

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500

vw/gcp

Mailed: May 20, 2014

Opposition No. 91215788

Vita Zahnfabrik H. Rauter GmbH & Co. KG

v.

Grupo Vitalmex, S.A. de C.V.

**George C. Pologeorgis,  
Interlocutory Attorney:**

On April 7, 2014, opposer served its notice of opposition. On April 10, 2014, opposer filed an amended notice of opposition. On April 30, 2014, applicant filed a motion to amend its involved application.

Turning first to the amended notice of opposition, pursuant to Fed. R. Civ. P. 15(a)(1), made applicable to Board proceedings by Trademark Rule 2.116(a), a party may amend its pleading once as a matter of course within 21 days after serving it, or if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Fed. R. Civ. P. 12(b), (e) or (f), whichever is earlier. *See* Trademark Rule 2.107/2.115; TBMP § 507.01. However, as a practical matter, because the time to answer set by the Board's institution order is 40 days, a plaintiff may amend its complaint once as a matter of course beyond

the initial 21 days from serving it until the defendant files either an answer or a motion under Fed. R. Civ. P. 12(b), (e) or (f). *See* TBMP § 507.02.

Opposer's amended notice of opposition was filed as a matter of course, and is accepted as opposer's operative pleading in this proceeding. *See* Fed. R. Civ. P. 15(a)(1)(A) and (B).

Turning next to applicant's proposed amendment to its involved application Serial No. 85821103, with opposer's consent, and opposer's alleged withdrawal of the opposition, contingent upon entry of the amendment. By the proposed amendment, applicant seeks to amend the identification of goods in International Classes 5 and 10 as follows:

**International Class 5**

**From:** "Pharmaceutical and sanitary products, dietetic substances for medical use, namely, antihypertensive drugs, metabolic syndrome drugs, pharmacogenomics, food for babies, medical plasters, all purpose disinfectants, preparations for destroying vermin, fungicides and herbicides."

**To:** "Pharmaceutical and sanitary products, dietetic substances for medical use, namely, antihypertensive drugs, metabolic syndrome drugs, pharmacogenomics, food for babies, medical plasters, all purpose disinfectants, excluding disinfectants used in connection with dental surgery and dentistry, preparations for destroying vermin, fungicides and herbicides."

**International Class 10**

**From:** "Surgical and medical apparatus and instruments and highly specialized inputs for surgery, namely, artificial limbs, eyes and teeth, imaging equipment for tomography and radiography; suture material; orthopedic items, namely, ophthalmological prosthesis, heart valves, stents, grafts, artificial heart, hip prosthesis, tissues, mother cells ."

**To:** “Surgical and medical apparatus and instruments and highly specialized inputs for surgery, namely, artificial limbs and eyes, imaging equipment for tomography and radiography; suture material; orthopedic items, namely, ophthalmological prosthesis, heart valves, stents, grafts, artificial heart, hip prosthesis, tissues, mother cells .”

With regard to the proposed amendments of the identification of goods in International Classes 5 and 10, the Board finds these amendments are clearly limiting in nature as required by Trademark Rule 2.71(a), and because opposer consents thereto, the amendments are approved and entered.<sup>1</sup> See Trademark Rule 2.133(a).

Although applicant indicates that the opposer has consented to such amendments and has agreed that the opposition be dismissed based upon approval of the foregoing amendments, the filing fails to include the signature of opposer so as to constitute a stipulation of the parties.

Accordingly, opposer is allowed until **TWENTY (20) DAYS** from the mailing date of this order to submit its written consent to the withdrawal of the opposition in view of the approval of the amendments, failing which the opposition will go forward on the application as amended. See Trademark Rule 2.106(c).

If no response is filed, proceedings will be resumed and dates reset, as appropriate.

Proceedings are otherwise **SUSPENDED** pending opposer’s response to this order.

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<sup>1</sup> The recitation of services for International Class 44 remains unchanged.