

ESTTA Tracking number: **ESTTA408342**

Filing date: **05/11/2011**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Evonik Degussa GmbH
Granted to Date of previous extension	05/11/2011
Address	RELLINGHAUSER STRASSE 1-11 Essen, 45128 GERMANY

Attorney information	Scott D. Woldow Smith, Gambrell & Russell, LLP 1130 Connecticut Avenue, NWSuite 1130 Washington, DC 20036 UNITED STATES sdwoldow@sgrlaw.com Phone:202-263-4300
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Applicant Information

Application No	85096047	Publication date	01/11/2011
Opposition Filing Date	05/11/2011	Opposition Period Ends	05/11/2011
Applicant	Afgritech Ltd. Old Croft, Stanwix Carlisle, CA39BA UNITED KINGDOM		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: animal feed supplement
Class 031. All goods and services in the class are opposed, namely: livestock feed

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	79083600	Application Date	04/10/2010
Registration Date	NONE	Foreign Priority Date	12/08/2009
Word Mark	AMINORED		

Design Mark	AMINORED
Description of Mark	NONE
Goods/Services	<p>Class 001. First use: Chemicals used in industry and science, as well as in agriculture, horticulture and forestry except for fungicides, herbicides, insecticides, and parasiticides; chemicals for use in industry; Chemicals used in industry, namely, chemicals for industrial purposes; chemicals for use in industry and science; chemical substances for preserving foodstuffs</p> <p>Class 009. First use: Computer software for use in estimating amino acid content in feedstuff for livestock and in formulating livestock diets in the field of animal nutrition; Diagnostic apparatus for testing feed ingredients; Measuring apparatus, namely, technical measuring, testing and checking apparatus and instruments for measuring, testing and checking feed ingredient raw material and rapid evaluation of digestibility in heat processed raw materials; Testing and food analysis apparatus, namely, apparatus for testing gas, liquid and solids for feed ingredient analysis; Testing and food analysis apparatus, namely, apparatus for testing gas, liquid and solids to detect heat damage in a processed raw material and to adjust amino acid digestibility in order to prevent performance depression of animals fed ingredients; Testing and food analysis apparatus, namely, apparatus for testing animal nutrition liquids and solids; Testing and food analysis apparatus, namely, apparatus for testing gas, liquid and solid raw materials for amino acid content; Scientific instruments, namely, electronic analyzers for testing feed ingredient raw material quality</p> <p>Class 031. First use: Foodstuffs for animals; additives to fodder, not for medical purposes</p> <p>Class 041. First use: Education and instruction, namely, conducting conferences, congresses, symposiums and colloquiums in the field of feedstuff and animal nutrition; entertainment in the nature of conducting entertainment exhibitions in the nature of animal exhibitions and animal nutrition festivals; teaching and continuing professional education for experts in the field of feedstuff and animal nutrition; arranging and conducting of conferences, congresses, symposiums and colloquiums in the field of animal nutrition and feedstuff; organization of exhibitions for cultural and/or educational purposes; publication of books, newspapers and periodicals; arranging and conducting of seminars and workshops, especially for experts in field of animal nutrition</p> <p>Class 042. First use: Scientific and technological services and research and design in the field of animal nutrition, feedstuff, and chemicals; industrial analysis and research services in the field of animal nutrition and feedstuff; design and development of computer hardware and software, in particular computer programs, especially as a database for amino acid analysis in feedstuffs for animal nutrition; computer software consultancy; technical consulting services for the animal feed industry about scientific research in the use of animal feed ingredients; chemistry consulting services; bacteriological and/or chemical laboratory research services; physics research; Research, namely, materials testing, analyzing, and evaluation; Industrial analysis, namely, product testing; Scientific and technological services, namely, scientific research, analysis and testing in the fields of feed ingredient raw material and amino acid digestibility; Research, namely, testing of raw materials and feed additives; Industrial analysis, namely, testing or research on machines, apparatus and instruments for raw materials and feed additives</p>

Attachments	79083600#TMSN.jpeg (1 page)(bytes) Scott - PDF document.PDF (15 pages)(192609 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	/SW/
Name	Scott D. Woldow
Date	05/11/2011

Evonik Degussa GmbH, a Limited Liability Company of the Federal Republic of Germany, having offices at Rellinghauser Strasse 1-11, Essen, D-45128, Germany, believes that it will be damaged by registration of the mark AMINOGREEN, Application Serial No. 85/096,047 and hereby opposes the same.

