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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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Attachments	92059915 Motion to Compel Draft (Interrogatories).pdf(245811 bytes) Exhibit A - GE Nutrients Original Answers to First Set of Interrogatories.pdf(654409 bytes) Exhibit B - Letter to Opposing Counsel re Deficient Discovery.pdf(216363 bytes) Exhibit C - September 11 2015 Email.pdf(215342 bytes) Exhibit D - Petitioner's Initial Disclosures.pdf(159208 bytes) Exhibit E - September 18 2015 Email.pdf(209825 bytes) Exhibit F - October 6 2015 Email.pdf(285532 bytes) Exhibit G - GE Nutrients Supplemental Answers to First Set of Interrogatories - 2015-10-15.pdf(419712 bytes) Exhibit H - October 15 2015 Email.pdf(323964 bytes) Exhibit I - October 7 2015 Email.pdf(288733 bytes) Exhibit J - GE Nutrients Interrogatories to CA IP.pdf(193812 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
ANSWERS TO REGISTRANT’S FIRST SET OF INTERROGATORIES**

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 Set of Interrogatories 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 Set of Interrogatories (hereinafter “Registrant’s Interrogatories”).
2. On August 17, 2015, Petitioner served Registrant with Petitioner’s Original Answers and Objections to Registrant’s Interrogatories (hereinafter “Petitioner’s Original Answers”). See Exhibit “A”, Petitioner’s Original Answers to Registrant’s First Set of Interrogatories.
3. After a review of Petitioner’s Original Answers, it became apparent to Registrant that, unfortunately, Petitioner’s Original Answers were wholly deficient and entirely lacking. 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 Registrant 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, is 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. In this regard, Registrant finds it peculiar that in Response to many 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. 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. In addition, during the Teleconference held on September 14, 2015, Counsel for Petitioner admitted that much of the sales and marketing information associated with the mark TESTOFEN is known by the licensees of the mark and not by Petitioner. The undersigned counsel pointed out, however, that no licensees were listed in any of Petitioner's discovery responses or in its initial disclosures. *See* Exhibit "D;" Petitioner's Initial Disclosures. In fact, the only name that was listed in Petitioner's initial disclosures was the name of Petitioner's President.

9. On Tuesday, September 15, 2015, the undersigned counsel made written demand that Counsel for Petitioner supplement its initial disclosures with the names, addresses, and telephone number(s) of licensees to which Petitioner has licensed its TESTOFEN mark.

10. Petitioner responded on Friday, September 18, 2015 with a list of one-hundred-and-two (102) names. Yet, none of these names were identified in Petitioner's discovery responses, nor was any explanation provided as to the nature of the relationship between the named entities and Petitioner or its mark TESTOFEN. Given that, as implied by Counsel for Petitioner, most of the marketing and sales information is with the licensees, Registrant finds it difficult to believe that Petitioner's discovery responses, which fail to identify any of these licensees, can be said to have been answered earnestly and sufficiently.

11. On September 18, 2015, Counsel for Petitioner explained that there would be further delay in supplementing Petitioner's Original Answers. *See* Exhibit "E;" September 18, 2015 email. Counsel for Petitioner stated that they were "still in the process of determining what, if any, information there may be to supplement Interrogatories Nos. 5, 6, 8 and 9," and that no further information would be provided for Interrogatory Nos. 2 and 7. *Id.* Petitioner's explanation as to the delay was due to attendance at an expo. In any case, Petitioner agreed to have this supplemental information by "late next week." *Id.*

12. Weeks later, on October 6, 2015, now almost **three (3) months** after being served with Registrant's discovery requests, Counsel for Petitioner emailed the undersigned stating that they "will be supplementing our interrogatory answers, however, the client is unable to review and sign the supplemental answers until sometime next week." *See* Exhibit "F;" October 6, 2015 email. Counsel for Petitioner's explanation as to the delay was due to Petitioner's being "out of the office." *Id.* 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 answers to the subject discovery served on July 14, 2015.

13. Thereafter, on October 15, 2015, over three (3) months after being served with Registrant's discovery requests, Petitioner finally provided supplemental answers to Registrant's Interrogatories. See Exhibit "G;" Petitioner's Supplemental Answers to Registrant's Interrogatories. Petitioner's Supplemental Answers to Registrant's Interrogatories provide bates numbers for documents produced under Fed. R. Civ. P. 33(d) in response to Interrogatory Nos. 1, 3, 4, 7, and 9. See *id.* In an email on October 15, 2015, however, Counsel for Petitioner reaffirmed its position of refusing to withdraw the general objections or explaining with any more specificity its specific objections. See Exhibit "H;" Petitioner's Email Dated October 15, 2015.

14. At this point, over three (3) months after Registrant served its discovery on July 14, 2015, Registrant is prejudiced by Petitioner's continuous delays, stalling tactics, refusal to address objections, and grossly delayed production of documents under Fed. R. Civ. P. 33(d). 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 supplemental answers and produced documents and prepare follow-up discovery requests than the time that it took Petitioner to answer and produce them.

15. 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 “I;” October 7, 2015 email. On October 15, 2015, Counsel for Petitioner responded by again refusing to withdraw the general objections. *See* Exhibit H, *supra*. Unfortunately, Petitioner’s refusal to address these improper objections and evasive responses has necessitated the preparation and filing of this Motion.

16. In addition to such continuous delays, Registrant wishes to address the substantive quality of Petitioner’s Original and Supplemental Answers, which have also necessitated the preparation and filing of this Motion. However, before addressing the substantive quality and completeness of Petitioner’s Answers, it is necessary to address the improper nature of Petitioner’s generalized objections, which makes it difficult, if not impossible for Registrant to evaluate the remaining aspects of Petitioner’s Answers.

Petitioner’s Improper and Inappropriate Generalized Objections

17. Petitioner’s generalized objections (hereinafter “Generalized Objections”), which are incorporated into each and every of Petitioner’s answers to Registrant’s Interrogatories, read as follows:

The following general objections are incorporated by reference in response to each and every Interrogatory 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 Interrogatories 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

objection with respect to each Interrogatory to the extent the Interrogatory 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 Interrogatories 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 Interrogatories to the extent that they seek information, documents, or things not in Petitioner's possession, custody or control.

E. Petitioner objects to the Interrogatories 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 Interrogatories to the extent that they seek private, privileged, and confidential commercial, financial, trade secret and/or proprietary business information. Petitioner further objects to the Interrogatory 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 G, supra.

18. 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.

19. Registrant submits that “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 & Apffel, 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).

20. That said, Petitioner lodged these five (5) General Objections which are incorporated by reference into each and every answer to Registrant’s Interrogatories, and one (1) very broad generalized objection to the Interrogatory Definitions. *See* para. 17, *supra*. Per *Amazon Techs., Inc., supra*, these objections are improper and should be overruled. Furthermore, all of Petitioner’s Answers 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.

21. In light of the foregoing, Registrant respectfully requests that Petitioner's generalized objections to Registrant's Interrogatory Nos. 1-9 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, to show that the interrogatories should not be answered.**" *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'.").

22. Consistent with the foregoing, and inasmuch as Petitioner's Answers 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.

23. 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.

24. 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).

25. 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.

26. 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.

27. In short, Petitioner's Generalized Objections, which are incorporated into each and every of Petitioner's answers to Registrant's Interrogatories, make it difficult to assess the substantive quality of Petitioner's answers. In particular, Petitioner's Generalized Objections make it impossible for Registrant to determine whether the question has been fully answered or whether only a portion of it has been answered. 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

28. Turning now to the substantive quality and completeness of Petitioner's Answers, and even putting the Generalized Objections aside, Registrant submits that the individual Answers to each Interrogatory are substantively deficient and incomplete.

29. In the Discovery Letter, Registrant clearly lists for Petitioner portions of Registrant's Interrogatories that were not responded to by Petitioner. *See* Exhibit "B," *supra*. As noted in the letter, the list constitutes a substantial portion of said Interrogatories. More specifically, the following paragraphs address each of Registrant's Interrogatories in turn.

