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

Proceeding	91238546
Party	Defendant Clariant AG
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Signature	/James L. Lovsin/
Date	11/16/2018
Attachments	Reply Brief in Support of Motion to Amend With Exhibits.pdf(1155920 bytes )

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

**In the matter of Trademark  
Application Serial No.: 79/194,431**

**For the mark: HIFORMER**

**Published in the Official Gazette on: Nov. 21, 2017**

**WESTLAKE LONGVIEW CORPORATION**

**Opposer,**

**v.**

**OPPOSITION NO. 91238546**

**CLARIANT AG**

**Applicant.**

**APPLICANT CLARIANT AG’S REPLY BRIEF IN SUPPORT OF  
ITS MOTION TO AMEND APPLICATION**

Clariant has proposed significant narrowing amendments to the identifications of goods and services for the HIFORMER mark. 21 TTABVue 2-4. These would vastly alter application of the second *DuPont* factor by, *inter alia*:

- narrowly focusing Clariant’s application to colorants and specific types of colorants;
- deleting International Class 1, thereby eliminating the only class overlap between the asserted registrations and opposed application; and
- deleting “resins” from International Classes 1 and 2 and clarifying that no remaining goods in Class 2 “contain[ ] resins,” thereby entirely eliminating any arguable overlap in recited goods between the asserted registrations and opposed application.

And, just like in the parties’ lead case, *Johnson & Johnson v. Stryker Corp.* 109 U.S.P.Q.2d 1077 (TTAB 2013), Clariant’s proposed amendments introduce a substantially different issue for trial, even if the amendments do not actually eliminate the single cause of action in the opposition.

The Board should, therefore, grant Clariant's motion to amend and enter Clariant's requested amendments before discovery or, at a minimum, before final decision and summary judgment deadlines.

**I. Clariant's Motion Satisfies the First Requirement: The Requested Amendments Limit the Identifications of Goods and Services**

In its motion to amend, Clariant proposes to delete all goods in International Class 1, delete some and narrow other goods in International Class 2, and delete some and narrow other services in International Class 42. 21 TTABVUE 2-4. And despite Westlake's repeated characterization of the proposed amendments as "broaden[ing]" or "expand[ing]," Westlake provides no support and cites no case law in support of its position. 23 TTABVUE 2-4.<sup>1</sup>

**A. Clariant's Proposed Amendments to International Class 2 Necessarily Narrow the Identification of Goods**

Clariant proposes to delete many International Class 2 goods, limit "colorants," and clarify with respect to all of the remaining goods that "none of the aforementioned contain[ ] resins." 21 TTABVUE 3. Nonetheless, Westlake attempts to argue that Clariant's amendments "fail[ ] to narrow the description of goods." 23 TTABVUE 2-3. In doing so, however, Westlake overlooks the *Stryker* case, which involved a nearly identical type of amendment that the Board entered prior to trial. 109 U.S.P.Q.2d 1078, 1080.<sup>2</sup>

In *Stryker*, the Board granted the applicant's amendment of "surgical instruments" to "surgical instruments, namely, osteochondral drills, drill guides, and curettes used to create

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<sup>1</sup> Westlake does not dispute that Clariant's deletion of all goods in International Class 1 is limiting. See 23 TTABVUE 2-3.

<sup>2</sup> Westlake concedes that *Stryker* is the leading case on unconsented motions to amend prior to trial by repeatedly citing it as the relevant law. 23 TTABVUE 2 n.2, 4 n.4.

microfracture holes.” *Id.* at 1078, 1080 (additions underlined). And according to the Board, this “proposed amendment permissibly narrows the identification as it was articulated at publication.” *Id.* at 1079; *see also id.* 1078 (“[T]he amendment is limiting in nature as required by Trademark Rule 2.71(a).”).<sup>3</sup>

Indeed, TMEP § 1402.07(c) confirms that such amendments are narrowing and acceptable: “An applicant may amend an unambiguous identification of *goods* that indicates a specific type of goods to specify definite and acceptable identifications of *goods* within the scope of the existing terminology.” As an example, the TMEP states “If the applicant specifies ‘newsletters in the field of accounting,’ the applicant may amend to . . . ‘electronic publications, namely, newsletters in the field of accounting recorded on computer media’ (Class 9).” *Id.*

Here, Applicant proposes amending an unambiguous identification of goods, “colorants,” to specify definite and acceptable identifications of goods within the scope of existing terminology:

Class 2: Colorants; colorants, namely, color master batches in liquid form;  
colorants, namely, liquid master batches containing pigment; colorants, namely,  
liquid master batches containing dye; colorants, namely, liquid color master  
batches containing additives; none of the aforementioned containing resins.

