

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77601409
LAW OFFICE ASSIGNED	LAW OFFICE 103
MARK SECTION (no change)	
ARGUMENT(S)	

RESPONSE TO FINAL OFFICE ACTION

In response to the Final Office Action dated September 8, 2009, Applicant states as follows:

Remarks

Section 2(e)(1) - Descriptiveness Refusal

Applicant acknowledges the Examining Attorney's comments in the Final Office Action.

Nevertheless, the Applicant reiterates its position that its mark is not merely descriptive but that it is suggestive and accordingly, the Applicant is responding to this Final refusal and respectfully requests reconsideration thereof in view of the following arguments.

a) Applicant's Mark is Suggestive, Not Merely Descriptive

The Examining Attorney has refused registration of the subject application on the Principal Register under §2(e)(1) in the asserted grounds that the proposed mark merely describes an ingredient, quality, characteristic, function, feature, purpose or use of Applicant's goods. Applicant respectfully submits that the Examining Attorney continues to mischaracterize Applicant's mark as "merely descriptive" rather than suggestive. The Examining Attorney contends that when Applicant uses its "SINGLEPORT" mark on or in connection with Applicant's goods, the mark merely describes the subject matter and a characteristic of the goods. Applicant respectfully disagrees.

Applicant's goods identified by the mark are, " Medical devices, namely access devices, for use in minimally invasive surgical procedures, namely, laparoscopic, endoscopic, gynecological, urological,

thoracic, colo-rectal, and bariatric and general surgery.” These access devices are used in surgery to facilitate the introduction of various surgical instruments into vessels, conduits, cavities, and other interior regions of the body. These access devices include, for example, devices which facilitate introduction of a needle into a vessel, and trocars which facilitate the introduction of laparoscopic instruments into the abdomen of the body.

These access devices may be one of many devices used in any procedure or it may be the only access device used. The term SINGLEPORT does not necessarily translate into “one access port.” It is not immediately apparent from the mark that this medical device will be the only point of access in any procedure.

When applicant’s customers or potential customers encounter Applicant’s mark, they must undertake a multi-stage reasoning process to determine the subject matter of applicant’s goods. As has been stated, it is a thin line that demarcates between what is a suggestive mark and a merely descriptive one, with the matter being a difficult one that involves a good deal of subjective judgment. *See, In re Atavio* 25 USPQ2d 1361 (TTAB 1992). In this instance, Applicant reiterates its contention that its mark does not cross that line and that it is suggestive of its goods, and not merely descriptive. Applicant respectfully submits that the Examining Attorney’s points of objection have been resolved. Applicant earnestly requests prompt publication. If the Examining Attorney has any questions, or if it would otherwise facilitate registration, he or she is requested to contact Applicant’s attorney.

SIGNATURE SECTION

RESPONSE SIGNATURE	/Andrea J Mealey/
SIGNATORY'S NAME	Andrea J. Mealey
SIGNATORY'S POSITION	Attorney of record, Massachusetts bar member
DATE SIGNED	03/08/2010
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES

FILING INFORMATION SECTION

SUBMIT DATE

characteristic of the goods. Applicant respectfully disagrees.

Applicant's goods identified by the mark are, " Medical devices, namely access devices, for use in minimally invasive surgical procedures, namely, laparoscopic, endoscopic, gynecological, urological, thoracic, colo-rectal, and bariatric and general surgery." These access devices are used in surgery to facilitate the introduction of various surgical instruments into vessels, conduits, cavities, and other interior regions of the body. These access devices include, for example, devices which facilitate introduction of a needle into a vessel, and trocars which facilitate the introduction of laparoscopic instruments into the abdomen of the body.

These access devices may be one of many devices used in any procedure or it may be the only access device used. The term SINGLEPORT does not necessarily translate into "one access port." It is not immediately apparent from the mark that this medical device will be the only point of access in any procedure.

When applicant's customers or potential customers encounter Applicant's mark, they must undertake a multi-stage reasoning process to determine the subject matter of applicant's goods. As has been stated, it is a thin line that demarcates between what is a suggestive mark and a merely descriptive one, with the matter being a difficult one that involves a good deal of subjective judgment. *See, In re Atavio* 25 USPQ2d 1361 (TTAB 1992). In this instance, Applicant reiterates its contention that its mark does not cross that line and that it is suggestive of its goods, and not merely descriptive.

Applicant respectfully submits that the Examining Attorney's points of objection have been resolved. Applicant earnestly requests prompt publication. If the Examining Attorney has any questions, or if it would otherwise facilitate registration, he or she is requested to contact Applicant's attorney.

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Andrea J Mealey/ Date: 03/08/2010

Signatory's Name: Andrea J. Mealey

Signatory's Position: Attorney of record, Massachusetts bar member

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the

highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 77601409

Internet Transmission Date: Mon Mar 08 16:11:18 EST 2010

TEAS Stamp: USPTO/RFR-38.112.153.190-201003081611182

71091-77601409-460365fde5c93f4ec921cc346

8939d35f27-N/A-N/A-20100308160851656565