

ESTTA Tracking number: **ESTTA618143**

Filing date: **07/28/2014**

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

Proceeding	92059680
Party	Plaintiff Kretek International, Inc
Correspondence Address	JAMES A STEPAN MAYBACK & HOFFMAN PA 5722 SOUTH FLAMINGO ROAD , SUITE 232 FORT LAUDERDALE, FL 33330 UNITED STATES jstepan@mayback.com, choffman@mayback.com
Submission	Other Motions/Papers
Filer's Name	Catherine F. Hoffman
Filer's e-mail	trademarks@mayback.com,jstepan@mayback.com
Signature	/catherine f hoffman/
Date	07/28/2014
Attachments	To file 7-28-14.pdf(4770722 bytes )

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

KRETEK INTERNATIONAL, INC.

Petitioner,

vs.

SPARK INDUSTRIES, LLC

Respondent.

Cancellation Proceeding No. 92059680

In Re Trademark Registration No. 3974247

**NOTICE OF SERVICE**

Petitioner, Kretek International, Inc. hereby files this Notice of Service confirming that the Petition for Cancellation and the TTAB Order dated July 28, 2014 were forwarded and served on Respondent, Spark Industries LLC, 2363 Teller Road, Suite 104, Newbury Park, CA 91320 on July 28, 2014. Pursuant to the TTAB Order on July 28, 2014, Petitioner was directed to forward a copy of the Petition for Cancellation to the owner of record for the registration at issue at the correspondence address of record. Therefore, Petitioner confirms that it has served a copy directly on the owner of the registration. Attached as Exhibit "A" is a copy of the correspondence and attachments.

Respectfully submitted,

Date: July 28, 2014

By: /s/Catherine F. Hoffman  
Catherine F. Hoffman, Esq.  
James A. Stepan, Esq.  
**MAYBACK & HOFFMAN, P.A.**  
5722 S. Flamingo Rd. #232  
Ft. Lauderdale, FL 33330  
Telephone: (954) 704-1599  
Facsimile: (954) 704-1588  
E-mail: [choffman@mayback.com](mailto:choffman@mayback.com)  
E-mail: [jstepan@mayback.com](mailto:jstepan@mayback.com)  
*Attorneys for Petitioner*

I hereby certify that a true and accurate copy of the foregoing has been served upon the following by U.S. first class mail on this 28<sup>th</sup> day of July 2014.

By: /s/Catherine F. Hoffman

**SERVICE LIST**

Louis R. Miller  
Miller Barondess LLP  
1999 Avenue of the Stars Suite 1000  
Los Angeles, CA 90067  
Attorneys for Respondent

Spark Industries LLC  
c/o Spencer Thompson  
Registered Agent  
750 Calle Plano  
Camarillo, CA 93012

Sparks Industries LLC  
2363 Teller Road, Suite 104  
Newbury Park, CA 91320

# **EXHIBIT A**

# MAYBACK & HOFFMAN, P.A.

**Mailing Address:**

5722 S. Flamingo Road, #232  
Fort Lauderdale, Florida 33330

**Office Address:**

110 11 Sheridan Street, Suite 212  
Cooper City, Florida 33026

Protect Your Creation  
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Office: 954.704.1599  
Fax: 954.704.1588  
www.mayback.com



July 28, 2014

**Via E-MAIL [scott@klkpatentlawlaw.com](mailto:scott@klkpatentlawlaw.com) and FedEx**

SPARK INDUSTRIES, LLC.  
2363 TELLER ROAD, SUITE 104  
NEWBURY PARK, CA 91320 UNITED STATES

Re: Cancellation No. 92059680

Dear Spark Industries:

Attached please find the following:

- 1) Petition for Cancellation; and
- 2) TTAB Order dated July 28, 2014.

As directed by the TTAB Order dated July 28, 2014, we are serving a copy of the Petition for Cancellation and TTAB Order on Spark Industries at the address listed at the USPTO, as shown above.

Sincerely,

MAYBACK & HOFFMAN, P.A.



Catherine F. Hoffman  
Attorney for Kretet International, Inc.

Enclosures

ESTTA Tracking number: **ESTTA617288**

Filing date: **07/23/2014**

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	Kretek International, Inc		
Entity	Corporation	Citizenship	California
Address	5449 Endeavour Ct Moorpark, CA 93021 UNITED STATES		

Attorney information	James A. Stepan Mayback & Hoffman, P.A. 5722 South Flamingo Road Suite 232 Fort Lauderdale, FL 33330 UNITED STATES jstepan@mayback.com Phone:954 251-5002		
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**Registration Subject to Cancellation**

Registration No	3974247	Registration date	06/07/2011
Registrant	Spark Industries, LLC Suite 104 Newbury Park, CA 91320 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 034. First Use: 2009/06/01 First Use In Commerce: 2010/06/01 All goods and services in the class are cancelled, namely: Electronic cigarettes; Electronic cigarettes for use as an alternative to traditional cigarettes
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**Grounds for Cancellation**

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Abandonment	Trademark Act section 14

Related Proceedings	Spark Industries LLC v. Kretek International and Cassar, case no. 56-2014-00454490-CU-BC-VTA, Superior Court for Ventura County, California
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Attachments	Petition for Cancellation CIG20.pdf(5679295 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 First Class Mail on this date.

Signature	/James A. Stepan/
Name	James A. Stepan
Date	07/23/2014

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

In Re Trademark Registration No. 3974247

**CIG<sup>2</sup>O**

For the Mark:

Registered on June 7, 2011

KRETEK INTERNATIONAL, INC.

