



**OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET
(TRADE MARKS AND DESIGNS)**

OPERATIONS DEPARTMENT

W211

**Notification of provisional refusal of protection based on an opposition pursuant to
Article 5 of the Madrid Protocol and Rule 17(1) and (2) of the Common Regulations
under the Madrid Agreement and Protocol and to Rule 115 CTMIR**

Alicante, 25/03/2015

International Registration No: **1204161**
Date of notification to OHIM: **29-05-2014**
Trade mark: **BIOPLAST**
Holder: **Bio-tec Biologische Naturverpackungen
GmbH & Co. KG
Werner-Heisenberg-Str. 32
46446 Emmerich**
Opposition number: **B2483256**

Protection of the above-mentioned mark is provisionally refused for the European Community.

The provisional refusal is based on the fact that an opposition has been filed against the international registration.

I. The grounds for the opposition are as follows:

Conflict with an earlier mark because of similarity of the goods and services and similarity of the marks concerned, and likelihood of confusion (Article 8(1) and (2) CTMR)

II. Name and address of the opposing party:

**LABORATORIOS ERN, S.A.
Calle de Pere IV, 499
E-08020 Barcelona
ESPAÑA**

III. The opposition is based on a mark which was the subject of an application or registration.

- type of mark : Spanish National Trademark.
- filing date, registration date and, if applicable, priority date: 18/10/1985; 22/06/1987.

- filing number and, if different, registration number: ES 1120891.
- list of goods and services on which the opposition is based: (see annex)

IV. The provisional refusal relates to

Only to the following goods and services covered by the designation of the EC

1 Chemicals used in industry, in particular pre-processed products and auxiliary agents for the manufacture of plastics; foaming agents for plastics; unprocessed plastics, in particular biodegradable unprocessed plastics, chemicals used in form of thermoplastically processable granules for pharmaceutical purposes.

5 Sanitary products (included in this class) capsules (filled) for medical purposes (included in this class), excluding pharmaceutical and veterinary products.

42 Scientific and technological services and research and design relating thereto; industrial analysis and research services; services of a chemico-physical laboratory for testing and development of biodegradable plastics; scientific and technological consultancy in the field of testing and development of biodegradable plastics.

V. The OHIM will notify the opposition separately to the holder of the international registration, including all evidence on which it is based, pursuant to Rule 18(1) CTMIR. The OHIM will set time limits for the holder. The notification will open an (extendable) cooling-off period of two months and a further period of two months for the opponent to substantiate the opposition. The notification will set a time limit of, in principle, six months for the holder of the international registration to submit observations.

Isabel ARRANZ

Annex: Notice of opposition; 4 pages.



Date of document (dd/mm/yyyy)	Number of pages (including current page)
27/02/2015	2

Reference

Your reference	OM40325EUWO/SCR
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Opposition proceedings

Language of proceedings	EN (English)
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Opponent(s)

Opponent number	1	Opponent OHIM ID	44181
Type of opponent	Legal entity		
Name of organization	LABORATORIOS ERN, S.A.		
Nationality	Spain		
Street name & house No	Calle de Pere IV, 499		
City/Town	Barcelona		
Postal code	08020		
Country	Spain		
Postal address			
Telephone number			
Fax number			
Email address			

Representative(s)

Representative number	1	OHIM Representative ID number	15051
Representative type	Association		
Name of organization	OFICINA PONTI, SLP		
Street name & house no	Consell de Cent, 322		
City/Town	Barcelona		
Postal code	08007		
Country	Spain		
Postal address	OFICINA PONTI, SLP Consell de Cent, 322 E-08007 Barcelona ESPAÑA		
Telephone number	934874936		
Fax number	934879713		
Email address	ponti@oficinaponti.com		

Challenged application

Number		1204161
Trade mark origin	International registration	
Application date	29/11/2013	
Publication date	02/06/2014	
Application representation	BIOPLAST	
Name of the applicant	Bio-tec Biologische Naturverpackungen GmbH & Co. KG	
First language	EN (English) Selected	
Second language	DE (German)	

List of goods & services - Against parts of the goods and services



OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET (TRADE MARKS AND DESIGNS)

Operations department

Class	Goods & services
1	Chemicals used in industry, in particular pre-processed products and auxiliary agents for the manufacture of plastics; foaming agents for plastics; unprocessed plastics, in particular biodegradable unprocessed plastics, chemicals used in form of thermoplastically processable granules for pharmaceutical purposes.
5	Sanitary products (included in this class) capsules (filled) for medical purposes (included in this class), excluding pharmaceutical and veterinary products.
42	Scientific and technological services and research and design relating thereto; industrial analysis and research services; services of a chemico-physical laboratory for testing and development of biodegradable plastics; scientific and technological consultancy in the field of testing and development of biodegradable plastics.

Basis of the opposition #1 - Trade mark

Trade mark number		1120891
Trade mark origin	National trade mark	
Country	Spain	
Trade mark name	BIOPLAK	
Application date	18/10/1985	
Registration number	1120891	
Registration date	22/06/1987	
Type of mark	Word	
Word element(s) of the mark	BIOPLAK	
Reputation claimed	No	

List of goods & services - Based on all goods and services

Class	Goods & services
5	Pharmaceutical preparations

Entitlement

Entitlement of opponent	Owner/Co-owner/Licencee
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Grounds for the opposition

Grounds #1	Article 8(1)(b) CTMR - there exists a likelihood of confusion on the part of the public.
Explanation of grounds and other remarks	To follow
Evidence	M1120891.pdf (57Kb)
Translation	TanslationM1120891.pdf (9Kb)

Payment of fees

Pay by	Current account with OHIM
Opposition fee	350 EUR
Account No.	000032

Signature

First name	Surname	Capacity of the signatory	Position
Adelaida	Ponti	OHIM professional representative	

Resultado de la consulta

Modalidad: M **Número:** 1120891(0) **Bis:** **Tipo:** **Fecha:** 27/02/2015 15:27:46

MARCA PRODUCTOS/SERVICIOS

FECHA PRESENTACION SOLICITUD.....: 18/10/1985 A LAS 12:09 EN MADRID

FECHA PRESENTACION SOLICITUD OTORGADA.: 18/10/1985

TIPO.....: DENOMINATIVA

DENOMINACION.....:

BIOPLAK

SOLICITANTE/TITULAR....: POR TRANSFERENCIA NUM.2006.01573 DE F.RESOL.08/08/2006

LABORATORIOS ERN, S.A.

