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

Proceeding	92047274
Party	Plaintiff Bandit Industries, Inc. Bandit Industries, Inc. ,
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Date	05/18/2007
Attachments	Mtn for Jmt on Pleadings.pdf (3 pages)(20470 bytes) Mtn for Jmt on Pleadings Brief.pdf (17 pages)(61316 bytes) Exhibit 1.pdf (2 pages)(1136868 bytes) Exhibit 2.pdf (5 pages)(2569230 bytes) Exhibit 3.pdf (2 pages)(445133 bytes) Exhibit 4.pdf (2 pages)(815091 bytes) Exhibit 5.pdf (11 pages)(5150209 bytes)

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

In re Registration of:

Registrant:	Janet L. Snider, a Michigan Corporation
Reg. No.:	2,704,634
Mark:	AUTO-FEED PLUS
Registration Date:	April 8, 2003
Current Filing Basis:	1A

BANDIT INDUSTRIES, INC.,
a Michigan Corporation,
Petitioner

Cancellation No.: 92047274

v.

JANET L. SNIDER,
a Michigan Corporation,
Registrant

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Gerald E. McGlynn, III (P-41149)
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Harrison, LLC*

PETITIONER'S MOTION FOR JUDGMENT ON THE PLEADINGS

In accordance with the Trademark Trial and Appeal Board Manual of Procedure (TBMP), Petitioner sought stipulation to this motion, to which no agreement was reached.

Pursuant to 504 of Trademark Trial and Appeal Board Manual of Examining Procedure (TBMP) and Rule 12(c) of the Federal Rules of Civil Procedure (Fed R. Civ. P.), Petitioner, Bandit Industries, Inc. (Bandit), by and through its attorneys, Bliss McGlynn, P.C., move this honorable Board for judgment on the pleadings in this matter.

It is admitted that the Applicant was not the proper owner of the mark at the time of filing the application for registration of the AUTO-FEED PLUS mark (the Application). If the Applicant does not own the mark on the application filing date, the application is void. 37 C.F.R. §2.71(d). Additionally, the AUTO-FEED PLUS trademark registration certificate identifies Janet L. Snider Corporation (Snider Corp.) as the owner of the registration, not Janet L. Snider, the individual (Ms. Snider). Yet, Ms. Snider, as an individual, executed an assignment for the AUTO-FEED PLUS trademark registration to Electronic Solutions of Harrison, LLC (ESH). Since Ms. Snider did not possess any ownership rights to the AUTO-FEED PLUS trademark registration, as an individual, the assignment to ESH is void. Therefore, ESH does not have standing to defend this cancellation proceeding.

Petitioner's motion for judgment on the pleadings is timely pursuant to TBMP § 504.01 and Fed. R. Civ. P. 12(c). Accordingly, for the reasons set forth above, as more fully explained within Petitioner's accompanying brief in support of this motion, judgment on the pleadings in favor of cancelling the AUTO-FEED PLUS trademark registration is warranted. Additionally, judgment on the pleadings declaring that ESH does not have standing in this proceeding is also warranted.

Respectfully submitted,

Date: May 18, 2007

/Daniel H. Bliss/

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PETITIONER'S BRIEF IN SUPPORT OF ITS
MOTION FOR JUDGMENT ON THE PLEADINGS

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ISSUES PRESENTED

1. Whether the TTAB should order judgment on the pleadings in favor of cancelling registration for the AUTO-FEED PLUS mark since it is admitted that the Applicant was not the owner of the mark at the time of filing the application?

Petitioner answers: Yes.

2. Whether the TTAB should order judgment on the pleadings in favor of cancelling registration for the AUTO-FEED PLUS mark since it is admitted that the Applicant did not actually use the mark in commerce?

Petitioner answers: Yes.

3. Whether the TTAB should order judgment on the pleadings to remove Electronic Solutions of Harrison, LLC (ESH) as a named party from this proceeding since ESH does not have standing as the assignment for the AUTO-FEED PLUS trademark registration was not executed by or on behalf of the Registrant identified on the Certificate of Registration for the AUTO-FEED PLUS trademark?

Petitioner answers: Yes.

TABLE OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
1	Application for federal registration of Snider Corp.'s AUTO-FEED PLUS mark (Serial No. 78/072477).
2	Certificate of Registration for Snider Corp.'s AUTO-FEED PLUS trademark (Reg. No. 2704634).
3	USPTO Trademark Assignment Record for Snider Corp.'s AUTO-FEED PLUS trademark registration (Reg. No. 2704634).
4	Application for federal registration of Ms. Snider's AUTO FEED PRO mark (Serial No. 78/894303).
5	USPTO Office Action for Ms. Snider's AUTO FEED PRO trademark application.

CITATION OF AUTHORITY

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I. INTRODUCTION

United States Registration No. 2,704,634 for the AUTO-FEED PLUS mark issued to Snider Corporation. Indeed, Snider Corporation was the Applicant for registration of the AUTO-FEED PLUS mark. During examination of the AUTO-FEED PLUS trademark application, Snider Corporation declared that it actually used the mark in commerce. However, Snider Corporation did not own the AUTO-FEED PLUS mark as of the filing date of the trademark application. The pleadings in this matter contain express admissions supporting these facts. As a result, the application for the AUTO-FEED PLUS mark was void and registration should be cancelled.

