

**THE PROTOCOL
RELATING TO THE MADRID AGREEMENT
CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS
PROVISIONAL REFUSAL OF PROTECTION**

Rule 17(1)

I. Office making the notification: STATE PATENT BUREAU OF THE REPUBLIC OF LITHUANIA Kalvariju g. 3, LT-09310 Vilnius LITHUANIA <div style="text-align: right;">Tel.: (370-5) 27 80 267 Fax.: (370-5) 27 50 723</div>	
II. Number of the international registration: 1 341 247	
III. Name of the holder and other indications of the international registration: <div style="display: flex; justify-content: space-between;"><div style="width: 35%;">Name of the holder:</div><div>Obschestvo s ogranichennoi otvetstvennostyu "NAUCHNO- PROIZVODSTVENNAYA FIRMA "MATERIA MEDICA HOLDING"</div></div> <div style="display: flex; justify-content: space-between;"><div style="width: 35%;">Verbal elements of the Mark:</div><div>AVAERA</div></div> <div style="display: flex; justify-content: space-between;"><div style="width: 35%;">Basic application:</div><div>RU, 26.11.2015, 2015738643</div></div>	
IV. Provisional refusal based on an opposition <div style="display: flex; justify-content: space-between; margin-top: 10px;"><div style="width: 35%;"><u>Name and address of the opponent:</u></div><div>Laverana GmbH & Co. KG Am Weingarten 4 D-30974 Wennigsen (DE)</div></div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"><div style="width: 35%;"><u>Name and address of the representative:</u></div><div>Tatjana Sterlina UAB „INTELS“ Naugarduko g. 32/2 LT-03225 Vilnius Tel.+370 5 233 5477, Fax.+370 5 216 2288</div></div>	

CONTINUATION SHEET

No: 1 of IV

VI. Grounds for refusal [(where applicable, see item VII)]:

- ☒ The mark would infringe rights acquired by third parties resulting from an earlier registration(s)
- ☐ Other grounds.

Opposition filed with the Division of Appeals of the State Patent Bureau on: 27.07.2017 No. PTZ-215

VII. Information relating to an earlier mark:*

Community Trade Marks (copy enclosed):

No 004098679

No 011493426

National registration (extract enclosed):

International registration (copy enclosed):

VIII. Corresponding essential provisions of the Lithuanian Law on Trade Marks [(see text under XII)]:*

Article 7 (1)(2)

IX. Information relating to subsequent procedure:

The proprietor of a mark of international registration against which an opposition has been filed must within a five months period from the date of this notification present a justified reply to opposition. The justified reply should be addressed to the Appeals Division of the State Patent Bureau. It should be presented in Lithuanian language and an address for the correspondence in the territory of the Republic of Lithuania should be indicated. Where the trademark owner is not a resident of the Republic of Lithuania or another member state of the European Union, neither he has subsidiary or representation registered in the Republic of Lithuania or another member state of the European Union, the justified reply should be presented through a patent attorney of the Republic of Lithuania. The list of patent attorneys is available on <http://www.vpb.gov.lt/engl/>. The time limit expires on **31.01.2018**.

XII. Corresponding essential provisions of the Lithuanian Law on Trade Marks:

Article 5. Signs of Which a Mark May Consist

Marks, with respect to which legal protection under this Law is applicable, may consist of any signs that can be represented graphically, for example:

- 1) words, personal surnames, names, artistic pseudonyms, names of the legal entities, slogans;
- 2) letters, numerals;
- 3) drawings, emblems;
- 4) three-dimensional forms (the shape of goods, their packaging or containers);
- 5) colours or combinations of colours, their compositions;
- 6) any combination of signs specified in subparagraphs 1-5 of this Article.

