

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

IN THE MATTER OF:

SmithKline Beecham PLC,

Opposer,

v.

BioTherapeutics, Inc.,

Applicant.

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)
)
) **OPPOSITION NO.: 91169856**
)
) Trademark Serial No. 78/301767
)
) Trademark: **PHYLODERM**
)
) Filed: September 17, 2003
)
)
)

Commissioner for Trademarks
BOX TTAB NO FEE
P.O. Box 1451
Alexandria, VA 22313-1451

ANSWER TO NOTICE OF OPPOSITION

Applicant, BioTherapeutics, Inc., for its answer to the Notice of Opposition, filed by Petitioner, SmithKline Beecham PLC. states and alleges as follows:

1. Applicant admits the allegations contained in Paragraph 1 of the Notice of Opposition.
2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Notice of Opposition and therefore denies the same.
3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the Notice of Opposition and therefore denies the same.



07-24-2006

4. Applicant admits the allegations contained in Paragraph 4 of the Notice of Opposition.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Notice of Opposition and therefore denies the same.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Notice of Opposition and therefore denies the same.

7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the Notice of Opposition and therefore denies the same.

8. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Notice of Opposition and therefore denies the same.

9. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of the Notice of Opposition and therefore denies the same.

10. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of the Notice of Opposition and therefore denies the same.

11. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Notice of Opposition and therefore denies the same.

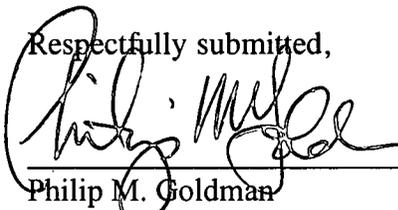
12. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 of the Notice of Opposition and therefore denies the same.

SEPARATE DEFENSES

1. The Notice of Opposition fails to state a claim for which relief may be granted.
2. The Notice of Opposition is barred by the doctrine of laches, estoppel and acquiescence.

WHEREAS, Applicant respectfully requests that the Notice of Opposition be dismissed with prejudice.

Dated: July 20, 2006

Respectfully submitted,


Philip M. Goldman
FREDRIKSON & BYRON, P.A.
200 Sixth Street South
Minneapolis, MN 55402-1425
(612) 492-7088
(612) 492-7077 (Fax)

**Attorneys for Applicant
BioTherapeutics, Inc.**

CERTIFICATE OF MAILING

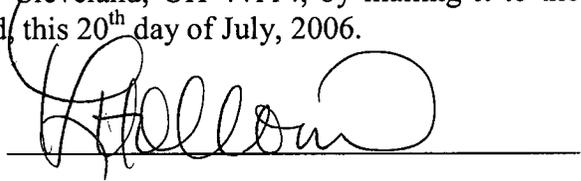
I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Assistant Commissioner for Trademarks, Box TTAB No Fee, P.O. Box 1451, Alexandria, VA 22313-1451 on the date shown below.



July 20, 2006

Certificate of Service

I hereby certify that a true copy of the Answer to Notice of Opposition was served by United States mail on the attorney of record for Opposer in this action, Una L. Lauricia, Pearne & Gordon, LLP, 1801 East 9th Street, Suite 1200, Cleveland, OH 44114, by mailing it to the address of record by first class mail, postage prepaid, this 20th day of July, 2006.



A handwritten signature in cursive script, appearing to read 'Una L. Lauricia', is written over a horizontal line.

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answer was not the result of willful conduct or gross neglect on the part of the defendant, (2) the plaintiff will not be substantially prejudiced by the delay, and (3) the defendant has a meritorious defense to the action. See *Paolo's Associates Limited Partnership v Paolo Bodo*, 21 USPQ2d 1899, 1903-04 (Comm'r 1990) and *Fred Haman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1557, 1557 (TTAB 1991). The TTAB tends to resolve any doubt on the issue of default in the defendant's favor. See TBMP § 312.02 (2d ed. June 2003).

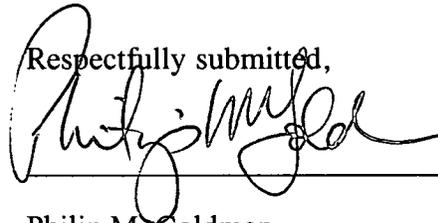
In this case, Applicant's failure to timely file an answer was not the result of willful conduct or gross neglect on the part of Applicant, the Opposer will not be prejudiced, and Applicant has a meritorious defense to the Notice of Opposition.

Applicant has been, and remains in the midst of considerable ongoing effort to raise sufficient funds to maintain its business, and in turn, to attend to its intellectual property matters. Hence, Applicant has not been in a position to authorize its counsel to fully respond or progress this matter. This has been exacerbated by considerable confusion raised by the original notice from the Board, which included several errors and was later revised, requiring the setting of new dates. Because of the time and cost involved with the need to conduct a suitable investigation into the merits of this matter, and the hope that sufficient funding to do so will be imminent the undersigned is now filing this motion. It is expected with the availability of funding, which appears imminent, Applicant will indeed be able to resolve the matter directly with the Opposer, in a manner that may well render moot the present proceeding.

Nevertheless, the delay in filing an answer and this motion is not the result of willful conduct or gross neglect on the part of Applicant. Further, there is no indication that Opposer will be prejudiced by the late filing of Applicant's answer. In addition, Applicant has set forth a meritorious defense by way of the denials set forth in its Answer.

Therefore, Applicant respectfully requests the Board to grant its motion for leave to file late its Answer.

Dated: July 20, 2006

Respectfully submitted,


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**Attorneys for Applicant
BioTherapeutics, Inc.**

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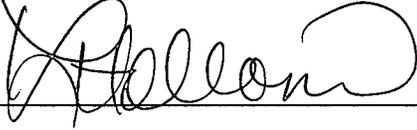
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July 20, 2006

Certificate of Service

I hereby certify that a true copy of the Motion to File Late Answer was served by United States mail on the attorney of record for Opposer in this action, Una L. Lauricia, Pearne & Gordon, LLP, 1801 East 9th Street, Suite 1200, Cleveland, OH 44114, by mailing it to the address of record by first class mail, postage prepaid, this 20th day of July, 2006.



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