DOMICILIO.....: DE PERE IV, 499

LOCALIDAD.....: BARCELONA

PROVINCIA/COD.POSTAL..: 08020 BARCELONA

REPRESENTANTE....: 0388 (3) ADELAIDA PONTI SALES

DOMICILIO.....: C/ CONSELL DE CENT, 322

LOCALIDAD.....: BARCELONA

PROVINCIA/CODIGO: 08007 BARCELONA

----- CLASES Y PRODUCTOS/SERVICIOS O ACTIVIDADES CONCEDIDOS -----

05 PRODUCTOS FARMACEUTICOS.

----- ACTOS DE TRAMITACION -----

16/01/1986 PUBLICACION DE SOLICITUD

27/02/1986 OPOSICION DE LA MARCA 0644968

14/03/1986 OPOSICION DE LA MARCA 0740146

17/03/1986 OPOSICION DE LA MARCA INTERNACIONAL 0327812

20/05/1986 PARECIDO DE LA MARCA 0641466

20/05/1986 PARECIDO DE LA MARCA 0904859

20/05/1986 PARECIDO DE LA MARCA 0362761

10/07/1986 CONTESTACION AL SUSPENSO PUBLICADO EL: 16/09/1986

16/09/1986 PUBL.SUSPENSO FONDO DE F.RESOL 20/05/1986

16/10/1987 PUBLIC. CONCESION DE F. RESOL. 22/06/1987

28/07/1998 SOLICITUD DE TRANSFERENCIA NUM: 1998.01921

CESIONARIO: ALMIRALL PRODESFARMA, S.A.

01/04/1999 PUBL. CONCESION TRANSFERENCIA NUM: 1998.01921

23/12/1999 SOLICITUD DE TRANSFERENCIA NUM: 1999.04716

CESIONARIO: LABORATORIOS DIVISER-AQUILEA, S.L.

16/03/2000 PUBL. CONCESION TRANSFERENCIA NUM: 1999.04716

07/06/2006 SOLICITUD DE TRANSFERENCIA NUM: 2006.01573

CESIONARIO: LABORATORIOS ERN, S.A.

01/09/2006 PUBL. CONCESION TRANSFERENCIA NUM: 2006.01573

04/06/2007 ANOTACION SOLICITUD RENOVACION

01/02/2008 PUBL.CONCES.RENOV. DE F.RESOL. 11/01/2008

29/04/2008 SOLIC.MODIFIC.DENOMINACION

16/05/2008 PUB.MODIF.DENOM.(ART.33)F.RES. 06/05/2008

----- ANOTACIONES DE PAGOS -----

23/10/1987 PAGO DE TITULO

23/10/1987 PAGO DEL PRIMER QUINQUENIO

29/06/1992 PAGO DEL SEGUNDO QUINQUENIO

25/06/1997 PAGO DEL TERCER QUINQUENIO

12/11/2002 PAGO DEL CUARTO QUINQUENIO

MINISTRY OF SCIENCE AND TECHNOLOGY

O.E.P.M.

TRADEMARK 1120891 (0)

SITADEx DATABASE

PRODUCTS/SERVICES TRADEMARK

APPLICATION DATE:18.10.1985

TYPE: WORD MARK

MARK:

BIOPLAK

APPLICANT/OWNER: BY ASSIGNMENT Nº 2006.01573 ON DATE 08.08.2006

LABORATORIOS ERN, S.A.

ADDRESS: C. DE PERE IV, 499

TOWN: BARCELONA

PROVINCE/POSTAL CODE: 08020 BARCELONA

REPRESENTATIVE: 0388 ADELAIDA PONTI SALES.

----- PRODUCTS/SERVICES OR ACTIVITIES GRANTED -----

05 Pharmaceutical preparations

----- Procedure acts -----

16.01.1986 Publication of the application

16.10.1987 Publication of grant dated 22.06.1987

28.07.1998 Application for assignment no 1998.01921

Assignee: Almirall Prodesfarma, S.A.

01.04.1999 Publication of grant of assignment no. 1998.01921

23.12.1999 Application for assignment no. 1999.04716

Assignee: Laboratorios Diviser-Alquilea, S.L.

16.03.2000 Publication of grant of assignment no. 1999.04716

07.06.2006 Application of assignment num. 2006.01573

Assignee: Laboratorios Ern, S.A.

01.09.2006 Publication of recordal of transfer 2006.01573

04.06.2007 Application for renewal

01.02.2008 Publication of grant of renewal dated 11.01.2008

29.04.2008 Request for name modification

16.05.2008 Publication of amendment of name (Art.33) dated 06.05.2008

----- ANNOTATIONS OF PAYMENTS -----

23.10.1987 Payment of certificate of registration

23.10.1987 Payment of first quinquennial tax

29.06.1992 Payment of second quinquennial tax

25.06.1997 Payment of third quinquennial tax

12.11.2002 Payment of fourth quinquennial tax