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Filing date: **12/21/2012**

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

Proceeding	91200105
Party	Defendant Cleary Chemicals, LLC
Correspondence Address	TAMA L DRENSKI RENNER KENNER GREIVE BOBAK TAYLOR ET AL FIRST NATIONAL TOWER , FL 4 AKRON, OH 44308- 1456 UNITED STATES pto@rennerkenner.com, tldrenski@rennerkenner.com
Submission	Motion to Amend/Amended Answer or Counterclaim
Filer's Name	Tama L. Drenski
Filer's e-mail	pto@rennerkenner.com
Signature	/Tama L. Drenski/
Date	12/21/2012
Attachments	TLD motion for leave to amend cancellation counterclaim.pdf (4 pages)(127753 bytes) Exhibit A.pdf (5 pages)(143172 bytes) Exhibit B.pdf (5 pages)(43153 bytes) 12-21-12 Second Amended Counterclaim.pdf (6 pages)(112992 bytes) Exhibit A to Counterclaim.pdf (5 pages)(24177 bytes) Exhibit B to Counterclaim.pdf (14 pages)(589094 bytes) Exhibit C to Counterclaim.pdf (6 pages)(38393 bytes) Exhibit D to Counterclaim.pdf (3 pages)(16804 bytes) Exhibit E to Counterclaim.pdf (1 page)(62124 bytes)

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

)	In re Matter of Trademark
)	Application No. 77/942162
NOVOZYMES BIOAG, INC.)	Filed: Feb. 23, 2011
Opposer,)	
v.)	Opposition No. 91200105
)	
)	
CLEARY CHEMICALS, LLC,)	
Applicant.)	
)	

MOTION FOR LEAVE TO AMEND COUNTERCLAIM, AND BRIEF IN SUPPORT

Now comes Applicant CLEARY CHEMICALS, LLC (“Cleary”), and moves the Board for leave to amend its counterclaim for cancellation to include two additional counts as follows:

- Registration No. 3,511,124 for the mark TORQUE for “natural molecule or bacteria for plant growth enhancement in agriculture crops,” owned in the name of NOVOZYMES BIOAG, INC. (“Novozymes”), is void *ab initio* because the applicant was not using the mark in interstate commerce on the filing date of application; and in the alternative,
- Registration No. 3,511,124 for the mark TORQUE for “natural molecule or bacteria for plant growth enhancement in agriculture crops,” owned in the name of Novozymes, is void *ab initio* because the applicant did not control the nature and quality of the goods sold under the mark TORQUE on the date of application, and therefore the applicant was not the owner of the registered mark.

Facts supporting these additional counts came to the attention of Cleary in the course of discovery allowed Cleary by the Board under Rule 56(d) (Doc. 27, p. 10), Novozymes having filed a motion for summary judgment on Cleary’s claim for fraud prior to the opening of

discovery (Doc. 19). More specifically, in response to requests for admission, Novozymes admitted that the applicant's only use on the filing date of the application was through a related company (see Exhibit A response to Request for Admission No. 21); and that the applicant did not identify that related company in its declaration (see Exhibit A response to Requests for Admission No. 20). Novozymes further admitted that it has no knowledge of why the applicant filed the application to register the mark TORQUE and not EMD Crop Bioscience, Inc. ("EMD") (the related company alleged by Novozymes to have used the mark TORQUE prior to and on the filing date) apart from the fact that it routinely did so. (See Exhibit A response to Interrogatory No. 7).

BRIEF IN SUPPORT

Amendments to pleadings in *inter partes* proceedings before the Board are governed by Rule 15(a) of the Federal Rules of Civil Procedure. 37 CFR §§ 2.107, 2.115 and 2.116(a). Rule 15(a) provides in relevant part that a party may amend its pleading by leave of the Board, and that leave must be freely given when justice so requires. The Board has consistently recognized that amendments to pleadings should be allowed with great liberty where necessary to bring about a furtherance of justice unless it is shown that the entry of the amendment would be prejudicial to the rights of the opposing party or legally insufficient. *Commodore Electronics Ltd. v. CBM Kabushiki Kaisha*, 26 U.S.P.Q. 2d 1503, 1505 (TTAB 1993); and *Cool-Ray, Inc. v. Eye Care, Inc.*, 183 U.S.P.Q. 618, 621 (TTAB 1974).

The Board has held that "the concept of 'undue delay' is inextricably linked with the concept of prejudice to the nonmoving party," and therefore the timing of a motion to amend is a major factor in the Board's determination of undue prejudice. *Marshall Field & Co. v. Mrs. Field's Cookies*, 11 U.S.P.Q. 2d 1355 (TTAB 1989); and *Tequila Cazadores, S.A. De C.V., et al.*

v. Tequila Centinela, S.A. De C.V., 2004 WL 407352 (TTAB) at *2, citing *Commodore Electronics*. Generally, when an applicant learns of grounds for a counterclaim to cancel a registration pleaded by the opposer, and seeks to plead those promptly thereafter, the motion to amend is timely. By way of example, see *Marshall Field & Co.*, 11 USPQ 2d at 1359.

In order to state a legally sufficient claim for cancellation, Cleary must state such facts as would, if proven, establish both its standing to challenge Novozymes' registration and a statutory ground for cancellation. *Commodore Electronics Ltd.*, 26 U.S.P.Q. 2d at 1506. Therefore, to determine the legal sufficiency of Cleary's proposed counterclaims, it is necessary to look at the language of 15 U.S.C. §1051(a) and 37 C.F.R. § 2.38(b).

15 U.S.C. §1051(a) provides that an application based on use in commerce must be filed by the party who is the owner of the mark as of the application filing date. A claim of ownership may be based on use by a related company, but to the extent that a claim of ownership is based on use by a related company, such facts must be alleged in the application. 37 C.F.R. §2.38 (b). If the applicant made no use of the mark prior to the application filing date, and did not claim ownership rights through a related company, the application from which the mark registered is void *ab initio*. 15 U.S.C. § 1051(a); Trademark Rule 2.71(d), 37 CFR § 2.71(d); and *In re Tong Yang Cement Corp.*, 19 U.S.P.Q. 2d 1689 (TTAB 1991).

On October 22, 2012, Novozymes served responses to Cleary's requests for discovery that at least tend to establish, if not conclusively establish, that Merck, the applicant of Registration No. 3,511,124 was not using the mark TORQUE in interstate commerce on October 19, 2007, the filing date of the application; that Merck's claim of ownership was based solely on EMD being a related company to Merck; and that Merck did not state such facts in its declaration given in support of its application. Alternatively, they tend to establish, if not

conclusively establish, that Merck did not control the nature and quality of the goods sold under the mark TORQUE. These facts are incorporated in the allegations of the second amended complaint, which draft is attached hereto as Exhibit B. As such, the Board should find that Cleary's proposed claims are, indeed, legally sufficient.

