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

Proceeding	92047581
Party	Defendant Mor-Nutech, Inc.
Correspondence Address	Ellen P. Winner Greenlee, Winner & Sullivan, P.C. 4875 Pearl East Circle, Suite 200 Boulder, CO 80301 UNITED STATES winner@greenwin.com,usptomail@greenwin.com
Submission	Motion to Amend/Amended Answer or Counterclaim
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

ACTIBIOL, S.A. Petitioner, v. MOR-NUTECH, INC. Registrant.	Cancellation No. 92047581 Trademark: CAPSOL-T Registration No.: 3,149,821

MOTION OF REGISTRANT TO AMEND ANSWER TO PETITION FOR CANCELLATION

Registrant, Mor-NuTech, Inc., respectfully moves to amend its Answer. Upon review it has been discovered that Registrant's Answer to Paragraph 3 of the Petition for Cancellation was erroneously answered "Admitted." Registrant wishes to correct this error.

Paragraph 3 of the Petition for Cancellation reads as follows:

> 3. Petitioner, Actibiol, S.A. ("Petitioner" or "Actibiol") is a corporation formed in Switzerland and run by its Managing Director, Georges Manoukian. Through Mr. Manoukian's efforts, Actibiol has developed a proprietary formula for a nutritional supplement ("the Capsibiol-T product") that Actibiol markets and sells under the trademark "CAPSIBIOL-T." The Capsibiol-T product is a proprietary formula combining decaffeinated green tea and capsaicin (an extract of chili peppers). The product has been successful in clinical trials for treating cancer patients.

Registrant's answer to this paragraph in their Answer to Petition for Cancellation was:

3. Admitted.

There are many different allegations set forth in Paragraph 3, not all of which Registrant wishes to contest. However, Registrant does wish to state that it has insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 3 of the Petition for Cancellation that Actibiol markets and sells a product under the trademark "CAPSIBIOL-T" or that its formula is currently proprietary.

Thus, Registrant moves to amend its Answer per the Amended Answer filed herewith, in which new Paragraph 3 has been changed to read:

> 3. Admitted, except that Registrant has insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 3 of the Petition for Cancellation that Actibiol markets and sells any product under the trademark "CAPSIBIOL-T," or that the formula for the product sold under the CAPSIBIOL-T mark is proprietary.

This error was inadvertent and was made through failing to appreciate certain nuances of the language used in the Petition. It was not appreciated that Paragraph 3 referred to the proprietary nature of the entire formula for the product, and not just of an ingredient thereof, nor that it implied that the proprietary formula originally developed by Actibiol for processing the *Capsicum* extract portion of the product was still proprietary. Also, it was not appreciated that Paragraph 3 of the Petition implied that the entire CAPSIBIOL-T product is being marketed by Actibiol and not just the *Capsicum* extract ingredient. Registrant is not aware that Actibiol is marketing any product under the "CAPSIBIOL-T" trademark (other than the product it claims to be marketing through Registrant's licensee, SMS). This is clear in Registrant's Answers to other allegations set forth in the Petition for Cancellation. See, e.g., Answer to Paragraph No. 5.

An Amended Answer is submitted herewith in which the Answer to Paragraph 3 has been amended as set forth above.

Acceptance and entry of this Amended Answer is respectfully requested.

Respectfully submitted,

MOR-NUTECH, INC.

By /ellenwinner/

Ellen P. Winner, Attorney for Registrant

Reg. No. 28,547

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Telephone 303-499-8080
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Email: Ewinner@greenwin.com
Date December 17, 2007

CERTIFICATE OF SERVICE

I certify that a copy of this paper was sent by first-class mail, this 17th day of December, 2007, postage prepaid, to the last known address of the attorney of record for Petitioner, as follows:

Gary J. Nelson
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/laurasedlacek/

Laura Sedlacek

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Date: December 17, 2007

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

ACTIBIOL, S.A. Petitioner, v. MOR-NUTECH, INC. Registrant.	Cancellation No. 92047581 Trademark: CAPSOL-T Registration No.: 3,149,821

AMENDED ANSWER TO PETITION FOR CANCELLATION

Registrant, Mor-Nutech, Inc., by its attorneys, answers the allegations set forth in the Notice of Cancellation as follows:

1. Registrant admits the allegations set forth in Paragraph 1 of the Petition for Cancellation.

2. Registrant admits the allegations set forth in Paragraph 2 of the Petition for Cancellation.

3. Admitted, except that Registrant has insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 3 of the Petition for Cancellation that Actibiol markets and sells any product under the trademark "CAPSIBIOL-T," or that the formula for the product sold under the CAPSIBIOL-T mark is proprietary.

