

2. Applicant admits that Applicant is a corporation with a business address at 4140 Dublin Boulevard, Suite 200, Dublin, California 94568. Applicant denies that it is a corporation organized under the laws of the state of California. Applicant is a corporation organized under the laws of the state of Delaware.

3. Applicant admits that Applicant filed a U.S. trademark application, later assigned Serial No. 78/216,191, for the mark DACOGEN for "pharmaceutical compositions for treating cancer and immune disorders," based on an intent to use the mark in U.S. commerce.

4. Applicant does not have sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph number four of the Notice of Opposition and accordingly denies those allegations.

5. Applicant does not have sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph number five of the Notice of Opposition and accordingly denies those allegations.

6. Applicant does not have sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph number six of the Notice of Opposition and accordingly denies those allegations.

7. Applicant denies the allegations in paragraph number seven of the Notice of Opposition.

8. Applicant denies the allegations in paragraph number eight of the Notice of Opposition.

Applicant states the following with respect to the last paragraph of the Notice of Opposition containing allegations, which is not numbered: Applicant denies the allegations in the last unnumbered paragraph of the Notice of Opposition.

AFFIRMATIVE DEFENSES

Applicant sets forth the following affirmative and other defenses. In asserting these defenses, Applicant is not assuming the burden to establish any fact or proposition where that burden is properly imposed upon Opposer. Applicant reserves the right to assert additional affirmative and other defenses at the appropriate time in these proceedings.

1. Opposer's request for relief is barred by fraud on the Patent and Trademark Office. Opposer's application for DAKO, at Serial No. 76/478,367, fraudulently states use of the mark in connection with "pharmaceutical and veterinary preparations for humans and animals for diagnosis of cancer" in Class 5. In its application, Applicant claims use of the DAKO mark in connection with the above-mentioned pharmaceutical preparations since January 1978. Upon information and belief, Applicant has never used the DAKO mark in connection with "pharmaceutical and veterinary preparations for humans and animals for diagnosis of cancer" in Class 5 and, therefore, fraudulently asserted this use to the Patent and Trademark Office. Applicant should not receive a registration for the DAKO mark currently pending at Serial No. 76/478,367 on the grounds of fraud in the procurement of a trademark registration.

2. Opposer's request for relief is barred by the equitable doctrine and affirmative defense of estoppel.

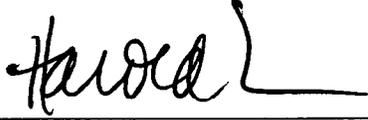
3. Opposer's request for relief is barred by the equitable doctrine and affirmative defense of unclean hands.

WHEREFORE, Applicant respectfully requests that the opposition be dismissed with prejudice.

Respectfully submitted,

HELLER EHRMAN WHITE & McAULIFFE LLP

Dated: March 17, 2004

By: 

Harold J. Milstein, Esq.

Lisa Greenwald-Swire, Esq.

Attorneys for Applicant
Supergen, Inc.

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

In the Matter of Application Serial No. 78/216,191
Published in the *Official Gazette* on September 23, 2003
Mark: **DACOGEN**

DAKOCYTOMATION DENMARK A/S,

Opposer,

v.

SUPERGEN INC.,

Applicant.

**ANSWER TO NOTICE OF
OPPOSITION**

Opposition No.: 91159358

Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3514



03-22-2004
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #66

TRANSMITTAL LETTER

Dear Sir or Madam:

We are attorneys representing Supergen, Inc. Enclosed are an original and one copy of an **Answer to Notice of Opposition**, filed by Supergen, Inc.

Please send all correspondence to me at the address below.

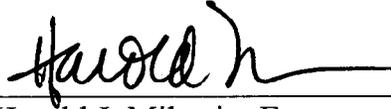
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Please stamp the enclosed postcard to evidence your receipt of this document.

Dated: March 17, 2004

Respectfully submitted,
HELLER EHRMAN WHITE & McAULIFFE LLP

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