

To: Interface Biologics Inc. (sstavish@sheridanross.com)
Subject: U.S. TRADEMARK APPLICATION NO. 77787804 - EPIDEL - 2240IBI-2-1
Sent: 8/11/2015 4:16:55 PM
Sent As: ECOM115@USPTO.GOV
Attachments:

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

U.S. APPLICATION SERIAL NO. 77787804

MARK: EPIDEL

77787804

CORRESPONDENT ADDRESS:

SABRINA C STAVISH
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DENVER, CO 80202-5145

**CLICK HERE TO RESPOND TO THIS
LETTER:**

http://www.uspto.gov/trademarks/teas/response_forms.jsp

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APPLICANT: Interface Biologics Inc.

CORRESPONDENT'S REFERENCE/DOCKET NO :

2240IBI-2-1

CORRESPONDENT E-MAIL ADDRESS:

sstavish@sheridanross.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 8/11/2015

THIS IS A FINAL ACTION.

This Office action is in response to applicant's communication filed on July 7, 2015.

In the Office action dated January 14, 2015, the following issues were raised:

- 1) Registration was refused under Trademark Act Section 1 and 45 because the mark was not yet used in commerce; and
- 2) Registration was refused because the specimen of record failed to demonstrate use in connection with the particular goods identified in the statement of use.

On July 7, 2015, applicant filed correspondence in which:

- 1) Applicant argued that the specimen demonstrated particular use in applicant's industry equivalent to use in commerce; and
- 2) Applicant argued that the specimen demonstrated use in connection with the goods identified.

In light of applicant's arguments and explanation, the refusal under Trademark Act Sections 1 and 45 because the mark was not yet used in commerce is **withdrawn**.

However, the requirement for a specimen of use demonstrating use in connection with the goods identified in the statement of use is now made FINAL for the reasons set forth below. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a), 2.63(b).

Specimen Refusal—Does Not Demonstrate Use with Identified Goods

Applicant was previously refused registration in because the specimen does not show the applied-for mark in use in commerce in connection with any of the goods specified in International Classes 1 and 5 in the statement of use. Response options for overcoming that refusal, if any, were set forth in the prior Office action. Applicant, however, responded to such refusal by arguing that the specimen does, in fact, demonstrate use with the identified goods. Thus, the refusal to register the applied-for mark is now made final because applicant failed to provide evidence of use of the mark in commerce. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a), 2.63(b); TMEP §§904, 904.07, 1301.04(g)(i).

An application based on Trademark Act Section 1(a) must include a specimen showing the applied-for mark in use in commerce for each international class of goods identified in the statement of use. 15 U.S.C. §1051(a)(1); 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a); *see In re Gulf Coast Nutritionals, Inc.*, 106 USPQ2d 1243, 1247 (TTAB 2013).

The statement of use identified use of the proposed mark in connection with:

- “Bioresponsive resorbable polymers for use in the manufacture of drug delivery systems” in International Class 1; and
- “Bioresponsive resorbable polymers containing pharmaceuticals and sold as a component of devices used in cardiovascular, urological, neurological and musculoskeletal applications, namely, orthopedic, ear, nose, throat, dental, faciomaxillary, neurosurgical, soft tissue replacement, intra-abdominal, thoracic, and ophthalmic surgical implants made from living tissue, implants made from living tissue for repairing muscular or other tissue, or for augmenting, strengthening, or aiding muscular or other tissue in performing a function, surgical implants made from living tissue for bone, joint, and cartilage repair, connective tissue implants made from living tissue; coatings sold as an integral component of the above listed implants” in International Class 5.

However, the specimen references use in connection with a CipromerTM-Coated and Uncoated ANGO

Dialysis Cuffs assembled onto a Carbothane® catheter. These systems consisting of a dialysis cuff and catheter reference neither a resorbable polymer nor a surgical implant.

On July 7, 2015, applicant filed correspondence in which it stated, “More specifically, the product is a cuff which is coated with the resorbable polymer and the catheter is the surgical implant. The cuff is the delivery mechanism for the polymer and the catheter is a specific type of surgical implant.” While applicant’s assertion regarding the goods referenced in the specimen may be accurate, the specimen makes no reference to the provision of a “resorbable polymer.” There is no reference to a polymer at all. The application identifies use of the proposed mark in connection with resorbable polymers—both for further manufacture and as a component of surgical implants made from living tissue, implants made from living tissue. In applicant’s argument, applicant itself indicates that the product depicted in the specimen is a cuff and catheter system, and not a bioresponsive resorbable polymer. Further, even if the indication “Cipromer” identifies a bioresponsive resorbable polymer, the proposed mark is not “Cipromer”, but rather “Epidel.” The display of the term “Epidel” in the specimen does not indicate that the term identifies a particular polymer coated onto a cuff or catheter. Rather, to the extent the proposed mark indicates the source of any product, it is the finished cuff and catheter, and not the polymer coating. As such, the specimen does not demonstrate use of the proposed mark in connection with the particular goods identified in the statement of use.

