

ESTTA Tracking number: **ESTTA436126**

Filing date: **10/17/2011**

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	Aton Pharma, Inc.
Granted to Date of previous extension	10/16/2011
Address	3150 Brunswick Pike, Suite 230 Lawrenceville, NJ 08648 UNITED STATES

Attorney information	Gene K. Park Morgan, Lewis & Bockius LLP 1111 Pennsylvania Avenue, N.W. Attn: TMSU Washington, DC 20004 UNITED STATES trademarks@morganlewis.com, gene.park@morganlewis.com, chimmelfarb@morganlewis.com, chowell@morganlewis.com Phone: 202-739-5253
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Applicant Information

Application No	85167740	Publication date	04/19/2011
Opposition Filing Date	10/17/2011	Opposition Period Ends	10/16/2011
Applicants	Brady, James W 3250 Country Rose Circle Encinitas, CA 92024 UNITED STATES Brady, Patricia M. 3250 Country Rose Circle Encinitas, CA 92024 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. First Use: 2009/08/31 First Use In Commerce: 2009/08/31 All goods and services in the class are opposed, namely: Clothing for men and women, namely, hats, caps, robes, sandals, polo shirts, collared shirts, slippers and sandals
Class 035. First Use: 2008/11/30 First Use In Commerce: 2008/11/30 All goods and services in the class are opposed, namely: Operations management of addiction rehabilitation centers
Class 044. First Use: 2008/11/30 First Use In Commerce: 2008/11/30 All goods and services in the class are opposed, namely: Drug and alcohol addiction rehabilitation services; providing addiction rehabilitation facilities

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3602978	Application Date	10/13/2006
Registration Date	04/07/2009	Foreign Priority Date	NONE
Word Mark	ATON PHARMA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2007/12/00 First Use In Commerce: 2008/01/00 Pharmaceutical preparations, namely, therapeutic preparations and compositions for use in humans in the treatment and prevention of a variety of medical conditions, namely, cancer, cardiovascular disease, neuro-degenerative diseases, ophthalmic disease, kidney disease, metabolic diseases, bioterror-related diseases, cosmetic conditions and arthritis		

U.S. Registration No.	3595285	Application Date	10/13/2006
Registration Date	03/24/2009	Foreign Priority Date	NONE
Word Mark	ATON PHARMA		
Design Mark			
Description of Mark	The mark consists of words "ATON" and "PHARMA" with a circle design as part of the letter "O" in word "ATON".		
Goods/Services	Class 005. First use: First Use: 2007/12/00 First Use In Commerce: 2008/01/00 Pharmaceutical preparations, namely, therapeutic preparations and compositions for use in humans in the treatment and prevention of a variety of medical conditions, namely, cancer, cardiovascular disease, neuro-degenerative diseases, ophthalmic disease, kidney disease, metabolic diseases, bioterror-related diseases, cosmetic conditions and arthritis		

Attachments	77021119#TMSN.jpeg (1 page)(bytes) 77021113#TMSN.jpeg (1 page)(bytes) aton opp.pdf (5 pages)(267037 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Gene K. Park/
Name	Gene K. Park
Date	10/17/2011

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

Aton Pharma, Inc.

Opposer,

v.

Brady, Patricia M., and Brady, James W.,

Applicants.

In re Application Serial No. 85/167,740

Published: April 19, 2011

Opposition No. _____

NOTICE OF OPPOSITION

Opposer, Aton Pharma, Inc., a corporation organized and existing under the laws of Delaware, having a principal place of business at 3150 Brunswick Pike, Suite 230 Lawrenceville, New Jersey, 08648 (“Opposer” or “Aton Pharma”), believes that it will be damaged by registration of the mark ATON CENTER (Plus Design), Application Serial No. 85/167,740 (the “Opposed Application”), covering, among other things, “[o]perations management of addiction rehabilitation centers” in Class 35 and “[d]rug and alcohol addiction rehabilitation services; providing addiction rehabilitation facilities” in Class 44, and owned by Patricia M. Brady and James W. Brady (“Applicants”). Opposer opposes the same under the provisions of Sections 2(d) and 13 of the Trademark Act of July 5, 1946 (the “Lanham Act”), 15 U.S.C. §§ 1052(d) and 1063.

