

PTO Form 1960 (Rev 9/2007)

OMB No. xxxx-xxxx (Exp. x/xxxx)

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77063672
LAW OFFICE ASSIGNED	LAW OFFICE 116
MARK SECTION (no change)	
ARGUMENT(S)	
<p><u>AMENDMENT AND REQUEST FOR RECONSIDERATION</u></p> <p>The Office Action dated November 16, 2007 making final the refusal to register under Section 2(e)(1) of the Trademark Act has been received and reviewed with Applicant, and Applicant has filed a Notice of Appeal with the Trademark Trial and Appeal Board. However, in order to possibly avoid the delay and expense of proceeding with an unnecessary appeal, Applicant has requested that the appeal be suspended pending a review of this Amendment and Request for Reconsideration. The Amendment and Request for Reconsideration raises a new issue, namely a claim of acquired distinctiveness under Section 2(f) of the Trademark Act supported by nearly five years of use in commerce, and may result in approval of the mark for publication.</p> <p>Based on the following amendment and discussion, Applicant respectfully requests withdrawal of the refusal of registration, and approval of this application for publication. Applicant submits that it has complied with all of the Examining Attorney's requirements, and the application is in condition for publication (<u>see</u>, 37 C.F.R. §2.64(a), and TMEP 1105.04 (g)).</p> <p>Even if, upon reconsideration, the refusal of registration is maintained, it is respectfully requested that this Amendment and Request for Reconsideration, declarations and exhibits be inserted in the application file, so they will be part of the record on appeal to the Trademark Trial and Appeal Board.</p> <p><u>AMENDMENT</u></p> <p>Please insert the following Section 2(f) claim of acquired distinctiveness:</p>	

The mark BAROREFLEX ACTIVATION THERAPY has become distinctive of Applicant's goods as a result of substantially exclusive and continuous use of the mark in interstate commerce in connection with Applicant's goods since at least as early as July 31, 2003.

REMARKS

The Examining Attorney made final the refusal to register Applicant's mark based on the Examining Attorney's conclusion that the mark is merely descriptive of Applicant's recited goods, namely, "Medical devices, namely, implantable electrical stimulators, electrical leads, and computer hardware and software sold as a unit for the electrical stimulation of tissue or nerves used to manage or treat physiological disorders," and therefore that Applicant's mark is not registrable on the Principal Register.

Applicant maintains its position that the mark is not merely descriptive in relation to the recited goods, and therefore that the mark is registrable on the Principal Register. In the alternative, Applicant submits that it is entitled to registration of the subject mark under Section 2(f) of the Trademark Act, based on the wide-spread recognition of BAROREFLEX HYPERTENSION THERAPY among relevant users as a trademark in connection with Applicant's goods. Applicant submits that its claim of distinctiveness under Section 2(f) should be acceptable, and respectfully requests acceptance of the Section 2(f) claim and withdrawal of the refusal to register.

More particularly, the subject mark has been used extensively by Applicant as a trademark in connection with Applicant's goods for nearly five years, since at least as early as July 31 2003. Applicant's BAROREFLEX HYPERTENSION THERAPY products have received a great deal of attention in the medical profession and there is significant consumer exposure to Applicant's mark. The mark is prominently displayed on instructions for use packaged with Applicant's devices, on packaging for the devices, and on Applicant's informational and promotional materials, including print, online and video, concerning the devices for medical professionals and patients. Medical professionals, patients and others who have used Applicant's medical device or have had the device implanted, or have otherwise been involved with medical studies concerning the devices, have been exposed to and are familiar with the mark. The extensive use of the subject mark in the medical field is evidence that the mark has acquired distinctiveness in the trade, and that relevant users and consumers readily perceive the mark primarily as an indicator of the source of Applicant's products.

It is respectfully submitted that Applicant's mark has acquired distinctiveness and functions as an indicator of the source of Applicant's goods. Accordingly, Applicant respectfully requests acceptance of the Section 2(f) claim, withdrawal of the refusal to register, and approval of the application for publication.

EVIDENCE SECTION

EVIDENCE FILE NAME(S)

ORIGINAL PDF FILE	http://tgate/PDF/RFR/2008/05/16/20080516164513640368-77063672-001_001/evi_6316112200-163250023_672-2f-scan.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT\IMAGEOUT\770\636\77063672\xml2\RFR0002.JPG
DESCRIPTION OF EVIDENCE FILE	Declaration in Support of Section 2(f) Claim
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Sandra Epp Ryan/
SIGNATORY'S NAME	Sandra Epp Ryan
SIGNATORY'S POSITION	Attorney for Applicant
DATE SIGNED	05/16/2008
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO
FILING INFORMATION SECTION	
SUBMIT DATE	Fri May 16 16:45:13 EDT 2008
TEAS STAMP	USPTO/RFR-63.161.12.200-2 0080516164513640368-77063 672-42010c7286c6bfealee31 3f67d80f942a7-N/A-N/A-200 80516163250023247

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OMB No. xxxx-xxxx (Exp. x/xxxx)

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. 77063672 has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

AMENDMENT AND REQUEST FOR RECONSIDERATION

The Office Action dated November 16, 2007 making final the refusal to register under Section 2(e)(1) of the Trademark Act has been received and reviewed with Applicant, and

Applicant has filed a Notice of Appeal with the Trademark Trial and Appeal Board. However, in order to possibly avoid the delay and expense of proceeding with an unnecessary appeal, Applicant has requested that the appeal be suspended pending a review of this Amendment and Request for Reconsideration. The Amendment and Request for Reconsideration raises a new issue, namely a claim of acquired distinctiveness under Section 2(f) of the Trademark Act supported by nearly five years of use in commerce, and may result in approval of the mark for publication.