21 TTABVUE 3. According to *Merriam-Webster*, a “colorant” is “a substance used for coloring a material: dye, pigment.”<sup>4</sup> A “liquid masterbatch,” in turn, is a “colorant”: “A liquid

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<sup>3</sup> Clariant quoted *Stryker* on the first requirement in its opening brief, 21 TTABVUE 6, and Westlake chose not to address *Stryker* in its brief.

<sup>4</sup> Exhibit 1, Printout from Merriam-Webster website last visited November 14, 2018, <https://www.merriam-webster.com/dictionary/colorant>. Exhibits 1-5 attached hereto.

masterbatch is a custom blend of additives and pigments dispersed in a liquid vehicle . . . [and] are an excellent choice when it comes to transparent or translucent colors, . . . and customers who's operations experience multiple color changes per shift.”<sup>5</sup>

Applicant's proposed amendments, therefore, narrow “colorants” by specifying that the “colorants” (i) are liquid master batches (or are color master batches in liquid form), (ii) contain “pigment” or “dye” (*see Merriam-Webster* definition of colorant), and/or (iii) are “liquid color master batches,” which contain “additives.” Indeed, the U.S. Patent & Trademark Office has allowed similar goods identifications in a number of applications, for example:

- “colorants, namely, color concentrate masterbatches” (U.S. Reg. Nos. 5175025 and 5367863 for the TEKNOR COLOR mark, Exhibit 3)
- “coloring compounds, namely, thermoplastic color masterbatch compounds . . .” (U.S. Reg. No. 2419622 for the COLORGUARD mark, Exhibit 4)
- “color concentrates, namely, pigments, pigment blends, color masterbatches . . .” (U.S. Reg. No. 4287607 for the COLORWEL mark, Exhibit 5)

**B. Clariant's Proposed Amendments to International Class 42 Necessarily Narrow the Description of Services**

Clariant proposes to delete two services in International Class 42 and limit the remaining services to “liquid color master batches.” 21 TTABVUE 3-4. Westlake, again, incorrectly argues that Clariant's amendments “fail[ ] to clarify or narrow the description of services.” 23 TTABVUE 3. As with its position with respect to International Class 2, Westlake provides no support and cites no case law in support of its position with respect to International Class 42.

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<sup>5</sup> Exhibit 2, Printout from Clariant's website dated November 13, 2018,

<https://www.clariant.com/en/Business-Units/Masterbatches/Liquid-Masterbatches>.

And once again, contrary to Westlake’s confusing assertions otherwise, Clariant’s proposed amendments necessarily narrow the services set forth in International Class 42 to services “for liquid color master batches,” by deleting certain services and narrowing others:

Class 42: ~~Scientific and technological services, namely, chemical solution analysis and related consulting services for the paint, textile, plastic, cosmetic and transportation industries;~~ Chemical research services to develop innovations, mainly carrier systems, dosing units and service concepts for liquid color master batches; Scientific and technological design services, namely, design services for customers to design new products in the nature of new product design services for liquid color master batches and for equipment for producing liquid color master batches; ~~design and development of computer hardware and software.~~

21 TTABVUE 3-4.

Westlake also alleges that Clariant’s proposed amendment “impermissibly broadens the scope of ‘carrier systems’ and ‘dosing units’ to include ‘equipment for producing color master batches.’” 23 TTABVUE 3. Westlake’s statement is simply facially incorrect, as “equipment for producing color master batches” would modify the second remaining group of services in the identification, not the first, which includes “carrier systems” and “dosing units.”

## **II. Clariant’s Motion Satisfies the Third Requirement: The Requested Amendments Introduce a Substantially Different Issue for Trial**

Westlake’s attempt to limit the Board granting an unconsented motion to amend prior to trial only when a “cause of action [is] eliminated” is inconsistent with *Stryker*. 23 TTABVUE 6. Here, Clariant proposes to dramatically amend its Application by focusing the HIFORMER application on types of colorants (color master batches, liquid master batches, and liquid color master batches), and services related to liquid color master batches, by:

- (i) deleting International Class 1 entirely (including “unprocessed artificial resins”),
- (ii) deleting many identifications entirely from International Class 2 (including “raw natural resins”) and clarifying that “none of the aforementioned” remaining goods “contain[ ] resins,” and
- (iii) deleting several services entirely from International Class 42.

