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

Registration No. 1,987,445 Alfacell Corporation Petitioner v. Anticancer, Inc. Registrant	Cancellation No. 32,202 PETITIONER'S REPLY BRIEF

Commissioner for Trademarks
2900 Crystal Drive
Arlington VA 22202-3514

Table of Contents

Index of Cases

I. Registrant's Brief Must Be Read Skeptically

A. Example 1

Registrant Anticancer not only denies the existence of well-established caselaw, but also accuses Petitioner Alfacell with citing that caselaw incorrectly. For example, at footnote 18 on page 26 of its Brief, Registrant sagely notes:

> Petitioner alleges that Registrant breached its duty to select a mark not being used. ... trademark law encompasses no such duty. The case that Petitioner cites for this proposition, *Schering Corp. v. Alza Corp.*, 207 USPQ 504 (TTAB 1980), does not state that there is any such duty.

In fact, of course, the cited case is but one of many decisions to the same effect; the doctrine in question is a well-known precept of trademark law. ***And, the holding of the cited decision is precisely as Petitioner quoted it in footnote 38 on page 18 of its Brief***:

> If any doubts could exist in this matter, they should be resolved in opposer's behalf because of opposer's prior rights and substantial investments in creating consumer acceptance of its products, and because applicant, as the subsequent user who has not yet made any sales or commenced any commercial promotion of goods under the mark ... was obligated to select a mark that would readily be distinguished from and would not infringe upon the established marks of opposer. (citations omitted)[1]

B. Example 2

Registrant does not confine itself to creatively misstating the law. Where the record does not support the position Registrant wishes to take, Registrant simply makes things up and hopes no one will

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[1] Schering Corp. v. Alza Corp., 207 USPQ 504 (TTAB 1980), at pp. 509 - 510.

notice. For example, at page 17 of its Brief, Registrant says "Petitioner's witness admitted that other drugs used in the treatment of cancer also use the ONCO prefix", citing 93:3-7 of Ms. Scudiery's deposition.

To understand the egregiousness of this invention, one must begin reading not at 93:3, but rather two pages earlier at 91:6. And, one must read Ms. Scudiery's holographic corrections to her deposition transcript (relevant pages attached as Exhibit A). In substance, Ms. Scudiery testified that when she worked at Enzon, ONCONASE was her company's first choice as a trademark for an anticancer product. But, Enzon's lawyers said this choice was unavailable because Petitioner had by then adopted ONCONASE as a trademark. So, Enzon adopted the ONCASPAR[2] trademark instead. Obviously, Registrant's lawyer misheard the ONCASPAR trademark as "ONCOSPAR" (as did the court reporter who took the testimony, because the two marks sound identical).

There was no fault in mishearing the ONCASPAR trademark as "ONCOSPAR". Such confusion is entirely understandable. ***But, as can be seen from Exhibit A, Ms. Scudiery meticulously corrected the transcript of her deposition to make it incontrovertibly clear that***

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[2]The Board may take judicial notice of public records, and Reg. No. 1,809,883 for ONCASPAR stands in the name of Enzon, Inc.

she never testified about an ONCOSPAR mark. She testified about an ONCASPAR mark.

Hence, the testimony cited by Registrant[3] has literally nothing whatsoever to do with the point for which Registrant cites it; it is pure invention for Registrant to say that a witness who testified to an ONCASPAR mark "admitted that other drugs used in the treatment of cancer also use the ONCO prefix". Ms. Scudiery's corrections are as obvious as can be, and Registrant has creatively - indeed shamefully - ignored them.

C. Example 3

Unfortunately, certain of Registrant's other arguments are more pernicious; their less-obvious falsity can be discerned only by deep reading that the Board should not be required to do. For example, Registrant takes pains to impugn the clinical effectiveness of ONCONASE by saying:

> As Petitioner's witnesses have admitted, the only disease for which Petitioner's product has demonstrated any effectiveness is mesothelioma ... . Shogen Deposition 46:1-13 (Brief, p. 18)

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[3]Scudiery, 93:3-7.

