

**UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451**

Mailed: October 31, 2012

Opposition No. 91200016

Ecolab

v.

The Procter & Gamble Company

Jennifer Krisp, Interlocutory Attorney:

On October 9, 2012, applicant filed its proposed amendment to application Serial No. 77765022, with opposer's consent, and opposer's withdrawal with prejudice of the opposition, contingent upon entry of the amendment.

By the proposed amendment, applicant seeks to amend its drawing as indicated below, and submitted a substitute drawing of the mark.

CURRENT MARK	PROPOSED MARK
	

Amendments to the drawing of the mark in an intent-to-use application may be approved if the proposed amendment

does not materially alter the mark. See Trademark Rule 2.72(b)(2). Further specific clarification of the record is required in order to allow the Board to ascertain the acceptability of the proposed amendment.

First, inasmuch as the substitute drawing adds the wording **P&G Professional**, applicant must state whether this exact matter is or is not previously registered by applicant for the same goods and services as those identified in the application. See TMEP 807.14(b). The addition of matter that applicant has previously registered for *different* goods or services, or that applicant has not previously registered, is not permissible. See *In re Hacot-Colombier*, 105 F.3d 616, 620, 41 USPQ2d 1523, 1526 (Fed. Cir. 1997); *In re Nationwide Industries Inc.*, 6 USPQ2d 1882, 1886 (TTAB 1988).

Second, inasmuch as the substitute drawing is not in color, the parties must file a joint motion wherein the parties either 1) file a substitute drawing of the mark in color if the amended mark does claim color as a feature of the mark, or 2) file an amended description of the mark statement which deletes all references to color AND an express deletion of the current color claim statement.

Third, the substitute drawing is not acceptable because it includes the ™ symbol, which is not part of the mark, is

not registrable matter, and must be deleted. See TMEP 807.14(a).

In view thereof, the motion is denied. Proceedings are suspended, and the parties are allowed thirty days from the mailing date of this order to file a bilaterally executed motion which sets forth the amendments and clarifications required herein, failing which the Board will resume proceedings and reset all dates.