

ESTTA Tracking number: **ESTTA975816**

Filing date: **05/23/2019**

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

Proceeding	91244593
Party	Plaintiff Cytosyme Laboratories, Inc.
Correspondence Address	PETER M DE JONGE THORPE NORTH & WESTERN LLP 175 S MAIN ST , SUITE 900 SALT LAKE CITY, UT 84111 UNITED STATES dejonge@tnw.com, jillaine.chaston@tnw.com, kaelynn.moultrie@tnw.com, aimee.kaderabek@tnw.com, litigation@tnw.com 801-566-6633
Submission	Opposition/Response to Motion
Filer's Name	Peter M. de Jonge
Filer's email	dejonge@tnw.com, catherine.maness@tnw.com, kaelynn.moultrie@tnw.com, aimee.kaderabek@tnw.com, litigation@tnw.com
Signature	/s/ Peter M de Jonge/
Date	05/23/2019
Attachments	Response to Motion to Compel.pdf(180601 bytes) Exhibit 1.pdf(253073 bytes) Exhibit 2.pdf(153214 bytes) P. de Jonge Declaration - Response to Motion to Compel.pdf(103702 bytes) Exhibit A.pdf(127276 bytes) Exhibit B.pdf(492527 bytes)

Peter M. de Jonge
THORPE NORTH & WESTERN, LLP
175 South Main Street, Suite 900
Salt Lake City, UT 84111
Telephone: (801) 566-6633
Facsimile: (801) 566-0750

Attorney for Cytozyme Laboratories, Inc.
Opposed Mark: SEEDUP
U.S. Trademark Application Serial No.: 87953971

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

Cytozyme Laboratories, Inc. Opposer, v. JH Biotech, Inc. Applicant.	CYTOZYME LABORATORIES, INC.'S RESPONSE TO APPLICANT'S MOTION TO COMPEL DISCOVERY Opposition No. 91244593
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Pursuant to Fed. R. Civ. P. 37 and 37 C.F.R. § 2.127(a), Opposer Cytozyme Laboratories, Inc. (“Cytozyme”) responds to Applicant JH Biotech, Inc.’s (“JH Biotech”) Motion to Compel Discovery to JH Biotech’s Requests For Admission (“RFA”) 5-6, Requests for Production (“RFP”) 2 and 8, and Interrogatories (“ROG”) 3, 5-6, 10-11, 26, 28-32, 34-37, and 40-42.

FACTS

Cytozyme is the owner of the registered mark “SEED+” for use with “[p]lant growth nutrients for treatment of seeds for use in agriculture, horticulture and forestry,

plant nutrition preparations for the treatment of seeds”. Cytozyme began using the SEED+ mark in 1976.

JH Biotech filed an application for registration of the mark “SEEDUP” for use with “[m]icrobial inoculants for application to seeds used in agriculture.” JH Biotech allegedly began using the mark in 2018, but has recently filed a request to change its application from “use” to “intent to use”.

Once Cytozyme learned of JH Biotech’s attempts to register the confusingly similar SEEDUP mark, Cytozyme promptly filed an opposition to publication of the SEEDUP mark in order to protect its rights in its SEED+ mark.

JH Biotech’s Discovery Requests and Cytozyme’s Responses

On January 28, 2019, JH Biotech served Cytozyme with a first set of RFAs, RFPs, and ROGs. Cytozyme responded to these discovery requests on February 27, 2019 after a diligent and reasonable search of its records.

On March 1, 2019, Cytozyme received an email communication from JH Biotech alleging that Cytozyme provided insufficient responses to certain discovery requests. While Cytozyme disagreed with JH Biotech’s characterization of its responses, Cytozyme supplemented its discovery responses on March 14, 2019.

Meanwhile, on March 5, 2019, JH Biotech served a second set of RFAs, RFPs, and ROGs. Cytozyme responded to JH Biotech’s second set of discovery requests on April 4, 2019 after a diligent and reasonable search of its records. As noted in Cytozyme’s responses, many of requests in JH Biotech’s second set of discovery are not relevant to this lawsuit and appear to be designed to burden Cytozyme.

On April 5, 2019, Cytozyme received an email communication from JH Biotech alleging that Cytozyme provided insufficient responses to certain discovery requests. JH Biotech requested Cytozyme respond to its email by April 26, 2019. On April 30, 2019 Cytozyme informed JH Biotech that it would need additional time to gather information to supplement Cytozyme's answers. While Cytozyme disagreed with JH Biotech's characterization of its responses, Cytozyme supplemented its discovery responses on May 3, 2019, the same day JH Biotech filed this instant motion. *See* Exhibit 1 (confidential information redacted). After review, JH Biotech agreed to withdraw its Motion to Compel as to ROGs 10-11, 26, 28, and 34. *See* P. de Jonge Declaration, Exhibit A. Thus, JH Biotech's Motion to Compel only continues as to RFAs 5-6, RFPs 2 and 8, and ROGs 3, 5-6, 29-32, 35-37, and 40-42.

ARGUMENT

1. JH Biotech's Discovery Requests Must Be Relevant to this Dispute

Cytozyme agrees that JH Biotech is allowed to "take discovery regarding nonprivileged matters relevant to [JH Biotech's] claims". Motion to Compel at *6. However, many of the requests JH Biotech seeks to compel Cytozyme to further respond to are not relevant to this dispute and were, instead, designed to abuse and unnecessarily burden Cytozyme. Tellingly, JH Biotech has failed to seek an order compelling further responses to ROGs 24, 25, 27, and 38 in which Cytozyme also responded that such requests were irrelevant to this dispute.

A. ROGs 40-41

For example, JH Biotech seeks similar information in ROGs 40-41, namely a recitation of the reasons Cytozyme believes confusion of the SEEDMAXX and SEEDNET marks and Cytozyme's SEED+ mark is not likely. When Cytozyme learns of new marks,

Cytozyme makes an independent determination as to each mark whether there is a likelihood of confusion. Cytozyme's reasons and analysis related to a potential mark's confusion with the SEED+ mark has no bearing on its analysis of any other mark, including the SEEDUP mark. As such, Cytozyme should not be compelled to provide an answer to JH Biotech's seemingly random requests.

Furthermore, the cases JH Biotech cites are not supportive of its arguments. For instance, in *Gould Inc. v Sanyo Electric Co.*, the Panel held "that an interrogatory is not objectionable simply because it calls for an opinion. However, it must be satisfactorily shown that the expression of such opinion would serve a substantial purpose, that is, that it would assist in narrowing the issues; enable the propounding party to determine what proofs it will have to adduce at trial; or otherwise lead to the discovery of relevant, admissible evidence which would tend to shed light upon the existing issues." 179 USPQ313, 314 (TTAB 1973). Here, JH Biotech fails to allege how the requested information would lead to the discovery of relevant evidence to this dispute, narrow any issues, or otherwise help the parties or trier of fact determine whether the SEED+ and SEEDUP marks are confusingly similar.

The *J.B. Williams Co. v. Pepsodent GmbH* decision is inapposite. See 188 USPQ 577. JH Biotech uses this case to support its statement that the "identity of all civil and USPTO proceedings involving mark is not objectionable". Motion to Compel at *9. However in *J.B. Williams*, the Panel actually held that "[w]ith regard to applicant's interrogatory seeking the identity of all civil and Patent and Trademark Office proceedings between opposer and third parties based on opposer's ownership of its pleaded mark, it has recently been held that such interrogatories are not per se objectionable. However, opposer, in response thereto, need only identify the legal proceedings by naming the parties

involved, listing the jurisdiction and proceeding number, and stating the outcome.” Here, JH Biotech does not seek information about proceedings Cytozyme filed related to the SEED+ mark. In fact, JH Biotech previously sought and obtained such information in other discovery requests. *See* Exhibit 2 at *3-4. JH Biotech’s cited cases do not support its irrelevant request to obtain information about why Cytozyme chose *not* to file an opposition to other registered marks.

