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

Proceeding	91265024
Party	Defendant Vytelle, LLC
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Attachments	Answer to Opposition.pdf(171056 bytes )



4. Applicant admits that the registration dates for Opposer’s marks are February 4, 1992, July 9, 2013, and July 31, 2018. Applicant has insufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations set forth in Paragraph 4, and therefore denies the same.

5. Applicant denies the allegations in paragraph 5. Applicant specifically states that Applicant’s VYTELLE Mark differs from Opposer’s VITEK mark in spelling, length, number of syllables, sight, sound, meaning an commercial impression.

**AFFIRMATIVE DEFENSES**

1. Opposer’s claim is barred for failure to state a claim upon which relief should be granted, as Applicant’s VYTELLE Mark and Opposer’s VITEK mark are dissimilar in sight, sound, meaning and commercial impression, the goods and services offered by Opposer and Applicant are dissimilar, the established, likely to continue, trade channels are dissimilar, the consumers and prospective consumers are dissimilar, and the conditions under which both parties’ goods/services are offered require careful, sophisticated purchasing decisions, thus eliminating any potential confusion.

2. There are many other “VIT” and “VYT” -formative marks already coexisting on the USPTO registry in relation to medical and veterinary goods and services—an exemplary list is shown in the chart below—evidencing that consumers are unlikely to be confused by the coexistence of the parties’ respective marks.

<b>Registration No.</b>	<b>Mark</b>	<b>Goods/Services</b>
5,959,470	VYTADCO	IC 005. US 006 018 044 046 051 052. G & S: Pharmaceutical preparations for the treatment of cancer
5,473,878	VYTENITY	IC 005. US 006 018 044 046 051 052. G & S: Pharmaceutical preparations, namely, anti-cancer preparations, preparations for the treatment of allergies and allergic diseases and disorders, autoimmune diseases and

		disorders, blood disorders, cardiovascular diseases and disorders, cholesterol disorders, lipid disorders, cerebrovascular diseases and disorders, infectious diseases, dermatological diseases and disorders, damaged skin and tissues, gastrointestinal diseases and disorders, inflammation and inflammatory diseases and disorders, respiratory diseases and disorders
2,946,492	VYTORIN	IC 005. US 006 018 044 046 051 052. G & S: Cardiovascular preparations.
5,492,323	VITROS	IC 005. US 006 018 044 046 051 052. G & S: chemical reagents for medical in vitro diagnostic tests.
4,657,595	VITASSAY	IC 005. US 006 018 044 046 051 052. G & S: Diagnostic agents, preparations and substances for medical purposes; Diagnostic kits comprised of medical diagnostic reagents and assays for testing of bodily fluids for use in disease detection, namely, HIV, malaria; Diagnostic kits consisting primarily of monoclonal antibodies, buffers, and reagents for use in disease testing; Diagnostic media for bacteriological cultures; Diagnostic preparations for medical and veterinary use; Diagnostic preparations for medical or veterinary purposes; Diagnostic preparations for medical purposes; Diagnostic preparations for medical purposes for detecting the presence of malignant, inflammatory and autoimmune disorders and conditions and tissue trauma in humans; Diagnostic radiopharmaceutical agent for use in PET imaging; Diagnostic radiopharmaceutical preparations; Diagnostic reagents and contrast media for medical use; Diagnostic reagents for medicinal use; Diagnostic test patch for application to the skin for determining allergic reactions; Diagnostic test patch for application to the skin for determining allergies; Drug testing kits comprised of medical diagnostic reagents and assays for testing body fluids; Drug testing kits comprised of medical diagnostic reagents and assays that test for the presence of alcohol and drugs in body fluids; In-vivo diagnostic agent used for detection and monitoring of angiogenesis and anti-angiogenic therapy; Medical diagnostic reagents; Medical diagnostic reagents and assays for testing body fluids for microorganisms; Medical diagnostic reagents and assays for testing of body fluids; Medical diagnostic reagents for the analysis of body fluids; Medical diagnostic test strips for use in the field of measuring blood glucose levels, measuring the PH level in human bodies for purposes of determining levels of alkalinity in the body; Reagents and media for medical and veterinary diagnostic purposes.

