Response to Suspension Inquiry or Letter of Suspension

The table below presents the data as entered.

Input Field	Entered			
SERIAL NUMBER	86458322			
LAW OFFICE ASSIGNED	LAW OFFICE 115			
MARK SECTION				
MARK	http://tmng-al.uspto.gov/resting2/api/img/86458322/large			
LITERAL ELEMENT	CARDIOTEC			
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.			

PENDING SERIAL NUMBER(S)

Serial number(s) 79157578 and 86439828 should not be used as a citation(s) under Section 2(d), in the event that said serial number(s) mature(s) into a registration(s). The applicant hereby requests removal of this application from suspension, based on the following arguments. If the examining attorney is not persuaded by these arguments, the applicant hereby requests that this application be returned to suspended status, awaiting ultimate disposition of the referenced serial number(s).

ARGUMENT(S)

Request to Lift Suspension of Application for CARDIOTEC

We make reference to the Office Action dated March 17, 2015 with respect to U.S. Trademark Application No. 86/458,322 for the mark **CARDIOTEC** (the "Bracco Application") owned by Bracco Diagnostics Inc. ("Bracco"). The Examining Attorney noted a potential likelihood of confusion between the Bracco Application and the prior-filed pending U.S. Application Serial No. 79/157,578 for the mark **SCHWARZER CARDIOTEK** (the "Schwarzer Application") owned by Schwarzer Cardiotek GmbH ("Schwarzer"), and U.S. Application Serial No. 86/439,828 for the mark **CARDIOTECH** (the "Raine Application") owned by Raine Industries Inc. ("Raine").

On September 16, 2015, Bracco responded to the Office Action by requesting to suspend action on the Bracco Application pending resolution of potential opposition proceedings against the Schwarzer Application and the Raine Application. The Examining Attorney thereafter suspended the Bracco Application on October 7, 2015.

As more fully detailed below, Bracco respectfully submits that there is no likelihood of confusion between CARDIOTEC on the one hand, and SCHWARZER CARDIOTEK and CARDIOTECH on the other hand. Indeed, both Schwarzer and Raine agree with this assessment, as noted in the enclosed Consents to Registration.

Schwarzer Consents to Bracco's Registration of CARDIOTEC

Enclosed as Exhibit 1 is a copy of the Consent to Registration signed by both Schwarzer and Bracco (the "Schwarzer Consent"). In the Schwarzer Consent, both Schwarzer and Bracco agree that each party's use of its respective mark (SCHWARZER CARDIOTEK v. CARDIOTEC) on its respective goods is not likely to cause confusion, mistake, or deception. With respect to the marks themselves, both Schwarzer and Bracco submit that the marks are distinguished by the "K" at the end of SCHWARZER CARDIOTEK versus the "C" at the end of CARDIOTEC. Further, the addition of SCHWARZER to CARDIOTEK reinforces the mark's association with Schwarzer.

Furthermore, both Schwarzer and Bracco submit that the goods covered by the Schwarzer Application and the Bracco Application do not overlap. The goods covered by the Schwarzer Application are for cardiovascular-related software and instruments in International Classes 9 and 10, while the goods covered by the Bracco Application are for a cardiac imaging pharmaceutical agent in International Class 5. Not only are the goods covered by each application different, but each of the party's goods are also sold to sophisticated parties through different channels of trade. As such, there is no likelihood of confusion among the relevant consumers.

Finally, neither Schwarzer nor Bracco is aware of any instance of actual confusion. Pursuant to a Trademark Peaceful Coexistence Agreement entered into by Schwarzer and Bracco, the parties have agreed that should it ever become necessary, they will take appropriate action to avoid any likelihood of confusion among prospective customers. Schwarzer and Bracco have also agreed that they will cooperate with one another to eliminate any likelihood of confusion should it arise. These provisions are for extra assurances, however, as both parties expect that no confusion does or will exist.