This mischaracterizes the cited testimony. Petitioner's Dr. Shogen merely testified[4] that the ongoing Phase III trials of ONCONASE were for mesothelioma and nothing else. She did not testify that ONCONASE was otherwise ineffective. In fact, just before the cited testimony, she testified to the contrary[5]:

> Q: What is your product designed to treat?
> A: A variety of solid tumors.
> Q: Which variety?
> A: Well we have evidence obviously in mesothelioma, we have this in lungs and breasts and we have evidence in - I'm talking about in the human event. We have a number of the renal cell carcinoma, we have also some prostate data and we are looking at other indications as well and particularly with other combinations.
>
> ***
>
> Q: Do you know what the indication is for breast cancer?
> A: We have published on seventeen patients in a Phase II trial which had Stage IV disease and ONCONASE as a single agent has produced tumor responses, partial responses and improved survival.
>
> Our end point is survival, long-term survival and we see that, yes, indeed, patients who participate in our clinical programs seem to benefit by that and that still remains to be proven. That's what we are doing now in our confirmatory trials and hopefully once we file the NDA. The FDA is the arbiter of efficacy. We, of course, are very confident and very optimistic that yes, indeed, this will be a valuable product.

Dr. Shogen also testified to the contrary immediately after the testimony to which Registrant refers. Dr. Shogen testified[6] that

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[4]Shogen, 46:1 - 13.

[5]Shogen, 44:2 - 45:25.

[6]Shogen, 47:13 - 49:10.

Petitioner had Phase II data regarding breast cancer, lung cancer, prostate cancer, and renal cancer. (She also mentioned pancreatic cancer, esophageal cancer, "a melanoma or two", and "squamous cell head and neck", but noted that the numbers were too small to really do an analysis.) And she expressly stated that Petitioner would like to move on to Phase III for those cancers, but that Petitioner did not have the money to do so.

Hence: to denigrate Petitioner's ONCONASE product (and to do so gratuitously and irrelevantly because efficacy is a question for the FDA and not for this Board) Registrant literally lifted a few sentences out of their context and then mischaracterized them. The Board deserves better.

D. Example 4

Registrant does not stop at mere mischaracterizations of testimony; it proffers hearsay evidence in the hope that an overburdened Board will accept it without review. Its Brief, at page 18, states: "Petitioner's product has not had any success with any other diseases, and certainly not with any other forms of cancer." Registrant cites four sources for this statement: 1) the above-quoted testimony of Dr. Shogen; 2) Dr. Hoffman's testimony at 88:25 - 89:11, 3) Exhibit 17 marked at Dr. Hoffman's deposition, and 4) Exhibit 16 marked at Dr. Hoffman's deposition.

Source 1, namely Dr. Shogen's testimony, has been discussed above. Sources 2, 3, and 4 justify discussion as well.

First, as to sources 2 and 4 (from Dr. Hoffman's testimony). Dr. Hoffman testified that he had discussed ONCONASE with a Dr. Vogelzang, who was one of the co-authors of source 4 (the paper marked as Exhibit 16). And, Dr. Hoffman quoted Dr. Vogelzang as saying that ONCONASE was "on life support".

This is naked hearsay, to which Petitioner objected (Hoffman, 89:12 - 14). Yet, Registrant nonetheless persisted:

> Q: Do you have any separate basis to believe the ONCONASE product may be on life support, as Dr. Vogelzang told you?
> A: Well, he said it in an e-mail. He wrote it. It's not hearsay[7].
> MR. JAY: Let me just note that I'm just going to offer a standing objection to questions that call for hearsay answers, but go ahead.
> THE WITNESS: I don't believe it's a hearsay answer. I have it in writing.

Citation of such testimony to a trier of the facts borders on insult. But, Registrant stoops even lower. Counsel for Registrant forgot to introduce the e-mail about which her witness testified, went on to other subjects, and explicitly ended her direct examination (Hoffman, 92:15 - 17). The deposition had been conducted by telephone, and because Petitioner's counsel needed a few minutes to organize his papers, the parties hung up. Petitioner's counsel called back, and the following colloquy ensued[8]:

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[7]Dr. Hoffman, who is not a lawyer, may be pardoned for failing to understand that written hearsay is still hearsay.

