

EXHIBITS



TIA B

05-21-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #26

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

Alfacell Corporation,

Petitioner,

vs.

Anticancer, Inc.,

Registrant.

Cancellation No.: 32,202

Registration No. 1,987,445

**REGISTRANT ANTICANCER, INC.'S NOTICE OF RELIANCE:
WEBSITE OF PETITIONER ALFACELL CORP.**

Pursuant to 37 C.F.R. § 2.122(a) and Rule 712.03 of the Trademark Trial and Appeal Board Manual of Procedure, Registrant Anticancer, Inc. ("Registrant") hereby submits this Notice of Reliance during its testimony period, and requests that the Board take judicial notice of facts not reasonably in dispute.¹ Registrant is relying upon printouts from the website of Petitioner Alfacell Corp. ("Petitioner"), namely webpages found at the domain name www.alfacell.com. A copy of these printouts is attached hereto as Exhibit B. Registrant requests that the Board take judicial notice of the facts that these printouts represent the current website of Petitioner, and that Petitioner's mark ONCONASE appears prominently on the homepage, and several times on other web pages found at this domain name.

¹ This Notice of Reliance replaces the Notice of Reliance submitted earlier regarding Printouts from the Website of Opposer Alfacell Corp. A copy of the earlier submitted Notice of Reliance is attached hereto as Exhibit A.

The facts that these printouts represent Petitioner's current website, and that the Petitioner's mark ONCONASE appears in several places on the website are facts not reasonably in dispute. These facts are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." See FRE 201(b). By attempting to reach the website of Petitioner by use of the domain name www.alfacell.com, the Board will reach the webpages depicted in Exhibit A. Furthermore, upon viewing the webpages, it cannot be reasonably disputed that Petitioner's mark ONCONASE appears prominently on the home page, and appears several other times on the various web pages at the site.

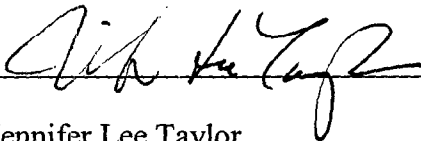
The facts that these printouts from Petitioner's website represent the current website, and that the mark ONCONASE appears prominently and numerous times at the web site, are relevant because they support the conclusion that Registrant's mark ONCASE is not likely to cause confusion with Petitioner's mark ONCONASE. Specifically, these facts help establish that Petitioner's ONCONASE mark has been widely promoted. The Board recognizes that under the *Du Pont* likelihood of confusion analysis, a long period of concurrent, simultaneous use of two marks, without any instances of actual confusion is persuasive evidence that there is no likelihood of confusion between the two marks. *Application of E.I. DuPont DeNemours & Co.*, 476 F.2d 1357, 1361, 177 U.S.P.Q. (BNA) 563, 567 (C.C.P.A. 1973); *G.H. Mumm & Cie v. Desnoes & Geddes Ltd.*, 917 F.2d 1292, 16 USPQ2d 1635, 1638 (Fed. Cir. 1990); *Marcal Paper Mills, Inc. v. American Can Company*, 1981 TTAB LEXIS 9 at *39.

The attached printouts from Petitioner's website support Registrant's request for judicial notice. Such requests are to be made by notice of reliance attaching the necessary information upon which the request depends. TBMP § 712.03; 37 C.F.R. § 2.122(a).

Based upon these authorities, Anticancer respectfully requests that the Board take judicial notice of the aforementioned facts which are not reasonably in dispute.

Dated: May 20, 2003

Respectfully submitted,

By  _____

Jennifer Lee Taylor
Attorney for Registrant

MORRISON & FOERSTER LLP
425 Market Street
San Francisco, California 94105-2482
Telephone: (415) 268-6538
Facsimile: (415) 268-7522