From: Cantone, Keri
Sent: 11/21/2014 3:37:03 PM
To: TTAB EFiling
CC:
Subject: U.S. TRADEMARK APPLICATION NO. 85836582 - SYNCHRONIZATION PA

ACK - 5020980-12 -Request for Reconsideration Denied - Return to TTAB

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Attachment Information:

Count: 26

Files: global-1.jpg, global-2.jpg, global-3.jpg, nmsu.jpg, beef-estrus-sync-lucero\_Page\_01.jpg, beefestrus-sync-lucero\_Page\_02.jpg, beef-estrus-sync-lucero\_Page\_03.jpg, beef-estrus-synclucero\_Page\_04.jpg, beef-estrus-sync-lucero\_Page\_05.jpg, beef-estrus-sync-lucero\_Page\_06.jpg, beefestrus-sync-lucero\_Page\_07.jpg, beef-estrus-sync-lucero\_Page\_08.jpg, beef-estrus-synclucero\_Page\_09.jpg, beef-estrus-sync-lucero\_Page\_10.jpg, beef-estrus-sync-lucero\_Page\_11.jpg, beefestrus-sync-lucero\_Page\_12.jpg, beef-estrus-sync-lucero\_Page\_13.jpg, beef-estrus-synclucero\_Page\_14.jpg, chem.jpg, p2p-1.jpg, p2p-2.jpg, p2p-3.jpg, p2p-4.jpg, bill-1.jpg, bill-2.jpg, 85836582.doc

# UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO) OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

U.S. APPLICATION SERIAL NO. 85836582	
MARK: SYNCHRONIZATION PACK	
CORRESPONDENT ADDRESS: GLENN K ROBBINS II	
SPENCER FANE BRITT & BROWNE LLP	
1 NORTH BRENTWOOD BLVD SUITE 1000	GENERAL TRADEMARK INFORMATION:
ST LOUIS, MO 63105	http://www.uspto.gov/trademarks/index.jsp
	VIEW YOUR APPLICATION FILE
APPLICANT: Parnell Technologies Pty Ltd	
CORRESPONDENT'S REFERENCE/DOCKET NO:	
5020980-12	
CORRESPONDENT E-MAIL ADDRESS:	
sfbbaction@spencerfane.com	

# **REQUEST FOR RECONSIDERATION DENIED**

ISSUE/MAILING DATE: 11/21/2014

The trademark examining attorney has carefully reviewed applicant's request for reconsideration and is denying the request for the reasons stated below. See 37 C.F.R. §2.64(b); TMEP §§715.03(a)(2)(B), (a)(2)(E), 715.04(a). The requirement(s) and/or refusal(s) made final in the Office action dated April 22, 2014, are maintained and continue to be final. See TMEP §§715.03(a)(2)(B), (a)(2)(E), 715.04(a).

In the present case, applicant's request has not resolved all the outstanding issue(s), nor does it raise a new issue or provide any new or compelling evidence with regard to the outstanding issue(s) in the final Office action. In addition, applicant's analysis and arguments are not persuasive nor do they shed new light on the issues. Accordingly, the request is denied.

The filing of a request for reconsideration does not extend the time for filing a proper response to a final Office action or an appeal with the Trademark Trial and Appeal Board (Board), which runs from the date the final Office action was issued/mailed. *See* 37 C.F.R. §2.64(b); TMEP §715.03, (a)(2)(B), (a)(2)(E), (c).

If time remains in the six-month response period to the final Office action, applicant has the remainder of the response period to comply with and/or overcome any outstanding final requirement(s) and/or refusal(s) and/or to file an appeal with the Board. TMEP §715.03(a)(2)(B), (c). However, if applicant has already filed a timely notice of appeal with the Board, the Board will be notified to resume the appeal. *See* TMEP §715.04(a).

### **SUMMARY OF ISSUES:**

- Trademark Act Section 23(c) Refusal- Mark Is Generic
- Specimen Not Acceptable

### TRADEMARK ACT SECTION 23(c) REFUSAL- MARK IS GENERIC

Registration is refused on the Supplemental Register because the applied-for mark is generic and thus incapable of distinguishing applicant's goods. Trademark Act Section 23(c), 15 U.S.C. §1091(c); see TMEP §§1209.01(c) et seq.

In this instance, the genus of the goods at issue is "hormone compositions." As is established by the previously attached evidence, "SYNCHRONIZATION PACK" is essentially the apt or common name for the genus of the goods.

