

ESTTA Tracking number: **ESTTA501987**

Filing date: **10/24/2012**

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

Proceeding	91206998
Party	Defendant Stutes, Kelly J.
Correspondence Address	MARK A. KAMMER KAMMER BROWNING PLLC 7700 BROADWAY ST STE 202 SAN ANTONIO, TX 78209-3260 makammer@kammerbrowning.com
Submission	Answer
Filer's Name	Mark A. Kammer
Filer's e-mail	makammer@kammerbrowning.com
Signature	/makammer34197/
Date	10/24/2012
Attachments	Answer Opposition 91206998.pdf (20 pages)(217711 bytes)

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

Board of Regents,	§	
University of Texas System,	§	
	§	
Opposer	§	Opposition No. 91206998
v.	§	
Kelly Stutes,	§	
Applicant	§	
	§	
Application Serial No.: 85/462,880	§	
Filing Date: November 2, 2011	§	
Mark: ALLOGRAFT RESOURCES & Design	§	
Published for Opposition August 28, 2012	§	

ANSWER

Applicant, Kelly J. Stutes (“Stutes”), by and through its undersigned attorneys, hereby responds to the like-numbered paragraphs of the Opposer, Board of Regents, The University of Texas System’s (“UT System”) Notice of Opposition to Stutes’ U.S. Trademark Application Serial No. 85/462,880 for the mark ALLOGRAFT RESOURCES & Design in International Class 005 for use in connection with “human allograft bone and tissue” as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 1, and therefore denies the same.
2. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 2, and therefore denies the same.
3. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 3, and therefore denies the same.
4. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 4, and therefore denies the same.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 5, and therefore denies the same.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 6, and therefore denies the same.

7. Applicant denies Opposer's allegations in Paragraph 7 as stated. Applicant admits that it filed Application Serial No. 85/462,880 on November 2, 2011 under 15 U.S.C. §1051(b). The subject Application was filed to replace voided Application Serial No. 85/405,060 filed *pro se* by Applicant on August 26, 2011 under 15 U.S.C. §1051(a) a copy of which is attached hereto as Applicant's Exhibit A. In Application Serial No. 85/405,060 Applicant alleged Dates of First Use of at least as early as March 1, 1992.

8. Admitted, subject to the above reference to Application Serial No. 85/405,060 and the allegation of use submitted therein with the original filing of the Application.

9. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 9, and therefore denies the same.

10. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 10, and therefore denies the same.

11. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 11, and therefore denies the same.

12. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 12, and therefore denies the same.

13. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 13, and therefore denies the same.

14. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 14, and therefore denies the same.

15. Denied.

16. Applicant denies Opposer's allegations in paragraph 16 as stated. Applicant admits to having been in a business relationship with UTHSCSA but denies the full characterization of that relationship as stated in paragraph 16.

17. Applicant denies Opposer's allegations in paragraph 17 as stated. The referenced Opposer's Exhibit B comprises an incomplete copy of the Rules and Regulations of the Board of Regents, limited as it is to Rule 90101. A copy of the Rules and Regulations Rule 90102 is attached hereto as Applicant's Exhibit B. Rule 90102 as provided in Applicant's Exhibit B establishes conditions whereby Intellectual Property ownership may arise not in the U.T. System but in the creator of the Intellectual Property, and/or whereby Intellectual Property ownership may be shared between the creator and the U.T. System.

18. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 18, and therefore denies the same.

19. Applicant denies Opposer's allegations in paragraph 19 as stated. Applicant admits to having filed the subject Application but otherwise denies the full characterization of that filing as stated in paragraph 19.

20. Applicant denies Opposer's allegations in paragraph 20 as stated. Applicant admits to having filed the subject Application but otherwise denies the full characterization of that filing as stated in paragraph 20.

21. Applicant admits to the receipt of the letter attached by Opposer as Opposer's Exhibit C, but denies the stated characterization of Opposer's rights in paragraph 21.

22. Applicant admits to the filing of the response attached by Opposer as Opposer's Exhibit D but denies the stated characterization of Applicant's intent in paragraph 22.

