

THE PROTOCOL RELATING TO THE MADRID AGREEMENT
CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS

PROVISIONAL REFUSAL BASED ON AN OPPOSITION

notified to the International Bureau of the World Intellectual Property Organization (WIPO) according to Article
5 of the Madrid Protocol

I. Office refusing protection:

National Board of Patents and Registration of Finland
Trademarks
P.O. Box 1170
FIN-00101 HELSINKI
Telephone: +358-9-6939500
Telefax: +358-9-69395585

II. Number of the international registration which is the subject of the refusal: 824061

III. Other information concerning the international registration which is subject of the refusal:
Verbal elements of the mark: MUCOSIN (word mark).

IV. The grounds for this refusal are the following:

An opposition to the mark has been made by BOEHRINGER INGELHEIM PHARMA GMBH & CO.
KG, Binger Strasse 173, D-55216, INGELHEIM, DE

According to the opponent the mark MUCOSIN is liable to be confused with opponent's trademark nro
68458 MUCOVIN; registered 05.01.1979 (dd.mm.yyyy); application date (25.05.1973); for all the
goods in class 5 (extract from the trademark register enclosed).

The name and address of the opponent:
BOEHRINGER INGELHEIM PHARMA GMBH & CO. KG, Binger Strasse 173, D-55216,
INGELHEIM, DE

The name and address of the representative of the opponent:
Kolster Oy Ab, Iso Roobertinkatu 23, 00120, HELSINKI

V. Provisions of the Finnish Trademarks Act applicable on the subject (enclosed):
Article 6 paragraph 1
Art. 14 paragraph 1 item 6

VI. Total refusal

VII. The holder of the registration is invited to comment the opposition. The statement shall be received by National Board of Patents and Registration of Finland no later than within 16 weeks from the date of the refusal. The time limit expires **17.08.2005** (dd.mm.yyyy).

The request has to be filed through the intermediary of a representative resident in Finland (Article 56 f).

VIII: Opposition period began **15.02.2005** (dd.mm.yyyy) , ended **15.04.2005** (dd.mm.yyyy).

IX. Date on which the refusal was pronounced: 27.04.2005 (dd.mm.yyyy)

X. Signature of the Office


Olli Teerikangas
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OTE TAVARAMERKKIREKISTERISTÄ
UTDRAG UR VARUMÄRKESREGISTRET
EXTRACT OF THE REGISTER OF TRADEMARKS

Rekisterinnumero
Registernummer
Registration number (111) 68458

Rekisteröintipäivä
Registreringsdatum
Date of registration (151) 05.01.1979

Rekisteröinti päättyy
Registreringen upphör
Registration expires (180) 05.01.2009

Hakemusnumero
Ansökningsnummer
Application number (210) T197303845

Hakemispäivä
Ingivandedatum
Filing date (220) 25.05.1973

Haltija - Innehavare - Holder (732)
(Merkitty rekisteriin - Antecknad i registret - Entry in the Register)

BOEHRINGER INGELHEIM PHARMA GMBH & CO. KG, Ingelheim am
Rhein, DE
(29.12.2003)

Asiamies - Ombud - Representative (740)
(Merkitty rekisteriin - Antecknad i registret - Entry in the Register 29.12.2003)

Kolster Oy Ab, Helsingfors

Tavaramerkki - Varumärke - Trademark (540)

MUCOVIN

Tavarat/palvelut - Varor/tjänster - Goods/services (511)
(Merkitty rekisteriin - Antecknad i register - Entry in the Register)

Luokka/Klass/Class 5

Rekisterimerkintöjä
Registeranteckningar
Entries in the Register

Merkintä - Anteckning - Entry

Merkitty rekisteriin Hakemispäivä
Antecknad i registret Ingivandedatum
Entry in the Register Filing date
Selitys - Förklaring - Explanation

Luovutuspäivä
Datum för överlåtelsen
Date of assignment

Sopimuspäivä
Datum för avtalet
Date of agreement

Förnyelse
30.09.1988 31.08.1988

Förnyelse
10.12.1998

Överlåtelse
29.12.2003 17.11.2003 05.11.2003

Haltijan ilmoittama osoite - Innehavarens adress enligt anmälan - Reported address of the trademark owner:

Binger Strasse 173, 55216 Ingelheim, DE

Extract from the Finnish Trademarks Act

Art. 6.

