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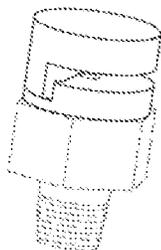
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	78867933
Applicant	UDOR U.S.A., INC.
Correspondence Address	MICHAEL B. LASKY ALTERA LAW GROUP LLC 220 South Sixth Street, 1700 US Bank Plaza South Minneapolis, MN 55402 UNITED STATES trademark@alteralaw.com
Submission	Appeal Brief
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Filer's Name	Michael B. Lasky
Filer's e-mail	trademark@alteralaw.com, mlasky@alteralaw.com
Signature	/Michael Lasky/
Date	03/28/2008

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

Serial No. 78/867933

Applicant: UDOR U.S.A., Inc.



Mark:

The mark consists of round disk head on sprayer nozzle.

Filing Date: April 24, 2006

Law Office: 114

Examining Attorney: Shaila E. Settles

Attorney Docket No. 1325.8-US-01

APPLICANT'S APPEAL BRIEF

The Examining Attorney refuses registration under Trademark Act Section 2(e)(5), stating the proposed mark comprises the configuration of a design feature of the identified goods that serves a utilitarian purpose. Applicant submits this brief in support of its position, and respectfully requests that the Trademark Trial and Appeal Board reverse the Examining Attorney's decision.

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Background Facts

Applicant filed its application for registration on April 24, 2006 and received the first Office Action on October 31, 2006 refusing registration under Section 2(e)(5) (Utilitarian Configuration Refusal) and Sections 1, 2 and 45 of the Trademark Act (Non-inherently Distinctive Configuration Refusal), in addition to an Information Inquiry; and Requirement for a signed declaration.

Applicant responded on April 30, 2007 arguing that the mark is not functional and the mark has acquired distinctiveness and submitted evidence to show distinctiveness. Applicant also satisfied the information inquiry and requirement for a signed declaration. Also on April 30, 2007, Applicant filed an Amendment to Allege Use of the mark providing the date of first use, August 3, 2001.

The second and final office action was mailed on June 19, 2007 maintaining the refusal to register under Section 2(e)(5) (Utilitarian Configuration Refusal) and Sections 1, 2 and 45 of the Trademark Act (Non-inherently Distinctive Configuration Refusal). The examining attorney also requested a substitute specimen.

Applicant filed its response and request for reconsideration and Notice of Appeal on December 19, 2007. With the response Applicant amended the drawing to disclaim the orifice on the disk head of the sprayer nozzle and provided an appropriate substitute specimen. The request for reconsideration was denied by the examining attorney on January 14, 2008. However, the new drawing and substitute specimen were accepted.

The registrability of this mark appears to turn primarily on the assertion by the examining attorney that the mark is functional and covered by a utility patent. This is clear error and based on misinterpretation of the utility patent and the function of the device. In short, the functional features of the nozzle are hidden from view and the trademark drawing includes only the non-functional features. The examining attorney

further rejects the application for lack of acquired distinctiveness. There is no support for this assertion and there is ample evidence to the contrary.

Our assertion of non-functionality and acquired distinctiveness are, on the other hand, supported with evidence of record and summarized below.

Applicant's Mark is NOT Functional

A product feature is functional as a matter of law if it is “essential to the use or purpose of the product or if it affects the cost or quality of the product. *TrafFix Devices, Inc. v. Marketing Displays, Inc.*, 532 U.S. 23, 58 USPQ2d 1001, 1006 (2001). Stated differently, a product configuration mark is functional where evidence shows that the product design incorporates “a particular shape because it works better in that shape.” *Valu Engineering, Inc. v. Rexnord Corp.*, 61 USPQ2d 1422, 1425 (Fed. Cir. 2002) (internal citation and quotation marks omitted). The distinctive design of Applicants spray nozzle top is arbitrary.

Indeed, Applicant could have designed the top in number of various ways, as evidenced by the fact that competitors of Applicant offer all different shapes of spray nozzle heads. The evidence of the different shapes is provided by the Examining Attorney with the first Office Action (web site pages from competitors showing various spray nozzle top shapes). Instead, Applicant has chosen a visually perceptible, distinctive and non-functional round head shape, which serves merely as a source identifier for Applicant's goods and is not a functional portion of Applicant's sprayer nozzle design.

