PTO Form 1960 (Rev 9/2007)
OMB No. 0651-0050 (Exp. 07/31/2017)

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86249068
LAW OFFICE ASSIGNED	LAW OFFICE 106
MARK SECTION	
MARK	http://tmng-al.uspto.gov/resting2/api/img/86249068/large
LITERAL ELEMENT	EYEOS
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size or color.
ARGUMENT(S)	
In the Final Office Action, the Examining Attorney refused registration of the present application under Trademark Act Section 2(d), 15 U.S.C. ? 1052(d), based on a likelihood of confusion between Applicant?s mark and the mark in U.S. Registration No. 4,559,079 (?the Reptile registration?). Applicant submits that Applicant?s mark, when used in connection with Applicant?s goods, is not likely to cause confusion, to cause mistake, or to deceive with respect to the mark of the Reptile registration. In the DuPont decision, the Court of Customs and Patent Appeals expressed a number of factors relevant when determining likelihood of confusion. In re E. I. DuPont DeNemours & Co., 476 F.2d 1357, 1361 (C.C.P.A. 1973). Of these factors, the nature of the respective goods, the respective trade channels, and the conditions under which purchases are made support that confusion is not likely between Applicant?s mark and the mark of the Reptile registration. First, the respective goods demonstrate that confusion is not likely. The goods listed in the Reptile registration relate to eyewear and components or conventional accessories for eyewear. This is entirely consistent with Reptile?s website and promotional materials, copies of which were submitted as Exhibits 2 and 3 to Applicant?s previous response, which show Reptile?s actual goods as ?readers? or reading eyeglasses. Thus, the goods of the Reptile registration have nothing to do with computer hardware or software generally, nor, specifically, to providing ?a user interface involving eye tracking and/or eye movement for wearable devices.? In fact, the goods listed in the Reptile registration are completely incapable of being used to provide a user interface of any kind let alone involving eye tracking and/or eye movement. Reptile?s goods all relate to conventional eyewear and accessories, and so do not include any of the electronics necessary to provide a user interface involving eye tracking and/or eye movement. The conclusion in the Final Office Action that the Reptile goods could be ?suitable devices for use in tracking eye movements? is based on pure speculation and not any evidence of record. The fact that eye tracking systems exist, which Applicant does not dispute, does not mean that Reptile?s goods could be used for	

such systems. Such systems include eye tracking cameras, light sources, processors, etc. integrated into a wearable device, which are completely absent from the goods listed in the Reptile registration and Reptile?s actually sold goods, as demonstrated by previously Exhibits 2 and 3. The eye tracking systems identified in the Final Office Action simply illustrate examples of custom wearable devices that incorporate the necessary electronics and other components for eye tracking, and fail to demonstrate that such components could be incorporated into conventional eyeglasses such as those identified in the Reptile registration or Reptile?s actual goods. Second, the dissimilarity of established, likely-to-continue trade channels also support that there is no likelihood of confusion. As evidenced by Exhibits 2 and 3 from Applicant?s previous response, the only established trade channels for the Reptile goods of record is their own website ? at which they sell conventional ?reader? glasses. There is no evidence of record that demonstrates that Reptile sells eye tracking systems nor that their reader eyeglasses could be readily modified to provide such systems. Thus, any conclusion that Reptile is likely to expand into eye tracking systems is without any basis on the record and is directly contrary to the evidence of record demonstrating the actual, established trade channels for Reptile?s goods. Further, as demonstrated by previous Exhibit 3, Reptile?s products are ?premium reading eyewear? that are ?targeted to mid- to high-end optical and optometric practices, refractive surgery practices, and ophthalmology practices.? Thus, the channels of trade for Reptile?s goods are its own website with sales targeted to specialized medical practitioners for sale to their patients. There is no basis that either Applicant?s goods or the eye tracking systems identified in the Final Office Action would be targeted to such medical practitioners and their patients. Instead, the exemplary eye tracking systems examples identified in the Office Action relate to various research fields (the Tobii eye tracker) or allowing disabled persons to communicate or create art (the Eye-Writer/Eye-Drawing system). Thus, they would likely be marketed to researchers or caregivers for disabled persons. None of these systems would be marketed to ophthalmologists to sell to patients nor is there any basis on the record for concluding that a provider of eyeglasses to ophthalmology practices would likely expand into eye tracking systems. Finally, the conditions under which purchasing decisions are made support that confusion is not likely. Eye tracking systems potentially cost thousands of dollars and so would not be the subject of impulse decisions, but rather careful, sophisticating purchasing. Thus, a purchaser of eye tracking systems would be unlikely to conclude that the source of conventional eyewear is somehow associated with such systems. Accordingly, for these reasons, Applicant?s use of EYEOS for its computer hardware are software is not likely to cause confusion with the use by Reptile of its mark for eyewear and related accessories. For these reasons, the rejection under Section 2(d) should be withdrawn.

