

ESTTA Tracking number: **ESTTA692651**

Filing date: **08/31/2015**

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

Proceeding	77924132
Applicant	Eastman Chemical Company
Applied for Mark	ASPIRA
Correspondence Address	ELIZABETH TWOMEY EASTMAN CHEMICAL COMPANY 100 N EASTMAN RD KINGSPORT, TN 37662 UNITED STATES etwomey@eastman.com
Submission	Applicant's Motion to Amend Drawing Pursuant to TMEP 807.14(b)
Attachments	8-31-15 Applicant's Motion to Amend Drawing.pdf(452286 bytes)
Filer's Name	Margaret A. Esquenet
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Signature	/Margaret A. Esquenet/
Date	08/31/2015

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

In re Application of:)
Eastman Chemical Company)
Serial Number: 77924132)
Filing Date: January 29, 2010)
Examining Attorney:)
William T. Verhosek, Esq.)
Mark: **ASPIRA**)
in Class 1)

**APPLICANT'S MOTION TO AMEND DRAWING
PURSUANT TO TMEP § 807.14(b)**

I. Background

On August 28, 2014, the Examining Attorney issued a final Office Action refusing registration on the ground Applicant's substitute specimen (a product label consisting of the wording EASTMAN ASPIRA COPOLYESTER EN177) failed to show that the applied-for ASPIRA mark was in use in commerce. Applicant filed a request for reconsideration on January 12, 2015, arguing that the presence of Applicant's EASTMAN house mark and the model designation "COPOLYESTER EN177" were not material to the mark's commercial impression. In denying the request for reconsideration on July 26, 2015, the Examining Attorney agreed the model designation "COPOLYESTER EN177" was immaterial, but maintained the position that the specimen shows the mark EASTMAN ASPIRA, not ASPIRA alone, and thus the specimen still did not show use of the ASPIRA mark in use in commerce. To overcome this conclusion, the Examining Attorney noted that Applicant could amend its drawing to EASTMAN ASPIRA pursuant to TMEP § 807.14(b).

Applicant now moves to amend its drawing as suggested by the Examining Attorney.

Proceedings in this appeal resumed on July 27, 2015, and Applicant's brief is due on September 25, 2015.

II. Motion to Amend Drawing

"An amendment adding an element that the applicant has previously registered for the same goods or services may be permitted." TMEP § 807.14(b). The rationale is that "[t]he addition of applicant's well-known registered mark to the mark sought to be registered... is not a material change which would require republication of the mark." *Id.* (citing *Florasynth Labs., Inc. v. Mühlens*, 122 USPQ 284 (Comm'r Pats. 1959)). Here, the pending application for ASPIRA covers "unprocessed polyester resins for use in the manufacture of plastic articles, namely, consumer and household containers" in Class 1. Applicant owns at least the following registrations for EASTMAN covering the same goods in Class 1:

Mark	Reg. No.	Reg. Date	Goods
EASTMAN	0850818	6/18/1968	Synthetic resins, in Class 1
EASTMAN	2118734	12/9/1997	Chemicals, namely, dyes used as additives in the manufacture of chemicals; unprocessed plastics and unprocessed synthetic resins; organic and inorganic chemical intermediates, namely, additives, ingredients, solutes, solvents, reactants, catalysts for use in industry, scientific research and pharmaceutical products; chemicals used in lacquers, paints and coatings for use as preservatives against rust and deterioration of wood, metal and masonry surfaces; and antioxidants used as inhibitors to retard deterioration of food and foodstuffs, in Class 1
EASTMAN	2053822	4/22/1997	Agricultural chemicals, unprocessed plastics, unprocessed synthetic resins, additives for plastics and resins, adhesives, inks for use in the printing industry and chemicals for use in pharmaceutical products, in Class 1

Copies of the TSDR and Assignment records for the above registrations are included in

Exhibit A.

The “synthetic resins” in Registration No. 0850818 and the “unprocessed synthetic resins” in Registration Nos. 2118734 and 2053822 would by definition include the “unprocessed polyester resins for use in the manufacture of plastic articles” covered in the pending application, as polyester resins are a type of synthetic resin. The pending application for ASPIRA and Applicant’s preexisting registrations for EASTMAN thus cover the same goods. Pursuant to TMEP § 807.14(b), amending the drawing in the pending application from ASPIRA to EASTMAN ASPIRA is not a material change and should be permitted.

As Applicant’s motion satisfies the requirements of TMEP § 807.14(b) and complies with the Examining Attorney’s proposal, Applicant accordingly requests that its drawing be amended from ASPIRA to EASTMAN ASPIRA.