Additionally, the pleadings, admissions contained therein, as well as the facts of which this Board may take judicial notice, demonstrate that Snider Corporation and Ms. Snider are not the same. USPTO documents clearly indicate a distinction between these two juristic persons. More specifically, the USPTO does not acknowledge that Ms. Snider, as an individual, has any ownership rights to the AUTO-FEED PLUS trademark registration. As a result, the assignment executed between Ms. Snider, as an individual, and Electronic Solutions of Harrison, LLC for the AUTO-FEED PLUS trademark registration is void. Accordingly, Electronic Solutions of Harrison, LLC does not have standing in this proceeding.

II. STATEMENT OF FACTS

Petitioner's motion for judgment on the pleadings (Motion) is predicated upon the following facts, which are undisputed and admitted to in the Answer to Petition for Cancellation (Answer). The following facts are also supported by documentary evidence

that is admitted to within the Answer as speaking for itself, namely the file history of the AUTO-FEED PLUS trademark.

A. The Parties

Petitioner, Bandit Industries, Inc. (Bandit) is a corporation organized under the laws of the State of Michigan with a principal place of business at 6750 Millbrook Road in Remus, Michigan 49340. Bandit filed a Petition for Cancellation (Petition) that requests cancellation of U.S. Registration No. 2,704,634 (the ‘634 Registration) for the AUTO-FEED PLUS mark.

Janet L. Snider Corporation (Snider Corp.), is a corporation organized under the laws of the State of Michigan. Snider Corp. applied for federal registration of the AUTO-FEED PLUS mark. Snider Corp. was identified as the Applicant in the application of the ‘634 Registration for the AUTO-FEED PLUS mark. Additionally, the Certificate of Registration of the ‘634 Registration for the AUTO-FEED PLUS mark identifies Snider Corp. as the Owner and Registrant.

Janet Snider (Ms. Snider) is an individual who corresponded with the United States Patent and Trademark Office (USPTO) on behalf of Snider Corp. during prosecution of the AUTO-FEED PLUS trademark application. The application for the ‘634 Registration for the AUTO-FEED PLUS mark identifies Ms. Snider as a “duly authorized officer” of Snider Corp.

Electronic Solutions of Harrison, LLC (ESH) is a limited liability company organized under the laws of the State of Michigan. ESH is the alleged assignee to the ‘634 Registration for the AUTO-FEED PLUS mark. More specifically, the USPTO

assignment record indicates an assignment of the '634 Registration for the AUTO-FEED PLUS mark between Ms. Snider, an individual, as the assignor and ESH as the assignee on March 3, 2007.

B. Application for Federal Registration of the AUTO-FEED PLUS Mark

Snider Corp. applied for federal trademark registration of the AUTO-FEED PLUS mark on July 5, 2001 (the Application), which received U.S. Serial No. 78/072477. Exhibit 1. The Application includes a declaration that was signed by Ms. Snider a "duly authorized officer" of Snider Corp. The declaration states, in part, that, "he/she believes the applicant to be the owner of the trademark/service mark sought to be registered...". Exhibit 1. Yet, the Answer contains the admission that, "the *owner* at the time of the filing of the application of the trademark AUTO-FEED PLUS, Registration No. 2,704,634, was *Janet L. Snider, an individual ("Ms. Snider")*." Answer, ¶ 1 (emphasis added).

On April 8, 2003, the '634 Registration issued for the AUTO-FEED PLUS mark. Exhibit 2. The Certificate of Registration of the '634 Registration for the AUTO-FEED PLUS mark identifies Snider Corporation as the owner/registrant. Yet, the Answer contains the admission that, "the Registered Mark was registered on April 8, 2003 to *Ms. Snider* as owner and that the Certificate of Registration speaks for itself." Answer, ¶ 16 (emphasis added).

C. Use of the AUTO-FEED PLUS Mark

During examination of the Application, Snider Corp. declared that it actually used the AUTO-FEED PLUS mark in commerce as of April 11, 2001. More specifically, Snider Corp. submitted a specimen of the mark representing actual use in commerce by ESH. Exhibit 1. However, the Answer includes the admission that, “*Ms. Snider used, licensed and subsequently assigned the Registered Mark to Registrant [ESH], of which she is a co-founder.*” Answer ¶ 2 (emphasis added).

D. Assignment of the ‘634 Registration of the AUTO-FEED PLUS Mark

The USPTO recorded an assignment of the ‘634 Registration on March 5, 2007. Exhibit 3. More specifically, the USPTO Trademark Assignment Details indicate that Ms. Snider, as an individual, executed an assignment for the entire interest of the ‘634 Registration for the AUTO-FEED PLUS mark to Electronic Solutions of Harrison, LLC on March 3, 2007. However, the Certificate of Registration of the ‘634 Registration for the AUTO-FEED PLUS mark identifies Snider Corporation as the owner/registrant, not Ms. Snider, the individual. Exhibit 2.

III. LAW

After the pleadings are closed, a party may move for judgment on the pleadings if no material facts remain at issue and the parties’ dispute can be resolved on the pleadings. Trademark Manual of Examining Procedure (TBMP) §504; Fed. R. Civ. P. 12(C); Von Schorlemer v. Baron Herm. Schorlemer Weinkellerei GmbH, 5 USPQ2d 1376 (TTAB 1986). Motions for judgment on the pleadings are generally treated in the same manner

as Fed. R. Civ. P. 12(b)(6) motions to dismiss. Internet Inc. v. Corporation for National Research Initiatives, 38 USPQ2d 1435, 1438 (TTAB 1996).

