

ESTTA Tracking number: **ESTTA323514**

Filing date: **12/22/2009**

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

Proceeding	91186212
Party	Plaintiff 3M ESPE AG
Correspondence Address	Scott W. Johnston Merchant & Gould P.C. P.O. Box 2910 Minneapolis, MN 55402-0910 UNITED STATES SJohnston@merchantgould.com, SLindemeier@merchantgould.com
Submission	Withdrawal of Opposition
Filer's Name	Scott W. Johnston
Filer's e-mail	sjohnston@merchantgould.com, slindemeier@merchantgould.com
Signature	/SWJ/
Date	12/22/2009
Attachments	2009 12 22 Suspension Amendment and Dismissal 99186212.PDF (3 pages) (151747 bytes)

Exhibit D

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

3M ESPE AG,)	
)	Opposition No. 91186212
Opposer,)	
)	Mark: LAVA
v.)	
)	Serial No.: 79/034,429
Fluorotechnics Pty Limited,)	
)	Filing Date: October 20, 2006
Applicant,)	
)	Published: May 6, 2008

SUSPENSION, AMENDMENT OF APPLICATION AND DISMISSAL WITHOUT
PREJUDICE

3M ESPE AG and Fluorotechnics Pty Limited, the parties to the above-captioned opposition action, having settled their differences, hereby jointly move that this opposition proceeding be suspended subject to entry of the amendment to the identification of services contained in the application at issue as stated below, and that after acceptance of such amendment, that the opposition proceeding be dismissed without prejudice.

Please amend the above-captioned application by adding the underlined wording at the end of the current recitation of services and deleting the struck out wording:

Class 1: Biological and chemical products, preparations and reagents other than for medical or veterinary use, being biological and chemical test kits comprised of alkaline solutions and epicocconone for electrophoresis, protease and proteolysis monitoring, proteomics analysis, protein staining, fluorescent protein staining, protein quantification, blot staining, peptide analysis and live cell imaging, and buffers containing products, preparations and reagents for biotechnology and scientific research; fluorescent compounds and kits comprised of alkaline solutions and epicocconone for electrophoresis, protease and proteolysis monitoring, proteomics analysis, protein staining, fluorescent protein staining, protein quantification, blot staining, peptide analysis, and live cell imaging, and buffers consisting thereof for use in biotechnology

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and scientific research; all of the aforementioned not for use in the fields of dentistry, orthodontics or any other oral health care field

Class 5: Biological products for electrophoresis, protease and proteolysis monitoring, proteomics analysis, protein staining, fluorescent protein staining, protein quantification, blot staining, peptide analysis, live cell imaging and buffer preparations and reagents for medical or veterinary use; ~~chemical products, preparations and reagents for medical or veterinary use, excluding dental products~~; biological and chemical preparations for electrophoresis, protease and proteolysis monitoring, proteomics analysis, protein staining, fluorescent protein staining, protein quantification, blot staining, peptide analysis, live cell imaging and buffer preparations and reagents for use in biotechnology and medical research being test kits comprised of alkaline solutions and epiceconone; fluorescent compounds and kits for electrophoresis, protease and proteolysis monitoring, proteomics analysis, protein staining, fluorescent protein staining, protein quantification, blot staining, peptide analysis and live cell imaging, and buffers consisting thereof for medical and veterinary use, including medical and veterinary research; all of the aforementioned not for use in the fields of dentistry, orthodontics or any other oral health care field

REMARKS

The above-captioned application has been the subject of an opposition proceeding. The parties have entered into a Settlement Agreement which contemplates entry of the above stated amendment to the recitation of goods.

It is submitted that the amended recitation sought to be entered above more narrowly recites the services in the originally published recitation in that it maintains the original recitation and adds a qualification thereto. Therefore, the amendment is believed to be enterable without republication of the application. Favorable consideration is earnestly solicited.

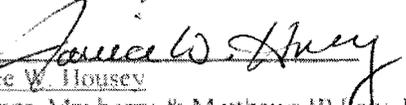
Respectfully submitted,

3M ESPE AG

By: 
Scott W. Johnston
MERCHANT & GOULD
3200 IDS Center
80 South 8th Street
Minneapolis, MN 55402
Telephone: 612/332-5300

Respectfully submitted,

Fluorotechniques Pty Limited

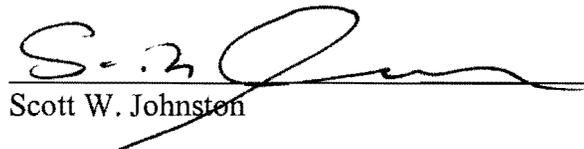
By: 
Janice W. Housey
Latimer, Mayberry & Matthews IP Law, L.L.P.
13873 Park Center Road, Suite 106
Herndon, VA 20171

December 17, 2009

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing SUSPENSION,
AMENDMENT OF APPLICATION AND DISMISSAL WITHOUT PREJUDICE was
served upon the following attorney of record for Applicant by First Class Mail, postage
prepaid, this 22nd day of December, 2009:

Janice W. Housey
Latimer & Mayberry Intellectual Property Law, LLP
13873 Park Center Road, Suite 106
Herndon, VA 20171


Scott W. Johnston