Examples of specimens for goods include tags, labels, instruction manuals, containers, photographs that show the mark on the actual goods or packaging, and displays associated with the actual goods at their point of sale. *See* TMEP §§904.03 *et seq.* Webpages may also be specimens for goods when they include a picture or textual description of the goods associated with the mark and the means to order the goods. TMEP §904.03(i).

Applicant may respond to this refusal by submitting, for each applicable international class, a different specimen (a verified [“substitute” specimen](#)) that (a) was in actual use in commerce prior to the expiration of the deadline for filing the statement of use and (b) shows the mark in actual use in commerce for the goods and/or services identified in the statement of use.

Applicant, however, may not withdraw the statement of use. *See* 37 C.F.R. §2.88(f); TMEP §1109.17.

For more information about this refusal and instructions on how to submit a verified “substitute” specimen online using the Trademark Electronic Application System (TEAS) form, please go to <http://www.uspto.gov/trademarks/law/specimen.jsp>.

Responding to a Final Office Action

Applicant must respond within six months of the date of issuance of this final Office action or the application will be abandoned. 15 U.S.C. §1062(b); 37 C.F.R. §2.65(a). Applicant may respond by providing one or both of the following:

- (1) A response that fully satisfies all outstanding requirements and/or resolves all outstanding refusals.
- (2) An appeal to the Trademark Trial and Appeal Board, with the appeal fee of \$100 per class.

37 C.F.R. §2.63(b)(1)-(2); TMEP §714.04; *see* 37 C.F.R. §2.6(a)(18); TBMP ch. 1200.

In certain rare circumstances, an applicant may respond by filing a petition to the Director pursuant to 37 C.F.R. §2.63(b)(2) to review procedural issues. TMEP §714.04; *see* 37 C.F.R. §2.146(b); TBMP §1201.05; TMEP §1704 (explaining petitionable matters). The petition fee is \$100. 37 C.F.R. §2.6(a)(15).

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TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/ mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

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UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

**IMPORTANT NOTICE REGARDING YOUR
U.S. TRADEMARK APPLICATION**

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED
ON **8/11/2015** FOR U.S. APPLICATION SERIAL NO. 77787804

Please follow the instructions below:

(1) TO READ THE LETTER: Click on this [link](#) or go to <http://tsdr.uspto.gov>, enter the U.S. application serial number, and click on “Documents.”

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

(2) TIMELY RESPONSE IS REQUIRED: Please carefully review the Office action to determine (1) how to respond, and (2) the applicable response time period. Your response deadline will be calculated from **8/11/2015** (*or sooner if specified in the Office action*). For information regarding response time periods, see <http://www.uspto.gov/trademarks/process/status/responsetime.jsp>.

Do NOT hit “Reply” to this e-mail notification, or otherwise e-mail your response because the USPTO does NOT accept e-mails as responses to Office actions. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System (TEAS) response form located at http://www.uspto.gov/trademarks/teas/response_forms.jsp.

(3) QUESTIONS: For questions about the contents of the Office action itself, please contact the assigned trademark examining attorney. For *technical* assistance in accessing or viewing the Office action in the Trademark Status and Document Retrieval (TSDR) system, please e-mail TSDR@uspto.gov.

WARNING

Failure to file the required response by the applicable response deadline will result in the

ABANDONMENT of your application. For more information regarding abandonment, see <http://www.uspto.gov/trademarks/basics/abandon.jsp>.

PRIVATE COMPANY SOLICITATIONS REGARDING YOUR APPLICATION: Private companies **not** associated with the USPTO are using information provided in trademark applications to mail or e-mail trademark-related solicitations. These companies often use names that closely resemble the USPTO and their solicitations may look like an official government document. Many solicitations require that you pay “fees.”

Please carefully review all correspondence you receive regarding this application to make sure that you are responding to an official document from the USPTO rather than a private company solicitation. All official USPTO correspondence will be mailed only from the “United States Patent and Trademark Office” in Alexandria, VA; or sent by e-mail from the domain “@uspto.gov.” For more information on how to handle private company solicitations, see http://www.uspto.gov/trademarks/solicitation_warnings.jsp.