

ESTTA Tracking number: **ESTTA358236**

Filing date: **07/15/2010**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Color Image Apparel, Inc.		
Entity	Corporation	Citizenship	United States
Address	6670 Flotilla Avenue Commerce, CA 90040 UNITED STATES		

Attorney information	Richard P. Sybert/Lindsay J. Hulley Gordon & Rees LLP 101 West Broadway Suite 1600 San Diego, CA 91201 UNITED STATES rsybert@gordonrees.com, lhulley@gordonrees.com, mmims@gordonrees.com Phone:619-696-6700
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Registration Subject to Cancellation

Registration No	3483638	Registration date	08/12/2008
Registrant	Eco-Bella, LLC 1281 Durand Mill Drive Atlanta, GA 30307 UNITED STATES		

Goods/Services Subject to Cancellation

Class 035. First Use: 2006/04/17 First Use In Commerce: 2006/04/17 All goods and services in the class are cancelled, namely: Retail clothing stores

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	2668441	Application Date	09/04/2001
Registration Date	12/31/2002	Foreign Priority Date	NONE
Word Mark	BELLA		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 2000/01/01 First Use In Commerce: 2000/01/01 Garments, namely cotton T-shirts and Tops

U.S. Registration No.	2895709	Application Date	09/28/2003
Registration Date	10/19/2004	Foreign Priority Date	NONE
Word Mark	BELLA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2000/01/01 First Use In Commerce: 2000/01/01 [MEN'S,] WOMEN'S AND CHILDREN'S CLOTHING, namely, [JEANS,] DRESSES, SKIRTS, [MINISKIRTS,] SHORTS, PANTS, [SLACKS, TROUSERS, SUITS, PANTSUITS,] JACKETS, SWEATERS, [CARDIGANS, PULLOVERS, COATS, SPORT COATS, BLOUSES, VESTS, BLAZERS, OVERALLS,] SWEATSHIRTS, SWEATPANTS, [SWEATSHORTS,] SWEATSUITS, SHIRTS, [POLO SHIRTS,] KNIT SHIRTS, SPORT SHIRTS, TEE-SHIRTS, COTTON SHIRTS, TOPS, TANK-TOPS, [HALTER TOPS,] KNIT TOPS, [WOVEN TOPS, BODYSUITS,] CAMISOLES [PAJAMAS, JUMPSUITS, SWIM SUITS, SWIMWEAR, SOCKS, GLOVES; CLOTHING ACCESSORIES, namely, BELTS, SCARVES, HATS, CAPS AND VISORS; FOOTWEAR, namely, LOAFERS, ESPADRILLES, SANDALS, THONGS, MULES, PUMPS, ATHLETIC SHOES, SLIPPERS, BOOTS, BEACH FOOTWEAR]		

U.S. Registration No.	3519794	Application Date	03/17/2008
Registration Date	10/21/2008	Foreign Priority Date	NONE
Word Mark	BELLA		

Design Mark	<h1>BELLA</h1>
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 2000/01/01 First Use In Commerce: 2000/01/01 Women's clothing, namely, tee shirts, short sleeve shirts, long sleeve shirts, tank tops, fleece tops, fleece pants, shirts, pants, yoga pants, capri pants, shorts, bras, underwear, camisoles, sweatshirts, polo shirts, and jackets

U.S. Application No.	77882072	Application Date	11/30/2009
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	ECO BELLA
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Design Mark	<h1>ECO BELLA</h1>
Description of Mark	NONE
Goods/Services	Class 025. First use: Women's clothing, namely, tee shirts, short sleeve shirts, long sleeve shirts, tank tops, fleece tops, fleece pants, shirts, pants, skirts, dresses, yoga pants, capri pants, shorts, bras, underwear, camisoles, sweatshirts, polo shirts and jackets

Attachments	76308113#TMSN.gif (1 page)(bytes) 77423400#TMSN.jpeg (1 page)(bytes) 77882072#TMSN.jpeg (1 page)(bytes) Petition For Cancellation ECOBELLA.pdf (20 pages)(349791 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/Lindsay J.Hulley/
Name	Richard P. Sybert/Lindsay J. Hulley
Date	07/15/2010

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

In the Matter of Trademark Registration)	
Registration No.: 3,483,638)	
Registration Date: August 12, 2008)	
Serial No.: 77261837)	
Filed: August 22, 2007)	
By: Eco-Bella, LLC)	
For the Trademark: ECOBELLA + design)	
<hr style="border: 1px solid black;"/>		
COLOR IMAGE APPAREL, INC.,)	<u>Cancellation No.</u>
a California corporation)	
Petitioner,)	
v.)	
Eco-Bella, LLC, a Georgia limited liability company,)	
Respondent.)	
<hr style="border: 1px solid black;"/>		

