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

Proceeding	92059915
Party	Defendant CA IP Holdings, LLC
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Date	11/05/2015
Attachments	92059915 Registrant's Motion to Compel (RFPs).pdf(211268 bytes ) Exhibit A - GE Nutrients Original Response to First Requests to Produce.pdf(49539 bytes ) Exhibit B - Letter to Opposing Counsel re Deficient Discovery.pdf(216274 bytes ) Exhibit C - September 11 2015 Email.pdf(215342 bytes ) Exhibit D - September 18 2015 Email.pdf(209913 bytes ) Exhibit E - GE Nutrients Supplemental Repsonse to First Requests to Produce - 2015-10-6.pdf(74775 bytes ) Exhibit F - October 7 2015 Email.pdf(288867 bytes ) Exhibit G - October 15 2015 Email.pdf(324327 bytes )

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

GE NUTRIENTS, INC.	)	Cancellation No. 92059915
Petitioner,	)	
	)	Mark: TESTOGEN-XR
	)	
CA IP HOLDINGS, LLC,	)	Registration No. 4,302,581
Registrant	)	
_____	)	

**REGISTRANT’S MOTION TO COMPEL COMPLETE RESPONSES TO  
REGISTRANT’S FIRST REQUESTS TO PRODUCE AND MOTION FOR EXTENSION  
OF TIME**

Registrant, CA IP HOLDING, LLC, by and through the undersigned counsel, hereby files this Motion to Compel Petitioner, GE NUTRIENTS, INC., pursuant to Rule 37, Fed. R. Civ. P., to provide complete responses to Registrant’s First Requests to Produce served on Registrant, Tuesday, July 14, 2015. In support thereof, Registrant states as follows:

1. On July 14, 2015, Registrant served Petitioner with its First Requests to Produce Documents (hereinafter “Registrant’s Document Requests”).
2. On August 17, 2015, Petitioner served Registrant with Petitioner’s original responses (hereinafter “Petitioner’s Original Responses”). *See* Exhibit “A;” Petitioner’s Original Responses to Registrant’s First Requests to Produce Documents.
3. After a review of Petitioner’s Original Responses, it became immediately apparent that, unfortunately, Petitioner’s Original Responses were wholly deficient and entirely lacking. More specifically, Petitioner’s Original Responses to Registrant’s Document Request Nos. 1-18 and 20-24 stated that Petitioner “will produce” responsive documents. *See* Exhibit “A.” Moreover, Document Request Nos. 17 and 19 stated “please see the attached documents.”

Yet, no documents were attached to Petitioner's Original Responses. In addition, Petitioner responded with generalized objections and specific objections without any explanation as to why (discussed in more detail below). Accordingly, Registrant prepared a detailed letter explaining the discovery deficiencies to Petitioner (hereinafter "the Discovery Letter"). *See* Exhibit "B."

4. On September 2, 2015, as part of Registrant's good faith effort to resolve discovery disputes in advance of filing this Motion to Compel and to prevent wasting this Board's time and resources, Registrant communicated the Discovery Letter to Counsel for Petitioner and requested a response to the Discovery Letter by Friday, September 11, 2015.

5. On Friday, September 11, 2015, the deadline for responding to the Discovery Letter, which is almost two (2) months after being served with Registrant's discovery requests, Registrant received an email from Counsel for Petitioner inquiring about scheduling a teleconference to discuss the Discovery Letter. *See* Exhibit "C;" September 11, 2015 email communication.

6. On Monday, September 14, 2015, **exactly two (2) months** after the Petitioner was served with Registrant's discovery requests, the undersigned counsel conducted a teleconference with Counsel for Petitioner, to discuss Registrant's concerns detailed in the Discovery Letter (hereinafter "the Teleconference"). Despite several attempts by the undersigned counsel to solicit any explanation as to why Counsel for Petitioner felt it was proper to incorporate generalized objections into each and every answer and response, Counsel for Petitioner made it very clear that they would not respond to any of the claims or case law cited in the Discovery Letter. The undersigned counsel pointed out that because of the blanket generalized objections, it is impossible for the undersigned counsel to assess the substantive quality of the responses and to identify what, exactly, is being objected to and why. In response, Counsel for Petitioner

merely refused to provide any explanation or legal support for Petitioner's objections, declaring that it was "unnecessary." Instead, Counsel for Petitioner simply suggested that Registrant should wait to receive Petitioner's document production as Counsel for Petitioner believed that the production would allay Registrant's concerns. Registrant submits that this refusal by Petitioner to substantively address Registrant's concerns expressed in the Discovery Letter, even during informal discussions, was improper. *See Amazon Technologies Inc. v. Wax*, 93 USPQ2d 1702, 1705 (TTAB 2009) ("In order for the meet and confer process to be meaningful and serve its intended purpose, 'the parties must present to each other the merits of their respective positions with the same candor, specificity, and support during informal negotiations as during the briefing of discovery motions.'") (quoting *Nevada Power Co. v. Monsanto Co.*, 151 F.R.D. 118, 120 (D. Nev. 1993)).

7. Furthermore, during the aforementioned Teleconference on September 14, 2015, Counsel for Petitioner stated that they had not yet had an opportunity to review the data given to them by their client. Registrant finds it peculiar that, for almost all of Petitioner's responses to Registrant's Requests for Production,<sup>1</sup> Petitioner incorporated the General Objections and declared that the "Petitioner will produce documents responsive to the above request," when, in fact, the data had **not** been reviewed yet.<sup>2</sup> Registrant is also unclear as to how Petitioner can make objections and affirmatively declare that responsive documents will be produced, if Petitioner had no such information on which to base the objections and responses.

8. On September 18, 2015, Counsel for Petitioner explained that there would be further delay in producing documents. *See* exhibit "D;" September 18, 2015 email. Counsel for

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<sup>1</sup> Registrant's response to Petitioner's Document Request No. 19 merely states that attached documents are responsive, yet no documents were attached. *See* exhibit "A," *supra*.

<sup>2</sup> It is also notable that in Response to many of Registrant's Interrogatories, Petitioner relied upon Fed. R. Civ. P. 33(d), but it is unclear how such rule was invoked if Petitioner had not even reviewed the documents.

Petitioner stated that they were “still reviewing a large amount of information received from our client....We hope to produce documents by late next week.” *Id.* Counsel for Petitioner’s explanation as to the delay was due to there being a large amount of information to review. However, Registrant finds this excuse to be unpersuasive because, at this point, not only had more than twelve (12) months passed since Petitioner instituted the instant proceedings (before which it should have conducted a search for relevant material), but Petitioner has also had over two (2) months to provide Registrant with substantive responses to the subject discovery served on July 14, 2015. In any case, Counsel for Petitioner provided a timeline of “late next week” to provide documents, but the documents were not provided within this timeframe. *Id.*

9. Thereafter, on October 6, 2015, almost three (3) months after being served with Registrant’s discovery requests, Counsel for Petitioner finally provided more than thirteen (13) GBs worth of documents and a supplemental response to Registrant’s Document Requests. *See* exhibit “E;” Petitioner’s Supplemental Response to Registrant’s Document Request. At this point, three (3) months after Registrant served its discovery, Registrant is prejudiced by Petitioner’s continuous delays, stalling tactics, and grossly delayed production of documents. It is interesting to note that with the Discovery Period closing on December 6, 2015, Registrant will have *significantly less* time to thoroughly review the thirteen (13) GBs worth of produced documents and prepare follow-up discovery requests than the time that it took Petitioner to produce them.

10. Importantly, Counsel for Petitioner has refused to address the impropriety of the generalized objections and other discovery deficiencies discussed in the Discovery Letter and further discussed during the Teleconference, held on September 14, 2015. The undersigned counsel made one last attempt to confer about the objections by emailing Counsel for Petitioner

regarding the same. *See* exhibit “F;” October 7, 2015 email. On October 15, 2015, Counsel for Petitioner responded by again refusing to withdraw the general objections. *See* exhibit “G;” October 15, 2015 email. Unfortunately, Petitioner’s dilatory behaviors, refusal to address objections, and evasive responses have necessitated the preparation and filing of this Motion.

11. In addition to such continuous delays, Registrant wishes to address the substantive quality of Petitioner’s supplemental response to Registrant’s Document Requests (hereinafter “Petitioner’s Supplemental Response”). However, before addressing the substantive quality and completeness of Petitioner’s responses, it is necessary to address the improper nature of Petitioner’s generalized objections, which makes it difficult, if not impossible for Registrant to properly evaluate the remaining aspects of Petitioner’s responses.

***Petitioner’s Improper and Inappropriate Generalized Objections***

12. Petitioner’s generalized objections (hereinafter “Generalized Objections”), which are incorporated into each and every of Petitioner’s responses to Registrant’s Document Requests, read as follows:<sup>3</sup>

The following general objections are incorporated by reference in response to each and every Document Request set forth below and are not waived with respect to any response. Petitioner provides the following responses only as to GE Nutrients, Inc. The following responses are based upon information and writings presently available to Petitioner.

A. Petitioner objects to the “Definitions” to the extent they exceed the requirements of, or purport to create obligations greater than, those imposed by the Federal Rules of Civil Procedure or the Trademark Trial and Appeal Board Manual of Civil Procedure.

B. Petitioner objects to the Document Requests to the extent that they call for the production of information, documents, or things protected from disclosure by the attorney privilege, the work-product doctrine, or any other applicable privilege, immunity, or other limitation on discovery. Petitioner hereby asserts this general

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<sup>3</sup> Petitioner’s Generalized Objections are identical in Petitioner’s Original Response and Petitioner’s Supplemental Response to Registrant’s Document Requests. *Compare* exhibit A *with* exhibit E.

objection with respect to each Document Request to the extent the Document Request is broadly interpreted to encompass privileged information, documents or things. Moreover, should any such response by Petitioner occur, it was inadvertent and shall not constitute a waiver of privilege or of Petitioner's right to object during this litigation or otherwise to the use of any such information, documents, or things.

C. Petitioner objects to the Document Requests to the extent that they seek information, documents, or things that are not relevant to this litigation, or are not reasonably calculated to lead to the discovery of admissible evidence.

D. Petitioner objects to the Document Requests to the extent that they seek information, documents, or things not in Petitioner's possession, custody or control.

