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VOLUME 5 - NUMBER 7 - FALL 2005

Welcome to the Lackebach Siegel today! Online Newsletter.

Lackebach Siegel, whose history and achievements in intellectual property law span most of the Twentieth Century, has practice areas which include patents, trademarks, copyrights, unfair competition, antitrust, licensing, litigation and all facets of computer, Internet and domain name law.

*Lackebach Siegel today and Since 1923 is all about
Patents, Trademarks, Copyrights, Domain Names,
Internet and Computer Law*

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From Fall 2005 Newsletter

Attorney Profile

Geoffrey I. Landau

Position at Firm:

Trademark Clearance and Title
Department Head



As head of the Trademark Clearance (searches) and Title Department, Mr. Landau has personally overseen and conducted thousands of trademark searches. He is responsible for advising and counseling clients in connection with their selection and adoption of new trademarks and service marks, including the use of designations and slogans in print and media advertising. Mr. Landau also evaluates marks for connotative interpretation, seeking to avoid adoption of marks that

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Notable, recent LS Trademarks

may have a negative connotation, and is also responsible for trademark title issues involving assignments, perfection of security interests, and title clearance in connection with business acquisitions and financing. Mr. Landau heads a department that handles trademark clearance for a wide variety of industries. The clients seeking Mr. Landau's advice include automobile manufacturers, high tech/electronics manufacturers, wine and spirits importers, as well as a host of fashion, hand tool, professional cutlery, cosmetics and other manufacturers.

Mr. Landau was instrumental in setting up a bifurcated system for preliminary trademark searching, covering the records of the United States Patent and Trademark Office and the registries of the 50 states on an expedited basis, prior to common law searching. This system often saves our clients the costs of expensive common law searching, and is particularly cost-effective when clients have long lists of proposed marks that they need to consider. The Clearance and Title Department is responsible, under the tutelage of Mr. Landau, for reviewing catalogs, sell sheets and other promotional literature for trademark marking and trademark usage, in order to help preserve and protect the trademark rights of our clients.

Mr. Landau has advised extensively in connection with the introduction of products and services into the U.S. marketplace, particularly with respect to trademark selection and clearance. He routinely manages large trademark search projects for major corporations, and is notable for one-day trademark clearance that is attractive to many overseas clients that have come to depend on urgent searching and insightful advice. Our clients have come to rely on Mr. Landau's prompt

ACKNOWLEDGEMENT ZONE

The Trademark Insider's 2005 Year-to-Date report, listing the top 25 U.S. Trademark Attorneys, ranks Howard N. Aronson of Lackenbach Siegel LLP - 11th!

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It's the Truth - I swear! Maybe.

Cathy E. Shore-Sirotn

The somewhat common practice of claiming use in a trademark application of more goods than those upon which the mark is actually used may well be regarded by the U.S. Trademark Office as fraud.

The Trademark Trial and Appeal Board (TTAB), the administrative law body of the U.S. Trademark Office that judges trademark application and registration disputes, ruled in *Medinol Ltd. v. Neuro Vasx Inc.* (a cancellation action challenging the validity of the disputed registration), that failure to use the mark on both of the goods recited in the application (there were only two items listed) when both goods were alleged in the Statement of Use as having been used in commerce, constituted fraud in the procurement of the registration. Furthermore, the Board held that when a registration is based upon a fraudulent statement, the registration is void in its entirety and cannot be rehabilitated by amendment. In *Medinol* the registrant's motion to amend the registration to delete the unused goods was denied, and the entire registration was cancelled.

The TTAB explained that a trademark applicant commits fraud in procuring a registration when it makes material representations of fact in a declaration of use that it knows or should know to be false or misleading. The inquiry made must address the manifestations of applicant's intent. Those manifestations are found in the signed Statement of Use, which contains "penalty-for-perjury" language. The Board said the obligations of that language require the signor to investigate any statements made with a "degree of solemnity" prior to submission to the USPTO.

The Board admonished: Respondent's knowledge that its mark was not in use on stents [one of goods in the application] – or its reckless disregard for the truth – is all that is required to establish intent to commit fraud in the procurement of a registration. . . We find that respondent's material misrepresentations made in connection with its Statement of Use were fraudulent.

The excuse that the unused goods were "overlooked" when the Statement Of Use was executed did not mitigate the fraudulent nature of the ultimate act.

and helpful advice, particularly when they have to meet their own urgent product planning and marketing deadlines.

Education: Mr. Landau is a Samuel Belkin scholar, having graduated with honors from Yeshiva University, and from the Benjamin N. Cardozo School of Law with a Doctor of Jurisprudence degree.

E-mail: To learn more about the Trademark Clearance and Title Department, contact: glandau@Lackenbach.com

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PATENT CORNER:

Featuring a recently issued patent to a client of Lackenbach Siegel

United States Patent Number:

6,908,214

VARIABLE BEAM LED LIGHT SOURCE SYSTEM

Date of Patent:

June 21, 2005

Assignee: Altman Stage Lighting Co., Inc.

In a June 2004 TTAB decision, *Jimlar Corporation v. Montrexpert S.P.A.*, a cancellation petitioner challenged the validity of a Secs. 8 & 15 (use) affidavit filed by the registration owner that was claiming use on a list of products. The cancellation petitioner argued that use had not been made on all of the recited goods in the registration. The Board held the overbroad claim of use to be fraud by filing a false declaration under Secs. 8 & 15. The Board explained, “proof of specific intent to commit fraud is not required, rather fraud occurs when an applicant or registrant makes a false material representation that the applicant or registrant knew or should have known was false.”

The Board further stated that, “fraud in maintaining a registration involves a willful withholding from the Patent and Trademark Office by a registrant of material information or facts which, if transmitted and disclosed to the examiner, would have resulted in the possible cancellation in whole or in part of a registration for failure to comply with Section 8... The intent element of fraud maybe found when an applicant or registrant makes a false material representation that the applicant or registrant knew or should have known was false.”

The USPTO has made it clear that alleging use of a mark in connection with a list of goods in a declaration of continued use pursuant to Section 8 of the Trademark Act, or in connection with an Amendment to allege use or Statement of Use, when there is no use on all of the goods, is a false, material representation. The fact that a respondent may not have understood the legal effect of the lack of actual use for all its listed goods does not negate the intent element of fraud in a Board proceeding.