30. **Interrogatory No. 1**, and Petitioner's corresponding Answer and Objections, reads as follows:

Interrogatory No. 1: Please explain, in detail and with specificity, all facts and reasons for 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 [sic] its dietary supplement product." In responding to this Interrogatory, please include, in detail and with specificity: (1) an indication of the date of your first use of the term "TESTOFEN", and an explanation of all evidence to support such claimed first use; (2) the circumstances, nature and extent of such first use; (3) how Petitioner claims to have continuously used said term following said first use, and an explanation of all evidence to support such claimed continuous use; and (4) an

explanation of every instance of how Petitioner has allegedly “used the term ‘TESTOFEN’ as a trademark for use in connection its dietary supplement product.”

Answer: Petitioner hereby incorporates its General Objections as if fully stated herein. Petitioner further objects to the above interrogatory as overly broad and unduly burdensome because it calls for all facts, in detail and with specificity, and calls for a lengthy narrative. Subject to and without waiving any foregoing objection, the TESTOFEN mark was filed on June 22, 2005 and registered on November 31, 2007. The date of first use in commerce was June 30, 2005. The TESTOFEN mark has been used in conjunction with the sale of over the counter dietary supplement products since 2005. The product has also been continuously advertised on the web, in trade journals, etc., for the past eight (8) years and has been exhibited at all tradeshows attended since 2005. Moreover, the TESTOFEN mark has been licensed to multiple parties since 2005 and is included in various dietary supplement products. In accordance with Fed.R.Civ.P 33(d), please see Bates Stamped documents as GEN0000001-0002336, 0002393, 0002399, 0002417, 0002423, 0002429, 0002430, 0002431-0002440, 002486, 0003680, 0005742-46, 0006246, 0006716-17, 0006071-72, 0007180-81, 0007849-50, 0007953-79, 0008077, 0008653, 0008471, 0008561, 0009156-60, 0009407, 0011050-56, 0011385-99, 0013686-14799, 0014947-0016571, 0017131-0017388, 0017461-0017857, 0018178, 0024863, as responsive to the above interrogatory.

See Exhibit G, supra.

31. Petitioner specifically objects to Interrogatory No. 1 as “overly broad and unduly burdensome because it calls for all facts, in detail and with specificity.” *See Exhibit G, supra.* Yet, Petitioner’s very own Interrogatory Nos. 5, 7, 9, 10, 15, 16, and 17 ask Registrant for details, facts, and/or an explanation with specificity. *See Exhibit “J;”* Petitioner’s Interrogatories. As for Petitioner’s objection to this Interrogatory as calling for a “lengthy narrative,” such objections to interrogatories as requiring a lengthy answer have not been well-taken by courts. *See Steinbach v. Credigy Receivables, Inc.*, 2006 U.S. Dist. LEXIS 20083, *34, 2006 WL 1007272 (E.D. Ky. Apr. 13, 2006) (the court overruled an objection to an interrogatory stating that the interrogatory is not improper “simply because it requires a lengthy answer”); *Wagner v. St. Paul Fire & Marine Ins. Co.*, 238 F.R.D. 418, 419, 2006 U.S. Dist. LEXIS 81952, *1 (N.D.

W. Va. 2006) (the court overruled an objection to an interrogatory as requiring a narrative of the case because “the defendant is entitled to know the factual basis of plaintiff’s allegations and the documents which the plaintiff intends to use to support those allegations”); and *Cardenas v. Dorel Juvenile Group, Inc.*, 231 F.R.D. 616, 619, 2005 U.S. Dist. LEXIS 24556, *10-11, 63 Fed. R. Serv. 3d (Callaghan) 423 (D. Kan. 2005) (the court overruled an objection to an interrogatory as requiring a narrative account of the case because the interrogatory was sufficiently narrowed to facts relating to a specific subset of allegations, rather than all allegations). More particularly, this Interrogatory requests that Petitioner provide facts supporting allegations which are quoted directly from Petitioner’s Petition to Cancel. *See* Petition to Cancel, para. 1. Surely, Registrant is entitled to know the facts on which Petitioner bases its complaint. Petitioner’s objections should be overruled.

32. **Interrogatory No. 2**, and Petitioner’s corresponding Answer and Objections, reads as follows:

Interrogatory No. 2: Please explain, in detail and with specificity, how the term “Testofen” was adopted for use in connection with dietary supplement products.

Answer: Petitioner hereby incorporates its General Objections as if fully stated herein. Petitioner further objects to the above interrogatory as vague and ambiguous. To the extent the above interrogatory is understood, in order to provide the Fenugreek product with a distinctive name and branding the name Testofen was developed. The name Testofen has been used continuously since 2005.

See Exhibit A, *supra*.

33. Petitioner merely restates a purpose of trademarks in general by answering “in order to provide the...product with a distinctive name and branding.” Again, this very general answer does not provide Registrant with any **real, substantive information**. And, clouded by improper objections, the Answer clearly does not answer the question of *how* the term

TESTOFEN was adopted by Petitioner, with any detail or specificity, as requested by the Interrogatory.

34. Further, Petitioner specifically objects to Interrogatory No. 2 as “vague and ambiguous,” without any explanation as to why Petitioner regards Interrogatory No. 2 as vague and ambiguous. *See Exhibit A, supra.* A mere statement that an Interrogatory is vague and ambiguous without explaining the specific and particular ways in which a request vague and ambiguous is not an adequate objection, and must be overruled. *See para. 26, supra.*

35. **Interrogatory No. 3**, and Petitioner’s corresponding Answer and Objections, reads as follows:

Interrogatory No. 3: Please explain, in detail and with specificity, each and every instance of actual consumer confusion caused by Registrant’s use of the term TESTOGEN-XR.

Answer: Petitioner hereby incorporates its General Objections as if fully stated herein. Petitioner further objects to the above interrogatory as overly broad and unduly burdensome because it calls for detail and specificity of each and every instance of actual consumer confusion and calls for a lengthy narrative. Subject to and without waiving any foregoing objection, there have been instances where Petitioner has received communications from customers referring to Testogen when it was clear they meant Testofen. In accordance with Fed.R.Civ.P 33(d), please see Bates Stamped documents as GEN0018179-0018342 as responsive to the above interrogatory.

See Exhibit G, supra.

36. In addition to the generalized objections, Petitioner specifically objects to Interrogatory No. 3 as “overly broad and unduly burdensome because it calls for detail and specificity of each and every instance of actual consumer confusion and calls for a lengthy narrative.” *See Exhibit G, supra.* Yet, again, Petitioner’s very own Interrogatory Nos. 5, 7, 9, 10, 15, 16, and 17 ask Registrant for details, facts, and/or an explanation with specificity. *See*

exhibit J. Such objections to interrogatories as requiring a lengthy answer have not been well-taken by courts. *See* para. 31, *supra*. Petitioner's objection should be overruled.

37. **Interrogatory No. 4**, and Petitioner's corresponding Answer and Objections, reads as follows:

Interrogatory No. 4: Please explain, in detail and with specificity, each and every effort by you to advertise, promote and sell dietary supplements under the term 'TESTOFEN', and, in so doing, detail, list and identify with specificity all advertisement and promotional costs expended by you, broken down at least annually, to further such efforts. If you have ever advertised, promoted or sold to any market other than direct to the general public, please categorize your response accordingly by separately detailing your efforts within each market identified by you.