Wherefore, because Cleary's motion for leave to amend is neither prejudicial to Novozymes, nor legally insufficient, it is respectfully requested that the Board grant the same.

Respectfully Submitted,

Dated: December 21, 2012

/Tama L. Drenski/
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Attorney for Applicant

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

NOVOZYMES BIOAG, INC.,)
)
 Opposer,)
)
v.)
)
CLEARY CHEMICALS, LLC,)
)
 Applicant.)

Opposition No. 91200105

**ANSWERS TO APPLICANT'S FIRST SET OF COMBINED DISCOVERY
REQUESTS**

Now comes Opposer, Novozymes BioAg, Inc., and in answer to
Applicant's Discovery Requests, states as follows:

Request for Admission No. 1.

Admit that the Declaration of Charles Broughton does not state that the mark
TORQUE was in use on June 25, 2007.

Answer to Request for Admission No. 1:

Admit.

Request for Admission No. 2.

Admit that the Declaration of Charles Broughton does not state that Exhibit 1 to
his Declaration was in use on June 25, 2007.

Answer to Request for Admission No. 2:

Admit.

Interrogatory No. 5.

State how Erkelenz and Kölle came into possession of the specimen attached to their Declaration dated May 21, 2008.

Answer to Interrogatory No. 5:

On information and belief, the specimen was provided by Jody Sharp, a former employee of EMD Chemicals, as an attachment to an email.

Interrogatory No. 6.

State the nature of the specimen attached to the Declaration of Erkelenz and Kölle dated May 21, 2008.

Answer to Interrogatory No. 6:

The specimen attached to the declaration is a 2008 specimen label identical to the 2007 specimen label created on September 22, 2007. This latter label is identical to the LCO-C IF specimen label initially adopted and used in February of 2007 except that the mark TORQUE has been substituted for the name LCO-C IF.

Interrogatory No. 7.

State "why" the application to register the mark TORQUE was filed by Merck KGAA and not EMD Crop Bioscience, Inc.

Answer to Interrogatory. 7:

Upon information and belief, Merck generally applies for and owns all trademarks of its subsidiaries. Other than this belief, opposer has no knowledge of why Merck applies for trademarks in its own name.

Answer to Request for Admission No. 19:

Admit.

Request for Admission No. 20.

Admit that the Declaration dated May 21, 2008 does not state that the first use of the mark was by a predecessor in interest or a related company.

Answer to Request for Admission No. 20:

Admit.

Request for Admission No. 21.

Admit that Merck KGAA itself was not using the mark in U.S. commerce on the application filing date.

Answer to Request for Admission No. 21:

Opposer can neither admit nor deny this request because the request is vague. As indicated in response to Interrogatory No. 11, it is not known what is meant by Merck KGAA "itself." Merck, through its related company EMD Crop Bioscience, was using the mark TORQUE in U.S. commerce before the filing date.

Interrogatory No. 12.

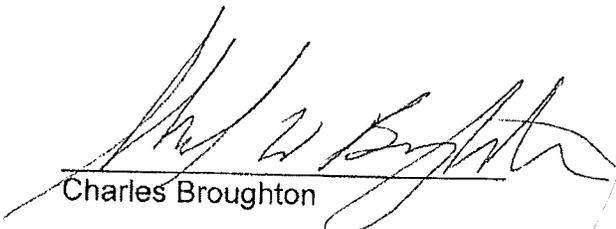
State the nature of the affiliation between EMD Crop Bioscience Inc. and Merck KGAA on October 19, 2007.

Answer to Interrogatory No. 12:

Related company.

Declaration of Charles Broughton

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements may jeopardize the validity of the registration, declares that he is currently Director, Global Business Development of Novozymes BioAg Inc., formerly EMD Crop Bioscience Inc.; that he was employed by EMD Crop Bioscience Inc. in 2007 as Director, Marketing; that he has read the foregoing response; that he has personal knowledge of the truth of some of the answers; and that, in the remaining instances, he has been informed that the answers are true, and on the basis of that information and belief, believes them to be true.

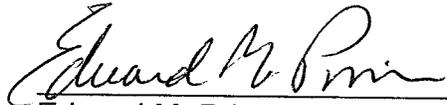

Charles Broughton

Dated: October 19, 2012

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of October, 2012, a true and correct copy of the foregoing Answers to Applicant's First Set of Combined Discovery Requests was served by U.S. mail and email on Applicant by serving Applicant's counsel addressed as follows:

Tama L. Drenski
Renner, Kenner, Greive, Bobak, Taylor & Weber
Fourth Floor, First National Tower
Akron, Ohio 44308-1456
Email: tldrenski@rennerkenner.com



Edward M. Prince

Exhibit B

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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)	In re Matter of Trademark
)	Application No. 77/942162
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CLEARY CHEMICALS, LLC,)	
Applicant.)	
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SECOND AMENDED COUNTERCLAIM

Applicant CLEARY CHEMICAL COMPANY (“Cleary”) asserts the following second amended counterclaim:

CANCELLATION

Cleary believes that it has been and will be damaged by Registration No. 3,511,124 for the mark TORQUE for “natural molecule or bacteria for plant growth enhancement in agriculture crops,” owned in the name of NOVOZYMES BIOAG, INC. (“Novozymes”), and pursuant to 15 U.S.C. §1064 et seq. and 37 C.F.R. §2.111 et seq., hereby petitions to cancel the same. The grounds for cancellation are as follows:

1. Cleary markets the following products for the turf and ornamental industries: fungicides, limestone, animal repellants, insecticides, colorants, tank cleaners, defoamers, soil decontaminators, and anti-transparent.
2. Since at least February 23, 2010, Cleary has used the mark TORQUE in connection

Exhibit B

connection with its sales of turf and ornamental fungicide.

3. Novozymes has opposed Cleary's registration of the mark TORQUE, and has objected and is likely to continue to object to Cleary's continued use of the mark.

COUNT I--APPLICANT NOT THE OWNER—NON-USE

4. Clearly repeats the allegations set forth in Paragraphs 1-3 as if fully rewritten.

5. Novozymes alleges ownership through assignment from Merck KGaA ("Merck") of United States Registration No. 3,511,124 for the mark TORQUE for "natural molecule or bacteria for plant growth enhancement in agriculture crops." A copy of the TESS and the assignment documents are attached as Exhibits A and B, respectively.

6. The application to register TORQUE, which issued as United States Registration No. 3,511,124, was a use-based application under 15 U.S.C. §1051(a). A copy of the application is attached hereto as Exhibit C.

