

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: July 9, 2003

Opposition No. **91-118,621**

G. D. SEARLE & CO.

v.

BIOMARINE LTD.

Peter Cataldo, Interlocutory Attorney

On April 28, 2003, applicant filed a proposed amendment to its application Serial No. 75/498,497, with opposer's written consent. Subsequently, on May 28, 2003, the parties filed a stipulated withdrawal of the notice of opposition, predicated upon the Board's acceptance of applicant's proposed amendment

In its proposed amendment, applicant seeks to amend the drawing of its mark from "SEARX" to "SEA-RX" in the stylized form depicted below.

Revised Logo: January 12, 2001



*Logo prints Reflex Blue with white outline,
PMS 326 green gradient background.*

The Board agrees that the proposed amendment does not create such a change in essence of the original mark as to constitute a material alteration thereof. See 37 C.F.R. §2.72(a) and *Visa International Service Association v. Life-Code Systems, Inc.*, 220 USPQ 740 (TTAB 1983). Moreover, the proposed amendment is supported by the specimens currently of record in the application at issue, as they are substantially exact depictions of the marks as shown in the amended drawing. See 37 C.F.R. §§2.51(a)(1) and 2.51(b)(1); *Ex parte Toledo Scale Co.*, 63 USPQ 98 (Comm'r Pats. 1944). Cf. *In re Schecter Brothers Modular Corp.*, 182 USPQ 694 (TTAB 1974).

However, the amended drawing submitted as Exhibit A with applicant's proposed amendment is unacceptable because it appears to depict the mark with a rectangular design element. As such, the drawing as it appears in Exhibit A appears to depict the mark as "SEA-RX and design" as opposed to "SEA-RX" in stylized form as claimed in applicant's amendment. See 37 C.F.R. §§ 2.51 and 2.52.

In light of the foregoing, and because the parties are negotiating toward settlement, applicant is allowed until thirty days from the mailing date hereof to submit a substitute drawing depicting the mark as "SEA-RX" in the claimed stylized form, failing which, the opposition will proceed on the drawing as originally filed.

In the event that applicant submits an acceptable substitute drawing, the Board will give effect to the parties' May 28, 2003 conditional stipulation to withdraw the notice of opposition.

Applicant's request to suspend proceedings is granted to the extent that proceedings herein are otherwise suspended.