

## Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85645727
LAW OFFICE ASSIGNED	LAW OFFICE 116
MARK SECTION (no change)	
ARGUMENT(S)	
<b>Response to Office Action</b>	
<b>I. General Response</b>	
<b>A. Request for Reconsideration:</b>	
Applicant requests reconsideration in light of additional arguments presented below.	
<b>II Arguments: Refusal Section 2(d)—Likelihood of Confusion.</b>	
The examining attorney has maintained that there may be a likelihood of confusion between the applicant's proposed mark ZYMO PHARMA and the marks in U.S. Registration Nos.: 1685713 (ZYMOGENETICS, Class 42); 3228500 (ZYMOGENETICS, Class 42); 3424808 (ZYMOGENETICS, Class 5); 3446450 (ZYMOGENETICS, Class 10); 3455193 (ZYMO, class 42). Applicant traverses this finding reiterating all arguments presented in the prior response and as presented below.	
<b>(1). Failure to consider the conditions under which and buyers to whom sales are made, i.e. habit and careful, sophisticated purchasing.</b> The examining attorney failed to address the conditions under which purchases are made and the sophistication of the average purchaser in relation to the goods and/or services which should be afforded sufficient weight as a major factor in the analysis. Applicant asserts again that the conditions under which purchases are made and the sophistication of the average purchaser in relation to the goods and/or services is also a major factor.	
Applicant, respectfully reasserts again the conditions under which applicant's and registrant's good and/or services are marketed, distributed and purchased is important and reduces any chance for confusion and in fact <b><i>weighs significantly</i></b> against a finding for any likelihood of confusion. It is recognized that when purchasers are distinct professionals they are unlikely to be confused and exercise greater care. <i>See Electronic Design &amp; Sales Inc. v. Electronic Data Systems</i> , 954 F.2d 713, 716, 21 USPQ2d 1388, 1392 (Fed. Cir. 1992), <i>citing Pignons S. A. de Technique de Precision v. Polaroid Corp.</i> , 657 F.2d 482, 489, 212 USPQ 246, 252 (1st Cir. 1981).	
Every individual pharmaceutical therapeutic, research service, and medical device are each expensive and purchased by skilled professionals who exercise a high degree of care in making purchases. <b><i>This</i></b>	

*point cannot be emphasized enough.* In the case of pharmaceuticals and medical devices such professionals interface with the general public after each is approved for sale after clearing governmental regulatory processes. Generally, people working with and responsible for purchasing applicant's goods or registrant's goods and/or services for companies or institutions have minimally bachelor's degrees in the sciences or arts and supervisors would typically have advanced degrees, usually Masters of Sciences (M.S.), Doctorates of Philosophy (Ph.D.), or Doctor of Medicine (M.D). Further, each of the above mentioned goods and/or services are for specific applications demanding a highest degree of care for such purchases since time consuming medical or scientific efforts are involved with implications for patients. It is reasonable the average purchaser exercises a high degree of care in all of these cases. Thus, only professional sophisticated purchasers (i.e. scientists, their technicians or agents, or medical doctors) form the relevant group for consideration and it follows that they would exercise a high degree of care reducing significantly any chance for confusion to develop between applicant's goods and registrant's goods and/or services.

**(2) Applicant's goods are distinct from registrant's goods or services.**

Applicant respectfully requests reconsideration of the nature of the goods for proposed mark compared to the goods and services of registrant. Applicant emphasizes all pharmaceuticals are distinct from other pharmaceuticals or by analogy medical devices due to the regulatory approval process. Thus, Doctors prescribing such goods would be highly sophisticated and note differences in source indicated by applicants proposed mark from registrant's marks.

For example, applicant's goods do not describe any of the categories of goods (3446450; 3424008) or services (1685713; 3228500; 3455193) of registrant. This creates a significant difference between applicant's goods and registrant's goods or services since federal regulation for pharmaceuticals or medical devices or research services provided for the same are distinct and require unique regulation including but not limited to good laboratory practices (GLP) and clinical trials for each therapeutic or medical device.

Applicant respectfully requests the Examining attorney reconsider the differences inherent in such sophisticated goods and services on their face. Applicant reasserts the relationship between its goods and registrant's goods and/or services is not significant removing chances for any likelihood of confusion. On balance applicant's goods are *markedly* distinct from registrant's goods and/or services since the descriptions are different such that an average purchaser could distinguish them when making careful sophisticated purchases which would be heightened due to specific regulation required for such goods and or services to reach market and that also control distribution and sale to laboratories, doctors, and hospitals.

**(3) Added Materials.** The Examining attorney ignores that applicant and registrant are coexisting presently with no confusion developing ore reported to applicant's knowledge for the core research use products made under applicants mark (U.S. Registration No.: 4156156). Further, applicant is forming a new company **Zymo Pharmaceuticals, LLC** (Entity No.: 201226110066; See Attachment 1) which will use the mark "*Zymo Pharma*" and is not expanding from the current research use goods. Applicant is the current owner and will assign this application to this new entity in due course rendering mute the web pages submitted of applicant. Applicant requests the Examining attorney allow the registrant to exercise their right to oppose applicant's proposed mark if they deem they are affected.

