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TIAJOLOFF & KELLY

By: _____

Printed Name: Edward P. Kelly

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : L-3 Communications Corp.
Serial No. : 78/706879
Mark : PEBBLE
Filed : September 5, 2005
Examining : Nelson B. Snyder III
Law Office 107

ATTN: Box Responses/No Fee
Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Request for Reconsideration

SIR:

Applicant hereby responds to the Office Action of October 22, 2009 in the referenced

Application and requests reconsideration of the Examiner's final rejection based upon Section 2 (d).

U.S. PATENT & TRADEMARK OFFICE

04-27-2009

U.S. Patent & Trademark Office Mail Rept. 01-#21

Section 2(d) Refusal - Likelihood of Confusion

The Examining Attorney has finally refused registration under Trademark Act § 2(d), 15 U.S.C.

§ 1052(d), on the basis that that the instant mark, when used in connection with the identified goods, so resembles the mark in U.S. Registration Numbers 3,412,719 for **PEBL**, as used in connection with,

“TELEPHONES, CELLULAR TELEPHONES, RADIO TELEPHONES, PAGERS, TWO-WAY RADIOS, RADIO TRANSMITTERS, RADIO RECEIVERS, RADIO TRANSCEIVERS, ELECTRONIC PERSONAL ORGANIZERS, AND RELATED ACCESSORIES FOR THE FOREGOING GOODS, NAMELY, HEADSETS, MICROPHONES, SPEAKERS, CARRYING CASES, AND BELT CLIPS; COMPUTER SOFTWARE AND PROGRAMS USED FOR TRANSMISSION AND REPRODUCING AND RECEIVING OF SOUND, IMAGES, VIDEO AND DATA OVER A TELECOMMUNICATIONS NETWORK AND SYSTEM BETWEEN TERMINALS AND FOR ENHANCING AND FACILITATING USE AND ACCESS TO COMPUTER NETWORKS AND TELEPHONE NETWORKS; COMPUTER SOFTWARE FOR USE IN GENERAL PURPOSE DATABASE MANAGEMENT; COMPUTER E-COMMERCE SOFTWARE TO ALLOW USER TO SAFELY PLACE ORDERS AND MAKE PAYMENTS IN THE FIELD OF ELECTRONIC BUSINESS TRANSACTIONS VIA A GLOBAL COMPUTER NETWORK OR TELECOMMUNICATIONS NETWORK; COMPUTER SOFTWARE FOR TRAINING AND PRODUCT SUPPORT FOR COMPUTERS AND MOBILE PHONES IN THE FIELD OF COMMUNICATIONS; COMPUTER GAME SOFTWARE FOR MOBILE HANDSETS; COMPUTER SOFTWARE AND PROGRAMS FEATURING MUSIC, MOVIES, ANIMATION, ELECTRONIC BOOKS; COMPUTER SOFTWARE FOR THE DISTRIBUTION OF INFORMATION AND INTERACTIVE MULTIMEDIA CONTENT CONTAINING TEXT, IMAGES, VIDEO AND SOUND TO USERS IN THE FIELD OF COMMUNICATIONS; COMPUTER SOFTWARE AND PROGRAMS FOR MANAGEMENT AND OPERATION OF WIRELESS TELECOMMUNICATIONS DEVICES; COMPUTER SOFTWARE FOR ACCESSING, SEARCHING, INDEXING AND RETRIEVING INFORMATION AND DATA FROM GLOBAL COMPUTER NETWORKS AND GLOBAL COMMUNICATION NETWORKS, AND FOR BROWSING AND NAVIGATING THROUGH WEB SITES ON SAID NETWORKS; COMPUTER SOFTWARE FOR SENDING AND RECEIVING SHORT MESSAGES AND ELECTRONIC MAIL AND FOR FILTERING NON-TEXT INFORMATION FROM THE DATA; ANALOG AND DIGITAL RADIO TRANSCEIVERS AND RECEIVERS FOR DATA, VOICE, IMAGE AND VIDEO COMMUNICATION; ELECTRONIC GAME SOFTWARE FOR MOBILE HANDSETS. CAMERAS, NAMELY, PHOTOGRAPHIC CAMERAS, DIGITAL CAMERAS, MOTION PICTURE CAMERAS, VIDEO CAMERAS; SYSTEMS AND APPARATUS FOR ELECTRIC MONEY TRANSACTIONS, NAMELY, SMART CARDS, SMART CARD READERS; CALCULATORS; CARDS FOR COMMUNICATIONS PURPOSES, NAMELY, MEMORY CARDS, MODEM CARDS AND FAX MODEM CARDS FOR COMMUNICATION PURPOSES, ALL FOR USE WITH COMMUNICATIONS APPARATUS; MODEMS,

GLOBAL POSITIONING UNITS, BATTERIES, BATTERY CHARGERS, POWER ADAPTERS, AND ANTENNAS,"

as to be likely to cause confusion. See TMEP 1207.01.

Applicant set forth its positions on the Examiner's finding of a likelihood of confusion in view of the PEBL reference in its September 19, 2008 response to office action and those arguments will not be specifically repeated here.

Applicant, however, requests reconsideration based upon the following fundamental differences between Applicant's mark of PEBBLE and the cited reference of PEBL:

- (1) The respective marks are not identical, and are in fact different in appearance, pronunciation and commercial impression; there is no reasonable basis to assume that ordinary consumers would pronounce PEBL as "pebble"; the burden to disprove such an assumption should not be placed upon the Applicant; and
- (2) The goods of each of the respective marks are quite different; Applicant's goods are part of a signal intelligence system for remotely detecting and monitoring radio frequency signals. A signal intelligence system intercepts radio frequency signals for the purpose of identifying the location from which such signals emanate. The system is used for instance during warfare conditions to identify the position of enemy locations. The goods of the cited registrant which are individual communication devices clearly do not provide the function of those identified in Applicant's application. The differences in the goods and the differences in the respective marks favor registration.

The Applicant is simultaneously filing a Notice of Appeal in this case. However, for the reasons discussed more fully below, it is respectfully submitted that the Section 2(d) rejection be withdrawn.

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