Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered	
SERIAL NUMBER	87085203	
LAW OFFICE ASSIGNED	LAW OFFICE 110	
MARK SECTION		
MARK FILE NAME	https://tmng-al.uspto.gov/resting2/api/img/87085203/large	
LITERAL ELEMENT	SQUAWK	
STANDARD CHARACTERS	NO	
USPTO-GENERATED IMAGE	NO	

ARGUMENT(S)

Applicant requests reconsideration of the Office Action dated June 26, 2018, in which the examining attorney made final the refusal to register in view of U.S. Reg. No. 4605056 (SQUAWK). Applicant has concurrently filed a Notice of Appeal.

Applicant does not contest the literal similarity of the marks. However, the respective marks are associated with services that are sufficiently different to avoid confusion.

Although the marks are identical, the examining attorney's conclusion regarding the relation of the respective goods relies on an overly broad construction of the cited registration.

The cited registration identifies the following goods:

Computer application software for mobile phones, portable media players, computers, namely, software for sending and receiving text messages, photos, and voice messages, for video conferencing, and for broadcasting live video

Applicant's has amended its identification of goods to the following:

Internet of Things-based computer software applications for mobile phones, tablets, portable media players and computers, for sending alert notifications resulting from anomalies detected by home sensors to designated contacts, namely, homeowners, insurance companies and repair and maintenance vendors and specialists through voice, SMS, e-mail and social media channels, in order to facilitate repairs and expedited insurance claims.

It is well-settled that even where marks are used on goods or services in the same category, the finding that marks are similar does not automatically result in a conclusion that a likelihood of confusion exists. *Electronic Design & Sales Inc. v. Electronic Data Systems*, 21 USPQ2d 1388 (Fed. Cir. 1992 (holding no likelihood of confusion between EDS for power supplies and batter charges versus EDS for computer services; *In re British Bulldog, Ltd.*, 224 USPQ 854 (TTAB 1984) (finding no likelihood of confusion between PLAYERS for shoes and PLAYERS for underwear); *In re Reach Electronics, Inc.*, 175 USPQ 734 (TTAB 1972) (finding no likelihood of confusion between REAC for measuring, testing and computing equipment and REACH for communication equipment).

However the examiner does not give sufficient weight to the function of each entity's software. The purpose of requiring specificity in identifying computer programs is to avoid the issuance of unnecessary refusals of registration under §2(d) where the actual goods of the parties are not related and there is no conflict in the marketplace. *In Re Docusys, Inc.*, Serial No. 76348236, 2004 WL 1427391 (TTAB June 9, 2004) (non-precedential) (no likelihood of confusion even the marks were identical because the software was sufficiently different to avoid confusion).

The cited Squawk application is a social media communication platform that allows users to share voice, photos, text and location information through their mobile phones. It is intended purely for social networking amongst friends and acquaintances. Screen captures of the registrant's website (sections II. and III.) and app detail page from Google Play (section IV.) are provided below. Screenshots are current as of December 13, 2018.

The evidence provided is not intended as a collateral attack on the substance of the cited registration. TMEP § 1207. However, where the terminology in the identification is unclear, the Trademark Trial and Appeal Board has permitted an applicant to provide extrinsic evidence to show that the registrant's identification has a specific meaning to members of the trade. The Board noted that in light of such evidence it is improper to consider the identification in a vacuum and attach all possible interpretations to it. *In re Trackmobile Inc.*, 15 USPQ2d 1152, 1154 (TTAB 1990).

By contrast, Applicant provides an IoT based application. Its purpose is to provide notification to pre-designated contacts in response to physical events and incidents that take place in a person's home as detected by critical sensors installed in the home. It is not a general communication or social media application. As an example, a sensor may detect that there is water pooling in the basement of a home. The app would then operate to activate a notification of this water pooling incident to a pre-designated plumber, the home owner's insurance company and the homeowner. In this example, the use of the app would significantly reduce the damage caused from the incident through early intervention. This, in turn, would reduce the monetary value of the associated home insurance claims as well as expediting the processing of the claim. Screen captures from applicant's website and app detail page are attached.