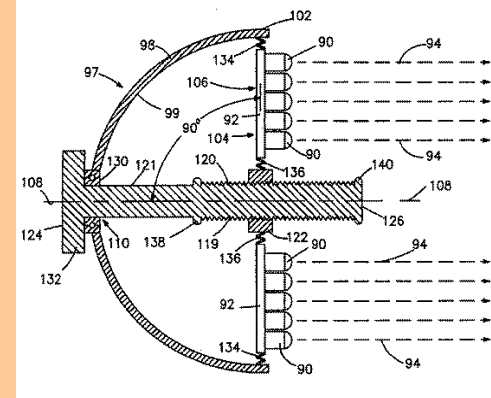
In a February 2005 decision, *J.E.M. Int’l. v. Happy Rompers*, a registrant claimed use in commerce for all of its 150 clothing items listed in its registration when, in fact, only fewer than 50 were actually being sold. The TTAB found that,

respondent knew or should have known its Statement of Use was materially incorrect. Respondent’s knowledge that its mark was not in use on about 100 of the approximately 150 identified items – or its reckless disregard for the truth – is all that is required to establish intent to commit fraud in the procurement of a registration.... [T]aking into consideration the circumstances of the case, the appropriate inquiry is not into the registrant’s subjective intent, but rather into the objective manifestations of that intent.

Lack of candor – not telling the truth – when responding to the Trademark Examiner about the meaning of the mark during prosecution was held to be fraudulent concealment in a recent Maryland District Court decision, causing the court to cancel the registration at issue in *Daesang Corp. v. Rhee Bros., Inc.* The trademark SOON CHANG in Hangul (Korean Characters) had been applied for Korean condiments, but the applicant did not disclose to the Trademark Examiner that SOON CHANG was a geographic term for an area in Korea noted for condiments. Failure to disclose this fact violated the “affirmative duty of candor to the USPTO.” It triggered the drastic penalty of cancellation of the disputed registration.

This body of important decisions on fraud in applications and maintaining registrations and the duty of candor make it clear: the lack of honesty puts a U.S. registration in jeopardy.

*To learn more about America’s Favorite Advertising Law Department, contact:
Cathy E. Shore-Sirotnin, cshore@Lackenbach.com*



VARIABLE BEAM LED LIGHT SOURCE SYSTEM

A diode light source system for stage, theatrical and architectural lighting has numerous separate flat, rigid panels for mounting light emitting diodes that emit diode light beams to a common focal area. Each panel is mounted with a group of these diodes, and each has an outer and an inner panel. A screw arrangement selectively positions the panels, with each panel oriented at a selected angle relative to an axis, and with each group of diodes emitting diode light beams transverse to each separate panel. Each inner panel portion is flexibly secured to the screw arrangement. The panels function hold the diodes and act as electrical circuit boards to transmit direct electrical current to the diodes on the panels. The screw arrangement includes an elongated, externally threaded cylinder, with opposed inner and outer ends, rotatably aligned with the axis and mounted on a corresponding internally cylindrical threaded nut.

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PATENT CORNER:

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Extreme Make-Over: *Patent Law Edition*

By Howard N. Aronson

Who wouldn't subscribe to "bolster the U.S. economy and improve the quality of living for all Americans" and "create new jobs." Such provocative thoughts were catch phrases in the Opening Statement of the proposed Patent Act of 2005 introduced in June 2005. But could changes to a fifty-five year old patent law truly be the panacea of the U.S. economy and improve the quality of life in the U.S.? Focusing on the major aspects of the proposed Act, there are significant suggested changes to longstanding policies endemic to U.S. patent law. The proposed new law would align the U.S. with the majority of the world as a "first to file" country. The first to invent system that was an endless breeding ground of litigation would finally be eliminated. Additionally, like the majority of the world, all (non-provisional) applications other than designs would be published 18 months after filing. Presently, one can avoid such publication by agreeing not to file foreign corresponding applications. That exemption would be eliminated by the proposed new law and all applications would then be publicly available.

The present U.S. unique requirement of having to disclose and illustrate the "best mode" of the invention known to the inventor, would likewise be eliminated. Elimination of this useless relic of legislation would assist patent attorneys to draft patent applications focusing on novelty and not on which mode (configuration) had been determined to operate best.

A controversial element of the proposed law is the ability of third parties to assist in the USPTO novelty examination. The public would be permitted to submit written materials with a discussion of its relevance to the claimed invention. This new procedure is expected to help reduce the number of invalid patents and reduce re-examination requests.

There is also a very controversial provision in the proposed Act of a post-grant opposition procedure. A party initiating a post-grant opposition would be estopped in all later proceedings, civil and administrative, from providing new evidence not lodged in the post-grant proceeding. While there are certain exceptions provided, the possible jeopardy is clear and will most likely seriously inhibit use of the post-grant opposition procedures. U.S. litigation paranoia – always fearful of waiving future rights – is seemingly a death knell to the success of the newly proposed opposition proceeding.

But with a keen consideration of litigation, the new law helps eliminate willful infringement except upon a showing of clear and convincing evidence of intentional copying or continuing infringement after a court determination. The proposed law would also provide a practical definition of a "reasonable royalty" for purposes of damage calculations based upon the portion of an entire product actually attributed to the patented invention. Knowledgeable commentators believe that some form of the proposed new law will be enacted. It is not imminent, but likely to be enacted in the near future. In view of active lobbying by many industries, it is not clear which new aspects of the proposed Act of 2005 will survive, but major changes to the present U.S. patent law are inevitable and it will likely significantly move the U.S. patent law towards global harmonization.

To learn more about Extreme Makeover, contact: Howard N. Aronson, haronson@Lackenbach.com

Notable, recent Patents secured by Lackenbach Siegel

TOOL HOLDER FIXTURE

Patent No.: 6,811,160 B2

Assignee: Eines Canela, S.A. (Spain)

CONCENTRIC TAPE APPLICATOR

Patent No.: 6,854,497 B2

Assignee: Roteq Machinery, Inc. (Canada)

DISC ROTATING APPARATUS WITH BALANCE CORRECTING BALLS

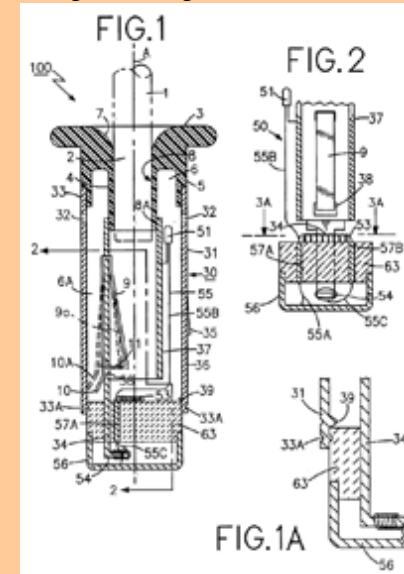
Patent No.: 6,779,191 B2

Assignee: Funai Electric Co., Ltd. (Japan)

LIGHTER ASSEMBLY

Patent No.: 6,794,613 B1

Assignee: Liteglow Industries, Inc. (USA)



COMPUTER MOUSE ACCESSORY

Patent No.: 6,798,398 B2

Assignee: Hairy Mouse Limited (United Kingdom)

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EMAIL: Making Life Easy, But Litigation Hard...