Petitioner,

vs.

SPARK INDUSTRIES, LLC

Respondent.

Cancellation Proceeding No. \_\_\_\_\_

**PETITION FOR CANCELLATION**

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

This Petition for Cancellation is brought pursuant to 15 U.S.C. § 1064(3) in the matter of the above trademark registration for **CIG<sup>2</sup>O**, registration no. 3974247, for electronic cigarettes; electronic cigarettes for use as an alternative to traditional cigarettes in international class 034.

Petitioner, Kretek International, Inc., with a place of business located at 5449 Endeavour Ct, Moorpark, CA 93021 (hereinafter "Kretek"), believes it has been and will continue to be damaged by the continued registration of the mark **CIG<sup>2</sup>O** registered to Respondent Spark Industries LLC ("Spark"), and hereby petitions to cancel the above trademark registration.

The grounds for cancellation are as follows:

### **BACKGROUND**

1. Kretek is a California corporation that is engaged in the tobacco and electronic cigarette business.
2. Spark is a California limited liability company that is engaged in the electronic cigarette business.
3. Spark filed an application under 15 U.S.C. § 1051(a)(1) for **CIG<sup>2</sup>O** on October 19, 2010, listing itself as the sole owner of the mark and a date of first use in commerce as June 1, 2010.
4. The USPTO issued registration no. 3974247 for **CIG<sup>2</sup>O** to Spark in international class 034 for electronic cigarettes; electronic cigarettes for use as an alternative to traditional cigarettes on June, 7, 2011.
5. Spark is the sole listed owner on the registration for the **CIG<sup>2</sup>O** mark.

### **FRAUD**

6. A trademark application must be filed by owner of the mark. TMEP § 803.01; 37 C.F.R. § 2.71(d).
7. Prior to filing the application for the **CIG<sup>2</sup>O** mark, Spark entered into an agreement to jointly own the **CIG<sup>2</sup>O** mark with Kretek. Spark needed Kretek's assistance in order to best commercialize the **CIG<sup>2</sup>O** mark, as Spark did not have the ability and financial resources to do so on its own.
8. However, when Spark applied for the **CIG<sup>2</sup>O** mark on October 19, 2010, Spark did not list Kretek as a co-owner. Instead, Spark falsely executed a declaration claiming to the

sole owner and that no other entity had the rights to use the mark. Ex. 1.

9. The standard declaration for any trademark application provides:

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; *he/she believes the applicant to be the owner of the trademark/service mark sought to be registered*, or, if the application is being filed under 15 U.S.C. § 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief *no other person, firm, corporation, or association has the right to use the mark in commerce*, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

TMEP § 802 (emphasis added); 15 U.S.C. § 1051(a)(1); TMEP § 804.02.

10. Spark allowed the mark to issue without ever notifying the USPTO examining attorney that Spark only owned 50% of the **CIG<sup>2</sup>O** mark and that Kretek owned the other 50%. To date, the only owner listed on the registration is Spark.<sup>1</sup>

11. Despite agreeing to jointly own the **CIG<sup>2</sup>O** mark with Kretek, Spark did not notify the USPTO that Spark jointly owned the **CIG<sup>2</sup>O** mark with Kretek and did not list Kretek as an owner.

12. Thus Spark, knowingly and with intent to deceive, made material misrepresentations and omissions to the USPTO.

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<sup>1</sup> Spark has brought suit against Kretek in the Superior Court for Ventura County, California styled *Spark Industries LLC v. Kretek International and Cassar*, case no. 56-2014-00454490-CU-BC-VTA, alleging, inter alia, a breach of this agreement. Kretek has filed and/or intends to file a counterclaim for, inter alia, declaratory relief, conversion, breach of fiduciary duty, dissolution of partnership, accounting, breach of contract, and breach of implied covenant of good faith and fair dealing seeking, inter alia, a declaration that Kretek owns 50% of the **CIG<sup>2</sup>O** mark and an accounting of profits.

13. Kretek has standing since it has ownership rights in the **CIG<sup>2</sup>O** mark.

14. The **CIG<sup>2</sup>O** mark is therefore void ab initio and the registration should be canceled.

#### **ABANDONMENT BY NAKED LICENSING**

15. Alternatively, if Spark is the sole owner of the **CIG<sup>2</sup>O** mark, the mark should be canceled for abandonment by naked licensing.

16. Spark allowed Kretek to use the **CIG<sup>2</sup>O** mark in commerce without exercising any quality control or supervision of that use. Spark and Kretek conducted business in a manner which allowed Kretek to use the **CIG<sup>2</sup>O** mark in commerce and to sell and distribute goods bearing the **CIG<sup>2</sup>O** mark without quality control or supervision by Spark. Spark did not exercise adequate quality control over Kretek's use of the **CIG<sup>2</sup>O** mark such that the **CIG<sup>2</sup>O** mark may no longer represent the quality of the product or service the consumer has come to expect.

17. Thus, Spark abandoned the **CIG<sup>2</sup>O** mark by naked licensing.

By reason of all of the foregoing, Petitioner believes it will be damaged by the continuation of the registration of the above mark by Registrant.

*Wherefore*, Petitioner Kretek International, Inc. respectfully requests that this Petition for Cancellation be sustained, and said Registration No. 3974247 for the trademark **CIG<sup>2</sup>O** be cancelled pursuant to 15 U.S.C. § 1064(3).

This Petition for Cancellation is being submitted via the Electronic System for the Trademark Trial and Appeal Board.