E. Petitioner objects to the Document Requests to the extent that they are overbroad, unduly burdensome, or fail to describe the information, documents or things sought with a reasonable degree of specificity. Petitioner will attempt to construe the terms and phrases used by Registrant in a way to give those terms and phrases a meaning that will result in the production of relevant information, documents, and things designed to lead to the discovery of admissible evidence.

F. Petitioner objects to the Document Requests to the extent that they seek private, privileged, and confidential commercial, financial, trade secret and/or proprietary business information. Petitioner further objects to the Document Request to the extent that they call for the production of information, documents, or things that Petitioner received or obtained from a third party under a nondisclosure agreement or any other obligation in the nature of a non-disclosure agreement.

*See Exhibit A and E, supra.*

13. As an initial matter, the Federal Rules of Civil Procedure relating to disclosure and discovery apply in cancellation proceedings. 37 C.F.R. § 2.120(a). To this end, Rule 26 allows a party to obtain discovery regarding any nonprivileged matter that is relevant to its claims and defenses—including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. Relevant information need not be admissible at the trial if the

discovery appears reasonably calculated to lead to the discovery of admissible evidence. Fed. R. Civ. P. 26.

14. Petitioner lodged these General Objections which are incorporated by reference into each and every response to Registrant's Document Requests, and one (1) very broad generalized objection to the Definitions. These objections are improper and should be overruled. Furthermore, all of Petitioner's Responses are provided "subject to" its generalized objections, which, once again, is improper. Formulaic objections followed by an answer to the request are improper, as

[s]uch an objection and answer preserves nothing and serves only to waste the time and resources of both the Parties and the Court. Further, such practice leaves the requesting Party uncertain as to whether the question has actually been fully answered or whether only a portion of the question has been answered.

*See Civil Discovery Standards, 2004 A.B.A. Sec. Lit. 18.*

15. In light of the foregoing, Registrant respectfully requests that Petitioner's generalized objections to Registrant's Document Request Nos. 1-24 be overruled, and that Petitioner be ordered to provide supplemental responses with appropriate objections (if and where specifically warranted) so that Registrant is able to properly evaluate the completeness of Petitioner's Responses. In this regard, Registrant notes that "it is established law...that the reasons for objecting by the party resisting discovery must be set forth and that **the burden of persuasion is on the objecting party.**" *Volkswagenwerk Aktiengesellschaft v. MTD Prods.*, 1974 TTAB LEXIS 19, \*1-2; *see also Pappas v. Loew's Inc.*, 18 F.R. Serv. 33.318, Case 1; 13 F.R.D. 471 [2] (D.C. M.D. Pa., 1953); *Tabron Engineering Corp. v. Eaton Mfg. Co.* 9 FR Serv2d 33.319, Case 2, 37 F.R.D. 51 (D.C. Ohio, 1964); and *Klausen v. Sidney Printing & Pub. Co.* 11 FR Serv2d 33.353, Case 1, 271 F.Supp. 783 (D.C. Kan., 1967); TBMP 402.02 ("Pursuant

to the rule, when an adverse party seeks to compel the production of such material, the party resisting discovery must show that the material sought is ‘not reasonably accessible because of undue burden or cost’.”).

16. Consistent with the foregoing, and inasmuch as Petitioner’s Responses contain common objections concerning, (1) relevancy, (2) permissive scope of discovery requests, and (3) privilege, Registrant submits that each of Petitioner’s objections in these regards are inadequate and improper. Each is addressed below in turn.

17. Regarding Petitioner’s objections as to relevancy, Registrant submits that it is not permitted to assert that a party’s discovery requests “exceed the scope of the Federal Rules without explaining how a particular request is out of bounds.” *See Benfatto v. Wachovia Bank, N.A.*, 2008 WL 4938418, \*2 (S.D. Fla. Nov. 19, 2008). Further, the “scope of discovery under Rule 26(b) is broad: ‘[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the claim or defense of any party involved in the pending action. Relevant information need not be admissible at trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.’” *Henderson v. Holiday CVS, LLC*, 269 F.R.D. 682, 685 (S.D. Fla. 2010); *see also Hickman v. Taylor*, 329 U.S. 495, 507–508, 67 S.Ct. 385, 91 L.Ed. 451 (1947); *Farnsworth v. Procter and Gamble Co.*, 758 F.2d 1545, 1547 (11th Cir.1985) (the Federal Rules of Civil Procedure “strongly favor full discovery whenever possible”); *Canal Authority v. Froehlke*, 81 F.R.D. 609, 611 (M.D.Fla.1979). “Thus, under Rule 26, relevancy is ‘construed broadly to encompass any matter that bears on, or that reasonably could lead to another matter that could bear on any issue that is or may be in the case.’” *Id.*; *see also Consumer Electronics Assoc. v. Compras & Buys Magazine, Inc.*, 2008 WL 4327253, \*3 (S.D. Fla. Sept. 18, 2008) (“An objection that a discovery request is irrelevant and not reasonably

calculated to lead to admissible evidence must include a specific explanation describing why the request lacks relevance and why the information sought will not reasonably lead to admissible evidence.”). Petitioner’s generalized objection as to “relevancy” must be overruled. Moreover, Petitioner’s specific objections as to “relevancy” (discussed in more detail below) that do not explain why the information sought is not relevant must be overruled.

18. Regarding Petitioner’s generalized objections as to privilege, Registrant notes that the “work product doctrine and the attorney-client privilege, though often intertwined in individual cases, are distinct privileges, and objections to discovery requests that rely on them should be specific in the statement of which privilege is being relied on.” *M-5 Steel Mfg. v. O'Hagin's, Inc.*, 2000 TTAB LEXIS 294, \*11 (Trademark Trial & App. Bd. Apr. 28, 2000). Further, “[a]n existing privilege exemption from discovery must be raised in a proper fashion to be effective in justifying a refusal to provide discovery.” 8 Wright, Miller & Marcus, Federal Practice and Procedure § 2016.1 (2d ed. 1994).

19. The discovery responses and generalized objections make it unclear as to a) whether there exists documents that would, if not privileged, be discoverable, b) whether no such documents exist, and/or c) whether the assertedly privileged information is intangible and exists only as personal knowledge of a party, its employees, or other individuals. Use of such a generalized objection as to privilege is improper, and should be overruled.

20. Regarding Petitioner’s objections as to claims that the requests are “vague, overly broad or unduly burdensome,” Registrant notes that “[o]bjections which state that a discovery request is ‘vague, overly broad, or unduly burdensome’ are, by themselves, meaningless, and are deemed without merit... A party properly objecting on these bases must explain the specific and particular ways in which a request is vague, overly broad, or unduly burdensome.” *Milinzio v.*

*State Farm Ins. Co.*, 247 F.R.D. 691, 695 (S.D. Fla. 2007); *see* Fed.R.Civ.P. 33(b)(4); *Josephs v. Harris Corp.*, 677 F.2d 985, 992 (3d Cir.1982) (“[T]he mere statement by a party that the interrogatory was ‘overly broad, burdensome, oppressive and irrelevant’ is not adequate to voice a successful objection to an interrogatory”).” Further, “to even merit consideration, ‘an objection must show specifically how a discovery request is overly broad, burdensome or oppressive, by submitting evidence or offering evidence which reveals the nature of the burden.’” *Henderson v. Holiday CVS, LLC*, 269 F.R.D. 682, 686 (S.D. Fla. 2010). Petitioner’s generalized objection as to vagueness and/or over breadth must be overruled. Moreover, Petitioner’s specific objections as to vagueness and over breadth (discussed in more detail below) that do not explain why the information sought is vague or overly broad must be overruled.

21. In short, Petitioner’s Generalized Objections, which are incorporated into each and every of Petitioner’s Original and Supplemental Responses to Registrant’s Document Requests, make it difficult to assess the substantive quality of Petitioner’s responses. In particular, Petitioner’s Generalized Objections make it impossible for Registrant to determine whether the Request has been fully satisfied or whether only a portion of documents have been provided. Such generalized objections, which do not identify specifically what is being objected to and why, are improper, and must be overruled.

***Petitioner’s Improper and Inappropriate Specific, yet unexplained, Objections***

22. Turning now to the substantive quality and completeness of Petitioner’s Responses, and even putting the Generalized Objections aside, Registrant submits that the individual Responses to a majority of the Requests are substantively deficient and incomplete.

23. Petitioner specifically objects to Registrant’s Document **Request Nos. 1, 2, 4, 8-14, 16, 17, 19, 21, and 22** as “overly broad and unduly burdensome,” without any explanation as

to the specific and particular ways in which the Requests are overly broad or unduly burdensome. *See Exhibit E, supra.* Mere statements that a request is overly broad or unduly burdensome, without an explanation as to why, is not an adequate objection and must be overruled. *See para. 20, supra.*

24. Petitioner specifically objects to Registrant's Document **Request Nos. 8, 14 and 22** as vague and ambiguous, without any explanation as to the specific and particular ways in which the Requests are vague and ambiguous. *See Exhibit E, supra.* Mere statement that a request is vague, without an explanation as to why, is not an adequate objection and must be overruled. *See para. 20, supra.*

25. Petitioner specifically objects to Registrant's Document **Request Nos. 12, 13, and 15** as not reasonably calculated to lead to the discovery of admissible evidence, without any further explanation. *See Exhibit E, supra.* An objection as to relevancy without a specific explanation describing why the request lacks relevance and why the information sought will not reasonably lead to admissible evidence is improper and must be overruled. *See para. 17, supra.*

26. Petitioner specifically objects to Registrant's Document **Request Nos. 12, 13, and 15** as calling for confidential information. *See Exhibit E, supra.* Petitioner's objection as to confidential documents must be overruled because it is improper by virtue of the Board's standard protective order that is automatically in place to govern the exchange of confidential information. "Parties cannot withhold properly discoverable information on the basis of confidentiality since the terms of the Board's standard protective order automatically apply. In instances where a party has refused to provide discoverable information on such grounds, the Board, where appropriate, may order the party to provide such information consistent with the terms of the protective order." *See TBMP 412.01.*

27. Petitioner specifically objects to Registrant's Document **Request No. 19** as "not limited in time or scope." *See* Exhibit E, *supra*. Registrant submits that Document Request No. 19 is inherently limited to the time period of Petitioner's use of the term TESTOFEN, which Petitioner admits has been used in commerce since June 30, 2005 at least in Petitioner's trademark application for the term TESTOFEN. Accordingly, Registrant requests that this Objection be overruled.

