

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86023464
LAW OFFICE ASSIGNED	LAW OFFICE 110
MARK SECTION	
MARK	http://tsdr.uspto.gov/img/86023464/large
LITERAL ELEMENT	HUMMINGBIRD
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size or color.
ARGUMENT(S)	
Please see the actual argument text attached within the Evidence section.	
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_4537320-152559252_.HUMMINGBIRD_Arguments.pdf
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ORIGINAL PDF FILE	evi_4537320-152559252_ . Exhibit B to HUMMINGBIRD Response to Office Action.pdf
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ORIGINAL PDF FILE	evi_4537320-152559252_ . Exhibit C to HUMMINGBIRD Response to Office Action.pdf
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DESCRIPTION OF EVIDENCE FILE	Applicant's Arguments in Response to Office Action as well as referenced Exhibits A - C.

GOODS AND/OR SERVICES SECTION (016)(current)

INTERNATIONAL CLASS 016

DESCRIPTION

Printed materials, books, booklets, pamphlets, policy briefs, research reports, conference reports, quarterly reviews, surveys, book catalogs and instructional and teaching materials, in the fields of entrepreneurship, start-up companies, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies and ventures, ventures based upon innovative technologies or business models, and the establishment, conducting, development and management of, and investment in, business

FILING BASIS Section 1(b)

FILING BASIS Section 44(d)

FOREIGN APPLICATION NUMBER 257775

FOREIGN APPLICATION COUNTRY Israel

FOREIGN FILING DATE 07/18/2013

GOODS AND/OR SERVICES SECTION (016)(proposed)

INTERNATIONAL CLASS 016

TRACKED TEXT DESCRIPTION

~~Printed materials, books, booklets, pamphlets, policy briefs, research reports, conference reports, quarterly reviews, surveys, book catalogs and instructional and teaching materials, in the fields of entrepreneurship, start-up companies, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies and ventures, ventures based upon innovative~~

~~technologies or business models, and the establishment, conducting, development and management of, and investment in, business; printed materials, namely, books, booklets, pamphlets, policy briefs, research reports, conference reports, quarterly reviews, surveys, book catalogs and instructional and teaching materials, in the fields of entrepreneurship, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies and ventures, ventures based upon innovative technologies or business models, and the establishment, conducting, development and management of, and investment in, business~~

FINAL DESCRIPTION

printed materials, namely, books, booklets, pamphlets, policy briefs, research reports, conference reports, quarterly reviews, surveys, book catalogs and instructional and teaching materials, in the fields of entrepreneurship, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies and ventures, ventures based upon innovative technologies or business models, and the establishment, conducting, development and management of, and investment in, business

FILING BASIS	Section 1(b)
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FILING BASIS	Section 44(d)
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FOREIGN APPLICATION NUMBER	257775
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FOREIGN APPLICATION COUNTRY	Israel
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FOREIGN FILING DATE	07/18/2013
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GOODS AND/OR SERVICES SECTION (035)(current)

INTERNATIONAL CLASS	035
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DESCRIPTION

Advertising and business management consultancy; incubation services, namely, providing assistance to entrepreneurs in the fields of corporate formation, funding strategies, corporate processes, talent management, development strategies, innovation, business and product development collaboration, business model and business process prototyping, and provision of information technology equipment and advice; business research; providing information and advice to governments, nation-states, businesses, non-governmental organizations, individuals, educational institutions, educators, academics, and other persons and entities, in the fields of entrepreneurship, start-up companies, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business

FILING BASIS	Section 1(b)
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FILING BASIS	Section 44(d)
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GOODS AND/OR SERVICES SECTION (035)(proposed)

INTERNATIONAL CLASS	035
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TRACKED TEXT DESCRIPTION

advertising and business management consultancy; ~~incubation services, namely, providing assistance to entrepreneurs in the fields of corporate formation, funding strategies, corporate processes, talent management, development strategies, innovation, business and product development collaboration, business model and business process prototyping, and provision of information technology equipment and advice;~~ business research; providing information and advice to governments, nation-states, businesses, non-governmental organizations, individuals, educational institutions, educators, academics, and other persons and entities, in the fields of entrepreneurship, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business; ~~providing information and advice to governments, nation-states, businesses, non-governmental organizations, individuals, educational institutions, educators, academics, and other persons and entities, in the fields of entrepreneurship, start-up companies, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business;~~ think tank services, in the nature of consultation services in the fields of entrepreneurship, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business; public policy research services; analysis of market research and data

FINAL DESCRIPTION

advertising and business management consultancy; business research; providing information and advice to governments, nation-states, businesses, non-governmental organizations, individuals, educational institutions, educators, academics, and other persons and entities, in the fields of entrepreneurship, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business; think tank

services, in the nature of consultation services in the fields of entrepreneurship, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business; public policy research services; analysis of market research and data

FILING BASIS	Section 1(b)
FILING BASIS	Section 44(d)
GOODS AND/OR SERVICES SECTION (036)(current)	
INTERNATIONAL CLASS	036
DESCRIPTION	Charitable fundraising
FILING BASIS	Section 1(b)
FILING BASIS	Section 44(d)
GOODS AND/OR SERVICES SECTION (036)(proposed)	
INTERNATIONAL CLASS	036
TRACKED TEXT DESCRIPTION	
charitable fundraising; incubation services, namely, providing financing to entrepreneurs in the fields of corporate formation, funding strategies, corporate processes, talent management, development strategies, innovation, business and product development collaboration, business model and business process prototyping, and provision of information technology equipment and advice	
FINAL DESCRIPTION	
charitable fundraising; incubation services, namely, providing financing to entrepreneurs in the fields of corporate formation, funding strategies, corporate processes, talent management, development strategies, innovation, business and product development collaboration, business model and business process prototyping, and provision of information technology equipment and advice	
FILING BASIS	Section 1(b)
FILING BASIS	Section 44(d)
GOODS AND/OR SERVICES SECTION (039)(no change)	
GOODS AND/OR SERVICES SECTION (041)(current)	
INTERNATIONAL CLASS	041
DESCRIPTION	
Educational services, namely, providing a learning and innovation center featuring fully customized leadership, motivational, educational, and brainstorming training; think tank services, namely, operation of a collaboration hub, conducting conferences and seminars in the fields of entrepreneurship, start-up companies, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business; organizing and hosting of events for cultural purposes; operating research and policy institute; providing training services to governments, nation-states, businesses, non-governmental organizations, individuals, educational institutions, educators, academics, and other persons and entities in the fields of entrepreneurship, start-up companies, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business; publication of printed matter; production and distribution of films, television programming and other media and multimedia productions; museum services; providing recognition and incentives by the way of awards and contests to demonstrate excellence in the fields of entrepreneurship, start-up companies, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business; conducting exhibitions; conducting demonstrations, courses of instruction and seminars in the fields of entrepreneurship, start-up companies, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business	
FILING BASIS	Section 1(b)
FILING BASIS	Section 44(d)
GOODS AND/OR SERVICES SECTION (041)(proposed)	
INTERNATIONAL CLASS	041
TRACKED TEXT DESCRIPTION	

educational services, namely, providing a learning and innovation center featuring fully customized leadership, motivational, educational, and brainstorming training; ~~think tank services, namely, operation of a collaboration hub, conducting conferences and seminars in the fields of entrepreneurship, start-up companies, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business;~~ organizing and hosting of events for cultural purposes; providing training services to governments, nation-states, businesses, non-governmental organizations, individuals, educational institutions, educators, academics, and other persons and entities in the fields of entrepreneurship, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business; ~~operating research and policy institute;~~ publication of printed matter; ~~providing training services to governments, nation-states, businesses, non-governmental organizations, individuals, educational institutions, educators, academics, and other persons and entities in the fields of entrepreneurship, start-up companies, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business;~~ production and distribution of films, television programming; museum services; ~~production and distribution of films, television programming and other media and multimedia productions;~~ providing recognition and incentives by the way of awards and contests to demonstrate excellence in the fields of entrepreneurship, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business; ~~conducting educational and entertainment museum exhibitions relating to start-ups and entrepreneurs;~~ providing recognition and incentives by the way of awards and contests to demonstrate excellence in the fields of entrepreneurship, start-up companies, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business; ~~educational services, namely, conducting courses of instruction and seminars in the fields of entrepreneurship, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business;~~ conducting exhibitions; conducting demonstrations, courses of instruction and seminars in the fields of entrepreneurship, start-up companies, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business

FINAL DESCRIPTION

educational services, namely, providing a learning and innovation center featuring fully customized leadership, motivational, educational, and brainstorming training; organizing and hosting of events for cultural purposes; providing training services to governments, nation-states, businesses, non-governmental organizations, individuals, educational institutions, educators, academics, and other persons and entities in the fields of entrepreneurship, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business; publication of printed matter; production and distribution of films, television programming; museum services; providing recognition and incentives by the way of awards and contests to demonstrate excellence in the fields of entrepreneurship, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business; conducting educational and entertainment museum exhibitions relating to start-ups and entrepreneurs; educational services, namely, conducting courses of instruction and seminars in the fields of entrepreneurship, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business

FILING BASIS	Section 1(b)
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FILING BASIS	Section 44(d)
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GOODS AND/OR SERVICES SECTION (042)(current)

INTERNATIONAL CLASS	042
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DESCRIPTION

Research in the fields of technology, business, start-up companies, new and early stage companies, entrepreneurship, innovation, business and product development collaboration, business model and business process prototyping, economics, economic policy, fiscal policy, educational policy, government, foreign policy, and social science; providing a facility for design, prototyping, and testing of products; analysis of market research and data; design and development of computer software

FILING BASIS	Section 1(b)
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FILING BASIS	Section 44(d)
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GOODS AND/OR SERVICES SECTION (042)(proposed)

INTERNATIONAL CLASS	042
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TRACKED TEXT DESCRIPTION

~~Research in the fields of technology, business, start-up companies, new and early stage companies, entrepreneurship, innovation, business and product development collaboration, business model and business process prototyping, economics, economic policy, fiscal policy, educational policy, government, foreign policy, and social science;~~ research in the fields of technology, business, new and early stage companies, entrepreneurship, innovation, business and product development collaboration, business model and business process prototyping, economics, economic policy, fiscal policy, educational policy, government, foreign policy, and social science; providing a facility for design, prototyping, and testing of products; ~~analysis of market research and data;~~ design and development of computer software

FINAL DESCRIPTION

research in the fields of technology, business, new and early stage companies, entrepreneurship, innovation, business and product development collaboration, business model and business process prototyping, economics, economic policy, fiscal policy, educational policy, government, foreign policy, and social science; providing a facility for design, prototyping, and testing of products; design and development of computer software

FILING BASIS Section 1(b)

FILING BASIS Section 44(d)

ADDITIONAL STATEMENTS SECTION

SIGNIFICANCE OF MARK HUMMINGBIRD appearing in the mark has no significance nor is it a term of art in the relevant trade or industry or as applied to the goods/services listed in the application, or any geographical significance.

MISCELLANEOUS STATEMENT Applicant will rely on its foreign registration as well as its use in commerce under Section 1(a) as the basis for registration. Therefore, Applicant requests that the Examining Attorney maintain both the Section 1(b) and Section 44(d) filing bases.

SIGNATURE SECTION

RESPONSE SIGNATURE /jmh/

SIGNATORY'S NAME Jennifer M. Hetu

SIGNATORY'S POSITION Attorney of Record, Michigan Bar Member

SIGNATORY'S PHONE NUMBER 248-566-8452

DATE SIGNED 05/21/2014

AUTHORIZED SIGNATORY YES

FILING INFORMATION SECTION

SUBMIT DATE Wed May 21 16:17:30 EDT 2014

TEAS STAMP USPTO/ROA-X.XX.XX.XX-2014
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Response to Office Action

To the Commissioner for Trademarks:

Application serial no. **86023464** HUMMINGBIRD(Standard Characters, see <http://tsdr.uspto.gov/img/86023464/large>) has been amended as follows:

ARGUMENT(S)

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

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

EVIDENCE

Evidence in the nature of Applicant's Arguments in Response to Office Action as well as referenced Exhibits A - C. has been attached.