7. An application based on use in commerce must be filed by the party who is the owner of the mark as of the application filing date.

8. A claim of ownership may be based on use by a related company, but to the extent that a claim of ownership is based on use by a related company, such facts must be alleged in the application. 37 C.F.R. §2.38(b).

9. The application to register TORQUE was filed electronically in the name of the general partners of Merck KGaA ("Merck"), the same being Dr. Karl-Ludwig Kley, Dr. Michael Becker, Mr. Elmar Schnee, Dr. Bernd Reckmann, and Mr. Walter W. Zywoitek, on October 19, 2007. It was neither signed by the general partners nor the attorney who filed the application.

Exhibit B

10. An Office Action issued on November 29, 2007 in which Merck was advised among other things that the application was not signed and verified. A copy of that Office Action is attached as Exhibit D.

11. In response to that Office Action, a declaration was filed on May 27, 2008 in which it was declared that Merck was the applicant. No facts declaring that Merck's claim of ownership was based on use by a related company were set forth in the declaration. A copy of that declaration is attached as Exhibit E.

12. Upon information and belief, Merck, itself, made no use of the mark TORQUE prior to and was not the owner of the mark TORQUE on October 19, 2007.

13. Because Merck made no use of the mark TORQUE prior to October 19, 2007 and did not claim ownership rights through a related company, the application from which TORUE registered is void *ab initio*.

COUNT II. APPLICANT NOT THE OWNER—NO CONTROL OVER THE NATURE AND QUALITY OF THE GOODS

14. Clearly repeats the allegations set forth in Paragraphs 1-13 as if fully rewritten.

15. Novozymes has represented that its predecessor-in-interest, EMD Crop BioScience Inc., was a related company to Merck.

16. Upon information and belief, prior to and on October 19, 2007, the filing date of the application, EMD, not Merck, controlled the nature and quality of the goods sold or services rendered under the mark TORQUE.

Exhibit B

17. Because Merck did not control the nature and quality of the goods sold or services rendered under the mark TORQUE as of the filing date of the application, use of the mark by EMD did not inure to the benefit of Merck, Merck was not the owner of the mark as of the filing date of the application, and had no right to file the application.

18. Because the application was filed in the name of the wrong party, the application cannot be amended and the registration is void *ab initio*.

COUNT II. FRAUD

19. Clearly repeats the allegations set forth in Paragraphs 1-18 as if fully rewritten.

20. On information and belief, EMD's mark was fraudulently obtained. The original application was filed under Section 1(a) of the Trademark Act. No specimen was provided. No date of first use anywhere was provided. The application was not signed and verified as required therefore, the initial application was not complete. In response to an Office Action, Opposer submitted a specimen dated 2008, and fraudulently stated that the specimen had been in use at least as early as the filing date of the application, which was October 19, 2007. The described acts of EMD were done knowingly and with the intent to induce the Trademark Examiner to rely thereon and grant said registration. Reasonably relying upon the truth of said false statement, and as a consequence thereof, the U.S. Patent and Trademark Office did, in fact, grant said registration to EMD.

21. In view of the foregoing allegations, EMD is not entitled to continued registration of its mark since upon information and belief, EMD committed fraud in the procurement of the subject

Exhibit B

subject registration. As such, Cleary prays that Registration No. 3,511,124 for the mark TORQUE for natural molecule or bacteria for plant growth enhancement in agriculture crops issued October 7, 2008 be cancelled.

In view of the foregoing allegations, Cleary prays hat its Counterclaim for Cancellation be sustained in favor of Cleary.

Respectfully Submitted,

Dated: December __, 2012

/Tama L. Drenski/

Tama L. Drenski (Reg. No. 50,323)

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Attorney for Applicant

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Cleary believes that it has been and will be damaged by U.S. Registration No. 3,511,124 for the mark TORQUE for “natural molecule or bacteria for plant growth enhancement in agriculture crops,” owned in the name of NOVOZYMES BIOAG, INC. (“Novozymes”), and pursuant to 15 U.S.C. §1064 et seq. and 37 C.F.R. §2.111 et seq., hereby petitions to cancel the same. The grounds for cancellation are as follows:

1. Cleary markets the following products for the turf and ornamental industries: fungicides, limestone, animal repellants, insecticides, colorants, tank cleaners, defoamers, soil decontaminators, and anti-transparent.
2. Since at least February 23, 2010, Cleary has used the mark TORQUE in connection with its sales of turf and ornamental fungicide.

3. Novozymes has opposed Cleary's registration of the mark TORQUE, and has objected and is likely to continue to object to Cleary's continued use of the mark.

COUNT I--APPLICANT NOT THE OWNER—NON-USE BY APPLICANT

4. Cleary repeats the allegations set forth in Paragraphs 1-3 as if fully rewritten.

5. Novozymes alleges ownership through assignment from Merck KGaA ("Merck") of U.S. Registration No. 3,511,124 for the mark TORQUE for "natural molecule or bacteria for plant growth enhancement in agriculture crops." A copy of the TESS and the assignment documents are attached as Exhibits A and B, respectively.

6. The application to register TORQUE, which issued as U.S. Registration No. 3,511,124, was filed as a use-based application under 15 U.S.C. §1051(a), by Merck KGaA. A copy of the application is attached hereto as Exhibit C.

7. An application based on use in commerce must be filed by the party who is the owner of the mark as of the application filing date.

8. A mark that is the subject of an application that is based on use in commerce must be in use in U.S. interstate commerce by the applicant or its related company as of the application filing date. 37 C.F.R. § 2.34(a)(1).

9. 15 U.S.C. § 1127 defines related company as any person whose use of a mark is controlled by the owner of the mark with respect to the nature and quality of the goods or services on or in connection with which the mark is used.

10. If the mark is not in fact being used by the applicant, but by a related company whose use inures to the benefit of the applicant, such facts must be alleged in the application. 37

C.F.R. §2.38(b).

11. An application filed in the name of an entity that did not own the mark as of the filing date of the application is void. 37 C.F.R. 2.71(d).

12. The application to register TORQUE was filed electronically in the name of the general partners of Merck KGaA (“Merck”), the same being Dr. Karl-Ludwig Kley, Dr. Michael Becker, Mr. Elmar Schnee, Dr. Bernd Reckmann, and Mr. Walter W. Zywottek, on October 19, 2007. It was neither signed by the general partners nor the attorney who filed the application. No signature was submitted.

13. An Office Action issued on November 29, 2007 in which Merck was advised, among other things, that the application was not signed and verified. A copy of that Office Action is attached as Exhibit D.

