



Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
www.uspto.gov

Trademark Application of Chemical Brothers
International, LLC :
Application Serial No. 85/229214 :
Filing Date: January 28, 2011 : On Petition
Mark: QUADFOAM :
Petition Filed: June 9, 2011 :

Chemical Brothers International, LLC has petitioned the Director to consider an amendment of the filing basis from Trademark Act Section 1(a), use in commerce, to Section 1(b), intent to use for the above identified application. 15 U.S.C. §1051(a) and (b). The Director has authority to review the petition pursuant to 37 C.F.R. §§2.35 and 2.146. The petition is granted.

FACTS

This application published for opposition in the *Official Gazette* on May 3, 2011 in International Class 17, based on use of the mark in commerce pursuant to Section 1(a). On June 9, 2011, petitioner filed this petition to the Director to change the basis from Section 1(a) to Section 1(b) for International Class 17 because it was discovered that the applicant was not using the mark in commerce as of the filing date of the application.

ANALYSIS

An applicant may request post-publication amendments adding or substituting a new statutory basis for registration by filing a petition pursuant to 37 C.F.R. §2.146(a)(3) and §2.35(b)(2). If the petition is granted, the application is returned to the examining attorney for examination of the new basis for registration. TMEP §1107. If the new basis is accepted, republication for opposition is always required. 37 C.F.R. §2.35(b)(2). *See In re Monte Dei Maschi Di Siena*, 34 USPQ2d 1415 (Comm'r Pats. 1995). However, the Director will not grant a petition to amend the basis if the amendment does not apply to all of the goods/services covered by the §1(b) basis, unless the applicant concurrently files a request to divide out the goods/services to which the amendment applies. *See* TMEP §§1110 *et seq.* regarding requests to divide.

Pursuant to 35 U.S.C. §2 and 2.146(a)(3), the Director may invoke supervisory authority in appropriate circumstances. Therefore, the circumstances presented here are appropriate for invoking such authority.

DECISION

The petition is granted. Jurisdiction is restored to the examining attorney for consideration of the amendment to the basis. If the amendment is accepted, republication is required.

/Sharon R. Marsh/
Sharon R. Marsh
Acting Deputy Commissioner
for Trademark Examination Policy

SRM:LW

Date: August 1, 2011

Counsel for Petitioner:

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