A. Applicant argues that SYNCHRONIZATION is not a genus of hormones.

Applicant has attached articles describing a variety of types of hormones and their biological effects. Applicant contends that because "hormones" would cover all types of hormones, "synchronization" is not a generic term for a genus of hormone compositions. Applicant's evidence and arguments are unpersuasive. As is shown by the previously attached evidence from msucares.com, <a href="https://www.grazeonline.com">www.grazeonline.com</a>, www.reprospecialty.com www.agriculture.purdue.edu, www.uspremiumbeef.com, www.verifiedbeef.com, www.americandairymen.com and <a href="https://www.southernlivestock.com">www.southernlivestock.com</a> as well as the attached evidence from <a href="http://aces.nmsu.edu/nmranchcamp/documents/beef-estrus-sync-lucero.pdf">http://aces.nmsu.edu/nmranchcamp/documents/beef-estrus-sync-lucero.pdf</a> (accessed on November 21, 2014) and www.globaldairyinstitute.com, "SYNCHRONIZATION" is used to generically refer to a genus of hormones. For example, as is shown in the chart on page 3 of the attachment from aces.nmsu.edu "prostaglandins (lutalyse, estrumate, estro PLAN) progesterone (MGA, CIDR) and GnRH (cystarelin, factrel, fertagyl)" are all hormones under the genus "synchronization hormones."

Further, as is shown by the attached evidence from <a href="www.chemnet.com">www.chemnet.com</a>, p2p-pharmhouse.com and <a href="www.dietresults.com">www.dietresults.com</a>, hormones commonly come in "packs."

B. Applicant argues that "synchronization pack" could also apply to "packaged semen" and artificial insemination.

The goods at issue are not "packaged semen" or the insemination process. The goods are "veterinary pharmaceutical compositions, namely, hormone compositions." The fact that the phrase may also be descriptive or generic for other goods is not relevant. Further, the services are not a "synchronization protocol." The fact that "synchronization protocol" describes the entire strategy manipulating estrus is not relevant to determining whether "synchronization" refers to a genus of hormones. Terms that identify the function or purpose of a product may be generic. TMEP §1209.03(p). Here, applicant's goods are used for synchronization, as such, SYNCHRONIZATION identifies the function or purpose of the hormones.

C. Applicant argues it is the only user of the term SYNCHRONIZATION PACK.

The fact that an applicant may be the first or only user of a generic designation is not dispositive on the issue of genericness where, as here, the evidence shows that the word or term is generic. *See Frito-Lay N. Am., Inc. v. Princeton Vanguard, LLC,* 109 USPQ2d 1949, 1959 (TTAB 2014); *In re Greenliant Sys. Ltd.*, 97 USPQ2d 1078, 1083 (TTAB 2010); TMEP §1209.03(c).

As is shown by the previously attached evidence from <a href="www.bovinevetonline.com">www.bovinevetonline.com</a>, shows that applicant's goods are merely the "first reproductive hormone ever to be approved by the FDA to synchronize estrous cycles in lactating dairy cows and beef cows." A major reason for not allowing protection of generic marks is to prevent the owner of a mark from inhibiting competition in the marketplace. TMEP §1209. Businesses and competitors should be free to use generic language when describing their own goods. While the applicant may now be the only company using this terminology as it is the only approved produced, when another company seeks approval for synchronization hormones, they will need to have available the generic designation SYNCHRONIZATION PACK.

### SPECIMEN NOT ACCEPTABLE

Registration is refused because the specimen in International Class(es) 05 consists of advertising material and thus does not show the applied-for mark in use in commerce for the identified goods for each international class. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a). Advertising materials are generally not acceptable as specimens to show use in commerce for goods. *See In re MediaShare Corp.*, 43 USPQ2d 1304, 1307 (TTAB 1997); *In re Schiapparelli Searle*, 26 USPQ2d 1520, 1522 (TTAB 1993); TMEP §904.04(b), (c).

An application based on Trademark Act Section 1(a) must include a specimen showing the applied-for mark in use in commerce for each international class of goods identified in the application or amendment to allege use. 15 U.S.C. §1051(a)(1); 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

Examples of specimens for goods include tags, labels, instruction manuals, containers, photographs that show the mark on the actual goods or packaging, and displays associated with the actual goods at their point of sale. See TMEP §§904.03 et seq. Webpages may also be specimens for goods when they include a picture or textual description of the goods associated with the mark and the means to order the goods. TMEP §904.03(i).