23. Denied.

24. Applicant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 24, and therefore denies the same.

25. Paragraph 25 in the Opposition does not present an allegation requiring response. Should any part of paragraph 25 be deemed an allegation requiring a response, that allegation is denied.

26. Paragraph 26 in the Opposition does not present an allegation requiring response. Should any part of paragraph 26 be deemed an allegation requiring a response, that allegation is denied.

In conclusion, Applicant respectfully requests that this Opposition Proceeding be dismissed and that U.S. Trademark Application Serial No. 85/462,880 be passed to allowance.

Dated: October 24, 2012

Respectfully submitted,



Mark A. Kammer
Kammer Browning PLLC
7700 Broadway, Suite 202
San Antonio, TX 78209
(210) 832-0900
makammer@kammerbrowning.com

Attorney for Applicant

CERTIFICATE OF TRANSMITTAL

I hereby certify that this correspondence is being electronically transmitted in PDF format to the Trademark Trial and Appeal Board through the Electronic System for Trademark Trials and Appeals (ESTTA) on the following date:

Date: October 24, 2012



Mark A. Kammer

CERTIFICATE OF SERVICE

I hereby certify that this correspondence is being served on counsel for the U.T. System, Sherri L. Eastley, via First Class Mail at Pirkey Barber PLLC, 600 Congress Avenue, Suite 2120, Austin, TX 78701 on the following date:

Date: October 24, 2012



Mark A. Kammer

Exhibit A

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 85405060

Filing Date: 08/23/2011

*NOTE: Data fields with the * are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.*

The table below presents the data as entered.

Input Field	Entered
TEAS Plus	YES
MARK INFORMATION	
*MARK	\\TICRS\EXPORT11\IMAGEOUT11\854\050\85405060\xml1\FTK0002.JPG
*SPECIAL FORM	YES
USPTO-GENERATED IMAGE	NO
LITERAL ELEMENT	Allograft Resources
*COLOR MARK	YES
*DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of words "Allograft Resources "with the word Allograft being in a lighter shade of blue representing the reversal of the aging process and the resources being in a darker shade. The artwork depicts the human form in various postures portraying comfort and health with emphasis upon the orthopedic structure and connective tissues emanating from within the form to highlight the nature of the aging population in need of regenerative assistance to in order to return to an active lifestyle. The trademark includes a gradient of blue rounded squares representing the seasons of human life; infancy (Spring of life), adulthood (Summer of Life), and senior ship (Winter of Life) upon a white background (The unknown prior to and after life).

*COLOR(S) CLAIMED (If applicable)	The color(s) Various shades of "blue" upon a white background is/are claimed as a feature of the mark.
PIXEL COUNT ACCEPTABLE	YES
PIXEL COUNT	729 x 944
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Stutes, Kelly J
*STREET	31 Pfeiffer Road
*CITY	Boerne
*STATE (Required for U.S. applicants)	Texas
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	78006
PHONE	210-998-9190
EMAIL ADDRESS	Kstutes@Gmail.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
LEGAL ENTITY INFORMATION	
*TYPE	INDIVIDUAL
* COUNTRY OF CITIZENSHIP	United States
GOODS AND/OR SERVICES AND BASIS INFORMATION	
*INTERNATIONAL CLASS	001
IDENTIFICATION	Biological tissue, namely, a set of matched frozen and fixed human biological specimens derived from the division of one original specimen for use in scientific and medical research; Biological tissue, namely, blood, stem cells, umbilical cords and placentas for scientific and medical research use
*FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 03/01/1992
FIRST USE IN COMMERCE DATE	At least as early as 03/01/1992
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT11\IMAGEOUT\11\854\050\85405060\xml1\FTK0003.JPG