Original PDF file:

[evi_4537320-152559252_.HUMMINGBIRD_Arguments.pdf](#)

Converted PDF file(s) (15 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

[Evidence-6](#)

[Evidence-7](#)

[Evidence-8](#)

[Evidence-9](#)

[Evidence-10](#)

[Evidence-11](#)

[Evidence-12](#)

[Evidence-13](#)

[Evidence-14](#)

[Evidence-15](#)

Original PDF file:

[evi_4537320-152559252_.Ex.A.HUMMINGBIRD.PDF](#)

Converted PDF file(s) (3 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

Original PDF file:

[evi_4537320-152559252_.Exhibit B to HUMMINGBIRD Response to Office Action.pdf](#)

Converted PDF file(s) (2 pages)

[Evidence-1](#)

[Evidence-2](#)

Original PDF file:

[evi_4537320-152559252_.Exhibit C to HUMMINGBIRD Response to Office Action.pdf](#)

Converted PDF file(s) (13 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

[Evidence-6](#)

[Evidence-7](#)

[Evidence-8](#)

[Evidence-9](#)

[Evidence-10](#)

[Evidence-11](#)

[Evidence-12](#)

[Evidence-13](#)

CLASSIFICATION AND LISTING OF GOODS/SERVICES

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

Current: Class 016 for Printed materials, books, booklets, pamphlets, policy briefs, research reports, conference reports, quarterly reviews, surveys, book catalogs and instructional and teaching materials, in the fields of entrepreneurship, start-up companies, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies and ventures, ventures based upon innovative technologies or business models, and the establishment, conducting, development and management of, and investment in, business

Original Filing Basis:

Filing Basis: Section 1(b), Intent to Use: For a trademark or service mark application: As of the application filing date, the applicant had a bona fide intention, and was entitled, to use the mark in commerce on or in connection with the identified goods/services in the application. **For a collective trademark, collective service mark, or collective membership mark application:** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by members on or in connection with the identified goods/services/collective membership organization. **For a certification mark application:** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by authorized users in connection with the identified goods/services, and the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant.

Filing Basis: Section 44(d), Priority based on foreign filing: For a trademark or service mark application: As of the application filing date, the applicant had a bona fide intention, and was entitled, to use the mark in commerce on or in connection with the identified goods/services, and asserts a claim of priority based upon a foreign application. **For a collective trademark, collective service mark, or collective membership mark application:** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by members on or in connection with the identified goods/services/collective membership organization, and asserts a claim of priority based upon a foreign application. **For a certification membership mark application:** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by authorized users in connection with the identified goods/services, the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods or services that meet the certification standards of the applicant, and the applicant asserts a claim of priority based upon a foreign application. Claim of priority is based on [Israel application number 257775 filed 07/18/2013]. 15 U.S.C. Section 1126(d), as amended.

Proposed:

Tracked Text Description: ~~Printed materials, books, booklets, pamphlets, policy briefs, research reports, conference reports, quarterly reviews, surveys, book catalogs and instructional and teaching materials, in the fields of entrepreneurship, start-up companies, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies and ventures, ventures based upon innovative technologies or business models, and the establishment, conducting, development and management of, and investment in, business;~~ printed materials, namely, books, booklets, pamphlets, policy briefs, research reports, conference reports, quarterly reviews, surveys, book catalogs and instructional and teaching materials, in the fields of entrepreneurship, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies and ventures, ventures based upon innovative technologies or business models, and the establishment, conducting, development and management of, and investment in, business

Class 016 for printed materials, namely, books, booklets, pamphlets, policy briefs, research reports, conference reports, quarterly reviews, surveys, book catalogs and instructional and teaching materials, in the fields of entrepreneurship, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies and ventures, ventures based upon innovative technologies or business models, and the establishment, conducting, development and management of, and investment in, business

Filing Basis: Section 1(b), Intent to Use: For a trademark or service mark application: As of the application filing date, the applicant had a bona fide intention, and was entitled, to use the mark in commerce on or in connection with the identified goods/services in the application. **For a collective trademark, collective service mark, or collective membership mark application:** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by members on or in connection with the identified goods/services/collective membership organization. **For a certification mark application:** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by authorized users in connection with the identified goods/services, and the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant.

Filing Basis: Section 44(d), Priority based on foreign filing: For a trademark or service mark application: As of the application filing date, the applicant had a bona fide intention, and was entitled, to use the mark in commerce on or in connection with the identified goods/services, and asserts a claim of priority based upon a foreign application. **For a collective trademark, collective service mark, or collective membership mark application:** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by members on or in connection with the identified goods/services/collective membership organization, and asserts a claim of priority based upon a foreign application. **For a certification membership mark application:** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by authorized users in connection with the identified goods/services, the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods or services that meet the certification standards of the applicant, and the applicant asserts a claim of priority based upon a foreign application. Claim of priority is based on [Israel application number 257775 filed 07/18/2013]. 15 U.S.C. Section 1126(d), as amended.

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

Current: Class 035 for Advertising and business management consultancy; incubation services, namely, providing assistance to entrepreneurs in the fields of corporate formation, funding strategies, corporate processes, talent management, development strategies, innovation, business and

product development collaboration, business model and business process prototyping, and provision of information technology equipment and advice; business research; providing information and advice to governments, nation-states, businesses, non-governmental organizations, individuals, educational institutions, educators, academics, and other persons and entities, in the fields of entrepreneurship, start-up companies, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business

Original Filing Basis:

Filing Basis: Section 1(b), Intent to Use: For a trademark or service mark application: As of the application filing date, the applicant had a bona fide intention, and was entitled, to use the mark in commerce on or in connection with the identified goods/services in the application. **For a collective trademark, collective service mark, or collective membership mark application:** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by members on or in connection with the identified goods/services/collective membership organization. **For a certification mark application:** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by authorized users in connection with the identified goods/services, and the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant.

Based on Foreign Application: Applicant has had a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and will submit a copy of a foreign registration, and translation thereof, if appropriate. 15 U. S.C. Section 1126(d), as amended.

Proposed:

Tracked Text Description: advertising and business management consultancy; ~~incubation services, namely, providing assistance to entrepreneurs in the fields of corporate formation, funding strategies, corporate processes, talent management, development strategies, innovation, business and product development collaboration, business model and business process prototyping, and provision of information technology equipment and advice;~~ business research; providing information and advice to governments, nation-states, businesses, non-governmental organizations, individuals, educational institutions, educators, academics, and other persons and entities, in the fields of entrepreneurship, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business; ~~providing information and advice to governments, nation-states, businesses, non-governmental organizations, individuals, educational institutions, educators, academics, and other persons and entities, in the fields of entrepreneurship, start-up companies, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business;~~ think tank services, in the nature of consultation services in the fields of entrepreneurship, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business; public policy research services; analysis of market research and data

Class 035 for advertising and business management consultancy; business research; providing information and advice to governments, nation-states, businesses, non-governmental organizations, individuals, educational institutions, educators, academics, and other persons and entities, in the fields of entrepreneurship, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business; think tank services, in the nature of consultation services in the fields of entrepreneurship, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business; public policy research services; analysis of market research and data

Filing Basis: Section 1(b), Intent to Use: For a trademark or service mark application: As of the application filing date, the applicant had a bona fide intention, and was entitled, to use the mark in commerce on or in connection with the identified goods/services in the application. **For a collective trademark, collective service mark, or collective membership mark application:** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by members on or in connection with the identified goods/services/collective membership organization. **For a certification mark application:** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by authorized users in connection with the identified goods/services, and the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant.

Based on Foreign Application: Applicant has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and will submit a copy of a foreign registration, and translation thereof, if appropriate. 15 U. S.C. Section 1126(d), as amended.

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

Current: Class 036 for Charitable fundraising

Original Filing Basis:

Filing Basis: Section 1(b), Intent to Use: For a trademark or service mark application: As of the application filing date, the applicant had a bona fide intention, and was entitled, to use the mark in commerce on or in connection with the identified goods/services in the application. **For a collective trademark, collective service mark, or collective membership mark application:** As of the application filing date, the applicant had a

bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by members on or in connection with the identified goods/services/collective membership organization. **For a certification mark application:** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by authorized users in connection with the identified goods/services, and the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant.

Based on Foreign Application: Applicant has had a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and will submit a copy of a foreign registration, and translation thereof, if appropriate. 15 U. S.C. Section 1126(d), as amended.

Proposed:

Tracked Text Description: charitable fundraising; [incubation services, namely, providing financing to entrepreneurs in the fields of corporate formation, funding strategies, corporate processes, talent management, development strategies, innovation, business and product development collaboration, business model and business process prototyping, and provision of information technology equipment and advice](#)

Class 036 for charitable fundraising; incubation services, namely, providing financing to entrepreneurs in the fields of corporate formation, funding strategies, corporate processes, talent management, development strategies, innovation, business and product development collaboration, business model and business process prototyping, and provision of information technology equipment and advice

Filing Basis: Section 1(b), Intent to Use: For a trademark or service mark application: As of the application filing date, the applicant had a bona fide intention, and was entitled, to use the mark in commerce on or in connection with the identified goods/services in the application. **For a collective trademark, collective service mark, or collective membership mark application:** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by members on or in connection with the identified goods/services/collective membership organization. **For a certification mark application:** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by authorized users in connection with the identified goods/services, and the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant.

Based on Foreign Application: Applicant has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and will submit a copy of a foreign registration, and translation thereof, if appropriate. 15 U. S.C. Section 1126(d), as amended.

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

Current: Class 041 for Educational services, namely, providing a learning and innovation center featuring fully customized leadership, motivational, educational, and brainstorming training; think tank services, namely, operation of a collaboration hub, conducting conferences and seminars in the fields of entrepreneurship, start-up companies, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business; organizing and hosting of events for cultural purposes; operating research and policy institute; providing training services to governments, nation-states, businesses, non-governmental organizations, individuals, educational institutions, educators, academics, and other persons and entities in the fields of entrepreneurship, start-up companies, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business; publication of printed matter; production and distribution of films, television programming and other media and multimedia productions; museum services; providing recognition and incentives by the way of awards and contests to demonstrate excellence in the fields of entrepreneurship, start-up companies, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business; conducting exhibitions; conducting demonstrations, courses of instruction and seminars in the fields of entrepreneurship, start-up companies, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business Original Filing Basis:

Filing Basis: Section 1(b), Intent to Use: For a trademark or service mark application: As of the application filing date, the applicant had a bona fide intention, and was entitled, to use the mark in commerce on or in connection with the identified goods/services in the application. **For a collective trademark, collective service mark, or collective membership mark application:** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by members on or in connection with the identified goods/services/collective membership organization. **For a certification mark application:** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by authorized users in connection with the identified goods/services, and the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant.

Based on Foreign Application: Applicant has had a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and will submit a copy of a foreign registration, and translation thereof, if appropriate. 15 U. S.C. Section 1126(d), as amended.

