

M.P.O.
7/15/04

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/132209

APPLICANT: Allied Electronics Inc.

78132209

CORRESPONDENT ADDRESS:
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RETURN ADDRESS:
Commissioner for Trademarks
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Arlington, VA 22202-3514

MARK: ALLIED ELECTRONICS

CORRESPONDENT'S REFERENCE/DOCKET NO: 105363.00007

Please provide in all correspondence:

CORRESPONDENT EMAIL ADDRESS:
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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.

FINAL OFFICE ACTION

TO AVOID ABANDONMENT, WE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF OUR MAILING OR E-MAILING DATE.

Serial Number 78/132209

This letter responds to applicant's communication filed on June 2, 2004.

Applicant's amendment to the identification of goods has been accepted and made of record.

FINAL Refusal Under Section 2(d) - Likelihood of Confusion

Registration was refused under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d), because the mark for which registration is sought so resembles the mark shown in U.S. Registration No. 0568267 as to be likely, when used in connection with the identified services, to cause confusion, or to cause mistake, or to deceive.

The examining attorney has considered applicant's arguments carefully but has found them unpersuasive. For the reasons set forth below and in the May 14, 2003 final Office action, the refusal under Section 2(d) is maintained and made FINAL.

Section 2(d) of the Trademark Act bars registration where a mark so resembles a registered mark, that it is likely, when applied to the services, to cause confusion, or to cause mistake or to deceive.

In order to demonstrate that the parties' goods are related, the examining attorney attaches evidence consisting of 32 registrations wherein the same mark is used contemporaneously in connection with applicant's and registrant's goods. Applicant has asserted that previously referenced applications do not contain specific hand tools for use in the electronics industry. Seven of the attached registrations include goods that are used in connection with electronics equipment and eight of the attached registrations include goods that are used in connection with computers. Furthermore, the identification of goods in the cited registration is not limited to "general home and garden tools" as applicant claims. The examining attorney must determine whether there is a likelihood of confusion on the basis of the goods/services identified in the application and registration. If the cited registration describes the goods/services broadly and there are no limitations as to their nature, type, channels of trade or classes of purchasers, it is presumed that the registration encompasses all goods/services of the type described, that they move in all normal channels of trade, and that they are available to all potential customers. *In re Elbaum*, 211 USPQ 639 (TTAB 1981). TMEP §1207.01(a)(iii).

Proper Response to Final Action

If applicant fails to respond to this final action within six months of the mailing date, the application will be abandoned. 15 U.S.C. §1062(b); 37 C.F.R. §2.65(a). Applicant may respond to this final action by:

- (1) submitting a response that fully satisfies all outstanding requirements, if feasible (37 C.F.R. §2.64(a)); or
- (2) filing an appeal to the Trademark Trial and Appeal Board, with an appeal fee of \$100 per class (37 C.F.R. §§2.6(a)(18) and 2.64(a); TMEP §§715.01 and 1501 *et seq.*; TBMP Chapter 1200).

In certain circumstances, a petition to the Director may be filed to review a final action that is limited to procedural issues, pursuant to 37 C.F.R. §2.63(b)(2). 37 C.F.R. §2.64(a). See 37 C.F.R. §2.146(b), TMEP §1704, and TBMP Chapter 1201.05 for an explanation of petitionable matter. The petition fee is \$100. 37 C.F.R. §2.6(a)(15).

/Cynthia Sloan/
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How to respond to this Office Action:

To respond formally using the Office's Trademark Electronic Application System (TEAS), visit

<http://www.uspto.gov/teas/index.html> and follow the instructions.

To respond formally via regular mail, your response should be sent to the mailing Return Address listed above and include the serial number, law office and examining attorney's name on the upper right corner of each page of your response.

To check the status of your application at any time, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at **<http://tarr.uspto.gov/>**

For general and other useful information about trademarks, you are encouraged to visit the Office's web site at **<http://www.uspto.gov/main/trademarks.htm>**

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY.