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

Proceeding	91255412
Party	Defendant Credo Biomedical Pte Ltd.
Correspondence Address	NICOLE B. RACKIEWICZ ROSENBERG, KLEIN & LEE 3458 ELLICOTT CENTER DRIVE, SUITE 101 ELLICOTT CITY, MD 21043 RKL@RKLPLAW.COM no phone number provided
Submission	Answer
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Date	05/29/2020
Attachments	4681-71-OPP-ANSWER-TO-NOTICE-OF-OPPOSITION-AS-FILED-MAY29-2020.pdf(135942 bytes) 4681-71-OPP-EXHIBITS-A-D-ANSWER-TO-NOTICE-OF-OPPOSITION-AS-FILED-MAY29-2020.pdf(2019317 bytes) 4681-71-OPP-EXHIBIT-E-ANSWER-TO-NOTICE-OF-OPPOSITION-AS-FILED-MAY29-2020.pdf(4612314 bytes) 4681-71-OPP-EXHIBITS-F-H-ANSWER-TO-NOTICE-OF-OPPOSITION-AS-FILED-MAY29-2020.pdf(5467399 bytes)

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Spacelabs Holdings, Inc.,	:	
<i>Opposer</i>	:	Opposition No. 91255412
v.	:	Serial No. 88/575,079
Credo Biomedical Pte. Ltd.	:	
<i>Applicant</i>	:	

APPLICANT’S ANSWER TO NOTICE OF OPPOSITION

Applicant, Credo Biomedical Pte. Ltd., by the undersigned Attorney, hereby answers each of the allegations filed in the Notice of Opposition made by Opposer, Spacelabs Holdings, Inc.

(1) Applicant admits that a search of the Delaware Department of State, Division of Corporations website indicates that “Spacelabs Holdings, Inc.” is a Delaware Corporation. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining matters alleged in Paragraph 1 and, on that basis, denies them.

(2) Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters alleged in Paragraph 2 and, on that basis, denies them.

(3) Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters alleged in Paragraph 3 and, on that basis, denies them.

(4) Applicant admits that a search of the website of the United States Patent and Trademark Office indicates that, as of the filing of this Answer, Registration No. 4,589,136 is “live,” owned by Spacelabs Holdings, Inc., and has a filing date of January 3, 2012. However,

with respect to the listings of goods in Paragraph 4, Applicant notes that “medical monitors and devices” is an overly broad summary of the goods listed for Registration No. 4,589,136 in Class 10 and, therefore, denies the same. Additionally, Applicant is without knowledge or information to form a belief as to the current validity and status of Registration No. 4,589,136 and, therefore, denies the same. More generally, Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining matters alleged in Paragraph 4 and, on that basis, denies them.

(5) Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters alleged in Paragraph 5 and, on that basis, denies them.

(6) Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters alleged in Paragraph 6 and, on that basis, denies them.

(7) Applicant admits the allegations made in Paragraph 7.

(8) Applicant is without knowledge or information as to Opposer's definition of “...made use in commerce...” with relation to the August 12, 2019 date and therefore denies same.

(9) Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters alleged in Paragraph 9 and, on that basis, denies them.

(10) Applicant admits that it did not request explicit consent or permission from Opposer before filing the subject Trademark Application as alleged in Paragraph 10 and submits that it was also under absolutely no obligation to do so because Opposer does not have any rights in the “QUBEMDX” mark for which protection is sought by Applicant.

(11) Applicant denies the allegations made in Paragraph 11.

(12) Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters alleged in Paragraph 12, including but not limited to the matters relating to Opposer's beliefs, and on that basis, denies them.

(13) Applicant asserts that no response is necessary to Paragraph 13, but to the extent a response is necessary, Applicant reasserts its responses for Paragraphs 1-12 as respectively provided *infra*.

(14) Applicant denies the allegations made in Paragraph 14.

(15) Applicant admits that its mark differs from Opposer's mark and that it includes "MDX". Applicant denies the remaining allegations made in Paragraph 14, including but not limited to the allegations that "MDX" would be understood by consumers to sound like "medics", that "medics" is descriptive as applied to Applicant's mark, and that the parties' goods are identical or closely related.

(16) Applicant asserts that no response is necessary to paragraph 16, but to the extent a response is necessary, Applicant reasserts its responses for Paragraphs 1-14 as respectively provided *infra*.

(17) Applicant denies the allegations made in Paragraph 17.

FURTHER DEFENSES

(18) Applicant, in the following paragraphs, provides the TTAB some defenses which respond to Opposer's Allegations made in the Notice of Opposition. Applicant expressly reserves the right to develop and plead further during the discovery phase of the Opposition proceeding.

(19) There is no likelihood of confusion, mistake, and/or deception because Applicant's Mark and Opposer's Mark are not confusingly similar.

(20) Applicant filed the subject Trademark Application, Serial No. 88/575,079, at the United States Patent and Trademark Office on August 12, 2019. The Examining Attorney did not issue any Office Actions during the course of prosecution of the subject Trademark Application. The subject Trademark Application was approved for publication on November 17, 2019 and Applicant received a Notice of Publication on December 4, 2019. Thus, Applicant's Application Serial No. 88/575,079, after having been searched by the Trademark Examining Attorney, was found to be suitable for registration and not confusingly similar to any registered or pending mark at that time.

(21) Applicant's Mark and Opposer's Mark are visually and phonetically distinct and have overall commercial impressions which are unique and distinct from one another.

(22) Applicant's mark is "QUBEMDX" which is a unitary, fanciful word. There is no spacing between "QUBE" and "MDX" in Applicant's mark to separate these components from one another and the mark must be compared in its entirety giving due weight to all of the literal elements of the mark in the manner they are presented. To that end, Applicant's Mark must be considered as a whole, namely, "QUBEMDX" where the "MDX" portion is not dissected from "QUBE".

(23) The goods offered in connection with the respective marks are remote and would travel in different channels of trade.

(24) Even assuming, *arguendo*, that the goods associated with the respective marks were to travel in the same channels of trade, both marks are associated with highly specialized goods and would be purchased by discriminating consumers who would be readily able to differentiate between Applicant's diagnostic apparatus' and Opposer's patient monitoring devices.

(25) Opposer's rights in and to the common portion of the respective marks, namely, the word "QUBE" is weak given that this term is diluted as applied to goods in International Class 10. A brief search of the office records of the USPTO reveals at least two additional marks which have been granted registration for the exact same mark as Opposer's Mark, namely, "QUBE" for goods in International Class 10.

(26) Registration Nos. 5,056,648 (Application Serial No. 79/165,038) and 5,158,866 (Application Serial No. 86/863,078) (copies attached as Exhibits A and B respectively), both for the mark "QUBE", were granted registration, respectively, on October 11, 2016 and March 14, 2017, each more than two years after Opposer's Mark was in full force and effect.

(27) Opposer's Mark was initially cited during prosecution of Application Serial Nos. 79/165,038 (*see* Exhibit C) and 86/863,078 (*see* Exhibit D) as a bar to registration, but in both instances, the rejection was overcome by amendments to the Identification of Goods. Copies of the Responses and the Arguments submitted in connection with those responses are attached as Exhibit E for Serial No. 79/165,038 and Exhibit F for Serial No. 86/863,078. This evidences that the USPTO believes consumers are readily able to differentiate between identical marks directed to goods in the same international class so long as there are differences between the specific goods associated with those respective marks.

(28) Not only is Applicant's Mark directed to goods which are distinct from the International Class 10 goods offered in connection with Opposer's mark, but also, Applicant's Mark itself is distinguishable from Opposer's Mark.

(29) Opposer did not initiate an Opposition proceeding against either of the applications which matured into Registration Nos. 5,056,648 (Serial No. 79/165,038) and 5,158,866 (Serial No. 86/863,078), notwithstanding that both of these marks and Opposer's Mark are for the mark

“QUBE” and directed to goods in International Class 10. The case histories for Registration Nos. 5,056,648 (Serial No. 79/165,038) and 5,158,866 (Serial No. 86/863,078), are attached as Exhibits G and H respectively and it can be seen that no Opposition Proceeding was initiated.

(30) The marks of Registration Nos. 5,056,648 and 5,158,866 have coexisted for over 3 years, and during that time there has been no Cancellation Proceeding initiated against either mark by Opposer since the marks' respective registrations on October 11, 2016 and March 14, 2017, evidencing that Opposer does not believe there to be confusion between its mark and the “QUBE” marks of Registration Nos. 5,056,648 and 5,158,866. With reference to Exhibits G and H, it can be seen that no Cancellation Proceeding has been initiated against either Registration Nos. 5,056,648 or Registration No. 5,158,866.

(31) If coexistence is possible between identical marks, namely, “QUBE” applied to goods in International Class 10, there is no possible likelihood of confusion between “QUBE” and a mark which is *not* the word “QUBE,” but a unitary fanciful term which happens to contain the letters “QUBE.”

Wherefore, having made full answer to the Notice of Opposition, Applicant prays that the Opposition be dismissed and that registration for the mark “QUBEMDX” be issued to Applicant. Respectfully submitted,

DATE: May 29, 2020

FOR: Credo Biomedical Pte. Ltd.

/Nicole B. Rackiewicz/
Nicole B. Rackiewicz
Morton J. Rosenberg
Christopher D. Reaves
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **APPLICANT'S ANSWER TO NOTICE OF OPPOSITION** was served on Opposer by email to Elisabeth K. O'Neill at tmlit@loeb.com on this 29th day of May 2020.

/Nicole B. Rackiewicz/
Nicole B. Rackiewicz

CERTIFICATE OF ELECTRONIC TRANSMISSION

The undersigned hereby certifies that the foregoing **APPLICANT'S ANSWER TO NOTICE OF OPPOSITION** was electronically transmitted to the United States Patent and Trademark Office by uploading a true copy thereof via the Electronic System for Trademark Trials and Appeals (ESTTA) on this 29th day of May 2020.

/Nicole B. Rackiewicz/
Nicole B. Rackiewicz

OPPOSITION NO. 91255412

**APPLICANT'S ANSWER TO
NOTICE OF OPPOSITION**

EXHIBIT A

United States of America

United States Patent and Trademark Office

QUBE

Reg. No. 5,056,648

Registered Oct. 11, 2016

Int. Cl.: 9, 10, 42

Service Mark

Trademark

Principal Register

Sophion Bioscience A/S (DENMARK Public Limited Company)
154 Baltorpvej
DK-2750 Ballerup
DENMARK

CLASS 9: Scientific, electrical and optical apparatus and instruments for use in laboratories, in pharmacology, and in the pharmaceutical and biochemical industries, namely, patch clamp apparatus and instruments for measuring and monitoring of chemical and biochemical processes in cell membranes and for handling, manipulating and characterising ion channels and transporters in living cells, and for microarray based and high throughput screening; all of the foregoing excluding spectrometers

CLASS 10: Medical apparatus and instruments for use in laboratories and in the pharmaceutical and biochemical industries, namely, patch clamp apparatus and instruments for functional characterisation of living cells, and for measuring and monitoring of chemical and biochemical processes in cell membranes and for handling, manipulating and characterising ion channels and transporters in living cells and for microarray based and high throughput screening; all of the foregoing excluding spectrometers

CLASS 42: Scientific research and industrial research for use in laboratories and in the pharmaceutical and biochemical industries, namely, research based on the screening of ion channels and transporters, research based on microarray technology, research based on high throughput screening technology, and research based on microchip technology; computer programming, namely the programming of apparatus and instruments for the measuring or monitoring of chemical and biochemical processes in cell membranes, and for the programming of apparatus or instruments for handling, manipulating and characterising ion channels and transporters in living cells

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

PRIORITY DATE OF 05-23-2014 IS CLAIMED

OWNER OF INTERNATIONAL REGISTRATION 1246746 DATED 11-21-2014,
EXPIRES 11-21-2024

SER. NO. 79-165,038, FILED 11-21-2014
KRISTIN M DAHLING, 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>.

OPPOSITION NO. 91255412

**APPLICANT'S ANSWER TO
NOTICE OF OPPOSITION**

EXHIBIT B

United States of America

United States Patent and Trademark Office

QUBE

Reg. No. 5,158,866

Advanced Anesthesia Specialists, LLC (ARIZONA LIMITED LIABILITY COMPANY)
802 N Beeline Hwy, Unit #C
Payson, AZ 85541

Registered Mar. 14, 2017

Int. Cl.: 10

CLASS 10: Anesthesia administering and critical care equipment, namely, non-rebreathing, heated and non-heated anesthesia units for use in the care of non-human animals exclusively

Trademark

FIRST USE 1-1-2013; IN COMMERCE 1-1-2013

Principal Register

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

SER. NO. 86-863,078, FILED 12-31-2015
STEVEN W JACKSON, 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>.

OPPOSITION NO. 91255412

**APPLICANT'S ANSWER TO
NOTICE OF OPPOSITION**

EXHIBIT C

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

U.S. APPLICATION SERIAL NO. 79165038

MARK: QUBE

79165038

CORRESPONDENT ADDRESS:

JOHAN SCHLÜTER LAW FIRM I/S
Højbro Plads 10
DK-1200 Copenhagen K
DENMARK

CLICK HERE TO RESPOND TO THIS LETTER:

http://www.uspto.gov/trademarks/teas/response_forms.jsp

APPLICANT: Sophion Bioscience A/S

CORRESPONDENT'S REFERENCE/DOCKET NO :

N/A

CORRESPONDENT E-MAIL ADDRESS:

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

INTERNATIONAL REGISTRATION NO. 1246746

STRICT DEADLINE TO RESPOND TO THIS NOTIFICATION: TO AVOID ABANDONMENT OF THE REQUEST FOR EXTENSION OF PROTECTION OF THE INTERNATIONAL REGISTRATION, THE USPTO MUST RECEIVE A COMPLETE RESPONSE TO THIS PROVISIONAL FULL REFUSAL NOTIFICATION **WITHIN 6 MONTHS** OF THE "DATE ON WHICH THE NOTIFICATION WAS SENT TO WIPO (MAILING DATE)" LOCATED ON THE WIPO COVER LETTER ACCOMPANYING THIS NOTIFICATION.

In addition to the Mailing Date appearing on the WIPO cover letter, a holder (hereafter "applicant") may confirm this Mailing Date using the USPTO's Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. To do so, enter the U.S. application serial number for this application and then select "Documents." The Mailing Date used to calculate the response deadline for this provisional full refusal is the "Create/Mail Date" of the "IB-1rst Refusal Note."

This is a **PROVISIONAL FULL REFUSAL** of the request for extension of protection of the mark in the above-referenced U.S. application. See 15 U.S.C. §1141h(c). See below in this notification (hereafter "Office action") for details regarding the provisional full refusal.

Section 2(d) - Likelihood of Confusion Refusal

Registration of the applied-for mark is refused because of a likelihood of confusion with the marks in U.S. Registration Nos. 4589136, 4544171, and 4009246. Trademark Act Section 2(d), 15 U.S.C. §1052(d); see TMEP §§1207.01 *et seq.* See the enclosed registrations.

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely a potential consumer would be confused, mistaken, or deceived as to the source of the goods and/or services of the applicant and registrant. See 15 U.S.C. §1052(d). A determination of likelihood of confusion under Section 2(d) is made on a case-by case basis and the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) aid in this determination. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d 1344, 1349, 98 USPQ2d 1253, 1256 (Fed. Cir. 2011) (citing *On-Line Careline, Inc. v. Am. Online, Inc.*, 229 F.3d 1080, 1085, 56 USPQ2d 1471, 1474 (Fed. Cir. 2000)). Not all the *du Pont* factors, however, are necessarily relevant or of equal weight, and any one of the factors may control in a given case, depending upon the evidence of record. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d at 1355, 98 USPQ2d at 1260; *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); see *In re E. I. du Pont de Nemours & Co.*, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity and nature of the goods and/or services, and similarity of the trade channels of the goods and/or services. See *In re Viterra Inc.*, 671 F.3d 1358, 1361-62, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In*

re Dakin's Miniatures Inc., 59 USPQ2d 1593, 1595-96 (TTAB 1999); TMEP §§1207.01 *et seq.*

The overriding concern is not only to prevent buyer confusion as to the source of the goods and/or services, but to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. *See In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt regarding a likelihood of confusion determination is resolved in favor of the registrant. TMEP §1207.01(d)(i); *see Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988).

Here, applicant applied for the mark **QUBE** for “Scientific, electrical or optical apparatus or instruments, including apparatus or instruments for measuring or monitoring of chemical or biochemical processes in cell membranes, for handling, manipulating and characterising ion channels and transporters in living cells, for microarray based screening, and for high throughput screening,” “Medical apparatus or instruments, including medical apparatus or instruments for functional characterisation of living cells, for measuring or monitoring of chemical or biochemical processes in cell membranes and for handling, manipulating and characterising of ion channels and transporters in living cells,” “Scientific or industrial research, including research based on the screening of ion channels and transporters, research based on microarray technology, research based on high throughput screening technology, and research based on micro chip technology; computer programming, including the programming of apparatus or instruments for measuring or monitoring of chemical or biochemical processes in cell membranes, and for programming of apparatus or instruments for handling, manipulating and characterising ion channels and transporters in living cells.”