Respectfully submitted,

Date: July 23, 2014

By: /s/ James A. Stepan  
Catherine F. Hoffman, Esq.  
James A. Stepan, Esq.  
**MAYBACK & HOFFMAN, P.A.**  
5722 S. Flamingo Rd. #232  
Ft. Lauderdale, FL 33330  
Telephone: (954) 704-1599  
Facsimile: (954) 704-1588  
E-mail: [choffman@mayback.com](mailto:choffman@mayback.com)  
E-mail: [jstepan@mayback.com](mailto:jstepan@mayback.com)  
*Attorneys for Petitioner*

I hereby certify that a true and accurate copy of the foregoing has been served upon the following by U.S. first class mail on this 23<sup>rd</sup> day of July 2014

By: /s/ James A. Stepan

**SERVICE LIST**

Louis R. Miller  
Miller Barondess LLP  
1999 Avenue of the Stars Suite 1000  
Los Angeles, CA 90067  
Attorneys for Respondent

Spark Industries LLC  
c/o Spencer Thompson  
Registered Agent  
750 Calle Plano  
Camarillo CA 93012

# **EXHIBIT 1**

Generated on: This page was generated by TSDR on 2014-07-21 10:21:43 EDT

Mark: CIG2O

**CIG<sup>2</sup>O**

US Serial Number: 85156343

Application Filing Date: Oct. 19, 2010

US Registration Number: 3974247

Registration Date: Jun. 07, 2011

Filed as TEAS Plus: Yes

Currently TEAS Plus: Yes

Register: Principal

Mark Type: Trademark

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Jun. 07, 2011

Publication Date: Mar. 22, 2011

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## Mark Information

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Mark Literal Elements: CIG2O

Standard Character Claim: No

Mark Drawing Type: 5 - AN ILLUSTRATION DRAWING WITH WORD(S) /LETTER(S)/ NUMBER(S) INSTYLIZED FORM

Description of Mark: The mark consists of stylized letters and number "CIG2O".

Color(s) Claimed: Color is not claimed as a feature of the mark.

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## Goods and Services

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Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks \*...\* identify additional (new) wording in the goods/services.

For: Electronic cigarettes; Electronic cigarettes for use as an alternative to traditional cigarettes

International Class(es): 034 - Primary Class

U.S Class(es): 002, 008, 009, 017

Class Status: ACTIVE

Basis: 1(a)

First Use: Jun. 01, 2009

Use in Commerce: Jun. 01, 2010

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## Basis Information (Case Level)

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Filed Use: Yes

Currently Use: Yes

Amended Use: No

Filed ITU: No

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

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## Current Owner(s) Information

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Owner Name: Spark Industries, LLC

Owner Address: Suite 104  
2363 Teller Road  
Newbury Park, CALIFORNIA 91320  
UNITED STATES

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: CALIFORNIA

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## Attorney/Correspondence Information

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### Attorney of Record

Attorney Name: Scott W. Kelley

Docket Number: SPARK-53417

Attorney Primary Email Address: [scott@KLKPatentLaw.com](mailto:scott@KLKPatentLaw.com)

Attorney Email Authorized: No

**Correspondent**

**Correspondent Name/Address:** SCOTT W. KELLEY  
KELLY LOWRY & KELLEY, LLP  
6320 CANOGA AVE STE 1650  
WOODLAND HILLS, CALIFORNIA 91367-7704  
UNITED STATES

**Phone:** 8183477900

**Fax:** 8183402859

**Correspondent e-mail:** [scott@KLKPatentLaw.com](mailto:scott@KLKPatentLaw.com)

**Correspondent e-mail No Authorized:**

**Domestic Representative - Not Found**

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**Prosecution History**

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<b>Date</b>	<b>Description</b>	<b>Proceeding Number</b>
Jun. 07, 2011	REGISTERED-PRINCIPAL REGISTER	
Mar. 22, 2011	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Mar. 22, 2011	PUBLISHED FOR OPPOSITION	
Jan. 24, 2011	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jan. 07, 2011	ASSIGNED TO EXAMINER	86336
Oct. 26, 2010	NOTICE OF PSEUDO MARK MAILED	
Oct. 23, 2010	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Oct. 22, 2010	NEW APPLICATION ENTERED IN TRAM	

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**TM Staff and Location Information**

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**TM Staff Information - None**

**File Location**

**Current Location:** PUBLICATION AND ISSUE SECTION

**Date in Location:** Jun. 07, 2011

# United States of America

United States Patent and Trademark Office

## CIG<sup>2</sup>O

**Reg. No. 3,974,247**

**Registered June 7, 2011**

**Int. Cl.: 34**

**TRADEMARK**

**PRINCIPAL REGISTER**

SPARK INDUSTRIES, LLC (CALIFORNIA LIMITED LIABILITY COMPANY)  
SUITE 104  
2363 TELLER ROAD  
NEWBURY PARK, CA 91320

FOR: ELECTRONIC CIGARETTES; ELECTRONIC CIGARETTES FOR USE AS AN ALTERNATIVE TO TRADITIONAL CIGARETTES, IN CLASS 34 (U.S. CLS. 2, 8, 9 AND 17).

FIRST USE 6-1-2009; IN COMMERCE 6-1-2010.

THE MARK CONSISTS OF STYLIZED LETTERS AND NUMBER "CIG<sup>2</sup>O".

SER. NO. 85-156,343, FILED 10-19-2010.

