

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

June 18, 2020

Tricia Brown

Trademark Examining Attorney

Law Office 121

United States Patent and Trademark Office

|     |                          |                        |
|-----|--------------------------|------------------------|
| RE: | Serial Number            | 88618326               |
|     | Mark                     | HYDROS                 |
|     | Applicant                | Tethers Unlimited Inc. |
|     | Office Action Issue Date | December 18, 2019      |

**APPLICANT'S RESPONSE TO OFFICE ACTION**

The following is the response of Applicant, Tethers Unlimited Inc., by Counsel, to the Office Action sent via email on December 18, 2019, by Examining Attorney Tricia Brown.

**IDENTIFICATION OF GOODS AMENDMENT**

The application was filed in class 009 and Class 012. The examiner finds that the goods listed in goods 009 should fall into class 007 and 012. Accordingly, the Applicant amends and adopts the description of the goods and classes listed in the application as per the suggestion of the examiner as follows except for the term “spacecraft engine” in class 007 instead of the suggested term “aircraft engine”.

**International Class 007:** Space propulsion system, namely, engines for space vehicles; apparatus to generate propellant, namely, spacecraft engines; propulsion system and architecture for use on satellites, space crafts and spacecraft platforms, and secondary payload operations, namely, engines not for land vehicles.

**International Class 012:** Space vehicles, namely, spacecraft and vehicles for use in space having a green propellant thruster; spacecraft thrusters and space vehicle propulsion for use with satellites, and space platforms in the nature of thrusters for space vehicles; space vehicle, namely, thruster flight unit in the nature of thrusters for space vehicles; space vehicle thruster

The amendment does not exceed the scope of the initial filed identification and clarifies the goods and services.

## **RESPONSES TO EXAMINER’S REQUEST FOR INFORMATION**

The examiner has requested information and documentation regarding the goods with wording appearing in the mark which includes fact sheets, instruction manuals, brochures, advertisements and pertinent screenshots of applicant’s website as it relates to the goods and/or services in the application, including any materials using the terms in the applied-for mark.

The Following Documents are submitted (as Miscellaneous statement under additional statements in the TEAS form) and made of record.

**Exhibit A:** Paper number AA7- 145 titled “HYDROS: HIGH PERFORMANCE WATER-ELECTROLYSIS PROPULSION FOR CUBESATS AND MICROSATS” about the HYDROS Propulsion System published in Advances in the Astronautical Sciences Guidance, Navigation and Control 2017, volume 159. This paper satisfies the Examiners request that the Applicant must provide a detailed factual description of the goods and that factual information about the goods must make clear how they operate, salient features, and prospective customers and channels of trade.

**Exhibit B:** Data Sheet about the HYDROS Thruster available on Applicants website which provides prospective customers information about the product.

**Exhibit C1-4:** pertinent screenshots of applicant’s website as it relates to the goods in the application

**Exhibit D:** Press Release dated July 2, 2019

**Exhibit E:** NASA TECHPORT project site screen shot

**Exhibit F:** NASA TechPort Project Data Sheet download

**Exhibit G:** Slides from Applicant’s presentation about the product providing information with regard to the features of the product, and how it operates.

**Exhibit H:** Momentus Space website Screenshot- Water Plasma Propulsion. In response to Examiner’s request for Applicants competitors.

**Exhibit I:** Bradford Space website screenshot – electrothermal propulsion system. In response to Examiner’s request for Applicants competitors.

In addition, the examiner requested the applicant provide responses to the following question for which answers are provided below.

1. Do applicant’s goods use or contain hydroelectric power, hydrogen, or water? If yes, provide information about the specific process that is performed by applicant’s goods using hydroelectric power, hydrogen, or water.

Applicants product does not involve Hydroelectric power. The device uses water and an electrolysis system to convert water into hydrogen and oxygen gas. The evolved gases are then combusted in a bipropellant thruster to provide high-thrust propulsion or utilized as cold gas to provide minimum impulse-bit thrust events. A paper published on the method used by the applicant in Advances in the Astronautical Sciences Guidance, Navigation and Control 2017, volume 159, is attached as Exhibit A.

2. Do applicant’s competitors use hydroelectric power, hydrogen, or water?

There are two companies that maybe considered competitors and are developing propellants that use water. They advertise a Water Plasma propulsion system and Electrothermal Propulsion system. See Exhibit H and I

3. If applicant's goods do not use or contain hydroelectric power, hydrogen, or water, do applicant's goods function the same as competitor's similar goods that use hydroelectric power, hydrogen, or water?