Morton-Norwich Factors

The Examining Attorney must establish a *prima facie* case that the mark sought to be registered is functional, upon which the burden then shifts to the Applicant to present the necessary evidence to rebut the Examiner's *prima facie* case of functionality. *In re R.M. Smith*, 222 U.S.P.Q. at 3; *In re Bio-Medicus Inc.*, 31 U.S.P.Q.2d 1254, 1257

n.5 (T.T.A.B. 1993). Applicant notes that the Examining Attorney has not yet presented any evidence that Applicant's mark is functional. The examining attorney provides evidence in the form of web site pages from the Internet that spray nozzle selection is an important decision in pesticide application and states that the spray nozzle can determine the amount of spray that is applied to the target area, the uniformity of the applied spray, the coverage obtained on the sprayed surfaces and the amount of drift that could occur. We completely agree that technical attributes of a nozzle are important in a customer's purchasing decision and technical data is available to the purchaser but to aid our customers in recognizing our nozzle, it has been designed to be recognizable in a way which is entirely unrelated to its function.

The functionality determination is a question of fact, and depends on the totality of the evidence presented in each particular case. *Valu Engineering*, 61 U.S.P.Q.2d at 1422; *In re Caterpillar Inc.*, 43 U.S.P.Q.2d 1335, 1339 (T.T.A.B. 1997).

When functionality is at issue in a trademark application, the evidence normally involves consideration of one or more of the "*Morton-Norwich*" factors. *In re Morton-Norwich Products, Inc.*, 671 F.2d 1332, 213 U.S.P.Q. 9, 15-16 (C.C.P.A. 1982). These factors include:

1. Whether there exists a utility patent that claims the utilitarian advantages of the design sought to be registered;
2. Whether Applicant's advertising touts the utilitarian advantages of the design;
3. Whether alternative designs are available; and
4. Whether the design results from a comparatively simple or inexpensive method of manufacture.

Addressing each factor individually and in sum, Applicant submits that none of the *Morton-Norwich* factors weighs in favor of a finding of functionality in the present application.

1. *The spray nozzle top (Applicant's mark) is not claimed in any utility patent, and is an arbitrary feature of a product found in patents, such design being only incidentally covered therein.*

Applicant is the owner of U.S. Design Patent Nos. D480,125, D474,255, D458,342 and D473,927; a utility Patent No. 7,108,204 and a divisional utility patent application SN 10/873 368 (still pending). Copies of the design patents were provided by the Examining Attorney with the first Office Action on October 31, 2006. A copy of the utility patent No. 7,108,204 was submitted with Applicant's first response on April 30, 2007.

The design patents do not protect utilitarian functions and thus are not subject to the "*Morton-Norwich*" factors.

The utility patent does not claim the trademark feature. An example claim from US Patent No. 7,108,204 is set forth below:

1. A spray nozzle, comprising: a substantially flat discharge surface lying in a single plane; an orifice disposed on the discharge surface; an impingement surface oppositely facing the orifice, the impingement surface oriented at an impingement angle measured relative to a centerline of the orifice, the impingement angle being 90 degrees or less; a deflection ridge, the deflection ridge bridging a gap between the impingement surface and the discharge surface, the deflection ridge defining a spray angle which limits the discharge of fluid; and a fluid fitting in fluid connection with the orifice, the fluid fitting adapted to receive a pressurized fluid and, wherein the deflection ridge comprises a filleted corner and a sharp corner, the filleted corner and the sharp corner intersecting at an angle defining the spray angle.

It is noted that none of the elements of this claim refer to a rounded head. That is because all of the claimed elements are hidden under the head and the head has no

utilitarian function. As illustrated below, Fig 6 from the issued patent identifies numerous functional components in the specification. Notice, that the external rounded head which is the trademark does not even warrant a reference numeral. That is because it does not control the flow of the liquid, that is, in a word, it is a non-functional feature.