28. Petitioner's supplemental response to Registrant's Document **Request No. 20** continues to maintain that "Petitioner *will produce* documents responsive to the above request;" even though Petitioner has already produced thirteen (13) GBs of documents responsive to other of the Requests. *See* Exhibit E, *supra*. Petitioner has had more than three (3) months since being served with Registrant's Document Requests to provide such documents. Additional delays for producing documents responsive to this Request would further prejudice Registrant. Petitioner has had more than enough time to produce such documents in response to Document Request No. 20 and should not be permitted to maintain any additional delays.

29. Petitioner specifically objects to Registrant's Document **Request No. 21** as "not specifically allowed for pursuant to TBMP 402.02" and as "duplicative of the previous discovery requests and the burden of producing such documents as the document request is worded will cause extreme burden." *See* Exhibit E, *supra*. Yet, Petitioner does not explain how or why producing such documents would be burdensome, which is improper and must be overruled. *See* para. 20, *supra*. More specifically, "[p]ursuant to [Fed. R. Civ. P. 26(b)(2)(B)], when an adverse party seeks to compel the production of such material, the party resisting discovery must show that the material sought is "not reasonably accessible because of undue burden or cost." TBMP 402.02; *see, e.g., Frito-Lay North America Inc. v. Princeton Vanguard LLC*, 100 USPQ2d 1904,

1910 (TTAB 2011) (opposer established that all of the specific materials applicant sought in response to specified requests were not reasonably accessible because of undue burden or costs). Petitioner, the party resisting discovery, has not made a showing that the material sought under Registrant's Document **Request No. 21** is not reasonably accessible because of undue burden or cost. Accordingly, Petitioner's objection is insufficient.

30. Petitioner specifically objects to Registrant's Document **Request No. 24** as "cumulative and duplicative [of] other document requests." *See* Exhibit E, *supra*. Yet, Petitioner does not explain how or why this Document Request is cumulative or duplicative. In particular, Registrant's Document Request No. 24 requests "documents reviewed in connection with responding to the contemporaneously served Interrogatories." *Id.* Petitioner's objection to this Request as cumulative and duplicative contradicts well-settled law. Such documents are discoverable and courts routinely require parties to produce such documents. *See, e.g., Strauss v. Credit Lyonnais, S.A.*, 242 F.R.D. 199, 232 (E.D.N.Y. 2007) (compelling party to "produce the non-privileged documents upon which they relied in preparing their interrogatory responses"); *St. Paul Reinsurance Co. v. Commercial Fin. Corp.*, 198 F.R.D. 508, 514 (N.D. Iowa 2000) (compelling production of "all documents identified, or relied on, in [the party's] answers" to interrogatories); *Storie v. United States*, 142 F.R.D. 317, 321 (E.D. Mo. 1991) (ordering plaintiff to turn over documents "referred to, relied on, or identified in response to the first set of interrogatories"). In any event, Petitioner does not explain *why* this Request is cumulative and duplicative. Accordingly, this Objection should be overruled.

31. Petitioner's specific, yet unexplained objections are merely conclusory statements made without any explanation as to *why* the Requests are objectionable. In some instances, Petitioner's objections are even contradictory. For example, Petitioner objects to Registrant's

Document **Request No. 22** as “vague and ambiguous” in one breathe and “overly broad and unduly burdensome” in another breathe. If, as Petitioner asserts, this Request is vague and ambiguous, how then is Petitioner able to determine that it is overly broad and unduly burdensome? Petitioner further responds to this Request by stating, “[s]ubject to and without waiving any objection, Petitioner does not have any documents responsive to this request.” Again, it is unclear how Petitioner is able to determine that there are no responsive documents if this Request is vague and ambiguous. Also, how can this Request be unduly burdensome if there are no responsive documents to be produced? Petitioner’s specific, yet unexplained objections must be overruled. Petitioner should be required to prepare detailed objections stated with particularity, if and where specifically warranted.

32. The persistent and dilatory discovery tactics of Petitioner are severely prejudicial to Registrant, who is unfortunately left to operate in the marketplace with the cloud of this instant proceeding hanging over its head. Furthermore, Petitioner’s deficient discovery responses and continuous delays serve to obstruct and hinder Registrant’s ability to discover facts crucial to the fair and complete prosecution of this underlying proceeding, which was thrust upon Registrant by Petitioner.

33. Registrant certifies that it has made multiple good faith attempts to resolve these issues with Petitioner, but such efforts have produced no substantive response.

***Motion for Extension of Discovery, Disclosures, and Trial Dates***

34. The deadline for Expert Disclosures is currently set at November 06, 2015. Registrant requests that such date be extended for at least ninety (90) days after the disposition of this Motion to Compel and the contemporaneously filed Motion to Compel Complete Answers to Registrant’s First Set of Interrogatories. Further, Registrant requests that each subsequent date in

the current scheduling order also be extended for at least a ninety (90) day period after the disposition of the same.

35. The grounds for this request are more thoroughly set forth throughout this Motion to Compel and within the contemporaneously filed Motion to Compel Complete Answers to Registrant's First Set of Interrogatories, and are summarized as follows: Registrant served Petitioner with Registrant's First Set of Document Requests and First Set of Interrogatories on July 14, 2015. Following several unsuccessful efforts to resolve discovery disputes with Petitioner, Registrant was finally served with Petitioner's document productions on October 6, 2015, which included over 13 GBs of electronic data. Having only recently received said large production, Registrant is still currently reviewing Petitioner's document productions. Furthermore, after serving Registrant's Initial Interrogatories to Petitioner on July 14, 2015, Registrant was only served with Petitioner's Supplemental Answers to Registrant's First Set of Interrogatories on October 15, 2015; which generously invokes Fed.R.Civ.P 33(d) and, consequently, Registrant is still currently reviewing Petitioner's document productions to ascertain Petitioner's responses to Registrant's Interrogatory inquiries. Further, Registrant was served with Petitioner's First Set of Document Requests and First Set of Interrogatories on September 17, 2015.

36. Due to the large volume of document productions provided by Petitioner and recent service of Petitioner's Interrogatories and Requests for Production necessitating Registrant's responses *both occurring within the same time period and in the latter half of the discovery period*, Registrant is still working on preparing electronic document productions responsive to Petitioner's discovery requests and reviewing Petitioner's document productions. Selection of expert disclosures will be affected by a thorough review of the discovery materials.

Accordingly, Registrant requests additional time for Expert Disclosures and a corresponding extension of time for all subsequent dates.

37. Registrant has provided an e-mail address herewith for itself and for the opposing party so that any order on this motion may be issued electronically by the Board.

**WHEREFORE**, Registrant, CA IP HOLDINGS, LLC, by and through the undersigned, hereby respectfully requests that this Board enter an Order against Petitioner, GE NUTRIENTS, INC., requiring:

(i) that Petitioner's generalized objections incorporated into each response to Registrant's Requests for Production be overruled;

(ii) that Petitioner provide supplemental discovery responses and documents to Registrant's Requests for Production with sufficiently detailed objections, articulated with particularity, if and where specifically warranted, and detailed and complete responses;

(iii) that the Expert Disclosures deadline and subsequent dates each be extended for a period of at least ninety (90) days after the disposition of this Motion and the contemporaneously filed Motion to Compel Complete Answers to Registrant's First Set of Interrogatories; and

(iv) such additional and further relief this Board deems just and proper under the circumstances.

Dated: November 5, 2015

Respectfully submitted,

The Concept Law Group, P.A.

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Certificate Of Good Faith Conference

Pursuant to Rule 37(a)(1), Federal Rules of Civil Procedure, counsel for Registrant certifies that a good faith attempt to confer with Petitioner has been made to resolve the matters raised in this Motion, but Registrant and Petitioner have been unable to agree to a resolution.

Certificate of Mailing and Service

I certify that on November 5, 2015, the foregoing MOTION TO COMPEL AND MOTION TO EXTEND is being served by first-class mail to:

Ryan M. Kaiser  
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# EXHIBIT A

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

GE Nutrients, Inc.,

Petitioner

v.

CA IP Holdings, LLC,

Registrant

Cancellation No. 92059915

Registration No. 4,302,581

Mark: TESTOGEN XR

**PETITIONER’S RESPONSES TO REGISTRANT CA IP HOLDINGS, LLC’S FIRST  
REQUEST FOR PRODUCTION OF DOCUMENTS & THINGS**

Pursuant to Rule 37 C.F.R. § 2.120 and Rule 34 of the Federal Rules of Civil Procedure, GE NUTRIENTS, INC., (“Petitioner”) hereby responds to CA IP Holdings, LLC, (“Registrant”) first request for production of documents and things.

**GENERAL OBJECTIONS**

The following general objections are incorporated by reference in response to each and every Document Request set forth below and are not waived with respect to any response. Petitioner provides the following responses only as to GE Nutrients, Inc. The following responses are based upon information and writings presently available to Petitioner.

A. Applicant objects to the “Definitions” to the extent they exceed the requirements of, or purport to create obligations greater than, those imposed by the Federal Rules of Civil Procedure.

B. Applicant objects to the Document Requests to the extent that they call for the production of information, documents, or things protected from disclosure by the attorney-client privilege, the work-product doctrine, or any other applicable privilege, immunity, or other limitation on discovery. Applicant hereby asserts this general objection with respect to each Document Request to the extent the Document

Request is broadly interpreted to encompass privileged information, documents or things. Moreover, should any such response by Petitioner occur, it was inadvertent and shall not constitute a waiver of privilege or of Applicant's right to object during this litigation or otherwise to the use of any such information, documents, or things.

C. Petitioner objects to the Document Requests to the extent that they seek information, documents, or things that are not relevant to this litigation, or are not reasonably calculated to lead to the discovery of admissible evidence.

D. Petitioner objects to the Document Requests to the extent that they seek information, documents, or things not in Petitioner's possession, custody or control.

E. Petitioner objects to the Document Request to the extent that they are overbroad, unduly burdensome, or fail to describe the information, documents or things sought with a reasonable degree of specificity. Petitioner will attempt to construe the terms and phrases used by Registrant in a way to give those terms and phrases a meaning that will result in the production of relevant information, documents, and things designed to lead to the discovery of admissible evidence.