Applicants product uses Water like the above-mentioned competing products. However, Applicant's product does not function in the same manner as the competing products.

### **SUBSTITUTE SPECIMEN**

The Examining Attorney rejected the Applicant's specimen filed with its application dated September 16, 2019 on grounds that the specimens "appears to be mere advertising material".

The applicant herewith submits the following substitute specimens, which consists of photographs of the goods with the mark stamped on it.

Section 37 C.F.R. §2.56(b)(1) states " A trademark specimen should be a label, tag, or container for the goods, or a display associated with the goods" Further clarification is provided in Section 904.03 (b) of the TMEP which states: ***"The trademark may be imprinted in the body of the goods, as with metal stamping; it may be applied by a rubber stamp; or it may be inked on by using a stencil or template. When a trademark is used in this manner, photographs or facsimiles showing the actual stamping or stenciling are acceptable as specimens"***.

The specimens 1 submitted for class 007, is a photograph of the HYDROS Space propulsion system. and the arrow points towards the Trademark stamped on the goods. Specimen 1a is a closeup of the mark found on the goods as the mark cannot be clearly seen on the photograph of the item.

The specimens 2 submitted for class 012 is a photograph of the HYDROS Thruster and the arrow points towards the Trademark stamped on the goods. Specimen 2a is a closeup of the mark found on the goods as the mark cannot be clearly seen on the photograph submitted as specimen 2.

In addition, the statute states that ***"Displays associated with the goods essentially comprise point-of-sale material such as banners, shelf-talkers, window displays, menus, and similar devices."*** These items must be designed to catch the attention of purchasers and prospective purchasers as an inducement to make a sale. *Id.* Further, the display must prominently display

the mark in question and associate it with, or relate it to, the goods. The display must be related to the sale of the goods such that an association of the two is inevitable

The **Specimen 3** consists of a photograph of the applicant's booth at a small sat conference. The display consists of the banner prominently displaying the mark HYDROS along with a picture of the goods. The Banner is prominently displayed, and the mark is noticeably clear so as to catch the attention of a prospective purchaser of the product, and is an inducement to the prospective purchaser as it display the goods associated with the mark as well as provides further information as inducement .

Applicant respectfully submits that the photographs of the goods and banner or display depicted in specimen 1, 1a, 2, 2a and 3 qualifies as an acceptable specimen according to 15 U.S.C. § 1127; T.M.E.P. 904.03(b) and 904.03 (g). In specimens 1 and 2, the mark is "imprinted in the body of the goods", and in specimen 3 the mark is "associated directly with the goods offered for sale" and "bear[s] the trademark prominently." *See* T.M.E.P. 904.03

The Applicant respectfully requests that that examining attorney accepts the substitute specimens submitted herewith and process this application towards allowance.

The applicant further declares according to 37 C.F.R. §2.20 that "The substitute specimen(s) were in use in commerce at least as early as the filing date of the application.

## **ARGUMENT**

Section 2(e)(1) of the Trademark Act prohibits registration of a mark on the Principal Register where the mark as "used on or in connection with the goods of the applicant is merely descriptive . . . of them." 15 U.S.C. § 1052(e). To be merely descriptive, a term must forthwith convey an immediate idea of a quality, feature, function, or characteristic of the relevant goods or services with a "degree of particularity." *The Goodyear Tire & Rubber Co. v. Cont'l Gen. Tire, Inc.*, 70 USPQ2d 1067, 1069 (TTAB 2008). If the information about the product or service is indirect or vague, then the mark is considered suggestive, not descriptive. *See* J. McCarthy, *McCarthy on Trademarks and Unfair Competition* §11.19, at 11-26 (4th ed. 1998). Descriptiveness must be evaluated "in relation to the particular goods for which registration is

sought, the context in which it is being used, and the possible significance that the term would have to the average purchaser of the goods because of the manner of its use or intended use.” Chamber of Commerce of the U.S., 102 USPQ2d at 1219 (quoting *In re Bayer AG*, 82 USPQ2d at 1831).

The Applicant in this response will argue that the term HYDROS is not descriptive of Spacecraft engines, Space Propulsion Systems and Spacecraft Thrusters. The Applicant further argues that the use of the term HYDROS does not prevent the Applicants competitors from describing their products and that the records in the United States Patent and Trademark Office shows that the term hydro or hydros in plural does not bar registration for products that are connected or include water or power or water based.

