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Gregg A. Paradise

ALVOGE 10,5P-021

**United States Court of Appeals for the Federal Circuit**

ALVOGEN IP CO. S.A.R.L.,

Appellant,

v.

**NOTICE OF APPEAL**

DAVID J. KAPPOS,

Appellee.

Alvogen IP Co. S.a.r.l. hereby appeals the Court for review of the decision of the United States Trademark Trial and Appeal Board affirming the Examining Attorney's final refusal to register U.S. Trademark Application No. 77/939,659 for "A" LOGO issued on January 19, 2012, and entered on January 20, 2012. The decision was received on January 20, 2012.



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Gregg A. Paradise

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Tel: 908.654.5000  
Attorney for Appellant

ALVOGE 10.5P-021

THIS OPINION  
IS NOT A PRECEDENT  
OF THE T.T.A.B.

Mailed:  
January 20, 2012

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Alvogen IP Co. S.a.r.l.

Serial No. 77939659

Bruce H. Sales, Gregg A. Paradise and Robert B. Hander of  
Lerner David Littenberg Krumholz & Mentlik, LLP for Alvogen  
IP Co. S.a.r.l.

April Roach, Examining Attorney, Law Office 115 (John  
Lincoski, Managing Attorney).

Before Rogers, Chief Administrative Trademark Judge, and  
Zervas and Lykos, Administrative Trademark Judges.

Opinion by Zervas, Administrative Trademark Judge:

On February 19, 2010, Alvogen IP Co. S.a.r.l.

("applicant") filed an application pursuant to Section 1(b)  
of the Trademark Act, 15 U.S.C. § 1051(b), for registration  
on the Principal Register of the following mark,



Serial No. 77939659

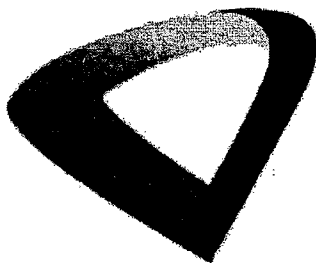
for International Class 5 goods identified as,

pharmaceutical preparations, namely, antibiotics, antidiabetics, antihypertensives, antidepressants, analgesics, anti-inflammatories, antivirals, and antiepileptics; transdermal patches for use in the treatment of infections, diabetes, hypertension, depression, pain, inflammation, and epilepsy; and contraceptive sponges,

and International Class 42 services identified as

"pharmaceutical research services." Applicant entered the following description of the mark into the record: "The mark consists of a stylized A in a triangular-like shape."

The examining attorney finally refused registration pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), in view of Registration No. 3127143 for the following mark,



for International Class 5 goods identified as,

pharmaceutical preparations, namely, medicines for the treatment of obesity, tobacco withdrawal, and for prevention of cardiovascular diseases; dietetic foods adapted for medical use; beverages for medical use, namely, nutritionally fortified beverages and vitamin fortified beverages;

medicinal infusions in the nature of medicinal herbs.<sup>1</sup>

Applicant appealed the final refusal of its application. Both applicant and the examining attorney filed briefs. The refusal to register is affirmed.

Evidentiary Issues

Applicant has included an image of a mobius triangle in its brief, which was not made of record prior to the filing of the appeal. The examining attorney's objection to the image is well taken - the record should be complete prior to the filing of an appeal. Trademark Rule 2.142(d). We have not considered the image of the mobius triangle in applicant's brief or the discussion regarding the image.

In addition, even though the examining attorney objected to the inclusion of the image of the mobius triangle in applicant's brief, applicant included pages from [www.new.myfonts.com](http://www.new.myfonts.com) with its reply brief. As these

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<sup>1</sup> The registration includes the following description of the mark, "the mark comprises a mobius triangle shape"; the following color claim, "the color(s) yellow, orange and red is/are claimed as a feature of the mark"; and the following color location statement, "different shades of the color yellow appear mostly in the upper portion of the triangle design, different shades of the color orange appear mostly on the left portion of the triangle design, and different shades of the color red appear mostly on the right portion of the triangle design."

Applicant states that the cited registration is a three-dimensional mark. The Office, however, does not consider the cited mark to be in three dimensions. See TMEP § 807.10 (8th ed. 2011).

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