B. ROGs 36, 37, and 42

Equally as random is JH Biotech’s request that Cytozyme identify the five crops from which the most revenue is obtained from the sale of SEED+ products. *See* ROG 42. Even if Cytozyme could reasonably obtain such information, it is not relevant to this dispute and JH Biotech has failed to explain how such information is relevant to this suit. Similarly ROGs 36 and 37 seek additional, excessive, information about Cytozyme’s sales of products bearing the SEED+ mark to consumers.

As support for these requests, JH Biotech states that “information relating to Opposer’s sales and advertising/promotion of its SEED+ products” is relevant to this lawsuit. *See* Motion to Compel at *7. In particular, JH Biotech states that “annual sales and advertising figures . . . for a party’s involved goods or services sold under its involved mark are proper matters for discovery.” *Id.* Here, JH Biotech has already been given information about Cytozyme’s annual sales and advertising figures for its SEED+ products in response to ROGs 10-11. JH Biotech has been given further context for the relevant sales and advertisements in responses to ROGs 26, 28, 34, and 35 related to the percentage of sales of SEED+ products both worldwide and in the United States as well as unit sizes and pricing for the SEED+ products. Thus, JH Biotech clearly has the information it needs

to file any motions and perform analysis and Cytozyme should not be required to respond further to a seemingly random and irrelevant additional requests in ROGs 36, 37, and 42.

C. ROGs 30-32 and RFP 8

ROGs 30-32 request information about the number of salesmen used to sell SEED+ products, the number of companies having partnerships with Cytozyme to sell SEED+ products, and the date Cytozyme first began using watch notices pertaining to its SEED+ mark. Similarly, RFP 8 seeks a copy of each partnership agreement identified in Cytozyme's response to ROG 24.

First, ROG 24 asked Cytozyme to identify each company currently in partnership with Cytozyme to sell products bearing the SEED+ mark. Cytozyme responded that, in addition to objections, the request was not relevant to this dispute. Tellingly, JH Biotech does not seek to compel an additional response to ROG 24, yet wants Cytozyme to search for, review, and produce agreements that are not relevant to this dispute over an undefined timeframe for RFP 8. The Panel should not compel Cytozyme to complete such a task.

Second, the date Cytozyme first began using watch notices pertaining to its SEED+ mark is not relevant to this dispute. Cytozyme disclosed to JH Biotech a copy of the watch notice it received on the SEEDUP mark in response to previous discovery requests as an explanation of how Cytozyme first became aware of the SEEDUP mark. *See* P. de Jonge Dec., Exhibit B. JH Biotech has all of the information it needs to understand the watch notice on the SEEDUP mark. The date on which Cytozyme first received watch notices related to its SEED+ mark does not add value to the disclosure or JH Biotech's understanding of this dispute. Furthermore, none of the orders cited by JH Biotech in its Motion to Compel support its request for this information. *See* Motion to Compel at *7-8.

Third, the number of salesmen and the number of companies Cytozyme has a partnership with, while sometimes discoverable, is simply not relevant to this dispute. Cytozyme has disclosed to JH Biotech its channels of trade and that its SEED+ products are sold throughout the country. The number of partnerships and salesmen will add no additional context to this previously produced information.

2. *Cytozyme Provided Adequate Responses to JH Biotech's Other Disputed ROGs and RFPs*

Unlike the requests discussed in the section above, Cytozyme provided information and, where needed, documents in response to ROGs 3, 5, 6, 29, and 35, as well as RFP 2. JH Biotech appears to be unsatisfied with Cytozyme's responses. However, such issues are best determined in a motion for summary judgment or similar not a motion to compel.

Nevertheless, Cytozyme states that its responses to ROGs 29 and 35 are sufficient and should not be compelled to be supplemented as both were answered using the information that is readily available. Further, JH Biotech needs neither answer to properly defend its SEEDUP mark. Cytozyme has provided information regarding the channels of trade it sells its products bearing the SEED+ mark. Further, JH Biotech has information about Cytozyme's annual sales and advertising figures as well as other similar information. JH Biotech is, thus, sufficiently armed with relevant information to argue its case.

3. *A Motion to Compel is Not the Appropriate Method to Determine Whether Cytozyme's Responses to Certain Requests for Admission Are Adequate*

Pursuant to 37 C.F.R. § 2.120(i), the appropriate method to determine whether Cytozyme's responses to RFAs 5 and 6 is sufficient is a Motion to Determine the Sufficiency of an Answer or Objection to a Request for Admission. Here, JH Biotech has filed no such motion.

In any case, Cytozyme's responses to RFAs 5-6 were sufficient. JH Biotech asks a variation of the same question in both requests, namely for Cytozyme to admit whether the marks SEEDNET and SEEDMAXX so resemble the SEED+ mark as to be likely to cause confusion among consumers as to source. Cytozyme objected that any analysis of confusion between the SEED+ mark and the SEEDNET and/or SEEDMAXX marks is not relevant to this dispute which centers on the SEEDUP mark. Cytozyme makes an independent determination of whether to oppose publication of any mark it becomes aware of depending on the potential of confusion and any other relevant factors. Cytozyme should not be required to respond to each of JH Biotech's attempts to paint Cytozyme as an entity that only selectively protects its rights in the SEED+ mark. Thus, for the above reasons, and all the reasons cited in section 1(A) above, Cytozyme should not be required to supplement its responses to RFAs 5-6.

CONCLUSION

For all of the reasons cited above, Cytozyme requests the Panel deny JH Biotech's Motion to Compel additional responses to RFAs 5-6, RFPs 2 and 8, and ROGs 3, 5-6, 29-32, 35-37, and 40-42.

DATED this 23rd day of May, 2019.

THORPE NORTH & WESTERN, LLP

/s/ Peter M. de Jonge

Peter M. de Jonge

Attorney for Opposer, Cytozyme Laboratories, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
**CYTOZYME LABORATORIES INC.'S RESPONSE TO APPLICANT'S
MOTION TO COMPEL DISCOVERY** was served upon the following party by
the methods indicated below:

Ralph D. Chabot Law Office
of Ralph D. Chabot
3210 E. Ponderosa Dr., Ste. 4
Camarillo, CA 93010
rdc@chabotlaw.com

- Electronic Mail
- United States Mail, First Class
- Overnight Delivery
- USPTO Filing

DATED this 23rd day of May, 2019.

/s/ Kaelynn Moultrie
Kaelynn Moultrie

Exhibit 1

Peter M. de Jonge
THORPE NORTH & WESTERN, LLP
175 South Main Street, Suite 900
Salt Lake City, UT 84111
Telephone: (801) 566-6633
Facsimile: (801) 566-0750

Attorney for Cytozyme Laboratories, Inc.
Opposed Mark: SEEDUP
U.S. Trademark Application Serial No.: 87953971

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

Cytozyme Laboratories, Inc.

Opposer,

v.

JH Biotech, Inc.

Applicant.

**CYTOZYME LABORATORIES,
INC.'S SECOND AMENDED
RESPONSE TO APPLICANT'S
INTERROGATORIES TO
OPPOSER SET NO. 1**

Opposition No. 91244593

Pursuant to Federal Rules of Civil Procedure 26 and 33 and 37 C.F.R. § 2.120, Opposer Cytozyme Laboratories, Inc (“Cytozyme”) submits these objections and responses to Applicant’s Interrogatories to Opposer Set No. 1 (the “Interrogatories”) to Cytozyme served by Applicant JH Biotech, Inc. (“JH Biotech”).

Cytozyme has not completed its investigation of the facts relating to this dispute, discovery, or its preparation for trial. Accordingly, all the responses contained herein are based solely upon information and documents that are presently available to and specifically known to

Cytozyme. Therefore, Cytozyme responds without prejudice to its right and obligation to supplement its responses hereto.