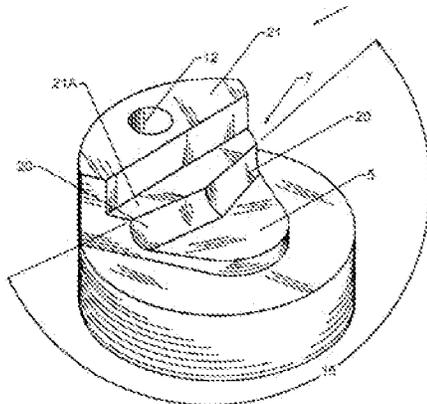


Fig. 6

Fig. 6 Reference Table.

The deflection ridge 7 is formed by two filleted corners 20.

The filleted corners 20 intersect at a spray angle 16.

The impingement surface 5. This configuration is especially useful in spray angles 16 ranging from about 180 degrees to about 220 degrees.

This figure also shows the mounting hole 12 and intersurfaces 21 and sealing surface 21A.

The Examining attorney states “the round head shape, the planar discharge surface, the orifice, the body of the spray head, the deflection ridge and the impingement surface, are functional for the goods because the nozzle system with each of these parts affects the amount of spray applied to the target area, the uniformity of the applied spray, the coverage obtained on the sprayed surfaces and the amount of drift that can occur.” This statement is incorrect. Reference is made to the reference numerals in Fig. 6 which makes clear that the features referred to by the examining attorney are not even visible in the trademark drawing. The visible features of the nozzle are not the functional elements which provide the desired spraying effect. It is the features not visible without

disassembly which control the spraying function and they are not shown nor claimed in the trademark drawing.

In short, the patent itself, completely undermines the examining attorney's unsupported assertion that the trademark is a feature claimed in the patent. That leaves the examining attorney still holding the burden of proof on this issue, and there is proof to the contrary.

The functions covered by the utility Patent No. 7,108,204 of the sprayer nozzle are contained in the internal, non-visible portions of the spray nozzle. A Declaration was submitted by Applicant on April 30, 2007 from Thomas Les Johnson the designer of the sprayer nozzle stating the trademark does not include the functional aspects of the sprayer nozzle (see paragraph 8 of the Declaration of Thomas Les Johnson).

The examining attorney states that "the 90 degree impingement surface shown in the proposed trademark was claimed by Applicant in its patent." Also stated in the Final Refusal by the examining attorney, "in Applicant's proposed trademark, the impingement surface serves the same function as one's thumb in that it disperses the water in a fan shape, which helps to distribute the liquid in an even distribution, enabling the same quantity of liquid material to be distributed in each increment of the discharge pattern." The impingement surface is hidden within the nozzle (see Fig. 6 reference table) and thus is not part of the trademark claim.

The examining attorney's assertion is analogous to asserting that the formula to Coke® is discernable by the shape of the shape of the bottle and thus bottle is functional. The "formula" of the impingement surface are not visible on sight by the purchaser. It would require disassembly of the device to see the functional features, and by then, the buying decision is long past.

The examining attorney states that in Claim 16 of the patent, "a deflection ridge at the intersection of the impingement surface and the sealing surface, the deflection

ridge being at least in part adjacent to the triangular base of the sealing surface. Applicant's proposed trademark configuration has a deflection ridge as well." A deflection ridge is likewise not shown as part of the trademark and is well hidden inside the device.

Lastly the examiner states, "the round head shape of the nozzle is functional because it helps to form the fan shaped discharge pattern of the fluid. In fact, this was claimed in the prior art cited against Applicant's patent, namely in U.S. Patent No. 2,338, 273, wherein 'a spray nozzle having an outlet opening, a wall spaced from and overhanging said opening' was claimed." As previously stated the round head shape is not functional. The dispersal of liquid from the nozzle is not controlled by the round shape. The examining attorney confuses the round shape of the nozzle head with the round covered orifice design which is not shown in the trademark drawing.

Also the examining attorney states, "if the shape were square or in a shape other than round, the spray pattern would not have a fan shape." This statement is incorrect, and total conjecture by the examining attorney. The physics of the nozzle are complex but in any event, it is not as speculatively proposed by the examining attorney. The examining attorney is invited to read the claims of the patent number 7,108,204 to have a further understanding of the physics, but suffice it to say, the external features do not control the spray pattern in this device.