5,148,887	VITARGUS	IC 005. US 006 018 044 046 051 052. G & S: Ophthalmic diagnostic test reagent; ophthalmic chemical preparations for medical purposes
5,103,050	VITAPRO	IC 005. US 006 018 044 046 051 052. G & S: Cultures of microorganisms for medical or veterinary use; Diagnostic preparations for medical and veterinary use; Reagents and media for medical and veterinary diagnostic purposes;
3,218,160	VITEGRA	IC 010. US 026 039 044. G & S: Surgical, medical apparatus and instruments for use in general surgery, for use in endoscopy; apparatus for reproducing and processing images for endoscopic and/or surgical and/or micro-surgical operations
6,138,690	VITRIGEL	<p>IC 005. US 006 018 044 046 051 052. G &amp; S: Chemical preparations for medical purposes, namely, treating ophthalmological, otolaryngological and dermatological diseases or disorders; chemical preparations for pharmaceutical purposes for eye irritation tests, corneal permeability tests, skin sensitization tests, vascular permeability tests, liver metabolism and excretion tests and intestine absorption tests; biological tissue cultures for medical purposes; biological tissue cultures for veterinary purposes; transplants, namely, implants comprising living tissues; human allograft tissue; drug delivery agents in the form of sheets, threads and hollow fibers that facilitate the delivery of pharmaceutical preparations; drug delivery agents consisting of compounds that facilitate delivery of a wide range of pharmaceuticals; microcapsules for delivering drugs</p> <p>IC 009. US 021 023 026 036 038. G &amp; S: Laboratory apparatus and instruments for the exchange of substances and heat; measuring or testing machines and instruments, namely, scales, measuring glassware, test tubes; incubators for laboratory use; cell culture apparatus for laboratory use, namely, cell culture dishes; cell culture apparatus for laboratory use, namely, tissue culture flasks; cell culture apparatus for research use, namely, bioreactor for cell culturing; furniture especially made and used for laboratories, namely, chambers for cell culture for laboratory use; bioreactors for cell culture; cell chips being bio-chips for research or scientific purposes</p> <p>IC 010. US 026 039 044. G &amp; S: Medical apparatus and instruments for use in treating ophthalmological, otolaryngological and dermatological diseases and conditions; artificial skin for medical purposes</p>

5,784,031	VITREX	<p>IC 009. US 021 023 026 036 038. G &amp; S: Capillary tubes being laboratory glassware; glass tubes for scientific purposes, namely, capillary tubes</p> <p>IC 010. US 026 039 044. G &amp; S: Medical apparatus and instruments, namely, dropping pipettes for medical purposes</p>
5,969,712	VITAVITRO	<p>IC 005. US 006 018 044 046 051 052. G &amp; S: Pharmaceutical preparations for enhancing fertility and treating fertility related conditions, namely, vitrification medium for cryopreservation of embryos, eggs and sperm, warming medium for use with cryopreserved embryos, eggs and sperm, in vitro fertilization medium, flushing buffer medium for use in enhancing fertility and treating fertility related conditions, gamete buffer medium, culture medium for enhancing fertility and treating fertility related conditions; biological tissue cultures for medical purposes; semen for artificial insemination; cultures of microorganisms for medical and veterinary use; chemical reagents for medical or veterinary purposes; reagent paper for medical or veterinary use</p> <p>IC 010. US 026 039 044. G &amp; S: Testing apparatus for medical purposes, namely, blood testing apparatus, hormone testing apparatus, DNA testing apparatus, reproduction organs testing apparatus, sperm motility testing apparatus; diagnostic apparatus for medical purposes, namely, blood testing apparatus, hormone testing apparatus, DNA testing apparatus, sperm motility test apparatus; electric belts for medical purposes; medical apparatus and instruments, namely, automatic vitrification machines for cryopreservation of embryos, eggs and sperm, incubators, single lumen ovum pick-up needle, double lumen ovum pick-up needle, embryo transfer catheters, embryo culture dishes; open- pulled straw for use in cryopreservation of embryos, eggs and sperm</p>
5,598,151	VITA ANIMAL HEALTH	<p>IC 005. US 006 018 044 046 051 052. G &amp; S: diagnostic preparation for veterinary use, reagents and media for veterinary diagnostic purposes</p>
3,286,777	VIT KIT	<p>IC 001. US 001 005 006 010 026 046. G &amp; S: Cryopreservation kits, used for freezing biological specimens, comprising chemical preparations and reagents for scientific and diagnostic or laboratory research use.</p> <p>IC 005. US 006 018 044 046 051 052. G &amp; S: Cryopreservation kits, used for freezing biological</p>

		specimens, comprising chemical preparations and reagents for medical and veterinary use.
2,579,475	VITALFLOR	IC 005. US 006 018 044 046 051 052. G & S: Microscopy kits comprising medical diagnostic reagents, namely, supravital fluorescence microscopy dyes, and microscope slides for use therewith.
2,126,793	VITROS	IC 005. US 006 018 044 046 051 052. G & S: chemical reagents for medical in vivo diagnostic tests.  IC 010. US 026 039 044. G & S: medical equipment, namely, chemistry analyzer apparatus used to generate diagnostic test results from blood and other body fluids by professionals in hospitals, laboratories, clinics and doctors' offices.
6,230,958	VITALSLEEP	IC 044. US 100 101. G & S: Medical testing for diagnostic or treatment purposes; Conducting sleep studies for medical diagnostic or treatment purposes; rental of medical diagnostic apparatus for testing sleep disorders
5,814,782	VYTALS - MOBILE HEALTHCARE DELIVERY PLATFORM	IC 044. US 100 101. G & S: Medical diagnostic testing, monitoring and reporting services; Medical ultrasound imaging services; Consulting services in the fields of diagnostic medical testing and nutrition.
5,652,680	VITALSCAN	IC 044. US 100 101. G & S: Consulting services in the fields of diagnostic medical testing and nutrition; Medical analysis services for the diagnosis of cancer; Medical diagnostic testing, monitoring and reporting services
5,549,492	VITALITY RX	IC 044. US 100 101. G & S: Medical diagnostic testing, monitoring and reporting services.
5,415,386	VITAL HEART & VEIN	IC 044. US 100 101. G & S: Medical testing for diagnostic or treatment purposes
5,070,631	VITASTIQ	IC 010. US 026 039 044. G & S: Medical apparatus, namely, medical skin resistivity measuring apparatus; medical apparatus, namely, body electric conductivity measuring and recording apparatus  IC 044. US 100 101. G & S: Medical diagnostic testing, monitoring and reporting services
5,784,271	VITVO	IC 010. US 026 039 044. G & S: Cell culture instruments for medical use, namely cell culture chambers; medical devices for biological tissue growth, namely cell culture vessels; medical devices for in-vitro studies, namely mini-bioreactors; medical devices for testing the efficiency of active principles, namely cell culture chambers; medical devices for testing the toxicity of active principles, namely cell culture chambers

