

ESTTA Tracking number: **ESTTA965344**

Filing date: **04/08/2019**

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 has filed a petition to cancel the registration indicated below.

**Petitioner Information**

Name	DrTim's Aquatics, LLC		
Entity	Limited liability company	Citizenship	Florida
Address	530 Los Angeles Boulevard Moorpark, CA 93021 UNITED STATES		

Correspondence information	Laura J. Winston Kim Winston LLP 73 Market Street, Suite 376 Kim Winston LLP Yonkers, NY 10710 UNITED STATES laurawinston@kimwinston.com, tm@kimwinston.com 9142317822
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**Registration Subject to Cancellation**

Registration No.	3122271	Registration date	08/01/2006
Registrant	AG CONCEPTS CORPORATION 439 E. Shore Drive, Ste. 200 Eagle, ID 83616 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 001. First Use: 2001/06/01 First Use In Commerce: 2001/06/01 All goods and services in the class are subject to cancellation, namely: FERTILIZERS FOR DOMESTIC USE
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**Grounds for Cancellation**

Abandonment	Trademark Act Section 14(3)
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Attachments	00091194.PDF(66938 bytes ) 00091192.PDF(36334 bytes ) 00091193.PDF(40811 bytes )
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Signature	/Laura J. Winston/
Name	Laura J. Winston
Date	04/08/2019



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

DRTIM'S AQUATICS, LLC,	)	
	)	
	)	Cancellation No. _____
Petitioner;	)	
	)	Mark: REFRESH
	)	Registration No. 3122271
	)	Registered: August 1, 2006
v.	)	
	)	
	)	
	)	
	)	
AG CONCEPTS CORPORATION,	)	
	)	
Respondent.	)	
	)	
	)	

**PETITION TO CANCEL**

Petitioner, DrTim's Aquatics, LLC, a limited liability company organized under the laws of Florida, with its principal place of business at 530 Los Angeles Boulevard, Moorpark, California 93021, believes that it will be damaged by Registration No. 3122271, and hereby petitions to cancel the same under the provisions of 15 U.S.C. §§1064(1) and (3).

To the best of Petitioner's knowledge, the name of the current owner of the registration is Ag Concepts Corporation, with an address at 439 E. Shore Drive, Ste. 200, Eagle, Idaho 83616.

The grounds for cancellation are as follows:

1. Petitioner manufactures and sells an extensive line of products for the care of aquarium and pond fish and the environments in which they live.

2. For over a decade, Petitioner has continuously used, and is currently using, the trademark RE-FRESH in interstate commerce in connection with water treatment bacteria for breaking down organic matter in aquariums and ponds.

3. Petitioner filed Trademark Application Serial No. 87939544 for the mark RE-FRESH on May 29, 2018, covering “water treatment bacteria for breaking down organic matter in aquariums and ponds” in International Class 1, claiming use in interstate commerce since at least as early as September 2008 (the “RE-FRESH Application”).

4. The USPTO has issued a final refusal of registration of the RE-FRESH application based on likelihood of confusion with Respondent’s Registration No. 3122271 for the trademark REFRESH covering “fertilizers for domestic use” in International Class 1 (the “REFRESH Registration”). Petitioner has filed an appeal of the refusal with the TTAB, and will request suspension of the appeal pending the outcome of the instant cancellation action. A true and correct copy of the status of Petitioner’s application from the USPTO’s TSDR database is attached as Exhibit A.

5. Respondent filed a Combined Declaration of Continued Use and Renewal of the REFRESH Registration on April 2, 2016. A true and correct copy of Respondent’s registration certificate and TSDR database printout showing the renewal is attached as Exhibit B.

6. Upon information and belief, Respondent has not used the trademark REFRESH in interstate commerce in more than three years.

7. Upon information and belief, more than three years ago Respondent ceased use of the trademark REFRESH in interstate commerce in connection with the goods identified in the REFRESH Registration with no intention to resume use and has abandoned whatever rights it ever could have claimed to own in the mark.

