

ESTTA Tracking number: **ESTTA278618**

Filing date: **04/16/2009**

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	Vintage Pharmaceuticals LLC
Granted to Date of previous extension	05/10/2009
Address	130 Vintage Drive Huntsville, AL 35811 UNITED STATES
Attorney information	Frank M. Caprio Bradley Arant Boult Cummings LLP 200 Clinton Avenue West, Suite 900 Huntsville, AL 35801 UNITED STATES fcaprio@babco.com, bmcarthur@babco.com, hshire@kenyon.com, wbabcock@babco.com Phone:256-517-5100

**Applicant Information**

Application No	76514737	Publication date	11/11/2008
Opposition Filing Date	04/16/2009	Opposition Period Ends	05/10/2009
International Registration No.	NONE	International Registration Date	NONE
Applicant	The Concept Foundation 111 Paholyothin Rd. Thailand Science Pk., Klong 1, Klong Luang Pathumthani, 12120 THAILAND		

**Goods/Services Affected by Opposition**

Class 005. All goods and services in the class are opposed, namely: Injectable contraceptives
--

**Grounds for Opposition**

Other	Lack of intent to use. Unsupported filing basis.
-------	--

Attachments	Notice of Opposition.pdf ( 12 pages )(565979 bytes )
-------------	--

**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	/Frank M. Caprio/
Name	Frank M. Caprio
Date	04/16/2009

**UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 76/514,737  
Published in the Official Gazette of November 11, 2008

<b>VINTAGE PHARMACEUTICALS, LLC</b>	)	
<b>Successor in interest to</b>	)	
<b>Teva Pharmaceuticals USA Inc.,</b>	)	
	)	
<b>Opposer,</b>	)	
	)	
v.	)	<b>Opposition No.:</b>
	)	
<b>THE CONCEPT FOUNDATION,</b>	)	
	)	
<b>Applicant.</b>	)	

**NOTICE OF OPPOSITION**

This Notice of Opposition is brought by Vintage Pharmaceuticals LLC, (“Opposer”), a Delaware limited liability company having its principal place of business at 130 Vintage Drive, Huntsville, Alabama 35811, against pending trademark application Serial No. 76/514,737 (the “Application”) filed by The Concept Foundation (“Applicant”) for the word mark CYCLOFEM, for goods identified in the Application as “Injectable contraceptives” in International Class 5. The Application was published in the Official Gazette on November 11, 2008.

As described in more detail below, Opposer believes it will be damaged by the registration of this trademark and hereby opposes registration of the same, alleging as follows:

1. A request for extension of time to file a Notice of Opposition was filed by Teva Pharmaceuticals USA Inc. (hereinafter “Teva”) on December 11, 2008.

2. Teva and Opposer entered into an Asset Purchase Agreement as of December 23, 2008, wherein the Opposer acquired from Teva the marks, CYCLAFEM, CYCLAFEM 7/7/7, and CYCLAFEM 1/35, together with the business interests related thereto.

3. A request for extension of time to file a Notice of Opposition was filed by Opposer on February 23, 2009.

4. Opposer, as the successor in interest to Teva, is the owner of the following trademark applications:

CYCLAFEM, Serial No. 78789496, filed January 11, 2006;

CYCLAFEM 7/7/7, Serial No. 78789508, filed January 11, 2006; and

CYCLAFEM 1/35, Serial No. 77118770, filed February 28, 2007 .

5. The assignment of the above trademarks from Teva to Opposer has been recorded with the U.S. Patent and Trademark Office at Reel/Frame 3925/0447.

6. Opposer would be damaged by the registration of Applicant's mark, because, *inter alia*, Opposer's application for the mark CYCLAFEM has been suspended by reason of Applicant's application for CYCLOFEM.

7. Upon information and belief, Applicant has not used the mark, CYCLOFEM in the United States.

8. Upon information and belief, Applicant is currently seeking registration of its mark CYCLOFEM under Section 44(e) of the Trademark Act.

9. Upon information and belief, Applicant amended its application from its original filing basis, by deleting Section 1(b) and claiming Section 44(e) as its sole basis for registration of the mark.

10. As set forth in TMEP § 806.03(h), “When the applicant substitutes one basis for another, the applicant will retain the original filing date, provided that the applicant has had a continuing valid basis for registration since the application filing date.” As further set forth, “If there is no valid basis, the application is void, and registration will be refused. In this situation, the applicant cannot amend the filing date, and the Office will not refund the filing fee.”

11. Upon information and belief, Applicant has not had a continuing valid basis for registration since the application filing date.

12. Upon information and belief, Applicant does not have a *bona fide* intent to use the mark CYCLOFEM in commerce and has not held any such intent since the application filing date.

13. In fact, Applicant has a history of filing multiple, different trademark applications for contraceptives, including a prior application for CYCLOFEM, all based on an alleged Intent to Use (not on actual use), but has never filed a Statement of Use in connection with any of these applications.

14. Upon information and belief, Applicant has never made any use in the United States of any trademark for any contraceptive.

