

PTO Form 1930 (Rev 9/2007)

OMB No. 0651-0050 (Exp. 4/30/2009)

## Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	78808184
LAW OFFICE ASSIGNED	LAW OFFICE 107
MARK SECTION (no change)	
ARGUMENT(S)	
<p><b>REMARKS</b></p> <p>In the Office Action the Examining Attorney maintained and made final the refusal to register the mark PERONAL COMBAT SYSTEMS on grounds that the mark is merely descriptive of the underlying goods. While Applicant appreciates the concerns raised by the Examining Attorney, Applicant respectfully disagrees with the Examining Attorney and submits that the mark is not merely descriptive.</p> <p><b>I. Composite Mark.</b></p> <p>A composite mark is not necessarily merely descriptive even if it consists of two or more admittedly descriptive elements. When joined in a single mark, the descriptive terms may create a distinct commercial impression which is not merely descriptive. <i>In re TBG, Inc.</i>, 229 USPQ 759 (TTAB 1986). In <i>TBG</i> the mark SHOWROOM ONLINE was held not to be merely descriptive of computerized interior furnishings product information services even though the terms “showroom” and “online” were descriptive individually.</p> <p>Similarly, in the present case, the composite mark PERSONAL COMBAT SYSTEMS is not merely descriptive even if “personal,” “combat,” and “systems” are each deemed descriptive individually. The Examining Attorney appears to have based her argument that the mark is descriptive in part on the fact that each of the terms contained in Applicant’s mark are contained in Applicant’s identification of goods. This however, does not support a finding that the composite mark as a whole is merely descriptive, especially since Applicant’s identification consists of four separate classifications of goods, one of which contains a lengthy listing of numerous, separate goods. Instead, the Examiner has only established that the word “personal” is descriptive for some of the goods, the word “combat” is descriptive of other goods, and “combat” is descriptive of still yet other goods, but not that the whole mark PERSONAL COMBAT SYSTEMS is descriptive of any one particular good.</p> <p>“To be characterized as ‘descriptive,’ a term [mark] must directly give some reasonably accurate or tolerably <i>distinct</i> knowledge of the characteristics of the product. If information about the product or service given by the term is indirect or vague, then this indicates that the term is being used in a ‘suggestive,’ not ‘descriptive’ manner.” J. Thomas McCarthy, <i>McCarthy on Trademark and Unfair Competition</i> §11.19 (4<sup>th</sup> ed. 2007) (Emphasis added). The composite mark PERSONAL COMBAT SYSTEMS is simply too vague to give customers and potential customers “reasonably accurate” knowledge of the characteristics of any of Applicant’s products, namely Applicant’s robots,</p>	

exoskeleton suits, unmanned vehicles, computers for simulation, or medical apparatus for measuring vital signs. Accordingly, Applicant submits that the composite mark PERSONAL COMBAT SYSTEMS, when considered in its entirety, is not merely descriptive.

## II. Examiner's Evidence.

In the Office Action, the Examining Attorney provided excerpts to support her position that Applicant's mark is merely descriptive. First, the Examining Attorney provided the dictionary definitions of the individual terms "personal," "combat," and "systems;" however, as discussed above, a showing that each term individually is descriptive is not conclusive that the composite is also descriptive. Second, the Examining Attorney provides an excerpt wherein the composite term "combat system" is used in relation to a video game. Applicant's goods do not include video games, and as a result, this piece of evidence is irrelevant to the present issue. This excerpt also includes the word "personal," but it is not used in connection with or even in close proximity to the phrase "combat system," further suggesting that this evidence is irrelevant.

Finally, the Examining Attorney attached 3 excerpts that do show the composite term "personal combat systems." The first excerpt uses the phrase "personal combat system" to depict what appears to be a method of fighting related to martial arts and the like. Accordingly, Applicant does not believe that this evidence is relevant with respect to Applicant's goods. The second and third excerpts show use of the phrase "personal combat systems" in what appears to be France and Germany. Specifically, the first references "personal combat systems" as the subject of a French military contract. The second refers to "personal combat systems" as the subject of a German defense contract. Even if the phrase "personal combat system" is descriptive in Germany and France (which is not necessarily the case), that does not mean that the mark is also descriptive in the United States. The issue in the present case is not whether the subject mark is descriptive in foreign countries but whether it is descriptive in the United States where Applicant seeks registration.

In view of the foregoing, Applicant submits that the evidence provided by the Examining Attorney does not support a finding that PERSONAL COMBAT SYSTEMS is merely descriptive of Applicant's goods.