Trade symbols shall be regarded under this Act as liable to cause confusion only if they apply to goods of identical or similar type. Notwithstanding the foregoing, the confusability of trade symbols may be judged in favor of a symbol that has a reputation in Finland where the use of another's trade symbol without due cause would constitute unfair exploitation of, or action detrimental to, the distinctive character or fame of the earlier trade symbol.

The second paragraph of this Article shall apply also to the auxiliary trade names and secondary symbols referred to in the third paragraph of Article 3.

Art. 13.

To be eligible for registration, a trademark must be capable of distinguishing its proprietor's goods from those of others. A mark that denotes either alone or with only few alterations or additions, the kind, quality, quantity, use, price or place or time of manufacture of the goods shall not, as such, be regarded as distinctive. Neither shall a mark be regarded as distinctive, if it is solely composed of a form that is characteristic of the goods, necessary for achieving a technical result or that substantially increases the value of the goods. In assessing whether a trademark possesses distinguishing power, all the factual circumstances shall be borne in mind, particularly the length of time and extent to which the mark has been used.

Art. 14.

A trademark shall not be registered:

- (1) if it is contrary to law and order, or to morality;
- (2) if it is liable to mislead the public;
- (3) if, without proper permission, it incorporates national armorial bearings, a national flag or other emblem, a sign or hallmark indicating control and warranty used by the State for goods of the same type as those for which the trademark is sought or a similar type, the armorial bearings of a Finnish commune, or the flag, armorial bearings or other emblem, name or abbreviated name of an international organization or any device or emblem, name or abbreviated name liable to be confused with the symbols or emblems, marks, names or abbreviations referred to in this item;
- (4) if it is composed of or contains anything likely to give the impression of being the protected trade name of another or the auxiliary trade name or secondary symbol of another as referred to in the third paragraph of Article 3, or of being the name or likeness of another person, unless such name or likeness plainly relates to a person long dead;
- (5) if it is composed of or contains anything likely to give the impression of being the title of another's protected literary or artistic work, such title being original in character, or if it constitutes an infringement of another's copyright in such a work or of his rights in a photographic illustration or a protected design;
- (6) if it is liable to be confused with the name or protected trade name of another trade, with an auxiliary trade name or secondary symbol of the kind referred to in the third paragraph of Article 3, with the trademark of another which has been registered on the basis of an earlier application or with the trade symbol of another party that is already established when registration is sought;
- (7) if it is liable to be confused with a trade symbol being used by another party for his goods at the time of the application, and if the applicant was aware of that use at the time of his application and had not used his own mark before the other trade symbol came into use;
- (8) if it is liable to be confused with a trademark protected by an international registration valid in Finland or European Community that on basis of this registration enjoys an earlier right in Finland or European Community;
- (9) if it is liable to be confused with a Community trade mark within the meaning of Article 57 that has been registered on the basis of an earlier application or that has seniority from Finland under Article 34 or 35 of the Council Regulation referred to in Article 57;
- (10) if it is liable to be confused with a registered name of a plant variety; or
- (11) if there is an obstacle to registration within the meaning of Council Regulation (EEC) No. 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs.

In the cases referred to in items (4) to (9), registration may be granted if the person whose right is concerned agrees thereto, and provided that the registration does not contravene any of the other provisions of the first paragraph of this Article.

Art. 15.

The exclusive rights in a trademark acquired by registration do not cover any part of the mark that cannot be registered as such.

If the trademark contains any such part and there are special reasons to believe that its registration may cause uncertainty regarding the extent of the exclusive rights granted, protection of the part may be specifically disclaimed when the registration is made.

If a part of a trademark excluded from protection later becomes registrable, a new registration may be made to cover that part or the entire trademark without the exclusion of the part from protection.

Art. 56b paragraph 3.

If the proprietor of an international registration has not within the given time limit submitted his statement commenting on the registration authority's notification referred to in paragraph 1, the international registration shall not take effect in Finland. If the said notification only concerned some of the goods in the international registration, the international registration shall take effect in Finland in respect of those of the goods that the notification did not concern.

Art. 56c.

If no obstacle to registration is found, the registration authority shall give public notice of the International Bureau notification referred to in Article 56a as laid down in the first paragraph of Article 20. The public notice shall specify the date accorded to the international registration by the International Bureau.

Any opposition to an international registration in Finland shall be filed in writing with the registration authority within two months of the date of the public notice.

Art. 56f.

If the proprietor of an international registration who is not domiciled in Finland wishes to submit a statement to the National Board of Patents and Registration of Finland, he shall appoint a representative resident in Finland.