Cytozyme objects to each Interrogatory to the extent that it seeks information protected by the attorney-client privilege, the work product doctrine and/or any other applicable privilege. Such information will not be disclosed. Any inadvertent disclosure of such information shall not be deemed a waiver of the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or immunity recognized by statute or state law.

GENERAL OBJECTIONS

1. Cytozyme objects to the “Introduction and Definitions” set forth in the Interrogatories on the grounds that they attempt to impose obligations on Cytozyme that are beyond those specified by the Federal Rules of Civil Procedure. Cytozyme’s responses are made in compliance with the applicable rules and without reference to JH Biotech’s “Introduction and Definitions”.

2. Cytozyme objects to the Interrogatories to the extent the Interrogatories seek information that is immaterial and irrelevant to the subject matter of this action.

3. Cytozyme objects to the Interrogatories to the extent the Interrogatories seek information or documentation that is protected from disclosure by privilege and/or work product doctrine. Such information shall not be produced.

4. Cytozyme objects to the Interrogatories to the extent the Interrogatories seek documents that are not within the possession, custody, or control of Cytozyme, are publicly available, or are already within the possession, custody, or control of JH Biotech.

5. Cytozyme objects to the Interrogatories to the extent the Interrogatories are overbroad, uncertain, and unintelligible so that Cytozyme cannot determine the nature of the information sought, and, therefore, is unable to provide such information.

6. Cytozyme objects to the Interrogatories to the extent the Interrogatories are based on information, the acquisition of which would be overly burdensome. The information so acquired would be of little or no relevance to the issues raised in this dispute and would place an unreasonable and oppressive burden on Cytozyme in the necessary expenditure of time and money.

7. Each of the foregoing objections are incorporated herein by reference into the responses below. To the extent a particular objection is mentioned in response to a specific Interrogatory, that objection is considered particularly relevant to that Interrogatory, and is not to be considered as excluding other objections that may be applicable.

Discovery is ongoing and Cytozyme reserves the right to supplement or amend the responses to these Interrogatories in accordance with Federal Rule of Civil Procedure 26(e).

SPECIFIC OBJECTIONS AND RESPONSES

INTERROGATORY NO. 1:

Identify each person employed by CYTOZYME LABORATORIES, INC. who assisted with the answering of these interrogatories.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent the Interrogatory calls for the disclosure of attorney-client communications or other privileged communications. Cytozyme further objects on the grounds that the term “assisted” is vague and overbroad.

Subject to and without waiving said objections, Gina Harris, Executive Support for Cytozyme, and Eric Baughman, Chief Executive Offer for Cytozyme, provided information to answer Applicant's Interrogatories.

INTERROGATORY NO. 2:

State whether or not CYTOZYME LABORATORIES, INC. has made a diligent search of all related documents under its control in order to fully answer Applicant's discovery requests.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Cytozyme further objects to the extent the request is overbroad. Moreover, Cytozyme objects to the Interrogatory to the extent "diligent" is vague and undefined.

Subject to and without waiving said objections, Cytozyme states that it has reviewed any documents necessary to respond to Applicant's discovery requests. Pursuant to its rights under the Federal Rules of Civil Procedure, Cytozyme will continue to search for any relevant documents and supplement and/or amend its responses to Applicant's discovery requests as needed.

INTERROGATORY NO. 3:

At paragraph 8 of the Notice of Opposition, CYTOZYME LABORATORIES, INC. states that upon "information and belief, Opposer's SEED+ mark is famous as defined under 15 U.S.C. § 1125(c)". Identify all documents that support this belief.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Cytozyme further objects to the extent the request is overbroad and unduly burdensome.

Subject to, and without waiving any of said objections, Cytozyme states that documents Bates labeled CYTOZYME0020-103 support Cytozyme's claim that its SEED+ mark is famous and widely recognized by the public. Specifically, documents Bates labeled CYTOZYME0028-75 show the SEED+ mark has been registered with the USPTO. Further, Cytozyme advertises its products bearing the SEED+ mark in multiple channels of trade, including online advertisements and through partnerships with other companies. *See* CYTOZYME0020-23, 76-103. For example, CYTOZYME0020-21 and 82-99 are images of Cytozyme's publicly available online website and web-linked pdf document advertising and providing information regarding its SEED+ products, while CYTOZYME0022-23 and 76-81 are images of the Verdesian's publicly available online website and web-linked pdf document advertising and providing information regarding Cytozyme's SEED+ products. Verdesian is an authorized distributor of the SEED+ Dry products. *See* CYTOZYME0100-103. Further still, customers of Cytozyme's products bearing the SEED+ mark are sold in multiple states throughout the country and are widely recognized by customers of Cytozyme and its SEED+ products.

INTERROGATORY NO. 4:

Identify the employees of CYTOZYME LABORATORIES, INC. most knowledgeable in providing testimony to their belief that the SEED+ mark is famous as alleged in paragraph 8 of the Notice of Opposition

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications.

Subject to, and without waiving any of said objections, Cytozyme states that Dr. Elizabeth Wozniak and Eric Baughman, both persons identified in Cytozyme's Initial Disclosures, are the Cytozyme employees with knowledge that the SEED+ mark is famous.

INTERROGATORY NO. 5:

At paragraph 9 of the Notice of Opposition, CYTOZYME LABORATORIES, INC. states that "Registration of the '971 Application in connection with the goods listed therein is likely to dilute Opposer's famous SEED+ mark by blurring and/or tarnishment under (*sic*) 15 U.S.C. § 1125(c). Identify all evidence to support CYTOZYME LABORATORIES, INC.'s allegation of tarnishment.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Cytozyme further objects to the extent the request is overbroad and unduly burdensome.

Subject to, and without waiving any of said objections, Cytozyme states that JH Biotech's SEEDUP mark tarnishes Cytozyme's famous SEED+ mark by associating JH Biotech's inferior and poorer quality seed treatment and growth products with Cytozyme's established and highly respected seed growth treatment.

INTERROGATORY NO. 6:

Identify all evidence to support CYTOZYME LABORATORIES, INC.'s allegation of blurring stated in paragraph 9 of the Notice of Opposition.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Cytozyme further objects to the extent the request is overbroad and unduly burdensome.

Subject to, and without waiving any of said objections, Cytozyme states that JH Biotech's SEEDUP mark causes blurring of Cytozyme's SEED+ mark by decreasing the unique nature of Cytozyme's SEED+ mark and the likelihood that SEED+ will continue to be a unique identifier of Cytozyme's high-quality seed treatment.

INTERROGATORY NO. 7:

Identify all channels of trade used by CYTOZYME LABORATORIES, INC. To sell products having the SEED+ mark.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Cytozyme further objects to the extent the request is overbroad and unduly burdensome. Cytozyme objects to the Interrogatory to the extent the term "channels of trade" is vague and undefined.

Subject to, and without waiving any of said objections, Cytozyme states products bearing the SEED+ mark are advertised on the internet, through partnerships with other companies, and

are directly sold to customers through contact with Cytozyme or one of these partnership companies.

INTERROGATORY NO. 8:

Identify what CYTOZYME LABORATORIES, INC. believes to be the dominant portion of the SEED+ mark.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it is overbroad and unduly burdensome. Cytozyme further objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Cytozyme further objects to the extent the term “dominant” is vague and undefined.

Subject to, and without waiving any of said objections, Cytozyme states that all “portions” of the SEED+ mark, especially the combination of SEED and + as well as the + on its own, are important to the strength and integrity of the mark.

INTERROGATORY NO. 9:

Identify each publication in which an advertisement for SEED+ has appeared in an issue of that publication.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it is overbroad and unduly burdensome. Cytozyme further objects to the Interrogatory to the extent that the terms “publication”, “issue”, and “appeared” are vague and undefined.

