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Filing date: **08/13/2012**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Nerium Biotechnology, Inc.		
Entity	Corporation	Citizenship	Canada
Address	11467 Huebner Road San Antonio, TX 78230 UNITED STATES		

Attorney information	William B. Nash Haynes and Boone, LLP 2323 Victory Avenue, Suite 1200 Dallas, TX 75219 UNITED STATES ipdocketing@haynesboone.com, bill.nash@haynesboone.com, jason.whitney@haynesboone.com, venisa.dark@haynesboone.com, dorothea.martinez@haynesboone.com Phone:210-978-7477
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Registration Subject to Cancellation

Registration No	3071320	Registration date	03/21/2006
Registrant	OZELLE PHARMACEUTICALS, INC. 21467 Briar Bluff Road Coal Valley, IL 61240 UNITED STATES		

Goods/Services Subject to Cancellation

Class 005. First Use: 2000/03/27 First Use In Commerce: 2000/03/27 All goods and services in the class are cancelled, namely: Pharmaceutical preparations used in the treatment of cancer, AIDS, hepatitis C, lupus and other viral diseases

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Abandonment	Trademark Act section 14

Attachments	PetCancel3071320.pdf (8 pages)(856668 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	/William B. Nash/
Name	William B. Nash
Date	08/13/2012

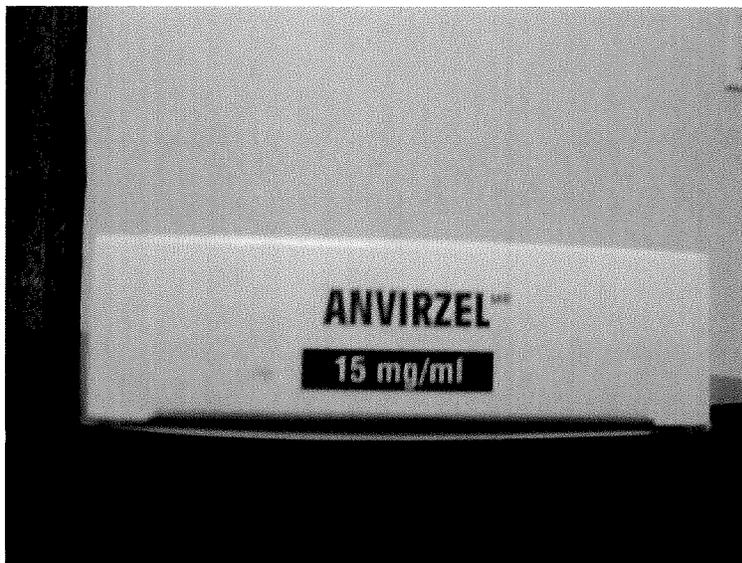
so resembles the mark in U.S. Registration No. 3071320 as to be likely to cause confusion, to cause mistake, or to deceive.”

4. According to the Trademark Applications and Registrations Retrieval (“TARR”) database, Ozelle Pharmaceuticals, Inc. (“Ozelle”) is the owner of record of U.S. Registration No. 3,071,320 for ANVIRZEL (the “Cited Registration”) for “Pharmaceutical preparations used in the treatment of cancer, AIDS, hepatitis C, lupus and other viral diseases” in International Class 05. The Cited Registration issued March 21, 2006.

5. According to the TARR database, the correspondence address of record for Ozelle is 21467 Briar Bluff Road, Coal Valley, IL 61240. According to the TARR database, Ozelle is a corporation formed under the laws of Nevada.

6. On or about January 4, 2006, Ozelle filed a Trademark/Service Mark Statement of Use for the Cited Registration (the “2006 Statement of Use”).

