

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
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EJW/am

May 5, 2023

Opposition No. 91277664

*Brainlab AG*

*v.*

*Shan X. Wang*

**ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:**

On April 28, 2023, Opposer filed the parties' Stipulated Termination of the Proceeding Subject to Amendment of Application, comprised of Applicant's proposed amendment to application Serial No. 90668611 and Opposer's withdrawal without prejudice of the opposition, contingent upon entry of the amendment.

By the proposed amendment, Applicant seeks to amend the identification of goods in International Class 10 as follows (additions shown in bold text):

From:

Diagnostic apparatus for the detection of cancer

To:

Diagnostic apparatus for the detection of cancer, **namely diagnostic apparatus for testing of bodily fluids for use in cancer detection, and excluding devices and apparatus for computer-assisted surgery, robot-assisted surgery, radio-surgical and radio-therapeutic applications**

When a request to amend an application is filed, and the application is also the subject of other inter partes proceedings, the consent of the other parties in each of

the other proceedings must be of record before the Board may approve the amendment. *See* Trademark Rule 2.133(a); TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 514.02 (2022).

The application involved in this proceeding, application Serial No. 90668611, is also opposed by Curve Therapeutics Limited in Opposition No. 91276501. The motion to amend does not include the consent of Curve Therapeutics Limited. Therefore, although the amendment is clearly limiting in nature as required by Trademark Rule 2.71(a), the Board cannot approve and enter the amendment. Accordingly, the proposed amendment and the Board's consideration of Opposer's withdrawal of the opposition without prejudice are **DEFERRED**.

In view of the foregoing, Applicant is allowed until **THIRTY DAYS** from the date of this order in which to file in this proceeding the consent of Curve Therapeutics Limited to the proposed amendment.<sup>1</sup> This proceeding is otherwise **SUSPENDED**.

If no response is filed during the time allowed, the Board will resume proceedings will be reset dates, as appropriate.<sup>2</sup>

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<sup>1</sup> Even if Curve Therapeutics Limited provides its written consent to the proposed amendment, a notice of allowance for the opposed application will not be issued until the other opposition is resolved.

<sup>2</sup> The Board notes that Opposer's motion for summary judgment is pending in Opp. No. 91276501. If Applicant is unable to obtain the authorization of that Opposer to the proposed amendment in this proceeding until after the Board issues an order on the summary judgment motion, the parties herein may seek suspension of this proceeding pending the outcome of the pending summary judgment motion. *See* TBMP § 510.02; *cf. Tamarkin Co. v. Seaway Food Town Inc.*, 34 USPQ2d 1587, 1592 (TTAB 1995) (suspended pending outcome of ex parte prosecution of opposer's application).