

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	79117368
LAW OFFICE ASSIGNED	LAW OFFICE 109
MARK SECTION (no change)	
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_216759226-114114862_.20131022105440495.pdf
CONVERTED PDF FILE(S) (2 pages)	\\TICRS\EXPORT16\IMAGEOUT16\791\173\79117368\xml11\RFR0002.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\791\173\79117368\xml11\RFR0003.JPG
DESCRIPTION OF EVIDENCE FILE	Please see attached.
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Constance Golden/
SIGNATORY'S NAME	Constance Golden
SIGNATORY'S POSITION	Attorney for Applicant, New York Bar Member
SIGNATORY'S PHONE NUMBER	212 885 9206
DATE SIGNED	10/22/2013
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Tue Oct 22 11:46:44 EDT 2013

TEAS STAMP

USPTO/RFR-216.75.92.26-20
131022114644359625-791173
68-500c082d0e3da4730731b8
362755862c6e962861e49ce74
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20131022114114862539

PTO Form 1930 (Rev 9/2007)
OMB No. 0651-0050 (Exp. 05/31/2014)

Request for Reconsideration after Final Action To the Commissioner for Trademarks:

Application serial no. **79117368** has been amended as follows:

EVIDENCE

Evidence in the nature of Please see attached. has been attached.

Original PDF file:

[evi_216759226-114114862_.20131022105440495.pdf](#)

Converted PDF file(s) (2 pages)

[Evidence-1](#)

[Evidence-2](#)

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Constance Golden/ Date: 10/22/2013

Signatory's Name: Constance Golden

Signatory's Position: Attorney for Applicant, New York Bar Member

Signatory's Phone Number: 212 885 9206

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 filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 79117368

Internet Transmission Date: Tue Oct 22 11:46:44 EDT 2013
TEAS Stamp: USPTO/RFR-216.75.92.26-20131022114644359
625-79117368-500c082d0e3da4730731b836275
5862c6e962861e49ce74a5ee63a4b8acb370-N/A
-N/A-20131022114114862539

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Trademark Application of
Pharma Nord ApS

Serial No. 79/117368

Filed: June 13, 2012

Mark: **SELENOQ10**

Richard F. White
Examining Attorney

Law Office 109

Attorney Docket No. 996035

I. GENERIC OBJECTION

Assuming the risk of redundancy but for the sake of emphasis, it is respectfully submitted that the mark is not generic of the identified goods.

In this case, the record simply does not show, by “clear evidence,” that the consuming public understands applicant’s mark to be the name of the category of the identified services. The articles cited are of little probative value because they do not show generic usage of the entire mark. Significantly, all references to the entire mark SELENOQ10 show that the term is associated with the applicant and no other source. All other citations are to separate components of the mark, either “seleno” or “Q10”. Such citations are not relevant because a mark must be considered as a whole. See, e.g. *In re Hutchinson Technology Inc.*, 852 F2d 552,554, 7 USPQ2d 1490, 1492 (Fed. Cir. 1988) (“the mark sought to be registered is not HUTCHINSON or TECHNOLOGY, but HUTCHINSON TECHNOLOGY”)’ *Concurrent Techs. Inc. v. Concurrent Technologies Corp.*, 12 USPQ2d 1054, 1057 (TTAB 1989) (although “concurrent” has a meaning in the computer field[, it] does not follow ... that the mark in its entirety, that is, ‘CONCURRENT TECHNOLOGIES CORPORATION’, is merely descriptive.”) When discussed, the terms “Seleno” and “Q10” are used with the conjunctive term “and” or the sign “+”. Thus there is no showing that these articles constitute actual or potential purchasers of applicant’s goods.

The citations do not show that applicant’s mark SELENOQ10 is generic for applicant’s identified goods.

II. DESCRIPTIVE OBJECTION

Applicant’s mark is merely suggestive rather than descriptive of the identified goods. The mark requires a multi-step thought process to link applicant’s mark to the goods identified in this application.

Moreover, there is no evidence to suggest that anyone else has used the phrase SELENOQ10. Similarly, in *BellSouth Corp. v. Planum Tech. Corp.*, 14 USPQ2d 1555, 1556 (TTAB 1992), the Board held that PHONE FORWARD was suggestive of automatic telephone call diverters because it was an unusual wording:

With respect to the issue of mere descriptiveness, opposer has offered little other than argument that the term "PHONE" is descriptive and has been disclaimed by applicant and that the accompanying term "FORWARD" is descriptive of the diverter feature of applicant's goods.... [A]pplicant's mark is a somewhat incongruous combination of words and requires a modicum of imagination or thought before one is able to determine the nature of applicant's product.

Applicant's mark SELENOQ10 similarly consists of separate words. There is no evidence to suggest that anyone other than applicant has used the entire phrase in connection with the identified goods or anything else. It is only with imagination that these words can be linked to applicant's: "Pharmaceutical and veterinary preparations; sanitary preparations for medical purposes; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides; dietetic foodstuffs for medical use and dietetic food supplements for medical use; vitamin and mineral preparations" in class 5.

It is well-settled that reasonable doubts as to a mark's suggestiveness or descriptiveness must be resolved in an applicant's favor, and that the mark should be published so that any person who believes he or she would be damaged by registration of the mark can file an opposition. *Merrill Lynch*, 828 F2d at 1571, 4 USPQ2d at 1144; *In re Waverly Inc.*, 27 USPQ2d 1620, 1624 (TTAB 1993); *In re Atavio*, 25 USPQ2d 1361, 1363 (TTAB 1992); *In re Intelligent Medical Systems Inc.*, 5 USPQ2d 1674, 1676 (TTAB 1987); *In re Bel Paese Sales Co.*, 1 USPQ2d 1233, 1236 (TTAB 1986).

CONCLUSION

Based on the foregoing, applicant respectfully submits that SELENOQ10 is merely suggestive of the recited goods, and therefor should proceed to publication.

Respectfully submitted

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