Subject to, and without waiving said objection, Cytozyme states that it advertises products bearing the SEED+ mark online and through its partnership companies. *See* CYTOZYME0020-23, 76-103. Cytozyme does not advertise its SEED+ products in magazines or newspapers in the United States.

INTERROGATORY NO. 10:

Provide the annual sales figures under the SEED+ mark for each year from 2000-2018.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it is overbroad and unduly burdensome. Cytozyme further objects to the extent the Interrogatory is disproportionate to the needs of the case and is not sufficiently limited in time. Cytozyme further objects to the extent the term “sales figures” is undefined and vague.

Subject to, and without waiving said objection, Cytozyme states that it sold the following amounts, in U.S. dollars, of products bearing the SEED+ mark for each year between 2013 and present:

- 2013: \$16,813
- 2014: \$0
- 2015: \$600
- 2016: \$0
- 2017: \$0
- 2018: \$25,280
- 2019 to date: \$78,400

INTERROGATORY NO. 11:

Provide the annual advertising figures for the SEED+ mark for each year from 2000-2018.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it is overbroad and unduly burdensome. Cytozyme further objects to the extent the Interrogatory is disproportionate to the needs of the case and is not sufficiently limited in time. Cytozyme further objects to the extent the term “advertising figures” is undefined and vague.

Subject to, and without waiving said objection, Cytozyme states that it has not, in the past, regularly tracked such expenses in the standard course of business. However, in 2018, Cytozyme or its partners spent, at least, \$459,300 on advertising for products bearing the SEED+ mark in the United States.

INTERROGATORY NO. 12:

State all reasons why CYTOZYME LABORATORIES, INC. did not file a Notice of Opposition against registration of the mark SEED COAT (Ser. No. 88/011,246), a copy of the mark status from the Trademark Electronic Search System (TESS) is provided with bates stamp JHB 0002.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it is overbroad and unduly burdensome. Cytozyme further objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications.

Subject to, and without waiving said objection, Cytozyme states that until it was served Applicant’s Interrogatories to Opposer it was unaware of the mark SEED COAT (Ser. No. 88/011,246).

INTERROGATORY NO. 13:

State all reasons why CYTOZYME LABORATORIES, INC. did not file a Notice of Opposition against registration of the mark SEED RANCH (Ser. No. 87/637,152), a copy of the mark status from TESS is provided with bates stamp JHB 0003.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it is overbroad and unduly burdensome. Cytozyme further objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications.

Subject to, and without waiving said objection, Cytozyme states that until it was served Applicant's Interrogatories to Opposer it was unaware of the mark SEED RANCH (Ser. No. 87/637,152).

INTERROGATORY NO. 14:

State all reasons why CYTOZYME LABORATORIES, INC. did not file a Notice of Opposition against registration of the mark SEEDMAXX (Ser. No. 87/528,475), a copy of the mark status from TESS is provided with bates stamps JHB 0004-0005.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it is overbroad and unduly burdensome. Cytozyme further objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications.

Subject to, and without waiving said objection, Cytozyme states that until it was served Applicant's Interrogatories to Opposer it was unaware of the mark SEEDMAXX (Ser. No. 87/528,475).

INTERROGATORY NO. 15:

State all reasons why CYTOZYME LABORATORIES, INC. did not file a Notice of Opposition against registration of the mark SEEDLINGERS (Ser. No. 87/420,096), a copy of the mark status from TESS is provided with bates stamps JHB 0006-0007.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it is overbroad and unduly burdensome. Cytozyme further objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications.

Subject to, and without waiving said objection, Cytozyme states that until it was served Applicant's Interrogatories to Opposer it was unaware of the mark SEEDLINGERS (Ser. No. 87/420,096).

INTERROGATORY NO. 16:

State all reasons why CYTOZYME LABORATORIES, INC. did not file a Notice of Opposition against registration of the mark SEED BOOSTER (Ser. No. 86/608,898), a copy of the mark status from TESS is provided with bates stamps JHB 0008-0009.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it is overbroad and unduly burdensome.

Cytozyme further objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications.

Subject to, and without waiving said objection, Cytozyme states that until it was served Applicant's Interrogatories to Opposer it was unaware of the mark SEED BOOSTER (Ser. No. 86/608,898).

INTERROGATORY NO. 17:

State all reasons why CYTOZYME LABORATORIES, INC. did not file a Notice of Opposition against registration of the mark SEEDNET (Ser. No. 85/896,497), a copy of the mark status from TESS is provided with bates stamps JHB 0010-0011.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it is overbroad and unduly burdensome. Cytozyme further objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications.

Subject to, and without waiving said objection, Cytozyme states that until it was served Applicant's Interrogatories to Opposer it was unaware of the mark SEEDNET (Ser. No. 85/896,497).

INTERROGATORY NO. 18:

State all reasons why CYTOZYME LABORATORIES, INC. did not file a Notice of Opposition against registration of the mark SEEDWORX (Ser. No. 85/799,307), a copy of the mark status from TESS is provided with bates stamps JHB 0012-0013.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it is overbroad and unduly burdensome. Cytozyme further objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications.

Subject to, and without waiving said objection, Cytozyme states that until it was served Applicant's Interrogatories to Opposer it was unaware of the mark SEEDWORX (Ser. No. 85/799,307).

INTERROGATORY NO. 19:

State all reasons why CYTOZYME LABORATORIES, INC. did not file a Notice of Opposition against registration of the mark SEED COAT (Ser. No. 85/823,274), a copy of the mark status from TESS is provided with bates stamps JHB 0014.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it is overbroad and unduly burdensome. Cytozyme further objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications.

Subject to, and without waiving said objection, Cytozyme states that until it was served Applicant's Interrogatories to Opposer it was unaware of the mark SEED COAT (Ser. No. 85/823,274).

INTERROGATORY NO. 20:

Does CYTOZYME LABORATORIES, INC. have an agreement with Agri Life LLC, an LLC registered in the State of Delaware, which permits Agri Life LLC to market product using the SEED+ mark, an example of which is provided with bates stamp JHB0039?

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it is overbroad and unduly burdensome. Cytozyme further objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Cytozyme further objects to the Interrogatory to the extent the term “agreement” is vague and undefined.

Subject to, and without waiving said objection, Cytozyme states that it has not authorized or otherwise entered into a contract or other “agreement” permitting Agri Life LLC to use the SEED+ mark.

INTERROGATORY NO. 21:

If the response to **INTERROGATORY NO. 20** is “NO”, provide all reasons why CYTOZYME LABORATORIES, INC. has not taken legal action to protect its SEED+ mark against Agri Life LLC.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme incorporates its Objections and Response to Interrogatory No. 20. Cytozyme objects to the Interrogatory to the extent it is overbroad and unduly burdensome. Cytozyme further objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications.

Subject to, and without waiving said objection, Cytozyme states that it will evaluate Agri Life LLC's use of the SEED+ mark and, if Cytozyme sees fit, will enforce its rights to protect the SEED+ mark to the fullest extent of the law.

INTERROGATORY NO. 22:

Is CYTOZYME LABORATORIES, INC. aware of any actual confusion between its SEED+ mark and Applicant's SEEDUP mark?

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it is overbroad and unduly burdensome. Cytozyme further objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Cytozyme further objects to the Interrogatory to the extent the term "aware" is vague and undefined.

Subject to, and without waiving said objection, Cytozyme states that it has not received or otherwise knows of any actual examples of confusion between the SEED+ and SEEDUP marks.

INTERROGATORY NO. 23:

If the answer to **INTERROGATORY NO. 22** is anything other than an unqualified "No", then identify all customers who were confused.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme incorporates its Objections and Response to Interrogatory No. 22.

Subject to, and without waiving said objection, Cytozyme states that since it has not received or otherwise knows of any actual examples of confusion between the SEED+ and SEEDUP marks, this Interrogatory requires no further answer.