## CONCLUSION

In view of the foregoing, Applicant submits that the mark PERSONAL COMBAT SYSTEMS is registrable on the Principal Register and respectfully requests the same. If any impediment to passing this mark onto publication remains after entry of these amendments and consideration of these remarks the Examining Attorney is invited to initiate a telephone interview with the undersigned.

### GOODS AND/OR SERVICES SECTION (009)(current)

INTERNATIONAL CLASS

009

### DESCRIPTION

Computers and computer peripherals for presenting virtual reality by simulating a visual and/or tactile environment to a human being; unmanned mobile robots for personal use; unmanned mobile robots for use in transporting and moving objects, and performing inspections and other useful tasks; Robotic amplifier systems, namely robotic exoskeleton suits worn by humans for the purpose of enhancing the strength and endurance of the person-wearing the suit; personal amplification systems, namely robotic exoskeleton suits worn by military personnel and others in combative and dangerous environments for enhancing the endurance and strength of the person wearing the suit, and providing protection from extreme temperatures, radiation, chemical, biological and nuclear threats

FILING BASIS

Section 1(b)

### GOODS AND/OR SERVICES SECTION (009)(proposed)

<b>INTERNATIONAL CLASS</b>	009
<b>DESCRIPTION</b>	
Computers and computer peripherals for presenting virtual reality by simulating a visual and/or tactile environment to a human being; unmanned mobile robots for personal use; unmanned mobile robots for personal, military, and public safety use for use in transporting and moving objects, and performing inspections and other useful tasks; Robotic amplifier systems, namely robotic exoskeleton suits worn by humans for the purpose of enhancing the strength and endurance of the person wearing the suit; personal amplification systems, namely robotic exoskeleton suits worn by military personnel and others in combative and dangerous environments for enhancing the endurance and strength of the person wearing the suit, and providing protection from extreme temperatures, radiation, chemical, biological and nuclear threats.	
<b>FILING BASIS</b>	Section 1(b)
<b>GOODS AND/OR SERVICES SECTION (010)(current)</b>	
<b>INTERNATIONAL CLASS</b>	010
<b>DESCRIPTION</b>	
Medical apparatus for attachment to the body for measuring vital signs of a human	
<b>FILING BASIS</b>	Section 1(b)
<b>GOODS AND/OR SERVICES SECTION (010)(proposed)</b>	
<b>INTERNATIONAL CLASS</b>	010
<b>DESCRIPTION</b>	
Medical apparatus for attachment to the body for measuring vital signs of a human.	
<b>FILING BASIS</b>	Section 1(b)
<b>GOODS AND/OR SERVICES SECTION (012)(current)</b>	
<b>INTERNATIONAL CLASS</b>	012
<b>DESCRIPTION</b>	
Automatic guided unmanned ground vehicles; automatic guided unmanned ground vehicles for use in transporting and moving objects, and performing inspections and other useful tasks	
<b>FILING BASIS</b>	Section 1(b)
<b>GOODS AND/OR SERVICES SECTION (012)(proposed)</b>	
<b>INTERNATIONAL CLASS</b>	012
<b>DESCRIPTION</b>	
Automatic guided unmanned ground vehicles; automatic guided unmanned ground vehicles for use in transporting and moving objects, and performing inspections and other useful tasks.	
<b>FILING BASIS</b>	Section 1(b)

<b>ADDITIONAL STATEMENTS SECTION</b>	
MISCELLANEOUS STATEMENT	Applicant appreciates the suggestions made by the Examining Attorney, which have been incorporated into the amended identification of goods. In addition to the Examiner's suggested language, Applicant has added the terms "military" and "public safety" to the identification of goods in Class 9. Accordingly, the phrase reads, "unmanned mobile robots for personal, military, and public safety use for use in transporting and moving objects". Applicant submits that the language "personal use" has been pre-approved as being sufficiently definite. The language "military use" and "public safety use" is at least as definite, if not more so, than the language "personal use." For this reason, Applicant submits that this language is acceptable.
<b>SIGNATURE SECTION</b>	
DECLARATION SIGNATURE	The filing Attorney has elected not to submit the signed declaration, believing no supporting declaration is required under the <i>Trademark Rules of Practice</i> .
RESPONSE SIGNATURE	/petermdejonge/
SIGNATORY'S NAME	Peter M. de Jonge
SIGNATORY'S POSITION	Attorney of Record
DATE SIGNED	09/14/2007
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
<b>FILING INFORMATION SECTION</b>	
SUBMIT DATE	Fri Sep 14 16:23:30 EDT 2007
TEAS STAMP	USPTO/RFR-66.236.93.130-2 0070914162330621228-78808 184-40056382f42c96d8734c6 fe17a37b8493f-N/A-N/A-200 70914161316474402