FONG HISU, EXAMINING ATTORNEY



*David J. Kappas*

Director of the United States Patent and Trademark Office

**From:** TMOOfficialNotices@USPTO.GOV  
**Sent:** Tuesday, March 22, 2011 00:43 AM  
**To:** scott@KLKPatentLaw.com  
**Subject:** Official USPTO Notice of Publication: Serial Number 85156343

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## NOTICE OF PUBLICATION

**Serial Number:** 85-156,343  
**Mark:** CIG20(SYTLIZED/DESIGN)  
**International Class(es):** 034  
**Applicant:** Spark Industries, LLC  
**Attorney Reference Number:** SPARK-53417

The mark identified above has been published in the *Trademark Official Gazette (OG)* on Mar 22, 2011. Any party who believes it will be damaged by the registration of the mark may file a notice of opposition (or extension of time therefor) with the Trademark Trial and Appeal Board. If no party files an opposition or extension request within thirty (30) days after the publication date, then within twelve (12) weeks of the publication date a certificate of registration should issue.

On the publication date or shortly thereafter, the applicant should carefully review the information that appears in the OG for accuracy (see steps, *below*). If any information is incorrect, the applicant should immediately email the requested correction to **TMPostPubQuery@uspto.gov**. For general information about this notice, please contact the Trademark Assistance Center at 1-800-786-9199.

1. Click on the following link or paste the URL into an internet browser:  
[http://www.uspto.gov/web/trademarks/tmog/20110322\\_OG.pdf#page=1](http://www.uspto.gov/web/trademarks/tmog/20110322_OG.pdf#page=1)
2. Wait for the total OG to download completely (as indicated on bottom of OG page).
3. At the top/side of the displayed page, click wherever the "binoculars" icon appears.
4. Enter in the "search" box the name of the applicant (for individual: last name, first name) or the serial number in this exact format (with hyphen and comma): 85-156,343, e.g.
5. View the retrieved result(s). If multiple results appear in the "results" box, click directly on each "search term" shown in the box to access all separate appearances in the OG.

## Trademark Snap Shot Publication Stylesheet

(Table presents the data on Publication Approval)

### OVERVIEW

SERIAL NUMBER	85156343	FILING DATE	10/19/2010
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	HSU, FONG	L.O. ASSIGNED	115

### PUB INFORMATION

RUN DATE	01/25/2011
PUB DATE	N/A
STATUS	680-APPROVED FOR PUBLICATON
STATUS DATE	01/24/2011
LITERAL MARK ELEMENT	CIG20

DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPub 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

### FILING BASIS

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	YES	1 (a)	YES	1 (a)	NO
1 (b)	NO	1 (b)	NO	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

### MARK DATA

STANDARD CHARACTER MARK	NO
LITERAL MARK ELEMENT	CIG20

MARK DRAWING CODE	5-AN ILLUSTRATION DRAWING WITH WORD(S)/LETTER(S)/NUMBER(S) IN STYLIZED FORM
COLOR DRAWING FLAG	NO

### CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	Spark Industries, LLC
ADDRESS	Suite 104 2363 Teller Road Newbury Park, CA 91320
ENTITY	16-LTD LIAB CO
CITIZENSHIP	California

### GOODS AND SERVICES

INTERNATIONAL CLASS	034
DESCRIPTION TEXT	Electronic cigarettes; Electronic cigarettes for use as an alternative to traditional cigarettes

### GOODS AND SERVICES CLASSIFICATION

INTERNATIONAL CLASS	034	FIRST USE DATE	06/01/2009	FIRST USE IN COMMERCE DATE	06/01/2010	CLASS STATUS	6-ACTIVE
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### MISCELLANEOUS INFORMATION/STATEMENTS

CHANGE IN REGISTRATION	NO
COLORS CLAIMED STATEMENT	Color is not claimed as a feature of the mark.
DESCRIPTION OF MARK	The mark consists of stylized letters and number "CIG2O".
PSEUDO MARK	CIGARETTES TWO O; CIGARETTES TO O

### PROSECUTION HISTORY

DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM
01/24/2011	CNSA	O	APPROVED FOR PUB - PRINCIPAL REGISTER	005
01/07/2011	DOCK	D	ASSIGNED TO EXAMINER	004
10/26/2010	MPMK	O	NOTICE OF PSEUDO MARK MAILED	003
10/23/2010	NWOS	I	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	002
10/22/2010	NWAP	I	NEW APPLICATION ENTERED IN TRAM	001

### CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	Scott W. Kelley
CORRESPONDENCE ADDRESS	SCOTT W. KELLEY KELLY LOWRY & KELLEY, LLP 6320 CANOGA AVE STE 1650 WOODLAND HILLS, CA 91367-7704
DOMESTIC REPRESENTATIVE	NONE

**CIG<sup>2</sup>O**

\*\*\* User:fhsu \*\*\*

#	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/ Search Duration	Search
01	18818	N/A	0	0	0:04	*{"szxc"} {"iey"}g* [bi,ti] not dead[lid]
02	194873	N/A	0	0	0:03	(*to* *two* *2*) [bi,ti] not dead[lid]
03	6593	N/A	0	0	0:04	"o" [bi,ti] not dead[lid]
04	2314	N/A	0	0	0:01	1 and (2 3)
05	786	0	786	704	0:02	4 and 034[cc]