15. Upon information and belief, as evidenced by the attached Exhibit A, Applicant describes itself on its website as a globally operating not-for-profit organization whose “principal purpose is to increase access to medicines of assured quality at affordable prices for public health services in *developing* countries.” (emphasis added)

16. Upon information and belief, Applicant is presently active in more than 30 developing countries, in which it licenses certain pharmaceutical preparations to pharmaceutical manufacturers. Attached hereto as Exhibit B is a map from Applicant's website which, upon information and belief, is intended to show the countries in dark color in which it is active, and in white the countries in which it is not active.

17. Upon information and belief, as evidenced by the attached Exhibit B, the United States is among the developed countries identified as those in which the Applicant is not active. This is consistent with Applicant's practice of filing Intent-to-use applications, but never making actual use in the United States, as referred to above in paragraph 13.

18. Upon completion of its nomenclature review, the U.S. Food and Drug Administration ("FDA") stated to Opposer's predecessor-in-interest that the FDA had no objection to use of the marks CYCLAFEM, CYCLAFEM 1/35, and CYCLAFEM 7/7/7, for oral contraceptives.

19. Upon information and belief, Applicant has not received FDA approval for its mark CYCLOFEM for its goods.

20. In order for Applicant to be able to use the CYCLOFEM trademark (or any prescription pharmaceutical trademark) in commerce in the United States, Applicant must first obtain approval of the trademark from the FDA.

21. If the marks CYCLAFEM and CYCLOFEM, for the goods specified in the respective trademark applications, are too confusingly similar for trademark registration, then they also are too similar for Applicant to receive FDA approval for its mark, for its goods.

22. Based on the foregoing, since the FDA has no objection to the use by Opposer of CYCLAFEM for contraceptives, and since, on information and belief, the Applicant has not received FDA approval for the mark CYCLOFEM for contraceptives, *even if* the Applicant had in the past a *bona fide* intent to use its mark in the United States (which the Opposer is not willing to concede, and which in fact the above factual allegations controvert), Applicant can no longer have a *bona fide* intent to use the mark, because Applicant cannot obtain the required FDA approval.

23. Applicant therefore cannot have a *bona fide* intent to use the mark CYCLOFEM in the United States for its goods.

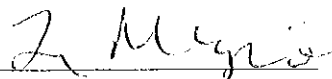
24. Without a *bona fide* intent to use the mark in commerce, the Applicant is not entitled to registration of the mark under Section 44(e).

25. Opposer respectfully requests that this opposition be sustained, and the registration of application Serial No. 76/514,737 for the mark CYCLOFEM sought by Applicant be refused.

The Application is in one (1) International Class, and a total fee of \$300.00 under 37 CFR § 2.6(a)(17) is enclosed. The Commissioner is authorized to charge any further fees required to Deposit Account Number 50-4293, in the name of Bradley Arant Boult Cummings LLP.

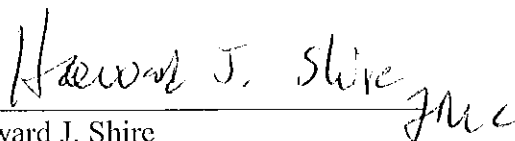
April 16, 2009

Respectfully submitted,



Frank M. Caprio  
Benjamin L. McArthur  
*Counsel for Opposer,*  
*Vintage Pharmaceuticals, LLC*

BRADLEY ARANT BOULT  
CUMMINGS LLP  
200 Clinton Avenue West, Suite 900  
Huntsville, Alabama 35801  
Phone: (256) 517-5100  
Fax: (256) 517-5200  
[fcaprio@bab.com](mailto:fcaprio@bab.com)  
[bmcarthur@bab.com](mailto:bmcarthur@bab.com)



Howard J. Shire  
*Counsel for Opposer,*  
*Vintage Pharmaceuticals, LLC*

*by permission*

KENYON & KENYON LLP  
One Broadway  
New York, NY 10004  
Phone: (212) 908-6205  
Fax: (212) 425-5288  
[hshire@kenyon.com](mailto:hshire@kenyon.com)

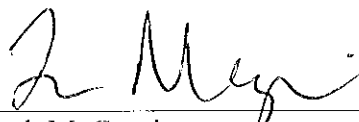


CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2009, I caused the foregoing **NOTICE OF OPPOSITION** to be served by United States mail, postage prepaid, in an envelope addressed to:

David J. Davis  
Baker & McKenzie  
130 E. Randolph Drive, Suite 800  
Chicago, IL 60601

*Attorney of Record for The Concept Foundation*

By:   
Frank M. Caprio

# EXHIBIT A



Home

## Not-for-Profit Organization Creating Access to Medicines

- Creator of Innovative Approaches to Intellectual Property Management of Health Products for Improved Public Sector Access -
- Partner in Public-Private-Partnerships with Pharmaceutical Manufacturers -

Our principal purpose is to increase access to medicines of assured quality at affordable prices for public health services in developing countries.