PETITION FOR CANCELLATION

Color Image Apparel, Inc., a California corporation having its principal place of business at 6670 Flotilla Street, Commerce, California 90040 (hereinafter "Petitioner"), believes that it is and will be damaged by the continued registration of the mark ECOBELLA, as shown in Registration No. 3,483,638, registered August 12, 2008 and hereby petitions to cancel the same pursuant to Section 24 of the Trademark Act, 15 U.S.C. § 1064.

As grounds for the Petition to Cancel, Petitioner alleges as follows:

1. Petitioner owns a federal trademark registration for BELLA and Design, which is the subject of Federal Registration No. 2,668,441, issued December 31, 2002, in International Class 25, for garments, namely cotton T-shirts and tops. A true and correct copy of the Certificate of Registration for this mark is attached hereto as Exhibit A.

2. Petitioner owns a federal trademark registration for the word mark BELLA, which is the subject of Federal Registration No. 2,895,709, issued October 19, 2004, in International Class 25, for women's and children's clothing, namely jeans, dresses, skirts, miniskirts, shorts, pants, slacks, trousers, suits, pantsuits, jackets, sweaters, cardigans, pullovers, coats, sport coats, blouses, vests, blazers, overalls, sweatshirts, sweatpants, sweatshorts, sweatsuits, shirts, polo shirts, knit shirts, sport shirts, tee-shirts, cotton shirts, tops, tank-tops, halter tops, knit tops, woven tops, bodysuits, camisoles, pajamas, jumpsuits, swim suits, swimwear, socks, gloves; clothing accessories, namely, belts, scarves, hats, caps, and visors; footwear, namely, loafers, espadrilles, sandals, thongs, mules, pumps, athletic shoes, slippers, boots, beach footwear. A true and correct copy of the Certificate of Registration for this mark is attached hereto as Exhibit B.

3. Petitioner owns a federal trademark registration for the word mark BELLA, which is the subject of Federal Registration No. 3,519,794, issued October 21, 2008, in International Class 25, for women's clothing, namely tee shirts, short sleeve shirts, long sleeve shirts, tank tops, fleece tops, fleece pants, shirts, pants, yoga pants, capri pants, shorts, bras, underwear, camisoles, sweatshirts, polo shirts, and jackets. A true and correct copy of the Certificate of Registration for this mark is attached hereto as Exhibit C.

4. In addition, Petitioner has registered or applied to register or been assigned numerous other trademarks for clothing incorporating BELLA, so that Petitioner is the owner of a well-established family of BELLA marks. These include BELLA BABY (U.S. Trademarks Nos. 3293659, 3250727), BELLA GIRL (U.S. Trademark No. 3158111), BELLA CHIC and BELLA-CHIC TEASE (U.S. Trademarks Nos. 2803696 and 2806739), BELLA LINGERIE (Serial No. 77683559), BELLA SOL (Serial No. 77683548), BELLA LIFESTYLE (Serial No. 77683328), BELLA HONEY (Serial No. 77683300), BELLA BRAZIL (Serial No. 77683276), BELLA BODYWEAR (Serial No. 77683191), BELLA BASICS (Serial No. 77683163), BELLA STRETCH (Serial No. 77683552), ECO BELLA (Serial No. 77882072), BELLA SPORT (Serial No. 77743487), BELLA COUTURE (Serial No. 77736270), BELLA FASHION (Serial No.

77728417), BELLA CLASSIC (Serial No. 77727522), BELLA LOUNGEWEAR (Serial No. 77726561), and BELLA LUXE (Serial No. 77726551).

5. All of the above-listed trademarks are collectively referred to as the “BELLA Marks.”

6. Petitioner has used the BELLA Marks to denote the source of its goods and services continuously in the United States since at least as early as 1999, and has enjoyed substantial commercial success. The BELLA Marks have acquired substantial secondary meaning as an indicator of the origin of goods, which are of the highest quality, and through which Petitioner has developed a high reputation in the clothing industry.

7. On information and belief, Petitioner has had the exclusive right to use the BELLA Marks in interstate commerce and Petitioner’s use has been exclusive since it first adopted the BELLA Marks.