The grounds for opposition are as follows.

1. Opposer is now and has been engaged in the specialty chemical business.
2. Opposer is the owner of the AMINORED trademark application, Serial No. 79/083,600, which is pending in association with:

International Class: 001

Chemicals used in industry and science, as well as in agriculture, horticulture and forestry except for fungicides, herbicides, insecticides, and parasiticides; chemicals for use in industry; Chemicals used in industry, namely, chemicals for industrial purposes; chemicals for use in industry and science; chemical substances for preserving foodstuffs.

International Class: 009

Computer software for use in estimating amino acid content in feedstuff for livestock and in formulating livestock diets in the field of animal nutrition; Diagnostic apparatus for testing feed ingredients; Measuring apparatus, namely, technical measuring, testing and checking apparatus and instruments for measuring, testing and checking feed ingredient raw material and rapid evaluation of digestibility in heat processed raw materials; Testing and food analysis apparatus, namely, apparatus for testing gas, liquid and solids for feed ingredient analysis; Testing and food analysis apparatus, namely, apparatus for testing gas,

liquid and solids to detect heat damage in a processed raw material and to adjust amino acid digestibility in order to prevent performance depression of animals fed ingredients; Testing and food analysis apparatus, namely, apparatus for testing animal nutrition liquids and solids; Testing and food analysis apparatus, namely, apparatus for testing gas, liquid and solid raw materials for amino acid content; Scientific instruments, namely, electronic analyzers for testing feed ingredient raw material quality.

International Class: 031

Foodstuffs for animals; additives to fodder, not for medical purposes.

International Class: 041

Education and instruction, namely, conducting conferences, congresses, symposiums and colloquiums in the field of feedstuff and animal nutrition and distribution of printed materials in connection therewith in hard copy or electronic format on the same topics; entertainment in the nature of conducting entertainment exhibitions in the nature of animal exhibitions and animal nutrition festivals; teaching and continuing professional education for experts in the field of feedstuff and animal nutrition; arranging and conducting of conferences, congresses, symposiums and colloquiums in the field of animal nutrition and feedstuff; organization of exhibitions for cultural and/or educational purposes; publication of books, newspapers and periodicals; arranging and conducting of seminars and workshops, especially for experts in field of animal nutrition.

International Class: 042

Scientific and technological services and research and design in the field of animal nutrition, feedstuff, and chemicals; industrial analysis and research

services in the field of animal nutrition and feedstuff; design and development of computer hardware and software, in particular computer programs, especially as a database for amino acid analysis in feedstuffs for animal nutrition; computer software consultancy; technical consulting services for the animal feed industry about scientific research in the use of animal feed ingredients; chemistry consulting services; bacteriological and/or chemical laboratory research services; physics research; Research, namely, materials testing, analyzing, and evaluation; Industrial analysis, namely, product testing; Scientific and technological services, namely, scientific research, analysis and testing in the fields of feed ingredient raw material and amino acid digestibility; Research, namely, testing of raw materials and feed additives; Industrial analysis, namely, testing or research on machines, apparatus and instruments for raw materials and feed additives.

3. The AMINORED trademark application was filed on April 10, 2010 with a priority date claim of December 8, 2009.

4. Applicant had and continues to have a bona fide intent to use the mark in commerce in association with the goods and services listed in the trademark application.

5. Opposer's mark is symbolic of goodwill and consumer recognition built up by Opposer through substantial amounts of time and effort in advertising and promotion.

6. Notwithstanding Opposer's rights in and to its AMINORED mark, Applicant on July 29, 2010, filed an application for registration of the mark AMINOGREEN. The AMINOGREEN trademark was approved for publication in association with "animal feed

supplement”, in Class 5 and “livestock feed”, in Class 31. The application was assigned Serial No. 85/096,047 and was published for opposition in the Official Gazette of January 11, 2011.