Answer: Petitioner hereby incorporates its General Objections as if fully stated herein. Petitioner further objects to the above interrogatory as vague, overly broad, unduly burdensome because it is not limited in time, Petitioner has been selling its TESTOFEN product for a decade. Subject to and without waiving any foregoing objection, Petitioner states that TESTOFEN has been advertised on the internet at www.testofen.com as well as at www.gencorpacific.com. In accordance with Fed.R.Civ.P 33(d), please see Bates Stamped documents as GEN0000001-0002336, 0002393, 0002399, 0002417, 0002423, 0002429, 0002430-0002490, 0003680-0005743, 0003246, 0006716-00017, 0006071-0006072, 0008653, 00071800-0007181, 0013686-0014799, 0014947-0016571, 0017131,-0017388, 0017402-0017466, and 0017775-0017857 as responsive to the above interrogatory.

See Exhibit G, *supra*.

38. In addition to the generalized objections, Petitioner specifically objects to Interrogatory No. 4 as "vague, overly broad, [and] unduly burdensome because it is not limited in time...[and] Petitioner has been selling its TESTOFEN product for a decade." *See* Exhibit G, *supra*. Registrant submits that Interrogatory No. 4 is implicitly limited in time to the time period of Petitioner's use of the term 'TESTOFEN.' More specifically, this Interrogatory is highly relevant to Registrant's counterclaims of void ab initio, partial cancellation, and abandonment due to nonuse, which take issue with use of the mark TESTOFEN to advertise, promote, and/or

sell to chemical compounders, rather than end users over the counter. Further, Petitioner does not explain why Interrogatory No. 4 is vague, which is improper. *See* para. 26, *supra*. Accordingly, Petitioner's objections are improper and should be overruled.

39. **Interrogatory No. 5**, and Petitioner's corresponding Answer and Objections, reads as follows:

Interrogatory No. 5: Please explain, in detail and with specificity, all facts, dates, and circumstances surrounding your discovery of the Registrant's use of the term TESTOGEN-XR to promote and sell dietary supplements.

Answer: Petitioner hereby incorporates its General Objections as if fully stated herein. Petitioner further objects to the above interrogatory as vague, overly broad and unduly burdensome. Subject to and without waiving any foregoing objection, Petitioner states it learned of Registrant's use of the term TESTOGEN-XR through monitoring of products containing Fenugreek and products with similar brand names to TESTOFEN. In a search conducted on July 21, 2014, Petitioner became aware of TESTOGEN-XR in connection with testosterone boosting.

See Exhibit A, *supra*.

40. Petitioner's answer to Interrogatory No. 5 incorporates the General Objections, which make it difficult for Registrant to understand what portion of the Interrogatory is being objected to and why. Petitioner specifically objects to Interrogatory No. 5 as "vague, overly broad and unduly burdensome," without any explanation as to why, which is improper and must be overruled. *See* para. 26, *supra*. Petitioner's answer to Interrogatory No. 5 is insufficient because it does not include any specific, detailed facts, as requested, other than the date of the search. For example, Petitioner's Answer does not disclose who conducted the search or where use of the term TESTOGEN-XR was discovered by the search.

41. **Interrogatory No. 6**, and Petitioner's corresponding Answer and Objections, reads as follows:

Interrogatory No. 6: Please explain, in detail and with specificity, all facts, dates, and circumstances surrounding your discovery of the Registrant's trademark registration for the term TESTOGENXR.

Answer: Petitioner hereby incorporates its General Objections as if fully stated herein. Petitioner further objects to the above interrogatory as overly broad and unduly burdensome. Subject to and without waiving any foregoing objection, Petitioner states it learned of Registrant's use of the term TESTOGEN-XR through monitoring of products containing Fenugreek and products with similar brand names to TESTOFEN. In a search conducted on July 21, 2014, Petitioner became aware of TESTOGEN-XR in connection with testosterone boosting.

See Exhibit A, supra.

42. In addition to the generalized objections, Petitioner specifically objects to Interrogatory No. 6 as "overly broad and unduly burdensome," without any explanation as to why, which is improper and must be overruled. *See* para. 26, *supra*. Petitioner's answer to Interrogatory No. 6 is insufficient because it does not include any specific, detailed facts, as requested, other than the date of the search. For example, Petitioner's answer does not disclose who conducted the search or where use of the term TESTOGEN-XR was discovered by the search.

43. **Interrogatory Nos. 7, 8 and 9** and Petitioner's corresponding Answers and Objections, each read as follows:

Interrogatory No. 7: Please list and explain, in detail and with specificity, each and every ingredient ever used in a dietary supplement sold by you under the term 'TESTOFEN'. To the extent a combination of ingredients has ever been used together at any given point, please detail and explain with specificity: (1) each ingredient ever used in combination in a dietary supplement sold by you under the term 'TESTOFEN'; (2) the date range every such combination was used by you; and (3) the respective ingredient portions (in whatever measurement used, i.e., grams, milligrams, etc.) used in each such combination.

Answer: Petitioner hereby incorporates its General Objections as if fully stated herein. Petitioner further objects to the above interrogatory as vague, overly broad and unduly burdensome, calls for information that is confidential and proprietary,

is not reasonably calculated to lead to the discovery of admissible evidence and seeks information that is not in Petitioner's care, custody or control because the TESTOFEN products are also licensed to and manufactured by others. Subject to and without waiving any objection, Petitioner states that its Fenugreek extract product is sold and packaged by itself as an OTC dietary supplement and is also used as a dietary supplement ingredient that is used as part of finished OTC dietary supplement products which are manufactured and sold by others. In accordance with Fed.R.Civ.P 33(d), please see Bates Stamped documents as GEN0000001-0002336, 0002393, 0002399, 0002417, 0002423, 0002429, 0002430-0002490, 0003680-0005743, 0003246, 0006716-00017, 0006071-0006072, 0008653, 00071800-0007181, 0013686-0014799, 0014947-0016571, 0017131,-0017388, 0017402-0017466, and 0017775-0017857 as responsive to the above interrogatory.

See Exhibit G, supra.

Interrogatory No. 8: Please list and explain, in detail and with specificity, each and every dietary supplement product ever sold by you in an 'over the counter' environment to consumers using the term 'TESTOFEN'. In responding to this interrogatory, please identify: (1) the retailers, and their locations, through which any such over the counter sale was made; (2) the date range each retailer that is identified herein by you sold a dietary supplement 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 herein by you, from the inception through the present that each retailer identified has sold such products. If a monthly breakdown is impossible to provide, please provide the next closest breakdown possible.

Answer: Petitioner hereby incorporates its General Objections as if fully stated herein. Petitioner further objects to the above interrogatory as vague, overly broad and unduly burdensome, calls for information that is confidential and proprietary, and seeks information that is not in Petitioner's care, custody or control. Subject to and without waiving any objection, the TESTOFEN product is a proprietary Fenugreek extract that is packaged and sold by itself as an OTC dietary supplement, and is also used as a dietary supplement ingredient that is used as part of finished OTC dietary supplement products that are manufactured and sold by others.

See Exhibit A, supra.

Interrogatory No. 9: Please list in detail and with specificity, each and every product ever sold or distributed by you as referenced in your Initial Disclosures as "Petitioner's TESTOFEN products". In responding to this interrogatory, please

identify: (1) all persons and entities, and their locations, through which any such sale or distribution was made; (2) the date range each person and entity that is identified herein by you 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 person and entity that is identified herein by you, from the inception through the present that each such person and entity identified has sold or distributed such products. If a monthly breakdown is impossible to provide, please provide the next closest breakdown possible.

Answer: Petitioner hereby incorporates its General Objections as if fully stated herein. Petitioner further objects to the above interrogatory as vague, overly broad and unduly burdensome because it is not limited in time and Petitioner has been selling its TESTOFEN product for a decade, calls for information that is confidential and proprietary because it calls for every product sold and customer information, and seeks information that is not in Petitioner’s care, custody or control because the TESTOFEN product has been licensed to and manufactured by others. Subject to and without waiving any objection, in accordance with Fed.R.Civ.P 33(d), please see Bates Stamped documents as GEN0000205-000224, 0007180-0007181, 0007849-0007850, 0007953-0007979, 0008077, 0008471, 0008561, 0009156-60, 00009407, 0009407, 0011050-56, 0011385-99, 0011437, 00011453, 0012223, 0012399, 0012602, 0012771, 0012865-86, 0013524-25, 0013619, 0013686-002457, 0017131-0017388, 0017402-0018150, as responsive to the above interrogatory.