F. Petitioner objects to the Document Request to the extent that they seek private, privileged, and confidential commercial, financial, trade secret and/or proprietary business information. Petitioner further objects to the Document Request to the extent that they call for the production of information, documents, or things that Petitioner received or obtained from a third party under a nondisclosure agreement or any other obligation in the nature of a non-disclosure agreement.

G. The term "non-privileged information, documents, or things" refers to information, documents, or things that are not protected by the attorney-client privilege, the work-product doctrine, or any other privilege or immunity precluding discovery.

H. Petitioner has performed a diligent search for information, documents and things responsive to these Document Requests. However, discovery is ongoing, and Petitioner's investigation is continuing. Therefore, Petitioner reserves its right to supplement its responses herein and its production with any responsive, non-privileged information, documents, or things that may be subsequently discovered.

### **RESPONSE TO DOCUMENT REQUESTS**

1. Produce all documents supporting your contention that "Petitioner for many years and since long prior to any date of first use upon which Registrant can rely, has adopted and continuously used the term 'TESTOFEN' as a trademark for use in connection its dietary supplement product."

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Petitioner further objects to this document request as overly broad and unduly burdensome. Subject to and without waiving any objection, Petitioner will produce documents responsive to the above request.

2. Produce all documents referencing, regarding or concerning how you decided to adopt the term TESTOFEN for use in connection with dietary supplement products.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Petitioner further objects to this document request as overly broad and unduly burdensome. Subject to and without waiving any objection, Petitioner will produce documents responsive to the above request.

3. Produce all documents referencing, regarding or concerning each and every instance of actual consumer confusion caused by Registrant's use of the term 'TESTOGEN-XR' and your use of 'TESTOFEN'.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Subject to and without waiving any objection, Petitioner will produce documents responsive to the above request.

4. Produce a representative label for each dietary supplement product sold by you under the term 'TESTOFEN' since you first began using said term, through the present.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Petitioner further objects to this document request as overly broad and unduly burdensome. Subject to and without waiving any objection, Petitioner will produce documents responsive to the above request.

5. Produce all documents that you reference in your Initial Disclosures as "Marketing and promotional materials concerning Petitioner's TESTOFEN products."

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Subject to and without waiving any objection, Petitioner will produce documents responsive to the above request.

6. Produce all documents that you reference in your Initial Disclosures as "Sales information concerning Petitioner's TESTOFEN products and documentation of Petitioner's first use of the TESTOFEN mark in the U.S."

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Subject to and without waiving any objection, Petitioner will produce documents responsive to the above request.

7. Produce all documents that you reference in your Initial Disclosures as "Documents concerning Petitioner's application to register the TESTOFEN trademark and resulting registration."

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Subject to and without waiving any objection, Petitioner will produce documents responsive to the above request.

8. Produce all documents relating to studies and/or surveys in connection with the use of the term TESTOFEN.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Petitioner further objects to the above document request as vague, ambiguous, and overly broad and unduly burdensome in terms of time and scope. Subject to and without waiving any objection, Petitioner will produce documents responsive to the above request.

9. Produce all documents relating to your selection, adoption and registration of any Internet domain names incorporating the term TESTOFEN.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Petitioner further objects to the above document request as overly broad and unduly burdensome. Subject to and without waiving any objection, Petitioner will produce documents responsive to the above request.

10. Produce all documents sufficient to identify every product in connection with how you have used or are using the term TESTOFEN.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Petitioner further objects to the above request as overly broad and unduly burdensome. Subject to and without waiving any objection, Petitioner will produce documents responsive to the above request.

11. Produce all documents relating to your past and present efforts to promote or expand public awareness of the term TESTOFEN.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Petitioner further objects to this document request as overly broad and unduly burdensome. Subject to and without waiving any objection, Petitioner will produce documents responsive to the above request.

12. Produce all documents relating to any licensing agreements or agreements providing your consent to others to use the term TESTOFEN.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Petitioner further objects to this request as overly broad, unduly burdensome, calls for confidential information and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any objection, Petitioner will produce documents responsive to the above request.

13. Produce all documents relating to your plans for future use of, or plans to license to others the use of, the term TESTOFEN.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Petitioner further objects to this request as overly broad, unduly burdensome, calls for confidential information and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any objection, Petitioner will produce documents responsive to the above request.

14. Produce all documents relating to your use of the term TESTOFEN on any product that you have sold or are offering for sale.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Petitioner further objects to the above request as vague, ambiguous, overly broad and

unduly burdensome. Subject to and without waiving any objection, Subject to and without waiving any objection, Petitioner will produce documents responsive to the above request.

15. Produce all documents sufficient to show your annual expenditures on domestic advertising and marketing of products bearing the term TESTOFEN since your first use of the marks in the United States.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Petitioner further objects to this document request as not reasonably calculated to lead to the discovery of admissible evidence and calls for confidential information. Subject to and without waiving any objection, Petitioner will produce documents responsive to the above request.

16. Produce all documents sufficient to show the geographic scope of your business and promotional activities associated with the use of the term TESTOFEN.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Petitioner further objects to this document request as overly broad and unduly burdensome. Subject to and without waiving any objection, Petitioner will produce documents responsive to the above request.

17. Produce one copy each of all advertising, marketing, and promotional material showing use of the term TESTOFEN on any goods, including, but not limited to, web pages, catalogs, circulars, leaflets, direct mail pieces, brochures, point of sale pieces, press releases, web-based advertisements (including, but not limited to, banner ads), newspaper and magazine advertisements and articles, transcripts and audio tapes for radio advertisements, and transcripts and video tapes of television advertisements.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Petitioner further objects to this document request as overly broad and unduly burdensome. Subject to and without waiving any objection, please see the attached documents

as responsive to the above. Subject to and without waiving any objection, Petitioner will produce documents responsive to the above request.

18. Produce all documents relating to your policies regarding retention, storage, filing and destruction of electronic mail, documents, and things.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Subject to and without waiving any objection, Petitioner will produce documents responsive to the above request.

19. Produce all documents sufficient to identify trade shows or conferences that you have attended where you have offered for sale, sold, or demonstrated products bearing the term TESTOFEN.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Petitioner further objects to this document request as overly broad and unduly burdensome, and is not limited in time or scope. Subject to and without waiving any objection, please see the attached documents as responsive to the above.

20. Produce all documents sufficient to identify the persons involved in design, sales, marketing, communications, business strategy, or business planning for your use of the term TESTOFEN.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Subject to and without waiving any objection, Petitioner will produce documents responsive to the above request.

21. Produce all documents related to e-mail communications directed to, addressed to, intended for, or received by you (excluding those from your counsel) concerning the use of the term TESTOFEN.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Petitioner further objects to this document request as overly broad and unduly burdensome. Subject to and without waiving any objection, Petitioner will produce documents responsive to the above request.

22. Produce all documents related to the meaning of the term TESTOFEN in relation to the goods claimed to be sold in intrastate and/or interstate commerce.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Subject to and without waiving any objection, Petitioner will produce documents responsive to the above request.

23. Produce all documents sufficient to show the dates of first use anywhere and in interstate commerce of the term TESTOFEN in relation to the goods claimed to be sold in intrastate and/or interstate commerce.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Subject to and without waiving any objection, Petitioner will produce documents responsive to the above request.

24. Produce all documents reviewed in connection with responding to the contemporaneously served Interrogatories.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Petitioner further objects to this document request as cumulative and duplicative or other document requests. Subject to and without waiving any objection, Petitioner will produce documents responsive to the above request.

Dated: August 17, 2015

/s/ Saira J. Alikhan

Saira J. Alikhan

Ryan M. Kaiser

AMIN TALATI & UPADHYE, LLC

55 W. Monroe St., Suite 3400

Chicago, Illinois 60603

Telephone: (312) 327-3328

E-mail: ryan@amintalati.com

E-mail: saira@amintalati.com

Attorneys for Petitioner

## **CERTIFICATE OF SERVICE**

I hereby certify that on August 17, 2015, a true and correct copy of the foregoing was served by via Electronic Mail and US Regular Mail on all counsel or parties of record on the Service List below:

Scott D. Smiley  
Museum Plaza  
200 South Andrews Avenue, Suite 100  
Fort Lauderdale, Florida 33301  
(754) 300-1500  
Email: scott@conceptlaw.com

/s/ Saira J. Alikhan  
Saira J. Alikhan

# EXHIBIT B



Museum Plaza  
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Fort Lauderdale, Florida 33301  
Tel: (754) 300-1325 www.ConceptLaw.com  
Fax: (754) 300-1501 ABrown@ConceptLaw.com

September 2, 2015

**VIA EMAIL ONLY: ryan@amintalati.com; saira@amintalati.com**

Saira J. Alikhan  
Ryan M. Kaiser  
AMIN TALATI & UPADHYE, LLC  
55 W. Monroe St., Suite 3400  
Chicago, Illinois 60603

**Re: *T.T.A.B. Cancellation No. 92059915*, Mark: TESTOGEN-XR**

Ryan & Saira –

By way of introduction, I am joining Scott Smiley and Yongae Jun on the above referenced file, and will be working with them from this point forward. I look forward to working with you and your team as this case progresses.

Substantively, this correspondence is being sent in furtherance of our obligation to Meet and Confer and to make a good faith effort to resolve discovery disputes in advance of filing a motion to compel. TBMP § 523.01 (citing 37 C.F.R. § 2.120(e)). In this regard, we are in receipt of your client's Responses to our client's First Requests to Produce (RFP) and First Set of Interrogatories, and believe that your client's responses are wholly deficient.

### **Impropriety of Generalized Objections**

Before we can properly assess the substantive quality and completeness of your client's Responses, we need to address the improper nature of your general objections, which make it impossible for us to evaluate the remaining aspects of the discovery responses.

