

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

NOTICE OF OPPOSITION

In the Matter of Trademark Application Serial No. 78/216,191

Filed: February 18, 2003

For the Mark: DACOGEN

Published in the Official Gazette: September 23, 2003

01-21-2004
U.S. Patent & TMO/TM Mail Rcpt Dt. #22

DAKOCYTOMATION DENMARK A/S, § Trademark Opposition No. _____
Opposer, §
v. §
§
SUPERGEN, INC., Applicant. §

BOX TTAB – FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

Opposer, DakoCytomation Denmark A/S, believes that it will be damaged by registration of Applicant's proposed mark shown in Application Serial No. 78/216,191, and Opposer, through its attorney, hereby opposes registration of that mark. As grounds for opposition, it is alleged that:

1. Opposer is a corporation organized and existing under the laws of the country of Denmark with a business address of Produktionsvej 42 2600 Glostrup DENMARK.

2. Upon information and belief, the Applicant, Supergen, Inc., is a corporation organized and existing under the laws of the state of California, with a business address of 4140 Dublin Boulevard, Suite 200, Dublin, California 94568.

3. On February 18, 2003, the Applicant filed U.S. trademark application serial no. 78/216,191 (the Opposed Application) to register the mark DACOGEN for "pharmaceutical compositions for treating cancer and immune disorders," based on an intent to use the mark in U.S. commerce, 15 U.S.C. § 1051(b).

4. Opposer is the owner of U.S. trademark application serial number 76/478,367 and current U.S. trademark registration numbers 1,220,474; 1,615,338; 1,281,138; 2,123,042; 2,006,857, each for the mark DAKO alone or DAKO in association with another component term. Opposer uses its marks to offer chemical reagents, diagnostic preparations, clinical and laboratory research kits, analytical and diagnostic apparatus and instrumentation for medical, veterinary and laboratory (both clinical and research) uses, and medical research services. It is heavily involved in the fields of clinical chemistry, microbiology, and immunohistochemistry, much of which is directed to the detection, identification, and study of cancers and other disorders.

5. Opposer began using its DAKO marks in U.S. commerce substantially prior to the Applicant's application filing date and the DAKO mark itself at least as early as 1978 for a majority of goods and services identified in paragraph 4 above.

6. Opposer's use of the DAKO marks in connection with Opposer's goods and services has developed valuable good will with respect to these marks.

7. Applicant's proposed mark, DACOGEN, so resembles Opposer's DAKO marks as to be likely, when used on or in connection with the goods and services identified in the Opposed Application, to cause confusion, to cause mistake, or to deceive consumers as to the source or origin of the goods and services or as to the affiliation, association, or connection between the parties.

8. Opposer will be damaged by Applicant's registration of the mark shown in the Opposed Application because registration would give the Applicant prima facie evidence of ownership of and exclusive right to use a mark that is confusingly similar to Opposer's mark, which rights could interfere with Opposer's continued use of its mark.

WHEREFORE, Opposer believes that a grant of federal trademark registration in this application is inconsistent with the standards and requirements established by and for the U.S. Trademark Office. Opposer therefore requests that application Serial No. 78/216,191 be refused registration, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer. A duplicate copy of this Notice of Opposition and the fee required under 37 C.F.R. §2.6(a)(17) are enclosed herewith.

Dated this 21st day of January, 2004

Respectfully Submitted,
SANTANGELO LAW OFFICES, P.C.

By: Cheryl Anderson Siler
Cheryl Anderson-Siler
ATTORNEY FOR OPPOSER
25 South Howes, Third Floor
Fort Collins, Colorado 80521
970) 224-3100

Dated this 21st day of January, 2004.

Respectfully Submitted,

SANTANGELO LAW OFFICES, P.C.

By: *Cheryl Anderson-Siler*

Cheryl Anderson-Siler
Attorney for Opposer
125 S. Howes, Third Floor
Fort Collins, CO 80521
(970) 224-3100



POWER OF ATTORNEY

I, Lene Rytter, Director, Corporate Legal Affairs, of DakoCytomation Denmark A/S, Produktionsvej 42 DK-2600, Glostrup, DENMARK, hereby appoint Luke Santangelo, Cheryl Anderson-Siler, and Kay L. Collins of Santangelo Law Offices, P.C., whose address is 125 South Howes, Third Floor, Fort Collins, Colorado 80521, as attorneys for DakoCytomation Denmark A/S to represent DakoCytomation Denmark A/S in the opposition case concerning US Trademark Registration No. 1220474 DAKO and US Trademark Application No. 76/478.367 DAKO versus US Trademark Application No. 78/216191 DACOGEN before the Trademark Trial and Appeal Board, to transact all business in the Patent and Trademark Office connected herewith, and to receive all communications pertaining hereto.

Please address all correspondence in this matter to:

Santangelo Law Offices, P.C.
125 South Howes, Third Floor
Fort Collins, Colorado 80521
(970) 224-3100

Glostrup, 21 January 2004



Lene Rytter

Atty Ref.:DakoCyto-TM-opp
Express Mail No.: EV381772629US

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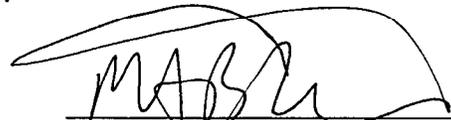
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CERTIFICATE OF EXPRESS MAILING

I, Michael A. Blackmore, hereby certify to the truth of the following items:

1. I am an employee of Santangelo Law Offices, P.C., 125 South Howes, Third Floor, Fort Collins, Colorado 80521.
2. I have this day deposited the following: 1) a Notice of Opposition and one copy; 2) an executed Power of Attorney; 3) a check in the amount of \$300.00, made payable to the Director of the Patent and Trademark Office; 4) a Proof of Service; 5) a Letter of Transmittal; and 6) this Certificate of Express Mailing, with the United States Postal Service as Express Mail in an appropriate envelope addressed to: Box TTAB - FEE, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3514, this 21 day of January, 2004.



Michael A. Blackmore