

ESTTA Tracking number: **ESTTA125623**

Filing date: **02/19/2007**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Whitmire Micro-Gen Research Laboratories, Inc.
Granted to Date of previous extension	02/18/2007
Address	3568 Tree Court Industrial Blvd. St. Louis, MO 63122 UNITED STATES
Correspondence information	James B. Surber Attorney Bryan Cave LLP 211 North Broadway Suite 3600 St. Louis, MO 63102 UNITED STATES jbsurber@bryancave.com Phone:314-259-2390

Applicant Information

Application No	78611411	Publication date	08/22/2006
Opposition Filing Date	02/19/2007	Opposition Period Ends	02/18/2007
Applicant	BioFutures PI Limited BioSciences Building, Crown Street Liverpool, L69 7ZB UNITED KINGDOM		

Goods/Services Affected by Opposition

<p>Class 001. Opposed goods and services in the class: Chemical preparations for use in agriculture, horticulture and forestry, namely, chemical preparations for the treatment of seed and plants, not including plant regulators; preparations for fortifying plants for use in agriculture, horticulture and forestry; Natural and artificial fertilizers; Bio control preparation for agricultural, horticulture and forestry use containing bacteria to protect plants from pests, protect and expand root structure and, increase nutrient uptake, and improve plant health and yield</p>
<p>Class 005. Opposed goods and services in the class: Preparations for repelling or destroying weeds, fungi, pests and vermin; Fungicides, Herbicides, and Pesticides for agricultural, horticultural and forestry use; Agricultural oil for use in repelling or destroying weeds, fungi, pests and vermin; Plant protection solutions used to kill pests for agricultural, horticultural and forestry use; Preparations for use in agriculture, horticulture and forestry for repelling or destroying weeds, fungi, pests and vermin; preparations for protecting plants against pathogens and pests; Antibacterial hand wash; antimicrobial coatings to prevent the growth of mold, mildew, bacteria and fungus on various surfaces; All purpose disinfectants; Germicides; and insect repellants</p>

Attachments	Opposition.pdf (4 pages)(86294 bytes)
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Signature	/James B. Surber/
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Name	James B. Surber
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Date	02/19/2007
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application
Serial No. 78/611,411
For the Mark: PI (& Design)
Published for Opposition: August 22, 2006

Whitmire Micro-Gen Research)
Laboratories, Inc.)
)
Opposer,)
)
vs.)
)
BioFutures PI Limited)
)
Applicant.)

Opposition No. _____

CERTIFICATE OF ELECTRONIC MAIL
I hereby certify that this correspondence is being sent to the TTAB via the Electronic System for Trademark Trials and Appeals (ESTTA) on this 19th day of February, 2007.

_____/jbs/
James B. Surber, Esq.

NOTICE OF OPPOSITION

Whitmire Micro-Gen Research Laboratories, Inc., a corporation organized under the laws of the State of Delaware, having an address of 3568 Tree Court Industrial Boulevard, St. Louis, Missouri 63122 (hereinafter referred to as “Opposer”) believes it will be damaged by registration of the mark PI (& Design) in U.S. application Serial No. 78/611,411 (hereinafter referred to as “the ‘411 application”) filed on April 18, 2006 by BioFutures PI Limited (hereinafter referred to as “Applicant”), and hereby opposes registration of said mark.

The mark in the ‘411 application was published for opposition in the Official Gazette on August 22, 2006. The Trademark Trial and Appeal Board has granted Opposer’s request to extend time to oppose the ‘411 application until Sunday, February 18, 2007. Inasmuch as the opposition period ends on a Sunday, and Monday (February 19, 2007 being a Federal Holiday), the deadline for filing a Notice of Opposition is extended to *the next succeeding day that is not a*

Saturday, Sunday or a Federal holiday (i.e., until Tuesday, February 20, 2007), this Notice of Opposition is therefore timely filed. 37 CFR § 2.196.

As grounds for opposition, Opposer alleges the following:

1. For many years, Opposer has been engaged in the business of selling and offering for sale in the U.S. and around the world, *inter alia*, insecticides for commercial, institutional and industrial use.

2. Since at least as early as July 23, 1997, Opposer has used the trademark P.I. in U.S. commerce in connection with its insecticides for commercial, institutional and industrial use.