SIGNATURE SECTION	
RESPONSE SIGNATURE	/william a english/
SIGNATORY'S NAME	William A. English
SIGNATORY'S POSITION	attorney
SIGNATORY'S PHONE NUMBER	714-449-8433
DATE SIGNED	09/13/2015
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Sun Sep 13 21:57:06 EDT 2015
	USPTO/RFR-71.108.4.122-20

TEAS STAMP	150913215706397043-862490 68-540bd8fbd2f639d53b4d88 6084e18b1fb286f98ace1ed41 b3dd42586da7b68f-N/A-N/A- 20150913215021127206

PTO Form 1960 (Rev 9/2007)
OMB No. 0651-0050 (Exp. 07/31/2017)

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. **86249068** EYEOS(Standard Characters, see http://tmng-al.uspto.gov/resting2/api/img/86249068/large) has been amended as follows:

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

In the Final Office Action, the Examining Attorney refused registration of the present application under Trademark Act Section 2(d), 15 U.S.C. ? 1052(d), based on a likelihood of confusion between Applicant?s mark and the mark in U.S. Registration No. 4,559,079 (?the Reptile registration?). Applicant submits that Applicant?s mark, when used in connection with Applicant?s goods, is not likely to cause confusion, to cause mistake, or to deceive with respect to the mark of the Reptile registration. In the DuPont decision, the Court of Customs and Patent Appeals expressed a number of factors relevant when determining likelihood of confusion. In re E. I. DuPont DeNemours & Co., 476 F.2d 1357, 1361 (C.C.P.A. 1973). Of these factors, the nature of the respective goods, the respective trade channels, and the conditions under which purchases are made support that confusion is not likely between Applicant?s mark and the mark of the Reptile registration. First, the respective goods demonstrate that confusion is not likely. The goods listed in the Reptile registration relate to eyewear and components or conventional accessories for eyewear. This is entirely consistent with Reptile?s website and promotional materials, copies of which were submitted as Exhibits 2 and 3 to Applicant?s previous response, which show Reptile?s actual goods as ?readers? or reading eyeglasses. Thus, the goods of the Reptile registration have nothing to do with computer hardware or software generally, nor, specifically, to providing ?a user interface involving eye tracking and/or eye movement for wearable devices.? In fact, the goods listed in the Reptile registration are completely incapable of being used to provide a user interface of any kind let alone involving eye tracking and/or eye movement. Reptile?s goods all relate to conventional eyewear and accessories, and so do not include any of the electronics necessary to provide a user interface involving eye tracking and/or eye movement. The conclusion in the Final Office Action that the Reptile goods could be ?suitable devices for use in tracking eye movements? is based on pure speculation and not any evidence of record. The fact that eye tracking systems exist, which Applicant does not dispute, does not mean that Reptile?s goods could be used for such systems. Such systems include eye tracking cameras, light sources, processors, etc. integrated into a wearable device, which are completely absent from the goods listed in the Reptile registration and Reptile?s actually sold goods, as demonstrated by previously Exhibits 2 and 3. The eye tracking systems identified in the Final Office Action simply illustrate examples of custom wearable devices that incorporate the necessary electronics and other components for eye tracking, and

fail to demonstrate that such components could be incorporated into conventional eyeglasses such as those identified in the Reptile registration or Reptile?s actual goods. Second, the dissimilarity of established, likely-to-continue trade channels also support that there is no likelihood of confusion. As evidenced by Exhibits 2 and 3 from Applicant?s previous response, the only established trade channels for the Reptile goods of record is their own website ? at which they sell conventional ?reader? glasses. There is no evidence of record that demonstrates that Reptile sells eye tracking systems nor that their reader eyeglasses could be readily modified to provide such systems. Thus, any conclusion that Reptile is likely to expand into eye tracking systems is without any basis on the record and is directly contrary to the evidence of record demonstrating the actual, established trade channels for Reptile?s goods. Further, as demonstrated by previous Exhibit 3, Reptile?s products are ?premium reading eyewear? that are ?targeted to mid- to high-end optical and optometric practices, refractive surgery practices, and ophthalmology practices.? Thus, the channels of trade for Reptile?s goods are its own website with sales targeted to specialized medical practitioners for sale to their patients. There is no basis that either Applicant?s goods or the eye tracking systems identified in the Final Office Action would be targeted to such medical practitioners and their patients. Instead, the exemplary eye tracking systems examples identified in the Office Action relate to various research fields (the Tobii eye tracker) or allowing disabled persons to communicate or create art (the Eye-Writer/Eye-Drawing system). Thus, they would likely be marketed to researchers or caregivers for disabled persons. None of these systems would be marketed to ophthalmologists to sell to patients nor is there any basis on the record for concluding that a provider of eyeglasses to ophthalmology practices would likely expand into eye tracking systems. Finally, the conditions under which purchasing decisions are made support that confusion is not likely. Eye tracking systems potentially cost thousands of dollars and so would not be the subject of impulse decisions, but rather careful, sophisticating purchasing. Thus, a purchaser of eye tracking systems would be unlikely to conclude that the source of conventional eyewear is somehow associated with such systems. Accordingly, for these reasons, Applicant?s use of EYEOS for its computer hardware are software is not likely to cause confusion with the use by Reptile of its mark for eyewear and related accessories. For these reasons, the rejection under Section 2(d) should be withdrawn.

SIGNATURE(S)
Request for Reconsideration Signature
Signature: /william a english/ Date: 09/13/2015
Signatory's Name: William A. English
Signatory's Position: attorney

Signatory's Phone Number: 714-449-8433

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 owner's/holder'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 owner/holder in this matter: (1) the owner/holder 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 owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner's/holder'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 filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 86249068
Internet Transmission Date: Sun Sep 13 21:57:06 EDT 2015
TEAS Stamp: USPTO/RFR-71.108.4.122-20150913215706397
043-86249068-540bd8fbd2f639d53b4d886084e
18b1fb286f98ace1ed41b3dd42586da7b68f-N/A
-N/A-20150913215021127206