21 TTABVUE 2-4. The requested amendments change the nature and character of goods and services and restrict the channels of trade and customers so as to introduce a substantially different issue for trial. *Id.* at 7-8.

Westlake argues, however, that “since the proposed amendment does not change the cause of action, it does not change the *DuPont* factors or issues that must be considered.” 23 TTABVUE 4 (relying on *Wis. Cheese Grp. LLC v. Comercializadora de Lácteos y Derivados, S.A. de C.V.*, 118 U.S.P.Q.2d 1262 (TTAB 2016)). In doing so, Westlake overlooks *Stryker* again, which, as here, also involved only a single cause of action: likelihood of confusion. 109 U.S.P.Q.2d at 1078. In *Stryker*, the Board found that a nearly identical type of amendment—which did not eliminate a cause of action—nevertheless presented a substantially different issue for trial and granted the motion to amend. *Id.* at 1079-80.<sup>6</sup>

Clariant’s amended goods and services are vastly different from the one good (“polyethylene resins for use in the plastics industry”) in the one class (International Class 1) for which Westlake’s marks are registered. 21 TTABVUE 2-4, 8. Clariant’s proposed amendment

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<sup>6</sup> Clariant cited *Stryker* on the third requirement in its opening brief, 21 TTABVUE 8, and Westlake chose not to address *Stryker* in its brief.

would vastly alter and narrow the second *DuPont* factor—the similarity or dissimilarity and nature of the parties’ goods and services<sup>7</sup>—by, *inter alia*:

- narrowly focusing its application on colorants and specific types of colorants;<sup>8</sup>
- eliminating the only class overlap between the asserted registrations and opposed application by entirely deleting International Class 1; and
- eliminating any arguable overlap in recited goods by deleting “resins” from International Classes 1 and 2, and clarifying that “none of the aforementioned” remaining goods in International Class 2 “contain[ ] resins.”

Further, Westlake misunderstands Clariant’s position on discovery. Clariant properly relies on *Wisconsin Cheese*, in which the Board explained that Federal Rule 26(b)’s proportionality principle applies to opposition proceedings:

The Board has applied the principle of proportionality to define the proper subjects of and expanse of inquiry in *inter partes* proceedings under various circumstances. . . . Here, while Applicant’s deletion of goods from its applications does not automatically alter the scope of discovery, the parties should keep these principles in mind as they agree to the appropriate scope of and limits

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<sup>7</sup> *In re E. I. DuPont DeNemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973); *see also* *Embarcadero Techs., Inc. v. RStudio, Inc.*, 105 U.S.P.Q.2d 1825, 1837-38, 1840 (TTAB 2013) (finding the applicant’s “significant” amendments changed the weighing of the second *DuPont* factor and the Board’s conclusion that there was no likelihood of confusion).

<sup>8</sup> As with the first requirement, Westlake improperly and incorrectly argues that Clariant’s proposed amendments “broaden[ ]” and “expand[ ]” the goods and services descriptions. 23 TTABVUE 4.



on discovery in this proceeding given the amendments to the Applicant's identification of goods.

118 U.S.P.Q.2d at 1267 n.10; 21 TTABVUE 5, 7. Accordingly, if the Board enters Clariant's proposed amendments prior to trial, the proportionality principle is relevant to discovery.

### **III. The Board's *Stryker* Requirements Balance Amendments Prior to Trial**

Westlake concludes by making a policy argument that the Board should defer its decision on Clariant's motion—regardless of whether the *Stryker* requirements are satisfied. 23 TTABVUE 7-8. The Board, however, has already rejected Westlake's policy argument in *Stryker* and related cases. The *Stryker* requirements properly balance an applicant's and opposer's interests, and Clariant satisfies these requirements.<sup>9</sup>

### **IV. Conclusion**

For the foregoing reasons and all the reasons in Clariant's opening brief, Clariant respectfully requests that the Board grant its motion to amend, enter Clariant's requested amendments before discovery or, at a minimum, before final decision and summary judgment deadlines, and for all other relief the Board deems proper and just.

Respectfully submitted,

Dated: November 16, 2018

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Attorneys for Applicant Clariant AG

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<sup>9</sup> Westlake does not dispute that the second requirement is satisfied. *See* 23 TTABVUE 2-7.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address of record by Email on this date.