Registrants' marks are also **QUBE**, for “Computer hardware and software for patient care documentation and information management; computer software for storing, reviewing and reporting patient medical information; computer workstations comprising computer servers, computer monitors, and local, remote or portable computer terminals; remote liquid crystal display (LCD) monitors; interfaces and peripheral devices for computers; computer network and communication network components, namely, hardwire ethernet connectors, wireless network cards, network switches, network routers, network ethernet cables, wireless access points, and wireless controllers; computer software for acquiring, analyzing, displaying, storing and transmitting patient information and physiological parameters from patients for use in the medical field, namely, emergency care and treatment, adult/pediatric/neonatal critical care, perioperative care, labor and delivery, and point of care records,” “Patient medical monitors for monitoring ECG (heart rate and arrhythmias), respiration, oxygen saturation (SpO2), invasive pressures, non-invasive blood pressure, cardiac output, temperature, carbon dioxide concentrations, and anesthetic agent concentrations; Medical device for measuring patient physiological parameters, namely, ECG (heart rate and arrhythmias), respiration, oxygen saturation (SpO2), invasive pressures, non-invasive blood pressure, cardiac output, temperature, carbon dioxide concentrations, and anesthetic agent concentrations; Patient medical monitoring systems and clinical medical information systems comprised of bedside monitors, patient monitors, central monitors, transport monitors, physiologic measurement monitors, medical sensors, display terminals, medical telemetry transmitters, antennas and receivers all for monitoring, obtaining, displaying, transmitting and storing patient information and physiological parameters from patients, namely, heart rate, body temperature, level of consciousness, cardiovascular status, ventilation, capnography, respiration, electrocardiography, electroencephalography, electromyography, blood oxygen saturation, invasive pressures and cardiac output, all for medical use” “Mass-spectrometers,” and “Electrostatic discharge management devices, namely, electric outlet receptacles for providing direct contact to equipment ground.”

Comparison of Marks

In a likelihood of confusion determination, marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *In re Viterro Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973)); TMEP §1207.01(b)-(b)(v). Similarity in any one of these elements may be sufficient to find the marks confusingly similar. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *see In re 1st USA Realty Prof'ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007); TMEP §1207.01(b).

In a likelihood of confusion determination, the marks in their entireties are compared for similarities in appearance, sound, connotation, and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973); TMEP §1207.01(b)-(b)(v).

In the present case, all of the marks are identical, as all are **QUBE** in standard or typed characters. Thus, the marks are identical in terms of appearance and sound. In addition, the connotation and commercial impression of the marks do not differ when considered in connection with applicant's and registrant's respective goods or services. Therefore, the marks are confusingly similar.

Comparison of Goods and Services

The goods and/or services of the parties **need not be identical** or even competitive to find a likelihood of confusion. *See On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000) (“[E]ven if the goods in question are different from, and thus not related to, one another in kind, the same goods can be related in the mind of the consuming public as to the origin of the goods.”); TMEP §1207.01(a)(i).

The respective goods and/or services ***need only be “related in some manner”*** and/or if the circumstances surrounding their marketing [be] such that they could give rise to the mistaken belief that [the goods and/or services] emanate from the same source.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)); *Gen. Mills Inc. v. Fage Dairy Processing Indus. SA*, 100 USPQ2d 1584, 1597 (TTAB 2011); TMEP §1207.01(a)(i).

Where the marks of the respective parties are identical or virtually identical, the relationship between the relevant goods and/or services need not be as close to support a finding of likelihood of confusion. See *In re Shell Oil Co.*, 992 F.2d 1204, 1207, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993); *In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202 (TTAB 2009); *In re Thor Tech, Inc.*, 90 USPQ2d 1634, 1636 (TTAB 2009); TMEP §1207.01(a).

Therefore, in this case, with the marks all being identical, as all are QUBE in standard or typed characters, the relationship between the goods and services need not be as close to result in a likelihood of confusion as to source in the minds of consumers.

In addition, the question of likelihood of confusion is determined based on the description of the goods and services stated in the application and registrations at issue. See *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1323, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014) (quoting *Octocom Sys. Inc. v. Hous. Computers Servs. Inc.*, 918 F.2d 937, 942, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990)).

Applicant, in addition to applying for a mark that is identical to the mark in the cited registrations, has provided an identification of goods and services that is very broad and may encompass goods and services that are related to the registrants’ goods and services such that confusion is likely. Absent restrictions in an application and/or registration, the identified goods and/or services are “presumed to travel in the same channels of trade to the same class of purchasers.” *In re Viterro Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1268, 62 USPQ2d 1001, 1005 (Fed. Cir. 2002)). Additionally, unrestricted and broad identifications are presumed to encompass all goods and/or services of the type described. See *In re Jump Designs, LLC*, 80 USPQ2d 1370, 1374 (TTAB 2006) (citing *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981)); *In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992).

In this case, the identification set forth in the application has no restrictions as to nature, type, channels of trade, or classes of purchasers. Therefore, it is presumed that the goods and services travel in all normal channels of trade, and are available to the same class of purchasers. Further, the application uses broad wording to describe the goods and services, such as “Scientific, electrical or optical apparatus or instruments,” “Medical apparatus or instruments,” and “computer programming,” and this wording is presumed to encompass all goods and services of the type described, including goods and services that are closely related to those in registrants’ more narrow identifications.

Because the marks are similar and because the marks refer to closely related goods and services, consumers would be likely to mistakenly believe that the goods and services emanate from a single source. Accordingly, registration is refused under Trademark Section 2(d).

Prior Pending Applications

The effective filing dates of pending U.S. Application Serial Nos. 86519122, 86296110, 86279094, 86366215, 85918034, 85863184 precedes applicant’s filing date. See attached referenced applications. If one or more of the marks in the referenced applications register, applicant’s mark may be refused registration under Trademark Act Section 2(d) because of a likelihood of confusion with the registered mark(s). See 15 U.S.C. §1052(d); 37 C.F.R. §2.83; TMEP §§1208 *et seq.* Therefore, upon receipt of applicant’s response to this Office action, action on this application may be suspended pending final disposition of the earlier-filed referenced application.

Identification of Goods and Services

Some of the wording in the identification of goods and services is indefinite and must be clarified as noted in the explanations and suggestions below. See TMEP §1402.01.

An application must specify, in an explicit manner, the particular goods or services on or in connection with which the applicant uses, or has a bona fide intention to use, the mark in commerce. See 15 U.S.C. §1051(a)(2), (b)(2); 37 C.F.R. §2.32(a)(6); TMEP §1402.01. for this reason, the terminology “and/or” and “or” is not sufficiently explicit language in identifications because it is not clear whether applicant is using the mark, or intends to use the mark, on all the identified goods or services. See TMEP §1402.03(a).

In addition, if applicant uses indefinite words and phrases such as “services in connection with,” “such as,” “including,” “and like services,” “concepts,” or “not limited to,” such wording must be followed by “namely,” and a list of the specific services identified by their common commercial or generic names. See TMEP §1402.03(a). Please note that in class 42 below, the wording “computer programming, *including...*” is acceptable because “computer programming” is considered to be sufficiently definite by the USPTO for purposes of acceptable identification of goods and services. See online searchable *Manual of Acceptable Identifications of Goods and Services* at <http://tess2.uspto.gov/netahtml/tidm.html>. However, although this wording is acceptable in terms of meeting the USPTO requirements for specificity, applicant may wish to narrow this wording as well as other broad wording in its identification, as this wording currently adds to the likelihood of confusion (see discussion above regarding broad wording).

Also, in the identification of goods, applicant must use the common commercial or generic names for the goods, be as complete and specific as possible, and avoid the use of indefinite words and phrases. TMEP §1402.03(a). If applicant uses indefinite words such as “accessories,” “apparatus,” “components,” “devices,” “equipment,” “materials,” “parts,” “systems,” or “products,” such words must be followed by “namely,” followed by a list of the specific goods identified by their common commercial or generic names. See TMEP §§1401.05(d), 1402.03(a).

Applicant may adopt the following for its identification of goods and services, if accurate, providing additional specificity where indicated.

“{ **List specific** Scientific, electrical or optical apparatus or instruments, including apparatus or instruments for measuring or monitoring of chemical or biochemical processes in cell membranes, for handling, manipulating and characterising ion channels and transporters in living cells, for microarray based screening, and for high throughput screening, **for example, “microscopes”**},” in International Class 9;

“{ **List specific** Medical apparatus or instruments, including medical apparatus or instruments for functional characterisation of living cells, for measuring or monitoring of chemical or biochemical processes in cell membranes and for handling, manipulating and characterising of ion channels and transporters in living cells, **for example, “devices for measuring blood sugar”**},” in International Class 10;

“Scientific **and** industrial research, **in the field of** screening of ion channels and transporters, microarray technology, high throughput screening technology, and micro chip technology; computer programming, including the programming of apparatus or instruments for measuring or monitoring of chemical or biochemical processes in cell membranes, and for programming of apparatus or instruments for handling, manipulating and characterizing ion channels and transporters in living cells,” in International Class 42.

While the suggested wording above provides examples of wording that meets the Office’s requirements for specificity, it does not provide every possible acceptable identification. Applicant must ensure that any identification submitted is accurate, properly classified, and does not include goods or services not included in the identification submitted with the application as originally filed. Although identifications of goods and/or services may be amended to clarify or limit the goods and/or services, adding to or broadening the scope of the goods and/or services is not permitted. 37 C.F.R. §2.71(a); see TMEP §§1402.06 *et seq.*, 1402.07. Therefore, applicant may not amend the identification to include goods and/or services that are not within the scope of the goods and/or services set forth in the present identification.

In addition, in a Trademark Act Section 66(a) application, classification of goods and/or services may not be changed from that assigned by the International Bureau of the World Intellectual Property Organization. 37 C.F.R. §2.85(d); TMEP §§1401.03(d), 1904.02(b). Further, classes may not be added or goods and/or services transferred from one class to another in a multiple-class Section 66(a) application. 37 C.F.R. §2.85(d); TMEP §1401.03(d).

For assistance with identifying and classifying goods and/or services in trademark applications, please see the online searchable *Manual of Acceptable Identifications of Goods and Services* at <http://tess2.uspto.gov/netathtml/tidm.html>. See TMEP §1402.04.

Significance

Applicant must explain whether “QUBE” has any meaning or significance in the industry in which the goods and/or services are manufactured/provided, or if such wording is a “term of art” within applicant’s industry. See 37 C.F.R. §2.61(b); TMEP §814. Applicant must also explain whether this wording identifies a geographic place or has any meaning in a foreign language. See 37 C.F.R. §2.61(b); TMEP §814.

Failure to respond to a request for information is an additional ground for refusing registration. See *In re Cheezwhse.com, Inc.*, 85 USPQ2d 1917, 1919 (TTAB 2008); *In re DTI P’ship LLP*, 67 USPQ2d 1699, 1701 (TTAB 2003); TMEP §814.

Response to Office Action

To expedite prosecution of the application, applicant is encouraged to file its response to this Office action online via the Trademark Electronic Application System (TEAS), which is available at <http://www.uspto.gov/trademarks/teas/index.jsp>. If applicant has technical questions about the TEAS response to Office action form, applicant can review the electronic filing tips available online at http://www.uspto.gov/trademarks/teas/e_filing_tips.jsp and e-mail technical questions to TEAS@uspto.gov.

/kristindahling/
Kristin M. Dahling
Trademark Examining Attorney, LO105
kristin.dahling@uspto.gov (preferred)
(571) 272-8277

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp.

Please wait at least 72 hours from the issue/mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application.

For technical assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

WHO IS PERMITTED TO RESPOND TO THIS PROVISIONAL FULL REFUSAL: Any response to this provisional refusal must be personally signed by an individual applicant, all joint applicants, or someone with legal authority to bind a juristic applicant (e.g., a corporate officer or general partner). 37 C.F.R. §§2.62(b), 2.193(e)(2)(ii); TMEP §712.01. If applicant hires a qualified U.S. attorney to respond on his or her behalf, then the attorney must sign the response. 37 C.F.R. §§2.193(e)(2)(i), 11.18(a); TMEP §§611.03(b), 712.01. Qualified U.S. attorneys include those in good standing with a bar of the highest court of any U.S. state, the District of Columbia, Puerto Rico, and other federal territories and possessions of the United States. *See* 37 C.F.R. §§2.17(a), 2.62(b), 11.1, 11.14(a); TMEP §§602, 712.01. Additionally, for all responses, the proper signatory must personally sign the document or personally enter his or her electronic signature on the electronic filing. *See* 37 C.F.R. §§2.193(a); TMEP §§611.01(b), 611.02. The name of the signatory must also be printed or typed immediately below or adjacent to the signature, or identified elsewhere in the filing. 37 C.F.R. §2.193(d); TMEP §611.01(b).

In general, foreign attorneys are not permitted to represent applicants before the USPTO (e.g., file written communications, authorize an amendment to an application, or submit legal arguments in response to a requirement or refusal). *See* 37 C.F.R. §11.14(c), (e); TMEP §§602.03-.03(b), 608.01.

DESIGNATION OF DOMESTIC REPRESENTATIVE: The USPTO encourages applicants who do not reside in the United States to designate a domestic representative upon whom any notice or process may be served. TMEP §610; *see* 15 U.S.C. §§1051(e), 1141h(d); 37 C.F.R. §2.24(a)(1)-(2). Such designations may be filed online at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

Print: May 31, 2015

85212610

DESIGN MARK

Serial Number

85212610

Status

REGISTERED

Word Mark

QUBE

Standard Character Mark

Yes

Registration Number

4009246

Date Registered

2011/08/09

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Prostat Corporation CORPORATION ILLINOIS 1072 Tower Lane Bensenville
ILLINOIS 60106

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Electrostatic discharge management devices, namely, electric outlet
receptacles for providing direct contact to equipment ground. First
Use: 2010/12/20. First Use In Commerce: 2010/12/20.

Filing Date

2011/01/07

Examining Attorney

OKEKE, BENJAMIN

Attorney of Record

Brett E. Bachtell

QUBE

Print: May 31, 2015

85508044

DESIGN MARK

Serial Number

85508044

Status

REGISTERED

Word Mark

QUBE

Standard Character Mark

Yes

Registration Number

4589136

Date Registered

2014/08/19

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Spacelabs Healthcare, LLC LIMITED LIABILITY COMPANY WASHINGTON 35301
SE Center St Snoqualmie WASHINGTON 98065

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Computer hardware and software for patient care documentation and
information management; computer software for storing, reviewing and
reporting patient medical information; computer workstations
comprising computer servers, computer monitors, and local, remote or
portable computer terminals; remote liquid crystal display (LCD)
monitors; interfaces and peripheral devices for computers; computer
network and communication network components, namely, hardwire
ethernet connectors, wireless network cards, network switches, network
routers, network ethernet cables, wireless access points, and wireless
controllers; computer software for acquiring, analyzing, displaying,
storing and transmitting patient information and physiological
parameters from patients for use in the medical field, namely,
emergency care and treatment, adult/pediatric/neonatal critical care,
perioperative care, labor and delivery, and point of care records.
First Use: 2012/04/10. First Use In Commerce: 2012/06/22.

Goods/Services

Class Status -- ACTIVE. IC 010. US 026 039 044. G & S: Patient medical monitors for monitoring ECG (heart rate and arrhythmias), respiration, oxygen saturation (SpO2), invasive pressures, non-invasive blood pressure, cardiac output, temperature, carbon dioxide concentrations, and anesthetic agent concentrations; Medical device for measuring patient physiological parameters, namely, ECG (heart rate and arrhythmias), respiration, oxygen saturation (SpO2), invasive pressures, non-invasive blood pressure, cardiac output, temperature, carbon dioxide concentrations, and anesthetic agent concentrations; Patient medical monitoring systems and clinical medical information systems comprised of bedside monitors, patient monitors, central monitors, transport monitors, physiologic measurement monitors, medical sensors, display terminals, medical telemetry transmitters, antennas and receivers all for monitoring, obtaining, displaying, transmitting and storing patient information and physiological parameters from patients, namely, heart rate, body temperature, level of consciousness, cardiovascular status, ventilation, capnography, respiration, electrocardiography, electroencephalography, electromyography, blood oxygen saturation, invasive pressures and cardiac output, all for medical use. First Use: 2012/04/10. First Use In Commerce: 2012/06/22.

Colors Claimed

Color is not claimed as a feature of the mark.

Filing Date

2012/01/03

Examining Attorney

I, DAVID

Attorney of Record

Douglas Masters

Qube

Print: May 31, 2015

85710095

DESIGN MARK

Serial Number

85710095

Status

REGISTERED

Word Mark

QUBE

Standard Character Mark

Yes

Registration Number

4544171

Date Registered

2014/06/03

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Brucker Corporation CORPORATION DELAWARE 40 Manning Road Billerica
MASSACHUSETTS 01821

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Mass-spectrometers. First Use: 2013/04/03. First Use In Commerce:
2013/04/03.

Filing Date

2012/08/22

Examining Attorney

TAYLOR, DAVID

Attorney of Record

Janet M. Garetto

QUBE

Print: May 31, 2015

85863184

DESIGN MARK

Serial Number

85863184

Status

NON-FINAL ACTION - MAILED

Word Mark

POWERQUBE

Standard Character Mark

No

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

Genie Products LLC LIMITED LIABILITY COMPANY INDIANA 110 East
Washington Street, Suite 301 Indianapolis INDIANA 46204

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Power distribution assemblies, namely, charging appliances, for
multiple outlets and USB ports. First Use: 2013/06/15. First Use In
Commerce: 2013/06/15.

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "POWER CUBE" APART FROM
THE MARK AS SHOWN.

Description of Mark

The mark consists of a gray, black and white rectangle that contains
the white word "POWERQUBE" below a black, white, orange and gray
graphical representation of an ungrounded electrical outlet.

Colors Claimed

The color(s) black, grey, white and orange is/are claimed as a feature
of the mark.

Filing Date

2013/02/28

Examining Attorney

REINHART, MEGHAN

Print: May 31, 2015

85863184

Attorney of Record
AMY A. ROLLINS



POWERQUBE

Print: May 31, 2015

85918034

DESIGN MARK

Serial Number

85918034

Status

NON-FINAL ACTION - MAILED

Word Mark

QUBE

Standard Character Mark

Yes

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Quantitative Sampling Technologies, LLC LIMITED LIABILITY COMPANY
IDAHO PO Box 8263 Boise IDAHO 83707

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
microprocessor hardware and associated firmware, software and
peripherals for the control and acquisition of data from the remote
interrogation of (1) RFID tags and sonar tags on organisms and (2)
associated environmental sensors. First Use: 2013/02/01. First Use
In Commerce: 2013/02/01.

