



UNITED LABORATORIES INC.,  
Opposer,

-versus-

BAYER INTELLECTUAL PROPERTY GMBH,  
Respondent-Applicant.

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IPC No. 14-2012-00529  
Opposition to:  
Appln. Serial No. 4-2012-006942  
Date Filed: 11 June 2012  
TM: "VIVERTY"

X-----X

### NOTICE OF DECISION

#### OCHAVE & ESCALONA

Counsel for the Opposer  
No. 66 United Street  
Mandaluyong City

#### NORBERTO S. GONZALES & ASSOCIATES


Counsel for Respondent-Applicant  
2302 Antel Global Corporate Center  
Dona Julia Vargas, Ortigas center  
Pasig City

#### GREETINGS:

Please be informed that Decision No. 2013 - 162 dated August 07, 2013 ( copy enclosed) was promulgated in the above entitled case.

Taguig City, August 07, 2013.

For the Director:

  
Atty. PAUSI U. SAPAK  
Hearing Officer  
Bureau of Legal Affairs



UNITED LABORATORIES INC.,	}	IPC No. 14-2012-00529
<i>Opposer,</i>	}	
	}	Opposition to:
-versus-	}	Appln. No. : 4-2012-006942
	}	Date Filed: 11 June 2012
BAYER INTELLECTUAL PROPERTY	}	
GMBH,	}	TM: "VIVERTY"
<i>Respondent-Applicant.</i>	}	
x-----x		Decision No. 2013- <u>162</u>

### DECISION BASED ON COMPROMISE AGREEMENT

UNITED LABORATORIES INC. ("Opposer") filed on 21 November 2012 an opposition to Trademark Application Serial No. 4-2012-006942. The application, filed by BAYER INTELLECTUAL PROPERTY GMBH ("Respondent-Applicant"), covers the mark "VIVERTY" for use on goods under Class 05.

This Bureau issued a Notice to Answer dated 06 December 2012 and served upon a copy thereof to Respondent-Applicant on 25 January 2013. The Respondent-Applicant filed its Answer on 26 April 2013.

In compliance to Office Order No. 154, s. 2010 ("*Rules of Procedure for IPO Mediation Proceedings*") and Office Order No. 197, s. 2010 ("*Mechanics for IPO Mediation Settlement Period*"), this Bureau issued on 06 May 2013 Order No. 2013-112 referring the case to mediation.

On 30 July 2013, the ADR Services of this Bureau submitted a Mediation Report submitting a copy of the parties' Compromise Agreement. The pertinent portions of the COMPROMISE AGREEMENT reads, as follows:

NOW, THEREFORE, for and in consideration of the Parties' respective concessions herein below enumerated, by way of a compromise, the Parties mutually agree as follows:

"1. UNILAB hereby agrees to withdraw its opposition to BAYER's Trademark Application No. 4-2012-006942 for the mark "VIVERTY" and consent, to the registration of the same subject to the conditions set forth below.

"2. Upon the execution of this Agreement, BAYER hereby undertakes to amend its Trademark Application No. 4-2012-006942 and limit the use of the mark "VIVERTY" for the following goods:

**Class 05 - "Pharmaceutical preparations and substances  
specifically hormonal preparations for contraceptive purposes**

"3. BAYER undertakes to use the mark "VIVERTY" specifically for the above-described goods only.

"4. BAYER shall not apply in the future for the registration of the mark VIVERTY" for goods other than those above-described.

"5. Each Party shall bear its own costs and expenses incurred in carrying out each of their respective undertakings and obligations required by this Agreement.

"6. The Parties acknowledge that their respective signatories have full authority and/or have secured the necessary approvals to execute, and do execute, this Agreement on behalf of their principals and that the Parties have the authority to comply with the promise, obligations, undertaking and acknowledgments made in this Agreement. The Parties hereto further acknowledge that they have executed this Compromise Agreement voluntarily with full knowledge of its consequences under the law.

"7. This Agreement shall apply to and be binding upon the Parties' related or associated companies, including the Parties' subsidiaries or affiliates and their respective licensees (i.e. importer, distributor, etc.) in the Philippines. Further, the Parties also undertake to impose the obligations under this Compromise Agreement upon any of their legal successors or assigns.

"8. The Parties acknowledge that they have read and understood the contents of this Agreement and that they have signed the same willingly, voluntarily, and with full knowledge of their rights and obligations."

This Bureau evaluated the COMPROMISE AGREEMENT and finds that the same has been duly entered into by the parties with the terms and conditions thereof not contrary to law, morals, good customs, public order or public policy.

Accordingly, an approved Compromise Agreement shall have the effect of a decision or judgment on the case and shall be enforced accordingly in accordance with the pertinent rules of IPO and the Rules of Court.<sup>1</sup>

WHEREFORE, premises considered, the parties' Compromise Agreement is hereby APPROVED. Accordingly, the instant opposition case is hereby DISMISSED. Let the filewrapper of Trademark Application Serial No. 4-2012-006942 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 07 August 2013.

  
Atty. NATHANIEL S. AREVALO  
Director IV  
Bureau of Legal Affairs

/vanj

<sup>1</sup> Office Order No. 154 Series of 2010.