



TTAB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

Applicant(s): Association for the Advancement of)
Medical Instrumentation Corp.)
Mark: CLES)
Serial No.: 85/374,659)
Filed: 7/19/2011)
Examining Attorney: Micheli, Angela)

APPEAL BRIEF

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I. INTRODUCTION AND STATEMENT OF THE ISSUE

Appellant hereby submits the subject brief in support of its Appeal of the refusal to register the above-referenced certification mark. The certification mark at issue is CLES for medical equipment maintenance, management and repair.¹

The Office finally refused registration solely under Section 2(e)(1) of the Trademark Act. More specifically, the sole basis for refusal is the assertion that “the proposed mark described the provider of the services being certified.” (See Final Action dated January 28, 2013) The Examining Attorney asserted that Appellant’s amendment of the application to seek registration via a claim under Section 2(f) of the Trademark Act was insufficient to show acquired distinctiveness. The Examining Attorney further asserted that Applicant’s evidence including the Declaration of hospital administrator Mr. James L. Chappell was not “conclusive evidence” of acquired distinctiveness. The Examining Attorney denied Appellant’s Request for Reconsideration and discounted additional declarations from the relevant consuming public.

Notably, the Examining Attorney expressly withdrew the “refusal under Trademark Act Sections 1, 2, 4 and 45 that the mark does not function as a certification mark.” (See Final Action, p. 2) Further, while the Examining Attorney initially contended that the certification mark was highly descriptive, no such assertion is made in the Final Action. (See Office Action dated April 27, 2012, p. 2; and Final Action, p. 2) Appellant notes that the Examining Attorney never alleged that the certification mark was generic.

¹ Appellant notes that it presently has filed Notice of Appeals in two other trademark applications. The first is Serial No. 85/348,778 for the certification mark CBET. The second is serial number 85/374,678 for the certification mark CRES. The Examining Attorney is Angela Micheli in all three applications.

The subject Appeal Brief is directed to the issue of acquired distinctiveness as that is the sole issue relevant to this Appeal.

II. DESCRIPTION OF THE RECORD

On July 19, 2011, Appellant filed a Trademark Application for the certification mark CLES for the services “[m]edical equipment maintenance, management, and repair services.” The application included the Certification Statement that “[t]he certification mark, as used by an authorized person, will certify that such person has met educational and/or experience requirements in the field of biomedical equipment technology, with a specialization in laboratory equipment, for certification and has passed the certification examination.” (Application Certification Statement) The application also included two specimens showing use of the mark and a copy of the eligibility requirements.

On October 5, 2011, the Examining Attorney refused registration of the mark under Trademark Act Sections 1, 2, 4 and 45 as the mark allegedly designated a title or degree and does not function as a trademark. The Examining Attorney also refused registration of the mark under Sections 2(e)(1) and 4 as allegedly being merely descriptive of the provider of the services being certified. The Examining Attorney also objected to the form of the specimens as allegedly failing to show the mark in use or advertising the services.

On April 5, 2012, Appellant filed a response to the October 5, 2011 Office Action. The response included a declaration under 15 U.S.C. § 1052(f) of substantially exclusive and continuous use in commerce for at least thirties years. Appellant provided additional arguments against the two grounds of rejection set forth in the October 5, 2011 Office Action.

On April 27, 2012, the Examining Attorney again refused registration of the mark in a second Office Action. The Examining Attorney again refused registration under § 2(e)(1) and under §§ 1, 2, 4 and 45. The Examining Attorney again objected to the form of the specimens as allegedly failing to show the mark in use or advertising of the services.

On October 31, 2012, Appellant filed a second response addressing all of the grounds of refusal. Appellant pointed out with particularity how the evidence made of record by the Examining Attorney

supported a finding of acquired distinctiveness. Appellant furnished the highly relevant declaration of hospital administrator, James L. Chappell (Unit Director of Crothall Healthcare, CES) supporting a finding of acquired distinctiveness. Appellant further submitted the declaration of Chris Dinegar, Vice President of AAMI supporting a finding of acquired distinctiveness.

On December 21, 2012, Appellant provided additional specimens including a photograph of a pin bearing the mark and a statement that the specimens were in use at least prior to the filing date of the application.

On January 28, 2013, the Examining Attorney issued a Final Office Action. The Examining Attorney again refused registration under § 2(e)(1). The Examining Attorney expressly withdrew the rejection under §§ 1, 2, 4 and 45. (See Final Action, p. 2) The Examining Attorney did not maintain or restate the objection to the specimens following Appellant's submission of additional specimens and arguments regarding the specimen issue. (See Final Action)

On July 29, 2013, Appellant filed a Request for Reconsideration. The request included arguments against the refusal and included additional evidence supporting a finding of acquired distinctiveness. Appellant explained how the evidence made of record by the Examining Attorney supported a finding of acquired distinctiveness including numerous websites clearly demonstrating that the relevant public has come to view the designation CLES as AAMI's source-identifying certification mark.

On October 7, 2013, the Examining Attorney issued a denial of Appellant's request for reconsideration. The sole ground for denial was that the mark was merely descriptive of such services under section 2(e)(1), namely that the showing of acquired distinctiveness furnished by Appellant was allegedly insufficient to establish that CLES has become distinctive. Again, the Examining Attorney made of record evidence that included numerous websites demonstrating that the relevant public has come to view the designation CLES as AAMI's source-identifying certification mark.

III. FACTS

Appellant, Association for the Advancement of Medical Instrumentation (“AAMI”), is the owner of the subject application for the certification mark CLES medical equipment maintenance, management and repair.² AAMI is a diverse community of nearly 7,000 health care technology professionals. (Ex. A, Ref. 25) AAMI is united by one important mission, i.e., supporting the health care community and the development, management and use of safe and effective medical technology. (Ex. A, Ref. 25) AAMI is a 501(C)(6) non-profit association.

AAMI is a primary source for the healthcare industry, its related professions, and the government for information on medical instrumentation and technology, including *national and international standards*. (Ex. A, Ref. 19)

AAMI certifies candidates through its International Certification Commission (“ICC”).³ (Ex. C, ¶ C)⁴ More specifically, the Board of Examiners for Biomedical Equipment Technicians, operating under

² Appellant provides herewith two tables (Exhibit A and Exhibit B). The first table lists all of the evidence of record sorted by the date the particular piece of evidence was made of record. The second table lists the same evidence sorted alphabetically. All sites to the record evidence refer to Exhibit A. For example, Ex. A, Ref. 25 refers to item 25 (www.biomedicaltimes.com) listed on Exhibit A.

³ AAMI, USCC and ICC are referred to herein collectively as AAMI.