It appears that the examining attorney is trying to use the *TrafFix* doctrine in a way which the United States Supreme court never stated, namely, that there is a blanket prohibition of trademark protection for features which are shown in patent drawing but are not the subject of the patent claims. This is not the *TrafFix* doctrine. The Court in *TrafFix Devices, Inc. v. Marketing Displays, Inc.*, 532 U.S. 23, 58 USPQ2d 1001 (2001); consistently refers to *claims* of the patent as the basis for their holding. Furthermore, *TrafFix* holds that even a *claimed* feature only creates a strong *presumption* of

functionality, not an absolute bar, but the analysis does not have to go there to find that *TrafFix* does not apply to this case. In this case the subject of this trademark application is not even a claimed feature in Applicant's U.S. Patent No 7,108,204.

The Court in *TrafFix* makes specific reference to how to handle arbitrary elements of an inventive structure:

In a case where a manufacturer seeks to protect arbitrary, incidental, or ornamental aspects of features of a product found in the patent claims, such as arbitrary curves in the legs or an ornamental pattern painted on the springs, a different result might obtain. *TrafFix*, at 1255.

In this case, the patents cover the internal features of the spray nozzle not the arbitrary shape or design of the spray nozzle top.

The *TrafFix* case has boundaries. The present trademark application falls well outside of the scope of the prohibited area defined by the Supreme Court. To extend the Court's definition of prohibited subject matter into the safe harbor explicitly defined by the Court (unclaimed aspects) would require an interpretation of *TrafFix* which cannot be found in that decision.

Further, Applicant has supplied documentary evidence via experts in the field that when purchasing a spray nozzle one cannot not assume a specific pattern or rate is obtained based on the shape of the head. See Statements from Ken Vahle, Richard J. Miller, Walter Byrd and Orvice L. Rozell submitted on December 19, 2007 all with more than 15 years of experience in manufacturing and distributing sprayer equipment. Also, see article in the newsletter "Range & Pasture" submitted by Applicant on December 19, 2007 wherein a scientist, Dave Valcore, states "Boomless nozzles offer a wide range of spray volumes. Even experts cannot predict the spraying angles, uniformity and volumes from looking at a nozzle. They must refer to technical test data. Again, the

examining attorney is substituting his judgment for expert declarations already of record, with no basis provided to refute this evidence.

Furthermore, the drawings of US Patent No. 7,108,204 have reference numerals only to the internal features of the nozzle. See for example, Figure 6 below:

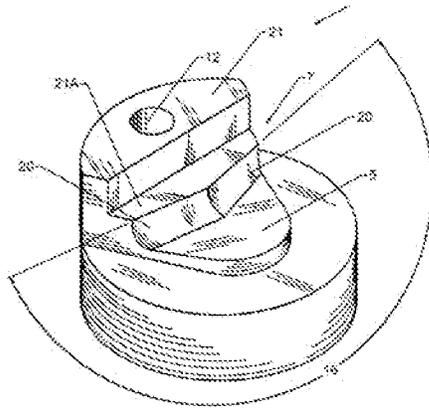


Fig. 5

Applicant's mark is comprised of the distinctive shaped spray nozzle top configuration. The spray nozzle top configuration (Applicant's mark) is not claimed in any of the utility patents or patent applications. As mentioned design patents do not protect functional aspects.

Where a utility patent claims the features sought to be registered, the applicant carries the burden of showing that the feature is not functional, "for instance by showing that it is merely an ornamental, incidental or arbitrary aspect of the device." *TrafFix Devices*, 532 U.S. at 30. In other words, even if a manufacturer seeks to protect a product feature that is found in utility patent claims, a finding of functionality can be avoided if the product feature does not "serve a purpose within the terms of the utility patent" or is not shown "as a useful part of the invention. *Id.* at 34.

Such is exactly the case here, where the round head design is an arbitrary and incidental feature of Applicant's spray nozzle and not claimed in the utility patent.

Specifically, none of the claims of the patent cover the trademark design.

