

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

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Mailed: October 26, 2007

Opposition No. 91177194

IAQ, Inc.

v.

Advanced Cleaning and  
Environmental Services, Inc.

Cheryl Goodman, Interlocutory Attorney:

On September 20, 2007, applicant filed a proposed amendment to amend the drawing for application Serial No. 76664541, with opposer's consent.

Applicant seeks to change the mark **from** "Air Duck Doctor" **to** "Air Duck."

By the proposed amendment, applicant seeks to amend the drawing of the mark and the description of the mark sought to be registered. Under Trademark Rule 2.72 (a), the description or drawing of an application based on use in commerce may be amended only if the specimens originally filed, or substitute specimens filed under Rule 2.59 (a), support the proposed amendment, and the proposed amendment does not materially alter the mark. The test for determining whether an amendment is a material alteration was articulated in *Visa International Service Association v. Life-Code Systems, Inc.*, 220 USPQ 740 (TTAB 1983):

The modified mark must contain what is the essence of the original mark, and the new form must create the impression of being essentially the same mark. The general test of whether an alteration is material is whether the mark would have to be republished after the alteration in order to fairly present the mark for purposes of opposition. If one mark is sufficiently different from another mark as to require republication, it would be tantamount to a new mark appropriate for a new application. 220 USPQ AT 743-44 See Trademark Rule 2.106(c).

Inasmuch as the proposed amendment to the drawing of the mark sought to be registered constitutes a material alteration thereof, the proposed amendment to the mark is hereby denied.

Applicant is allowed until THIRTY DAYS from the mailing date of this order to file an answer that complies with Fed. R. Civ. P. 8, as set forth in the Board's prior order.

To correct an error in the trial schedule set forth in the Board's order issued September 6, 2007, the parties are advised that discovery and trial dates are as follows:

DISCOVERY PERIOD TO CLOSE:	<b>March 5, 2008</b>
30-day testimony period for party in position of plaintiff to close:	<b>June 3, 2008</b>
30-day testimony period for party in position of defendant to close:	<b>August 2, 2008</b>
15-day rebuttal testimony period for party in position of plaintiff to close:	<b>September 16, 2008</b>

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

**NEWS FROM THE TTAB:**

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:  
<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>  
[http://www.uspto.gov/web/offices/com/sol/notices/72fr42242\\_FinalRuleChart.pdf](http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf)

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:  
<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>