#### **A. THE MARK IS SUGGESTIVE AND NOT DESCRIPTIVE.**

A mark is suggestive if some imagination, thought, or perception is needed to understand the nature of the goods and/or services described in the mark; whereas a descriptive term immediately and directly conveys some information about the goods and/or services. See *Stoncor Grp., Inc. v. Specialty Coatings, Inc.*, 759 F.3d 1327, 1332, 111 USPQ2d 1649, 1652 (Fed. Cir. 2014) (citing *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1251-52, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012)); TMEP §1209.01(a).

The examiner finds that term HYDROS is merely descriptive of the goods; as it is defined in the American Heritage Dictionary as “water; hydroelectric power” and that this term is descriptive of the applicants goods which use “electrolysis of water to generate hydrogen and oxygen propellant, which are fed to a simple bipropellant thruster” and that the goods are “water based” .

Applicants respectfully submits that the term HYDROS is not descriptive of the goods but that the Applicant's mark is in fact suggestive because "imagination, thought, or perception is required to reach a conclusion on the nature of the goods or services." *In re Quik-Print Shops, Inc.* 616 F.2d 523, 525, 205 U.S.P.Q. 505, 507 (C.C.P.A. 1980, due to the following reasons.

At the outset, the Applicant would like to respectfully submit that the applicants goods are not Water and nor is Hydro-electricity. The Applicants goods include Space propulsion system, an

apparatus to generate propellant for spacecrafts, spacecraft engines, Space vehicles, spacecraft thruster flight.

### **Definitions.**

HYDROS is defined as the plural form of the term HYDRO in several dictionaries including the American Heritage Dictionary cited by the examiner.

- Merriam Webster Dictionary has 2 definitions and states that Hydros is the plural of Hydro. Hydro is defined as
  - 1. an establishment offering hydropathic treatment (as for weight loss) :  
HEALTH SPA
  - 2. hydroelectric power
  - 3. Short for Hydro Power

-Your Dictionary.com also defines it as the plural for hydro and gives it the following meanings.

1. Hydroelectric power.
2. A hydroelectric power plant.

The word Hydros comes from the root word -hydr-, which comes from Greek, where it has the meaning "water." Hydro in general parlance also is associated with water.

### What is Hydroelectric power?

“Hydroelectric energy, also called hydroelectric power or hydroelectricity, is a form of energy that harnesses the power of water in motion—such as water flowing over a waterfall to generate electricity”<sup>1</sup>

“Hydropower or water power (from Greek: ὕδωρ, "water") is power derived from the energy of falling or fast-running water, which may be harnessed for useful purposes. In the late 19th

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<sup>1</sup> nationalgeographic.org, HYDROELECTRIC ENERGY, Resource Library, Encyclopedia.  
<https://www.nationalgeographic.org/encyclopedia/hydroelectric-energy/#:~:text=Hydroelectric%20energy%2C%20also%20called%20hydroelectric,a%20waterfall%E2%80%94to%20generate%20electricity.>

century, hydropower became a source for generating electricity”.<sup>2</sup> Hydro power uses the flow of water to turn a propeller-like piece called a turbine, which then turns a metal shaft in an electric generator, which is the motor that produces electricity”<sup>3</sup> See Evidence A.

In contrast to the definition of what Hydros refers to and what Hydroelectric power is, the Applicant’s goods are generally, Spacecraft Thrusters, Spacecraft engines, and Propulsion Systems which uses a method called “Electrolysis”. As described in the material provided, the Applicants goods uses an electrolysis system designed for zero-G operation to split the water into its constituent elements, hydrogen and oxygen, for bi-propellant combustion through a rocket nozzle. Having no connection to Hydropower or the manner hydropower is used, and because hydropower is not used in space propellants the mark HYDROS does not describe a feature, function, or quality of the goods.

The Applicant’s goods use a process called electrolysis and creates a chemical reaction as opposed to creating electricity.

#### What is Electrolysis?

The Encyclopedia Britannica describes “Electrolysis, process by which electric current is passed through a substance to effect a chemical change. The chemical change is one in which the substance loses or gains an electron (oxidation or reduction)”<sup>4</sup>. Electrolysis of water is specifically described in the Energy.gov website as “the process of using electricity to split water into hydrogen and oxygen. This reaction takes place in a unit called an electrolyzer”.<sup>5</sup> It is an environmentally friendly method of producing Hydrogen using a renewable source. The Term HYDROS is not used in discussing the process of Electrolysis which is chemical reaction as opposed to the process of Hydro Electricity production. See Evidence B.

