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Sent: 7/26/2012 5:01:52 PM

To: TTAB EFiling

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Subject: U.S. TRADEMARK APPLICATION NO. 85315751 - EZ PAI GOW -
1003.0019 - Request for Reconsideration Denied - Return to TTAB - Message 1 of 5

Attachment Information:

Count: 5

Files: vp1-1.jpg, vp1-2.jpg, vp1-3.jpg, vp1-4.jpg, 85315751.doc

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

APPLICATION SERIAL NO. 85315751

MARK: EZ PAI GOW



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GENERAL TRADEMARK INFORMATION:
<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: DEQ Systèmes Corp.

CORRESPONDENT'S REFERENCE/DOCKET NO:

1003.0019

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REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 7/26/2012

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. §2.64(b); TMEP §§715.03(a), 715.04(a). The requirements made final in the Office action dated January 11, 2012, are maintained and continue to be final. *See* TMEP §§715.03(a), 715.04(a).

In the present case, applicant's request has not resolved all the outstanding issues, nor does it raise a new issue or provide any new or compelling evidence with regard to the outstanding issues in the final Office action, for the reasons set forth below. In addition, applicant's analysis and arguments are not persuasive nor do they shed new light on the issues. Accordingly, the request is denied.

Refusal under Trademark Act Section 2(e)(1) – Mark is Merely Descriptive

Registration is refused because the applied-for mark, "EZ PAI GOW," merely describes the nature and features of the applicant's goods. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); *see* TMEP §§1209.01(b), 1209.03 *et seq.*

The determination of whether a mark is merely descriptive is considered in relation to the identified goods and/or services, not in the abstract. *In re Abcor Dev. Corp.*, 588 F.2d

811, 814, 200 USPQ 215, 218 (C.C.P.A. 1978); TMEP §1209.01(b). A mark is merely descriptive if it describes an ingredient, quality, characteristic, function, feature, purpose or use of the specified goods and/or services. TMEP §1209.01(b); *see In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005); *In re Gyulay*, 820 F.2d 1216, 1217-18, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987). Moreover, a mark that identifies a group of users to whom an applicant directs its goods and/or services is also merely descriptive. TMEP §1209.03(i); *see In re Planalytics, Inc.*, 70 USPQ2d 1453, 1454 (TTAB 2004).

Three major reasons for not protecting descriptive marks are: (1) to protect only marks that are capable of being distinguished by consumers as indicators of unique source; (2) to prevent the owner of a descriptive mark from inhibiting competition in the marketplace; and (3) to avoid the possibility of costly infringement suits brought by the trademark or service mark owner. *In re Abcor Dev. Corp.*, 588 F.2d 811, 813, 200 USPQ 215, 217 (C.C.P.A. 1978); TMEP §1209. Businesses and competitors should be free to use descriptive language when describing their own goods and/or services to the public in advertising and marketing materials. *See In re Styleclick.com Inc.*, 58 USPQ2d 1523, 1527 (TTAB 2001).

Analysis of the Applicant's Mark in the Context of the Identified Goods

In this case, the applicant seeks to register the mark "EZ PAI GOW" for goods related to gambling and gaming. The applicant's mark merely describes the nature and purpose of the goods.

The letters "EZ" in the mark are common shorthand for the word "easy", as shown by the previously attached evidence. The examining attorney attaches additional evidence, such as an entry from the *Random House* online dictionary, demonstrating the common use of these letters as an abbreviation for "easy". Finally, the examining attorney attaches numerous third-party registrations for marks for goods in Classes 9 and 28 – including for toys and games – that show treatment of the term as meaning "easy" and therefore merely descriptive. These terms describe goods that are simple and clear to use, involve basic rules, and so forth. The term "EZ" thus describes characteristics and the purpose of the applicant's goods in making the applicant's games simple for consumers to play, such as with more basic or clearer rules.

The phrase "PAI GOW" is the common generic name for a type of casino game. The specimen for the applicant's goods clearly show the goods being used to play this game. This wording is thus generic in the context of the goods.

The applicant's own evidence, submitted in the Request for Reconsideration, reinforces that the wording in the mark is merely descriptive. First, it is noted that the game "is the only stand-alone commission free Pai Gow game in the market." Further, a member of the industry is quoted as noting that "[the applicant's game] is the only true non commission form of Pai Gow where the push mechanism is offset by a very enticing optional side bet." Finally, the "easy" aspect of the game is reinforced by the description

of the goods as featuring “a revolutionary method of accelerating the speed of Pai Gow poker by eliminating the 5% commission on winning hands.”