Proposed:

Tracked Text Description: educational services, namely, providing a learning and innovation center featuring fully customized leadership, motivational, educational, and brainstorming training; ~~think tank services, namely, operation of a collaboration hub, conducting conferences and seminars in the fields of entrepreneurship, start-up companies, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business;~~ organizing and hosting of events for cultural purposes; providing training services to governments, nation-states, businesses, non-governmental organizations, individuals, educational institutions, educators, academics, and other persons and entities in the fields of entrepreneurship, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business; ~~operating research and policy institute;~~ publication of printed matter; ~~providing training services to governments, nation-states, businesses, non-governmental organizations, individuals, educational institutions, educators, academics, and other persons and entities in the fields of entrepreneurship, start-up companies, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business;~~ production and distribution of films, television programming; museum services; ~~production and distribution of films, television programming and other media and multimedia productions;~~ providing recognition and incentives by the way of awards and contests to demonstrate excellence in the fields of entrepreneurship, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business; conducting educational and entertainment museum exhibitions relating to start-ups and entrepreneurs; ~~providing recognition and incentives by the way of awards and contests to demonstrate excellence in the fields of entrepreneurship, start-up companies, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business;~~ educational services, namely, conducting courses of instruction and seminars in the fields of entrepreneurship, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business; ~~conducting exhibitions; conducting demonstrations, courses of instruction and seminars in the fields of entrepreneurship, start-up companies, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business~~

Class 041 for educational services, namely, providing a learning and innovation center featuring fully customized leadership, motivational, educational, and brainstorming training; organizing and hosting of events for cultural purposes; providing training services to governments, nation-states, businesses, non-governmental organizations, individuals, educational institutions, educators, academics, and other persons and entities in the fields of entrepreneurship, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business; publication of printed matter; production and distribution of films, television programming; museum services; providing recognition and incentives by the way of awards and contests to demonstrate excellence in the fields of entrepreneurship, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business; conducting educational and entertainment museum exhibitions relating to start-ups and entrepreneurs; educational services, namely, conducting courses of instruction and seminars in the fields of entrepreneurship, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business

Filing Basis: Section 1(b), Intent to Use: For a trademark or service mark application: As of the application filing date, the applicant had a bona fide intention, and was entitled, to use the mark in commerce on or in connection with the identified goods/services in the application. **For a collective trademark, collective service mark, or collective membership mark application:** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by members on or in connection with the identified goods/services/collective membership organization. **For a certification mark application:** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by authorized users in connection with the identified goods/services, and the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant.

Based on Foreign Application: Applicant has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and will submit a copy of a foreign registration, and translation thereof, if appropriate. 15 U. S.C. Section 1126(d), as amended.

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

Current: Class 042 for Research in the fields of technology, business, start-up companies, new and early stage companies, entrepreneurship, innovation, business and product development collaboration, business model and business process prototyping, economics, economic policy, fiscal policy, educational policy, government, foreign policy, and social science; providing a facility for design, prototyping, and testing of products; analysis of market research and data; design and development of computer software

Original Filing Basis:

Filing Basis: Section 1(b), Intent to Use: For a trademark or service mark application: As of the application filing date, the applicant had a bona fide intention, and was entitled, to use the mark in commerce on or in connection with the identified goods/services in the application. **For a collective trademark, collective service mark, or collective membership mark application:** As of the application filing date, the applicant had a

bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by members on or in connection with the identified goods/services/collective membership organization. **For a certification mark application:** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by authorized users in connection with the identified goods/services, and the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant.

Based on Foreign Application: Applicant has had a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and will submit a copy of a foreign registration, and translation thereof, if appropriate. 15 U. S.C. Section 1126(d), as amended.

Proposed:

Tracked Text Description: ~~Research in the fields of technology, business, start-up companies, new and early stage companies, entrepreneurship, innovation, business and product development collaboration, business model and business process prototyping, economics, economic policy, fiscal policy, educational policy, government, foreign policy, and social science;~~ [research in the fields of technology, business, new and early stage companies, entrepreneurship, innovation, business and product development collaboration, business model and business process prototyping, economics, economic policy, fiscal policy, educational policy, government, foreign policy, and social science;](#) providing a facility for design, prototyping, and testing of products; ~~analysis of market research and data;~~ design and development of computer software

Class 042 for research in the fields of technology, business, new and early stage companies, entrepreneurship, innovation, business and product development collaboration, business model and business process prototyping, economics, economic policy, fiscal policy, educational policy, government, foreign policy, and social science; providing a facility for design, prototyping, and testing of products; design and development of computer software

Filing Basis: Section 1(b), Intent to Use: For a trademark or service mark application: As of the application filing date, the applicant had a bona fide intention, and was entitled, to use the mark in commerce on or in connection with the identified goods/services in the application. **For a collective trademark, collective service mark, or collective membership mark application:** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by members on or in connection with the identified goods/services/collective membership organization. **For a certification mark application:** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by authorized users in connection with the identified goods/services, and the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant.

Based on Foreign Application: Applicant has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and will submit a copy of a foreign registration, and translation thereof, if appropriate. 15 U. S.C. Section 1126(d), as amended.

ADDITIONAL STATEMENTS

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

HUMMINGBIRD appearing in the mark has no significance nor is it a term of art in the relevant trade or industry or as applied to the goods/services listed in the application, or any geographical significance.

Miscellaneous Statement

Applicant will rely on its foreign registration as well as its use in commerce under Section 1(a) as the basis for registration. Therefore, Applicant requests that the Examining Attorney maintain both the Section 1(b) and Section 44(d) filing bases.

SIGNATURE(S)

Response Signature

Signature: /jmh/ Date: 05/21/2014

Signatory's Name: Jennifer M. Hetu

Signatory's Position: Attorney of Record, Michigan Bar Member

Signatory's Phone Number: 248-566-8452

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

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RESPONSE TO OFFICE ACTION

FILED ELECTRONICALLY

This is in response to the Office Action of November 21, 2013.

For the reasons stated below, there is no likelihood of confusion between Applicant's mark HUMMINGBIRD for the goods and services identified below ("Applicant's Mark") and the marks cited by the Examining Attorney. These include marks that are neither visually nor aurally similar to Applicant's Mark and that do not even contain the term HUMMINGBIRD but are merely foreign language translations, that the consumer would not translate into English, of the term "hummingbird." Confusion is particularly unlikely given the differences in the channels of trade and the levels of consumer sophistication, since consumers of Applicant's Goods and Services are governmental and non-governmental ("NGO") organizations, academia, the media, and investment funds and organizations looking to implement policies to replicate the success of Israel's start-ups.

I. AMENDMENT

Please amend the identification of goods and services as follows ("Applicant's Goods and Services"):

printed materials, namely, books, booklets, pamphlets, policy briefs, research reports, conference reports, quarterly reviews, surveys, book catalogs and instructional and teaching materials, in the fields of entrepreneurship, ~~start-up companies, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies and ventures, ventures based upon innovative technologies or business models, and the establishment, conducting, development and management of, and investment in, business in Class 16;~~

~~advertising and business management consultancy; incubation services, namely, providing assistance to entrepreneurs in the fields of corporate formation, funding strategies, corporate processes, talent management, development strategies, innovation, business and product development collaboration, business model and business process prototyping, and provision of information technology equipment and advice; business research; providing information and advice to governments, nation-states, businesses, non-governmental organizations, individuals, educational institutions, educators, academics, and other persons and entities, in the fields of entrepreneurship, start-up companies, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business; think tank services, in the nature of consultation services in the fields of entrepreneurship, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business; public policy research services; analysis of market research and data in Class 35;~~

charitable fundraising; incubation services, namely, providing financing to entrepreneurs in the fields of corporate formation, funding strategies, corporate processes, talent management, development strategies, innovation, business and product development collaboration, business model and business process prototyping, and provision of information technology equipment and advice in Class 36;

arranging travel tours, travel tour conducting, escorting of travelers in Class 39;

educational services, namely, providing a learning and innovation center featuring fully customized leadership, motivational, educational, and brainstorming training; think-tank services, namely, operation of a collaboration hub, conducting conferences and seminars in the fields of entrepreneurship, start-up companies, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business; organizing and hosting of events for cultural purposes; operating research and policy institute; providing training services to governments, nation-states, businesses, non-governmental organizations, individuals, educational institutions, educators, academics, and other persons and entities in the fields of entrepreneurship, start-up companies, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business; publication of printed matter; production and distribution of films, television programming and other media and multimedia productions; museum services; providing recognition and incentives by the way of awards and contests to demonstrate excellence in the fields of entrepreneurship, start-up companies, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business; conducting educational and entertainment museum exhibitions; relating to start-ups and entrepreneurs; educational services, namely, conducting demonstrations; courses of instruction and seminars in the fields of entrepreneurship, start-up companies, innovation, business and product development collaboration, business model and business process prototyping, new and early stage companies, and the establishment, conducting, development and management of, and investment in, business in Class 41; and

research in the fields of technology, business, start-up companies, new and early stage companies, entrepreneurship, innovation, business and product development collaboration, business model and business process prototyping, economics, economic policy, fiscal policy, educational policy, government, foreign policy, and social science; providing a facility for design, prototyping, and testing of products; analysis of market research and data; design and development of computer software in Class 42.

II. BASIS FOR REGISTRATION

Applicant will rely on its foreign Registration as well as its use in commerce under Section 1(a) as the basis for Registration. Therefore, Applicant requests that the Examining Attorney maintain both the Section 1(b) and Section 44(d) filing bases.

III. SIGNIFICANCE

Applicant's Mark does not have any significance as applied to the goods and services identified above. HUMMINGBIRD is not a "term of art" within the industry in which Applicant's Goods and Services are manufactured and provided.

IV. THERE IS NO LIKELIHOOD OF CONFUSION BETWEEN APPLICANT'S MARK AND THE CITED MARKS

The Examining Attorney has refused to register Applicant's Mark for the goods and services identified above based on a perceived likelihood of confusion with:

- 1) Registration No. 3,100,403 for HUMMING BIRD RADIO DISPATCHED BY NO. 856-6155 and design for "livery services, namely, providing door-to-door transportation of customers by automobile" (the "403 Registration");
- 2) Registration No. 3,709,621 for HUMMINGBIRD and design for "custom plastic injection molding; prototype fabrication of plastic parts for others; assembling and machining molds and mold components, namely, custom manufacture of molds for use in industry, assembly of molds and mold components for others, machine shop services in the nature of machining molds and mold components for others; assembly services for manufactured products, namely, assembly of products for others" (the "621 Registration");
- 3) Registration No. 3,944,968 for COLIBRI and design for "import and export agencies; promotional marketing and representation services for sales to the public sector; online retail store services featuring textiles of all kinds" (the "968 Registration"); and
- 4) Registration No. 4,409,192 for COLIBRA for "[s]cientific, biological, biochemical, and biotechnology research in the field of in-vitro screening and protein engineering; biochemical research services; biotechnological engineering, namely, the engineering of peptides, proteins, molecules, antibodies, polypeptides and polymers" (the "192 Registration").

The Examining Attorney has also indicated that Registration may be refused if one or both of the pending Applications below mature into a Registration:

- 1) Application Serial No. 79/074,422 for KOLIBRI (the "422 Application"); and
- 2) Application Serial No. 85/889,433 for HUMMINGBIRDIB, which has since registered as Registration No. 4,530,747 (the "747 Registration").

Collectively, the above four registrations and two applications shall be referred to as the "Cited Marks."

It is respectfully submitted that confusion between Applicant's Mark and the Cited Marks is not likely due to: (1) differences between the visual and aural impressions of the marks, as well as the different commercial impressions; (2) differences between the parties' respective goods and/or services; and (3) sophistication of consumers.

A. Introduction

The two-part test to determine whether there is likelihood of confusion between marks was set forth in *In re Dupont de Nemours & Co., Inc.*, 476 F.2d 1357 (C.C.P.A. 1977). The test first looks at the marks themselves for similarities in appearance, sound, connotation and commercial impression, and second requires that the Examining Attorney compare the goods

and/or services to determine if they are related or if the activities surrounding their marketing are such that confusion is likely.

In determining whether a mark is likely to be confused with another, the marks must be considered in their entireties and not judged by their individual components. *Rodeo Collection v. West Seventh*, 812 F.2d 1215, 1218 (9th Cir. 1987); *In re Bed & Breakfast Registry*, 791 F.2d 157 (Fed. Cir. 1986); *Sears Mortgage Corp. v. Northeast Savings F.A.*, 24 U.S.P.Q.2d 1227 (T.T.A.B. 1992); *Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 1007 (C.C.P.A. 1981).