⁴ Exhibit C is the declaration of Mr. Dinegar dated October 25, 2012. This declaration is of record in the aforementioned Serial Nos. 85/348,778 to CBET. In the response filed on October 31, 2012, Appellant discussed the October 25, 2012 declaration, but inadvertently submitted a second copy of Mr. Dinegar’s April 4, 2012 declaration. However, since the Examining Attorney is aware of the contents of the October 25, 2012 declaration of Mr. Dinegar, Appellant

the direction of the United States Certification Commission (USCC) and the ICC, maintains the certification programs for biomedical equipment technicians (CBET), radiology equipment specialists (CRES), and laboratory equipment specialists (CLES). (Ex. C, ¶ E; Ex. A, Ref. 25; Ex. A, Ref. 19)

It is undisputed that AAMI is the sole body recognized to certify biomedical equipment technicians (CBET), radiology equipment specialists (CRES), and laboratory equipment specialists (CLES). (Ex. C, ¶¶ E & I; Ex. A, Ref. 10, ¶¶ 7-8; Ex. A, Ref. 15, ¶¶ 7-8; Ex. A, Ref. 16, ¶¶ 7-8; Ex. A, Ref. 17, ¶¶ 7-8) *The record is devoid of any evidence that any other body provides such certification.*

In today's healthcare market, technology is paramount. The need for a workforce knowledgeable in the theory of operation, underlying physiological principles, and safe application of biomedical equipment is a central concern of many hospitals and companies. Certification demonstrates that successful applicants have the knowledge to ensure a safe, reliable healthcare environment. It also demonstrates to employers a significant commitment to career and competence. (Ex. C, ¶ D; Ex. A, Ref. 25)

The AAMI certification evidences that the candidate has met the minimum requirements for certification. (Ex. A, Ref. 2) The candidate must meet ONE of the following minimum eligibility requirements:

- (i) Associate's degree in biomedical academic program and two years full-time BMET work experience; or
- (ii) Completion of a U.S. military biomedical equipment technology program and two years full-time BMET work experience; or
- (iii) Associate's degree in electronics technology and three years full-time BMET work experience; or
- (iv) Four years full-time BMET work experience.

Additional eligibility routes for CLES Applicants include one of the following:

respectfully requests this Board to fully consider the October 25, 2012 declaration of Mr. Dinegar. See TMEP § 1208.

- (i) Associate's degree in medical laboratory technology and three years fulltime BMET work experience; or
- (ii) Bachelor's degree in medical laboratory technology and two years full-time BMET work experience.

(Ex. C, ¶ F; Ex. A, Ref. 1; Ex. A, Ref 25)

Certification is not granted for instruction or classes provided by ICC, but shows that the candidates have achieved the levels of knowledge and experience to achieve the certification. Candidates achieve their education and knowledge outside of AAMI and are tested by ICC after proving that their experience meets the levels required by ICC. (Ex. C, ¶ G)

The Board of Examiners, the USCC, and the ICC do not sponsor or endorse any refresher course. (Ex. C, ¶ G)

Certification is not "merely a title" for the successful candidates, but is a temporary certification of the qualification of the candidate, and must be renewed by taking further tests. A certification is initially considered valid through the remainder of the year in which certification is received plus the following full calendar year. Upon expiration of this time period, it becomes necessary to renew certification. Upon renewal, certificants are put on a triennial schedule. (Ex. C, ¶ H; Ex. A, Ref. 19, p. 6)

Since at least December 31, 1980, CLES has been substantially exclusively and continuously used by laboratory equipment specialists certified by AAMI. (Ex. A, Ref. 8, ¶ 6)

The relevant public has come to view the designation CLES as AAMI's source-identifying certification mark. (Ex. A, Ref. 10, ¶¶ 7-8; Ex. A, Ref. 15, ¶¶ 7-8; Ex. A, Ref. 16, ¶¶ 7-8; Ex. A, Ref. 17, ¶¶ 7-8; Ex. A, Ref. 33; Ex. A, Ref. 19; Ex. A, Ref. 25; Ex. A, Ref. 14, pp. 16-17; Ex. A, Ref. 12, p. 5; Ex. A, Ref. 30; Ex. A, Ref. 28; Ex. A, Ref. 21; Ex. A, Ref. 27; Ex. A, Ref. 5, pp. 10-11)

The very evidence cited by the Examining Attorney to allegedly establish that the mark is merely descriptive confirms that the mark has acquired distinctiveness. For example, the job posting on the website www.jobs.parklandpeers.com has the following requirement:

Certification/Registration/Licensure

-Must be a Certified Biomedical Equipment Technicians (BMET), or Certified Radiology Specialist (CRES), or Certified Laboratory Specialist (CLES) *from the International Certification Commission for Clinical Engineering or Biomedical Technology (ICC)* (Ex. A, Ref. 33)(emphasis added)

Importantly, the above highly pertinent job posting is from a member of the relevant public that has come to view the designation CLES as AAMI's source-identifying certification mark.

Another example is found at the website www.biomedicaltimes which includes the following passage:

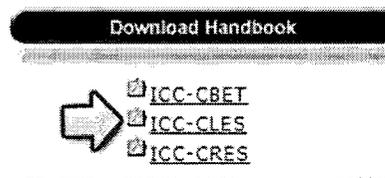
[A] CERTIFICATION FOR BIOMEDICAL EQUIPMENT TECHNICIANS

1. CBET, CRES & CLES CERTIFICATIONS (by AAMI)

... The Board of Examiners for Biomedical Equipment Technicians, operating under the direction of the United States Certification Commission (USCC) and the ICC, maintains the certification programs for biomedical equipment technicians (CBET), radiology equipment specialists (CRES), laboratory equipment specialist (CLES)... (Ex. A, Ref. 25)

A further example is found at the website www.ptcny.com which includes the following passage (Ex. A, Ref. 21):

International Certification Commission



Yet another example is found at the website www.testscorehelp.com which includes the following passage:

The Association for the Advancement of Medical Instrumentation (AAMI) is the primary source for information on medical instrumentation and technology, including providing national and international standards.

Under the direction of the International Certification Commission (ICC) and the United States Certification Commission (USSC), the Board of Examiners for Biomedical Equipment Technicians *maintains several certification programs, one of which is the certification for laboratory equipment specialists (CLES)*. In addition to meeting specific

academic and/or work experience requirements, an individual must successfully pass the CLES examination in order to earn CLES certification....

From a professional standpoint, passing the CLES examination and becoming certified may be required for specific jobs in the biomedical field. Even if certification is not required, by preparing for and successfully passing the CLES examination, individuals demonstrate their knowledge as it relates to the operation, the relevant physiological principles, and the safe application of the various types of biomedical equipment - knowledge that is extremely important in a world of ever changing and advancing technologies.