4. Registrant has insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 4 of the Petition for Cancellation.

5. Registrant denies the allegations set forth in Paragraph 5 of the Petition for Cancellation, except that Registrant agrees that Portola licensed the use of the CAPSIBIOL-T mark to Scientific Motive Systems (SMS) in March of 2000.

6. Registrant admits that Scientific Motive Systems, Inc. (SMS) made its first sale of product under the trademark CAPSIBIOL-T trademark in September, 2000 and that SMS paid royalties for sales of this product in the United States during 2000, 2001, 2002, 2003, 2004 and 2005. These royalties were paid to Portola Sciences, Inc., and Auderset, and Manoukian/Mesrobian under a license agreement from Portola Sciences, Inc. to SMS dated March 20, 2000 covering technology, which the agreement recites was invented by Guy Auderset of Geneva Switzerland, George Manoukian of Geneva, Switzerland, and D. James Morre of West Lafayette, Indiana, and also covering trademark rights. Registrant denies that all use of the trademark during these years inured to Actibiol's benefit.

7. Registrant has insufficient knowledge or belief as to the truth of the allegations set forth in Paragraph 7 of the Petition for Cancellation. However, Registrant denies that SMS used the CAPSIBIOL-T trademark to sell products other than those in which the *Capsicum* source was material provided by ActiBiol.

8. Registrant denies the allegations set forth in Paragraph 8 of the Petition for Cancellation.

9. Registrant has insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 9 of the Petition for Cancellation.

10. Registrant denies the allegations set forth in Paragraph 10 of the Petition for Cancellation.

11. Registrant denies the allegations set forth in Paragraph 11 of the Petition for Cancellation, except that Registrant admits that it asserts a date of first use of the CAPSOL-T trademark of at least as early as June 5, 2006.

12. Registrant denies the allegations set forth in Paragraph 12 of the Petition for Cancellation.

13. Registrant denies the allegations set forth in Paragraph 13 of the Petition for Cancellation.

14. Registrant has insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 14 of the Petition for Cancellation.

15. Registrant denies the allegations set forth in Paragraph 15 of the Petition for Cancellation.

16. Registrant denies the allegations set forth in Paragraph 16 of the Petition for Cancellation.

17. Registrant denies the allegations set forth in Paragraph 17 of the Petition for Cancellation.

18. Registrant denies the allegations set forth in Paragraph 18 of the Petition for Cancellation.

19. Registrant denies the allegations set forth in Paragraph 19 of the Petition for Cancellation.

20. Registrant denies the allegations set forth in Paragraph 20 of the Petition for Cancellation.

21. Registrant denies the allegations set forth in Paragraph 21 of the Petition for Cancellation.

22. Registrant denies the allegations set forth in Paragraph 22 of the Petition for Cancellation.

23. Registrant denies the allegations set forth in Paragraph 23 of the Petition for Cancellation.

24. Registrant denies the allegations set forth in Paragraph 24 of the Petition for Cancellation, except that Registrant admits that an Assignment was executed on June 8, 2006 by applicants James and Dorothy Morre assigning the entire interest in the CAPSOL-T trademark application from applicants to Mor-NuTech, Inc. Registrant also admits that on June 26, 2006 a Statement of Use was signed and submitted by applicants James and Dorothy Morre.

25. Registrant denies the allegations set forth in Paragraph 25 of the Petition for Cancellation.

26. Registrant denies the allegations set forth in Paragraph 26 of the Petition for Cancellation, except that Registrant admits that Dorothy and James Morre executed an Assignment of the application for registration of CAPSOL-T on June 8, 2006 and filed a Statement of Use on June 26, 2006.

AFFIRMATIVE DEFENSES

27. **Petitioner has no standing in this matter.** As a first affirmative defense, it is submitted that ActiBiol has no rights in the trademark CAPSIBIOL-T in the United States, and therefore has no standing in this matter. Note that Paragraph 5 of the Petition for Cancellation states that "*Mr. Manoukian* licensed the trademark to Portola Sciences, Inc." [Emphasis added.] The Petition for Cancellation does not state that *ActiBiol* licensed the trademark to Portola Sciences, Inc. Attached as Exhibit A is a copy of the only document known to Registrant that appears to concern the relationship between Mr. Manoukian or Petitioner and Portola.

Contrary to the assertions in the Petition to Cancel, Registrant, Mor-NuTech, Inc. owns all rights in the trademark CAPSIBIOL-T in the United States.