Use of identical, even dominant words in common does not automatically mean that two marks are confusingly similar. See *General Mills, Inc. v. Kellogg Co.*, 824 F.2d 622, 627 (8th Cir. 1987) (citing *Freedom Sav. & Loan Ass'n v. Way*, 757 F.2d 1176, 1183 (1st Cir. 1985)). In the words of the prominent trademark scholar J. McCarthy, "under the overall impression analysis, there is no rule that confusion is automatically likely if a junior user has a mark which contains in part the whole of another's mark." 3 J. McCarthy, *Trademarks and Unfair Competition* § 23:41 at 91 (4th ed.). For example, in *In re Ferrero*, 479 F.2d 1395 (C.C.P.A. 1973), the Court of Customs and Patent Appeals reversed the Trademark Trial and Appeal Board's refusal to register the applicant's mark TIC TAC based upon a prior registration for TIC TAC TOE. The Court held that "the Board has made too much of the indisputable fact that TIC TAC is two-thirds of TIC TAC TOE and that TIC TAC would 'bring to mind' TIC TAC TOE." *Id.* at 1397.

Due to the differences between Applicant's Mark and the Cited Mark, it is respectfully submitted that confusion as to the source of origin is not likely.

B. Confusion Is Not Likely Since Hummingbird Is Weak

It is well established that marks will not be found confusingly similar if the only shared element is a common, suggestive element. *Red Carpet Corp. v. Johnstown American Enterprises Inc.*, 7 U.S.P.Q.2d 1404, 1407 (T.T.A.B. 1988) (citing *Tektronix, Inc. v. Daktronics, Inc.*, 189 U.S.P.Q. 693 (C.C.P.A. 1976)). See also T.M.E.P. § 1207.01(b)(viii) ("If the common element of two marks is 'weak' in that it is generic, descriptive, or highly suggestive of the named goods or services, it is unlikely that consumers will be confused unless the overall combinations have other commonality.").

For example, in *In re Nycomed Amersham PLC*, 2002 TTAB LEXIS 79 (T.T.A.B. 2002), the Board reversed the Examining Attorney's refusal to register TOMOJET for a medical device related to x-rays based on a registration for TOMOSCAN for a similar medical device. The Board held that since the dictionary defines "tomography" as a technique for making detailed x-rays, the shared element, TOMO, was deemed highly suggestive, and an insufficient basis upon which to find the marks confusingly similar.

Similarly, in *Arrowhead Mills, Inc. v. Good Health Natural Foods, Inc.*, 2004 TTAB LEXIS 268 (T.T.A.B. 2004), the Board found that there was no confusion between GARDEN CHIPS and GARDEN GRAINS, both for food, since GARDEN "is a highly suggestive term indicating that the food item is fresh or natural, and comes from the garden." See also *Carefirst*

of Maryland, Inc. v. Firsthealth of the Carolinas, Inc., 77 U.S.P.Q.2d 1492 (T.T.A.B. 2005) (Confusion was not likely between FIRSTCAROLINA CARE and CAREFIRST, both for health related services, since CAREFIRST is, on its face, highly suggestive.).

In the instant case, HUMMINGBIRD is somewhat weak in the relevant categories. A hummingbird is defined as “a very small, brightly colored American bird that has wings which beat very fast.” See <http://www.merriam-webster.com/dictionary/hummingbird> (copy attached as Exhibit A). Because it is a small bird that beats its wings fast, HUMMINGBIRD is suggestive of speed and/or precision. See, e.g., http://en.wikipedia.org/wiki/Hummingbird_%28disambiguation%29, which lists seven entries for “transportation” (copy attached as Exhibit B). It is apparent that the term HUMMINGBIRD is fairly weak, and, therefore, the mere fact that Applicant’s Mark and the Cited Marks share this term is not sufficient to render confusion likely.

Furthermore, it is important to recognize the relative position of the Cited Marks in terms of distinctiveness among other registrations at the USPTO. Third party registrations are relevant in the analysis of the distinctiveness of a mark. HUMMINGBIRD is weak as evidenced by the numerous third party registrations for goods and services similar to those covered by the Cited Marks. See *In re Hamilton Bank*, 222 U.S.P.Q. 174, 177 (T.T.A.B. 1984) (Third party registrations are “competent to show that others in a particular area of commerce have adopted and registered marks incorporating a particular term.” One can “note from such registrations that the term or feature common to the marks has a normally understood meaning or suggestiveness in the trade and that marks containing the term or feature have been registered for the same or closely related goods or services because the remaining portions of the marks are sufficient to distinguish the marks as a whole from one another.”). Reference is made to ten such registrations (this list is not exhaustive in the least):

- 1) Registration No. 4,386,289 for **THE HUMMINGBIRD BAKERY** and design for “[s]tationery; books on the topic of cooking, baking and cookery; cookbooks; recipe books; address books; notebooks; paper bags; greaseproof paper; printed menus; adhesive stickers; printed stickers; stickers; packaging bags of paper, card, cardboard or plastic, including for use with food and drink items; packaging boxes and containers of paper, card and cardboard, including for use with food and drink items; greeting cards; paper gift cards; notelets” in Class 16 and for “[t]he bringing together, for the benefit of others, of a variety of bakery products and beverages, enabling customers to conveniently view and purchase those goods; retail bakery shops; business consultancy services relating to franchising; services of a franchisor and services rendered by a franchisor, namely, assistance in the running or management of commercial enterprises; business advisory services relating to franchising, particularly a franchisor in the field/area of bakery products, retailing of bakery products, and catering services, and the provision thereof; services of a franchisor and rendered by a franchisor, namely, conveying commercial know-how to franchisees, the administration of the business affairs of franchisees, advisory services relating to publicity for franchisees, business advice and the provision of business advice and information by a franchisor to franchisees relating to franchising, business consultation services to franchisees and business consultancy by a franchisor to franchisees relating to franchising, business consultancy services relating to franchising, business assistance provided by a franchisor to franchisees relating to franchising and to the establishment and operation of franchises, provision of business assistance provided by a franchisor to franchisees in the establishment of franchises; provision of business assistance provided by a franchisor to franchisees in the operation of franchises; business

- management consultancy, advisory, and information services in the field of retail bakery shops and franchising in the area of bakery products” in Class 35;
- 2) Registration No. 4,254,450 for **HUMMINGBIRD** for “[p]assport cases” in Class 16;
 - 3) Registration No. 4,257,175 for **TWO HUMMINGBIRDS DESIGN STUDIO** for “[g]raphic design services” in Class 42;
 - 4) Registration No. 4,348,449 for **HUMMINGBIRD** for “[t]he bringing together, for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase those goods in a retail bakery store in the field of bakery goods” in Class 35;
 - 5) Registration No. 3,647,707 for **KOLIBRI** for “[p]aint brushes; artist materials, namely, easels and canvas for painting” in Class 16;
 - 6) Registration No. 3,092,503 for **SA-CINN**, which means HUMMINGBIRD in English, for “online retail store services featuring jewelry, carvings, weavings, prints and posters, art cards, decals, fridge magnets, glassware, literature, drums, musical sound recordings, clothing, headwear, footwear, scarves and mittens, souvenirs, coffee mugs, coasters, ceramic products, crafts and knickknacks” in Class 35;
 - 7) Registration No. 3,916,079 for **VECTORVISION KOLIBRI** for “[c]omputer programming services, namely, developing programs for others for neurosurgical, orthopedic, radiotherapeutic or radiosurgical purposes, for application in ear, nose, and throat surgery, for robot-assisted applications, and for three-dimensional registration or referencing of patients” in Class 42;
 - 8) Registration No. 2,994,584 for **HUMMINGBIRDS SCHOOL** for “[e]ducational [s]ervices, namely, instruction in the fields of dance, yoga, music, and art for people with special needs” in Class 41;
 - 9) Registration No. 4,385,846 for **HUMMINGBIRD** for “[t]echnology advisory and technology consultancy services in the field of building, maintenance and repair of chemical plants” in Class 42; and
 - 10) Registration No. 3,817,456 for **HUMMINGBIRDSTUDIO77** for “[o]nline retail store services featuring art prints, wall art, wall decals, note cards, bags, journals, small leather goods, home products including screened canvas and home textiles” in Class 35.

Registration certificates for the above-referenced marks are annexed hereto collectively as Exhibit C.

Based on the foregoing, it is clear that HUMMINGBIRD is fairly weak and highly diluted in the relevant Classes, and therefore, the mere fact that Applicant’s Mark and the Cited Marks share this term is not sufficient to render confusion likely. *Red Carpet*, 7 U.S.P.Q.2d at 1407. The Cited Marks and the marks listed above are able to coexist in spite of the common use of the term HUMMINGBIRD (or close variations), based upon only minor differences in the marks, or the underlying goods or services, or both. Similarly, Applicant’s Mark can coexist with the Cited Marks without confusion.

C. Applicant’s Mark Is Not Similar In Appearance To The Cited Marks

Applicant’s Mark and the Cited Marks are very different visually.

The Examining Attorney concluded that the ‘403 Registration, the ‘621 Registration, the ‘747 Registration, and Applicant’s Mark are similar because the marks share the “same dominant feature.” However, the Examining Attorney could only come to this conclusion after eliminating consideration of the wording RADIO DISPATCHED BY NO. 856-6155 from the ‘403 Registration and term IRB from the ‘747 Registration, as well as eliminating the distinctive design elements from the ‘403 Registration and the ‘621 Registration. The Examining Attorney

also failed to consider the distinctive design element in the '968 Registration. This amounts to improper dissection under TMEP §1207.01(b). *See In re Nat'l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 750-51 (Fed. Cir. 1985):

The basic principle in determining confusion between marks is that marks must be compared in their entireties and must be considered in connection with the particular goods or services for which they are used. *It follows from that principle that likelihood of confusion cannot be predicated on dissection of a mark, that is, on only part of a mark* (emphasis added).

After the dissection, the Examining Attorney in effect compares only the word HUMMINGBIRD in the '403, '621, and '747 Registrations, and the word COLIBRI in the '968 Registration, to Applicant's Mark. While there is some TTAB precedent (as cited by the Examining Attorney) to support giving greater weight to the prefix portion in a multi-word mark, this precedent does not justify or support ignoring the rest of the mark. As discussed above, because it is slightly weak and highly diluted, the focus here *should not* be solely on the common term HUMMINGBIRD in the '403, '621, and '747 Registrations, or on the word portion of the '968 Registration. When the additional wording and design elements in the '403, '621, '968, and '747 Registrations are properly considered, the distinguishing impact on the marks is highly significant. Consumers are not likely to separate the term HUMMINGBIRD in the '403 Registration for the mark RADIO DISPATCHED BY HUMMING BIRD NO. 856-6115 & Design, or in the '747 Registration for the mark HUMMINGBIRDIRB. Similarly, consumers are unlikely to separate the wording COLIBRI from the '968 Registration and compare it separately to Applicant's Mark. Further, the '403 Registration, the '621 Registration, and the '968 Registration contain distinctive design elements that consumers are not likely to discard, as such elements contribute to the overall commercial impression imparted by the marks.

Therefore, the additional wording and design elements in the '403, '621, '968, and '747 Registrations distinguish these marks from Applicant's Mark. *See In re Hearst Corp.*, 982 F.2d 493 (Fed. Cir. 1993) (VARGA GIRL and VARGAS were sufficiently distinct visually to avoid a likelihood of confusion); *Colgate-Palmolive Co. v. Carter-Wallace, Inc.*, 432 F.2d 1400, 1402 (C.C.P.A. 1970) (PEAK PERIOD does not look like PEAK); *In re Electrolyte Laboratories, Inc.*, 16 U.S.P.Q.2d 1239 (Fed. Cir. 1990) (The Federal Circuit reversed the Board's finding that confusion was likely and reasoned that the Board focused too much on the similar word element of the parties marks and ignored the fact that the applicant's mark contained a design portion.). The Examining Attorney did not give proper consideration to the additional wording and design elements in the '403, '621, '968, and '747 Registrations and the significant impact imparted by these elements upon the sound, appearance, meaning or overall commercial impression of these marks.