Accordingly, Applicant requests reconsideration and withdrawal of the Section 2(d) refusal.

EVIDENCE SECTION

EVIDENCE FILE NAME(S)		
ORIGINAL PDF FILE	evi_502272536-20181221095235751109Evidence_for_Request_for_ReconsiderationSQUAWKPDF	
CONVERTED PDF FILE(S) (10 pages)	\\\TICRS\EXPORT17\IMAGEOUT17\870\852\87085203\xml13\RFR0002.JPG	
	\\TICRS\EXPORT17\IMAGEOUT17\870\852\87085203\xml13\RFR0003.JPG	
	\\TICRS\EXPORT17\IMAGEOUT17\870\852\87085203\xml13\RFR0004.JPG	
	\\TICRS\EXPORT17\IMAGEOUT17\870\852\87085203\xml13\RFR0005.JPG	
	\\TICRS\EXPORT17\IMAGEOUT17\870\852\87085203\xml13\RFR0006.JPG	
	\\TICRS\EXPORT17\IMAGEOUT17\870\852\87085203\xml13\RFR0007.JPG	
	\\TICRS\EXPORT17\IMAGEOUT17\870\852\87085203\xml13\RFR0008.JPG	
	\\TICRS\EXPORT17\IMAGEOUT17\870\852\87085203\xml13\RFR0009.JPG	
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	\\TICRS\EXPORT17\IMAGEOUT17\870\852\87085203\xml13\RFR0011.JPG	
DESCRIPTION OF EVIDENCE FILE	screen captures of relevant websites and apps.	
GOODG AND OD GEDAN ODG GEGENON (

GOODS AND/OR SERVICES SECTION (current)

INTERNATIONAL OF ACC	009
INTERNATIONAL CLASS	111119

DESCRIPTION

computer software applications for mobile phones, tablets, portable media players and computers, for sending notifications resulting from anomalies detected by home sensors to homeowners, insurance companies and repair and maintenance vendors and specialists through voice, SMS, e-mail and social media channels, based on preference driven decision making

FILING BASIS	Section 1(b)
FILING BASIS	Section 44(e)
FOREIGN REGISTRATION NUMBER	TMA996,756
FOREIGN REGISTRATION COUNTRY	Canada
FOREIGN REGISTRATION DATE	05/15/2018
FOREIGN EXPIRATION DATE	05/15/2033

GOODS AND/OR SERVICES SECTION (proposed)

INTERNATIONAL CLASS 009

TRACKED TEXT DESCRIPTION

computer software applications for mobile phones, tablets, portable media players and computers, for sending notifications resulting from anomalies detected by home sensors to homeowners, insurance companies and repair and maintenance vendors and specialists through voice,

SMS, e-mail and social media channels, based on preference driven decision making; Internet of Things-based computer software applications for mobile phones, tablets, portable media players and computers, for sending alert notifications resulting from anomalies detected by home sensors to designated contacts, namely, homeowners, insurance companies and repair and maintenance vendors and specialists through voice, SMS, e-mail and social media channels, in order to facilitate repairs and expedited insurance claims

FINAL DESCRIPTION

Internet of Things-based computer software applications for mobile phones, tablets, portable media players and computers, for sending alert notifications resulting from anomalies detected by home sensors to designated contacts, namely, homeowners, insurance companies and repair and maintenance vendors and specialists through voice, SMS, e-mail and social media channels, in order to facilitate repairs and expedited insurance claims

