

UNITED STATES PATENT AND TRADEMARK OFFICE  
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nmt/wbc

May 29, 2019

Opposition No. 91244593

*Cytozyme Laboratories, Inc.*

*v.*

*JH Biotech, Inc.*

**Wendy Boldt Cohen, Interlocutory Attorney:**

On April 30, 2019, Applicant filed a proposed amendment to its application Serial No. 87953971.<sup>1</sup> *See* 6 TTABVUE. By the proposed amendment, Applicant seeks to amend the basis of the application from use in commerce under Trademark Act Section 1(a) to intent-to-use under Section 1(b). Opposer has not provided its consent to the amendment.

An application subject to an opposition may not be amended in substance nor may a registration subject to a cancellation be amended or disclaimed in part, except with the consent of the other party or parties and the approval of the Trademark Trial and Appeal Board, or upon motion granted by the Board. In keeping with Board practice and because the amendment seeks to amend Applicant's application in substance, consideration of the proposed amendment is **deferred** until final decision. *See e.g., Zachry Infrastructure LLC v. American Infrastructure Inc.*, 101 USPQ2d 1249, 1255-

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<sup>1</sup> Applicant's change in correspondence is noted. *See* 5 TTABVUE.

56 (TTAB 2011); *Enbridge Inc. v. Excelerate Energy L.P.*, 92 USPQ2d 1537, 1539 n.3 (TTAB 2009); *Space Base Inc. v. Stadis Corp.*, 17 USPQ2d 1216, 1219 (TTAB 1990); TBMP § 514.03 (2018).

Opposer filed a motion to compel discovery responses on April 30, 2019. *See* 7 TTABVUE.

Proceedings are **suspended** pending disposition of Opposer's motion, except as discussed below. The parties should not file any paper that is not germane to the motion to compel. *See* Trademark Rule 2.120(f)(2).

The parties may not serve any additional discovery until the period of suspension is lifted or expires by or under order of the Board. The filing of the motion to compel disclosure or discovery shall not toll the time for a party to comply with any initial disclosure requirement, or to respond to any outstanding discovery requests or to appear for any noticed discovery deposition. If the motion to compel was filed after the close of discovery, the parties need not make pretrial disclosures until directed to do so by the Board. *See* Trademark Rule 2.120(f)(2); TBMP § 523.01.

The motion to compel will be decided in due course.