Raine Consents to Bracco's Registration of CARDIOTEC

Enclosed as Exhibit 2 is a copy of the Consent to Registration signed by both Raine and Bracco (the "Raine Consent"). In the Raine Consent, both Raine and Bracco agree that each party's use of its respective mark (CARDIOTECH v. CARDIOTEC) on its respective goods is not likely to cause confusion, mistake, or deception. With respect to the marks themselves, both Raine and Bracco submit that the marks are distinguished by the "CH" at the end of CARDIOTECH versus the "C" at the end of CARDIOTEC, which not only look different, but also sound different and render each mark with a different commercial impression.

Furthermore, both Raine and Bracco submit that the goods covered by the Raine Application and the Bracco Application do not overlap. The goods covered by the Raine Application are for cardiovascular-related monitoring and recording instruments in International Class 10, while the goods covered by the Bracco Application are for a cardiac imaging pharmaceutical agent in International Class 5. Not only are the goods covered by each application different, but each of the party's goods are also sold to sophisticated parties through different channels of trade. Here there is also no likelihood of confusion among the relevant consumers.

As with the above, neither Raine nor Bracco is aware of any instance of actual confusion. Pursuant to a Trademark Coexistence Agreement entered into by Raine and Bracco, the parties have agreed that should it ever become necessary, they will take appropriate action to avoid any likelihood of confusion among prospective customers. Schwarzer and Raine have also agreed that they will cooperate with one another to eliminate any likelihood of confusion should it arise. These provisions are for extra assurances, however, as both parties expect that no confusion does or will exist.

There is No Likelihood of Confusion between CARDIOTEC and either SCHWARZER CARDIOTEK or CARDIOTECH

Pursuant to the TMEP section on Consent Agreements, "examining attorneys should give substantial weight to a proper consent agreement....When an applicant and registrant have entered into a credible consent agreement and, on balance, the other facts do not dictate a finding of likelihood of confusion, an examining attorney should not interpose his or her own judgment that confusion is likely. *See* TMEP § 1207.01(d)(viii); *In re Four Seasons Hotels Ltd.*, 987 F.2d 1565, 26 U.S.P.Q.2d 1071 (Fed. Cir. 1993); *In re N.A.D. Inc.*, 754 F.2d 996, 224 U.S.P.Q. 969 (Fed. Cir. 1985). Bracco respectfully submits that because the parties that are engaged in the relevant business are in a superior position to determine whether registration of a particular mark poses a risk of confusion, any doubts as to registrability should be resolved in favor of Bracco.

As stated above, and agreed upon by Bracco, Schwarzer, and Raine, there is no likelihood of confusion between CARDIOTEC and either SCHWARZER CARDIOTEK or CARDIOTECH, due to the distinctions between the marks themselves, and the goods covered by the Bracco Application (i.e. a cardiac imaging agent in Class 5), and the goods covered by the Schwarzer Application and Raine Application (i.e. cardiovascular instruments in Class 10). It is notable that the Schwarzer Application and Raine Application co-exist in Class 10, while the Bracco Application is in Class 5. The Schwarzer Application and the Raine Application are arguably closer to each other than either of them is to the Bracco Application. So too can the Bracco Application co-exist in the distinct field of pharmaceutical agents.

In view of the foregoing, Bracco respectfully requests that the suspension of the Bracco Application be lifted, and that the Bracco Application