Taken together, the terms in the applicant’s mark are not inherently distinctive, but rather merely describe the nature and features of the goods. Consumers will not associate the mark with a particular source, but rather as simple information about the goods. Other entities must remain free to use such terms to describe the nature and purpose of similar goods.

The applicant argues that because opinions vary whether “PAI GOW” is simple or difficult, the term “EZ” in the mark is not merely descriptive. This argument is not persuasive. The standard is whether consumers believe that the term describes the applicant’s goods, not the general game of pai gow. Consumers could easily believe that the applicant’s mark describes features of the goods that make pai gow easier to play. Thus, in the context of the applicant’s goods, the term is merely descriptive.

The applicant also failed to enter a disclaimer of “PAI GOW”, even though that phrase is clearly generic for the goods, and the applicant disclaimed this wording in co-pending application 85315739.

For these reasons, registration remains refused.

The applicant must also resolve the following requirements.

Identifications and/or Classifications of Goods Requires Amendment

The wording used to describe portions of the applicant’s goods needs clarification because it is indefinite and/or includes goods classified in different international classes. *See* TMEP §§1401 *et seq.*, 1402.01, 1402.03. The Trademark Office requires a degree of particularity necessary to identify clearly goods and/or services covered by a mark. *See In re Omega SA*, 494 F.3d 1362, 1365, 83 USPQ2d 1541, 1543-44 (Fed. Cir. 2007). Descriptions of goods and services in applications must be specific, explicit, clear and concise. TMEP §1402.01; *see In re Cardinal Labs., Inc.*, 149 USPQ 709, 711 (TTAB 1966); *Cal. Spray-Chem. Corp. v. Osmose Wood Pres. Co. of Am.*, 102 USPQ 321, 322 (Comm’r Pats. 1954). These requirements for specification of the particular goods and/or services apply to applications filed under all statutory bases. *See* 15 U.S.C. §§1051(a)(2), 1051(b)(2), 1053, 1126(d)-(e), 1141f; 37 C.F.R. §2.32(a)(6); TMEP §§1402.01, 1402.01(b)-(c).

The application insufficiently describes the following goods:

- In Class 28, the wording “casino card games” remains indefinite and may be misclassified. In the context of casinos, it is unclear whether these are electronic games in the nature of slot or wager machines like video poker machines, or simple decks of cards. Both are used in casinos, and both are games featuring

cards, but the ultimate natures of the goods are very different. The applicant must clarify the nature of the goods and classify them properly.

Contrary to the applicant's arguments, just because "card games" is acceptably definite, does not mean that the entry encompasses all card games if the games are electronic. Electronic card games may fall into either Class 9 or Class 28 depending on whether the goods are merely the software programs for the games (Class 9) or the physical gaming devices/machines (Class 28). Thus, in addition to being simply indefinite because the nature of the goods is not clear, the goods may be misclassified.

If accurate, and inserting specific information where directed, the applicant may adopt any or all of the following identifications of goods. See TMEP §1402.01. PLEASE NOTE: The applicant has currently paid for any one (1) class of its choosing.

- Class 9: Electronic card game computer programs, namely, software for gaming machines including slot machines or video lottery terminals;
- Class 28: Gaming machines including slot machines or video lottery terminals for playing electronic card games; Card games; Card game accessories, namely, tables specially adapted for casino games; Gaming tables; Gaming table felt layouts for betting and instructions for playing card games, sold as a unit.

The applicant should note the following when amending the identifications and/or classifications.

