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

U.S. APPLICATION SERIAL NO. 86263453

MARK: PIP



CORRESPONDENT ADDRESS:

ANN MCCAMEY

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1801 CENTURY PARK E STE 1920

LOS ANGELES, CA 90067-2326

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/trademarks/index.jsp>

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APPLICANT: Developed Research for Irrigation Produc ETC.

CORRESPONDENT'S REFERENCE/DOCKET NO:

N/A

CORRESPONDENT E-MAIL ADDRESS:

ann@ruttenbergiplaw.com

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 9/9/2015

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. §2.63(b)(3); TMEP §§715.03(a)(ii)(B), 715.04(a). The following requirement(s) and/or refusal(s) made final in the Office action dated February 21, 2015 are **maintained and continue to be final: Section 2(d) Refusal – Likelihood of Confusion.** See

TMEP §§715.03(a)(ii)(B), 715.04(a). The following requirement(s) and/or refusal(s) made final in the Office action are obviated: Specimen requirement. See TMEP §§715.03(a)(ii)(B), 715.04(a).

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

Specifically, applicant argues that the owner of the cited registration has abandoned its trademark due to nonuse, arguing that applicant can find no evidence of the mark used since 2006. However, a trademark or service mark registration on the Principal Register is prima facie evidence of the validity of the registration and the registrant's exclusive right to use the mark in commerce in connection with the specified goods. See 15 U.S.C. §1057(b); TMEP §1207.01(d)(iv).

Thus, **evidence and arguments that constitute a collateral attack on a cited registration, such as information or statements regarding a registrant's nonuse of its mark, are not relevant during ex parte prosecution.** See *In re Dixie Rests.*, 105 F.3d 1405, 1408, 41 USPQ2d 1531, 1534-35 (Fed. Cir. 1997); *In re Peebles Inc.*, 23 USPQ2d 1795, 1797 n.5 (TTAB 1992); TMEP §1207.01(d)(iv). Such evidence and arguments may, however, be pertinent to a formal proceeding before the Trademark Trial and Appeal Board to cancel the cited registration.

Similarly, applicant maintains that its mark and the mark of registrant have different meaning, and are therefore distinct. However, in this case, the marks are essentially identical (as applicant's mark contains little more than a carrier design element and the registration is in standard characters). What applicant and/or registrant intend the mark to mean does not alter the sound, appearance, or commercial impression of the mark itself. Thus, this argument is not persuasive.

Similarly, applicant argues that the goods are distinct, arguing that registrant's goods are limited to the sump pumps and non-clog pumps applicant has identified in registrant's manuals, and maintaining that these goods have nothing to do with agriculture. Again, however, when analyzing an applicant's and registrant's goods for similarity and relatedness, that **determination is based on the description of the goods stated in the application and registration at issue, not on extrinsic evidence of actual use.** See *Octocom Sys. Inc. v. Hous. Computers Servs. Inc.*, 918 F.2d 937, 942, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990); see also *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 1267, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002). Here, the description of the goods of registrant includes goods such as centrifugal pumps. The attached evidence from The Home Depot, Flotec, Goulds Water Technology, Ewing and

Pentair, along with the previously attached evidence, demonstrates that pumps, including centrifugal pumps, are commonly used in agricultural irrigation. Indeed, The Home Depot evidence explains, “Centrifugal pumps installed above the water level are the most commonly used type (of irrigation pump).” Thus, the goods of applicant are complementary to the goods of registrant. The previously attached evidence further demonstrates that not only are irrigation units commonly sold in the same channels of trade as pumps, such as those of registrant, but that such pumps actually are sold by the distributors who sell applicant’s goods.

Moreover, the trademark examining attorney has attached evidence from the USPTO’s X-Search database consisting of a representative sample of third-party marks registered for use in connection with the same or similar goods as those of both applicant and registrant in this case. This evidence shows that the goods listed therein, namely, agricultural irrigation units and pumps, including the pumps of registrant, are of a kind that may emanate from a single source under a single mark. *See In re Anderson*, 101 USPQ2d 1912, 1919 (TTAB 2012); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988); TMEP §1207.01(d)(iii).