The specimen of record does not provide the means for ordering the goods. In most cases, telephone numbers and e-mail addresses alone will not transform mere advertising into point-of-sale displays even though it is common to sell products on-line or over the telephone. *See In re Anpath Grp.*, 95 USPQ2d 1377, 1382 (TTAB 2010). However, they may suffice if accompanied by special instructions for placing or accepting orders, such as "call now to buy" or "e-mail your order." There are no special instructions for buying on applicant's webpage, only insuctions to contact a representative for "additional information."

If no ordering instructions appear, telephone numbers and e-mail addresses may be sufficient if: (1) the web page contains enough product and ordering information to enable the consumer to buy the goods (e.g., the web page shows the goods; offers size, color, or quantity selections; price; identifies credit card payment options; or states shipping methods); (2) the record contains an explanation or evidence that clearly supports the conclusion that the telephone number or e-mail address can be used for ordering, rather than merely for obtaining information about the goods or the ordering process; or (3) the telephone number or e-mail address is prominently placed close to the goods, indicating it as a means of ordering.

Here, the submitted webpage merely states "please contact your Parnell Territory Manager or Distributor Sales Representative for additional information." No phone number or contact information for the representative or distributor is provided. The only contact information provided is the corporate information at the bottom of the page. The number at the bottom of the page does not indicate it can be used for ordering, and this appears only to be corporate location information. *See In re Genitope Corp.*, 78 USPQ2d 1819, 1822 (TTAB 2006) (concluding that the company name, address, and phone number appearing at the end of applicant's web page "indicate[d] only location information about applicant; it [did] not constitute a means to order goods through the mail or by telephone, in the way that a catalog sales form provides a means for one to fill out a sales form or call in a purchase by phone").

### **CONCLUSION**

For the reasons stated above, the Trademark Act Section 23(c) refusal and specimen refusal are maintained.

### **ASSISTANCE**

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant's rights. *See* TMEP §§705.02, 709.06.

/Keri-Marie Cantone/

Examining Attorney - Law Office 104

(571) 272-6069

Keri.Cantone@uspto.gov



SCR CASE STUDY: Cannon Dairy / Idaho, USA





- Bring pregnancy rates back up following sharp decrease
  Reduce costs of synchronization hormonis
  More effectively find, diagnose and treat sick cows

- SCR Heatime® Pro System, 4,150 Heatime HR tags, heat detection, rumination monitoring and cow identification functionality
- 4 SCR DataWand portable tag readers for efficient cow identification by brooders and health crew

- 12% increase in number of pregnancies, resulting in a 5% increase in pregnancy rate, raising annual revenue by \$130 per cow achieved within 15 months of SCR Heatime installation
- 80% decrease in hormone and tail paint costs and additional income generated from increased prognancy rate enabled full return on investment in a year
   Earlier identification of cows with mastitis and DAs enables earlier treatment leading to reduced negative impact on mik production.

DOWNLOAD COMPLETE CASE STUDY PDE

### PROJECT DETAILS

FARM

LOCATION

HERD SIZE

8000 (7000 milking) cows

Taking into account the higher number of pregnancies, fewer days open, the gains in increased production due to lower days in milk, and improved overall herd

### health, our payback time has already happened.

Chris Crandall, Office Manager, Cannon Dairy Farm

### VIEW MORE SCR CASE STUDIES



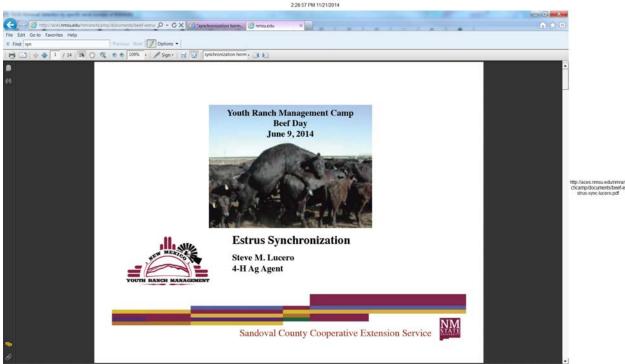


Fertile Ridge Dairy Mount Horeb / WI USA

Bowman Dairy Farm



### 2:28:57 PM 11/21/2014







**Estrus Synchronization** 

Steve M. Lucero 4-H Ag Agent

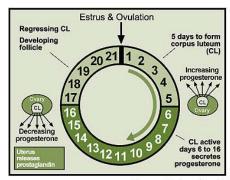
> NM STATE



Reproduction is the most important factor for profitable beef production



# Synchronization is more then just synchronizing the estrus but also manipulating the ovulation



Synchronization Hormones

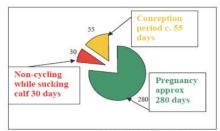
- Prostaglandins
   Lutalyse , Estrumate , estro PLAN,

