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

Proceeding	92049358
Party	Defendant Cornerstone Biopharma, Inc.
Correspondence Address	Cornerstone Biopharma, Inc. Suite 255, 2000 Regency Parkway Cary, NC 27518 UNITED STATES
Submission	Answer
Filer's Name	Steven J. Hultquist
Filer's e-mail	hultquist@iptl.com
Signature	/steven j. hultquist/
Date	06/24/2008
Attachments	AnswerPetitionCancel92049358.pdf (5 pages)(25847 bytes)

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

In the matter of Trademark Registration No. 3,384,232
Issued February 19, 2008
Mark: ALLERX

BAUSCH & LOMB INCORPORATED,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92049358
)	
CORNERSTONE BIOPHARMA, INC.)	
)	
Registrant.)	
)	
)	

ANSWER TO PETITION TO CANCEL

Registrant, Cornerstone Biopharma, Inc. (“Cornerstone” or “Registrant”) respectfully submits this Answer to the Petition to Cancel filed by Petitioner, Bausch & Lomb Incorporated (“Bausch & Lomb” or “Petitioner”) against Registrant’s Trademark Registration No. 3,384,232 (“Registration”). Terms defined in the Petition shall have the same meaning herein unless the context otherwise requires.

1. Cornerstone is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 1, 2 and 3 of the Petition to Cancel, and therefore denies same and relegates Petitioner to its proof of the same at the trial of this cause.

2. Cornerstone admits the allegations of Paragraph 4 of the Petition to Cancel.

3. Cornerstone admits the allegation of Paragraph 5 of the Petition to Cancel that the Registration identifies an April 1999 date of commenced use of Registrant's Mark; Cornerstone otherwise is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in such Paragraph 5, and therefore denies such remaining allegations of Paragraph 5 and relegates Petitioner to its proof of the same at the trial of this cause.

4. Cornerstone denies or is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6 of the Petition to Cancel, and therefore denies all allegations of such Paragraph 6, and relegates Petitioner to its proof of the same at the trial of this cause.

5. Cornerstone denies the allegations of Paragraphs 7, 8 and 9 of the Petition to Cancel.

AFFIRMATIVE DEFENSES

6. Bausch & Lomb is barred by laches from seeking to cancel the Registration on Cornerstone's Registered Mark, having previously filed a Notice of Opposition against U.S. Application No. 77/120,121 on which Cornerstone's Registration has issued and having voluntarily discontinued the prosecution of such opposition.

7. Bausch & Lomb has acquiesced in the issue of the Registration on Cornerstone's Registered Mark, having previously filed a Notice of Opposition against U.S. Application No. 77/120,121 on which Cornerstone's Registration has issued and having voluntarily discontinued the prosecution of such opposition, allowing the Registration to be issued.

8. Bausch & Lomb is estopped from seeking to cancel Cornerstone's Registered Mark, having previously filed a Notice of Opposition against U.S. Application No. 77/120,121 on which Cornerstone's Registration has issued, and thereafter having voluntarily discontinued the prosecution of such opposition, allowing the Registration to issue and the mark of such Registration to pass into registered usage.

9. Bausch & Lomb is guilty of unclean hands in seeking to cancel Cornerstone's Registered Mark, having previously filed a Notice of Opposition against U.S. Application No. 77/120,121 on which Cornerstone's Registration has issued, and thereafter having voluntarily discontinued the prosecution of such opposition, allowing the Registration to issue and the mark of such Registration to pass into registered usage, whereupon Bausch & Lomb within three (3) months of the issue of such Registration now is seeking to cancel such Registration.

10. Registrant has after inquiry been unable to confirm that Bausch & Lomb has used the Petitioner's Marks for the gel and ointment products identified in the listings of goods in the registrations for which the Petitioner's Marks have been registered, and Registrant on information and belief therefore avers that the identification of goods in Bausch & Lomb's registrations of Petitioner's Marks is or may be overbroad under the standard of *Medinol Ltd. v. Neuro Vasx Inc.*, 67 USPQ 2d 1205 (TTAB 2003) such that the registrations of Petitioner's Marks do not provide a substantive basis for prosecuting the instant cancellation proceeding.

WHEREFORE, Cornerstone requests that the cancellation be dismissed and Cornerstone's Registration be confirmed as properly issued and validly subsisting.

Respectfully submitted,

CORNERSTONE BIOPHARMA, INC.

By: /steven j hultquist/

Steven J. Hultquist

PO Box 14329

Research Triangle Park, NC 27709

Tel: (919) 419-9350

Fax: (919) 419-9354

Email: hultquist@iptl.com

Attorney for Registrant

Date: June 24, 2008

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Answer to the Petition to Cancel was sent to Floyd Mandell, Petitioner's counsel of record in this action, on this 24th day of June, 2008, via email to his address, floyd.mandell@kattenlaw.com, and an email delivery confirmation of such transmission was received by the undersigned attorney on the same date.

/steven j hultquist/
Steven J. Hultquist
PO Box 14329
Research Triangle Park, NC 27709
Tel: (919) 419-9350
Fax: (919) 419-9354
Email: hultquist@iptl.com
Attorney for Registrant