14. In response to that Office Action, a declaration was filed on May 27, 2008 in which it was declared that Merck was the applicant. No facts declaring that Merck’s claim of ownership was based on use by a related company were set forth in the declaration. A copy of that declaration is attached as Exhibit E.

15. Upon information and belief, Merck, itself, made no use of the mark TORQUE prior to and was not the owner of the mark TORQUE on October 19, 2007.

16. Because Merck made no use of the mark TORQUE prior to October 19, 2007, and did not claim ownership rights through a related company, the application from which TORQUE registered is void *ab initio*.

17. Because Merck was not using the mark TORQUE in commerce as of October

19, 2007, and was not the owner of the mark TORQUE on October 19, 2007, the application from which TORQUE registered is void *ab initio*.

COUNT II. APPLICANT NOT THE OWNER—NO CONTROL OVER THE NATURE AND QUALITY OF THE GOODS

18. Cleary repeats the allegations set forth in Paragraphs 1-17 as if fully rewritten.

19. Novozymes has represented that its predecessor-in-interest, EMD Crop BioScience Inc. (“EMD”), was a related company to Merck.

20. Upon information and belief, prior to and on October 19, 2007, the filing date of the application, EMD, not Merck, controlled the nature and quality of the goods sold or services rendered under the mark TORQUE.

21. Because Merck did not control the nature and quality of the goods sold or services rendered under the mark TORQUE as of the filing date of the application, use of the mark by EMD did not inure to the benefit of Merck, Merck was not the owner of the mark as of the filing date of the application, and had no right to file the application.

22. Because the application was filed in the name of the wrong party, the application cannot be amended and the registration is void *ab initio*.

COUNT III. FRAUD

23. Cleary repeats the allegations set forth in Paragraphs 1-22 as if fully rewritten.

24. On information and belief, U.S. Registration No. 3,511,124 was fraudulently

obtained. The application was filed under Section 1(a) of the Trademark Act. No specimen was provided. No date of first use anywhere was provided. The application was not signed and verified as required. Therefore the application was not complete as filed. In response to an Office Action, Opposer submitted a specimen dated 2008, and stated that the specimen had been in use at least as early as the filing date of the application, which was October 19, 2007. This was not a true statement.

25. Abandoning an earlier application with goods limited to plant growth enhancers for corn, Opposer intentionally filed a use-based application for plant growth enhancers for agricultural crops, knowing that the mark had not been used on any crops except for corn.

26. Facts evidencing additional false statements made by Opposer have come to the attention of Cleary in the course of discovery, as set forth in Applicant's Brief in Opposition to Motion for Summary Judgment, the same being incorporated herein by reference.

27. The described acts of Opposer were done knowingly and with the intent to induce the Trademark Examiner to rely thereon and grant said registration. Reasonably relying upon the truth of said false statement, and as a consequence thereof, the U.S. Patent and Trademark Office did, in fact, grant said registration to Opposer.

28. In view of the foregoing allegations, Opposer is not entitled to continued registration of its mark since, upon information and belief, Opposer committed fraud in the procurement of the subject registration. As such, Cleary prays that Registration No. 3,511,124 for the mark TORQUE for natural molecule or bacteria for plant growth enhancement in agriculture crops issued October 7, 2008 be cancelled.

In view of the foregoing allegations, Cleary prays that its Counterclaim for Cancellation be granted in favor of Cleary.

Respectfully Submitted,

Dated: December 21, 2012

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Attorney for Applicant

Generated on: This page was generated by TSDR on 2012-12-18 15:52:14 EST

Mark: TORQUE

TORQUE

US Serial Number: 77308151

Application Filing Date: Oct. 19, 2007

US Registration Number: 3511124

Registration Date: Oct. 07, 2008

Register: Principal

Mark Type: Trademark

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Oct. 07, 2008

Publication Date: Jul. 22, 2008

Mark Information

Mark Literal Elements: TORQUE

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Natural molecule or bacteria for plant growth enhancement in agriculture crops

International Class: 001 - Primary Class **U.S Class:** 001, 005, 006, 010, 026, 046
Class Status: ACTIVE
Basis: 1(a)
First Use: Jun. 25, 2007 **Use in Commerce:** Jun. 25, 2007

Basis Information (Case Level)

Filed Use:	Yes	Currently Use:	Yes	Amended Use:	No
Filed ITU:	No	Currently ITU:	No	Amended ITU:	No
Filed 44D:	No	Currently 44D:	No	Amended 44D:	No
Filed 44E:	No	Currently 44E:	No	Amended 44E:	No
Filed 66A:	No	Currently 66A:	No		
Filed No Basis:	No	Currently No Basis:	No		

Current Owner(s) Information

Owner Name: NOVOZYMES BIOAG, INC.
13100 WEST LISBON AVENUE
Owner Address: BROOKFIELD, WISCONSIN 53005
UNITED STATES

Legal Entity Type: CORPORATION **State or Country Where Organized:** DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: William C. Wright

Correspondent

Correspondent Name/Address: WILLIAM C. WRIGHT
EPSTEIN DRANGEL BAZERMAN & JAMES, LLP
60 E 42ND ST RM 820
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mail: mail@ipcounselors.com mail Authorized: No

Domestic Representative

Domestic Representative Name: William C. Wright **Phone:** (212) 292-5390

Fax: (212) 292-5391

Domestic Representative e-mail: mail@ipcounselors.com **Domestic Representative e-mail Authorized:** No

Prosecution History

Date	Description	Proceeding Number
Nov. 09, 2011	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
May 11, 2011	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Oct. 07, 2008	REGISTERED-PRINCIPAL REGISTER	
Jul. 22, 2008	PUBLISHED FOR OPPOSITION	
Jul. 02, 2008	NOTICE OF PUBLICATION	
Jun. 17, 2008	LAW OFFICE PUBLICATION REVIEW COMPLETED	78145
Jun. 17, 2008	ASSIGNED TO LIE	78145
Jun. 16, 2008	APPROVED FOR PUB - PRINCIPAL REGISTER	
May 27, 2008	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
May 27, 2008	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
May 27, 2008	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Nov. 30, 2007	NON-FINAL ACTION MAILED	
Nov. 29, 2007	NON-FINAL ACTION WRITTEN	68365
Nov. 27, 2007	ASSIGNED TO EXAMINER	68365
Oct. 24, 2007	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION
Date in Location: Oct. 07, 2008

Assignment Abstract of Title Information

Summary

Total Assignments: 2
Registrant: MERCK KGAA

Assignment 1 of 2

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: [4533/0788](#) **Pages:** 11

Date Recorded: May 04, 2011

Supporting Documents: [assignment-tm-4533-0788.pdf](#)