PTO Form 1930 (Rev 9/2007)

OMB No. 0651-0050 (Exp. 4/30/2009)

**Request for Reconsideration after Final Action**

**To the Commissioner for Trademarks:**

Application serial no. **78808184** has been amended as follows:

**ARGUMENT(S)**

**In response to the substantive refusal(s), please note the following:**

**REMARKS**

In the Office Action the Examining Attorney maintained and made final the refusal to register the mark PERONAL COMBAT SYSTEMS on grounds that the mark is merely descriptive of the underlying goods. While Applicant appreciates the concerns raised by the Examining Attorney, Applicant respectfully disagrees with the Examining Attorney and submits that the mark is not merely descriptive.

**I. Composite Mark.**

A composite mark is not necessarily merely descriptive even if it consists of two or more admittedly descriptive elements. When joined in a single mark, the descriptive terms may create a distinct commercial impression which is not merely descriptive. *In re TBG, Inc.*, 229 USPQ 759 (TTAB 1986). In *TBG* the mark SHOWROOM ONLINE was held not to be merely descriptive of computerized interior furnishings product information services even though the terms "showroom" and "online" were descriptive individually.

Similarly, in the present case, the composite mark PERSONAL COMBAT SYSTEMS is not merely descriptive even if "personal," "combat," and "systems" are each deemed descriptive individually. The Examining Attorney appears to have based her argument that the mark is descriptive in part on the fact that each of the terms contained in Applicant's mark are contained in Applicant's identification of goods. This however, does not support a finding that the composite mark as a whole is merely descriptive, especially since Applicant's identification consists of four separate classifications of goods, one of which contains a lengthy listing of numerous, separate goods. Instead, the Examiner has only established that the word "personal" is descriptive for some of the goods, the word "combat" is descriptive of other goods, and "combat" is descriptive of still yet other goods, but not that the whole mark PERSONAL COMBAT SYSTEMS is descriptive of any one particular good.

"To be characterized as 'descriptive,' a term [mark] must directly give some reasonably accurate or tolerably *distinct* knowledge of the characteristics of the product. If information about the product or service given by the term is indirect or vague, then this indicates that the term is being used in a 'suggestive,' not 'descriptive' manner." J. Thomas McCarthy, *McCarthy on Trademark and Unfair Competition* §11.19 (4<sup>th</sup> ed. 2007) (Emphasis added). The composite mark PERSONAL COMBAT SYSTEMS is simply too vague to give customers and potential customers "reasonably accurate" knowledge of the characteristics of any of Applicant's products, namely Applicant's robots, exoskeleton suits, unmanned vehicles, computers for simulation, or medical apparatus for measuring vital signs. Accordingly, Applicant submits that the composite mark PERSONAL COMBAT SYSTEMS, when considered in its entirety, is not merely descriptive.

**II. Examiner's Evidence.**

In the Office Action, the Examining Attorney provided excerpts to support her position that Applicant's mark is merely descriptive. First, the Examining Attorney provided the dictionary definitions of the individual terms "personal," "combat," and "systems;" however, as discussed above, a showing that each term individually is descriptive is not conclusive that the composite is also descriptive. Second, the Examining Attorney provides an excerpt wherein the composite term "combat system" is used in relation to a video game. Applicant's goods do not include video games, and as a result, this piece of evidence is irrelevant to the present issue. This excerpt also includes the word "personal," but it is not used in connection with or even in close proximity to the phrase "combat system," further suggesting that this evidence is irrelevant.

Finally, the Examining Attorney attached 3 excerpts that do show the composite term "personal

combat systems.” The first excerpt uses the phrase “personal combat system” to depict what appears to be a method of fighting related to martial arts and the like. Accordingly, Applicant does not believe that this evidence is relevant with respect to Applicant’s goods. The second and third excerpts show use of the phrase “personal combat systems” in what appears to be France and Germany. Specifically, the first references “personal combat systems” as the subject of a French military contract. The second refers to “personal combat systems” as the subject of a German defense contract. Even if the phrase “personal combat system” is descriptive in Germany and France (which is not necessarily the case), that does not mean that the mark is also descriptive in the United States. The issue in the present case is not whether the subject mark is descriptive in foreign countries but whether it is descriptive in the United States where Applicant seeks registration.