   Prostmate, In-Synch
- Progesterone MGA, CIDR
- GnRH
   Cystarelin, Factrel, Fertagyl

Source: University of Missouri



# Calving Interval



Source: Adam Woods, Teagasc, Animal & Grassland Research & Innovation Centre

"If the percentage of cows calving the first 21 days of the calving season is less than 60 percent and the percentage of cows calving the second 21 days of the calving season is greater than 25 percent, a serious re-evaluation of the herd needs to occur."

Kris Ringwall, Beef Specialist NDSU Extension Service



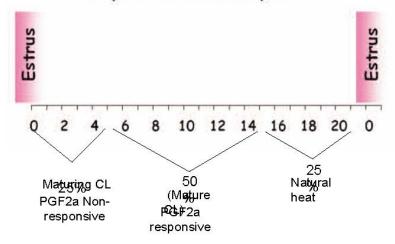
## **Increase Conception Rates**

If 100 cows were put to the bull and achieved 60% conception in each estrus period, then the following pregnancy rate would be achieved.

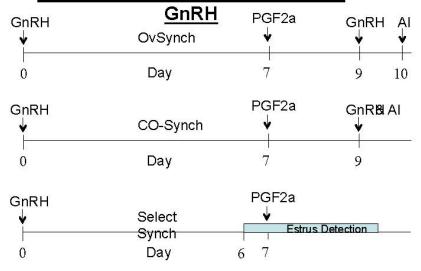
Conception rate of 60%	Conception rate of 40%
3 weeks – 60 in calf	40 in calf
6 weeks – 84 in calf	64 in calf
9 weeks – 93 in calf	78 in calf
12 weeks – 97 in calf	86 in calf



# Day of the Estrous Cycle

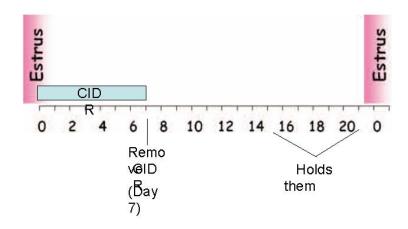


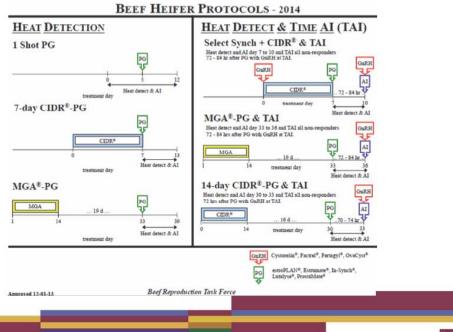
# Synchronization Systems that use





# Day of the Estrous Cycle

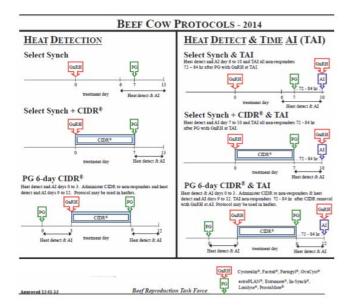




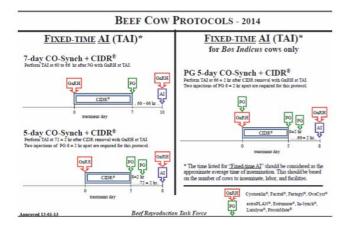


# FIXED-TIME AI (TAI)\* Short-term Protocols 7-day CO-Synch + CIDR® Perform TAI at 54 = 2 lar after PG with GaRH at TAI CODR® Streatment day Solution Treatment day Solution Treatment day MGA®-PG Perform TAI at 60 = 4 lar after CIDR removal with GaRH at TAI Two injections of PG 8 = 2 lar apart are required for this protocol MGA®-PG Perform TAI at 72 = 2 lar after PG with GaRH at TAI Two injections of PG 8 = 2 lar apart are required for this protocol The times listed for "Fixed-time AI" should be considered as the approximate average time of insemination. This should be based on the number of heights to insemination. This should be based on the number of heights to insemination. This should be considered as the approximate average time of heights to insemination. This should be based on the number of heights to insemination. This should be considered as the approximate average time of heights to insemination. This should be considered as the approximate average time of heights to insemination. This should be considered as the approximate average time of heights to insemination. This should be considered as the approximate average time of heights to insemination. This should be considered as the approximate average time of heights to insemination. This should be considered as the approximate average time of heights to insemination. This should be considered as the approximate average time of heights to insemination. This should be considered as the approximate average time of heights to insemination. This should be considered as the approximate average time of heights to insemination. This should be considered as the approximate average time of heights to inseminate the province of heights to inseminate





