

GLAXO GROUP LIMITED,
Opposer,

INTER PARTES CASE NO. 3358

-versus

Opposition to:

Application Serial No.: 61502
Filed: April 15, 1987
Applicant: Ciba-Geigy Limited
Trademark: NEPOREX
Used On: Preparation for
destroying vermin, fungicides
and herbicides

CIBA-GEIGY LIMITED
Respondent-Applicant.
x-----x

DECISION NO. 90-2 (TM)
February 8, 1990

DECISION

A verified Notice of Opposition has been filed by Opposer, Glaxo Group Limited, a corporation organized and existing under the laws of England, located and doing business at Graham Street, London NI 8JZ, England against the application for registration of the trademark "NEPOREX" used on preparation for destroying vermin, fungicides and herbicides, bearing Application Serial No. 61502 filed on April 15, 1987 by Respondent-Applicant, Ciba-Geigy Limited, a corporation duly organized under the laws of Switzerland and doing business at Basle, Switzerland, and published on Page 15 of the BPTTT Official Gazette released for circulation on February 28, 1989.

The grounds for opposition are:

"1. Opposer is the owner of the trademark CEPOREX as used worldwide for an antibiotic pharmaceutical preparation.

2. The product bearing the mark CEPOREX has been sold by opposer in England and other countries for several years and has gained goodwill and high repute.

3. In the Philippines, the trademark CEPOREX has been continuously used by Opposer's wholly owned subsidiary since at least 1972, and such use has never been abandoned. The said mark has been recognized by the medical profession and the buying public as indicative of the origin of the goods of the Opposer.

4. The trademark NEPOREX is confusingly similar to Opposer's trademark CEPOREX, and its registration will run counter to Section 4(d) of Republic Act No. 166, as amended."

On August 16, 1989, Respondent-Applicant filed its Answer denying the material allegations of facts.

Issues having been joined, a pre-trial conference was scheduled on September 19, 1989 but was reset to another date upon motion of Respondent-Applicant's counsel. Pre-trial conference was terminated on October 19, 1989 after which trial on the merits was set.

On January 26, 1990, Respondent-Applicant through counsel filed a Motion to Withdraw Trademark Application, manifesting its decision to abandon its application for the mark "NEPOREX".

In view of the said Motion to Withdraw, this Bureau can do no less but to dismiss this case for being moot and academic.

WHEREFORE, this case is, as it is, hereby DISMISSED for being moot and academic. Application Serial No. 61502 for the trademark "NEPOREX" is declared voluntarily withdrawn and abandoned.

Let the records of this case be forwarded to the Application, Issuance and Publication Division for appropriate action in accordance with this Decision.

SO ORDERED.

IGNACIO S. SAPALO
Director