7. Applicant’s mark AMINOGREEN, when used in connection with the goods set forth in its application, is confusingly similar to Opposer’s AMINORED mark, as set forth and protected by Opposer’s above-identified prior pending application. Registration and use of Applicant’s mark in association with the products identified in the trademark application is likely to cause consumer confusion, mistake and deception.

8. Applicant’s mark and Registrant’s mark are highly similar in appearance, sound, connotation and commercial impression.

9. The goods associated with the AMINOGREEN mark and the goods and services associated with the AMINORED mark are highly similar.

10. Despite Opposer’s rights in and to the AMINORED mark, Applicant proposed the AMINOGREEN designation to refer to its products. Both the AMINORED mark and the AMINOGREEN mark are associated with animal food products. The similar nature of the goods accentuates the similarity between AMINORED and AMINOGREEN and exacerbates the likelihood of confusion regarding the marks and the likelihood of confusion as to sponsorship or affiliation.

11. If Applicant is permitted to register its AMINOGREEN mark, and uses the mark in commerce, for the goods specified in the application, confusion in the trade resulting in damage and injury to Opposer would be caused and would result by reason of the similarity between Applicant's mark and Opposer's mark. Persons familiar with Opposer's mark would be likely to confuse Applicant's goods as a product made, sold, or sponsored by Opposer. Any such confusion in the trade would inevitably result in loss of sales to Opposer.

12. In addition to the harm identified in the preceding paragraph, any defect, objection or fault found with Applicant's products marketed under the AMINOGREEN mark would necessarily reflect badly upon and significantly injure the reputation which Opposer has established for its products.

13. Attached are true copies of United States Patent and Trademark Office database reports showing current title and status of Opposer's prior pending application.

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant's mark, and prays that registration be denied.

Please charge Deposit Account No. 02-4300 for any additional fees that may be required.

Respectfully submitted,

SMITH, GAMBRELL & RUSSELL, LLP



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EXHIBIT A



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AMINORED

Word Mark AMINORED

Goods and Services

IC 001. US 001 005 006 010 026 046. G & S: Chemicals used in industry and science, as well as in agriculture, horticulture and forestry except for fungicides, herbicides, insecticides, and parasiticides; chemicals for use in industry; Chemicals used in industry, namely, chemicals for industrial purposes; chemicals for use in industry and science; chemical substances for preserving foodstuffs

IC 009. US 021 023 026 036 038. G & S: Computer software for use in estimating amino acid content in feedstuff for livestock and in formulating livestock diets in the field of animal nutrition; Diagnostic apparatus for testing feed ingredients; Measuring apparatus, namely, technical measuring, testing and checking apparatus and instruments for measuring, testing and checking feed ingredient raw material and rapid evaluation of digestibility in heat processed raw materials; Testing and food analysis apparatus, namely, apparatus for testing gas, liquid and solids for feed ingredient analysis; Testing and food analysis apparatus, namely, apparatus for testing gas, liquid and solids to detect heat damage in a processed raw material and to adjust amino acid digestibility in order to prevent performance depression of animals fed ingredients; Testing and food analysis apparatus, namely, apparatus for testing animal nutrition liquids and solids; Testing and food analysis apparatus, namely, apparatus for testing gas, liquid and solid raw materials for amino acid content; Scientific instruments, namely, electronic analyzers for testing feed ingredient raw material quality

IC 031. US 001 046. G & S: Foodstuffs for animals; additives to fodder, not for medical purposes

IC 041. US 100 101 107. G & S: Education and instruction, namely, conducting conferences, congresses, symposiums and colloquiums in the field of feedstuff and animal nutrition; entertainment in the nature of conducting entertainment exhibitions in the nature of animal exhibitions and animal nutrition festivals; teaching and continuing professional education for experts in the field of feedstuff and animal nutrition; arranging and conducting of conferences, congresses, symposiums and colloquiums in the field of animal nutrition and feedstuff; organization of exhibitions for cultural and/or educational purposes; publication of books, newspapers and periodicals; arranging and conducting of seminars and workshops, especially for experts in field of animal nutrition