NM STATE







http://www.iowabeefcenter.org/estrus\_synch.html

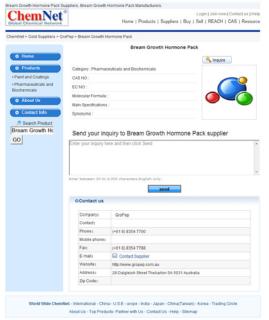
n Service NM

# Question?



Steve M. Lucero Sandoval County Cooperative Extension Service (505) 867-2582 smlucero@nmsu.edu





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220 USD



Genotropin Go Quick 36 IU (12mg) - Somatropin HGH & Insulin Manufacturer: Pfizer, Turkey Substance: Human Growth Hormone Pack: 1 injection pen of 36iu

400 USD



Humatrope 36IU (12mg) -Somatropin HGH & Insulin Manufacturer: Lilly, Turkey Substance: Human Growth Hormone Pack: 1 injection cartrige of 36iu



Norditropin 30iu (10mg) -Somatropin HGH & Tusulin Mandacturer: Simplex Novonordisk, Turkey Scharace: Human Growth Hormone Pack: 1 injection cartridge of 30iu 565 USD

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Saizen 24iu (8mg) Click Easy -Somatropin HGH & Insulin Manufacturer: Serono, Turkey Substance: Human Growth Hormone Pack: 1 injection pen of 24iu



Bacteriostatic Water HGH & Insulin Manufacturer: Gen-Shi Laboratories, Japan Substance: Distilled water+%0.9 NaCl+0.9% Benzyl alcohol Pack: 1 vial of Sml

10 USD



Bacteriostatic Water 10 vials HGH & Insulin Manufacture: Gen-Shi Laboratories, Japan Substance: Distilled water+%0.9 NaCH-0.9% Benzyl alcohol Pack: 10x5ml

75 USD



GHRP-2 5mg HGH & Insulin Manufacturer: Gen-Shi Laboratories, Japan Substance: Growth hormone releasing peptie Pack: 1 vial of 3mg

30 USD



GHRP-2 5mg 10 vials HGH & Insulin Manufacturer: Gen-Shi Laboratories, Japan Substance: Growth hormone releasing peptie Pack: 10x5mg







GHRP-6 Smg 10 vials HGH & Insulin Manufacturer: Gen-Shi Laboratories, Japan Substance: Growth hormone releasing peptide Pack: 10x5mg





HCG 5000iu 10 vials HGH & Insulin Manufacturer: Gen-Shi Laboratories, Japan Substance: Human chorionic gonadotropin Pack: 10x5000iu



HGH Fragment 176-191 HGH & Insulin Manufacturer: Gen-Shi Laboratories, Japan Substance: HGH Fragment 176-191 Pack: 1 vial of 5mg



HGH Fragment 176-191 10 vials
HGH & Insulin
Manufacturer: Gen-Shi Laboratories,
Japan Substance: HGH Fragment 176191 Pack: 10x5mg



191 Pack: 10x5mg

600 USD



HGH-GENSHI 10lu HGH & Insulin Manufacturer: Gen-Shi Laboratories, Japan Substance: human growth hormone 191aa Pack: 1 vial of 10iu



HGH-GENSHI 10iu 10 vials HGH & Insulin Manufacturer: Gen-Shi Laboratories, Japan Substance: human growth hormone 191aa Pack: 10x10iu



HMG 75iu
HGH & Insulin
Manufacturer: Gen-Shi Laboratories,
Japan Substance: Human menopausal
gonadotropin Pack: 1 vial of 75iu
30 USD



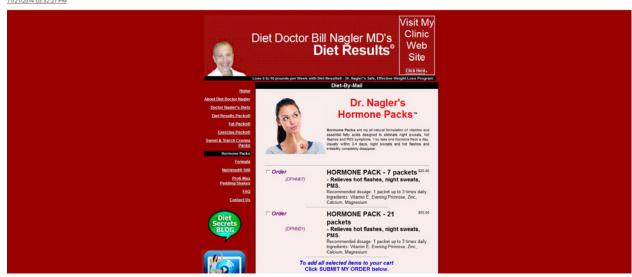




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