A motion for judgment on the pleadings is a test solely of the undisputed facts appearing in all the pleadings, supplemented by any facts of which the Board will take judicial notice. The Scotch Whisky Assoc. v. United States Distilled Products Co., 13 USPQ2d 1711, 1714 n.1 (TTAB 1989), *recon denied*, 17 USPQ2d 1240 (TTAB 1990), *dismissed*, 18 USPQ2d 1391, *rev'd on other grounds*, 952 F.2d 1317, 21 USPQ2d 1145 (Fed Cir. 1991). The registration of the trademark is evidence in a cancellation proceeding. TBMP §317. Additionally, the Board may consider documents attached as exhibits to pleadings or referred to in the complaint, where such documents are central to plaintiff's claim and indisputably authentic. Fed. R. Civ. P. 10(c); Horsley v. Feldt, 304 F.3d 1125, 1134-35 (11th Cir. 2002).

IV. ARGUMENT

As explained in greater detail below, judgment in favor of cancelling the '634 Registration for the AUTO-FEED PLUS mark is warranted since no material facts remain at issue based on the pleadings and those facts of which this Board can take judicial notice.

A. The AUTO-FEED PLUS Application Is Void.

1. *Snider Corporation Was Not The Proper Applicant.*

Pursuant to the TMEP, the applicant of a federal trademark application may be any person or entity capable of suing and being sued in a court of law. TMEP §1201.02(a). Furthermore, an application to register a mark *must* be filed by the *owner* of the mark. TMEP §803.01 (emphasis added). More specifically, an application for federal registration of a mark *must* be filed by *the party who owns the mark on the application filing date*. TMEP §1201.02(b) (emphasis added). If the applicant is *not the owner* of the mark on the application filing date, *the application is void*. 37 C.F.R. §2.71(d) (emphasis added); Huang v. Tzu Wei Chen Food Co. Ltd., 849 F.2d 1458, 7 USPQ2d 1335 (Fed. Cir. 1988).

In the present case, the Application for the ‘634 Registration for the AUTO-FEED PLUS mark indicates Snider Corporation as the Applicant. Exhibit 1. Moreover, the Application includes a declaration, signed by Ms. Snider, as a duly authorized officer of Snider Corp., that Snider Corp. is the owner of the AUTO-FEED PLUS mark. Exhibit 1. Additionally, the Certificate of Registration for the ‘634 Registration indicates that Snider Corp. is the owner/registrant of the AUTO-FEED PLUS mark. Exhibit 2. However, the Answer includes the admission that *Ms. Snider, the individual*, was the *owner* of the AUTO-FEED PLUS mark at the time of filing, *not Snider Corporation*. Answer ¶ 1 (emphasis added). The admission in the Answer is further supported by the assignment Ms. Snider executed, as an individual, to assign the entire interest in the ‘634 Registration for the AUTO-FEED PLUS mark to ESH. Exhibit 3.

The admission in the Answer is clear – Snider Corp. was not the owner of the AUTO-FEED PLUS mark at the time of filing the application. When an application is filed in the name of the wrong party, this defect cannot be cured by amendment or assignment, but the true owner may file another application. 37 C.F.R. §2.71(d); TMEP §803.06. Accordingly, the Application for the ‘634 Registration for the AUTO-FEED PLUS mark is void. *Id.*; Huang, 849 F.2d 1458. Therefore, judgment on the pleadings in favor of cancelling the ‘634 Registration for the AUTO-FEED PLUS mark is warranted.

2. *Snider Corporation And Janet L. Snider Are Not The Same.*

The Application for the ‘634 Registration contains express language that Snider Corporation and Ms. Snider are not the same juristic person. More specifically, the Answer includes the admission that Ms. Snider filed the Application for the ‘634 Registration as well as the admission that the Application for the ‘634 Registration speaks for itself. Answer ¶¶ 7-10. *Ms. Snider prepared the Application for the ‘634 Registration* and it is replete with express distinctions between Ms. Snider and Snider Corporation. Through her own conduct, *Ms. Snider knowingly and willingly admitted that Snider Corp. and Ms. Snider are not the same juristic person to the USPTO.* By way of example, Ms. Snider expressly identifies Snider Corporation as the Applicant and herself as a “duly authorized officer” of Snider Corporation in the Application for the ‘634 Registration. Exhibit 1. Moreover, Ms. Snider knowingly and willingly executed a declaration stating that that Snider Corp. and not her, as an individual, was the owner of the mark. In the same declaration, Ms. Snider also declared that no other person had the right to use the mark. Exhibit 1.

Furthermore, the Answer includes the admission that Ms. Snider corresponded with the Examining Attorney during examination of the Application as well as the admission that the correspondence speaks for itself. Answer ¶¶ 11 and 14. At no time, did Ms. Snider, as a duly authorized officer of Snider Corp., represent to the Examining Attorney that any juristic person other than Snider Corp. was the owner of the mark. Indeed, even where the Examining Attorney proposed a change in ownership of the Mark, Ms. Snider, as an authorized officer of Snider Corp., refused.

The USPTO also recognizes that Snider Corp. and Ms. Snider are not the same juristic person. Recently, Ms. Snider applied for federal trademark registration for the mark, AUTO FEED PRO (Application Serial No. 78/894303). Exhibit 4. The USPTO rejected registration of Ms. Snider's AUTO FEED PRO trademark application based on a likelihood of confusion with Snider Corp.'s AUTO-FEED PLUS registration. Exhibit 5. Indeed, where marks are determined to be confusingly similar, common ownership will generally eliminate such a determination.

Accordingly, based on the admissions within the Answer as well as those within USPTO documents of which this Board may take judicial notice, Snider Corp. is not the same as Ms. Snider for purposes of trademark ownership. Therefore, judgment on the pleadings in favor of cancelling the '634 Registration for the AUTO-FEED PLUS mark is warranted.