Filing Date

2013/04/29

Examining Attorney

DALL, MAUREEN

Attorney of Record

Stuart J. Ford

QUBE

DESIGN MARK

Serial Number

86279094

Status

PUBLISHED FOR OPPOSITION

Word Mark

SMARTQUBE

Standard Character Mark

Yes

Type of Mark

TRADEMARK; SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Quatro Electronics Holdings Limited limited company (ltd.) UNITED KINGDOM
Premiere House, Elstree Way, Borehamwood Hertfordshire UNITED KINGDOM WD61JH

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S: Optical and/or signaling apparatus and instruments, namely, surveillance cameras and lenses for surveillance cameras, intruder alarms, smoke alarms, fire alarms, burglar alarms, flood alarms; apparatus for receiving, recording, transmission or reproduction of sound and/or images; electrical security apparatus, other than for vehicles, namely, stands for surveillance cameras, stands for intruder alarms, smoke alarms, fire alarms, burglar alarms and flood alarms; sensors for surveillance cameras and for intruder alarms, smoke alarms, fire alarms, burglar alarms and flood alarms, transmitters for alarms, network video recorders, computer software for processing and recording information received from security and surveillance cameras, security sensors and intruder alarms, smoke alarms, fire alarms, burglar alarms and flood alarms; alarm monitoring systems; alarm apparatus, namely, intruder alarms, smoke alarms, fire alarms, burglar alarms, flood alarms, sirens for alarms, sensors for alarms, door sensors, pressure sensors, keypads for alarms, batteries for alarms, power supplies for alarms; alarm central units, namely, control centers being parts of alarm systems; closed circuit TV systems for security and surveillance, namely, cameras, switchers, monitors, microphones and recorders; sonar apparatus; structural parts and fittings for all the aforesaid goods.

Goods/Services

Class Status -- ACTIVE. IC 037. US 100 103 106. G & S: Installation, maintenance, servicing, repair and removal of security apparatus, system and instruments, alarms, alarm systems, alarm apparatus, alarm management apparatus, control centers being parts of alarm systems, closed circuit television apparatus, sonar apparatus, and structural parts and fittings for all the aforesaid goods; advice and consultancy services relating to the aforesaid services.

Goods/Services

Class Status -- ACTIVE. IC 045. US 100 101. G & S: Security services for the protection of property and individuals, alarm monitoring, response and verification services; rental and leasing of security apparatus, system and instruments, alarms, alarm systems, alarm apparatus, alarm management apparatus, control centers being parts of alarm systems, parts and fittings for all the aforesaid goods; Closed-circuit surveillance services.

Foreign Country Name

ERPN CMNTY TM OFC

Foreign Registration Number

012499208

Foreign Registration Date

2014/06/13

Foreign Expiration Date

2024/01/14

Colors Claimed

Color is not claimed as a feature of the mark.

Filing Date

2014/05/12

Examining Attorney

GUSTASON, ANNE E.

Attorney of Record

Kit M. Stetina

SMARTQUBE

DESIGN MARK

Serial Number

86296110

Status

PUBLISHED FOR OPPOSITION

Word Mark

QUBE GLOBAL SOFTWARE

Standard Character Mark

No

Type of Mark

TRADEMARK; SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

Qube Global Software Limited CORPORATION UNITED KINGDOM 9 King Street
London UNITED KINGDOM EC2V8EA

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Computers; computer software and computer programs for transactional
data processing and information management for use in the field of
facilities management and the management of property and real estate;
downloadable publications in the nature of newsletters in the field of
facilities management and management of real property and real estate.

Goods/Services

Class Status -- ACTIVE. IC 041. US 100 101 107. G & S: Training in
the use and operation of computers; training in the use and operation
of computers and software in the field of facilities management and
management of property and real estate and consultation relating
thereto; all of the aforesaid services relating to facilities
management and management of property and real estate.

Goods/Services

Class Status -- ACTIVE. IC 042. US 100 101. G & S: Design and
consultancy services in the field of computers, computer software,
computer programs; computer software installation and maintenance;
installation, maintenance and repair of computer software, computer
programs; consultancy, information and advisory services relating to
all the aforesaid services; all of the aforesaid services relating to
facilities management and management of property and real estate.

Foreign Country Name

ERPN CMNTY TM OFC

Foreign Registration Number

009374737

Foreign Registration Date

2011/05/20

Foreign Expiration Date

2020/09/14

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "GLOBAL SOFTWARE" APART FROM THE MARK AS SHOWN.

Description of Mark

The mark consists of the word "QUBE" above the words "GLOBAL SOFTWARE" in black and a design of a red cube above and to the right of the word "QUBE". The cube is shaded and in perspective with the upper left and lower right corners rounded and divided into thirds lengthwise by two white lines.

Colors Claimed

The color(s) red, black, and white is/are claimed as a feature of the mark.

Filing Date

2014/05/30

Examining Attorney

SCHRODY, ALLISON

Attorney of Record

Theodore D. Lienesch

Qube
Global Software



Print: May 31, 2015

86366215

DESIGN MARK

Serial Number

86366215

Status

NOTICE OF ALLOWANCE - ISSUED

Word Mark

QUBE

Standard Character Mark

Yes

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Intelati, Inc. CORPORATION DELAWARE 2600 El Camino Real Palo Alto
CALIFORNIA 94306

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Downloadable software for the viewing and navigation of computer data
among various dimensions on multiple device platforms via connected
computer networks; Downloadable computer software for users to view,
collaborate, and discuss data and charts on multiple device platforms
via connected computer networks.

Filing Date

2014/08/14

Examining Attorney

CORWIN, CHARLOTTE

Attorney of Record

Carlos Romero

Qube

Print: May 31, 2015

86519122

DESIGN MARK

Serial Number

86519122

Status

NON-FINAL ACTION - MAILED

Word Mark

QUBE

Standard Character Mark

Yes

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Heraeus Electro-Nite International N.V. naamloze vennootschap (nv)
BELGIUM Centrum Zuid 1105 3530 Houthalen BELGIUM

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
measuring equipment for measurements in liquid steel, namely, wireless
data transmitter modules.

Foreign Country Name

ERPN CMNTY TM OFC

Foreign Priority

FOREIGN PRIORITY CLAIMED

Foreign Application Number

013659826

Foreign Filing Date

2015/01/21

Filing Date

2015/01/30

Examining Attorney

ROACH, APRIL

Attorney of Record

Print: May 31, 2015

86519122

Patricia Smink Rogowski

QUBE

OPPOSITION NO. 91255412

**APPLICANT'S ANSWER TO
NOTICE OF OPPOSITION**

EXHIBIT D

To: Advanced Anesthesia Specialists, LLC (trademarks@woodsoviatt.com)
Subject: U.S. TRADEMARK APPLICATION NO. 86863078 - QUBE - AD077.95467
Sent: 4/26/2016 6:40:41 AM
Sent As: ECOM107@USPTO.GOV
Attachments: [Attachment - 1](#)
[Attachment - 2](#)
[Attachment - 3](#)

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

U.S. APPLICATION SERIAL NO. 86863078

MARK: QUBE

86863078

CORRESPONDENT ADDRESS:

RONALD J. KISICKI,
WOODS OVIATT GILMAN LLP
2 STATE STREET, 700 CROSSROADS BUILDING
ROCHESTER, NY 14614

CLICK HERE TO RESPOND TO THIS LETTER:

http://www.uspto.gov/trademarks/teas/response_forms.jsp

[VIEW YOUR APPLICATION FILE](#)

APPLICANT: Advanced Anesthesia Specialists, LLC

CORRESPONDENT'S REFERENCE/DOCKET NO :

AD077.95467

CORRESPONDENT E-MAIL ADDRESS:

trademarks@woodsoviatt.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 4/26/2016

TEAS PLUS OR TEAS REDUCED FEE (TEAS RF) APPLICANTS – TO MAINTAIN LOWER FEE, ADDITIONAL REQUIREMENTS MUST BE MET, INCLUDING SUBMITTING DOCUMENTS ONLINE: Applicants who filed their application online using the lower-fee TEAS Plus or TEAS RF application form must (1) file certain documents online using TEAS, including responses to Office

actions (see TMEP §§819.02(b), 820.02(b) for a complete list of these documents); (2) maintain a valid e-mail correspondence address; and (3) agree to receive correspondence from the USPTO by e-mail throughout the prosecution of the application. See 37 C.F.R. §§2.22(b), 2.23(b); TMEP §§819, 820. TEAS Plus or TEAS RF applicants who do not meet these requirements must submit an additional processing fee of \$50 per international class of goods and/or services. 37 C.F.R. §§2.6(a)(1)(v), 2.22(c), 2.23(c); TMEP §§819.04, 820.04. However, in certain situations, TEAS Plus or TEAS RF applicants may respond to an Office action by authorizing an examiner's amendment by telephone without incurring this additional fee.

The Office of the Deputy Commissioner for Trademark Examination Policy accepted a Letter of Protest received in connection with this application. The evidence presented in the letter was forwarded to the trademark examining attorney for consideration. See TMEP §1715.

Based upon this evidence, the trademark examining attorney is taking further action, as specified below. See TMEP §1715.02(b).

SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 4589136. Trademark Act Section 2(d), 15 U.S.C. §1052(d); see TMEP §§1207.01 *et seq.* See the enclosed registration.

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely a potential consumer would be confused, mistaken, or deceived as to the source of the goods of the applicant and registrant. See 15 U.S.C. §1052(d). A determination of likelihood of confusion under Section 2(d) is made on a case-by case basis and the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973) aid in this determination. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d 1344, 1349, 98 USPQ2d 1253, 1256 (Fed. Cir. 2011) (citing *On-Line Careline, Inc. v. Am. Online, Inc.*, 229 F.3d 1080, 1085, 56 USPQ2d 1471, 1474 (Fed. Cir. 2000)). Not all the *du Pont* factors, however, are necessarily relevant or of equal weight, and any one of the factors may control in a given case, depending upon the evidence of record. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d at 1355, 98 USPQ2d at 1260; *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); see *In re E. I. du Pont de Nemours & Co.*, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity and nature of the goods, and similarity of the trade channels of the goods. See *In re Viterro Inc.*, 671 F.3d 1358, 1361-62, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593, 1595-96 (TTAB 1999); TMEP §§1207.01 *et seq.*

COMPARISON OF THE MARKS

In a likelihood of confusion determination, the marks in their entireties are compared for similarities in appearance, sound, connotation, and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973); TMEP §1207.01(b)-(b)(v).

In the present case, applicant's mark is QUBE and registrant's mark is QUBE. Thus, the marks are identical in terms of appearance and sound. In addition, the connotation and commercial impression of the marks do not differ when considered in connection with applicant's and registrant's respective goods.

Therefore, the marks are confusingly similar.

COMPARISON OF THE GOODS

The goods of the parties need not be identical or even competitive to find a likelihood of confusion. See *On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000) (“[E]ven if the goods in question are different from, and thus not related to, one another in kind, the same goods can be related in the mind of the consuming public as to the origin of the goods.”); TMEP §1207.01(a)(i).

The respective goods need only be “related in some manner and/or if the circumstances surrounding their marketing [be] such that they could

give rise to the mistaken belief that [the goods and/or services] emanate from the same source.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)); TMEP §1207.01(a)(i).

Applicant’s goods are “Anesthesia administering and critical care equipment, namely, non-rebreathing, heated and non-heated anesthesia mask system.” Registrant’s goods are “Patient medical monitors for monitoring ECG (heart rate and arrhythmias), respiration, oxygen saturation (SpO2), invasive pressures, non-invasive blood pressure, cardiac output, temperature, carbon dioxide concentrations, and anesthetic agent concentrations; Medical device for measuring patient physiological parameters, namely, ECG (heart rate and arrhythmias), respiration, oxygen saturation (SpO2), invasive pressures, non-invasive blood pressure, cardiac output, temperature, carbon dioxide concentrations, and anesthetic agent concentrations; Patient medical monitoring systems and clinical medical information systems comprised of bedside monitors, patient monitors, central monitors, transport monitors, physiologic measurement monitors, medical sensors, display terminals, medical telemetry transmitters, antennas and receivers all for monitoring, obtaining, displaying, transmitting and storing patient information and physiological parameters from patients, namely, heart rate, body temperature, level of consciousness, cardiovascular status, ventilation, capnography, respiration, electrocardiography, electroencephalography, electromyography, blood oxygen saturation, invasive pressures and cardiac output, all for medical use.”

The identification set forth in the application and registration(s) has no restrictions as to nature, type, channels of trade, or classes of purchasers. Therefore, it is presumed that these goods travel in all normal channels of trade, and are available to the same class of purchasers. Further, the application uses broad wording to describe the goods and this wording is presumed to encompass all goods of the type described, including those in registrant’s more narrow identification.

The overriding concern is not only to prevent buyer confusion as to the source of the goods, but to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. *See In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt regarding a likelihood of confusion determination is resolved in favor of the registrant. TMEP §1207.01(d)(i); *see Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988).

Although applicant’s mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration. If applicant responds to the refusal(s), applicant must also respond to the requirement(s) set forth below.

IDENTIFICATION OF GOODS

The identification of goods is indefinite and must be clarified. *See* TMEP §1402.01. Applicant must specify the common commercial or generic name for the goods. If there is no common commercial or generic name, applicant must describe the product and intended consumer as well as its main purpose and intended uses.

Applicant may adopt the following identification, if accurate:

“Anesthesia administering and critical care equipment, namely, non-rebreathing, heated and non-heated anesthesia mask system **comprised of {please list the major components of the system in Class 010}**,” in International Class 010.

An applicant may only amend an identification to clarify or limit the goods, but not to add to or broaden the scope of the goods. 37 C.F.R. §2.71(a); *see* TMEP §§1402.06 *et seq.*, 1402.07.

For assistance with identifying and classifying goods and services in trademark applications, please see the USPTO’s online searchable *U.S. Acceptable Identification of Goods and Services Manual* at <http://tess2.uspto.gov/netathtml/tidm.html>. *See* TMEP §1402.04.

MULTIPLE-CLASS APPLICATION REQUIREMENTS

The application identifies goods in more than one international class; therefore, applicant must satisfy all the requirements below for each international class based on use in commerce under Section 1(a):

- (1) List the goods and/or services by their international class number in consecutive numerical order, starting with the lowest numbered class.

- (2) **Submit a filing fee for each international class** not covered by the fee(s) already paid (view the USPTO's current fee schedule at http://www.uspto.gov/trademarks/tm_fee_info.jsp). Applicant must either submit the filing fees for the classes not covered by the submitted fees or restrict the application to the number of classes covered by the fees already paid.
- (3) **Submit verified dates of first use of the mark** anywhere and in commerce **for each international class**.
- (4) **Submit a specimen for each international class**. Examples of specimens for goods include tags, labels, instruction manuals, containers, and photographs that show the mark on the actual goods or packaging, or displays associated with the actual goods at their point of sale. Webpages may also be specimens for goods when they include a picture or textual description of the goods associated with the mark and the means to order the goods.
- (5) **Submit a verified statement** that “**The specimen was in use in commerce on or in connection with the goods listed in the application at least as early as the filing date of the application.**”

See 15 U.S.C. §§1051(a), 1112; 37 C.F.R. §§ 2.32(a)(6)-(7), 2.34(a)(1), 2.86(a); TMEP §§904, 1403.01, 1403.02(c).

For an overview of the requirements for a Section 1(a) multiple-class application and how to satisfy the requirements online using the Trademark Electronic Application System (TEAS) form, please go to <http://www.uspto.gov/trademarks/law/multiclass.jsp>.

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. See 37 C.F.R. §§2.62(c), 2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant's rights. See TMEP §§705.02, 709.06.

/Steven W. Jackson/
Steven W. Jackson
Trademark Attorney
Law Office 107
steven.jackson@uspto.gov
571-272-9409

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the

response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

DESIGN MARK

Serial Number

85508044

Status

REGISTERED

Word Mark

QUBE

Standard Character Mark

Yes

Registration Number

4589136

Date Registered

2014/08/19

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Spacelabs Healthcare, LLC LIMITED LIABILITY COMPANY WASHINGTON 35301
SE Center St Snoqualmie WASHINGTON 98065

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Computer hardware and software for patient care documentation and
information management; computer software for storing, reviewing and
reporting patient medical information; computer workstations
comprising computer servers, computer monitors, and local, remote or
portable computer terminals; remote liquid crystal display (LCD)
monitors; interfaces and peripheral devices for computers; computer
network and communication network components, namely, hardwire
ethernet connectors, wireless network cards, network switches, network
routers, network ethernet cables, wireless access points, and wireless
controllers; computer software for acquiring, analyzing, displaying,
storing and transmitting patient information and physiological
parameters from patients for use in the medical field, namely,
emergency care and treatment, adult/pediatric/neonatal critical care,
perioperative care, labor and delivery, and point of care records.
First Use: 2012/04/10. First Use In Commerce: 2012/06/22.

Goods/Services

Class Status -- ACTIVE. IC 010. US 026 039 044. G & S: Patient medical monitors for monitoring ECG (heart rate and arrhythmias), respiration, oxygen saturation (SpO2), invasive pressures, non-invasive blood pressure, cardiac output, temperature, carbon dioxide concentrations, and anesthetic agent concentrations; Medical device for measuring patient physiological parameters, namely, ECG (heart rate and arrhythmias), respiration, oxygen saturation (SpO2), invasive pressures, non-invasive blood pressure, cardiac output, temperature, carbon dioxide concentrations, and anesthetic agent concentrations; Patient medical monitoring systems and clinical medical information systems comprised of bedside monitors, patient monitors, central monitors, transport monitors, physiologic measurement monitors, medical sensors, display terminals, medical telemetry transmitters, antennas and receivers all for monitoring, obtaining, displaying, transmitting and storing patient information and physiological parameters from patients, namely, heart rate, body temperature, level of consciousness, cardiovascular status, ventilation, capnography, respiration, electrocardiography, electroencephalography, electromyography, blood oxygen saturation, invasive pressures and cardiac output, all for medical use. First Use: 2012/04/10. First Use In Commerce: 2012/06/22.

Colors Claimed

Color is not claimed as a feature of the mark.

