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

EX OFFICIO PROVISIONAL REFUSAL OF PROTECTION ACCORDING TO RULE 17 (2)

I. National office that notifies the refusal of protection:

The Swedish Patent and Registration Office
Trademarks Sections
Box 530
S-826 27 SÖDERHAMN
Sweden

Telephone: int + 46 8 782 25 00
Telefax: int + 46 270 173 51

II. Number and wording of the international registration which is subject to refusal: 846495, PLATELIA

III. Grounds for refusal:

☐ The mark is not distinctive.

☒ Confusingly similar to the national mark(s): PLATELIN nr: 242665.
Holder: bioMériux B.V., Boseind 15. NL-5281 RM Boxtel, Nederländerna.

☐ Confusingly similar to the mark(s) under the Madrid Protocol:
Holder:

☐ Confusingly similar to the Community Trademark(s):
Holder:

☐ Other grounds:

IV. Provisions of the Swedish Trademarks Act (enclosed) : Article 14 par. 1.6.

V. ☒ Refusal for all the goods and services

VI. The holder of the registration may request a review of the refusal. The request must be received by the Swedish Patent and Registration Office no later than 3 (three) months after the date of the refusal, that is 28-07-2006. The request must be filed in Swedish.
Please note that if the designation is accepted subsequent to a review or an appeal, an opposition may be filed against the mark within 2 (two) months of the publication of the mark.
Oppositions may be filed after the end of the 18-month period (Article 5(2)(c)(i) of the Protocol, Rule 16(1). Information concerning the dates on which the opposition period begins and ends will be communicated at the same time as the notification of a provisional refusal on an opposition.

VII. Date of the notification of the provisional refusal: 28-04-2006

VIII. Signature by the Office: Åsa Ekvall Åsa Ekvall

Number of continuation sheets: 3

REGISTRERAD

Registeringsnummer:	242665	**Registreringsdatum:**	1992-11-27
Ansökningsnummer:	1989/03889	**Ingivningsdatum:**	1989-04-21

PLATELIN

Klassificering:

1: Kemiska preparat för vetenskapliga ändamål; biologiska produkter och preparat för laboratorier; reagenser för laboratorier; diagnostiska preparat, ej för medicinska eller veterinära ändamål.

5: Diagnostiska preparat för medicinska ändamål.

Innehavare:

bioMérieux B.V., Boseind 15, NL-5281 RM BOXTEL, Nederländerna

Ombud:

Awapatent AB, Box 5117, 200 71 MALMÖ, Sverige,
Org.nr: 556082-7023

Extract from the Swedish Trademarks Act

Article 2. An exclusive right in a trademark is acquired also without registration when the mark has been established on the market.

Article 6. Symbols shall be deemed to be confusingly similar under this Act only if they relate to goods of the same kind or a similar kind.

Confusing similarity may be invoked also for the benefit of a symbol, which has a reputation in this country if the use of another similar symbol would take unfair advantage of, or would be detrimental to, the distinctive character or reputation of the symbol having the reputation.

Article 13. A trademark may be registered only if it is distinctive. A mark which, exclusively or with only minor changes or additions, indicates the kind, quality , quantity, use, price or geographical origin of the goods or the date of their production shall not in itself be deemed to be distinctive. In the assessment of whether a mark is distinctive consideration shall be given to all circumstances and in particular to the scale and the time of the use of the mark.
A symbol consisting exclusively of a shape which results from the nature of the goods or of a shape which is necessary to obtain a technical result or of a sign which gives a substantial value to the goods may not be registered as a trademark.

Article 14. A trademark may not be registered:
1) if the mark contains such a State emblem or international emblem or such a local authority coat of arms which under existing laws or regulations may not be used, without permission, as a trademark, or anything that may be easily confused therewith;
2) if the mark is likely to deceive the public;
3) if the mark is otherwise contrary to laws or regulations or public order or is likely to cause offence;
4) if the mark contains or consists of elements which are likely to convey the impression of being another person's trade name or the family name, artistic name or similar name of another person, or another person's portrait, unless the name or the portrait obviously relates to a person who is long deceased;
5) if the mark contains an element which is likely to convey the impression of being the title of another person's protected literary or artistic work, where the title is distinctive, or which would violate another person's copyright in a literary or artistic work or another person's right in a photographic picture or in a design;
6) if the mark is confusingly similar to a name or a trade name which is being used in the course of another person's business activities or to another person's trademark which is registered on the basis of an earlier application, or to another person's trade symbol which is established on the market when the application for registration is filed;
7) if the mark is confusingly similar to a trade symbol which, at the time of the application, is being used by another person and the applicant had knowledge about that use at the time of the application and had not used the mark before the other symbol was first used;
8) if the mark is confusingly similar to a trademark covered by an international registration with effect in Sweden and for which the date referred to in Article 55, second paragraph, precedes the date of the application.

9) if the mark is confusingly similar to a Community trademark owned by another person which is registered on the basis of an earlier application.

In cases referred to in items 4), 5), 6), 7) 8) and 9) the registration may nevertheless be effected if the person whose right is involved gives his consent and there are no other obstacles according to the provisions of the first paragraph. ---

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Article 15. An exclusive right in a trademark acquired through registration does not include such elements of the mark, which can not by them be registered.

Article 21. Following an opposition, the Registration Authority shall invalidate the registration if there is an obstacle to it. If there is an obstacle only in respect of part of the goods listed in the registration, the Registration Authority shall, instead, if the trademark owner so desires, invalidate the registration only as regards those goods.

The Registration Authority shall refuse the opposition if there is no obstacle to the registration.

A notice shall be published when the decision of the Registration Authority concerning the opposition has taken legal force. If the decision implies that the registration is invalidated wholly or in part, this fact shall be recorded in the register.

Article 54. If the National Trademark Authority receives a notification from the International Bureau to the effect that a person other than one referred to in Article 51 has requested an extension of the territorial effect of an international registration of a mark to Sweden, the Authority shall examine whether there is an obstacle to admitting such an effect.

Such an obstacle exists if the trademark referred to in the international registration does not fulfil the requirements under Article 13 or if an obstacle to a national registration would have existed according to Article 14.

Article 55. If there is an obstacle to the registration according to Article 54, second paragraph, the National Trademark Authority shall, within 18 months from the date of the notification referred to in Article 54, first paragraph, notify the International Bureau that the international registration can not have effect in Sweden and state the grounds therefore.

Article 56. After the expiry of the time limit indicated in Article 55, third paragraph, the National Trademark Authority shall, if there is no obstacle to it, decide that the international registration shall have effect in Sweden. When that decision has taken legal effect, the trademark shall be entered into the register and a notice of this fact be published.
If there is an obstacle to admitting the effect in Sweden of the international registration, the National Trademark authority shall decide that the international registration shall not have any effect in this country. The decision shall indicate the grounds which have determined the result. If the National Trademark Authority has not previously transmitted a notification under Article 55, first paragraph, it shall communicate the decision to the International Bureau within 18 months from the date of the notification referred to in Article 54, first paragraph, or, if the time period indicated in Article 55, third paragraph, expires later, within one month from the expiry of that period. In the latter case, the National Trademark Authority shall, within 18 months from the date of the notification referred to in Article 54, first paragraph, notify the International Bureau that a decision as just referred to may be communicated later. When the decision that the international registration shall not have any effect in Sweden has taken legal force, a notice of this fact shall be published.