Although Applicant's Mark and the Cited Marks share certain elements, Applicant's Mark as a whole is not confusingly similar to any of the Cited Marks. *See Interstate Brands Corp. v. Celestial Seasonings, Inc.*, 576 F.2d 926 (C.C.P.A. 1978) (No visual similarity found between ZINGERS and the applied for mark RED ZINGER since the word RED was an identifying factor sufficient to distinguish it from the ZINGERS mark.); *Conde Nast*

Publications, Inc. v. Miss Quality, Inc., 507 F.2d 1404, 1407 (C.C.P.A. 1975) (No visual similarity found between COUNTRY VOGUES and VOGUE since “[t]he only similarity between them is that VOGUE part of the mark . . . , and the dissimilarities between the marks, viewed in their entireties, outweigh this similarity . . .”).

Even if the ‘403, ‘621, ‘968, and ‘747 Registrations are only considered in part when comparing them to Applicant’s Mark, the mere similarity or even identity between two marks can never alone be decisive of likelihood of confusion. *McGregor-Donniger, Inc. v. Drizzle, Inc.*, 202 U.S.P.Q. 81, 89 (2nd Cir. 1979). Thus, in holding that the mark “DRIZZLE” for women’s overcoats was not likely to cause confusion with the mark “DRIZZLER” used for golf jackets, the Court of Appeals for the Second Circuit stated:

First, even close similarity between the marks is not dispositive on the issue of likelihood of confusion. Similarity in and of itself is not the acid test. Whether the similarity is likely to provoke confusion is the crucial question. *Id.* (Citations omitted).

The *Drizzle* case is directly on point in this case. In *Drizzle*, the only difference between the marks was the letter “R” at the end of the applicant’s mark. Here, the Cited Marks differ from Applicant’s Mark in a number of significant ways, including: (1) the ‘403 and ‘747 Registrations contain additional, distinctive wording in addition to the shared word HUMMINGBIRD; (2) the ‘403, ‘621, and ‘968 Registrations feature additional, significant design elements; and (3) three of the Cited Marks are comprised of non-English wording that on its face is markedly different visually and phonetically. Under the holding in *Drizzle*, the differences between Applicant’s Mark and the Cited Marks should suffice to make Applicant’s Mark readily distinguishable from the Cited Marks.

Further, the ‘968 and ‘192 Registrations and ‘422 Application do not even contain the word HUMMINGBIRD and most certainly are not similar in appearance to Applicant’s Mark. These three Cited Marks are not even words in the English language.

Accordingly, the differences in appearance between Applicant’s Mark on the one hand and the Cited Marks on the other renders confusion unlikely.

D. Applicant’s Mark Is Not Similar In Sound To The Cited Marks

For the same reasons discussed above, Applicant’s Mark is different in sound when compared to the Cited Marks. The ‘968 and ‘192 Registrations and ‘422 Application are not within the English language and are phonetically different from Applicant’s Mark.

Second, the additional word elements in the ‘403 Registration and the ‘747 Registration readily distinguish those Cited Marks from Applicant’s Mark. *See In Bell Lab. Inc. v. Colonial Prods. Inc.*, 644 F. Supp. 542 (S.D. Fla. 1986) (The Court found that FINAL FLIP does not sound like FINAL.).

Accordingly, the aural differences between Applicant's Mark on the one hand and the Cited Marks on the other are sufficiently different to avoid confusion.

E. The Marks Create A Very Different Commercial Impression

Confusion will not be found if the marks at issue create different commercial impressions. See *Champagne Louis Roederer, S.A. v. Delicato Vineyards*, 148 F.3d 1373, 1375 (Fed. Cir. 1998) ("CRISTAL" for champagne and "CRYSTAL CREEK" for wine "evoked very different images in the minds of relevant consumers. While the former suggested the clarity of the wine within the bottle or the glass of which the bottle itself was made, the latter suggested "a very clear (and hence probably remote from civilization) creek or stream.").

Indeed, this rule has been applied even when the marks at issue are identical and the goods/services are closely related. See *Taj Mahal Enterprises, Ltd. v. Trump*, 745 F. Supp. 240, 248 (D.N.J. 1990) (No likelihood of confusion was found between TAJ MAHAL for an Indian restaurant and TAJ MAHAL for a casino-hotel since, in the context of a restaurant, TAJ MAHAL "may simply be indicative of Indian cuisine and a general Indian motif," whereas, as applied to a casino hotel, "TAJ MAHAL may indicate grandeur, opulence and extravagance.").

Applicant submits that the connotation and commercial impression established by its mark is not similar to the commercial impression created by the Cited Marks. The additional wording RADIO DISPATCHED BY NO. 856-6155 in the '403 Registration and the additional term IRB in the '747 Registration, as well as the distinctive design elements in the '403, '621, and '968 Registrations, are highly significant parts of these marks. Such additional wording and design elements change the sound and/or appearance of these marks and contribute greatly to the overall commercial impression of these marks. Rather than ignoring the impact of these additional items, the additional wording and design elements should be given due consideration and significant weight in reviewing these marks as a whole.

Accordingly, the vastly different commercial impressions of Applicant's Mark on the one hand, and the Cited Marks on the other, renders confusion unlikely.

F. Doctrine of Foreign Equivalents

Under the doctrine of foreign equivalents, a foreign word (from a language familiar to an appreciable segment of American consumers) and the English equivalent *may* be held to be confusingly similar. TMEP § 1207.01(b)(vi). However, the doctrine of foreign equivalents is not an absolute rule, but rather, merely a guideline. *Id.*

The test is whether those U.S. consumers familiar with the foreign language would denote the word's English equivalent. When it is unlikely that the U.S. consumer will translate the foreign mark and will instead take it as is, then confusion is not likely and the marks may co-exist. See *In re Tia Maria, Inc.*, 188 U.S.P.Q. 524, 525-526 (T.T.A.B. 1975) ("[T]here are foreign expressions that even those familiar with the language will not translate, accepting the term as it is . . ."). Further, in the words of the preeminent trademark scholar J. McCarthy:

The doctrine of foreign equivalents should not be transformed into a mechanical and rigid doctrine. The purchaser of the goods does not, of course, see the English “equivalent” compared to the English language word alleged to be confusingly similar. He sees only a foreign word mark compared to an English word mark. When it is unlikely that the American buyer will translate the foreign mark and will take it as it is, then use of the foreign equivalent gives a skewed view of the marketplace.

3 J. McCarthy, *Trademarks and Unfair Competition* § 23:36 at 105 (4th ed.).

Even if under the doctrine of foreign equivalents Applicant’s Mark and the Cited Marks are found having similar meaning and connotation (which Applicant disputes), any similarity in connotation between the marks must be weighed against the dissimilarity in appearance, sound and all other factors before reaching a conclusion on likelihood of confusion as to source. *In re Sarkli, Ltd.*, 721 F.2d 353 , 354, 220 U.S.P.Q. 111, 113 (Fed. Cir. 1983); *see also In re Thomas*, 79 U.S.P.Q.2d 1021, 1027 (T.T.A.B. 2006) (Under the doctrine of foreign equivalents foreign words from common languages are translated into English only to determine the similarity of meaning or connotation which must be “weighed against the dissimilarities in sound and appearance of the marks . . .”).

Consistent with the foregoing, in *In re Ness & Co.*, 18 U.S.P.Q.2d 1815, 1816 (T.T.A.B. 1991), the Board found no likelihood of confusion between registered mark LABONTE for cheese and applied for mark GOOD-NESS for cheese due to differences in sight and sound, notwithstanding the fact that “labonte” translates to “the goodness.” Similarly, in *Horn’s, Inc. v. Sanofi Beaute, Inc.*, 963 F. Supp. 318, 323 (S.D.N.Y. 1997), the court found that confusion was not likely between HERE & THERE for fashion consulting services and DECI DELA (translated as “here and there”) for fragrances, since “[a]lthough the marks are similar in meaning, such similarity is outweighed by the differences in appearance and sound.” *See also Sarkli*, 721 F.2d at 355 (REPECHAGE for various skin care products not likely to be confused with SECOND CHANCE for face creams and other toiletries).

In the instant case, due to the differences in the sight, sound and commercial impression between Applicant’s Mark and the ‘968 and ‘192 Registrations and ‘422 Application as discussed above, it is respectfully submitted that confusion as to the source of origin is not likely.

G. Most of the Goods And Services Covered By Applicant’s Mark Are Distinguishable From The Goods And Services Provided By The Cited Marks

Most of the goods and services covered by Applicant’s Mark and the Cited Marks are clearly different.

For example, the ‘403 Registration covers “door-to-door transportation of customers by automobiles.” Such a service transports customers at most a few cities over. Applicant’s Mark, however, covers the “escorting of travelers” from one country to another. Clearly, the two services are different.

The '192 Registration covers biochemical research whereas Applicant's Mark covers social science research. Both are completely difference disciplines.

The '621 Registration covers "custom plastic injection molding" and other services as applied to a business that operates in plastic molds and plastic processing. Applicant's Mark, on the other hand, covers "providing a facility for design, prototyping, and testing of products" for the development of a business model. The services are different.

The '968 Registration covers "promotional marketing and representation services for sales to the public sector," specifically at the retail level for active wear clothing, while Applicant's Mark covers "advertising *and business management consultancy*," specially at the business-to-business level. The two services are not related.

The '422 Application covers goods and services in the field of biological sciences, whereas Applicant's Mark does not. The goods and services provided under the two marks are different.

The '747 Registration specifically covers services that relate to an institutional review board (IRB), namely the review of biomedical and other research involving human subjects. Applicant's Mark does not cover the research or review of research conducted on human subjects. The services provided under the marks are different.

Even if there were some general commonalities between the goods and services covered by Applicant's Mark and the Cited Marks (which Applicant disputes), courts and the Board have refused to find likelihood of confusion even where both marks are used in the same broad field. In *Mejia and Assocs. v. Int'l Business Machines Corp.*, 920 F. Supp. 540 (S.D.N.Y. 1996), the court rejected the argument that because both parties provided "educational" services likelihood of confusion existed. The court explained that "[b]y increasing the level of generality, any products can be made to appear to fall in the same class." *Id.* at 548. See also *Elec. Design & Sales Inc. v. Elec. Data Sys.*, 954 F.2d 713 (Fed. Cir. 1992) (The Federal Circuit found no likelihood of confusion between the same mark for batteries and computer programming services.); *Hi-Country Foods Corp. v. Hi Country Beef Jerky*, 4 U.S.P.Q.2d 1169 (T.T.A.B. 1987) (The Board found no likelihood of confusion between the same mark for beef jerky and apple juice.).

Based on the foregoing, there is no likelihood of confusion between Applicant's Mark and the Cited Marks.

H. The Parties' Goods And Services Travel In Different Channels of Trade

Confusion is unlikely for the additional reason that the parties' goods and services travel in different channels of trade. In particular, Applicant's Goods and Services are provided through highly specialized channels and are geared primarily to governmental and non-governmental ("NGO") organizations, academia, the media, and investment funds and organizations that are interested in lessons learned in Israel, including the conditions and policies

in Israel that support a proliferation of start-ups. The goods and services covered by the Cited Marks are not.

Based on the foregoing, it is clear that the parties' respective goods and services travel in different channels of trade, and confusion is not likely. *See Indus. v. JBJ Fabrics, Inc.*, 6 U.S.P.Q.2d 1756 (S.D.N.Y.1988) (The court found no likelihood of confusion because the parties' products were marketed through distinctly different channels of commerce. Plaintiff's garments were sold through retail channels to consumers while defendant's fabric was sold to garment manufacturers.); *American Cyanamid Co. v. S.C. Johnson & Son, Inc.*, 729 F. Supp. 1018 (D.N.J.1989) (The court found no likelihood of confusion between similar insecticides where one was sold primarily through industrial channels and the other through retail channels.).

I. Purchasers Are Capable Of Distinguishing Between The Marks

Where the services at issue are provided to sophisticated consumers, confusion is not likely. *M & G Electronics Sales Corp. v. Sony Kabushiki Kaisha*, 250 F. Supp. 2d 91, 104 (E.D.N.Y. 2003).

