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Subject: U.S. Trademark Application Serial No. 79238068 - DERMIFANT - 12055-6 - Request for Reconsideration Denied - Return to TTAB

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**United States Patent and Trademark Office (USPTO)**  
**Office Action (Official Letter) About Applicant's Trademark Application**

**U.S. Application Serial No.** 79238068

**Mark:** DERMIFANT

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**Applicant:** ALLERGIKA Pharma GmbH

**Reference/Docket No.** 12055-6

**Correspondence Email Address:**

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**REQUEST FOR RECONSIDERATION**  
**AFTER FINAL ACTION**  
**DENIED**

**Issue date:** **November 04, 2019**

**International Registration No.** 1416398

**Applicant's request for reconsideration is denied.** *See* 37 C.F.R. §2.63(b)(3). The trademark examining attorney has carefully reviewed applicant's request and determined the request did not: (1) raise a new issue, (2) resolve all the outstanding issue(s), (3) provide any new or compelling

evidence with regard to the outstanding issue(s), or (4) present analysis and arguments that were persuasive or shed new light on the outstanding issue(s). TMEP §§715.03(a)(ii)(B), 715.04(a).

Accordingly, the following requirement made final in the Office action dated April 11, 2019 is **maintained and continued**:

- Identification of Goods

See TMEP §§715.03(a)(ii)(B), 715.04(a).

### **IDENTIFICATION OF GOODS**

**This partial requirement applies only to the goods specified therein.**

Applicant must clarify the wording “diagnostic apparatus, instruments and devices, in particular test kits and rapid tests comprised of in-vitro allergen tests, in-vivo allergy test” and “filtering material of textiles, namely, encasings” in the identification of goods in International Classes 010 and 024 because it is indefinite and too broad. See 37 C.F.R. §2.32(a)(6); TMEP §§1402.01, 1402.03. This wording is indefinite because it does not make clear the exact nature of the goods. Further, this wording could identify goods in more than one international class.

In addition, the proposed amended wording “and shampoos,” “and medicated sun screening preparations,” and “neurodermatitis overalls against scratching, t-shirts” is not acceptable because it exceeds the scope of the goods in the initial application. See 37 C.F.R. §2.71(a); TMEP §§1402.01(c), 1904.02(c)(iv). Applicant’s goods may be clarified or limited, but may not be expanded beyond those originally itemized in the application or as acceptably amended. See 37 C.F.R. §2.71(a); TMEP §§1402.06, 1904.02(c)(iv). Therefore, the original identification in the U.S. application as filed, or as acceptably amended, remains operative for purposes of future amendment. See 37 C.F.R. §2.71(a); TMEP §§1402.01(b), 1402.07(d).

With regard to the proposed wording “and shampoos,” the application identifies the goods in the specified class as follows: “medical and disinfecting soaps and detergents.” The proposed wording “and shampoos” is beyond the scope of the original identification because it is not logically encompassed by the original wording “medical and disinfecting soaps and detergents.”

With regard to the proposed wording “medicated sun screening preparations,” the application identifies the goods in the specified class as follows: “medical and pharmaceutical preparations for the treatment of and for protection of, care and prevention of the skin internally and externally.” As currently written, the proposed wording “medicated sun screening preparations” is beyond the scope of the original identification because it is not encompassed by the original wording “medical and pharmaceutical preparations for the treatment of and for protection of, care and prevention of the skin internally and externally.”

With regard to the proposed wording “neurodermatitis overalls against scratching, t-shirts,” the application identifies the goods in the specified class as follows: “headgear.” The proposed wording “neurodermatitis overalls against scratching, t-shirts” is beyond the scope of the original identification because it is not logically encompassed by the original wording “headgear.”

Accordingly, applicant may respond by deleting the proposed amendment to the goods and/or arguing that the amendment is within the scope of the goods in the initial application and should remain in the application. See 37 C.F.R. §2.71(a); TMEP §§1402.07(a), (e), 1904.02(c)(iv). If this issue is being made final, applicant may appeal to the Trademark Trial and Appeal Board under 37 C.F.R. §§2.141, 2.142, or petition the Director under 37 C.F.R. §2.146 if permitted by 37 C.F.R. §2.63(b)(2). TMEP §1904.02(c)(iv).

### **Madrid Applicants**

In a Trademark Act Section 66(a) application, classification of goods and/or services may not be changed from that assigned by the International Bureau of the World Intellectual Property Organization. 37 C.F.R. §2.85(d); TMEP §§1401.03(d), 1904.02(b). Additionally, classes may not be added or goods and/or services transferred from one class to another in a multiple-class Section 66(a) application. 37 C.F.R. §2.85(d); TMEP §1401.03(d).

Applicant should note that any wording in **bold**, in *italics*, underlined and/or in ALL CAPS below offers guidance and/or shows the changes being proposed for the identification of goods and/or services. If there is wording in the applicant’s version of the identification of goods and/or services which should be removed, it will be shown with a double line through it such as this: ~~striketrough~~. When making its amendments, applicant should enter them in standard font, not in **bold**, in *italics*, underlined and/or in ALL CAPS.