3. *Snider Corp. Never Used The Mark – Snider Corp. Never Controlled The Mark.*

The Answer includes the admission that Ms. Snider was the owner of the AUTO-FEED PLUS mark at the time of filing the Application. Additionally, the Answer

includes the admission that Ms. Snider, not Snider Corp., actually who used the AUTO-FEED PLUS mark. Answer ¶¶ 2 and 17. In fact, it is clear from admissions within the Answer that Snider Corp. never used the AUTO-FEED PLUS mark. Furthermore, the Application for the '634 Registration includes no evidence that Snider Corp. actually used the mark. Rather, the specimen provided during examination of the Application for the '634 Registration indicates the AUTO-FEED PLUS mark was (arguably) used in commerce by persons other than Snider Corp. The admissions within the Answer confirm that Snider Corp. never used the AUTO-FEED PLUS mark in commerce. Moreover, the admissions with the Answer as well as the Assignment for the '634 Registration prove that Snider Corp. never controlled the use of the AUTO-FEED PLUS mark in commerce.

As a corollary, the admissions within the Answer and the Assignment of the '634 Registration prove that Ms. Snider, as an individual, controlled use of the AUTO-FEED PLUS mark. More specifically, the Answer includes the admission that Ms. Snider, as an individual, licensed and subsequently assigned the AUTO-FEED PLUS mark to ESH. Answer ¶ 2. Likewise, the Assignment of the '634 Registration proves that Ms. Snider, as an individual, controlled the use of the AUTO-FEED PLUS mark. Assuming facts in a light most favorable to the non-moving party, the relationships between Ms. Snider and ESH proves that she was the controlling party regarding use of the AUTO-FEED PLUS mark, not Snider Corp. It is the controlling party that owns the mark and, therefore, is the *only party* that may apply to register the mark. Smith International, Inc. v. Olin Corp., 209 USPQ 1033, 1044 (TTAB 1981) (emphasis added).

In the present case however, it is admitted that Snider Corp. was not the owner of the mark at the date of filing the Application. Additionally, despite being the admitted owner of the mark at the time of filing the Application, Ms. Snider declared that Snider Corp. was the Applicant and the Registrant of the '634 Registration for the AUTO-FEED PLUS mark. Ms. Snider's admissions as well as the documents from the USPTO prove that Ms. Snider and Snider Corp. are not the same juristic person for purposes of trademark ownership. Accordingly, based on the admissions and the facts of which this Board may take judicial notice, the Application for the '634 Registration of the AUTO-FEED PLUS mark is void. Therefore judgment on the pleadings in favor of cancelling the '634 Registration is warranted.

B. ESH Has No Standing In This Proceeding – The Assignment Is Void

On March 5, 2007 the USPTO recorded an assignment of the '634 Registration for the AUTO-FEED PLUS mark. Exhibit 3. The assignment conveyed the entire interest in the '634 Registration and was executed between Ms. Snider, an individual, as the assignor and ESH as the assignee.

Ms. Snider is not the recorded owner of the '634 Registration for the AUTO-FEED PLUS mark. To the contrary, the Certificate of Registration for the '634 Registration identifies Snider Corp. as the registered owner. Pursuant to the USPTO documents (the Certificate of Registration for the '634 Registration in particular), Ms. Snider, as an individual, does not have any ownership rights with respect to the '634 Registration for the AUTO-FEED PLUS mark. Accordingly, Ms. Snider, as an individual, cannot convey ownership rights that she does not possess. As a result, the

assignment between Ms. Snider, the individual, and Electronic Solutions, LLC is void. Thus, ESH has no standing in this proceeding as “Registrant” or “owner” of the AUTO-FEED PLUS trademark registration. Based on the pleadings and facts of which this Board may take judicial notice, judgment in favor of removing ESH as a named party from this proceeding is warranted.

V. CONCLUSION

Pursuant to the pleadings, the admissions contained therein, as well as those facts of which this Board may take judicial notice, Snider Corporation was not the proper owner of the AUTO-FEED PLUS mark as of the date of filing the Application. The pleadings, admissions contained therein, and those facts of which this Board may take judicial notice, further prove that Snider Corporation did not use or control the use of the AUTO-FEED PLUS mark. Additionally, pleadings, the admissions contained therein, as well as those facts of which this Board may take judicial notice, prove that Janet L. Snider, as an individual, did not possess the authority to assign U.S. Registration No. 2,704,634 for the AUTO-FEED PLUS mark to Electronic Solutions of Harrison, LLC.

For the reasons stated in its Motion for Judgment on the Pleadings, as well as in this Brief in support thereof, Bandit hereby requests this honorable Board to issue an order for judgment on the pleadings in favor of cancelling U.S. Registration No. 2,704,634 for the AUTO-FEED PLUS mark. Furthermore, Bandit requests that this honorable Board issue an order for judgment on the pleadings that the assignment of U.S. Registration No. 2,704,634 for the AUTO-FEED PLUS mark to Electronic Solutions of

Harrison, LLC is void and remove ESH as a named party to this proceeding for lack of standing.

Respectfully submitted,

Date: May 18, 2007

/Daniel H. Bliss/

Daniel H. Bliss (P-40129)

Gerald E. McGlynn, III (P-41149)

Robert A. Bondra (P-61345)

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Attorneys for Petitioner

Exhibit 1

Int. Cl.: 7

Prior U.S. Cls.: 13, 19, 21, 23, 31, 34 and 35

Reg. No. 2,704,634

United States Patent and Trademark Office

Registered Apr. 8, 2003

TRADEMARK
PRINCIPAL REGISTER

AUTO-FEED PLUS

JANET L. SNIDER (MICHIGAN CORPORATION)
930 W. SPRUCE ST.
HARRISON, MI 48625

FIRST USE 3-1-2001; IN COMMERCE 4-11-2001

FOR: DUAL OUT PUT ELECTRONIC CONTROL
USED ON OUTDOOR POWER EQUIPMENT AND
HEAVY MACHINERY USED IN THE TREE CARE,
FORESTRY, AND RECYCLING INDUSTRIES. IN
CLASS 7 (U.S. CLS. 13, 19, 21, 23, 31, 34 AND 35).

