

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77924132
LAW OFFICE ASSIGNED	LAW OFFICE 114
MARK SECTION (no change)	
ARGUMENT(S)	
<p>The applicant respectfully requests that the Examining Attorney reconsider the requirement for a substitute specimen and the refusal of registration based on the insufficiency of the specimen submitted.</p> <p>The applicant's label shows the use of its mark <i>Aspira</i> in connection with the applicant's goods. The fact that the applicant's company name <i>Eastman</i> also appears on the label should not be considered to make the specimen submitted fail in being sufficient proof of use of the applied-for mark <i>Aspira</i>. The TTAB has long held that applicant's use of its corporate name or house mark on a specimen should not be considered to be creating a unitary mark. For example, in <i>Textron Inc. v. Cardinal Engineering Corp.</i>, 164 USPQ 397 (TTAB 1969), the TTAB stated "while the record does show that Textron's principal or house mark "HOMELITE" appears on the chain saws as well as in all of its advertising literature, there is no statutory limitation on the number of trademarks that one may use on or in connection with a particular product to indicate origin." See also, <i>In re Servel, Inc.</i>, 181 F.2d. 192, 85 USPQ 257 (CCPA 1950), where the court indicated the right of registration of one part of an owner's mark, finding <i>SERVEL</i> was registrable apart from <i>INKLINGS</i>); <i>In Re Royal Bodycare, Inc.</i>, Serial No. 78976265 (TTAB 2007), where the TTAB found that specimen that showed "RBC's NANOCEUTICAL" was sufficient specimen showing use of <i>NANONCEUTICAL</i> mark). Indeed, The TTAB has held in many cases that that applicant's use of its corporate name or house mark even physically connected to another trademark does not create a unitary mark. See <i>In re Berg Electronics Inc.</i>, 163 USPQ 487 (TTAB 1969) (<i>Griplet</i> creates a separate impression despite overlapping with house mark <i>Berg</i>); <i>In re Dempster Brothers, Inc.</i>, 132 USPQ 300 (TTAB 1961) (overlapping <i>Dempster</i> and <i>Dumpmaster</i> marks were held to be separately registrable).</p> <p>Moreover, with regard to the generic words that follow the Applicant's mark <i>ASPIRA</i> on the label, "<i>Copolyester EN177</i>", these are clearly a generic word and a model number, which are not intended, nor would they reasonably be viewed as being a part of the mark nor having any trademark significance. The mere presence of other wording on the label after the mark should not mean that those words must become part of the mark, especially when those words are merely generic. In a similar case involving generic terms, <i>In Re Raychem</i>, 12 USPQ 1399 (TTAB 1989), the Examining Attorney required new specimens because she contended that the mark shown on applicant's drawing, "<i>TINEL-LOCK</i>," did not agree with the mark "<i>TRO6AI-TINEL-LOCK-RING</i>" used on the specimens. The TTAB reversed the requirement for new specimens, finding that, "In the case at hand the alpha-numeric designation appearing on the specimen in front of "<i>TINEL-LOCK</i>" is not essential to the commercial impression of</p>	

"TINEL-LOCK" as a trademark for applicant's metal rings. In a similar sense, the generic term "RING," although connected to the model number and the source-identifying term, "TINEL LOCK," by a hyphen, nonetheless plays no integral role in forming the portion of applicant's mark which distinguishes applicant's goods from those of others. Applicant therefore need not include either the part number or the generic term in the drawing, because neither is essential to the commercial impression created by the mark as shown in the specimens. Prospective purchasers of these highly technical goods would readily recognize both the part number and the name of the goods as such, and would therefore look only to the trademark "TINEL-LOCK" for source identification. The fact that hyphens connect both the part number and the generic term to the mark does not, under the circumstances presented by this case, create a unitary expression such that "TINEL-LOCK" has no significance by itself as a trademark. Such independent significance is in fact supported by applicant's use of the mark without the part number or generic designation in its advertising materials."

For all of the foregoing reasons, the Applicant respectfully requests that the Examining Attorney reconsider the final refusal of registration.