[8]Hoffman, 93:8 - 95:10.

> MS. TAYLOR: Back on the record.
> During - at the tail end of my - the last questions I had for Dr. Hoffman, he was commenting on a communication he had with Dr. Vogelzang, and he had received it in e-mail form. And after we went off the record I remembered that I had it ready to mark as an exhibit and we had not done that, so I'm proposing that we would go ahead and mark as Exhibit Number - Registrant's Exhibit Number 17 a copy of the e-mail exchange that Dr. Hoffman had referenced earlier.
> (Registrant's Exhibit 17 was marked.)
> MR. JAY: And for the record, Mark Jay speaking. We're going to be objecting to the introduction of anything further that was not introduced on direct because direct examination has closed. So that at the appropriate time, we will be addressing the board on the propriety of the documents which are now being marked.

Registrant then proceeded to ask the witness about Exhibit 17, and counsel for Petitioner repeated his objection that the document was not properly introduced into evidence during direct examination.[9]

In other words, Registrant cites not merely verbal hearsay but written hearsay as well ... and untimely introduced written hearsay at that! No lawyer would dare to so conduct herself before a federal judge, but there is no judicial supervision during the trial phase of *inter partes* trademark proceedings and an Oral Hearing may not take place until a year from now.

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[9]It should be noted that the deposition was by telephone, that Registrant had not provided Petitioner with an advance copy of Exhibit 17, and that opposing counsel could not see the document that was being introduced into evidence at the time of its introduction. So, counsel for Petitioner had no idea what Exhibit 17 was and could not object to it as written hearsay (which it obviously is).

The 25 page limit on Reply Briefs makes it impossible to point out all the misstatements of law, inventions of fact, misleading citations, and evidentiary problems in Registrant's Brief. Petitioner merely requests, on the basis of the above demonstration, that the Board take Registrant's representations with more than a single grain of salt.

II. The Absence of Actual Confusion Between the ONCONASE Drug and the ONCASE Drug Proves Nothing But Registrant's Success in Keeping Its ONCASE Mark out of the Marketplace.

There has been no actual confusion between Petitioner's ONCONASE product and Registrant's ONCASE product because Registrant has kept the ONCASE mark out of the marketplace. Although every scientist reads scientific papers, Registrant elects to keep the ONCASE mark out of such papers[10] (and therefore under the regulatory radar). Since 1996, when the ONCASE registration issued, only seven bottles of ONCASE have been used in preclinical trials[11]. In fact, since 1996, there have been only three ways that a scientist could ever connect with the ONCASE trademark:

1. He or she could visit a huge trade show such as AACR or ASCO, find Registrant's "large" booth located somewhere on the show floor, view the "large" display of the ONCASE mark, take one of the 200 - 500 handouts that were available there, refrain from throwing the handout away, and perhaps

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[10]Hoffman, 96:21 - 97:5.

[11]Hoffman, 127:5 - 128:1.

even read one of Registrant's therein-cited scientific papers (from which the ONCASE mark is entirely absent).

2. He or she could decide to attend one of Dr. Hoffman's "dozens" of presentations instead of attending one of the literally thousands of other presentations that are given at the many large scientific meetings that are held every year.

3. He or she could happen on Registrant's website and click through to a page on which the ONCASE mark appears.

With such minimal promotion of the ONCASE mark, it is no wonder that no one has confused it with the ONCONASE mark.

III. Registrant's Repeated Insinuations That ONCONASE Is Ineffective and Unapprovable Are Legally Irrelevant, for Petitioner Has Earned Trademark Rights in its ONCONASE Mark by Using it in Commerce.

Registrant fills many pages describing the FDA approval process, denigrating the ONCONASE drug, and even asserting that

> there is only a mere "theoretical possibility" that Petitioner's product will be approved for general medical use or that it will be approved for general medical use with the name ONCONASE[12].

Incredibly, Registrant wants this Board to evaluate the likelihood that ONCONASE will receive marketing approval from the FDA, claiming that the FDA will never approve ONCONASE or allow it to be sold under the ONCONASE trademark:

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[12]Brief, page 23.