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "AUTO-FEED", APART FROM
THE MARK AS SHOWN.

SER. NO. 78-072,477, FILED 7-5-2001.

LYNN A. LUTHEY, EXAMINING ATTORNEY

Exhibit 2

<SERIAL NUMBER> 78072477

<FILING DATE> 07/05/2001

<DOCUMENT INFORMATION>

<TRADEMARK/SERVICEMARK APPLICATION>

<VERSION 1.23>

<APPLICANT INFORMATION>

<NAME> Janet L. Snider
<STREET> 930 W. Spruce St.
<CITY> Harrison
<STATE> MI
<COUNTRY> USA
<ZIP/POSTAL CODE> 48625
<TELEPHONE NUMBER> (989) 539-6000
<FAX NUMBER> (989) 539-7888
<E-MAIL ADDRESS> janet@radioremove.com
<AUTHORIZE E-MAIL COMMUNICATION> Yes

<APPLICANT ENTITY INFORMATION>

<CORPORATION: STATE/COUNTRY OF INCORPORATION> MI

<TRADEMARK/SERVICEMARK INFORMATION>

<MARK> Auto-Feed Plus

<TYPED FORM> Yes

* Applicant requests registration of the above-identified trademark/service mark in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq., as amended). *

<BASIS FOR FILING AND GOODS/SERVICES INFORMATION>

<USE IN COMMERCE: SECTION 1(a)> Yes

* Applicant is using or is using through a related company the mark in commerce on or in connection with the below-identified goods/services. (15 U.S.C. Section 1051(a), as amended.). Applicant attaches one SPECIMEN for each class showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services. *

<SPECIMEN> Yes

<SPECIMEN DESCRIPTION> This is an image of the owners manual

<LISTING OF GOODS AND/OR SERVICES> Programmable Digital Auto Feed Control for industrial power machinery.

<FIRST USE ANYWHERE DATE> 04/21/2001

<FIRST USE IN COMMERCE DATE> 04/21/2001

<BASIS FOR FILING AND GOODS/SERVICES INFORMATION>

<INTENT TO USE: SECTION 1(b)> Yes

* Applicant has a bona fide intention to use or use through a related company the mark in commerce on or in connection with the below-identified goods/services. (15 U.S.C. Section 1051(b), as amended.) *

<LISTING OF GOODS AND/OR SERVICES> Programmable Digital Auto Feed Control for industrial power machinery.

<FEE INFORMATION>

<TOTAL FEES PAID> 325

<NUMBER OF CLASSES PAID> 1

<NUMBER OF CLASSES> 1

<LAW OFFICE INFORMATION>

* The USPTO is authorized to communicate with the applicant at the below e-mail address *

<E-MAIL ADDRESS FOR CORRESPONDENCE> janet@radioremove.com

<SIGNATURE AND OTHER INFORMATION>

* PTO-Application Declaration: The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true. *

<SIGNATURE> /Janet L. Snider/

<DATE> 07/05/2001

<NAME> Janet L. Snider

<TITLE> Duly authorized officer

<MAILING ADDRESS>

<LINE> Janet L. Snider

<LINE> 930 W. Spruce St.

<LINE> Harrison MI 48625

<CREDIT CARD INFORMATION>

<RAM SALE NUMBER> 32

<RAM ACCOUNTING DATE> 20010706

78072477

<SERIAL NUMBER INFORMATION>

<SERIAL NUMBER> 78/072477

<INTERNET TRANSMISSION DATE> Thursday, 07-05-2001 17:00:17 EDT

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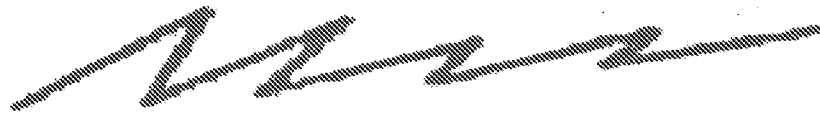
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E-MAIL ADDRESS FOR ACKNOWLEDGMENT> janet@radioreMOTE.com

78072477

Filing Date:

2001/07/05

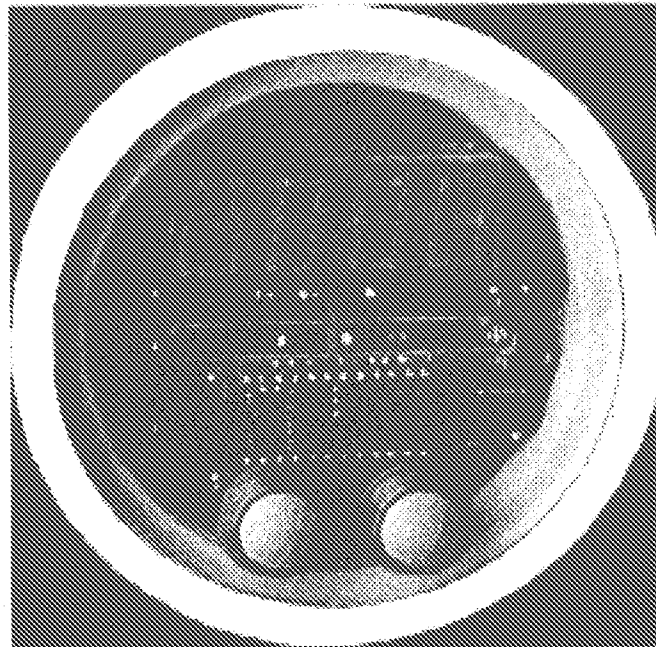


Electronic Solutions of Harrison, LLC

Reversing Auto-Feed Plus™

Owners Manual

Patent
Pending



Warning!