ARGUMENT FILE NAME(S)		
ORIGINAL PDF FILE	PE_1981821544-112204883Exhibit_1.pdf	
CONVERTED PDF FILE(S) (3 pages)	\\\TICRS\EXPORT16\IMAGEOUT16\864\583\86458322\xml7\RSI0002.JPG	
	\\TICRS\EXPORT16\IMAGEOUT16\864\583\86458322\xml7\RSI0003.JPG	
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ORIGINAL PDF FILE	PE_1981821544-112204883Exhibit_2.pdf	
CONVERTED PDF FILE(S) (3 pages)	\\\TICRS\EXPORT16\IMAGEOUT16\864\583\86458322\xml7\RSI0005.JPG	
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	\\TICRS\EXPORT16\IMAGEOUT16\864\583\86458322\xml7\RSI0007.JPG	
SIGNATURE SECTION		
RESPONSE SIGNATURE	/Francesca B. Silverman/	
SIGNATORY'S NAME	Francesca B. Silverman	
SIGNATORY'S POSITION	Attorney of record, New York bar member	
SIGNATORY'S PHONE NUMBER	212.715.9144	
DATE SIGNED	05/09/2016	
AUTHORIZED SIGNATORY	YES	
FILING INFORMATION SECTION		
SUBMIT DATE	Mon May 09 12:19:51 EDT 2016	
TEAS STAMP	USPTO/RSI-XXX.XXX.XXX.X-2 0160509121951693903-86458 322-55082b9e8c09a4db7ff15 a8ec50de81e5fc91a56baac5e 5359ab554da1c456f46-N/A-N /A-20160509112204883158	

Under the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PTO Form 1822 (Rev 10/2011)

OMB No. 0651-0050 (Exp 07/31/2017)

Response to Suspension Inquiry or Letter of Suspension

To the Commissioner for Trademarks:

Application serial no. **86458322** CARDIOTEC(Standard Characters, see http://tmng-al.uspto.gov/resting2/api/img/86458322/large) has been amended as follows:

PENDING SERIAL NUMBER(S)

Serial number(s) 79157578 and 86439828 should not be used as a citation(s) under Section 2(d), in the event that said serial number(s) mature(s) into a registration(s). The applicant hereby requests removal of this application from suspension, based on the following arguments. If the examining attorney is not persuaded by these arguments, the applicant hereby requests that this application be returned to suspended status, awaiting ultimate disposition of the referenced serial number(s).

ARGUMENT(S)

We make reference to the Office Action dated March 17, 2015 with respect to U.S. Trademark Application No. 86/458,322 for the mark **CARDIOTEC** (the "Bracco Application") owned by Bracco Diagnostics Inc. ("Bracco"). The Examining Attorney noted a potential likelihood of confusion between the Bracco Application and the prior-filed pending U.S. Application Serial No. 79/157,578 for the mark **SCHWARZER CARDIOTEK** (the "Schwarzer Application") owned by Schwarzer Cardiotek GmbH ("Schwarzer"), and U.S. Application Serial No. 86/439,828 for the mark **CARDIOTECH** (the "Raine Application") owned by Raine Industries Inc. ("Raine").

On September 16, 2015, Bracco responded to the Office Action by requesting to suspend action on the Bracco Application pending resolution of potential opposition proceedings against the Schwarzer Application and the Raine Application. The Examining Attorney thereafter suspended the Bracco Application on October 7, 2015.

As more fully detailed below, Bracco respectfully submits that there is no likelihood of confusion between CARDIOTEC on the one hand, and SCHWARZER CARDIOTEK and CARDIOTECH on the other hand. Indeed, both Schwarzer and Raine agree with this assessment, as noted in the enclosed Consents to Registration.

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Enclosed as Exhibit 1 is a copy of the Consent to Registration signed by both Schwarzer and Bracco (the "Schwarzer Consent"). In the Schwarzer Consent, both Schwarzer and Bracco agree that each party's use of its respective mark (SCHWARZER CARDIOTEK v. CARDIOTEC) on its respective goods is not likely to cause confusion, mistake, or deception. With respect to the marks themselves, both Schwarzer and Bracco submit that the marks are distinguished by the "K" at the end of SCHWARZER CARDIOTEK versus the "C" at the end of CARDIOTEC. Further, the addition of SCHWARZER to CARDIOTEK reinforces the mark's association with Schwarzer.

Furthermore, both Schwarzer and Bracco submit that the goods covered by the Schwarzer Application and the Bracco Application do not overlap. The goods covered by the Schwarzer Application are for cardiovascular-related software and instruments in International Classes 9 and 10, while the goods covered by the Bracco Application are for a cardiac imaging pharmaceutical agent in International Class 5. Not only are the goods covered by each application different, but each of the party's goods are also sold to sophisticated parties through different channels of trade. As such, there is no likelihood of confusion among the relevant consumers.

