ESTTA Tracking number: **ESTTA641634**

Filing date: **11/26/2014**

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

Proceeding	91218833
Party	Defendant Fuenmayor, Ricardo A.
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Filer's Name	Ricardo A Fuenmayor
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Date	11/26/2014
Attachments	Consented Motion to Amend Goods.pdf(3931696 bytes)

IN THE U.S. PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL & APPEAL BOARD

Opp. Ref.: 123.0906

HORUS PHARMA, Opposer, v. **RICARDO A. FUENMAYOR,** Applicant.	Opposition No. 91218833 (Application Serial No. 86157681)

CONSENTED MOTION TO AMEND
APPLICANT'S IDENTIFICATION OF GOODS

RICARDO A. FUENMAYOR, Applicant herein, moves to amend the goods covered by his Application Serial No. 86157681 for **THORUS** in Class 10 by adding the following language to both clauses of Applicant's identification of goods, namely, "..., all of the foregoing excluding ophthalmological products and devices, dermatological products and devices, anti-infective, anti-inflammatory, antiviral, anti-allergy, healing and edema and dry-eye disease products and devices."

As published, Applicant's identification of goods currently reads:

> *Beautifying devices, namely, surgical and medical implant devices comprised of artificial materials for use in cosmetic surgery for the stretching of the user's face, skin, thus minimizing his/her wrinkles, for the specific purpose of obtaining a younger look; medical devices, namely, surgical implant devices comprised primarily of artificial materials for use in plastic surgery as cosmetic devices for improving appearance* in Class 10.

A redlined version of the amendment follows:

> *Beautifying devices, namely, surgical and medical implant devices comprised of artificial materials for use in cosmetic surgery for the stretching of the user's face, skin, thus minimizing his/her wrinkles, for the specific purpose of obtaining a younger look,* ***all of the foregoing excluding ophthalmological products and devices, dermatological products and devices, anti-infective, anti-inflammatory, antiviral, anti-allergy, healing and edema and dry-eye disease products and devices****; medical devices, namely, surgical implant devices comprised primarily of artificial materials for use in plastic surgery as cosmetic devices for improving appearance,* ***all of the foregoing excluding ophthalmological products and devices, dermatological products and devices, anti-infective, anti-inflammatory, antiviral, anti-allergy, healing and edema and dry-eye disease products and devices*** in Class 10.

Accordingly, the final identification of goods for Application Serial No. 86157681 will read as follows:

> *Beautifying devices, namely, surgical and medical implant devices comprised of artificial materials for use in cosmetic surgery for the stretching of the user's face, skin, thus minimizing his/her wrinkles, for the specific purpose of obtaining a younger look, all of the foregoing excluding ophthalmological products and devices, dermatological products and devices, anti-infective, anti-inflammatory, antiviral, anti-allergy, healing and edema and dry-eye disease products and devices; medical devices, namely, surgical implant devices comprised primarily of artificial materials for use in plastic surgery as cosmetic devices for improving appearance, all of the foregoing excluding ophthalmological products and devices, dermatological products and devices, anti-infective, anti-inflammatory, antiviral, anti-allergy, healing and edema and dry-eye disease products and devices* in Class 10.

Opposer makes no amendment to the goods and services covered by its Application Serial No. 79128753.

"If an amendment is filed in an application that is the subject of an opposition, the Board has jurisdiction over the application and will determine the propriety of the

amendment. Once an opposition has commenced, the application that is the subject of the opposition may not be amended in substance, *except with the consent of the other party or parties and the approval of the Board*, or upon motion granted by the Board." 37 CFR § 2.133; TBMP § 212.07; TBMP § 514 (emphasis added).

Opposer does not object and affirmatively consents to the proposed amendment as recited *supra*.

The Board is empowered to accept the consented amendment and to amend the identification of goods and the opposed application accordingly. TBMP § 514.01; *See Hachette Filipacchi Presse v. Elle Belle LLC*, 85 USPQ2d 1090, 1095 (TTAB 2007) (Board has jurisdiction to determine propriety of amendment; subsequent attempt by registrant to delete goods on which mark has never been used through the Post Registration Section Branch is irrelevant); *In re Pamex Foods, Inc.*, 209 USPQ 275, 277 (Comm'r 1980) (Trademark Examining Operation acted beyond its authority in denying amendment to registration which Board had already approved).

The Parties believe that republication of Application Serial No. 86157681 is not required.

Upon approval of the proposed amendment, the Parties will promptly file a stipulated withdrawal of the instant opposition.

Assuming the Board, approves and accepts Applicant's proposed amendment, the Board may dismiss Applicant's MOTION TO AMEND MARK REGISTRATION (Dkt. 5), filed November 18, 2014 and the relevant portions of Opposer's response thereto (Dkt. 6), filed November 21, 2014, as moot.

For the foregoing reasons, the Parties respectfully request that the Board approve the proposed amendment as soon as practicable.

Respectfully submitted,

RICARDO A. FUENMAYOR

Dated: November 26, 2014 By: _____

6318 23rd Ave
Brooklyn, NY 11204-3305
Applicant, Pro se

HORUS PHARMA

Dated: November 26, 2014 By: _____

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the CONSENTED MOTION TO AMEND APPLICANT'S IDENTIFICATION OF GOODS was served on the following individuals at the following addresses of record, by first class mail, postage prepaid, this 26th day of November 2014:

G. MATHEW LOMBARD
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Ricardo A. Fuenmayor