To: Gungner, David J. (e9pxbkwmrp1u5o3@pacbell.net)

Subject: TRADEMARK APPLICATION NO. 78093634 - MISSING A RIB, XY INSTEAD OF XX - N/A

Sent: 5/24/2005 6:01:20 PM

Sent As: ECOM116@USPTO.GOV

Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/093634

APPLICANT: Gungner, David J.

[redacted]

CORRESPONDENT ADDRESS:
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Post Office Area 3302
Los Angeles County CA 90408-3302

RETURN ADDRESS:
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

If no fees are enclosed, the address should include the words "Box Responses - No Fee."

MARK: MISSING A RIB, XY INSTEAD OF XX

CORRESPONDENT'S REFERENCE/DOCKET NO: N/A

CORRESPONDENT EMAIL ADDRESS:
e9pxbkwmrp1u5o3@pacbell.net

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address..

Serial Number 78/093634

Applicant is requesting reconsideration of a final refusal dated July 16, 2004.

After careful consideration of the law and facts of the case, the examining attorney must deny the request for reconsideration and adhere to the final action as written since no new facts or reasons have been presented that are significant and compelling with regard to the point at issue.

Applicant has submitted "facsimile transmission paper utilizing 'missing a rib, xy instead of xx.'" This use of the mark is not acceptable use on the goods in commerce because the specimen is merely a facsimile cover sheet addressed to the examining attorney.

Commerce is defined as "all commerce which may lawfully be regulated by Congress." Trademark Act Section 45, 15 U.S.C. §1127. Specifically, Section 45 of the Act defines "use in commerce" as

follows:

> the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark. For purposes of this Act, a mark shall be deemed to be in use in commerce-
>
> (1) on goods when-
>
> (A) it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale, and
>
> (B) the goods are sold or transported in commerce, and
>
> (2) on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce, or the services are rendered in more than one State or in the United States and a foreign country and the person rendering the services is engaged in commerce in connection with the services.

See TMEP §§901 *et seq.*

Accordingly, applicant's request for reconsideration is *denied.* The application file will be returned to the Trademark Trial and Appeal Board for resumption of the appeal. 37 C.F.R. Section 2.64(b); TMEP Section 715.03(c).

NOTICE: FEE CHANGE

Effective January 31, 2005 and pursuant to the Consolidated Appropriations Act, 2005, Pub. L. 108-447, the following are the fees that will be charged for filing a trademark application:

(1) $325 per international class if filed electronically using the Trademark Electronic Application System (TEAS); or

(2) $375 per international class if filed on paper

These fees will be charged not only when a new application is filed, but also when payments are made to add classes to an existing application. If such payments are submitted with a TEAS response, the fee will be $325 per class, and if such payments are made with a paper response, the fee will be $375 per class.

The new fee requirements will apply to any fees filed on or after January 31, 2005.

NOTICE: TRADEMARK OPERATION RELOCATION

The Trademark Operation has relocated to Alexandria, Virginia. Effective October 4, 2004, all Trademark-related paper mail (except documents sent to the Assignment Services Division for recordation, certain documents filed under the Madrid Protocol, and requests for copies of trademark documents) must be sent to:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Applicants, attorneys and other Trademark customers are strongly encouraged to correspond with the USPTO online via the Trademark Electronic Application System (TEAS), at http://www.uspto.gov/teas/index.html.

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