Article 6. Absolute Grounds for Refusal of Registration or Invalidation of a Mark

1. A sign shall not be recognised as a mark and shall be refused registration or the registration of a registered mark shall be declared invalid if:

- 1) the sign cannot constitute a mark under the requirements of Article 5;
- 2) the sign is devoid of any distinctive character;
- 3) it has become customary in the current language or in the *bona fide* and established practices of the trade;
- 4) it consists exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, the mode of production or other characteristics of the goods and/or services;
- 5) the sign is of such a nature as to mislead the public, for instance as to the nature, quality or geographical origin of the goods and/or services;
- 6) the sign is contrary to accepted principles of morality or public policy, including ethics of society and humanitarian principles;
- 7) the sign consists exclusively of the shape which results from the nature of the goods themselves or the shape of goods which is necessary to obtain a technical result or the shape which gives substantial value to the goods;
- 8) the sign consists of the official or traditional (abbreviated) state name of the Republic of Lithuania, or armorial bearings, flag or other state heraldic objects or any imitation from a heraldic point of view, also official signs and hallmarks indicating control and warranty, stamps, medals or marks of distinction, unless the permission for their use in a mark has been issued according to the established procedure by the institution authorised by the Government of the Republic of Lithuania;
- 9) it consists of the signs the registration of which has not been authorised by the competent authorities of other states or international organisations and the registration of which is to be refused or invalidated pursuant to Article 6ter of the Paris Convention;
- 10) it is a sign of high symbolic value, in particular a religious symbol;
- 11) it contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the mark for such goods in the Republic of Lithuania is of such a nature as to mislead the public as to the true place of origin of the goods. The above provision shall also be applicable against a geographical indication which, although literally true as to the place of origin of the goods, falsely represent to the public that the goods originate in another territory;
- 12) it contains or consists of a geographical indication identifying wines for wines or spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.

2. In the cases provided for in subparagraphs 2, 3 or 4 of paragraph 1 of this Article, a sign may be recognised as a mark and its registration may not be invalidated if, before the date of application for registration, after the date of filing of the application or registration of the mark and following the use which has been made of it, it has acquired distinctive character.

Article 7. Other Grounds for the Invalidation of Registration

1. Registration of a mark shall be declared invalid if the mark is:

- 1) identical with an earlier mark, and the goods and/or services for which the mark is registered are identical with the goods and/or services for which the earlier mark is applied for or is registered;
- 2) identical with or similar to the earlier mark and because of the identity or similarity of the goods and/or services covered by the marks there exists a likelihood of confusion on the part of the public; the likelihood of confusion includes the likelihood of association with the earlier mark;
- 3) identical with the mark recognised as well-known in the Republic of Lithuania in the manner prescribed by Article 9 of this Law, the proprietor of which is another person, or because of its similarity to the mark it is liable to mislead the public;
- 4) identical with the name of the legal entity or processing a misleading likelihood to the name of the legal entity, whose proprietor is another person who acquired the right to the name of the legal entity in the Republic of Lithuania before the date of filing of the application for the registration of the mark or the date of the priority, if on the specified date the firm had a right to engage in identical or similar trade to which the goods and/or services covered by the registered mark may be attributed;

5) identical with the geographical indication protected in the Republic of Lithuania or possessing a misleading likelihood thereto, except for the indication incorporated in the mark as the disclaimer, for which registration is applied for by a person entitled to use the geographical indication;

6) identical with the protected industrial design or any other object of industrial property, literary, scientific or artistic work protected under the copyright, the name or surname or artistic pseudonym of a famous person, or the portrait of another person or its likelihood to the above is misleading, except in cases where consent has been granted by the owner of the rights or the successor to them.

7) identical with, or similar to, an earlier Community trade mark and where the later mark has been registered for goods and (or) services which are not similar to those for which the earlier Community trade mark is registered, where the earlier Community trade mark has a reputation in the European Community and where the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier Community trade mark.

8) identical with, or similar to, an earlier trade mark and where the later mark has been registered for goods and (or) services which are not similar to those for which the earlier trade mark is registered, where the earlier trade mark has a reputation in the Republic of Lithuania and where the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier Community trade mark (...)

3. Registration of the mark may be declared invalid where it becomes evident that the application for the registration of a mark was made in bad faith by the applicant.

Article 11. Filing of an Application

2. (...) Foreign nationals who are not permanent residents of the Republic of Lithuania or another member state of the European Union, or another state of the European Economic Area and legal persons of foreign states who do not have a subsidiary or representation registered in the Republic of Lithuania or another member state of the European Union, or another state of the European Economic Area shall file applications to the State Patent Bureau and perform all actions relating to the registration of the mark with the State Patent Bureau, including also representation at the Appeals Division, through the patent attorney of the Republic of Lithuania (...)