As an initial matter, "it is incumbent upon a party who has been served with interrogatories to respond by articulating his objections (with particularity) to those interrogatories which he believes to be objectionable." *Amazon Techs., Inc. v. Wax*, 2009 TTAB LEXIS 712, \*5-6 (citing *Medtronic, Inc. v. Pacesetter Systems, Inc.*, 222 USPQ 80, 83 (TTAB 1984) (emphasis supplied); see also, Fed. R. Civ. P. 33(b)(4) ("The grounds for objecting to an

interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived ...") and Advisory Committee Note to 1993 Amendment thereto ("Paragraph (4) is added to make clear that objections must be specifically justified, and that unstated or untimely grounds for objection ordinarily are waived. "); *Redland Soccer Club, Inc. v. Department of the Army*, 55 F.3d 827, 856 (3d Cir. 1995); *McLeod, Alexander, Powel & Appfel, P.C. v. Quarles*, 894 F.2d 1482, 1485 (5th Cir. 1990); *St. Paul Reinsurance Co., Ltd. v. Commercial Financial Corp.*, 198 F.R.D. 508, 514 (N.D. Iowa 2000); *Safeco Insurance Co. of America v. Rawstrom*, 183 F.R.D. 668 (C.D. Cal. 1998).

To this end, in your Responses to our RFPs you lodge five (5) General Objections which are incorporated by reference in each and every Response in the RFP, and one (1) very broad generalized objection to our RFP Definitions. Similarly, in your Responses to our Interrogatory Requests, you lodge five (5) General Objections which are incorporated by reference in each and every Response in the Interrogatory Requests, and one (1) very broad generalized objection to our Interrogatory Definitions. Per *Amazon Techs., Inc., supra*, these objections are improper and must be withdrawn. Furthermore, all of your discovery responses are provided "subject to" your generalized objections, which, once again, is improper. Formulaic objections followed by an answer to the request are improper, as

[s]uch an objection and answer preserves nothing and serves only to waste the time and resources of both the Parties and the Court. Further, such practice leaves the requesting Party uncertain as to whether the question has actually been fully answered or whether only a portion of the question has been answered. See Civil Discovery Standards, 2004 A.B.A. Sec. Lit. 18.

In light of the foregoing, I request that you withdraw all of your generalized objections, and provide supplemental responses with appropriate objections (if and where specifically warranted) so that we may properly evaluate the completeness of your discovery responses. In this regard, I remind you that "it is established law...that the reasons for objecting by the party resisting discovery must be set forth and that **the burden of persuasion is on the objecting party,**" your client, "**to show that the interrogatories should not be answered.**" *Volkswagenwerk Aktiengesellschaft v. MTD Prods.*, 1974 TTAB LEXIS 19, \*1-2; see: *Pappas v. Loew's Inc.*, 18 F.R. Serv. 33.318, Case 1; 13 F.R.D. 471 [2] (D.C. M.D. Pa., 1953); *Tabron Engineering Corp. v. Eaton Mfg. Co.* 9 FR Serv2d 33.319, Case 2, 37 F.R.D. 51 (D.C. Ohio, 1964); and *Klausen v. Sidney Printing & Pub. Co.* 11 FR Serv2d 33.353, Case 1, 271 F.Supp. 783 (D.C. Kan., 1967); see also TBMP 402.02 ("Pursuant to the rule, when an adverse party seeks to compel the production of such material, the party resisting discovery must show that the material sought is 'not reasonably accessible because of undue burden or cost'.").

Consistent with the foregoing, and inasmuch as your responses contain common objections concerning, (1) relevancy, (2) permissive scope of discovery requests, and (3) privilege, I also note that each of your objections in these regards are inadequate and improper. To this end, I request that you withdraw *all of your objections*, and replace them with appropriately detailed objections where appropriate. In an effort to provide you with the reasoning of my assertions here, below you will find some legal holdings indicating that your delineated objections are improper:

### **Objections Based on Relevancy and the Scope of Discovery:**

*Benfatto v. Wachovia Bank, N.A.*, 2008 WL 4938418, \*2 (S.D. Fla. Nov. 19, 2008): “Defendants are not permitted to assert that Plaintiff’s discovery requests exceed the scope of the Federal Rules without explaining how a particular request is out of bounds.”

*Henderson v. Holiday CVS, LLC*, 269 F.R.D. 682, 685 (S.D. Fla. 2010): “The scope of discovery under Rule 26(b) is broad: ‘[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the claim or defense of any party involved in the pending action. Relevant information need not be admissible at trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.’ *Id.*; see also *Hickman v. Taylor*, 329 U.S. 495, 507–508, 67 S.Ct. 385, 91 L.Ed. 451 (1947); *Farnsworth v. Procter and Gamble Co.*, 758 F.2d 1545, 1547 (11th Cir.1985) (the Federal Rules of Civil Procedure “strongly favor full discovery whenever possible”); *Canal Authority v. Froehlke*, 81 F.R.D. 609, 611 (M.D.Fla.1979). Thus, under Rule 26, relevancy is ‘construed broadly to encompass any matter that bears on, or that reasonably could lead to another matter that could bear on any issue that is or may be in the case.’”

See also *Milinazzo v. State Farm Ins. Co.*, 247 F.R.D. 691 (S.D. Fla. 2007) (accord).

### **Objection Claiming Request is Not Reasonably Calculated to Lead to Admissible Evidence**

*Consumer Electronics Assoc. v. Compras & Buys Magazine, Inc.*, 2008 WL 4327253, \*3 (S.D. Fla. Sept. 18, 2008): “An objection that a discovery request is irrelevant and not reasonably calculated to lead to admissible evidence must include a specific explanation describing why the request lacks relevance and why the information sought will not reasonably lead to admissible evidence.”

### **Objections Based on Privilege and Work Product**

*M-5 Steel Mfg. v. O'Hagin's, Inc.*, 2000 TTAB LEXIS 294, \*11 (Trademark Trial & App. Bd. Apr. 28, 2000): “The work product doctrine and the attorney-client privilege, though often intertwined in individual cases, are distinct privileges, and objections to discovery requests that rely on them should be specific in the statement of which privilege is being relied on. ‘An existing privilege exemption from discovery must be raised in a proper fashion to be effective in justifying a refusal to provide discovery.’ 8 Wright, Miller & Marcus, Federal Practice and Procedure § 2016.1 (2d ed. 1994). ‘The question whether the materials are privileged is for the court, not the party, to decide, and the court has a right to insist on being presented with sufficient information to make that decision.’ *Id.*”

### **Objections Claiming a Request is “Vague, Overly Broad or Unduly Burdensome”**

*Milinzio v. State Farm Ins. Co.*, 247 F.R.D. 691, 695 (S.D. Fla. 2007): “Objections which state that a discovery request is ‘vague, overly broad, or unduly burdensome’ are, by themselves, meaningless, and are deemed without merit by this Court. A party properly objecting on these bases must explain the specific and particular ways in which a request is vague, overly broad, or unduly burdensome. *See* Fed.R.Civ.P. 33(b)(4); *Josephs v. Harris Corp.*, 677 F.2d 985, 992 (3d Cir.1982) (“[T]he mere statement by a party that the interrogatory was ‘overly broad, burdensome, oppressive and irrelevant’ is not adequate to voice a successful objection to an interrogatory”).”

*Henderson v. Holiday CVS, LLC*, 269 F.R.D. 682, 686 (S.D. Fla. 2010): “to even merit consideration, ‘an objection must show specifically how a discovery request is overly broad, burdensome or oppressive, by submitting evidence or offering evidence which reveals the nature of the burden.’”

### **Insufficiency of Responses**

Turning now to the substantive quality and completeness of your client’s Responses, we believe that your client’s responses are substantively deficient and incomplete. Initially, we note that it is difficult to assess the substantive quality of your client’s responses due to the generalized objections coupled with partial or wholly incomplete responses to each of the RFPs and Interrogatory Requests.

More particularly, your client’s responses to the RFPs merely state that Petitioner “will produce” responsive documents. Yet, your client has failed to provide or identify *any documents at all*, and you have ignored an email from our office asking when we can expect to receive your production.

The responses to our client’s Interrogatory Requests are similarly deficient. At a bare minimum, the following portions of Registrant’s Interrogatory Requests (which constitute a substantial portion of said Requests) have not been responded to by your client:

**Interrogatory No. 1:** (1) an explanation of all evidence to support Petitioner’s claimed first use; (2) the circumstances, nature and extent of such first use; (3) an explanation of all evidence to support Petitioner’s claimed continuous use; and (4) an explanation of every instance of how Petitioner has allegedly “used the term ‘TESTOFEN’” as a trademark in connection with dietary supplements.

**Interrogatory No. 2:** an explanation, in detail and with specificity, of how the term “TESTOFEN” was adopted for use in connection with dietary supplement products.

**Interrogatory No. 3:** an explanation of each and every instance of actual consumer confusion caused by Registrant’s use of the term TESTOGEN-XR.

**Interrogatory No. 4:** an explanation of each and every effort by Petitioner to advertise, promote, and sell dietary supplements under the term ‘TESTOFEN’. Petitioner has failed to identify all advertisement and promotional costs expended by Petitioner broken down at least

annually. Petitioner has failed to list and categorize advertising, promotional, and sales efforts within each market other than direct to the general public.

**Interrogatory No. 5:** an explanation of all facts and circumstances surrounding Petitioner's discovery of Registrant's use of the term TESTOGEN-XR to promote and sell dietary supplements.

**Interrogatory No. 6:** an explanation of all facts and circumstances surrounding Petitioner's discovery of Registrant's trademark registration for the term TESTOGEN-XR.

**Interrogatory No. 7:** a list and an explanation of each and every ingredient ever used in a dietary supplement sold by Petitioner under the term 'TESTOFEN.' Petitioner has failed to explain (1) each ingredient ever used in combination in a dietary supplement sold under the term 'TESTOFEN'; (2) the date range of every such combination used; and (3) the respective ingredient portions used in each such combination.

**Interrogatory No. 8:** a list and an explanation of each and every dietary supplement product ever sold in an 'over the counter' environment to consumers using the term 'TESTOFEN'. Petitioner has not identified (1) any retailers and their locations through which any such over the counter sale was made; (2) the date range each retailer sold dietary supplement products as an 'over the counter product' under the name 'TESTOFEN'; and (3) the monthly quantity of dietary supplement products sold under the term 'TESTOFEN' by each retailer that is identified.

**Interrogatory No. 9:** a list of each and every product ever sold or distributed by Petitioner as referenced in Petitioner's Initial Disclosures as "Petitioner's TESTOFEN products." Petitioner has failed to identify (1) all persons and entities and their locations through which any such sale or distribution was made; (2) the date range each said person and entity sold or distributed one of "Petitioner's TESTOFEN products" as referenced in your Initial Disclosures; and (3) the monthly quantity of "Petitioner's TESTOFEN products" (as referenced in your Initial Disclosures) sold or distributed by each such person and entity.