**We focus on the identification and introduction of quality health technologies and pharmaceuticals that otherwise would not be available for the public sector in developing countries.**

Concept Foundation is a globally operating not-for-profit organization. We aim at providing access to medicines through manufacturing of pharmaceutical products of assured quality in developing countries according to cGMP standards. The business model is built on the out-licensing role of Concept Foundation as licensor to pharmaceutical companies for the manufacturing and marketing of the selected products. Through a rigorous due diligence process for their technology capabilities, we select pharmaceutical companies as licensees for manufacturing, marketing & sales of medicines and health products and license out the intellectual property we own and manage.

Since more than 15 years Concept Foundation manages the complex downstream processes of technology transfer and IP out licensing. We manage the capacity building in developing countries by IP and technology transfer to pharmaceutical manufacturers in the developing world and prepare the licensees for commercialization of the license products. Adequate training and education of the licensees supports the competitive positions of license products and companies. The contractual framework of the license agreements with the pharmaceutical manufacturers ensures that the commercial rights to the products include a supply obligation to the benefit of public health services at lowest possible costs.

Concept Foundation is leading and practicing already for more than 15 years innovative,

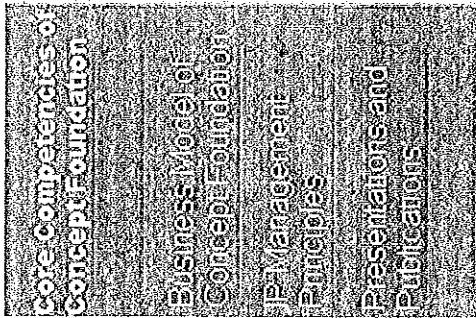
> About

Concept Foundation

> Global Activities

> Impact of

Concept Foundation



distinctive approaches and originative lines of IP management for intellectual property of health products and technologies, beneficial for the public sector in developing countries, to close the medicines access gap specific to the developing world.

Concept Foundation as licensor to commercial private sector partners is the only not-for-profit organization, among all others in the worldwide health care sector, operating on a broad platform of manufacturing licensees in the pharmaceutical industry guaranteeing sustainable results and long-term public health impact.

Concept Foundation is an experienced initiator and participant in various public-private-partnerships bringing significant accomplishments to the PPPs model in providing access to low-cost, top quality medicines for the public sector in developing countries.

[[Related Links](#)]

It is more important to have imagination than knowledge.

*(Albert Einstein)*



# EXHIBIT B

http://www.conceptfoundation.org/Global\_Activities.htm - Microsoft Internet Explorer

File Edit View Favorites Tools Help

Back Stop Refresh Home Search Favorites Print Mail News RSS Feeds

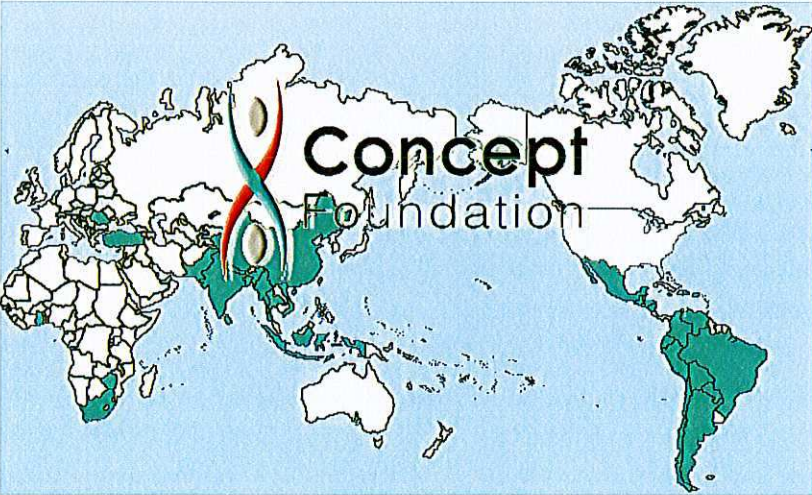
Address http://www.conceptfoundation.org/Global\_Activities.htm Go Links

### Global Activities of Concept Foundation

- Home <
- > About Concept Foundation
- Monthly Injectable Contraceptive >
- Emergency Contraception >
- HIV SPECIMEN BANK >
- HIV Dipstick™ >
- Global Abortion Regulations >
- > Impact of Concept Foundation

Concept Foundation is presently active in more than 30 countries worldwide, managing various reproductive health projects as well as by working through its licensees.

The products licensed out to pharmaceutical manufacturers are an injectable monthly contraceptive, Cyclofem®, and a rapid diagnostic test for HIV 1&2, HIV Dipstick™.



The image shows a world map with the Concept Foundation logo overlaid. The logo consists of a stylized DNA double helix in red and blue, with the words 'Concept Foundation' in black text. Several countries are highlighted in green, indicating active regions: South Africa, India, China, Indonesia, Philippines, Thailand, Vietnam, Cambodia, Laos, Myanmar, and parts of South America (Brazil, Colombia, Venezuela, and Peru).

Done

Start | Internet | Inbox - Micr... | PATTSY@ 2... | Elite WebVi... | Document1 ... | http://ww... | about:blank... | 1:06 PM