Upon information and belief ActiBiol has not used the mark CAPSIBIOL-T in the United States and therefore has no trademark rights in this mark. This trademark was first used in the United States by SMS under license from Portola Sciences, Inc., who later assigned its rights to Mor-NuTech, Inc. (Assignment executed July 3, 2006 recorded at Reel/Frame 3349/0096). ActiBiol has not alleged that it independently used the mark CAPSIBIOL-T in the United States, but rather erroneously claims that all use of the mark by SMS inures to its benefit. However, in fact, all use of the mark by SMS inures to the benefit of Mor-NuTech, Inc.

28. **Res Judicata and Estoppel.** As a second affirmative defense, it is submitted that the matter of non-ownership of rights in the trademark CAPSIBIOL-T in the United States by Petitioner, and ownership of these rights by Registrant is barred by *res judicata*. In Cancellation Proceeding 92046423, naming Mor-NuTech, Inc. as Petitioner, the Trademark Trial and Appeal Board cancelled the Registration for the mark CAPSIBIOL-T that was listed as being owned by Edwige L. Mesrobian and Edouard Manoukian. That decision should prevent Petitioner from now attempting to claim ownership rights in the CAPSIBIOL-T mark. Note that Georges Manoukian is stated in the present Petition for Cancellation to be the person who formed the ActiBiol corporation, and who is the Managing Director of ActiBiol. Exhibit B, a summary of royalties paid by SMS to Portola, Auderset, Manoukian and Mesrobian, shows that Manoukian and Mesrobian were accepting royalties on behalf of ActiBiol. Note that the record shows that applicants were represented by counsel and therefore cannot have been unaware of the existence of this prior cancellation proceeding. It is therefore requested that the present proceeding be dismissed on the ground that the ownership issue with respect to the trademark CAPSIBIOL-T in the United States has already been adjudicated by this Board, and Petitioner herein is estopped from raising this issue again.

29. **Failure to State a Cause of Action.** As a third affirmative defense, Registrant states that Petitioner's Petition for Cancellation of the CAPSOL-T registration should be dismissed in accordance with Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. Petitioner has failed to demonstrate it has any enforceable trademark rights in the United States related to the CAPSIBIOL-T mark or that the Registrant's use of

the mark CAPSOL-T to identify its goods causes a likelihood of confusion with use of the CAPSIBIOL-T mark.

31. **No Prior Rights of Petitioner.** As a fourth affirmative defense, Registrant states that contrary to the allegations in Paragraph 19 of the Petition for Cancellation, Registrant is not aware of any prior rights of ActiBiol in the CAPSIBIOL-T trademark. Registrant is not aware of any document that purports to grant Portola, Inc. a trademark license. The only document Registrant is aware of is a one-paragraph document signed by Georges Manoukian and Guy Auderset and dated February 14, 2000, that authorizes Portola, Inc. to negotiate licensing for manufacture and sale of the CAPSIBIOL-T product and to use the CAPSIBIOL-T mark. This authorization is attached hereto as Exhibit A. It does not recite that Manoukian and Auderset were owners of the trademark, and in fact, because, on information and belief, the mark had not yet been used in commerce in the United States, nor had a trademark application based on intention to use the mark in the United States yet been filed, no trademark rights in the U.S. actually existed at that time. Accordingly, there were no trademark rights in CAPSIBIOL-T for either ActiBiol or Mr. Manoukian to convey at the time the February 14, 2000 document was signed.

To the extent the document Exhibit A can be construed as a trademark license, it was breached by Petitioner's causing Edouard Manoukian and Edwige Mesrobian to file the trademark application for CAPSIBIOL-T resulting in Registration No. 3064221 that was successfully cancelled on petition of Registrant herein in Cancellation No. 92046423.

Registrant submits that Petitioner's attempt to claim rights in the CAPSIBIOL-T trademark are without support in law or in fact.

32. **Registrant's Application Was Not Fraudulent as Filed.** As a fifth affirmative defense, Registrant states that, contrary to the allegations set forth in Paragraphs 20-22 of the Petition for Cancellation, no fraud on the United States Patent and Trademark Office was committed in obtaining the subject registration. The application for registration of CAPSOL-T stated that applicants, D. James Morre and Dorothy M. Morre had a "bona fide intention to use or use through the applicant's related company or licensee the mark . . . . "

Applicants, in fact, did subsequently use the mark through a related company that they formed, namely Registrant, Mor-NuTech, Inc. All requirements of 15 U.S.C. Section 1051(b) have been met.