8. Petitioner has widely advertised, promoted and marketed goods under the BELLA Marks. Because of these efforts, and because of its BELLA Marks, customers and potential customers have come to associate the BELLA Marks with Petitioner. Petitioner has thus developed extensive goodwill in its BELLA Marks.

9. Respondent’s mark ECOBELLA + design, U.S. Registration No. 3,483,638 includes services which third parties may assume emanated from Petitioner, specifically “Retail Clothing Stores” in International Class 035, thus there is substantial likelihood of confusion of the relevant portion of the public who are exposed both to Respondent’s goods and those of Petitioner. Respondent’s mark, as the newcomer, will be seen either as the same mark, or as a deliberate variation of Petitioner’s mark coming from the same source and thus is further likely to cause confusion, mistake, or deception. A true and correct copy of an electronic database print-out indicating title and status from the website www.uspto.gov for Respondent’s mark is attached hereto as Exhibit D.

10. Respondent’s claimed date of first use, in interstate commerce and anywhere, is April 17, 2006, thus Petitioner’s use is prior to Respondent’s use.

11. Petitioner is the owner of common law rights and a pending application for ECO BELLA, Serial No. 77/882,072 in International Class 25 for “women's clothing, namely, tee shirts, short sleeve shirts, long sleeve shirts, tank tops, fleece tops, fleece pants, shirts, pants, skirts, dresses, yoga pants, capri pants, shorts, bras, underwear, camisoles, sweatshirts, polo shirts and jackets.” A true and correct copy of an electronic database print-out indicating title and status from the website www.uspto.gov for the mark ECO BELLA is attached hereto as Exhibit E.

12. On March 8, 2010, the Trademark Examiner mailed an office action to Petitioner, making a refusal to register ECO BELLA based upon a perceived likelihood of confusion with Respondent's mark.

13. Petitioner is being damaged and will continue to be damaged by registration of Respondent's mark because, unless cancelled, the registration will remain as a cloud on Petitioner's legal right to use ECO BELLA in that the Trademark Office concluded that ECO BELLA is likely to cause confusion with Respondent's mark under the Registration.

14. As further grounds for cancellation, on information and belief, Respondent has abandoned the registration through non-use of the mark in the ordinary course of the trade with the intent not to resume such use.

15. To the best of Petitioner's' knowledge, the name and address of the current owner of the registration is Eco-Bella, LLC, 1281 Durand Mill Drive, Atlanta, GA 30307.

16. Respondent's abandonment of the mark is sufficient cause to cancel the registration, pursuant to 15 U.S.C. § 1064.

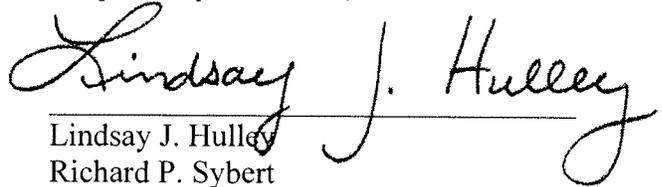
17. If Respondent is permitted to retain the registration sought to be cancelled and thereby the prima facie exclusive right to use, in commerce, its mark on goods that are closely related to or the same as those provided by Petitioner, Petitioner will likely be prevented from obtaining its registration on ECO BELLA and may be prevented from using the ECO BELLA mark in commerce, to the great detriment of Petitioner.

WHEREFORE, Petitioner prays that Registration No. 3,483,638 be cancelled as Petitioner believes and avers that it will be damaged by the continued registration as aforesaid and requests that Respondent be required to answer the allegations of this Petition for Cancellation and that the cancellation of said registration be sustained.

This Petition for Cancellation is being submitted electronically. The required fee is authorized to be charged against the Deposit Account No. 501990 of the Attorney for Petitioner.

Date: July 15, 2010

Respectfully submitted,

A handwritten signature in black ink that reads "Lindsay J. Hulley". The signature is written in a cursive style and is positioned above a horizontal line.