Finally, applicant agrees that the standard is likelihood of confusion, but points to the lack of actual confusion as evidence of an absence of likelihood of confusion. The test under Trademark Act Section 2(d) is whether there is a likelihood of confusion. It is not necessary to show actual confusion to establish a likelihood of confusion. *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1165, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002) (citing *Giant Food, Inc. v. Nation’s Foodservice, Inc.*, 710 F.2d 1565, 1571, 218 USPQ 390, 396 (Fed. Cir. 1983)); TMEP §1207.01(d)(ii). The Trademark Trial and Appeal Board stated as follows:

[A]pplicant’s assertion that it is unaware of any actual confusion occurring as a result of the contemporaneous use of the marks of applicant and registrant is of little probative value in an ex parte proceeding such as this where we have no evidence pertaining to the nature and extent of the use by applicant and registrant (and thus cannot ascertain whether there has been ample opportunity for confusion to arise, if it were going to); and the registrant has no chance to be heard from (at least in the absence of a consent agreement, which applicant has not submitted in this case).

In re Kangaroos U.S.A., 223 USPQ 1025, 1026-27 (TTAB 1984).

Here, applicant's evidence of its own use of the mark cannot demonstrate the scope of usage by registrant. Thus, applicant's argument of a lack of actual confusion cannot be dispositive in this matter.

If applicant has already filed a timely notice of appeal with the Trademark Trial and Appeal Board, the Board will be notified to resume the appeal. *See* TMEP §715.04(a).

If no appeal has been filed and time remains in the six-month response period to the final Office action, applicant has the remainder of the response period to (1) comply with and/or overcome any outstanding final requirement(s) and/or refusal(s), and/or (2) file a notice of appeal to the Board. TMEP §715.03(a)(ii)(B); *see* 37 C.F.R. §2.63(b)(1)-(3). The filing of a request for reconsideration does not stay or extend the time for filing an appeal. 37 C.F.R. §2.63(b)(3); *see* TMEP §§715.03, 715.03(a)(ii)(B), (c).

/chrisreams/

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Sprinkler & Centralized Pump FAQ

1. What is a centralized pump system?

A centralized pump system is a fire protection system where a single pump supplies water to multiple sprinkler heads. This system is typically used in large commercial buildings, hotels, and multi-story residential structures. It allows for a more efficient use of water and provides a consistent water supply to all sprinkler heads.

2. How does a centralized pump system differ from a conventional system?

In a conventional system, each floor or zone has its own dedicated pump. In a centralized pump system, a single pump is located in a central location, and water is distributed to various zones through a network of pipes. This centralization allows for easier maintenance and monitoring of the system.

3. What are the advantages of a centralized pump system?

Centralized pump systems offer several advantages, including: reduced water consumption, simplified piping layout, easier maintenance, and the ability to integrate with other building systems like fire alarm and smoke detection. They also provide a more uniform water supply to all sprinkler heads, which can improve fire protection performance.

4. What are the disadvantages of a centralized pump system?

While centralized pump systems have many benefits, they also have some drawbacks. These include: higher initial installation costs, the need for a larger water supply source, and the potential for a single point of failure if the central pump malfunctions. Additionally, they may require more complex piping and control systems.

5. How is a centralized pump system controlled?

Centralized pump systems are typically controlled by a fire alarm control panel (FACP). The FACP receives signals from fire alarm devices and sends control signals to the pump and valves. This allows for automatic activation of the pump when a fire is detected, ensuring a rapid response to the fire.

6. What are the key components of a centralized pump system?

The key components of a centralized pump system include: the central pump, control valves, piping, and sprinkler heads. The pump is the heart of the system, providing the necessary pressure to move water through the pipes to the sprinkler heads. Control valves are used to isolate different zones for maintenance or to shut down the system in an emergency.

7. How is the water supply for a centralized pump system ensured?

The water supply for a centralized pump system is typically provided by a municipal water supply or a dedicated fire water tank. The system must be designed to ensure that there is always enough water available to meet the demand of the sprinkler system during a fire event. This often involves installing a fire water tank and a pump to draw water from the tank and supply it to the system.