3. Opposer owns U.S. Trademark Registration No. 2,185,061 for its trademark P.I. (hereinafter referred to as the "P.I. Registration") for use in connection with Opposer's insecticides for commercial, institutional and industrial use.

4. Opposer's P.I. Registration is incontestable and was based on an application filed with the USPTO before April 18, 2006, the filing date for the '411 application. The P.I. Registration is valid and existing and *prima facie* evidence of Opposer's exclusive right to use its P.I. mark in U.S. commerce in connection with its insecticides for commercial, institutional and industrial use.

5. By reason of the aforementioned, Opposer has acquired valuable rights and goodwill in its P.I. mark

6. Notwithstanding the foregoing, Applicant filed the '411 application with the USPTO on April 18, 2006 for PI (& Design) for use with:

- "Chemical preparations for use in agriculture, horticulture and forestry, namely, chemical preparations for the treatment of seed and plants, not including plant regulators; preparations for fortifying plants for use in agriculture, horticulture and forestry; Natural and artificial fertilizers; Bio control preparation for

agricultural, horticulture and forestry use containing bacteria to protect plants from pests, protect and expand root structure and, increase nutrient uptake, and improve plant health and yield,” in International Class 001; and

- “Preparations for repelling or destroying weeds, fungi, pests and vermin; Fungicides, Herbicides, and Pesticides for agricultural, horticultural and forestry use; Agricultural oil for use in repelling or destroying weeds, fungi, pests and vermin; Plant protection solutions used to kill pests for agricultural, horticultural and forestry use; Preparations for use in agriculture, horticulture and forestry for repelling or destroying weeds, fungi, pests and vermin; preparations for protecting plants against pathogens and pests; Antibacterial hand wash; antimicrobial coatings to prevent the growth of mold, mildew, bacteria and fungus on various surfaces; All purpose disinfectants; Germicides; and insect repellants,” in International Class 005.

7. The mark in the ‘411 application for PI (& Design) is confusingly similar in appearance, pronunciation, and commercial impression to Opposer’s P.I. mark.

8. Applicant seeks to register PI (& Design), a mark confusingly similar to Opposer’s marks, for goods similar to Opposer’s products and in the identical International Class of goods as Opposer’s products. The goods for which Applicant seeks registration are customarily sold through similar channels of trade, to similar classes of customers, and under circumstances that are likely to cause confusion with Opposer’s P.I. mark.

9. Accordingly, when used in connection with the goods set forth in the ‘411 application, PI (& Design) so resembles Opposer’s P.I. mark as to cause confusion, to cause mistake, and to deceive as to the source of origin or sponsorship of Applicant’s products.

10. Applicant’s alleged mark PI (& Design) in the ‘411 application is not registrable under Section 2(d) of the Lanham Act in view of Opposer’s prior, continuous, and ongoing use of its P.I. mark in U.S. commerce.

WHEREFORE, Opposer prays that this opposition be sustained and that the registration sought by U.S. Trademark Application Serial No. 78/611,411 be denied.

Opposer hereby appoints the following individuals as its attorneys with full power of substitution, association, and revocation in the above-entitled opposition to prosecute same and to transact all business in the USPTO and TTAB in connection with said opposition: James B. Surber, David A. Roodman, Daniel A. Crowe, Stephen P. Gilbert, Stephen M. Haracz, Erik Wolff Kahn, Lawrence G. Kurland, Maurice B. Stiefel, Todd J. Braverman, Katherine L. McDaniel, Lucinda A. Althausser, Robert G. Lancaster, Mark A. Paskar, George C. Chen, K. Lee Marshall, Andrew Klungness, Jason P. Kelly, and other intellectual property attorneys from the firm, all of the above-mentioned attorneys are licensed members of their respective State Bar and work with the firm of BRYAN CAVE LLP, One Metropolitan Square, 211 North Broadway, Suite 3600, St. Louis, Missouri 63102.

The USPTO is authorized to withdraw the standard government opposition filing fees for this matter, as well as to credit any overpayments to USPTO Deposit Account No. 02-4467.

Respectfully Submitted,

Date: February 19, 2007

By: /jbs/
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ATTORNEYS FOR OPPOSER
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