- The applicant may use different wording of its own when amending the identifications and/or classifications of goods. The applicant must follow the guidelines discussed herein to ensure specificity and accuracy. Please note that while identifications of goods or services can be clarified or limited by amendment; adding to the goods or services or broadening the scope of the goods or services is not permitted. 37 C.F.R. §2.71(a); see TMEP §§1402.06 *et seq.*, 1402.07. Therefore, the applicant may not amend the identification to include goods or services that are not within the scope of the present identification.
- Careful use of grammar, capitalization, and punctuation helps to clearly group or distinguish goods and services. Generally, **commas** should be used (1) to separate a series of related items or a series of descriptions of characteristics for a single overall category of goods or services (the term "namely" often signifies such a list or series of many items or descriptions under a broader category). TMEP §1402.01(a). **Semicolons** generally should be used to separate a series of distinct categories of goods or services within an international class. *Id.* For example, the identification of goods "cleaners, namely, glass cleaners, deodorizers for pets, cosmetics" is ambiguous because "cosmetics" and "deodorizers for pets" are not "cleaners," and thus are not within this category of goods even though they are all in the same international class. *Id.* However, by replacing the commas with

semicolons after “glass cleaners” and “deodorizers for pets,” this identification would become acceptable: “Cleaners, namely, glass cleaners; Deodorizers for pets; Cosmetics.” *Id.*

- The applicant must be as complete and specific as possible and avoid the use of indefinite words and phrases. *See* TMEP §§1402.01, 1402.03(a). If applicant uses indefinite wording, such as “accessories,” “components,” “devices,” “equipment,” “materials,” “parts,” “systems,” “products,” “services in connection with,” “such as,” “including,” “and like services,” “concepts,” or “not limited to,” to refer to goods or services, such words must be followed by “namely,” followed by a list of the specific goods or service activities identified by their common commercial names.
- Periodically the Office revises its international classification system and the policies regarding acceptable identifications of goods and services. Identifications are examined in accordance with Rules of Practice and Office policies and procedures in effect on the application filing date. 37 C.F.R. §2.85(e)(1); TMEP §1402.14. Descriptions of goods and services found in earlier-filed applications and registrations are not necessarily considered acceptable identifications when a later-filed application is examined. *See* TMEP §§702.03(a)(iv), 1402.14. **For guidance on writing identifications of goods and/or services and classifying them properly, please use the online searchable *Manual of Acceptable Identifications of Goods and Services* at <http://tess2.uspto.gov/netahtml/tidm.html>, which is continually updated in accordance with prevailing rules and policies.** *See* TMEP §§702.03(a)(iv), 1402.04.

Requirements for Multiple-Class Applications

For an application with more than one international class, called a “multiple-class application,” an applicant must meet all the requirements below for those international classes based on use in commerce:

- (1) LIST GOODS AND/OR SERVICES BY INTERNATIONAL CLASS: Applicant must list the goods and/or services by international class.
- (2) PROVIDE FEES FOR ALL INTERNATIONAL CLASSES: Applicant must submit an application filing fee for each international class of goods and/or services not covered by the fee(s) already paid (confirm current fee information at http://www.uspto.gov/trademarks/tm_fee_info.jsp).
- (3) SUBMIT REQUIRED STATEMENTS AND EVIDENCE: For each international class of goods and/or services, applicant must also submit the following:

- (a) DATES OF USE: Dates of first use of the mark anywhere and dates of first use of the mark in commerce, or a statement that the dates of use in the initial application apply to that class. The dates of use, both anywhere and in commerce, must be at least as early as the filing date of the application.
- (b) SPECIMEN: One specimen showing the mark in use in commerce for each international class of goods and/or services. Applicant must have used the specimen in commerce at least as early as the filing date of the application. If a single specimen supports multiple international classes, applicant should indicate which classes the specimen supports. Examples of specimens for goods are tags, labels, instruction manuals, containers, photographs that show the mark on the actual goods or packaging, or displays associated with the goods at their point of sale. *See* TMEP §§904.03 *et seq.* Examples of specimens for services are signs, photographs, brochures, website printouts, or advertisements that show the mark used in the actual sale or advertising of the services. *See* TMEP §§1301.04 *et seq.*
- (c) STATEMENT: The following statement: **“The specimen was in use in commerce on or in connection with the goods and/or services listed in the application at least as early as the filing date of the application.”**
- (d) VERIFICATION: Applicant must verify the statements in 3(a) and 3(c) (above) in an affidavit or signed declaration under 37 C.F.R. §2.20. Verification is not required where (1) the dates of use for the added class are stated to be the same as the dates of use specified in the initial application, and (2) the original specimens are acceptable for the added class(es).

See 15 U.S.C. §§1051(a), 1112, 1127; 37 C.F.R. §§2.32(a)(5), 2.34(a)(1), 2.56(a), 2.71(c), 2.86(a), 2.193(e)(1); TMEP §§1403.01, 1403.02(c).