Assignor

Name: [MERCK KGAA](#) **Execution Date:** Feb. 07, 2011

Legal Entity Type: CORPORATION **State or Country Where Organized:** GERMANY

Assignee

Name: [EMD CROP BIOSCIENCE INC.](#)

Legal Entity Type: CORPORATION **State or Country Where Organized:** DELAWARE

Address: 13100 WEST LISBON AVENUE
SUITE 600
BROOKFIELD, WISCONSIN 53005

Correspondent

Correspondent Name: EDWARD M. PRINCE

Correspondent Address: 950 F STREET, NW
THE ATLANTIC BUILDING
WASHINGTON, DC 20004

Domestic Representative - Not Found

Assignment 2 of 2

Conveyance: CHANGE OF NAME

Reel/Frame: [4654/0562](#)

Pages: 3

Date Recorded: Nov. 03, 2011

Supporting Documents: [assignment-tm-4654-0562.pdf](#)

Assignor

Name: [EMD CROP BIOSCIENCE, INC.](#) Execution Date: May 31, 2011

Legal Entity Type: CORPORATION State or Country Where Organized: DELAWARE

Assignee

Name: [NOVOZYMES BIOAG, INC.](#)

Legal Entity Type: CORPORATION State or Country Where Organized: DELAWARE

Address: 13100 WEST LISBON AVENUE
BROOKFIELD, WISCONSIN 53005

Correspondent

Correspondent Name: EDWARD M. PRINCE

Correspondent Address: 950 F STREET
THE ATLANTIC BUILDING
WASHINGTON, DC 20004

Domestic Representative - Not Found

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:		NEW ASSIGNMENT	
NATURE OF CONVEYANCE:		ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL	
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Merck KGaA		02/07/2011	CORPORATION: GERMANY
RECEIVING PARTY DATA			
Name:	EMD Crop BioScience Inc.		
Street Address:	13100 West Lisbon Avenue		
Internal Address:	Suite 600		
City:	Brookfield		
State/Country:	WISCONSIN		
Postal Code:	53005		
Entity Type:	CORPORATION: DELAWARE		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Registration Number:	3511124	TORQUE	
CORRESPONDENCE DATA			
Fax Number:	(202)239-3333		
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>			
Phone:	202-239-3358		
Email:	edward.prince@alston.com		
Correspondent Name:	Edward M. Prince		
Address Line 1:	950 F Street, NW		
Address Line 2:	The Atlantic Building		
Address Line 4:	Washington, DISTRICT OF COLUMBIA 20004		
NAME OF SUBMITTER:	Edward M. Prince		
Signature:	/Edward M. Prince/		
Date:	05/04/2011		

OP \$40.00 3511124

Total Attachments: 9

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ASSIGNMENT OF TRADEMARK RIGHTS

This Assignment of Trademark Rights (this "Assignment"), is dated as of February 7, 2011 and effective immediately prior to the Closing (as defined in that certain Purchase Agreement, dated as of December 19, 2010, by and among the Assignors (as defined below) and the other parties named therein) (the "Effective Date"), by and among EMD Chemicals Inc., a New York corporation, having a principal place of business at 480 S. Democrat Road, Gibbstown, NJ 08027, USA ("EMD Chemicals"), Merck KGaA, a corporation with general partners (*Kommanditgesellschaft auf Aktien*) organized under the laws of the Federal Republic of Germany and registered with the commercial register (*Handelsregister*) of the municipal court (*Amtsgericht*) of Darmstadt, Federal Republic of Germany, under HRB 6164, having a principal place of business at Frankfurter Str. 250, 64293 Darmstadt, Germany ("Merck KGaA"), EMD Crop BioScience Canada Inc., a corporation organized under the laws of the province of Ontario, with its registered agent's office at c/o EMD Crop BioScience Inc., 13100 West Lisbon Avenue, Suite 600, Brookfield, WI 53005, USA ("EMD Canada" and, collectively with EMD Chemicals and Merck KGaA, the "Assignors"), and EMD Crop BioScience Inc., a Delaware corporation, having a principal place of business at 13100 West Lisbon Avenue, Suite 600, Brookfield, WI 53005, USA (the "Assignee").

WHEREAS, pursuant to that certain Purchase Agreement, dated as of December 19, 2010, by and among the Assignors, the Assignee and the other parties named therein, the Assignors have agreed to transfer, sell, convey, assign and deliver to the Assignee, and the Assignee has agreed to purchase, acquire and accept from the Assignors, all right, title and interest of the Assignors in, to and under certain trademark registrations and applications that are used solely in the Business (as defined therein), as set forth on Schedule A, and certain Internet domain names that are used solely in the Business, as set forth on Schedule B (Schedule A and Schedule B collectively, "Assigned Marks").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The Assignors hereby transfer, sell, convey, assign and deliver to the Assignee, and the Assignee hereby purchases, acquires, accepts and assumes, the Assignors' entire right, title and interest in, to and under the Assigned Marks, together with the goodwill symbolized by any of the Assigned Marks, and all rights that the Assignors may have anywhere in the world to sue for any past infringement or misappropriation of any of the Assigned Marks, or injury to the goodwill symbolized by any of the Assigned Marks.

2. From time to time, and when requested by the Assignee, the Assignors shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as the Assignee may reasonably deem necessary or desirable to consummate and record this Assignment in any and all jurisdictions throughout the world, including promptly executing and delivering to the Assignee such assignments and other instruments as the Assignee or its counsel may reasonably request as necessary or desirable for such purpose, at the Assignee's sole expense.

3. This Assignment may be executed in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Assignment to produce or account for more than one set of counterparts signed by all of the parties. This Assignment shall become effective on the Effective Date.

4. This Assignment shall be governed by, and construed and enforced in accordance with the internal laws of New York without regard to its choice-of-law principles (other than Section 5-1401 and 5-1402 of the New York General Obligations Law).

* * * * *

IN WITNESS WHEREOF, the undersigned have executed this Assignment of
Trademark Rights.