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<sup>2</sup> HYDROPOWER- <https://en.wikipedia.org/wiki/Hydropower>

<sup>3</sup> USGS.gov. Hydroelectric Power, how it works. [https://www.usgs.gov/special-topic/water-science-school/science/hydroelectric-power-how-it-works?qt-science\\_center\\_objects=0#qt-science\\_center\\_objects](https://www.usgs.gov/special-topic/water-science-school/science/hydroelectric-power-how-it-works?qt-science_center_objects=0#qt-science_center_objects)

<sup>4</sup> Encyclopædia Britannica, The Editors of Encyclopaedia Britannica Title: Electrolysis

Website Name: Published:

February 06, 2020

URL:<https://www.britannica.com/science/electrolysis>

<sup>5</sup> Energy.gov. Hydrogen Production: Electrolysis

<https://www.energy.gov/eere/fuelcells/hydrogen-production-electrolysis>



As stated earlier, for a mark to be considered merely descriptive, it should describe the “quality, feature, function, or characteristic of the relevant goods or services with a degree of particularity.” Hydroelectricity and electrolysis are different concepts. Hydros or Hydroelectricity does not describe any quality, feature, function, or characteristic of the goods which spacecraft engine and thruster. The only common element between the two is Water, and there are many examples of registered trademarks bearing the term Hydro for goods and services that includes water.

The attached paper Exhibit A gives a detailed description of the goods and the manner it functions. It does not describe a process comparable or similar to the production of Hydro electricity or describe a product that features any characteristics of Hydroelectricity.

**b. HYDROS and Water; the mark is suggestive of Water and the Greek water God.**

“Hydros is named as the Greek god of water in some ancient texts, although Hydros is just one of many Greek deities associated with water”.<sup>6</sup>

In addition, HYDRO comes from the Greek root word hydor or hydra to mean water.<sup>7</sup> We have many words in the English language that include the root word hydr- and suggests a connection to water.

The Applicants goods use water to generate its propellant. By using the term HYDROS the Applicant suggesting to the consumer that like the many words that use the root word “hydr” and hark to the Greek god Hydros this product too has a connection to water. Having a connection to water is not a bar for registration of a trademark that includes the word Hydro.

The trademark office has more than 1000 applications and registrations, that use the term HYDROS and have a connection to “water” in the description of their goods and services.

In fact, there are 83 registered trademarks that include the word Hydro in its basic index and “Water” in its description. There are 27 registered trademarks in the principal registry that

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<sup>6</sup> Greek Legends and Myths, Hydros in Greek Mythology.

<https://www.greeklegendsandmyths.com/hydros.html#:~:text=Hydros%20is%20named%20as%20the,gods,%20Hydros%20is%20hardly%20mentioned.>

<sup>7</sup> <https://www.etymonline.com/word/hydro->

include the word Hydro in the mark and include both the terms “Water” and “Power” in the description of the goods. There are 28 registered trademarks that have the word Hydro and have a connection to hydrogen. These marks suggest a connection to Water, power or hydrogen is not bar to registering the term HYDRO or HYDROS due to the mark being merely descriptive. The following marks show that the term Hydro used on goods that have a connection to water and power are not descriptive of the goods and may be registered in the principle registry.

Particularly, Trademark registration number 3658476 for “HYDRO GREEN ENERGY” received a registration in class 007 “ *Water driven electrical power systems consisting of an individual cell or array of cells with a horizontal or vertical axis turbine, a step up transmission, a generator, a duct, shroud, ejector, educator, or streamline or turbulence creating device to enhance power production.*”

Trademark registration number 3669731 for HYDRO+ in class 007 for “*Water driven electrical power systems consisting of an individual cell or array of cells with a horizontal or vertical axis turbine, a step up transmission, a generator, a duct, shroud, ejector, educator, or streamline or turbulence creating device to enhance power production*”

The applicants mark there fore only Suggests a connection to water, the term HYDRO does not describe the manner in which the applicants goods function, it does not describe the goods which are not water or electricity production but are space crafts, engines and thrusters.

## **B. THE TRADEMARK DOES NOT PREVENT OTHERS FROM DESCRIBING THEIR GOODS AND IS THEREFORE NOT DESCRIPTIVE.**

As pointed out by the Examining Attorney, the two major reasons for not protecting descriptive marks are: (1) to prevent the owner of a descriptive mark from inhibiting competition in the marketplace and,

(2) to avoid the possibility of costly infringement suits brought by the trademark or service mark owner.