Finally, neither Schwarzer nor Bracco is aware of any instance of actual confusion. Pursuant to a Trademark Peaceful Coexistence Agreement entered into by Schwarzer and Bracco, the parties have agreed that should it ever become necessary, they will take appropriate action to avoid any likelihood of confusion among prospective customers. Schwarzer and Bracco have also agreed that they will cooperate with one another to eliminate any likelihood of confusion should it arise. These provisions are for extra assurances, however, as both parties expect that no confusion does or will exist.

Raine Consents to Bracco's Registration of CARDIOTEC

Enclosed as Exhibit 2 is a copy of the Consent to Registration signed by both Raine and Bracco (the "Raine Consent"). In the Raine Consent, both Raine and Bracco agree that each party's use of its respective mark (CARDIOTECH v. CARDIOTEC) on its respective goods is not likely to cause confusion, mistake, or deception. With respect to the marks themselves, both Raine and Bracco submit that the marks are distinguished by the "CH" at the end of CARDIOTECH versus the "C" at the end of CARDIOTEC, which not only look different, but also sound different and render each mark with a different commercial impression.

Furthermore, both Raine and Bracco submit that the goods covered by the Raine Application and the Bracco Application do not overlap. The goods covered by the Raine Application are for cardiovascular-related monitoring and recording instruments in International Class 10, while the goods covered by the Bracco Application are for a cardiac imaging pharmaceutical agent in International Class 5. Not only are the goods covered by each application different, but each of the party's goods are also sold to sophisticated parties through different channels of trade. Here there is also no likelihood of confusion among the relevant consumers.

As with the above, neither Raine nor Bracco is aware of any instance of actual confusion. Pursuant to a Trademark Coexistence Agreement entered into by Raine and Bracco, the parties have agreed that should it ever become necessary, they will take appropriate action to avoid any

likelihood of confusion among prospective customers. Schwarzer and Raine have also agreed that they will cooperate with one another to eliminate any likelihood of confusion should it arise. These provisions are for extra assurances, however, as both parties expect that no confusion does or will exist.

There is No Likelihood of Confusion between CARDIOTEC and either SCHWARZER CARDIOTEK or CARDIOTECH

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As stated above, and agreed upon by Bracco, Schwarzer, and Raine, there is no likelihood of confusion between CARDIOTEC and either SCHWARZER CARDIOTEK or CARDIOTECH, due to the distinctions between the marks themselves, and the goods covered by the Bracco Application (i.e. a cardiac imaging agent in Class 5), and the goods covered by the Schwarzer Application and Raine Application (i.e. cardiovascular instruments in Class 10). It is notable that the Schwarzer Application and Raine Application co-exist in Class 10, while the Bracco Application is in Class 5. The Schwarzer Application and the Raine Application are arguably closer to each other than either of them is to the Bracco Application. So too can the Bracco Application co-exist in the distinct field of pharmaceutical agents.

In view of the foregoing, Bracco respectfully requests that the suspension of the Bracco Application be lifted, and that the Bracco Application be restored to the Examining Attorney for publication.

Original PDF file:

PE_1981821544-112204883_._Exhibit_1.pdf

Converted PDF file(s) (3 pages)

Pending File1

Pending File2

Pending File3

Original PDF file:

PE_1981821544-112204883_._Exhibit_2.pdf

Converted PDF file(s) (3 pages)

Pending File1

Pending File2

Pending File3

Response Suspension Inquiry Signature

Signature: /Francesca B. Silverman/ Date: 05/09/2016

Signatory's Name: Francesca B. Silverman

Signatory's Position: Attorney of record, New York bar member

Signatory's Phone Number: 212.715.9144

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.