Article 18. Opposition

1. Within a period of three months following the publication of the registered Mark in the Official Bulletin of the State Patent Bureau, the interested person may give to the Appeals Division a justified written opposition to registration of the mark on the grounds that it may not be registered under Articles 6 and 7 of this Law (...)

7. The decision made by the Appeals Division may be appealed against to the Vilnius County Court within six months from the day of adoption thereof.

8. Decisions made by the Appeals Division shall be published in the Official Bulletin of the State Patent Bureau.

Article 19. Appeal and Opposition Examination at the State Patent Bureau

1. Appeals and oppositions are examined at the written or public oral proceedings of the Appeals Division (...)

3. (...) Where appeals and oppositions are examined at the oral proceedings the applicant, the interested person, the proprietor of the mark against which opposition has been filed or the representatives of the above persons are invited to take part in the examination proceedings of the Appeals Division, however their absence shall not prevent from examination of the appeal or opposition (...)

Article 34. Special Provisions Applicable to International Registration of a Mark

(...)

4. The proprietor of a mark of international registration against which an opposition has been filed must within a five months period from the date of Notification of Refusal to the International Bureau appoint his representative in the manner laid down in paragraph 2 of Article 11 of this Law and present a justified reply to opposition. Failure to present a justified reply to the opposition shall be considered as a refusal to take part in the examination of the opposition and shall not prevent the Appeals Division from examining the opposition in the absence of the proprietor of the mark of international registration or his representative. If the proprietor of the mark of international registration to which the opposition is filed fails to appoint his representative, the decision made by the Appeals Division shall not be communicated to the proprietor of the mark of international registration (...)

Article 49. Institutions Having Jurisdiction in Disputes Relating to Marks

1. The Appeals Division of the State Patent Bureau shall deal with disputes provided for in Article 18 of this Law.

2. The Vilnius County Court shall deal with disputes relating to:

- 1) decisions of the Appeals Division of the State Patent Bureau;
- 2) invalidation of registration of a mark;
- 3) revocation of registration of a mark;
- 4) enforcement of the proprietor's rights;
- 5) recognition of the mark as well-known in the Republic of Lithuania;
- 6) Community trade marks as defined in the Council Regulation on Community Trade Mark.



Protect your intellectual property in the European Union

EUTM file information

Lavera
004098679

Trade mark information

Name	Lavera	Filing date	29/10/2004
Filing number	004098679	Registration date	25/02/2008
Basis	EUTM	Expiry date	29/10/2024
Date of receipt	29/10/2004	Designation date	
Type	Word	Filing language	German
Nature	Individual	Second language	English
Nice classes	3, 5, 10, 16, 21, 24, 25, 32, 42, 44 (Nice Classification)	Application reference	GM43289
Vienna Classification		Trade mark status	Registered
		Acquired distinctiveness	No

Goods and services

English (en)



3 Perfumery goods; essential oils; cosmetics, decorative cosmetics; face creams and lotions; skin-cleansing lotions and creams, hand and body lotions and creams; tinted moisturising creams, make-up, foundation, face powder and rouge; blemish stick, lipstick, lip pencils, eyeliner pens and mascara, eyeshadow; sun care preparations; foot-care preparations; foot creams and lotions; exfoliants; abrasive implements in the form of pumice stones; non-medicated powders and lotions for foot spas; body care products, shower gels, hair care products; shampoos and hair lotions, conditioning rinses (conditioners), combined shampoo and conditioner, hair sprays, styling mousse and gels; hair dyes; baby and infant care products; bath oils, shampoos, skin oils and creams; anti-wrinkle creams; massage oils; grooming products for men; shaving cream, after-shave balms; deodorants; products for oral hygiene (not for medical purposes); preparations for the mouth and for cleaning the mouth, breath-freshening and mouth-freshening preparations, mouth sprays, mouth rinses, dentifrices; toothpaste; antiperspirants.