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# EXHIBIT 1



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colorant



DICTIONARY

THESAURUS



# colorant noun

col-ər-ənt | ˈkə-lər-ənt, ˈlər-ənt

## Definition of *colorant*

: a substance used for coloring a material : DYE, PIGMENT

### ↓ Synonyms

### ↓ Example Sentences

### ↓ Learn More about *colorant*

## Synonyms for *colorant*

### Synonyms

color, coloring, dye, dyestuff, pigment, stain

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## Examples of *colorant* in a Sentence

// in ancient times, a mollusk was used to produce a rich purple *colorant* for clothing and linens

## Recent Examples on the Web

// Some brands also add sweeteners, *colorants*, or even glycerin, but at face value, bitters are a pretty basic concoction.— Lauren Hubbard, *Town & Country*, "Everything You Need to Know About Bitters," 31 Oct. 2017// Some brands also add sweeteners, *colorants*, or even glycerin, but at face value, bitters are a pretty basic concoction.— Lauren Hubbard, *Town & Country*, "Everything You Need to Know About Bitters," 31 Oct. 2017

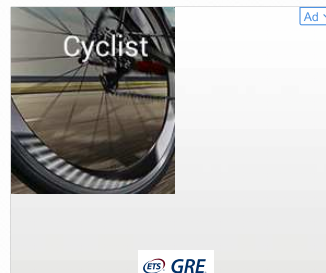
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## First Known Use of *colorant*

1800, in the meaning defined above

## History and Etymology for *colorant*

COLOR entry 2 + -ANT entry 1

## WORD OF THE DAY

tomfoolery 🔊

playful or foolish behavior

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Which is a synonym of **fugacious**?

impermanent

hidden

violent

brawny

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colorant



DICTIONARY

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**colorant**



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[Colorado white balsam](#)

[Colorado wild potato](#)

**[colorant](#)**

[coloration](#)

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The first known use of **colorant** was in 1800

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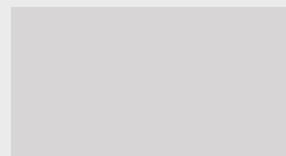
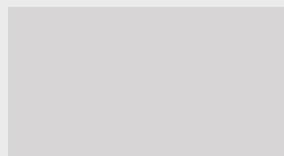
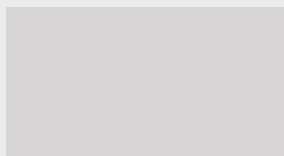
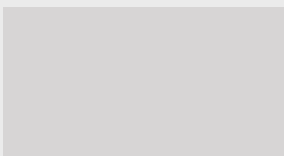
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colorant



DICTIONARY

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You can't shut them up, but you can label them

The complaint comes first; the suit follows.

New words that came from bigger words

A cavalcade of words for travel

#### ASK THE EDITORS



##### How Do You Pronounce 'Vase'?

And is one way more correct than the others?



##### Ghost Word

The story of an imaginary word that managed to sneak past



##### Literally

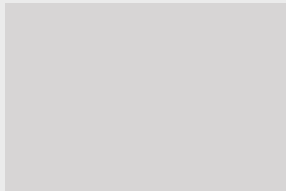
How to use a word that (literally) drives some people



##### Is Singular 'They' a Better Choice?

The awkward case of 'his or her'

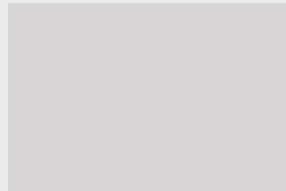
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(Secret October WOTD Quiz)

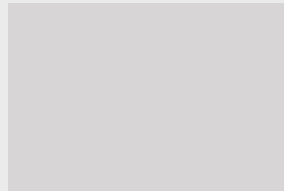
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##### Forms of Government Quiz

Name that government! Or something like that.

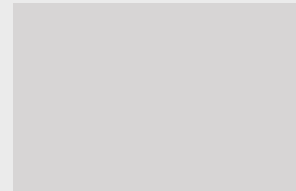
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# EXHIBIT 2



# Liquid Masterbatches

## **A CUSTOM BLEND OF ADDITIVES AND PIGMENTS DISPERSED IN A LIQUID VEHICLE AND TAILORED TO THE END-USE POLYMER**

A liquid masterbatch is a custom blend of additives and pigments dispersed in a liquid vehicle chosen in order to ensure compatibility with the end-use polymer. The decision to use liquids should be based on the specific requirements of the application and Clariant can provide excellent guidance when it comes to making the choice. Due to liquid masterbatches easy incorporation into the polymer matrix they are an excellent choice when it comes to transparent or translucent colors, parts with large wall thicknesses and customers who's operations experience multiple color changes per shift. Because liquid Masterbatches are not compounded at high temperatures and pressures, they represent a good option when heat-sensitive pigments or additives are required. Liquids can be metered with Clariant's very precise state-of-the-art dosing systems with wireless control for recipe control and inventory management. Liquid masterbatches can be formulated to improve the flow properties of the polymer, with fast filling times and shortened injection molding cycles, as well as improved extrusion throughput and low screw speeds.