**I look forward to hearing back from you on these discovery concerns, and request that you provide me by Friday, September 11, 2015 with your client's intention concerning my request that it supplement its discovery responses. Assuming your client is amenable to supplementing in the manner requested above, we can reach agreement on a reasonable time thereafter within which you will provide the supplementations.**

Very truly yours,



ALEXANDER D. BROWN  
For the Firm

# EXHIBIT C

## Yongae Jun

---

**From:** Saira Alikhan <saira@amintalati.com>  
**Sent:** Friday, September 11, 2015 2:49 PM  
**To:** Alex Brown; Ryan Kaiser; Monica Gutierrez  
**Cc:** Scott Smiley; Yongae Jun  
**Subject:** RE: T.T.A.B. Cancellation No. 92059915 (TESTOGEN-XR) - Regarding Discovery

Alex,

Please let me know if you have any availability for a telephone call today regarding your letter dated 9/2/2015. Thanks.

Best,

**Saira J. Alikhan**

Amin Talati & Upadhye, LLC  
55 W. Monroe St., Suite 3400  
Chicago, IL 60603  
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Main: 312.466.1033  
Fax: 312.884.7352  
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---

**From:** Alex Brown [mailto:[abrown@conceptlaw.com](mailto:abrown@conceptlaw.com)]  
**Sent:** Wednesday, September 02, 2015 4:37 PM  
**To:** Ryan Kaiser; Monica Gutierrez; Saira Alikhan  
**Cc:** Scott Smiley; Yongae Jun  
**Subject:** RE: T.T.A.B. Cancellation No. 92059915 (TESTOGEN-XR) - Regarding Discovery

Thank you, Ryan. I look forward to hearing back from you.

Best Regards,

Alex

**THE CONCEPT LAW GROUP, P.A.**  
**AN INTELLECTUAL PROPERTY LAW FIRM**

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---

**From:** Ryan Kaiser [mailto:[ryan@amintalati.com](mailto:ryan@amintalati.com)]  
**Sent:** Wednesday, September 02, 2015 5:26 PM  
**To:** Monica Gutierrez <[mgutierrez@conceptlaw.com](mailto:mgutierrez@conceptlaw.com)>; Saira Alikhan <[saira@amintalati.com](mailto:saira@amintalati.com)>  
**Cc:** Scott Smiley <[scott@conceptlaw.com](mailto:scott@conceptlaw.com)>; Alex Brown <[abrown@conceptlaw.com](mailto:abrown@conceptlaw.com)>; Yongae Jun <[yjun@conceptlaw.com](mailto:yjun@conceptlaw.com)>  
**Subject:** RE: T.T.A.B. Cancellation No. 92059915 (TESTOGEN-XR) - Regarding Discovery

Alex,

Good meeting you and thanks for the letter. We'll review and discuss it with our client and get back to you to discuss. I'm sure we'll be able to come to an agreement about the issues you've raised.

Also, just as an update, our client's documents are currently being culled and processed by our e-discovery vendor. We expect to have them for review and production soon.

Sincerely,

Ryan M. Kaiser  
Amin, Talati & Upadhye, LLC  
55 W. Monroe St.  
Suite 3400  
Chicago, IL 60603  
312.327.3328 direct  
312.466.1033 reception  
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---

**From:** Monica Gutierrez [<mailto:mgutierrez@conceptlaw.com>]  
**Sent:** Wednesday, September 02, 2015 3:47 PM  
**To:** Ryan Kaiser; Saira Alikhan  
**Cc:** Scott Smiley; Alex Brown; Yongae Jun  
**Subject:** T.T.A.B. Cancellation No. 92059915 (TESTOGEN-XR) - Regarding Discovery

Dear Ms. Alikhan and Mr. Kaiser,

Please see the attached letter regarding your client's Discovery responses in T.T.A.B. Cancellation No. 92059915.

Best regards,  
Monica Gutierrez  
LEGAL ASSISTANT

**THE CONCEPT LAW GROUP, P.A.**

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# EXHIBIT D

## Yongae Jun

---

**From:** Saira Alikhan <saira@amintalati.com>  
**Sent:** Friday, September 18, 2015 4:24 PM  
**To:** Yongae Jun; Ryan Kaiser  
**Cc:** Alex Brown; Scott Smiley  
**Subject:** RE: Cancellation Proceeding No. 92059915 for TESTOGEN-XR (Supplementation of Initial Disclosures)  
**Attachments:** Petitioner's Initial Disclosures - Supplemental.pdf

Yongae,

Attached please find Petitioner's Supplemental Initial Disclosures.

In terms of the document production, we are still reviewing a large amount of information received from our client in response to your documents requests. As I indicated on our call, there is over 10 GB of information to review that I received for our eDiscovery document provider on Monday. We are making headway, but there is still much to review. We hope to produce the documents by late next week and are working as diligently as possible, but I cannot be sure that we will be finished by then.

As far as the interrogatory responses, our client is attending an expo this week and will not be back until Monday. We are still in the process of determining what, if any, information there may be to supplement Interrogatories Nos. 5,6, 8 and 9. We also hope to have this information to you by late next week. With respect to Interrogatories Nos. 2 and 7, there is no further information to be provided.

Best,

**Saira J. Alikhan**

Amin Talati & Upadhye, LLC  
55 W. Monroe St., Suite 3400  
Chicago, IL 60603  
Direct: 312.784.1065  
Main: 312.466.1033  
Fax: 312.884.7352  
[saira@AminTalati.com](mailto:saira@AminTalati.com)  
[www.amintalati.com](http://www.amintalati.com)

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**From:** Yongae Jun [<mailto:yjun@conceptlaw.com>]  
**Sent:** Tuesday, September 15, 2015 3:52 PM  
**To:** Saira Alikhan; Ryan Kaiser  
**Cc:** Alex Brown; Scott Smiley  
**Subject:** RE: Cancellation Proceeding No. 92059915 for TESTOGEN-XR (Supplementation of Initial Disclosures)

Saira:

As discussed during our teleconference on Monday, September 14, 2015, we await your status update regarding the production of documents and supplemental answers to our client's interrogatories by Friday, September 18, 2015.

In addition, we request that your client supplement its initial disclosures with the name, address, and telephone number(s) of licensees to which your client has licensed its TESTOFEN mark by Friday, September 18, 2015. Fed. R. Civ. P. 26(e)(1); TBMP 408.03. The initial disclosure that your client provided included only a single individual – the President of Petitioner GE Nutrients, Inc. As discussed during the teleconference, the licensees are likely to have discoverable information and therefore are required to be included in the initial disclosures. Fed. R. Civ. P. 26(a)(1); TBMP 401.02.

Kindest Regards,

Yongae Jun  
Registered U.S. Patent and Trademark Attorney  
(USPTO Reg. No. 63,267)

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AN INTELLECTUAL PROPERTY LAW FIRM

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# EXHIBIT E

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

GE Nutrients, Inc.,

Petitioner

v.

CA IP Holdings, LLC,

Registrant

Cancellation No. 92059915

Registration No. 4,302,581

Mark: TESTOGEN XR

**PETITIONER’S SUPPLEMENTAL RESPONSES TO REGISTRANT CA IP  
HOLDINGS, LLC’S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS &  
THINGS**

Pursuant to Rule 37 C.F.R. § 2.120 and Rule 34 of the Federal Rules of Civil Procedure, GE NUTRIENTS, INC., (“Petitioner”) hereby supplements its response to CA IP Holdings, LLC, (“Registrant”) first request for production of documents and things.

**GENERAL OBJECTIONS**

The following general objections are incorporated by reference in response to each and every Document Request set forth below and are not waived with respect to any response. Petitioner provides the following responses only as to GE Nutrients, Inc. The following responses are based upon information and writings presently available to Petitioner.

A. Applicant objects to the “Definitions” to the extent they exceed the requirements of, or purport to create obligations greater than, those imposed by the Federal Rules of Civil Procedure.

B. Applicant objects to the Document Requests to the extent that they call for the production of information, documents, or things protected from disclosure by the attorney-client privilege, the work-product doctrine, or any other applicable privilege, immunity, or other limitation on discovery. Applicant

hereby asserts this general objection with respect to each Document Request to the extent the Document Request is broadly interpreted to encompass privileged information, documents or things. Moreover, should any such response by Petitioner occur, it was inadvertent and shall not constitute a waiver of privilege or of Applicant's right to object during this litigation or otherwise to the use of any such information, documents, or things.

C. Petitioner objects to the Document Requests to the extent that they seek information, documents, or things that are not relevant to this litigation, or are not reasonably calculated to lead to the discovery of admissible evidence.

D. Petitioner objects to the Document Requests to the extent that they seek information, documents, or things not in Petitioner's possession, custody or control.

E. Petitioner objects to the Document Request to the extent that they are overbroad, unduly burdensome, or fail to describe the information, documents or things sought with a reasonable degree of specificity. Petitioner will attempt to construe the terms and phrases used by Registrant in a way to give those terms and phrases a meaning that will result in the production of relevant information, documents, and things designed to lead to the discovery of admissible evidence.

F. Petitioner objects to the Document Request to the extent that they seek private, privileged, and confidential commercial, financial, trade secret and/or proprietary business information. Petitioner further objects to the Document Request to the extent that they call for the production of information, documents, or things that Petitioner received or obtained from a third party under a nondisclosure agreement or any other obligation in the nature of a non-disclosure agreement.

G. The term "non-privileged information, documents, or things" refers to information, documents, or things that are not protected by the attorney-client privilege, the work-product doctrine, or any other privilege or immunity precluding discovery.

H. Petitioner has performed a diligent search for information, documents and things responsive to these Document Requests. However, discovery is ongoing, and Petitioner's investigation is continuing. Therefore, Petitioner reserves its right to supplement its responses herein and its production with any responsive, non-privileged information, documents, or things that may be subsequently discovered.

I. For the convenience of the parties and due to the voluminous nature of Petitioner's document production and vagueness of Registrant's document requests, Petitioner has, to the best of its ability, identified the documents responsive to each of Registrant's document requests. The identification of these documents is not an admission, or representation, that those identified documents are the only responsive documents to each request, or the totality of all responsive documents to each request.

