

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85259696
LAW OFFICE ASSIGNED	LAW OFFICE 115
MARK SECTION (no change)	
ARGUMENT(S)	<p>In response to the Trademark Attorney's Final Office Action dated January 6, 2012, the following documentation, amendments and remarks are respectfully submitted in connection with the above-identified application.</p> <p style="text-align: center;"><u>DOCUMENTATION</u></p> <p style="text-align: center;">Mark as proposed to be used in connection with the goods.</p> <p style="text-align: center;"><u>IN THE APPLICATION</u></p> <p>Please insert the following disclaimer: --No claim is made to the exclusive right to the word "THREAD" apart from the mark as shown.--</p> <p style="text-align: center;"><u>REMARKS</u></p> <p>Applicant thanks the Trademark Attorney for the very thorough consideration given the present application.</p> <p style="text-align: center;"><u>DESCRIPTIVENESS OF THE MARK</u></p> <p>The Trademark Attorney has issued a final refusal to register the mark based on the contention that the mark is merely descriptive of the goods. The Trademark Attorney is respectfully advised that some of the Applicant's goods contain a thread which is composed of cellulose acetate with coloring. A mentholation process will occur through the application of the menthol onto a foil material. The thread filter will serve more as a visual cue indicating a higher mentholation versus Applicant's current</p>

menthol product which is being offered. This information was provided to the Trademark Attorney in the Applicant's Amendment dated December 8, 2011. Because some of the Applicant's goods contain a thread as indicated above, Applicant hereby disclaims the word "thread" apart from the mark as shown. Entry of the disclaimer into the official record is respectfully requested.

Applicant submits that the words "flavor" and "technology" are not merely descriptive of the Applicant's goods. With regard to the word "technology," Applicant submits that this term has nothing to do with the thread which was added in the Applicant's goods or any feature of the Applicant's goods. The Trademark Attorney attached one of the uncovered excerpts to indicate that "the filter thread option is a heated applicator designed to allow flavor loading of a textile yard (thread) for direct incorporation into the filter tow." However, this information does not describe the Applicant's goods. In the Trademark Attorney's GOOGLE search engine information regarding Japan Tobacco, it stated that the thread is to "produce a stronger menthol sensation." There is no such technology called "flavor thread technology." Therefore, there is doubt regarding the mark's descriptiveness. Any doubt regarding the mark's descriptiveness should be resolved on Applicant's behalf. *In re Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 828 F.2d 1567, 1571 4 USPQ2d 1141, 1144 (Fed. Cir. 1987); and *In Re Grand Forest Holdings*, 78 USPQ2d 1152, 1156 (TTAB 2006).

REQUIREMENT FOR INFORMATION

The Trademark Attorney requested that the Applicant submit additional product information regarding the goods to permit proper examination of the application. Applicant submits a document that shows a proposed use of the mark in connection with the goods for the Trademark Attorney's review. The document shows "Discover Wave's unique Flavor Thread Technology™ that delivers MaXimum menthol experience." The attached document provides additional information for the review of the Trademark Attorney.

CONCLUSION

Since all the requirements of the Trademark Attorney have been complied with, it is believed that the present application should be in condition for publication. Therefore, an early Notice of Publication is respectfully requested.

Please charge any fees or credit any overpayment pursuant to 37 C.F.R. § 2.6 to Deposit Account No. 02-2448.

EVIDENCE SECTION

EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	<u>evi 1691301914-154223584 . 2012-06-29 - Documentation.PDF</u>
CONVERTED PDF FILE(S) (2 pages)	<u>\\TICRS\EXPORT16\IMAGEOUT16\852\596\85259696\xml1\RFR0002.JPG</u>
	<u>\\TICRS\EXPORT16\IMAGEOUT16\852\596\85259696\xml1\RFR0003.JPG</u>
DESCRIPTION OF EVIDENCE FILE	Mark as proposed to be used in connection with the goods.
ADDITIONAL STATEMENTS SECTION	
DISCLAIMER	No claim is made to the exclusive right to use 'thread' apart from the mark as shown.
SIGNATURE SECTION	
RESPONSE SIGNATURE	/James M. Slattery/
SIGNATORY'S NAME	James M. Slattery
SIGNATORY'S POSITION	Attorney of Record, VA Bar
SIGNATORY'S PHONE NUMBER	703-205-8000
DATE SIGNED	06/29/2012
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO
FILING INFORMATION SECTION	
SUBMIT DATE	Fri Jun 29 16:46:07 EDT 2012
TEAS STAMP	USPTO/RFR-169.130.19.14-2 0120629164607651034-85259 696-4905516c91d9478e3168c f031e3f89f615-N/A-N/A-201 20629154223584334

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 1691301914-154223584-2012-06-29-Documentation.PDF

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

Application serial no. **85259696** has been amended as follows:

ARGUMENT(S)

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

In response to the Trademark Attorney's Final Office Action dated January 6, 2012, the following documentation, amendments and remarks are respectfully submitted in connection with the above-identified application.

DOCUMENTATION

Mark as proposed to be used in connection with the goods.

IN THE APPLICATION

Please insert the following disclaimer:

--No claim is made to the exclusive right to the word "THREAD" apart from the mark as shown.--

REMARKS

Applicant thanks the Trademark Attorney for the very thorough consideration given the present application.

DESCRIPTIVENESS OF THE MARK

The Trademark Attorney has issued a final refusal to register the mark based on the contention that the mark is merely descriptive of the goods. The Trademark Attorney is respectfully advised that some of the Applicant's goods contain a thread which is composed of cellulose acetate with coloring. A mentholation process will occur through the application of the menthol onto a foil material. The thread filter will serve more as a visual cue indicating a higher mentholation versus Applicant's current menthol product which is being offered. This information was provided to the Trademark Attorney in the Applicant's Amendment dated December 8, 2011. Because some of the Applicant's goods contain a thread as indicated above, Applicant hereby disclaims the word "thread" apart from the mark as shown. Entry of the disclaimer into the official record is respectfully requested.

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Please charge any fees or credit any overpayment pursuant to 37 C.F.R. § 2.6 to Deposit Account No. 02-2448.

EVIDENCE

Evidence in the nature of Mark as proposed to be used in connection with the goods. has been attached.

Original PDF file:

evi_1691301914-154223584_2012-06-29 - Documentation.PDF

Converted PDF file(s) (2 pages)

Evidence-1

Evidence-2

ADDITIONAL STATEMENTS

Disclaimer

No claim is made to the exclusive right to use 'thread' apart from the mark as shown.

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /James M. Slattery/ Date: 06/29/2012

Signatory's Name: James M. Slattery

Signatory's Position: Attorney of Record, VA Bar

Signatory's Phone Number: 703-205-8000

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: 85259696

Internet Transmission Date: Fri Jun 29 16:46:07 EDT 2012

TEAS Stamp: USPTO/RFR-169.130.19.14-2012062916460765

1034-85259696-4905516c91d9478e3168cf031e

3f89f615-N/A-N/A-20120629154223584334



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SURGEON GENERAL'S WARNING
Smoking Causes Lung Cancer, Heart Disease,
Emphysema, And May Complicate Pregnancy.

COLOR REFERENCES

- PANTONE 362 C
- PANTONE 445
- PANTONE 3495 BK C
- PANTONE 8362 C
- PANTONE 449 C



COLOR REFERENCES:

-  PANTONE 302 C
-  PANTONE 343 C
-  PANTONE 386 C
-  PANTONE 392 C
-  PANTONE 190 C