EMD CHEMICALS INC.
As the Assignor

BY: _____

NAME: Stephen J. Kunst

TITLE: Secretary

MERCK KGAA
As the Assignor

BY: Friederike Rotsch

NAME: Dr. Friederike Rotsch

TITLE: Authorized Officer

BY: Ulrich Fogel

NAME: Ulrich Fogel

TITLE: Authorized Officer

EMD CROP BIOSCIENCE CANADA INC.
As the Assignor

BY: _____

NAME: Stephen J. Kunst

TITLE: Secretary

[SIGNATURE PAGE TO ASSIGNMENT OF TRADEMARK RIGHTS]

EMD CROP BIOSCIENCE INC.
As the Assignee

BY: Paul Schmidt

NAME: PAUL SCHMIDT

TITLE: President

[SIGNATURE PAGE TO ASSIGNMENT OF TRADEMARK RIGHTS]

Schedule A to the Assignment of Trademark Rights

Assigned Marks – Trademarks

Merck KGaA Trademark Registrations and Applications

Jurisdiction	MARK	Reg. No. (App. No.)	Reg. Date (App. Date)	Record Owner	Status
United States	TORQUE	3,511,124	10/07/2008	Merck KGaA	Registered
Canada	TORQUE	723888	9/17/2008	Merck KGaA	Registered
Canada	TORQUE	715276	5/27/2008	Merck KGaA	Registered
Canada	CELL-TECH SCI	711935	4/15/2008	Merck KGaA	Registered
Canada	NITRASTIK	711934	4/15/2008	Merck KGaA	Registered
United States	NITRASTIK	3,526,363	11/4/2008	Merck KGaA	Registered
United States	PEANUT SPECIAL	3,510,719	10/7/2008	Merck KGaA	Registered
Canada	SOIL IMPLANT	725195	10/2/2008	Merck KGaA	Registered
Canada	CUE	(1441192)	(11/6/2009)	Merck KGaA	Published
United States	CUE	(77908111)	(7/26/2009)	Merck KGaA	Published
Italy	JEWEL	1285884	5/25/2010	Merck KGaA	Registered
Canada	JEWEL	715277	5/27/2008	Merck KGaA	Registered
Canada	ANEW	723822	9/17/2008	Merck KGaA	Registered
Germany	ANEW	307 69 830	12/6/2007	Merck KGaA	Registered
Canada	RATCHET	(1402145)	(7/4/2008)	Merck KGaA	Pending
United States	RATCHET	(77512542)	(7/1/2008)	Merck KGaA	Pending
Germany	REVEAL	307 69 824	12/6/2007	Merck KGaA	Registered
Canada	REVEAL	723889	9/17/2008	Merck KGaA	Registered

EMD Crop BioScience Canada Inc. Trademark Registrations and Applications

Jurisdiction	MARK	Reg. No. (App. No.)	Reg. Date (App. Date)	Record Owner	Status
United States	BOLT ¹	(77190203)	(5/25/2007)	EMD Crop BioScience Canada Inc.	Pending
India	BOLT	(1624484)	(11/26/2007)	EMD Crop BioScience Canada Inc.	Pending
Germany	BOLT	307 34 268	7/27/2005	EMD Crop BioScience Canada Inc.	Registered
European Community	WAVE	006489124	10/30/2008	EMD Crop BioScience Canada Inc.	Registered

¹ For "BOLT" Trademark, there exists a worldwide co-existence agreement with Bayer AG concerning their younger United States trademark "BELT" (serial no. 774,318,06).

Kazakhstan	WAVE	29024	5/15/2009	EMD Crop BioScience Canada Inc.	Registered
Turkey	WAVE	2007/62844	11/26/2007	EMD Crop BioScience Canada Inc.	Registered
Ukraine	WAVE	106721	5/12/2009	EMD Crop BioScience Canada Inc.	Registered
Canada	WAVE	716721	6/17/2008	EMD Crop BioScience Canada Inc.	Registered
Germany	WAVE	307 34 269	7/27/2007	EMD Crop BioScience Canada Inc.	Registered
Brazil	WAVE	(829482504)	(11/16/2007)	EMD Crop BioScience Canada Inc.	Pending

Schedule B to the Assignment of Trademark Rights

Assigned Marks – Domain Names

Merck KGaA Domain Names

Domain Name	Record Owner
nitragin.com.ar	Onifur S.A., but Merck has initiated the process of transferring to Merck KGaA ²
nitraginargentina.com.ar	Gustavo La Rosa (from Merck IT department), but Merck has initiated the process of transferring to Merck KGaA ²
nitragin.com	Merck KGaA

EMD Chemicals Inc. Domain Names

Domain Name	Record Owner
cell-tech-sci.com	EMD Chemicals Inc.
cell-tech-sci.de	EMD Chemicals Inc.
cell-tech-sci.eu	EMD Chemicals Inc.
cell-tech-sci.info	EMD Chemicals Inc.
nitragin-bonus.com	EMD Chemicals Inc.
nitragin-bonus.de	EMD Chemicals Inc.
nitragin-bonus.eu	EMD Chemicals Inc.
nitragin-bonus.info	EMD Chemicals Inc.
nitraginbonus.com	EMD Chemicals Inc.
nitraginbonus.de	EMD Chemicals Inc.
nitraginbonus.eu	EMD Chemicals Inc.
nitraginbonus.info	EMD Chemicals Inc.
nitrastik.com	EMD Chemicals Inc.
nitrastik.de	EMD Chemicals Inc.
nitrastik.eu	EMD Chemicals Inc.
nitrastik.info	EMD Chemicals Inc.
peanut-special.com	EMD Chemicals Inc.
peanut-special.de	EMD Chemicals Inc.
peanut-special.eu	EMD Chemicals Inc.
peanut-special.info	EMD Chemicals Inc.

² As of Closing, these domain names have not yet been transferred to Assignee. Merck KGaA will complete assignment to Assignee of its right, title and interest to each of these domain names as soon as practicable, and will promptly provide notice to Assignee of the completion of such assignment, after Closing. Upon receipt by Merck KGaA of the transfer of record ownership by Onifur S.A. or Gustavo La Rosa, as applicable, the domain names shall be deemed transferred to Assignee in accordance with this Assignment.

Domain Name	Record Owner
revv.eu	EMD Chemicals Inc.
revv.info	EMD Chemicals Inc.
azogreen.com	EMD Chemicals Inc.
azogreen.de	EMD Chemicals Inc.
azogreen.eu	EMD Chemicals Inc.
azogreen.info	EMD Chemicals Inc.
bidoz.com	EMD Chemicals Inc.
bidoz.de	EMD Chemicals Inc.
bidoz.eu	EMD Chemicals Inc.
bidoz.info	EMD Chemicals Inc.
biolidoz.com	EMD Chemicals Inc.
biolidoz.de	EMD Chemicals Inc.
biolidoz.eu	EMD Chemicals Inc.
biolidoz.info	EMD Chemicals Inc.
biolidozeug.com	EMD Chemicals Inc.
biolidozeug.de	EMD Chemicals Inc.
biolidozeug.eu	EMD Chemicals Inc.
biolidozeug.info	EMD Chemicals Inc.