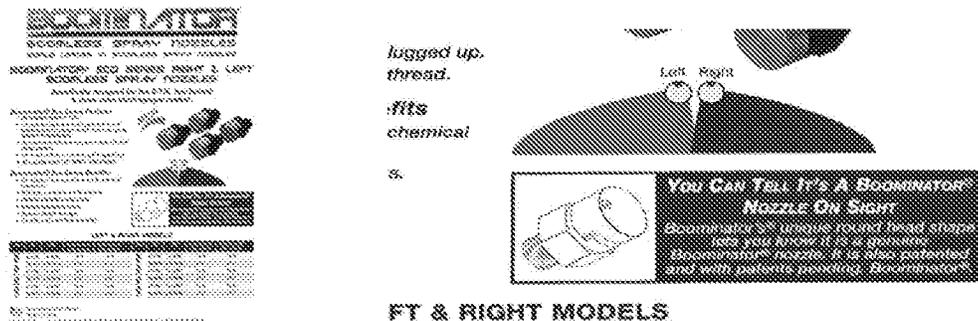
Applicant notes, with particularity, that it is important to analyze a patent thoroughly to determine whether the patent actually *claims* the features presented in the proposed mark in the legal sense of the word “claim.” If it does not, or if the features are referenced in the patent disclosure to meet the requirement of full disclosure, but the trademark feature is not claimed in the utility patent. *TrafFix Devices*, 532 U.S. at 34. The claims of utility patent do not cover the portion of the spray nozzle claimed in Applicant’s mark.

Accordingly, an analysis of the first factor of the *Morton-Norwich* test one cannot reasonably find in favor of functionality.

2. Applicant’s advertising does not claim benefits based on utilitarian aspects of its design.

If a trademark applicant has promotional materials that tout the utilitarian aspects of its design, this is oftentimes strong evidence supporting a functionality refusal. See, e.g., *In re Gibson Guitar Corp.*, 61 U.S.P.Q.2d 1948 (T.T.A.B. 2001); *m-5 Steel Mfg., Inc. v. O’Hagin’s Inc.*, 61 U.S.P.Q.2d 1086 (T.T.A.B. 2001).

Applicant has specifically drawn customer attention to the special round shaped top which it considers its trademark (see advertising material submitted by Applicant on April 30, 2007 and shown below:



[Enlarged portion of the advertisement.]

The spray nozzle industry has adopted many shapes, but Applicant is unaware of any commercially available nozzle using the trademark rounded head, so the trademark feature stands alone in the industry.

The examining attorney asserts that Applicant's advertising and the advertising of its distributors touts the utilitarian advantages of the round head design when the examining attorney states "[a]ll nozzles feature a multi patented round covered orifice design which improves spray pattern & distribution. The advertising materials and the third parties who sell Applicant's products tout the advantages of the round covered orifice design of the spray nozzle's internal features. There is no advertisement or reference to the trademark design or statements that the spray nozzle top as claimed in the trademark is functional."

Again, the examining attorney makes a critical and fundamental error in confusing the orifice design with the nozzle top in the trademark drawing. They are not the same component. The orifice is hidden from view in the trademark drawing and the trademark does not include the orifice design as claimed in the patent. In fact, the orifice is in the base of the nozzle fully occluded by the top portion Fig. 6. This fundamental error complete undermines the examining attorney's position.

Accordingly, the second *Morton-Norwich* factor weighs in favor of a finding of non-functionality.

3. *Alternative designs are fully available and indeed deployable in the marketplace*

Evidence of the availability of alternate designs is often helpful in making a determination of functionality. *TrafFix Devices*, 532 U.S. at 1006-1007. With respect to this factor, Applicant has provided the Declaration of Thomas Les Johnson (submitted by

Applicant on April 30, 2007 – see paragraph 4), which clearly states that alternate designs are readily available. The examining attorney's own evidence supports a finding that alternative designs are widely available.

Accordingly, the third *Morton-Norwich* factor weighs in favor of a finding of non-functionality.

4. Applicant's design does not result from a comparatively simple or inexpensive method of manufacture

The final factor of the *Morton-Norwich* test finds in favor of functionality if the product design gives a comparative advantage in ease or cost of manufacture. Applicant submits that the round head shape of its spray nozzle is neither necessarily easier nor less expensive to manufacture than other designs. As support, Applicant notes paragraph 9 of the Declaration of Thomas Les Johnson submitted by Applicant on April 30, 2007 which includes the expert assertion that Applicant's mark is not the most inexpensive design from a manufacturing standpoint, and that there are no manufacturing or cost benefits related to that particular design. In fact, since the trademark feature is superfluous to its function, the additional material used for the trademark feature adds costs, particularly in the version made of expensive stainless steel.