By Robert Golden

E-mail has become ubiquitous. It is now possible to communicate with others across the country and around the world instantaneously. Scanning and other technologies, coupled with inexpensive and virtually unlimited digital storage space, have made it simple to store huge amounts of information. These digital tools unquestionably have made business easier and more efficient. But these same technologies make litigation more complicated and more costly. Aside from the costs, these technologies can alter the outcome of a litigation. The informality of email and its seemingly temporary nature lead us to write things we may not have otherwise committed to paper. And while the limits of physical space prompted us to regularly dispose of paper documents, digitally stored information can, and often is, stored indefinitely. Deleted emails are not really deleted, but merely moved or renamed, awaiting retrieval by a skilled computer consultant. The smoking gun that would have been impossible to find a generation ago, now resides on your cell phone, Blackberry, or laptop.

When the rules relating to discovery in litigation were written, the drafters did not have to consider email, digital storage formats, or the numerous related issues. As is typical, technology has moved much faster than the law. A series of well-publicized decisions have shed light on these issues, and the potential pitfalls for litigants. For example, once a company becomes involved in litigation (or in some circumstances, even before the litigation begins), there is an obligation to preserve all relevant documents and information. The courts have held that this obligation applies to email and other electronically stored information, and have penalized litigants who failed to preserve, locate, and produce relevant digital information.

Pending amendments to the Federal Rules of Civil Procedure are intended to address these issues, simplify the “e-discovery” process, and offer some protection to companies that establish and follow reasonable storage and destruction policies. The proposed amendments to Rule 26(b), which governs initial disclosures, would require production of only electronic information that is “accessible without undue burden or cost.” This would exclude production of back-up tapes or other long-term storage media that generally must be restored before they can be accessed. Information from active sources, however, such as desktops, networks and active archives, would need to be produced. If a party is unsatisfied by production of only accessible information, the party can obtain the inaccessible information upon a showing of “good cause.” But the rule would allow for cost sharing or shifting, and the restoration and review of back-up media can be extremely expensive.

Perhaps most importantly, the proposed amendment to Rule 37 provides for a safe-harbor against sanctions (either monetary or substantive). More specifically, the proposed rule provides that “absent exceptional circumstances, a court may not impose sanctions . . . for failure to provide electronically stored information lost as a result of routine, good-faith operation of an electronic information system.” The proposed rule is clearly not an invitation to destroy relevant information. But the proposed rule should provide protection in the event back-up media are over-written as part of a well established and routinely followed maintenance program.

For more information, please contact: Robert Golden, rgolden@Lackebach.com

THERMAL PRINTER CLOSING APPARATUS

Patent No.: 6,798,436 B2

Assignee: Custom Engineering SpA (Italy)

ADJUSTABLE UTILITY LIGHT

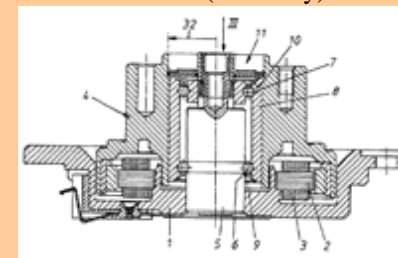
Patent No.: 6,799,863 B2

Assignee: Central Tools, Inc. (USA)

SPINDLE MOTOR WITH MAGNETIC SEAL

Patent No.: 6,800,976 B2

Assignee: Precision Motors Deirtsche Minebea GmbH (Germany)



PLANETARIUM

Patent No.: 6,821,125 B2

Assignee: Kabushikigaisya Goto Kogaku Kenkyujo (Japan)

METHOD FOR OPTICAL IMAGING IN INCOHERENT LIGHT AND DEVICE FOR CARRYING OUTSAID METHOD (VARIANTS)

Patent No.: 6,825,986 B2

Assignee: Obschestvo s Ogranichennoy Otvetstvennostiju <INSMAT Teknologiya> (Russian Federation)

PSEUDO NOISE GENERATOR

Patent No.: 6,826,494 B2

Assignees: IWATSU Electric Co., Ltd.; Electromagnetic Compatibility Research Laboratories Co., Ltd. (Japan)

METHOD FOR INK JET PRINTING A DIGITAL IMAGE ON

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Patent Reexamination Found Lacking

By Andrew Young

The American Inventors Protection Act (AIPA), signed into law during 1999, established a novel inter-partes reexamination procedure in the U.S., allowing third parties (requestors) to participate during a reexamination procedure. The AIPA also required the U.S. Patent and Trademark Office (USPTO) to file a report to Congress by the fifth anniversary, evaluating whether the inter-partes reexamination procedure is inequitable to any party and to provide recommendations for change to remove any such inequity. The report lodged November 29, 2004, found the procedure inequitable and outlined a series of recommendations for change.

In essence, the inter-partes reexamination procedure permits third party requestors to (a) submit a written comment each time a patent owner files a response, (b) appeal an adverse decision of an examiner to the Board of Patent Appeals and Interferences (BPAI), and (c) have full rights to participate in any patent owner's appeal to the BPAI.

Due to substantial procedural inequities, only 53 inter-partes reexaminations have been filed in the past five years. For comparison, during the same period 1719 ex-parte reexaminations were filed.

The inter-partes reexamination inequities included an inability for requestors to appeal to the Court of Appeals for the Federal Circuit (remedied in 2002), and to participate in patent owner appeals to the Court (also remedied in 2002)). Of particular and remaining concern to third party requestors are (i) estoppel to an unsuccessful third-party reexamination request, (ii) the lack of litigation procedural mechanisms like discovery and cross-examination for the establishment of facts, (iii) the inability of third party requestors to respond to a USPTO office action where a patent owner does not respond (e.g., where all claims are found allowable), (iv) the inability to challenge patents filed before November 29, 1999, and (iv) the limitation of challenge to prior art patents and publications.

The USPTO Report to Congress attempts to remedy these inequities and makes the following recommendations:

- Provide an independent right to the third party reexamination requestor to present input even where a patent owner fails to respond;
- Create a Post-Grant Review process to address patentability issues after a patent has been awarded;
- Allow the Post-Grant Review process to provide a genuinely contested case to both parties, presided over by a panel of USPTO administrative law judges, and allow limited discovery and cross-examination.

The USPTO's recommendations do not go far enough. Without, at a minimum, eliminating the estoppel provision for inter-partes reexamination, and making the procedure retroactive to cover all enforceable patents, the inter-partes reexamination procedure will remain a little used procedural novelty.

