

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, Virginia 22202-3513

TTAB

Mailed: June 16, 2005  
Attr: Cindy B. Greenbaum



Opposition No. 91161603  
Serial No. 78320975

06-16-2005

U.S. Patent & TMOtc/TM Mail Rcpt Dt. #11

This submission is in response to the paper filed on June 14, 2005 referred to as "Other Filing."

In paragraph 2 of "The Opposer's Brief In Support Of Its Motion To Compel Introduction and Background Facts," it states, "On April 4, 2005, Opposer served its first sets of interrogatories, request for production of documents and things, and request for admission on Applicant by mailing copies to Applicant at address of record".

BioCentric Laboratories, Inc. never received any such documents on or around April 4, 2005.

The first time we become aware of any such requests, was on the morning of June 16, 2005, when we signed and received Opposers letter No. EL123674737US entered in by the Opposer as exhibit 2.

The tracking number of the Opposers letter with our signature is: No. EL123674737US.

Upon receiving the letter, we immediately went to the TTABVUE website and reviewed the "Other Filing".

On June 16, 2005, we sent a letter of response to the Opposers letter No. EL123674737US, exhibit 1, by UPS Next Day Air Early AM.

In the filing "Filed And Fee," under "Notice of Opposition", paragraph eight, the opposer states:

"It is requested that all correspondence be directed to Susan J. Hinchey, Allergan, Inc., Corporate Trademark Department, 2525 Dupont Drive, Irvine, California 92612".

A copy of our response letter and a copy of this filing have been sent to Susan J. Hinchey.

We submit a copy of our response letter, labeled exhibit 1.

With this submission, we provide a copy of the UPS tracking number: 1Z2A68T71550274216

As soon as the signature of delivery is available, we will follow up with a filing to submit it as proof of service.

As we further review the filing, several questions came up about the April 4, 2005 request.

1) Why the April 4, 2005 requests were not sent to the address of record?

In "Other Filing," page six and eleven of exhibit 1, it shows that the request were not sent to the address of record.

2) Why the Opposer did not file these requests with the Board, back on April 4, 2005?

The Board would have become aware of the requests and they would have been posted on the TTABVUE website. We have been reviewing the site every Thursday for any new filings and would have immediately responded.

- 3) Why the Opposer waited until June 8, 2005, to write the letter No. EL12366747, exhibit 2, instead of writing it on May 10, 2005, the day after the requested meeting date?

On page 7 of exhibit 1 in paragraph 1, the Opposer is requesting a meeting at 10:00 a.m., Monday May 9, 2005. Considering that they were requesting an actual face to face meeting, at a specific time and date, one would believe that it was important enough to have written it on the calendar, as well as immediately writing BioCentric Laboratories as to why we hadn't responded.

- 4) Why the Opposer has not served BioCentric Laboratories a copy of the "Other Filing?"

In the 03/10/2005 filing by the Board, "Trial Dates Reset," under "OBSERVATIONS REGARDING SPECIFIC RULES," the Board gracefully reminded BioCentric Laboratories of Trademark Rule 2.119.

- 5) If the Opposer truly believed that they had served BioCentric Laboratories with the request of April 4, 2005, after the date of May 9, 2005, why didn't the Opposer immediately file with the Board, to the fact that BioCentric Laboratories had not responded and has failed to follow the Trademark Rules of Practice or the Federal Rules of Civil Procedure?

BioCentric Laboratories did not receive the request on April 4, 2005.

The Opposer had many opportunities to insure that BioCentric Laboratories received these request within the period of time set by the Board and did not take them.

BioCentric Laboratories respectfully ask the Board to up hold the exiting dates so as not to further delay these proceedings.

Sincerely,



Rebecca Spaar  
CEO  
BioCentric Laboratories, Inc.

RS/av

P.O. Box 1018  
Brighton, CO, 80601  
Local Phone: 303-659-8855  
Toll Free: 800-451-2181  
Fax: 303-659-6072

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# BioCentric Laboratories™ Inc

June 16, 2005

Kenneth L. Wilton  
Seyfarth Shaw LLP  
One Century Plaza  
2029 Century Park East Suite 3300  
Los Angeles, CA 90067-3063

Dear Mr. Wilton,

We are writing with regard to the opposition (No. 91161603) proceeding currently pending before the Trademark Trial and Appeal Board of the United States Patent Office.

This letter is in response to your letter No. EL123674737US.

In your letter, you stated that you served BioCentric Laboratories, with the "First Set of Request for Production, Requests for Admissions and Interrogatories," on April 4, 2005.

We never received any such request on or around April 4, 2005.

The first time we became aware of the request, was in your letter No. EL123674737US. All BioCentric Laboratory mail is pickup at our P.O. Box every Thursday morning. Your letter No. EL123674737US, arrived to the box on Friday June 10, 2005. We signed for it and received it on the following Thursday morning, June 16, 2005.

BioCentric Laboratories has not failed to respond. Seyfarth Shaw failed to deliver the request in the time set by the Board.

Sincerely,

  
Rebecca Spaar

CEO

RS/av

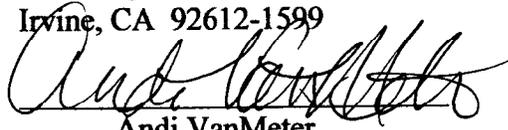
**Exhibit 1**

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 16, 2005, I served the foregoing papers of BioCentric Laboratories; a letter of response to Kenneth L. Wilton, letter No. EL 123674737US, and the new filing Trademark Submission3, by depositing a true copy thereof in a sealed UPS Next Day Air Early AM envelope, tracking number 1Z2A68T71550274216, addressed to Opposer's address of record as follows:

Allergan, Inc.  
Attn: Susan J. Hinchey  
Corporate Trademark Department  
2525 Dupont Drive  
Irvine, CA 92612-1599

  
Andi VanMeter