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

Proceeding	91167276
Party	Defendant Kure Engineering Ltd. Kure Engineering Ltd. 1-16-13, Higashiyama, Meguro-ku JPX Tokyo,
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Attachments	Kure Engineering Answer to Notice of Opposition.pdf (15 pages)

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

J.H. Biotech, Inc.)	
Opposer,)	
)	Opposition No. 91/167,276
v.)	
)	Application Serial No.: 76/483,358
Kure Engineering Ltd.)	
Applicant.)	Mark: KURE and design

ANSWER TO NOTICE OF OPPOSITION

COMES NOW Applicant, Kure Engineering Ltd. (hereinafter “Applicant” or “Kure”) and answers the Notice of Opposition filed by JH Biotech, Inc. (hereinafter “Opposer” or “JH”) in the above-captioned opposition proceedings as follows:

In regard to the first unnumbered paragraph, Applicant denies that Opposer has any legitimate rights whereby it would be damaged by issuance of a registration for the above-referenced application.

With respect to paragraph 1 of the Notice of Opposition, Applicant is without information sufficient to form a belief as to the truth of the allegations set forth in paragraph 1 of the Notice of Opposition and therefor denies the same.

With respect to paragraph 2 of the Notice of Opposition, Applicant admits that application serial number 78/342,315 is pending for the mark MILDEW CURE for the recited goods, recites an alleged date of first use in commerce of at least as early as September 12, 2003, and lists the Opposer as the applicant therefor, but is otherwise without information sufficient to form a belief as to whether Opposer has made use of the mark MILDEW CURE on or in connection with those goods and therefor denies the same.

With respect to paragraph 3 of the Notice of Opposition, Applicant admits that the application 78/342,315 for the mark MILDEW CURE has initially been suspended, and that Applicant's KURE application 76/483,358 has been cited as a possible basis for a likelihood of confusion, but is otherwise without information sufficient to form a belief as to the truth of the remaining allegations and therefor denies the same.

Applicant admits the allegations of paragraph 4 of the Notice of Opposition.

Applicant admits the allegations of paragraph 5 of the Notice of Opposition.

Applicant admits the allegations of paragraph 6 of the Notice of Opposition.

Applicant admits the allegations of paragraph 7 of the Notice of Opposition.

Applicant admits the allegations of paragraph 8 of the Notice of Opposition.

Applicant admits the allegations of paragraph 9 of the Notice of Opposition.

The allegations of paragraph 10 of the Notice of Opposition are essentially the same as the allegations of paragraph 7 of the Notice of Opposition, and applicant admits the allegations of paragraph 10 of the Notice of Opposition subject to minor variations in capitalization.

Applicant admits that it does not now sell a fungicide product using the KURE mark for agricultural or horticultural use, but otherwise denies the allegations of paragraph 11 of the Notice of Opposition.

Applicant admits that it does not now have a bona fide intention to sell a fungicide in the United States for agricultural or horticultural uses, but it does have a bona fide intention to sell a general purpose fungicide in the United States for domestic use which may include garden uses, and therefore denies the remaining allegations of paragraph 12 of the Notice of Opposition.

Applicant denies the allegations of paragraph 13 of the Notice of Opposition.

Applicant denies the allegations of paragraph 14 of the Notice of Opposition.

Applicant denies the allegations of paragraph 15 of the Notice of Opposition.

An answer to the allegations of paragraph 16 of the Notice of Opposition requires a legal conclusion and speculation on the part of the Applicant and Applicant therefor objects to any requirement to answer the allegations of paragraph 16 of the Notice of Opposition. To the extent such an answer is required, Applicant is without information sufficient to form a belief as to the truth of the allegations of paragraph 16 of the Notice of Opposition and therefor denies the same.

In response to the allegations of paragraph 17 of the Notice of Opposition, Applicant admits that it has not yet sold any goods listed in the application in International Class 5 under the mark KURE and design in the United States.

AFFIRMATIVE DEFENSES

1. The Notice of Opposition fails to state a claim upon which relief may be granted, in that:
 - a. The Japanese application and registration from which priority is claimed includes within the broader categorization “pharmaceutical, veterinary and sanitary preparations” the specific identification of, *inter alia*, “fungicides” as demonstrated by the attached Exhibit 1 which is a schedule of the identification of goods in Japan, and thus the issuance of the Japanese registration as claimed and submitted in the opposed application as to “all other pharmaceutical, veterinary and sanitary preparations” is fully supportive of applicant’s section 44(d)/44(e) basis for registration and does not impermissibly broaden the scope of Applicant’s description of goods; and

- b. Applicant is entitled to priority for the present application to its Japanese application number 2002-062081 filed July 23, 2002 and which matured into Japanese registration No. 4,727,185 issued November 21, 2003, for its application filed July 21, 2003, and which priority date precedes the application date and the earliest date of use alleged by the Opposer for its asserted application number 78/342,315 and thus Opposer is entitled to no priority over Applicant which could support a basis for the present opposition; and
- c. Even if the Japanese application and registration did not support Applicant's identification of goods, Applicant's filing date of January 21, 2003 for the opposed application no. 78/254,862 in the United States is well before the asserted date of first use by Opposer of September 12, 2003, and thus Applicant enjoys priority not only as to its Japanese application and registration, but furthermore the opposed application enjoys priority over and precedes both the filing date and earliest date of use claimed by Opposer; and
- d. Notwithstanding the amendment to delete the Section 1(b) filing basis based on the acceptance of the Japanese registration in support of the Section 44 filing basis for the opposed application, Applicant is entitled to amend the filing basis to re-assert the Section 1(b) basis should the Japanese registration be found not to support the application still retaining the benefit of the January 21, 2003 filing date, and thus render the basis for the opposition moot.

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