For more information contact Andrew Young - ayoung@Lackebach.com

A TEXTILE, THE SYSTEM AND APPARATUS FOR PRACTICING THE METHOD, AND PRODUCTS PRODUCED BY THE SYSTEM AND APPARATUS USING THE METHOD

Patent No.: 6,834,935 B2

Assignees: Supersample Corporation (USA)

VIDEO SIGNAL SELECTING DEVICE

Patent No.: 6,836,297 B2

Assignee: Funai Electric Co., Ltd. (Japan)

MENU DISPLAY APPARATUS

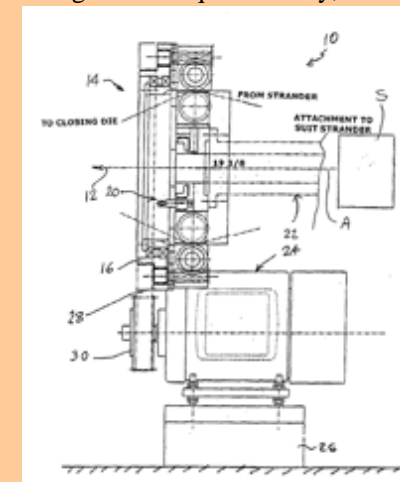
Patent No.: 6,876,397 B2

Assignee: Funai Electric Co., Ltd. (Japan)

APPARATUS FOR AND METHOD OF MANUFACTURING COMPACTED CABLES BY USE OF RIGID CAGE STRANDERS

Patent No.: 6,840,031 B2

Assignee: Roteq Machinery, Inc. (Canada)



DEVICE FOR TREATING PLANAR ELEMENTS WITH A PLASMA JET

Patent No.: 6,845,733 B1

Assignee: Samsung Electronics Co., Ltd. (Korea)

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Waiter - Skip the Protocol, please...

While over 13,000 applications to the U.S. have been filed in nearly two years under the Madrid Protocol trademark registration procedure, fewer than 3000 of these were filed by U.S. businesses.

Why? This international convention does not provide a strong benefit to domestic enterprises. While a single Madrid filing can extend to 65 signatory nations, Canada and Mexico (NAFTA countries and primary U.S. business partners) are not members of the Protocol. Significantly, virtually no South American country is yet a party to the Protocol either.

The belief that a U.S. company can realize cost savings under the Madrid Protocol may be shortsighted. Not only are many important countries not part of the Protocol, but severe restrictions also exist which preclude a filer from obtaining broad-scope trademark registrations that are the usual goal. Notably, a Madrid registration cannot be assigned to a party in a non-Madrid country, a significant problem for global businesses given the large number of non-Madrid jurisdictions.

The belief that a U.S. company can realize cost savings under the Madrid Protocol may be shortsighted. Not only are many important countries not part of the Protocol, but severe restrictions also exist which preclude a filer from obtaining broad-scope trademark registrations that are the usual goal. Notably, a Madrid registration cannot be assigned to a party in a non-Madrid country, a significant problem for global businesses given the large number of non-Madrid jurisdictions.

Trademark rights may actually suffer in an attempt to take advantage of the Madrid Protocol based on U.S. rights. The U.S. is a special trademark jurisdiction, as it requires detailed, specific listings of goods/services sought for registration. This contrasts with most countries that allow broad recitations of categories and types of goods (e.g., “clothing” rather than “shirts, pants and sweaters”). Thus, a U.S. application or registration with a narrow identification of goods does not provide a platform for broad Madrid international protection. This compromise and narrowing of rights weighs against the (debatable) cost savings and may make the Protocol unattractive. As a result, many non-U.S. companies use the Protocol to file in other member countries but omit the U.S. to avoid U.S. prosecution hurdles and attendant costs. A Madrid applicant’s attorney (who must be a U.S. attorney when dealing with the USPTO) almost always must prosecute the U.S. Madrid extension by narrowing the goods and dealing with other unique U.S. requirements. This prosecution incurs expenses and further whittles the ‘cost-benefit’ allegedly associated with U.S. extension applications under Madrid.

Importantly, unlike most national registrations based upon other international conventions, should the home country registration or application that is the basis for a Madrid Protocol filing be attacked successfully, all the extensions are lost.

Thus, a national U.S. application is often the choice for both U.S. and foreign-based companies once an educated

FLEXIBLE LED LIGHTING STRIP

Patent No.: 6,846,094 B2

Assignee: Altman Stage Lighting Co, Inc.
(USA)

ORNAMENT HAVING LIQUID THEREIN

Patent No.: 6,848,206 B2

Inventor: Jianliang Zhan (China)

MULTICHAMBERED STEELMAKING APPARATUS AND METHOD OF STEELMAKING

Patent No.: 6,855,188 B1

Inventor: Vladimir Maximovich Lomakin
(Russia)

METHOD OF FORMING A RETAINING COLLAR, IN PARTICULAR, A COLLAR RETAINING A BEARING ON A HUB OF A WHEEL

Patent No.: 6,857,190 B2

Assignee: S.N.R. Roulements (France)

STRUCTURED SYSTEM FOR MONITORING AND CONTROLLING THE ENGINEERING EQUIPMENT OF AN INSTALLATION

Patent No.: 6,859,668 B1

Assignee: EcoProg Ltd. (Russia)

WATCH FACE

Patent No.: D497,825 S

Inventor: Lois Hill

legal and cost analysis is made. The surface attraction of the Madrid Protocol is the initial application fee savings – undeniably significant compared to a multi-national filing program. However, the post-filing costs necessary for U.S. prosecution for foreign-based applicants and the loss of broad foreign rights for U.S.-based applicants make that initial filing cost saving not very attractive overall, especially for important trademarks.

Notably, IP Law & Business reports that DaimlerChrysler AG in Germany has a trademark program of over 35,000 registrations, yet it does not use the Protocol to file in the U.S.. DaimlerChrysler files a national application in the U.S. as, according to its chief trademark counsel, “there are no cost savings in the U.S. under the Madrid system.”

To learn more about Protocol, please contact: Howard N. Aronson, haronson@Lackenbach.com

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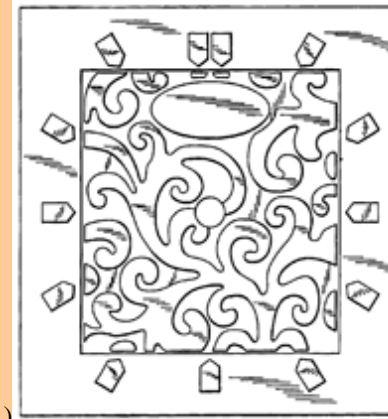
Waiter - I'll Have The Special, PLEASE!

To learn more about Special U.S. Trademark Applications, contact:
Nancy Dwyer Chapman - ndchapman@Lackenbach.com

Waiter - I'll Have The Special, Please!