Supervisors, co-workers, and others in the healthcare industry will know that a certified individual is competent and qualified, and possesses the knowledge to ensure the healthcare environment is safe and reliable. Certification is indicative of someone who is motivated to maintain the latest job-related skills and of someone who takes pride in what they do. (Ex. A, Ref. 19)

Yet a further example is found at the website www.ohiocea.org which includes the following passage:

CBET, CRES and CLES Certification:

The Board of Examiners for Biomedical Equipment Technicians, operating under the direction of *the United States Certification Commission (USCC) and the International Certification Commission, maintains the certification programs for Biomedical Equipment Technicians (CBET), Radiology Equipment Specialists (CRES), and Laboratory Equipment Specialists (CLES).* (Ex. A, Ref. 28)

Yet a further example is found at the website www.1technation.com which includes the following passage:

What kind of certifications are there?

The Board of Examiners for Biomedical Equipment Technicians, *operating under the direction of the United States Certification Commission (USCC) and the ICC, maintains the certification programs for biomedical equipment technicians (CBET), radiology equipment specialists (CRES), and laboratory equipment specialists (CLES).* (Ex. A, Ref. 27)

Yet a further example is found at the website www.ntba.org which includes the following passage:

The Board of Examiners for Biomedical Equipment Technicians, *operating under the direction of the United States Certification Commission (USCC) and the ICC, maintains the certification programs for biomedical equipment technicians*

(CBET), radiology equipment specialists (CRES), and laboratory equipment specialists (CLES). (Ex. A, Ref. 30)

Yet a further example is found at the website www.medical-careers-hub.com which includes the following passage:

3) Certifications

The International Certification Commission for Clinical Engineering in Biomedical Technology (ICC) offers certification for biomedical equipment technicians (BMETs) to formally recognize that individuals have demonstrated excellence in theoretical as well as practical knowledge of biomedical equipment technology.

Certification demonstrates that successful applicants have the knowledge to ensure a safe, reliable healthcare environment.

It also demonstrates to employers a significant commitment to career and competence. *There are 3 certifications offered by the Board of Examiners for Biomedical Equipment Technicians, operating under the United States Certification Commission (USCC) and the ICC:*

- Certified Biomedical Equipment Technicians (CBET)
- Certified Radiology Equipment Specialists (CRES)
- *Certified Laboratory Equipment Specialists (CLES) (Ex. A, Ref. 5)*

Hospital administrators, clearly members of the relevant public, have come to view the designation CLES as AAMI's source-identifying certification mark.

Hospital administrator Dave Duet is the Facilities Manager at Contra Regional Medical Center in Martinez, California. (Ex. A, Ref. 16, ¶1) One of Mr. Duet's responsibilities is to hire and/or oversee technicians to maintain medical equipment. (Ex. A, Ref. 16, ¶ 4) When he or his hospital have posted job listings including the requirement or desirability of a Certified Biomedical Equipment Technician ("CBET"), Certified Radiological Equipment Specialist ("CRES"), or Certified Laboratory Equipment Specialist ("CLES"), such requirements or desirability *refer to only the ICC certification by AAMI.* (Ex. A, Ref. 16, ¶¶ 3 and 5)

Mr. Duet understands that by hiring AAMI certified individuals, his hospital will receive a higher quality level of service. (Ex. A, Ref. 16, ¶ 6)

Mr. Duet and his hospital are aware that ICC and/or AAMI promote the marks CRES/CLES/CBET. (Ex. A, Ref. 16, ¶ 7) *Mr. Duet and his hospital further recognize AAMI as the sole source of certification for these marks.* (Ex. A, Ref. 16, ¶ 7) Finally, Mr. Duet notes that he is not aware of any other company or entity outside of ICC & AAMI that certifies these candidates for the CRES/CLES/CBET certifications. (Ex. A, Ref. 16, ¶ 8)

Hospital administrator, James L. Chappell, is the Unit Director of Crothall Healthcare CES in Wayne, Pennsylvania. (Ex. A, Ref. 10, ¶ 1) Mr. Chappell has held this position since December 1, 2010. (Ex. A, Ref. 10, ¶ 2) Mr. Chappell's responsibilities include hiring and overseeing technicians that maintain medical equipment. (Ex. A, Ref. 10, ¶ 1)

Mr. Chappell has *interviewed and/or hired a number of candidates that are certified by the International Certification Commission (ICC) through the Association for the Advancement of Medical Instrumentation (AAMI) with a CBET, a CRES or a CLES to maintain biomedical and imaging equipment.* (Ex. A, Ref. 10, ¶ 3) *Mr. Chappell is aware of the eligibility requirements and the testing that these certified individuals have received and the quality of services that he has found these certified candidates can provide over and beyond non-certified candidates.* (Ex. A, Ref. 10, ¶ 4)

Mr. Chappell gives higher consideration to candidates holding these certificates. Mr. Chappell is aware of which employees hold these certificates because they generally post their certificates above their work space. (Ex. A, Ref. 10, ¶ 5) Mr. Chappell is more comfortable and more secure bringing work to or assigning work to employees that have these certificates above their workbench because he knows the quality, knowledge and care that they provide in their services is more reliable and higher than those without such certificates. (Ex. A, Ref. 10, ¶ 5)

Mr. Chappell and his hospital also hire outside contractors to fix their medical equipment STERRAD Sterilizers. (Ex. A, Ref. 10, ¶ 6) *Mr. Chappell and his hospital prefer to hire contractors that hold these (CBET, CRES, CLES) certifications, because he knows the quality, knowledge and care that they provide in their services is more reliable and higher than those without such certificates.* (Ex. A,

Ref. 10, ¶ 6) Mr. Chappell and his hospital know these contractors are certified because they advertise it. (Ex. A, Ref. 10, ¶ 6)

Mr. Chappell is aware that the ICC provides testing to candidates that hold the CBET, CRES and CLES certifications. (Ex. A, Ref. 10, ¶ 7) Mr. Chappell is aware that by achieving these certifications, they have achieved a certain level of education and experience. Mr. Chappell prefers technicians that hold these certifications. (Ex. A, Ref. 10, ¶ 7)

Mr. Chappell is not aware of any other company or entity other than ICC that certifies these candidates for the CBET, CRES and CLES certifications. (Ex. A, Ref. 10, ¶ 8)

Douglas Stephens, the Chairman and Founder of Stephens International Recruiting, Inc., oversees the placement of technicians that maintain medical equipment. (Ex. A, Ref. 15, ¶¶ 1 to 4) *Mr. Stephens and his company are familiar with AAMI's promotion of the marks CLES, CBET and CRES and recognize AAMI as the sole source of certification for these marks. (Ex. A, Ref. 15, ¶¶ 7-8) As Mr. Stephens explains, individuals with these certifications will provide medical equipment maintenance, management and repair services at a higher quality level because of their certification by AAMI. (Ex. A, Ref. 15, ¶ 6) Mr. Stephens further states that he is unaware of any other company or entity outside of AAMI that certifies candidates for the CLES, CBET and CRES certifications. (Ex. A, Ref. 15, ¶ 8)*

Jennifer Brown of Health Tech Talent Management, LLC (“Health Tech”) oversees the placement of technicians that maintain medical equipment. (Ex. A, Ref. 17, ¶¶ 1 to 4) *Ms. Brown and Health Tech are familiar with AAMI's promotion of the marks CLES, CBET and CRES and recognize AAMI as the sole source of certification for these marks. (Ex. A, Ref. 17, ¶¶ 7-8) As Ms. Brown explains, individuals with these certifications will provide medical equipment maintenance, management and repair services at a higher quality level because of their certification by AAMI. (Ex. A, Ref. 17, ¶ 6) Ms. Brown further states that she is unaware of any other company or entity outside of AAMI that certifies candidates for the CLES, CBET and CRES certifications. (Ex. A, Ref. 17, ¶ 8)*

IV. ARGUMENT

Before addressing the final refusal, Appellant again points out that AAMI, USCC, ICC and The Board of Examiners of Biomedical Equipment Technicians are all references to Appellant.