IC 042. US 100 101. G & S: Scientific and technological services and research and design in the field of animal nutrition, feedstuff, and chemicals; industrial analysis and research services in the field of animal nutrition and feedstuff; design and development of computer hardware and software, in particular computer programs, especially as a database for amino acid analysis in feedstuffs for animal nutrition; computer software consultancy; technical consulting services for the animal feed

industry about scientific research in the use of animal feed ingredients; chemistry consulting services; bacteriological and/or chemical laboratory research services; physics research; Research, namely, materials testing, analyzing, and evaluation; Industrial analysis, namely, product testing; Scientific and technological services, namely, scientific research, analysis and testing in the fields of feed ingredient raw material and amino acid digestibility; Research, namely, testing of raw materials and feed additives; Industrial analysis, namely, testing or research on machines, apparatus and instruments for raw materials and feed additives

Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 79083600
Filing Date April 10, 2010
Current Filing Basis 66A
Original Filing Basis 66A
Published for Opposition May 24, 2011
International Registration Number 1041517
Owner (APPLICANT) Evonik Degussa GmbH LIMITED LIABILITY COMPANY FED REP GERMANY Rellinghauser Straße 1-11 45128 Essen FED REP GERMANY
Priority Date December 8, 2009
Type of Mark TRADEMARK. SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

[TESS HOME](#)
[NEW USER](#)
[STRUCTURED](#)
[FREE FORM](#)
[BROWSE DICT](#)
[SEARCH OG](#)
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Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2011-05-11 09:23:34 ET

Serial Number: 79083600 Assignment Information Trademark Document Retrieval

Registration Number: (NOT AVAILABLE)

Mark

AMINORED

(words only): AMINORED

Standard Character claim: Yes

Current Status: Review prior to publication completed.

Date of Status: 2011-04-20

Filing Date: 2010-04-10

The Information will be/was published in the Official Gazette on 2011-05-24

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 112

Attorney Assigned:
OLANDRIA WARREN L

Current Location: 650 -Publication And Issue Section

Date In Location: 2011-04-20

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Evonik Degussa GmbH

Address:

Evonik Degussa GmbH
Rellinghauser Straße 1-11
45128 Essen

Fed Rep Germany

Legal Entity Type: Limited Liability Company

State or Country Where Organized: Fed Rep Germany

GOODS AND/OR SERVICES

International Class: 001

Class Status: Active

Chemicals used in industry and science, as well as in agriculture, horticulture and forestry except for fungicides, herbicides, insecticides, and parasiticides; chemicals for use in industry; Chemicals used in industry, namely, chemicals for industrial purposes; chemicals for use in industry and science; chemical substances for preserving foodstuffs

Basis: 66(a)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 009

Class Status: Active

Computer software for use in estimating amino acid content in feedstuff for livestock and in formulating livestock diets in the field of animal nutrition; Diagnostic apparatus for testing feed ingredients; Measuring apparatus, namely, technical measuring, testing and checking apparatus and instruments for measuring, testing and checking feed ingredient raw material and rapid evaluation of digestibility in heat processed raw materials; Testing and food analysis apparatus, namely, apparatus for testing gas, liquid and solids for feed ingredient analysis; Testing and food analysis apparatus, namely, apparatus for testing gas, liquid and solids to detect heat damage in a processed raw material and to adjust amino acid digestibility in order to prevent performance depression of animals fed ingredients; Testing and food analysis apparatus, namely, apparatus for testing animal nutrition liquids and solids; Testing and food analysis apparatus, namely, apparatus for testing gas, liquid and solid raw materials for amino acid content; Scientific instruments, namely, electronic analyzers for testing feed ingredient raw material quality

Basis: 66(a)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 031

Class Status: Active

Foodstuffs for animals; additives to fodder, not for medical purposes

Basis: 66(a)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 041

Class Status: Active

Education and instruction, namely, conducting conferences, congresses, symposiums and colloquiums in the field of feedstuff and animal nutrition; entertainment in the nature of conducting entertainment exhibitions in the nature of animal exhibitions and animal nutrition festivals; teaching and continuing professional education for experts in the field of feedstuff and animal nutrition; arranging and conducting of conferences, congresses, symposiums and colloquiums in the field of animal nutrition and feedstuff; organization of exhibitions for cultural and/or educational purposes; publication of books, newspapers and periodicals; arranging and conducting of seminars and workshops, especially for experts in field of animal nutrition

