

ESTTA Tracking number: **ESTTA448201**

Filing date: **12/23/2011**

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

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	LifeGen Technologies, LLC		
Entity	limited liability company	Citizenship	Wisconsin
Address	510 Charmany Drive, Suite 262 Madison, WI 53719 UNITED STATES		

Attorney information	Erik W. Ibele Neider & Boucher, S.C. 401 Charmany Drive, Suite 262 Madison, WI 53719 UNITED STATES eibele@neiderboucher.com Phone:(608) 661-4500		
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**Applicant Information**

Application No	85191831	Publication date	11/29/2011
Opposition Filing Date	12/23/2011	Opposition Period Ends	12/29/2011
Applicant	Waite, Roger P.O. Box 366, 570 Lederach Station Way Lederach, PA 19450 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 005. First Use: 2008/04/05 First Use In Commerce: 2008/04/05 All goods and services in the class are opposed, namely: Nutritional supplements
Class 044. First Use: 2008/04/05 First Use In Commerce: 2008/04/05 All goods and services in the class are opposed, namely: Genetic testing for medical purposes

**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Mark Cited by Opposer as Basis for Opposition**

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	LIFEGEN		
Goods/Services	Contract research services in the fields of aging, gene chips and genomics; contract research services relating to evaluation and improvement of nutritional supplements; database subscription services for analysis and interpretation of gene expression data; and		

	drug development
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Attachments	00385296.PDF ( 6 pages )(222204 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Erik Ibele/
Name	Erik W. Ibele
Date	12/23/2011

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

LifeGen Technologies, LLC	)	
	)	
Opposer,	)	Opposition No.: _____
	)	
v.	)	Application Serial No. 85/191831
	)	
LifeGen, Inc.	)	Mark: LIFEGEN
	)	
Applicant.	)	
_____	)	

**NOTICE OF OPPOSITION**

LifeGen Technologies, LLC (“Opposer”), a limited liability company organized and existing under the laws of the State of Wisconsin, having its principal offices at 510 Charmany Drive, Suite 262, Madison, Wisconsin 53719 believing that it will be damaged by the above-identified application, hereby opposes Application Serial No. 85/191831, filed December 7, 2010, in the name of Roger Waite d/b/a LifeGen, Inc. (“Applicant”), published for opposition on November 29, 2011, for the mark LIFEGEN, reciting the goods and services “nutritional supplements” in International Class 005; and “genetic testing for medical purposes” in International Class 044.

The grounds of Opposition are as follows:

1. Opposer is a limited liability company duly organized under the laws of the State of Wisconsin, and having its principal offices at 510 Charmany Drive, Suite 252, Madison, Wisconsin 53719.

2. Long prior to Applicant’s filing date, Opposer has engaged, and is now engaged, in the sale, distribution, advertising and promotion in commerce under the

LIFEGEN mark of goods and services, including contract research services in the fields of aging, gene chips and genomics; contract research services for nutritional supplement companies in the field of evaluation and improvement of nutritional supplements; database subscription services for analysis and interpretation of gene expression data; and drug development. Opposer will rely in this Opposition upon its common law rights resulting from its uses in commerce of various LIFEGEN marks (the “LIFEGEN Marks”). Opposer has established the LIFEGEN Marks for a broad range of research, database, and drug development products and services. Such uses in commerce by Opposer commenced long prior to Applicant’s filing date.

3. Since the initial uses of the LIFEGEN Marks, Opposer has made a substantial investment in advertising and promoting the goods and services sold under the LIFEGEN Marks. Opposer has built up extensive goodwill in connection with the sales of products and services sold under the LIFEGEN Marks.

4. There is no issue as to Opposer’s superior priority. Opposer commenced using its mark LIFEGEN in connection with the sale, distribution, advertising and promotion in commerce of contract research services, database subscription services, and drug development services at least as early as March 16, 2001.