SPECIMEN DESCRIPTION	box containing Logo with a clear cellophane window for viewing of specific product inserted into the box
*INTERNATIONAL CLASS	005
IDENTIFICATION	Gene therapy products, namely, genetically engineered tissues for transplant purposes; Implantable scaffolds comprising living tissue for enhancing therapy; Media for use in the augmentation of bone and tissue for medical purposes; Medicated pre-moistened tissues; Pharmaceutical preparations and substances for the treatment of damaged skin and tissue; Pre-moistened medicated tissues
*FILING BASIS	SECTION 1(b)
*INTERNATIONAL CLASS	005
IDENTIFICATION	Human allograft bone and tissue; Human allograft tissue; Implants comprising living tissue; Processed human donor skin for the replacement of soft tissue; Surgical implants comprising living tissue; Surgical tissues; Vascular grafts
*FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 03/01/1992
FIRST USE IN COMMERCE DATE	At least as early as 03/01/1992
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT11\IMAGEOUT 11\854\050\85405060\xml1\ FTK0004.JPG
ADDITIONAL STATEMENTS SECTION	
*TRANSLATION (if applicable)	
*TRANSLITERATION (if applicable)	
*CLAIMED PRIOR REGISTRATION (if applicable)	
*CONSENT (NAME/LIKENESS) (if applicable)	
*CONCURRENT USE CLAIM (if applicable)	
CORRESPONDENCE INFORMATION	
*NAME	Stutes, Kelly J

*STREET	31 Pfeiffer Road
*CITY	Boerne
*STATE (Required for U.S. applicants)	Texas
*COUNTRY	United States
*ZIP/POSTAL CODE	78006
PHONE	210-998-9190
*EMAIL ADDRESS	Kstutes@Gmail.com
*AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	2
FEE PER CLASS	275
*TOTAL FEE PAID	550
SIGNATURE INFORMATION	
* SIGNATURE	/Tran5plantman/
* SIGNATORY'S NAME	Kelly James Stutes
* SIGNATORY'S POSITION	Owner
* DATE SIGNED	08/23/2011

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 85405060

Filing Date: 08/23/2011

To the Commissioner for Trademarks:

MARK: Allograft Resources (stylized and/or with design, see [mark](#))

The literal element of the mark consists of Allograft Resources.

The color(s) Various shades of "blue" upon a white background is/are claimed as a feature of the mark. The mark consists of words "Allograft Resources "with the word Allograft being in a lighter shade of blue representing the reversal of the aging process and the resources being in a darker shade. The artwork depicts the human form in various postures portraying comfort and health with emphasis upon the orthopedic structure and connective tissues emanating from within the form to highlight the nature of the aging population in need of regenerative assistance to in order to return to an active lifestyle. The trademark includes a gradient of blue rounded squares representing the seasons of human life; infancy (Spring of life), adulthood (Summer of Life), and senior ship (Winter of Life) upon a white background (The unknown prior to and after life).

The applicant, Kelly J Stutes, a citizen of United States, having an address of
31 Pfeiffer Road
Boerne, Texas 78006
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 001: Biological tissue, namely, a set of matched frozen and fixed human biological specimens derived from the division of one original specimen for use in scientific and medical research; Biological tissue, namely, blood, stem cells, umbilical cords and placentas for scientific and medical research use

In International Class 001, the mark was first used at least as early as 03/01/1992, and first used in commerce at least as early as 03/01/1992, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) box containing Logo with a clear celophane window for viewing of specific product inserted into the box.

[Specimen File 1](#)

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 005: Gene therapy products, namely, genetically engineered tissues for transplant purposes; Human allograft bone and tissue; Human allograft tissue; Implantable scaffolds comprising living tissue for enhancing therapy; Implants comprising living tissue; Media for use in the augmentation of bone and tissue for medical purposes; Medicated pre-moistened tissues; Pharmaceutical preparations and substances for the treatment of damaged skin and tissue; Pre-moistened medicated tissues; Processed human donor skin for the replacement of soft tissue; Surgical implants comprising living tissue; Surgical tissues; Vascular grafts

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

In International Class 005, the mark was first used at least as early as 03/01/1992, and first used in commerce at least as early as 03/01/1992, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, .

