

ESTTA Tracking number: **ESTTA195594**

Filing date: **02/29/2008**

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	Wyeth
Granted to Date of previous extension	03/02/2008
Address	Five Giralda Farms Madison, NJ 07940 UNITED STATES

Correspondence information	Wyeth Five Giralda Farms Madison, NJ 07940 UNITED STATES raos@wyeth.com Phone:973-660-7697
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### Applicant Information

Application No	77026267	Publication date	09/04/2007
Opposition Filing Date	02/29/2008	Opposition Period Ends	03/02/2008
Applicant	VELCERA, INC. 201 CORPORATE DRIVE LANGHORNE, PA 190478007 UNITED STATES		

### Goods/Services Affected by Opposition

Class 010. All goods and services in the class are opposed, namely: Drug delivery device, namely, oral spray device for transmucosal delivery of pharmaceutical, medical and veterinary preparations
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### Grounds for Opposition

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

U.S. Registration No.	3330565	Application Date	04/29/2004
Registration Date	11/06/2007	Foreign Priority Date	NONE
Word Mark	PROMERIS		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 005. First use: First Use: 2007/06/15 First Use In Commerce: 2007/06/15 Veterinary products and preparations, namely, flea and tick preparations for cats and dogs
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Attachments	78410066#TMSN.jpeg ( 1 page )( bytes ) Promist Opp.pdf ( 11 pages )(196891 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	/Sudipta Rao/
Name	Wyeth
Date	02/29/2008

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

In the Matter of Application Serial No. 77/026,267  
Published on September 4, 2007

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WYETH,	:	
	:	Opposition No.
Opposer,	:	
	:	<u>NOTICE OF OPPOSITION</u>
v.	:	
	:	
VELCERA, INC.,	:	
	:	
Applicant.	:	
-----X	:	

Opposer Wyeth, a Delaware corporation having its principal place of business at Five Giralda Farms, Madison, New Jersey, believes it will be damaged by registration of the mark PROMIST sought to be registered in Application Serial No. 77/026,267, filed on October 20, 2006 and published in the Official Gazette on September 4, 2007, in International Class 10 for *“Drug delivery device, namely, oral spray device for transmucosal delivery of pharmaceutical, medical and veterinary preparations,”* and having been granted an extension of time to oppose this application, hereby opposes same.

As grounds for opposition, it is alleged that:

1. Opposer Wyeth and its affiliated and predecessor companies (referred to collectively herein as “Wyeth”), are now, and for many years have been engaged in the manufacture, distribution and sale of a wide variety of pharmaceutical, consumer healthcare and animal health products. Wyeth’s wide variety of prescription and over-the-counter animal health

products for use on livestock and companion animals are sold in commerce throughout the United States by its animal health division, Fort Dodge Animal Health.


- 2 . Wyeth's PROMERIS® trademark was filed on April 29, 2004. Ever since the adoption and use of the PROMERIS® trademark, Wyeth has widely used and sold, advertised and promoted goods bearing the PROMERIS® trademark in interstate commerce. As a consequence of same, the consuming public and trade have come to recognize and do recognize the PROMERIS® trademark as being used by Wyeth, and to identify and associate said mark with Wyeth. Wyeth derives substantial goodwill and value from the aforesaid recognition, association and identification by the consuming public and trade.
- 3 . Wyeth is the owner of U.S. Reg. No. 3,330,565 on the Principal Register of the United States Patent and Trademark Office for the PROMERIS® trademark, covering "*Veterinary products and preparations, namely flea and tick preparations for cats and dogs,*" and issued on November 6, 2007. The aforesaid registration is valid and subsisting, unrevoked and uncanceled, and Wyeth is the owner of such registration and all of the goodwill represented thereby. In accordance with Rule 2.122 of the Trademark Rules of Practice, a current printout of the aforesaid registration from the electronic database of the U.S. Patent and Trademark Office showing the current status and title of the registration is attached hereto as Exhibit A and submitted into evidence on behalf of Wyeth.
4. By the application herein opposed, Applicant seeks to register the mark PROMIST in International Class 10 for "*Drug delivery device, namely, oral spray device for transmucosal delivery of pharmaceutical, medical and veterinary preparations.*"

