

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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EM/vv

Mailed: February 12, 2016

Opposition No. 91215035 (Parent)
Opposition No. 91218760

Vertex Pharmaceuticals Incorporated

v.

CHD Bioscience, Inc.

By the Trademark Trial and Appeal Board:

On July 17, 2015, Applicant filed the parties' stipulation to the amendment of application Serial Nos. 85887894 and 86073577, and the withdrawal of this consolidated proceeding upon entry of the amendment.

By the proposed amendment Applicant seeks to amend the identification of goods in International Class 5 of the involved applications as follows:

Application Serial No. 85887894¹

International Class 5

From:

“All-purpose disinfectants for medical instruments, healthcare facility surfaces, and for coating medical bandages; irrigation solutions, namely, medical cleansers for wounds; coatings for surgical implants and medical devices, namely, antimicrobial coatings to prevent the growth of viruses, bacteria, spores, biofilms and fungus on various surfaces; antibacterial creams and ointments for use in dental procedures; pharmaceutical preparations for the treatment of pulmonary infections; all-purpose disinfectants”

¹ The identification of International Class 10 of Serial No. 85887894 remains unchanged.

to:

“Disinfectants for medical instruments and for coating medical bandages; irrigation solutions, namely, medical cleansers for wounds; coatings for surgical implants and medical devices, namely, antimicrobial coatings to prevent the growth of viruses, bacteria, spores, biofilms and fungus on the surfaces of surgical medical, dental and veterinary apparatus, instruments, implants, sutures, bandages, dressings, and plasters; antibacterial creams and ointments for use in dental procedures; disinfectants for surgical, medical, dental and veterinary purposes.”

Application Serial No. 86073577²

International Class 5

From:

“Chemical ingredients in the nature of antimicrobial substances and preparations for medical purposes for treating, inhibiting and preventing viruses, fungus, mold, bacteria, spores and biofilms; chemical ingredients in the nature of antimicrobial substances sold as a component ingredient of antimicrobial coatings to treat, inhibit and prevent the growth of viruses, fungus, mold, bacteria, spores and biofilms on various surfaces; chemical ingredients in the nature of antimicrobial substances sold as a component ingredient of biostatic antimicrobial preparations for treating, inhibiting and preventing viruses, fungus, mold, bacteria, spores and biofilms; chemical ingredients in the nature of antimicrobial substances sold as a component ingredient of pharmaceutical preparations for the treatment of pulmonary infections; chemical ingredients in the nature of antimicrobial substances sold as a component ingredient of antimicrobial creams and ointments for treating, inhibiting and preventing viruses, fungus, mold, bacteria, spores and biofilms; chemical ingredients in the nature of antimicrobial substances sold as a component ingredient of irrigation solutions, namely, medical cleansers for wounds; surgical implants comprising living tissue impregnated with an antimicrobial treatment; surgical implants comprising living tissue coated with an antimicrobial treatment; coatings sold as an integral component of medical bandages for skin wounds; coatings sold as an integral component of surgical implants comprising living tissue; Antimicrobial preparations for treating,

² The Board notes that Diversey, Inc., the Opposer in Opposition No. 91220061 also consented to the amendment of Serial No. 86073577 which was involved in both oppositions. Applicant filed and previously received action on its amendment to Serial No. 86073577 in Opposition No. 91220061.

inhibiting and preventing viruses, fungus, mold, bacteria, spores and biofilms; antimicrobial coatings to treat, inhibit and prevent the growth of viruses, fungus, mold, bacteria, spores and biofilms on various surfaces; biostatic antimicrobial preparations for treating, inhibiting and preventing viruses, fungus, mold, bacteria, spores and biofilms; antimicrobial creams and ointments for treating, inhibiting and preventing viruses, fungus, mold, bacteria, spores and biofilms; antimicrobial creams and ointments for treating, inhibiting and preventing viruses, fungus, mold, bacteria, spores and biofilms for use in dental procedures; microfiber towels impregnated with an antimicrobial treatment; medical bandages impregnated with an antimicrobial treatment.”

To:

“Chemical ingredients in the nature of antimicrobial substances and preparations for medical purposes for treating, inhibiting and preventing viruses, fungus, mold, bacteria, spores and biofilms; chemical ingredients in the nature of antimicrobial substances sold as a component ingredient of antimicrobial coatings to treat, inhibit and prevent the growth of viruses, fungus, mold, bacteria, spores and biofilms on the surfaces of surgical medical, dental and veterinary apparatus, instruments, implants, sutures, bandages, dressings, and plasters; chemical ingredients in the nature of antimicrobial substances sold as a component ingredient of biostatic antimicrobial preparations for treating, inhibiting and preventing viruses, fungus, mold, bacteria, spores and biofilms; chemical ingredients in the nature of antimicrobial substances sold as a component ingredient of antimicrobial creams and ointments for treating, inhibiting and preventing viruses, fungus, mold, bacteria, spores and biofilms; chemical ingredients in the nature of antimicrobial substances sold as a component ingredient of irrigation solutions, namely, medical cleansers for wounds; surgical implants comprising living tissue impregnated with an antimicrobial treatment; surgical implants comprising living tissue coated with an antimicrobial treatment; coatings sold as an integral component of medical bandages for skin wounds; coatings sold as an integral component of surgical implants comprising living tissue; Antimicrobial preparations for treating, inhibiting and preventing viruses, fungus, mold, bacteria, spores and biofilms; antimicrobial coatings to treat, inhibit and prevent the growth of viruses, fungus, mold, bacteria, spores and biofilms on the various surfaces of surgical medical, dental and veterinary apparatus, instruments, implants, sutures, bandages, dressings, and plasters; biostatic antimicrobial preparations for treating, inhibiting and preventing viruses, fungus, mold, bacteria, spores and biofilms; antimicrobial creams and ointments for treating, inhibiting and preventing viruses, fungus, mold, bacteria, spores and biofilms; antimicrobial creams and ointments for treating, inhibiting and preventing viruses, fungus, mold, bacteria, spores and biofilms for use in dental procedures;

microfiber towels impregnated with an antimicrobial treatment; medical bandages impregnated with an antimicrobial treatment.”

The amendment is limiting in nature, as required by Trademark Rule 2.71(a), and because Opposer stipulates thereto, the amendment is approved and entered. *See* Trademark Rule 2.133(a).

In view of the contingency in the withdrawal being met, the opposition is dismissed in accordance with the agreement between the parties.

Counterclaim Against Registration Nos. 2704913 and 3531356

It is noted that Applicant has filed a counterclaim to cancel Opposer’s pleaded registrations, namely Registration Nos. 2704913 and 3531356. The parties’ stipulation was silent with respect to the disposition of the counterclaim. Accordingly, Applicant/Counterclaim Plaintiff is allowed until thirty (30) days from the mailing date of this order to file a withdrawal of the counterclaim filed against Opposer/Counterclaim Defendant’s pleaded registrations. If no response is received within the time allowed, while the Opposition proceedings will remain as dismissed in this order, appropriate dates will be reset with respect to the counterclaim in Opposition No. 91215035.