5 Pharmaceutical products and health-care products; medicated lubricants; dietetic substances and sanitary preparations, dietetic substances adapted for medical use; nutritional supplements; vitamin preparations; disinfectants; royal jelly (for medical purposes); herbal tea; corn remedies; headache pencils; lactose; milking grease; except foodstuffs, dietetic substances and beverages especially for babies, infants and children, included in this class.

10 Massage apparatus, gloves for massage, massage articles; physical exercise apparatus, for medical purposes; spelt cushions (for medical purposes), cherry stone cushions (for medical purposes); feeding bottles; maternity belts.

16 Printed matter; stationery; photographs; adhesives for stationery or household purposes; paint brushes; instructional and teaching material (except apparatus); plastic materials for packaging; towels of paper, paper napkins.

21 Brushes, in particular eyebrow brushes; cosmetics brushes; toothbrushes; nail brushes; sponges, combs, hair combs; oils and foot spa containers.

24 Woven goods and textiles; towels, bath towels, bed and table covers; bath linen (except clothing); tissues of textile for removing make-up; Household textiles; washing mitts.

25 Clothing, t-shirts, headgear; bathrobes; bathing shoes and trunks, swimsuits; caps; shawls; stockings and socks.

32 Anti-aging drinks.

42 Biological research; cosmetic research.

44 Hygienic and beauty care; beauty-salon services; health consultancy; manicuring; operating of wellness facilities, consultancy in the field of hygienic, cosmetic and beauty care, in particular in the field of decorative cosmetics and anti-ageing; nutrition consultation.

Owners

Laverana GmbH & Co. KG

ID	387938	Country	DE - Germany	Correspondence address	
Organisation	Laverana GmbH & Co. KG	State/county	n/a	Laverana GmbH & Co. KG	Can be accessed and changed by authorised user via the User Area
		Town	Wennigsen	Am Weingarten 4	
Legal status	Legal entity	Post code	30974	D-30974 Wennigsen	
		Address	Am Weingarten 4	ALEMANIA	Can be accessed and changed by authorised user via the User Area
					Can be accessed and changed by authorised user via the User Area



Protect your intellectual property in the European Union

EUTM file information

Lavera
011493426

Trade mark information

Name	Lavera	Filing date	16/01/2013
Filing number	011493426	Registration date	
Basis	EUTM	Expiry date	
Date of receipt	16/01/2013	Designation date	
Type	Word	Filing language	German
Nature	Individual	Second language	English
Nice classes	3, 5, 32, 44 (Nice Classification)	Application reference	EW35239NSJFamh
Vienna Classification		Trade mark status	Application opposed
		Acquired distinctiveness	No

Goods and services

English (en)



3 Body and skin care and beauty preparations (not for medical purposes); milks, tonics, lotions, creams, emulsions, gels for the face and body; non-medicated cleansing preparations for the face and body; skin astringents not for medical purposes; body mist; non-medicated foot baths, depilatory creams; pumice stones for personal use; soaps; bubble bath; shower creams and gels; skin exfoliating products; make-up removing preparations for the face; talcum powder; shampoos; hair lotions, oils, conditioners and repair preparations; hair dyes; hair spray, gel and mousse; hair brighteners; hair mascaras; shaving creams and gels; after-shave gels and lotions; perfumery; deodorants for personal use; essential oils; bath beads; bath oils and salts; cosmetics; masks; foundation cream; blush; bronzing powder; make up powder; facial shimmer preparations; mascara; eyeliner; cosmetic eye and lip pencils; eye shadows; lip balms; lip gloss; lipsticks; makeup removing preparations; nail polish; nail forms; false nails; nail polish remover; cuticle creams; preparations for strengthening nails; non-medicated concealer sticks; body glitter; sun-tanning lotions and creams for the face and body; fake tan lotions and creams for the face and body; sunscreen creams; after sun lotions and creams for the face and body; Perfumes, eaux de toilette; bath and shower gels and salts not for medical purposes; toilet soaps; cosmetics, in particular creams, milks, lotions, gels and powders for the face, body and hands; sun-tanning milks, gels and oils and after-sun preparations (cosmetics); make-up preparations; shampoos; gels, mousses, balms and preparations in aerosol form for hairdressing and haircare; hair lacquers; hair-colouring and hair-decolorizing preparations; preparations for waving and setting hair; cosmetics, decorative cosmetics; face creams and lotions; skin-cleansing lotions and creams, hand and body lotions and creams; tinted moisturising creams, make-up, foundation, face powder and rouge; blemish stick, lip pencils, eyeliner pens and mascara, eyeshadow; sun care preparations; foot-care preparations; foot creams and lotions; exfoliants; abrasive implements in the form of pumice stones; non-medicated powders and lotions for foot spas; body care products, shower gels, hair care products; shampoos and hair lotions, conditioning rinses (conditioners), combined shampoo and conditioner, hair sprays, styling mousse and gels; hair dyes; baby and infant care products; bath oils, shampoos, skin oils and creams; anti-wrinkle creams; massage oils; grooming products for men; shaving cream, after-shave balms products for oral hygiene (not for medical purposes); preparations for the mouth and for cleaning the mouth, breath-freshening and mouth-freshening preparations, mouth sprays, mouth rinses, dentifrices; toothpaste; antiperspirants.