III. Conclusion

In light of the foregoing, Applicant requests that the Board approve the amendment and remand the file to the Examining Attorney so the amendment can be entered and Applicant’s Statement of Use accepted.

Respectfully submitted,

EASTMAN CHEMICAL COMPANY

Dated: August 31, 2015

By: /Margaret A. Esquenet/
Margaret A. Esquenet
Naresh Kilaru
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Applicant: Eastman Chemical Company
Serial Number: 77924132
Mark: SPIRA
APPLICANT'S PURSUANT TO TMEP § 807.14(b)
MOTION TO AMEND DRAWING

Exhibit A

STATUS DOCUMENTS

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Print

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Mark: EASTMAN

No Image exists for this case.

US Serial Number: 72245574

Application Filing Date: May 13, 1968

US Registration Number: 850818

Registration Date: Jun. 18, 1968

Register: Principal

Mark Type: Trademark

Status: The registration has been renewed.

Status Date: Mar. 31, 2008

Publication Date: Apr. 02, 1968

Mark Information

Mark Literal Elements: EASTMAN

Standard Character Claim: No

Mark Drawing Type: 1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)

Related Properties Information

Claimed Ownership of US [0580301](#), [0619228](#) and others

Registrations:

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services

- Brackets [] indicate deleted goods/services;
- Double parenthesis (()) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks * * identify additional (new) wording in the goods/services

For: SYNTHETIC RESINS

International Class(es): 001 - Primary Class

U.S Class(es): 001

Class Status: ACTIVE

Basis: 1(a)

First Use: Dec. 02, 1930

Use In Commerce: Dec. 02, 1930

Basis Information (Case Level)

Filed Use: Yes	Currently Use: Yes	Amended Use: No
Filed ITU: No	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: EASTMAN CHEMICAL COMPANY

Owner Address: 200 SOUTH WILCOX DRIVE
KINGSPORT, TENNESSEE 37660
UNITED STATES

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: DAVID C. STIMSON

Correspondent

Correspondent Name/Address: ELIZABETH TWOMEY
EASTMAN CHEMICAL COMPANY
100 N EASTMAN RD
KINGSPORT, TENNESSEE 37660
UNITED STATES

Phone: 4232295515

Fax: 4232291239

Correspondent e-mail: etwomey@eastman.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Feb. 04, 2009	CASE FILE IN TICRS	
Mar. 31, 2008	REGISTERED AND RENEWED (SECOND RENEWAL - 10 YRS)	73376
Mar. 31, 2008	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	
Mar 12, 2008	ASSIGNED TO PARALEGAL	73376
Mar, 06, 2008	TEAS SECTION 8 & 9 RECEIVED	
Aug. 30, 2002	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Apr. 08, 2002	PAPER RECEIVED	
Jun. 18, 1988	REGISTERED AND RENEWED (FIRST RENEWAL - 20 YRS)	
May 31, 1988	REGISTERED - SEC. 9 FILED/CHECK RECORD FOR SEC 8	

Maintenance Filings or Post Registration Information

Affidavit of Continued Use: Section 8 - Accepted

Affidavit of Incontestability: Section 15 - Accepted

Renewal Date: Jun. 18, 2008

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: SCANNING ON DEMAND

Date in Location: Feb. 04, 2009

Assignment Abstract Of Title Information

Summary

Total Assignments: 1

Conveyance Filter

Registrant: EASTMAN KODAK COMPANY

Assignment 1 of 1

Conveyance: RECORD TO CORRECT SERIAL NUMBER 74/411,560 ERRONEOUSLY CITED TO 74/441,550 ON A PREVIOUSLY RECORDED DOCUMENT AT REEL 1112 FRAME 106.

Reel/Frame: 1128/0256

Pages: 4

Date Recorded: Mar. 25, 1994

Supporting Documents: No Supporting Documents Available

Assignor

Name: EASTMAN KODAK COMPANY

Execution Date: Feb. 24, 1994

Legal Entity Type: CORPORATION

State or Country Where Organized: No Place Where Organized Found

Assignee

Name: EASTMAN CHEMICAL COMPANY

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Address: LEGAL DEPARTMENT 100 NORTH EASTMAN ROAD KINGSPORT, TN 37880

Correspondent

Correspondent Name: EASTMAN CHEMICAL COMPANY

Correspondent Address: BETTY J. JAMES
LEGAL DEPARTMENT
P.O. BOX 511, 100 NORTH EASTMAN ROAD
KINGSPORT, TN 37880