Disconnect Before Welding!

PLEASE READ BEFORE OPERATING

The applicant has submitted required color specimen.
The USPTO has printed only one copy of the specimen,
and extra copies can be produced in-house as needed.

Exhibit 3



[Assignments on the Web](#) > Trademark Query

Trademark Assignment Details

Reel/Frame: 3493/0300

Pages: 3

Received: 03/05/2007

Recorded: 03/05/2007

Attorney Dkt #: SNIDER

Conveyance: ASSIGNS THE ENTIRE INTEREST

Total properties: 1

1 Serial #: 28072477 Filing Dt: 07/05/2001 Reg #: 2704634 Reg. Dt: 04/08/2003
Mark: AUTO-FEED PLUS

Assignor

1 SNIDER, JANET L

Exec Dt: 03/03/2007

Entity Type: INDIVIDUAL

Citizenship: UNITED STATES

Assignee

1 ELECTRONIC SOLUTIONS OF HARRISON, LLC
3200 S. CLARE AVENUE
CLARE, MICHIGAN 48617

Entity Type: LIMITED LIABILITY
COMPANY

Citizenship: MICHIGAN

Correspondence name and address

PAMELA D. DEITCHLE
444 S. FLOWER STREET, SUITE 3675
LOS ANGELES, CA 90071

Search Results as of: 05/18/2007 10:54 AM

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350, v 2 0.1
Web interface last modified: April 20, 2007 v2.0.1

[HOME](#) | [INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [CONTACT US](#) | [PRIVACY STATEMENT](#)

Exhibit 4



Trademarks > Trademark Electronic Search System(Tess)

TESS was last updated on Thu May 10 04:18:56 EDT 2007

[TESS Home](#) | [NEW USER](#) | [STRUCTURED](#) | [FREE FORM](#) | [Browse Data](#) | [SEARCH OG](#) | [Bottom](#) | [HELP](#)

[Logout](#) Please logout when you are done to release system resources allocated for you.

Record 1 out of 1

[TARR Status](#) | [ASSIGN Status](#) | [TOP](#) | [TTAB Status](#) (Use the "Back" button of the Internet Browser to return to TESS)

Auto Feed Pro

Word Mark AUTO FEED PRO
Goods and Services IC 007, US 013 019 021 023 031 034 035, G & S: Power lawn and garden tools namely, chippers; Tree stump cutters, Wood chipping machines; Wood grinding machines
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Design Search Code
Serial Number 78894303
Filing Date May 26, 2006
Current Filing Basis 1B
Original Filing Basis 1B
Owner (APPLICANT) Janet L. Snider INDIVIDUAL UNITED STATES 3210 S. Clare Ave. Clare MICHIGAN 48617
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

[TESS Home](#) | [NEW USER](#) | [STRUCTURED](#) | [FREE FORM](#) | [Browse Data](#) | [SEARCH OG](#) | [TOP](#) | [HELP](#)

[HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)

Exhibit 5

To: Janet L. Snider (janet@radioremove.com)
Subject: TRADEMARK APPLICATION NO. 78894303 - AUTO FEED PRO - N/A
Sent: 11/7/2006 12:19:54 PM
Sent As: ECOM114@USPTO.GOV
Attachments: Attachment - 1
Attachment - 2
Attachment - 3
Attachment - 4
Attachment - 5

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/894303

APPLICANT: Janet L. Snider

78894303

CORRESPONDENT ADDRESS:

JANET L. SNIDER
3210 S CLARE AVE
CLARE, MI 48617-9756

RETURN ADDRESS:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

MARK: AUTO FEED PRO

CORRESPONDENT'S REFERENCE/DOCKET NO: N/A

Please provide in all correspondence:

CORRESPONDENT EMAIL ADDRESS:

janet@radioremove.com

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address

OFFICE ACTION

RESPONSE TIME LIMIT: TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE MAILING OR E-MAILING DATE.

MAILING/E-MAILING DATE INFORMATION: If the mailing or e-mailing date of this Office action does not appear above, this information can be obtained by visiting the USPTO website at <http://tarr.uspto.gov/>, inserting the application

serial number, and viewing the prosecution history for the mailing date of the most recently issued Office communication.

Serial Number 78/894303

The assigned trademark examining attorney has reviewed the referenced application and has determined the following:

LIKELIHOOD OF CONFUSION

Registration of the proposed mark is refused because of a likelihood of confusion with the marks in U.S. Registration Nos. 2039930, 2041698 and 2704634. Trademark Act Section 2(d), 15 U.S.C. §1052(d); TMEP §§1207.01 *et seq.* See the enclosed registration.

