

ESTTA Tracking number: **ESTTA406225**

Filing date: **04/29/2011**

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

Proceeding	92053787
Party	Defendant Metagenics, Inc.
Correspondence Address	METAGENICS, INC. 100 AVENIDA LA PATA SAN CLEMENTE, CA 92673 UNITED STATES
Submission	Answer
Filer's Name	Dennis H. Cavanaugh
Filer's e-mail	dhc@dhcavanaugh.net
Signature	/Dennis H. Cavanaugh/
Date	04/29/2011
Attachments	Metagenics adv James - Answer.pdf ( 6 pages )(21639 bytes )

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

-----X  
Everett W. James aka Tad James, :  
Petitioner, : Cancellation No.: 92053787  
v. :  
Metagenics, Inc., :  
Registrant, :  
-----X

**ANSWER AND AFFIRMATIVE DEFENSES**

Registrant, Metagenics, Inc. (“Registrant”), by its attorneys, as and for its Answer to the Petition for Cancellation of Petitioner states as follows:

1. Registrant is without information as to the truth or falsity of the allegations contained in this paragraph, and accordingly, denies same, except to admit that the records of the U.S. Patent and Trademark Office (“USPTO”) show certain registrations to be in the name of Petitioner, which records speak for themselves.

2. There is no paragraph 2 in the Petition for Cancellation.

3. Registrant is without information as to the truth or falsity of the allegations contained in this paragraph, and accordingly, denies same, except to admit that the records of the USPTO show certain registrations to be in the name of Petitioner, which records speak for themselves.

4. Registrant is without information as to the truth or falsity of the allegations contained in this paragraph, and accordingly, denies same.

5. Registrant is without information as to the truth or falsity of the allegations contained in this paragraph, and accordingly, denies same, except to admit that the records of the USPTO show certain registrations to be in the name of Petitioner, which records speak for themselves.

6. Registrant is without information as to the truth or falsity of the allegations contained in this paragraph, and accordingly, denies same.

7. Registrant is without information as to the truth or falsity of the allegations contained in this paragraph, and accordingly, denies same.

8. Registrant is without information as to the truth or falsity of the allegations contained in this paragraph, and accordingly, denies same.

9. Registrant is without information as to the truth or falsity of the allegations contained in this paragraph, and accordingly, denies same.

10. Registrant is without information as to the truth or falsity of the allegations contained in this paragraph, and accordingly, denies same.

11. Registrant is without information as to the truth or falsity of the allegations contained in this paragraph, and accordingly, denies same.

12. Registrant is without information as to the truth or falsity of the allegations contained in this paragraph, and accordingly, denies same.

13. Admitted.

14. Admitted.

15. Admitted.

16. The Registration is a legal document that speaks for itself.

17. Denied.

18. Denied.

19. Denied.

20. Denied.

21. Registrant is without information as to the truth or falsity of the allegations contained in this paragraph, and accordingly, denies same, except to admit that there is an Exhibit A attached to the Petition for Cancellation, which exhibit speaks for itself.

22. Registrant is without information as to the truth or falsity of the allegations contained in this paragraph, and accordingly, denies same, except to admit that there are Exhibits B, C and D attached to the Petition for Cancellation, which exhibits speak for themselves.

23. Admitted.

24. Registrant denies that “First” is a concept that is *only* related to “Time,” and admits that there is an Exhibit E attached to the Petition for Cancellation, which exhibit speaks for itself.

25. Denied.

26. Admitted.

27. Registrant denies the allegations of this paragraph except to admit that the official record of Registration No. 2,818,514 at the USPTO speaks for itself with respect to the allegations of this paragraph.

28. Registrant denies the allegations of this paragraph except to admit that the official record of Registration No. 2,818,514 at the USPTO speaks for itself with respect to the allegations of this paragraph.

29. Denied.

30. Denied.

31. Denied.
32. Denied.
33. Denied.
34. Denied.
35. Denied.
36. Denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

37. Petitioner's claims fail to state a cause of action upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

38. Petitioner's claims are barred by the doctrine of waiver.

THIRD AFFIRMATIVE DEFENSE

39. Petitioner's claims are barred by the doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

40. Petitioner's claims are barred by the doctrine of estoppel, including equitable estoppel.

FIFTH AFFIRMATIVE DEFENSE

41. Petitioner's claims are barred by fraud.

SIXTH AFFIRMATIVE DEFENSE

42. Petitioner's claims are barred by the doctrine of unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

43. Registrant reserves the right to amend its Answer and Affirmative Defenses after further discovery and/or to add counterclaims.

WHEREFORE, Registrant demands judgment against Petitioner dismissing Petitioner's  
Petition for Cancellation.

Respectfully submitted,

METAGENICS, INC.

Dated: April 29, 2011

/Dennis H. Cavanaugh/  
By: \_\_\_\_\_

Dennis H. Cavanaugh  
D H Cavanaugh Associates  
555 Fifth Avenue, 17<sup>th</sup> Floor  
New York, New York 10017  
Tel: (212) 856-7210  
Fax: (212) 856-7211  
Email: [dhc@dhcavanaugh.net](mailto:dhc@dhcavanaugh.net)

Attorneys for Registrant

CERTIFICATE OF SERVICE

DENNIS H. CAVANAUGH, declares that:

1. I am counsel for the Registrant in the captioned action, and that on the execution date which appears below, a true copy of the foregoing was served on Petitioner or its attorneys by causing the same to be placed in an official depository under the exclusive care and custody of the United States Postal Service, first class mail, postage prepaid, addressed as follows:

Martin E. Hsia, Esq.  
Cades Schutte LLP  
1000 Bishop Street, Suite 1200  
Honolulu, HI 96813

2. Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that all of the foregoing is true and correct.

Executed on April 29, 2011

/Dennis H. Cavanaugh/  
By \_\_\_\_\_  
Dennis H. Cavanaugh