Domestic Representative - Not Found

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Mark: EASTMAN

EASTMAN

US Serial Number: 74715613 Application Filing Date: Aug. 15, 1995
 US Registration Number: 2118734 Registration Date: Dec. 09, 1997
 Regulator: Principal
 Mark Type: Trademark
 Status: The registration has been renewed.
 Status Date: Aug. 01, 2007
 Publication Date: Sep. 16, 1997

Mark Information

Mark Literal Elements: EASTMAN
 Standard Character Claim: No
 Mark Drawing Type: 5 - AN ILLUSTRATION DRAWING WITH WORD(S)/LETTER(S)/NUMBER(S) INSTYLIZED FORM

Related Properties Information

Claimed Ownership of US [0298573](#), [0556354](#), [0580301](#), [0619228](#), [0631434](#), [0641595](#), [0650818](#), [1487274](#) and others
 Registrations:

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services.

- Brackets [.] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of incontestability, and
- Asterisks "*" identify additional (new) wording in the goods/services.

For: chemicals, namely, dyes used as additives in the manufacture of chemicals; unprocessed plastics and unprocessed synthetic organic and inorganic chemical intermediates, namely, additives, ingredients, solutes, solvents, reactants, catalysts for use in scientific research and pharmaceutical products; chemicals used in lacquers, paints and coatings for use as preservatives against deterioration of wood, metal and masonry surfaces; and antioxidants used as inhibitors to retard deterioration of food and

International Class(es): 001 - Primary Class U.S Class(es): 001, 005, 006, 010, 026, 046

Class Status: ACTIVE

Basis: 1(a)

First Use: Nov. 1992

Use in Commerce: Nov. 1992

For: polyethylene waxes

International Class(es): 003 - Primary Class U.S Class(es): 001, 004, 006, 050, 051, 052

Class Status: ACTIVE

Basis: 1(a)

First Use: Nov. 1992

Use in Commerce: Nov. 1992

For: plastics in extruded form for use in manufacture

International Class(es): 017 - Primary Class U.S Class(es): 001, 005, 012, 013, 035, 050

Class Status: ACTIVE

Basis: 1(a)

First Use: Nov. 1992

Use In Commerce: Nov. 1992

For: synthetic fibers; and acetate tow used in the manufacture of cigarette filters

International Class(es): 022 - Primary Class

U.S Class(es): 001, 002, 007, 019, 022, 042, 050

Class Status: ACTIVE

Basis: 1(a)

First Use: Nov. 1992

Use In Commerce: Nov. 1992

For: synthetic yarns and threads

International Class(es): 023 - Primary Class

U.S Class(es): 043

Class Status: ACTIVE

Basis: 1(a)

First Use: Nov. 1992

Use in Commerce: Nov. 1992

Basis Information (Case Level)

Filed Use: Yes	Currently Use: Yes	Amended Use: No
Filed ITU: No	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: Eastman Chemical Company

Owner Address: 100 North Eastman Road
Kingsport, TENNESSEE 37660
UNITED STATES

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: ELIZABETH TWOMEY

Correspondent

Correspondent ELIZABETH TWOMEY
Name/Address: EASTMAN CHEMICAL COMPANY
100 N EASTMAN RD
KINGSPORT, TENNESSEE 37660
UNITED STATES

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Aug. 01, 2007	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	68335
Aug. 01, 2007	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	
Jul. 19, 2007	ASSIGNED TO PARALEGAL	68335

Jun. 25, 2007	REGISTERED - COMBINED SECTION 8 (10-YR) & SEC. 9 FILED	
Jun. 25, 2007	TEAS SECTION 8 & 9 RECEIVED	
Mar. 09, 2007	CASE FILE IN TIGRS	
Jul. 08, 2003	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	
Apr. 09, 2003	REGISTERED - SEC. 8 (6-YR) & SEC. 15 FILED	
Apr. 09, 2003	TEAS SECTION 8 & 15 RECEIVED	
Apr. 08, 2002	PAPER RECEIVED	
Dec. 09, 1997	REGISTERED-PRINCIPAL REGISTER	
Sep. 16, 1997	PUBLISHED FOR OPPOSITION	
Aug. 15, 1997	NOTICE OF PUBLICATION	
Jul. 07, 1997	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jun. 24, 1997	ASSIGNED TO EXAMINER	70722
May 09, 1997	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Mar. 31, 1997	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Sep. 30, 1996	NON-FINAL ACTION MAILED	
Feb. 13, 1996	ASSIGNED TO EXAMINER	67348
Feb. 02, 1996	ASSIGNED TO EXAMINER	73356

Maintenance Filings or Post Registration Information

Affidavit of Continued Use: Section 8 - Accepted

Affidavit of Incontestability: Section 15 - Accepted

Renewal Date: Dec. 09, 2007

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: POST REGISTRATION

Date In Location: Aug 01, 2007

Assignment Abstract Of Title Information - None recorded

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Mark: EASTMAN

EASTMAN

US Serial Number: 74592753
US Registration Number: 2053822

Application Filing Date: Oct. 31, 1994

Registration Date: Apr. 22, 1997

Register: Principal

Mark Type: Trademark

Status: The registration has been renewed.

