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

Proceeding	85984162
Applicant	Clear Image, Inc.
Applied for Mark	CLEARBAGS
Correspondence Address	GRANT R CLAYTON CLAYTON HOWARTH & CANNON PC PO BOX 1909 SANDY, UT 84091-1909 UNITED STATES Email: docketclerk@chcpat.com
Submission	Applicants Request for Remand and Amendment
Attachments	Request_for_Remand.pdf(90450 bytes )
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Signature	/Grant R. Clayton/
Date	04/16/2018

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

APPLICANT:	Clear Image Inc.	)	
		)	
MARK:	CLEARBAGS	)	
		)	
SERIAL NO.:	85/984,162	)	REQUEST FOR REMAND
		)	
FILED:	July 1, 2013	)	
		)	
EXAMINING		)	
ATTORNEY:	Jason P. Blair	)	
		)	
PARALEGAL:	Monique Hill-Tyson	)	

**REQUEST FOR REMAND**

Applicant, Clear Image Inc., by and through its counsel, hereby requests that the Trademark Trial and Appeal Board (hereinafter referred to as the “Board”) remand the above referenced application to the Examining Attorney pursuant to TBMP 1205.01 and 1209.4<sup>1</sup> for consideration of the amendment and request to divide attached hereto as Exhibit A.

Good cause exists for remanding for consideration of the amendment because Applicant will amend its identification of goods to obviate the only refusal being raised by the Examining

<sup>1</sup>Applicant acknowledges that a Request For Remand was previously filed on April 25, 2017. That remand was granted and upon action by the Examining Attorney in view of the amendment which accompanied the Request for Remand, resulted in approval for publication. Moreover, Applicant also divided the application prior to publishing, which has now led to the application, being back before the Board in this appeal. Applicant believes that a request for remand will again result in approval for publication upon granting of the Request for Remand, and such is good cause to grant the Request for Remand. Applicant notes support for granting the present Request for Remand can be found at TBMP 1205.01, which notably states:

The Board will also treat as a request for remand an amendment filed after the filing of a notice of appeal, even if filed within six months of the final action, if the examining attorney had previously acted on an amendment or request for reconsideration after the filing of the notice of appeal. Similarly, if the amendment is filed along with the applicant's appeal brief or thereafter, even if filed within six months of the final action, the Board will treat the submission as a request for remand. See TBMP § 1204. The amendment must accompany the request for remand. Both the request and the amendment should be submitted through ESTTA. The amendment should not be filed separately through TEAS.

Attorney.<sup>2</sup> By way of the attached, and with the help of the Examining Attorney upon remand, Applicant believes the present application will be in condition for approval for publication. Accordingly, good cause exists and Applicant respectfully requests that the Board grant this Request for Remand.

Applicant expresses thanks for the attention provided to this Request. Any questions regarding this Request can be directed to the undersigned.

Respectfully submitted this 16<sup>th</sup> day of April, 2018.

CLAYTON HOWARTH, P.C.

/Grant R. Clayton/

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<sup>2</sup>Additionally, TBMP 1209.04 notably states:

However, if the examining attorney denies a request for reconsideration after the appeal is filed, a second request for reconsideration will be treated as a request for remand even if it is filed within six months of the final Office action.

Both of this section, and the previously cited section, indicate that a Request for Remand is the proper procedure when also amending an application, when filed within six months of the final action, and TBMP 1209.04 further specifies that a second request for reconsideration is treated as a request for remand. Applicant respectfully submits that it follows that good cause for granting this Request for Remand is readily available.

# Exhibit A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT:	Clear Image Inc.	)	
		)	
MARK:	CLEARBAGS	)	
		)	AMENDMENT
SERIAL NO.:	85/984,162	)	AND
		)	REQUEST TO DIVIDE
FILED:	July 1, 2013	)	
		)	
EXAMINING		)	
ATTORNEY:	Jason P. Blair	)	

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**AMENDMENT**  
**AND**  
**REQUEST TO DIVIDE PRIOR TO APPROVAL FOR PUBLICATION**

Applicant, Clear Image Inc., by and through its counsel, hereby submits the below amendment and arguments to be considered by the Examining Attorney upon remand of the application from the Trademark Trial and Appeal Board (the “Board”).

While Applicant believes its CLEARBAGS mark is not descriptive of the goods, and has acquired distinctiveness as shown by the testimonies of industry leaders *and* over five years’ use in commerce, and is *not* generic of any of its goods, as detailed in its November 20, 2017 Response to Office Action, Applicant requests entry of this amendment to further prosecution and requests a division of this application. Specifically, Applicant respectfully requests that its identifications of goods in class 016 and class 018 be amended as detailed below, in advance of a division of its application that will leave all goods remaining in the present application free of rejection to be approved for publication.