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	CHANGE OF NAME

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
EMD Crop BioScience, Inc.		05/31/2011	CORPORATION: DELAWARE

RECEIVING PARTY DATA

Name:	Novozymes BioAg, Inc.
Street Address:	13100 West Lisbon Avenue
City:	Brookfield
State/Country:	WISCONSIN
Postal Code:	53005
Entity Type:	CORPORATION: DELAWARE

PROPERTY NUMBERS Total: 12

Property Type	Number	Word Mark
Registration Number:	3511124	TORQUE
Registration Number:	3526363	NITRASTIK
Registration Number:	3510719	PEANUT SPECIAL
Registration Number:	4045742	RATCHET
Registration Number:	3020518	OPTIMIZE
Registration Number:	3020522	OPTIMIZE
Registration Number:	3067439	LIFT
Registration Number:	1418004	NITRAGIN
Registration Number:	1424478	SOIL IMPLANT
Registration Number:	1648610	CELL-TECH
Registration Number:	3394096	REVV
Registration Number:	3200913	LCO PROMOTER TECHNOLOGY

CORRESPONDENCE DATA

900206290

**TRADEMARK
 REEL: 004654 FRAME: 0562**

OP \$315.00 3511124

Fax Number: (202)239-3333
Phone: 202-239-3358
Email: edward.prince@alston.com

Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.

Correspondent Name: Edward M. Prince
Address Line 1: 950 F Street
Address Line 2: The Atlantic Building
Address Line 4: Washington, DISTRICT OF COLUMBIA 20004

ATTORNEY DOCKET NUMBER:	051076/404064
NAME OF SUBMITTER:	Edward M. Prince
Signature:	/Edward M. Prince/
Date:	11/03/2011
Total Attachments: 0	

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Trademark/Service Mark Application, Principal Register

Serial Number: 77308151

Filing Date: 10/19/2007

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77308151
MARK INFORMATION	
*MARK	TORQUE
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	TORQUE
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	MERCK KGAA
*STREET	Frankfurter Strasse 250
*CITY	64293 Darmstadt
*COUNTRY	Germany
EMAIL ADDRESS	mail@ipcounselors.com
LEGAL ENTITY INFORMATION	
TYPE	partnership limited by shares
STATE/COUNTRY WHERE LEGALLY ORGANIZED	Germany
NAME OF ALL GENERAL PARTNERS, ACTIVE MEMBERS, INDIVIDUAL, TRUSTEES, OR EXECUTORS, AND CITIZENSHIP/ INCORPORATION	Dr. Karl-Ludwig Kley (a German citizen), Dr. Michael Becker (a German citizen), Dr. Bernd Reckmann (a German citizen), Mr. Elmar Schnee (a Swiss citizen), and Mr. Walter W. Zywottek (a German citizen)
GOODS AND/OR SERVICES AND BASIS INFORMATION	

*INTERNATIONAL CLASS	001
*IDENTIFICATION	Natural molecule or bacteria for plant growth enhancement in agriculture crops
FILING BASIS	SECTION 1(a)
FIRST USE IN COMMERCE DATE	At least as early as 06/25/2007
ATTORNEY INFORMATION	
NAME	William C. Wright
FIRM NAME	Epstein Drangel Bazerman & James, LLP
STREET	60 East 42nd Street, Suite 820
CITY	New York
STATE	New York
COUNTRY	United States
ZIP/POSTAL CODE	10165
PHONE	(212) 292-5390
FAX	(212) 292-5391
EMAIL ADDRESS	mail@ipcounselors.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	No
OTHER APPOINTED ATTORNEY	Jason M. Drangel, Robert L. Epstein, Harold James, and Dermot M. Sheridan
DOMESTIC REPRESENTATIVE INFORMATION	
NAME	William C. Wright
FIRM NAME	Epstein Drangel Bazerman & James, LLP
STREET	60 East 42nd Street, Suite 820
CITY	New York
STATE	New York
COUNTRY	United States
ZIP CODE	10165
PHONE	(212) 292-5390
FAX	(212) 292-5391
EMAIL ADDRESS	mail@ipcounselors.com
CORRESPONDENCE INFORMATION	

NAME	William C. Wright
FIRM NAME	Epstein Drangel Bazerman & James, LLP
STREET	60 East 42nd Street, Suite 820
CITY	New York
STATE	New York
COUNTRY	United States
ZIP/POSTAL CODE	10165
PHONE	(212) 292-5390
FAX	(212) 292-5391
EMAIL ADDRESS	mail@ipcounselors.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	No
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	NOT PROVIDED
SIGNATORY'S NAME	NOT PROVIDED
SIGNATORY'S POSITION	NOT PROVIDED
DATE SIGNED	NOT PROVIDED

Trademark/Service Mark Application, Principal Register

Serial Number: 77308151

Filing Date: 10/19/2007

To the Commissioner for Trademarks:

MARK: TORQUE (Standard Characters, see [mark](#))

The literal element of the mark consists of TORQUE.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, MERCK KGAA, a partnership limited by shares legally organized under the laws of Germany, comprising of Dr. Karl-Ludwig Kley (a German citizen), Dr. Michael Becker (a German citizen), Dr. Bernd Reckmann (a German citizen), Mr. Elmar Schnee (a Swiss citizen), and Mr. Walter W. Zywottek (a German citizen), having an address of

Frankfurter Strasse 250
64293 Darmstadt
Germany

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

International Class 001: Natural molecule or bacteria for plant growth enhancement in agriculture crops

Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, or the applicant's predecessor in interest used the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

In International Class 001, the mark was first used at least as early as _____, and first used in commerce at least as early as 06/25/2007, and is now in use in such commerce. The applicant will submit one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, .

The applicant hereby appoints William C. Wright and Jason M. Drangel, Robert L. Epstein, Harold James, and Dermot M. Sheridan of Epstein Drangel Bazerman & James, LLP

60 East 42nd Street, Suite 820
New York, New York 10165
United States

to submit this application on behalf of the applicant.

The applicant hereby appoints William C. Wright of Epstein Drangel Bazerman & James, LLP

60 East 42nd Street, Suite 820
New York New York 10165
United States

as applicant's representative upon whom notice or process in the proceedings affecting the mark may be served.