Filing Date

2012/01/03

Examining Attorney

I, DAVID

Attorney of Record

Douglas Masters

Qube

To: Advanced Anesthesia Specialists, LLC (trademarks@woodsoviatt.com)
Subject: U.S. TRADEMARK APPLICATION NO. 86863078 - QUBE - AD077.95467
Sent: 4/26/2016 6:40:42 AM
Sent As: ECOM107@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

**IMPORTANT NOTICE REGARDING YOUR
U.S. TRADEMARK APPLICATION**

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED
ON **4/26/2016** FOR U.S. APPLICATION SERIAL NO. 86863078

Please follow the instructions below:

(1) TO READ THE LETTER: Click on this [link](#) or go to <http://tsdr.uspto.gov>, enter the U.S. application serial number, and click on "Documents."

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

(2) TIMELY RESPONSE IS REQUIRED: Please carefully review the Office action to determine (1) how to respond, and (2) the applicable response time period. Your response deadline will be calculated from **4/26/2016** (*or sooner if specified in the Office action*). For information regarding response time periods, see <http://www.uspto.gov/trademarks/process/status/responsetime.jsp>.

Do NOT hit "Reply" to this e-mail notification, or otherwise e-mail your response because the USPTO does NOT accept e-mails as responses to Office actions. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System (TEAS) response form located at http://www.uspto.gov/trademarks/teas/response_forms.jsp.

(3) QUESTIONS: For questions about the contents of the Office action itself, please contact the assigned trademark examining attorney. For *technical* assistance in accessing or viewing the Office action in the Trademark Status and Document Retrieval (TSDR) system, please e-mail TSDR@uspto.gov.

WARNING

Failure to file the required response by the applicable response deadline will result in the ABANDONMENT of your application. For more information regarding abandonment, see <http://www.uspto.gov/trademarks/basics/abandon.jsp>.

PRIVATE COMPANY SOLICITATIONS REGARDING YOUR APPLICATION: Private companies **not** associated with the USPTO are using information provided in trademark applications to mail or e-mail trademark-related solicitations. These companies often use names that closely resemble the USPTO and their solicitations may look like an official government document. Many solicitations require that you pay

“fees.”

Please carefully review all correspondence you receive regarding this application to make sure that you are responding to an official document from the USPTO rather than a private company solicitation. All official USPTO correspondence will be mailed only from the “United States Patent and Trademark Office” in Alexandria, VA; or sent by e-mail from the domain “@uspto.gov.” For more information on how to handle private company solicitations, see http://www.uspto.gov/trademarks/solicitation_warnings.jsp.

OPPOSITION NO. 91255412

**APPLICANT'S ANSWER TO
NOTICE OF OPPOSITION**

EXHIBIT E

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	79165038
LAW OFFICE ASSIGNED	LAW OFFICE 105
MARK SECTION	
MARK	http://tmng-al.uspto.gov/resting2/api/img/79165038/large
LITERAL ELEMENT	QUBE
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)	
Please see the actual argument attached within the Evidence section.	
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
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DESCRIPTION OF EVIDENCE FILE	In addition to the argument, the evidence consists of TESS printouts and screenshots, as referenced in the accompanying Response to Office Action. Specifically, Exhibit A is the TESS printout for Reg. No. 4589136; Exhibit B is the TESS printout for Reg. No. 4544171; Exhibit C is the TESS printout for Reg. No. 4009246; Exhibit D and E are screenshots from the Prostat website; Exhibit F is the TESS printout for Reg. No. 4775416; Exhibit G is the TESS printout for Reg. No. 4767161; and Exhibit H is the TESS printout for App. Serial No. 86366215.
GOODS AND/OR SERVICES SECTION (009)(current)	
INTERNATIONAL CLASS	009

DESCRIPTION	
Scientific, electrical or optical apparatus or instruments, including apparatus or instruments for measuring or monitoring of chemical or biochemical processes in cell membranes, for handling, manipulating and characterising ion channels and transporters in living cells, for microarray based screening, and for high throughput screening	
GOODS AND/OR SERVICES SECTION (009)(proposed)	
INTERNATIONAL CLASS	009
TRACKED TEXT DESCRIPTION	
Scientific, electrical or optical apparatus or instruments, including apparatus or instruments for measuring or monitoring of chemical or biochemical processes in cell membranes, for handling, manipulating and characterising ion channels and transporters in living cells, for microarray based screening, and for high throughput screening; Scientific, electrical and optical apparatus and instruments for use in laboratories, in pharmacology, and in the pharmaceutical and biochemical industries, namely, patch clamp apparatus and instruments for measuring and monitoring of chemical and biochemical processes in cell membranes and for handling, manipulating and characterising ion channels and transporters in living cells, and for microarray based and high throughput screening; all of the foregoing excluding spectrometers	
FINAL DESCRIPTION	
Scientific, electrical and optical apparatus and instruments for use in laboratories, in pharmacology, and in the pharmaceutical and biochemical industries, namely, patch clamp apparatus and instruments for measuring and monitoring of chemical and biochemical processes in cell membranes and for handling, manipulating and characterising ion channels and transporters in living cells, and for microarray based and high throughput screening; all of the foregoing excluding spectrometers	
GOODS AND/OR SERVICES SECTION (010)(current)	
INTERNATIONAL CLASS	010
DESCRIPTION	
Medical apparatus or instruments, including medical apparatus or instruments for functional characterisation of living cells, for measuring or monitoring of chemical or biochemical processes in cell membranes and for handling, manipulating and characterising of ion channels and transporters in living cells	
GOODS AND/OR SERVICES SECTION (010)(proposed)	
INTERNATIONAL CLASS	010
TRACKED TEXT DESCRIPTION	
Medical apparatus or instruments, including medical apparatus or instruments for functional characterisation of living cells, for measuring or monitoring of chemical or biochemical processes in cell membranes and for handling, manipulating and characterising of ion channels and transporters in living cells; Medical apparatus and instruments for use in laboratories and in the pharmaceutical and biochemical industries, namely, patch clamp apparatus and instruments for functional characterisation of living cells, and for measuring and monitoring of chemical and biochemical processes in cell membranes and for handling, manipulating and characterising ion channels and transporters in living cells and for microarray based and high throughput screening; all of the foregoing excluding spectrometers	
FINAL DESCRIPTION	
Medical apparatus and instruments for use in laboratories and in the pharmaceutical and biochemical industries, namely, patch clamp apparatus and instruments for functional characterisation of living cells, and for measuring and monitoring of chemical and biochemical processes in cell membranes and for handling, manipulating and characterising ion channels and transporters in living cells and for microarray based and high throughput screening; all of the foregoing excluding spectrometers	
GOODS AND/OR SERVICES SECTION (042)(current)	
INTERNATIONAL CLASS	042
DESCRIPTION	
Scientific or industrial research, including research based on the screening of ion channels and transporters, research based on microarray technology, research based on high throughput screening technology, and research based on micro chip technology; computer programming, including the programming of apparatus or instruments for measuring or monitoring of chemical or biochemical processes in cell membranes, and for programming of apparatus or instruments for handling, manipulating and characterising ion channels and transporters in living cells	
GOODS AND/OR SERVICES SECTION (042)(proposed)	
INTERNATIONAL CLASS	042

TRACKED TEXT DESCRIPTION	
Scientific or industrial research, including research based on the screening of ion channels and transporters, research based on microarray technology, research based on high throughput screening technology, and research based on micro chip technology; <u>Scientific research and industrial research for use in laboratories and in the pharmaceutical and biochemical industries, namely, research based on the screening of ion channels and transporters, research based on microarray technology, research based on high throughput screening technology, and research based on microchip technology;</u> computer programming, including the programming of apparatus or instruments for measuring or monitoring of chemical or biochemical processes in cell membranes, and for programming of apparatus or instruments for handling, manipulating and characterising ion channels and transporters in living cells; <u>computer programming, namely the programming of apparatus and instruments for the measuring or monitoring of chemical and biochemical processes in cell membranes, and for the programming of apparatus or instruments for handling, manipulating and characterising ion channels and transporters in living cells.</u>	
FINAL DESCRIPTION	
Scientific research and industrial research for use in laboratories and in the pharmaceutical and biochemical industries, namely, research based on the screening of ion channels and transporters, research based on microarray technology, research based on high throughput screening technology, and research based on microchip technology; computer programming, namely the programming of apparatus and instruments for the measuring or monitoring of chemical and biochemical processes in cell membranes, and for the programming of apparatus or instruments for handling, manipulating and characterising ion channels and transporters in living cells.	
ADDITIONAL STATEMENTS SECTION	
SIGNIFICANCE OF MARK	QUBE appearing in the mark has no significance nor is it a term of art in the relevant trade or industry or as used in connection with the goods/services/collective membership organization listed in the application, or any geographical significance.
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Robert P. Felber, Jr./
SIGNATORY'S NAME	Robert P. Felber, Jr.
SIGNATORY'S POSITION	Attorney of record, Tennessee bar member
SIGNATORY'S PHONE NUMBER	(615) 850-8741
DATE SIGNED	11/25/2015
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Wed Nov 25 14:24:58 EST 2015
TEAS STAMP	USPTO/ROA-XXX.XXX.XXX.XXX -20151125142458901459-791 65038-540452bef66e84599c0 5a27f29ac4a16d592202b13de eb4c85f6bbf2d554adf3-N/A- N/A-20151125140129387935

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. **79165038** QUBE(Standard Characters, see <http://tmng-al.uspto.gov/resting2/api/img/79165038/large>) has been amended as follows:

ARGUMENT(S)

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

Please see the actual argument attached within the Evidence section.

EVIDENCE

Evidence in the nature of In addition to the argument, the evidence consists of TESS printouts and screenshots, as referenced in the accompanying Response to Office Action. Specifically, Exhibit A is the TESS printout for Reg. No. 4589136; Exhibit B is the TESS printout for Reg. No. 4544171; Exhibit C is the TESS printout for Reg. No. 4009246; Exhibit D and E are screenshots from the Prostat website; Exhibit F is the TESS printout for Reg. No. 4775416; Exhibit G is the TESS printout for Reg. No. 4767161; and Exhibit H is the TESS printout for App. Serial No. 86366215. has been attached.

Original PDF file:

[evi_209136102231-20151125140129387935_. Response to Office Action.pdf](#)

Converted PDF file(s) (11 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

[Evidence-6](#)

[Evidence-7](#)

[Evidence-8](#)

[Evidence-9](#)

[Evidence-10](#)

[Evidence-11](#)

Original PDF file:

[evi_209136102231-20151125140129387935_. Exhibit A.pdf](#)

Converted PDF file(s) (3 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

Original PDF file:

[evi_209136102231-20151125140129387935_. Exhibit B.pdf](#)

Converted PDF file(s) (2 pages)

[Evidence-1](#)

[Evidence-2](#)

Original PDF file:

[evi_209136102231-20151125140129387935_. Exhibit C.pdf](#)

Converted PDF file(s) (3 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

Original PDF file:

[evi_209136102231-20151125140129387935_. Exhibit D.pdf](#)

Converted PDF file(s) (4 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

Original PDF file:

[evi_209136102231-20151125140129387935_. Exhibit E.pdf](#)

Converted PDF file(s) (4 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

Original PDF file:

[evi_209136102231-20151125140129387935_. Exhibit F.pdf](#)

Converted PDF file(s) (3 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

Original PDF file:

[evi_209136102231-20151125140129387935_.Exhibit_G.pdf](#)

Converted PDF file(s) (3 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

Original PDF file:

[evi_209136102231-20151125140129387935_.Exhibit_H.pdf](#)

Converted PDF file(s) (3 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

CLASSIFICATION AND LISTING OF GOODS/SERVICES

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

Current: Class 009 for Scientific, electrical or optical apparatus or instruments, including apparatus or instruments for measuring or monitoring of chemical or biochemical processes in cell membranes, for handling, manipulating and characterising ion channels and transporters in living cells, for microarray based screening, and for high throughput screening

Original Filing Basis:

Filing Basis Section 66(a) , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

Proposed:

Tracked Text Description: ~~Scientific, electrical or optical apparatus or instruments, including apparatus or instruments for measuring or monitoring of chemical or biochemical processes in cell membranes, for handling, manipulating and characterising ion channels and transporters in living cells, for microarray based screening, and for high throughput screening;~~ [Scientific, electrical and optical apparatus and instruments for use in laboratories, in pharmacology, and in the pharmaceutical and biochemical industries, namely, patch clamp apparatus and instruments for measuring and monitoring of chemical and biochemical processes in cell membranes and for handling, manipulating and characterising ion channels and transporters in living cells, and for microarray based and high throughput screening; all of the foregoing excluding spectrometers](#)

Class 009 for Scientific, electrical and optical apparatus and instruments for use in laboratories, in pharmacology, and in the pharmaceutical and biochemical industries, namely, patch clamp apparatus and instruments for measuring and monitoring of chemical and biochemical processes in cell membranes and for handling, manipulating and characterising ion channels and transporters in living cells, and for microarray based and high throughput screening; all of the foregoing excluding spectrometers

Filing Basis Section 66(a) , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

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

Current: Class 010 for Medical apparatus or instruments, including medical apparatus or instruments for functional characterisation of living cells, for measuring or monitoring of chemical or biochemical processes in cell membranes and for handling, manipulating and characterising of ion channels and transporters in living cells

Original Filing Basis:

Filing Basis Section 66(a) , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

Proposed:

Tracked Text Description: ~~Medical apparatus or instruments, including medical apparatus or instruments for functional characterisation of living cells, for measuring or monitoring of chemical or biochemical processes in cell membranes and for handling, manipulating and characterising of ion channels and transporters in living cells;~~ [Medical apparatus and instruments for use in laboratories and in the pharmaceutical and biochemical industries, namely, patch clamp apparatus and instruments for functional characterisation of living cells, and for measuring and monitoring of chemical and biochemical processes in cell membranes and for handling, manipulating and characterising ion channels and transporters in living cells and for microarray based and high throughput screening; all of the foregoing excluding spectrometers](#)

Class 010 for Medical apparatus and instruments for use in laboratories and in the pharmaceutical and biochemical industries, namely, patch clamp apparatus and instruments for functional characterisation of living cells, and for measuring and monitoring of chemical and biochemical processes in cell membranes and for handling, manipulating and characterising ion channels and transporters in living cells and for microarray based and high throughput screening; all of the foregoing excluding spectrometers

Filing Basis Section 66(a) , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

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

Current: Class 042 for Scientific or industrial research, including research based on the screening of ion channels and transporters, research

based on microarray technology, research based on high throughput screening technology, and research based on micro chip technology; computer programming, including the programming of apparatus or instruments for measuring or monitoring of chemical or biochemical processes in cell membranes, and for programming of apparatus or instruments for handling, manipulating and characterising ion channels and transporters in living cells

Original Filing Basis:

Filing Basis Section 66(a) , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

Proposed:

Tracked Text Description: ~~Scientific or industrial research, including research based on the screening of ion channels and transporters, research based on microarray technology, research based on high throughput screening technology, and research based on micro chip technology;~~ Scientific research and industrial research for use in laboratories and in the pharmaceutical and biochemical industries, namely, research based on the screening of ion channels and transporters, research based on microarray technology, research based on high throughput screening technology, and research based on microchip technology; ~~computer programming, including the programming of apparatus or instruments for measuring or monitoring of chemical or biochemical processes in cell membranes, and for programming of apparatus or instruments for handling, manipulating and characterising ion channels and transporters in living cells;~~ computer programming, namely the programming of apparatus and instruments for the measuring or monitoring of chemical and biochemical processes in cell membranes, and for the programming of apparatus or instruments for handling, manipulating and characterising ion channels and transporters in living cells.

Class 042 for Scientific research and industrial research for use in laboratories and in the pharmaceutical and biochemical industries, namely, research based on the screening of ion channels and transporters, research based on microarray technology, research based on high throughput screening technology, and research based on microchip technology; computer programming, namely the programming of apparatus and instruments for the measuring or monitoring of chemical and biochemical processes in cell membranes, and for the programming of apparatus or instruments for handling, manipulating and characterising ion channels and transporters in living cells.

Filing Basis Section 66(a) , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

ADDITIONAL STATEMENTS

Significance of wording, letter(s), or numeral(s)

QUBE appearing in the mark has no significance nor is it a term of art in the relevant trade or industry or as used in connection with the goods/services/collective membership organization listed in the application, or any geographical significance.

SIGNATURE(S)

Response Signature

Signature: /Robert P. Felber, Jr./ Date: 11/25/2015

Signatory's Name: Robert P. Felber, Jr.

Signatory's Position: Attorney of record, Tennessee bar member

Signatory's Phone Number: (615) 850-8741

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.

Serial Number: 79165038

Internet Transmission Date: Wed Nov 25 14:24:58 EST 2015

TEAS Stamp: USPTO/ROA-XXX.XXX.XXX.XXX-20151125142458

901459-79165038-540452bef66e84599c05a27f

29ac4a16d592202b13deeb4c85f6bbf2d554adf3

-N/A-N/A-20151125140129387935

**IN THE UNITED STATES PATENT
AND TRADEMARK OFFICE**

IN RE)	
APPLICATION OF:)	Trademark Attorney:
)	
MARK:)	Kristin M. Dahling
)	Law Office 105
)	
CLASSES:)	
)	
SERIAL NO.:)	
)	
INTERNATIONAL)	
REGISTRATION)	
NO.:)	
)	
FILED:)	
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)	
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SUBMITTED VIA TEAS

COMMISSIONER FOR TRADEMARKS

P.O. Box 1451

ALEXANDRIA, VIRGINIA 22313-1451

RESPONSE TO OFFICE ACTION DATED JUNE 3, 2015

In response to the office action dated June 3, 2015 (the “Office Action”), pertaining to the above-referenced application (the “Application”), we submit the following on behalf of Sophion Bioscience A/S (the “Applicant”).