Serial Number: 86458322

Internet Transmission Date: Mon May 09 12:19:51 EDT 2016

TEAS Stamp: USPTO/RSI-XXX.XXX.XXX.X-2016050912195169 3903-86458322-55082b9e8c09a4db7ff15a8ec5

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 $N/A\hbox{-}N/A\hbox{-}20160509112204883158$



EXHIBIT A

CONSENT TO REGISTRATION

January 21, 2016

Re: Application Ser. No. 86/458,322 - CARDIOTEC

Dear Sir/Madam:

Schwarzer Cardiotek GmbH, a company organized under the laws of Germany with its primary business address located at Im Zukunftspark 3, 74076 Heilbronn, Germany ("Schwarzer") is the owner of U.S. App. Ser. No. 79/157,578 (the "Schwarzer Application") for the mark SCHWARZER CARDIOTEK (the "Schwarzer Mark") covering software for use with medical apparatus and instruments, in particular for the processing of images and the indication of medical-diagnostic data and information; software for use with cardiovascular apparatus used for medical and surgical purposes, for the function of stimulating and processing of cardiac signals, processing of images, display, monitoring and storage of medical diagnostic data and information; electrical circuits and integrated circuits for medical and surgical apparatus and instruments; recorders and recording machines for use with medical apparatus and instruments, namely, electronic data recorders and electronic recorders for storing and archiving information related to medical-diagnostic data in International Class 9; medical apparatus and instruments, namely, Medical instruments to measure blood pressure, cardiac output and other physiological and cardiovascular parameters, electrocardiographs; electromedical apparatus for use in cardiovascular surgery and procedures, electromedical diagnostic instruments for cardiovascular diagnosis, electromedical monitoring apparatus for use in cardiovascular surgery and diagnosis; ultrasonic medical diagnostic apparatus; ultrasonic medical diagnostic apparatus for cardiovascular diagnosis, screening and cardiovascular patient follow-up; medical cardiovascular instruments for cardiovascular diagnostics and for treating cardiovascular diseases; ultrasonic measuring instruments for measuring blood flow; medical apparatus and instruments for haemodynamic and electrophysiologic measurement; electrodes and hemodynamic sensors for use with medical apparatus and instruments; medical electrodes and diagnostic catheters for electrophysiology and for haemodynamic measurements; structural and replacement parts for the aforementioned medical apparatus and instruments in International Class 10; and installation, maintenance and repair of medical apparatus and instruments, in particular of electromedical apparatus and accessories thereof in International Class 37 (collectively, the "Schwarzer Goods").

Bracco Diagnostics Inc., a company organized under the laws of Delaware, with its primary business address located at 259 Prospect Plains Road, Bldg. H, Monroe Township, New Jersey 08831, U.S.A. ("Bracco") is the owner of U.S. Reg. No. 1,279,584 for the mark CARDIOTEC (the "Bracco Mark") covering pharmaceutical preparation, namely, a cardiac imaging agent in International Class 9 (the "Bracco Goods"), which was issued on May 29, 1984 and cancelled on March 17, 2015, and claimed a first use date of August 6, 1982. Bracco is also the owner of U.S. App. Ser. No. 86/458,322 for the Bracco Mark covering the Bracco Goods (the "Bracco Application"), filed on November 19, 2014. The Bracco Application has been denied registration by the PTO, based on the PTO's position that there exists a likelihood of confusion

between the Bracco Mark and the Schwarzer Mark.

Schwarzer and Bracco agree that each party's use of its respective mark on the goods identified herein is not likely to cause confusion, mistake or deception. In particular, the Schwarzer Mark and the Bracco Mark are distinct, in that the Schwarzer Mark contains a "K" at the end, while the Bracco Mark contains a "C." Additionally, the Schwarzer Mark includes the term SCHWARZER before CARDIOTEK, and therefore reinforces the mark's association with Schwarzer. Moreover, the Schwarzer Goods and Bracco Goods are different, and do not overlap. The Schwarzer Goods are for cardiovascular-related software and instruments in International Classes 9 and 10, while the Bracco Goods are for a cardiac imaging pharmaceutical agent in International Class 5. The Schwarzer Goods and Bracco Goods are sold to sophisticated parties in different channels of trade.