In view of the foregoing, Applicant submits that the evidence provided by the Examining Attorney does not support a finding that PERSONAL COMBAT SYSTEMS is merely descriptive of Applicant’s goods.

#### **CONCLUSION**

In view of the foregoing, Applicant submits that the mark PERSONAL COMBAT SYSTEMS is registrable on the Principal Register and respectfully requests the same. If any impediment to passing this mark onto publication remains after entry of these amendments and consideration of these remarks the Examining Attorney is invited to initiate a telephone interview with the undersigned.

#### **CLASSIFICATION AND LISTING OF GOODS/SERVICES**

**Applicant proposes to amend the following class of goods/services in the application:**

**Current:** Class 009 for Computers and computer peripherals for presenting virtual reality by simulating a visual and/or tactile environment to a human being; unmanned mobile robots for personal use; unmanned mobile robots for use in transporting and moving objects, and performing inspections and other useful tasks; Robotic amplifier systems, namely robotic exoskeleton suits worn by humans for the purpose of enhancing the strength and endurance of the person wearing the suit; personal amplification systems, namely robotic exoskeleton suits worn by military personnel and others in combative and dangerous environments for enhancing the endurance and strength of the person wearing the suit, and providing protection from extreme temperatures, radiation, chemical, biological and nuclear threats  
Original Filing Basis:

**Filing Basis: Section 1(b), Intent to Use:** The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

**Proposed:** Class 009 for Computers and computer peripherals for presenting virtual reality by simulating a visual and/or tactile environment to a human being; unmanned mobile robots for personal use; unmanned mobile robots for personal, military, and public safety use for use in transporting and moving objects, and performing inspections and other useful tasks; Robotic amplifier systems, namely robotic exoskeleton suits worn by humans for the purpose of enhancing the strength and endurance of the person wearing the suit; personal amplification systems, namely robotic exoskeleton suits worn by military personnel and others in combative and dangerous environments for enhancing the endurance and strength of the person wearing the suit, and providing protection from extreme temperatures, radiation, chemical, biological and nuclear threats.

**Filing Basis; Section 1(b), Intent to Use:** The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

**Applicant proposes to amend the following class of goods/services in the application:**

**Current:** Class 010 for Medical apparatus for attachment to the body for measuring vital signs of a human

**Original Filing Basis:**

**Filing Basis: Section 1(b), Intent to Use:** The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

**Proposed:** Class 010 for Medical apparatus for attachment to the body for measuring vital signs of a human.

**Filing Basis: Section 1(b), Intent to Use:** The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

**Applicant proposes to amend the following class of goods/services in the application:**

**Current:** Class 012 for Automatic guided unmanned ground vehicles; automatic guided unmanned ground vehicles for use in transporting and moving objects, and performing inspections and other useful tasks

**Original Filing Basis:**

**Filing Basis: Section 1(b), Intent to Use:** The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

**Proposed:** Class 012 for Automatic guided unmanned ground vehicles; automatic guided unmanned ground vehicles for use in transporting and moving objects, and performing inspections and other useful tasks.

**Filing Basis: Section 1(b), Intent to Use:** The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

**ADDITIONAL STATEMENTS**

Applicant appreciates the suggestions made by the Examining Attorney, which have been incorporated into the amended identification of goods. In addition to the Examiner's suggested language, Applicant has added the terms military and public safety to the identification of goods in Class 9. Accordingly, the phrase reads, unmanned mobile robots for personal, military, and public safety use for use in transporting and moving objects Applicant submits that the language personal use has been pre-approved as being sufficiently definite. The language military use and public safety use is at least as definite, if not more so, than the language personal use For this reason, Applicant submits that this language is acceptable.

**SIGNATURE(S)****Declaration Signature**

I hereby elect to bypass the submission of a signed declaration, because I believe a declaration is not required by the rules of practice. I understand that the examining attorney could still, upon later review, require a signed declaration.

**Request for Reconsideration Signature**

Signature: /petermdejonge/ Date: 09/14/2007

Signatory's Name: Peter M. de Jonge

Signatory's Position: Attorney of Record

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian

attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 78808184

Internet Transmission Date: Fri Sep 14 16:23:30 EDT 2007

TEAS Stamp: USPTO/RFR-66.236.93.130-2007091416233062

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