The Court in *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973), listed the principal factors to be considered in determining whether there is a likelihood of confusion under Section 2(d). Any one of the factors listed may be dominant in any given case, depending upon the evidence of record. In this case, the following factors are the most relevant: similarity of the marks, similarity of the goods, and similarity of trade channels of the goods. See *In re Opus One, Inc.*, 60 USPQ2d 1812 (TTAB 2001); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593 (TTAB 1999); *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999); *In re L.C. Licensing Inc.*, 49 USPQ2d 1379 (TTAB 1998); TMEP §§1207.01 *et seq.*

A likelihood of confusion determination requires a two-part analysis. First, the marks are compared for similarities in appearance, sound, connotation and commercial impression. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). Second, the goods or services are compared to determine whether they are similar or related or whether the activities surrounding their marketing are such that confusion as to origin is likely. *In re August Storck KG*, 218 USPQ 823 (TTAB 1983); *In re Int'l Tel. and Tel. Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Prods. Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); TMEP §§1207.01 *et seq.*

Comparison of the Marks

The marks are compared for similarities in sound, appearance, meaning or connotation. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). Similarity in any one of these elements is sufficient to find a likelihood of confusion. *In re Mack*, 197 USPQ 755 (TTAB 1977); TMEP §§1207.01(b) *et seq.* When applicant's mark is compared to a registered mark, "the points of similarity are of greater importance than the points of difference." *Esso Standard Oil Co. v. Sun Oil Co.*, 229 F.2d 37, 108 USPQ 161 (D.C. Cir.), *cert. denied*, 351 U.S. 973, 109 USPQ 517 (1956); TMEP §1207.01(b). The examining attorney must look at the marks in their entireties under Section 2(d). Here, the applicant's mark AUTO FEED PRO poses a likelihood of confusion to the registrants' marks AUTOFEED II, AUTOFEED II and design and [REDACTED] because the marks share the dominant wording AUTOFEED which creates a similar commercial impression. Since the marks are compared in their entireties under a Section 2(d) analysis, one feature of a mark may be recognized as more significant in creating a commercial impression. Greater weight is given to that dominant feature in determining whether there is a likelihood of confusion. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985); *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693 (C.C.P.A. 1976). *In re J.M. Originals Inc.*, 6 USPQ2d 1393 (TTAB 1987); TMEP §1207.01(b)(viii). Although the applicant has the wording "Pro" and two of the registrations have "II" and "Plus", the wording AUTOFEED is significant in determining the similarities of the marks. Regarding the issue of likelihood of confusion, the question is not whether people will confuse the marks, but whether the marks will confuse people into believing that the goods they identify come from the same source. *In re West Point-Pepperell, Inc.*, 468 F.2d 200, 175 USPQ 558 (C.C.P.A. 1972). For that reason, the test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison. The question is whether the marks create the same overall impression. *Recot, Inc. v. M.C. Becton*, 214 F.2d 1322, 54 USPQ2d 1894, 1896 (Fed. Cir. 2000); *Visual Information Inst., Inc. v. Vicon Indus. Inc.*, 209 USPQ 179 (TTAB 1980). The focus is

on the recollection of the average purchaser who normally retains a general rather than specific impression of trademarks. *Chemtron Corp. v. Morris Coupling & Clamp Co.*, 203 USPQ 537 (TTAB 1979); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975); TMEP §1207.01(b).

Similarity of Goods/Services

If the marks of the respective parties are identical or highly similar, the examining attorney must consider the commercial relationship between the goods or services of the respective parties carefully to determine whether there is a likelihood of confusion. *In re Concordia International Forwarding Corp.*, 222 USPQ 355 (TTAB 1983). TMEP §1207.01(a). Here, the applicant's goods are "Power lawn and garden tools namely, chippers; Tree stump cutters; Wood chipping machines; Wood grinding machines". The registrants' goods are "dual out put electronic control used on outdoor power equipment and heavy machinery used in the tree care, forestry, and recycling industries" and "chippers". Both party's goods are lawn and garden tools and given the strong similarity of the marks and the relatedness of these goods, the examining attorney finds that there is a substantial likelihood that the goods move in all normal channels of trade and that they are available to all potential customers. TMEP §1207.01(a)(ii).

The examining attorney must resolve any doubt regarding the likelihood of confusion in favor of the prior registrant. *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir., 1988).

TEAS PLUS Advisory

TEAS PLUS APPLICANTS MUST SUBMIT DOCUMENTS ELECTRONICALLY OR SUBMIT FEE: TEAS Plus applicants should submit the following documents using the Trademark Electronic Application System (TEAS) at <http://www.uspto.gov/teas/index.html>: (1) responses to Office actions; (2) preliminary amendments; (3) changes of correspondence address; (4) changes of owner's address; (5) appointments and revocations of attorney; (6) amendments to allege use; (7) statements of use; (8) requests for extension of time to file a statement of use, and (9) requests to delete a §1(b) basis. If any of these documents are filed on paper, they must be accompanied by a \$50 per class fee. 37 C.F.R. §§2.6(a)(1)(iv) and 2.23(a)(i). NOTE: In addition to the above, applicant must also continue to accept correspondence from the Office via e-mail throughout the examination process in order to avoid the additional fee. 37 C.F.R. §2.23(a)(2).

Pro Se Advisory

The following information applies only if the applicant chooses to respond to the Office action. No set form is required for response to this Office action. However, the applicant must respond to *each* refusal(s) and/or requirement(s) raised. The applicant should simply set forth the required changes or statements and request that the Office enter them. If the response is filed electronically through the Trademark Electronic Application System (TEAS), then applicant should sign the response by entering a "symbol" that applicant has adopted as a signature (e.g., /john doe/, /drl/, and /544-4925/). The Office will accept *any* combination of letters, numbers, spaces and/or punctuation marks as a valid signature if it is placed between two forward slash ("/") symbols. 37 C.F.R. §§2.33(d) and 2.193(c)(1)(iii); TMEP §§304.07 and 804.05.

