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

Proceeding	79280678
Applicant	POLYTEC Holding AG
Applied for Mark	POLYTEC
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Submission	Request for remand/amendment
Attachments	00072014.PDF(86510 bytes) 00072015.PDF(93880 bytes)
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Date	07/29/2021

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

July 29, 2021

IN RE:
POLYTEC Holding AG

SERIAL NO. 79280678

APPEAL RECEIVED: **04/30/2021**

BRIEF DUE: **07/29/2021**

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**APPLICANT'S REQUEST FOR REMAND
FOR CONSIDERATION OF ITS PROPOSED AMENDMENT
TO THE IDENTIFICATION OF GOODS**

Applicant's deadline for filing its main brief is today, July 29, 2021 according to a July 6, 2021 order approving applicant's request for a first extension of time to file its brief.

Applicant is submitting with this request a proposed amendment to the identifications of goods in classes 007 and 012. Applicant has a good faith belief that the proposed ID amendments will overcome the objections of the trademark examining attorney. This could reduce the number of issues on appeal and might resolve the appeal in its entirety.

This request would have been better filed during or before the extension period. Applicant's counsel attempted to file a request for reconsideration but was, ultimately, thwarted by technical issues. In other words, the examining attorney has not had the opportunity to consider applicant's proposed amendment.

Based on the history of the case and other considerations, including the possibility of resolving all of the issues on appeal, without taking up any more of the Board's resources, applicant asks the Board to remand the application to the examining attorney for consideration of the amendment.

Respectfully submitted,
/David C. Purdue/
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Attorney for Applicant

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July 29, 2021

IN RE:
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SERIAL NO. 79280678

Applicant's Proposed Amendments to the Identification of Goods

Applicant proposes to amend the Identification of Goods in Classes 007 and 012 to read as follows:

IC 007:

mixing and dosing machines

IC 012:

Parts and fittings for vehicles, namely, automotive exterior and interior decorative and protective trim,
Expansion pressure systems,
Chain adjustment systems,
Charge air ducts,
Venting systems,
Intake manifolds,
Cable boxes,
Coolant pipes and reservoirs,
Engine covers,
Boxes for electronic components,
Transmission oil pans,
Oil pans,
Timing belt covers,

Air filtration systems,
Drive shaft guards,
Cylinder head covers,
battery trays,
truck wells,
battery box covers,
mounting supports,
cabin floors

Applicant submits that the amended identification of goods is no longer subject to objection. Entry of the amendment is requested.

Further, applicant submits that the pending refusals to register the mark under Section (2)(d), for goods in class 012, should be withdrawn in view of the amended identification of goods.

Registration of the applied-for mark is refused because of a likelihood of confusion with the marks in U.S. Registration Nos. 2435299, 4345315 and 4698739.

The examining attorney duly notes:

The Registrant in U.S. Registration No. 2435299 owns the mark POLY-TECH for use with “Land-vehicle parts, namely, wheels for industrial/institutional use”.

The Registrant in U.S. Registration No. 4345315 owns the mark POLYTEX for use with “Synthetic fiber acoustical insulation for acoustically insulating vehicle interiors.”

The Registrant in U.S. Registration No. 4698739 owns the mark POLYTECH for use with “Flexible storage systems for vehicles comprising automotive envelope nets, door panel nets, front and back seat nets, rear arm rest nets, trunk floor nets, multi-purpose tie down nets and truck bed cover nets, fasteners and parts therefor; spare tire covers;

automobile accessories, namely, car interior organizer bags, nets and trays specially adapted for fitting in the trunks of vehicles”.

First, applicant points out that the cited registrations might be considered to indicate that similar sounding marks are each eligible for registration if there is an adequate degree of difference between the goods, even if the marks are all used, speaking broadly in the vehicle field. Of course, this application must be examined on its own merits.

Part of the problem, as the examining attorney notes, is that the applicant broadly identified its good in class 012 as parts and fittings for vehicles. In the amended ID, applicant’s class 012 goods do not overlap with the goods in any of the cited registrations. Specifically, the amended ID for class 012 does not include “Land-vehicle parts, namely, wheels for industrial/institutional use” as listed in Registration No. 2435299. Also, the amended ID for class 012 does not include “Synthetic fiber acoustical insulation for acoustically insulating vehicle interiors” as listed in Registration No. 4345315. Further, the amended ID for class 012 does not include “Flexible storage systems for vehicles comprising automotive envelope nets, door panel nets, front and back seat nets, rear arm rest nets, trunk floor nets, multi-purpose tie down nets and truck bed cover nets, fasteners and parts therefor; spare tire covers; automobile accessories, namely, car interior organizer bags, nets and trays specially adapted for fitting in the trunks of vehicles” as listed in Registration No. 4698739. Not only do the goods not overlap, applicant submits that the goods in amended class 012 ID are different enough from the goods in the three cited registrations that there is not a likelihood of confusion.

Withdrawal of the objections to the identification of goods and withdrawal of the refusals are respectfully requested.

Respectfully submitted,
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