5 Pharmaceutical products and health-care products; medicated lubricants; dietetic substances and sanitary preparations, dietetic substances adapted for medical use; vitamin preparations; disinfectants; royal jelly (for medical purposes); herbal tea for medical or therapeutic purposes; corn remedies; headache pencils; lactose; milking grease; except foodstuffs, dietetic substances and beverages especially for babies, infants and children, included in this class; nutritional supplements that may contain proteins, glucides, lipids, peptides and/or fibres, or micronutrients such as vitamins and/or minerals and/or amino acids and/or fatty acids and/or plants, and/or vegetable extracts and/or purified molecules extracted from vegetables, for beauty and skin, body, face, hair or nail care, in the form of capsules, tablets, ampules, yeast, powders, bars, creams or drinks, for medical and/or cosmetics and/or food purposes; nutritional additives made from meat, fish, poultry and game, meat extracts, fruit and canned vegetables, dried and cooked, jellies, jams, compotes, eggs, milk and milk products, edible oils and fats, for beauty and skin, body, face, hair or nail care in the form of capsules, tablets, vials, yeast, powders, bars, creams or beverages, for medical and/or cosmetics and/or food purposes; nutritional supplements that may contain coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee, flour and preparations made from cereals, bread, pastry and confectionary, ices, honey, treacle, yeast, baking powder, salt, mustard, vinegar, sauces (condiments), spices, ice, for beauty and skin, body, face, hair or nail care, in the form of capsules, tablets, ampules, yeast, powders, bars, creams or

drinks, for medical and/or cosmetics and/or food purposes; nutritional additives made from agricultural, horticultural, forestry and seed products (not included in other classes), fresh fruit and vegetables, seeds, plants and natural flowers, for beauty and skin, body, face, hair or nail care in the form of capsules, tablets, vials, yeast, powders, bars, creams or beverages, for medical and/or cosmetics and/or food purposes; nutritional additives for beauty and skin, body, face, hair or nail care in the form of vials for drinking or beverages, for medical and/or cosmetics and/or food purposes; cosmetics in all galenical forms, not adapted for medical use.

32 Anti-aging beverages, not for pharmaceutical purposes.

44 Medical services; medical clinics; health and beauty care services, hygienic services; aromatherapy services; massage; manicuring; beauty salons, hairdressing salons; hygienic and beauty care; health consultancy; manicuring; operating of wellness equipment, namely operating beauty salons and medical healing and thermal spas, consultancy in the field of hygienic and beauty care, in particular in the field of decorative cosmetics and anti-ageing; nutrition consultation.

Owners

Laverana GmbH & Co. KG

ID	387938	Country	DE - Germany	Correspondence address	
Organisation	Laverana GmbH & Co. KG	State/county	n/a	Laverana GmbH & Co. KG	Can be accessed and changed by authorised user via the User Area
		Town	Wennigsen	Am Weingarten 4	
		Post code	30974	D-30974 Wennigsen	
Legal status	Legal entity	Address	Am Weingarten 4	ALEMANIA	Can be accessed and changed by authorised user via the User Area
					Can be accessed and changed by authorised user via the User Area