DATED this 3rd day of May, 2019.

THORPE NORTH & WESTERN, LLP

/s/ Peter M. de Jonge
Peter M. de Jonge
Attorney for Opposer, Cytozyme Laboratories, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
**CYTOZYME LABORATORIES INC.'S SECOND AMENDED RESPONSE TO
APPLICANT'S INTERROGATORIES TO OPPOSER** was served upon the following
party by the methods indicated below:

Ralph D. Chabot
Law Office of Ralph D. Chabot
3210 E. Ponderosa Dr., Ste. 4
Camarillo, CA 93010
rdc@chabotlaw.com

- Electronic Mail
- United States Mail, First Class
- Overnight Delivery
- Fax Transmission

DATED this 3rd day of May, 2019.

/s/ Kaelynn Moultrie _____
Kaelynn Moultrie

Peter M. de Jonge
THORPE NORTH & WESTERN, LLP
175 South Main Street, Suite 900
Salt Lake City, UT 84111
Telephone: (801) 566-6633
Facsimile: (801) 566-0750

Attorney for Cytozyme Laboratories, Inc.
Opposed Mark: SEEDUP
U.S. Trademark Application Serial No.: 87953971

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

Cytozyme Laboratories, Inc.

Opposer,

v.

JH Biotech, Inc.

Applicant.

**CYTOZYME LABORATORIES,
INC.'S FIRST AMENDED
RESPONSE TO APPLICANT'S
INTERROGATORIES TO
OPPOSER SET NO. 2**

Opposition No. 91244593

**Partial Confidential – For Attorneys'
Eyes Only (trade secret/commercially
sensitive) Designation**

Pursuant to Federal Rules of Civil Procedure 26 and 33 and 37 C.F.R. § 2.120, Opposer Cytozyme Laboratories, Inc (“Cytozyme”) submits these objections and responses to Applicant’s Interrogatories to Opposer Set No. 2 (the “Interrogatories”) to Cytozyme served by Applicant JH Biotech, Inc. (“JH Biotech”).

Cytozyme has not completed its investigation of the facts relating to this dispute, discovery, or its preparation for trial. Accordingly, all the responses contained herein are based solely upon information and documents that are presently available to and specifically known to

Cytozyme. Therefore, Cytozyme responds without prejudice to its right and obligation to supplement its responses hereto.

Cytozyme objects to each Interrogatory to the extent that it seeks information protected by the attorney-client privilege, the work product doctrine and/or any other applicable privilege. Such information will not be disclosed. Any inadvertent disclosure of such information shall not be deemed a waiver of the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or immunity recognized by statute or state law.

Please note, the amended answer to Interrogatory 28 is marked **Confidential – For Attorneys’ Eyes Only (trade secret/commercially sensitive)**.

GENERAL OBJECTIONS

1. Cytozyme objects to the “Introduction and Definitions” set forth in the Interrogatories on the grounds that they attempt to impose obligations on Cytozyme that are beyond those specified by the Federal Rules of Civil Procedure. Cytozyme’s responses are made in compliance with the applicable rules and without reference to JH Biotech’s “Introduction and Definitions”.

2. Cytozyme objects to the Interrogatories to the extent the Interrogatories seek information that is immaterial and irrelevant to the subject matter of this action.

3. Cytozyme objects to the Interrogatories to the extent the Interrogatories seek information or documentation that is protected from disclosure by privilege and/or work product doctrine. Such information shall not be produced.

4. Cytozyme objects to the Interrogatories to the extent the Interrogatories seek documents that are not within the possession, custody, or control of Cytozyme, are publicly available, or are already within the possession, custody, or control of JH Biotech.

5. Cytozyme objects to the Interrogatories to the extent the Interrogatories are overbroad, uncertain, and unintelligible so that Cytozyme cannot determine the nature of the information sought, and, therefore, is unable to provide such information.

6. Cytozyme objects to the Interrogatories to the extent the Interrogatories are based on information, the acquisition of which would be overly burdensome. The information so acquired would be of little or no relevance to the issues raised in this dispute and would place an unreasonable and oppressive burden on Cytozyme in the necessary expenditure of time and money.

7. Each of the foregoing objections are incorporated herein by reference into the responses below. To the extent a particular objection is mentioned in response to a specific Interrogatory, that objection is considered particularly relevant to that Interrogatory, and is not to be considered as excluding other objections that may be applicable.

Discovery is ongoing and Cytozyme reserves the right to supplement or amend the responses to these Interrogatories in accordance with Federal Rule of Civil Procedure 26(e).

SPECIFIC OBJECTIONS AND RESPONSES

INTERROGATORY NO. 24:

CYTOZYME LABORATORIES, INC.'s response to **INTERROGATORY NO. 7**, stated that products bearing the SEED+ mark are directly sold to customers through contact with Cytozyme or by companies having a partnership with Cytozyme. Identify each company currently in partnership with Cytozyme for sale of SEED+ products.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent the Interrogatory calls for the disclosure of

attorney-client communications or other privileged communications. Cytozyme further objects to the extent the request is overbroad and unduly burdensome. Moreover, Cytozyme objects to the Interrogatory to the extent the phrase “currently in partnership” is vague.

Subject to and without waiving said objections, Cytozyme states that a full list of Cytozyme’s partners and companies it has agreements with is not relevant to this dispute.

INTERROGATORY NO. 25:

Identify each company which had a partnership with CYTOZYME LABORATORIES, INC., to sell products bearing the SEED+ mark but that does not have a current partnership with Cytozyme to do so.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent the Interrogatory calls for the disclosure of attorney-client communications or other privileged communications. Cytozyme further objects to the extent the request is overbroad and unduly burdensome and is not reasonably limited in time.

Subject to and without waiving said objections, Cytozyme states that a full list of Cytozyme’s former partners is not relevant to this dispute.

INTERROGATORY NO. 26:

Identify each unit size which is used to sell SEED+ product.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Cytozyme further objects to the extent the

term “unit size” is vague and undefined. Additionally, Cytozyme objects to the Interrogatory as it is abusive, unduly burdensome, and not designed to lead to relevant information to this dispute.

Subject to, and without waiving any of said objections, Cytozyme states that it sells products bearing the SEED+ mark in 11.3 kg buckets, 1.6 and 2.5 gallon jugs, and 30 gallon drums.

INTERROGATORY NO. 27:

For each unit size identified in **INTERROGATORY NO. 26**, provide the price paid by companies having a partnership with CYTOZYME LABORATORIES, INC.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Cytozyme further objects to the extent the term “unit size” is vague and undefined. Cytozyme incorporates its Objections and Response to Interrogatory No. 26. Additionally, Cytozyme objects to the Interrogatory as it is abusive, unduly burdensome, and not designed to lead to relevant information to this dispute.

Subject to, and without waiving any of said objections, Cytozyme states that the price Cytozyme’s partner companies pay for Cytozyme’s products using the SEED+ mark is not relevant to this dispute.

INTERROGATORY NO. 28:

For each unit size identified in **INTERROGATORY NO. 26**, provide the unit price for customers desiring SEED+ products directly from CYTOZYME LABORATORIES, INC.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Cytozyme further objects to the extent the terms “unit size” and “desiring” are vague and undefined. Cytozyme incorporates its Objections and Response to Interrogatory No. 26. Additionally, Cytozyme objects to the Interrogatory as it is abusive, unduly burdensome, and not designed to lead to relevant information to this dispute.

Please note, the below answer is marked **Confidential – For Attorneys’ Eyes Only** (**trade secret/commercially sensitive**). Accordingly, pursuant to the Standard Protective Order the information is “restricted from any access by the Parties” and should only be viewed by Outside Counsel and other persons approved for access under the Standard Protective Order

Subject to, and without waiving any of said objections, Cytozyme states that an exemplary price customers for Cytozyme’s products using the SEED+ mark for each unit size is listed below:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

INTERROGATORY NO. 29:

Is SEED+ products available in retail stores?