	,	
FILING BASIS	Section 1(b)	
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FOREIGN REGISTRATION NUMBER	TMA996,756	
FOREIGN REGISTRATION COUNTRY	Canada	
FOREIGN REGISTRATION DATE	05/15/2018	
FOREIGN EXPIRATION DATE	05/15/2033	
SIGNATURE SECTION		
RESPONSE SIGNATURE	/AIC/	
SIGNATORY'S NAME	Andy I. Corea	
SIGNATORY'S POSITION	Attorney for Applicant, Member CT bar	
SIGNATORY'S PHONE NUMBER	203/772-7739	
DATE SIGNED	12/21/2018	
AUTHORIZED SIGNATORY	YES	
CONCURRENT APPEAL NOTICE FILED	NO	
FILING INFORMATION SECTION		
SUBMIT DATE	Fri Dec 21 09:55:19 EST 2018	
TEAS STAMP	USPTO/RFR-XX.XXX.XX.XX-20 181221095519787054-870852 03-620876610ed75e3d01bdc6 31e93794f78ef1e964ddc30e0 e3c0845ac01380fa-N/A-N/A- 20181221095235751109	

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OMB No. 0651-0050 (Exp 09/20/2020)

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. **87085203** SQUAWK (Stylized and/or with Design, see https://tmng-al.uspto.gov/resting2/api/img/87085203/large) has been amended as follows:

ARGUMENT(S)

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

Applicant requests reconsideration of the Office Action dated June 26, 2018, in which the examining attorney made final the refusal to register in view of U.S. Reg. No. 4605056 (SQUAWK). Applicant has concurrently filed a Notice of Appeal.

Applicant does not contest the literal similarity of the marks. However, the respective marks are associated with services that are sufficiently different to avoid confusion.

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Accordingly, Applicant requests reconsideration and withdrawal of the Section 2(d) refusal.

EVIDENCE

Evidence in the nature of screen captures of relevant websites and apps. has been attached.

Original PDF file:

evi_502272536-20181221095235751109_._Evidence_for_Request_for_Reconsideration__SQUAWK_.PDF

Converted PDF file(s) (10 pages)

Evidence-1

Evidence-2

Evidence-3

Evidence-4

Evidence-5

Evidence-6

Evidence-7

Evidence-8 Evidence-9 Evidence-10

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 009 for computer software applications for mobile phones, tablets, portable media players and computers, for sending notifications resulting from anomalies detected by home sensors to homeowners, insurance companies and repair and maintenance vendors and specialists through voice, SMS, e-mail and social media channels, based on preference driven decision making Original Filing Basis:

Filing Basis: Section 1(b), Intent to Use: For a trademark or service mark application: As of the application filing date, the applicant had a bona fide intention, and was entitled, to use the mark in commerce on or in connection with the identified goods/services in the application. For a collective trademark, collective service mark, or collective membership mark application: As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by members on or in connection with the identified goods/services/collective membership organization. For a certification mark application: As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by authorized users in connection with the identified goods/services, and the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant.

Filing Basis: Section 44(e), Based on Foreign Registration: For all applications: The applicant attaches a copy of [Canada registration number TMA996,756 registered 05/15/2018 with a renewal date of _______ and an expiration date of 05/15/2033], and translation thereof, if appropriate. For a trademark or service mark application: As of the application filing date, the applicant had a bona fide intention, and was entitled, to use the mark in commerce on or in connection with the identified goods/services. For a collective trademark, collective service mark, or collective membership mark application: As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by members on or in connection with the identified goods/services/collective membership organization. For a certification mark application: As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by authorized users on or in connection with the identified goods/services, and the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods or services that meet the certification standards of the applicant.

Proposed:

Tracked Text Description: computer software applications for mobile phones, tablets, portable media players and computers, for sending notifications resulting from anomalies detected by home sensors to homeowners, insurance companies and repair and maintenance vendors and specialists through voice, SMS, e-mail and social media channels, based on preference driven decision making; Internet of Things-based computer software applications for mobile phones, tablets, portable media players and computers, for sending alert notifications resulting from anomalies detected by home sensors to designated contacts, namely, homeowners, insurance companies and repair and maintenance vendors and specialists through voice, SMS, e-mail and social media channels, in order to facilitate repairs and expedited insurance claims

