

Application 77201487 - Response to 9/12/2007 Office Action - Arguments

Applicant acknowledges that the original listing failed to express the context of the use of its software. Applicant's software is designed for use in any field of endeavor when there is a need for analysis of data expressed on data tables. That software introduces a new cognition-based methodology for human analysis of data tables in the context of the user's mind. This is the only software embodying two software patents that enable operations unrelated to those of any other software. The issuance of those two patents attests to that distinction and, further, because those patents have been licensed to no other parties, remaining at issue is likelihood of confusion, mistake, or deception experienced by person's seeking the functions of other software that has the same mark.

Applicant believes buyers of personal computer software ascertain details of a software application before acquiring it. Software discussed in publications is described in the context of what it does and for whom. If software is on a CD, the labeling identifies the source and generally describes its use. Software located through a web-based search engine is then described in the source's website identified by the search. Some software may be simply listed by online distributors but wording almost invariably identifies the source. Please see the attached CDM_Home.pdf image of applicant's pending homepage, which introduces a new analytic methodology. Another attachment, CDM_Products.pdf, will take a viewer to descriptions of Reason and another application. Applicant respectfully claims that there is no likelihood that a person seeking software to perform tasks of any of the software and services cited by the examiner will, upon viewing applicant's web pages, experience confusion, mistake, or deception. Further, such a person is able to download a free trial copy of applicant's Reason software, the operation of which will establish its inadequacy for intended tasks..

Cited in the Office Action were three software applications with the same registered mark, presumably registrable because of great differences in function. One supports residential property analysis, and another is for creating and playing music. The third is for leasing access time to a specialized database. Applicant believes the differences between its functions are as different, or more so, from those cited as they differ from each other. However, the inadequacy of the original listing failed to express that difference, hence the amended description in the TEAS form to which this is attached.

Applicant further believes the arguments set forth above overcome the examiner's findings that its software and the three cited software applications may be complementary in nature, or related in some fashion, or be encountered by potential licensees in similar marketing environments, or give rise to belief that they come from a common source.

Applicant believes the amended listing text on the ROA far more adequately explains the "automated sorting of data tables" in the original listing. The Help instructions for the ROA form contain the instruction that "If the examining attorney has suggested a listing, you should adopt that wording." Applicant respectfully requests the examining attorney, if the above arguments are accepted, to review the amended listing and suggest wording that will be cause the mark to be registrable.