

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

TTAB

In the matter of Application Ser. Nos.: 78/765,773 and 78/756,196  
Filed: December 2, 2005 and November 17, 2005  
For the marks: ZYMERIZ and ZYMERYS  
Published in the Trademark Official Gazette on July 4, 2006.

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ORPHAN MEDICAL, INC.,

Opposer,

v.

Opposition No. 91172190

ELI LILLY AND COMPANY

Applicant.

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Commissioner for Trademarks  
P.O. Box 1451  
Arlington, VA 22313-1451

CERTIFICATE OF MAILING 37 C.F.R. 1.8  
I hereby certify that this correspondence is being  
deposited with the U.S. Postal Service as First Class  
Mail in an envelope addressed to: Commissioner of  
Trademarks, P.O. Box 1451, Arlington, VA 22313-1451,  
on the date below:  
Date: 10/27/06 Emin Austad  
Signature

**MOTION FOR DEFAULT JUDGMENT**

Orphan Medical, Inc. ("Opposer"), hereby moves for the entry of default judgment against Eli Lilly and Company ("Applicant") for Applicant's failure to timely answer Opposer's Notice of Opposition, filed on August 3, 2006. The Trademark Trial and Appeal Board ("TTAB") mailed an order concerning Opposition No. 91172190 on August 3, 2006, requiring an answer from Applicant no later than September 12, 2006. To the best of Opposer's knowledge, no such answer has been filed with the TTAB, and no such answer has been served on Opposer.

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10-25-2006

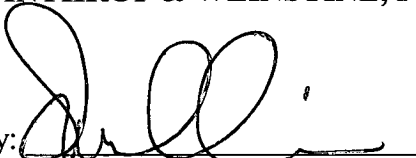
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #22

Trademark Rule of Practice 2.106(a) provides that “[i]f no answer is filed within the time set, the opposition may be decided as in case of default.” 37 C.F.R. § 2.106(a). While the TTAB will normally issue a notice of default, allowing the Applicant twenty days from the mailing date of the notice in which to show cause why default judgment should not be entered against it, the Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) also provides that “the plaintiff, realizing that the defendant is in default, may file a motion for default judgment (in which case the motion may serve as a substitute for the Board’s issuance of a notice of default).” TBMP § 317.01 (parenthetical in original).

Accordingly, Opposer respectfully requests that the present Motion for Default Judgment, having been mailed to Applicant’s address on record at the Patent and Trademark Office, as set forth on the attached Certificate of Service, serve as a substitute for the Board’s issuance of a Notice of Default, and begin the running of Applicant’s twenty-day time period in which to demonstrate good cause why default judgment should not be entered against it. See Paolo’s Assocs. Ltd. Partnership v. Paolo Bodo, 21 U.S.P.Q.2d 1899 (Comm’r 1990).

Respectfully Submitted,

**WINTHROP & WEINSTINE, P.A.**

By: 

Stephen R. Baird

Sarah A. Crain

225 South Sixth Street, Suite 3500

Minneapolis, Minnesota 55402

(612) 604-6400

ATTORNEYS FOR OPPOSER

Date: October 23, 2006

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the following documents:

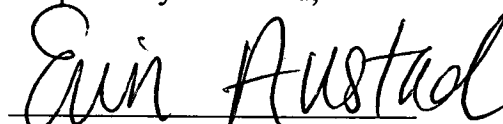
1. Motion for Default Judgment; and
2. Certificate of Service

have been served upon Applicant this 23<sup>rd</sup> day of October, 2006, directed to Applicant at the following address and in the below stated manner:

Bruce W. Longbottom  
ELI LILLY AND COMPANY  
LILLY CORPORATE CENTER  
INDIANAPOLIS, IN 46285-0001

**VIA FIRST CLASS MAIL**

Respectfully submitted,



Erin N. Austad  
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(612) 604-6400

Date: October 23, 2006

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