

ESTTA Tracking number: **ESTTA71753**

Filing date: **03/20/2006**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Life Therapeutics Ltd.		
Entity	Corporation	Citizenship	Australia
Address	22 Rodborough Road Frenchs Forest, NSW 2086 AUSTRALIA		

Attorney information	Adam L. Barea Cooley Godward LLP 875 15th St., N.W., Suite 800 Washington, DC 20005-2221 UNITED STATES trademarks@cooley.com, pwillsey@cooley.com, abarea@cooley.com, mobleysg@cooley.com Phone:2028427800		
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Registration Subject to Cancellation

Registration No	2271480	Registration date	08/24/1999
Registrant	INVITROGEN CORPORATION 1600 FARADAY AVENUE CARLSBAD, CA 92008 UNITED STATES		

Goods/Services Subject to Cancellation	Class 001. First Use: 1993/06/00 , First Use In Commerce: 1993/06/00 Goods/Services: BIOLOGICAL AND BIOCHEMICAL PRODUCTS, NAMELY, MICRO-BIOLOGICAL AND TISSUE CULTURE MEDIA, ANIMAL BLOOD AND SERUM, AND REAGENTS AND KITS CONSISTING OF CHEMICALS, BIOCHEMICALS, AND REAGENTS, ALL FOR SCIENTIFIC OR MEDICAL RESEARCH USE
	Class 009. First Use: 1993/06/00 , First Use In Commerce: 1993/06/00 Goods/Services: LABORATORY EQUIPMENT AND APPARATUS AND RELATED CONSUMABLE AND DISPOSABLE ITEMS, NAMELY, HORIZONTAL GEL ELECTROPHORESIS APPARATUS, VERTICAL GEL ELECTROPHORESIS APPARATUS, SEQUENCING GEL ELECTROPHORESIS APPARATUS, EXTERNAL GEL CASTING APPARATUS, ELECTROPORATION APPARATUS; GEL TRAYS, COMBS, COMB SLOTS, DROP-IN DAMS, INTERLOCKING LIDS, GEL CASTING DAMS, GEL TRAYS, GEL CASTING CLAMPS, GEL DRYERS, CHAMBER SAFES, AND CHAMBER RACKS; CELL CULTURE APPARATUS AND SUPPLIES, NAMELY, BLOT TRANSFER APPARATUS, BLOTTING PADS, BLOTTING MEMBRANES, PULSE GENERATORS FOR MAKING CELLS TEMPORARILY PERMEABLE FOR IOTECHNICAL PURPOSES, POWER SUPPLIES, POWER CORDS, CENTRIFUGE TUBES, PIPET TIPS, GLASS PLATES, WEDGE SPACER SETS, VOLTAGE BOOSTERS, EXTRACTION TUBES, GRADIENT FORMERS, GLASS PLATE WASH STANDS, PERISTALTIC PUMPS, PERISTALTIC PUMP HEADS, FILTRATION MANIFOLDS, AND CELL SEPARATION/FILTRATION APPARATUS
	Grounds for Cancellation

Attachments

Signature

Name

Date

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

In the matter of Trademark Registration No. 2,271,480
For the Trademark LIFE TECHNOLOGIES & Design
Registered on August 24, 1999

Life Therapeutics Ltd.,)	
)	
Petitioner,)	
)	Cancellation No. _____
v.)	
)	
Invitrogen Corporation,)	
)	
Respondent.)	
_____)	

PETITION TO CANCEL PURSUANT TO 37 C.F.R. §2.111

Life Therapeutics Ltd. (formerly known as Gradipore Limited) (“Petitioner”), a corporation organized under the laws of Australia and having its principal place of business at 22 Rodborough Road, Frenchs Forest NSW 2086, AUSTRALIA, believes that it will be damaged by the continued existence of the registration for the mark LIFE TECHNOLOGIES & Design, Registration No. 2,271,480, issued on August 24, 1999 and presently owned by Invitrogen Corporation (“Respondent”), a Delaware corporation, having its principal place of business at 1600 Faraday Avenue, Carlsbad, California 92008, U.S.A. As such, Petitioner hereby petitions to cancel the same.

As grounds for its petition, Petitioner alleges as follows.

1. Petitioner is a global biotechnology company that researches, develops, manufactures and markets hematological and separation products and technologies principally for the life science market. Petitioner does business under the name “Life Therapeutics Ltd.” and offers products and technologies under the mark LIFE THERAPEUTICS & Design (“the

Mark”).

2. Pursuant to the Madrid Protocol, Petitioner filed on August 5, 2004 an application to register the Mark in numerous jurisdictions, including the United States, in connection with “chemical preparations and supplies for industrial and scientific use; chromatography and electrophoresis preparations and supplies including pre-cast gels, membranes, chemicals, stains and markers” in International Class 1, “chemical preparations and supplies for medical, biological and veterinary use; preparations and supplies for the separation and analysis of biological and clinical materials and specimens; medical diagnostic and testing reagents and supplies including plasma and blood clotting agents, reagents and supplies; blood and blood-derived products including pharmaceutical and veterinary preparations” in International Class 5, and “scientific apparatus, instruments and parts therefor; apparatus and instruments for the separation and analysis of materials including small molecules, compounds and biological materials; electrophoresis apparatus and instruments” in International Class 9.