7. Because Respondent has abandoned the trademark REFRESH, it is no longer entitled to own the REFRESH Registration.

8. The continued existence of the REFRESH Registration, to which Respondent is not entitled, damages Petitioner, as the registration is preventing Petitioner from obtaining registration of the RE-FRESH mark.

WHEREFORE, Petitioner requests that Registration No. 3122271 be cancelled and that this Petition to Cancel be sustained in favor of the Petitioner.

Respectfully submitted,

KIM WINSTON LLP

Dated: April 8, 2019

By /Laura J. Winston/

Laura J. Winston  
Kim Winston LLP  
73 Market Street, Suite 376  
Yonkers, NY 10710  
Tel: 914.231.7822  
Fax: 914.297.6660  
Email: [tm@kimwinston.com](mailto:tm@kimwinston.com);  
[laurawinston@kimwinston.com](mailto:laurawinston@kimwinston.com)  
Attorneys for Petitioner

# Exhibit A

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Mark: RE-FRESH

# RE-FRESH

US Serial Number: 87939544

Application Filing Date: May 29, 2018

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Trademark

Status: An appeal of a final refusal to register the mark is pending before the Trademark Trial and Appeal Board. For further information, see TTABVue on the Trademark Trial and Appeal Board web page.

Status Date: Feb. 15, 2019

## Mark Information

Mark Literal Elements: RE-FRESH

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

## Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks \*..\* identify additional (new) wording in the goods/services.

For: Water treatment bacteria for breaking down organic matter in aquariums and ponds

International Class(es): 001 - Primary Class

U.S Class(es): 001, 005, 006, 010, 026, 046

Class Status: ACTIVE

Basis: 1(a)

First Use: Sep. 2008

Use in Commerce: Sep. 2008

## Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Amended Use: No

Filed ITU: No

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

## Current Owner(s) Information

Owner Name: DrTim's Aquatics, LLC

Owner Address: 530 Los Angeles Blvd., Suite 115-243  
Moorpark, CALIFORNIA 93021  
UNITED STATES

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: FLORIDA

## Attorney/Correspondence Information

**Attorney of Record****Attorney Name:** Laura J. Winston**Docket Number:** 2046.0005**Attorney Primary Email Address:** [tm@kimwinston.com](mailto:tm@kimwinston.com)**Attorney Email Authorized:** Yes**Correspondent****Correspondent Name/Address:** LAURA J. WINSTON  
KIM WINSTON LLP  
73 MARKET STREET, SUITE 376  
YONKERS, NEW YORK 10710  
UNITED STATES**Phone:** 914-226-3476**Fax:** 914-297-6660**Correspondent e-mail:** [tm@kimwinston.com](mailto:tm@kimwinston.com) [laurawinston@kimwinston.com](mailto:laurawinston@kimwinston.com)  
[om susansantaniello@kimwinston.com](mailto:susansantaniello@kimwinston.com)**Correspondent e-mail Authorized:** Yes**Domestic Representative - Not Found****Prosecution History**

Date	Description	Proceeding Number
Feb. 15, 2019	EX PARTE APPEAL-INSTITUTED	939544
Feb. 15, 2019	EXPARTE APPEAL RECEIVED AT TTAB	
Aug. 21, 2018	NOTIFICATION OF FINAL REFUSAL EMAILED	
Aug. 21, 2018	FINAL REFUSAL E-MAILED	
Aug. 21, 2018	FINAL REFUSAL WRITTEN	92567
Jul. 31, 2018	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Jul. 31, 2018	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Jul. 31, 2018	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Jun. 26, 2018	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Jun. 26, 2018	NON-FINAL ACTION E-MAILED	6325
Jun. 26, 2018	NON-FINAL ACTION WRITTEN	92567
Jun. 20, 2018	ASSIGNED TO EXAMINER	92567
Jun. 19, 2018	PETITION TO DIRECTOR - GRANTED	70998
Jun. 19, 2018	ASSIGNED TO PETITION STAFF	70998
Jun. 04, 2018	TEAS PETITION TO DIRECTOR-MAKE SPECIAL-RECEIVED	1111
Jun. 04, 2018	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Jun. 01, 2018	NEW APPLICATION ENTERED IN TRAM	