> It would be patently unfair to cancel Registrant's registration when Petitioner itself has no reason to believe it will ever receive approval of the ONCONASE product and proprietary name[13].

There are at least two reasons why this argument makes no sense. First: this Board exists for the purpose of resolving issues of trademark registration, not for the purpose of evaluating the likelihood that a new drug will receive marketing approval from the FDA. And, second: if Registrant's argument holds water, it would then follow that a Petition to Cancel could never be based upon a drug trademark when that drug lacked marketing approval. No matter that ONCONASE constantly travels between New Jersey and thirty-three prestigious medical research institutions across the country. Likewise, no matter that ONCONASE has passed Phases I and II and is almost at the end of Phase III. Still further, no matter that Registrant's ONCASE drug remains in what it calls "preclinical trials" fully eight years after registration without ever being the subject of an Investigational New Drug application to the FDA (much less entering Phase I) and that those "preclinical trials" have been so minimal as to require a mere seven bottles (i.e. less than one each year) during that time. No, says Registrant: ONCONASE will likely never get anywhere, and until its New Drug Application is filed and approved, and its proprietary name approved, too bad for Petitioner.

This cannot be the law.

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[13]Brief, page 26.

One final remark is in order. In footnote 17 of its Brief on page 25, Registrant accuses Petitioner of misleading the Board by saying that the label for ONCONASE has been approved by the FDA, because the FDA has not yet approved ONCONASE for general medical use. Petitioner will not allow such an accusation to go unanswered.

The ONCONASE mark is in use in commerce because the mark is placed on labels[14] affixed to vials of ranpirnase and such vials travel in commerce to thirty-three clinical sites across the United States[15]. And, such use is stringently regulated by the Food and Drug Administration. Ms. Scudiery explained[16] this:

> As part of this package [to the FDA] it is understood that we would also include a section on what the current labeling for the product in the clinic looks like to be including and it is referred to on Page 39 and then a sample of the labels for the vial and cartons that are shipped to the clinic was provided in Appendix 7.9 on Page 273, 274 and then the instructions for preparation of ONCONASE for injection on 275, 276, 277 and 278.
>
> Q: Why was it that you submitted Appendix 7.19 and the other documents in this package?
>
> A: Because it is standard practice when you are undergoing chemistry review and the meeting that you include what your clinical label looks like. It is just what you include.
>
> Q: Is this a requirement?
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> A: Basically, yes. It is not a formal written requirement but they want to know everything about the chemistry, manufacturing and controls of the product from

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[14]Petitioner's Exhibit 1.

[15]15 U.S.C. §1127, "Use In Commerce".

[16]Scudiery, 87:11 - 88:20.

start to finish and so you make your package as inclusive as possible.

Q: Was this label that you submitted approved by the FDA?

A: Well, we followed the regulations for labeling and we showed them basically what the label looked like and they had no problem with it. You would submit the label for their approval. There are regulations that you design your label according to and obviously if you are not following that then you have a problem.

Once you show it to them they look at it and if they don't have a problem with it then you are fine.

Q: Are you allowed to distribute or are you allowed to ship this drug with any label other than the one that you have submitted to the FDA?

A: No, not for clinical use.

In other words, Petitioner uses the ONCONASE mark in commerce by using it on a label, the FDA requires the label and other packaging to conform with various regulations, the label as used by Petitioner does indeed so conform and was submitted to the FDA so such conformity could be verified, the FDA approved use of the label by failing to object to it, and in the clinical trials, Petitioner uses the label exactly in the form in which it was approved.

Consequently, Petitioner's statement that its label for ONCASE has been approved by the FDA is not misleading in any way. It is absolutely accurate.

IV. Registrant's Ad Hominem Attack Does Not Meet Petitioner's Challenge to the ONCASE Registration.

Petitioner has indeed challenged the validity of the ONCASE registration. Instead of meeting that challenge, Registrant resorts to ad hominem assertions that Petitioner's counsel "hid the ball" by failing to explain the relevancy of his questions to Dr. Hoffman and

delayed explaining the theory of his challenge until after the close of Registrant's testimony period.

