

TTAB

03-03-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #30

UNITED STATES DEPARTMENT OF
COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: February 13, 2003

Opposition No 91155077
Serial No. 78082909

JOAR OPHEIM
3040 VALENCIA AVE
APTOS, CA 95003-4126

GENETICS INSTITUTE, LLC

v.

Opheim, Joar

EGON E. BERG.
WYETH
5 GIRALDA FARMS
MADISON, NJ 07940

03 MAR 13 AM 9:30
TRADEMARK TRIAL AND
APPEAL BOARD

George Woods, Legal Assistant:

A notice of opposition to the registration sought in the above-identified application has been filed. A copy of the notice is attached.

ANSWER IS DUE FORTY DAYS after the mailing date hereof. (See Patent and Trademark Rule 1.7 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that became effective October 9, 1998. See Notice of Final Rulemaking published in the *Official Gazette* on September 29, 1998 at 1214 TMOG 145. Slight corrections to the rules, resulting in a correction notice, were published in the *Official Gazette* on October 20, 1998 at 1215 TMOG 64. A copy of the recent amendments to the Trademark Rules, as

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well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), is available at <http://www.uspto.gov>.

Discovery and testimony periods are set as follows:

Discovery period to open:	March 05, 2003
Discovery period to close:	September 01, 2003
30-day testimony period for party in position of plaintiff to close:	November 30, 2003
30-day testimony period for party in position of defendant to close:	January 29, 2004
15-day rebuttal testimony period for plaintiff to close:	March 14, 2004

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). A hard copy of the *Official Gazette* containing this notice is available for a fee from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (Telephone (202) 512-1800). The notice is also available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.



03-03-2003

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #30

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

-----X)
)
 In the Matter of the Application of:)
)
 Opheim, Joar)
)
 Serial No.: 78-082,909)
)
 Published in the OFFICIAL GAZETTE)
 on: October 29, 2002)
)
 For the trademark: NOROMEGA)
)
 -----X



01-27-2003

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #70

RECEIVED
MAR 10 2003
U.S. PATENT & TRADEMARK OFFICE

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

NOTICE OF OPPOSITION

Sir:

Genetics Institute, LLC, a corporation of the State of Delaware, with offices at 87 Cambridge Park Drive, Cambridge, Massachusetts 02140 (hereinafter referred to as "Opposer") believes that it will be damaged by registration of the mark shown in the above-identified application and hereby opposes registration thereof.

As grounds of opposition, it is alleged that:

1. Opheim, Joar, an individual, (hereinafter referred to as "Applicant") has applied to register NOROMEGA as a trademark for "nutritional and dietary supplement" in International Class 5.

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DD

2. Opposer, through its parent company, Wyeth, has for many years long prior to the filing date of the subject application by Applicant, been continuously engaged in, inter alia, the manufacture and sale of health care products, including dietary and nutritional supplements.

3. Opposer is the owner of the trademark NEUMEGA, which was duly registered on April 25, 1995 under Registration No. 1,891,610; a copy of said Registration is attached hereto as Exhibit A. The Registration is valid, subsisting, and incontestable.

4. Any use by Applicant of the trademark for which registration is sought is without Opposer's permission or consent.

5. The granting of the requested registration to Applicant is deemed likely to result in confusion, mistake and deception with Opposer and Opposer's trademark, and/or result in the incorrect belief that Applicant or its goods for which registration is sought herein are in some way connected with, sponsored by or approved by Opposer.

WHEREFORE, Opposer believes that it will be damaged by the granting of registration to Applicant for the subject claimed trademark and prays that the instant application for registration be rejected and denied.

This Notice of Opposition is filed in triplicate.

Opposer requests that the requisite opposition fee be charged to Deposit Account No. 01-1425 of Wyeth.

The undersigned, Genetics Institute, LLC, hereby appoints Egon E. Berg, Stanley J. Silverberg, Mary M. Cheli, and Carole E. DeNatale, members of the Bar of the State of New York, its attorney in the matter of the above-identified opposition, with full power to act, with full power of substitution and revocation, to prosecute said opposition, to transact all business with the Patent

and Trademark Office and elsewhere in connection with this Opposition, and to receive all official communications relating to same. It is further requested that such correspondence be addressed to Egon E. Berg, Esquire, Wyeth, Five Giralda Farms, Madison, New Jersey 07940.

GENETICS INSTITUTE, LLC

Egon E. Berg

Egon E. Berg
Attorney for Opposer
Wyeth
Five Giralda Farms
Madison, New Jersey 07940
Telephone: (973) 683-2128
Facsimile: (973) 683-2122

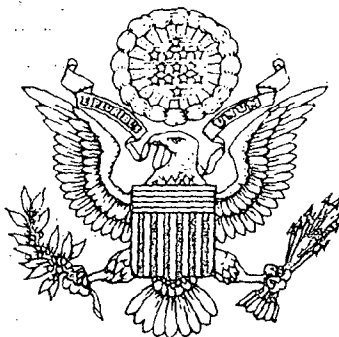
Dated: January 24, 2003

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513 ATTN: TTAB - Fee.

Ted M. Kushner

Ted M. Kushner
DATED: January 24, 2003

The United States of America



CERTIFICATE OF REGISTRATION

This is to certify that the records of the Patent and Trademark Office show that an application was filed in said Office for registration of the Mark shown herein, a copy of said Mark and pertinent data from the Application being annexed hereto and made a part hereof,

And there having been due compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents and Trademarks,

Upon examination, it appeared that the applicant was entitled to have said Mark registered under the Trademark Act of 1946, as amended, and the said Mark has been duly registered this day in the Patent and Trademark Office on the

PRINCIPAL REGISTER

to the registrant named herein.

This registration shall remain in force for TEN years unless sooner terminated as provided by law.



In Testimony whereof I have hereunto set my hand and caused the seal of the Patent and Trademark Office to be affixed this twenty-fifth day of April 1995.

Bence Lehman

Commissioner of Patents and Trademarks

Int. Cl.: 5

Prior U.S. Cl.: 18

Reg. No. 1,891,610

United States Patent and Trademark Office Registered Apr. 25, 1995

**TRADEMARK
PRINCIPAL REGISTER**

NEUMEGA

GENETICS INSTITUTE, INC. (DELAWARE
CORPORATION)
87 CAMBRIDGE PARK DRIVE
CAMBRIDGE, MA 021402387

FIRST USE 11-1-1993; IN COMMERCE
11-1-1993.

SN 74-249,250, FILED 2-25-1992.

FOR: PROTEIN BLOOD CELL GROWTH
FACTOR FOR INJECTION OR INTRAVENOUS
USE, IN CLASS 5 (U.S. CL. 18).

NORA BUCHANAN WILL, EXAMINING AT-
TORNEY

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registrant
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DEPARTMENT OF COMMERCE

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 3040 VALENCIA AVE
 APTOS, CA 95003-4126

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 RETURN TO SENDER
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 UNABLE TO FORWARD
 RETURN TO SENDER