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

Proceeding	87614019
Applicant	Spark Therapeutics, Inc.
Applied for Mark	SPARK THERAPEUTICS GENERATION PATIENT SERVICES
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application of:

Applicant: Spark Therapeutics, Inc. Examining Attorney: Josette M. Beverly

Serial No.: 87/614019 Law Office: 115

Filed: September 19, 2017

Mark: **SPARK THERAPEUTICS GENERATION PATIENT SERVICES**

**APPLICANT'S REPLY IN SUPPORT OF ITS APPLICATION TO REGISTER THE
MARK SPARK THERAPEUTICS GENERATION PATIENT SERVICES**

This Reply Memorandum is submitted in support of the appeal of Spark Therapeutics, Inc. (“Applicant”), and in Reply to the Examining Attorney’s Appeal Brief. The paragraph lettering below corresponds to the respective lettered paragraphs in the Examining Attorney’s Brief.

Third Party Registrations Should be Considered

The Examining Attorney has maintained the objection to the third-party registrations submitted with the Request for Reconsideration submitted on May 19, 2020. *See* Examining Attorney’s Appeal Brief p. 2. Applicant respectfully disagrees and submits that the third-party registrations should be made of record and considered in this matter.

Applicant submits that mere listings of registrations, or copies of private company search reports, may not be sufficient to make such listings of record. TBMP § 1208.02. However, Applicant provided substantive arguments regarding third-party listings in the Request for Reconsideration. These arguments provided the mark, registration number, Registrant, and classification. Applicant submits that the substantive description of the third-party registrations should be considered even if the third-party registration listing Exhibits are not made of record in this matter.

A. Applicant’s Mark is Unique and Dissimilar in Overall Commercial Impression

The Examining Attorney has mistakenly focused the analysis of the mark solely on a single term of Applicant’s mark and fails to properly assess the commercial impression of those likely to encounter the marks. TMEP §1207.01(b). Specifically, those who would use those services provided under Applicant’s mark, even when their view of the mark is “‘considered ... in light of the fallibility of memory’”, are so deeply dependent on the life-altering services provided under Applicant’s mark, that a specific impression of Applicant’s mark is indelibly

innate. In re St. Helena Hosp., 774 F.3d 747, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014) (quoting San Fernando Elec. Mfg. Co. v. JFD Elecs. Components Corp., 565 F.2d 683, 196 USPQ 1 (CCPA 1977)). While Applicant agrees that individual components of a mark may be weighed in order to determine the overall commercial impression of the mark, a single component should not, and cannot in this instance, carry all of the weight. *See* Examiner's Appeal Brief p. 3.

Applicant's mark in its entirety recites "SPARK THERAPEUTICS GENERATION PATIENT SERVICES AND DESIGN"; however, the Examining Attorney has limited their comparison to the sole term "SPARQ". Although the cited mark and the first term of Applicant's mark contain the letter string S-P-A-R, there are no other significant similarities in sound or appearance when looking at the entirety of Applicant's mark. Applicant's mark is composed of fourteen (14) syllables comprising five (5) terms all of which are known within the English language. Comparatively, the cited mark is simply composed of one (1) syllable comprising one (1) term that is not known in English, as well as, any other language.

Further, the Examining Attorney has asserted that consumers are generally more inclined to focus on the first word, prefix, or syllable in any trademark or service mark. *See* Examining Attorney's Appeal Brief p.3. Applicant submits that when the mark is visually inspected the mark possess two lines of text in which the terms "SPARQ" and "GENERATION" appear as the first words. The terms "SPARK" and "GENERATION" would both be prominent features and the features that consumers are inclined to focus upon. Even more so, the second term "THERAPEUTICS" may mean more to the consumers of Applicant's life-altering services than any other aspect of Applicant's mark. Therefore, while one of the first terms of the Applicant's mark shares a letter string with the cited mark, the overall impression of the marks are distinct and not likely to cause confusion.

From a visual and aural perspective, it is undeniable that Applicant's mark and the Cited Mark are distinct and do not support a finding of likelihood of confusion.

B. The Applicant's Mark is Utilized in a Separate, Distinct Channel of Trade

The Examining Attorney asserts that Applicant's and Registrant's healthcare services, including healthcare information services of the parties have no restrictions as to nature, type, channels of trade, or classes of purchasers and are "presumed to travel in the same channels of trade to the same class of purchasers. *See* Examiner's Appeal Brief p. 4.

Applicant respectfully submits that the highly personal and customized services related to cutting-edge gene therapies target a select group of consumers affected by genetic disorders. This class of purchasers varies greatly when compared to the vast market segment targeted by the Registrant that is not necessarily singularly affected by an issue requiring undue care when selecting a service. Applicant provides direct contact from a healthcare professional, including support and consultation services from the time of diagnosis through post-surgery follow-up; allows for a single point of contact with a professional to navigate the complex insurance issues that arise when utilizing cutting-edge therapeutic treatments; allows for a single point of contact to connect with financial assistance resources; coordinates the numerous treatment visits that the consumer must make; and allows for a point of contact with a professional to answer healthcare and related questions, as well as, nonmedical questions that may arise during their cutting edge gene therapy treatment journey to individuals affected by rare genetic disorders.

Applicant provides services that are focused on unique and extremely rare individuals facing unique and extremely rare genetic diseases and utilize a narrow channel of trade wherein the life of each market participant depends upon the highly individualized, specific services provided. Therefore, the channels of trade occupied by Applicant's mark not intersect those of

the cited mark and are highly disparate supporting Applicant's assertion that no likelihood of confusion exists.

CONCLUSION

Even though Applicant has limited this reply to the issues addressed in the Examining Attorney's Appeal Brief, Applicant maintains and submits all arguments presented in Applicant's Appeal Brief. For the foregoing reasons, Spark Therapeutics, Inc. respectfully requests that the Examiner's refusal to register the mark SPARK THERAPETUICS GENERATION PATIENT SERVICES AND DESIGN be overturned and that the application be passed to publication.

Respectfully submitted,

SPARK THERAPEUTICS, INC.

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