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

Proceeding	91224936
Party	Defendant Moderna Therapeutics, Inc.
Correspondence Address	JENNIFER F. BRYAN DT WARD PC 142 MAIN ST # A GROTON, MA 01450-4267 docketing@dtwardlaw.com;dward@dtwardlaw
Submission	Answer and Counterclaim
Filer's Name	Jacqueline M. Lesser
Filer's e-mail	jlesser@bakerlaw.com, kblumer@bakerlaw.com, bhipdocket@bakerlaw.com, docketing@dtwardlaw.com
Signature	/Jacqueline M. Lesser/
Date	12/29/2015
Attachments	#608058881, v1 _BHDOCS_ - Answer and Counterclaims_91224936_12_29 - WorkSite Acrobat Integration.pdf(111864 bytes)

Registrations Subject to the filing

Registration No	3799692	Registration date	06/08/2010
International Re- gistration No.	NONE	International Re- gistration Date	NONE
Registrant	Laverana GmbH & Co. KG Am Weingarten 4 GERMANY		
Grounds for filing	The registered mark has been abandoned.		

Goods/Services Subject to the filing

Class 003. First Use: 0 First Use In Commerce: 0

Requested goods and services in the class: Perfumery goods; essential oils; cosmetics, decorative cosmetics; face creams and lotions; skin-cleansing lotions and creams, hand and body lotions and creams;tinted moisturising creams, make-up, foundation, face powder and rouge; non-medicated acne medications, namely, blemishsticks, lipstick, lip pencils, eyelinerpens and mascara, eyeshadow; sun care preparations, namely cosmetic preparations for ski browning, for the protection against sunburns and after-sun care preparations; foot care preparations namely, foot scrubs; non-medicated foot creams and lotions; exfoliants, namely, exfoliant creams, exfoliant lotions, and exfoliant gels; abrasive implements in the formof pumice stones; non-medicated powdersand lotions for foot spas; body care products, namely, perfumed body sprays forcosmetic purposes, refreshing body sprays for cosmetic purposes, gels and lotions for skin care, shower gels, hair careproducts, namely, hair gels; shampoos and hair lotions, hair conditioning rinses and conditioners, combined shampoo andconditioner, hair sprays, styling mousse and gels; hair dyes; bath oils, shampoos, skin oils and creams for cosmetic purposes; anti-wrinkle creams; massage oils; grooming products for men, namely, face creams and lotions, hair lotions, hand and body lotions and creams, skin-cleansing lotions and creams; shaving cream,after shave balm; deodorants for body care; products for oral hygiene not for medical purposes, namely, mouth washes; preparations for the mouth and for cleaning the mouth, namely, tooth powder, breath-freshening and mouth-freshening preparations, namely, mouth sprays as breath freshener, mouth rinses as breath freshener, dentifrices; toothpaste; antiperspirants

Class 005. First Use: 0 First Use In Commerce: 0

All goods and services in the class are requested, namely: Pharmaceutical products, namely, tinctures, lotions, creams, pills, sprays and ointments for treating skin irritations, allergic skin irritations, dry skin, acne, scratched skin and neurodermatitis, and health-care products, namely, tinctures, lotions, creams, sprays and ointments for treating skin irritations, allergic skin irritations, dry skin, acne, scratched skin and neurodermatitis; medicated lubricants, namely, vaginal and anal lubricants; dietetic substances, namely, dietetic sugar and sanitary sterilizing preparations, dietetic foods adapted for medical use; nutritional supplements for nonmedical purposes, on the basis of vitamins, minerals and trace elements; vitamin preparations; all purpose disinfectants; herbal supplements for medical use; corn remedies, namely, corn creams; headache pencils for headache treatment; milking grease for medical purposes, all the aforesaid goods except foodstuffs, dietetic foods and beverages adapted for medical use specially for babies, infants and children

Class 010. First Use: 0 First Use In Commerce: 0

All goods and services in the class are requested, namely: Files for the treatment of corn and horny layer of the cuticle, non-electric massage apparatus, foot massage apparatus

Registration No	3835200	Registration date	08/17/2010
International Registration No.	NONE	International Registration Date	NONE
Registrant	Laverana GmbH & Co. KG Am Weingarten 4 GERMANY		
Grounds for filing	The registered mark has been abandoned.		

Goods/Services Subject to the filing

Class 003. First Use: 0 First Use In Commerce: 0

All goods and services in the class are requested, namely: Perfumery; essential oils; cosmetics, decorative cosmetics; face creams and lotions; skin-cleansing lotions and creams, hand and body lotions and creams; tinted moisturizing creams, make-up, foundation, face powder and rouge; blemish sticks, namely, make-up foundation for covering blemishes, lipstick, lip pencils, eyeliner pens and mascara, eyeshadow; non-medicated sun care preparations, namely, cosmetic preparations for skin browning for protection against sunburns and after-sun care preparations; non-medicated foot-care preparations, namely, foot scrubs; non-medicated foot creams and lotions; exfoliants, namely, exfoliant creams, exfoliant lotions, and exfoliant gels; abrasive implements in the form of pumice stones for personal use; non-medicated powders and lotions for foot spas; body care products, namely, beauty creams for body care, soaps for body care, perfumed body sprays for cosmetic purposes, refreshing body sprays for cosmetic purposes, gels and lotions for skin care, shower gels, hair care products, namely, hair care creams, hair care lotions, and hair care gels; shampoos and hair lotions, conditioning hair rinses being conditioners, combined shampoo and conditioner, hair sprays, styling mousse and hair gels; hair dyes; baby and infant care products, namely, baby oils, baby wipes, baby body creams and lotions; bath oils, shampoos, skin oils and creams for cosmetic use; anti-wrinkle creams; massage oils; grooming products for men, namely, face creams and lotions, hair lotions, hand and body lotions and creams, skin-cleansing lotions and creams; shaving cream, after-shave balm; personal deodorants for body care; products for oral hygiene not for medical purposes, namely, mouth washes; non-medicated preparations for the mouth and for cleaning the mouth, namely, cosmetic preparations for the care of mouth and teeth, breath-freshening and mouth-freshening preparations, namely, breath freshener, non-medicated breath freshening strips, non-medicated mouth sprays as breath freshener, non-medicated mouth rinses as breath freshener; dentifrices; toothpaste; antiperspirants

Class 005. First Use: 0 First Use In Commerce: 0

All goods and services in the class are requested, namely: Pharmaceutical and health-care products, namely, medicated skin preparations in the form of tinctures, lotions, creams, sprays and ointments for treating skin irritations, allergic skin irritations, dry skin, acne, scratched skin and neurodermatitis; medicated lubricants, namely, vaginal and anal lubricants; dietetic substances, namely, dietetic sugar and sanitary sterilizing preparations, dietetic foods adapted for medical use; nutritional supplements for nonmedical purposes, namely, vitamins, minerals and vitamin and mineral supplements featuring

trace elements; vitamin preparations; all-purpose disinfectants; herbal tea for medical purposes; corn remedies, namely, corn creams; headache pencils for headache treatment, namely, headache treatment preparations rendered via pencil-shaped applicators; lactose, namely, dietary supplemental drinks; milking grease for medical purposes; all the aforesaid goods except foodstuffs, dietetic foods, and beverages specially for babies, infants and children

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

LAVERANA GMBH & CO. KG,

Opposer,

vs.

MODERNA THERAPEUTICS, INC.,

Applicant

Opposition No. 91224936

Appln. No. 86187819

**APPLICANT'S ANSWER AND AFFIRMATIVE DEFENSES TO
NOTICE OF OPPOSITION AND COUNTERCLAIMS**

Moderna Therapeutics, Inc., for its Answer to the Notice of Opposition, and as its Counterclaims, hereby states the following:

1. Applicant lacks information necessary to confirm or deny the allegations of Paragraph 1 of the Notice of Opposition and therefore denies it.
2. Applicant lacks information necessary to confirm or deny the allegations of Paragraph 2 of the Notice of Opposition and therefore denies it.
3. Applicant denies that its current address is 200 Technology Square, Cambridge, MA 02139. Applicant is a Delaware corporation with an address of 320 Bent Street, Cambridge, MA 02139. Applicant admits that its application covers “vaccines; pharmaceutical preparations, namely, nucleic acid preparations for the treatment and prevention of infectious diseases; medicines, namely, nucleic acid therapeutics for the treatment and prevention of infectious diseases; biological preparations, namely, nucleic acid preparations for the prevention and treatment of infectious diseases; biotherapeutics, namely, nucleic acid therapeutics for the prevention and treatment of infectious diseases;

biosimilars in the nature of therapeutic agents, namely, nucleic acid therapeutics for the prevention and treatment of infectious diseases; vaccine adjuvants” (Int. Cl. 5) and “scientific research in the fields of immunopharmaceuticals and vaccines; scientific research in the fields of pharmaceuticals, medicine, biologics, biotherapeutics, biosimilars and therapeutics for the prevention and treatment of infections or diseases.” (Int. Cl. 42).

4. Denied.
5. Applicant lacks information to confirm or deny Paragraph 5 of the Notice of Opposition and therefore denies it.
6. Denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense

The Notice of Opposition fails to state a claim upon which relief may be granted.

Second Affirmative Defense

Opposer has not used and does not have a bona fide intent to use the mark LAVERA for all the goods and services covered by its applications and/or registrations.

Third Affirmative Defense

Applicant gives notice that it intends to rely upon any other affirmative defense that may arise or be identified during the discovery proceedings in this Opposition and Counterclaim Petition for Cancellation, including any and all equitable defenses, and hereby reserves the right to further amend its Answer and Affirmative Defenses and its Counterclaims as additional facts arise.

COUNTERCLAIMS

Moderna Therapeutics, Inc. (“Moderna”) for its counterclaims alleges as follows:

1. Moderna is a drug research development company, located at 320 Bent Street, Cambridge, MA 02139, U.S.A.
2. Moderna’s entire business model is focused on the development of a new class of drugs made of messenger RNA (mRNA). Moderna operates several venture companies focused on the development and production of (mRNA)-based treatments within this context with end user consumers being pharmaceutical companies, hospitals, and research facilities, in addition to the consuming public who receive treatments via medical services.
3. On information and belief, Registrant, Laverana (“Laverana”) is a German cosmetics company with no offices in the United States.
4. Laverana claims to offer certain cosmetics products under the mark LAVERA in certain individual natural foods stores and natural cosmetics stores in the United States.
5. Laverana has sought protection of various forms of a LAVERA mark covering goods on which it does not sell in interstate commerce, including on any goods offered for sale in International Class 5, and has not undertaken any of the preliminary steps necessary for sale of any products in International Class 5.
6. On information and belief, Laverana has no bona fide intent to use the LAVERA mark on any goods in International Class 5, and no bona fide intent to use certain of its LAVERA marks on all of the goods covered by the registrations subject to this petition. Laverana’s earlier registrations covering goods in International Class 5 have all been cancelled.

Laverana does not purport to sell or otherwise distribute goods in International Class 5 in any country around the world, the third party website used by Laverana to promote its products only points to sales of certain cosmetics products under certain marks held by Laverana.

FIRST COUNTERCLAIM FOR CANCELLATION

7. Moderna realleges paragraphs 1 – 6 of its Counterclaims, as if set forth in full.
8. Registration No. 3799692 for the mark LAVERA BABY AND KINDER should be cancelled for non-use and abandonment.
9. On information and belief, Laverana has not used the subject mark on the following goods listed in International Class 3, namely, “Perfumery goods; essential oils; cosmetics, decorative cosmetics; face creams and lotions; skin-cleansing lotions and creams, hand and body lotions and creams; tinted moisturising creams, make-up, foundation, face powder and rouge; non-medicated acne medications, namely, blemish sticks, lipstick, lip pencils, eyeliner pens and mascara, eyeshadow; sun care preparations, namely cosmetic preparations for skin browning, for the protection against sunburns and after-sun care preparations; foot care preparations namely, foot scrubs; non-medicated foot creams and lotions; exfoliants, namely, exfoliant creams, exfoliant lotions, and exfoliant gels; abrasive implements in the form of pumice stones; non-medicated powders and lotions for foot spas; body care products, namely, perfumed body sprays for cosmetic purposes, refreshing body sprays for cosmetic purposes, gels and lotions for skin care, shower gels, hair care products, namely, hair gels; shampoos and hair lotions, hair conditioning rinses and conditioners, combined shampoo and conditioner, hair