Dr. Hoffman's deposition transcript, beginning at 107:7, is a record of what actually happened (**boldface emphasis added**):

> Q (by Petitioner's counsel to Dr. Hoffman):
> Did the FDA know at that time that doctors were carrying the ONCase product from California to Mexico?
> MS TAYLOR: I'm going to object ....
> Now, Mr. Jay, if you can explain to me how it might be relevant, I might permit Dr. Hoffman to answer the question, but it appears that you're trying to raise an issue of compliance with FDA regulations that is not pertinent to the trademark proceedings.
> MR. JAY: **Well, I will respond to you, Ms. Taylor. As you know, the trademark law does not recognize use of a trademark which does not occur in accordance with regulatory requirements. For example, if you go ahead and submit a specimen of - using, for example, a trademark that is for tobacco or for alcohol or for anything like that, the Patent and Trademark Office will not accept that specimen as evidence of use unless that specimen complies with the applicable regulations. And in the case of applicable for tobacco, for example, the labeling has to be appropriate.**
> **I also call your attention to the provisions of 21 CFR 312.110, which refer to FDA regulations relating to export of unapproved new drug products.**
> **Now, I simply want to know whether or not the FDA knew - to use the words that appear in the affidavit - that the ONCase product was being carried from California to Mexico at the time it was so carried.**
> MS. TAYLOR: Given that the Trademark Trial and Appeal Board has issued a ruling on summary judgement on the issue of abandonment, Mr. Jay, I fail to see how that statement is relevant to the remaining issues in the cancellation proceeding. If you could explain the relevancy to the remaining issues in the cancellation proceeding, I may well change my position. How is it relevant to the remaining issues in the cancellation proceeding? You cannot raise the issue of abandonment again.
> MR. JAY: **The issue is not one of abandonment now, Ms. Taylor, because as you know the declaration from which I am now quoting, i.e., Exhibit 3, was a declaration that was not**

of record at the time that the petitioner made its - filed its petition to cancel.

The issue here is not, as I would phrase it or would have phrased it had this been publically available before the filing of that petition, whether or not there had been any use, but whether the use was such as to entitle AntiCancer to derive a benefit from such use.

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MS. TAYLOR: We are not at this point addressing the issue of use in commerce, are we?

MR. JAY: You are addressing, I believe, your right to use what use you made of this drug as evidence which can benefit you in this proceeding.

Now, I will contend, and I - my authority for the proposition is contained in 21 CFR 312.110, that any exportation of the ONCase product from the United States, whether in the pocket of a physician or otherwise, is not in compliance with the applicable regulation, unless the person who is causing the exportation to occur either has an investigational new drug application or the FDA has approved a written request.

So much for Registrant's charge that Petitioner's lawyer "hid the ball" at Dr. Hoffman's deposition. This charge does not hold water. Counsel for Registrant objected to the requested testimony not because Petitioner's lawyer concealed the reasons for Petitioner's questioning, but rather because those reasons were apparent to her, and fatal to her client's case.

And, this is not - as Registrant claims - an instance in which a new argument is made for the first time in a party's Brief. Rather, this is an instance where a party's trial testimony (actually, lack of trial testimony) brings a new argument into existence.

Petitioner stands by its challenge to the validity of the ONCASE registration and refers the Board to its Brief.

V. Registrant's Laches Defense is Makeweight

Registrant claims that Petitioner delayed unduly and unreasonably in filing this Petition to Cancel and that Petitioner's Petition should be denied on the basis of laches, citing two decisions of the Court of Appeals for the Federal Circuit, namely Bridgestone/Firestone Research Inc. v. Automobile Club de l'Ouest de la France, 58 USPQ2d 1460 (Fed. Cir., 2001) and National Cable Television Association Inc. v. American Cinema Editors Inc., 19 USPQ2d 1424 (Fed. Cir., 1991). Neither case is of aid to Registrant; each helps Petitioner instead.