It is now possible to reduce the governmental filing fee for each class of a U.S. trademark/ service mark application from the “standard” \$325 per class to a special price of \$275 per class. But just like ordering a special meal, there are several restrictions and fewer choices (no substitutions please!) allowed in connection with using this Trademark Office (“USPTO”) “special” procedure. In order to take advantage of the special lower per class filing fee one must agree to:

- A. File a “complete” application that satisfies all requirements set forth in the USPTO rules (Rule 2.22 (a)) and therefore lose the ability to file with “minimum requirements” only for obtaining a filing date;
- B. Select the listing of goods and/or services directly from the USPTO's Acceptable Identification of Goods and Services Manual. While certain listings will allow for customization, total free-text entries for identifications cannot be made;



(USA)

METHOD FOR CARRYING OUT
TRANSACTIONS AND DEVICE
FOR REALIZING THE SAME

Patent No.:

6,859,795 B1

Assignee: Cyphermint, Inc. (USA)

REEL ROTATION AND OPTICAL
DETECTION MECHANISM FOR
VIDEO CASSETTE DECK

Patent No.: 6,885,018 B2

Assignee: Funai Electric Co., Ltd. (Japan)

ANTIBODIES AND FV
FRAGMENT RECOGNIZING
ANTIGEN IOR C2

Patent No.: 6,891,023 B1

Assignee: Centro Inmunologia Molecular
(Cuba)

SPINDLE MOTOR WITH CASING
PART IN HARD DISK DRIVES

Patent No.: 6,906,439 B2

Assignee: Minebea Co., Ltd. (Japan)

SYSTEM AND METHOD OF
KNOWLEDGE ARCHITECTURE

Patent No.: 6,910,027 B2

Assignee: Acappella Software, Inc. (USA)

- C. Attach all required image files, where applicable, in the .jpg format (for specimens, foreign registration certificates, consents, evidence) (except for sounds marks, for which a .wav or MP3 file can be submitted separately);
- D. Pay the fees for all classes at the time of filing;
- E. File certain later communications regarding the application, such as a response to an Office Action, electronically using the USPTO website; and
- F. Receive communications concerning the application solely by e-mail during the pendency of the application.

NOTE: If you use the “special” version of filing, you must pay an additional fee of \$50 per class if, at any time during the examination of the application, the USPTO determines that (1) the application did not meet the filing requirements for a special application as of the filing date, as set forth in Rule 2.22(a); (2) the applicant files a paper document after the initial application, while an electronic form existed for that purpose, e.g., a response to an Office Action; and/or (3) the applicant refuses to receive correspondence from the Office by electronic mail (e-mail) during the pendency of the application.

To learn more about Special U.S. Trademark Applications, contact: Nancy Dwyer Chapman, ndchapman@Lackenbach.com

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Waiter - Where is my insurance?

Most business Commercial General Liability (“CGL”) insurance policies include a section on “advertising injury” that has been used with some degree of success to gain insurance coverage for product emulation copyright and trademark infringement, and sometimes even patent infringement. While the advertising injury section of CGL insurance policies was not written with a view towards insuring businesses against claims of product infringement separate and apart from copyright infringement as a part of media advertising, clever attorneys have used the advertising injury language in the policy to extend coverage far beyond what was contemplated.

After years of litigation defense coverage for product infringements, a number of insurers who previously offered “advertising injury” as part of CGL policies are now expressly excluding such coverage.

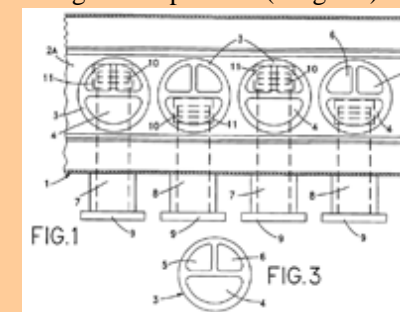
The exclusion is effected in connection with endorsements that modify the basic policy, and it may not be immediately clear that the business is losing this area of coverage. Our clients are therefore vigorously urged to carefully review all endorsements proffered in connection with CGL insurance coverage this year and to discuss the advertising injury section with your agent. Insurance companies are not notable for clearly pointing out reductions in policy coverage.

Companies are advised to review and consider their insurance policies if sued for an intellectual

METHOD AND DEVICE FOR MICROWAVE-HEATING PREPARED MEALS SEALED IN TRAYS

Patent No.: 6,906,297 B2

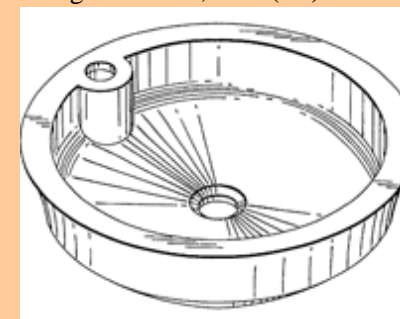
Assignee: Top Foods (Belgium)



WASHBASIN

Patent No.: D507,040 S

Assignee: Sonia, S.A. (ES)



MONOCLONAL ANTIBODY TO THE STABILIZER PEPTIDE OF THE P64K ANTIGEN OF NEISSERIA MENINGITIDIS

Patent No.: 6,921,809 B1

Assignee: Centro de Ingenieria Genetica y Biotecnologia (Cuba)

KETTLE

Patent No.: D506,635 S

Assignee: Lifetime Hoan Corporation (USA)

FULL WRAP SHOE SOLE

Patent No.: U.S. D501,293 S

property infringement to determined if the CGL policy can be relied upon in connection with providing defense as well as liability coverage, and to carefully consider all endorsements affecting scope of coverage. The advertising injury section is a recent focus of several insurance companies seeking to reduce coverage.

To learn more about My Insurance, please contact: Howard N. Aronson, haronson@Lackebach.com

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Waiter - Secondary Meaning, please...

Under U.S. trademark law, a descriptive designation, rather than a suggestive word, is not entitled to protection or registration unless and until the designation has acquired “secondary meaning.” As applied to trademarks, this means that the first or primary meaning of a word is descriptive, and therefore it must acquire a second or additional meaning in the minds of the purchasing public as a source of origin. The second meaning is therefore that of a trademark.

This basic tenet of trademark law came into focus recently when a company sought to secure an injunction against use of TRADITIONAL on the label of feta cheese. The effort failed, and the quest for a preliminary injunction denied as the court found that the TRADITIONAL “mark” had not acquired secondary meaning, and the designation therefore descriptive only and ineligible for trademark protection. The court analyzed the advertising, sales success, unsolicited media coverage and attempts at plagiarism as well as the length and exclusivity of use of the word, and found that TRADITIONAL primarily means a specific taste in connection with feta cheese. Despite extensive advertising the public did not understand or perceive use of the designation as a source of origin or trademark owned by one party.