Correspondence Information: William C. Wright

60 East 42nd Street, Suite 820
New York, New York 10165
(212) 292-5390(phone)
(212) 292-5391(fax)
mail@ipcounselors.com (not authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

RAM Sale Number: 6704
RAM Accounting Date: 10/19/2007

Serial Number: 77308151
Internet Transmission Date: Fri Oct 19 09:59:53 EDT 2007
TEAS Stamp: USPTO/BAS-160.79.96.147-2007101909595365
0159-77308151-4009b1871c2659c9d2ae5d09ae
651d7449f-CC-6704-20071019094852239026

TORQUE

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/308151

MARK: TORQUE

77308151

CORRESPONDENT ADDRESS:

WILLIAM C. WRIGHT
EPSTEIN DRANGEL BAZERMAN & JAMES,
LLP
60 E 42ND ST RM 820
NEW YORK, NY 10165-0808

RESPOND TO THIS ACTION:

<http://www.uspto.gov/teas/eTEASpageD.htm>

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: MERCK KGAA

**CORRESPONDENT'S REFERENCE/DOCKET
NO:**

N/A

CORRESPONDENT E-MAIL ADDRESS:

OFFICE ACTION

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

ISSUE/MAILING DATE:

The assigned trademark examining attorney has reviewed the referenced application and has determined the following:

Search Results

The Office records have been searched and no similar registered or pending mark has been found that would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d). TMEP §704.02.

Specimen

The application is incomplete because it does not include the required specimen showing use of the applied-for mark in commerce for the goods and/or services identified in the application. An application based on Section 1(a) of the Trademark Act must include a specimen showing the applied-for mark in use in commerce for each class of goods and/or services. Trademark Act Sections 1(a) and 45, 15 U.S.C. §§1051(a) and 1127; 37 C.F.R. §§2.34(a)(1)(iv) and 2.56; TMEP §904.

Therefore, applicant must submit the following:

- (1) A specimen (i.e., an example of how applicant actually uses its mark in commerce) for each class of goods and/or services based on use in commerce.

(2) The following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: “**The specimen was in use in commerce at least as early as the filing date of the application.**” 37 C.F.R. §2.56(a); TMEP §904.09. If submitting a specimen requires an amendment to the dates of use, applicant must also verify the amended dates. 37 C.F.R. §2.71(c).

Examples of specimens for goods are tags, labels, instruction manuals, containers, photographs that show the mark on the goods or packaging, or displays associated with the goods at their point of sale. TMEP §§904.04 *et seq.* Examples of specimens for services are signs, photographs, brochures, website printouts or advertisements that show the mark used in the sale or advertising of the services. TMEP §§1301.04 *et seq.*

If applicant cannot satisfy the above requirements, applicant may amend the Section 1(a) filing basis (use in commerce) to Section 1(b) (intent to use basis), for which no specimen is required. However, should applicant amend the basis to Section 1(b), registration cannot be granted until applicant later amends the application back to use in commerce by filing an acceptable allegation of use with a proper specimen. 15 U.S.C. §1051(c); 37 C.F.R. §§2.76, 2.88; TMEP Chapter 1100. In the alternative, applicant may cancel the Section 1(a) basis and rely solely on the already asserted Section 44(e) basis, for which a specimen would not be required. 15 U.S.C. §1126(e); 37 C.F.R. §2.34(a)(3).

In order to amend the Section 1(a) basis to either Section 1(b) or Section 44(e) of the Trademark Act, applicant need only provide a written request to do so. TMEP §§806.02(g) and 806.03(g).

Pending a proper response, registration is refused for those goods and/or services based on Section 1(a), because applicant has not provided evidence of use in commerce of the applied-for mark. 15 U.S.C. §§1051(a) and 1127; 37 C.F.R. §§2.34(a)(1)(iv) and 2.56.

First Use Anywhere

The application does not specify the date of first use of the mark anywhere. 15 U.S.C. §1051(a)(2); 37 C.F.R. §2.34(a)(1)(ii); TMEP §§903 and 903.01. Both a date of first use anywhere and a date of first use in commerce must be provided, even if they are the same. TMEP §903.04.

Therefore, applicant must specify the date of first use of the mark anywhere. If the date of first use anywhere differs from the date of first use in commerce, applicant must verify the date of first use anywhere with an affidavit or signed declaration under 37 C.F.R. §2.20. 37 C.F.R. §2.71(c); TMEP §903. However, if the date of first use anywhere is the same as the date of first use in commerce, applicant need not verify the date of first use anywhere. TMEP §903.05.

Declaration

The application was not signed and verified, which are application requirements. 15 U.S.C. §§1051(a)-(b), 1126(d)-(e), 1141f(a); 37 C.F.R. §§2.33-2.34. Therefore, applicant must verify, in an affidavit or signed declaration under 37 C.F.R. §2.20, the facts set forth in the application.

If the application is based on **use in commerce** under Trademark Act Section 1(a), the verified statement must include the following allegation: “**The mark is in use in commerce and was in use in commerce on or in connection with the goods or services listed in the application as of the application filing date.**” 15 U.S.C. §1051(a)(3)(C); 37 C.F.R. §2.34(a)(1)(i); TMEP §804.02.

If the application is based on an **intent to use the mark in commerce** under Trademark Act Section 1(b) or based on a **foreign registration** under Section 44, the verified statement must include the following allegation: “**Applicant had a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application as of the application filing date.**” 15 U.S.C. §§1051(b)(3)(B), 1126(d) and (e); 37 C.F.R. §§2.34(a)(2)(i), 2.34(a)(3)(i) and 2.34(a)(4)(ii); TMEP §§804.02, 806.01(b)-(d).

Significance of Mark

Applicant must specify whether “TORQUE” has any significance in the plant growth enhancement trade or industry, any geographical significance, or any meaning in a foreign language. 37 C.F.R. §2.61(b).

If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.

/Chrisie Brightmire King/
Trademark Attorney
Law Office 109
(571) 272-9179
chrisie.king@uspto.gov

RESPOND TO THIS ACTION: If there are any questions about the Office action, please contact the assigned examining attorney. A response to this Office action should be filed using the form available at <http://www.uspto.gov/teas/eTEASpageD.htm>. If notification of this Office action was received via e-mail, no response using this form may be filed for 72 hours after receipt of the notification. **Do not attempt to respond by e-mail as the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Merck KGaA

Mark: TORQUE

Ser. No.: 77/308,151

Dated: October 19, 2007

DECLARATION

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the Declaration or any resulting registration, declares that: he/she is properly authorized to execute this form on behalf of the applicant; he/she believes the applicant to be the owner of the trademark sought to be registered; the applied for mark is in use in commerce and was in use in commerce on or in connection with the goods listed in the application at least as early as the application filing date; the applied for mark was first used anywhere on June 25, 2007; the enclosed specimens are in use in commerce and have been in use in commerce on or in connection with the goods listed in the application since at least as early as the application filing date; the facts set forth in the application are true and correct; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Dated: May 21, 2008

MERCK KGAA

BY:

i.v.

Print Name: Helge Erkelenz

Title:

Authorised Representative

Dated: May 21, 2008

MERCK KGAA

BY:

i.v.

Print Name: Wolfgang Kölle

Title:

Authorised Representative