### **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUESTS**

1. Produce all documents supporting your contention that "Petitioner for many years and since long prior to any date of first use upon which Registrant can rely, has adopted and continuously used the term 'TESTOFEN' as a trademark for use in connection its dietary supplement product."

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Petitioner further objects to this document request as overly broad and unduly burdensome. Subject to and without waiving any objection, please see Bates Stamped documents GEN0000001-0002336, 2393, 2399, 2417, 2423, 2429, 2430-2490, 3680-5743, 3246, 6716-17 as responsive to the above request.

2. Produce all documents referencing, regarding or concerning how you decided to adopt the term TESTOFEN for use in connection with dietary supplement products.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Petitioner further objects to this document request as overly broad and unduly

burdensome. Subject to and without waiving any objection, Petitioner states that it does not have any documents responsive to the above request.

3. Produce all documents referencing, regarding or concerning each and every instance of actual consumer confusion caused by Registrant's use of the term 'TESTOGEN-XR' and your use of 'TESTOFEN'.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Subject to and without waiving any objection, please see Bates Stamped documents GEN0018179-0018342 as responsive to the above request.

4. Produce a representative label for each dietary supplement product sold by you under the term 'TESTOFEN' since you first began using said term, through the present.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Petitioner further objects to this document request as overly broad and unduly burdensome. Subject to and without waiving any objection, please see Bates Stamped documents GEN0006071-6072, 0008653, 0017461-001773 as responsive to the above request.

5. Produce all documents that you reference in your Initial Disclosures as "Marketing and promotional materials concerning Petitioner's TESTOFEN products."

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Subject to and without waiving any objection, please see Bates Stamped documents GEN0000001-0002336, 0002393, 0002399, 0002417, 0002423, 0002429, 0002430-2490, 0003680-0005743, 0006716-17 as responsive to the above request.

6. Produce all documents that you reference in your Initial Disclosures as "Sales information concerning Petitioner's TESTOFEN products and documentation of Petitioner's first use of the TESTOFEN mark in the U.S."

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Subject to and without waiving any objection, Petitioner please see Bates Stamped documents GEN0003318-21, 0003564-67, 0003582-83, 0004584-98, 0004607-4629, 0004689, 0004991, 0005376, 0005467, 0005468, 0005998-99, 0006096, 0007116, 0007757, 0007884, 0009243-44, 0009268, 0009497-98, 0011062, 0011256, 0012417, 0012900, 0012965, 0013141-152, 0013766-67, 0013904, 0014066-69, 0014744-60, 0014947-0016480 as responsive to the above request.

7. Produce all documents that you reference in your Initial Disclosures as “Documents concerning Petitioner’s application to register the TESTOFEN trademark and resulting registration.”

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Subject to and without waiving any objection, Petitioner please see Bates Stamped documents GEN0014947, 0018178, 0024863.

8. Produce all documents relating to studies and/or surveys in connection with the use of the term TESTOFEN.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Petitioner further objects to the above document request as vague, ambiguous, and overly broad and unduly burdensome in terms of time and scope. Subject to and without waiving any objection, Petitioner please see Bates Stamped documents GEN0001961, 0002871-0002880, 0003381-3412, 0004365-0004377, and 0010850-0010878 as responsive to the above request.

9. Produce all documents relating to your selection, adoption and registration of any Internet domain names incorporating the term TESTOFEN.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Petitioner further objects to the above document request as overly broad and unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any objection, Petitioner states that it has no documents responsive to this request.

10. Produce all documents sufficient to identify every product in connection with how you have used or are using the term TESTOFEN.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Petitioner further objects to the above request as overly broad and unduly burdensome. Subject to and without waiving any objection, Petitioner please see Bates Stamped documents GEN0007849-50, 0007981, 0007953-79, 0008077, 0008471, 0008561, 0009156-60, 0009407, 0011050-56, 0011385-99, 0011437, 0011453, 0012223, 0012399, 0012602, 0012771, 0012865-86, 0013524-25, 0013531, 0013619, 0014253-67, 0017461-001773, and 001774-0018150 as responsive to the above request.

11. Produce all documents relating to your past and present efforts to promote or expand public awareness of the term TESTOFEN.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Petitioner further objects to this document request as overly broad and unduly burdensome. Subject to and without waiving any objection, please see Bates Stamped documents GEN0000001-0002336, 0002393, 0002399, 0002417, 0002423, 0002429, 0002430-2490, 0003680-0005743, 0006716-17 as responsive to the above request.

12. Produce all documents relating to any licensing agreements or agreements providing your consent to others to use the term TESTOFEN.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Petitioner further objects to this request as overly broad, unduly burdensome, calls for confidential information and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any objection, please see Bates Stamped documents GEN0007849-50, 0007981, 0007953-79, 0008077, 0008471, 0008561, 0009156-60, 0009407, 0009407, 0011050-56, 0011385-99, 0011437, 0011453, 0012223, 0012399, 0012602, 0012771, 0012865-86, 0013524-25, 0013531, 0013619, 0014253-67, and 0017477-0018150 as responsive to the above request.

13. Produce all documents relating to your plans for future use of, or plans to license to others the use of, the term TESTOFEN.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Petitioner further objects to this request as overly broad, unduly burdensome, calls for confidential information and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any objection, please see Bates Stamped documents GEN0007849-50, 0007981, 0007953-79, 0008077, 0008471, 0008561, 0009156-60, 0009407, 0009407, 0011050-56, 0011385-99, 0011437, 0011453, 0012223, 0012399, 0012602, 0012771, 0012865-86, 0013524-25, 0013531, 0013619, 0014253-67, and 0017477-0018150 as responsive to the above request.

14. Produce all documents relating to your use of the term TESTOFEN on any product that you have sold or are offering for sale.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Petitioner further objects to the above request as vague, ambiguous, overly broad and

unduly burdensome. Subject to and without waiving any objection, Subject to and without waiving any objection, please see Bates Stamped documents GEN0007180-0007181, 0013686-0014799, 0014947-0016571, 0017131-0017388, 0017402-0017446, and 0017775-0017857 as responsive to the request above.

15. Produce all documents sufficient to show your annual expenditures on domestic advertising and marketing of products bearing the term TESTOFEN since your first use of the marks in the United States.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Petitioner further objects to this document request as not reasonably calculated to lead to the discovery of admissible evidence and calls for confidential information. Subject to and without waiving any objection, Subject to and without waiving any objection, please see Bates Stamped documents GEN0000424-0000432 as responsive to the request above.

16. Produce all documents sufficient to show the geographic scope of your business and promotional activities associated with the use of the term TESTOFEN.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Petitioner further objects to this document request as overly broad and unduly burdensome. Subject to and without waiving any objection, please see Bates Stamped documents GEN0000205-000224 and 0001468-0002457 as responsive to the request above.

17. Produce one copy each of all advertising, marketing, and promotional material showing use of the term TESTOFEN on any goods, including, but not limited to, web pages, catalogs, circulars, leaflets, direct mail pieces, brochures, point of sale pieces, press releases, web-based advertisements (including, but not limited to, banner ads), newspaper and magazine advertisements and articles, transcripts and audio tapes for radio advertisements, and transcripts and video tapes of television advertisements.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Petitioner further objects to this document request as overly broad and unduly burdensome. Subject to and without waiving any objection, please see the attached documents as responsive to the above. Subject to and without waiving any objection, please see Bates Stamped documents GEN0000205-000224 and GEN0001468-0002457 as responsive to the request above.

18. Produce all documents relating to your policies regarding retention, storage, filing and destruction of electronic mail, documents, and things.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Subject to and without waiving any objection, Petitioner does not have documents responsive to this request.

19. Produce all documents sufficient to identify trade shows or conferences that you have attended where you have offered for sale, sold, or demonstrated products bearing the term TESTOFEN.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Petitioner further objects to this document request as overly broad and unduly burdensome, and is not limited in time or scope. Subject to and without waiving any objection, please documents Bates Stamped GEN0001468-0002457 as responsive to the request above.

20. Produce all documents sufficient to identify the persons involved in design, sales, marketing, communications, business strategy, or business planning for your use of the term TESTOFEN.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Subject to and without waiving any objection, Petitioner will produce documents responsive to the above request.

21. Produce all documents related to e-mail communications directed to, addressed to, intended for, or received by you (excluding those from your counsel) concerning the use of the term TESTOFEN.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Petitioner further objects to this document request as overly broad and unduly burdensome and not specifically allowed for pursuant to TMBP 402.02. The request is duplicative of previous discovery requests and the burden of producing such documents as the document request is worded will cause extreme burden.

22. Produce all documents related to the meaning of the term TESTOFEN in relation to the goods claimed to be sold in intrastate and/or interstate commerce.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Petitioner further objects to this document request as vague and ambiguous, overly broad and unduly burdensome. Subject to and without waiving any objection, Petitioner does not have any documents responsive to this request.

23. Produce all documents sufficient to show the dates of first use anywhere and in interstate commerce of the term TESTOFEN in relation to the goods claimed to be sold in intrastate and/or interstate commerce.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Subject to and without waiving any objection, please see Bates Stamped documents GEN0014947 as responsive to the request above.

24. Produce all documents reviewed in connection with responding to the contemporaneously served Interrogatories.

**Response:** Petitioner incorporates by this reference its General Objections as if set forth fully herein. Petitioner further objects to this document request as cumulative and duplicative or other document requests. Subject to and without waiving any objection, Petitioner has produced documents responsive to the above request.

Dated: October 6, 2015

/s/ Saira J. Alikhan

Saira J. Alikhan

Ryan M. Kaiser

AMIN TALATI & UPADHYE, LLC

55 W. Monroe St., Suite 3400

Chicago, Illinois 60603

Telephone: (312) 327-3328

E-mail: ryan@amintalati.com

E-mail: saira@amintalati.com

Attorneys for Petitioner

## **CERTIFICATE OF SERVICE**

I hereby certify that on October 6, 2015, a true and correct copy of the foregoing was served by Electronic Mail on all counsel or parties of record on the Service List below:

Scott D. Smiley  
Alex Brown  
Yongae Jun  
Museum Plaza  
200 South Andrews Avenue, Suite 100  
Fort Lauderdale, Florida 33301  
(754) 300-1500  
scott@conceptlaw.com  
abrown@concept.law.com  
yjun@conceptlaw.com

/s/ Saira J. Alikhan  
Saira J. Alikhan

# EXHIBIT F

## Yongae Jun

---

**From:** Yongae Jun  
**Sent:** Wednesday, October 07, 2015 12:24 PM  
**To:** 'Saira Alikhan'  
**Cc:** Alex Brown; Scott Smiley; Ryan Kaiser  
**Subject:** RE: Cancellation Proceeding No. 92059915 for TESTOGEN-XR (Petitioner's Supplemental Document Production)

Saira:

Thank you. We appreciate you providing these documents.

