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Filing date: **11/16/2004**

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

Proceeding	92043750
Party	Plaintiff AGRIGENIC FOOD CORPORATION ,
Correspondence Address	ROBERT G. KAVANAUGH AGRIGENIC FOOD CORPORATION D/B/A BIOTEC FOODS 5152 BOLSA AVENUE, SUITE 101 HUNTINGTON BEACH, CA 92649
Submission	Motion for Default Judgment
Filer's Name	Robert G. Kavanaugh
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Date	11/16/2004
Attachments	TTAB Motion for Default Judgment.pdf (3 pages)

1 Robert G. Kavanaugh, President
Agrigenic Food Corporation, d/b/a Biotec Foods
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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 92043750
8 Petitioner)
9 vs.) **Motion for Default Judgment**
PDK Labs, Inc.)
10 Respondent)
11)
12)

12 **Procedural History**

13 On October 4, 2004, Agrigenic Food Corporation, d/b/a Biotec Foods (hereinafter
14 Petitioner) filed a Petition to Cancel Trademark Registration No. 1471924 for the mark "Biotech"
15 originally registered January 12th, 1988, by PDK LABS, INC. (hereinafter Respondent).

16 In accordance with the Trademark Rules of Practice, on October 6th, 2004, the United
17 States Patent and Trademark Office, Trademark Trial and Appeal Board notified Respondent of
18 the Petition to Cancel via mail, and set a answer due date forty days after the mailing date, for
19 November 15, 2004.

20 As of November 16, 2004, no opposition has been filed by Respondent nor has an
21 extension of time to file opposition been requested by Respondent nor granted by Petitioner,
22 and pursuant to Rule 2.113, 37 C.F.R. § 2.113, - If no answer is filed within the time set, the
23 opposition may be decided as in case of default.

24 On November 16th, 2004, this Motion for Default Judgment was prepared and served on
25 Respondent via mail according to the attached Proof of Service.

1 **Legal Standard**

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

6 **Prayer**

7 Pursuant to Rule 2.113, 37 C.F.R. § 2.113, Petitioner hereby moves the Trademark Trial
8 and Appeal Board for a default judgment order canceling trademark registration No 1471924 for
9 the mark *Biotech*.

10 Dated this 16th day of November, 2004

11
12 By: /ROBERT G. KAVANAUGH/¹
13 Robert G. Kavanaugh, President
14 For Petitioner Agrigenic Food Corporation
15 d/b/a Biotec Foods
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¹ 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 92043750
Petitioner)
8 vs.) **Proof of Service**
9 PDK Labs, 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 November 16, 2004, I served a true copy of **Motion**
14 **for Default Judgment** pursuant to 37 C.F.R. §2.119 by depositing it in the United States Mail in
15 a sealed envelope with the priority mail, first-class postage thereon fully prepaid with delivery
16 confirmation tracking number (0180 5213 9075 8091 0762) to the following:

17 PDK LABS, INC.
18 65 AIR PARK
RONKONKOMA, NY 11779-7340

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

23 Executed on this 16th day of November, 2004 at Huntington Beach, County of Orange, Ca.

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

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