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

Proceeding	91170762
Party	Defendant Ascenta Therapeutics, Inc. Ascenta Therapeutics, Inc. 12750 High Bluff Drive Suite 320 San Diego, CA 92130
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Date	06/12/2006
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of

Gene Logic, Inc.

Opposer,

vs.

Opposition No. 91,170,762

Serial No. 76/628,224

Ascenta Therapeutics, Inc.

Applicant.

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ANSWER AND AFFIRMATIVE DEFENSES

Applicant, through its attorneys, Reed Smith, LLP, answers the Notice of Opposition filed by Gene Logic, Inc. (hereinafter "Opposer") as follows:

1. Applicant has insufficient knowledge or information to form a belief as to the legal status of Opposer and denies that Opposer would be damaged by registration of ASCENTA as shown in Application Serial No. 76/628,224.

2. Applicant has insufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 1 of the Notice of Opposition and therefore denies the same.

3. Applicant has insufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 2, and therefore denies each and every allegation contained therein.

4. Applicant admits that applicant Ascenta, Therapeutics, Inc. has applied for federal registration of the mark ASCENTA based on its claimed *bona*

fide intent-to-use the mark in commerce for “oncological pharmaceutical products and preparations” in class 5 (the “Application”). Applicant further admits that the Application was filed on January 19, 2005 and assigned Application Serial No. 76/628,224, and was published in the *Official Gazette* on November 8, 2005.

5. Applicant has insufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 4, and therefore denies each and every allegation contained therein.

6. Applicant denies each and every allegation contained in Paragraph 5 of the Notice of Opposition.

7. Applicant denies each and every allegation contained in Paragraph 6 of the Notice of Opposition.

8. Applicant denies each and every allegation contained in Paragraph 7 of the Notice of Opposition.

9. Applicant denies each and every allegation contained in Paragraph 8 of the Notice of Opposition.

10. Applicant denies each and every allegation contained in Paragraph 9 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE:

11. There is no likelihood of confusion between Applicant’s mark Ascenta and the mark allegedly owned by Opposer and allegedly made the subject of Opposer’s U.S. Trademark Application No. 2,928,187. The goods and services recited in Opposer’s relied-upon federal registration are distinctly different from the goods recited in Applicant’s pending application. Opposer’s mark is registered under class 9 in connection with “computer software used to access and

manipulate biological information; electronic database recorded on computer media in the field of biological information.” In contrast, Applicant’s mark is filed under class 5 for “oncological pharmaceutical products and preparations.” Opposer’s goods, a software program for tracking genes and other biological information, and services for “maintaining an interactive computer database for biological information,” are wholly distinct from and unrelated to Applicant’s goods, which are small molecule pharmaceutical drug products for physical administration to patients for the treatment of cancer. These significant differences in the goods and services eliminate any likelihood of confusion between the two marks.

SECOND AFFIRMATIVE DEFENSE:

12. There is no likelihood of confusion between Applicant’s mark Ascenta and the mark allegedly owned by Opposer. The goods and services recited in Opposer’s relied-upon federal registration are found in different channels of trade than the goods recited in Applicant’s pending application. Opposer’s goods and services (noted above) are targeted towards the research community, such as research scientists in both industry and universities, specifically in the area of gene research, who wish to catalog and manipulate information as part of their research endeavors. Applicant’s goods, however, are tangible drug materials which will be administered by oncologists and other doctors practicing in the field of cancer treatment to patients with cancer. The purchasers of Applicant’s goods are highly sophisticated, as are the purchasers of Opposer’s unrelated goods. Thus, there is little or no overlap between the channels of trade and as a result, there is no likelihood of confusion between the two marks.

THIRD AFFIRMATIVE DEFENSE:

13. Upon information and belief, Opposer does not have exclusive rights to the allegedly registered mark in the general medical field.

FOURTH AFFIRMATIVE DEFENSE:

14. Opposer has failed to state a claim upon which relief can be granted.

WHEREFORE, Applicant respectfully requests that the Notice of Opposition be dismissed with prejudice and that Applicant's mark be registered.

Dated: June 12, 2006

Respectfully submitted,



Doyle B. Johnson
Attorney for Applicant

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Answer to Notice of Opposition was mailed first class mail, postage prepaid, to:

Joseph E. Washington
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Ave., N.W.
Washington, D.C. 20004

on the 12th day of June, 2006.

Dated:


Name _____

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