sprays, styling mousse and gels; hair dyes; skin oils and creams for cosmetic purposes; anti-wrinkle creams; massage oils; grooming products for men, namely, face creams and lotions, hair lotions, hand and body lotions and creams, skin-cleansing lotions and creams; shaving cream, after shave balm; deodorants for body care; products for oral hygiene not for medical purposes, namely, mouth washes; preparations for the mouth and for cleaning the mouth, namely, tooth powder, breath-freshening and mouth-freshening preparations, namely, mouth sprays as breath freshener, mouth rinses as breath freshener, dentifrices; toothpaste; antiperspirants.”

10. These goods are not currently in use, and should be deleted from Registration No.

3799692 for the mark LAVERA BABY AND KINDER.

11. On information and belief, Laverana has not used the subject mark on any goods in

International Class 5, namely “Pharmaceutical products, namely, tinctures, lotions, creams, pills, sprays and ointments for treating skin irritations, allergic skin irritations, dry skin, acne, scratched skin and neurodermatitis, and health-care products, namely, tinctures, lotions, creams, sprays and ointments for treating skin irritations, allergic skin irritations, dry skin, acne, scratched skin and neurodermatitis; medicated lubricants, namely, vaginal and anal lubricants; dietetic substances, namely, dietetic sugar and sanitary sterilizing preparations, dietetic foods adapted for medical use; nutritional supplements for nonmedical purposes, on the basis of vitamins, minerals and trace elements; vitamin preparations; all purpose disinfectants; herbal supplements for medical use; corn remedies. namely, corn creams; headache pencils for headache treatment; milking grease for medical purposes, all the aforesaid goods except foodstuffs, dietetic foods and beverages adapted for medical use specially for babies, infants and children.

12. All goods in International Class 5 should be deleted from Registration No. 3799692 for the mark LAVERA BABY AND KINDER.
13. On information and belief, Laverana has not used the subject mark on any goods in International Class 10, namely: “files for the treatment of corn and horny layer of the cuticle, non-electric massage apparatus, foot massage apparatus.”
14. All goods in International Class 10 should be deleted from Registration No. 3799692 for the mark LAVERA BABY AND KINDER.

SECOND COUNTERCLAIM FOR CANCELLATION

15. Moderna repeats and realleges Paragraphs 1 -14 of its Counterclaims, as if set forth in full.
16. Registration No. 3835200 for the mark LAVERA NEUTRAL should be cancelled for non-use and abandonment.
17. On information and belief, Laverana has not used the subject mark on any of the goods in International Class 3, namely “Perfumery; essential oils; cosmetics, decorative cosmetics; face creams and lotions; skin-cleansing lotions and creams, hand and body lotions and creams; tinted moisturizing creams, make-up, foundation, face powder and rouge; blemish sticks, namely, make-up foundation for covering blemishes, lipstick, lip pencils, eyeliner pens and mascara, eyeshadow; non-medicated sun care preparations, namely, cosmetic preparations for skin browning for protection against sunburns and after-sun care preparations; non-medicated foot-care preparations, namely, foot scrubs; non-medicated foot creams and lotions; exfoliants, namely, exfoliant creams, exfoliant lotions, and exfoliant gels; abrasive implements in the form of pumice stones for personal

use; non-medicated powders and lotions for foot spas; body care products, namely, beauty creams for body care, soaps for body care, perfumed body sprays for cosmetic purposes, refreshing body sprays for cosmetic purposes, gels and lotions for skin care, shower gels, hair care products, namely, hair care creams, hair care lotions, and hair care gels; shampoos and hair lotions, conditioning hair rinses being conditioners, combined shampoo and conditioner, hair sprays, styling mousse and hair gels; hair dyes:...

