

TRADEMARK

Date September 30, 2005

Case Docket No. 2966-030684

COMMISSIONER FOR TRADEMARKS

P.O. Box 1451

Alexandria, VA 22313-1451

Madam:

Transmitted herewith for filing with the United States Patent and Trademark Office is:

APPLICANT: CONVERSIVE, INC. ("ASSISTED RESPONSE" Application No. 78/240,385

FOR: Trademark Application

Renewal of Trademark

X Motion for Remand for Consideration of Conditional Amendment Pursuant to Rule 2.117(c) (2 pp. in trip.); Conditional Amendment (5 pp.) and Notice of Appeal (2 pp.)

including:

sheet(s) of drawings,

specimen(s) showing the mark as actually used,

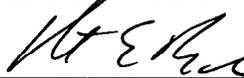
and \$ N/A for filing.

The Commissioner of Patents and Trademarks is hereby authorized to charge any additional payment of the fees associated with this communication to Deposit Account No. 23-0650. Please refund any overpayment to Deposit Account No. 23-0650.

The original and two copies of this transmittal sheet are enclosed.

Respectfully submitted,

THE WEBB LAW FIRM

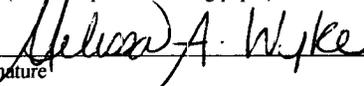
By 

Kent E. Baldauf, Jr.
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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, on September 30, 2005.

Melissa A. Wyke

(Name of person mailing paper)



Signature

9/30/2005
Date

ATTY. DOCKET NO. 2966-030684

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

International Class No. 009 :
In re trademark application of :
Conversive, Inc. :
Application No. 78/240,385 : **ASSISTED RESPONSE**
Filed April 22, 2003 :
Law Office 105 :
Examining Attorney Linda M. Estrada : Pittsburgh, Pennsylvania

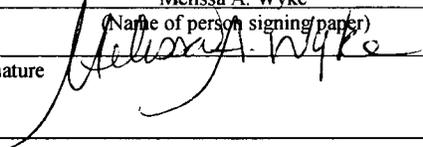
**MOTION FOR REMAND TO CONSIDER CONDITIONAL AMENDMENT AND TO
STAY TIME TO FILE AN APPEAL BRIEF PURSUANT TO RULE 2.117(c)**

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

Madam:

Applicant, Conversive, Inc., respectfully requests that the Board remand the above-referenced application for consideration of the attached conditional amendment and to reset the time to file an Appeal Brief pending further consideration of the Application. Applicant asserts that the attached conditional amendment will place the application in condition for acceptance and publication.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Attention: Trademark Trial and Appeal Board, Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451 on September 30, 2005.

Melissa A. Wyke
(Name of person signing paper)
Signature  Date 9/30/2005

The application to register ASSISTED RESPONSE stands finally rejected as being deemed merely descriptive. The refusal to register ASSISTED RESPONSE pursuant to §2(e)(1) of the Trademark Act is the only issue now present in the case. Applicant avers that the issue of descriptiveness will be mooted by the proposed amendment to the identification of goods. The conditional amendment further limits the description of the goods so that no feature of the goods is described in any way. Further, the Examining Attorney's position that the mark describes the goods is incorrect and is based upon uses of these words in contexts other than that relating to a product of the type sold by Applicant. Accordingly, Applicant respectfully requests that the Trademark Trial and Appeal Board acknowledge that jurisdiction over the application has been remanded to the Examining Attorney for consideration of the conditional amendment, acceptance and passage to publication for opposition. Additionally, Applicant requests that the time to file an Appeal Brief, if later necessary, be reset.

Applicant asserts that this Motion is filed with good cause and requests that the Motion be granted. An early action to that effect is earnestly solicited.

Respectfully submitted,

THE WEBB LAW FIRM

By 

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Law Office 105 :
Examining Attorney Linda M. Estrada : Pittsburgh, Pennsylvania

CONDITIONAL AMENDMENT

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

Madam:

This is in response to the Office Action dated June 9, 2005. The Examining Attorney's comments have been carefully considered.

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_____	Melissa A. Wyke
_____	(Name of person mailing paper)
Signature <i>Melissa A. Wyke</i>	9/30/2005
	Date

IN THE IDENTIFICATION OF GOODS:

Conditioned on the acceptance by the Examining Attorney, please replace the current description of goods and services in the subject application with the following:

--Computer programs, namely an interactive natural language processing knowledge base used to build and customize interactive conversational mechanisms in the form of an animated or virtual character which assists, answer questions and provide information to users of web sites relating to higher education admissions and student loan information, for use in real-time Internet relay communications platforms in International Class 9.--

REMARKS:

The Examining Attorney has refused the registration of ASSISTED RESPONSE as being merely descriptive of the recited goods.

Applicant has conditionally amended the identification of goods to further clarify its use of the mark. Applicant's software permits the purchaser to create a virtual "person" or other animated character for interacting with users of a web site. The virtual person or character interacts in a conversational manner to answer questions and provide help and information to users of a web site.

In the June 9, 2005, Office Action the Examining Attorney submitted that the words "Assisted" and "Response" simply describe the goods.