33. **Statement of Use was Properly Filed.** As a sixth affirmative defense, Registrant states that the Statement of Use was filed by the proper parties, and was timely filed. Contrary to the allegations in Paragraphs 23 and 24 of the Petition for Cancellation, the Statement of Use was timely filed on June 26, 2006, within six months of the date of the Notice of Allowance, December 27, 2005. The date of first use was shown to be at least as early as June 5, 2006. The Assignment of the Trademark to Mor-NuTech, Inc. (copy submitted herewith as Exhibit C) was signed on June 8, 2006 and recorded in the Patent and Trademark Assignment Division on June 26, 2006, as shown in Exhibit C. The Statement of Use was filed by the record owners of the trademark reflected in the Patent and Trademark Office TEAS system records for the application when the Statement of Use was filed. The TEAS system does not allow a change in the Applicant's name when applicants file a Statement of Use. The electronic form states: "Note: If the name of the applicant has actually changed, you may not do a 'correction.' You must file an actual change of name document/assignment and recordation form PTO-1594." TMEP Sections 504 and 504.1 state that the TEAS records will be automatically updated from documents [including Assignments of the entire interest and goodwill in the mark] that are recorded with the Assignment Division. The Assignment to Mor-NuTech was an assignment of the entire interest and goodwill in the mark, and therefore was proper to transfer title to the application. On the same date that the Statement of Use was filed, the Assignment of the mark to Mor-NuTech, Inc. was recorded. The electronic field for Applicants' name therefore should have been automatically updated to show the change of applicant.

It is submitted that applicants have a right to rely on the published procedures of the Patent and Trademark Office when filing through the TEAS system, and so as not to cause problems with the system, applicants are justified in not attempting to interfere with processes that are to be performed automatically.

As shown in the electronic records for the CAPSOL-T application, the TEAS system was updated automatically with the Assignment information on July 5, 2007 before the Statement of Use processing was completed on July 17, 2005, and thus the system performed as it should have. It is therefore submitted that when the Statement of Use was evaluated by the Trademark Office Examiner, the record reflected Mor-NuTech, Inc. as the applicant, as was intended by applicants' attorneys and as was consistent with the actions taken by applicants' attorneys. Thus applicants' attorneys took actions that were intended and reasonably designed to cause the TEAS system to reflect the correct applicant for the application when the Statement of Use was evaluated, in fact this is what happened.

Applicants followed the procedures available on the TEAS system for properly filing the Statement of Use, and it is submitted that since there was no way for the name of the trademark applicants to be updated on the TEAS form except by filing an Assignment, which was done, the Statement of Use was properly filed.

Presumably, Petitioner is relying on TMEP Section 1109.10, entitled "Ownership," for their allegation that the Statement of Use was not filed by the correct party. However, this section of the TMEP is directed to situations such as those described in *In re Colombo, Inc.,* 33 USPQ2d 1530 (Comm'r of Pats. 1994), cited in TMEP Section 1109.10. The events of that case took place prior to the institution of the TEAS system. In addition, in that case the Statement of Use that was refused was filed in the name of the original applicant, CMHC, Inc., on November 30, 1992, close to *a year after* the assignment to the new owner, Colombo, Inc. was recorded. The applicant in that case was not justified in relying on an automatic updating of the applicant's name from the assignment records. In contrast, as shown above, the applicants in the present case were justified in relying on an automatic updating of the applicant's name from the assignment records.

Further, even if it is determined that applicants should not have relied on the automatic updating of the TEAS system, the Statement of Use alleged that the mark was being used by the applicants or "through a related company or licensee." Mor-NuTech is a related company of the original applicants. Original applicant D. James Morre is President of Mor-NuTech (see Assignment document, Exhibit C). The first use of the mark occurred at least

as early as June 5, 2006, *before* the signing of the assignment to Mor-NuTech on June 8, 2006, while title to the application was still held by the original applicants. Thus the Statement of Use was timely filed by parties who owned the mark on the date of first use.

34. **The Application was Properly Assigned.** As a seventh affirmative defense, Registrant states that, contrary to the allegations of Paragraphs 25 and 26 of the Petition for Cancellation, the Assignment of the mark and trademark application was in accordance with 15 U.S.C. Section 1060(a)(1), which states that an assignment to a successor to the business of the applicant or portion thereof to which the mark pertains, if the business is ongoing and existing, is valid for transfer of rights in a trademark application prior to filing of a Statement of Use. In the present instance, the Assignment transfers rights in the mark and the associated business, thus meeting the requirements of 15 U.S.C. Section 1060(a)(1).