With respect to the specimen requirement in 3(b) above in which a specimen is required for each international class of goods and/or services, the specimens of record are acceptable for International Class 28 only. Applicant must submit additional specimens if different international classes are added to the application.

Response Guidelines

The filing of a request for reconsideration does not extend the time for filing a proper response to a final Office action or an appeal with the Trademark Trial and Appeal Board (Board), which runs from the date the final Office action was issued/mailed. *See* 37 C.F.R. §2.64(b); TMEP §§715.03, 715.03(a), (c).

If time remains in the six-month response period to the final Office action, applicant has the remainder of the response period to comply with and/or overcome any outstanding final requirements and/or to file an appeal with the Board. TMEP §715.03(a), (c). However, if applicant has already filed a timely notice of appeal with the Board, the

Board will be notified to resume the appeal when the time for responding to the final Office action has expired. *See* TMEP §715.04(a).

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Reason #3 why the Wizard likes Bovada:

Excellent Odds

In my opinion many online casinos are too stingy when setting the odds on their games. They think they will make more money that way but I believe they are misguided, because when players lose too quickly it's not fun, and those players might not come back.

Bovada is one of the few casinos that understands this. They offer generous odds to let you play longer and get you a better chance of winning. Among their generous offerings are Full-Pay Jacks or Better returning 99.54%, six other video poker games paying over 99%, single-zero roulette, and my

Video Poker

Last Update: Apr. 13, 2012

Video poker made its entry to the casino in the seventies; and is today one of the most popular forms of gambling. For the player who likes a game of skill, a low house edge, the possibility of large wins, and the anonymity of playing alone there is nothing else that can compare to video poker. The rules of video poker are simple; you play 1 to 5 coins, the machine give you five cards, you choose which to hold and which to discard, the machine replaces your discards and pays you off according to the value of your hand.



You may have heard the adage that the "house always has the advantage." Video poker is an exception to that rule. If you look for the most liberal pay tables, and play them properly, you can have a thin advantage. Some pay tables, which are slightly in the machine's favor, can return over 100%, if you factor in incentives such as cash back, free play, mailers, and other comps.

Video poker is one of my personal favorites to play. It isn't as strong as it was when I first moved to Las Vegas in 2001. However, good opportunities are still out there.

If you don't want to learn proper strategy, or bother to look for the liberal pay tables, then video poker is not for you. Inferior pay tables and mistakes will make it an expensive form of gambling. You may as well play slots. Correct strategy is often not intuitive. If you try to bring your five-card draw strategy to video poker, like holding a high kicker with a pair, you will lose, and lose badly, over the long run.

Playing Strategy

Following are some strategies to some of the most popular video poker games:

- [Jacks or Better simple strategy](#) (return of 99.46%)
- [Jacks or Better intermediate strategy](#) (return of 99.52%)
- [Jacks or Better optimal strategy](#) (return of 99.54%)
- ["Not So Ugly Ducks" \(Deuces Wild\) intermediate strategy](#)
- [Full-Pay Deuces Wild simple strategy](#) (return of 100.71%)



favorite, Pick 'em
Poker, returning 99.95%!
Kudos to Bovada for not
being afraid to give their
players a good gamble.

More about Bovada
Visit Bovada



- [Full-Pay Deuces Wild optimal strategy](#) (return of 100.71%)
- [Full-Pay Deuces Wild optimal strategy](#) (return of 100.76%)
- [8/5 Bonus Poker basic strategy](#)
- [10/7 Double Bonus basic strategy](#)
- [9/6 Double Double Bonus basic strategy](#)

Quick Quads strategies:

- [9/6 Jacks or Better Quick Quads](#)
- [8/5 Bonus Poker Quick Quads](#)
- [9/7 Double Bonus Quick Quads](#)
- [9/6 Double Double Bonus Quick Quads](#)
- [8/5 Triple Bonus Quick Quads](#)