As grounds for opposition, Opposer alleges that:

1. Opposer is the owner of all right, title and interest in and to the following trademarks, and the corresponding registrations issued by the United States Patent and Trademark Office (together, the “Aton Pharma Marks”):

Trademark:	Goods:
<p>ATON PHARMA (in block letters)</p> <p>Reg. No. 3602978</p> <p>Filed: October 13, 2006</p>	<p>Class 5: Pharmaceutical preparations, namely, therapeutic preparations and compositions for use in humans in the treatment and prevention of a variety of medical conditions, namely, cancer, cardiovascular disease, neuro-degenerative diseases, ophthalmic disease, kidney disease, metabolic diseases, bioterror-related diseases, cosmetic conditions and arthritis.</p>
 <p>ATON PHARMA (Plus Design)</p> <p>Reg. No. 3595285</p> <p>Filed: October 13, 2006</p>	<p>Class 5: Pharmaceutical preparations, namely, therapeutic preparations and compositions for use in humans in the treatment and prevention of a variety of medical conditions, namely, cancer, cardiovascular disease, neuro-degenerative diseases, ophthalmic disease, kidney disease, metabolic diseases, bioterror-related diseases, cosmetic conditions and arthritis.</p>

2. The Aton Pharma Marks are symbolic of the extensive goodwill and consumer recognition that Opposer has established through substantial expenditures of time, effort and other resources in the advertising and promotion of the products that Aton Pharma sells under the Aton Pharma Marks.

3. On November 3, 2010, Applicants filed the Opposed Application, which, as noted above, covers among other things, “[o]perations management of addiction rehabilitation centers” in Class 35 and “[d]rug and alcohol addiction rehabilitation services; providing addiction rehabilitation facilities” in Class 44.

4. The Opposed Application was published for opposition in the *Official Gazette* on April 19, 2011. The Trademark Trial and Appeal Board extended the opposition period for the Opposed Application by granting Opposer's timely requests for extension. The opposition period for the Opposed Application is currently set to expire on October 17, 2011. Opposer therefore timely files this opposition.

5. As further shown below, Applicants' mark as applied for in the Opposed Application is very similar to the Aton Pharma Marks (including in style, layout, and font), and the goods and services covered by the Opposed Application are related to the goods identified by the Aton Pharma Marks.

Applicants' mark:	Aton Pharma Mark
	

6. Through continuous use by Opposer of the Aton Pharma Marks in connection with its pharmaceutical products since at least as early as January 2008, Opposer has acquired exclusive rights in its marks that, upon information and belief, predate any rights upon which Applicants may rely.

7. Opposer believes it will be damaged by registration of Applicants' ATON CENTER Plus Design mark as covered by the Opposed Application under Section 13 of the Lanham Act, 15 U.S.C. § 1063, because consumers, familiar with the Aton Pharma Marks are likely to believe, mistakenly, that Applicants or their products/services emanate from, are

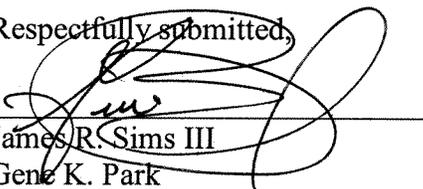
sponsored by or authorized by, or are otherwise associated or affiliated with Opposer, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

WHEREFORE, Opposer believes it will be damaged by registration of Applicants' mark shown in the Opposed Application (Serial No. 85/167,740) and respectfully requests that the registration sought by Applicants be refused.

Dated: October 17, 2011

Respectfully submitted,

By:


James R. Sims III

Gene K. Park

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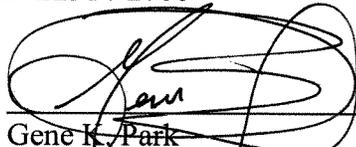
Attorneys for Opposer

Aton Pharma, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Opposition has been sent via first class mail, postage pre-paid, on this 17th day of October 2011 to:

Donald L. Denison
Dennison, Schultz & McDonald
1727 King Street
Suite 105
Alexandria, VA 22314-2700

A handwritten signature in black ink, appearing to read "Gene K. Park", is written over a horizontal line. The signature is stylized and somewhat circular.

~~Gene K. Park~~
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