35. **No Likelihood of Confusion.** As an eighth affirmative defense, it is submitted that even if it were found by the Board that ActiBiol has rights in the trademark CAPSIBIOL-T, which is not believed to be likely, there is still no likelihood of confusion, mistake or deception of the purchasing public occasioned by the use of Registrant's mark, CAPSOL-T, and CAPSIBIOL-T when considered in their entireties. Registrant's CAPSOL-T mark is distinctly different from CAPSIBIOL-T in visual appearance, pronunciation, commercial impression and connotation, and in addition, there are critical differences in the goods being marketed under the respective marks.

Although both marks begin with “CAP” and end in “T,” they are dissimilar in commercial impression. The marks are not similar enough in visual appearance to give rise to likelihood of confusion:

CAPSOL-T

CAPSIBIOL-T

Note that CAPSOL-T contains only eight characters, while CAPSIBIOL-T contains 11 characters, and that CAPSOL-T contains three syllables, while CAPSIBIOL-T contains five syllables. CAPSIBIOL-T gives a visual impression of complexity, while CAPSOL-T gives a visual impression of simplicity.

Further, the fact that CAPSOL-T has only three syllables while CAPSIBIOL-T has five syllables makes a great difference in pronunciation. The syllable "BI" in CAPSIBIOL is produced using an explosive sound, which makes a strong auditory impression, while CAPSOL-T lacks this explosive sound.

The commercial impressions and connotations of the marks are also dissimilar. The final "-T" of both marks is evocative of the fact that the goods are made using tea. Thus the first portions of the marks are the dominant portions, and these dominant portions are very different in commercial effect. The prefix "CAPSI" in CAPSIBIOL-T is evocative of capsaicin, an essential ingredient of the goods. The "BIOL" portion of the CAPSIBIOL-T mark connotes a biological effect for the goods. In contrast, the term "CAPSOL" in Registrant's mark is evocative of the fact that the goods are sold in capsule form. Thus the commercial impression of CAPSIBIOL-T relates to its connotation of a tea containing capsaicin and having a biological effect, while the commercial impression of CAPSOL-T relates to its connotation of tea in a capsule form.

In addition, the goods are dissimilar. Exhibit D is a print-out from the website being used to market Registrant's CAPSIBIOL-T goods, showing that these goods are not being advertised as food-grade ingredients. Exhibit E is a print-out from the website being used to market Registrant's CAPSOL-T goods, showing that the goods for CAPSOL-T are *food grade* ingredients. As stated in the present Petition for Cancellation, the CAPSIBIOL-T formula is a proprietary formula. It is formulated by SMS, but contains a capsaicin ingredient produced by ActiBiol that has been processed by a trade-secret procedure. Because of the use of this trade-secret procedure, upon information and belief, the CAPSIBIOL-T product cannot be shown to meet "food grade" U.S. regulatory standards. This is an important difference between the goods that results in the ability of the CAPSOL-T product to be used in clinical trials in the U.S., while the CAPSIBIOL-T product cannot be used in clinical trials in the U.S.

Additionally, the goods are dissimilar in that a different plant species is utilized as a source for the *Capsicum* ingredient. In the CAPSIBIOL-T product, the *Capsicum* source is

Capsicum fructescens. In the CAPSOL-T product, the *Capsicum* source is *Capsicum annum.* This is an important difference because federal regulatory agencies of the United States place great weight on the plant species utilized for neutraceutical supplements.

In addition, the CAPSOL-T and CAPSIBIOL-T goods are sold through different channels of trade, on different websites.

In view of the foregoing, even in the unlikely event the Board were to decide that ActiBiol has rights in the CAPSIBIOL-T mark, ordinary consumers would not be confused.

WHEREFORE, it is respectfully requested that the Board's decision hold that Mor-NuTech is the owner of the trademark CAPSOL-T.

Respectfully submitted,
MOR-NUTECH, INC.

By /ellenwinner/

Ellen P. Winner, Attorney for Registrant
Reg. No. 28,547

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Attorney docket No. 320-003
Date: December 17, 2007

CERTIFICATE OF SERVICE

I certify that a copy of this paper was sent by first-class mail, this 17th day of December, 2007, postage prepaid, to the last known address of the attorney of record for Petitioner, as follows:

Gary J. Nelson
Tiffany A. Parcher
CHRISTIE, PARKER & HALE, LLP
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Laura Sedlacek

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Attorney docket No. 320-003
Date: December 17, 2007

February 10, 2000

Fax To: Guy Auderset, 011-41-223-49-9979

Portola Sciences Inc.
40 Ciervos Road
Portola Valley, CA 94028
Phone (650) 851-8855
Fax (650) 851-1896

I hereby authorize Portola Sciences Inc. of Portola Valley, California to act as the sole agent for negotiation of licensing of 'Capsibiol T' for U.S. manufacture and marketing and for use of 'Capsibiol T' as a U.S. trademark.