**TM Staff and Location Information****TM Staff Information****TM Attorney:** SPARER, KATERINA DOROT**Law Office Assigned:** LAW OFFICE 120**File Location****Current Location:** TMO LAW OFFICE 120 - EXAMINING ATTORNEY ASSIGNED**Date in Location:** Aug. 21, 2018**Proceedings****Summary****Number of Proceedings:** 1**Type of Proceeding: Exparte Appeal****Proceeding Number:** [87939544](#)**Filing Date:** Feb 15, 2019**Status:** Pending**Status Date:** Feb 15, 2019**Interlocutory Attorney:****Plaintiff(s)**



**Name:** DrTim's Aquatics, LLC

**Correspondent** LAURA J. WINSTON  
**Address:** KIM WINSTON LLP  
73 MARKET STREET, SUITE 376  
YONKERS NY , 10710  
UNITED STATES

**Correspondent e-mail:** [tm@kimwinston.com](mailto:tm@kimwinston.com) , [laurawinston@kimwinston.com](mailto:laurawinston@kimwinston.com) , [susansantaniello@kimwinston.com](mailto:susansantaniello@kimwinston.com)

**Associated marks**

Mark	Application Status	Serial Number	Registration Number
RE-FRESH	Ex Parte Appeal Pending	<a href="#">87939544</a>	

**Prosecution History**

Entry Number	History Text	Date	Due Date
1	APPEAL TO BOARD	Feb 15, 2019	
2	APPEAL ACKNOWLEDGED	Feb 15, 2019	
3	INSTITUTED	Feb 15, 2019	

# Exhibit B

**Int. Cl.: 1**

**Prior U.S. Cls.: 1, 5, 6, 10, 26 and 46**

**Reg. No. 3,122,271**

**United States Patent and Trademark Office**

**Registered Aug. 1, 2006**

**TRADEMARK  
PRINCIPAL REGISTER**

**REFRESH**

AG CONCEPTS CORPORATION (IDAHO COR-  
PORATION)  
PO BOX 62  
BLISS, ID 83314

OWNER OF U.S. REG. NOS. 1,811,369, 2,459,503  
AND OTHERS.

FOR: FERTILIZERS FOR DOMESTIC USE, IN  
CLASS 1 (U.S. CLS. 1, 5, 6, 10, 26 AND 46).

SER. NO. 76-304,179, FILED 8-24-2001.

FIRST USE 6-1-2001; IN COMMERCE 6-1-2001.

IRA J. GOODSID, EXAMINING ATTORNEY

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Mark: REFRESH

**REFRESH**

US Serial Number: 76304179

Application Filing Date: Aug. 24, 2001

US Registration Number: 3122271

Registration Date: Aug. 01, 2006

Register: Principal

Mark Type: Trademark

Status: The registration has been renewed.

Status Date: Apr. 02, 2016

Publication Date: May 09, 2006

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## Mark Information

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Mark Literal Elements: REFRESH

Standard Character Claim: No

Mark Drawing Type: 1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)

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## Related Properties Information

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Claimed Ownership of US Registrations: 1811369, 1892869, 1978808, 2036782, 2036783, 2038365, 2122161, 2447769, 2459500, 2459503 and others

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## Goods and Services

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**Note:** The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks \*..\* identify additional (new) wording in the goods/services.