Return Tables

4-5 Bonus Poker

- [7 Stud Poker](#)
- [Ace and Deuce Bonus Poker](#)
- [Ace Invaders](#)
- [Ace on the Deal](#)
- [Aces and Eights](#)
- [Aces and Faces](#)
- [ACES Bonus Poker](#)
- [Acey Deucey Poker](#)
- [All American](#)
- [Anything's Wild](#)
- [Big Split Poker](#)
- [Big Times Draw Poker](#)
- [Big Win Poker](#)
- [Black Jack Bonus Poker](#)
- [Bonus Deuces Wild](#)
- [Bonus Poker](#)
- [Bonus Poker Deluxe](#)
- [Bonus Poker Plus](#)
- [Bonus Video Poker](#)
- [Build a Wheel](#)
- [Chase the Royal](#)
- [Deuce on the Deal](#)
- [Deuces and Joker Wild](#)
- [Deuces Wild](#)
- [Double Aces and Faces](#)
- [Double Bonus](#)
- [Double Bonus Deuces Wild](#)
- [Double Deuce Wild](#)

Double Draw

- [Double Draw Aces](#)
- [Double Jackpot](#)
- [Double Joker](#)
- [Double Pay](#)
- [Double Super Times Pay](#)
- [Draw 6 Poker](#)
- [Dream Card](#)
- [Faces 'n Deuces](#)
- [Five Aces Poker](#)
- [Flush Fever](#)
- [Full House Bonus Poker](#)
- [Going for Fours](#)
- [Good Times Pay](#)
- [Guaranteed Play](#)
- [Jacks or Better](#)
- [Joker Poker \(Kings\)](#)
- [Joker Poker \(Aces\)](#)
- [Joker Poker \(Two Pair\)](#)
- [Loose Deuces](#)
- [Lucky Suit Poker](#)
- [Max Out Poker](#)
- [Multi-Strike](#)
- [Multi-Strike Bonus](#)
- [Nevada Bonus](#)
- [One Eyed Jacks](#)
- [Pay the Aces](#)
- [Pick 'em Poker](#)
- [Quick Quads](#)

Sequential Royal

- [Sevens and Joker Wild](#)
- [Sevens Wild](#)
- [Shockwave](#)
- [Spin Fever](#)
- [Spin Poker](#)
- [Super Aces Bonus Poker](#)
- [Super Bonus Deuces Wild](#)
- [Super Double Bonus](#)
- [Super Double Double Bonus](#)
- [Super Draw Poker](#)
- [Super Times Pay](#)
- [Super Triple Bonus](#)
- [Tens or Better](#)
- [Three Card Draw Poker](#)
- [Three Way Action](#)
- [Trade Up Poker](#)
- [Triple Bonus](#)
- [Triple Deuces Wild](#)
- [Triple Double Bonus](#)
- [Triple Trouble](#)
- [Turbo Video Poker](#)
- [Two Ways Royal](#)
- [Ultimate 4 of a Kind Bonus](#)
- [Ultimate X](#)
- [Ultra Bonus Poker](#)
- [Video Hold 'em](#)
- [Wheel Poker](#)
- [Wheel Poker Deluxe](#)

- [Double Deuces Wild](#)
- [Double Double Aces and Faces](#)
- [Double Double Bonus](#)
- [Double Double Bonus Poker Plus](#)
- [Double Double Jackpot](#)
- [Quick Quads](#)
- [Royal Aces Bonus Poker](#)
- [Royal Court](#)
- [Royal Draw](#)
- [Second Chance Royal](#)
- [Wheel Poker Deluxe](#)
- [White Hot Aces](#)
- [World Series of Poker Final Table Bonus](#)

For just the pay tables and returns of major games and pay tables see my [Video Poker Return Summary](#).

Can't find the game or pay table you're looking for? [Video Poker Help Starts Here](#) also carries lots of return tables.



Play for Fun

Practice over a dozen video poker games on my new and improved [video poker game](#).

ROYAL FLUSH	250	500	750	1000	4000
FOUR DEUCES	200	400	600	800	1000
WILD ROYAL FLUSH	25	50	75	100	125
FIVE OF A KIND	10	30	40	60	75
STRAIGHT FLUSH	9	18	27	36	45
FOUR OF A KIND	6	10	15	20	25
FULL HOUSE	3	6	9	12	15
FLUSH	2	4	6	8	10
STRAIGHT	2	4	6	8	10
THREE OF A KIND	1	2	3	4	5

CREDITS 1965 BETS 5 WIN 1000

Five-Card Hand Calculator

My [free video poker analyzer](#) will calculate the best way to play any hand and any pay table for most video poker games.

Analyze Go Back

Play	Expected Return
	0.49765