Session started 1/24/2011 12:13:42 PM

Session finished 1/24/2011 12:20:40 PM

Total search duration 0 minutes 14 seconds

Session duration 6 minutes 58 seconds

Default NEAR limit=1ADJ limit=1

Sent to TICRS as Serial Number: 85156343

\*\*\* User: fhsu \*\*\*

#	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/ Search Duration	Search
01	18806	N/A	0	0	0:04	*{"szxc"}{"iey"}g* [bi,ti] not dead[ld]
02	194739	N/A	0	0	0:03	(*to* *two* *2*) [bi,ti] not dead[ld]
03	6594	N/A	0	0	0:04	"o" [bi,ti] not dead[ld]
04	2312	N/A	0	0	0:01	1 and (2 3)
05	786	N/A	4	4	0:02	4 and 034[cc]
06	235	0	235	230	0:01	4 and ("034" "A" "B" "200")[ic]
07	1027	N/A	0	0	0:01	2 and 3
08	197	0	197	175	0:02	7 and 034[cc]
09	3918	N/A	6	6	0:04	(*20* "2 0") [bi,ti] not dead[ld]
10	784	N/A	0	0	0:02	9 and 034[cc]
11	175	0	175	162	0:02	9 and ("034" "A" "B" "200")[ic]
12	936	N/A	1	1	0:03	*c{"iy"}g* [bi,ti] not dead[ld]
13	644	N/A	0	0	0:02	12 and 034[cc]
14	478	0	478	439	0:01	12 and ("034" "A" "B" "200")[ic]
15	1226	N/A	0	0	0:01	*{"szx"}quar* [bi,ti] not dead[ld]
16	283	0	283	230	0:02	15 and 034[cc]

Session started 1/14/2011 4:48:37 PM

Session finished 1/14/2011 5:06:14 PM

Total search duration 0 minutes 35 seconds

Session duration 17 minutes 37 seconds

Default NEAR limit=1ADJ limit=1

Sent to TICRS as Serial Number: 85156343

**From:** TMDesignCodeComments  
**Sent:** Tuesday, October 26, 2010 00:13 AM  
**To:** scott@KLKPatentLaw.com  
**Subject:** Notice of Pseudo Mark for Serial Number: 85156343  
**ATTORNEY REFERENCE NUMBER:** SPARK-53417

---

The USPTO may assign pseudo marks, as appropriate, to new applications to assist in searching the USPTO database for conflicting marks. They have no legal significance and will not appear on the registration certificate.

A PSEUDO MARK may be assigned to marks that include words, numbers, compound words, symbols, or acronyms that can have alternative spellings or meanings. For example, if the mark comprises the words 'YOU ARE' surrounded by a design of a box, the pseudo mark field in the USPTO database would display the mark as 'YOU ARE SQUARE'. A mark filed as 'URGR8' would receive a pseudo mark of 'YOU ARE GREAT'.

Response to this notice is not required; however, to suggest additions or changes to the pseudo mark assigned to your mark, please e-mail [TMDesignCodeComments@USPTO.GOV](mailto:TMDesignCodeComments@USPTO.GOV). You **must** reference your application serial number within your request. The USPTO will review the proposal and update the record, if appropriate. For questions, please call 1-800-786-9199 to speak to a Customer Service representative.

The USPTO will not send any further response to your e-mail. Check TESS in approximately two weeks to see if the requested changes have been entered. Requests deemed unnecessary or inappropriate will not be entered.

**Pseudo marks assigned to the referenced serial number are listed below.**

**CIG<sup>2</sup>O**



# Trademark/Service Mark Application, Principal Register

## TEAS Plus Application

Serial Number: 85156343

Filing Date: 10/19/2010

**NOTE: Data fields with the \* are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.**

The table below presents the data as entered.

Input Field	Entered
<b>TEAS Plus</b>	<b>YES</b>
<b>MARK INFORMATION</b>	
*MARK	<a href="file:///TICRS/EXPORT11/IMAGEOUT/11/851/563/85156343/xml1/FTK0002.JPG">\\TICRS\EXPORT11\IMAGEOUT 11\851\563\85156343\xml1\FTK0002.JPG</a>
*SPECIAL FORM	YES
USPTO-GENERATED IMAGE	NO
LITERAL ELEMENT	CIG2O
*COLOR MARK	NO
*COLOR(S) CLAIMED (If applicable)	
*DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of stylized letters and number "CIG2O".
PIXEL COUNT ACCEPTABLE	YES
PIXEL COUNT	751 x 257
<b>REGISTER</b>	Principal
<b>APPLICANT INFORMATION</b>	
*OWNER OF MARK	Spark Industries, LLC
INTERNAL ADDRESS	Suite 104
*STREET	2363 Teller Road
*CITY	Newbury Park

<b>*STATE</b> (Required for U.S. applicants)	California
<b>*COUNTRY</b>	United States
<b>*ZIP/POSTAL CODE</b> (Required for U.S. applicants only)	91320
<b>EMAIL ADDRESS</b>	scott@KLKPatentLaw.com
<b>LEGAL ENTITY INFORMATION</b>	
<b>*TYPE</b>	LIMITED LIABILITY COMPANY
<b>* STATE/COUNTRY WHERE LEGALLY ORGANIZED</b>	California
<b>GOODS AND/OR SERVICES AND BASIS INFORMATION</b>	
<b>* INTERNATIONAL CLASS</b>	034
<b>IDENTIFICATION</b>	Electronic cigarettes; Electronic cigarettes for use as an alternative to traditional cigarettes
<b>*FILING BASIS</b>	SECTION 1(a)
<b>FIRST USE ANYWHERE DATE</b>	At least as early as 06/01/2009
<b>FIRST USE IN COMMERCE DATE</b>	At least as early as 06/01/2010
<b>SPECIMEN FILE NAME(S)</b>	<a href="#">\\TICRS\EXPORT11\IMAGEOUT11\851\563\85156343\xml1\FTK0003.JPG</a>
<b>SPECIMEN DESCRIPTION</b>	digital photograph of packaging for goods
<b>ADDITIONAL STATEMENTS SECTION</b>	
<b>*TRANSLATION</b> (if applicable)	
<b>*TRANSLITERATION</b> (if applicable)	
<b>*CLAIMED PRIOR REGISTRATION</b> (if applicable)	
<b>*CONSENT (NAME/LIKENESS)</b> (if applicable)	
<b>*CONCURRENT USE CLAIM</b> (if applicable)	
<b>ATTORNEY INFORMATION</b>	
<b>NAME</b>	Scott W. Kelley
<b>ATTORNEY DOCKET NUMBER</b>	SPARK-53417
<b>FIRM NAME</b>	KELLY LOWRY & KELLEY, LLP
<b>INTERNAL ADDRESS</b>	Suite 1650