In the Office Action, the examining attorney has refused registration under Section 2(d) on grounds that the Applicant’s mark QUBE (the “Applicant Mark”) is likely to be confused with U.S. Registration No. 4589136 for the mark QUBE owned by Spacelabs Healthcare, LLC (the “Spacelabs Mark”), U.S. Registration No. 4544171 for the mark QUBE owned by Bruker Corporation (the “Bruker Mark”), and U.S. Registration No. 4009246 for the mark QUBE owned by Prostat Corporation (the “Prostat Mark”).

The examining attorney has also noted the prior pending applications to register the marks QUBE shown in U.S. Serial No. 86519122, QUBE GLOBAL SOFTWARE shown in U.S. Serial No. 86296110, SMARTQUBE shown in U.S. Serial No. 86279094, QUBE shown in U.S. Serial No. 86366215, QUBE shown in U.S. Serial No. 85918034, and POWERQUBE shown in U.S. Serial No. 85863184 (collectively, the “Pending Prior Applications”).

Since the time that the examining attorney issued the Office Action, two of the prior pending applications matured to registration, namely, QUBE GLOBAL SOFTWARE (U.S. Serial No. 86296110; U.S. Reg. No. 4775416) owned by Qube Global Software Ltd. (the “QGS Mark”) and SMARTQUBE (U.S. Serial No. 86279094; U.S. Reg. No. 4767161) owned by Quatro Electronics Holdings Ltd. (the “Quatro Electronics Mark”). These two registrations, along with the aforementioned Spacelabs Mark, Bruker Mark, and Prostat Mark are referred to, collectively, as the “Prior Registrations.”

The examining attorney has also requested that the Applicant clarify the identification of goods and services for Classes 9, 10 and 42. Finally, the examining attorney has inquired whether the term “QUBE” has any meaning or significance in the industry in which the goods and services are manufactured/provided and if the term is a “term of art” within the Applicant’s industry.

Applicant addresses each of these issues below.

I. Section 2(d) Likelihood of Confusion Refusal

The examining attorney has refused registration of the Applicant Mark because she believes that there is a likelihood of confusion under Section 2(d) with the Prior Registrations. Applicant believes that consumer confusion is unlikely considering the numerous differences between the Applicant Mark and the Prior Registrations, as discussed below with respect to each.

As an initial matter, while one of the principal factors to consider in determining whether there is a likelihood of confusion is similarity of the marks, a finding of phonetic or visual similarity alone does not mean that the marks are confusingly similar. *In re Lamson Oil Co.*, 6 USPQ 2d 1041, 1042 n.4 (TTAB 1988). Other factors must be considered in determining whether consumer confusion is likely, including the similarity of the goods covered by the respective marks and the activities surrounding their marketing. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973).

In determining the issue of likelihood of confusion, the Board and the Courts “assess the ‘context in which [the products/services] are found and consider the totality of factors that could cause confusion among prospective purchasers.’” *Nature’s Best, Inc. v. Ultimate Nutrition, Inc.*, 323 F. Supp. 2d 429, 431 (E.D.N.Y. 2004) (citing *Streetwise Maps, Inc. v. Vandam, Inc.*, 159 F.3d 739, 744 (2d Cir. 1998) and quoting *Gruner & Jahr USA Publishing v. Meredith Corporation*, 991 F.2d 1071, 1078 (2d Cir. 1993)). The question is the “overall impression” of the marks in the context in which they are presented. *Gruner*, 991 F.2d at 1078.

Indeed, regarding the issue of likelihood of confusion, all circumstances surrounding the sale of the goods and/or services are considered. *Industrial Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 177 USPQ 386 (C.C.P.A. 1973). These circumstances include the marketing channels, identity of the prospective purchasers and degree of similarity between the goods. *Id.*

In situations where a Section 2(d) refusal is based on “closely related” goods/services, the Board and the Courts have found in favor of applicants where the overlap is *de minimis* or lacks

clear and convincing evidentiary support. *In re Coors*, 343 F.3d 1340, 68 USPQ 2d 1059 (Fed. Cir. 2003) (rev’g TTAB affirmation of refusal to register an application for BLUE MOON & Design for beer based on a Sec. 2(d) rejection from a registration for BLUE MOON & Design for restaurant services); *In re Broadway Chicken*, 38 USPQ 2d 1559 (TTAB 1996) (rev’g refusal to register an application for BROADWAY CHICKEN for restaurant services based on a Sec. 2(d) rejection from a registration for BROADWAY PIZZA for restaurant and bar services).

In light of aforementioned precedent and argument below, Applicant respectfully requests that the examining attorney withdraw her likelihood of confusion objection.

A. Prior Registrations

1. The Applicant Mark is Not Confusingly Similar to the Spacelabs Mark.

Although the examining attorney asserts that a likelihood of confusion exists between the Applicant Mark and the Spacelabs Mark,¹ Applicant respectfully submits that confusion is unlikely for numerous reasons.

First, the goods differ significantly. Applicant submits that its amended Identification of Goods clarifies these differences, which may not have been apparent upon its initial submission.

- Class 9 of the registration for the Spacelabs Mark covers computer hardware and software for patient care in the medical field. Conversely, Applicant’s amended Identification of Goods in Class 9 is expressly limited to the pharmaceutical and biochemical industries and covers “patch clamp apparatus and instruments for measuring and monitoring of chemical and biochemical processes in cell membranes and for handling, manipulating and characterising ion channels and transporters in living cells, and for microarray based and high throughput screening” Thus, Applicant’s identified goods (as clarified by amendment) differ markedly from those identified for the Spacelabs Mark.
- Class 10 of the registration for the Spacelabs Mark covers patient medical monitors and devices, “all for medical use.” Review of the Spacelab Mark’s identified goods indicates that these monitors may accurately be characterized as “bedside monitors.” Conversely, Applicant’s amended Identification of Goods in Class 10 is expressly limited to the pharmaceutical and biochemical industries and covers “patch clamp apparatus and instruments for functional characterisation of living cells, and for measuring and monitoring of chemical and biochemical processes in cell membranes and for handling, manipulating and characterising ion channels and transporters in living cells and for microarray based and high throughput screening” As clear from the foregoing description of Applicant’s goods, they are not “bedside monitors,” nor are they otherwise similar or related to the goods identified in Class 10 of the Spacelabs Mark.

¹ Attached as Exhibit A is the TESS print-out for the Spacelabs Mark.

Second, the goods travel in different trade channels, as a result of their significant differences, as well as each Identification of Goods expressly limiting the goods to separate industries. If goods and services of two parties are offered to different classes of buyers, confusion is less likely than if two parties offered their goods and services through the same channel of distribution. MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 24:51.² Applicant submits that its pharmaceutical equipment that measures and monitors “chemical and biochemical processes in cell membranes” does not travel in the same trade channel as Spacelabs’ bedside monitors, nor would their purchasers expect them to do so.

Third, the relevant purchasers of both parties’ goods are sophisticated – purchasers of goods under the Spacelabs Mark would be companies in the medical industry, such as hospitals and healthcare corporations, with purchasing decisions most likely made by individuals whose function is to purchase patient medical equipment. Purchasers of goods and services under the Applicant Mark would be pharmaceutical companies, with purchasing decisions most likely made by individuals whose function is to purchase pharmaceutical equipment and services. Such sophisticated purchasers are unlikely to confuse a bedside monitor with pharmaceutical equipment that measures and monitors “chemical and biochemical processes in cell membranes” or, therefore, the source of those goods.

Fourth, the Spacelabs Mark registered without its examining attorney citing any of the Prior Registrations against it, evidencing that the PTO has not considered the Prior Registrations – also containing “QUBE” and cited against Applicant’s Mark – to be confusingly similar to the Spacelabs Mark. Applicant submits that the PTO’s practice of not citing Prior Registrations against one another – let alone refusing registration on the presence of any of them on the Principal Register or as prior pending applications – strongly supports a finding that the Applicant Mark is not confusingly similar to the Spacelabs Mark or any of the Prior Registrations.

Accordingly, the Spacelabs Mark is unlikely to be confused with the Applicant Mark and should not pose a bar to registration.

2. The Applicant Mark is Not Confusingly Similar to the Bruker Mark.

Although the examining attorney asserts that a likelihood of confusion exists between the Applicant Mark and the Bruker Mark,³ Applicant respectfully submits that confusion is unlikely for numerous reasons.

² For example, no likelihood of confusion was held to exist between two producers of records under the UPTOWN label because one party was selling “forgotten” jazz records and the other was selling “rap” recordings; such recordings are not in the same channel of trade because they are featured in different parts of record stores. *Sunenblick v. Harrell*, 895 F. Supp. 616, 629 (S.D.N.Y. 1995), *aff’d* 101 F.3d 684 (2nd Cir. 1996).

³ Attached as Exhibit B is the TESS print-out for the Bruker Mark.

First, the goods differ significantly. Applicant submits that its amended Identification of Goods clarifies these differences, which may not have been apparent upon its initial submission. The registration for the Bruker Mark consists of one good in one class, namely, “Mass-spectrometers” in Class 9. Applicant’s Identification of Goods and Services does not identify “mass-spectrometers;” indeed, Applicant’s amended Identification of Goods for Class 9 expressly excludes all spectrometers.

Second, the relevant purchasers of both parties’ goods are sophisticated. The ordinary consumer does not purchase a “mass-spectrometer;” rather, a highly sophisticated consumer would purchase such a device. Further, purchasers of goods and services under the Applicant Mark would be pharmaceutical companies, with purchasing decisions most likely made by individuals whose function is to purchase pharmaceutical equipment and services. Such sophisticated purchasers are unlikely to confuse “mass-spectrometers” with Applicant’s goods and services, which expressly exclude all spectrometers, and, therefore, unlikely to confuse the sources of those goods.

Third, the Bruker Mark registered without its examining attorney citing any of the Prior Registrations against it, evidencing that the PTO has not considered the Prior Registrations – also containing “QUBE” and cited against Applicant’s Mark – to be confusingly similar to the Bruker Mark. Applicant submits that the PTO’s practice of not citing Prior Registrations against one another – let alone refusing registration on the presence of any of them on the Principal Register or as prior pending applications – strongly supports a finding that the Applicant Mark is not confusingly similar to the Bruker Mark or any of the Prior Registrations.

Accordingly, the Bruker Mark is unlikely to be confused with the Applicant Mark and should not pose a bar to registration.

3. The Applicant Mark is Not Confusingly Similar to the Prostat Mark.

Although the examining attorney asserts that a likelihood of confusion exists between the Applicant Mark and the Prostat Mark,⁴ Applicant respectfully submits that confusion is unlikely for numerous reasons.

First, the goods differ significantly. Applicant submits that its amended Identification of Goods clarifies these differences. The registration for the Prostat Mark consists of one good in one class, namely, “electric outlet receptacles for providing direct contact to equipment ground.” Review of the Prostat website evidences that, in layman’s terms, this identified good is a three-prong electrical outlet that plugs a metal ground prong into an electrical outlet.⁵ Applicant’s Identification of Goods and Services does not identify electrical outlet receptacles. Rather, the Applicant Mark identifies research services and patch clamp instruments for the pharmaceutical and biochemical industries, which Applicant respectfully submits are very different from Prostat’s identified product.

⁴ Attached as Exhibit C is the TESS print-out for the Prostat Mark.

⁵ See Exhibit D, <http://www.prostatcorp.com/esd-common-point-ground> (showing Prostat’s QUBE electric outlet receptacle).

Second, the goods travel in different trade channels as a result of their significant differences. If goods and services of two parties are offered to different classes of buyers, confusion is less likely than if two parties offered their goods and services through the same channel of distribution. MCCARTHY § 24:51. Prostat is selling electrical hardware such as one might find in an aisle at Home Depot. Prostat's website provides that its products are only sold directly from Prostat or from ESDCheck.com, Amazon.com, or Stanleysupplyservices.com.⁶ Conversely, Applicant is selling goods and services to the pharmaceutical industry and, accordingly, not through any of these websites. In short, Applicant submits that these products do not travel in the same trade channel, nor would their purchasers expect them to do so.

Third, the relevant purchasers of both parties' goods are sophisticated – purchasers of goods under the Prostat Mark would be electricians or individuals knowledgeable regarding the grounding of electrical current. Purchasers of goods and services under the Applicant Mark would be pharmaceutical companies, with purchasing decisions most likely made by individuals whose function is to purchase pharmaceutical equipment and services. Such sophisticated purchasers are unlikely to confuse an electrical outlet receptacle with pharmaceutical equipment that measures and monitors “chemical and biochemical processes in cell membranes” or, therefore, the sources of those goods.

Fourth, the Prostat Mark (which is the earliest filed registration cited by the examining attorney) has not been cited against any of the Prior Registrations, evidencing that the PTO has not considered the Prior Registrations – also containing “QUBE” and cited against Applicant's Mark – to be confusingly similar to the Prostat Mark. Applicant submits that the PTO's practice of not citing Prior Registrations against one another – let alone refusing registration on the presence of any of them on the Principal Register or as prior pending applications – strongly supports a finding that the Applicant Mark is not confusingly similar to the Prostat Mark or any of the Prior Registrations.

Accordingly, the Prostat Mark is unlikely to be confused with the Applicant Mark and should not pose a bar to registration.

4. The Applicant Mark is Not Confusingly Similar to the QGS Mark.

Although the examining attorney asserts that a likelihood of confusion exists between the Applicant Mark and the QGS Mark,⁷ Applicant respectfully submits that confusion is unlikely for numerous reasons.

First, the marks differ in sound and appearance, with the Applicant Mark being “QUBE” and the QGS Mark being “QUBE GLOBAL SOFTWARE” & Design.

⁶ See Exhibit E, <http://www.prostatcorp.com/contact/where-to-buy.asp> (screenshot from Prostat's “Where to Buy Prostat” webpage).

⁷ Attached as Exhibit F is the TESS print-out for the QGS Mark.

Second, the goods differ significantly. Applicant submits that its amended Identification of Goods clarifies these differences, which may not have been apparent upon its initial submission.

- Class 9 of the registration for the QGS Mark covers: (a) computers, and (b) computer software, computer programs, and downloadable publications, limited to the “field of facilities management and management of real property and real estate.” Conversely, Applicant’s amended Identification of Goods in Class 9 is expressly limited to the pharmaceutical and biochemical industries and covers “patch clamp apparatus and instruments for measuring and monitoring of chemical and biochemical processes in cell membranes and for handling, manipulating and characterising ion channels and transporters in living cells, and for microarray based and high throughput screening” Thus, Applicant’s identified goods (as clarified by amendment) differ markedly from those identified for the QGS Mark. The identified goods for the QGS Mark also do not relate to the patch clamp apparatus identified in Applicant’s Class 10.
- Class 41 of the registration for the QGS Mark covers computer and software training and Class 42 covers design, consultancy, installation, maintenance, and repair of computers and computer software. As expressly stated in the Identification of Services for both classes, “all of the aforesaid services relating to facilities management and management of property and real estate.” Conversely, Class 42 of Applicant’s amended Identification of Services covers different services, namely scientific research and industrial research, as well as computer programming for apparatus and instruments for measuring and monitoring chemical or biochemical processes in cell membranes. Further, as expressly stated in Applicant’s Identification of Services for Class 42, the identified services are limited to laboratories, the pharmaceutical industry, and the biochemical industry. Thus, Applicant’s services differ markedly from those identified for the QGS Mark.

Third, the goods travel in different trade channels as a result of their significant differences, as well as each Identification of Goods expressly limiting the goods to separate industries. If goods and services of two parties are offered to different classes of buyers, confusion is less likely than if two parties offered their goods and services through the same channel of distribution. MCCARTHY § 24:51. Applicant respectfully submits that QGS’s goods and services relating to “facilities management and management of property and real estate” do not travel in the same trade channel as Applicant’s goods and services for the pharmaceutical and biochemical industries, nor would their purchasers expect them to do so.

Fourth, the relevant purchasers of both parties’ goods are sophisticated – purchasers of goods under the QGS Mark would be property management companies knowledgeable regarding real estate and property management. Purchasers of goods and services under the Applicant’s Mark would be pharmaceutical companies, with purchasing decisions most likely made by individuals whose function is to purchase pharmaceutical equipment and services. Such sophisticated purchasers are unlikely to confuse property management software with pharmaceutical equipment that measures and monitors “chemical and biochemical processes in cell membranes,” or confuse the sources of such services.

Fifth, the QGS Mark registered without its examining attorney citing any of the Prior Registrations against it, evidencing that the PTO has not considered the Prior Registrations – also containing “QUBE” and cited against Applicant’s Mark – to be confusingly similar to the QGS Mark. Applicant submits that the PTO’s practice of not citing Prior Registrations against one another – let alone refusing registration on the presence of any of them on the Principal Register or as prior pending applications – strongly supports a finding that the Applicant Mark is not confusingly similar to the QGS Mark or any of the Prior Registrations.

Accordingly, the QGS Mark is unlikely to be confused with the Applicant Mark and should not pose a bar to registration.

5. The Applicant Mark is Not Confusingly Similar to the Quatro Electronics Mark.

Although the examining attorney asserts that a likelihood of confusion exists between the Applicant Mark and the Quatro Electronics Mark,⁸ Applicant respectfully submits that confusion is unlikely for numerous reasons.

First, the marks differ in sound and appearance, with Applicant’s Mark being “QUBE” and the Quatro Electronics’ Mark being “SMARTQUBE”.

Second, the goods differ significantly. Applicant submits that its amended Identification of Goods clarifies these differences. The registration for the Quatro Electronics Mark consists of: (a) surveillance, security, and safety equipment, such as surveillance cameras, burglar alarms, and fire alarms, in Class 9; (b) installation, maintenance, and removal services related to the Class 9 goods, in Class 37; and (c) security services, in Class 45. Applicant’s Identification of Goods and Services does not identify any of the same goods or services as covered by the Quatro Electronics Mark, nor any related goods and services. Applicant’s Mark identifies research services and patch clamp instruments for the pharmaceutical and biochemical industries, which Applicant respectfully submits are very different from Quatro Electronics’ identified products and services.