The case in point involved the unregistered designation TRADITIONAL which was indeed registered at one point in time in the past. But at the time of suit, it was not registered due to the failure of filing a continued use affidavit. Accordingly, the mark was not afforded registration presumptions and a complete analysis of the mark was made by the court to see if it was capable of protection. The mark was determined to be descriptive, requiring that secondary meaning be proven to be a protectable mark. TRADITIONAL is obviously a word that conveys an idea of the ingredients, qualities or characteristics of the goods, hence, descriptive.

It did not take an industry expert for the court to determine that TRADITIONAL feta cheese is a designation that manufacturers and distributors use to describe their

Assignee: Aerogroup Int'l, Inc. (USA)

WASHBASIN

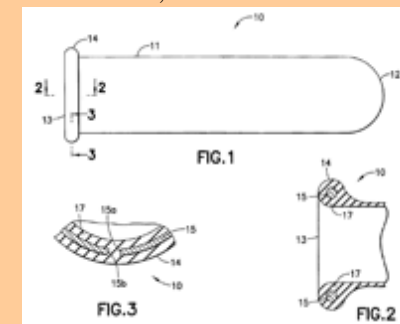
Patent No.: U.S. D507,043 S

Assignee: Sonia, S.A. (ES)

MAGNETIC CONDOM

Patent No.: 6,895,968,B2

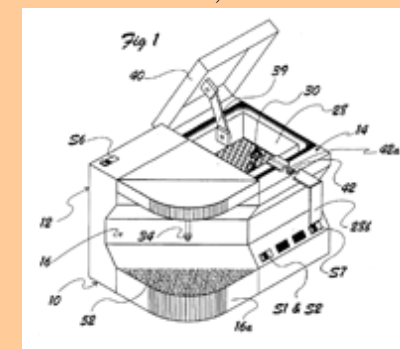
Inventors: George Shapiro, Anthony Nigro
Westchester, NY



DEVICE FOR CLEANING JEWELRY

Patent No.: 6,800,181 B1

Inventor: Carlo L. Accattato
West Haverstraw, NY



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cheeses as 'tastes like feta that comes from Greece.'

The court learned that TRADITIONAL serves to distinguish the kind of feta cheese made without removing the fat, without adding spices, and without ultrafiltration. This is contrary to modern production techniques where producers enhance flavors artificially. The court determined that TRADITIONAL is used by cheese producers descriptively to advise the public that the cheese tastes like it comes from Greece because of the specific way it is produced. Therefore, without a secondary meaning, the plaintiff in suit could not enforce exclusive rights as the court did not find an acquired secondary meaning.

Courts have consistently warned manufacturers that when attempting to adopt descriptive designations as a trademark, which they often do as it seemingly helps sell a product, the ability to protect such weak marks depends upon proof of secondary meaning – often difficult to prove.

*To learn more about Secondary Meaning, please contact: Howard Aronson,
haronson@Lackebach.com*

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And Waiter - Separate Checks, please!

The United States is one of many countries throughout the world where one can file a single trademark application for goods classified in several different International Classes of Goods and Services (a "multi-class" application). The governmental fees, however, are based upon International Classes, and the USPTO charges for each class of goods whether they are embodied in one multi-class application or several single-class applications. The governmental fees, therefore, are exactly the same no matter how the attorney files the trademark application.

Lackebach Siegel generally advises filing single-class (individual) applications rather than a one, multi-class application when a mark is to be registered for goods and services falling into more than one class. There are distinct benefits to following our advice. Filing individual single-class applications allows each class to proceed separately, so that any prosecution problems with one class do not delay or taint the progress of classes that have no problems. This is true when merely two classes are involved, but if more classes are being claimed for a particular mark, the wisdom of individual, single-class applications is even more compelling.

There is also no professional fee price difference between filing a single, multi-class application or filing several single-class applications for the same mark if all are for the same mark when using Lackebach Siegel. Remember the USPTO charges the same fee per class, regardless of whether a single or multi-class application is filed.

The benefits in filing individual single-class applications are convincing:

> Individual applications are examined individually. If there is a problem with one application, it does not affect or taint its companion applications. Thus, a problem with the identification of goods or, more seriously, a likelihood of confusion refusal to register that an Examiner raises against a single class application will not delay for the companion applications which may immediately proceed toward publication. On the contrary, a single, multi-class application is regarded as a whole. If a single, multi-class application is found to have a problem with one or more of the claimed classes but not all of the claimed classes, the entire application is rejected until the problem is resolved.

> Individual one-class applications may rely on individual filing bases. It is possible to have a different base(s) for each application. For example, one application could rely on foreign rights (Sec. 44(e)) while a separate, companion application could rely on intent-to-use – or several bases can be selectively combined. When an intention-to-use is the filing basis, the application will not issue to registration until use has been proven and an Amendment to Allege Use or a Statement of Use is filed and accepted. If separate applications are filed, and only one is based upon an intention to use, those based upon foreign rights would proceed to registration without use needing to be proven. These individual foreign-based applications can move at their own pace and issue to registration quickly.

> It costs more money and time to divide a multi-class application into individual applications than to file separately initially - and division is often the eventual outcome of prosecution of these sorts of applications – e.g., when use is made in some classes, but not all, classes are dropped in the course of prosecution, or one class is opposed, but others are not. The USPTO charges a fee to divide an application and the progress toward registration is slowed while the division and assignment of new filing particulars occur.

> It is possible that a multi-class application could be opposed by a third party that is concerned about the mark for only one class, but not all classes. However, the opposition holds up the entire application, unless division (with the attendant cost and delay) occurs.

> Licensing or selling rights to one of several classes of goods is far less complicated with individual single class registrations than a multi-class registration for the same mark for a wide variety of goods or services. A single registration is easier to manage in licenses, especially in connection with making representations and warranties.

> The USPTO's fees for maintaining registrations (use affidavits, renewals and the like) are also charged on a per-class basis, so there is no governmental fee price difference between a series of one-class individual registrations or a single multi-class registration.

For all these reasons it is far more straightforward and beneficial to file individual, single-class applications, which we usually strongly urge.

*To learn more about Separate Checks, contact: Nancy Dwyer Chapman,
ndchapman@Lackebach.com or Howard N. Aronson, haronson@Lackebach.com*

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Waiver - the Lackebach Advantage, please...

The United States has been a signatory to the Madrid Protocol for nearly two years, and over 13,000 Madrid Requests for Extension of Protection (“MREP”) based upon an International Registration have been submitted to the U.S. Trademark Office. While a portion of the MREPs have encountered no prosecution problems, the majority of the applications have been preliminarily rejected and received Official Actions from the U.S. Trademark Office examining operation.

As these Official Actions clearly state, it is mandatory that the responses be presented only by the applicant itself or by an attorney licensed in the U.S., who has been appointed as counsel for the applicant in the matter.