Applicant should include the following information on *regular mail or facsimile* correspondence with the Office [not necessary if the correspondence is filed electronically via TEAS]: (1) the name and law office number of the trademark examining attorney; (2) the serial number of this application; (3) the mailing date of this Office action; and, (4) applicant's telephone number. 37 C.F.R. §2.194(b)(1); TMEP §302.03(a). To expedite prosecution of this application, applicant is encouraged to file its response to this Office action through the TEAS, available at <http://www.uspto.gov/teas/index.html>. If needed, the applicant should call the Trademark Assistance Center (TAC) for help in using TEAS. TAC may be reached at (571) 272-9250 or (800) 786-9199. TAC is open from 8:30 a.m. to 8:00 p.m. Eastern Standard Time, Monday through Friday, except on federal holidays.

The following legal authorities govern the processing of trademark and service mark applications by the Office: The Trademark Act, 15 U.S.C. §§1051 *et seq.*, the Trademark Rules of Practice, 37 C.F.R. Part 2, and the Office's *Trademark Manual of Examining Procedure* (TMEP) (4th ed., 2005), available on the United States Patent and Trademark Office web site at <http://www.uspto.gov/main/trademarks.htm>. The TMEP is a detailed guidebook written by the Office to explain the laws and procedures that govern the trademark application, registration and post registration processes. The TMEP is the manual that examining attorneys use when examining applications. Please note that this "Office action" will give references to the TMEP, e.g., TMEP §904.04. The applicant should refer to the cited section of the TMEP for information regarding the specific issue raised.

Applicant May wish to seek Trademark counsel

Applicant may wish to hire a specialist attorney to assist in prosecuting this application because of the technicalities involved. The Office cannot aid in the selection of a trademark attorney. 37 C.F.R. §2.11. Applicant may wish to consult the Yellow Pages for a listing of attorneys specializing in trademark or intellectual property law, or seek guidance from its local Bar Association attorney-referral service.

If applicant has questions about its application or needs assistance in responding to this Office action, please telephone the assigned trademark examining attorney directly at the number below.

/Regina C. Hines, Esq./

Regina.Hines@uspto.gov

Trademarks LO 114

571-272-9451

571-273-9451

HOW TO RESPOND TO THIS OFFICE ACTION:

- * **ONLINE RESPONSE:** You may respond using the Office's Trademark Electronic Application System (TEAS) Response to Office action form available on our website at <http://www.uspto.gov/teas/index.html>. If the Office action issued via e-mail, you must wait 72 hours after receipt of the Office action to respond via

TEAS. NOTE: Do not respond by e-mail. THE USPTO WILL NOT ACCEPT AN E-MAILED RESPONSE.

- * **REGULAR MAIL RESPONSE:** To respond by regular mail, your response should be sent to the mailing return address above, and include the serial number, law office number, and examining attorney's name.
NOTE: The filing date of the response will be the *date of receipt in the Office*, not the postmarked date.
To ensure your response is timely, use a certificate of mailing. 37 C.F.R. §2.197.

STATUS OF APPLICATION: To check the status of your application, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov>.

VIEW APPLICATION DOCUMENTS ONLINE: Documents in the electronic file for pending applications can be viewed and downloaded online at <http://portal.uspto.gov/external/portal/tow>.

GENERAL TRADEMARK INFORMATION: For general information about trademarks, please visit the Office's website at <http://www.uspto.gov/main/trademarks.htm>

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY SPECIFIED ABOVE.

DESIGN MARK

Serial Number

74721798

Status

SECTION 8 & 15--ACCEPTED AND ACKNOWLEDGED

Word Mark

AUTOFEED II

Standard Character Mark

No

Registration Number

2039930

Date Registered

1997/02/25

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Owner

Vermeer Manufacturing Company CORPORATION IOWA P.O. Box 200 Pella IOWA
50219

Goods/Services

Class Status --- ACTIVE. IC 007. US 013 019 021 023 031 034 035. G
& S: power operated brush [clippers] *chippers*. First Use:
1995/07/25. First Use In Commerce: 1995/07/25.

Disclaimer Statement

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

Filing Date

1995/09/28

Examining Attorney

VANSTON, KATHLEEN M.

Attorney of Record

Linda M. Byrne

Auto Feed II

DESIGN MARK

Serial Number

74721800

Status

SECTION 8 & 15--ACCEPTED AND ACKNOWLEDGED

Word Mark

AUTOFEED II

Standard Character Mark

No

Registration Number

2041698

Date Registered

1997/03/04

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

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

Owner

Vermeer Manufacturing Company CORPORATION IOWA P.O. Box 200 Pella IOWA
50219

Goods/Services

Class Status --- ACTIVE. IC 007. US 013 019 021 023 031 034 035. G
& S: power operated brush [clippers] *CHIPPERS*. First Use:
1995/07/25. First Use In Commerce: 1995/07/25.

Disclaimer Statement

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

Filing Date

1995/08/28

Examining Attorney

VANSTON, KATHLEEN M.

Attorney of Record

Linda M. Byrne



TYPED DRAWING

Serial Number

78072477

Status

REGISTERED

Word Mark

Standard Character Mark

No

Registration Number

2704634

Date Registered

2009/04/08

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

930 W. Spruce St. Harrison
MICHIGAN 49625

Goods/Services

Class Status --- ACTIVE. IC 007. US 013 019 021 023 031 034 035. G
& S: dual out put electronic control used on outdoor power equipment
and heavy machinery used in the tree care, forestry, and recycling
industries. First Use: 2001/03/01. First Use In Commerce:
2001/04/11.

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "AUTO-FEED" APART FROM
THE MARK AS SHOWN.

Filing Date

2001/07/05

Examining Attorney

LUTHEY, LYNN A.