Accordingly, Applicant submits that it does not maintain an ease of manufacture or cost advantage over other designs, and that the fourth *Morton-Norwich* factor finds in favor of non-functionality.

The overwhelming weight of the evidence establishes that Applicant's mark is not functional.

Applicant's Mark has Acquired Distinctiveness

Applicant's spray nozzle top configuration design has become distinctive of the goods listed in the application through the Applicant's substantially exclusive and

continuous use in commerce for at least five years and Applicant submitted a claim of acquired distinctiveness under Section 2(f) of the Trademark Act.

The issue of acquired distinctiveness is a question of fact. *In re Loew's Theatres, Inc.*, 769 F.2d 764, 769, 226 USPQ 865, 869 (Fed. Cir. 1985). In considering a claim of acquired distinctiveness, the issue is whether, “*in the minds of the public*, the primary significance of a [mark] is to identify the source of the produce rather than the product itself.” *Inwood Laboratories, Inc. v. Ives Laboratories, Inc.*, 456 U.S. 844, 851 n.11, 102 S. Ct. 2182, 214 USPQ 1, 4 (1982) (emphasis added).

In proving acquired distinctiveness, Applicant may submit any “appropriate evidence tending to show that the mark distinguishes [its] goods.” 37 C.F.R. § 2.41(a). The “exact kind and amount of evidence necessarily depends on the circumstances of the particular case,” as “Congress has chosen to leave the exact degree of proof necessary to qualify a mark for registration to the judgment of the Patent Office and the Courts.” *In re Owens-Corning Fiberglas Corp.*, 774 F.2d 1116, 1125, 227 USPQ 417, 422 (Fed. Cir. 1985).

Traditionally, however, the Trademark Trial and Appeal Board has examined any number of factors, including evidence of copying, advertising and advertising expenditures, sales success, length and exclusivity of use, unsolicited media coverage, and evidence of consumers linking the mark with the source of the product. *Cicena Ltd. V. Columbia Telecomms Group*, 900 F.2d 1546, 1551, 14 USPQ2d 1401, 1406 (Fed. Cir. 1990). From these, however, *no single factor is determinative* – a showing of secondary meaning need not consider each of these factors, but rather the determination examines all of the circumstances involving use of the mark. See *Thompson Med. Co., v. Pfizer Inc.*, 753 F.2d 208, 217, 225 USPQ 124, 132 (Fed. Cir. 1985).

Long standing and exclusive use of the mark is one relevant factor in determining acquired distinctiveness. TMEP 1212.06(a). Applicant's spray nozzle top configuration design has become distinctive of the goods listed in the application through the Applicant's substantially exclusive and continuous use in commerce for at least five years (since August 3, 2001) and by virtue of Applicant's promotion and significant sales throughout the United States during that time, the mark has become a sign of quality and a reference of origin for the Applicant. But in this case, the examining attorney, without explanation, merely rejects the allegation of more than five years use and asserts that it is simply insufficient to show acquired distinctiveness. The burden of why five years use is insufficient remains with the examining attorney and has not been met.

Still there is more evidence that the mark has acquired secondary meaning. For example, Applicant estimates it has a 33% share of the market for high precision chemical spraying nozzles of its flow range. [Found in file history submitted by Applicant on April 30, 2007 in the Declaration of Thomas Les Johnson, paragraph 11.]

Applicant also submitted as evidence of distinctiveness, advertising or promotional materials touting the design characteristic claimed as a mark which is also one of the factors considered by the Board in acquired distinctiveness determinations.

As further evidence of acquired distinctiveness Applicant submitted on December 19, 2007 web pages owned by distributors which advertise the distinctive trademark shape of Applicant's spray nozzle head.

Applicant has sold approximately \$2 million worth of products (approximately 80,000 sprayer nozzles) under the trademark applied for herein. The Applicant has spent in excess of \$150,000 on advertising the trademark in the United States. Considering the specialized use of this product, this is a sensational success and these figures are substantial in this industry.