Since Lackebach Siegel has over 80 years of working with overseas law firms, it has been chosen by many Madrid Protocol applicants and their law firms to represent them in the prosecution of their MREP applications before the U.S. Trademark Office.

Over 80% of all applications filed in the U.S. receive Official Actions, and the percentage of MREPs that receive Actions is even higher. The most common ground for a provisional refusal is an unacceptable identification and classification of goods and services. U.S. trademark practice requires very specific descriptions of goods and services, far more detailed than is customary in most other jurisdictions.

Lackebach Siegel has vast experience in crafting acceptable descriptions of goods and services and working with clients to revise indefinite terminology into language that will be acceptable to U.S. Examiners.

Other common grounds for provisional refusal include requirements for translations and explanations of unusual marks that may have meanings in other languages or significance in a particular industry, requests for clearer artwork for design marks, and requests for the legal entity status of the applicant. The most serious provisional refusal ground, of course, is likelihood of confusion with a prior registration or earlier-filed application. Our skilled, seasoned attorneys evaluate the validity of the Examiner’s position and research the law and the Trademark Register to prepare arguments to persuade Examiners to withdraw likelihood of confusion refusals.

When an MREP has received an Office Action, contact Lackebach Siegel to send a Power of Attorney so that this office can be recorded as attorneys of record for the application. This authorizes us to communicate with the Examining Attorney and file the Response, and ensures that the U.S. Trademark Office directs future prosecution correspondence to us without delay. It is also prudent to choose Lackebach Siegel as your domestic counsel for your MREP so that we can file Use Affidavits and Renewal Applications at the appropriate time after registration. Such Use documents must be filed directly with the USPTO, notwithstanding the centralized renewal at the International Bureau in Switzerland.

To learn more about the Lackebach Advantage, contact: Nancy Dwyer Chapman, ndchapman@Lackebach.com

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TRADEMARK CORNER:

***Notable, recent Trademarks secured
by Lackebach Siegel***

COLLECTIBULLS

Registrant: Reeves International, Inc. (NJ Corp.)

CI:LABO

Registrant: Dr.CI: Labo Co., Ltd.
(Japan Corp.)

BE A MODEL . . . OR JUST LOOK LIKE ONE! (Block Form)

Registrant: Barbizon International, LLC
(FL Limited Liability Company)

MISCELLANEOUS DESIGN

Registrant: Matsushita Toshiba Picture
Display Co., Ltd.
(Japan Jt. Stock Co.)

SOFGRIP (Stylized)

Registrant: Dexter-Russell, Inc. (MA Corp.)

FIDEURAM and Design

Registrant: Banca Fideuram S.p.A. (Italy Corp.)

UNIM

Registrant: Proven Methods Seminars, LLC,
dba National Grants Conferences (FL Corp.)

PAPERZIP and Design

Registrant: Economic Strategies, Inc.
(British Virgin Islands Corp.)

POWER STICK

Registrant: A.P. Deauville, LLC (NJ Limited
Liability Company)

A2 and Design

Registrant: Aerogroup
International, Inc.
(NJ Corp.)



WONDER WOOD
Registrant: Wolf-Gordon Inc. (NY Corp.)

BADGLEY MISCHKA
Registrant: Badgley Mischka Licensing
LLC (DE Limited Liability Company)

TUCSON
Registrant: Hyundai Motor America (CA
Corp.)

AEROSOLE'S SIGNATURE
(Stylized)
Registrant: Aerogroup International
Holdings, Inc. (NJ Corp.)

**A ACORN RISK MANAGEMENT,
INC. and Design**
Registrant: Acorn Risk Management, Inc.
(DE Corp.)



EUROCOLA
Registrant: Refrescos Europeos, S.L.
(Spain Corp.)

TRUE NORTH KNIVES. TNK and
Design



X/S HOOPS
Registrant: Honora Ltd. (NY Corp.)

MELON DELIGHT
Registrant: USA Metro, Inc. (DE Corp.)

PLASTIKEN and Design
Registrant: Plastiken, S.L. (Spain Corp.)

AKROS and Design
Registrant: Banca Akros S.p.A.
(Italy Jt. Stock Co.)

TANGUERO
Registrant: Finca Flichman S.A.
(Argentina Corp.)

BIO-TRIBE
Registrant: Sunboyz CC (South Africa Corp.)
AYURA
(Stylized)

EVERLAST (Stylized)
Registrant: Everlast World's Boxing
Headquarters Corporation (NY Corp.)



EGGXOTIC
Registrant: Eggxotic Inc. (NY Corp.)

Registrant: 138060 Canada Inc. (Canada Corp.)

EUPHORIUM

Registrant: Pink Soda (UK) Ltd. (United Kingdom Corp.)

OMBRES QUADRI SOYEUSES

Registrant: Shiseido Company, Ltd. (Japan Corp.)

DIANE VON FURSTENBERG

Registrant: Diane Von Furstenberg Studio (CT Partnership)

FAT CHANCE FILMS

Registrant: Fat Chance Films, LLC (NY Corp.)

ZECUF

Registrant: J.B. Chemicals and Pharmaceuticals Limited (India Corp.)

ANTICHE SORGENTI UMBRE
FABIA ACQUA MINERALE
NAURALE OLIGOMINERALE and
Design

Registrant: Sangemini S.p.A.
(Italy Corp.)



SUPERMODULE

Registrant: Pharmadule Emtunga AB
(Sweden Corp.)

SUPERDECKING and Design

Registrant: Max Co., Ltd. (Japan Jt. Stock Co.)

NATURAL

Registrant: Natural Productions, LLC
(DE Ltd. Liab. Jt. St. Co.)

ACEITES DE OLIVA FELIX
GASULL REUS VIRGIN OLIVE OIL
EXTRA MARTI REUS and Design

Registrant: Establecimientos Felix Gasull, S.
A.
(Spain Corp.)

NIGHT & DAY . . . FOR THE
PRIVILEGED FEW
and Design

Registrant: Executive Tours Inc.
(FL Corp.)

FLEXFOAM and Design

Registrant: Red Lab Srl
(Italy Corp.)

AUTOMATIC IP COMPLEX

Registrant: Shiseido Company, Ltd.
(Japan Corp.)

GOOD TIMES ARE A SHORE
THING

Registrant: Soldatovic, Steven (U.S. Citizen)
(Hollywood, Florida)

LIQUID SOLDIER MEDIA; THINK
DIFFERENT

Registrant: Mistretta, Thomas (U.S. Citizen)
(Brooklyn, New York)

EVERDRI

Registrant: Everlast World's Boxing
Headquarters Corporation
(Bronx, New York)

VP WEB and Design

Registrant: V.P. Holdings S.p.A. (Italy Corp.)