See Exhibit G, supra.

44. Again, Petitioner’s Answer to Interrogatory Nos. 7, 8, and 9 incorporates the General Objections, which make it difficult for Registrant to understand what portion of the Interrogatories are being objected to, and why.

45. Further, Petitioner specifically objects to Interrogatory Nos. 7, 8, and 9 as being “vague, overly broad, and unduly burdensome.” Yet, Petitioner does not identify what language in the Interrogatories Petitioner regards as vague, overly broad, and/or unduly burdensome, or why any of the Interrogatory are unduly burdensome, so that Registrant can either rephrase the Interrogatories and/or explain any vagueness or over-breadth. Mere statement that a request is vague, overly broad, or unduly burdensome, without an explanation as to why, is not an adequate

objection and must be overruled. *See* para. 26, *supra*. Again, during the Teleconference held on September 14, 2015, Counsel for Petitioner refused to address these objections, and also refused to provide any additional information or explanation; instead, Counsel suggested that Registrant simply wait to review its document production.¹

46. Petitioner also specifically objects to Interrogatory Nos. 7, 8, and 9 as calling for “confidential and propriety” information. Yet, this objection is clearly improper and must be overruled because of the standard protective order that is automatically in place to govern the exchange of 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.

47. Petitioner also specifically objects to Interrogatory No. 7 as “not reasonably calculated to lead to the discovery of admissible evidence,” without any further explanation as to why. By virtue of the fact that Registrant’s counterclaims (void ab initio, abandonment due to non-use, and partial cancellation) focus on use of the TESTOFEN mark in connection with an ingredient sold to chemical compounders, rather than as “a dietary supplement sold and distributed over the counter” as described in Petitioner’s Registration for TESTOFEN (Reg. No. 3,336,267), information on the ingredients used in products bearing the TESTOFEN mark are reasonably calculated to lead to the discovery of admissible evidence. Therefore, Petitioner’s suggestion that Interrogatory No. 7 is somehow not reasonably calculated to lead to the

¹ Finally, on October 6, 2015, Petitioner produced a collection of documents it contends are responsive to Registrant’s discovery requests. The production consisted of 13.5 GBs of data, which Petitioner apparently suggests is fair to dump on Registrant and leave Registrant to guess, while reviewing the 13.5 GBs of data, what was intended by Petitioner’s objections. Such is not what our Rules require or invite.

discovery of admissible evidence is unfounded. In any case, Petitioner's objection to Interrogatory No. 7 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. 23, *supra*.

48. Further, Petitioner specifically objects to Interrogatory Nos. 7, 8, and 9 as "seek[ing] information that is not in Petitioner's care, custody or control because the TESTOFEN products are also licensed to and manufactured by others." Under Fed. R. Civ. P. 26(a)(1), Petitioner is required to identify individuals or entities likely to have such discoverable information. Thus far, Petitioner has provided the name of Petitioner's president and the names of licensees in its initial disclosures. *See* paras. 8 and 9, *supra* (where despite Petitioner's clear acknowledgement that much of the sales and marketing information is known by the licensees, Petitioner did not provide the identities of these licensees in its initial disclosure until Registrant specifically requested them). Accordingly, to the extent that the names of manufacturers of TESTOFEN products have not already been provided in Petitioner's initial disclosures, Registrant expressly requests that Petitioner supplement its initial disclosures with the names of manufacturers or any other individuals or entities that have this care, custody, or control, if not already provided.

49. Finally, Petitioner responds to Interrogatory No. 8 by providing a very general Answer, without any detail and without invoking Rule 33(d) by providing responsive documents. Petitioner simply evades the question posed, rather than answers it. Petitioner should be required to provide better answers and more detailed objections so that Registrant can evaluate the substantive quality of the Answer and make a determination as to what, if anything, is being withheld.

50. 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.

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

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 First Set of Interrogatory Requests be overruled;

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

(iii) 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.

By: /Scott D. Smiley/
Scott D. Smiley

Alexander D. Brown
Yongae Jun
Museum Plaza
200 South Andrews Avenue
Suite 100
Fort Lauderdale, FL 33301
(754) 300-1500

Attorney for Registrant,
CA IP Holdings, LLC

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 is being served by first-class mail to:

Ryan M. Kaiser
Amin Talati LLC
55 W. Monroe Street,
Suite 3400
Chicago, IL 60603
Telephone: (312) 327-3328
Facsimile: (312) 884-7352
ryan@amintalati.com

The Concept Law Group, P.A.

By: /Scott D. Smiley/
Scott D. Smiley
Alexander D. Brown
Yongae Jun
Museum Plaza
200 South Andrews Avenue
Suite 100
Fort Lauderdale, FL 33301
(754) 300-1500

Attorney for Registrant,
CA IP Holdings, LLC

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 ANSWERS TO REGISTRANT CA IP HOLDINGS, LLC'S
FIRST SET OF INTERROGATORIES**

Pursuant to 37 C.F.R 2 § 2.120 and Rule 33 of the Federal Rules of Civil Procedure, GE NUTRIENTS, INC., (“Petitioner”) by and through the undersigned counsel, hereby responds to CA IP Holdings, LLC, (“Registrant”) first set of interrogatories as follows.

GENERAL OBJECTIONS

The following general objections are incorporated by reference in response to each and every Interrogatory 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 Interrogatories 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. Petitioner hereby asserts this general objection with respect to each Interrogatory to the extent the Interrogatory 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 Interrogatories 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 Interrogatories to the extent that they seek information, documents, or things not in Petitioner's possession, custody or control.

E. Petitioner objects to the Interrogatories 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 Interrogatories to the extent that they seek private, privileged, and confidential commercial, financial, trade secret and/or proprietary business information. Petitioner further objects to the Interrogatory 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 Interrogatories. 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.

ANSWERS TO INTERROGATORIES

1. Please explain, in detail and with specificity, all facts and reasons for 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 [sic] its dietary supplement product.” In responding to this Interrogatory, please include, in detail and with specificity: (1) an indication of the date of your first use of the term “TESTOFEN”, and an explanation of all evidence to support such claimed first use; (2) the circumstances, nature and extent of such first use; (3) how Petitioner claims to have continuously used said term following said first use, and an explanation of all evidence to support such claimed continuous use; and (4) an explanation of every instance of how Petitioner has allegedly “used the term ‘TESTOFEN’ as a trademark for use in connection its dietary supplement product.”

Answer: Petitioner hereby incorporates its General Objections as if fully stated herein. Petitioner further objects to the above interrogatory as overly broad and unduly burdensome. Subject to and without waiving any foregoing objection, the TESTOFEN mark was filed on June 22, 2005 and registered on November 31, 2007. The date of first use in commerce was June 30, 2005. The TESTOFEN mark has been used in conjunction with the sale of over the counter

dietary supplement products since 2005. The product has also been continuously advertised on the web, in trade journals, etc., for the past eight (8) years and has been exhibited at all tradeshows attended since 2005. Moreover, the TESTOFEN mark has been licensed to multiple parties since 2005 and is included in various dietary supplement products. In accordance with Fed. R. Civ. P 33(d), Petitioner will produce responsive documents.

2. Please explain, in detail and with specificity, how the term “TESTOFEN” was adopted for use in connection with dietary supplement products.

Answer: Petitioner hereby incorporates its General Objections as if fully stated herein. Petitioner further objects to the above interrogatory as vague and ambiguous. To the extent the above interrogatory is understood, in order to provide the Fenugreek product with a distinctive name and branding the name Testofen was developed. The name Testofen has been used continuously since 2005.

3. Please explain, in detail and with specificity, each and every instance of actual consumer confusion caused by Registrant’s use of the term TESTOGEN-XR.