For: FERTILIZERS FOR DOMESTIC USE

International Class(es): 001 - Primary Class

U.S Class(es): 001, 005, 006, 010, 026, 046

Class Status: ACTIVE

Basis: 1(a)

First Use: Jun. 01, 2001

Use in Commerce: Jun. 01, 2001

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## Basis Information (Case Level)

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Filed Use: Yes

Currently Use: Yes

Amended Use: No

Filed ITU: No

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

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## Current Owner(s) Information

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Owner Name: AG CONCEPTS CORPORATION

**Owner Address:** 439 E. Shore Drive, Ste. 200  
Eagle, IDAHO 83616  
UNITED STATES

**Legal Entity Type:** CORPORATION

**State or Country** IDAHO  
**Where Organized:**

## Attorney/Correspondence Information

### Attorney of Record

**Attorney Name:** Tom C. Morris

**Attorney Primary Email Address:** [tmorris@morrisbowerhaws.com](mailto:tmorris@morrisbowerhaws.com)

**Attorney Email Authorized:** Yes

### Correspondent

**Correspondent Name/Address:** Tom C. Morris  
Morris Bower & Haws, PLLC  
12550 W. Explorer Drive, Suite 100  
BOISE, IDAHO 83713  
UNITED STATES

**Phone:** 2083453333

**Fax:** 208-345-4461

**Correspondent e-mail:** [tmorris@morrisbowerhaws.com](mailto:tmorris@morrisbowerhaws.com) [morris.tom.charles@gmail.com](mailto:morris.tom.charles@gmail.com)

**Correspondent e-mail Authorized:** Yes

### Domestic Representative - Not Found

## Prosecution History

Date	Description	Proceeding Number
Jun. 07, 2018	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Jun. 07, 2018	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Apr. 02, 2016	NOTICE OF ACCEPTANCE OF SEC. 8 & 9 - E-MAILED	
Apr. 02, 2016	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	70131
Apr. 02, 2016	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	70131
Apr. 02, 2016	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	70131
Jan. 26, 2016	TEAS SECTION 8 & 9 RECEIVED	
Aug. 01, 2015	COURTESY REMINDER - SEC. 8 (10-YR)/SEC. 9 E-MAILED	
Jun. 05, 2012	NOTICE OF ACCEPTANCE OF SEC. 8 & 15 - E-MAILED	
Jun. 05, 2012	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	73376
Jun. 05, 2012	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	73376
May 25, 2012	TEAS SECTION 8 & 15 RECEIVED	
Aug. 01, 2006	REGISTERED-PRINCIPAL REGISTER	
May 09, 2006	PUBLISHED FOR OPPOSITION	
Apr. 19, 2006	NOTICE OF PUBLICATION	
Mar. 20, 2006	WITHDRAWN FROM PUB - OG REVIEW QUERY	77908
Feb. 21, 2006	LAW OFFICE PUBLICATION REVIEW COMPLETED	68552
Feb. 16, 2006	ASSIGNED TO LIE	68552
Feb. 02, 2006	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jan. 27, 2006	TEAS/EMAIL CORRESPONDENCE ENTERED	78287
Jan. 12, 2006	CORRESPONDENCE RECEIVED IN LAW OFFICE	78287
Jan. 12, 2006	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Oct. 14, 2005	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	
Apr. 14, 2005	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	
Oct. 14, 2004	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	
Sep. 16, 2003	CASE FILE IN TICRS	
Oct. 11, 2002	ASSIGNED TO EXAMINER	63030
Jun. 26, 2002	LETTER OF SUSPENSION MAILED	
Mar. 27, 2002	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Apr. 01, 2002	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Apr. 01, 2002	PAPER RECEIVED	
Sep. 27, 2001	NON-FINAL ACTION MAILED	

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## Maintenance Filings or Post Registration Information

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**Affidavit of Continued Use:** Section 8 - Accepted

**Affidavit of Incontestability:** Section 15 - Accepted

**Renewal Date:** Aug. 01, 2016

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## TM Staff and Location Information

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TM Staff Information - None

File Location

**Current Location:** GENERIC WEB UPDATE

**Date in Location:** Apr. 02, 2016