7. The 2006 Statement of Use included the following “[d]igital photograph of package” as the specimen:



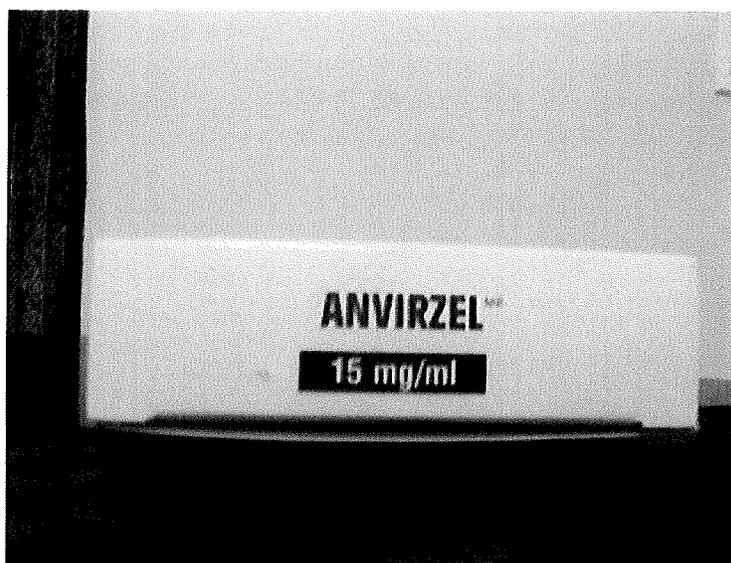
8. The 2006 Statement of Use specimen showed a curtain on the left side of the photograph and a light switch in the upper right corner of the photograph.

9. On or about March 21, 2012, Ozelle filed a Combined Declaration of Use and Incontestability under Sections 8 & 15 for the Cited Registration (the “2012 Renewal”).

10. The 2012 Renewal stated that: “For International Class 005, the mark is in use in commerce on or in connection with **all** of the goods or services listed”

11. The 2012 Renewal stated that: “the mark has been continuously used in commerce for five (5) consecutive years after the date of registration . . . and is still in use in commerce on or in connection with **all** goods or services listed in the existing registration for this class.”

12. The 2012 Renewal included the following “photograph of goods packaging” as the specimen:



13. The 2012 Renewal specimen showed a curtain on the left side of the photograph and a light switch in the upper right corner of the photograph.

14. On information and belief, the 2012 Renewal specimen comprised the same photograph (with slightly different shading) as the 2006 Statement of Use specimen.

15. On information and belief, the 2006 Statement of Use and the 2012 Renewal used the same photograph as a specimen.

16. Ozelle filed Articles of Incorporation in Nevada on or about March 31, 1997. From 1998 to 2007, Ozelle filed an “Annual List” with the Nevada Secretary of State. Ozelle did not file an Annual List with the Nevada Secretary of State for 2008 to 2012.

17. The Nevada Secretary of State website currently identifies Ozelle’s corporate status as “revoked.”

18. On information and belief, Nevada revoked Ozelle’s corporate status in or about 2008.

19. On information and belief, Ozelle does not have approval from the Food and Drug Administration for any products identified by the trademark ANVIRZEL.

20. On information and belief, Ozelle does not have approval from the Food and Drug Administration or any other government agency to advertise, offer, or sell products under the trademark ANVIRZEL for “Pharmaceutical preparations used in the treatment of cancer, AIDS, hepatitis C, lupus and other viral diseases.”

21. Nerium believes it is or will be damaged by the continued registration of U.S. Registration No. 3071320.

**II.
Cancellation Claims**

A. Cancellation Based on Abandonment (15 U.S.C. § 1064(3))

22. On information and belief, Ozelle has discontinued use of the ANVIRZEL mark.

23. On information and belief, Ozelle does not intend to resume use of the ANVIRZEL mark.

24. On information and belief, Ozelle discontinued use of the ANVIRZEL mark in commerce on or in connection “Pharmaceutical preparations used in the treatment of cancer, AIDS, hepatitis C, lupus and other viral diseases” in or about 2008.

25. On information and belief, the Cited Registration should be cancelled because Ozelle has abandoned the ANVIRZEL mark.

B. Cancellation Based on Fraud (15 U.S.C. § 1064(3))

26. On information and belief, Ozelle made false statements in the 2012 Renewal for the Cited Registration.

27. On information and belief, Ozelle falsely stated that the ANVIRZEL “mark is in use in commerce on or in connection with **all** of the goods or services listed”

28. On information and belief, Ozelle falsely stated that the ANVIRZEL “mark has been continuously used in commerce for five (5) consecutive years after the date of registration . . . and is still in use in commerce on or in connection with **all** goods or services listed in the existing registration for this class.”