Answer: Petitioner hereby incorporates its General Objections as if fully stated herein. Petitioner further objects to the above interrogatory as overly broad and unduly burdensome. Subject to and without waiving any foregoing objection, there have been instances where Petitioner has received communications from customers referring to Testogen when it was clear they meant Testofen. In accordance with Fed. R. Civ. P 33(d), Petitioner will produce responsive documents.

4. Please explain, in detail and with specificity, each and every effort by you to advertise, promote and sell dietary supplements under the term ‘TESTOFEN’, and, in so doing, detail, list and identify with specificity all advertisement and promotional costs expended by you, broken down at least annually, to further such efforts. If you have ever advertised, promoted or

sold to any market other than direct to the general public, please categorize your response accordingly by separately detailing your efforts within each market identified by you.

Answer: Petitioner hereby incorporates its General Objections as if fully stated herein. Petitioner further objects to the above interrogatory as vague, overly broad, unduly burdensome because it is not limited in time, is not reasonably calculated to lead to the discovery of admissible evidence, and calls for documents that are confidential. Subject to and without waiving any foregoing objection, Petitioner states that TESTOFEN has been advertised on the internet at www.testofen.com as well as at www.gencorpacific.com. In accordance with Fed. R. Civ. P 33(d), Petitioner will provide responsive documents.

5. Please explain, in detail and with specificity, all facts, dates, and circumstances surrounding your discovery of the Registrant's use of the term TESTOGEN-XR to promote and sell dietary supplements.

Answer: Petitioner hereby incorporates its General Objections as if fully stated herein. Petitioner further objects to the above interrogatory as vague, overly broad and unduly burdensome. Subject to and without waiving any foregoing objection, Petitioner states it learned of Registrant's use of the term TESTOGEN-XR through monitoring of products containing Fenugreek and products with similar brand names to TESTOFEN. In a search conducted on July 21, 2014, Petitioner became aware of TESTOGEN-XR in connection with testosterone boosting.

6. Please explain, in detail and with specificity, all facts, dates, and circumstances surrounding your discovery of the Registrant's trademark registration for the term TESTOGEN-XR.

Answer: Petitioner hereby incorporates its General Objections as if fully stated herein. Petitioner further objects to the above interrogatory as overly broad and unduly burdensome.

Subject to and without waiving any foregoing objection, Petitioner states it learned of Registrant's use of the term TESTOGEN-XR through monitoring of products containing Fenugreek and products with similar brand names to TESTOFEN. In a search conducted on July 21, 2014, Petitioner became aware of TESTOGEN-XR in connection with testosterone boosting.

7. Please list and explain, in detail and with specificity, each and every ingredient ever used in a dietary supplement sold by you under the term 'TESTOFEN'. To the extent a combination of ingredients has ever been used together at any given point, please detail and explain with specificity: (1) each ingredient ever used in combination in a dietary supplement sold by you under the term 'TESTOFEN'; (2) the date range every such combination was used by you; and (3) the respective ingredient portions (in whatever measurement used, i.e., grams, milligrams, etc.) used in each such combination.

Answer: Petitioner hereby incorporates its General Objections as if fully stated herein. Petitioner further objects to the above interrogatory as vague, overly broad and unduly burdensome, calls for information that is confidential and proprietary, is not reasonably calculated to lead to the discovery of admissible evidence and seeks information that is not in Petitioner's care, custody or control. Subject to and without waiving any objection, Petitioner states that its Fenugreek extract product is sold and packaged by itself as an OTC dietary supplement and is also used as a dietary supplement ingredient that is used as part of finished OTC dietary supplement products which are manufactured and sold by others.

8. Please list and explain, in detail and with specificity, each and every dietary supplement product ever sold by you in an 'over the counter' environment to consumers using the term 'TESTOFEN'. In responding to this interrogatory, please identify: (1) the retailers, and their locations, through which any such over the counter sale was made; (2) the date range each retailer that is identified herein by you sold a dietary supplement 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 herein by you, from the inception through the present that each retailer identified has sold such products. If a monthly breakdown is impossible to provide, please provide the next closest breakdown possible.

Answer: Petitioner hereby incorporates its General Objections as if fully stated herein. Petitioner further objects to the above interrogatory as vague, overly broad and unduly burdensome, calls for information that is confidential and proprietary, and seeks information that is not in Petitioner's care, custody or control. Subject to and without waiving any objection, the TESTOFEN product is a proprietary Fenugreek extract that is packaged and sold by itself as an OTC dietary supplement, and is also used as a dietary supplement ingredient that is used as part of finished OTC dietary supplement products that are manufactured and sold by others.

9. Please list in detail and with specificity, each and every product ever sold or distributed by you as referenced in your Initial Disclosures as "Petitioner's TESTOFEN products". In responding to this interrogatory, please identify: (1) all persons and entities, and their locations, through which any such sale or distribution was made; (2) the date range each person and entity that is identified herein by you 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 person and entity that is identified herein by you, from the inception through the present that each such person and entity identified has sold or distributed such products. If a monthly breakdown is impossible to provide, please provide the next closest breakdown possible.

Answer: Petitioner hereby incorporates its General Objections as if fully stated herein. Petitioner further objects to the above interrogatory as vague, overly broad and unduly burdensome, calls for information that is confidential and proprietary, and seeks information that is not in Petitioner's care, custody or control. Subject to and without waiving any objection, the TESTOFEN product is a proprietary Fenugreek extract that is packaged and sold by itself as an OTC dietary supplement, and is also used as a dietary supplement ingredient that is used as part of finished OTC dietary supplement products that are manufactured and sold by others.

Dated: August 17, 2015

/s/ Saira J. Alikhan

Saira J. Alikhan (As to objections)

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

Petitioner, GE Nutrients, Inc.

BY:

NAME:

SITH VEERANALLI

TITLE:

PRESIDENT

STATE OF

California

COUNTY OF

Orange

) S.S.
)

BEFORE ME the undersigned authority, personally appeared _____, on behalf of GE NUTRIENTS, INC., who swears and deposes that the information provided in the above answers to interrogatories are true and correct to the best of his/her knowledge and belief.

SWORN TO AND SUBSCRIBED before me this _____ day of _____, 2015.

SEE ATTACHED

NOTARY PUBLIC

PRINTED NAME:

COMMISSION STAMP:

PERSONALLY KNOWN

IDENTIFICATION PRESENTED:

CALIFORNIA JURAT WITH AFFIANT STATEMENT

GOVERNMENT CODE § 8202

- See Attached Document (Notary to cross out lines 1-6 below)
- See Statement Below (Lines 1-6 to be completed only by document signer[s], *not* Notary)

Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
 County of Orange

Subscribed and sworn to (or affirmed) before me
 on this 17th day of August, 2015,
 by Jith Vecravall
 (1) _____
 (and (2) _____),
Name(s) of Signer(s)



proved to me on the basis of satisfactory evidence
 to be the person(s) who appeared before me.
 Signature _____
Signature of Notary Public

Seal
 Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document
 Title or Type of Document: _____ Document Date: _____
 Number of Pages: _____ Signer(s) Other Than Named Above: _____

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

EXHIBIT B



Museum Plaza
200 South Andrews Avenue, Suite 100
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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

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Direct: 312.784.1065
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From: Alex Brown [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

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From: Ryan Kaiser [mailto:ryan@amintalati.com]
Sent: Wednesday, September 02, 2015 5:26 PM
To: Monica Gutierrez <mgutierrez@conceptlaw.com>; Saira Alikhan <saira@amintalati.com>
Cc: Scott Smiley <scott@conceptlaw.com>; Alex Brown <abrown@conceptlaw.com>; Yongae Jun <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
773.474.8271 cellular
312.884.7352 fax
Ryan@AminTalati.com

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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

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EXHIBIT D

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 INITIAL DISCLOSURES

Pursuant to Rule 401.02 of the TBMP and Rule 26(a)(1) of the Fed. R. Civ. P., Petitioner hereby submits the following initial disclosures:

(1) the name and, if known, the address and telephone number of each individual likely to have discoverable information — along with the subjects of that information — that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment

(a) Jith Veeravalli, President, GE Nutrients, Inc.,

Mr. Veeravalli has personal knowledge of Petitioner's use of the TESTOFEN mark, its trademark registration and products, and the operations of Petitioner, including sales of TESTOFEN products and the manner in which Petitioner advertises and markets its products.