The Final Rejection dated January 28, 2013 refused registration of the subject certification mark *solely* under Section 2(e)(1) of the Trademark Act. More specifically, the *sole* basis for refusal is the assertion that “the proposed mark described the provider of the services being certified.” (See Final Action dated January 28, 2013) Notably, the Final Rejection expressly withdrew the “refusal under Trademark Act Sections 1, 2, 4 and 45 that the mark does not function as a certification mark.” (See Final Action, p. 2)

Hence, the only issue to be resolved in this appeal is whether the certification mark CLES has acquired distinctiveness, i.e., whether the consuming public has come to know the mark CLES as a source-identifying certification mark as opposed to a general certification. In connection with this issue, it is important to note that while the Examining Attorney initially contended that the certification mark was “highly descriptive,” no such assertion is made in the Final Action.⁵ (See Office Action dated April 27, 2012, p. 2; and Final Action) As such, Appellant is not required to meet the higher evidentiary burden on the issue of acquired distinctiveness where the mark at issue is deemed to be “highly descriptive.” *In re Packaging Specialists*, 221 USPQ 917, 919 (TTAB 1984) Appellant notes that at no time has the subject certification mark been alleged to be generic.

Appellant submits that record evidence including but not limited to the over thirty years of substantially exclusive and continuous use of the subject certification mark, the four (4) declarations of members of the relevant consuming public expressly acknowledging CLES as AAMI’s source-identifying certification mark and the numerous websites made of record by the Examining Attorney

⁵ The Final Action must include all grounds/basis for refusal. See TMEP §714.04 (“When making an action final, the examining attorney must restate any requirements or refusals that remain outstanding, and must cite the rule(s) and/or statute(s) that provide the basis for these refusals or requirements. “)

evidencing the recognition by the relevant consuming public of CLES as AAMI's source-identifying certification mark is more than sufficient to meet Appellant's evidentiary burden on the issue of acquired distinctiveness. Notably, *the record lacks any evidence that any other body provides such certification.*

Appellant respectfully submits that the refusal of registration is predicated on critical errors of fact and law. Specifically, the Final Rejection adopted an erroneous evidentiary standard for Appellant to meet on the issue of acquired distinctiveness. Specifically, the Final Rejection asserts that "[t]he third-party declaration provided is not *conclusive evidence* of acquired distinctiveness." (See Final Rejection, p. 2)(emphasis added)

While the sufficiency of evidence required to establish secondary meaning depends on the facts in each case and the nature of the mark to be registered, Appellant is not saddled with providing "conclusive evidence" of acquired distinctiveness. *Roux Laboratories, Inc. v. Clairol Inc.*, 166 USPQ 34, 39 (CCPA 1907); and *In re Packaging Specialists*, 221 USPQ at 919.

The Final Rejection also erred in finding that the declaration of Mr. Chappell shows "the proposed mark being used as a title of a type of job" when Mr. Chappell's declaration establishes clear recognition by a hospital administrator of CLES as a source-identifying certification mark.⁶ (See Final Rejection, p. 2)

The Examining Attorney also erred by finding that the numerous websites made of record establish CLES as being used "to describe the job position" when in fact these websites establish the clear recognition of the relevant consuming public that CLES is a source-identifying certification mark. (See Denial of Request for Reconsideration, p. 1)

The Examining Attorney further erred in failing to recognize the critical distinctions between the subject case and *In re Council on Certification of Nurse Anesthetists*, 85 USPQ 2d at 1415. This Board, in *In re Council on Certification of Nurse Anesthetists*, found that the Appellant had not satisfied its

⁶ There is no question that hospital administrators are members of the relevant consuming public.

In re Council on Certification of Nurse Anesthetists, 85 USPQ 2d 1403, 1415 (TTAB 2007)

evidentiary burden on the issue of acquired distinctiveness because the record in that case lacked any evidence that the relevant consuming public recognized CRNA as a source-identifying certification mark. This Board stated that “noticeably absent from this record is direct evidence regarding how surgical patients, doctors and hospital administrators have come to view the designation CRNA.” *Id.*

Appellant and the Examining Attorney have made of record the very outcome determinative evidence found lacking in *In re Council on Certification of Nurse Anesthetists, i.e., i.e.* direct evidence that the relevant consuming public has come to view the designation CLES as a source-identifying certification mark. Another material distinction between the subject appeal and *In re Council on Certification of Nurse Anesthetists* is the lack in the Final Rejection of an allegation that the subject certification mark is highly descriptive. Notably, the Examining Attorney in *In re Council on Certification of Nurse Anesthetists* alleged that the mark at issue was generic and alternatively highly descriptive. In fact, this Board found the designation CRNA to be “highly descriptive” triggering a higher evidentiary burden than exists in the present case.

A. EVIDENCE THAT RELEVANT CONSUMING PUBLIC VIEWS CLES AS A SOURCE-IDENTIFYING CERTIFICATION MARK

Appellant respectfully submits that the evidence of record more than satisfies Appellant’s evidentiary burden on the issue of acquired distinctiveness. This evidence includes the over thirty years of substantially exclusive and continuous use of the subject certification mark. (Ex. A, Ref. 8) The Examining Attorney has not and cannot cite any evidence establishing that someone other than Appellant provides a CLES certification. Appellant submitted four (4) declarations from members of the relevant consuming public expressly acknowledging CLES as AAMI’s source-identifying certification mark. (Ex. A, Ref. 10; Ex. A, Ref. 15; Ex. A, Ref. 16; Ex. A, Ref. 17;) This is the very outcome determinative evidence lacking in *In re Council on Certification of Nurse Anesthetists*. The record evidence further includes the numerous websites made of record by the Examining Attorney evidencing the recognition by the relevant consuming public of the designation CLES as a source-identifying certification mark. (Ex. A, Ref. 10, ¶¶ 7-8; Ex. A, Ref. 15, ¶¶ 7-8; Ex. A, Ref. 16, ¶¶ 7-8; Ex. A, Ref. 17, ¶¶ 7-8; Ex. A, Ref. 33;