Specifically, Applicant requests entry of the following identification of goods in the new divisional application:

Decorative plastic polymer food storage bags for household use; gift bags with handles, fabricated from a polymer; Reclosable bags with or without hang holes; comic book bags; decorative food bags; ice cream cone bags; cupcake bags; gift bags with handles; flat bags; general purpose polymer bags adapted for hanging from door knobs; polymer bags specifically adapted for carrying CDs and DVDs; bags specifically adapted for carrying jewelry, fabricated from a polymer; polymer bait bags for holding live bait worms; polymer fly fishing tackle bags; Decorative plastic silver-color backed polymer food storage bags for household use; gift bags with handles, fabricated from a frosted polymer; Reclosable bags with or without hang holes with an opaque block; decorative printed food bags (International Class 16);

All-purpose carrying bags, all fabricated from a polymer, and all for travel, and not as packaging, namely, flap seal bags, protective closure bags, laminated protective closure bags, flap bags, hanging bags, protective closure hanging bags, gusset bags, side gusset bags, flat bottom gusset bags, heavy duty gusset bags, clear print gusset bags, bottom gusset bags, reclosable bags, with and without hang holes, comic book bags, cone-shaped bags, roll bags; All-purpose carrying bags, all fabricated from a frosted polymer, and all for travel, and not as packaging, namely, hanging bags; All-purpose carrying bags, all fabricated from a polymer and all for travel, and not as packaging, namely, flat bottom gusset bags with a paper insert; All-purpose carrying bags, all fabricated from a polymer, all silver-color backed, and all for travel, and not as packaging, namely, gusset bags, heavy duty gusset bags, reclosable bags; All-purpose carrying bags, all fabricated from a printed polymer and all for travel, and not as packaging, namely gusset bags, side gusset bags, flat bottom gusset bags, clear print gusset bags (International Class 18).

Importantly, Applicant asserts that the above recited goods, which are “frosted,” “silver-color backed,” “printed,” “opaque block,” and “paper insert” goods clearly should not be subject to refusal under Section 2(e)(1) or, alternatively, under a generic refusal.

Applicant additionally requests a division of present application, once the application has been remanded from the Board, and after the amendment of the application, leaving the following goods remaining in the instant application:

Decorative plastic polymer food storage bags for household use; gift bags with handles, fabricated from a polymer; Reclosable bags with or without hang holes; comic book bags; decorative food bags; ice cream cone bags; cupcake bags; gift bags with handles; flat bags; general purpose polymer bags adapted for hanging

from door knobs; polymer bags specifically adapted for carrying CDs and DVDs; bags specifically adapted for carrying jewelry, fabricated from a polymer; polymer bait bags for holding live bait worms; polymer fly fishing tackle bags (International Class 016);

All-purpose carrying bags, all fabricated from a polymer, and all for travel, and not as packaging, namely, flap seal bags, protective closure bags, laminated protective closure bags, flap bags, hanging bags, protective closure hanging bags, gusset bags, side gusset bags, flat bottom gusset bags, heavy duty gusset bags, clear print gusset bags, bottom gusset bags, reclosable bags, with and without hang holes, comic book bags, cone-shaped bags, roll bags (International Class 018).

The undersigned has in the past attempted to effectuate a division of an application while jurisdiction over the application was with the Board on appeal, using a complicated procedure relatively unfamiliar to those charged with handling the application, which resulted in a delay in processing the application, with multiple resultant complications. Accordingly, the undersigned respectfully asks for the Examining Attorney's assistance in taking jurisdiction of the application, entering the amendment to the identification of goods, and thereafter proceeding to perform the requested Request to Divide as indicated above before approving the present application for publication.

The undersigned and the Applicant expresses appreciation in advance for help moving the amended goods forward to publication and registration while maintaining the present goods for further prosecution.<sup>1</sup>

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<sup>1</sup>There being no outstanding Office Action, Applicant need not respond to any refusals. TMEP 1110.05. However, out of an abundance of caution, Applicant hereby incorporates by reference the responses filed in the above captioned application on November 30, 2017 and April 18, 2014.

Applicant appreciates in advance the attention of the Examining Attorney to this filing.

Any fees needed to process a Request to Divide can be charged to Deposit Account No. 50-0836, including Fee Codes 6001/7009 and 6006/7008.

Respectfully submitted this 16<sup>th</sup> day of April, 2018.

CLAYTON HOWARTH, P.C.

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