The goods description has been further narrowed to specify that the software permits the user to create a virtual person or other character for use on the web site. Applicant's software enables the purchaser to create a virtual "person" or other animated character for interacting with users of a web site. This virtual person or character interacts in a conversational manner to answer questions, and to provide help and information to users of the web site. The

mark ASSISTED RESPONSE does not describe the Applicant's software that enables the purchaser to create such a virtual "person" or character. An individual hearing or reading this mark would not conclude that such goods would be provided under this mark. The goods are not described in any way.

Moreover, the mark ASSISTED RESPONSE does not describe an ingredient, quality, characteristic, function, feature, purpose or use of the goods. When one applies any of the imagination test, the competitors' need test or the competitors' use test, it is readily apparent that the mark ASSISTED RESPONSE is suggestive. The imagination test provides that a mark is suggestive if it requires imagination, thought and perception to reach a conclusion as to the nature of the goods. A term is descriptive if it conveys an immediate idea of the ingredients, qualities or characteristics of the goods. See Hasbro, Inc. v. Lanard Toys, Ltd., 858 F.2d 70 (2d Cir. 1988). The mark ASSISTED RESPONSE does not immediately convey any idea that this is a software product for creating a virtual person or character to assist users of a web site. Correspondingly, because some imagination is required to associate ASSISTED RESPONSE with this software product, it will not be needed by competitive sellers to describe their product. Union Carbide Corp. v. Ever-Ready, Inc., 531 F.2d 366 (7th Cir. 1976). The materials submitted by the Examiner do not provide evidence that this term is used by competitors for a product that permits the development of such virtual characters. This further supports the conclusion that the mark is not descriptive. Firestone Tire & Rubber Co. v. Goodyear Tire & Rubber Co., 186 U.S.P.Q 557 (T.T.A.B. 1975), aff'd, 189 U.S.P.Q. 348 (CCPA 1976).

The Examining Attorney also attached various articles on which the words "assisted response" are used in connection with dissimilar products. Specifically, in the article "Concerto Software Launches EnsemblePro 5.0", the words "assisted response" are used in connection with coordinated voice and data transfers and screen pops. In the article "Firepond's

eService Performer Helps Saga Manage Interactions with 'Silver Surfers'; Top UK Web Site for Over-50s Has Complete View of its Customers", the words "assisted response" are used in a discussion of the processing of incoming e-mails in an e-mail management product. In the article "E-Mail Management Technologies: A Purchaser's Primer; Technology Information", the words "assisted response" are used in a discussion of automating e-mail message systems. The article "NetworkDirect's Eagle Email Introduces Eagle Response; E-mail Assisted Response System Designed for Businesses of Any Size" describes a system for reducing time for e-mail replies by using pre-developed messages to customer questions. The article "Maximize SAN and NAS ROI with SRM: matching application requirements with appropriate storage resources enables administrators to fully realize the value of networked storage; storage resource management", the words "assisted response" are used in connection with notification of instances where data storage capacity is surpassed. In the article "Firepond Delivers Intelligent Multi-Channel Contact Center with New e ServicePerformer 2002; Combines fast deployment with advanced intelligence and easy integration," the words "assisted response" are used in the discussion of a customer assistance product for e-mail responses. The article "E-Mail Management Technologies: A Purchaser's Primer; Technology Information" uses the words "agent-assisted response" to describe a method of sending e-mail responses to e-mail inquiries with human involvement. The article "Chordiant knowledge management system; Management News and Products; Brief Article; Product Announcement" refers to words "assisted response" in a product name. This likewise appears to be product for responding to e-mails in a written form. The article "Marks Debut in DP; Savin Comes Out With Two OA Systems", the words "computer-assisted response" are used in connection with a hotline for remote repair and maintenance problems.

The Examining Attorney also attached information concerning the companies Chordiant and Banter. Chordiant apparently delivers responses to consumer questions (presumably by e-mail) by an "Assisted Response" application. Banter sells an e-mail response product. The words "assisted response" are used in the discussion of the e-mail response.

Based upon the forgoing, the words "assisted response" are not consistently used to describe any particular type of software product. At best, these words are most commonly used to describe software products that automate e-mail responses.

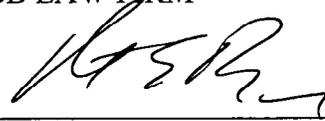
Thus the evidence submitted by the Examining Attorney does not demonstrate the use of the words "assisted response" to describe Applicant's product. These words are not used to describe a software product that permits the user to create a virtual person or character.

In view of the foregoing, Applicant respectfully requests the entry of the amendment to the goods description, acceptance of this application and passage to publication for opposition pursuant to § 1(a) of the Trademark Act. An early action to that effect is earnestly solicited.

Respectfully submitted,

THE WEBB LAW FIRM

By



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NOTICE OF APPEAL

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

Madam:

Applicant hereby appeals from the refusal to register the above mark in the Final

Office Action mailed June 9, 2005.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA. 22313-1451 on September 30, 2005.

Melissa A. Wyke
(Name of Person Mailing Paper or Fee)

Melissa A. Wyke 9/30/2005
Signature Date

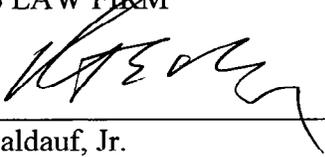
Please charge \$100.00 and any additional required fees to Deposit Account No. 23-

0650. This Notice of Appeal is filed in triplicate.

Respectfully submitted,

THE WEBB LAW FIRM

By



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