

ESTTA Tracking number: **ESTTA541539**

Filing date: **06/04/2013**

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

Proceeding	85459999
Applicant	Blue Star Power Systems, Inc.
Correspondence Address	EDMUND J. SEASE MCKEE, VOORHEES & SEASE, P.L.C 801 GRAND AVENUE, SUITE 3200 DES MOINES, IA 50309-2721 UNITED STATES patatty@ipmvs.com
Submission	Reply Brief
Attachments	Reply_Brief_6-4-13_EJS.pdf(1080562 bytes)
Filer's Name	Edmund J. Sease
Filer's e-mail	patatty@ipmvs.com
Signature	/Edmund J. Sease/
Date	06/04/2013

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

In re Trademark Application of:

Applicant: Blue Star Power Systems, Inc.
Serial No: 85/459,999
Mark: BLUE STAR POWER SYSTEMS
International Class: 7

REPLY BRIEF

I. THE EXAMINER HAS IGNORED APPLICANT'S AMENDMENTS

During prosecution Applicant amended its description two significant ways. First, generators were limited to generators of at least twenty kWe and second, they were limited to being sold through distributors, not retail. Both of these limitations were made to make likelihood of confusion even further remote. The registration cited under 2(d) is not for related goods. It is for smaller generators, portable in nature and sold retail. In this regard the Board is directed to the declaration of Doug Fahrforth showing that his company's large power generators are much larger in physical size (even far larger than a human being) and often sell for from \$10,000.00 for the smallest unit to \$500,000.00 for the largest unit; and they are sold only through distributors. In contrast, the cited registrants goods for registration 1,662,307 are portable welding and power generators, typically used on farms and sell for \$2,600.00 to \$2,900.00 (see brochure in appendix). The different channels of trade confirm the evidence already of record of no lack of confusion ever having occurred despite years of coexistence, see Fahrforth Affidavit paragraph 7. The amendments make limiting to large power generators and non-retail distribution, assume no likelihood of confusion.

II. THE EXAMINER IS WRONG WHEN HE SAYS THE GOODS ARE IDENTICAL AND THEIR CHANNELS OF TRADE ARE CLOSELY RELATED

The argument made by the Examiner simply ignores the evidence of record i.e. the Fahrforth Affidavit and the amendments made to Applicant's goods description. To say that the goods are identical because they both produce electrical power is like saying that lighting and lighting bugs are identical because they both product light! Applicant is entitled to a fair and reasonable addressing of the changes in the description of the goods and the limitation to the distribution to non-retail channels of trade which are not even addressed by the Examiner in his answer.

III. THE EXAMINER MUST CONSIDER THE TOTALITY OF CIRCUMSTANCES

The Examiner has not adequately addressed the Doug Fahrforth Affidavit and the totality of circumstances including the amendments made by the Applicant. When and if one does it reveals the following:

- (1) We restricted our goods to large 20 kWe and bigger generators to distinguish theirs;
- (2) Our large 20 kWe generators are in a different channel of trade;
- (3) Our mark in totality does have differences, which he chooses to ignore, i.e. more words than Bluestar;
- (4) The price is a dramatic difference;
- (5) Co-existence with no problem is evidence of no likelihood of confusion.

Thus the totality of circumstances, all relevant under the duPont factors, leads to a conclusion that it is more probable than not that there is no likelihood of confusion under 2(d). The Examiner should be reversed, which is solicited.

Respectfully submitted,



EDMUND J. SEASE, Reg. No. 24,741
McKEE, VOORHEES & SEASE, P.L.C.
801 Grand Avenue, Suite 3200
Des Moines, Iowa 50309-2721
Phone No. (515) 288-3667
Fax No. (515) 288-1338
CUSTOMER NO: 22885

Attorneys of Record

-EJS/smg