We look forward to receiving your client's supplemental answers to our client's Interrogatories. Based on your Supplemental Document Response, I assume that you will also not be withdrawing or providing any further explanation as to any of the general objections or specification objections to our client's Interrogatories. Is this correct?

Kindest Regards,

Yongae Jun  
Registered U.S. Patent and Trademark Attorney  
(USPTO Reg. No. 63,267)

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---

**From:** Saira Alikhan [mailto:saira@amintalati.com]

**Sent:** Tuesday, October 06, 2015 12:11 PM

**To:** Yongae Jun

**Cc:** Alex Brown; Scott Smiley; Ryan Kaiser

**Subject:** RE: Cancellation Proceeding No. 92059915 for TESTOGEN-XR (Petitioner's Supplemental Document Production)

Counsel,

Attached please find Petitioner's Supplemental Document Response and a link to the responsive documents. We will be supplementing our interrogatory answers, however, the client is unable to review and sign the supplemental answers until sometime next week due to being out of the office. If you should have any questions, please do not hesitate to contact me.

Link: <https://cardinal-ip.exavault.com/share/view/8osr-dljvbr1>

PW: Gencor#543@!

Best,

**Saira J. Alikhan**

Amin Talati & Upadhye, LLC

55 W. Monroe St., Suite 3400

Chicago, IL 60603

Direct: 312.784.1065

Main: 312.466.1033

Fax: 312.884.7352

[saira@AminTalati.com](mailto:saira@AminTalati.com)

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**From:** Saira Alikhan  
**Sent:** Monday, September 28, 2015 3:12 PM  
**To:** 'Yongae Jun'  
**Cc:** 'Alex Brown'; 'Scott Smiley'; Ryan Kaiser  
**Subject:** RE: Cancellation Proceeding No. 92059915 for TESTOGEN-XR (Supplementation of Initial Disclosures)

Yongae,

We have finished reviewing the documents and they are being processed with our eDiscovery document provider. I have just been informed that they have run into a technical issue in retrieving the documents and there is going to be a delay. At this point they do not know how long the delay may be, but I will keep you informed as I learn more information. Thank you.

Best,

**Saira J. Alikhan**

Amin Talati & Upadhye, LLC  
55 W. Monroe St., Suite 3400  
Chicago, IL 60603  
Direct: 312.784.1065  
Main: 312.466.1033  
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[saira@AminTalati.com](mailto:saira@AminTalati.com)  
[www.amintalati.com](http://www.amintalati.com)

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**From:** Saira Alikhan  
**Sent:** Friday, September 18, 2015 3:24 PM  
**To:** 'Yongae Jun'; Ryan Kaiser  
**Cc:** Alex Brown; Scott Smiley  
**Subject:** RE: Cancellation Proceeding No. 92059915 for TESTOGEN-XR (Supplementation of Initial Disclosures)

Yongae,

Attached please find Petitioner's Supplemental Initial Disclosures.

In terms of the document production, we are still reviewing a large amount of information received from our client in response to your documents requests. As I indicated on our call, there is over 10 GB of information to review that I received for our eDiscovery document provider on Monday. We are making headway, but there is still much to review. We hope to produce the documents by late next week and are working as diligently as possible, but I cannot be sure that we will be finished by then.

As far as the interrogatory responses, our client is attending an expo this week and will not be back until Monday. We are still in the process of determining what, if any, information there may be to supplement Interrogatories Nos. 5,6, 8 and 9. We also hope to have this information to you by late next week. With respect to Interrogatories Nos. 2 and 7, there is no further information to be provided.

Best,

**Saira J. Alikhan**  
Amin Talati & Upadhye, LLC

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**From:** Yongae Jun [<mailto:yjun@conceptlaw.com>]  
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**Cc:** Alex Brown; Scott Smiley  
**Subject:** RE: Cancellation Proceeding No. 92059915 for TESTOGEN-XR (Supplementation of Initial Disclosures)

Saira:

As discussed during our teleconference on Monday, September 14, 2015, we await your status update regarding the production of documents and supplemental answers to our client's interrogatories by Friday, September 18, 2015.

In addition, we request that your client supplement its initial disclosures with the name, address, and telephone number(s) of licensees to which your client has licensed its TESTOFEN mark by Friday, September 18, 2015. Fed. R. Civ. P. 26(e)(1); TBMP 408.03. The initial disclosure that your client provided included only a single individual – the President of Petitioner GE Nutrients, Inc. As discussed during the teleconference, the licensees are likely to have discoverable information and therefore are required to be included in the initial disclosures. Fed. R. Civ. P. 26(a)(1); TBMP 401.02.

Kindest Regards,

Yongae Jun  
Registered U.S. Patent and Trademark Attorney  
(USPTO Reg. No. 63,267)

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# EXHIBIT G

## Yongae Jun

---

**From:** Saira Alikhan <saira@amintalati.com>  
**Sent:** Thursday, October 15, 2015 3:46 PM  
**To:** Yongae Jun  
**Cc:** Alex Brown; Scott Smiley; Ryan Kaiser  
**Subject:** RE: Cancellation Proceeding No. 92059915 for TESTOGEN-XR (Petitioner's Supplemental Document Production)  
**Attachments:** GE Nutrients Supplemental Answers to First Set of Interrogatories.pdf

Yongae,

Attached please find Petitioner's Supplemental Answers to Registrant's First Set of Interrogatories. As I explained during our meet and confer on September, 14, we do not agree that we must withdraw our general objections and have stated our objections to each interrogatory with specificity. Despite fully articulating our position on each interrogatory objection during our call, I have further explained our objections to the interrogatories in our supplemental interrogatory response. Please let me know if you have any questions.

Best,

**Saira J. Alikhan**

Amin Talati & Upadhye, LLC  
55 W. Monroe St., Suite 3400  
Chicago, IL 60603  
Direct: 312.784.1065  
Main: 312.466.1033  
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# AMIN TALATI & UPADHYE

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**From:** Yongae Jun [mailto:yjun@conceptlaw.com]

**Sent:** Wednesday, October 07, 2015 11:24 AM

**To:** Saira Alikhan

**Cc:** Alex Brown; Scott Smiley; Ryan Kaiser

**Subject:** RE: Cancellation Proceeding No. 92059915 for TESTOGEN-XR (Petitioner's Supplemental Document Production)

Saira:

Thank you. We appreciate you providing these documents.

We look forward to receiving your client's supplemental answers to our client's Interrogatories. Based on your Supplemental Document Response, I assume that you will also not be withdrawing or providing any further explanation as to any of the general objections or specification objections to our client's Interrogatories. Is this correct?

Kindest Regards,

Yongae Jun  
Registered U.S. Patent and Trademark Attorney  
(USPTO Reg. No. 63,267)

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**From:** Saira Alikhan [<mailto:saira@amintalati.com>]

**Sent:** Tuesday, October 06, 2015 12:11 PM

**To:** Yongae Jun

**Cc:** Alex Brown; Scott Smiley; Ryan Kaiser

**Subject:** RE: Cancellation Proceeding No. 92059915 for TESTOGEN-XR (Petitioner's Supplemental Document Production)

Counsel,

Attached please find Petitioner's Supplemental Document Response and a link to the responsive documents. We will be supplementing our interrogatory answers, however, the client is unable to review and sign the supplemental answers until sometime next week due to being out of the office. If you should have any questions, please do not hesitate to contact me.

Link: <https://cardinal-ip.exavault.com/share/view/8osr-dljvbr1>

PW: Gencor#543@!

Best,

**Saira J. Alikhan**

Amin Talati & Upadhye, LLC

55 W. Monroe St., Suite 3400

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**From:** Saira Alikhan  
**Sent:** Monday, September 28, 2015 3:12 PM  
**To:** 'Yongae Jun'  
**Cc:** 'Alex Brown'; 'Scott Smiley'; Ryan Kaiser  
**Subject:** RE: Cancellation Proceeding No. 92059915 for TESTOGEN-XR (Supplementation of Initial Disclosures)

Yongae,

We have finished reviewing the documents and they are being processed with our eDiscovery document provider. I have just been informed that they have run into a technical issue in retrieving the documents and there is going to be a delay. At this point they do not know how long the delay may be, but I will keep you informed as I learn more information. Thank you.

Best,

**Saira J. Alikhan**  
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---

**From:** Saira Alikhan  
**Sent:** Friday, September 18, 2015 3:24 PM  
**To:** 'Yongae Jun'; Ryan Kaiser  
**Cc:** Alex Brown; Scott Smiley  
**Subject:** RE: Cancellation Proceeding No. 92059915 for TESTOGEN-XR (Supplementation of Initial Disclosures)

Yongae,

Attached please find Petitioner's Supplemental Initial Disclosures.

In terms of the document production, we are still reviewing a large amount of information received from our client in response to your documents requests. As I indicated on our call, there is over 10 GB of information to review that I received for our eDiscovery document provider on Monday. We are making headway, but there is still much to review. We hope to produce the documents by late next week and are working as diligently as possible, but I cannot be sure that we will be finished by then.

As far as the interrogatory responses, our client is attending an expo this week and will not be back until Monday. We are still in the process of determining what, if any, information there may be to supplement Interrogatories Nos. 5,6, 8 and 9. We also hope to have this information to you by late next week. With respect to Interrogatories Nos. 2 and 7, there is no further information to be provided.

Best,

**Saira J. Alikhan**

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**From:** Yonggae Jun [<mailto:yjun@conceptlaw.com>]

**Sent:** Tuesday, September 15, 2015 3:52 PM

**To:** Saira Alikhan; Ryan Kaiser

**Cc:** Alex Brown; Scott Smiley

**Subject:** RE: Cancellation Proceeding No. 92059915 for TESTOGEN-XR (Supplementation of Initial Disclosures)

Saira:

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Kindest Regards,

Yongae Jun  
Registered U.S. Patent and Trademark Attorney  
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