Lindsay J. Hulley
Richard P. Sybert
Attorneys for Petitioner
GORDON & REES LLP
101 W. Broadway, Suite 1600
San Diego, CA 92101-8217
tel (619) 696-6700 / fax (619) 696-7124

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Petition for Cancellation is being served by Federal Express service to the below Addressee(s) on July 15, 2010, as follows:

Registrant:
Eco-Bella, LLC
1281 Durand Mill Drive
Atlanta, GA 30307

Correspondent:
Scott C. Withrow
3379 Peachtree Rd. NE Suite 970
Atlanta, GA 30326-1020

Federal Express Nos. 7902 2820 2184 and 7907 1999 3691

Printed Name: Monica L. Mims

Signature:

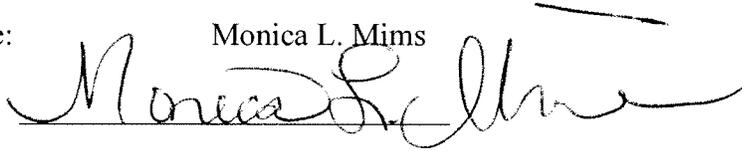
A handwritten signature in black ink that reads "Monica L. Mims". The signature is written in a cursive style and is positioned over a horizontal line.

EXHIBIT “A”

7197754



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:
UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

August 13, 2009

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,668,441 IS
CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND
EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN
THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES
PATENT AND TRADEMARK OFFICE.

REGISTERED FOR A TERM OF 10 YEARS FROM *December 31, 2002*

SECTION 8 & 15

SAID RECORDS SHOW TITLE TO BE IN:

Registrant

By Authority of the
Under Secretary of Commerce for Intellectual Property
and Director of the United States Patent and Trademark Office

P. SWAIN
Certifying Officer



Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

United States Patent and Trademark Office

Reg. No. 2,668,441

Registered Dec. 31, 2002

**TRADEMARK
PRINCIPAL REGISTER**

bella

COLOR IMAGE APPAREL, INC. (CALIFORNIA
CORPORATION)
601 WALSH AVENUE
SANTA CLARA, CA 95050

FIRST USE 1-1-2000; IN COMMERCE 1-1-2000.

SER. NO. 76-308,113, FILED 9-4-2001.

FOR: GARMENTS, NAMELY COTTON T-SHIRTS
AND TOPS, IN CLASS 25 (U.S. CLS. 22 AND 39).

AMOS T. MATTHEWS, JR., EXAMINING ATTOR-
NEY

EXHIBIT “B”

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

United States Patent and Trademark Office

Reg. No. 2,895,709

Registered Oct. 19, 2004

**TRADEMARK
PRINCIPAL REGISTER**

BELLA

COLOR IMAGE APPAREL, INC. (CALIFORNIA CORPORATION)
6670 FLOTILLA STREET
COMMERCE, CA 90040

FOR: MEN'S, WOMEN'S AND CHILDREN'S CLOTHING, NAMELY JEANS, DRESSES, SKIRTS, MINISKIRTS, SHORTS, PANTS, SLACKS, TROUSERS, SUITS, PANTSUITS, JACKETS, SWEATERS, CARDIGANS, PULLOVERS, COATS, SPORT COATS, BLOUSES, VESTS, BLAZERS, OVERALLS, SWEATSHIRTS, SWEATPANTS, SWEATSHORTS, SWEATSUITS, SHIRTS, POLO SHIRTS, KNIT SHIRTS, SPORT SHIRTS, TEE-SHIRTS, COTTON SHIRTS, TOPS, TANK-TOPS, HALTER TOPS, KNIT TOPS, WOVEN TOPS, BODYSUITS, CAMISOLES, PAJAMAS, JUMPSUITS, SWIM SUITS, SWIMWEAR, SOCKS, GLOVES; CLOTHING ACCESSORIES

NAMELY BELTS, SCARVES, HATS, CAPS AND VISORS; FOOTWEAR, NAMELY LOAFERS, ESPADRILLES, SANDALS, THONGS, MULES, PUMPS, ATHLETIC SHOES, SLIPPERS, BOOTS, BEACH FOOTWEAR , IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 1-1-2000; IN COMMERCE 1-1-2000.

OWNER OF U.S. REG. NO. 2,668,441.

THE ENGLISH TRANSLATION OF "BELLA" IS "BEAUTIFUL".

SER. NO. 78-306,447, FILED 9-28-2003.

MATTHEW PAPPAS, EXAMINING ATTORNEY

EXHIBIT “C”

7197794



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

August 13, 2009

THE ATTACHED U.S. TRADEMARK REGISTRATION 3,519,794 IS
CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION ISSUED BY
THE UNITED STATES PATENT AND TRADEMARK OFFICE WHICH
REGISTRATION IS IN FULL FORCE AND EFFECT.

