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

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|---|---|
| Proceeding | 85791698 |
| Applicant | No Surprises Software, LLC |
| Applied for Mark | VIEWABILL |
| Correspondence Address | THEODORE R REMAKLUS<br>WOOD HERRON & EVANS LLP<br>441 VINE ST, 2700 CAREW TOWER<br>CINCINNATI, OH 45202-2814<br>UNITED STATES<br>tremaklus@whe-law.com,usptodock@whe-law.com, |
| Submission | Reply Brief |
| Attachments | Applicant's Reply Brief.pdf(1103524 bytes ) |
| Filer's Name | Theodore R. Remaklus |
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| Signature | /theodore r remaklus/ |
| Date | 02/02/2015 |

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

In the Matter of

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|---|---|---|
| Application No. | : | 85/791,698 |
| Applicant | : | No Surprises Software, LLC |
| Mark | : | **VIEWABILL** |
| Filing Date | : | November 30, 2012 |
| Examining Attorney | : | Carolyn A. Pendleton |
| Law Office | : | 103 |

# REPLY BRIEF FOR APPLICANT

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**ARGUMENT**

The brief of the Examining Attorney makes clear that she fails to understand what consumers/users of the services are provided under Applicant's VIEWABILL mark. Specifically, the Examining Attorney mistakenly asserts the following:

> The examining attorney respectfully disagrees with the applicant's argument that VIEWABILL is not descriptive because consumers use the services to see a bill before it is issued, rather than a final bill, and that the mark is only descriptive of final not interim bills. It is unlikely that consumers will need to make any leap from the literal meaning of the mark to what is actually provided because consumers are immediately able to view a bill. Therefore, consumers viewing the VIEWABILL mark with the services clearly conveys to the consumer the purpose and function of the mark. Applicant has based its arguments entirely on a timeline of events. Specifically, that applicant's services enable viewing of a bill before it is issued rather than enable viewing of a final bill, so the mark cannot be descriptive of anything but the final bill. It is irrelevant whether consumers can use applicant's services to view a bill before or after it is issued. The fact of the matter is that the applicant's services enable consumers to view, review and question a bill before it is issued. The timing of the viewing of the bill does not obviate a finding descriptiveness because the mark describes exactly what applicant's services provide, namely, the ability to "view a bill". In this situation, applicant is providing users the ability to view a bill before the final bill is issued in order to question charges that may seem too high or activity that may not have been performed.

Nowhere does Applicant assert that its services provide access to "a bill before it is issued." Quite the contrary, and that is why Applicant's mark is not descriptive.

Consumers/users of Applicant's services under the VIEWABILL mark see time and cost entries from service providers <u>before</u> a bill is generated. Indeed, the data that the consumer/user sees relates to activity that may or may not show up on a bill. Specifically, consumers/users see raw entries so that they can track the progress and costs details of a task while it is being performed. Because Applicant's services provide consumers/users access to the raw data before a bill is generated, changes can be made, and problems can be detected before the consumer/user receives a bill from their service provider (and not from Applicant). As the specimen that was submitted states:

> Work with outside counsel to achieve the results for your company, and leave behind concerns about inflated hours, block billing, poor time-keeping, communication and misaligned expectations.
>
> . . . Whether you actively review entries and collaborate with outside counsel in real time, or just want Viewabill to inform you before there's a problem, having the option to access your data anytime anywhere will encourage outside counsel to use best practices.

Thus, Applicant's services do not provide access to a bill before it is final, nor is this an issue of timing. Rather, Applicant's services under the VIEWABILL mark provide consumers/users with real time data on a project from hourly service providers, not access to a bill, final or otherwise.

As a result, Applicant's reliance on the decision in *Airco, Inc. v. Air Products & Chemicals, Inc.,* 196 U.S.P.Q. 832 (T.T.A.B. 1977), is directly on point. Just as the AIR-CARE mark in *Airco* literally meant "care of the air", the literal meaning of Applicant's VIEWABILL mark would be that a consumer could "see" his/her "invoice". And, just as in *Airco*, the actual services provided by Applicant do not correspond to that literal meaning. Rather, a consumer/user must undertake an exercise of mental gymnastics end extrapolation to get from that literal meaning to the services actually provided by Applicant – access to real time data/activity of hourly service providers.

Accordingly, for all of the foregoing reasons, and the reasons set forth in Applicant's opening Brief for Applicant, Applicant respectfully submits that the VIEWABILL mark is not merely descriptive of the services that are the subject of the present application, and the refusal to register should be reversed. Alternatively, and again as set out in the Brief for Applicant, in the event that the Board does not agree with Applicant that the VIEWABILL mark is not merely descriptive of Applicant's services, Applicant requests that the Board remand the application to the Examining Attorney to process the application as one seeking registration of the mark on the Supplemental Register.

Respectfully submitted,

WOOD, HERRON & EVANS, L.L.P.

Dated: February 2, 2015

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