3. The United States Patent and Trademark Office (“PTO”) has assigned United States Application Serial No. 79/007,420 to Petitioner’s U.S. application for the Mark (the “Application”).

4. On September 19, 2005, the PTO issued an office action concerning the Application, by which the PTO refused to register the Mark. Specifically, the PTO refused registration of the Mark pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), based on the Examining Attorney’s initial conclusion that there is “a likelihood of confusion with the mark in U.S. Registration No. 2271480.”

5. United States Registration No. 2,271,480 for the mark LIFE TECHNOLOGIES & Design identifies “biological and biochemical products, namely, micro-biological and tissue

culture media, animal blood and serum, and reagents and kits consisting of chemicals, biochemicals, and reagents, all for scientific or medical research use” in International Class 1, “biological and biochemical products, namely, micro-biological and tissue culture media, animal blood and serum, and reagents and kits consisting of chemicals, biochemicals, and reagents, all for medical diagnostic laboratory use” in International Class 5, and “laboratory equipment and apparatus and related consumable and disposable items, namely, horizontal gel electrophoresis apparatus, vertical gel electrophoresis apparatus, sequencing gel electrophoresis apparatus, external gel casting apparatus; electroporation apparatus; gel trays, combs, comb slots, drop-in dams, interlocking lids, gel casting dams, gel trays, gel casting clamps, gel dryers, chamber safes, and chamber racks; cell culture apparatus and supplies, namely, blot transfer apparatus, blotting pads, blotting membranes, pulse generators for making cells temporarily permeable for iotechnical purposes, power supplies, power cords, centrifuge tubes, pipet tips, glass plates, wedge spacer sets, voltage boosters, extraction tubes, gradient formers, glass plate wash stands, peristaltic pumps, peristaltic pump heads, filtration manifolds, and cell separation/filtration apparatus” in International Class 9 (the “Cited Registration”).

6. Petitioner is informed and believes that Respondent, Invitrogen Corporation, owns the Cited Registration, and that Respondent’s address, as reported to the PTO, is 1600 Faraday Avenue, Carlsbad, California 92008, U.S.A. Petitioner is informed and believes that Respondent acquired ownership of the Cited Registration on September 13, 2000 when the original owner of the Cited Registration, Life Technologies, Inc., merged into Respondent.

7. As the result of an investigation, Petitioner is informed and believes that Respondent no longer uses nor intends to use the mark displayed in the Cited Registration in commerce in connection with the goods identified in the Cited Registration or in connection with

any other goods. Respondent has therefore abandoned the mark LIFE TECHNOLOGIES & Design as displayed and identified in the Cited Registration.

8. Pursuant to 15 U.S.C. § 1058 and 37 C.F.R. § 2.160, Respondent was required to file an affidavit or declaration of continued use in connection with the Cited Registration between August 24, 2004 and August 24, 2005. As of March 20, 2006, however, the PTO's database does not indicate that Respondent filed any such affidavit or declaration of continued use with the PTO in connection with the Cited Registration by August 24, 2005.

9. Pursuant to the grace period provisions of 15 U.S.C. § 1058 and 37 C.F.R. § 2.160, Respondent could file such affidavit or declaration of continued use in connection with the Cited Registration within six (6) months of August 24, 2005 (i.e., by February 24, 2006). As of March 20, 2006, approximately a month after the expiration of the statutory grace period, the PTO's database does not indicate that Respondent filed any such affidavit or declaration of continued use with the PTO in connection with the Cited Registration by February 24, 2006.

10. In view of Respondent's apparent failure to file an affidavit or declaration of continued use in connection with the Cited Registration by February 24, 2006, the Cited Registration will be cancelled by the PTO in due course.

11. If the Cited Registration is not cancelled, Respondent will own the *prima facie* exclusive right to use the mark LIFE TECHNOLOGIES & Design in connection with goods that the PTO believes are related to the goods offered by Petitioner and identified in the Application, despite the fact that it appears that Respondent is not making use of the LIFE TECHNOLOGIES & Design mark in commerce. The continued existence of the Cited Registration will damage Petitioner because it could prevent Petitioner from registering its LIFE THERAPEUTICS &

Design mark, as depicted in the Application, in connection with goods in International Classes 1, 5, and 9, respectively.

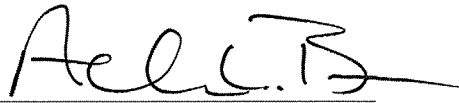
12. Accordingly, Petitioner requests that this Petition to Cancel be sustained, and that United States Registration No. 2,271,480 for the mark LIFE TECHNOLOGIES & Design be cancelled in its entirety – i.e., with respect to all of the goods identified in Classes 1, 5 and 9 -- pursuant to Sections 14(3) and 18 of the Lanham Act, 15 U.S.C. §§ 1064(3), 1068.

13. A duplicate copy of this Petition to Cancel and the required fee are submitted herewith.

Respectfully submitted,

Dated: March 20, 2006

By:



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