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Attorney Docket No. 3

06-17-2003

U.S. Patent & TMOfe/TM Mail Rcpt Dt. #73

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of :  
 :  
**CHUNGHWA PICTURE TUBES, LTD.** : Trademark Atty:  
 : **Monique C. Miller**  
 Serial No. 76/260,855 :  
 : Law Office: 108  
 Filed: May 23, 2001 :  
 :  
 Mark: CPT :

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NOTICE OF APPEAL

Commissioner for Trademarks  
Washington, D.C. 20231

Sir:

1. This Notice of Appeal applies to International Class 9.

2. A Credit Card Authorization Form PTO-2038 is submitted herewith to cover the \$100.00 per class U.S. government fee. The Commissioner is hereby authorized to charge to deposit account no. 04-0753, any fees required to prevent abandonment of the application. A duplicate copy of this document is attached.

3. The Office Action comprises a FINAL refusal of registration, which applicant hereby appeals from. All requirements made by the Examiner and not the subject of appeal have been complied with, as required by 37 CFR 2.142(c). The BRIEF OF APPELLANT will be filed within sixty (60) days hereof, as required by 37 CFR 2.142(b).

06/30/2003 KGIBBONS 00000059 76260855

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100.00 OP

June 16, 2003

Date

Respectfully submitted,

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Reg. No. 19,576

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

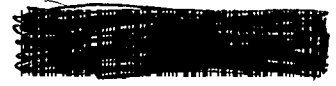
In re Application of  
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Filed: May 23, 2001  
Mark: CPT

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: Trademark Atty:  
: Monique C. Miller  
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: \*\*Please place on Upper Right Corner\*\*  
: \*\*of Response to Office Action ONLY.\*\*

Examining Attorney: MILLER, MONIQUE  
Serial Number: 76/260855

AMENDMENT



Commissioner for Trademarks  
Washington, D.C. 20231

Sir:

In response to the Office Action of December 17, 2002,  
please amend the above-identified application as follows:

Rewrite the Identification of Goods to read:

Televisions; Radios; Antennas; Electric luminescent  
display panels; home theater products, namely, LCD-liquid  
crystal displays; Light emitting diode displays; Liquid  
crystal displays; Deflection yokes; Cathode ray tubes;  
Electron guns for directing and accelerating beams of  
electrons toward the innersurface of a cathode ray tube;  
Electric circuit boards; Liquid crystal displays; Liquid  
crystal display modules; Liquid crystal display projectors;  
Projection televisions; and flat panel displays namely  
plasma display panels and plasma display panel modules in  
International Class 009.

REMARKS

In the aforementioned Office Action, the Examining Attorney stated:

"The Examining Attorney has considered the Applicant's arguments carefully but has found them unpersuasive as to the following goods in Applicant's identification. "Computers" and "personal digital assistants".

For the reasons below the refusal under §2(d) is maintained and made final.

It is Applicant's contention that in view of the deletion of Computers and personal digital assistants from the Identification of Goods there should be no likelihood of confusion. Accordingly, it is respectfully submitted that the final rejection should be withdrawn.

In the aforementioned Office Action the Examining Attorney stated:

The Examining Attorney must compare the marks for similarities in sound, appearance, meaning or connotation. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). Similarity in any one of these elements is sufficient to find a likelihood of confusion (cite omitted).

Here Applicant's mark is highly similar to the registrant's mark as both Applicant's mark and the registrant's mark contain the wording/lettering CPT.

The Examining Attorney went on to state:

When a mark consists of a word portion and a design portion, the word portion is more likely to be impressed upon a purchaser's memory and to be used in calling for the goods or services. (cites omitted)

It is respectfully submitted that considering the marks in their entirety, there is no likelihood of confusion. To be more specific, it is Applicant's contention that in cathode ray Applicant's mark the design is the dominant portion of the mark. That design includes an outline of a cathode ray tube Chinese lettering and in a relatively small portion the letters CPT within the cathode ray tube.

Accordingly, it is Applicant's contention that the marks are not similar in appearance, connotation or commercial impression. As stated in *McCarthy on Trademarks and Unfair Competition* §23:44:

In most composite works, some part of the mark is "dominant" in its total impact upon the ordinary buyer, over and above the "peripheral" elements of the mark.

As stated by McCarthy:

One criteria for determining "dominant portion" of a composite mark is that if a buyer would be more likely to remember and use one part of a mark as indicating origin

of the goods, then this is the "dominant portion" of the mark.

It is respectfully submitted that in the instant case the dominant and literally overwhelming portion of the mark is a design. Accordingly, there should be no likelihood of confusion.

Further, as stated in §23.47 of McCarthy:

It has sometimes been stated that in a word-design composite mark, the words are always presumed to be the "dominant" portion. This might be labeled the "literacy" presumption in that it assumes that words have more impact than designs. A dubious generalization. That this "rule" of word dominance is merely a guideline as shown by cases finding that a design element is "dominant" if more conspicuous than accompanying words.

It is Applicant's contention that in this case the design element is far more conspicuous than the accompanying letters.

As further stated by McCarthy:

The Federal Circuit has cautioned that "there is no general rule as to whether letters or design will dominate in composite marks..."

As further stated by the Examining Attorney under paragraph C comparison of goods:

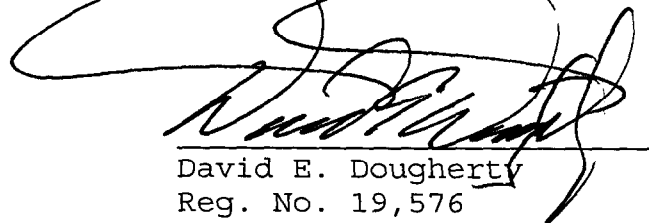
Here Applicant's "host computers" and "personal digital assistants" are highly similar to the registrant's goods identified as "computers" as the registrant's goods identified as "computers" can include or encompass the Applicant's "host computers" and "personal digital assistants."

It is Applicant's contention that since these goods have been deleted from Applicant's statement of goods, there is no longer any likelihood of confusion between the marks. Accordingly, it is Applicant's contention that the present application is now in proper form for publication.

Prompt favorable action is requested.

While Applicant believes that this amendment should place the application in condition for publication, a Notice of Appeal is being filed herewith to avoid abandonment.

Respectfully submitted,



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Reg. No. 19,576

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