Ex. A, Ref. 19; Ex. A, Ref. 25; Ex. A, Ref. 14, pp. 16-17; Ex. A, Ref. 12, p. 5; Ex. A, Ref. 30; Ex. A, Ref. 28; Ex. A, Ref. 21; Ex. A, Ref. 27; Ex. A, Ref. 5, pp. 10-11)

1. EVIDENCE OF ACQUIRED DISTINCTIVENESS MADE OF RECORD BY THE EXAMINING ATTORNEY

Appellant respectfully submits that the Examining Attorney made a critical error in the evaluation of evidence the Examining Attorney made of record in this case. Specifically, the Examining Attorney erroneously determined that the numerous websites she made of record establish “CLES is used to describe the job position” as opposed to establishing recognition by the relevant consuming public of the designation CLES as a source-identifying certification mark. (See Denial of Request for Reconsideration, p. 1)

The Examining Attorney made the job posting on the website www.jobs.parklandpeers.com of record in this case. The job posting includes the following passage:

Certification/Registration/Licensure
-Must be a Certified Biomedical Equipment Technicians (BMET), or Certified Radiology Specialist (CRES), or Certified Laboratory Specialist (CLES) *from the International Certification Commission for Clinical Engineering or Biomedical Technology (ICC)* (Ex. A, Ref. 33)(emphasis added)

Importantly, the above highly pertinent job posting is from a member of the relevant public. This posting is direct evidence that a member of the relevant consuming public views the designation CLES as AAMI’s source-identifying certification mark. More specifically, this job posting expressly states that the CLES certification is “*from the International Certification Commission for Clinical Engineering or Biomedical Technology (ICC)*, i.e., Appellant. The Examining Attorney does not provide any argument or authority that the above job posting could possibly be considered merely a job description as opposed to a source-identifying certification mark.

The Examining Attorney also made of record excerpts from the website www.biomedicaltimes.com. These excerpts include the following passage:

[A] CERTIFICATION FOR BIOMEDICAL EQUIPMENT TECHNICIANS

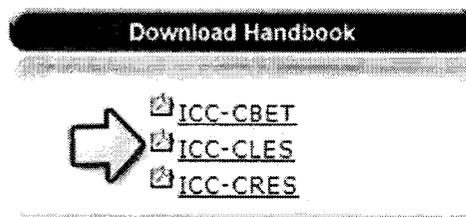
1. CBET, CRES & CLES CERTIFICATIONS (by AAMI)

... *The Board of Examiners for Biomedical Equipment Technicians, operating under the direction of the United States Certification Commission (USCC) and the ICC, maintains the certification programs for biomedical equipment technicians (CBET), radiology equipment specialists (CRES), laboratory equipment specialist (CLES)...*(Ex. A, Ref. 25)(emphasis added)

The above excerpts expressly state that the CLES certification is “by AAMI” clearly identifying CLES as Appellant’s source-identifying certification mark. The above excerpt further identifies Appellant (i.e., The Board of Examiners for Biomedical Equipment Technicians, operating under the direction of the United States Certification Commission (USCC) and the (ICC) as the source that *maintains* the certification programs which include the CLES certification. Again, these excerpts are direct evidence that the relevant consuming public views the designation CLES as AAMI’s source-identifying certification mark.

The Examining Attorney also made of record excerpts from the website www.ptcny.com. These excerpts include the following passage (Ex. A, Ref. 21):

International Certification Commission



The above excerpts directly identify Appellant (i.e., ICC) as the source of the CLES certification.

The Examining Attorney also made of record excerpts from the websites www.testscorehelp.com; www.ohiocea.org; www.1technation.com; www.ntba.org; and www.medical-careers-hub.com. The excerpts from these websites include the following passages, respectively:

The Association for the Advancement of Medical Instrumentation (AAMI) is the primary source for information on medical instrumentation and technology, including providing national and international standards.

Under the direction of the International Certification Commission (ICC) and the United States Certification Commission (USSC), the Board of Examiners for Biomedical Equipment Technicians *maintains several certification programs, one of which is the certification for laboratory equipment specialists (CLES)*. In addition to meeting specific academic and/or work experience requirements, an individual must successfully pass the CLES examination in order to earn CLES certification...

From a professional standpoint, passing the CLES examination and becoming certified may be required for specific jobs in the biomedical field. Even if certification is not required, by preparing for and successfully passing the CLES examination, individuals demonstrate their knowledge as it relates to the operation, the relevant physiological principles, and the safe application of the various types of biomedical equipment - knowledge that is extremely important in a world of ever changing and advancing technologies.

Supervisors, co-workers, and others in the healthcare industry will know that a certified individual is competent and qualified, and possesses the knowledge to ensure the healthcare environment is safe and reliable. Certification is indicative of someone who is motivated to maintain the latest job-related skills and of someone who takes pride in what they do. (Ex. A, Ref. 19)

**** ***** ****

CBET, CRES and CLES Certification:

The Board of Examiners for Biomedical Equipment Technicians, operating under the direction of *the United States Certification Commission (USCC) and the International Certification Commission, maintains the certification programs for Biomedical Equipment Technicians (CBET), Radiology Equipment Specialists (CRES), and Laboratory Equipment Specialists (CLES)*. (Ex. A, Ref. 28)

**** ***** ****

What kind of certifications are there?

The Board of Examiners for Biomedical Equipment Technicians, *operating under the direction of the United States Certification Commission (USCC) and the ICC, maintains the certification programs for biomedical equipment technicians (CBET), radiology equipment specialists (CRES), and laboratory equipment specialists (CLES)*. (Ex. A, Ref. 27)

**** ***** ****

The Board of Examiners for Biomedical Equipment Technicians, *operating under the direction of the United States Certification Commission (USCC) and the ICC, maintains the certification programs for biomedical equipment technicians (CBET), radiology*

equipment specialists (CRES), and laboratory equipment specialists (CLES). (Ex. A, Ref. 30)

**** ***** ****

3) Certifications

The International Certification Commission for clinical engineering in biomedical technology (ICC) offers certification for biomedical equipment technicians (BMETs) to formally recognize that individuals have demonstrated excellence in theoretical as well as practical knowledge of biomedical equipment technology. Certification demonstrates that successful applicants have the knowledge to ensure a safe, reliable healthcare environment. It also demonstrates to employers a significant commitment to career and competence. There are 3 certifications offered by the Board of Examiners for Biomedical Equipment Technicians, operating under the United States Certification Commission (USCC) and the ICC:

- Certified Biomedical Equipment Technicians (CBET)
- Certified Radiology Equipment Specialists (CRES)
- *Certified Laboratory Equipment Specialists (CLES)* (Ex. A, Ref. 5)

All of the above excerpts expressly identify Appellant as the sole source that *maintains and/or offers* the certification programs which include the CLES certification. The above excerpts are all direct evidence that the relevant consuming public views the designation CLES as AAMI's source-identifying certification mark.