Applicant's clients, governments, nation-states, businesses, non-governmental organizations, individuals, educational institutions, educators, academics, and other persons and entities in the fields of entrepreneurship are sophisticated. *In re McGladrey & Pullen*, 1996 TTAB LEXIS 123, at *4 (T.T.A.B. Nov. 20, 1996) (“[B]usiness services . . . would be the subject of careful choices by sophisticated purchasers.”).

Applicant's clients also include government leaders and other policy makers, who are clearly sophisticated. *American Television & Communications Corp. v. American Communications & Television, Inc.*, 810 F.2d 1546, 1550 (11th Cir. 1987) (Government entities are discriminating purchasers.).

The price level of the goods or services is also an important factor in determining the amount of care a buyer will use when encountering a mark. If the goods or services are relatively expensive, more care is taken and buyers are less likely to be confused as to source or affiliation. *See Drizzle, supra* at 92; *see also* Restatement Third, Unfair Competition, § 20, comment h (1995) (“As with the standard of the reasonable person in negligence cases, the discernment exercised by a reasonably prudent purchaser varies with the circumstances. One can expect, for example, more careful inquiry in purchasers of expensive rather than inexpensive items.”).

In this case, most if not all of Applicant's Goods and Services will be relatively expensive, *e.g.*, attending a course or seminar (which may be weeks or months in duration), using a think tank or collaboration hub (which may involve companies, their high level employees, or government officials locating in Israel for several months at a time, or more), economic or policy research services, prototyping services, travel tours of the innovation ecosystem in Israel, etc. Consumers are likely to exercise a high degree of care before making a purchase of any of the goods or services under Applicant's Mark. Just as importantly, such purchases are very likely to be motivated in large part by precisely who the Applicant is in this

case, namely, an authority on the phenomenon of the relatively small nation of Israel generating outside volumes of investment, innovation and creation of new business ventures.

Based on the foregoing, confusion is not likely.

J. Registration Should Not Be Barred On The Ground That There Is Overlap With Respect To Some of The Goods and Services

The fact that Applicant's Mark and the Cited Marks may be applied to some similar goods and services should not preclude registration of Applicant's Mark since the differences in the entirety of each mark would render any consumer confusion unlikely.

Applicant respectfully submits that the Office Action perceives overlaps between the goods and services in the Cited Marks and Applicant's Goods and Services where none exist. A more systematic comparison of the actual relationship between the parties' respective goods and services reveals that they are in fact readily distinguishable. In *Interstate Brands Corp. v. Celestial Seasonings, Inc.*, 198 U.S.P.Q. 151 (C.C.P.A. 1978), the court held that the mark RED ZINGER for herbal tea was not confusingly similar to the mark ZINGERS for snack cakes, because an analysis of the actual relationship of the goods based on their individual characteristics is always required, and it is not proper to lump different goods into a broad category and then hold the different goods to be "related" automatically as a result.

In *Astra Pharmaceutical Products Inc. v. Beckman Instruments, Inc.*, 220 U.S.P.Q. 786, 790 (1st Cir. 1983), the court affirmed a grant of summary judgment and found that the identical marks ASTRA for the plaintiff's pharmaceuticals and syringes and for the defendant's computerized blood analyzer machines, were not likely to be confused. In so doing, the court stated:

The most favorable inference that may be drawn from the evidence regarding the similarity of goods is that both parties' products are used in the medical or health care field. However, such a broad inference is not sufficient to demonstrate that a genuine issue exists concerning likelihood of confusion as to the source of the products identified in the present suit. *Id.*

In considering this *du Pont* factor in the Office Action, the Examining Attorney stated:

As to U.S. Registration No. 3100403: Both the applicant and the registrant provide transportation services.

As to U.S. Registration No. 3709621: The registrant's services are "custom plastic injection molding; prototype fabrication of plastic parts for others; assembling and machining molds and mold components, namely, custom manufacture of molds for use in industry, assembly of molds and mold components for others, machine shop services in the nature of machining molds and mold components for others; assembly services for manufactured products, namely, assembly of products for others." Similarly, the applicant's services are "providing a facility for design, prototyping, and testing of products."

As to U.S. Registration No. 3944968: Advertising and marketing services are highly related services.

As to U.S. Registration No. 4409192: The registrant's services are "Scientific, biological, biochemical, and biotechnology research in the field of in-vitro screening and protein engineering; biochemical research services." Similarly, the applicant's services are "research in the fields of technology, business, start-up companies, new and early stage companies, entrepreneurship, innovation, business and product development collaboration, business model and business process prototyping, economics, economic policy, fiscal policy, educational policy, government, foreign policy, and *social science*."

The approach used by the Examining Attorney in the present case is exactly what the decisions in *Interstate Brands* and *Astra Pharmaceutical Products* cautioned against, namely, the creation of one or more broad categories and then the lumping all of the goods and services under the Cited Marks with Applicant's Goods and Services into these broad categories. This is improper according to the TTAB and the Federal Circuit Court of Appeals.

When discussing the alleged similarities between Applicant's Goods and Services and those covered by the Cited Marks, the Examining Attorney states:

In this case, the identification set forth in the application and registration(s) has no restrictions as to nature, type, channels of trade, or classes of purchasers. Therefore, *it is presumed that these goods and/or services travel in all normal channels of trade, and are available to the same class of purchasers* (emphasis added).

In other words, the Examining Attorney employed a presumption to find overlap in goods and services as to trade channels and purchasers. However, this presumption should not have been used in this case. There *are* express limitations within the goods and services for the Cited Marks, which precludes reliance upon this presumption.

In *The Land-O-Nod Co. v. Paulison*, 220 U.S.P.Q. 61, 67 (T.T.A.B. 1983), the Board held that CHIRO-MATIC was not confusingly similar to CHIROPRACTIC, despite the fact that the marks were used for identical goods, *i.e.*, mattresses and bed springs, and despite the fact that both marks contained the term CHIRO, suggestive of bedding designed to provide healthful support to the body. Similarly, in *In re Bed & Breakfast Registry*, 791 F.2d 157 (Fed. Cir. 1986), the Federal Circuit held that the applicant's service mark BED & BREAKFAST REGISTRY for making lodging reservations in private homes was not confusingly similar in sight, sound, or meaning to opposer's service mark BED & BREAKFAST INTERNATIONAL, even though the services were similar. In so holding, the court stated that "[marks] are not rendered confusingly similar merely because they share the words 'bed' and 'breakfast.'" *Id.* at 159. *See also Ferro Corp. v. Nicofibers, Inc.*, 196 U.S.P.Q. 41 (T.T.A.B. 1977) (UNIFORMAT and CONFORMAT sufficiently different in significance, sound and appearance despite the fact that both were used for fiberglass for reinforcing plastic.); *Iodent Chemical Co. v. Dart Drug Corp.*, 207 U.S.P.Q. 602 (T.T.A.B. 1980) (Biodent and Iodent not confusingly similar for denture cleanser and dental care products.).

In the above-referenced cases, courts and the Board have held that registration should not be denied automatically because a cited mark and Applicant's Mark share similar words and are applied to common goods or services. Therefore, in the present case, Applicant's Mark should not be denied registration on the basis that it may be used in conjunction with goods and services which are similar to the goods and services offered under the Cited Marks. Conversely, the Examining Attorney should approve publication of Applicant's Mark because the marks are not confusingly similar in sight, sound, or meaning, as applied to any goods or services.

V. CONCLUSION

Based on the foregoing, it is respectfully submitted that the refusal to register Applicant's Mark should be withdrawn, and Applicant's Mark should be passed to publication in due course.



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hum·ming·bird *noun* \ˈhʌ-mɪŋ-ˈbɜrd\

: a very small, brightly colored American bird that has wings which beat very fast

Full Definition of HUMMINGBIRD g+1 Like

: any of a family (Trochilidae) of tiny brightly colored nonpasserine American birds related to the swifts that have a very slender bill and an extensible tongue for sipping nectar and that usually hover rather than perch when feeding

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Illustration of HUMMINGBIRD



First Known Use of HUMMINGBIRD

1637

Rhymes with HUMMINGBIRD

[afterword](#), [bowerbird](#), [butcher-bird](#), [cedarbird](#), [dickey bird](#), [dirty word](#), [dolly bird](#), [early bird](#), [fighting word](#), [frigate bird](#), [gallows bird](#), ...
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hummingbird *noun* (*Concise Encyclopedia*)



Any of about 320 species of New World birds (family Trochilidae), many of which have glittering colours and elaborately

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Hummingbird - Definition and More from the Free Merriam-Webster Dictionary



Allen's hummingbird
(Selasphorus sasin)—Arvid
L. Parker

specialized feathers. They are most abundant in South America, though about 12 species are found in the U.S. and Canada. Hummingbirds range in length from slightly more than 2 in. (5 cm) to 8 in. (20 cm), weigh 0.07–0.7 oz (2–20 g), and have a long, slender bill. The bee hummingbird of Cuba is the smallest living bird. Hummingbirds can fly forward, straight up and down, sideways, and backward and can hover in front of flowers to obtain nectar and insects. Smaller species can beat their wings as fast as 80 beats per second.

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MAY 26

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Spanish Central Translation: "hummingbird" in Spanish
 Britannica.com: [Encyclopedia article about "hummingbird"](#)

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« Seen & Heard »

What made you want to look up *hummingbird*? Please tell us where you read or heard it (including the quote, if possible).

Darlene Finley · Works at Stay at home Nana

When you have many hummingbirds...are they considered a flock?

Reply · Like · July 23, 2013 at 9:25am

Nancy Young · Top Commenter · Works at Three Square

Not sure just happy and you can make their food 2c water 1 c sugar and 3 drops red food coloring or you can buy it a wal-mart and make it up.

Reply · Like · July 23, 2013 at 9:47am

Darlene Finley · Works at Stay at home Nana

Nancy Young I read an article that they DO NOT fly together as a flock. They are solitary birds. But when they are flying around your porch, what do you call them...lol...perhaps a squadron since they zoom by like a fighter pilot.haha

Reply · Like · July 23, 2013 at 10:14am

Nicole Payne · Thurston High School

working on migration project need informal name hummer found out.

Reply · Like · May 2, 2013 at 11:28pm

Lynette McDonall · Sydney, Australia

I was curious about whether the bird's name came from its call or the sound of its rapidly beating wings (I assumed the latter).

Reply · Like · December 18, 2011 at 3:51pm

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Hummingbird (disambiguation)

From Wikipedia, the free encyclopedia

A **hummingbird** is a member of a family (Trochilidae) of very small birds.