Basis: 66(a)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 042

Class Status: Active

Scientific and technological services and research and design in the field of animal nutrition, feedstuff, and chemicals; industrial analysis and research services in the field of animal nutrition and feedstuff; design and development of computer hardware and software, in particular computer programs, especially as a database for amino acid analysis in feedstuffs for animal nutrition; computer software consultancy; technical consulting services for the animal feed industry about scientific research in the use of animal feed ingredients; chemistry consulting services; bacteriological and/or chemical laboratory research services; physics research; Research, namely, materials testing, analyzing, and evaluation; Industrial analysis, namely, product testing; Scientific and technological services, namely, scientific research, analysis and testing in the fields of feed ingredient raw material and amino acid digestibility; Research, namely, testing of raw materials and feed additives; Industrial analysis, namely, testing or research on machines, apparatus and instruments for raw materials and feed additives

Basis: 66(a)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

International Registration Number: 1041517

International Registration Date: 2010-04-10

Priority Claimed: Yes

Date of Section 67 Priority Claim: 2009-12-08

International Registration Status: Request For Extension Of Protection Processed

Date of International Registration Status: 2010-07-09

International Registration Renewal Date: 2020-04-10

Notification of Designation Date: 2010-07-08

Date of Automatic Protection: 2012-01-08

Date International Registration Cancelled: (DATE NOT AVAILABLE)

First Refusal: Yes

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2011-05-04 - Notification Of Possible Opposition Sent To IB

2011-05-04 - Notice Of Start Of Opposition Period Created, To Be Sent To IB

2011-05-04 - Notice of publication

2011-04-20 - Law Office Publication Review Completed
2011-04-19 - Approved for Pub - Principal Register (Initial exam)
2011-04-19 - Teas/Email Correspondence Entered
2011-04-19 - Communication received from applicant
2011-04-18 - TEAS Response to Office Action Received
2011-03-18 - Non-final action mailed
2011-03-17 - Non-Final Action Written
2011-01-24 - Teas/Email Correspondence Entered
2011-01-24 - Communication received from applicant
2011-01-19 - Assigned To LIE
2011-01-18 - TEAS Response to Office Action Received
2010-08-06 - Refusal Processed By IB
2010-07-16 - Application Filing Receipt Mailed
2010-07-15 - Non-Final Action Mailed - Refusal Sent To IB
2010-07-15 - Refusal Processed By MPU
2010-07-15 - Non-Final Action (Ib Refusal) Prepared For Review
2010-07-14 - Non-Final Action Written
2010-07-12 - Assigned To Examiner
2010-07-12 - New Application Office Supplied Data Entered In Tram
2010-07-09 - Sn Assigned For Sect 66a Appl From IB

ATTORNEY/CORRESPONDENT INFORMATION

Correspondent

Evonik Degussa GmbH,
DG-IPM-PAT
Rodenbacher Chaussee 4
63457 Hanau
FED REP GERMANY

Attorney Docket No.
032301.691

TRADEMARK

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

In the Matter of Application Serial No. 85/096,047

Published: January 11, 2011

Evonik Degussa GmbH

Opposer,

v.

Afgritech Ltd.

Applicant.

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Opposition No. _____

Commissioner for Trademarks
Box TTAB FEE
P.O. Box 1451
Alexandria, Virginia 22313-1451

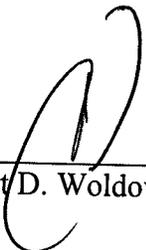
Madam:

CERTIFICATE OF SERVICE

I, Scott D. Woldow, counsel for Evonik Degussa GmbH, do hereby certify that the **NOTICE OF OPPOSITION** was served upon applicant by placing a copy of same in the U.S. mail, postage prepaid, addressed as follows:

THOMAS H. VAN HOOZER
HOVEY WILLIAMS LLP
10801 MASTIN BLVD STE 1000
KANSAS CITY, MO 66210

This 11th day of May, 2011



Scott D. Woldow