**MB NORAM Liquid**

Contact Person

**PET**





Clariant has been focused on the application of liquid color masterbatches in PET packaging, achieving bright, clear tint colors at very low addition rates for cost-effective performance. State-of-the-art dosing systems, including wireless control, deliver consistent color results and help with inventory management.

## POLYOLEFINS



Liquid color masterbatches from Clariant Masterbatches can now be formulated using a proprietary non-mineral-oil carrier, which allows them to be

used in the extrusion blowmolding of polyethylene (PE) and polypropylene (PP) without screw slippage often associated with liquid colors. Processors can use as much as 2.5% without affecting screw performance, while state-of-the-art dosing systems, including wireless control, make it equally easy to achieve low addition rates accurately to 0.01%. State-of-the-art dosing systems, including wireless control, deliver consistent color results and help with inventory management.

#### From Design to Production and Beyond



Liquid Excellence to Power Your Performance. [MORE](#)

## FLEXIBLE DELIVERY: SOLID & LIQUID MASTERBATCH EXPERTISE GIVES YOU THE OPTIMUM CHOICE

HIFORMER® LIQUID EXCELLENCE TO POWER YOUR PERFORMANCE (2.09 MB)

CONSISTENTLY BEAUTIFUL OMNIColor MULTIPURPOSE MASTERBATCHES (24.94 MB)

HIFORMER LIQUID EXCELLENCE TO POWER YOUR CAPS AND CLOSURES (1.22 MB)

### Disclaimer:

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# EXHIBIT 3

# United States of America

## United States Patent and Trademark Office



**Reg. No. 5,175,025**

**Registered Apr. 04, 2017**

**Int. Cl.: 1, 2, 17**

**Trademark**

**Principal Register**

TEKNOR COLOR COMPANY (RHODE ISLAND CORPORATION)  
505 CENTRAL AVENUE  
PAWTUCKET, RI 02861

CLASS 1: Polymeric additives to impart antioxidant properties, for use in the manufacture of a wide variety of plastic products; chemicals, namely, ultraviolet light stabilizers for use in the manufacture of a wide variety of plastic products; chemical blowing agents for use in the manufacture of plastic products; unprocessed artificial plastic resins blended with colorants and sold in pellet and powder form

FIRST USE 12-31-2013; IN COMMERCE 12-31-2013

CLASS 2: Colorants, namely, color concentrate masterbatches; colorants, namely, color concentrate masterbatches for use in the coloring of a variety of plastics to be used in a wide variety of plastic processes

FIRST USE 12-31-2013; IN COMMERCE 12-31-2013

CLASS 17: Semiprocessed plastic resins blended with colorants and sold in pellet and powder form

FIRST USE 12-31-2013; IN COMMERCE 12-31-2013

The colors yellow, red, orange, and dark blue are claimed as a feature of the mark.

The mark consists of the words "TEKNOR COLOR" on the right of three curved bands shown in red on the left, yellow in the middle, and orange on the right. The entire mark appears on a dark blue background. The white color of the letters represents background and is not claimed as a feature of the mark.

OWNER OF U.S. REG. NO. 3780145, 3858838, 3780146

No claim is made to the exclusive right to use the following apart from the mark as shown: "COLOR"

SER. NO. 87-041,151, FILED 05-18-2016

LAURA ELIZABET FIONDA, EXAMINING ATTORNEY



*Michelle K. Lee*

Director of the United States  
Patent and Trademark Office

## **REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

### **Requirements in the First Ten Years\***

#### **What and When to File:**

- **First Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.
- **Second Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.\* See 15 U.S.C. §1059.