Class 009 for Internet of Things-based computer software applications for mobile phones, tablets, portable media players and computers, for sending alert notifications resulting from anomalies detected by home sensors to designated contacts, namely, homeowners, insurance companies and repair and maintenance vendors and specialists through voice, SMS, e-mail and social media channels, in order to facilitate repairs and expedited insurance claims

Filing Basis: Section 1(b), Intent to Use: For a trademark or service mark application: As of the application filing date, the application. For a collective trademark, collective service mark, or collective membership mark application: As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by members on or in connection with the identified goods/services/collective membership organization. For a certification mark application: As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by authorized users in connection with the identified goods/services, and the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant.

Filing Basis: Section 44(e), Based on Foreign Registration: For all applications: The applicant attaches a copy of [Canada registration number TMA996,756 registered 05/15/2018 with a renewal date of ______ and an expiration date of 05/15/2033], and translation thereof, if appropriate, before the application may proceed to registration. For a trademark or service mark application: As of the application filing date, the applicant had a bona fide intention, and was entitled, to use the mark in commerce on or in connection with the identified goods/services. For a collective trademark, collective service mark, or collective membership mark application: As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by members on or in connection with the identified goods/services/collective membership organization. For a certification mark application: As of the

application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by authorized users on or in connection with the identified goods/services, and the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods or services that meet the certification standards of the applicant.

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /AIC/ Date: 12/21/2018 Signatory's Name: Andy I. Corea

Signatory's Position: Attorney for Applicant, Member CT bar

Signatory's Phone Number: 203/772-7739

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 not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 87085203

Internet Transmission Date: Fri Dec 21 09:55:19 EST 2018

TEAS Stamp: USPTO/RFR-XX.XXX.XX.XX.20181221095519787

054-87085203-620876610ed75e3d01bdc631e93 794f78ef1e964ddc30e0e3c0845ac01380fa-N/A

-N/A-20181221095235751109

Squawkin landing page (www.squawkin.com)



connect + communicate





Combine

live audio, photos, text plus location to tell your story







Take Control of your Sharing

Decide who finds you — or doesn't find you Delete everywhere — if you want it gone, it's gone Hear only what you want, from whom you want





CROWDS

Diversional Submit Office of Flowings



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Squawkin FAQ (http://www.squawkin.com/faq - Getting Started)

SQUAWKIN

About FAO Press Blog Beta





iOS FAQs

Getting Started \land

What is Squawkin?

Squawkin is a next-generation social communication platform that allows you to instantly and securely share your voice, photos, texts and location information with unlimited audiences, from a person to a planet.

Why use Squawkin?

Simply put, there's nothing out there that lets you do all the things that Squawkin does -- or that does them as well.

What is a Squawk?

A Squawk is a powerful new way to communicate and connect in real time with the people in your life. Sent instantly and securely over the Squawkin communication platform, Squawks can contain live voice streams, text, audio, photos, location information, or a combination of these. Squawks can be sent to an audience of any size. There are three ways to send Squawks:

- Squawks can be sent privately, one-to-one between Friends
 Squawks can be shared between discoverable or hidden Groups of any size
 Squawks can also be sent from an individual to an unlimited audience called a Crowd

What iOS devices are supported?

Squawkin for iPhone requires iOS 7.0 or later. For the best experience, we recommend you use the latest version of iOS available for your phone. All y need is an internet connection or a 3G/4G or WiFi connection. At this time, Squawkin is not optimized for iPad.

How do I get the app?

Squawkin can be downloaded for iOS/iPhone at the App Store.

How to sign up for an account?

Once you have downloaded Squawkin to your device, tap "Create account" on the front page. You must be at least 13 years of age to use Squawkin.

What does it cost?

Squawkin is a free app and service. As with any other apps that transfer data, you may be charged a 3G/4G usage fee by your mobile phone company if you do not subscribe to an unlimited data plan, or if you exceed the data usage limit of your plan.

What can I do when I first log in to Squawkin?