5. Applicant's trademark PROMIST, opposed herein, closely resembles Wyeth's PROMERIS® trademark in both appearance and pronunciation. Applicant's mark, when applied to Applicant's goods, which are related to Wyeth's products bearing the PROMERIS® trademark is likely to cause confusion, mistake, or deception with consequent injury to Wyeth, veterinary professionals, the consuming public and trade.
6. The goods for which Applicant seeks registration of the PROMIST mark are likely to be sold in similar channels of trade and/or used by the same consumers to whom Wyeth sells its goods and services under the PROMERIS® mark. These consumers and potential consumers are likely to believe that Applicant's PROMIST and products sold thereunder are associated with, endorsed by, related to or sponsored by Wyeth. Any fault or defect, misuse or misapplication of Applicant's goods bearing the PROMIST mark may cause serious injury to animals and their respective owners and would reflect upon and injure Wyeth's reputation.
7. Wyeth will be damaged by the concurrent registration and use of the Applicant's because such registration will support and assist Applicant in the confusing and misleading use of Applicant's mark sought to be registered, and will give color of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Wyeth.

WHEREFORE Wyeth believes that it will be damaged by registration of Applicant's mark and prays that this opposition be sustained, and that Application Serial No. 77/026,267 be denied.

Dated: February 29, 2008  
Madison, New Jersey

WYETH

By:   
Sudipta Rao  
Attorney for Opposer  
Five Giralda Farms  
Madison, New Jersey 07940  
(973) 660-7697  
raos@wyeth.com

## **EXHIBIT A**

**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2008-02-29 12:00:47 ET**

**Serial Number:** 78410066 [Assignment Information](#) [Trademark Document Retrieval](#)

**Registration Number:** 3330565

**Mark**

**PROMERIS**

**(words only):** PROMERIS

**Standard Character claim:** Yes

**Current Status:** Registered.

**Date of Status:** 2007-11-06

**Filing Date:** 2004-04-29

**Transformed into a National Application:** No

**Registration Date:** 2007-11-06

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 111

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)**

**Current Location:** 650 -Publication And Issue Section



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ADDITIONAL INFORMATION

(NOT AVAILABLE)

MANDATORY COLIFORM INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2007-11-06 - Registered - Principal Register

2007-10-02 - Law Office Registration Review Completed

2007-09-30 - Assigned To LIE

2007-08-30 - Allowed for Registration - Principal Register (SOU accepted)

2007-08-29 - Statement of use processing complete

2007-08-29 - Extension 4 granted

2007-07-20 - Amendment to Use filed

2007-07-20 - Extension 4 filed

2007-07-20 - TEAS Extension Received

2007-07-20 - TEAS Statement of Use Received

2007-03-26 - Extension 3 granted

2007-01-17 - Extension 3 filed

2007-01-17 - TEAS Extension Received

2006-08-07 - Extension 2 granted

2006-07-10 - Extension 2 filed

2006-07-10 - TEAS Extension Received

2006-07-10 - Attorney Revoked And/Or Appointed

2006-07-10 - TEAS Revoke/Appoint Attorney Received

2006-03-01 - Extension 1 granted

2006-01-13 - Extension 1 filed

2006-01-13 - Attorney Revoked And/Or Appointed

2006-01-13 - TEAS Revoke/Appoint Attorney Received

2006-01-13 - TEAS Extension Received

2005-08-30 - Notice of allowance - mailed

2005-06-07 - Published for opposition

2005-05-18 - Notice of publication

2005-02-23 - Law Office Publication Review Completed

2005-02-11 - Assigned To LIE

2005-02-08 - Approved for Pub - Principal Register (Initial exam)

2005-02-07 - Teas/Email Correspondence Entered

2005-01-27 - Communication received from applicant

2005-01-27 - TEAS Response to Office Action Received

2004-09-03 - Non-final action e-mailed

2004-09-03 - Non-Final Action Written

2004-09-02 - Assigned To Examiner

2004-05-05 - New Application Entered In Tram

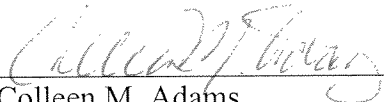
ATTORNEY/RESPONDENT INFORMATION

Attorney Name: [Illegible]  
Address: [Illegible]  
City: [Illegible]  
State: [Illegible]  
Zip: [Illegible]  
Phone Number: 973-660-7697  
Fax Number: 973-660-7978

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing Notice of Opposition has been served on counsel for Applicant by mailing such copy on February 29, 2008, via First Class Mail, postage prepaid to:

Peter J. Willsey, Esq.  
Cooley Godward Kronish LLP  
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Colleen M. Adams  
Trademark Analyst