

ESTTA Tracking number: **ESTTA1288867**

Filing date: **06/01/2023**

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	Eli Lilly and Company
Granted to date of previous extension	06/14/2023
Address	LILLY CORPORATE CENTER INDIANAPOLIS, IN 46285 UNITED STATES
Attorney information	SETH I. APPEL PATTISHALL, MCAULIFFE, NEWBURY, HILLIARD & GERALDSON LLP 200 S. WACKER DRIVE SUITE 2900 CHICAGO, IL 60606 UNITED STATES Primary email: sia@pattishall.com Secondary email(s): jsj@pattishall.com, pb@pattishall.com, lkn@pattishall.com 312-554-8000
Docket no.	

Applicant information

Application no.	90269209	Publication date	02/14/2023
Opposition filing date	06/01/2023	Opposition period ends	06/14/2023
Applicant	Donaldson, Jack 1693 NW 97 TERRACE CORAL SPRINGS, FL 33071 UNITED STATES		

Goods/services affected by opposition

Class 005. First Use: None First Use In Commerce: None
All goods and services in the class are opposed, namely: Pharmaceutical preparations being over the counter and prescription medications in the form of pills, liquids, injectables and inhalables for treatment of toxicity

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.	6148489	Application date	03/08/2019
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Register	Principal		
Registration date	09/08/2020	Foreign priority date	NONE
Word mark	RETEVMO		
Design mark			
Description of mark	NONE		
Goods/services	Class 005. First use: First Use: May 8, 2020 First Use In Commerce: May 8, 2020 Pharmaceutical preparations namely, pharmaceutical preparations for the treatment of cancer		

Attachments	Notice of Opposition RETEXO.pdf(388072 bytes)
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Signature	/Seth I. Appel/
Name	Seth I. Appel
Date	06/01/2023

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

In the Matter of U.S. Trademark Application No. 90/269,209:
RETEXO

ELI LILLY AND COMPANY,)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	
JACK DONALDSON,)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Opposer, Eli Lilly and Company (“Opposer”), believes that it will be damaged by registration of the mark shown in U.S. Trademark Application No. 90/269,209, RETEXO, and hereby opposes the same. This application was filed by Applicant, Jack Donaldson ("Applicant"), on October 21, 2020, and published for opposition on February 14, 2023.

As grounds for opposition, Opposer alleges the following:

1. As a leader in the healthcare and pharmaceutical field, Opposer discovers, develops and commercializes a wide variety of pharmaceuticals, treatments and medicines in the United States.

2. Opposer owns U.S. Trademark Registration No. 6,148,489 for RETEVMO for “Pharmaceutical preparations namely, pharmaceutical preparations for the treatment of cancer” in Class 5, and, since well prior to the filing date of the application opposed herein, has used this mark in U.S. commerce in connection with said pharmaceutical preparations. See

www.retevmo.com. Attached as Exhibit A is a print-out from the electronic records of the U.S. Patent and Trademark Office showing the current status and title of Opposer's registration of the RETEVMO mark.

3. Opposer has sold extensive amounts of its aforesaid pharmaceutical preparations in connection with the RETEVMO mark.

4. Opposer has extensively advertised and promoted the aforesaid pharmaceutical preparations in connection with the RETEVMO mark.

5. As a result of Opposer's aforesaid use, sales, and advertising efforts, Opposer has built up and now owns valuable goodwill in the RETEVMO mark.

6. As a result of Opposer's aforesaid use, sales and advertising efforts, consumers recognize its mark, RETEVMO, as a source identifier for Opposer's pharmaceutical preparations.

7. After Opposer obtained its registration of RETEVMO, Applicant filed its application to register RETEXO (Application No. 90/269,209) for "Pharmaceutical preparations [*sic*] being over the counter and prescription medications in the form of pills, liquids, injectables and inhalables for treatment of toxicity" in Class 5, on an intent-to-use basis.

8. Opposer's registered mark, RETEVMO, has a priority date that precedes the filing of Application No. 90/269,209 and, upon information and belief, predates Applicant's use, if any, of the RETEXO mark shown in Application No. 90/269,209.

9. Opposer has not consented to Applicant's use, planned use or registration of RETEXO.

10. The parties' marks, RETEVMO and RETEXO, have the same first four letters "RETE" and have the same last letter "O" and thus are highly similar, and the goods covered by Opposer's registration and Applicant's application are the same or closely related.