This record lacks any analysis by the Examining Attorney of the excerpts that she made of record supporting the naked assertion that these website use the designation CLES to describe a job position as opposed to a designation serving as a source-identifying certification mark.

In fact, the certification is so well recognized and valued by the relevant consuming public as a source-identifying certification mark that one website cited by the Examining Attorney, www.mo-media.com, posted, "CLES exam scores are used by the Association for the Advancement of Medical Instrumentation (AAMI) as a uniform standard of qualification. *While it may not be fair, all of a person's plans for the future may be dependent upon need a certain CLES exam score.*" (Ex. A, Ref. 12)

(Emphasis added)

2. DECLARATION EVIDENCE OF ACQUIRED DISTINCTIVENESS MADE OF RECORD BY APPELLANT

Appellant submitted declarations from hospital administrators Duet and Chappell. There is no question that these two hospital administrators are members of the relevant consuming public. These declarations provide direct evidence that CLES is Appellant's source-identifying certification mark.

Hospital administrator Duet states that he is the Facilities Manager at Contra Regional Medical Center in Martinez, California. (Ex. A, Ref. 16, ¶1) One of Mr. Duet's responsibilities is to hire and/or oversee technicians to maintain medical equipment. (Ex. A, Ref. 16, ¶ 1) When he or his hospital have posted job listings including the requirement or desirability of a Certified Biomedical Equipment Technician ("CBET"), Certified Radiological Equipment Specialist ("CRES"), or Certified Laboratory Equipment Specialist ("CLES"), such requirements or desirability *refer to only the ICC certification by AAMI*. (Ex. A, Ref. 16, ¶¶ 3 and 5) Mr. Duet understands that by hiring AAMI certified individuals, his hospital will receive a higher quality level of service. (Ex. A, Ref. 16, ¶ 6) Mr. Duet and his hospital are aware that ICC and/or AAMI promote the marks CRES/CLES/CBET. (Ex. A, Ref. 16, ¶ 7)

Mr. Duet and his hospital further recognize AAMI as the sole source of certification for these marks. (Ex. A, Ref. 16, ¶ 7) Finally, Mr. Duet notes that he is not aware of any other company or entity outside of ICC & AAMI that certifies these candidates for the CRES/CLES/CBET certifications. (Ex. A, Ref. 16, ¶ 8)

Hospital administrator Chappell, is the Unit Director of Crothall Healthcare CES in Wayne, Pennsylvania. (Ex. A, Ref. 10, ¶ 1) Mr. Chappell has held this position since December 1, 2010. (Ex. A, Ref. 10, ¶ 2) Mr. Chappell's responsibilities include hiring and overseeing technicians that maintain medical equipment. (Ex. A, Ref. 10, ¶ 1) Mr. Chappell has *interviewed and/or hired a number of candidates that are certified by the International Certification Commission (ICC) through the Association for the Advancement of Medical Instrumentation (AAMI) with a CBET, a CRES or a CLES to maintain biomedical and imaging equipment.* (Ex. A, Ref. 10, ¶ 3) *Mr. Chappell is aware of the eligibility*

requirements and the testing that these certified individuals have received and the quality of services that he has found these certified candidates can provide over and beyond non-certified candidates. (Ex. A, Ref. 10, ¶ 4) Mr. Chappell gives higher consideration to candidates holding these certificates. Mr. Chappell is aware of which employees hold these certificates because they generally post their certificates above their work space. (Ex. A, Ref. 10, ¶ 5) Mr. Chappell is more comfortable and more secure bringing work to or assigning work to employees that have these certificates above their workbench because he knows the quality, knowledge and care that they provide in their services is more reliable and higher than those without such certificates. (Ex. A, Ref. 10, ¶ 5)

Mr. Chappell and his hospital also hire outside contractors to fix their medical equipment STERRAD Sterilizers. (Ex. A, Ref. 10, ¶ 6) *Mr. Chappell and his hospital prefer to hire contractors that hold these (CBET, CRES, CLES) certifications, because he knows the quality, knowledge and care that they provide in their services is more reliable and higher than those without such certificates.* (Ex. A, Ref. 10, ¶ 6) Mr. Chappell and his hospital know these contractors are certified because they advertise it. (Ex. A, Ref. 10, ¶ 6)

Mr. Chappell is aware that the ICC provides testing to candidates that hold the CBET, CRES and CLES certifications. (Ex. A, Ref. 10, ¶ 7) *Mr. Chappell is aware that by achieving these certifications, they have achieved a certain level of education and experience. Mr. Chappell prefers technicians that hold these certifications.* (Ex. A, Ref. 10, ¶ 7)

Mr. Chappell is not aware of any other company or entity other than ICC that certifies these candidates for the CBET, CRES and CLES certifications. (Ex. A, Ref. 10, ¶ 8)

The Examining Attorney's assertion that the Chappell declaration shows "the proposed mark being used as a title of a type of job" is not supported by the clear and unmistakable sworn testimony of Mr. Chappell clearly recognizing the designation CLES as Appellant's source-identifying certification mark.

Appellant further submitted two declarations of placement experts, i.e., Mr. Stephens and Ms. Brown. These declarations provide direct evidence that CLES is Appellant's source-identifying

certification mark. Mr. Stephens is the Chairman and Founder of Stephens International Recruiting, Inc. He oversees the placement of technicians that maintain medical equipment. (Ex. A, Ref. 15, ¶¶ 1 to 4) *Mr. Stephens and his company are familiar with AAMI's promotion of the marks CLES, CBET and CRES and recognize AAMI as the sole source of certification for these marks.* (Ex. A, Ref. 15, ¶¶ 7-8) As Mr. Stephens explains, individuals with these certifications will provide medical equipment maintenance, management and repair services at a higher quality level because of their certification by AAMI. (Ex. A, Ref. 15, ¶ 6) *Mr. Stephens further states that he is unaware of any other company or entity outside of AAMI that certifies candidates for the CLES, CBET and CRES certifications.* (Ex. A, Ref. 15, ¶ 8)

Ms. Brown of Health Tech Talent Management, LLC (“Health Tech”) oversees the placement of technicians that maintain medical equipment. (Ex. A, Ref. 17, ¶¶ 1 to 4) *Ms. Brown and Health Tech are familiar with AAMI's promotion of the marks CLES, CBET and CRES and recognize AAMI as the sole source of certification for these marks.* (Ex. A, Ref. 17, ¶¶ 7-8) *As Ms. Brown explains, individuals with these certifications will provide medical equipment maintenance, management and repair services at a higher quality level because of their certification by AAMI.* (Ex. A, Ref. 17, ¶ 6) *Ms. Brown further states that she is unaware of any other company or entity outside of AAMI that certifies candidates for the CLES, CBET and CRES certifications.* (Ex. A, Ref. 17, ¶ 8)

Notably, the Examining Attorney does not analyze the Duet declaration, the Brown declaration or the Stephens declaration.