<b>STREET</b>	6320 Canoga Avenue
<b>CITY</b>	Woodland Hills
<b>STATE</b>	California
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	91367
<b>PHONE</b>	8183477900
<b>FAX</b>	8183402859
<b>EMAIL ADDRESS</b>	scott@KLKPatentLaw.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>OTHER APPOINTED ATTORNEY</b>	all attorneys associated with the law firm
<b>CORRESPONDENCE INFORMATION</b>	
<b>*NAME</b>	Scott W. Kelley
<b>FIRM NAME</b>	KELLY LOWRY & KELLEY, LLP
<b>INTERNAL ADDRESS</b>	Suite 1650
<b>*STREET</b>	6320 Canoga Avenue
<b>*CITY</b>	Woodland Hills
<b>*STATE</b> (Required for U.S. applicants)	California
<b>*COUNTRY</b>	United States
<b>*ZIP/POSTAL CODE</b>	91367
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<b>FAX</b>	8183402859
<b>*EMAIL ADDRESS</b>	scott@KLKPatentLaw.com
<b>*AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>FEE INFORMATION</b>	
<b>NUMBER OF CLASSES</b>	1
<b>FEE PER CLASS</b>	275
<b>*TOTAL FEE PAID</b>	275
<b>SIGNATURE INFORMATION</b>	
<b>* SIGNATURE</b>	/Scott W. Kelley/
<b>* SIGNATORY'S NAME</b>	

* SIGNATORY'S NAME	Scott W. Kelley
* SIGNATORY'S POSITION	Attorney of record, California bar member
* DATE SIGNED	10/19/2010

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## Trademark/Service Mark Application, Principal Register

### TEAS Plus Application

**Serial Number: 85156343**

**Filing Date: 10/19/2010**

#### To the Commissioner for Trademarks:

**MARK:** CIG2O (stylized and/or with design, see [mark](#))

The literal element of the mark consists of CIG2O.

The mark consists of stylized letters and number "CIG2O".

The applicant, Spark Industries, LLC, a limited liability company legally organized under the laws of California, having an address of

Suite 104,  
2363 Teller Road  
Newbury Park, California 91320  
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

#### **For specific filing basis information for each item, you must view the display within the Input Table.**

International Class 034: Electronic cigarettes; Electronic cigarettes for use as an alternative to traditional cigarettes

In International Class 034, the mark was first used at least as early as 06/01/2009, and first used in commerce at least as early as 06/01/2010, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) digital photograph of packaging for goods.

[Specimen File 1](#)

The applicant's current Attorney Information:

Scott W. Kelley and all attorneys associated with the law firm of KELLY LOWRY & KELLEY, LLP  
Suite 1650  
6320 Canoga Avenue  
Woodland Hills, California 91367  
United States

The attorney docket/reference number is SPARK-53417.

The docket/reference number is SPARK-53417.

The applicant's current Correspondence Information:

Scott W. Kelley  
KELLY LOWRY & KELLEY, LLP  
Suite 1650  
6320 Canoga Avenue  
Woodland Hills, California 91367  
8183477900(phone)  
8183402859(fax)  
scott@KLKPatentLaw.com (authorized)

A fee payment in the amount of \$275 has been submitted with the application, representing payment for 1 class(es).

#### **Declaration**

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Scott W. Kelley/ Date Signed: 10/19/2010  
Signatory's Name: Scott W. Kelley  
Signatory's Position: Attorney of record, California bar member

RAM Sale Number: 4248  
RAM Accounting Date: 10/20/2010

Serial Number: 85156343  
Internet Transmission Date: Tue Oct 19 17:29:20 EDT 2010  
TEAS Stamp: USPTO/FTK-67.112.171.194-201010191729208  
06398-85156343-470b987b4b880ec777e289c3c  
53d1444d33-CC-4248-20101019171633558146

**CIG<sup>2</sup>O**



PREMIUM CIGARETTE ALTERNATIVE

**CIG20**  
water vapor cigarette



ELECTRONIC CIGARETTE

NO SMOKE • NO TAR • NO TOBACCO • NO SMELL  
GREAT TASTE • GREAT SATISFACTION • WATER VAPOR

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500

Mailed: July 28, 2014

Cancellation No. 92059680  
Registration No. 3974247

SPARK INDUSTRIES LLC  
2363 TELLER ROAD, SUITE 104  
NEWBURY PARK, CA 91320 UNITED STATES

Kretek International, Inc.

v.

