

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: November 22, 2014

Concurrent Use No. 94002616

Cyanotech Corporation
Serial Nos. 85423915 and 85423883

v.

Nutrex nv
Registration Nos. 3798632 and
3849395

Nutrex Research, Inc.
Registration Nos. 3870696 and
3870697

Monique Loppe
Common Law User

CORRECTION TO THE BOARD'S INSTITUTION ORDER

This serves to correct the Board's prior order also dated November 22, 2014. The due date for filing the answer to the concurrent use allegations is January 1, 2015, and not December 1, 2014, as indicated in the prior order. The substance of the prior order otherwise remains unchanged.

Denise M. DelGizzi,
Technical Program Manager:

Applicant: Cyanotech Corporation, Serial Nos. 85423915 and 85423883.

A concurrent use proceeding involving your above-identified applications is hereby instituted under the provisions of Section 2(d) of the Trademark Act of 1946. The proceeding will be conducted in accordance with the Rules of

Practice in Trademark Cases ("Trademark Rules"), as set out in Title 37 of the Code of Federal Regulations.

The Trademark Rules may be viewed at the USPTO's trademarks webpage: <http://www.uspto.gov/trademarks/index.jsp>. The Board's main webpage (<http://www.uspto.gov/trademarks/process/appeal/index.jsp>) includes information on amendments to the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and a web link to the Board's manual of procedure (the TBMP).

Nutrex nv, Nutrex Research, Inc., and Monique Loppe, the mark users (defendants in this proceeding) referred to in your application, are being notified on this date of the institution of the concurrent use proceeding. **You (plaintiff in this proceeding) have until ten (10) days from the date of this order to serve on defendants a copy of your application, including the specimens of use and drawing of the mark. See Trademark Rule 2.99(d)(1).** You also must file with the Board proof that you have effected proper service of the copies, but should not file with the Board a copy of the served documents themselves. See Trademark Rule 2.119. Plaintiff must notify the Board within 10 days of the date of receipt of a returned service copy, or of the date on which plaintiff learns that service has been ineffective.

If they agree to, the parties may utilize electronic means, e.g., e-mail or fax, during the proceeding for forwarding of service copies. See Trademark Rule 2.119(b)(6).

The defending mark users, by separate order, have been given forty (40) days to file answers under Trademark Rule 2.99. Any mark user that fails to file an answer addressing the allegations in a concurrent use application may suffer entry of judgment by default precluding such user from claiming any right more extensive than that acknowledged in the concurrent use application. See Trademark Rule 2.99(d)(3).

You must advise the Board of any relevant applications or registrations, other than that already referenced herein, which should be included in this concurrent use proceeding. Your response, if any, should be in writing and should be filed on or before December 22, 2014.

Trademark Rule 2.126 pertains to the form of submissions. Paper submissions, including but not limited to exhibits and transcripts of

depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.

If one or both of the defending mark users file an answer, then a schedule for this concurrent use proceeding will be set, including time for conferencing, disclosures, discovery, trial and briefing. However, it is noted that most concurrent use proceedings result in a negotiated settlement and the parties are encouraged to promptly begin discussion of settlement. If the parties choose to begin settlement talks prior to the due date for the answers, they may stipulate to a suspension to accommodate settlement talks.

The Board allows parties to utilize telephone conferences to discuss or resolve a wide range of interlocutory matters that may arise during this case. In addition, the assigned interlocutory attorney has discretion to require the parties to participate in a telephone conference to resolve matters of concern to the Board. See TBMP § 502.06(a) (2d ed. rev. 2004).

If the parties to this proceeding are (or during the pendency of this proceeding become) parties in another Board proceeding or a civil action involving related marks or other issues of law or fact which overlap with this case, they shall notify the Board immediately, so that the Board can consider whether consolidation or suspension of proceedings is appropriate.

ESTTA NOTE: For faster handling of all papers the parties need to file with the Board, the Board strongly encourages use of electronic filing through the Electronic System for Trademark Trials and Appeals (ESTTA). Various electronic filing forms, some of which may be used as is, and others which may require attachments, are available at <http://estta.uspto.gov>.

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