

ESTTA Tracking number: **ESTTA761127**

Filing date: **07/28/2016**

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

Proceeding	91226464
Party	Defendant MYGENETX LABORATORY, LLC
Correspondence Address	ROBERT P. FELBER, JR. Waller Lansden Dortch & Davis Llp 511 Union St Ste 2700 Nashville, TN 37219-1791 laura.merritt@wallerlaw.com, rfelber@wallerlaw.com, trademarkdock- et@wallerlaw.com
Submission	Answer
Filer's Name	Laura P. Merritt
Filer's e-mail	laura.merritt@wallerlaw.com, rfelber@wallerlaw.com, trademarkdock- et@wallerlaw.com
Signature	/LAURA P. MERRITT/
Date	07/28/2016
Attachments	MyGenetx Answer to Notice of Opposition of Elevated Capital.pdf(110753 bytes)

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

ELEVATED CAPITAL GROUP, LLC)	
)	
Opposer,)	Opposition No. 91226464
)	
v.)	Mark: MYGENETX
)	
MYGENETX LABORATORY, LLC)	Serial No. 86/584,714
)	
Applicant.)	

APPLICANT’S ANSWER TO NOTICE OF OPPOSITION

Applicant Mygenetx Laboratory, LLC, (“Applicant”) by and through its undersigned attorneys, hereby submits its Answer to the Notice of Opposition filed by Opposer Elevated Capital Group, LLC, (“Opposer”). The following numbered paragraphs correspond to the numbering of the paragraphs used in the Notice of Opposition. Applicant reserves the right to amend or supplement this Answer.

In response to the unnumbered statements below the heading “Notice of Opposition,” Applicant admits that it is the owner of Application Serial No. 86/584,714, filed on April 1, 2015, seeking registration on the Principal Register of the trademark MYGENETX in connection with “clinical, medical and genetic laboratory services; medical, scientific and technical research and development services” in International Class 42; which intent-to-use application was published for opposition on August 25, 2015, with extensions of time to file a Notice of Opposition granted up to and including Sunday, February 21, 2016.

Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the corporate structure or address of Elevated Capital Group, LLC, and therefore denies the same. Applicant denies that Opposer is or will be damaged by the

registration of MYGENETX Application Serial No. 86/584,714 or that it has any grounds for this action.

1. Applicant admits that Opposer is shown as the owner of Reg. No. 4,835,805 in the records of the United States Patent and Trademark Office (“Opposer’s Registration”). Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining 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 of the allegations of Paragraph 2 and therefore denies same.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3 and therefore denies same.

4. Denied.

5. Denied.

6. Denied.

7. All averments not specifically admitted are hereby denied. Applicant denies that Opposer is entitled to any relief.

AFFIRMATIVE DEFENSES

In further answer to the Notice of Opposition, Applicant asserts each of the following, without admitting or conceding that it bears the burden of proof or persuasion:

1. Opposer fails, in whole or in part, to state a claim upon which relief can be granted.

2. There is no likelihood of confusion between Applicant’s and Opposer’s marks because, among other reasons, the marks are not confusingly similar.

3. The terms “MY” and “GENE” are included in a number of third party marks on the Principal Register and in the marketplace. These marks have co-existed with Opposer’s Registration without any confusion.

4. There have been no instances of actual confusion between Applicant’s and Opposer’s marks.

WHEREFORE, Applicant respectfully requests that the Notice of Opposition be dismissed in its entirety with prejudice and that Application Serial No. 86/584,714 for the mark MYGENETX proceed to registration.

Respectfully submitted,

Dated: July 28, 2016

By: /s/Laura P. Merritt
Laura P. Merritt (TN BPR No. 026482)
Eric B. Fugett (TN BPR No. 032454)
Waller Lansden Dortch & Davis, LLP
511 Union Street, Suite 2700
Nashville, Tennessee 37219
Phone: (615) 244-6380
Laura.Merritt@wallerlaw.com
Eric.Fugett@wallerlaw.com

Counsel for Applicant MyGenetx Laboratory, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon the following counsel of record by depositing a copy of same in the United States mail, first class postage prepaid, on this 28th day of July 2016, addressed to:

Ralph H. Cathcart
Jennifer Kwon
Francesca M. Montalvo
Ladas & Parry, LLP
1040 Avenue of the Americas
New York, New York 10018

Counsel for Opposer, Elevated Capital Group, LLC

/s/Laura P. Merritt

Laura P. Merritt