Bridgestone/Firestone points out that

> mere delay in asserting a trademark-related right does not necessarily result in changed conditions sufficient to support the defense of laches. There must also have been some detriment due to the delay.[17]

And, the decision identifies two categories of detriment[18]. The first, prejudice at trial due to loss of evidence, is inapplicable here, for Registrant's failure of proof results from the absence of favorable facts rather than the death or memory loss of witnesses. The second, namely loss of time or money or foregone opportunity, is likewise inapplicable here, for Registrant's "investment" in its ONCASE mark has only been the minimal costs associated with printing seven labels, a few reusable posters, and some handouts for

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[17]58 USPQ2d at 1463.

[18]58 USPQ2d at 1463.

distribution at trade shows. (Petitioner has also borne the insubstantial costs associated with putting the ONCASE mark on its website.)

National Cable likewise aids Petitioner. This decision dealt with a unique fact pattern. The senior party petitioner had adopted and used its mark long before the junior party registrant began using the mark it eventually registered. And, the junior party used its mark for some time before applying to register it and eventually obtaining registration. When the senior party petitioned to cancel the junior party's registration, the junior party pointed out that the senior party had long known of the junior party's use and had initiated no legal action to stop it. The Board held in favor of the senior party petitioner, and the junior party registrant appealed.

Although Registrant's Brief does not say so, the Federal Circuit *affirmed* the Board's decision to cancel the junior party's registration. The court noted that the junior party failed to carry its burden of proving that the senior party had delayed unreasonably, and that the junior party had been prejudiced by the delay. And then, the court held in favor of the senior party petitioner, stating:

> the appropriate adage is that a latecomer acts at its peril in promoting and investing in a mark which impinges on the rights of another (citations omitted).[19]

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[19]19 USPQ2d at 1432.

In short, Registrant has proven nothing other than the obvious fact that this proceeding was commenced shortly before the end of the five year period specified by 15 U.S.C. §1064(1). Such proof is legally insufficient to establish laches.

VI. Summary and Conclusion

Perhaps the most effective demonstration of the weakness of Registrant's position is a point-for-point comparison between the Petitioner's position as expressed in the summary section of its Brief at Final Hearing and Registrant's response thereto:

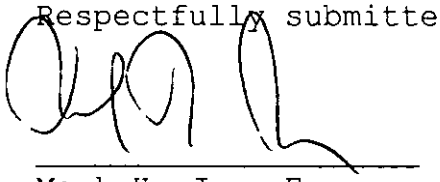
Petitioner's Position	Registrant's Response **Petitioner's Comment**
The petitioner Alfacell registered its ONCONASE mark before the registrant Anticancer adoped its ONCASE mark.	Uncontroverted.
The registrant Anticancer adopted its ONCASE mark without a search and therefore remained ignorant of Alfacell's ONCONASE registration (which was legal notice to the world as of its registration date).	"There is no testimony to that effect in the record." **Note Dr. Hoffman's transcript from 181:17 to 183:4, and particularly 182:5-12.**
The ONCONASE mark and the ONCASE mark look and sound almost identical, and the ONCASE mark is only two letters (i.e. only a one-syllable vowel sound) away from Alfacell's prior ONCONASE mark.	"The two marks differ markedly in sight, sound, and meaning. ... Registrant's mark does not contain the prefix ONCO or the suffix NASE. Rather, it is a crisper, coined term, namely ON-CASE."
Both trademarks relate to dangerous medicinal products (each is an intravenously-administered cancer drug)	Uncontroverted.

as to which Alfacell bears a reduced burden of proof of likelihod of confusion (because of the danger to the public that confusion would cause).	The proper standard is preponderance of the evidence.
If there is any doubt about the confusing similarity between the ONCONASE and ONCASE trademarks, the doubt must be resolved against Anticancer, because Anticancer is a second-comer that breached its duty to adopt a non-confusing trademark.	"... trademark law encompasses no such duty." And Petitioner has mis-cited the *Schering Corp.* decision.
And, Anticancer's refusal to answer legitimate questions on cross-examination makes it obvious that it is concealing the illegality of the commerce on which its ONCASE registration was based.	The questions were not legitimate, the commerce was legal or only technically noncompliant with FDA regulations, and this assertion comes too late.

