

ESTTA Tracking number: **ESTTA178778**Filing date: **12/05/2007**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	Cell Genesys, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	500 Forbes Boulevard South San Francisco, CA 94080 UNITED STATES		

Attorney information	Chelseaa Bush Heller Ehrman LLP 333 Bush Street San Francisco, CA 94104 UNITED STATES sf-trademark@hellerehrman.com Phone:415-772-6000
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Registration Subject to Cancellation

Registration No	2717137	Registration date	05/20/2003
International Registration No.	NONE	International Registration Date	NONE
Registrant	Genesis Biomedical Limited 2nd Floor 464 Hay Street Subiaco WA 6008, AUSTRALIA		

Goods/Services Subject to Cancellation

Class 010. All goods and services in the class are cancelled, namely: ELECTROTHERAPY DEVICES, NAMELY, PULSED ELECTROMAGNETIC FIELD THERAPEUTIC DEVICES; APPARATUS AND INSTRUMENTS FOR DELIVERING OF THERAPY FOR MUSCULOSKELETAL AND VASCULAR DISORDERS; PARTS AND ACCESSORIES FOR THE AFORESAID GOODS
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Grounds for Cancellation

Abandonment	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	1772613	Application Date	12/05/1990
Registration Date	05/18/1993	Foreign Priority Date	NONE

Word Mark	CELL GENESYS
Design Mark	
Description of Mark	NONE
Goods/Services	Class 042. First use: First Use: 1992/09/25 First Use In Commerce: 1992/09/25 research and product development services concerning biotechnology

U.S. Registration No.	2604222	Application Date	03/29/2001
Registration Date	08/06/2002	Foreign Priority Date	NONE
Word Mark	CELL GENESYS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1994/10/24 First Use In Commerce: 1994/10/24 PHARMACEUTICAL PREPARATIONS IN THE NATURE OF VIRAL VECTORS, CANCER VACCINES, PACKAGING CELLS AND CELLS TRANSFORMED WITH VIRAL VECTORS, ALL FOR THE TREATMENT OF CANCER, AUTOIMMUNE DISEASES, INFECTIOUS DISEASES, INFLAMMATORY DISEASES AND GENETIC DISEASES		

U.S. Registration No.	2604223	Application Date	03/29/2001
Registration Date	08/06/2002	Foreign Priority Date	NONE
Word Mark	CELL GENESYS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 1994/10/24 First Use In Commerce: 1994/10/24 BIOCHEMICAL PREPARATIONS IN THE NATURE OF VIRAL VECTORS, PACKAGING CELLS AND CELLS TRANSFORMED WITH VIRAL VECTORS, ALL FOR RESEARCH USE		

Attachments	76232409#TMSN.gif (1 page)(bytes) 76232410#TMSN.gif (1 page)(bytes) CancellationCELLGEN.pdf (5 pages)(125387 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/ChelseaaBush/
Name	Chelseaa Bush
Date	12/05/2007

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

In the Matter of Registration No. 2,717,137
Trademark: **CELLGEN**

<p>Cell Genesys, Inc., Petitioner, v. Genesis Biomedical Limited, Respondent.</p>	
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PETITION FOR CANCELLATION

Cell Genesys, Inc. (“Petitioner”), a Delaware corporation having a principal place of business at 500 Forbes Boulevard, South San Francisco, California 94080, believes that it is and will continue to be damaged by Registration No. 2717137 for the mark CELLGEN in International Class 10 and hereby petitions to cancel the same.

As grounds for cancellation, Petitioner alleges:

1. Genesis Biomedical Limited (“Respondent”) appears as the Registrant of Registration No. 2,717,137 for CELLGEN for “electrotherapy devices, namely, pulsed electromagnetic field therapeutic devices; apparatus and instruments for delivering of therapy for musculoskeletal and vascular disorders; parts and accessories for the aforesaid goods” in International Class 10.
2. Respondent is, upon information and belief, an Australian company having a place of business at 464 Hay Street, Subiaco, Western Australia 6008, Australia.

3. Upon information and belief, Respondent has not used CELLGEN as a trademark in the United States for over three consecutive years, if at all, and therefore Registrant is presumed to have abandoned the CELLGEN mark pursuant to 15 U.S.C. § 1127.

4. Petitioner has used the mark CELL GENESYS since at least as early as 1992. Petitioner is the owner of numerous registrations for CELL GENESYS, including Registration No. 1772613 registered May 18, 1993 for research and product development services concerning biotechnology with a date of first use of September 25, 1992, Registration No. 2604222 registered August 6, 2002 for pharmaceutical preparations with a date of first use of October 24, 1994, and Registration No. 2604223 registered August 6, 2002 for biochemical preparations with a date of first use of October 24, 1994.

4. There is no issue as to priority. Respondent's registration is based on its foreign registration under Section 44(e) and has been granted a priority date of June 6, 2001. The first date of registration and all the dates of first use of Petitioner's CELL GENESYS mark are well before the priority date of Respondent's CELLGEN mark, and Petitioner's CELL GENESYS mark therefore has priority over Respondent's CELLGEN registration.

5. Petitioner has provided its goods and services under the mark CELL GENESYS throughout the United States and has developed exceedingly valuable goodwill with respect to the CELL GENESYS mark.

6. By virtue of its efforts and the expenditure of considerable sums for promotional and advertising activities and by virtue of the excellence of its goods and services, Petitioner has gained for its CELL GENESYS mark a most valuable reputation and has created, in the minds of the buying public, an exclusive association between the CELL GENESYS mark and its goods and services.

7. The trademark registered by Respondent, namely, CELLGEN, is likely to be confused with Petitioner's CELL GENESYS mark because the marks are highly similar in appearance, sound and overall commercial impression.

8. Respondent has registered CELLGEN as a mark in connection with goods that are highly related to the goods of Petitioner and such use so nearly resembles Petitioner's use as to be likely to cause confusion, to cause mistake or to deceive within the meaning of 15 U.S.C. § 1052(d).

9. If Respondent is permitted to use CELLGEN for its goods as specified in the challenged registration, confusion in trade resulting in damage and injury to Petitioner would be caused and would result by reason of the fact that Respondent's mark is confusingly similar to Petitioner's CELL GENESYS mark. Persons familiar with Petitioner's CELL GENESYS mark would be likely to purchase Respondent's CELLGEN goods as goods offered and sold by Petitioner. Furthermore, any defect, objection, or fault found with Respondent's goods marketed under CELLGEN would be likely to reflect upon and seriously injure the reputation that Petitioner has established for its goods offered under its CELL GENESYS mark.

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