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

Proceeding	91168575
Party	Defendant AcryMed Incorporated AcryMed Incorporated 12232 SW Garden Place Portland, OR 97223
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Date	07/25/2006
Attachments	ACRYMED MOTION.pdf (5 pages)(173873 bytes)

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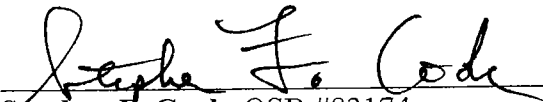
Johnson & Johnson,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91168575
)	Serial No. 78/475,642
AcryMed Incorporated,)	
)	
Applicant.)	
)	

MOTION TO AMEND APPLICATION

Pursuant to Section 605.03(b) of the Trademark Trial and Appeal Board Manual of Procedure, AcryMed Incorporated hereby requests that Serial No. 78/475,642 be amended to add the following additional statement to the description of the mark: "The portion of the mark comprised of a cross design is not displayed in the color red or orange, or in white on a red or orange background, or a colorable imitation thereof; and is not used and will not be used in the color red or orange, or in white on a red or orange background, or a colorable imitation thereof."

This amendment has been approved by both parties, Johnson & Johnson and AcryMed Incorporated, as evidence by the settlement agreement attached to this Motion as Exhibit A.

Dated: July 25, 2006.



Stephen F. Cook, OSB #83174
Attorneys for Applicant AcryMed Incorporated
Bullivant Houser Bailey PC
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888 SW Fifth Avenue
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EXHIBIT A

AGREEMENT

THIS AGREEMENT, made this 4th day of May, 2006, by and between JOHNSON & JOHNSON, a New Jersey corporation, having an address at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933-7001 ("J&J") and ACRYMED INCORPORATED, an Oregon corporation, having an address at 9560 NW Nimbus Ave, Beaverton, Oregon 97008 ("AcryMed").

RECITALS

- A. J&J has used and registered the marks RED CROSS and a Red Cross Design in connection with medical and surgical bandages and dressings, first aid kits, skin creams, and other health care products since long prior to 1905, as evidenced by its ownership of U.S. Reg. Nos. 54,308; 1,870,955; 1,888,143 and 1,889,576.
- B. AcryMed is the owner of application Ser. No. 78/475,642 – ACRYMED & Design for “medicated products for tissue repair and infection protection and control, namely, wound dressings, wound coverings, topical anti-microbial gels for therapeutic use, and anti-microbial coatings for internal and external use” in class 5. The ACRYMED & Design mark incorporates the letter “A” with design elements that J&J considers to be a “Cross Design.”
- C. AcryMed is using the mark ACRYMED & Design in the color maroon.
- D. J&J has evidenced its concern to AcryMed that there may be a likelihood of confusion, mistake or deception with J&J's RED CROSS and Red Cross Design marks if the Cross Design feature of AcryMed's mark appears in red or orange or in white on a red or orange background, and that J&J considers AcryMed's maroon to be a shade of red.
- E. The parties are desirous of avoiding any likelihood of confusion, mistake or deception by the public resulting from the use of their respective marks described above.

UNDERTAKINGS

NOW THEREFORE, in consideration of the above Recitals, the mutual promises and undertakings set forth in this Agreement, and other good and valuable consideration being extant, the parties agree as follows:

- 1. AcryMed will not use the Cross Design feature of the mark identified in Ser. No. 78/475,642 in whole or in part in the colors maroon, red or orange, or in white on a red or orange background, or colorable imitations thereof, in connection with the goods identified in said application.
- 2. J&J will not object to the registration of Serial No. 78/475,642, and will immediately withdraw the opposition proceeding it has instituted with regard to trademark application Serial No. 78/475,462, provided that AcryMed amends the application to enter the following description of the mark:

The portion of the mark comprised of a cross design is not displayed in the color red or orange, or in white on a red or orange background, or a colorable imitation thereof; and is not used and will not be used in the color red or orange, or in white on a red or orange background, or a colorable imitation thereof.

3. J&J will not object to the past, current, or future use of the mark shown in Serial No. 78/475,642, and will not claim past, current or future infringement by AcryMed due to the use of that mark, provided that AcryMed complies with the terms of ¶¶1 and 2, above.
4. AcryMed will have until three (3) months from the date of this agreement to phase out all use, including on product packaging and web site displays, of the current Cross Design portion of its mark in red or maroon, except that AcryMed will have the right to exhaust its current inventory of the SilvaGard brochure, the front page of which is attached as Schedule 1, so long as it ceases all use of that brochure within 24 months from the date of this Agreement.
5. The parties hereto acknowledge that this is a compromise resolution of the issues addressed in this Agreement, and that agreement to the terms of this Agreement shall not be construed to be an admission of any liability, fault or obligation by either party to the other party or to any other person whomsoever.
6. Each party may freely assign its marks as set forth in this Agreement. However, by taking an assignment, an assignee shall be deemed to have accepted all of the rights and to perform all of the obligations of the assignor under this Agreement.
7. This Agreement constitutes the entire understanding between the parties regarding the subject matter (into which all prior negotiations, commitments, representations, inducements and undertakings with respect to the subject matter hereof are merged), and except as provided herein, there are no other oral or written undertakings or agreements between the parties relating to the subject matter hereof. The terms of this Agreement may not be changed except by consent of the parties in writing.
8. This Agreement constitutes and shall be deemed a contract made under the laws of the State of New Jersey for any and all purposes, and shall be interpreted and enforced in accordance with such laws.
9. Each of the parties hereto warrants that it has the authority to bind itself by the signature of the person who signs this agreement.
10. This Agreement may be executed in identical counterparts with the same force and effect as if the signatures were all set forth on a single instrument. This Agreement is deemed to be executed as of the last date on which a party signs a counterpart to this Agreement.

11. In the event that either party breaches this agreement, the parties acknowledge that the non-breaching party will suffer immediate and irreparable injury and will have no adequate remedy at law.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed on the day, month and year set forth adjacent to each of the parties' signatures hereto.

JOHNSON & JOHNSON

Date: June 2, 2006

By: Kaye Foster-Cheek
Kaye Foster-Cheek
Title: Vice President

ACRYMED INCORPORATED

Date: 5-4 2006

By: Jack D. McMullen
Title: Pres & CEO

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Amend Application regarding Opposition No. 91168575/Serial No. 78/475,642 was served this 25th day of July, 2006 via regular U.S. Mail upon:

Norm D. St. Landau
Christen M. English
Drinker Biddle & Reath LLP
1500 K Street N.W. Suite 1100
Washington, DC 20005-1209

A handwritten signature in black ink, appearing to read "Stephen F. Cook", written over a horizontal line.

Stephen F. Cook
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(503) 499-4536

ATTORNEYS FOR APPLICANT