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Filing date: **07/06/2012**

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

Proceeding	92053424
Party	Defendant World Nutrition, Inc.
Correspondence Address	LAILA S WOLFGRAM STINSON MORRISON HECKER LLP 7700 FORSYTH BLVD SUITE 1100 ST LOUIS, MO 63105 UNITED STATES TRADEMAR.STL@stinson.com, lwolfgram@stinson.com
Submission	Motion to Strike
Filer's Name	Laila S. Wolfgram
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Date	07/06/2012
Attachments	VITALZYME - MOtion to Strike PEt Testimony.pdf (3 pages)(16058 bytes)

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

PROTHERA, INC.,	:	
	:	
Petitioner,	:	
	:	
v.	:	In re Registration No. 3,783,555
	:	Cancellation No. 92053424
	:	
WORLD NUTRITION, INC.	:	
	:	
Respondent.	:	
	:	

BOX TTAB NO FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

MOTION TO STRIKE PETITIONER'S TESTIMONY

Respondent WORLD NUTRITION, INC. moves to strike Petitioner's Testimony filed on May 7, 2012. Respondent recently discovered, on its own accord, that Petitioner filed Testimony on May 7, 2012 with the Trademark Trial and Appeal Board. Respondent's attorney was never served with a copy of Petitioner's Testimony. Respondent's May 7th filing does not contain a Certificate of Service.

The form of Petitioner's testimony is a declaration executed by Janet Ralston who is purportedly the Vice-President of Marketing, owner and founder of Petitioner. Respondent never gave Petitioner consent to file testimony in the form of affidavit of declaration as required by 37 CFR §2.123(b). The record contains no evidence of a stipulation or any written agreement between the parties whereby either party would be permitted to file a declaration in lieu of testimony deposition. It is well settled that during the testimony period, affidavits and/or declarations may only be used if the parties have agreed to do so in writing. See Tri-Star Marketing, LLC v. Nino Franco Spumanti S.R.L., 84 USPQ2d 1912, 1914 (TTAB 2007); Order

of Sons of Italy in America v. Memphis Mafia Inc., 52 USPQ2d 1364, 1365 n.3 (TTAB 1999); 37 CFR §2.123(b); and TBMP §703.01(b).

Therefore, Respondent respectfully requests that the Declaration of Janet Ralston and all accompanying exhibits be stricken from the record.

Respectfully submitted,

Dated: July 6, 2012

By: s/Laila S. Wolfgram
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Attorneys for Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Request for Board Participation was served this 6th day of July, 2012, by depositing a copy thereof in the U.S. mail, postage prepaid, addressed to the Petitioner and its Attorney of Record as follows:

ProThera, Inc.
10439 Double R Blvd.
Reno, NV 89521

Bruce Methven, Esq.
Methven & Associates
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s/Laila S. Wolfgram
Attorney for Respondent