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

Proceeding	91200334
Party	Plaintiff Afgritech Ltd.
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Submission	Motion to Consolidate
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Afgritech Ltd.,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91200334
)	Re: Application Serial No. 79/083,600
Evonik Degussa GmbH,)	
)	
Applicant.)	

**COMBINED MOTION TO CONSOLIDATE PENDING INTER PARTES
PROCEEDINGS WITH CONSENT AND SUPPORTING BRIEF**

Afgritech Ltd. (“Opposer”) requests that the Board consolidate the above-captioned proceeding with presently pending Opposition No. 91199752 for purposes of trial and pre-trial proceedings. In support of its Motion, Afgritech provides the following factual background and legal basis to support its Motion.

BRIEF IN SUPPORT OF MOTION TO CONSOLIDATE

Afgritech Ltd. (“Opposer”) has applied for federal registration of its trademarks AMINOGREEN, Serial No. 85/096,047, for the following goods:

Class 5: Animal feed supplement; and

Class 31: Livestock feed.

Evonik Degussa GmbH (“Applicant”) has applied for federal registration of its trademarks AMINORED, Serial No. 79/083,600, for the following goods:

Class 1: 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;

Class 9: 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;

Class 31: Foodstuffs for animals; additives to fodder, not for medical purposes;

Class 41: 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; and

Class 42: 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.

Both parties filed timely Notices of Opposition to each respective party's application.

The facts and legal theories for the instant Oppositions are substantially identical.

Pursuant to 37 C.F.R. § 2.116(a), the procedure and practice of *inter partes* trademark proceedings shall be governed by the Federal Rules of Civil Procedure wherever applicable and appropriate and except as otherwise provided. Rule 42(a) of the Federal Rules of Civil Procedure provides that when actions involving a common question of law or fact are pending before a court, that court may order all the actions consolidated to avoid unnecessary costs and delay.

Consolidation of the Oppositions would serve the interests of judicial economy because they both have a common question of law in that both cases challenge the issuance of trademark containing in whole or in part AMINO for similar and overlapping reasons. Furthermore, consolidating the Oppositions will serve the interests of judicial economy because both oppositions have a common nucleus of facts. Indeed, both oppositions *allege* similar and related facts.

The Oppositions have common questions of law and fact that would serve the interests of justice, if consolidated. Furthermore, there is no indication that consolidation of the two oppositions would impose any prejudice on the parties. Thus, to preserve costs and prevent unnecessary delay, the above captioned opposition and the two other oppositions should be consolidated.

Counsel for Applicant, Evonik Degussa GmbH, consented to this Motion in email correspondence on June 30, 2011.

CONCLUSION

Afgritech Ltd. and Evonik Degussa GmbH respectfully request that Opposition No. 91200334 be consolidated with Opposition Proceeding No. 91199752, including all deadlines scheduled in the above-captioned opposition proceeding.

Dated: June 30, 2011

Respectfully submitted,

HOVEY WILLIAMS LLP

/Thomas H. Van Hoozer

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Attorneys for Opposer Afgritech Ltd.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing, which was filed electronically with the Trademark Trial and Appeal Board, was served upon Applicant's attorney of record, this 30th day of June, 2011, at the following address:

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