Status Date: May 08, 2007

Publication Date: Jan. 28, 1997

Mark Information

Mark Literal Elements: EASTMAN

Standard Character Claim: No

Mark Drawing Type: 5 - AN ILLUSTRATION DRAWING WITH WORD(S) /LETTER(S)/ NUMBER(S) INSTYLIZED FORM

Related Properties Information

Claimed Ownership of US [0298573](#), [0656354](#), [0680301](#), [0619228](#), [0631434](#), [0641595](#), [0850818](#), [1487274](#) and others
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- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *,* identify additional (new) wording in the goods/services.

For: agricultural chemicals, unprocessed plastics, unprocessed synthetic resins, additives for plastics and resins, adhesives, inks the printing industry and chemicals for use in pharmaceutical products

International Class(es): 001 - Primary Class

U.S Class(es): 001, 005, 006, 010, 026, 046

Class Status: ACTIVE

Basis: 1(a)

First Use: Nov. 1992

Use in Commerce: Nov. 1992

For: synthetic fibers for textile uses

International Class(es): 022 - Primary Class

U.S Class(es): 001, 002, 007, 019, 022, 042, 050

Class Status: ACTIVE

Basis: 1(a)

First Use: Nov. 1992

Use in Commerce: Nov. 1992

For: synthetic yarns and threads for textile uses

International Class(es): 023 - Primary Class

U.S Class(es): 043

Class Status: ACTIVE

Basis: 1(a)

First Use: Nov. 1992

Use in Commerce: Nov. 22, 1992

Basis Information (Case Level)

Filed Use: Yes	Currently Use: Yes	Amended Use: No
Filed ITU: No	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: Eastman Chemical Company
Owner Address: 100 North Eastman Road
Kingsport, TENNESSEE 37660
UNITED STATES
Legal Entity Type: CORPORATION
State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: ELIZABETH TWOMEY
Docket Number: 05581.8010

Correspondent

Correspondent Name/Address: ELIZABETH TWOMEY
EASTMAN CHEMICAL COMPANY
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KINGSPORT, TENNESSEE 37660
UNITED STATES
Phone: 4232295515
Fax: 4232291239
Correspondent e-mail: etwomey@eastman.com
Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
May 08, 2007	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	61619
May 08, 2007	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	
Apr. 25, 2007	ASSIGNED TO PARALEGAL	61619
Mar. 26, 2007	REGISTERED - COMBINED SECTION 8 (10-YR) & SEC. 9 FILED	
Mar. 26, 2007	TEAS SECTION 8 & 9 RECEIVED	
Dec. 11, 2006	CASE FILE IN TIGRS	
Jul. 17, 2003	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK	
Mar. 28, 2003	REGISTERED - SEC. 8 (6-YR) & SEC. 15 FILED	
Mar. 28, 2003	TEAS SECTION 8 & 15 RECEIVED	
Aug. 30, 2002	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Apr. 08, 2002	PAPER RECEIVED	

Apr. 22, 1997	REGISTERED-PRINCIPAL REGISTER	
Jan. 28, 1997	PUBLISHED FOR OPPOSITION	
Dec. 27, 1996	NOTICE OF PUBLICATION	
Sep. 26, 1996	APPROVED FOR PUB - PRINCIPAL REGISTER	
Aug. 07, 1996	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Mar. 04, 1996	FINAL REFUSAL MAILED	
Nov. 12, 1995	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Dec. 22, 1995	ASSIGNED TO EXAMINER	67348
Oct. 08, 1995	ASSIGNED TO EXAMINER	62871
May 08, 1995	NON-FINAL ACTION MAILED	
Apr. 17, 1995	ASSIGNED TO EXAMINER	67431

Maintenance Filings or Post Registration Information

Affidavit of Continued Use: Section 8 - Accepted

Affidavit of Incontestability: Section 15 - Accepted

Renewal Date: Apr, 22, 2007

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: POST REGISTRATION

Date In Location: May 08, 2007

Assignment Abstract Of Title Information - None recorded

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