		IC 042. US 100 101. G & S: Technological consultancy in the field of biotechnological research; laboratory research services relating to pharmaceuticals; services providing chemical and biological laboratory research; biomedical research services; biological research services
6,275,098	VITALTRACE	IC 010. US 026 039 044. G & S: Diagnostic apparatus for obstetrics, namely, medical diagnostic devices for fetal monitoring, maternal monitoring, monitoring during labour, monitoring after labour, monitoring neonatal well-being; research instruments for medical diagnosis in the nature of medical devices for studying fetal physiology in human and animal research, medical devices for studying animal well-being in a research setting, medical devices for studying animal well-being in livestock  IC 042. US 100 101. G & S: Medical research; Scientific research relating to medicine; design of medical apparatus; research and development of products; advisory services relating to scientific and technological research in the field of medical monitoring and diagnosis
5,310,828	VITAGENE	IC 010. US 026 039 044. G & S: Diagnostic test kits for scientific use comprised of devices for collecting DNA samples in the nature of DNA collecting tubes, collection envelopes, and instruction manuals for using diagnostic test kits, all used for the purpose of researching genealogical and family history, wellness assessment and gaining insight into how the body responds to micronutrients and nutrients.
2,676,704	VITAPHONE	IC 010. US 026 039 044. G & S: Electrical apparatus and instruments, namely, data capturing and processing apparatus, namely, apparatus for recording and transmission of bio-signals, namely, sonographs, electrocardiographs (EKG), x-ray apparatus, echocardiographs, blood pressure meters, thermometers for medical purposes, stethoscopes, pulseimeters, electro-encephalographs (EEG), electromyographs (EMG), electroneurographs, audiometry apparatus, mammographs, breath gas analyzers for medical diagnostics; apparatus for medical diagnostic testing of liquids, namely, blood sugar meters, blood analyzers, urine analyzers, spittle analyzers, liquor analyzers
6,183,234	VITALIPID	IC 005. US 006 018 044 046 051 052. G & S: Pharmaceutical and veterinary preparations, namely, nutritional solutions for intravenous infusion in the form of an oil-in-water emulsion containing liposoluble vitamins A, D2, E and K1
5,682,909	VITAECELL	IC 005. US 006 018 044 046 051 052. G & S: stem cells for medical or veterinary use, not for human use.

		IC 044. US 100 101. G & S: Isolation, collection and banking of Mesenchymal stem cells from adipose tissue.
5,672,007	VITADX	IC 005. US 006 018 044 046 051 052. G & S: Pharmaceutical products for the treatment and diagnosis of cancer diseases or bladder diseases; veterinary preparations for the treatment and diagnosis of cancer diseases or bladder diseases; chemical preparations for medical or pharmaceutical use, namely, for the treatment and diagnosis of cancer diseases or bladder diseases
5,258,416	VITAMFERO	IC 005. US 006 018 044 046 051 052. G & S: Pharmaceutical and veterinary products, namely pharmaceutical preparations for the treatment of infectious diseases; medicines for human medicine, namely, medicine for the treatment of infectious diseases; chemical preparations for veterinary use for treating infectious diseases; bacteriological preparations for medical and veterinary use for treating infectious diseases; biological tissue cultures for medical and veterinary use; cultures of microorganisms for medical and veterinary use  IC 042. US 100 101. G & S: Engineering; research in the field of biology and bacteriology; research and development of new products for others; conducting clinical trials for others; scientific research for medical and veterinary purposes

WHEREFORE, Applicant prays the opposition be dismissed with prejudice and that Application Serial No. 88/700,953 be registered.

Respectfully submitted,

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*ATTORNEYS FOR APPLICANT*

**CERTIFICATE OF FILING and SERVICE**

I hereby declare that the foregoing Answer to Opposition has been filed via the Electronic System for Trademark Trials and Appeals (ESTTA) this 6th day of May 2021 which I have caused to be served upon the following counsel of record via email.

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