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client

communications or other privileged communications. Cytozyme further objects to the extent the terms “available” and “retail stores” are vague and undefined. Additionally, Cytozyme objects to the Interrogatory as it is not designed to lead to relevant information to this dispute.

Subject to, and without waiving any of said objections, Cytozyme states that Cytozyme products bearing the SEED+ mark are available directly from Cytozyme and through Cytozyme’s partners.

INTERROGATORY NO. 30:

Identify the number of salesmen used to sell SEED+ product that are not affiliated with any company having a partnership with CYTOZYME LABORATORIES, INC..

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Cytozyme further objects to the extent the terms “salesmen” and “affiliated” are vague and undefined. Additionally, Cytozyme objects to the Interrogatory as it is abusive, unduly burdensome, and not designed to lead to relevant information to this dispute.

Subject to, and without waiving any of said objections, Cytozyme states that the number of salesmen used to sell products bearing the SEED+ mark who are not affiliated with any company having a partnership with Cytozyme is not relevant to this dispute.

INTERROGATORY NO. 31:

Identify the number of companies having a partnership with CYTOZYME LABORATORIES, INC. for sale of SEED+ products in the United States.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Additionally, Cytozyme objects to the Interrogatory as it is abusive, unduly burdensome, and not designed to lead to relevant information to this dispute.

Subject to, and without waiving any of said objections, Cytozyme states that the number of companies Cytozyme has a partnership with and which sell SEED+ products in the United States is not relevant to this dispute.

INTERROGATORY NO. 32:

Provide the date CTYOZYME LABORATORIES, INC. first began using a company to provide Watch Notices pertaining to SEED+; an example of a Watch Notice provided by Bates number CYTOZYME0024.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Additionally, Cytozyme objects to the Interrogatory as it is abusive, unduly burdensome, and not designed to lead to relevant information to this dispute.

Subject to, and without waiving any of said objections, Cytozyme states that the date Cytozyme began using a company to provide watch notices pertaining to the SEED+ mark is not relevant to this dispute.

INTERROGATORY NO. 33:

Why did CYTOZYME LABORATORIES, INC. wait more than 34 years to file a trademark application for the SEED+ mark?

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Additionally, Cytozyme objects to the Interrogatory as it is abusive, unduly burdensome, and not designed to lead to relevant information to this dispute.

Subject to, and without waiving any of said objections, Cytozyme states that its decision as to when to file its trademark application for the SEED+ mark is not relevant to this dispute. Further, Cytozyme was not required to file its trademark application when it first used its mark.

INTERROGATORY NO. 34:

For the year 2018, what percentage of worldwide sales of SEED+ product is sold in the United States?

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Additionally, Cytozyme objects to the Interrogatory as it is abusive, unduly burdensome, and not designed to lead to relevant information to this dispute.

Subject to, and without waiving any of said objections, Cytozyme states that the percentage of worldwide sales of SEED+ product sold in the United States in 2018 is 10 percent.

INTERROGATORY NO. 35:

For the year 2018, what percentage of Cytozyme's overall sales in the United States is attributed to the sale of SEED+ products?

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Cytozyme further objects to the extent the term "attributed" is vague and undefined. Additionally, Cytozyme objects to the Interrogatory as it is abusive, unduly burdensome, and not designed to lead to relevant information to this dispute.

Subject to, and without waiving any of said objections, Cytozyme states that the percentage of Cytozyme's sales in the United States from products bearing the SEED+ mark in the year 2017 is 5 percent.

INTERROGATORY NO. 36:

For the year 2018, what percentage of SEED+ sales in the United States is sold by Cytozyme directly to customers?

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Cytozyme further objects to the extent the term "directly" is vague and undefined. Additionally, Cytozyme objects to the Interrogatory as it is abusive, unduly burdensome, and not designed to lead to relevant information to this dispute.

Subject to, and without waiving any of said objections, Cytozyme states that the percentage of Cytozyme's sales in the United States from products bearing the SEED+ mark directly to customers in the year 2018 is not relevant to this dispute.

INTERROGATORY NO. 37:

For the year 2018, state in US dollars the single largest purchase of SEED+ product purchased by a customer placing an order directly with CYTOZYME LABORATORIES, INC.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Cytozyme further objects to the extent the phrases "single largest purchase" and "placing an order directly" are vague and undefined. Additionally, Cytozyme objects to the Interrogatory as it is abusive, unduly burdensome, and not designed to lead to relevant information to this dispute.

Subject to, and without waiving any of said objections, Cytozyme states that the single largest purchase of SEED+ product purchased by a customer placing an order directly with Cytozyme, in US dollars, for the year 2018 is not relevant to this dispute.

INTERROGATORY NO. 38:

For the year 2018, state in US dollars the single largest purchase of SEED+ product purchased by a customer placing an order with a company having a partnership with CYTOZYME LABORATORIES, INC.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client

communications or other privileged communications. Cytozyme further objects to the extent the phrase “single largest purchase” is vague and undefined. Additionally, Cytozyme objects to the Interrogatory as it is abusive, unduly burdensome, and not designed to lead to relevant information to this dispute.

Subject to, and without waiving any of said objections, Cytozyme states that the single largest purchase of SEED+ product purchased by a customer placing an order with a company having a partnership with Cytozyme, in US dollars, is not relevant to this dispute.

INTERROGATORY NO. 39:

Are SEED+ products used by customers for organic farming?

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it is overbroad and unduly burdensome. Cytozyme further objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications.

Subject to, and without waiving said objection, Cytozyme states that its products bearing the SEED+ product are used by a variety of farms and companies using a variety of growing techniques, which may include organic farming.

INTERROGATORY NO. 40:

If your response to **REQUEST FOR ADMISSION NO. 5** is anything but an unqualified admission, state all reasons why confusion between SEEDMAXX and SEED+ is not likely.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client

communications or other privileged communications. Additionally, Cytozyme objects to the Interrogatory as it is abusive, unduly burdensome, and not designed to lead to relevant information to this dispute.

Subject to, and without waiving any of said objections, Cytozyme states that Cytozyme's analysis of confusion between the SEED+ and SEEDMAXX marks is not relevant to this dispute.

INTERROGATORY NO. 41:

If your response to **REQUEST FOR ADMISSION NO. 6** is anything but an unqualified admission, state all reasons why confusion between SEEDNET and SEED+ is not likely.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client communications or other privileged communications. Additionally, Cytozyme objects to the Interrogatory as it is abusive, unduly burdensome, and not designed to lead to relevant information to this dispute.

Subject to, and without waiving any of said objections, Cytozyme states that Cytozyme's analysis of confusion between the SEED+ and SEEDNET marks is not relevant to this dispute.

INTERROGATORY NO. 42:

Identify the five crops from which the most revenue is obtained from sale of SEED+ products.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Interrogatory to the extent it calls for the disclosure of attorney-client

communications or other privileged communications. Cytozyme further objects to the extent the terms “most revenue” and “obtained” are vague and undefined. Additionally, Cytozyme objects to the Interrogatory as it is abusive, unduly burdensome, not reasonably limited in time, and not designed to lead to relevant information to this dispute.

Subject to, and without waiving any of said objections, Cytozyme states that a list of the five crops from which the most revenue is obtained from the sale of products bearing the SEED+ mark is not relevant to this dispute.

DATED this 3rd day of May, 2019.

THORPE NORTH & WESTERN, LLP

/s/ Peter M. de Jonge /
Peter M. de Jonge
Attorney for Opposer, Cytozyme Laboratories Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
**CYTOZYME LABORATORIES INC.'S FIRST AMENDED RESPONSE TO
APPLICANT'S INTERROGATORIES TO OPPOSER SET NO. 2** was served upon
the following party by the methods indicated below:

Ralph D. Chabot
Law Office of Ralph D. Chabot
3210 E. Ponderosa Dr., Ste. 4
Camarillo, CA 93010
rdc@chabotlaw.com

- Electronic Mail
- United States Mail, First Class
- Overnight Delivery
- Fax Transmission

DATED this 3rd day of May, 2019.