### **Requirements in Successive Ten-Year Periods\***

#### **What and When to File:**

- You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.\*

### **Grace Period Filings\***

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**\*ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

**NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.**

**NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at <http://www.uspto.gov>.**

# United States of America

## United States Patent and Trademark Office

### TEKNOR COLOR

**Reg. No. 5,367,863**

**Registered Jan. 02, 2018**

**Int. Cl.: 1, 2, 17**

**Trademark**

**Principal Register**

Teknor Apex Company (DELAWARE CORPORATION)  
505 Central Avenue  
Pawtucket, RHODE ISLAND 02861

CLASS 1: Polymeric additives to impart antioxidant properties, for use in the manufacture of a wide variety of plastic products; chemicals, namely, ultraviolet light stabilizers for use in the manufacture of a wide variety of plastic products; chemical blowing agents for use in the manufacture of plastic products

FIRST USE 00-00-1964; IN COMMERCE 00-00-1964

CLASS 2: colorants, namely, color concentrate masterbatches; colorants, namely, color concentrate masterbatches for use in the coloring of a variety of plastics to be used in a wide variety of plastic processes

FIRST USE 00-00-1964; IN COMMERCE 00-00-1964

CLASS 17: semiprocessed plastic resins blended with colorants and sold in pellet and powder form

FIRST USE 00-00-1964; IN COMMERCE 00-00-1964

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

No claim is made to the exclusive right to use the following apart from the mark as shown: "COLOR"

SER. NO. 87-250,121, FILED 11-29-2016



*Joseph Matol*

Performing the Functions and Duties of the  
Under Secretary of Commerce for  
Intellectual Property and Director of the  
United States Patent and Trademark Office

## **REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

### **Requirements in the First Ten Years\***

#### **What and When to File:**

- **First Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.
- **Second Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.\* See 15 U.S.C. §1059.

### **Requirements in Successive Ten-Year Periods\***

#### **What and When to File:**

- You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.\*

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# EXHIBIT 4

**Int. Cl.: 2**

**Prior U.S. Cls.: 6, 11, and 16**

**Reg. No. 2,419,622**

**United States Patent and Trademark Office**

**Registered Jan. 9, 2001**

**TRADEMARK  
PRINCIPAL REGISTER**

**COLORGUARD**

FERRO CORPORATION (OHIO CORPORATION)  
1000 LAKESIDE AVENUE  
CLEVELAND, OH 44114

FOR: COLORING COMPOUNDS, NAMELY, THERMOPLASTIC COLOR MASTERBATCH COMPOUNDS IN EXTRUDED PELLET FORM FOR GENERAL IN-

DUSTRIAL USE, IN CLASS 2 (U.S. CLS. 6, 11 AND 16).

FIRST USE 4-26-2000; IN COMMERCE 4-26-2000.

SN 75-484,714, FILED 5-13-1998.

ANNA ERENBURG, EXAMINING ATTORNEY

# EXHIBIT 5

**United States of America**  
United States Patent and Trademark Office

# COLORWEL

**Reg. No. 4,287,607**

**Registered Feb. 12, 2013**

**Int. Cl.: 2**

**TRADEMARK**

**PRINCIPAL REGISTER**

BRENNTAG CANADA INC. (CANADA CORPORATION)  
43 JUTLAND ROAD  
ETOBICOKE, ONTARIO, CANADA M8Z-2G6

FOR: COLOR CONCENTRATES, NAMELY, PIGMENTS, PIGMENT BLENDS, COLOR MASTERBATCHES AND COLORED PELLETIZED HOMOPOLYMER AND COPOLYMER RESINS, NAMELY, COLORED POLYPROPYLENE RESINS, COLORED POLYSTYRENE RESINS, COLORED POLYETHYLENE RESINS, COLORED ACRYLIC RESINS, COLORED ABS RESINS, COLORED COMPOUNDED THERMOPLASTIC RESINS, IN CLASS 2 (U.S. CLS. 6, 11 AND 16).

FIRST USE 0-0-1997; IN COMMERCE 0-0-1997.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

PRIORITY CLAIMED UNDER SEC. 44(D) ON CANADA APPLICATION NO. 1540150, FILED 8-18-2011.

OWNER OF U.S. REG. NO. 1,650,503.

SER. NO. 85-414,261, FILED 9-2-2011.

HELENE LIWINSKI, EXAMINING ATTORNEY



*Hea Street Lee*

Acting Director of the United States Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL  
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE  
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

**Requirements in the First Ten Years\***

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**Second Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.\*  
*See* 15 U.S.C. §1059.

**Requirements in Successive Ten-Year Periods\***

**What and When to File:**

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.\*

**Grace Period Filings\***

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or  
reminder of these filing requirements.**

**\*ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See* 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See* 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

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