Georges Manoukian	14 février 2000 Date	Guy Auderset	14. février 00 Date

EXHIBIT A

S.M.S. Royalty Payments

DATE	CHECK #	TO	AMOUNT
11/13/01	133	Guy Auderset	$ 20.68
11/13/01	134	Portola	$ 107.85
11/13/01	135	(Menukian/Mesrobian)	$ 20.69
1/23/03	320	Portola	$ 895.97
1/23/03	321	(Menukian/Mesrobian)	$ 33.73
1/23/03	323	Guy Auderset	$ 33.73
1/9/04	361	(Menukian/Mesrobian)	$ 49.78
1/9/04	362	Guy Auderset	$ 49.78
1/20/05	162	Guy Auderset	$ 89.81
1/20/05	163	(Menukian/Mesrobian)	$89.81

Jim - If you must have the cancelled checks I can probably find them. -
Joe

Exhibit B

EXHIBIT C
p.1

TRADEMARK ASSIGNMENT

WHEREAS, Dorothy M. Morré and D. James Morré, individuals, having an address at 1112 Cherry Lane, West Lafayette, IN 47906 ("ASSIGNORS"), have adopted and is the owner of the following trademark for which an application in the United States Patent and Trademark Office is pending:

TRADEMARK	APPLICATION NO.	FILING DATE
CAPSOL-T	78/528700	December 7, 2004

WHEREAS, the ASSIGNORS wish to transfer all their rights in, to and pertaining to the above trademark and trademark application, including marketing rights therein, as well as the business associated with the trademark to MOR-NUTECH, INC. ("ASSIGNEE"); a corporation they have formed to do business using said trademark and other trademarks, said corporation having a principal place of business at 1112 Cherry Lane, West Lafayette, IN 47906;

WHEREAS ASSIGNEE is desirous of acquiring said trademark and the application therefor, as well as marketing rights therein; and

WHEREAS, ASSIGNEE is assuming the business of ASSIGNORS that pertains to the above trademark;

NOW THEREFORE, in consideration of the sum of $1.00 and other good and valuable consideration, the receipt of which is hereby acknowledged, ASSIGNORS hereby assign to ASSIGNEE all right, title and interest in the United States and other countries where such rights may exist, together with the goodwill of the business symbolized by said trademark and application to register said trademark, as well as marketing rights associated with said trademark.

The United States Commissioner of Patents and Trademarks is requested to issue the Certificates of Registration to ASSIGNEE, MOR-NUTECH, INC.

ASSIGNORS
Dorothy M. Morré, and D. James Morré, individuals.

Dorothy M. Morré
Date: 6/8/06

D. James Morré
Date: 6/8/06

ASSIGNEE

MOR-NUTECH, INC.

D. James Morré, President
Date: 6/8/06

EXHIBIT C
p.2

UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

JUNE 30, 2006

PTAS

900051921A

900051921A

RONALD FRIEDLAND
4875 PEARL EAST CIRCLE, SUITE 200
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UNITED STATES PATENT AND TRADEMARK OFFICE
NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 571-272-3350. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, MAIL STOP: ASSIGNMENT SERVICES BRANCH, P.O. BOX 1450, ALEXANDRIA, VA 22313.

RECORDATION DATE: 06/26/2006

REEL/FRAME: 003337/0566
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BRIEF: ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL
DOCKET NUMBER: 29-04T

ASSIGNOR:
DOROTHY M MORRE

DOC DATE: 06/08/2006
CITIZENSHIP:
ENTITY: INDIVIDUAL

ASSIGNOR:
D JAMES MORRE

DOC DATE: 06/08/2006
CITIZENSHIP:
ENTITY: INDIVIDUAL

ASSIGNEE:
MOR-NUTECH, INC.
1112 CHERRY LANE
WEST LAFAYETTE, INDIANA 47906

CITIZENSHIP:
ENTITY: CORPORATION

EXHIBIT C
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003337/0566 PAGE 2

APPLICATION NUMBER: 78528700
REGISTRATION NUMBER:

FILING DATE: 12/07/2004
ISSUE DATE:

MARK: CAPSOL-T
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN BLOCK FORM

ASSIGNMENT SERVICES BRANCH
PUBLIC RECORDS DIVISION

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TRADEMARK ASSIGNMENT

Electronic Version v1.1
Stylesheet Version v1.1

06/26/2006
900051921

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
Dorothy M Morre		06/08/2006	INDIVIDUAL:
D James Morre		06/08/2006	INDIVIDUAL:

RECEIVING PARTY DATA

Name:	MOR-NUTECH, INC.
Street Address:	1112 Cherry Lane
City:	West Lafayette
State/Country:	INDIANA
Postal Code:	47906
Entity Type:	CORPORATION:

PROPERTY NUMBERS Total: 1

Property Type	Number	Word Mark
Serial Number:	78528700	CAPSOL-T

CH $40.00 78528700

CORRESPONDENCE DATA

Fax Number: (303)499-8089
Correspondence will be sent via US Mail when the fax attempt is unsuccessful.
Phone: 3034998080
Email: rfriedland@greenwin.com
Correspondent Name: Ronald Friedland
Address Line 1: 4875 Pearl East Circle, Suite 200
Address Line 4: Boulder, COLORADO 80301

ATTORNEY DOCKET NUMBER:	29-04T
NAME OF SUBMITTER:	Ellen P. Winner
Signature:	/ellenwinner/
Date:	06/26/2006

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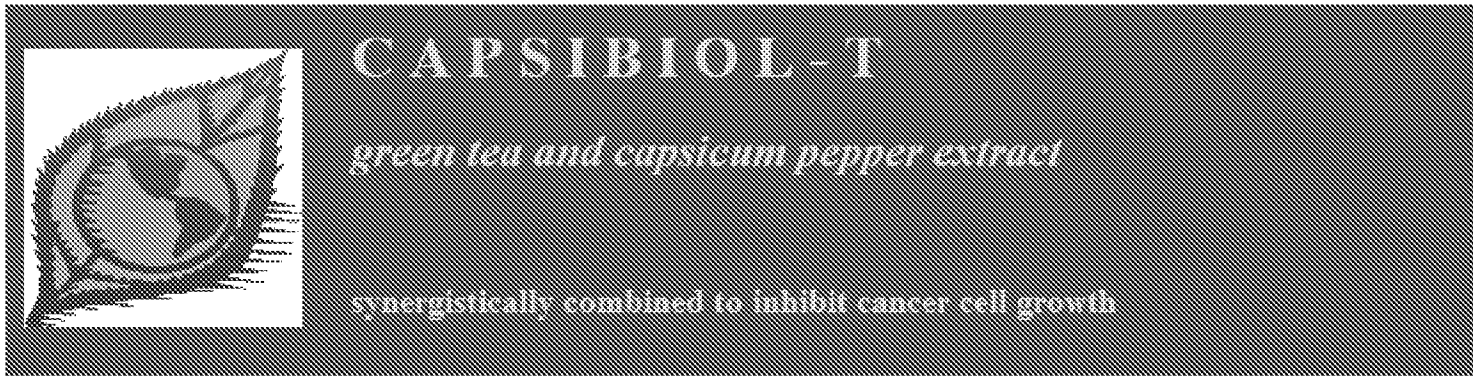
Total Attachments: 1
source=29-04T_US_tm_assignment#page1.tif

EXHIBIT D



natural supplement to traditional cancer therapy

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Capsibiol-T ® is an all-natural caffeine-free dietary supplement. Its sy
combination of green tea catechins and *Capsicum* pepper vanilloids is
effective in inhibiting the growth of cancer cells than either extract ta

EXHIBIT E
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CAPSOL-T

ALL NEW

Capsol-T©

New Formula
Easier to Swallow
Better Support

CAPSOL-T® is a product consisting of food grade decaffeinated green tea concentrate and a food grade *Capsicum* powder (from a mild chili-type pepper) in an optimum ratio giving an approximately 100-fold synergy compared to green tea alone.

One 350 mg capsule of CAPSOL-T® has been shown in laboratory studies to be equivalent to drinking 16 cups of green tea but without the liquid and without the caffeine (D. J. Morré and D. M. Morré (2003) Synergistic *Capsicum* tea mixtures with anticancer activity. J. of Pharmacy and Pharmacology 55:987-994).

CAPSOL-T® has been voluntarily evaluated in patients, and is reported to be safe and effective (D. J. Morré and D. M. Morré (2006) research).

Easy purchase and checkout with your choice of payment methods! Use your **credit card** or **PayPal** over SSL secure checkout!