SIGNATURE SECTION

RESPONSE SIGNATURE	/etwomey/
SIGNATORY'S NAME	Elizabeth Twomey
SIGNATORY'S POSITION	Senior Counsel
SIGNATORY'S PHONE NUMBER	4232295515
DATE SIGNED	01/12/2015
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO

FILING INFORMATION SECTION

SUBMIT DATE	Mon Jan 12 15:38:19 EST 2015
TEAS STAMP	USPTO/RFR-199.190.10.27-2 0150112153819594503-77924 132-500b1a35834af5970d6a2 db3c534ce06145633295d1398 743fd17bce08e328f21-N/A-N /A-20150112153543179561

**Request for Reconsideration after Final Action
To the Commissioner for Trademarks:**

Application serial no. **77924132** has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

The applicant respectfully requests that the Examining Attorney reconsider the requirement for a substitute specimen and the refusal of registration based on the insufficiency of the specimen submitted.

The applicant's label shows the use of its mark *Aspira* in connection with the applicant's goods. The fact that the applicant's company name *Eastman* also appears on the label should not be considered to make the specimen submitted fail in being sufficient proof of use of the applied-for mark *Aspira*. The TTAB has long held that applicant's use of its corporate name or house mark on a specimen should not be considered to be creating a unitary mark. For example, in *Textron Inc. v. Cardinal Engineering Corp.*, 164 USPQ 397 (TTAB 1969), the TTAB stated "while the record does show that Textron's principal or house mark "HOMELITE" appears on the chain saws as well as in all of its advertising literature, there is no statutory limitation on the number of trademarks that one may use on or in connection with a particular product to indicate origin." See also, *In re Servel, Inc.*, 181 F.2d. 192, 85 USPQ 257 (CCPA 1950), where the court indicated the right of registration of one part of an owner's mark, finding *SERVEL* was registrable apart from *INKLINGS*); *In Re Royal Bodycare, Inc.*, Serial No. 78976265 (TTAB 2007), where the TTAB found that specimen that showed "RBC's *NANOCEUTICAL*" was sufficient specimen showing use of *NANONCEUTICAL* mark). Indeed, The TTAB has held in many cases that that applicant's use of its corporate name or house mark even physically connected to another trademark does not create a unitary mark. See *In re Berg Electronics Inc.*, 163 USPQ 487 (TTAB 1969) (Griplet creates a separate impression despite overlapping with house mark *Berg*); *In re Dempster Brothers, Inc.*, 132 USPQ 300 (TTAB 1961) (overlapping *Dempster* and *Dumpmaster* marks were held to be separately registrable).

Moreover, with regard to the generic words that follow the Applicant's mark *ASPIRA* on the label, "Copolyester EN177", these are clearly a generic word and a model number, which are not intended, nor would they reasonably be viewed as being a part of the mark nor having any trademark significance. The mere presence of other wording on the label after the mark should not mean that those words must become part of the mark, especially when those words are merely generic. In a similar case involving generic terms, *In Re Raychem*, 12 USPQ 1399 (TTAB 1989), the Examining Attorney required new specimens because she contended that the mark shown on applicant's drawing, "TINEL-LOCK," did not agree with the mark "TRO6AI-TINEL-LOCK-RING" used on the specimens. The TTAB reversed the requirement for new specimens, finding that, "In the case at hand the alpha-numeric designation appearing on the specimen in front of "TINEL-LOCK" is not essential to the commercial impression of "TINEL-LOCK" as a trademark for applicant's metal rings. In a similar sense, the generic term "RING," although connected to the model number and the source-identifying term, "TINEL LOCK," by a hyphen, nonetheless plays no integral role in forming the portion of applicant's mark which distinguishes applicant's goods from those of others. Applicant therefore need not include either the part number or the generic term in the drawing, because neither is essential to the commercial impression created by the mark as shown in the specimens. Prospective purchasers of these highly technical goods would readily recognize both the part number and the name of the goods as such, and would therefore look only to the trademark "TINEL-LOCK" for source identification. The fact that hyphens connect both the part number and the generic term to the mark does not, under the circumstances presented by this case, create a unitary expression such that "TINEL-LOCK" has no significance by itself as a trademark. Such independent significance is in fact supported by applicant's use of the mark without the part number or generic designation in its advertising materials."

For all of the foregoing reasons, the Applicant respectfully requests that the Examining Attorney reconsider the final refusal of registration.

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /etwomey/ Date: 01/12/2015

Signatory's Name: Elizabeth Twomey

Signatory's Position: Senior Counsel

Signatory's Phone Number: 4232295515

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 not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 77924132

Internet Transmission Date: Mon Jan 12 15:38:19 EST 2015

TEAS Stamp: USPTO/RFR-199.190.10.27-2015011215381959

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