[Specimen File 1](#)

The applicant's current Correspondence Information:

Stutes, Kelly J
31 Pfeiffer Road
Boerne, Texas 78006
210-998-9190(phone)
Kstutes@Gmail.com (authorized)

A fee payment in the amount of \$550 has been submitted with the application, representing payment for 2 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Tran5plantman/ Date Signed: 08/23/2011
Signatory's Name: Kelly James Stutes
Signatory's Position: Owner

RAM Sale Number: 13419
RAM Accounting Date: 08/24/2011

Serial Number: 85405060
Internet Transmission Date: Tue Aug 23 16:55:13 EDT 2011
TEAS Stamp: USPTO/FTK-75.227.143.198-201108231655132
39379-85405060-480a6cd25c3d87c917c7eef83
389e26143-CC-13419-20110823151521438799

Exhibit B

1. Title

Intellectual Property Rights and Obligations

2. Rule and Regulation

Sec. 1 Intellectual Property Owned by the Creator. Intellectual property developed or created by a U. T. System employee outside the course and scope of employment of the individual which is developed or created on his/her own time and without the support of the U. T. System or any U. T. System institution or use of their facilities or resources, is the exclusive property of the creator.

Sec. 2 Intellectual Property Owned by U. T. System. Intellectual property either developed within the course and scope of employment of the individual or resulting from activities performed on U. T. System time, or with support of State funds, or from using facilities or resources owned by the U. T. System or any U. T. System institution (other than incidental use) is owned by the Board of Regents. To effectively implement this Rule and provide certainty to individuals subject to this Rule, a U. T. System institution may promulgate institutional rules, regulations, or policies defining the course and scope of employment for persons or classes of persons and specifying that authorized (pursuant to existing rules and procedures) outside employment is or is not within an employee's course and scope of employment.

2.1 Determination of U. T. System's Interest. Before intellectual property subject to ownership by the Board of Regents is disclosed to any party outside the U. T. System, to the public generally, or for commercial purposes, and before publishing same, the creator shall submit a reasonably complete and detailed disclosure of such intellectual property to the president of the creator's institution for determination of the U. T. System's interest. The institution will regularly and promptly communicate with the creator during this decision-making process.

2.2 Election Not to Assert Ownership Interest. If the institution's president elects not to assert U. T. System's interest, the U. T. System Office of General Counsel and the primary creator shall be notified in writing within 20 business days after a decision is made not to assert

ownership rights that the institution will offer the released intellectual property to the creator (see [Rule 90101](#), Section 8), except where prohibited by law or contractual obligations or requirements. Thereafter, the creator will be free to obtain and exploit a patent or other intellectual property protection in his or her own right and the U. T. System and U. T. System institutions shall not have any further rights, obligations, or duties with respect thereto except that, in appropriate circumstances, the institution's president may elect to impose certain limitations or obligations, including, but not limited to, a nonexclusive license for the creator, U. T. System, and any U. T. System institution to use the released invention for patient care, teaching, scholarly and other academically related purposes, and nonprofit research.

- 2.3 Later Release of Invention. Except where prohibited by law or contractual obligations or requirements, the institution's president may elect to release an invention to its creator at any time after asserting U. T. System's interest, with notice to the U. T. System Office of General Counsel (see [Rule 90101](#), Section 8); however, such a release must include provisions for the recovery by U. T. System of patent and licensing expenses, if any, as well as the retention of income rights by U. T. System, and may include certain limitations or obligations, including those set forth in Section 2.2 above.
- 2.4 Protection and Commercialization of Intellectual Property. With respect to intellectual property in which the U. T. System or any U. T. System institution asserts an interest, the institution's president, or his or her designee, shall decide how, when, and where the intellectual property is to be protected and commercialized. Outside counsel services may be contracted with the prior consent of the U. T. System Vice Chancellor and General Counsel and, if required by law, the approval of the Attorney General. U. T. System shall establish an intellectual property data collection system.
- 2.5 Reimbursement of Licensing Costs and Allocation of Income. In those instances where the U. T. System or any U. T. System institution licenses rights in intellectual property to third parties, and other than with regard to elections under Section 2.2 above, the costs of licensing,

including, but not limited to, the costs to operate and support a technology transfer office and the costs of obtaining a patent or other protection for the property on behalf of the Board of Regents must first be recaptured from any royalties or other license payments received by the U. T. System or any U. T. System institution. The remainder of any such income (including but not limited to license fees, prepaid royalties, minimum royalties, running royalties, milestone payments, and sublicense payments) shall be divided as follows:

50% to creator(s)
50% to U. T. System,

provided, however, that a creator may disclaim his/her interest in such income, in which case the institution shall receive the creator's share and shall decide, in its sole discretion, if, how, and when to disburse such income.