REGISTERED FOR A TERM OF 10 YEARS FROM *October 21, 2008*
SAID RECORDS SHOW TITLE TO BE IN: *Registrant*

By Authority of the
Under Secretary of Commerce for Intellectual Property
and Director of the United States Patent and Trademark Office

P. SWAIN
Certifying Officer



Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

United States Patent and Trademark Office

Reg. No. 3,519,794

Registered Oct. 21, 2008

TRADEMARK
PRINCIPAL REGISTER

BELLA

COLOR IMAGE APPAREL, INC. (CALIFORNIA CORPORATION)
6670 FLOTILLA STREET
COMMERCE, CA 90040

FOR: WOMEN'S CLOTHING, NAMELY, TEE SHIRTS, SHORT SLEEVE SHIRTS, LONG SLEEVE SHIRTS, TANK TOPS, FLEECE TOPS, FLEECE PANTS, SHIRTS, PANTS, YOGA PANTS, CAPRI PANTS, SHORTS, BRAS, UNDERWEAR, CAMI-SOLES, SWEATSHIRTS, POLO SHIRTS, AND JACKETS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 1-1-2000; IN COMMERCE 1-1-2000.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 3,158,111, 3,293,659 AND OTHERS.

THE ENGLISH TRANSLATION OF THE WORD "BELLA" IN THE MARK IS "BEAUTIFUL".

SER. NO. 77-423,400, FILED 3-17-2008.

LYDIA BELZER, EXAMINING ATTORNEY

EXHIBIT “D”

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 3,483,638

Registered Aug. 12, 2008

SERVICE MARK
PRINCIPAL REGISTER

The logo for ECOBELLA features the word "ECOBELLA" in a bold, sans-serif font. The letter "O" is replaced by a stylized globe showing continents. Above the "O" is a coat hanger symbol, consisting of a curved line with a hook at the top. The letter "A" is represented by a simple geometric shape.

ECO-BELLA, LLC (GEORGIA LTD LIAB CO)
1281 DURAND MILL DRIVE
ATLANTA, GA 30307

FOR: RETAIL CLOTHING STORES, IN CLASS 35
(U.S. CLS. 100, 101 AND 102).

FIRST USE 4-17-2006; IN COMMERCE 4-17-2006.

THE MARK CONSISTS OF LETTERS "C", "B",
TWO "E'S", AND TWO "L'S" AS STANDARD LET-
TERS OF THE ALPHABET. THE "O" IS REPRESEN-

TED BY A GLOBE WITH OUTLINES OF
CONTINENTS. ABOVE THE "O" IS A COAT HANG-
ER. THE "A" IS REPRESENTED BY A GEOMETRIC
FIGURE..

THE FOREIGN WORDING IN THE MARK
TRANSLATES INTO ENGLISH AS BEAUTIFUL
FOR THE ITALIAN WORD "BELLA".

SER. NO. 77-261,837, FILED 8-22-2007.

INGA ERVIN, EXAMINING ATTORNEY

EXHIBIT “E”

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2010-07-15 18:07:56 ET

Serial Number: 77882072 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: (NOT AVAILABLE)

Mark

ECO BELLA

(words only): ECO BELLA

Standard Character claim: Yes

Current Status: A non-final action has been mailed. This is a letter from the examining attorney requesting additional information and/or making an initial refusal. However, no final determination as to the registrability of the mark has been made.

Date of Status: 2010-03-08

Filing Date: 2009-11-30

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 103

Attorney Assigned:
RAPPAPORT SETH A

Current Location: L3X -TMEG Law Office 103 - Examining Attorney Assigned

Date In Location: 2010-03-08

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Color Image Apparel, Inc.

Address:

Color Image Apparel, Inc.
6670 Flotilla Street
Commerce, CA 90040
United States

Legal Entity Type: Corporation
State or Country of Incorporation: California

GOODS AND/OR SERVICES

International Class: 025

Class Status: Active

Women's clothing, namely, tee shirts, short sleeve shirts, long sleeve shirts, tank tops, fleece tops, fleece pants, shirts, pants, skirts, dresses, yoga pants, capri pants, shorts, bras, underwear, camisoles, sweatshirts, polo shirts and jackets

Basis: 1(b)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2010-07-08 - Assigned To Examiner

2010-03-08 - Notification Of Non-Final Action E-Mailed

2010-03-08 - Non-final action e-mailed

2010-03-08 - Non-Final Action Written

2010-03-04 - Assigned To Examiner

2009-12-03 - New Application Office Supplied Data Entered In Tram

2009-12-03 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Richard P. Sybert

Correspondent

RICHARD P. SYBERT

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SAN DIEGO, CA 92101-8217

Phone Number: 619-696-6700

Fax Number: 619-696-7124