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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_20180802.pdf(92214 bytes)
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Signature	/Grant R. Clayton/
Date	08/02/2018

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 1209.4.¹

¹Applicant acknowledges that a Request For Remand was previously filed on April 16, 2018. That remand was accepted and resulted in a published application. Applicant divided the application prior to publishing, which led to the present application being back on appeal. Applicant believes that a request for remand will again result in a published application, if the request is granted, and thus good cause exists for granting remand. Precedent for a multiple requests for remand is found in 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.

(continued...)

Applicant hereby requests consideration of the attached Amendment and Request to Divide attached hereto as Exhibit A.

Good cause exists for remanding for consideration of the amendment because Applicant intends to amend its identification of goods to obviate refusals. 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 its 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 2nd day of August, 2018.

CLAYTON HOWARTH, P.C.

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¹(...continued)

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 these TBMP sections 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 it is proper to file this Request for Remand.

EXHIBIT A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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

AMENDMENT

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, or has acquired distinctiveness, as shown by the testimonies of industry leaders, consumers, competitors *and* over five years’ use in commerce, and that its CLEARBAGS mark is *not* generic of any of its goods, as detailed in the evidence submitted with its September 25, 2015 Response to Office Action and in the remarks in the November 30, 2017 Response to Office Action, Applicant requests entry of this amendment to further prosecution and requests a division of its 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 identifications of goods in the application (which will be divided from the present 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; Reclosable bags with or without hang holes with a colored opaque block; decorative food bags with an opaque printed pattern, in International Class 16; and

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 an opaque printed patterned polymer and all for travel, and not as packaging, namely gusset bags, side gusset bags, flat bottom gusset bags, clear print gusset bags, in International Class 18.

Additionally, Applicant believes a number of its above recited “colored opaque block,” “opaque printed pattern” and opaque printed patterned polymer” related goods should not be subject to refusal under Section 2(e)(1) or, alternatively, under a generic refusal.

REQUEST TO DIVIDE

Applicant additionally requests a division of the 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, which Applicant submits will be in condition for approval for publication:

Reclosable bags with or without hang holes with a colored opaque block; decorative food bags with an opaque printed pattern, in International Class 16; and

All-purpose carrying bags, all fabricated from an opaque printed patterned polymer and all for travel, and not as packaging, namely gusset bags, side gusset bags, flat bottom gusset bags, clear print gusset bags, in International Class 18.

Applicant requests the following goods placed in a divisional application to allow retention of rights while dividing goods so that the present application may be ready for publication:

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, in International Class 16; and

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, in International Class 18.

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 nearly 10 month delay in processing the divisional application, with multiple resultant complications.

Accordingly, the undersigned 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. The undersigned and the Applicant expresses appreciation in advance for help moving the pertinent goods forward to

publication and registration while maintaining rights to the goods to be prosecuted in the divisional application.

Applicant believes that with the Examining Attorney's assistance, the present application will be in condition for approval for publication. 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. Applicant appreciates in advance the attention of the Examining Attorney.

Respectfully submitted this 2nd day of August, 2018.

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