The foregoing individuals may be contacted through counsel. Petitioner reserves the right to supplement the foregoing disclosures.

(2) a copy — or a description by category and location — of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

Petitioner discloses the following categories of responsive documents, electronically stored information and tangible things:

- (1) Petitioner's TESTOFEN products;
- (2) Marketing and promotional materials concerning Petitioner's TESTOFEN products;
- (3) Sales information concerning Petitioner's TESTOFEN products and documentation of Petitioner's first use of the TESTOFEN mark in the U.S.;
- (4) Documents concerning Petitioner's application to register the TESTOFEN trademark and resulting registration;

The foregoing documents, electronically stored information, and tangible things are presently believed to be located on the premises of Petitioner or at the offices of its counsel. Petitioner reserves the right to seasonably supplement the foregoing disclosures.

July 10, 2015

Respectfully submitted,

/s/ Ryan M. Kaiser

RYAN M. KAISER
SAIRA J. ALIKHAN
ASHLEY NELSON
AMIN TALATI, LLC
55 W. MONROE ST., SUITE 3400
CHICAGO, IL 60603
Telephone: 312-327-3328
ryan@amintalati.com
saira@amintalati.com
Ashley@amintalati.com

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2015, a true and correct copy of the foregoing was served by via Electronic Mail and U.S. 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, FL 33301
scott@conceptlaw.com
mwoodruff@conceptlaw.com

/ s/ Ryan M. Kaiser

EXHIBIT E

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

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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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EXHIBIT F

Yongae Jun

From: Saira Alikhan <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)
Attachments: GE Nutrients Repsonse to First Requests to Produce - Supplemental 2015-10-6.pdf

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-dljvbb1>

PW: Gencor#543@!

Best,

Saira J. Alikhan

Amin Talati & Upadhye, LLC
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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
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Chicago, IL 60603
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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>]
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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EXHIBIT G

**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 ANSWERS TO REGISTRANT CA IP
HOLDINGS, LLC'S FIRST SET OF INTERROGATORIES**

Pursuant to 37 C.F.R 2 § 2.120 and Rule 33 of the Federal Rules of Civil Procedure, GE NUTRIENTS, INC., ("Petitioner") by and through the undersigned counsel, hereby supplements its response to CA IP Holdings, LLC, ("Registrant") first set of interrogatories as follows.

GENERAL OBJECTIONS

The following general objections are incorporated by reference in response to each and every Interrogatory 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 Interrogatories 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. Petitioner hereby asserts this general objection with respect to each Interrogatory to the extent the Interrogatory 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 Interrogatories 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 Interrogatories to the extent that they seek information, documents, or things not in Petitioner's possession, custody or control.

E. Petitioner objects to the Interrogatories 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 Interrogatories to the extent that they seek private, privileged, and confidential commercial, financial, trade secret and/or proprietary business information. Petitioner further objects to the Interrogatory 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 Interrogatories. 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 Defendant’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 ANSWERS TO INTERROGATORIES

1. Please explain, in detail and with specificity, all facts and reasons for 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 [sic] its dietary supplement product.” In responding to this Interrogatory, please include, in detail and with specificity: (1) an indication of the date of your first use of the term “TESTOFEN”, and an explanation of all evidence to support such claimed first use; (2) the circumstances, nature and extent of such first use; (3) how Petitioner claims to have continuously used said term following said first use, and an explanation of all evidence to support such claimed continuous use; and (4) an explanation of every instance of how Petitioner has allegedly “used the term ‘TESTOFEN’ as a trademark for use in connection its dietary supplement product.”

Supplemental Answer: Petitioner hereby incorporates its General Objections as if fully stated herein. Petitioner further objects to the above interrogatory as overly broad and unduly burdensome because it calls for all facts, in detail and with specificity, and calls for a lengthy narrative. Subject to and without waiving any foregoing objection, the TESTOFEN mark was filed on June 22, 2005 and registered on November 31, 2007. The date of first use in commerce was June 30, 2005. The TESTOFEN mark has been used in conjunction with the sale of over the counter dietary supplement products since 2005. The product has also been continuously advertised on the web, in trade journals, etc., for the past eight (8) years and has been exhibited at all tradeshows attended since 2005. Moreover, the TESTOFEN mark has been licensed to multiple parties since 2005 and is included in various dietary supplement products. In accordance with Fed.R.Civ.P 33(d), please see Bates Stamped documents as GEN0000001-0002336, 0002393, 0002399, 0002417, 0002423, 0002429, 0002430, 0002431-0002440, 002486, 0003680, 0005742-46, 0006246, 0006716-17, 0006071-72, 0007180-81, 0007849-50, 0007953-79, 0008077, 0008653, 0008471, 0008561, 0009156-60, 0009407, 0011050-56, 0011385-99, 0013686-14799, 0014947-0016571, 0017131-0017388, 0017461-0017857, 0018178, 0024863, as responsive to the above interrogatory.

3. Please explain, in detail and with specificity, each and every instance of actual consumer confusion caused by Registrant's use of the term TESTOGEN-XR.

Supplemental Answer: Petitioner hereby incorporates its General Objections as if fully stated herein. Petitioner further objects to the above interrogatory as overly broad and unduly burdensome because it calls for detail and specificity of each and every instance of actual consumer confusion and calls for a lengthy narrative. Subject to and without waiving any foregoing objection, there have been instances where Petitioner has received communications

from customers referring to Testogen when it was clear they meant Testofen. In accordance with Fed.R.Civ.P 33(d), please see Bates Stamped documents as GEN0018179-0018342 as responsive to the above interrogatory.

4. Please explain, in detail and with specificity, each and every effort by you to advertise, promote and sell dietary supplements under the term 'TESTOFEN', and, in so doing, detail, list and identify with specificity all advertisement and promotional costs expended by you, broken down at least annually, to further such efforts. If you have ever advertised, promoted or sold to any market other than direct to the general public, please categorize your response accordingly by separately detailing your efforts within each market identified by you.

Supplemental Answer: Petitioner hereby incorporates its General Objections as if fully stated herein. Petitioner further objects to the above interrogatory as vague, overly broad, unduly burdensome because it is not limited in time, Petitioner has been selling its TESTOFEN product for a decade. Subject to and without waiving any foregoing objection, Petitioner states that TESTOFEN has been advertised on the internet at www.testofen.com as well as at www.gencorpacific.com. In accordance with Fed.R.Civ.P 33(d), please see Bates Stamped documents as GEN0000001-0002336, 0002393, 0002399, 0002417, 0002423, 0002429, 0002430-0002490, 0003680-0005743, 0003246, 0006716-00017, 0006071-0006072, 0008653, 00071800-0007181, 0013686-0014799, 0014947-0016571, 0017131,-0017388, 0017402-0017466, and 0017775-0017857 as responsive to the above interrogatory.

7. Please list and explain, in detail and with specificity, each and every ingredient ever used in a dietary supplement sold by you under the term 'TESTOFEN'. To the extent a combination of ingredients has ever been used together at any given point, please detail and explain with specificity: (1) each ingredient ever used in combination in a dietary supplement sold by you under the term 'TESTOFEN'; (2) the date range every such combination was used by you; and (3) the respective ingredient portions (in whatever measurement used, i.e., grams, milligrams, etc.) used in each such combination.

