

From: Hussain, Tasneem

Sent: 1/26/2015 9:31:21 AM

To: TTAB EFiling

CC:

Subject: U.S. TRADEMARK APPLICATION NO. 79129718 - SEPTOCURVE - N/A - Request for
Reconsideration Denied - Return to TTAB

Attachment Information:

Count: 1

Files: 79129718.doc

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

U.S. APPLICATION SERIAL NO. 79129718

MARK: SEPTOCURVE



CORRESPONDENT ADDRESS:

MARK LEBOW

1727 KING STREETSUITE 105

ALEXANDRIA, VA 22314

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/trademarks/index.jsp>

[VIEW YOUR APPLICATION FILE](#)

APPLICANT: SEPTODONT HOLDING

CORRESPONDENT'S REFERENCE/DOCKET NO:

N/A

CORRESPONDENT E-MAIL ADDRESS:

mlebow@ladas.com

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 1/26/2015

INTERNATIONAL REGISTRATION NO. 1159161

The trademark examining attorney has carefully reviewed applicant's request for reconsideration and is denying the request for the reasons stated below. See 37 C.F.R. §2.63(b)(3); TMEP §§715.03(a)(ii)(B), 715.04(a). The following requirement(s) and/or refusal(s) made final in the Office action dated July 15,

2014 are maintained and continue to be final: Trademark Act Section 2(d) Refusal; unity of control has not been established. See TMEP §§715.03(a)(ii)(B), 715.04(a).

In the present case, applicant's request has not resolved all the outstanding issue(s), nor does it raise a new issue or provide any new or compelling evidence with regard to the outstanding issue(s) in the final Office action. In addition, applicant's analysis and arguments are not persuasive nor do they shed new light on the issues. Specifically, applicant merely "requests reconsideration given the unitary of control issue" but still does not show that those companies own or control applicant's company, i.e., "how the parties constitute a single source". In other words, there is still no evidence to support the contention that the sister corporations constitute a single source or explanation how those relationships establish unity of control. See *Pneutek, Inc. v. Scherr*, 211 USPQ 824 (TTAB 1981). Being the president of a company, in and of itself, does not demonstrate how all of the companies and their trademark activities are controlled from a common source.

Applicant indicates that it has a legal relationship with the registrant(s) in the cited registration(s). However, a legal relationship between the parties is insufficient to overcome a likelihood of confusion unless the parties constitute a "single source." That is, the legal relationship between the parties must exhibit a "unity of control" over the nature and quality of the goods and/or services in connection with which the trademarks and/or service marks are used, and a "unity of control" over the use of the trademarks and/or service marks. See *In re Wella A.G.*, 5 USPQ2d 1359, 1361 (TTAB 1987); see also TMEP §1201.07.

Unity of control is presumed in instances where, absent contradictory evidence, one party owns (1) all of another entity, or (2) substantially all of another entity and asserts control over the activities of that other entity. See TMEP §1201.07(b)(i)-(ii). Such ownership is established, for example, when one party owns all or substantially all of the stock of another or when one party is a wholly owned subsidiary of another. See *In re Wella A.G.*, 5 USPQ2d at 1361; TMEP §1201.07(b)(i)-(ii). It is additionally presumed when, absent contradictory evidence, applicant is shown in USPTO records as a joint owner of the cited registration, or the owner of the registration is listed as a joint owner of the application, and applicant submits a written statement asserting control over the use of the mark by virtue of joint ownership. TMEP §1201.07(b)(ii).

However, in most other situations, additional evidence is required to show unity of control. For example, if the parties are sister corporations or if the parties share certain stockholders, directors or officers in common, additional evidence must be provided to show how the parties constitute a single source. See *In re Pharmacia, Inc.*, 2 USPQ2d 1883, 1884 (TTAB 1987); TMEP §1201.07(b)(iii).

Therefore, applicant was required to provide a written statement explaining the nature of the legal relationship between the parties. In addition, if neither party owns all or substantially all of the other party, and USPTO records do not show their joint ownership of the application or cited registration, applicant must provide a detailed written explanation and documentary evidence showing the parties' "unity of control" over the nature and quality of the goods and/or services in connection with which the trademarks and/or service marks are used, and the parties' "unity of control" over the use of the trademarks and/or service marks. See TMEP §1201.07(b)(i)-(iii). This statement and, if necessary, explanation must be verified with an affidavit or signed declaration under 37 C.F.R. §2.20. TMEP §1201.07(b)(ii)-(iii); see 37 C.F.R. §2.193(e)(1). However, if one party owns all of the other entity, and there is no contradictory evidence of record, the written statement need not be verified. TMEP §1201.07(b)(i).

Applicant states, "Applicant is consideration [sic] a coexistence agreement or other actions that will also obviate these issues" but did not provide any such agreement or demonstrate any action to prove unity of control or overcome the refusal. Accordingly, the request is denied.

If applicant has already filed a timely notice of appeal with the Trademark Trial and Appeal Board, the Board will be notified to resume the appeal. See TMEP §715.04(a).

/Ms. Tasneem Hussain/

Trademark Examining Attorney

Law Office 118

tasneem.hussain@uspto.gov (preferred)

571.272.8273