Moreover, neither party is aware of any instance of actual confusion. Pursuant to a Trademark Peaceful Coexistence Agreement entered into by the Parties, the Parties have agreed that should it ever become necessary, they will take appropriate action to avoid any likelihood of confusion among prospective customers. The Parties have also agreed that they will cooperate with one another to eliminate any likelihood of confusion should it arise.

In view of the factors noted above, Schwarzer consents to the use and registration by Bracco of the mark CARDIOTEC as shown in Application Ser. No. 86/458,322, for the goods listed therein.

Bu: 92:11 5 - Bu:

Name: Dr. Michael Späth

SCHWARZER CARDIOTEK GMBH

Title: President & COO

Date: 21st January 2016

BRACCO DIAGNOSTICS INC.

Name: VIITORIO PUPPO

Title: President and CEE

Date: 12th Tehruson 2016



EXHIBIT A

CONSENT TO REGISTRATION

December 10, 2015

Re: Application Ser. No. 86/458,322 - CARDIOTEC

Dear Sir/Madam:

Raine Industries Inc., a company organized under the laws of California with its primary business address located at 5963 Olivas Park Drive, Suite F, Ventura, California 93003 ("Raine") the owner of U.S. App. Ser. No. 86/439,828 (the "Raine Application") for the mark CARDIOTECH (the "Raine Mark") covering non-invasive medical equipment, namely, vital sign monitors, blood pressure monitors, spirometers, electrocardiographic recorders, medical ultrasound apparatus, EKG machines, holters, holter monitors, and holter recorders in International Class 10 (the "Raine Goods").

Bracco Diagnostics Inc., a company organized under the laws of Delaware, with its primary business address located at 259 Prospect Plains Road, Bldg. H, Monroe Township, New Jersey 08831, U.S.A. ("Bracco") is the owner of U.S. Reg. No. 1,279,584 for the mark CARDIOTEC (the "Bracco Mark") covering pharmaceutical preparation, namely, a cardiac imaging agent in International Class 5 (the "Bracco Goods"), which was issued on May 29, 1984 and cancelled on March 17, 2015, and claimed a first use date of August 6, 1982. Bracco is also the owner of U.S. App. Ser. No. 86/458,322 for the Bracco Mark covering the Bracco Goods (the "Bracco Application"), filed on November 19, 2014. The Bracco Application has been denied registration by the PTO, based on the PTO's position that there exists a likelihood of confusion between the Bracco Mark and the Raine Mark.

Raine and Bracco agree that each party's use of its respective mark is not likely to cause confusion, mistake or deception. In particular, the Raine Mark and the Bracco Mark are distinct, in that the Raine Mark contains a "CH" at the end, while the Bracco Mark contains a "C." Moreover, the Raine Goods and Bracco Goods are different, and do not overlap. The Raine Goods are for cardiovascular-related monitoring and recording instruments in International Class 10, while the Bracco Goods are for a cardiac imaging pharmaceutical agent in International Class 5. The Raine Goods and Bracco Goods are sold to sophisticated parties in different channels of trade.

Moreover, neither party is aware of any instance of actual confusion. Pursuant to a Trademark Coexistence Agreement entered into by the parties, the parties have agreed that should it ever become necessary, they will take appropriate action to avoid any likelihood of confusion among prospective customers. The parties have also agreed that they will cooperate with one another to eliminate any likelihood of confusion should it arise.

In view of the factors noted above, Raine consents to the use and registration by Bracco of the mark CARDIOTEC as shown in Application Ser. No. 86/458,322, for the goods listed therein.

DATME	INDUSTRIES	TNC
KAINE	INDUSTRIES	TINC.

Ву:

Name: Gordon Huckestein

Title: CEO

Date: 12/10/2015

BRACCO DIAGNOSTICS INC.

Name: VI Honio Puppo

Title: President and CEO

Date: Jaway 12, 2016