
To: Azimuth Systems, Inc. (tfd@mbbp.com)
Subject: TRADEMARK APPLICATION NO. 78285760 - AZIMUTH DIRECTOR
- AZITM05
Sent: 12/12/05 2:51:45 PM
Sent As: ECOM106@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE**SERIAL NO:** 78/285760**APPLICANT:** Azimuth Systems, Inc. **CORRESPONDENT ADDRESS:**

Thomas F. Dunn
Pendleton, P.C.
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1601 Trapelo Road
Waltham, MA 02451

RETURN ADDRESS:

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

If no fees are enclosed, the address should
include the words "Box Responses - No Fee."

MARK: AZIMUTH DIRECTOR**CORRESPONDENT'S REFERENCE/DOCKET NO:** AZITM05

Please provide in all correspondence:

CORRESPONDENT EMAIL ADDRESS:

tfd@mbbp.com

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address..

Serial Number 78/285760

Applicant is requesting reconsideration of a final refusal dated August 23, 2005.

After careful consideration of the law and facts of the case, the examining attorney must deny the request for reconsideration and adhere to the final action as written since no new facts or reasons have been presented that are significant and compelling with regard to the point at issue.

The applicant cites a voice mail, wherein the examining attorney indicated, in response to applicant's argument to the contrary, "hat the fact the applicant owns another similar registration does not exclude registration of the existing mark. The applicant claims this is quite rare, the applicant's assertion is incorrect with regard to "who filed first." The applicant may assert certain common law rights which are beyond the jurisdiction of the examining attorney. Such information is relevant to a formal cancellation proceeding and is not appropriate matter for *ex parte* examination. TMEP §1207.01(d)(iv).

During *ex parte* prosecution, an applicant will not be heard on matters that constitute a collateral attack on the cited registration such as a registrant's nonuse of the mark. See *In re Dixie Restaurants*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997); *In re Calgon Corp.*, 435 F.2d 596, 168 USPQ 278 (C.C.P.A. 1971); *Cosmetically Yours, Inc. v. Clairol Inc.*, 424 F.2d 1385, 1387, 165 USPQ 515, 517 (C.C.P.A. 1970); *In re Peebles Inc.* 23 USPQ2d 1795, 1797 n. 5 (TTAB 1992); *In re White Swan Ltd.*, 8 USPQ2d 1534 (TTAB 1988); *In re Pollio Dairy Products Corp.*, 8 USPQ2d 2012, 2014-15 (TTAB 1988).

Accordingly, applicant's request for reconsideration is *denied*. The time for appeal runs from the date the final action was mailed. 37 C.F.R. Section 2.64(b); TMEP Section 715.03(c).

/pbm/
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