Based on the following amendment and discussion, Applicant respectfully requests withdrawal of the refusal of registration, and approval of this application for publication. Applicant submits that it has complied with all of the Examining Attorney's requirements, and the application is in condition for publication (see, 37 C.F.R. §2.64(a), and TMEP 1105.04(g)).

Even if, upon reconsideration, the refusal of registration is maintained, it is respectfully requested that this Amendment and Request for Reconsideration, declarations and exhibits be inserted in the application file, so they will be part of the record on appeal to the Trademark Trial and Appeal Board.

AMENDMENT

Please insert the following Section 2(f) claim of acquired distinctiveness:
The mark BAROREFLEX ACTIVATION THERAPY has become distinctive of Applicant's goods as a result of substantially exclusive and continuous use of the mark in interstate commerce in connection with Applicant's goods since at least as early as July 31, 2003.

REMARKS

The Examining Attorney made final the refusal to register Applicant's mark based on the Examining Attorney's conclusion that the mark is merely descriptive of Applicant's recited goods, namely, "Medical devices, namely, implantable electrical stimulators, electrical leads, and computer hardware and software sold as a unit for the electrical stimulation of tissue or nerves used to manage or treat physiological disorders," and therefore that Applicant's mark is not registrable on the Principal Register.

Applicant maintains its position that the mark is not merely descriptive in relation to the recited goods, and therefore that the mark is registrable on the Principal Register. In the alternative, Applicant submits that it is entitled to registration of the subject mark under Section 2(f) of the Trademark Act, based on the wide-spread recognition of BAROREFLEX HYPERTENSION THERAPY among relevant users as a trademark in connection with Applicant's goods. Applicant submits that its claim of distinctiveness under Section 2(f) should be acceptable, and respectfully requests acceptance of the Section 2(f) claim and withdrawal of the refusal to register.

More particularly, the subject mark has been used extensively by Applicant as a trademark in connection with Applicant's goods for nearly five years, since at least as early as July 31 2003. Applicant's BAROREFLEX HYPERTENSION THERAPY products have received a great deal of attention in the medical profession and there is significant consumer exposure to Applicant's mark. The mark is prominently displayed on instructions for use packaged with Applicant's devices, on packaging for the devices, and on Applicant's informational and promotional materials, including print, online and video, concerning the devices for medical professionals and patients. Medical professionals, patients and others who have used Applicant's medical device or have had the device implanted, or have otherwise been involved with medical studies concerning the devices, have been exposed to and are familiar with the mark. The extensive use of the subject mark in the medical field is evidence that the mark has acquired distinctiveness in the trade, and that relevant users and consumers readily perceive the mark primarily as an indicator of the source of Applicant's products.

It is respectfully submitted that Applicant's mark has acquired distinctiveness and functions as an indicator of the source of Applicant's goods. Accordingly, Applicant respectfully requests acceptance of the Section 2(f) claim, withdrawal of the refusal to register, and approval of the application for publication.

EVIDENCE

Evidence in the nature of Declaration in Support of Section 2(f) Claim has been attached.

Original PDF file:

http://tgate/PDF/RFR/2008/05/16/20080516164513640368-77063672-001_001/evi_6316112200-163250023_.672-2f-scan.pdf

Converted PDF file(s) (1 page)

Evidence-1

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Sandra Epp Ryan/ Date: 05/16/2008

Signatory's Name: Sandra Epp Ryan

Signatory's Position: Attorney for Applicant

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 77063672

Internet Transmission Date: Fri May 16 16:45:13 EDT 2008

TEAS Stamp: USPTO/RFR-63.161.12.200-2008051616451364

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80f942a7-N/A-N/A-20080516163250023247

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: CVRx, Inc.

Examiner: Tamara G. Fraizer

Serial No.: 77/062672

Law Office No.: 116

Filed: December 13, 2006

Docket: 75453-347392


Mark: BAROREFLEX HYPERTENSION THERAPY

DECLARATION IN SUPPORT OF SECTION 2(f) CLAIM

I, Robert Kieval (name), Chief Technology Officer (title) of Applicant, 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 and false statements may jeopardize the validity of the application or any resulting registration, declare that I am duly authorized by Applicant to make this declaration; that the mark shown in the above-identified application has become distinctive of Applicant's recited goods, as a result of Applicant's substantially exclusive and continuous use of the mark in connection with the recited goods in interstate commerce since at least as early as July 31, 2003; and that all statements of my own knowledge are true and all statements made on information and belief are believed to be true.

Dated: 5-16-08

CVRx, Inc.

By: 

Its: CTO