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

Proceeding	78206550
Applicant	Biorefining, Inc.
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TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: BIOREFINING)	
)	
Serial No.: 78206550)	BEFORE THE
)	TRADEMARK TRIAL
Filed: January 23, 2003)	AND
)	APPEAL BOARD
For: 1865.004US1)	ON APPEAL

APPLICANT'S APPEAL BRIEF

The Applicant has appealed the Trademark Examining Attorney's refusal to register the trademark, BIOREFINING, on the ground that it is merely descriptive within the meaning of §2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1).

FACTS

The Applicant filed an application for the mark BIOREFINING on January 23, 2003 and obtained serial number 7806550.

In a first Office Action mailed July 14, 2003, the Examining Attorney objected to the classification of the services and requested that the trademark application be amended to classify the services in Class 40. The Applicant amended the application to classify the services in Class 40. The Examiner also rejected the application as being merely descriptive and cited several references to support the assertion.

In a second Office Action mailed March 17, 2004, the Examiner maintained the rejection and cited uses of the word "biorefining." The Applicant responded by a showing that the manufacturing process marketed by BIOREFINING is a proprietary, unique process.

ARGUMENT

The service marked by the service mark, BIOREFINING, is the custom manufacture of specialty chemicals in the nature of L-arabinose, hemicellulose, pectins, proteins, monosaccharides, oligosaccharides, and polysaccharides using pressure and temperature based reaction kinetics.

The Applicant has obtained a United States patent, U.S. Pat. No. 6,365,732, on the process of using pressure and temperature and pressure based kinetics to extract the materials mentioned above. The proprietary patented process of the Applicant is different from the processes mentioned in the references provided by the Examining Attorney because of the reliance upon pressure and temperature and not "wet chemistry." As a result, the products extracted using the proprietary process have distinctive tertiary and quaternary structures associated with the proprietary process marked with the BIOREFINING mark. It is believed that the tertiary and quaternary structures obtained from the proprietary process embodiments marked BIOREFINING are very close to native structures, unlike products obtained from traditional wet chemistry. These are not the type of products that those skilled in the art would expect to derive from the type of processes listed by the Trademark Examiner.

CONCLUSION

The Applicant asserts that the mark BIOREFINING is then associated with a distinctive, proprietary patented process for producing products with a distinctive tertiary and quaternary structure. The Applicant respectfully requests the Board of Appeals to reconsider and withdraw the rejection and allow registration of the mark BIOREFINING.

Respectfully submitted,

Janal M. Kalis

Attorney for Applicant