When you first log in, you can start inviting friends, start following crowds, and start requesting to join groups. To find and request friends, tap the Search icon to find your friends, and to send them friend requests. Once your first friend request is accepted, you can begin sending Squawks. You can also immediately tap the Search icon to find crowds you know about, or use the Discover screen to find and follow crowds you might like. Using the same methods, you can search for and request to join groups, too.

Can I send a Squawk when I first log in to Squawkin?

Squawkin is better with friends! When you first log in to Squawkin, you can tap the Search icon to find and request friends. Once you have your first friend, you're ready to start sending Squawks.

III. <u>Squawkin Crowd Messenger (Google Play - play.google.com/store/apps/details?id=com.squawkin.android)</u>



Squawkin Crowd Messenger

Squawkin, Inc. Communication ★★★★ 157 ♣

1 Teen

Add to Wishlist



Start a Crowd. Get in a Crowd. Squawk to the Crowd. You'll be part of something big!

With Squawkin, not only can you privately message friends and groups, but Squawkin is the only app with CROWD COMMUNICATION.

A Squawkin Crowd is a new kind of shared-interest community that's more than a following. Squawkin crowds give a voice to all, so you can be more than just a follower!

Let the people in your life experience the sounds, sights, and places you love with:

- Photo sharing
- Instant messaging/text chat
- Live audio and intercom voice (works like push to talk or a walkie talkie)
- Interactive location information

Or custom-mix these modes into a one-of-a-kind expression of your own unique voice!

Squawkin Puts You in Control

- Ephemeral if you want it to be: Instantly make sent messages disappear permanently from Squawkin's service, including every phone/device, and our servers delete in a snap and it's gone for good!
- Control your private information, including data and in-app presence with powerful privacy settings
- Combine messaging modes and make every message a custom-mixed masterpiece!

You can now share Squawkin Crowd Messenger through Facebook, Twitter, Instagram, SMS or MMS to get your friends and family on the app today! Squawkin is growing quickly, with users in over 150 countries and counting, so download the free app now and get Squawkin!

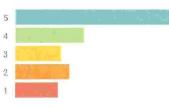
- Learn more at https://www.squawkin.com
- Need Help? Email support@squawkin.com

COLLAPSE

REVIEWS

Review Policy







Maurice Saldebar



Nice! Clean easy simple to use... After spending more time on Squawkin, family friends clients business contacts finding it easier to use then GroupMe or Twitter. Also not as clumsy or confusing as using group phone texts More functionality and easier to relate to. Can be used privately and publicly. Es...

Full Review

Squawkin, Inc. Descripes 18, 2014

Thanks, Maruice!



Madhu Anvekar

* * * * * April 36:2015.



Innovative This is the fastest communications app I've used. Love how I can share any form of message (including a live audio Squawk-super cool) instantly, to an individual, private group or public crowd. And notifications are TOTALLY customizable, allowing me to prioritize incoming communications. Unique fe...

Full Review

Squawkin, Inc. April 22, 2015

Thanks very much, Madhu!



Marc Trotoux



.

Great platform! Really intuitive to use and blurs boundaries between different types of messages: it's all in one thread as you can switch from text to voice to picture and back to text.

Squawkin, Inc. April 19, 2015

***** | |

Wait till you see what's in store for the new update, Marc!



Cynthia Anderson



0 0

Easy, safe and fun to use! I love that I can create a private group for my daughters volleyball team and share locations, post pictures, chat and use voice push to talk. And also join public groups and stay in touch with friends from all over the country. A great way to communicate while staying safe in this ever changing wor...

Full Review

READ ALL REVIEWS

WHAT'S NEW

Bug fixes

ADDITIONAL INFORMATION

Updated

Size

Installs

July 10, 2018

5.0M

5,000+

Current Version

Requires Android

Content Rating

1.1.108

5.0 and up

Teen

Learn More

Interactive Elements

Permissions

Report

Users Interact, Shares

View details

Flag as inappropriate

Location







