are professionals in the medical industry, as meaning "subcu" or subcutaneous.

5. It is commonly understood and recognized that a slight misspelling of a word will not turn a descriptive or generic word into a non-descriptive mark. *See TMEP Section 1209.03(j); C.-Thru Ruler Co. v. Needleman*, 190 USPQ 93 (E.D. Pa. 1976) (C-THRU held to be the equivalent of "see-through" and therefore merely descriptive of transparent rulers and drafting aids); *In re Hubbard Milling Co.*, 6 USPQ2d 1239 (TTAB 1987) (MINERAL-LYX held generic for mineral licks for feeding livestock). The Applicant's Mark is merely a slight misspelling of the descriptive terminology "subcu," which is not only commonly and widely recognized in the medical community as the equivalent of subcutaneous, but is also defined in medical dictionaries as meaning "subcutaneous." As set forth in TMEP Section 1209.03(j) and the aforementioned cases, the Applicant cannot transform the descriptive word "subcu" into a non-descriptive mark by slightly misspelling the word to "subq." Despite this slight misspelling, the wording "subq" would easily be recognized as meaning "subcu," which is merely descriptive when used in connection with a pharmaceutical product delivered subcutaneously.

6. The Applicant's Goods are delivered **subcutaneously** through syringes as evidenced not only by Applicant's own description of goods, which describes the goods as consisting of "syringes prefilled with tissue augmenting preparations," but also the Applicant's own press release, which is attached hereto as Exhibit B. The Applicant's press release describes its Restylane SubQ product as being intended for "**subcutaneous** or supraperiosteal injections where more volume is required for instance to contour cheeks and chins." [emphasis added] Therefore, it is clear that the method of delivery of the Applicant's pharmaceutical goods is through subcu injection. The fact that the Applicant's goods are delivered subcu renders the mark descriptive of a feature, function or characteristic of the goods.

7. The Applicant seeks to register services for “providing medical education classes and seminars in the field of aesthetic enhancement.” Although the Applicant has not specifically called out the precise subject matter of such classes and seminars, the Applicant’s Services are obviously related to the Applicant’s Goods, because they are being offered under the same mark. Also, the “field of aesthetic enhancement” in which the Applicant’s Services are offered also describes the field in which the Applicant’s Goods are offered. The classes and seminars will most likely be related to how to use the Applicant’s Goods and how to treat patients with the Applicant’s Goods. Since the wording “subq” is descriptive of Applicant’s Goods (as discussed above), any classes and seminars regarding Applicant’s Goods must also be descriptive, because “subq” describes a feature, quality or characteristic of the subject matter of such services. Although “subq” is not descriptive of classes and seminars in general, it is descriptive when viewed in the context of the subject matter of such classes and seminars, which must be considered when evaluating descriptiveness in relation to the Applicant’s Services. For example, “subq” would not be descriptive of classes and seminars in the field of computer repair, because “subq” has no description connotation in that field; however, “subq” would be descriptive of classes and seminars regarding a pharmaceutical product that is delivered subcu.

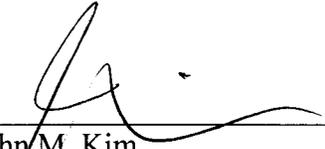
8. The Applicant’s Goods are directly competitive with Opposer’s Goods and are intended for the same function, which is the treatment of facial lines, wrinkles, asymmetries and defects of the skin. The manner of delivery of both the Applicant’s Goods and Opposer’s Goods is also the same, namely, subcu (subcutaneous) injection of the pharmaceutical product.

9. Opposer plans to use the descriptive wording “subq” in its advertising and in conjunction with its marks to describe the method of delivery of its pharmaceutical products and to describe services, such as classes and seminars regarding the use of Opposer’s Goods and patient treatment. In fact, Opposer has filed for the mark JUVEDERM SUBQ, which incorporates the descriptive wording “subq” as part of the mark Juvederm. Also, Opposer intends to file further applications for marks that include the descriptive wording “subq” for both Opposer’s Goods and services similar to the Applicant’s Services.

10. Opposer will be damaged by the registration of the Applicant’s Mark, because such registration may serve to block the registration of Opposer’s JUVEDERM SUBQ and other marks that include the descriptive wording “subq.” Given the similar nature of the respective goods, the Applicant may argue that there would be a likelihood of confusion between JUVEDERM SUBQ and its registration for SUBQ. Furthermore, the registration of the Applicant’s Mark will provide Applicant’s Mark with a presumption of distinctive, which could be used unfairly by the Applicant in future trademark infringement litigation against Opposer’s use of the wording “subq.” In such case, Opposer would be put in the extremely unfair position of having to defend a trademark infringement lawsuit based on the registration of a descriptive term.

WHEREFORE, it is respectfully requested this opposition be sustained and the registration sought of Applicant's Mark be denied.

Respectfully submitted,



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Dated: March 7, 2006

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Source: <http://www.medterms.com>

MedTerms is the Medical Dictionary of MedicineNet.com

Definition of Subcu

Subcu: Abbreviation for subcutaneous.

Subcutaneous means under the skin. It implies just under the skin.

With a subcutaneous injection, a needle is inserted just under the skin. A drug (for example, [insulin](#)) can then be delivered into the subcutaneous tissues. After the injection, the drug moves into small blood vessels and the bloodstream. The subcutaneous route is used with many protein and polypeptide drugs such as [insulin](#) which, if given by mouth, would be broken down and digested in the intestinal tract.

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Q-Med has entered into an agreement regarding RESTYLANE SubQ in North America, can generate at least USD 80 million.

Q-Med today announced that it has entered into an exclusive license agreement with Medicis, to market, distribute, sell and commercialize in the United States and Canada Q-Med's product currently marketed in Europe under the trademark RESTYLANE SubQ. Q-Med will have the exclusive right to manufacture and sell RESTYLANE SubQ to Medicis. RESTYLANE SubQ is not currently approved for use in the United States and Canada.

Under the terms of the agreement, Medicis Aesthetics Holdings Inc., a wholly owned subsidiary of Medicis Pharmaceutical Corporation, will license RESTYLANE SubQ for USD 80 million, due as follows: USD 30 million upon closing of the transaction today, USD 10 million upon completion of certain clinical milestones, USD 20 million upon the submission of the regulatory file to the FDA and USD 20 million upon U.S. launch. Medicis will also make additional substantial milestone payments to Q-Med upon the achievement of certain commercial milestones. Q-Med will be responsible for the costs and handling of the regulatory process of getting RESTYLANE SubQ approved by the regulatory authorities in Canada and the USA.

"We are pleased that RESTYLANE SubQ will be marketed by Medicis together with our other RESTYLANE products in North America," says Bengt Ågerup, President and Chief Executive Officer of Q-Med. "We strongly believe that RESTYLANE SubQ has a great potential and that Medicis is the ideal partner for exploring this new and exciting market. There are approximately 200,000 fat injections performed yearly world wide and we believe that our non-invasive treatment with RESTYLANE SubQ can replace a large part of these procedures, as well as other implant procedures for deep facial augmentation."

* Like the other RESTYLANE products, RESTYLANE SubQ is based on the company's patented NASHA technology (Non-Animal Stabilized Hyaluronic acid), but it has a larger gel particle size. The product is intended for subcutaneous or supraperiosteal injections where more volume is required for instance to contour cheeks and chins.

(more)

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