11. The mark, RETEXO, shown in Application No. 90/269,209, so resembles Opposer's mark, RETEVMO, as to be likely, when used on or in connection with the goods identified in Application No. 90/269,209, to cause confusion, or to cause mistake, or to deceive as to the source, origin or affiliation of Applicant's RETEXO pharmaceutical preparations, and to the belief that Applicant, its RETEXO mark, or its aforesaid goods, are affiliated with, approved by or otherwise authorized by Opposer and its RETEVMO pharmaceutical preparations when they are not.

12. Accordingly, the Board should refuse registration under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

WHEREFORE, Opposer prays that this opposition be sustained; that judgment be entered in favor of Opposer and against Applicant; and that Application No. 90/269,209 be refused registration.

Opposer hereby appoints the law firm of Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP to act as attorneys for Opposer in this matter, with full power to prosecute this opposition proceeding, to transact all relevant business with the United States Patent and Trademark Office and in the United States courts, and to receive all official communications. Opposer submits the requisite filing fee of \$ 600.00. Please debit any deficiency from or credit any overpayment to Account No. 16-0650.

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Date: June 1, 2023

Respectfully submitted,

PATTISHALL, MCAULIFFE, NEWBURY,
HILLIARD & GERALDSON LLP

/Seth I. Appel/

By: _____

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Attorneys for Opposer

Eli Lilly and Company

EXHIBIT A

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Mark: RETEVMO

RETEVMO

US Serial Number: 88332283

Application Filing Date: Mar. 08, 2019

US Registration Number: 6148489

Registration Date: Sep. 08, 2020

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor:



LIVE/REGISTRATION/Issued and Active

The trademark application has been registered with the Office.

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Sep. 08, 2020

Publication Date: May 28, 2019 Notice of Allowance Date: Jul. 23, 2019

Mark Information

Mark Literal Elements: RETEVMO

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Translation: The wording "RETEVMO" has no meaning in a foreign language.

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((..)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Pharmaceutical preparations namely, pharmaceutical preparations for the treatment of cancer

International Class(es): 005 - Primary Class

U.S Class(es): 006, 018, 044, 046, 051, 052

Class Status: ACTIVE

Basis: 1(a)

First Use: May 08, 2020

Use in Commerce: May 08, 2020

Basis Information (Case Level)

Filed Use: No

Currently Use: Yes

Filed ITU: Yes

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Eli Lilly and Company

Owner Address: Lilly Corporate Center
Indianapolis, INDIANA UNITED STATES 46285

Legal Entity Type: CORPORATION

State or Country INDIANA
Where Organized:

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Bruce W. Longbottom

Attorney Primary trademarks@lilly.com
Email Address:

Attorney Email Yes
Authorized:

Correspondent

Correspondent Bruce W. Longbottom
Name/Address: ELI LILLY AND COMPANY
LILLY CORPORATE CENTER
INDIANAPOLIS, INDIANA UNITED STATES 46285

Phone: 317-651-1346

Fax: 317 276 1919

Correspondent e- trademarks@lilly.com
mail: longbottom_bruce@lilly.com

Correspondent e- Yes
mail Authorized:

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Sep. 08, 2020	REGISTERED-PRINCIPAL REGISTER	
Aug. 04, 2020	NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED	
Aug. 03, 2020	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Jul. 31, 2020	STATEMENT OF USE PROCESSING COMPLETE	66154
Jul. 17, 2020	USE AMENDMENT FILED	66154
Jul. 31, 2020	CASE ASSIGNED TO INTENT TO USE PARALEGAL	66154
Jul. 17, 2020	TEAS STATEMENT OF USE RECEIVED	
Jun. 24, 2020	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Jun. 23, 2020	SOU EXTENSION 2 GRANTED	69302
Jun. 05, 2020	SOU EXTENSION 2 FILED	69302
Jun. 23, 2020	CASE ASSIGNED TO INTENT TO USE PARALEGAL	69302
Jun. 05, 2020	TEAS EXTENSION RECEIVED	
Dec. 13, 2019	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Dec. 11, 2019	SOU EXTENSION 1 GRANTED	98765
Dec. 11, 2019	SOU EXTENSION 1 FILED	98765
Dec. 11, 2019	TEAS EXTENSION RECEIVED	
Jul. 23, 2019	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
May 28, 2019	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
May 28, 2019	PUBLISHED FOR OPPOSITION	
May 08, 2019	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Apr. 18, 2019	APPROVED FOR PUB - PRINCIPAL REGISTER	
Apr. 16, 2019	ASSIGNED TO EXAMINER	78325
Mar. 27, 2019	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED	
Mar. 12, 2019	NEW APPLICATION ENTERED	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Aug. 03, 2020