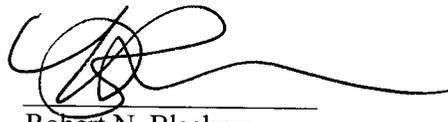
V. CONCLUSION

Appellant respectfully submits that the Examining Attorney committed errors of fact and law that require reversal of the final refusal. As previously explained, the Examining Attorney erroneously held Appellant to the “conclusive evidence” standard on the acquired distinctiveness issue. The Examining Attorney further made erroneous factual findings that are unsupported by the record including the assertion that the webpages of record and the declaration of hospital administrator Chappell establish use of the designation CLES as a job position as opposed to a source-identifying certification mark.

Appellant further submits that the evidence of record more than satisfies Appellant's evidentiary burden on the issue of acquired distinctiveness including: (i) the over thirty years of substantially exclusive and continuous use of the subject certification mark; (ii) the complete lack of any evidence that any other body provides CLES certification; (iii) the four (4) declarations of members of the relevant consuming public expressly acknowledging CLES as AAMI's source-identifying certification mark; and (iv) the numerous websites made of record by the Examining Attorney evidencing the recognition by the relevant consuming public of the designation CLES as a source-identifying certification mark.

Date: December 6, 2013 Respectfully submitted,

Merek, Blackmon & Voorhees, LLC
673 S. Washington St.
Alexandria, VA 22314
(703)-684-5633



Robert N. Blackmon
Reg. No. 39,494
Attorney for the Applicant

Exhibit A

U.S. Trademark Ser. No. 85/374,659, Filed 7/19/2011

by

Association for the Advancement of Medical Instrumentation Corp., Appellant

for the mark:

CLES

TABLE OF EVIDENCE PROVIDED DURING PROSECUTION OF
U.S. Ser. No. 85/374,659 Filed 7/19/2011 for the mark CLES
by Appellant, Association for the Advancement of Medical Instrumentation Corp.

EXHIBIT A. EVIDENCE SORTED BY DATE*

Ref	Document	Filing Date
1.	Copy of Standards Description ("Eligibility Requirements")	Application 7/19/2011
2.	Certification Statement	Application 7/19/2011
3.	www.acronymattic.com	Office Action 10/5/2011 pp. 4-5*
4.	www.studyguidetest.com	Office Action 10/5/2011 pp. 6-8
5.	www.medical-careers.hub.com	Office Action 10/5/2011 pp. 9-23
6.	AAMI Certification Poster	Response 4/5/12 p. 9
7.	Wikipedia article on "Biomedical Equipment Technician"	Response 4/5/12 pp. 10-14
8.	§2(f) Declaration of Chris Dinegar dated 4/4/12	Response 4/5/12 pp. 10-14
9.	Declaration of Chris Dinegar dated 4/4/12 (Exhibit 1)	Response 10/31/12 pp. 5-6
10.	Declaration of James Chappell (Exhibit 2)	Response 10/31/12 pp. 7-8
11.	AAMI webpage showing CLES pin	p. 1
12.	www.mo-media.com	Final Office Action 1/28/13 pp. 5-13
13.	www.24x7mag.com	Final Office Action 1/28/13 pp. 14-15
14.	www.degreedirectory.com	Final Office Action 1/28/13 pp. 16-22
15.	Declaration of Douglas Stephens (Exhibit 3)	Request for Reconsideration 7/29/13 pp. 11-12
16.	Declaration of Dave Duet (Exhibit 4)	Request for Reconsideration 7/29/13 pp. 13-14
17.	Declaration of Jenifer Brown (Exhibit 5)	Request for Reconsideration 7/29/13 pp. 15-16

* Note: the page numbers refer to the responses or office actions posted as individual PDF files on the Trademark Status and Document Retrieval ("TSDR") portal on the USPTO website at <http://tsdr.uspto.gov/>.

TABLE OF EVIDENCE PROVIDED DURING PROSECUTION OF
U.S. Ser. No. 85/374,659 Filed 7/19/2011 for the mark CLES
by Appellant, Association for the Advancement of Medical Instrumentation Corp.

18.	www.cool.navy.mil	Denial of Reconsideration 10/7/13 pp. 3-4
19.	www.testscorehelp.com	Denial of Reconsideration 10/7/13 pp. 5-9
20.	www.voices.yahoo.com	Denial of Reconsideration 10/7/13 pp. 10-12
21.	www.ptcny.com	Denial of Reconsideration 10/7/13 pp. 13-18
22.	www.innerbody.com	Denial of Reconsideration 10/7/13 pp. 19-23
23.	www.amazon.com	Denial of Reconsideration 10/7/13 pp. 24-27
24.	www.studyguideexam.com	Denial of Reconsideration 10/7/13 pp. 28-30
25.	www.biomedicaltimes.com	Denial of Reconsideration 10/7/13 pp. 31-33
26.	www.1technation.com 10/07/2013 11:29am	Denial of Reconsideration 10/7/13 pp. 34-38
27.	www.1technation.com 10/07/2013 10:57am	Denial of Reconsideration 10/7/13 pp. 39-40
28.	www.ohiocea.org	Denial of Reconsideration 10/7/13 pp. 41-42
29.	www.biomedrxinstitute.com	Denial of Reconsideration 10/7/13 pp. 43-44
30.	www.ntba.org	Denial of Reconsideration 10/7/13 pp. 45-46
31.	www.indeed.com	Denial of Reconsideration 10/7/13 pp. 47-48
32.	www.baptistjax.com	Denial of Reconsideration 10/7/13 pp. 49-50
33.	www.job.parklandcareers.com	Denial of Reconsideration 10/7/13 pp. 51-52

* Note: the page numbers refer to the responses or office actions posted as individual PDF files on the Trademark Status and Document Retrieval ("TSDR") portal on the USPTO website at <http://tsdr.uspto.gov/>.

Exhibit B

U.S. Trademark Ser. No. 85/374,659, Filed 7/19/2011

by

Association for the Advancement of Medical Instrumentation Corp., Appellant

for the mark:

CLES

TABLE OF EVIDENCE PROVIDED DURING PROSECUTION OF
U.S. Ser. No. 85/374,659 Filed 7/19/2011 for the mark CLES
by Appellant, Association for the Advancement of Medical Instrumentation Corp.