Supplemental Answer: Petitioner hereby incorporates its General Objections as if fully stated herein. Petitioner further objects to the above interrogatory as vague, overly broad and unduly burdensome, calls for information that is confidential and proprietary, is not reasonably calculated to lead to the discovery of admissible evidence and seeks information that is not in Petitioner's care, custody or control because the TESTOFEN products are also licensed to and manufactured by others. Subject to and without waiving any objection, Petitioner states that its Fenugreek extract product is sold and packaged by itself as an OTC dietary supplement and is also used as a dietary supplement ingredient that is used as part of finished OTC dietary supplement products which are manufactured and sold by others. In accordance with Fed.R.Civ.P 33(d), please see Bates Stamped documents as GEN0000001-0002336, 0002393, 0002399, 0002417, 0002423, 0002429, 0002430-0002490, 0003680-0005743, 0003246, 0006716-00017, 0006071-0006072, 0008653, 00071800-0007181, 0013686-0014799, 0014947-0016571, 0017131,-0017388, 0017402-0017466, and 0017775-0017857 as responsive to the above interrogatory.

9. Please list in detail and with specificity, each and every product ever sold or distributed by you as referenced in your Initial Disclosures as "Petitioner's TESTOFEN products". In responding to this interrogatory, please identify: (1) all persons and entities, and their locations, through which any such sale or distribution was made; (2) the date range each person and entity that is identified herein by you 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 person and entity that is identified herein by you, from the inception through the present that each such person and entity identified has sold or distributed such products. If a monthly breakdown is impossible to provide, please provide the next closest breakdown possible.

Supplemental Answer: Petitioner hereby incorporates its General Objections as if fully stated herein. Petitioner further objects to the above interrogatory as vague, overly broad and unduly burdensome because it is not limited in time and Petitioner has been selling its

TESTOFEN product for a decade, calls for information that is confidential and proprietary because it calls for every product sold and customer information, and seeks information that is not in Petitioner's care, custody or control because the TESTOFEN product has been licensed to and manufactured by others. Subject to and without waiving any objection, in accordance with Fed.R.Civ.P 33(d), please see Bates Stamped documents as GEN0000205-000224, 0007180-0007181, 0007849-0007850, 0007953-0007979, 0008077, 0008471, 0008561, 0009156-60, 00009407, 0009407, 0011050-56, 0011385-99, 0011437, 00011453, 0012223, 0012399, 0012602, 0012771, 0012865-86, 0013524-25, 0013619, 0013686-002457, 0017131-0017388, 0017402-0018150, as responsive to the above interrogatory.

Dated: October 15, 2015

/s/ Saira J. Alikhan
Saira J. Alikhan (As to objections)
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

Petitioner, GE Nutrients, Inc.

BY: [Signature]

NAME: JITH VEERAVALLI

TITLE: PRESIDENT

STATE OF California)
) S.S.
COUNTY OF Orange)

BEFORE ME the undersigned authority, personally appeared Jith Veeravalli, on behalf of GE NUTRIENTS, INC., who swears and deposes that the information provided in the above answers to interrogatories are true and correct to the best of his knowledge and belief.

SWORN TO AND SUBSCRIBED before me this 13 day of October, 2015.

[Signature]
NOTARY PUBLIC

PRINTED NAME: Ali Saghafi

COMMISSION STAMP:



PERSONALLY KNOWN

IDENTIFICATION PRESENTED: California Driver's License

CERTIFICATE OF SERVICE

I hereby certify that on October 15, 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
Alex Brown
Yongae Jun
Museum Plaza
200 South Andrews Avenue, Suite 100
Fort Lauderdale, Florida 33301
(754) 300-1500
Email: scott@conceptlaw.com
abrown@conceptlaw.com
yjun@conceptlaw.com

EXHIBIT H

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
Fax: 312.884.7352
saira@AminTalati.com
www.amintalati.com

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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

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Chicago, IL 60603

Direct: 312.784.1065

Main: 312.466.1033

Fax: 312.884.7352
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
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Direct: 312.784.1065
Main: 312.466.1033

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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: 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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EXHIBIT I

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

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

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Best,

Saira J. Alikhan
Amin Talati & Upadhye, LLC

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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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EXHIBIT J

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

GE NUTRIENTS, INC.,

Petitioner,

vs.

CA IP HOLDINGS, LLC,

Registrant.

Cancellation No. 92,059,915

Registration No. 4,302,581

Mark: TESTOGEN-XR

PETITIONER'S FIRST SET OF INTERROGATORIES

Pursuant to 37 C.F.R. 2 § 2.120 and Rule 33 of the Federal Rules of Civil Procedure, Petitioner GE Nutrients, Inc. requests that Registrant CA IP HOLDINGS, LLC answer under oath within thirty (30) days hereof the interrogatories set forth below, subject to the following instructions and definitions.

INSTRUCTIONS AND DEFINITIONS

A. These interrogatories shall be deemed to seek answers as of the date hereof, but shall be deemed to be continuing so that any additional information relating in any way to these interrogatories which Registrant acquires or which becomes known to Registrant, up to and including the time of trial, shall be furnished to Petitioner promptly after any such information is acquired or becomes known.

B. "Petitioner," as used herein, shall mean GE Nutrients, Inc., and includes, without limitation, any predecessors-in-interest as well as all applicable subsidiaries, affiliates, divisions, licensees, or identities under which Petitioner does business.

C. “Registrant,” as used herein, shall mean CA IP Holdings, Inc., and includes, without limitation, any predecessors-in-interest as well as all applicable subsidiaries, affiliates, divisions, licensees, or identities under which Registrant does business.

D. “And” and “or” shall be construed both conjunctively and disjunctively, and each shall include the other whenever such dual construction will serve to bring within the scope of this request any documents which would otherwise not be brought within its scope.

E. The term “document” is used in its customary sense and includes, without limitation, the following items (whether printed or electronic, or recorded or reproduced by any other mechanical process, or written or produced by hand, and whether or not claimed to be privileged against discovery on any ground): letters, memoranda, notes, agreements, contracts, licenses, communications (including intra-company communications), correspondence, telegrams, bills of lading, warehouse receipts, orders for the delivery of goods or performance of services, documents of title, summaries of records of personal conversations or interviews, diaries, forecasts, statistical statements, graphs, laboratory and engineering reports and notebooks, charts, plans, drawing, minutes or records of meetings, minutes or records of conferences, expressions or statements of policy, lists of persons attending meetings or conferences, reports and/or summaries of interviews, reports and/or summaries of investigations, opinions or reports of consultants, opinions of counsel, records, reports or summaries of negotiations, brochures, pamphlets, advertisements, circulars, trade letters, press releases, drafts of any documents, original or preliminary notes, photographs, all other writings and data compilations, marginal comments appearing on any document, copies which differ in any respect from an original or copy thereof, and tangible things such as models or prototypes.

F. "Person" or "persons" includes, without limitation, any natural person or individual, association, business organization, partnership, corporation, government, organization, or formal or informal group or division thereof.

G. "Advertising" shall mean activity which attracts attention to Registrant or its products or services, including the use of "advertisements" as hereafter defined. "Advertisements" include social network, local, cable and spot television or radio commercials; billboards; print advertising; point of sale, point of purchase, direct mail, press releases, promotion and publicity materials of all kinds, including electronic and online media; exhibits and shows; coupons; premiums; novelties; signs; posters; brochures; samples; co-op, dealer, distributor and customer catalogs or audio-visual catalogs, price lists, spec sheets, and directories; and all other forms of media or communication utilized in the commercial advertising, promotion, marketing or sale of Registrant's products/services, or in connection with publicity relating thereto.