/s/ Kaelynn Moultrie
Kaelynn Moultrie

Exhibit 2

Peter M. de Jonge
THORPE NORTH & WESTERN, LLP
175 South Main Street, Suite 900
Salt Lake City, UT 84111
Telephone: (801) 566-6633
Facsimile: (801) 566-0750

Attorney for Cytozyme Laboratories, Inc.
Opposed Mark: SEEDUP
U.S. Trademark Application Serial No.: 87953971

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

<p>Cytozyme Laboratories, Inc. Opposer, v. JH Biotech, Inc. Applicant.</p>	<p>CYTOZYME LABORATORIES, INC.’S RESPONSE TO APPLICANT’S REQUESTS FOR ADMISSION SET NO. 1</p> <p>Opposition No. 91244593</p>
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Pursuant to Federal Rules of Civil Procedure 36 and 37 C.F.R. § 2.120, Opposer Cytozyme Laboratories, Inc. (“Cytozyme”) responds to Applicant JH Biotech, Inc.’s (“JH Biotech”) Requests for Admissions Set No. 1.

Cytozyme has not completed its investigation of the facts relating to this dispute, discovery, or its preparation for trial. Accordingly, all of the responses contained herein are based solely upon information and documents that are presently available to and specifically known to Cytozyme. Therefore, Cytozyme responds without prejudice to its right and obligation to supplement its responses hereto.

Cytozyme objects to each Request to the extent that it seeks information protected by the attorney-client privilege, the work product doctrine and/or any other applicable privilege. Such information will not be disclosed. Any inadvertent disclosure of such information shall not be deemed a waiver of the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or immunity recognized by statute or state law.

GENERAL OBJECTIONS TO ALL REQUESTS

1. Cytozyme objects to the Requests to the extent the Requests seek information that is immaterial and irrelevant to the subject matter of this action.

2. Cytozyme objects to the Requests to the extent the Requests seek information that is publicly available.

3. Cytozyme objects to the Requests to the extent the Requests are overbroad, uncertain, and unintelligible so that Cytozyme cannot determine the nature of the information sought, and, therefore, is unable to provide such information.

4. Each of the foregoing objections is incorporated herein by reference into each of the responses below. To the extent a particular objection is mentioned in response to a specific Request, that objection is considered particularly relevant to that Requests, and is not to be considered as excluding other objections that may be applicable.

Discovery is ongoing and Cytozyme reserves the right to supplement or amend the responses to these Requests in accordance with Federal Rule of Civil Procedure 26(e).

OBJECTIONS AND RESPONSES TO REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1:

With regard to the SEED+ mark, admit CYTOZYME LABORATORIES INC. has not filed a Notice of Opposition against another Applicant applying for a US trademark registration besides JH Biotech Inc.

RESPONSE:

Admitted.

REQUEST FOR ADMISSIONS NO. 2:

With regard to the SEED+ mark, admit CYTOZYME LABORATORIES INC. has not filed a Petition for Cancellation against another Registrant.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Request on the ground that the Request is overly broad and not sufficiently limited to an appropriate geographic area.

Subject to and without waiving these objections, Cytozyme admits it has not filed a Petition for Cancellation against another party in the United States with regard to Cytozyme's SEED+ mark.

REQUEST FOR ADMISSION NO. 3:

Admit CYTOZYME LABORATORIES INC. has not filed a lawsuit in federal court alleging infringement of the SEED+ mark.

RESPONSE:

In addition to the general objections noted above, incorporated herein by reference, Cytozyme objects to the Request on the ground that the term “Federal Court” is not sufficiently defined and is vague and ambiguous.

Subject to and without waiving these objections, Cytozyme admits that it has not filed a lawsuit in any federal court in the United States of America alleging infringement of the SEED+ mark.

DATED this 27th day of February, 2019.

THORPE NORTH & WESTERN, LLP

Peter M. de Jonge

Peter M. de Jonge

Attorney for Opposer, Cytozyme Laboratories, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
**CYTOZYME LABORATORIES INC.'S RESPONSE TO APPLICANT'S
REQUESTS FOR ADMISSION** was served upon the following party by the methods
indicated below:

Ralph D. Chabot Law
Office of Ralph D.
Chabot
3210 E. Ponderosa Dr., Ste. 4
Camarillo, CA 93010
rdc@chabotlaw.com

- Electronic Mail
- United States Mail, First Class
- Overnight Delivery
- Fax Transmission

DATED this 27th day of
February, 2019.

/s/ Catherine Maness _____
Catherine Maness

Peter M. de Jonge
THORPE NORTH & WESTERN, LLP
175 South Main Street, Suite 900
Salt Lake City, UT 84111
Telephone: (801) 566-6633
Facsimile: (801) 566-0750

Attorney for Cytozyme Laboratories, Inc.
Opposed Mark: SEEDUP
U.S. Trademark Application Serial No.: 87953971

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

<p>Cytozyme Laboratories, Inc. Opposer, v. JH Biotech, Inc. Applicant.</p>	<p>DECLARATION OF P. DE JONGE IN SUPPORT OF CYTOZYME LABORATORIES, INC.'S RESPONSE TO APPLICANT'S MOTION TO COMPEL DISCOVERY</p> <p>Opposition No. 91244593</p>
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1. I am an attorney of record for Opposer Cytozyme Laboratories, Inc. (“Cytozyme”).
2. On Monday, May 6, 2019, I received an email communication from counsel for JH Biotech, Inc. (“JH Biotech”) Ralph Chabot. A true and correct copy of that communication is attached as Exhibit A.
3. As part of its discovery responses, Cytozyme produced a watch notice labeled CYTOZYME0024. A true and correct copy of that document is attached as Exhibit B.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 23, 2019.

A handwritten signature in blue ink, appearing to be 'Peter M. de Jonge', written over a horizontal line.

Peter M. de Jonge

Exhibit A

From: rdc@chabotlaw.com on behalf of rdc.chabotlaw.com
To: [Peter deJonge](#)
Cc: [Jillaine Chaston](#); [Kaelynn Moultrie](#); [Aimee Kaderabek](#); [Litigation](#)
Subject: Cytozyme v. JH Biotech Opposition No. 91244593
Date: Monday, May 06, 2019 11:10:22 AM

Peter,

I'm in receipt of your discovery responses received after the Motion to Compel had been filed. After review, JH Biotech withdraws Interrogatories 10,11,26,28, and 34 from its "Motion to Compel Discovery Responses".

However, the motion will proceed with respect to Interrogatories 3, 5, 6, 29-32, 35-37 and 40-42 as inadequate answers to-date have been provided.

Interrogatory No 3. requested Cytozyme identify all documents that support your allegation that SEED+ is famous.

You cited Bates labeled CYTOZYME0028-75 that the SEED+ mark is registered with the USPTO. Every registrant can provide such evidence about their respective mark and such information does not support an allegation that the mark is famous.

You further cited Bates labeled CYTOZYME0020-23, and 76-103 as advertising SEED+ in multiple channels of trade, including online advertisements and through partnerships with other companies. Bates labeled CYTOZYME0020-23 appears to be a single brochure promoted by VERDESIAN while CYTOZYME0076-82 are webpages purportedly controlled by VERDESIAN and CYTOZYME0083-99 are webpages copyrighted 2019 from the website www.cytozymeag.com which Opposer purportedly controls. Finally, Bates labeled CYTOZYME0100-103 is an August 15, 2018 press release announcing that VERDESIAN has become Midwest distributor of SEED+.