EXHIBIT B. EVIDENCE SORTED ALPHABETICALLY BY DOCUMENT

Document	Filing Date
AAMI Certification Poster	Response 4/5/12 p. 9*
AAMI webpage showing CLES pin	p. 1
Certification Statement	Application 7/19/2011
Declaration (§2(f)) of Chris Dinegar dated 4/4/12	Response 4/5/12 pp. 10-14
Declaration of Chris Dinegar dated 4/4/12 (Exhibit 1)	Response 10/31/12 pp. 5-6
Declaration of Dave Duet (Exhibit 4)	Request for Reconsideration 7/29/13 pp. 13-14
Declaration of Douglas Stephens (Exhibit 3)	Request for Reconsideration 7/29/13 pp. 11-12
Declaration of James Chappell (Exhibit 2)	Response 10/31/12 pp. 7-8
Declaration of Jenifer Brown (Exhibit 5)	Request for Reconsideration 7/29/13 pp. 15-16
Eligibility Requirements	Application 7/19/2011
www.1technation.com 10/07/2013 11:29am	Denial of Reconsideration 10/7/13 pp. 34-40
www.1technation.com 10/07/2013 10:57am	Denial of Reconsideration 10/7/13 pp. 34-40
www.24x7mag.com	Final Office Action 1/28/13 pp. 14-15
www.acronymattic.com	Office Action 10/5/2011 pp. 4-5
www.amazon.com	Denial of Reconsideration 10/7/13 pp. 24-27
www.baptistjax.com	Denial of Reconsideration 10/7/13 pp. 49-50
www.biomedicaltimes.com	Denial of Reconsideration 10/7/13 pp. 31-33
www.biomedrxinstitute.com	Denial of Reconsideration 10/7/13 pp. 43-44
www.cool.navy.mil	Denial of Reconsideration 10/7/13 pp. 3-4

* Note: the page numbers refer to the responses or office actions posted as individual PDF files on the Trademark Status and Document Retrieval ("TSDR") portal on the USPTO website at <http://tsdr.uspto.gov/>.

TABLE OF EVIDENCE PROVIDED DURING PROSECUTION OF
U.S. Ser. No. 85/374,659 Filed 7/19/2011 for the mark CLES
by Appellant, Association for the Advancement of Medical Instrumentation Corp.

www.degreedirectory.com	Final Office Action 1/28/13 pp. 16-22
www.indeed.com	Denial of Reconsideration 10/7/13 pp. 47-48
www.innerbody.com	Denial of Reconsideration 10/7/13 pp. 19-23
www.job.parklandcareers.com	Denial of Reconsideration 10/7/13 pp. 51-52
www.medical-careers.hub.com	Office Action 10/5/2011 pp. 9-23
www.mo-media.com	Final Office Action 1/28/13 pp. 5-13
www.ntba.org	Denial of Reconsideration 10/7/13 pp. 45-46
www.ohiocea.org	Denial of Reconsideration 10/7/13 pp. 41-42
www.ptcny.com	Denial of Reconsideration 10/7/13 pp. 13-18
www.studyguideexam.com	Denial of Reconsideration 10/7/13 pp. 28-30
www.studyguidetest.com	Office Action 10/5/2011 pp. 6-8
www.testscorehelp.com	Denial of Reconsideration 10/7/13 pp. 5-9
www.voices.yahoo.com	Denial of Reconsideration 10/7/13 pp. 10-12
www.wikipedia.com article on "Biomedical Equipment Technician"	Response 4/5/12 pp. 10-14

* Note: the page numbers refer to the responses or office actions posted as individual PDF files on the Trademark Status and Document Retrieval ("TSDR") portal on the USPTO website at <http://tsdr.uspto.gov/>.

Exhibit C

U.S. Trademark Ser. No. 85/374,659, Filed 7/19/2011

by

Association for the Advancement of Medical Instrumentation Corp., Appellant

for the mark:

CLES

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Association for the Advancement of Medical Instrumentation Corp.	
Mark: CLES/CRS/CBET	Trademark Law
Serial No.: 85/374,659, 85/348,778, 85/374,678	Office: _____
Filed: 7/19/2011	Docket: J2AAM002.31

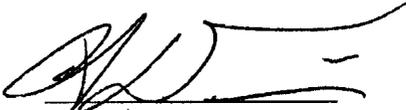
DECLARATION

I, Chris Dinegar, do hereby declare that:

- A. I am a Vice President of the Association for the Advancement of Medical Instrumentation that is the applicant in the application identified above;
- B. I have been a Vice President at the Association for the Advancement of Medical Instrumentation since June 2003;
- C. I can and do hereby attest that AAMI certifies candidates through its International Certification Commission ("ICC").
- D. In today's healthcare market, technology is paramount. The need for a workforce knowledgeable in the theory of operation, underlying physiological principles, and safe application of biomedical equipment is a central concern of many hospitals and companies. Certification demonstrates that successful applicants have the knowledge to ensure a safe, reliable healthcare environment. It also demonstrates to employers a significant commitment to career and competence.
- E. The Board of Examiners for Biomedical Equipment Technicians, operating under the direction of the United States Certification Commission (USCC) and the ICC, maintains the certification programs for biomedical equipment technicians (CBET), radiology equipment specialists (CRES), and laboratory equipment specialists (CLES).
- F. This certification evidences that the candidate has met the minimum requirements for certification as provided in the eligibility requirements (provided with the application filing), namely, "Applicants must meet ONE of the following minimum eligibility requirements:
 - 1. Associate's degree in biomedical academic program and two years full-time BMET work experience; OR
 - 2. Completion of a U.S. military biomedical equipment technology program and two years full-time BMET work experience; OR
 - 3. Associate's degree in electronics technology and three years full-time BMET work experience; OR
 - 4. Four years full-time BMET work experience.Additional eligibility routes for CLES Applicants only:
 - 5. Associate's degree in medical laboratory technology and three years fulltime BMET work experience; OR
 - 6. Bachelor's degree in medical laboratory technology and two years full-time BMET work experience." Eligibility Requirements, as filed.

- G. Certification is not granted for instruction or classes provided by ICC, but shows that the candidates have achieved the levels of knowledge and experience to achieve the certification. Candidates achieve their education and knowledge outside of AAMI and ICC and are tested by ICC after proving that their experience meets the levels required by ICC. The Board of Examiners, the USCC, and the ICC do not sponsor or endorse any refresher course.
- H. Certification is not merely a title for the successful candidates, but is a temporary certification of the qualification of the candidate, and must be renewed by taking further tests. A certification is initially considered valid through the remainder of the year in which certification is received plus the following full calendar year. At that time it becomes necessary to renew certification and upon renewal certificants are put on a triennial schedule.
- I. I am not aware of any other company or entity other than AAMI that certifies these candidates for the CRES/CLES/CBET certifications;

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application and any registration resulting therefrom.



Chris Dinegar
Vice President, Conferences & Certification
Association for the Advancement of Medical Instrumentation

10/23/12
Date