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CAPSOL-T

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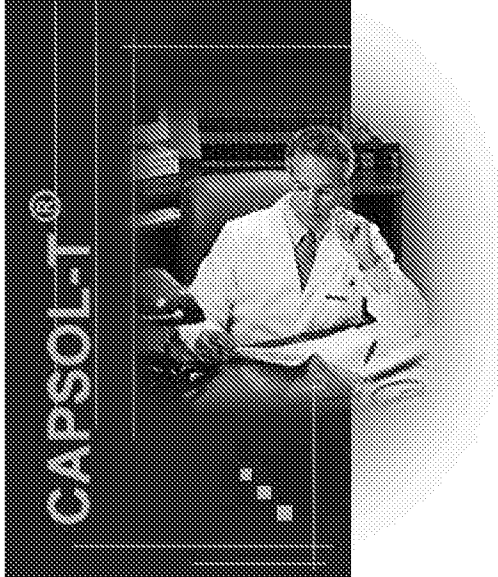

What is CAPSOL-T®

CAPSOL-T® is a product consisting of food grade decaffeinated green tea concentrate and a food grade *Capsicum* powder (from a mild chili-type pepper) in an optimum ratio giving an approximately 100-fold synergy compared to green tea alone. One 350 mg capsule of CAPSOL-T® has been shown in laboratory studies to be equivalent to drinking 16 cups of green tea but without the liquid and without the caffeine (D. J. Morré and D. M. Morré (2003) Synergistic *Capsicum* tea mixtures with anticancer activity. J. of Pharmacy and Pharmacology 55:987-994). CAPSOL-T® has been tested in patients, and is currently undergoing evaluation in a Phase I/Phase II clinical trial. Laboratory research has shown that the constituents of the decaffeinated green tea and *Capsicum* mixture **inhibit the growth and division of cancer cells** without affecting growth of non-cancer (normal) cells.

The synergy of CAPSOL-T®'s unique formula of decaffeinated green tea and *Capsicum* powder is directed to a cancer specific and cancer growth-related cell surface protein, tNOX (D. J. Morré, D. M. Morré, H. Sun, R. Cooper, J. Chang, and E. M. Janle (2003) Tea catechin synergies in inhibition of cancer cell proliferation and of a cancer cell specific ECTO-NOX activity. Pharmacol. Toxicol. 92: 234-241). The tNOX protein is absent from the surface of non-cancer cells to account for the large margin of safety shown by CAPSOL-T®.

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CAPSOL-T®

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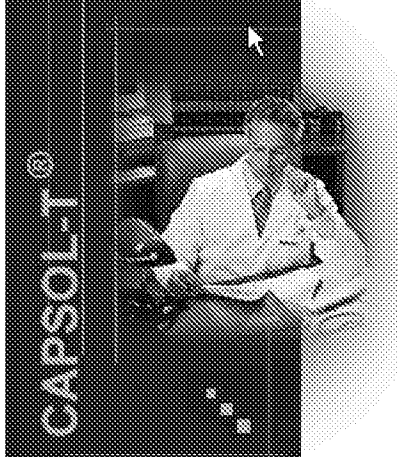

CAPSOL-T® Discovery

A December 1998 presentation by Purdue University researchers, Dr. D. James and Dr. Dorothy M. Morré at the American Cell Biology Conference outlined the discovery, identification and investigation of the tumor-associated protein tNOX which is the molecular target for CAPSOL-T®. This ***discovery is an important advancement*** in understanding how cancer cells are able to grow and divide unchecked. tNOX is uniquely associated with ***all*** forms of cancer but is absent from normal cells.

The overactive tumor-associated NOX protein is expressed exclusively by cancer cells and is blocked by quinone site inhibitors. CAPSOL-T® is formulated with two known quinone site inhibitors: Catechins such as epigallocatechin gallate (EGCg) from green tea and modified capsaicin from chili peppers.

Agents that block tNOX interfere with the ability of cancer cells to enlarge to the size required for cell division. Cells that do not reach the size required for division undergo apoptosis or programmed cell death.

World Health Organization statistics note a much ***lower cancer death rate*** in countries with a diet high in consumption of chili peppers, especially Mexico and Thailand. Research has shown that a group of compounds referred to as "vanilloids" has important anti-cancer benefits. Capsaicin, the pungent (hot) principle of chili peppers, is one well-studied example of a cancer-fighting vanilloid. In CAPSOL-T®, the pepper source has been selected to maximize cancer-fighting vanilloids other than capsaicin to avoid discomfort due to pungency (hotness) but without loss of anticancer properties.

There have been no adverse effects associated with CAPSOL-T® use. CAPSOL-T® is all-natural and contains only decaffeinated green tea and Capsicum powder, both of which are extremely safe. CAPSOL-T® is well tolerated and appears to be safe to use in conjunction with current cancer drug protocols, radiation treatment or other drugs in general but one should always consult with your physician before doing so.

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