No strings of misrepresentations or arguments, no matter how lengthy and forcefully expressed, can remedy the absence of favorable facts and law. Registrant's case is meritless, and it obviously knows it.

Reg. No. 1,987,445 should be cancelled.

Respectfully submitted



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Proof of Service

I hereby certify that, pursuant to the provisions of 37 CFR §2.119(a), a copy of this paper was served upon counsel for Registrant in accordance with the provisions of 37 CFR §2.119(b)(4) by transmitting it, on November 10, 2003, by first-class mail, in an envelope addressed to:

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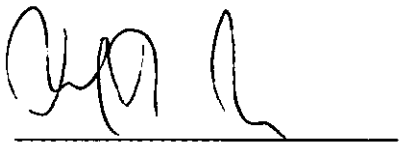

Mark H. Jay
Reg. No. 27,507

want if they feel it is misleading, confusing, dangerous, not valid, not true, can't be supported.

When you do your final package insert, when you submit it to the FDA you have to do what they call an annotated package insert meaning every sentence and everything has to be documented and verified that there is supporting evidence for every statement you are making on that label.

They have the final say and that's the regulations.

Q Do you know what criteria the FDA applies with respect to trademarks that are used on the label?

A My understanding is that if it's going to cause confusion or misprescription or errors or anything like that they will have a say in it. They will make you change it.

Q Have you had experience in instances where companies wanted to have particular trademarks and did not select them?

A Absolutely. When I worked at Enzon, the first ~~alkalytic~~ ENCOLYTIC DB 2/10/03 that they had, it was a ~~parafin~~ ASPARGINASE DB 2/10/03-based, when we had our team meeting we chose Onconase as one of the names we wanted to use as a trade name and at that time Alfacell had already gotten it and it was crossed off 2/10/03 the list by our lawyers. The trade name is ~~Oncospar~~. ONCASPAR That was the first choice of the other company, Onconase.

MR. JAY: Thank you. I don't have any further questions of Ms. Scudiery.

MS. TAYLOR: I have some questions.

CROSS EXAMINATION

BY MS. TAYLOR:

Q What was the name of the other company that you were working for when you talked about adopting that name?

A Enzon.

Q Why was Onconase the first choice?

A Because Asparaginase is an old drug which is used for leukemia to treat children with acute ~~lymphatic~~ lymphocytic leukemia and Enzon developed the technology and our policy was to ~~pegalyte~~ pegylate it.

Because it was cancer and it was Asparaginase we felt that Onconase was a great name for the new form of it, the non-~~pegalyted~~ pegylated version and the only version that was sold in the United States.

When our team met and we were reviewing potential names, that was our first choice and then the lawyers came back and said it has already been taken and we can't use that name. Someone already has the trademark on it.

Asparaginase was well into Phase III clinical

trials and I think it was approved in 1994.

Q Then I believe you said Enzon ultimately adopted ~~Oncospar~~ ONCASPAR 2/10/03. Does that have a particular name?

A Oncology For Cancer.

Q So ONCO is short for oncology?

A Yes.

Q What happened after you filed this IND application in November of 1995 with respect to Alfacell's aplications to the FDA?

A I'm not really sure of that question. Well, we had our meeting and we have continued to file and have more meetings with them and we continue to meet with them. In fact we just got fast track designation so we will probably be at even more meetings with them on our product.

Q You got fast track designation for what?

A Onconase.

Q For what purpose?

A For mesothelioma.

Q Did it cover any other cancers?

A No. Fast track is only for the drug and the indication.

Q So it is only for Onconase and it is only for mesothelioma?

A For Onconase and for mesothelioma together, yes.

Q When did you get fast track?

TTAB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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v.	PETITIONER'S REPLY BRIEF
Anticancer, Inc.	
Registrant	

Commissioner for Trademarks
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PURSUANT TO 37 CFR §1.8

I hereby certify that the above-captioned correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to

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2900 Crystal Drive
Arlington VA 22202-3514

on: November 10, 2003

Mark H. Jay, Esq.
Reg. No. 27,507