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**UNITED STATES PATENT AND TRADEMARK
OFFICE**
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: September 8, 2003

ISTITUTO ITALIANO FERMENTI S.p.A.

Via Quaranta 42 ITX
20142 Milan,

Cancellation No. 92042398
Reg. No. 2327634

Donna J. Bunton
Nixon & Vanderhye P.C.
1100 North Glebe Road, 8th Floor
Arlington, VA 22201-4714

VSL Pharmaceuticals, Inc.

V.

ISTITUTO ITALIANO FERMENTI S.p.A.



09-15-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #77

Torri Rodgers, Legal Assistant

A petition, a copy of which is attached, has been filed to cancel the above-identified registration.

Proceedings will be conducted in accordance with the Trademark Rules of Practice.

ANSWER IS DUE FORTY DAYS after the mailing date hereof.
(See Patent and Trademark Rule 1.7 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that became effective October 9, 1998. See Notice of Final Rulemaking published in the *Official Gazette* on September 29, 1998 at 1214 TMOG 145. Slight corrections to the rules, resulting in a correction notice, were published in the *Official Gazette* on October 20, 1998 at 1215 TMOG 64. A copy of the recent amendments to the Trademark Rules, as

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well as the *Trademark Trial and Appeal Board Manual of Procedure (TBMP)*, is available at <http://www.uspto.gov>.

Discovery and testimony periods are set as follows:

Discovery period to open: **September 28, 2003**

Discovery period to close: **March 26, 2004**

30-day testimony period for party
in position of plaintiff to close: **June 24, 2004**

30-day testimony period for party
in position of defendant to close: **August 23, 2004**

15-day rebuttal testimony period
for plaintiff to close: **October 07, 2004**

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "*Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board*," 1235 TMOG 68 (June 20, 2000). A hard copy of the *Official Gazette* containing this notice is available for a fee from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (Telephone (202) 512-1800). The notice is also available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

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If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

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

In Re Registration No.
2,327,634, issued March 14, 2000

) Atty. Ref.: 2818-160

) VSL Pharmaceuticals, Inc.

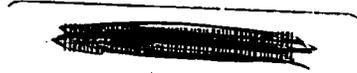
)
)
) Petitioner

) Cancellation No. _____

) v.

) Istituto Italiano Fermenti S.p.A.

)
)
) Respondent



08-12-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

PETITION FOR CANCELLATION

Petitioner, VSL Pharmaceuticals, Inc., a corporation of Delaware, having its principal offices at 800 South Frederick Avenue, Gaithersburg, Maryland 20877, believes that it is being damaged by Registration No. 2,327,634, issued March 14, 2000, and hereby petitions to cancel the same.

As grounds for the present petition, it is alleged that:

1. Istituto Italiano Fermenti S.p.A. (hereinafter "Respondent") is the record owner of United States Trademark Registration No. 2,327,634, issued March 14, 2000, of the trademark YOVIS for pharmaceutical preparations for the treatment of acne, cholesterol, cholecystitis, cancer, hyperglycemia, diabetes, high blood pressure and rheumatism; veterinary preparations for the treatment of ring worm, rabies, scabies, anti-mange, horse-fly, ticks, flea repellents; herbicides for domestic and agricultural use; pesticides for domestic and agricultural use; sanitary preparations, namely, all purpose disinfectants, disinfecting handwash, sanitary napkins, sanitary pads, pre-moistened medicated towelettes; incontinence garments, namely, sanitary panties, sanitary

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knickers; dietetic beverages adapted for medical purposes; dietetic foods adapted for medical purposes; food for babies; dietetic foods for medical purposes, namely, milk ferments, malt, malted milk, albuminous milk, milk sugar or lactose; teat dip; dietary supplement for medical purposes, vitamins for medical purposes (hereafter "the YOVIS goods").

2. Petitioner is the owner of the trademark YOVIS, having adopted the mark for use in connection with pharmaceutical, veterinary and sanitary preparations; dietetic substances adapted for medical use, food for babies; nutraceuticals; food supplements.

3. Petitioner filed Application Serial No. 76/526,202 in the United States Patent and Trademark Office on June 27, 2003, seeking to register the mark YOVIS for pharmaceutical, veterinary and sanitary preparations; dietetic substances adapted for medical use, food for babies; nutraceuticals; food supplements.

4. On information and belief, Respondent discontinued use of the registered mark YOVIS for a period of more than three years with no intent to resume said use and, therefore, has abandoned YOVIS as a trademark for the YOVIS goods within the meaning of § 45 of the Trademark Act.

5. On information and belief, Respondent has never used the registered mark YOVIS since the issuance of Registration No. 2,327,634 more than three years ago and, therefore, has abandoned YOVIS as a trademark for the YOVIS goods within the meaning of § 45 of the Trademark Act.

6. Registration No. 2,327,634 of the mark YOVIS accordingly is invalid as a matter of law and is subject to cancellation at any time under § 14 of the Trademark Act of 1946.

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7. As Respondent has abandoned YOVIS as a trademark for the aforesaid goods, Petitioner has now established superior rights in the mark YOVIS for pharmaceutical, veterinary and sanitary preparations; dietetic substances adapted for medical use, food for babies; nutraceuticals and food supplements.

8. For the reasons set forth above, Petitioner is likely to be damaged by the continued existence of Registration No. 2,327,634, and the business and goodwill of Petitioner is further damaged in that said registration tends to create or maintain statutory rights in violation and derogation of Petitioner's rights.

The requisite filing fee for this Petition for Cancellation is submitted herewith.

WHEREFORE, Petitioner prays that judgment be entered herein canceling United States Trademark Registration No. 2,327,634 and for such other and further relief as may be just and proper.

VSL PHARMACEUTICALS, INC.

.Dated: August 12, 2003

By: Donna J. Buntor
Donna J. Buntor
Attorney for Petitioner
NIXON & VANDERHYE P.C.
1100 North Glebe Road, 8th Floor
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(703) 816-4000

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

TTAB

VSI PHARMACEUTICALS, INC.,

Petitioner,

v.

ISTITUTO ITALIANO FERMENTI S.P.A.,

Respondent.



08-12-2003

U.S. Patent & TMO/TM Mail Rpt Dt. #22

Cancellation No. _____

Our Account No. 14-1140

Our Order 2818-160

No.

C# M#

In Re Registration No. 2,327,634
Issued March 14, 2000
For the Mark YOVIS

Date: August 12, 2003

Box TTAB Fee

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Sir:

The document indicated below is attached for filing and is incorporated by reference. Fees are attached as calculated below:

- NOTICE OF OPPOSITION in 0 class(es) (\$ 300.00 per class) \$ 0.00
- PETITION FOR CANCELLATION in 1 class(es) (\$ 300.00 per class) \$ 300.00

TOTAL FEE ENCLOSED \$ 300.00

The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this form) to our **Account No. 14-1140**. A duplicate copy of this sheet is attached.

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DJB:pav

NIXON & VANDERHYE P.C.
By Atty: Donna J. Bunton

Signature: Donna J. Bunton

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