To summarize, a) you have provided no documents to support multiple channels of trade; b) you have provided a single webpage advertisement from Cytozyme and a single webpage advertisement from its mid-west distributor VERDESIAN; 3) you have only provided documentation of Cytozyme's partnership with VERDESIAN and not with any other company although you claim there are other companies; and, 4) the press release of August 15, 2018 inferring that VERDESIAN was not a distributor before that date.

The purpose of Interrogatory No. 3 was to receive information for making an informed determination as to whether the SEED+ is famous. JH Biotech does not want to be surprised with "supplemented responses" at the end of discovery. For a product alleged to have been sold for over thirty years, the evidence supporting an allegation that SEED+ is famous is woefully lacking. If you have any additional information to support your allegation then you are required to provide. However, if you have no additional information Cytozyme will be using to support that the SEED+ mark is famous, then so state on an amended response and JH Biotech will withdraw Interrogatory No. 3 from its motion to compel.

Interrogatory No 5. requested Cytozyme identify all documents that support your allegation of tarnishment.

As stated in my March 1st email, your response, in part alleges JHB's SEEDUP mark tarnishes SEED+ by associating JHB's inferior and poorer quality seed treatment and growth products. In order to support your allegation of "inferior and poorer quality", some testing or comparative evaluation of the products must have been performed. Any such results or evaluation should be identified in your response to this interrogatory.

Alternatively, you may revise your response to state Cytozyme has no evidence to support an allegation of tarnishment.

The purpose of Interrogatory No. 5 was to receive information you possess of tarnishment. JH Biotech does not want to be surprised with "supplemented responses" at the end of discovery. If you have any additional information to support your allegation then you are required to provide. However, if you have no additional information Cytozyme will be using to support tarnishment, then so state on an amended response and JH Biotech will withdraw Interrogatory No. 5 from its motion to compel.

Interrogatory No 6. requested Cytozyme identify all documents that support your allegation of blurring.

As stated in my March 1st email, your response, in part "simply makes an accusation that JHB's SEEDUP mark causes blurring of Cytozyme's SEED+ mark by decreasing the unique nature of Cytozyme's SEED+ mark and the likelihood that SEED+ will continue to be a unique identifier of Cytozyme's high-quality seed treatment. Your response does not identify any evidence to support your allegation of blurring. If you have no evidence, you may revise your response to so state."

The purpose of Interrogatory No. 6 was to receive information of blurring JH Biotech does not want to be surprised with "supplemented responses" at the end of discovery. If you have any additional information to support your allegation then you are required to provide. However, if you have no additional information Cytozyme will be using to support blurring, then so state on an amended response and JH Biotech will withdraw Interrogatory No. 6 from its motion to compel.

Interrogatory No. 10 requested annual sales figures.

Your amended response has provided a satisfactory answer and JH Biotech withdraws Interrogatory No. 10 from its motion to compel.

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Interrogatory No. 11 requested annual advertising figures.

Your amended response has provided a satisfactory answer and JH Biotech withdraws Interrogatory No. 11 from its motion to compel.

Interrogatory No. 26 requests Cytozyme to identify each unit size which is used to sell SEED+ product.

Your amended response has provided a satisfactory answer and JH Biotech withdraws Interrogatory No. 26 from its motion to compel.

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Interrogatory No. 28 requests for each unit size described in **Interrogatory No. 26** the unit price for customers desiring to purchase directly from Cytozyme.

Your amended response has provided a satisfactory answer and JH Biotech withdraws Interrogatory No. 26 from its motion to compel.

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Interrogatory No. 29 requests whether SEED+ is available in retail stores.

The answer bears on the channels of trade SEED+ is offered for sale. Your response was that Cytozyme products bearing the SEED+ mark are available directly from Cytozyme and through Cytozyme's partners. Your response does not directly answer this interrogatory and you are required to answer.

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Interrogatory No. 30 requests Cytozyme to identify the number of salesman. We are not asking for the names; simply the number of salesman Cytozyme employs that are not affiliated with another company. Your response was that this is not relevant to this dispute. You are required to answer.

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Interrogatory No. 31 requests the number of companies having a partnership with Cytozyme for sale of SEED+ products in the US. As stated in my April 5th email, we are not asking for each company name; only the total number of companies. Your response was that this is not relevant to this dispute. You are required to answer.

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Interrogatory No. 32 requests when Cytozyme first began using a company to provide Watch Notices pertaining to SEED+. We are not asking for the company name or search results; only the date Cytozyme first began using a company. If Cytozyme has never used a company, then so state. Your response was that this is not relevant to this dispute. You are required to answer.

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Interrogatory No. 34 requests what percentage of worldwide sales of SEED+ product is sold in the US.

Your amended response has provided a satisfactory answer and JH Biotech withdraws Interrogatory No. 34 from its motion to compel.

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Interrogatory No. 35 requests what percentage of overall sales in the US is attributed to the sale of SEED+ products for the year 2018. Your amended response provided an answer for the year 2017. You are required to provide an answer for the year 2018.

Interrogatory No. 36 requests what percentage of SEED+ sales in the US was sold by Cytozyme directly to customers for the year 2018. As stated in my April 5th email, this is to ascertain your allegation that SEED+ is famous. Your response was that this is not relevant to this dispute. You are required to answer.

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Interrogatory No. 37 requests the single largest purchase of SEED+ product purchased by a

customer placing an order directly with Cytozyme. As stated in my April 5th email, this is to ascertain the level of sophistication of the purchaser regarding your allegation of likelihood of confusion. Your response was that this is not relevant to this dispute. You are required to answer.

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Interrogatory No. 40 regard Cytozyme to state why confusion between SEEDMAXX and SEED+ is not likely. Your response was that this is not relevant to this dispute. You are required to answer.

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Interrogatory No. 41 regard Cytozyme to state why confusion between SEEDNET and SEED+ is not likely. Your response was that this is not relevant to this dispute. Your opinion regarding this issue is relevant. You are required to answer.

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Interrogatory No. 42 requests Cytozyme to identify the five crops from which the most revenue is obtained for your SEED+ product. As stated in my April 5th email, we fail to see how identifying 5 crops is vague and burdensome. This information is required for an analysis into likelihood of confusion. Your response was that this is not relevant to this dispute. You are required to answer.

Regards,


Ralph D. Chabot
Attorney At Law
Tel: 805.388.5028

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Exhibit B

USPTO Official Gazette Watch Notice

Active applications and registrations as published in the U.S. PATENT AND TRADEMARK OFFICE Official Gazette of **10/09/2018** have been examined in preparing this report.


THORPE NORTH & WESTERN LLP
175 SOUTH MAIN ST
SUITE 900
SALT LAKE CITY, UT 84111
USA

Your Ref.: 2982-32590
Sub Client: 2982-32590
Our Ref.: 1164418 / 359488280 / 266621 / 40587
Date: October 15, 2018

MARK WATCHED:SEED+

SELECTED MARK:SEEDUP

CLASS(ES) WATCHED:01, 05, 31

INTERNATIONAL CLASS(ES):01

SEEDUP

OPPOSITION DEADLINE: NOVEMBER 08, 2018

SERIAL NUMBER: 87-953, 971

GOODS/SERVICES:

(INT.CL. 1) Microbial inoculants for application to seeds used in agriculture

STATUS: PUBLISHED PUB. DATE: OCT 09, 2018
PUBLISHED FOR OPPOSITION

FILED: JUN 08, 2018

PUBLISHED FOR OPPOSITION: OCT 09, 2018

APPLICANT:

JH BIOTECH
4951 OLIVAS PARK DRIVE
VENTURA, CALIFORNIA, 93003
UNITED STATES OF AMERICA

FIRST USED: JUN 07, 2018 (INTL.CL.01)
IN COMM: JUN 07, 2018

FILING CORRESPONDENT:

RALPH D CHABOT
LAW OFFICE OF RALPH D. CHABOT
2310 E. PONDEROSA DR., STE 4
CAMARILLO, CA 93010-4747