5. Applicant is an individual with his address at P.O. Box 366, 570 Lederach Station Way, Lederach, Pennsylvania, 19450.

6. Applicant filed Application Serial No. 85/191831 on December 7, 2010, to register the alleged mark LIFEGEN, such application currently reciting the goods and services: “nutritional supplements” in International Class 005, and “genetic testing for medical purposes” in International Class 044.

7. The alleged mark LIFEGEN depicted in Application Serial No. 85/191831 is a colorable imitation of, and so resembles, Opposer's LIFEGEN Marks as to be likely, when applied to the goods and services recited in Applicant's application, to cause confusion or mistake or to deceive purchasers, resulting in injury to Opposer.

8. Upon information and belief, the goods and services sold under Opposer's LIFEGEN marks and the goods and services described in Application Serial No. 85/191831 for the alleged LIFEGEN mark would be sold through the same channels of trade and to the same general class of purchasers.

9. Opposer, upon information and belief, avers that customers and the public in general are likely to be confused, mistaken or deceived as to the origin and sponsorship of the goods and services that would be sold under Applicant's alleged LIFEGEN mark, and misled into believing that such services are related to, endorsed, sold by, emanate from, or are in some way directly or indirectly associated with Opposer, all to the injury of Opposer. This is particularly true given that Opposer's nutritional supplement research services are complementary to Applicant's provision of nutritional supplements, such that customers and the public would most certainly be misled into believing that Applicant's LIFEGEN nutritional supplements are in some way associated with Opposer.

10. Opposer, upon information and belief, avers that it will be damaged by the registration of the alleged LIFEGEN trademark by Applicant, as set forth in Application Serial No. 85/191831, as the mark is confusingly similar to the LIFEGEN Marks. Upon information and belief, the mark depicted in Applicant's Application Serial No. 85/191831 would be used in connection with services related to the services offered by Opposer under the LIFEGEN Marks.

11. Opposer's LIFESEN Mark is famous within the meaning of 15 U.S.C. § 1125(c). Opposer's LIFESEN Mark is distinctive and became famous prior to any date upon which Applicant can rely in this proceeding. Use and registration of Applicant's alleged LIFESEN mark is likely to cause dilution by blurring the distinctive quality of Opposer's famous LIFESEN Mark within the meaning of Section 43(c) of the Lanham Act, to the injury of Opposer.

12. If Applicant is allowed to register his alleged LIFESEN mark depicted in Application Serial No. 85/191831, such registration would falsely suggest a connection with Opposer within the meaning of Section 2(a) of the Lanham Act, to the injury of Opposer.

WHEREFORE, Opposer requests that the opposition to Application Serial No. 85/191831 for LIFESEN be sustained in favor of Opposer, and that no registration be issued thereon to Applicant.

The filing fees required by 37 C.F.R. 2.6(a)(17) for filing this Notice of Opposition on behalf of Opposer are submitted herewith.

NEIDER & BOUCHER, S.C.

Dated: December 23, 2011

By:   
Erik W. Ibele  
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Madison, WI 53719  
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Fax (608) 661-4510  
E-mail: eibele@neiderboucher.com

Attorneys for Opposer, LifeGen  
Technologies, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing NOTICE OF OPPOSITION has been served on Roger Waite, DBA LifeGen, Inc. by mailing said copy on the date below, via First Class Mail, postage prepaid to Applicant, whose current correspondence address as listed in the Trademark Applications and Registrations Retrieval (TARR) system for Application Serial No. 85/191831 is:

Roger Waite  
DBA LifeGen, Inc.  
P.O. Box 366  
570 Lederach Station Way  
Lederach, PA 19450

Dated: December 23, 2011

  
Erik W. Ibele

**CERTIFICATE OF MAILING**

I hereby certify that this pleading is being filed electronically through on-line TTAB filing systems, ESTTA on December 23, 2011.

  
By: Erik W. Ibele