Spark Industries, LLC

JAMES A STEPAN  
MAYBACK & HOFFMAN PA  
5722 SOUTH FLAMINGO ROAD, SUITE 232  
FORT LAUDERDALE, FL 33330 UNITED STATES

**Amy Matelski, Paralegal Specialist:**

The petitioner (plaintiff) identified above has filed a petition for cancellation of the above-identified registration owned by respondent (defendant). A service copy of the petition for cancellation was forwarded to respondent by the petitioner. An electronic version of the petition for cancellation, and of the entire proceeding, is viewable on the Board's web page via the TTABVUE link: <http://ttabvue.uspto.gov/ttabvue/>.

**PETITIONER DIRECTED TO FORWARD COPY TO OWNER OF RECORD**

The Board acknowledges that petitioner included proof that it forwarded a service copy of its petition to respondent. However, the proof of service indicates that petitioner sent that service copy to an attorney for respondent, and to respondent at an address other than of record with the Board. As provided in amended Trademark Rule 2.111(a), a petitioner must include "proof of service on the owner of record for the registration, or the owner's

domestic representative of record, at the correspondence address of record." The rule does not direct a petitioner to serve an attorney, though an attorney should be served if the attorney is the respondent's designated domestic representative. The reference in the rule to correspondence address is a reference to the address for the owner of the registration or the domestic representative, if one has been appointed. While petitioner's proof of service is a reasonable attempt to effect service, petitioner is directed to forward an additional copy of its petition to the owner of record for the registration, at its address of record. In addition, any future filing must be served directly on the owner of the registration. If an attorney files an answer or other paper for respondent, thereby entering an appearance, petitioner may thereafter forward service copies to that attorney rather than respondent.

**RESPONDENT MUST FILE AND SERVE ANSWER**

As required in the schedule set forth below, **respondent must file an answer within forty (40) days from the mailing date of this order.** (For guidance regarding when a deadline falls on a Saturday, Sunday or federal holiday, *see* Trademark Rule 2.196.) Respondent's answer must comply with Fed. R. Civ. P. 8(b), must contain admissions or denials of the allegations in the petition for cancellation, and may include available defenses and counterclaims. For guidance regarding the form and content of an answer, *see* Trademark Rule 2.114(b), and TBMP §§ 311.01 and 311.02. Failure to file a timely answer may result in entry of default judgment and the cancellation of the registration.

**SERVICE OF ANSWER AND OF ALL FILINGS**

The answer, and **all** other filings in this proceeding, **must** be served in a manner specified in Trademark Rule 2.119(b), and **must** include proof of service. For guidance regarding the service and signing of all filings, *see* TBMP §§ 113-113.04. As noted in TBMP § 113.03, proof of service should be in the following certificate of service form:

*I hereby certify that a true and complete copy of the foregoing (insert title of submission) has been served on (insert name of opposing counsel or party) by mailing said copy on (insert date of mailing), via First Class Mail, postage prepaid (or insert other appropriate method of delivery) to: (set out name and address of opposing counsel or party).*

*Signature* \_\_\_\_\_  
*Date* \_\_\_\_\_

The parties may agree to forward service copies by electronic transmission, e.g., e-mail. *See* Trademark Rule 2.119(b)(6) and TBMP §113.04. Pursuant to Trademark Rule 2.119(c), however, five additional days are afforded only

to actions taken in response to papers served by first-class mail, "Express Mail," or overnight courier, not by electronic transmission.

### **LEGAL RESOURCES AVAILABLE AT WEB PAGE**

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. These rules, as well as amendments thereto, the Manual of Procedure (TBMP), information on Accelerated Case Resolution (ACR) and Alternative Dispute Resolution (ADR), and many Frequently Asked Questions, are available on the Board's web page, at:

<http://www.uspto.gov/trademarks/process/appeal/index.jsp>. For a general description of Board proceedings, *see* TBMP §102.03.

### **FILING PAPERS ONLINE**

The link to the Board's electronic filing system, ESTTA (Electronic System for Trademark Trials and Appeals), is at the Board's web page, at:

<http://estta.uspto.gov/>. The Board **strongly encourages parties to use ESTTA** for all filings. ESTTA provides various electronic filing forms; some may be used as is, and others may require attachments. For technical difficulties with ESTTA, parties may call 571-272-8500. Due to potential technical issues, parties should not wait until the last date of a deadline for filing papers. The Board may decline to consider any untimely filing.

### **PETITIONER'S OBLIGATION IF SERVICE IS INEFFECTIVE**

If a service copy of the petition for cancellation is returned to petitioner as undeliverable or petitioner otherwise becomes aware that service has been ineffective, petitioner must notify the Board in writing within ten (10) days of receipt of the returned copy. Notification to the Board may be provided by any means available for filing papers with the Board, but preferably should be provided **by written notice filed through ESTTA**. For guidance regarding notice of ineffective service, *see* Trademark Rule 2.111(b) and TBMP § 309.02(c)(2).

While petitioner is under no obligation to search for current correspondence address information for, or investigate the whereabouts of, any respondent petitioner is unable to serve, if petitioner knows of any new address information for the respondent, petitioner must report the address to the Board. If a petitioner notifies the Board that a service copy sent to a respondent was returned or not delivered, including any case in which the notification includes a new address for the respondent discovered by or reported to petitioner, the Board will give notice under Trademark Rule 2.118.

**FORMAT FOR ALL FILINGS**

Trademark Rule 2.126 sets forth the required form and format for all filings. The Board may **decline to consider** any filing that does not comply with this rule, including, but not limited to motions, briefs, exhibits and deposition transcripts.