COSMOPACK and Design

Registrant: Consorzio Uniservice (Italy Corp.)

CHNT (Stylized)

Registrant: Zhengtal Group Corp. (China Corp.)

LE SIRENUSE "EAU D'ITALIE" and Design

Registrant: Le Sirenuse S.p.A. (Italy Corp.)



SPRAY E RUB and Design

Registrant: Massimo Guarducci S.R.L. (Italy Corp.)

HAMMERLOC

Registrant: YKK Corporation (Japan Corp.)

LION BRANDS YARNS

Registrant: Orchard Yarn and Thread Company, Inc., dba Lion Brand Yarn Company

TOGETHER TIME

Registrant: Gomola Associates, Inc. (CT Corp.)

DYNAFLEX

Registrant: Lanceco Industries Incorporated, dba C.G. Creations (NY Corp.)

UTAC and Design



MANTEIA

Registrant: Ares Trading S.A. (Switzerland Corp.)

FAENZA

Registrant: Hakakian, Cyrus (Iran Citizen) (NY Corp.)

DREAMSCAPE (Stylized)

Registrant: Eastern Jungle Gym, Inc. (Carmel, New York)



JINXED

Registrant: One Eleven Records, Inc. (Florida Corp.)

BARBIZON BE A MODEL . . . OR JUST LOOK LIKE ONE!

Registrant: Barbizon International, LLC (Florida Limited Liability Company)

HEADS 4 DREADS IT'S A LIFESTYLE NOT A HAIRSTYLE and Design

Registrant: Scott, Jerome D. (United States Citizen) (Brooklyn, New York)



Registrant: United Test and Assembly
Center Ltd. (Singapore Corp.)



COMASEC

Registrant: Comasec S.P.A.S. (France
Corp.)

OXYMAX

Registrant: USA Detergents, Inc. (DE
Corp.)

OPTIVA PURITOS and Design

Registrant: DCTS Ltd. (United Kingdom
Corp.)

SNAP TRAK (Stylized)

Registrant: YKK Corporation (Japan Corp.)

NEXTLOOK (Stylized)

Registrant: Sogecos S.p.A. (Italy Corp.)

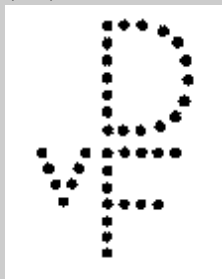
ALL WASHED MIO and Design

<MY>

Registrant: Massimo Guarducci S.R.L.
(Italy Corp.)

DVF (Stylized)

Registrant: Diane von Furstenberg Studio
(CT)



PERFECT CONCEALER

Registrant: Shiseido Company, Ltd.
(Japan Corp.)

OUTPOWER THE SUN

Registrant: Shiseido Company, Ltd.
(Japan Corp.)

THIS DAY & AGE

Registrant: Fischetti, Bradley, D
(Florida)

NICE FRY

Registrant: Nice Blends Corp.
(Bronx, NY)

OPEN INFOSERVICES

Registrant: Open Infoservices, Inc.
(NY Corp.)

H (Stylized)

Registrant: Honora Industries, Inc.
(NY Corp.)





MISCELLANEOUS DESIGN

Registrant: Agricola Hacienda Canteras
Ltda. (Chile Corp.)

BONGO

Registrant: IP Holdings LLC (DE Corp.)

SMARTSTOCK (Stylized)

Registrant: Hyundai Motor America (CA
Corp.)

VITA BY SANGEMINI and Design <LIFE>

Registrant:
Snagemini S.p.A.
(Italy Corp.)



DA BAR

Registrant: Vaughan & Bushnell
Manufacturing Company
(Illinois Corp.)

PS PAMELA STEWART

Registrant: Pamela Stewart Collection, Inc.
(NY Corp.)

CORRECTEUR COMPACT

Registrant: Shiseido Company, Ltd.
(Japan Corp.)

CRYSTALLIZING STRAIGHT

Registrant: Shiseido Company, Ltd.
(Japan Corp.)

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FOREIGN TRADEMARK DEVELOPMENTS

By Rosemarie B. Tofano

European Union – As of July 2005 the “cooling-off” period – that period of time set aside in an opposition proceeding to allow the parties to negotiate a settlement – is limited to 26 months. Previously, such period was extendable indefinitely if agreed by both parties. Once the 26-month period has expired, dates for the filing of evidence, and the like, will be set. Also, the ability to divide an application is now established, which will allow an application that has some but not all goods opposed to be divided and allow immediate registration of the non-opposed goods.

Canada – When a mark comprises a word and design element – and the word elements are the dominant features of the mark – registration will be denied if the word portion is found to be clearly descriptive or deceptively misdescriptive in English or French. In the assessment of “dominant feature,” the Examiner will consider the size of the words versus the design, the font and layout of the lettering and the inherent distinctiveness of the design element.

Israel – Much like present U.S. practice, the consent for use and registration proffered by an earlier registrant will be considered as probative evidence but not an automatic elimination of the prior registration. The Examiner will still assess the likelihood of confusion independently of the consent, and possibly still reject registration, notwithstanding the consent, if likelihood of confusion appears to exist.

France – While protection for all shades of a specific color, e.g. red, is not achievable, a range of shades surrounding a specified specific color – usually identified by a Pantone color number – is protectable. The scope or width of the range surrounding a given shade is not objectively defined, so counseling and infringement advice is a subjective assessment. The French practice is now quite similar to U.S. practice.

Thailand – The Thai government has recently taken visible steps to help quell rampant, blatant trademark infringement. The Thai police in coordination with the Thai Intellectual Property & International Trade Court raided eleven high profile infringing clothing wholesalers located in Bangkok. The result was thousands of counterfeits seized that can now result in a public destruction ceremony. Also, the infringers can be fined as well as be imprisoned up to four years.

Mexico – A change in the law to allow the Trademark Office to declare a mark “well-

known” and “famous” has been presented to the Mexican Senate. Previously, the Trademark Office has been reticent to actually enforce provisions in international treaties allowing such assessments despite significant proof. Fame will be assessed in the future based upon a mark being “well-known” by a specific segment of the public or an industry in Mexico, and an assessment of “famous” by a majority of Mexican consumers. The law when effective will change litigation in Mexico that has notably been ineffective in enforcing rights of admittedly “well-known” marks.

Contact: Rosemarie Tofano, (rtofano@Lackebach.com) for more information.

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Lackebach Siegel, LLP

Lackebach Siegel Building
One Chase Road Scarsdale
New York 10583 U.S.A.

Phone: (914) 723-4300 - Fax: (914) 723-4301
E-Mail: mail@Lackebach.com
<http://www.Lackebach.com>

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[Howard H. Aronson](#)

Managing Partner, Lackebach Siegel, LLP

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