Applicant is in receipt of the June 20, 2017 Office Action issued in connection with the instant trademark application and hereby responds as follows:

The Examining Attorney has initially refused registration under Trademark Act Section 2(d), 15 U.S.C. § 1052(d) based on United States Trademark Registration Number 3953513. Applicant responds to the issue raised by the Examiner as follows:

Applicant submits herewith at Exhibit A, a copy of a Mutual Consent to Trademark Use and Registration executed on behalf of both OCI Company Ltd. (the owner of the cited registration) and OCI N.V. (Applicant) which includes consent to the use and registration of Applicant's OCI (stylized) trademark in the United States with the goods covered by the instant application. Consequently, Applicant asserts that this consent allows for registration of Applicant's mark.

Specifically, it was held by the Court of Customs and Patent Appeals:

> … when those most familiar with use in the marketplace and most interested in precluding confusion enter agreements designed to avoid it, the scales of evidence are clearly tilted. It is at least difficult to maintain a subjective view that confusion will occur when those directly concerned say it won't. A mere *assumption* that confusion is likely will rarely prevail against uncontroverted evidence from those on the firing line that it is not. [Emphasis in original.]

In re E.I. du Pont de Nemours & Co., 177 USPQ 563, 568 (C.C.P.A. 1973)

The Federal Circuit has consistently upheld that consent agreements are to be accorded great weight. In *Bongrain International (American) Corporation v. Delice de France Inc.*, 1 USPQ 2d 1775 (Fed. Cir. 1987), the Federal Circuit stated:

> We have often said, in trademark cases involving agreements reflecting parties' views on the likelihood of confusion in the marketplace, that they are in a much better position to know the real life situation than bureaucrats or judges and therefore such agreements may, depending upon the circumstances, carry great weight as was held in *DuPont.*

Bongrain International (American) Corporation v. Delice de France Inc., 1 USPQ 2d 1775, 1778 (Fed. Cir. 1987).

Moreover, in *Amalgamated Bank of New York v. Amalgamated Trust & Savings Bank*, the Court reiterated the CCPA's observations in *DuPont*:

> Decisions of men who stand to lose if wrong are normally more reliable than those of examiner's and judges.

476 F.2d at 1363, 177 USPQ at 568.

> It can be safely taken as fundamental that reputable businessmen – users of valuable trademarks have no interest in *causing* public confusion. [Emphasis in original.]

Id. At 1362, 177 USPQ at 568.

Amalgamated Bank of New York v. Amalgamated Trust & Savings Bank, 6 USPQ2d 1305, 1308 (Fed. Cir. 1988).

For the reasons expressed by the Federal Circuit and its predecessor, the Court of Customs and Patent Appeals, Applicant asserts that the attached consent agreement does support registration of the OCI (stylized) trademark by Applicant. Clearly, the owner of the cited trademark registration has no concerns that there would be likelihood of confusion among consumers. For that reason, Applicant asserts that the Trademark Act Section 2(d) refusal should be withdrawn since the attached consent presents sufficient evidence precluding any likelihood of confusion in the marketplace.

Additionally, in light of the consent, no refusal based on the cited prior pending application is warranted because that application is also owned by OCI Company Ltd. – the entity that has provided consent to Applicant's registration of the OCI (stylized) trademark.

Based on the foregoing, Applicant respectfully requests that the Examining Attorney approve the instant application for publication.

Respectfully submitted,

OCI N.V.

Dated: December 19, 2017 BY: /todd a denys/

Todd A. Denys, Esq.
Porzio, Bromberg & Newman, P.C.
600 Alexander Road, Suite 2-1
Princeton, New Jersey 08540
Tel: 609-924-8555
Fax: 609-924-3036
Attorney of Record for Applicant