

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

csq

Mailed: August 13, 2012

Opposition No. **91204507**

Fresenius SE & Co. KgaA and  
Kresenius Medical Care  
Deutschland GmbH

v.

Hochschule Fresenius  
gemeinnützige GmbH

On July 18, 2012, applicant filed a proposed amendment to application Serial No. 79070045 without opposer's written consent.

By the proposed amendment applicant seeks to delete International Classes 9, 16, 35, 38, 42, 44, and 45 from its Section 66(a) application in their entirety, to leave International Class 28 unchanged, and to amend the services in International Class 41. Applicant has indicated it did not obtain the consent of opposer. On August 2, 2012, opposer filed its opposition to the amendment.

If an applicant files a request to amend the application to delete an opposed class in an opposition to an application having multiple classes, the request for amendment is, in effect, an abandonment of the application with respect to that class, and is governed by Trademark

Rule 2.135.

Trademark Rule 2.135 provides that if, in an inter partes proceeding, the applicant files an abandonment without the written consent of every adverse party to the proceeding, judgment shall be entered against applicant.

In view thereof, and because opposer's written consent to the abandonment of Classes 9, 16, 35, 38, 42, 44 and 45 is not of record, judgment is hereby entered against applicant with respect to International Classes 9, 16, 35, 38, 42, 44 and 45 of the opposed application, the opposition is sustained with respect to Classes 9, 16, 35, 38, 42, 44 and 45 of the opposed application, and registration to applicant is refused with respect to Classes 9, 16, 35, 38, 42, 44 and 45 of the opposed application.

The amendment with respect to Class 41 is one in substance and is without opposer's consent. The motion to amend Class 41 is deferred until final decision or until the case is decided upon summary judgment. TBMP Section 514.03 (3d ed. rev. 2012). This proceeding will move forward with respect to Classes 28 and 41.

Dates remain as set forth in the notice of institution.

***By the Trademark Trial  
and Appeal Board***