Hummingbird may also refer to:

In **music**:

- Hummingbird (band), a 1970s British rock band
- *Hummingbird* (Merzbow album), a 2001 album
- *Hummingbird* (Rick Wakeman and Dave Cousins album), a 2002 album
- *Hummingbird* (Jessica Robinson album), a 2005 album
- *Hummingbird* (Local Natives album), a 2013 studio album by Local Natives
- Humming Bird (Paul Gonsalves album)
- "Hummingbird" (song), a 1955 pop song
- "Hummingbird", a single by Seals and Crofts on the 1972 album *Summer Breeze*
- "Hummingbird", a song by Wilco on the 2004 album *A Ghost Is Born*
- "Hummingbird", a single by Born Ruffians from the 2008 album *Red, Yellow & Blue*
- "Hummingbirds", a single by Venus Hum from the 2001 album *Venus Hum*
- The Hummingbirds, an Australian jangle pop band
- Gibson Hummingbird, an acoustic guitar
- Humming Bird Records, a record label

In **transportation**:

- Boeing A160 Hummingbird, a pilotless helicopter
- de Havilland Humming Bird, a 1920s ultralight monoplane
- Gemini Hummingbird, ultralight aircraft
- Humming Bird (train), of the Louisville and Nashville Railroad
- Hummingbird Highway in Belize
- Lockheed XV-4 Hummingbird, an experimental vertical takeoff jet airplane
- Nelson Hummingbird PG-185B motorglider

In **technology**:

- Hummingbird Processor, a mobile processor from Samsung
- Hummingbird Ltd., a subsidiary of Open Text which produces the Exceed software product
- Hummingbird algorithm, a software search engine core program used by Google

In **other**:

- *Hummingbird* (film), a 2013 film starring Jason Statham
- *The Humming Bird*, a 1924 American silent crime drama film
- *Macroglossum stellatarum*, the Hummingbird Hawk-moth
- Idol Defense Force Hummingbird, a 1993 four-episode OVA anime series
- Hummingbird Photo, chain of photo developing labs

Retrieved from "http://en.wikipedia.org/w/index.php?title=Hummingbird_(disambiguation)&oldid=578197801"

Categories: Disambiguation pages

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United States of America

United States Patent and Trademark Office


the hummingbird bakery

Reg. No. 4,386,289

Registered Aug. 20, 2013

**Int. Cls.: 16, 30, 35, 40
and 43**

TRADEMARK

SERVICE MARK

PRINCIPAL REGISTER

THE HUMMINGBIRD BAKERY LTD. (UNITED KINGDOM PRIVATE LIMITED COMPANY)
FIRST FLOOR 20, BREWER STREET
LONDON, UNITED KINGDOM W1F0SJ

FOR: STATIONERY; BOOKS ON THE TOPIC OF COOKING, BAKING AND COOKERY; COOKBOOKS; RECIPE BOOKS; ADDRESS BOOKS; NOTEBOOKS; PAPER BAGS; GREASEPROOF PAPER; PRINTED MENUS; ADHESIVE STICKERS; PRINTED STICKERS; STICKERS; PACKAGING BAGS OF PAPER, CARD, CARDBOARD OR PLASTIC, INCLUDING FOR USE WITH FOOD AND DRINK ITEMS; PACKAGING BOXES AND CONTAINERS OF PAPER, CARD AND CARDBOARD, INCLUDING FOR USE WITH FOOD AND DRINK ITEMS; GREETING CARDS; PAPER GIFT CARDS; NOTELETS, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FOR: TEA, COCOA; BAKERY PRODUCTS; BAKERY GOODS; BREAD, PASTRY AND CONFECTIONERY MADE OF SUGAR; CAKES; PASTRIES; PIES; CUPCAKES; BISCUITS; BROWNIES; COOKIES; BAKERY DESSERTS; BREAD ROLLS; BUNS; ICE-CREAM; FROZEN YOGHURT; ICE CREAM DESSERTS; ICE DESSERTS, IN CLASS 30 (U.S. CL. 46).

FOR: THE BRINGING TOGETHER, FOR THE BENEFIT OF OTHERS, OF A VARIETY OF BAKERY PRODUCTS AND BEVERAGES, ENABLING CUSTOMERS TO CONVENIENTLY VIEW AND PURCHASE THOSE GOODS; RETAIL BAKERY SHOPS; BUSINESS CONSULTANCY SERVICES RELATING TO FRANCHISING; SERVICES OF A FRANCHISOR AND SERVICES RENDERED BY A FRANCHISOR, NAMELY, ASSISTANCE IN THE RUNNING OR MANAGEMENT OF COMMERCIAL ENTERPRISES; BUSINESS ADVISORY SERVICES RELATING TO FRANCHISING, PARTICULARLY A FRANCHISOR IN THE FIELD/AREA OF BAKERY PRODUCTS, RETAILING OF BAKERY PRODUCTS, AND CATERING SERVICES, AND THE PROVISION THEREOF; SERVICES OF A FRANCHISOR AND RENDERED BY A FRANCHISOR, NAMELY, CONVEYING COMMERCIAL KNOW-HOW TO FRANCHISEES, THE ADMINISTRATION OF THE BUSINESS AFFAIRS OF FRANCHISES, ADVISORY SERVICES RELATING TO PUBLICITY FOR FRANCHISEES, BUSINESS ADVICE AND THE PROVISION OF BUSINESS ADVICE AND INFORMATION BY A FRANCHISOR TO FRANCHISEES RELATING TO FRANCHISING, BUSINESS CONSULTATION SERVICES TO FRANCHISEES AND BUSINESS CONSULTANCY BY A FRANCHISOR TO FRANCHISEES RELATING TO FRANCHISING, BUSINESS CONSULTANCY SERVICES RELATING TO FRANCHISING, BUSINESS ASSISTANCE PROVIDED BY A FRANCHISOR TO FRANCHISEES RELATING TO FRANCHISING AND TO THE ESTABLISHMENT AND OPERATION OF FRANCHISES, PROVISION OF BUSINESS ASSIST-



Leon Street
Acting Director of the United States Patent and Trademark Office

Reg. No. 4,386,289

ANCE PROVIDED BY A FRANCHISOR TO FRANCHISEES IN THE ESTABLISHMENT OF FRANCHISES; PROVISION OF BUSINESS ASSISTANCE PROVIDED BY A FRANCHISOR TO FRANCHISEES IN THE OPERATION OF FRANCHISES; BUSINESS MANAGEMENT CONSULTANCY, ADVISORY, AND INFORMATION SERVICES IN THE FIELD OF RETAIL BAKERY SHOPS AND FRANCHISING IN THE AREA OF BAKERY PRODUCTS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FOR: BAKERY SERVICES, NAMELY, THE MANUFACTURE OF BAKERY PRODUCTS TO ORDER AND/OR THE SPECIFICATION OF OTHERS, IN CLASS 40 (U.S. CLS. 100, 103 AND 106).

FOR: SERVICES FOR PROVIDING FOOD AND DRINK; CATERING SERVICES; RESTAURANT SERVICES; SELF-SERVICE RESTAURANTS; CAFETERIA SERVICES; CAFE SERVICES; SELF-SERVICE CAFETERIAS; BAKERY RESTAURANTS; CONSULTANCY, ADVISORY AND INFORMATION SERVICES IN THE FIELD OF CAFES AND RESTAURANTS, IN CLASS 43 (U.S. CLS. 100 AND 101).

OWNER OF ERPN CMNTY TM OFC REG. NO. 8734279, DATED 6-2-2010, EXPIRES 6-2-2020.

THE COLOR(S) PINK IS/ARE CLAIMED AS A FEATURE OF THE MARK.

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

THE MARK CONSISTS OF THE WORDS "THE HUMMINGBIRD BAKERY", ALL IN LOWER CASE, WITH A SILHOUETTE OF A HUMMINGBIRD IN FLIGHT, FACING LEFT, BETWEEN AND ABOVE THE WORDS "HUMMINGBIRD" AND "BAKERY", ALL OF THE WORDS AND THE ENTIRE DESIGN COMPRISING THE MARK APPEAR IN THE COLOR PINK.

SER. NO. 85-494,967, FILED 12-14-2011.

JAMES GRIFFIN, EXAMINING ATTORNEY

United States of America
United States Patent and Trademark Office

HUMMINGBIRD

Reg. No. 4,254,450
Registered Dec. 4, 2012
Int. Cls.: 9, 16, 18, 20,
and 24

TRADEMARK
PRINCIPAL REGISTER

CASCADE DESIGNS, INC. (WASHINGTON CORPORATION)
LEGAL DEPARTMENT - YOSEMITE BUILDING
4000 1ST AVE. S.
SEATTLE, WA 98134

FOR: CARRYING CASES FOR ELECTRONIC EQUIPMENT, NAMELY, MP3 PLAYERS, ELECTRONIC BOOK READERS AND COMPUTER TABLETS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 3-23-2010; IN COMMERCE 1-26-2011.

FOR: PASSPORT CASES, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 3-23-2010; IN COMMERCE 1-26-2011.

FOR: BRIEFCASES, BUSINESS CASES, TRAVEL CASES; HANDBAGS AND PURSES; TRAVEL ARTICLES, NAMELY, TRAVEL BAGS; UMBRELLAS; BUSINESS CARD CASES, CARRY-ON BAGS, HANDBAGS, SUITCASES, LUGGAGE, DUFFEL BAGS, IN CLASS 18 (U.S. CLS. 1, 2, 3, 22 AND 41).

FIRST USE 3-23-2010; IN COMMERCE 1-26-2011.

FOR: HOUSEHOLD ARTICLES, NAMELY, BEDS, SLEEPING BAGS AND PILLOWS; TRAVEL ARTICLES, NAMELY, AIR MATTRESSES FOR USE WHEN CAMPING AND AIR MATTRESSES FOR RECREATIONAL USE, IN CLASS 20 (U.S. CLS. 2, 13, 22, 25, 32 AND 50).

FIRST USE 3-23-2010; IN COMMERCE 1-20-2011.

FOR: TEXTILES AND TEXTILE GOODS, NAMELY, TOWELS OF TEXTILE FABRICS, TOWELS, IN CLASS 24 (U.S. CLS. 42 AND 50).

FIRST USE 3-23-2010; IN COMMERCE 1-27-2011.

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

SN 85-159,311, FILED 10-22-2010.



David J. Kappas

Director of the United States Patent and Trademark Office

Reg. No. 4,254,450 DAWN HAN, EXAMINING ATTORNEY

United States of America
United States Patent and Trademark Office

**Two Hummingbirds Design
Studio**

Reg. No. 4,257,175

RILEY, STEPHANIE (UNITED STATES INDIVIDUAL)
3815 HAZELWOOD AVENUE
DOWNTOWN, PA 19335

Registered Dec. 11, 2012

Int. Cl.: 42

FOR: GRAPHIC DESIGN SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

SERVICE MARK

FIRST USE 3-15-2012; IN COMMERCE 3-15-2012.

PRINCIPAL REGISTER

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

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

SER. NO. 85-604,161, FILED 4-20-2012.

JOHN E. MICHOS, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

United States of America
United States Patent and Trademark Office

HUMMINGBIRD

Reg. No. 4,348,449

Registered June 11, 2013

Int. Cls.: 35 and 43

SERVICE MARK

PRINCIPAL REGISTER

THE HUMMINGBIRD BAKERY LIMITED (UNITED KINGDOM PRIVATE LIMITED COMPANY)
133 PORTOBELLO ROAD
NOTTING HILL; LONDON W11 2DY
UNITED KINGDOM

FOR: THE BRINGING TOGETHER, FOR THE BENEFIT OF OTHERS, OF A VARIETY OF GOODS, ENABLING CUSTOMERS TO CONVENIENTLY VIEW AND PURCHASE THOSE GOODS IN A RETAIL BAKERY STORE IN THE FIELD OF BAKERY GOODS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FOR: CATERING SERVICES; CAFES; SNACK-BAR SERVICES, IN CLASS 43 (U.S. CLS. 100 AND 101).

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

OWNER OF INTERNATIONAL REGISTRATION 1060198 DATED 11-10-2010, EXPIRES 11-10-2020.

SER. NO. 79-096,976, FILED 3-2-2011.

ANNE FARRELL, EXAMINING ATTORNEY



Lynn Street
Acting Director of the United States Patent and Trademark Office

Int. Cl.: 16

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38 and 50

United States Patent and Trademark Office

Reg. No. 3,647,707

Registered June 30, 2009

**TRADEMARK
PRINCIPAL REGISTER**

kolibri

HACKENBERGER, THOMAS (FED REP GERMA-
NY INDIVIDUAL)

BEYERBERGER STR. 1

91596 BURK

FED REP GERMANY AND

HUBRICHT, KATRIN (FED REP GERMANY INDI-
VIDUAL)

BEYERBERGER STR. 1

91596 BURK

FED REP GERMANY

FOR: PAINT BRUSHES; ARTIST MATERIALS,
NAMELY, EASELS AND CANVAS FOR PAINTING,
IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

OWNER OF INTERNATIONAL REGISTRATION
0963599 DATED 5-9-2008, EXPIRES 5-9-2018.

THE ENGLISH TRANSLATION OF "KOLIBRI" IN
THE MARK IS "HUMMINGBIRD".