**Conclusion**

Applicant respectfully requests the Examining attorney give adequate weight and to reconsider the arguments offered above especially the sophistication of purchasers and reasserts that when their mark is properly viewed as a whole compared to registrant's, the marks cannot be said to be confusingly similar due to clear differences between them for overall commercial impression. Thus applicant respectfully requests reconsideration and that their mark be allowed to proceed to publication so that any affected party may oppose its registration.

**EVIDENCE SECTION**

**EVIDENCE FILE NAME(S)**

**ORIGINAL PDF FILE**

evi\_6458142178-205545280 . Attachment 1.pdf

**CONVERTED PDF FILE(S)  
(1 page)**

\\TICRS\EXPORT16\IMAGEOUT16\856\457\85645727\xml10\RFR0002.JPG

**DESCRIPTION OF EVIDENCE FILE**

Corporate Entity Number for Zymo Pharmaceuticals, LLC

**SIGNATURE SECTION**

**RESPONSE SIGNATURE**

/Jonathan A Clkaypool/

**SIGNATORY'S NAME**

Jonathan A Claypool

**SIGNATORY'S POSITION**

Attorney of record, Washington state bar member

**SIGNATORY'S PHONE NUMBER**

949-679-1190

**DATE SIGNED**

07/08/2014

**AUTHORIZED SIGNATORY**

YES

**CONCURRENT APPEAL NOTICE FILED**

NO

**FILING INFORMATION SECTION**

**SUBMIT DATE**

Tue Jul 08 21:00:48 EDT 2014

**TEAS STAMP**

USPTO/RFR-64.58.142.178-2  
0140708210048034470-85645  
727-500203ca6e25cbde78462  
a723409f8281be2f46ddce1b8  
b6a46b8f750b71f4d586-N/A-  
N/A-20140708205545280415

## Request for Reconsideration after Final Action To the Commissioner for Trademarks:

Application serial no. **85645727** has been amended as follows:

### ARGUMENT(S)

**In response to the substantive refusal(s), please note the following:**

#### Response to Office Action

##### I. General Response

###### A. Request for Reconsideration:

Applicant requests reconsideration in light of additional arguments presented below.

##### II Arguments: Refusal Section 2(d)—Likelihood of Confusion.

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Every individual pharmaceutical therapeutic, research service, and medical device are each expensive and purchased by skilled professionals who exercise a high degree of care in making purchases. ***This point cannot be emphasized enough.*** In the case of pharmaceuticals and medical devices such professionals interface with the general public after each is approved for sale after clearing governmental regulatory processes. Generally, people working with and responsible for purchasing applicant's goods or registrant's goods and/or services for companies or institutions have minimally bachelor's degrees in the sciences or arts and supervisors would typically have advanced degrees, usually Masters of Sciences

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requests reconsideration and that their mark be allowed to proceed to publication so that any affected party may oppose its registration.

**EVIDENCE**

Evidence in the nature of Corporate Entity Number for Zymo Pharmaceuticals, LLC has been attached.

**Original PDF file:**

evi\_6458142178-205545280 . Attachment 1.pdf

**Converted PDF file(s) (1 page)**

Evidence-1

**SIGNATURE(S)**

**Request for Reconsideration Signature**

Signature: /Jonathan A Clkaypool/ Date: 07/08/2014

Signatory's Name: Jonathan A Claypool

Signatory's Position: Attorney of record, Washington state bar member

Signatory's Phone Number: 949-679-1190

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 85645727

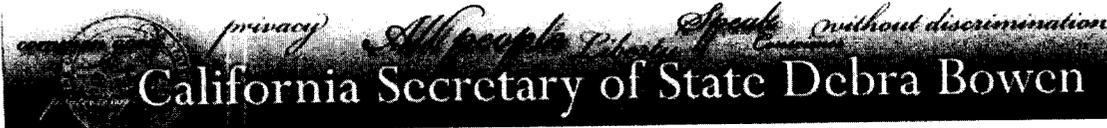
Internet Transmission Date: Tue Jul 08 21:00:48 EDT 2014

TEAS Stamp: USPTO/RFR-64.58.142.178-2014070821004803

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-N/A-N/A-20140708205545280415



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### Business Entity Detail

Data is updated to the California Business Search on Wednesday and Saturday mornings. Results reflect work processed through Friday, July 04, 2014. Please refer to [Processing Times](#) for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity.

Entity Name:	ZYMO PHARMACEUTICALS, LLC
Entity Number:	201226110066
Date Filed:	09/14/2012
Status:	ACTIVE
Jurisdiction:	CALIFORNIA
Entity Address:	17062 MURPHY AVE
Entity City, State, Zip:	IRVINE CA 92614
Agent for Service of Process:	XI-YU JIA
Agent Address:	17062 MURPHY AVE
Agent City, State, Zip:	IRVINE CA 92614

\* Indicates the information is not contained in the California Secretary of State's database.

\* **Note:** If the agent for service of process is a corporation, the address of the agent may be requested by ordering a status report.

- For information on checking or reserving a name, refer to [Name Availability](#).
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