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Filing date: **08/18/2022**

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

Petition for Cancellation

Notice is hereby given that the following party has filed a petition to cancel the registration indicated below.

Petitioner information

Name	Gebr. Brasseler GmbH & Co. KG		
Entity	German limited partnership	Citizenship	Germany
Address	TROPHAGENER WEG 25 LEMGO, 32657 GERMANY		

Attorney information	SUSAN B. FLOHR BLANK ROME LLP 1825 EYE STREET NW WASHINGTON, DC 20006 UNITED STATES Primary email: trademarks@blankrome.com Secondary email(s): brady.craig@blankrome.com, samar.aryani@blankrome.com (202) 420-2200		
Docket no.	125641-00234		

Registration subject to cancellation

Registration no.	5882723	Registration date	10/15/2019
Register	Principal		
International registration no.	NONE	International registration date	NONE
Registrant	Chengdu Di'ao Pharmaceutical Group Co.,Ltd. NO. 26, CHUANGYE ROAD, HIGH-TECH AVENUE HIGH-TECH DEVELOPMENT ZONE, CHENGDU SICHUAN, 610000 CHINA		

Goods/services subject to cancellation

Class 005. First Use: None First Use In Commerce: None Goods and services in the class that are subject to cancellation: Material for dental fillings and for sealing purposes

Grounds for cancellation

Abandonment	Trademark Act Section 14(3)
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Attachments	Petition for Cancellation - DIAO.pdf(147228 bytes)
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Signature	/sbf/
Name	Susan B. Flohr
Date	08/18/2022

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

GEBR. BRASSELER GMBH & CO.,)	
)	
Petitioner,)	
)	Registration No. 5882723
v.)	
)	
CHENGDU DI'AO PHARMACEUTICAL)	Cancellation No.: _____
GROUP CO., LTD.,)	
)	
Registrant.)	
)	

Hon. Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Attn.: Trademark Trial and Appeal Board

PETITION TO CANCEL REGISTRATION

Petitioner, Gebr. Brasseler GmbH & Co. KG, a German limited partnership with an address of Trophagener Weg 25, 32657 Lemgo, Germany ("Petitioner"), believes that it is or will be damaged by U.S. Trademark Registration No. 5882723 (the "'723 Registration") in respect of the registered goods "*material for dental fillings and for sealing purposes*" in Class 05 and hereby petitions for partial cancellation of the same pursuant to Section 14 of the Trademark Act of July 5, 1946, as amended, 15 U.S.C. § 1064.

Upon information and belief, the current record owner of the '723 Registration is Chengdu Di'ao Pharmaceutical Group Co., Ltd. ("Registrant"), a Chinese limited company with an address of No. 26, Chuangye Road, High-Tech Avenue High-Tech Development Zone, Chengdu Sichuan, CHINA 610000.

As grounds of this Petition, it is alleged that:

1. Petitioner is the owner of U.S. Trademark Application Serial No. 79315128 for the mark DIAO for “*dental instruments, namely, burs, cutters, drills; diamond instruments for dentistry, namely, burs, cutters, drills; dental drills; dental drill bits used in dental motors to enable dentists to cut or drill teeth*” [Class 10], filed on March 23, 2021, with a priority date of September 28, 2020 (“Petitioner’s Application”).

2. The United States Patent and Trademark Office has refused registration of Petitioner’s Application pursuant to Section 2(d) of the Lanham Act on the basis of alleged likelihood of confusion with the ‘723 Registration.

3. The ‘723 Registration was filed pursuant to Section 44(e) of the Lanham Act, 15 U.S.C. § 1126(e), and registered on October 15, 2019.

4. The ‘723 Registration is registered in connection with, in relevant part, “*material for dental fillings and for sealing purposes*” in Class 05 (the “Relevant Goods”).

5. Upon information and belief, despite the ‘723 Registration having registered more than 34 months ago, Registrant has never used and does not currently use the DIAO mark in commerce in the United States in connection with the Relevant Goods.

6. Upon information and belief, Registrant does not currently intend to resume use of the DIAO mark in the United States in connection with the Relevant Goods.

7. Upon information and belief, Registrant has never intended to use and does not currently intend to use the DIAO mark in commerce in the United States in connection with the Relevant Goods.

8. Upon information and belief, Registrant has abandoned the ‘723 Registration pursuant to 15 U.S.C. § 1127, and the ‘723 Registration is therefore subject to partial cancellation as to the Relevant Goods.

9. Upon information and belief, Registrant did not have the requisite *bona fide* intention to use the DIAO mark in commerce in the United States in connection with the Relevant Goods prior to or on the date the application that matured into the ‘723 Registration was filed, rendering the ‘723 Registration invalid and subject to cancellation for the Relevant Goods.

10. The continued registration of the ‘723 Registration for the Relevant Goods has prevented and continues to prevent Petitioner from obtaining registration in connection with Petitioner’s Application.

* * *

For the reasons set forth in the foregoing paragraphs, Petitioner believes that it is or will be damaged by the continued registration of Registrant’s Mark as to the Relevant Goods. The ‘723 Registration should therefore be cancelled in respect of the Relevant Goods.

WHEREFORE, Petitioner requests that this Petition for Cancellation be sustained and that the '723 Registration be cancelled in respect of the Relevant Goods.

Respectfully submitted,

GEBR. BRASSELER GMBH & CO. KG

Dated: August 18, 2022

By: /sbf/

Susan B. Flohr
Bradford C. Craig
Samar Aryani-Sabet
Its Attorneys

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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this correspondence is addressed to the Trademark Trial and Appeal Board, Hon. Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451, and is being deposited via the Electronic System for Trademark Trials and Appeals (ESTTA) on August 18, 2022.

/Samar Aryani-Sabet/
Samar Aryani-Sabet