With the prior approval of the Board and after review by the U. T. System Vice Chancellor and General Counsel and the appropriate Executive Vice Chancellor, an institution may adjust the allocation of royalties set forth herein for a creator.

Sec. 3 Intellectual Property Involving Sponsored Research. Intellectual property resulting from research supported by a grant or contract with the government (federal and/or state), or an agency thereof, with a nonprofit or for-profit nongovernmental entity, or by a private gift or grant to the U. T. System or any U. T. System institution is owned by the Board of Regents.

3.1 Nonconformance with Intellectual Property Guidelines. Administrative approval of such grants and contracts containing provisions inconsistent with this Rule or other policies and guidelines adopted by the Board imply a decision that the value to the U. T. System or any U. T. System institution of receiving the grant or performing the contract outweighs the impact of any nonconforming provisions on the intellectual property policies and guidelines of the U. T. System or any U. T. System institution (Reference Regents' *Rules and Regulations*, [Rule 90105](#), Section 2).

- 3.2 **Conflicting Provisions.** Subject to approval as described in Subsection 3.1 above, the intellectual property policies and guidelines of the U. T. System or any U. T. System institution are subject to, and thus amended and superseded by, the specific terms pertaining to intellectual property rights included in state and/or federal grants and contracts, or grants and contracts with nonprofit and for-profit nongovernmental entities or private donors, to the extent of any such conflict.
- 3.3 **Cooperation with Necessary Assignments.** Those persons subject to this Rule whose intellectual property creations result from a grant or contract with the government (federal and/or state), or any agency thereof, or with a nonprofit or for-profit nongovernmental entity, or by private gift to the U. T. System or any U. T. System institution shall promptly execute and deliver such documents and other instruments as are reasonably necessary for the U. T. System or any U. T. System institution to discharge its obligations, expressed or implied, under the particular agreement.
- 3.4 **Sharing of Royalty Income.** In the event that two or more persons who are entitled to share royalty income pursuant to Section 2.5 of this Rule (or equity pursuant to Regents' *Rules and Regulations*, [Rule 90103](#) concerning equity interests) cannot agree in writing on an appropriate sharing arrangement, the institution's president shall determine that portion of the royalty income to which the creators are entitled under the circumstances and such amount will be distributed to them accordingly. In the event that the creators are located at two or more U. T. System institutions and cannot agree, such royalty (or equity) distribution decision shall be made by the involved institutions' presidents (or their respective designees). In the further event that the involved presidents cannot agree, then the Chancellor (or designee) shall decide and his/her decision shall be binding on the creators.
- 3.5 **Geographical Scope of Protection.** A decision by the U. T. System or any U. T. System institution to seek patent or other available protection for intellectual property covered by Section 2 of this Rule shall not obligate the U. T. System or any U. T. System institution

to pursue such protection in all national jurisdictions.
The U. T. System's decision relating to the geographical
scope and duration of such protection shall be final.

3. Definitions

None

4. Relevant Federal and State Statutes

None

5. Relevant System Policies, Procedures, and Forms

Regents' *Rules and Regulations*, [Rule 90101](#) – Rules for Intellectual
Property: Purpose, Scope, Authority

Regents' *Rules and Regulations*, [Rule 90103](#) – Equity Interests

Regents' *Rules and Regulations*, [Rule 90104](#) – Business Participation and
Reporting

Regents' *Rules and Regulations*, [Rule 90105](#) – Execution of Legal
Documents Related to Intellectual Property

Regents' *Rules and Regulations*, [Rule 90106](#) – Income from Intellectual
Property

6. Who Should Know

Administrators
Faculty
Staff
Students

7. System Administration Office(s) Responsible for Rule

Office of General Counsel

8. Dates Approved or Amended

November 10, 2011
Editorial amendments made October 6, 2011
Editorial amendment to Sec. 2.5 made September 1, 2010
February 8, 2007

December 10, 2004

9. Contact Information

Questions or comments regarding this Rule should be directed to:

- bor@utsystem.edu