**CONFERENCE, DISCOVERY, DISCLOSURE AND TRIAL SCHEDULE**

Time to Answer	9/6/2014
Deadline for Discovery Conference	10/6/2014
Discovery Opens	10/6/2014
Initial Disclosures Due	11/5/2014
Expert Disclosures Due	3/5/2015
Discovery Closes	4/4/2015
Plaintiff's Pretrial Disclosures	5/19/2015
Plaintiff's 30-day Trial Period Ends	7/3/2015
Defendant's Pretrial Disclosures	7/18/2015
Defendant's 30-day Trial Period Ends	9/1/2015
Plaintiff's Rebuttal Disclosures	9/16/2015
Plaintiff's 15-day Rebuttal Period Ends	10/16/2015

**PARTIES ARE REQUIRED TO HOLD DISCOVERY CONFERENCE**

As noted in the schedule above, the parties are required to schedule and to participate with each other in a discovery conference by the deadline in the schedule. For guidance, see Fed. R. Civ. P. 26(f), Trademark Rule 2.120(a)(2), and TBMP § 401.01. In the conference, the parties are required to discuss (1) the nature of and basis for their respective claims and defenses, (2) the possibility of settling or at least narrowing the scope of claims or defenses, and (3) arrangements for disclosures, discovery and introduction of evidence at trial, if the parties are unable to settle at this time.

Discussion of amendments of otherwise prescribed procedures can include limitations on disclosures and/or discovery, willingness to stipulate to facts, and willingness to stipulate to more efficient options for introducing at trial information or materials obtained through disclosures or discovery.

The parties must hold the conference in person, by telephone, or by any means on which they agree. A Board interlocutory attorney or administrative trademark judge will participate in the conference, upon request of any party, provided that such request is made no later than ten (10) days prior to the conference deadline. See Trademark Rule 2.120(a)(2). A request for Board participation must be made either through an ESTTA filing, or by telephone call to the assigned interlocutory attorney whose name

is on the TTABVue record for this proceeding. A party should request Board participation only after the parties have agreed on possible dates and times for the conference. A conference with the participation of a Board attorney will be by telephone, and the parties shall place the call at the agreed date and time, in the absence of other arrangements made with the Board attorney.

#### **PROTECTIVE ORDER FOR CONFIDENTIAL INFORMATION**

The Board's Standard Protective Order is applicable, and is available at: <http://www.uspto.gov/trademarks/process/appeal/guidelines/stndagmnt.jsp>.

During their conference, the parties should discuss whether they agree to supplement or amend the standard order, or substitute a protective agreement of their choosing, subject to approval by the Board. *See* Trademark Rule 2.116(g) and TBMP § 412. The standard order does not automatically protect a party's confidential information and its provisions for the designation of confidential information must be utilized as needed by the parties.

#### **ACCELERATED CASE RESOLUTION**

During their conference, the parties should discuss whether they wish to seek mediation or arbitration, and whether they can stipulate to follow the Board's Accelerated Case Resolution (ACR) process for a more efficient and economical means of obtaining the Board's determination of the proceeding. For guidance regarding ACR, *see* TBMP § 528. Detailed information on ACR, and examples of ACR cases and suggestions, are available at the Board's webpage, at: <http://www.uspto.gov/trademarks/process/appeal/index.jsp>.

#### **DISCOVERY AND INTERLOCUTORY PROCEDURES**

For guidance regarding discovery, *see* Trademark Rule 2.120 and TBMP Chapter 400, regarding the deadline for and contents of initial disclosures, *see* Trademark Rule 2.120(a)(2) and TBMP § 401.02, and regarding the discoverability of various matters, *see* TBMP § 414. Certain provisions of Fed. R. Civ. P. 26 are applicable in modified form. The interlocutory attorney has discretion to require the parties, or to grant a request made by one or both parties, to resolve matters of concern to the Board, or a contested motion, by telephone conference. *See* Trademark Rule 2.120(i)(1) and TBMP § 502.06(a).

#### **TRIAL**

For guidance regarding trial and testimony procedures, *see* Trademark Rules 2.121, 2.123 and 2.125, as well as TBMP Chapter 700. The parties should review authorities regarding the introduction of evidence during the trial phase, including by notice of reliance and by taking testimony from witnesses. For instance, any notice of reliance must be filed during the filing

party's assigned testimony period, with a copy served on all other parties, and any testimony of a witness must be both noticed and taken during the party's testimony period. A party that has taken testimony must serve on each adverse party a copy of the transcript of such testimony, together with copies of any exhibits introduced during the testimony, within thirty (30) days after completion of the testimony deposition.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing is not required, but will be scheduled upon request of any party, pursuant to Trademark Rule 2.129. For guidance regarding briefing and an oral hearing, *see* TBMP §§ 801-802.

**PARTIES NOT REPRESENTED BY COUNSEL**

This proceeding is similar to a civil action in a federal district court. The Board **strongly** advises all parties to secure the services of an attorney who is familiar with trademark law and Board procedure. Strict compliance with the Trademark Rules of Practice and, where applicable, the Federal Rules of Civil Procedure, is required of all parties, whether or not they are represented by counsel. Parties not represented by such an attorney are directed to read the Frequently Asked Questions, available at the Board's web page: <http://www.uspto.gov/trademarks/process/appeal/index.jsp>.

**PARTIES MUST NOTIFY BOARD OF OTHER PENDING ACTIONS**

If the parties are, or during the pendency of this proceeding become, parties in another Board proceeding or a civil action involving the same or related marks, or involving any issues of law or fact which are also in this proceeding, they shall notify the Board immediately, so the Board can consider whether consolidation and/or suspension of proceedings is appropriate. *See* TBMP § 511.