29. On information and belief, Ozelle falsely identified itself as the owner of the Cited Registration, when the corporate status of Ozelle had been revoked.

30. On information and belief, Ozelle knew that the 2012 Renewal contained false representations.

31. On information and belief, Ozelle knew at the time it submitted the Renewal that the recitation of use of the ANVIRZEL mark for “Pharmaceutical preparations used in the treatment of cancer, AIDS, hepatitis C, lupus and other viral diseases” was false.

32. On information and belief, Ozelle knew at the time it submitted the 2012 Renewal that the statement that the ANVIRZEL “mark has been continuously used in commerce for five (5) consecutive years after the date of registration” was false.

33. On information and belief, Ozelle knew at the time it submitted the 2012 Renewal that the statement that the ANVIRZEL mark “is still in use in commerce on or in connection with **all** goods or services listed in the existing registration for this class” was false.

34. On information and belief, Ozelle knew at the time it submitted the 2012 Renewal declaration that its corporate status had been revoked.

35. On information and belief, Ozelle made the false representations in the 2012 Renewal with intent to deceive the United States Patent and Trademark Office.

36. On information and belief, the United States Patent and Trademark Office accepted the 2012 Renewal and maintained the Cited Registration on the Principal Register pursuant to the false representations by Ozelle.

37. On information and belief, the United States Patent and Trademark Office issued (i) a Notice of Acceptance Under Section 8 and (ii) a Notice of Acknowledgement Under Section 15 for the Cited Registration pursuant to the false statements by Ozelle.

38. On information and belief, Ozelle’s false representations were material to the continued registrability of the Cited Registration.

39. On information and belief, Ozelle maintained the Cited Registration by knowingly making false representations to the United States Patent and Trademark Office, including false representations that Ozelle used ANVIRZEL in commerce on or in connection with “Pharmaceutical preparations used in the treatment of cancer, AIDS, hepatitis C, lupus and

other viral diseases,” when Ozelle had stopped using the ANVIRZEL mark at the time of the Renewal.

40. On information and belief, the Cited Registration should be cancelled because Ozelle fraudulently maintained the Cited Registration.

C. Cancellation Based on Nonuse (15 U.S.C. § 1068)

41. On information and belief, Ozelle did not use ANVIRZEL in commerce on or in connection with any of “Pharmaceutical preparations used in the treatment of cancer, AIDS, hepatitis C, lupus and other viral diseases” when the 2012 Renewal was filed.

42. On information and belief, the 2012 Renewal falsely stated that the ANVIRZEL “mark is in use in commerce on or in connection with **all** of the goods or services listed”

43. Cancelling the entire Cited Registration would avoid the likelihood of confusion rejection for the Application.

44. On information and belief, the Cited Registration should be cancelled in its entirety because, at the time of filing the 2012 Renewal, Ozelle did not use the ANVIRZEL mark.

PRAYER

WHEREFORE, Nerium Biotechnology, Inc. believes it is being damaged by the continued registration of U.S. Registration No. 3,071,320, and respectfully prays that the Cited Registration be cancelled.

Dated: August 13, 2012.

Respectfully submitted,

HAYNES AND BOONE, LLP



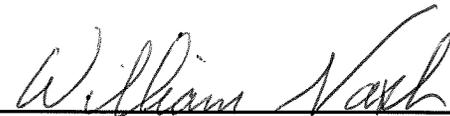
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**ATTORNEYS FOR PETITIONER,
NERIUM BIOTECHNOLOGY, INC.**

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served on Ozelle Pharmaceuticals, Inc. by certified mail, return receipt requested, on the 13th day of August, 2012 at the following correspondence address of record in the United States Patent and Trademark Office:

Ozelle Pharmaceuticals, Inc.
21467 Briar Bluff Road
Coal Valley, IL 61240



William B. Nash