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Filing date: **05/19/2004**

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

<b>Proceeding</b>	92043119
<b>Party</b>	Plaintiff AGRIGENIC FOOD CORPORATION, D/B/A BIOTEC FOODS
<b>Correspondence Address</b>	ROBERT G. KAVANAUGH 5152 BOLSA AVENUE, SUITE 101 HUNTINGTON BEACH, CA 92649
<b>Submission</b>	Motion for Default Judgment
<b>Filer's Name</b>	Robert G. Kavanaugh
<b>Filer's e-mail</b>	robert_kavanaugh@hotmail.com
<b>Signature</b>	/Robert G. Kavanaugh/
<b>Date</b>	05/19/2004
<b>Attachments</b>	Motion for Default Judgment.pdf ( 3 pages )

1 Robert G. Kavanaugh, President  
Agrigenic Food Corporation, D/b/a Biotec Foods  
2 5152 Bolsa Avenue, Suite 101  
Huntington Beach, CA 92649-1047  
3 Phone: 714-89-3477  
Fax: 714-899-0078  
4

5 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
6 **BEFORE THE TRADEMARK TRIAL AND APPEALS BOARD**

7 Agrigenic Food Corporation, d/b/a Biotec Foods ) **Proceeding Number 92043119**  
Petitioner )  
8 vs. ) **Motion for Default Judgment**  
9 VIVA LIFE SCIENCE INC. )  
Respondent )  
10 )  
11 )

12 **Procedural History**

13 On March 29, 2004, Agrigenic Food Corporation, d/b/a Biotec Foods (hereinafter  
14 Petitioner) filed a Petition to Cancel Trademark Registration No. 2779751 for the mark  
15 "CellGuard" originally registered November 4, 2003, by Viva Life Science Inc. (hereinafter  
16 Respondent).

17 In accordance with the Trademark Rules of Practice, on April 2, 2004, the United States  
18 Patent and Trademark Office, Trademark Trial and Appeal Board notified Respondent of the  
19 Petition to Cancel via mail, and set a answer due date forty days after the mailing date, for May  
20 12, 2004.

21 As of May 19, 2004, no opposition has been filed by Respondent nor has an extension  
22 of time to file opposition been requested by Respondent nor granted by Petitioner, and pursuant  
23 to 37 CFR §2.106 (a) - If no answer is filed within the time set, the opposition may be decided  
24 as in case of default.  
25

1 On May 19, 2004, Petitioner contacted Respondent via telephone at (949) 645-6100,1  
2 for the purposes of determining whether Respondent had intended to file an opposition;  
3 however, no one with apparent authority to answer Petitioner's inquiry returned my phone call,  
4 and thereafter this Motion for Default Judgment was prepared and served on Respondent via  
5 mail according to the attached Proof of Service.

6 **Legal Standard**

7 Under Rule 2.113, 37 C.F.R. § 2.113, when a petition for cancellation is filed, the Board  
8 "shall designate a time ... within which an answer must be filed." If the cancellation respondent  
9 fails to file an answer within the time set by the Board, "the petition may be decided as in case  
10 of default." (See Rule 2.114, 37 C.F.R. § 2.114.)

11 **Prayer**

12 Pursuant to Rule 2.113, 37 C.F.R. § 2.113, Petitioner hereby moves the Trademark Trial  
13 and Appeal Board for a Default Order to Cancel Trademark Registration No. 2779751 for the  
14 mark "CellGuard" originally registered November 4, 2003 by Respondent Viva Life Science, Inc.

15 Dated this 19<sup>th</sup> day of May, 2004

16 By: /ROBERT G. KAVANAUGH/<sup>2</sup>  
17 Robert G. Kavanaugh, President  
18 For Petitioner Agrigenic Food Corporation  
19 d/b/a Biotec Foods  
20  
21  
22  
23  
24

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25 <sup>1</sup> See "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter-Parties Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68. (June 20, 2000).

<sup>2</sup> This document has been signed using an Electronic Signature. See 37 C.F.R. §§1.4(d)(1)(iii) and 2.33(d).

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5 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
6 **BEFORE THE TRADEMARK TRIAL AND APPEALS BOARD**

7 Agrigenic Food Corporation, d/b/a Biotec Foods ) **Proceeding Number 92043119**  
Petitioner )  
8 vs. ) **Proof of Service**  
9 VIVA LIFE SCIENCE INC. )  
Respondent )  
10 )  
11 )  
\_\_\_\_\_ )

12 I, the undersigned, certify and declare that I am over the age of 18 years, employed in the  
13 County of Orange, State of California. On May 19, 2004, I served a true copy of **Motion for**  
14 **Default Judgment** pursuant to 37 C.F.R. §2.119 by depositing it in the United States Mail in a  
15 sealed envelope with the priority mail, first-class postage thereon fully prepaid with delivery  
16 confirmation tracking number (01805213907443505982) to the following:

17 CHARLES C FOWLER  
Viva Life Science, Inc  
18 1239 Victoria St  
Costa Mesa, CA 92627-3933  
19

20 Place of Mailing:  
Arise Direct Marketing, Inc.  
5152 Bolsa Avenue STE 101  
21 Huntington Beach, CA 92649-1047  
County of Orange, California  
22

23 Executed on this 19th day of May, 2004 at Huntington Beach, County of Orange, California

24 I hereby certify under the penalty of perjury that the foregoing is true and correct.

25 /ROBERT G. KAVANAUGH/  
Robert G. Kavanaugh, President