

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
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Mailed: September 1, 2011

In re VIVINT, INC.

Serial No. 85063639

Filed: 6/15/10

GRANT R CLAYTON
CLAYTON HOWARTH & CANNON PC
PO BOX 1909,
SANDY, UT 84091-1909

Applicant filed, on August 5, 2011 (with a certificate of service dated August 1, 2011), a notice of appeal and a request for reconsideration. On August 26, 2011, the Board denied applicant's notice of appeal as being untimely filed. It has come to the attention of the Board that applicant's notice of appeal was in fact timely filed and should have been accepted and instituted. The Board apologizes for this oversight.

Accordingly, the Board's order of August 26, 2011, is hereby vacated, and the appeal is hereby instituted but action on it is suspended and the application is remanded to the Trademark Examining Attorney for consideration of the request for reconsideration. The request contains a proposed amendment to the identification of goods. If the amendment is accepted and the mark is found registrable on the basis of this paper, the appeal will be moot and

proceedings on the appeal will terminate in due course. If the amendment is accepted but the refusal to register is maintained, the Examining Attorney should issue an Office Action so indicating, and notify the Board. The appeal will then be resumed and applicant allowed a sufficient time in which to file its appeal brief. If the Examining Attorney determines that the amendment to the identification is not acceptable, the Examining Attorney should issue an Office Action to that effect, indicating the reasons why the proposed amendment is unacceptable and, if possible, advising applicant as to how to cure any deficiency in the identification. The amendment to the identification should be treated as raising a new issue, such that any refusal to accept the proposed identification cannot be made final until applicant is given an opportunity to respond.

***By the Trademark Trial
and Appeal Board***