UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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RK/mt

February 4, 2019

Opposition No. **91244563**

Bayer HealthCare LLC

v.

Hal Bell and Henry Vargas

By the Trademark Trial and Appeal Board:

By the Board's institution order of November 5, 2018, Applicants were allowed until December 15, 2018, to answer the notice of opposition. Applicants failed to do so resulting in the issuance of a notice of default on December 25, 2018. Per the Board order, Applicants were allowed thirty days in which to show cause why default judgment should not be entered against them in accordance with Fed. R. Civ. P. 55(b)(2). On January 23, 2019, Applicants filed a putative motion to amend **Application Serial No. 87914405**. On January 24, 2019, Opposer filed the parties' stipulation to set aside the notice of default, to amend the subject application, and to withdraw the opposition without prejudice contingent upon entry of the amendment.

As the Board presumes that the parties' stipulation was intended to supersede Applicants' filing of January 23, 2019, that earlier filing will be given no

consideration. Furthermore, in view of the parties' stipulation, the notice of default is **SET ASIDE**.

As for the proposed amendment, Applicant seeks to change the identification of goods in International Class 10 as follows (additions bolded and deletions underlined):

From: Heating pads for <u>medical purposes</u>; Heating pads, electric, for <u>medical purposes</u>; Electric automatic moist heating pad for <u>medical purposes</u>; in International Class 10.

To: Heating pads for **use in relieving symptoms of an enlarged prostate**; Heating pads, electric, for **use in relieving symptoms of an enlarged prostate**; Electric automatic moist heating pad for **use in relieving symptoms of an enlarged prostate, none of the foregoing for use in relieving fever, or colds or for providing electrical stimulation for nerves for therapeutic purposes; all of the foregoing excluding products for pain and inflammation unrelated to an enlarged prostate**; in International Class 10.

Inasmuch as the amendment is clearly limiting in nature as required by Trademark Rule 2.71(a), and because Opposer consents thereto, it is **APPROVED** and entered. *See* Trademark Rule 2.133(a).

The contingency in Opposer's withdrawal having now been met, the opposition is **DISMISSED without prejudice**.

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