H. "Each" means each and every.

I. "Identify" shall mean a complete identification to the full extent known or ascertainable by Registrant, whether or not in Registrant's possession and whether or not alleged to be privileged, including the following information:

- a. The present depository or depositories and the name and address of the person(s) having custody of any item to be identified, unless the item is a person or a public document;
- b. Where the item to be identified is a person, his or her full name, home and business address, home and business telephone number, home and business email address, job title, and present employer; and

- c. Where the item to be identified is a documents, its character, title, date, address or recipient, and author, signatory or sender;
- d. Where the item identified is an event, the date and place of such event, all persons present at the event and a description of what was said and/or done by each such person; and

J. The term “Registrant’s mark” shall mean TESTOGEN-XR, as well as any mark containing the term “TESTOGEN.” Where applicable, “Registrant’s mark” shall be interpreted broadly to include design marks and composite marks so that Registrant’s answers to these interrogatories are broad and complete in scope rather than narrow and limited in their interpretation of terms.

K. The term “Petitioner’s mark” shall mean TESTOFEN. Where applicable, “Petitioner’s mark” shall be interpreted broadly to include design marks and composite marks so that Registrant’s answers to these interrogatories are broad and complete in scope rather than narrow and limited in their interpretation of terms.

L. To “state the basis” of or for a particular claim, assertion, allegation, or contention, means that the party shall:

- a. Identify each and every document (and, where pertinent, the section, article, or subparagraph thereof), which forms any part of the source of the party’s information, regarding the alleged facts or legal conclusions referred to by the interrogatory.
- b. Identify each and every statement or communication which forms any part of the source of the party's information regarding the alleged facts or legal conclusions referred to by the interrogatory.

- c. State separately the acts or omissions to act on the part of any person (identifying the acts or omissions to act by stating their nature, time, and place and identifying the persons involved) which form any part of the party's information regarding the alleged facts or legal conclusions referred to in the interrogatory; and
- d. State separately any other fact which forms the basis of the party's information regarding the alleged facts or conclusions referred to in the interrogatory.

INTERROGATORIES

Interrogatory No. 1

Identify the dates upon which Registrant first used Registrant's mark: (i) anywhere; and (ii) interstate commerce.

Interrogatory No. 2

(a) Identify all products and services offered or sold in connection with Registrant's mark, including the dates of use of Registrant's Mark for each product and service;

(b) Identify the manner in which Registrant's mark has been used on or in connection with each product or service (e.g., labels attached to the goods, product tags, product packaging, brochures, marketing materials, point of sale displays, signage, web sites, etc., or any drafts therefore);

(c) Identify all types of purchasers and customers for the products and services identified in response to Interrogatory No. 2 (a);

(d) Describe with particularity the channels of trade in which such products and services are offered;

(e) for each product and service identified in response to Interrogatory No. 2 (a), state the intended purpose and manner of use by purchasers or end users;

(f) identify the geographic location(s) (by state) in which the products and services identified in response to Interrogatory No. 2(a) are sold;

(g) identify, by year from the first year such products have been sold in the U.S. to the present, the annual volume of sales in units and dollars for each of the products and services identified in response to Interrogatory No. 2(a);

(h) identify the yearly amount Registrant has spent on advertising each of the products and identified in response to Interrogatory No. 2(a);

(i) identify the current wholesale and retail price of each product and service identified in response to Interrogatory No. 2(a);

(j) identify all documents which support or otherwise substantiate the information stated in answer to subparts (a) through (i) of this Interrogatory.

Interrogatory No. 3

Identify all goods and services in connection with which Registrant intends to use Registrant's mark, but for which use has not yet begun.

Interrogatory No. 4

For each product and service identified in response to Interrogatory No. 2(a), above:

(a) describe with particularity the manner in which each product or service is, has been, or is intended to be brought to the end user, including but not limited to the identification of all distributors, retailers or other re-sellers and online retail outlets through which each product or service is, has been, or is intended to be sold;

(b) identify all trade shows, exhibitions, and other related events that Registrant attended, exhibited at, or participated in during the past five (5) years;

(c) identify all documents which relate or refer to the information stated in answer to subparts (a) and (b) of this Interrogatory.

Interrogatory No. 5

Explain, in detail and with specificity, how and why the term “TESTOGEN-XR” was adopted for use in connection with dietary supplement products.

Interrogatory No. 6

Identify all persons who have performed and/or supervised the following functions during the past five (5) years relating each of the goods identified in response to Interrogatory 2(a):

- (a) product or service development
- (b) marketing;
- (c) sales and fulfillment;
- (d) customer service;
- (e) custodians of records and files;
- (f) procurer of trademarks/trademark registrations;

Interrogatory No. 7

Describe in detail each poll, survey, consumer study, or other market research effort initiated, whether or not completed, by Registrant or any other person on its behalf:

(a) concerning the use of Registrant’s mark, either alone or in combination with any other word or symbol, as a trademark, service mark and/or trade name;

(b) concerning any product or service which has been sold or offered, or which is intended to be sold or offered, using Registrant's mark either alone or in combination with any other word or symbol, as a trademark, service mark and/or trade name; and

(c) identify all documents which relate to the information stated in answer to subparts (a) through (b) of this interrogatory.

Interrogatory No. 8

Identify all information regarding any inquiry, survey, poll, research, or other investigation conducted or caused to be conducted by Registrant involving Petitioner or Petitioner's TESTOFEN trademark or product(s).

Interrogatory No. 9

Explain, in detail and with specificity, all facts, dates, and circumstances surrounding Registrant's discovery of the Petitioner's use of the term TESTOFEN to promote and sell dietary supplements.

Interrogatory No. 10

Explain, in detail and with specificity, all facts, dates, and circumstances surrounding Registrant's discovery of the Petitioner's trademark registration for the term TESTOFEN.

Interrogatory No. 11

Identify each person whom Registrant intends to call as a witness, including expert witnesses, and for each witness describe the nature of his or her expected testimony, including the identification of all documents about which each witness is expected to testify.

Interrogatory No. 12

Identify all persons who were or are, responsible for or participating in, the conception, creation, selection or adoption of Registrant's Mark for use on or in connection with any goods or services.

Interrogatory No. 13

Identify each trademark search, investigation or any other inquiry conducted by or for Registrant concerning the availability to use or register any mark containing the term TESTOGEN, and identify the persons involved in the review of any such trademark search, investigation or other inquiry.

Interrogatory No. 14

Describe each and every instance of which Registrant is aware in which any person has been in any way confused, mistaken or deceived as to the origin or sponsorship of any goods or services sold or offered for sale under or in connection with Registrant's Mark.

Interrogatory No. 15

Describe in detail all facts and circumstances that support Registrant's affirmative defense of Laches.

Interrogatory No. 16

Describe in detail all facts and circumstances that support Registrant's affirmative defense of Estoppel.

Interrogatory No. 17

Describe in detail all facts and circumstances that support the contention in Paragraph 41 of the Registrant's Counterclaims that "Petitioner's statement of use of the mark TESTOFEN in commerce for the identified goods, namely dietary supplements sold and distributed over the counter, at the time of filing of Petitioner's application was false."

Interrogatory No. 18

Identify all persons furnishing information for the response to these interrogatories, designating the number of each interrogatory for which such persons furnished information.

Interrogatory No. 19

Describe the relationship between CA IL Holdings, LLC and RCBA Nutraceuticals, LLC.

Interrogatory No. 20

Describe the relationship between CA IL Holdings, LLC and ANE Marketers & Management, LLC.

Interrogatory No. 21

Describe the relationship between Registrant and Florida Supplement, LLC (including all work or services performed by Florida Supplement, LLC for or on behalf of Registrant).

Interrogatory No. 22

Describe the relationship between Registrant and Compound Solutions, Inc. (including all work or services performed by Compound Solutions, Inc. for or on behalf of Registrant).

Interrogatory No. 23

Identify every third-party product name or trademark Registrant is aware of which contains the term "TESTO."

September 17, 2015

Respectfully submitted,

/s/ Saira J. Alikhan

SAIRA J. ALIKHAN

RYAN M. KAISER

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Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on September 17, 2015, a true and correct copy of the foregoing was served by via electronic mail on all counsel or parties of record on the Service List below:

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/s/ Ryan M. Kaiser