SER. NO. 79-053,584, FILED 5-9-2008.

LINDA MICKLEBURGH, EXAMINING ATTORNEY

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 3,092,503

Registered May 16, 2006

**SERVICE MARK
PRINCIPAL REGISTER**

SA-CINN

SA-CINN NATIVE ENTERPRISES LTD. (CANADA CORPORATION)
BOX 349
3149 MAXWELL STREET
CHEMAINUS, BRITISH COLUMBIA, CANADA V0R 1K0

FOR: ONLINE RETAIL STORE SERVICES FEATURING JEWELRY, CARVINGS, WEAVINGS, PRINTS AND POSTERS, ART CARDS, DECALS, FRIDGE MAGNETS, GLASSWARE, LITERATURE, DRUMS, MUSICAL SOUND RECORDINGS, CLOTHING, HEADWEAR, FOOTWEAR, SCARVES AND MITTENS, SOUVENIRS, COFFEE MUGS, COASTERS, CERAMIC PRODUCTS, CRAFTS AND KNICKKNACKS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 11-14-2000; IN COMMERCE 11-14-2000.

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

PRIORITY CLAIMED UNDER SEC. 44(D) ON CANADA APPLICATION NO. 1216441, FILED 5-11-2004, REG. NO. TMA653077, DATED 11-21-2005, EXPIRES 11-21-2020.

THE FOREIGN WORDING IN THE MARK TRANSLATES INTO ENGLISH AS HUMMINGBIRD.

SER. NO. 78-514,956, FILED 11-10-2004.

CHARLES L. JENKINS, EXAMINING ATTORNEY

United States of America

United States Patent and Trademark Office

VECTORVISION KOLIBRI

Reg. No. 3,916,079
Registered Feb. 8, 2011
Int. Cls.: 9, 10 and 42

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER

BRAINLAB AG (FED REP GERMANY CORPORATION)
AMMERTHALSTR. 8
KIRCHHEIM/HEIMSTETTEN, FED REP GERMANY 85551

FOR: COMPUTERS; PLANNING SOFTWARE AND PROGRAMS FOR USE IN CONDUCTING NEUROSURGICAL, ORTHOPEDIC, RADIOTHERAPEUTIC OR RADIOSURGICAL PROCEDURES; PLANNING SOFTWARE AND PROGRAMS FOR APPLICATION IN ROBOT-ASSISTED MEDICAL APPLICATIONS; PLANNING SOFTWARE AND PROGRAMS FOR APPLICATION IN EAR, NOSE AND THROAT (ENT) SURGERY; PLANNING SOFTWARE AND PROGRAMS FOR APPLICATION TO THREE-DIMENSIONAL REGISTRATION OR REFERENCING PATIENT DATA BY PRODUCING LIGHT MARKINGS; DATA CARRIERS FEATURING PLANNING SOFTWARE AND PROGRAMS FOR NEUROSURGICAL, ORTHOPEDIC, RADIOTHERAPEUTIC OR RADIOSURGICAL PURPOSES; DATA CARRIERS FEATURING PLANNING SOFTWARE AND PROGRAMS FOR APPLICATION IN EAR, NOSE, AND THROAT SURGERY PURPOSES; DATA CARRIERS FEATURING PLANNING SOFTWARE AND PROGRAMS FOR APPLICATION TO THREE-DIMENSIONAL REGISTRATION AND/OR REFERENCING PATIENT DATA BY PRODUCING LIGHT MARKINGS; LIGHT POINTERS, LASER LIGHT POINTERS AND INFRARED LIGHT POINTERS ALL FOR IMAGE REGISTRATION AND LOCALIZATION IN MEDICAL APPLICATIONS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FOR: IMAGE PRESENTATION APPARATUS FOR DISPLAYING MEDICAL IMAGES FOR MEDICAL PURPOSES; IMAGE-GUIDED LOCALIZATION SYSTEMS FOR SURGICAL PURPOSES; MEDICAL AND SURGICAL ROBOTS AND ACCESSORIES, NAMELY, CONTROL BOXES, INSTRUMENT ADAPTORS, TOOL HOLDERS, ADAPTORS FOR ENDOSCOPES AND MICROSCOPES, AND CONNECTION CABLES; RADIOTHERAPEUTIC AND RADIOSURGICAL APPARATUS; DEVICES TO ACQUIRE AND ADJUST RADIATION POINTS FOR MEDICAL PURPOSES; SYSTEMS AND COMPONENTS TO PRECISELY POSITION PATIENTS FOR RADIOTHERAPEUTIC, RADIOSURGICAL OR NEUROSURGICAL PURPOSES, NAMELY, COLLIMATORS, INFRARED AND VIDEO CAMERAS AND ACCESSORIES, PATIENT MARKERS, DISPLAYS, ISOCENTER PHANTOMS, CALIBRATION PHANTOMS, PATIENT TRAYS AND ACCESSORIES, HEAD HOLDERS AND ADAPTORS, VACUUM PUMPS, VACUUM CUSHIONS, REFERENCING STARS, ULTRASOUND PHANTOMS, ULTRASOUND ADAPTORS, AND X-RAY REGISTRATION KITS; NUCLEAR SPIN TOMOGRAPHS; MAGNETIC RESONANCE TOMOGRAPHS. INTRA-OPERATIVE, IMAGE-GUIDED LOCALIZATION SYSTEMS AND COMPONENTS FOR NEUROSURGICAL, ORTHOPEDIC, STEREOTACTIC, RADIOTHERAPEUTIC OR RADIOSURGICAL PURPOSES, AND FOR APPLICATION IN EAR, NOSE AND THROAT SURGERY, CONSISTING OF CAMERAS, DISPLAYS, IMAGE PRESENTATION APPARATUS, COMPUTERS, REFERENCE CLAMPS, POINTERS, SURGICAL INSTRUMENTS, REGISTRATION MARKERS AND MARKER SPHERES, BODY MARKERS, CANULLAE, LAPTOPS, DOCKING STATIONS, PANELS, PANEL PARTS, HEADSETS, HEADRINGS, REMOTE CONTROLS, PROBES, SENSORS, INSTRUMENT ADAPTORS, VIRTUAL KEYBOARDS, DENTAL REFERENCING DEVICES, LASER POINTERS, PHANTOM POINTERS, SYSTEMS AND COMPONENTS FOR SOFTWARE-CONTROLLED PRECISION TREATMENT IN NEUROSURGERY, ORTHOPED-



David J. Kappes

Director of the United States Patent and Trademark Office

Reg. No. 3,916,079 ICS, RADIOTHERAPY OR RADIOSURGERY AND IN EAR, NOSE, AND THROAT SURGERY, NAMELY, LOCALIZERS, TORQUE WRENCH SETS, STEREOTACTIC OR NEUROSURGICAL ARCS, FIXATION ADAPTORS, INSTRUMENT CALIBRATION MATRIXES AND FIXATION RINGS, PLANNING STATIONS, COMPUTERS, COUCH MOUNTS, COLLIMATORS, TARGET POSITIONERS, FILM HOLDERS, COUCH STABILIZERS, COUCH ADAPTORS, RADIATION DEVICES, LINEAR ACCELERATORS, GANTRIES, MICROSCOPE ADAPTORS, FIXATION PINS, HEAD AND NECK IMMOBILIZATION DEVICES, INSTRUMENTS AND APPARATUS FOR THREE-DIMENSIONAL REGISTRATION OR REFERENCING OF PATIENTS, LIGHT POINTERS FOR MEDICAL USE, IN CLASS 10 (U.S. CLS. 26, 39 AND 44).

FOR: COMPUTER PROGRAMMING SERVICES, NAMELY, DEVELOPING PROGRAMS FOR OTHERS FOR NEUROSURGICAL, ORTHOPEDIC, RADIOTHERAPEUTIC OR RADIOSURGICAL PURPOSES, FOR APPLICATION IN EAR, NOSE, AND THROAT SURGERY, FOR ROBOT-ASSISTED APPLICATIONS, AND FOR THREE-DIMENSIONAL REGISTRATION OR REFERENCING OF PATIENTS, IN CLASS 42 (U.S. CLS. 100 AND 101).

PRIORITY CLAIMED UNDER SEC. 44(D) ON FED REP GERMANY APPLICATION NO. 30123412.4, FILED 4-10-2001, REG. NO. 30123412, DATED 3-27-2002, EXPIRES 4-30-2011.

THE ENGLISH TRANSLATION OF THE WORD "KOLIBRI" IN THE MARK IS "HUMMING-BIRD".

SER. NO. 78-083,253, FILED 9-9-2001.

DEZMONA MIZELLE, EXAMINING ATTORNEY

Int. Cl.: 41

Prior U.S. Cls.: 100, 101 and 107

United States Patent and Trademark Office

Reg. No. 2,994,584

Registered Sep. 13, 2005

SERVICE MARK
PRINCIPAL REGISTER

**HUMMINGBIRDS
SCHOOL**

HUMMINGBIRDS SCHOOL, INC. (NEW YORK
CORPORATION)
131 THOMPSON STREET, SUITE 7A
NEW YORK, NY 10012

FOR: EDUCATIONAL SERVICES, NAMELY IN-
STRUCTION IN THE FIELDS OF DANCE, YOGA,
MUSIC, AND ART FOR PEOPLE WITH SPECIAL
NEEDS, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 12-1-2003; IN COMMERCE 12-1-2003.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE SCHOOL, APART FROM THE
MARK AS SHOWN.

SER. NO. 78-378,454, FILED 3-4-2004.

HEATHER THOMPSON, EXAMINING ATTORNEY

United States of America
United States Patent and Trademark Office

HUMMINGBIRD

Reg. No. 4,385,846

BP P.L.C. (UNITED KINGDOM PUBLIC LIMITED COMPANY (PLC))

Registered Aug. 20, 2013

1 ST. JAMES'S SQUARE
LONDON SW1Y 4PD, UNITED KINGDOM

Int. Cls.: 1, 37 and 42

FOR: CHEMICALS USED IN INDUSTRY; CHEMICALS AND PETROCHEMICALS, NAMELY, OLEFINS, IN CLASS 1 (U.S. CLS. 1, 5, 6, 10, 26 AND 46).

TRADEMARK

FOR: CONSTRUCTION AND MAINTENANCE OF PLANTS AND BUILDINGS; CONSTRUCTION ADVISORY SERVICES FOR THE BUILDING, MAINTENANCE AND REPAIR OF PLANTS, IN CLASS 37 (U.S. CLS. 100, 103 AND 106).

SERVICE MARK

PRINCIPAL REGISTER

FOR: TECHNOLOGY ADVISORY AND TECHNOLOGY CONSULTANCY SERVICES IN THE FIELD OF BUILDING, MAINTENANCE AND REPAIR OF CHEMICAL PLANTS, IN CLASS 42 (U.S. CLS. 100 AND 101).

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

OWNER OF ERPN CMNTY TM OFC REG. NO. 008113409, DATED 3-29-2010, EXPIRES 2-19-2019.

SER. NO. 77-673,793, FILED 2-19-2009.

COLLEEN DOMBROW, EXAMINING ATTORNEY



Lynn Street
Acting Director of the United States Patent and Trademark Office

United States of America

United States Patent and Trademark Office

hummingbirdstudio77

Reg. No. 3,817,456

GAYHEART, AMY (UNITED STATES INDIVIDUAL)

Registered July 13, 2010

PO BOX 14068
SAN FRANCISCO, CA 94114

Int. Cl.: 35

FOR: ONLINE RETAIL STORE SERVICES FEATURING ART PRINTS, WALL ART, WALL DECALS, NOTE CARDS, BAGS, JOURNALS, SMALL LEATHER GOODS, HOME PRODUCTS INCLUDING SCREENED CANVAS AND HOME TEXTILES, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

SERVICE MARK

PRINCIPAL REGISTER

FIRST USE 6-15-2008; IN COMMERCE 1-15-2009.

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

SER. NO. 77-878,218, FILED 11-21-2009.

ANGELA DUONG, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office