

**THIS OPINION IS NOT A
PRECEDENT
OF THE TTAB**

Mailed: July 22, 2011

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Inviro Medical Devices Ltd.

v.

DuoProSS Meditech Corporation

Cancellation No. 92046702
of Registration No. 2897833; and,
Counterclaim to cancel Registration Nos. 2970944, 2778604,
2967982, 2944686 and 3073371

Request for Reconsideration

Duane M. Byers of Nixon & Vanderhye, P.C. for Inviro Medical
Devices, Inc.

Thomas J. Moore of Bacon & Thomas, PLLC for DuoProSS
Meditech Corporation.

Before Walters, Taylor and Mermelstein, Administrative
Trademark Judges.

Opinion by Taylor, Administrative Trademark Judge:

Inviro Medical Devices, Ltd. ("Inviro") petitioned to cancel
a registration owned by DuoProSS Meditech Corporation
("DuoProSS") for the mark BAKSNAP and design, shown below.



As grounds for cancellation, Inviro alleged priority of use and likelihood of confusion, claiming ownership of Registration Nos. 2970944, 2778604, 2967982, 2944686 and 3073371. DuoProSS filed counterclaims to cancel all five pleaded registrations.¹

In a decision issued April 5, 2011, the Board sustained DuoProSS' counterclaims as to Registration Nos. 2967982, 2778604 and 2970944 (all three for the mark SNAP); conditionally sustained DuoProSS' alternative counterclaim against Registration No. 3073371 (for the mark SNAP SIMPLY SAFER);² and dismissed DuoProSS's counterclaim to cancel Registration No. 2944686 for the mark **Snap!** on both the grounds of mere descriptiveness and that the mark is improperly registered in the absence of a disclaimer.

DuoProSS has filed a timely motion for reconsideration of the Board's decision only as it pertains to Registration No. 2944686.

"[T]he premise underlying a request for rehearing, reconsideration, or modification under 37 CFR § 2.129(c) is that, based on the evidence of record and the prevailing authorities, the Board erred in reaching the decision it issued." TBMP § 543 (3rd ed. 2011). The request may not be

¹ Inviro filed an unconsented withdrawal of the petition for cancellation prior to trial and the petition was dismissed with prejudice on April 30, 2009. The proceeding went to trial only on DuoProSS' counterclaims.

² That portion of the decision has been set aside following Inviro Medical Devices Ltd.'s submission of the required disclaimer of the term "Snap."

used to introduce additional evidence, nor should it be devoted simply to a reargument of the points presented in the requesting party's brief on the case. See *Amoco Oil Co. v. Amerco, Inc.*, 201 USPQ 126 (TTAB 1978). Rather, the request normally should be limited to a demonstration that, based on the evidence properly of record and the applicable law, the Board's ruling is in error and requires appropriate change. See, e.g., *Steiger Tractor Inc. v. Steiner Corp.*, 221 USPQ 165 (TTAB 1984), *reh'g granted*, 3 USPQ2d 1708 (TTAB 1984).

By its request, DuoProSS argues that because the Board held that the term SNAP merely describes a significant feature or function of Inviro's goods and because the design portion of the mark is "essentially" an exclamation point, "the mark taken as a whole is simply an instruction on how to use the goods and not distinctive." DuoProSS thus maintains that the final decision should be modified to order the cancellation of Registration No. 2944686.

DuoProSS' arguments regarding the significance of the design element in the mark are merely an elaborate rehash of arguments previously made in its brief. We find no error in our decision in this regard. Nonetheless, so as to be clear, although the design element in Inviro's mark was described in the April 5th order as "a fanciful exclamation point," the design neither serves solely as punctuation nor

as a visual representation of applicant's various cannulae, syringes and needles or of a significant characterization thereof. Thus, the design does not command one to "snap" the goods. Moreover, while, as applicant points out, we found the literal element SNAP descriptive of a characteristic of applicant's goods, as further stated in the order, "the design element does not consist of a realistic depiction of a breaking syringe" and "the mark, as a whole, is not merely descriptive of an important feature or characteristic of applicant's cannulae, syringes and needles." Decision p. 29. Although the word "SNAP" is descriptive, it is physically connected to the non-descriptive design. Because the word SNAP is part of a unitary mark which is as a whole non-descriptive, a disclaimer of SNAP alone is not appropriate.

We also note that DuoProSS is wrong in its assertion that Inviro's failure to file a redacted copy of the transcript of the deposition of its witness, Dr. Sharp, results in Inviro's preclusion from further reliance on that deposition. As stated at footnote 12 of the decision, such failure merely results in the redesignation of the deposition as non-confidential. Accordingly, because Inviro did not file a redacted copy of the Sharp deposition, the transcript is now available for public viewing.

In view of the foregoing, DuoProSS' request for reconsideration is denied, and the decision of April 5, 2011 stands as issued.