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Subject: U.S. TRADEMARK APPLICATION NO. 85281291 - 18.44 - REMAND REQUEST TO TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

U.S. APPLICATION SERIAL NO. 85281291

MARK:



CORRESPONDENT ADDRESS:

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APPLICANT: Heatcon, Inc.

CORRESPONDENT'S REFERENCE/DOCKET NO:

18.44

CORRESPONDENT E-MAIL ADDRESS:

MOTION TO REMAND

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD ON APPEAL

TRADEMARK EXAMINING ATTORNEY'S REQUEST FOR REMAND

The trademark examining attorney requests that the Trademark Trial and Appeal Board remand this case to the examining attorney under 37 C.F.R. §2.142(d) for the following reason(s):

On July 11, 2013, the applicant requested a remand to amend the application to the Supplemental Register. This amendment raises a new issue to be addressed and a new refusal to be issued. The examining attorney issued a final refusal regarding Section 2(e)(5) functionality, Section 1, 2, and 45 non-distinctive product design and the drawing requirement on September 20, 2012.

In the applicant's request for remand, the applicant amended the application to the Supplemental Register in an effort to overcome the Section 1, 2, and 45 refusal. However, the amendment raises a new issue with regard to the Section 2(e)(5) functional refusal as an amendment to the Supplemental Register is not acceptable for functional marks. A new refusal under Section 23 must be issued as the configuration is incapable of distinguishing the applicant's goods. The Section 2(e)(5) refusal is now moot since the applicant has amended to the Supplemental Register, and the functional refusal will now be issued pursuant to Section 23.

Respectfully submitted,

/Tracy Cross/

Examining Attorney

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