shampoos, skin oils and creams for cosmetic use; anti-wrinkle creams; massage oils; grooming products for men, namely, face creams and lotions, hair lotions, hand and body lotions and creams, skin-cleansing lotions and creams; shaving cream, aftershave balm; personal deodorants for body care; products for oral hygiene not for medical purposes, namely, mouth washes. non-medicated preparations for the mouth and for cleaning the mouth, namely, cosmetic preparations for the care of mouth and teeth, breath-freshening and mouth-freshening preparations, namely, breath freshener, non-medicated breath freshening strips, non-medicated mouth sprays as breath freshener, non medicated mouth rinses as breath freshener; dentifrices; toothpaste; antiperspirants

18. On information and belief, Laverana has not used the subject mark on any of the goods in International Class 5, namely Pharmaceutical and health-care products, namely, medicated skin preparations in the form of tinctures, lotions, creams, sprays and ointments for treating skin irritations, allergic skin irritations, dry skin, acne, scratched skin and neurodermatitis; medicated lubricants, namely, vaginal and anal lubricants; dietetic substances, namely, dietetic sugar and sanitary sterilizing preparations, dietetic foods adapted for medical use; nutritional supplements for nonmedical purposes, namely, vitamins, minerals and vitamin and mineral supplements featuring trace elements;

vitamin preparations; all-purpose disinfectants; herbal tea for medical purposes; corn remedies, namely, corn creams; headache pencils for headache treatment, namely, headache treatment preparations rendered via pencil-shaped applicators; lactose, namely, dietary supplemental drinks; milking grease for medical purposes; all the aforesaid goods except foodstuffs, dietetic foods, and beverages specially for babies, infants and children.”

19. On information and belief, Laverana has not used the subject mark on any of the goods listed in International Class 5, namely “Pharmaceutical and health-care products, namely, medicated skin preparations in the form of tinctures, lotions, creams, sprays and ointments for treating skin irritations, allergic skin irritations, dry skin, acne, scratched skin and neurodermatitis; medicated lubricants, namely, vaginal and anal lubricants; dietetic substances, namely, dietetic sugar and sanitary sterilizing preparations, dietetic foods adapted for medical use; nutritional supplements for nonmedical purposes, namely, vitamins, minerals and vitamin and mineral supplements featuring trace elements; vitamin preparations; all-purpose disinfectants; herbal tea for medical purposes; corn remedies, namely, corn creams; headache pencils for headache treatment, namely, headache treatment preparations rendered via pencil-shaped applicators; lactose, namely, dietary supplemental drinks; milking grease for medical purposes; all the aforesaid goods except foodstuffs, dietetic foods, and beverages specially for babies, infants and children.”

WHEREFORE, Applicant respectfully requests that the Opposer’s Notice of Opposition be dismissed in its entirety with prejudice, and that a Notice of Allowance

issue to Applicant for registration of its mark VALERA, and that Laverana's Regs. Nos. 3799692 and 3835200 be cancelled in whole or in part.

Dated: December 29, 2015

BAKER & HOSTETLER LLP

By: s/Jacqueline M. Lesser
Jacqueline M. Lesser, Esq.
jlesser@bakerlaw.com
2929 Arch Street
Cira Centre, 12th Floor
Philadelphia, PA 19104-2891
Telephone: 215.568.3100
Facsimile: 215.568.3439

*Attorney for Applicant/
Counterpetitioner
Moderna Therapeutics, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2015, a true and correct copy of the foregoing
ANSWER TO NOTICE OF OPPOSITION was served on Opposer's through Opposer's
authorize attorney, Susan Neuberger Weller via first class mail to:

Susan Neuberger Weller
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, N.W., Suite 900
Washington, D.C. 20004

/s/ Jacqueline M. Lesser
Jacqueline M. Lesser