Third, the goods travel in different trade channels, as a result of their significant differences. If goods and services of two parties are offered to different classes of buyers, confusion is less likely than if two parties offered their goods and services through the same channel of distribution. MCCARTHY § 24:51. Respectfully, Quatro Electronic’s surveillance cameras, burglar alarms, fire alarms, and related services for those products are not sold in the same trade channel as Applicant’s goods and services for the pharmaceutical and biochemical industries. Applicant submits that the purchasers of these goods and services also would not expect such products to travel in the same trade channels.

Fourth, the relevant purchasers of both parties’ goods are sufficiently sophisticated to understand that Quatro Electronics’ security equipment and services, on the one hand, and Applicant’s pharmaceutical/biochemical goods and services, on the other hand, originate from different sources.

⁸ Attached as Exhibit G is the TESS print-out for the Quatro Electronics Mark.

Fifth, the Quatro Electronics Mark registered without its examining attorney citing any of the Prior Registrations against it, evidencing that the PTO has not considered the Prior Registrations – also containing “QUBE” and cited against Applicant’s Mark – to be confusingly similar to the Quatro Electronics Mark. Applicant submits that the PTO’s practice of not citing Prior Registrations against one another – let alone refusing registration on the presence of any of them on the Principal Register or as prior pending applications – strongly supports a finding that the Applicant Mark is not confusingly similar to the Quatro Electronics Mark or any of the Prior Registrations.

Accordingly, the Quatro Electronics Mark is unlikely to be confused with the Applicant Mark and should not pose a bar to registration.

B. Pending Prior Applications

The examining attorney cited prior pending application Serial No. 86366215 as posing a potential hurdle to registration of Applicant’s Mark. Applicant notes that, according to the PTO database, application Serial No. 86366215 was abandoned on October 19, 2015 for failure to file a statement of use.⁹

II. Identification of Goods and Services

Modification of Identification of Good for Class 9

In response to the request of the examining attorney, Applicant requests that the Class 9 identification of goods be amended to read as follows:

Scientific, electrical ~~or~~ **and** optical apparatus ~~or~~ **and** instruments **for use in laboratories, in pharmacology, and in the pharmaceutical and biochemical industries, including namely, patch clamp** apparatus ~~or~~ **and** instruments for measuring ~~or~~ **and** monitoring of chemical ~~or~~ **and** biochemical processes in cell membranes; **and** for handling, manipulating and characterising ion channels and transporters in living cells, **and** for microarray based ~~screening~~, and ~~for~~ high throughput screening; **all of the foregoing excluding spectrometers**

Modification of Identification of Good for Class 10

In response to the request of the examining attorney, Applicant requests that the Class 10 identification of goods be amended to read as follows:

⁹ Attached as Exhibit H is the TESS print-out for prior pending application Serial No. 86366215.

Medical apparatus ~~or~~ **and** instruments **for use in laboratories and in the pharmaceutical and biochemical industries, including namely, patch clamp apparatus ~~or~~ and** instruments for functional characterisation of living cells, **and** for measuring ~~or~~ **and** monitoring of chemical ~~or~~ **and** biochemical processes in cell membranes and for handling, manipulating and characterising ion channels and transporters in living cells and for microarray based and high throughput screening; **all of the foregoing excluding spectrometers**

Modification of Identification of Good for Class 42

In response to the request of the examining attorney, Applicant requests that the Class 42 identification of services be amended to read as follows:

Scientific **research ~~or~~ and** industrial research **for use in laboratories and in the pharmaceutical and biochemical industries, including namely,** research based on the screening of ion channels and transporters, research based on microarray technology, research based on high throughput screening technology, and research based on microchip technology; computer programming, ~~including namely~~ the programming of apparatus ~~or~~ **and** instruments for **the** measuring or monitoring of chemical **and** biochemical processes in cell membranes, and for **the** programming of apparatus or instruments for handling, manipulating and characterising ion channels and transporters in living cells.

III. Significance

The term QUBE is a fanciful term with no known significance in the industry for the goods and services covered by this application.

IV. Conclusion

Applicant submits that it has responded fully to all of the examining attorney's concerns stated in the Office Action and, for all of the foregoing reasons, Applicant respectfully requests that the examining attorney withdraw the refusal of registration and approve the mark for publication in the Official Gazette of the United States Patent and Trademark Office.

Should you have questions regarding the foregoing or require additional information, please contact the undersigned.

Respectfully submitted,

/Robert P. Felber, Jr./

Robert P. Felber, Jr.

WALLER LANSDEN DORTCH & DAVIS, LLP

511 Union Street, Suite 2700

Nashville, Tennessee 37219

Tel: (615) 850-8741

Fax: (615) 244-6804

E-Mail: robert.felber@wallerlaw.com

Attorney for Applicant

Dated: November 25, 2015

Exhibit A



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Qube

Word Mark QUBE

Goods and Services IC 009. US 021 023 026 036 038. G & S: Computer hardware and software for patient care documentation and information management; computer software for storing, reviewing and reporting patient medical information; computer workstations comprising computer servers, computer monitors, and local, remote or portable computer terminals; remote liquid crystal display (LCD) monitors; interfaces and peripheral devices for computers; computer network and communication network components, namely, hardwire ethernet connectors, wireless network cards, network switches, network routers, network ethernet cables, wireless access points, and wireless controllers; computer software for acquiring, analyzing, displaying, storing and transmitting patient information and physiological parameters from patients for use in the medical field, namely, emergency care and treatment, adult/pediatric/neonatal critical care, perioperative care, labor and delivery, and point of care records. FIRST USE: 20120410. FIRST USE IN COMMERCE: 20120622

IC 010. US 026 039 044. G & S: Patient medical monitors for monitoring ECG (heart rate and arrhythmias), respiration, oxygen saturation (SpO2), invasive pressures, non-invasive blood pressure, cardiac output, temperature, carbon dioxide concentrations, and anesthetic agent concentrations; Medical device for measuring patient physiological parameters, namely, ECG (heart rate and arrhythmias), respiration, oxygen saturation (SpO2), invasive pressures, non-invasive blood pressure, cardiac output, temperature, carbon dioxide concentrations, and anesthetic agent concentrations; Patient medical monitoring systems and clinical medical information systems comprised of bedside monitors, patient monitors, central monitors, transport monitors, physiologic measurement monitors, medical sensors, display terminals, medical telemetry transmitters, antennas and receivers all for monitoring, obtaining, displaying, transmitting and storing patient information and physiological parameters from patients, namely, heart rate, body temperature, level of consciousness, cardiovascular status, ventilation, capnography, respiration, electrocardiography, electroencephalography, electromyography, blood oxygen saturation, invasive pressures and cardiac output, all for medical use. FIRST USE: 20120410. FIRST USE IN COMMERCE: 20120622

**Standard
Characters
Claimed**

Mark

Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 85508044

Filing Date January 3, 2012

Current Basis 1A

Original Filing Basis 1B

Published for Opposition February 18, 2014

Registration Number 4589136

Registration Date August 19, 2014

Owner (REGISTRANT) Spacelabs Healthcare, LLC LIMITED LIABILITY COMPANY WASHINGTON
35301 SE Center St Snoqualmie WASHINGTON 98065

Attorney of Record Douglas Masters

Description of Mark Color is not claimed as a feature of the mark.

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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Exhibit B



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QUBE

Word Mark	QUBE
Goods and Services	IC 009. US 021 023 026 036 038. G & S: Mass-spectrometers. FIRST USE: 20130403. FIRST USE IN COMMERCE: 20130403
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85710095
Filing Date	August 22, 2012
Current Basis	1A
Original Filing Basis	1B
Published for Opposition	July 9, 2013
Registration Number	4544171
Registration Date	June 3, 2014
Owner	(REGISTRANT) Bruker Corporation CORPORATION DELAWARE 40 Manning Road Billerica MASSACHUSETTS 01821
Attorney of Record	Janet M. Garetto
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Exhibit C



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QUBE

Word Mark	QUBE
Goods and Services	IC 009. US 021 023 026 036 038. G & S: Electrostatic discharge management devices, namely, electric outlet receptacles for providing direct contact to equipment ground. FIRST USE: 20101220. FIRST USE IN COMMERCE: 20101220
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85212610
Filing Date	January 7, 2011
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	May 24, 2011
Registration Number	4009246
Registration Date	August 9, 2011
Owner	(REGISTRANT) Prostat Corporation CORPORATION ILLINOIS 1072 Tower Lane Bensenville ILLINOIS 60106 (LAST LISTED OWNER) STEPHEN A. HALPERIN INDIVIDUAL CITIZEN OF THE UNITED STATES UNITED STATES 260 W. ELM PARK ELMHURST ILLINOIS 60126
Assignment Recorded	ASSIGNMENT RECORDED Brett E. Bachtell

Attorney of
Record

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead
Indicator LIVE

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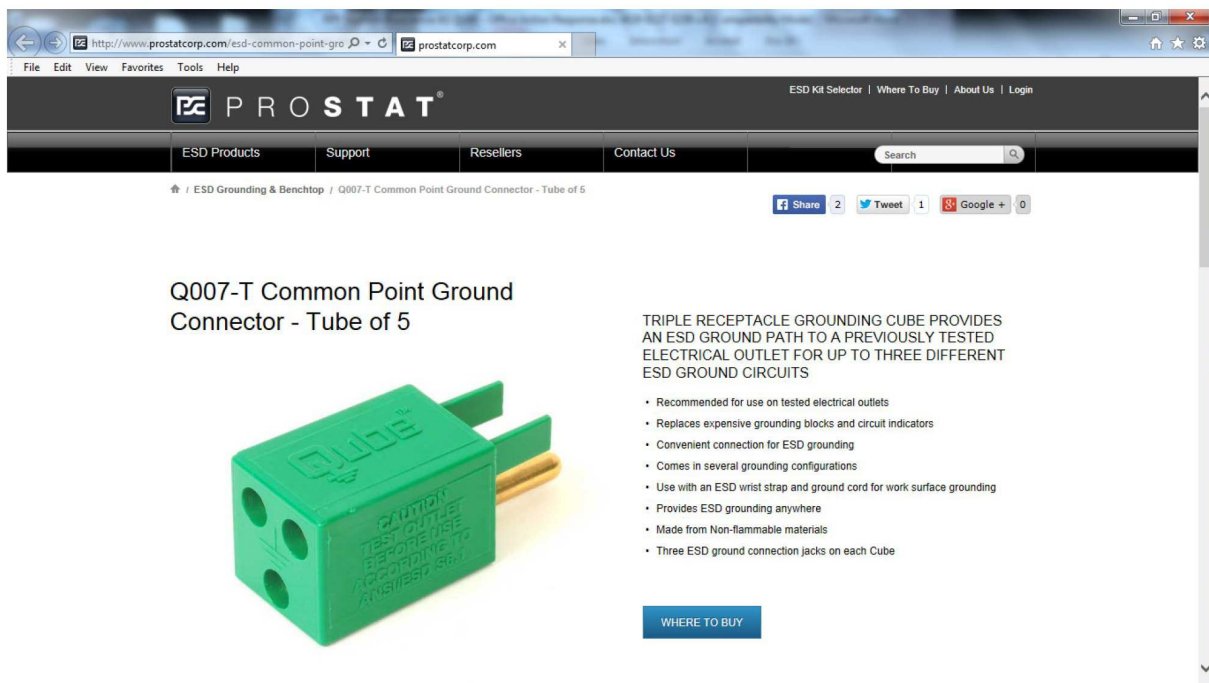
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Exhibit D



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The Prostat Q007B Qube™ replaces ordinary electrical grounding devices with a convenient, cost effective means to connect several ESD controls to a single grounded electrical outlet. Use the Q007B Qube™ to ground workstations, mats, wrist strap & testers, instruments, and other ESD control products to a pre-tested facility electrical ground. It consists of a robust multi receptacle frame encased in fire retardant ABS with a solid brass grounding pin.

CAUTION: For your safety, test your electrical outlet before use per ANSI/ESD S6.1.

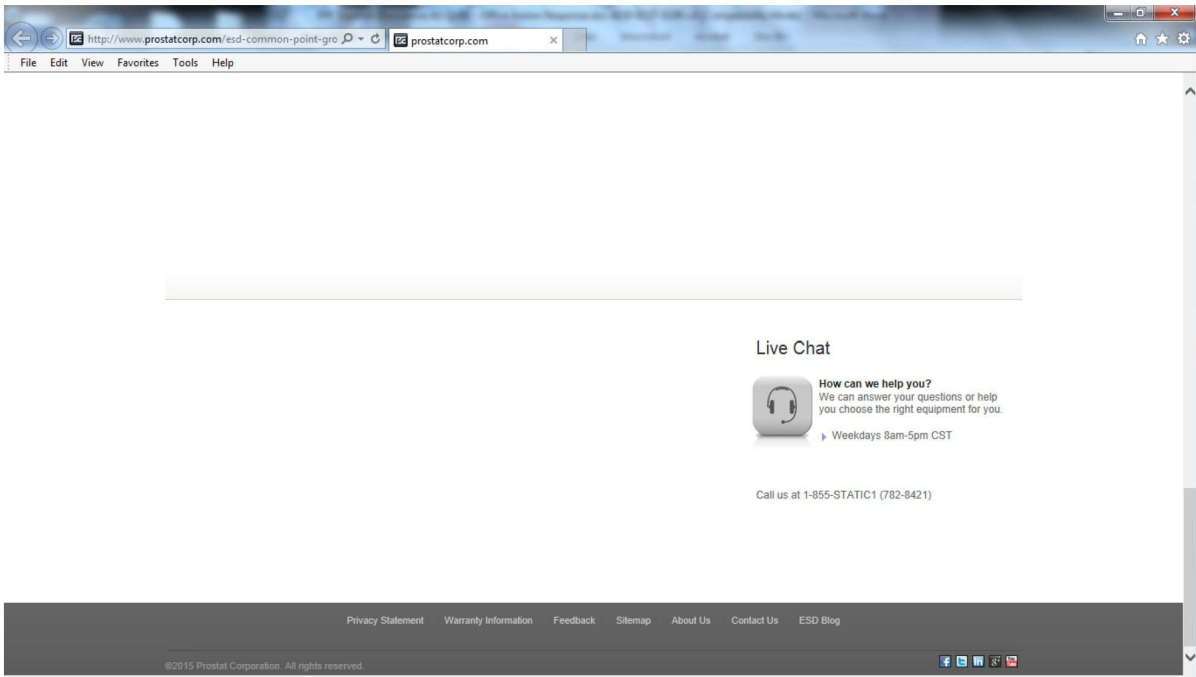
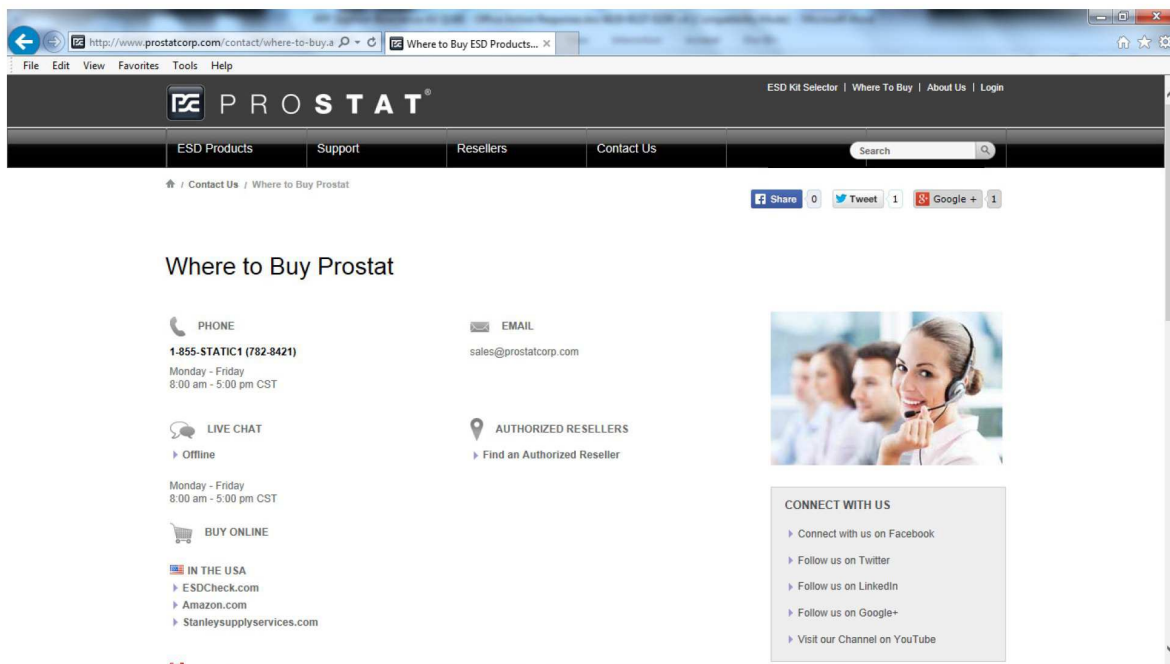
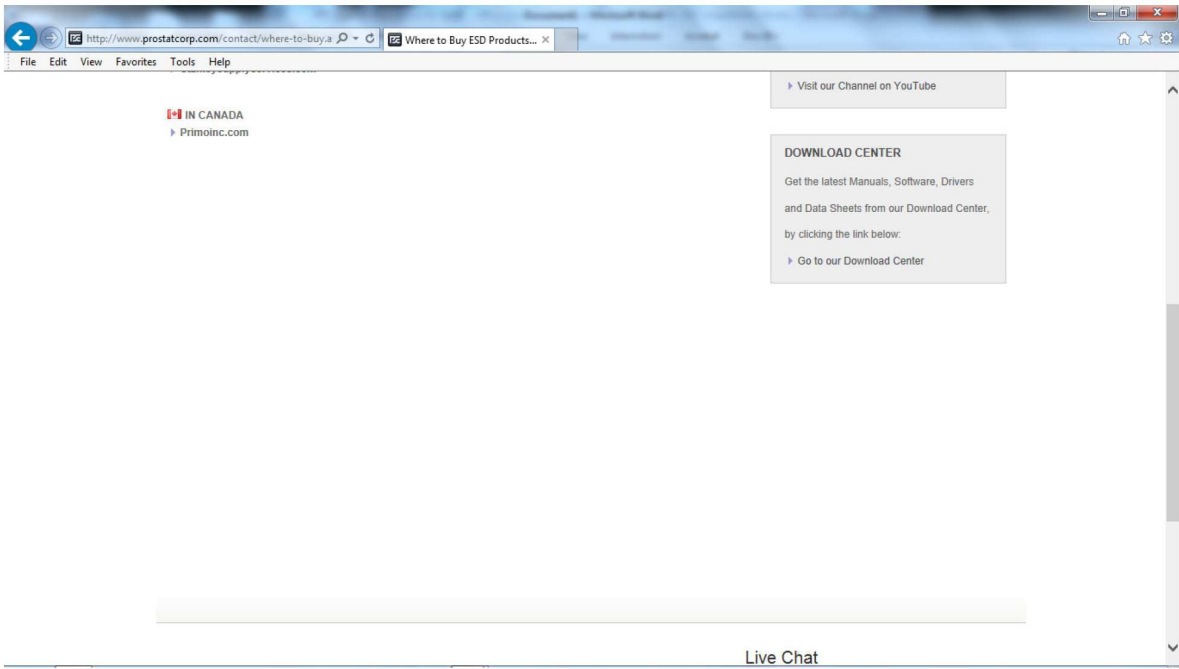


