UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500
General Email: TTABInfo@uspto.gov

ajl/ky

June 20, 2023

Opposition No. 91272469

Vitruvi Corporation

v.

Camille Goutal and Isabelle Doyen

By the Trademark Trial and Appeal Board:

On May 23, 2023, Opposer filed the parties' stipulated proposed amendment to application Serial No. 79288015, with Opposer's consent, and Opposer's withdrawal with prejudice of the opposition, contingent upon entry of the amendment.

By the proposed amendment, Applicant seeks to amend the identification of goods in International Classes 3, 4 and 21 as follows (deletions are struck-through, and additions are in bold):

Class 3:

From:

> Perfumery products, namely, body cream, body lotion ~~and body deodorants~~; perfumes; eaux de toilette; eau de Cologne; scented water for body, namely, perfume; scented linen water for laundry; eau de parfum; extracts of flowers being perfumes; ~~body deodorants; perfume bases, namely, perfumed extracts for perfumes; incense;~~ fragrances; room fragrances; ~~air fragrance~~ reed diffusers; ~~fragrance emitting wicks for room fragrance;~~ shower gels; ~~body wash creams~~; body oils; ~~massage oils;~~ cosmetic creams, lotions and powders for face and body care; ~~shampoos; hair conditioners; hair lotions;~~ dentifrices; laundry

detergents; ~~aromatic potpourris; sachets for perfuming linen;~~ make-up for the face and body; make-up removing preparations; beauty masks; aftershave; cleansing milk for toilet purposes; bath soaps, toilet soaps, cream soaps and cosmetic soaps; ~~essential oils;~~ lipstick; lip glosses; amber being perfume; ~~scented wood~~

To:

Perfumery products, namely, body cream, body lotion perfumes; eaux de toilette; eau de Cologne; scented water for body, namely, perfume; scented linen water for laundry; eau de parfum; extracts of flowers being perfumes; fragrances **being perfumes**; room fragrances **being perfume sprays**; reed diffusers **comprised of perfumes and also including reeds and a diffuser container**; shower gels; body oils; cosmetic creams, lotions and powders for face and body care; dentifrices; laundry detergents; make-up for the face and body; make-up removing preparations; beauty masks; aftershave; cleansing milk for toilet purposes; bath soaps, toilet soaps, cream soaps and cosmetic soaps; lipstick; lip glosses; amber being perfume; **all of the foregoing specifically excluding essential oils, misters and diffusers for use in home and space scenting**

Class 4:

From:

Candles; perfumed candles; candles for night lights; tallow candles; tapers

To:

Candles; perfumed candles; candles for night lights; tallow candles; tapers**; all of the foregoing specifically excluding essential oils, misters and diffusers for use in home and space scenting**

Class 21:

From:

~~Perfume burner~~**;** empty perfume sprayers; ~~apparatus for perfuming air, namely perfume sprayers sold empty;~~ candle holders; candlesticks; non-electric candelabra; candle jars; soap holders

To:

> Empty perfume sprayers; candle holders; candlesticks; non-electric candelabra; candle jars; soap holders**; all of the foregoing specifically excluding essential oils, misters and diffusers for use in home and space scenting**

A proposed amendment to any application or registration which is the subject of a Board proceeding must comply with all other applicable rules and statutory provisions, including Trademark Rules 2.32 and 2.71(a), 37 C.F.R. §§ 2.32, 2.71(a). *See also* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) §§ 514.01 and 605.03(b) (June 2022). An identification that fails to identify the goods and services with specificity is indefinite, either because the nature of the goods or services is not clear, or because the wording is so broad that it may include goods or services in more than one class. *See* TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) §§ 1402.01, 1402.06(a) (2022). In particular, exclusionary language that falls outside the scope of the terms originally identified or that is otherwise qualitatively different from the goods and services as originally identified may not be added. TMEP § 1402.06(a).

Proposed Amendments to International Classes 3 and 4:

Although the proposed amendments to delete items from Classes 3 is sufficiently limiting, and the proposed exclusionary language as to "essential oils . . . for use in home and space scenting" is sufficiently limiting in that it clarifies that the remaining identified goods in International Classes 3 and 4 exclude essential oils for use in home and space scenting, the proposed exclusionary language as to "misters and diffusers" to the identification of goods in Classes 3 and 4 is not limiting in nature, as required by Trademark Rule 2.71(a). In particular, excluding "misters and diffusers for use in

home and space scenting" does not logically relate to "[p]erfumery products, namely, body cream, body lotion perfumes; eaux de toilette; eau de Cologne; scented water for body, namely, perfume; scented linen water for laundry; eau de parfum; extracts of flowers being perfumes; fragrances being perfumes; room fragrances being perfume sprays; reed diffusers comprised of perfumes and also including reeds and a diffuser container; shower gels; body oils; cosmetic creams, lotions and powders for face and body care; dentifrices; laundry detergents; make-up for the face and body; make-up removing preparations; beauty masks; aftershave; cleansing milk for toilet purposes; bath soaps, toilet soaps, cream soaps and cosmetic soaps; lipstick; lip glosses; amber being perfume" in Class 3 nor to "[c]andles; perfumed candles; candles for night lights; tallow candles; tapers" in Class 4.

Therefore, the Board cannot accept the proposed amendment to Classes 3 and 4 and will not enter the amendment to Classes 3 and 4.

Proposed Amendment to International Class 21:

Although the proposed amendments to delete items from Class 21 and to add exclusionary language as to "misters and diffusers for use in home and space scenting" are sufficiently limiting, the proposed exclusionary language as to "essential oils . . . for use in home and space scenting" to the identification of goods in International Class 21 is not limiting in nature, as required by Trademark Rule 2.71(a). In particular, excluding "essential oils . . . for use in home and space scenting" does not logically relate to "[e]mpty perfume sprayers; candle holders; candlesticks; non-electric candelabra; candle jars; soap holders" in Class 21.

Therefore, the Board cannot accept the proposed amendment to Class 21 and will not enter the amendment to Class 21.

Summary:

In view of these findings, the motion to amend is **denied without prejudice**. The present identification of services for Classes 3, 4, and 21, that is, the identification prior to the filing of the motion to amend, remains operative for purposes of future amendment. *See* Trademark Rule 2.71(a); TMEP § 1402.07(d).

However, inasmuch as the filing of the proposed amendment indicates to the Board that the parties are making efforts to settle this matter, proceedings are suspended, and the parties are allowed until **thirty days** from the date of this order to file a revised motion to amend, failing which the Board will resume proceedings and reset dates, and the opposition will go forward on the present application.

Accordingly, consideration of Opposer's withdrawal of the opposition is **deferred**.

Proceedings are otherwise suspended.