Also as evidence of distinctiveness, Applicant obtained multiple Statements which were submitted by Applicant on December 19, 2007 from users of this product in the relevant field and purchasers of spray nozzles specifically attesting to their recognition of the trademark as an indicator of Applicant as a source for the goods. These are representative purchasers of the product. While sales of the trademark product are substantial, the net profit does not justify an expensive survey and statistical analysis thereof, nor does this Tribunal require same. Applicant submits that these Statements are sufficient to provide additional proof of acquired distinctiveness, in addition to the five plus years of use and significant sales and market penetration. How much more can an applicant be reasonably expected to prove on this point? The Applicant has carried and exceeded its burden of proof.

Finally, the examining attorney alleges that several spray nozzle manufacturers make the same round head design, thus Applicant's design has very little distinctiveness. A close look at the evidence provided from AllSpray.com, Bete, Spraying Systems Co., Bex Products and others, show different variations of spray nozzle shapes, though none are similar to Applicant's distinctive design. First, it is noted that these three companies sell the same product and thus there is only *one* product asserted by the examining attorney.

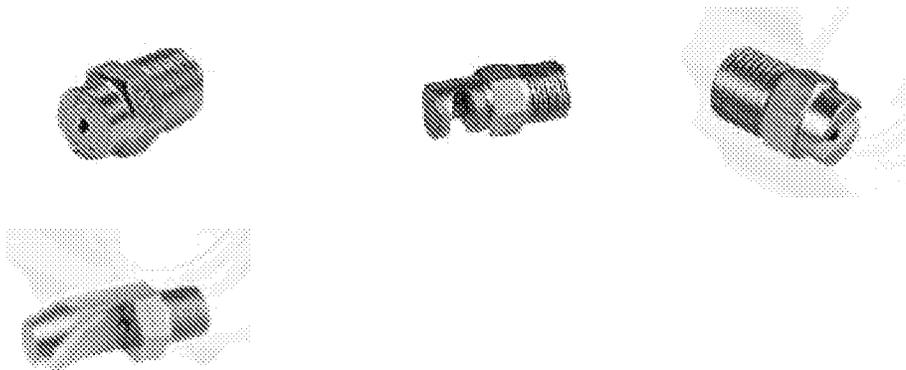
Even with that, the impression of the Bex product is not the same. Bex has a *noticeably different wide open jaw*. These citations all refer to a single device, which we will call "Bex" for convenience.

First, it is important to note that the vast majority of nozzles do not look like the present Applicant's nor Bex. (See evidence provided by the examining attorney on October 31, 2006 in file history.) The additional metal required to make a round nozzle adds significantly to the expense especially when the metal is brass or stainless.

Therefore, it is inaccurate to assert that the round head shape is common in the industry. It is clearly not.

More importantly, while Bex is the only nozzle remotely similar, the Bex device is distinguishable in its wide open jaw. Furthermore, Bex is constructed differently where the open jaw is indeed a functional feature. Bex is primarily intended for fire suppression or other uses where *precision* spraying is not required. The wide mouth (the “smiling face”) is also recognizable and clearly different from the tight gap of Applicant’s design. Applicant’s design is very closed and has a gap with, what looks like parallel space apart walls. The difference is completely recognizable. Bex has a “smiley” look and the present Applicant’s has the look of an “alien” That is what the user sees and recognizes. The functional part is almost invisible as being deep in the gap and not claimed or shown in the trademark drawing. Finally, it is important to take into consideration that the users are very sophisticated as experts in industrial or agricultural spraying. This can easily distinguish the products.

The Bex nozzle designs are shown below:



Accordingly Applicant has submitted ample evidence that its mark has acquired distinctiveness.

CONCLUSION

We recognize that there is a strong tendency for examining attorneys to refuse product configuration trademarks. We fear that in this case, this trademark application has been “swept” into that category. Yet the facts of the record remain unrefuted: 1) the trademark does not cover functional features—they are hidden; 2) the trademark is not claimed feature in a utility patent; and 3) the trademark has acquired secondary meaning by use for over five years, but also because of phenomenal market penetration in its field.

The examining attorney has only made conjectural responses to each of these issues and has not met the Office’s burden of proof.

For all of the foregoing reasons, Applicant respectfully request that the Examining Attorney’s final refusal be reversed.

Respectfully submitted,

/Michael Lasky/

Michael B. Lasky
Attorney for Applicant
Altera Law Group
220 South Sixth Street
1700 US Bank Plaza South
Minneapolis, MN 55402
Telephone: 952-253-4106
E-Mail: trademark@alteralaw.com