Exhibit E





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Word Mark	QUBE GLOBAL SOFTWARE
Goods and Services	<p>IC 009. US 021 023 026 036 038. G & S: Computers; computer software and computer programs for transactional data processing and information management for use in the field of facilities management and the management of property and real estate; downloadable publications in the nature of newsletters in the field of facilities management and management of real property and real estate</p> <p>IC 041. US 100 101 107. G & S: Training in the use and operation of computers; training in the use and operation of computers and software in the field of facilities management and management of property and real estate and consultation relating thereto; all of the aforesaid services relating to facilities management and management of property and real estate</p> <p>IC 042. US 100 101. G & S: Design and consultancy services in the field of computers, computer software, computer programs; computer software installation and maintenance; installation, maintenance and repair of computer software, computer programs; consultancy, information and advisory services relating to all the aforesaid services; all of the aforesaid services relating to facilities management and management of property and real estate</p>
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	26.19.04 - Cubes (geometric)
Serial Number	86296110
Filing Date	May 30, 2014
Current Basis	44E
Original Filing Basis	1B;44E
Published for Opposition	May 5, 2015

Registration Number 4775416

Registration Date July 21, 2015

Owner (REGISTRANT) Qube Global Software Limited CORPORATION UNITED KINGDOM 9 King Street London UNITED KINGDOM EC2V8EA

Attorney of Record Theodore D. Lienesch

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "GLOBAL SOFTWARE" APART FROM THE MARK AS SHOWN

Description of Mark The color(s) red, black, and white is/are claimed as a feature of the mark. The mark consists of the word "QUBE" above the words "GLOBAL SOFTWARE" in black and a design of a red cube above and to the right of the word "QUBE". The cube is shaded and in perspective with the upper left and lower right corners rounded and divided into thirds lengthwise by two white lines.

Type of Mark TRADEMARK. SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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SMARTQUBE

Word Mark SMARTQUBE

Goods and Services IC 009. US 021 023 026 036 038. G & S: Optical and/or signaling apparatus and instruments, namely, surveillance cameras and lenses for surveillance cameras, intruder alarms, smoke alarms, fire alarms, burglar alarms, flood alarms; apparatus for receiving, recording, transmission or reproduction of sound and/or images; electrical security apparatus, other than for vehicles, namely, stands for surveillance cameras, stands for intruder alarms, smoke alarms, fire alarms, burglar alarms and flood alarms; sensors for surveillance cameras and for intruder alarms, smoke alarms, fire alarms, burglar alarms and flood alarms, transmitters for alarms, network video recorders, computer software for processing and recording information received from security and surveillance cameras, security sensors and intruder alarms, smoke alarms, fire alarms, burglar alarms and flood alarms; alarm monitoring systems; alarm apparatus, namely, intruder alarms, smoke alarms, fire alarms, burglar alarms, flood alarms, sirens for alarms, sensors for alarms, door sensors, pressure sensors, keypads for alarms, batteries for alarms, power supplies for alarms; alarm central units, namely, control centers being parts of alarm systems; closed circuit TV systems for security and surveillance, namely, cameras, switchers, monitors, microphones and recorders; sonar apparatus; structural parts and fittings for all the aforesaid goods

IC 037. US 100 103 106. G & S: Installation, maintenance, servicing, repair and removal of security apparatus, system and instruments, alarms, alarm systems, alarm apparatus, alarm management apparatus, control centers being parts of alarm systems, closed circuit television apparatus, sonar apparatus, and structural parts and fittings for all the aforesaid goods; advice and consultancy services relating to the aforesaid services

IC 045. US 100 101. G & S: Security services for the protection of property and individuals, alarm monitoring, response and verification services; rental and leasing of security apparatus, system and instruments, alarms, alarm systems, alarm apparatus, alarm management apparatus, control centers being parts of alarm systems, parts and fittings for all the aforesaid goods; Closed-circuit surveillance services

**Standard
Characters
Claimed**

Mark

Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 86279094

Filing Date May 12, 2014

Current Basis 44E

Original Filing Basis 44D

Published for Opposition April 21, 2015

Registration Number 4767161

Registration Date July 7, 2015

Owner (REGISTRANT) Quatro Electronics Holdings Limited limited company (Ltd.) UNITED KINGDOM
Premiere House, Elstree Way, Borehamwood Hertfordshire UNITED KINGDOM WD61JH

Attorney of Record Kit M. Stetina

Description of Mark Color is not claimed as a feature of the mark.

Type of Mark TRADEMARK. SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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Qube

Word Mark	QUBE
Goods and Services	(ABANDONED) IC 009. US 021 023 026 036 038. G & S: Downloadable software for the viewing and navigation of computer data among various dimensions on multiple device platforms via connected computer networks; Downloadable computer software for users to view, collaborate, and discuss data and charts on multiple device platforms via connected computer networks
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	86366215
Filing Date	August 14, 2014
Current Basis	1B
Original Filing Basis	1B
Published for Opposition	January 20, 2015
Owner	(APPLICANT) Intelati, Inc. CORPORATION DELAWARE 2600 El Camino Real Palo Alto CALIFORNIA 94306
Attorney of Record	Carlos Romero
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	DEAD
	October 19, 2015

Abandonment Date

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OPPOSITION NO. 91255412

**APPLICANT'S ANSWER TO
NOTICE OF OPPOSITION**

EXHIBIT F

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86863078
LAW OFFICE ASSIGNED	LAW OFFICE 107
MARK SECTION	
MARK	http://tmng-al.uspto.gov/resting2/api/img/86863078/large
LITERAL ELEMENT	QUBE
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)	
Please see the actual argument text attached within the Evidence section.	
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_66162186115-20161026134716629049_.Argument.pdf
CONVERTED PDF FILE(S) (4 pages)	\\TICRS\EXPORT17\IMAGEOUT17\868\630\86863078\xml2\ROA0002.JPG
	\\TICRS\EXPORT17\IMAGEOUT17\868\630\86863078\xml2\ROA0003.JPG
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CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT17\IMAGEOUT17\868\630\86863078\xml2\ROA0013.JPG
DESCRIPTION OF EVIDENCE FILE	Argument and Exhibits A-F referenced therein.
GOODS AND/OR SERVICES SECTION (current)	
INTERNATIONAL CLASS	010
DESCRIPTION	
Anesthesia administering and critical care equipment, namely, non-rebreathing, heated and non-heated anesthesia mask system	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 01/01/2013
FIRST USE IN COMMERCE DATE	At least as early as 01/01/2013
GOODS AND/OR SERVICES SECTION (proposed)	
INTERNATIONAL CLASS	010
TRACKED TEXT DESCRIPTION	
Anesthesia administering and critical care equipment, namely, non-rebreathing, heated and non-heated anesthesia mask system; Anesthesia administering and critical care equipment, namely, non-rebreathing, heated and non-heated anesthesia units for use in the care of non-human animals exclusively.	
FINAL DESCRIPTION	
Anesthesia administering and critical care equipment, namely, non-rebreathing, heated and non-heated anesthesia units for use in the care of non-human animals exclusively.	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 01/01/2013
FIRST USE IN COMMERCE DATE	At least as early as 01/01/2013
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Ronald J. Kisicki/
SIGNATORY'S NAME	Ronald J. Kisicki, Esq.
SIGNATORY'S POSITION	Attorney of Record, AZ bar member
SIGNATORY'S PHONE NUMBER	585-987-2800
DATE SIGNED	10/26/2016
AUTHORIZED SIGNATORY	YES

FILING INFORMATION SECTION	
SUBMIT DATE	Wed Oct 26 13:55:32 EDT 2016
TEAS STAMP	USPTO/ROA-XX.XXX.XXX.XXX- 20161026135532969361-8686 3078-570e263acc443c78cafd ea6d3cab7ccd11fcb24edb595 631ff3baa4799c22128-N/A-N /A-20161026134716629049

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PTO Form 1957 (Rev 10/2011)
OMB No. 0651-0050 (Exp 07/31/2017)

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. **86863078** QUBE(Standard Characters, see <http://tmng-al.uspto.gov/resting2/api/img/86863078/large>) has been amended as follows:

ARGUMENT(S)

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

Please see the actual argument text attached within the Evidence section.

EVIDENCE

Evidence in the nature of Argument and Exhibits A-F referenced therein. has been attached.

Original PDF file:

[evi_66162186115-20161026134716629049_. Argument.pdf](#)

Converted PDF file(s) (4 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

Original PDF file:

[evi_66162186115-20161026134716629049_. qube-brochure Ex A .pdf](#)

Converted PDF file(s) (2 pages)

[Evidence-1](#)

[Evidence-2](#)

Original PDF file:

[evi_66162186115-20161026134716629049_. QUBE Info Website Printout Ex B .pdf](#)

Converted PDF file(s) (2 pages)

[Evidence-1](#)

[Evidence-2](#)

Original PDF file:

[evi_66162186115-20161026134716629049_. Qube Hospital Setting Video from Website Ex C .pdf](#)

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[Evidence-1](#)

Original PDF file:

[evi_66162186115-20161026134716629049_. QUBE Vet Office Setting Screenshot from Website Ex D .pdf](#)

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[Evidence-1](#)

Original PDF file:

[evi_66162186115-20161026134716629049_. Qube Website Ex E .pdf](#)

Converted PDF file(s) (1 page)

[Evidence-1](#)

Original PDF file:

[evi_66162186115-20161026134716629049 . QUBE Website Ex F .pdf](#)

Converted PDF file(s) (1 page)

[Evidence-1](#)

CLASSIFICATION AND LISTING OF GOODS/SERVICES

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

Current: Class 010 for Anesthesia administering and critical care equipment, namely, non-rebreathing, heated and non-heated anesthesia mask system

Original Filing Basis:

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 01/01/2013 and first used in commerce at least as early as 01/01/2013 , and is now in use in such commerce.

Proposed:

Tracked Text Description: ~~Anesthesia administering and critical care equipment, namely, non-rebreathing, heated and non-heated anesthesia mask system;~~ [Anesthesia administering and critical care equipment, namely, non-rebreathing, heated and non-heated anesthesia units for use in the care of non-human animals exclusively.](#)

Class 010 for Anesthesia administering and critical care equipment, namely, non-rebreathing, heated and non-heated anesthesia units for use in the care of non-human animals exclusively.

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 01/01/2013 and first used in commerce at least as early as 01/01/2013 , and is now in use in such commerce.

SIGNATURE(S)

Response Signature

Signature: /Ronald J. Kisicki/ Date: 10/26/2016

Signatory's Name: Ronald J. Kisicki, Esq.

Signatory's Position: Attorney of Record, AZ bar member

Signatory's Phone Number: 585-987-2800

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.

Serial Number: 86863078

Internet Transmission Date: Wed Oct 26 13:55:32 EDT 2016

TEAS Stamp: USPTO/ROA-XX.XXX.XXX.XXX-201610261355329

69361-86863078-570e263acc443c78cafdea6d3

cab7ccd11fcb24edb595631ff3baa4799c22128-

N/A-N/A-20161026134716629049

SUMMARY OF ISSUES

- 1) Identification of Goods
- 2) Section 2(d) Refusal –Likelihood of Confusion

The Examiner raised the aforementioned issues with the instant application, number 86/863,078 for the QUBE mark ("Applicant's mark" or the "Application"). Applicant responds as set forth below.

- 1) Identification of Goods

Applicant hereby amends its description in Class 010 to read, "Anesthesia administering and critical care equipment, namely, non-rebreathing, heated and non-heated anesthesia units for use in the care of non-human animals exclusively."

- 2) Section 2(d) Refusal – Likelihood of Confusion

A. Comparison of the Marks

The Examiner has partially refused registration of the Application because of a possible likelihood of confusion with the goods recited in U.S. Registration No. 4,589,136 for the "QUBE" mark (the "cited mark," the "Registration," or "Registrant's mark"). In part, the description of goods for the cited mark are directed to, "[p]atient medical monitors...[m]edical device for measuring patient physiological parameters...[p]atient medical monitoring systems and clinical medical information systems...."

When determining the similarity of the marks in appearance, sound, connotation, and commercial impression, the issue is not whether the marks are likely to be confused because they look or sound the same, but rather whether there is a likelihood of confusion as to the source of the goods. *See, Paula Payne Prods. Co. v. Johnson's Publ'g Co.*, 473 F.2d 901, 902, 177 USPQ 76, 77 (C.C.P.A. 1973) ("[T]he question is not whether people will confuse the marks, but rather whether the marks will confuse people into believing that the goods they identify emanate from the same source."); *In re Majestic Distilling Co.*, 315 F.3d 1311, 1316, 65 USPQ2d 1201, 1205 (Fed. Cir. 2003) ("[T]he...mistaken belief that [a good] is manufactured or sponsored by the same entity [as another good] ... is precisely the mistake that §2(d) of the Lanham Act seeks to prevent."); *In re Shell Oil Co.*, 992 F.2d 1204, 1207, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993) ("The degree of 'relatedness' must be viewed in the context of all the factors, in determining whether the services are sufficiently related that a reasonable consumer would be confused as to source or sponsorship."). Here, while the two marks bear identity in appearance, a further analysis is necessary to determine whether a likelihood of confusion as to the source of the goods exists.

B. Comparison of the Goods

In determining whether products are identical or similar, the inquiry should be whether they appeal to the same market, not whether they resemble each other physically or whether a

word can be found to describe the goods of the parties. *Harvey Hubbell Inc. v. Tokyo Seimitsu Co., Ltd.*, 188 USPQ 517, 520 (TTAB 1975)).

The Applicant's goods set forth in Class 10, as amended, are significantly different than the goods offered under the cited mark. The description of goods for the cited mark are directed to, "[p]atient medical monitors...[m]edical device for measuring patient physiological parameters...[p]atient medical monitoring systems and clinical medical information systems...." In other words, the Registrant's associated goods are patient monitors for human use as depicted below, and described in the attached marketing brochure attached hereto as Exhibit A. Registrant's goods are designed for use in critical care settings such as operating rooms, intensive care units, recovery rooms, hospital emergency rooms and ambulances. Functionally, the sole purpose of Registrant's associated goods are to monitor a patient's vital signs.



In contrast, Applicant's goods in Class 10, as amended, are directed to equipment for delivering anesthesia. Applicant's goods administer or deliver anesthetic gas to animals in a veterinarian's office as depicted below and described in the attached product information printout attached hereto as Exhibit B.



The two goods have different functionalities, i.e., the Registrant's goods perform a *monitoring* function, while the Applicant's goods provide *delivery* function. A consumer would not be confused into thinking that all of the aforementioned goods would originate from a single source.

Further, as Registrant's website depicts, the goods covered under Registrant's mark are for use on humans only in a critical care setting (see Exhibit C). In contrast, the goods covered under Applicant's mark are for use on non-human animals only in a veterinarian office setting (see Exhibit D). Since the goods set forth in the Registration and Applicant's goods, as amended, in Class 10 are significantly different, and a relevant consumer would not be confused into believing that a company providing healthcare monitoring equipment for the treatment of humans would also offer equipment for delivering anesthesia in veterinarian offices, there would be no likelihood of confusion.

C. Channels of Trade

Applicant has amended its identification of goods to clarify its channels of trade. As clearly set forth in the amendment, Applicant's channels of trade flow to veterinarians for use in "non-human animals exclusively." The Registrant's goods' channels of trade flow to human medical providers and facilities such as hospitals, doctors' offices and clinics. There is no conflict between these two channels as they are distinctly different. *In re The Shoe Works Inc.*, 6 U.S.P.Q.2d 1890, 1891 (TTAB 1988).

The determinative question should be whether there is an overlap in the ordinary and usual trade channels for Applicant's animal anesthesia units and Registrant's patient monitors. See, *Triumph Machinery v. Kentmaster Manufacturing*, 1 USPQ2d 1826, 1828 (TTAB 1987). While Registrant's associated goods are designed for use in critical care settings such as operating rooms, intensive care units, recovery rooms, hospital emergency rooms and burn units, Applicant's associated goods are used exclusively by veterinarians in the treatment of non-human animals. Therefore, the trade channels for the goods at issue would not overlap. The goods flow to two completely disparate and non-related end users. These disparate end users would never encounter the Registrant's mark and Applicant's mark and products in the same marketplace.

D. Sophistication of Buyers/Degree of Care in Purchasing

The likelihood of confusion is also lacking due to the conditions under which sales are made and the level of sophistication of the consumers. The purchasing decisions of Applicant's goods are made by professionals such as veterinarians who exercise extra care with regard to purchasing such goods. See, *In re N.A.D. Inc.*, 224 U.S.P.Q. 969, 971 (Fed. Cir. 1985); *In re Ship*, 4 U.S.P.Q.2d 1174, 1176 (TTAB 1987). To become a veterinarian, a person must complete a four year undergraduate degree, then another four years of veterinarian school completing a Doctorate in Veterinary Medicine. In the use of equipment for the delivery of anesthesia, the patient's life is at risk if the equipment does not perform satisfactorily. The purchaser would be expected to understand this and to scrutinize the functionality of the equipment carefully, including the source of the product itself, before making the purchase.

