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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	87448330
Applicant	CGTN C.V.
Applied for Mark	AGE IQ
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Submission	Request for remand/amendment
Attachments	AGE IQ -TTAB Request for Suspension and Request for Remand -2.pdf(191011 bytes) AGE IQ -Req for Remand Exhibits 1-7.pdf(2452622 bytes)
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Date	07/09/2021

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Applicant:	CGTN C.V.	§	
		§	
Trademark:	AGE IQ	§	
		§	EX PARTE APPEAL
		§	SERIAL NO. 87/448330
		§	

Attn: Victoria von Vistauxx Von
Office: TTAB
Commissioner for Trademarks
Trademark Trial and Appeal Board
Filed Electronically Via ESTTA

REQUEST TO SUSPEND PROCEEDINGS AND
REQUEST FOR REMAND FOR FURTHER EXAMINATION

Pursuant to 37 CFR §2.142(d), CGTN C.V. ("Applicant"), respectfully requests that the ex parte appeal identified above be suspended and requests that the application be remanded to the Examining Attorney for further review for good cause shown. (*See* TBMP §1207.02).

The Applicant believes that good cause is established for this request by the following facts:

- The Applicant would like to make new evidence of record for the Examiner's review. (See TBMP §1209.04)
- The new evidence seeks to further address the issue of the refused specimen (the only issue in this appeal) and further support Applicant's position that the specimens are "medicated" and appropriately classified in Class 5. (*See* TBMP §1205.01.)
- This new evidence should obviate the ground for refusal to accept the specimen, and the Examining Attorney should accept the Statement of Use and place the application in condition for registration.

In the event that the Board does not grant this Request for Suspension and Remand, Applicant alternatively requests, pursuant to Section 1203.02(d) of the TTAB Manual of Procedure, an extension of time to file an appeal brief for good cause shown.

Applicant incorporates by reference the prior prosecution chronology and facts set forth in the prior Request to Suspend Proceedings and Request for Remand for Further Examination.

The Applicant believes that good cause is established by the following facts:

I. INTRODUCTION

The Examiner continues to refuse to accept Applicant's specimens as "medicated" products that may be appropriately registered in Class 5. According to the TMEP § 1401.02 (a) the headings of the International Trademark Classes are general indications relating to the fields to which, in principle, the goods or services belong. Class 5 is for Pharmaceuticals, including medical preparations or "medicated" goods. This Class includes, in particular "**medicated** shampoos, soaps, **lotions** and dentrifrices. Further, TMEP §1401.14(a) states that

-[C]osmetics, toiletry preparations, and soap are classified in Class 3, except when those goods are medicated, are for pharmaceutical purposes, or have antibacterial or disinfectant properties. In such case, the goods are classified in Class 5. -

Therefore, the issue before the examiner is whether Applicant's goods are "medicated." The answer, as demonstrated by the information and evidence below, is, yes! Applicant's goods meet the criteria for being "medicated" and accordingly, the specimens submitted should be accepted. Because the last specimen submitted, the substitute specimen, is the current sample of use of the mark, we are providing evidence and arguments in support of the specimen, which is a "sunscreen gel" which is akin to a lotion like product that is a Broad Spectrum SPF that protects against UVA, UVB, and HEV rays.

While the TMEP does not define "medicated," the examiner may look to the plain and ordinary meaning to understand what the term "medicated" means. To determine the ordinary meaning, we look to the dictionary.

> Google's English dictionary provide by Oxford Languages of the *Oxford English* Dictionary defines "medicated" as:
>
> "containing or impregnated with a drug"

See attached **EXHIBIT 1** printout of the Google search and definition.

As gleaned from the above-referenced definition, the plain and ordinary meaning of a medicated substance is a substance that contains a drug. Thus a sunscreen product is considered "medicated" if it is or contains a drug, leading to the next question: what is a drug?

According to the *Merriam-Webster* dictionary, a "drug" is defined as:

- A substance recognized in an official pharmacopoeia or formulary;
- a substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease;
- a substance other than food intended to affect the structure or function of the body

See attached **EXHIBIT 2**.

II. APPLICANT'S GOODS ARE MEDICATED

In the previous Office Action dated June 4, 2019, the examiner stated that the goods do not "treat (someone or something) with or as if with medicine". The examiner lacked all of the information regarding the product to make an informed decision regarding whether the goods are "medicated" and how they are used to "treat with, or as with medicine." Applicant is now providing the examiner with additional evidence to clarify the nature of the goods and put to rest any question as to whether the goods are "medicated" and are appropriately suited to be registered in Class 5.

A. Food and Drug Administration identifies sunscreens as a Drug Product for Over-the-Counter Human Use

The Food and Drug Administration ("FDA") is a governmental agency that is responsible for protecting the public health by ensuring the safety, efficacy, and security of human drugs, biological products, and medical devices by ensuring the safety of cosmetics. In 2011, the FDA announced new requirements for over-the-counter sunscreen products marketed in the U.S.

The FDA published an article with some questions and answers to provide a brief overview of the regulatory actions for consumers when buying sunscreen products. One question was whether the new Final Rule applied to all cosmetics and moisturizers containing sunscreen. The answer was, "Yes. All products that claim to provide Broad Spectrum SPF protection are regulated as sunscreen drug products. Therefore, the regulations FDA has developed for OTC sunscreen drug products apply to cosmetics and moisturizers labeled with SPF values. The article also stated that broad spectrum sunscreen products protect against both UVA and UVB rays. "Scientific date demonstrated that products that are "Broad Spectrum SPF 15 [or higher] have been shown to reduce the risk of skin cancer and early skin aging when used with other sun protection measures, in addition to helping prevent sunburn." Attached as **EXHIBIT 3** is a copy of the article from the FDA Administration official website.

In Applicant's Request for Reconsideration dated December 4, 2019, Applicant submitted a substitute specimen, which was the online display of Applicant's AGE IQ Invisi-Bloc Sunscreen Gel Broad Spectrum SPF 40, with the pricing and "add to bag" button. The display includes a picture of the actual product with the mark on the packaging and also "Broad Spectrum SPF 40." As defined by the FDA, Applicant's goods are "Broad Spectrum SPF" with an SPF of 40, which is higher than 15, making it a sunscreen drug product, regulated by the FDA which helps in the prevention of skin cancer and early skin aging.

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