8. What are the maintenance requirements for a centralized pump system?

Regular maintenance is essential for the proper operation of a centralized pump system. This includes: inspecting the pump and valves, testing the system, and ensuring that the water supply is adequate. Maintenance should be performed by qualified personnel who are familiar with the system and its components.

9. How is the system tested?

Centralized pump systems are tested regularly to ensure they are in good working order. This is typically done by simulating a fire event and checking that the pump starts, the valves open, and water is delivered to the sprinkler heads. Testing should be performed at least once a year, and more frequently if the system is used in a high-risk area.

10. What are the safety considerations for a centralized pump system?

There are several safety considerations for a centralized pump system. These include: ensuring that the system is properly installed and maintained, providing adequate training for personnel who operate the system, and ensuring that the system is clearly labeled and accessible. Safety is a top priority in fire protection systems, and centralized pump systems are no exception.

11. How is the system designed?

The design of a centralized pump system is a complex task that involves: determining the water supply requirements, selecting the appropriate pump and valves, and designing the piping layout. The system must be designed to meet the specific needs of the building and to comply with all applicable codes and standards.

12. What are the code requirements for a centralized pump system?

Centralized pump systems must comply with various codes and standards, including: NFPA 13, NFPA 20, and local building codes. These codes specify the minimum requirements for the design, installation, and maintenance of fire protection systems. It is essential to consult with a qualified professional to ensure that the system meets all applicable code requirements.

13. How is the system installed?

The installation of a centralized pump system is a multi-step process that involves: site preparation, pump installation, piping installation, and system testing. The pump is typically installed in a central location, and the piping is run to the various zones of the building. The system is then tested to ensure that it is working properly and that all components are installed correctly.

14. How is the system monitored?

Centralized pump systems are typically monitored by a fire alarm control panel (FACP). The FACP provides a visual and audible indication of system status, including: pump operation, valve position, and water flow. This allows for early detection of any problems and ensures that the system is always ready to respond to a fire event.



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Every time your sprinkler heads pop up and begin to water your lawn to ensure that it stays green and lush, a pump is responsible for supplying them with the water they need. A crucial but sometimes overlooked component of any irrigation system, pumps are available in different designs, allowing you to find the right one for your particular lawn configuration.

There are a number of technical features such as capacity, power and efficiency that will play a large role in determining your selection. Consider the following questions as you design your irrigation system:

- What performance considerations are most important?
- What features would you like to have available?

SHOP ALL

Type, Performance and Installation

In addition to providing water for lawn sprinkling applications, pumps can boost water pressure for washing cars, boats, farm equipment and more. Heavy-duty units can be used to irrigate gardens, remove water, protect against fires and for a host of other applications. They may draw on water from a lake, creek, well or municipal water supply. Pumps may be fueled by electricity, gasoline or even propane. Consider how extensive your watering needs are, where you plan to draw water from and how much power you will need when selecting the ideal pump for your irrigation system.

Surface Centrifugal Pumps: Centrifugal pumps installed above the water level are the most commonly used type. They must be filled with water, or primed, prior to operation and can draw water from reservoirs, lakes, streams and wells. Centrifugal units use a rapidly spinning impeller to push water through the pump. Priming is required because they cannot suck air on their own, they can only provide suction for water.

Centrifugal pumps offer a wide range of capacities while providing a fairly constant flow rate. They offer an economical choice, though their efficiency and capacity may be somewhat limited compared to other pump types.

- May be installed either horizontally or vertically
- Horizontal installations may allow for easier inspection and maintenance
- Make sure joints and connections are airtight to ensure optimum operation
- May be powered by electricity or diesel fuel

Submersible Pumps: Unlike surface pumps, submersible pumps are installed completely underwater, motor and all. They function in a manner similar to a multistage centrifugal pump. The pump is often cylindrical, making it ideal for placement inside a well. Because they are already underwater, submersible pumps tend to operate with greater efficiency than other pumps. They may feature dry motors, which are constructed to prevent water from getting in, or wet motors, which function even when water is running through them.

- Submersible pumps do not need to be primed and are generally low maintenance.

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