The purchases of Registrant's goods are scrutinized carefully as well. Typically, the purchase is overseen by a physician. Equally, a patient's life is at risk if the equipment does not perform satisfactorily; equally, the purchasing decision would be made carefully.

The purchasers of Applicant's goods and Registrant's goods are highly sophisticated people. These highly educated and trained end users would not purchase the Applicant's goods or the Registrant's goods as an impulse purchase, thereby eliminating the likelihood of confusing the source of the services.

E. Length of time of Concurrent Use Without Confusion

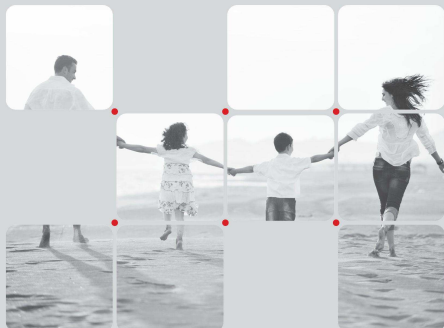
There is no known evidence supporting any reported instances of confusion. The Internet presence both parties maintain corroborate that the channels of trade and classes of consumers are different (see Exhibits E and F).

The Registrant's date of first use is at least as early as April 10, 2012. Applicant has been using their mark at least as early as January 1, 2013. Therefore both marks have been in use simultaneously for over three and a half years with no reported instances of confusion. Since the concern is not a theoretical possibility of confusion, but the practicalities of the commercial world, and in the commercial world, no confusion has taken place, there is no argument that the marks are likely to be confused. *See, Electronic Design & Sales Inc. v. Electronic Data Systems Corp.*, 954 F.2d 713, 21 USPQ2d 1388, 1391 (Fed. Cir. 1992), quoting *Witco Chemical Co. v. Whitfield Chemical Co., Inc.*, 418 F.2d 1403, 1405, 164 USPQ 43, 44-45 (CCPA 1969).

F. Conclusion

When viewing all of the factors set forth above as a whole, the differences in the goods being offered, the difference in the target consumers, the and the sophistication of the customers and conditions upon which sales would be made (i.e., careful, sophisticated purchasing), it is submitted that there would be no likelihood of confusion between the Applicant's Mark and the Registrant's mark. As such, it is requested that the Section 2(d) rejection based on the Registration be withdrawn.

cube facilitates at-a-glance monitoring with an ultra-bright display featuring large numerics. Multicolor, severity-based lights illuminate on both the front and back of the monitor for enhanced alarm surveillance.



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Inspired by simplicity and style, qube breaks with tradition to offer a fresh, new perspective in compact monitoring.

INTRODUCING QUBE™

Small and lightweight with a battery life that goes the distance, qube offers portability, accessibility and heightened connectivity—perfect for emergency, general, intensive- and post-anesthesia care units. Caregivers can access current, critical patient information—from bedside throughout transport—to provide the ultimate level of patient care.

VERSATILE

qube is mountable anywhere—wall, roll-stand, bed rail, anesthesia system—or can quickly be detached via a quick-release feature for immediate mobility. Long battery life and dual battery capability keep qube on the go everywhere your patient goes. Impact resistant, chemical resistant, and protected from liquid ingress, qube endures even with heavy use. Full functionality in a compact package.



INSIGHTFUL

Data from a variety of sources informs and supports clinical determinations at the bedside or remotely. Graphical assessment tools and the ability to access up to 96 hours of physiologic data empower clinicians and help to facilitate decision making.

CONFIDENT

Clinicians can customize the screen view to quickly access a multitude of graphical and tabular trend presentations based on individual patient needs and procedural guidelines. Interactive view, control, and recording for parameters, trends, and calculations can be engaged instantaneously, linking clinicians with a range of real-time patient physiologic data, qube enables point-of-care decisions that provide ongoing reassurance and confidence to patients and their loved ones.

ENLIGHTENED

qube facilitates at-a-glance monitoring with an ultra-bright display featuring large, numerics. Multicolor, severity-based lights illuminate on both the front and back of the monitor for enhanced alarm surveillance.

ATTRACTIVE

The sleek, contemporary details of qube, including ergonomic user controls and a comfortable grip handle, create a positive impact for caregiver and patient. Art meets technology. The small, compact form of the capnography pod makes it ideal for use with qube. Designed to attach seamlessly onto the rear of the monitor, it's ready in a snap.



CONNECTED

With its modular architecture, qube easily connects to any SpaceLabs physiologic module or Flexport for continuity and ease when networking across different platforms. qube also utilizes industry-standard communication protocols to allow inter-monitor communication, enhanced alarm surveillance, and broader productivity through both wired and wireless channels. Clinicians can choose how they stay connected - single or multiparameter view - for any monitored patient on the network.

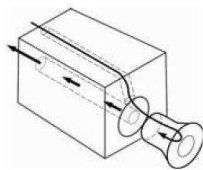


SHAPING THE FUTURE OF PATIENT MONITORING

Darvall ZDS Qubes*

Darvall ZDS Qubes bring new solutions to the longstanding anesthesia problems encountered by zoo veterinarians, academics, and pocket-pet practitioners.

- Eliminate waste gas pollution
- Increase efficiency
- Reduce morbidity / mortality
- Maintain predictable anesthesia

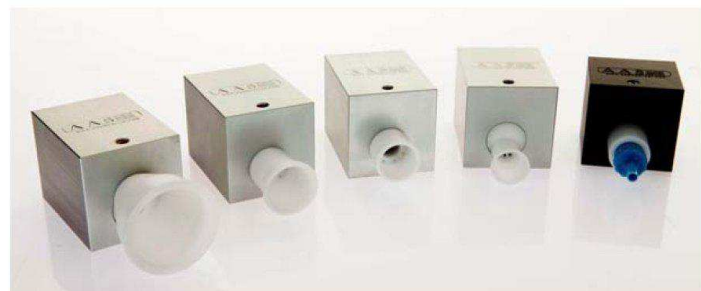
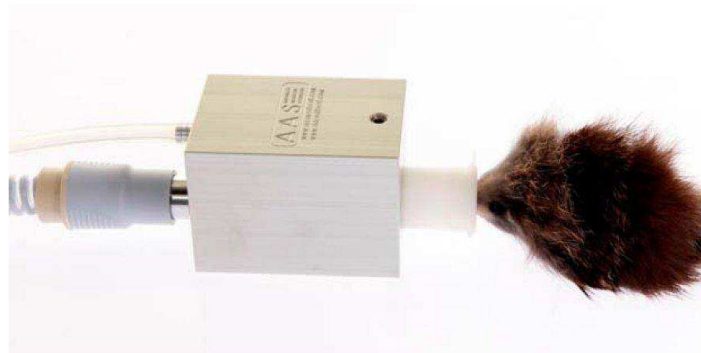


Features & Benefits:

- **Lo-flo Zero Dead Space (ZDS) design** – enhances response to changes in anesthesia, allows for fast & predictable anesthesia, and efficient gas flow
- **Sealed mask system** – saves money with up to 80% decrease in anesthetic and oxygen consumption and reduced waste gas volume
- **Solid, heavy cube design** – secure and stable for improved patient positioning
- **Complete range of models, masks and diaphragms available** – accommodates puppies and kittens, to a most pocket pets

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Select from our full line of Darvall ZDS Qubes:

- ZDS Qube [Buy Now Product #7885](#)
- ZDS Rodent Qube Set, for rodents and pocket pets [Buy Now Product #8436](#)
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- ZDS Qube for Imaging [Order Now Product #8438](#)
- The Heated ZDS Qube [Buy Now Product #8556](#)

ZDS Qubes and ZDS Masks offer solutions to these longstanding problems

Waste gas contamination of workplace.

- "Sealed" mask prevents leakage into workplace
- High-flow waste gas scavenging NOT required to prevent anesthetic agent contamination
- Capacity of active gas scavenging system reduced ~80%

Inadequate anesthetic depth.

- Zero dead space (ZDS*) mask, uni-directional flow design delivers gas direct to patient, preventing rebreathing
- No unpredictable "leakage" of delivered gas

Long, uncontrolled inductions.

- Use ZDS Qube* for induction
- Yields rapid, controlled induction
- Eliminates patient transfer from chamber to procedure site, minimizing workplace contamination

Time (and tape) in patient set-up.

- Unique anesthesia solution (*patent pending*)
- Solid aluminum (1 lb) design gives positioning stability
- Hoses secured and fixed in place automatically
- Eccentric mask aperture gives multiple patient heights

Morbidity/mortality due to hypothermia.

- Reduces fresh gas flow by 80 – 90% (inflow oxygen is cold and dry)
- Eliminates high scavenge system air flow around patient to resolve hypothermia
- Heated ZDS Qube* provides warmed inspired gas

High anesthetic costs.

- "Sealed" mask system reduces anesthetic/oxygen consumption
- Gas flow (and consumption) reduced 80 – 90%

- Wide range of masks & diaphragms to suit most animals and procedures

- Typical 1 – 2 liters/min flow reduced to 100 – 200 mls/min

* = patents pending

[/column]

HEATED Darvall ZDS Qubes*

Darvall HEATED ZDS Qube warms patients from within. Our totally new warming technology features a heat controller with a microprocessor and temperature sensors. Together they warm the patient's inspired air to between 98°F and 103°F.

- Prevents hypothermia in rodents and other pocket pets
- Warms from the start of anesthesia
- Controlled heating: 98°F – 103°F
- Continuously monitors patient's temperature
- Safe: closed-loop feedback
- Eliminates waste gas pollution
- Increases efficiency
- Reduces morbidity / mortality
- Maintains predictable anesthesia

Features & Benefits:

- **Warms From Within!**
- **Captures control** of patient's body temperature from induction
- **Increase your precision** by adding an optional esophageal / rectal temperature probe
- **Lo-flo Zero Dead Space (ZDS) design** – enhances response to changes in anesthesia, fast & predictable anesthesia, and efficient gas flow
- **Sealed mask system** – save money with up to 80% decrease in anesthetic and oxygen consumption and reduced waste gas volume
- **Solid, heavy cube design** – secure and stable for improved patient positioning
- **Operates as Heated or Non-Heated**
- **Complete range of masks and diaphragms available** – accommodates rodents, kittens, and most pocket pets

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- Telemetry
- Supplies & Accessories



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Introducing *qube* Inspired by simplicity and style, *qube* breaks with tradition to offer a fresh, new perspective in compact monitoring. Small and lightweight with a battery life that goes the distance, *qube* offers portability, accessibility and heightened connectivity—perfect for emergency-, general-, intensive- and post-anesthesia care units. Caregivers can access current, critical patient information—from bedside throughout transport—to provide the ultimate level of patient care.

To learn more about *qube*, view the following video:

Art of Monitoring (short) patient monitori...

Direct links:

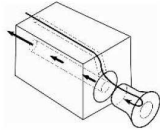
- Xhibit central station
- XPREZZON
- qube
- Wireless Capabilities

Buy Now Product #0835 (Non-Autoclavable)

Darvall ZDS Qubes*

Darvall ZDS Qubes bring new solutions to the longstanding anesthesia problems encountered by zoo veterinarians, academics, and pocket-pet practitioners.

- Eliminate waste gas pollution
- Increase efficiency
- Reduce morbidity / mortality
- Maintain predictable anesthesia



Features & Benefits:

- **Lo-flo Zero Dead Space (ZDS) design** – enhances response to changes in anesthesia, allows for fast & predictable anesthesia, and efficient gas flow
- **Sealed mask system** – saves money with up to 80% decrease in anesthetic and oxygen consumption and reduced waste gas volume
- **Solid, heavy cube design** – secure and stable for improved patient positioning
- **Complete range of models, masks and diaphragms available** – accommodates puppies



Select from our full line of Darvall ZDS Qubes:

OPPOSITION NO. 91255412

**APPLICANT'S ANSWER TO
NOTICE OF OPPOSITION**

EXHIBIT G

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US Serial, Registration, or Reference No. ▼	5056648	Status	Documents
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STATUS	DOCUMENTS	MAINTENANCE	Back to Search	Print
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Mark: QUBE

QUBE

US Serial Number: 79165038

Application Filing Date: Nov. 21, 2014

US Registration Number: 5056648

Registration Date: Oct. 11, 2016

Register: Principal

Mark Type: Trademark, Service Mark

TM5 Common Status

Descriptor:



LIVE/REGISTRATION/Issued and Active

The trademark application has been registered with the Office

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Oct. 11, 2016

Publication Date: Jul. 26, 2016

▲ Mark Information

▼ Expand All

▲ Related Properties Information

▲ Goods and Services

▲ Basis Information (Case Level)

▲ Current Owner(s) Information

▲ Attorney/Correspondence Information

▼ Prosecution History

Date	Description	Proceeding Number
Jun. 30, 2017	NEW REPRESENTATIVE AT IB RECEIVED	
Mar. 03, 2017	FINAL DECISION TRANSACTION PROCESSED BY IB	

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Feb. 13, 2017	FINAL DISPOSITION NOTICE SENT TO IB	
Feb. 13, 2017	FINAL DISPOSITION PROCESSED	71529
Jan. 11, 2017	FINAL DISPOSITION NOTICE CREATED, TO BE SENT TO IB	
Oct. 12, 2016	NOTIFICATION OF POSSIBLE OPPOSITION - PROCESSED BY IB	
Oct. 11, 2016	REGISTERED-PRINCIPAL REGISTER	
Jul. 26, 2016	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Jul. 26, 2016	PUBLISHED FOR OPPOSITION	
Jul. 06, 2016	NOTIFICATION OF POSSIBLE OPPOSITION SENT TO IB	
Jul. 06, 2016	NOTICE OF START OF OPPOSITION PERIOD CREATED, TO BE SENT TO IB	
Jul. 06, 2016	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Jun. 21, 2016	LAW OFFICE PUBLICATION REVIEW COMPLETED	70633
Jun. 14, 2016	APPROVED FOR PUB - PRINCIPAL REGISTER	
Dec. 31, 2015	NOTIFICATION OF LETTER OF SUSPENSION E-MAILED	6332
Dec. 31, 2015	LETTER OF SUSPENSION E-MAILED	6332
Dec. 31, 2015	SUSPENSION LETTER WRITTEN	81131
Dec. 10, 2015	TEAS/EMAIL CORRESPONDENCE ENTERED	70633
Dec. 10, 2015	CORRESPONDENCE RECEIVED IN LAW OFFICE	70633
Dec. 10, 2015	ASSIGNED TO LIE	70633
Dec. 04, 2015	NEW REPRESENTATIVE AT IB RECEIVED	
Dec. 01, 2015	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Dec. 01, 2015	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Nov. 25, 2015	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Jun. 21, 2015	REFUSAL PROCESSED BY IB	
Jun. 03, 2015	NON-FINAL ACTION MAILED - REFUSAL SENT TO IB	
Jun. 03, 2015	REFUSAL PROCESSED BY MPU	72629
Jun. 03, 2015	NON-FINAL ACTION (IB REFUSAL) PREPARED FOR REVIEW	
Jun. 02, 2015	NON-FINAL ACTION WRITTEN	81131
May 29, 2015	NON-FINAL ACTION (IB REFUSAL) WITHDRAWN FOR REVIEW	76826
May 28, 2015	NON-FINAL ACTION (IB REFUSAL) PREPARED FOR REVIEW	
May 27, 2015	NON-FINAL ACTION WRITTEN	81131
May 22, 2015	APPLICATION FILING RECEIPT MAILED	
May 18, 2015	ASSIGNED TO EXAMINER	81131
May 18, 2015	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
May 14, 2015	SN ASSIGNED FOR SECT 66A APPL FROM IB	

▲ International Registration Information (Section 66a)

▲ TM Staff and Location Information

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▼ [Proceedings - None recorded](#)

OPPOSITION NO. 91255412

**APPLICANT'S ANSWER TO
NOTICE OF OPPOSITION**

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STATUS	DOCUMENTS	MAINTENANCE	Back to Search	Print
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Mark: QUBE

QUBE

US Serial Number: 86863078

Application Filing Date: Dec. 31, 2015

US Registration Number: 5158866

Registration Date: Mar. 14, 2017

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Trademark

TM5 Common Status

LIVE/REGISTRATION/Issued and Active

Descriptor:



The trademark application has been registered with the Office

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Mar. 14, 2017

Publication Date: Dec. 27, 2016

▲ Mark Information

▼ Expand All

▲ Goods and Services

▲ Basis Information (Case Level)

▲ Current Owner(s) Information

▲ Attorney/Correspondence Information

▼ Prosecution History

Date	Description	Proceeding Number
May 21, 2019	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Mar. 14, 2017	REGISTERED-PRINCIPAL REGISTER	

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Dec. 27, 2016	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Dec. 27, 2016	PUBLISHED FOR OPPOSITION	
Dec. 07, 2016	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Nov. 18, 2016	APPROVED FOR PUB - PRINCIPAL REGISTER	
Oct. 27, 2016	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Oct. 26, 2016	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Oct. 26, 2016	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Oct. 25, 2016	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
Oct. 25, 2016	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Apr. 26, 2016	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Apr. 26, 2016	NON-FINAL ACTION E-MAILED	6325
Apr. 26, 2016	NON-FINAL ACTION WRITTEN	78185
Apr. 19, 2016	ASSIGNED TO EXAMINER	78185
Mar. 22, 2016	LETTER OF PROTEST ACCEPTED	
Jan. 12, 2016	NOTICE OF PSEUDO MARK E-MAILED	
Jan. 11, 2016	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Jan. 04, 2016	NEW APPLICATION ENTERED IN TRAM	

▲ **TM Staff and Location Information**

▲ **Assignment Abstract Of Title Information - Click to Load**

▼ **Proceedings - None recorded**