Applicant may adopt the following identification, if accurate:

International Class 003: Substances for laundry use, namely, laundry soap; non-medicated soaps; essential oils; cosmetics; dermatological cosmetic products, namely, cosmetic preparations for skin care, skin cleansing lotion; hair lotions; dentifrices

International Class 005: Pharmaceutical preparations for the treatment and prevention of skin diseases and disorders; veterinary preparations for the treatment and prevention of skin diseases and disorders in cats, dogs, cattle, horses; healthcare preparations, namely, vitamins, dietary supplements; medical and disinfecting soaps and detergents and medicated soaps ~~and shampoos~~; medical cosmetics and medicated cosmetic preparations; medical and pharmaceutical preparations for the treatment of and for protection against and prevention of internal and external skin disorders and **MEDICAL PREPARATIONS FOR PROTECTION AGAINST AND PREVENTION OF EXTERNAL SKIN DISORDERS, NAMELY**, medicated sun screening preparations; dental preparations and products, namely, medicated dental rinses, medicated dental floss, dental veneers; medical dentifrices; sanitary preparations for medical use and sanitary articles for medical purposes, namely, sanitary napkins, sanitary pants; dietetic food and substances, namely, beverages all adapted for medical or veterinary use; food for babies; dietary supplements for humans; dietary supplements for animals; medical plasters; medical dressings; disinfectants; preparations for destroying vermin; fungicides, herbicides

International Class 010: Surgical, medical, dental and veterinary apparatus and instruments, namely, scalpels, blades, staplers; medical furniture and beds specially made for medical purposes; medical clothing for use in medical examination and treatment, in particular medical suits, medical protective suits and medical overalls for babies and infants with neurodermatitis; diagnostic apparatus, instruments and devices, in particular **IN-VITRO ALLERGEN AND IN-VIVO ALLERGY** test kits and rapid tests comprised of \_\_\_\_\_ ***{please list components that make up the test kits, with all of the primary components being in International Class 010 only and listed first, e.g., blood collection vials, testing strips}*** ~~*in-vitro-allergen-tests, in-vivo-allergy test*~~; medical apparatus, devices and instruments for treatment of and prevention of allergies and skin diseases; inhalation devices in the nature of inhalers for medical use for treatment of respiratory complaints, in particular of asthma and chronic bronchitis

International Class 024: Fabrics for textile use; textile goods, and substitutes for textile goods, not included in other classes, namely, textile labels; bed blankets, bed linen and bed covers, in particular pillow covers, mattress covers, bed covers and duvet covers for protection against allergens; filtering material of textiles, namely, **GAUZE FABRIC** encasings

International Class 025: Clothing, in particular suits, non-life preserving protective suits and overalls for babies and infants with neurodermatitis; headgear, namely, ~~*neurodermatitis overalls against scratching, t-shirts*~~, hats, baseball caps, skull caps for sun protection

Applicant may amend the identification to clarify or limit the goods and/or services, but not to broaden or expand the goods and/or services beyond those in the original application or as acceptably amended. See 37 C.F.R. §2.71(a); TMEP §1402.06. Generally, any deleted goods and/or services may not later be reinserted. See TMEP §1402.07(e). Additionally, for applications filed under Trademark Act Section 66(a), the scope of the identification for purposes of permissible amendments is limited by the international class assigned by the International Bureau of the World Intellectual Property Organization (International Bureau); and the classification of goods and/or services may not be changed from that assigned by the International Bureau. 37 C.F.R. §2.85(d); TMEP §§1401.03(d), 1904.02(b). Further, in a multiple-class Section 66(a) application, classes may not be added or goods and/or services transferred from one existing class to another. 37 C.F.R. §2.85(d); TMEP §1401.03(d).

For assistance with identifying and classifying goods and services in trademark applications, please see the USPTO's online searchable [U.S. Acceptable Identification of Goods and Services Manual](#). See TMEP §1402.04.

#### **ADVISORY – PARTIAL ABANDONMENT**

If applicant does not respond to this Office action, the following goods will be deleted from the application: “and shampoos,” “and medicated sun screening preparations,” “neurodermatitis overalls against scratching, t-shirts,” “diagnostic apparatus, instruments and devices, in particular test kits and rapid tests comprised of in-vitro allergen tests, in-vivo allergy test,” and “filtering material of textiles, namely, encasings.” The application will then proceed with the remaining goods only. See 37 C.F.R. §2.65(a)-(a)(1); TMEP §718.02(a).

**If applicant has already filed an appeal** with the Trademark Trial and Appeal Board, the Board will be notified to resume the appeal. See TMEP §715.04(a).

**If applicant has not filed an appeal** and time remains in the six-month response period, applicant has the remainder of that time to (1) [file another request for reconsideration](#) that complies with and/or overcomes any outstanding final requirement(s) and/or refusal(s), and/or (2) [file a notice of appeal](#) to the Board. TMEP §715.03(a)(ii)(B). Filing a request for reconsideration does not stay or extend the time for filing an appeal. 37 C.F.R. §2.63(b)(3); see TMEP §715.03(c).

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