The goods described for which the mark is used are generally space craft engines, spacecraft thrusters and propellant. The examiner correctly states that water is being increasingly used as

rocket fuel in the industry. However, examination of publication and articles relating rocket fuel, water based propellants and thrusters as well as description of the product or competitive products does not use the term Hydro, Hydroelectric power or Hydros to describe rocket fuel, propellant or thrusters. The Applicant's goods are not rocket fuel. See Exhibit H and I and also Evidence 1- 5 submitted hear with. Looking specifically at the two articles submitted by the examiner, neither articles mention the term Hydros or Hydroelectric power to describe the product, process or feature of water based rocket fuel. The article by Beth Daley in "conversation.com" mentions hydrogen fuel and not hydro electric power. The articles discuss the production of hydrogen fuel but does not make a connection to the term hydro or hydroelectric power as expected by the examiner.

The examiner also cited a publication found in the South West Research Institute. The article from the South West Research Institute does not use the term Hydros to describe liquid propulsion.

In addition the mark HYDROS in connection with the Applicants goods has been used among consumers and the space community since late 2013 or January 2014 as shown by Evidence # 2 submitted. There has not been any claims of inhibition of the right to use the term in the relevant field of commerce or in connection with rocket fuel or similar goods. There has been no instances of possible infringement in any literature describing rocket fuel.

It must be noted that the mark has been used in contracts between applicant and its competitors like Momentus Space who is also developing a water based propellant and with Southwest Research Institute mentioned in the Office action issued on December 18, 2019. Applicant wishes to draw the Examiners attention to Exhibit J : a press release announcing a contract to provide key communications and propulsion capabilities to Southwest Research Institute (SwRI) in support of the NASA PUNCH Mission. The contract includes the term HYDROS thrusters.

The mark HYDROS has been used to identify the applicants goods by the National Aeronautics and Space Administration (NASA) in several of their contracts and publications, as well as by nationally and internationally recognized space publications like spacenews.com, Geekwire, Parabolic arc and Spinoff NASA. The applicant has used the term on its facebook posts, its website, its press releases and tradeshow to refer to its product. No objection has been raised by the space community nor the Applicants competitors with concern that Applicants trademark

prevents others from using the mark to describe similar or competing goods. The mark has been used in the market place and in contracts with competitors and there has been no inhibition of competition.

In light of this the applicant respectfully urges the examiner to let the market decide whether the term is descriptive so as to inhibit competition by allowing the mark to be published. As shown by the evidence submitted, the use of the mark since 2013 has not inhibited competition in the market.

To the extent that any “doubts exist as to whether [the] term is descriptive as applied to the . . . [goods] for which registration is sought, it is the practice of this Board to resolve doubts in favor of the applicant and pass the mark to publication with the knowledge that a competitor of applicant can come forth and initiate an opposition proceeding in which a more complete record can be established.” In *re*Stroh Brewery Co., 34 USPQ2d 1796, 1797 (TTAB 1994); see also *In re* Merrill Lynch, Pierce, Fenner, and Smith Inc., 828 F.3d 1567, 4 USPQ2d 1141, 1144 (Fed. Cir.1987) (citing *In re* Gourmet Bakers, Inc., 173 USPQ 565 (TTAB 1972)).”

The applicant respectfully requests that the examining attorney withdraw the Attorney's descriptiveness rejection and allow registration of the applicant's trademark for the listed goods and services as amended.

### **C. THE MARK HAS ACQUIRED DISTINCTION OVER TIME.**

In the alternative, Applicant alleges that the HYDROS mark, has become distinctive as applied to Applicant's goods as shown by evidence presented. In addition to the mark being a suggestive mark as shown above, Applicant is also entitled to registration of its mark under Trademark Act §2(f), 15 U.S.C. §1052(f), based on acquired distinctiveness.

A mark can overcome a descriptiveness refusal by a showing of acquired distinctiveness through extensive, exclusive, use of the mark. See generally TMEP § 1212 and 15 U.S.C. §1052(f).

“To show that a mark has acquired distinctiveness, an applicant must demonstrate that the relevant public understands the primary significance of the mark as identifying the source of a

product or service rather than the product or service itself.” In re Steelbuilding.com, 415 F.3d 1293, 75 USPQ2d 1420, 1422 (Fed.Cir. 2005) (emphasis added).

The Mark “HYDROS” has been used in connection to the Thruster and Water Based Propulsion System developed and marketed by the Applicant Tether Unlimited Inc since 2013. It has been a source identifier for the goods developed by the applicant as seen in the evidence submitted. The mark has been used in connection with the product developed and delivered by Tethers Unlimited Inc. (The Applicant) in advertisements, press releases by the applicant, used in tradeshows in exhibiting and promoting the applicants products and services, used by NASA in their announcements, used by the government in its orders and contracts, and in several national and international publications . The mark has brand recognition among the relevant public and space community, in connection to the thruster, spacecraft engine and propulsion systems for space crafts offered by the Applicant. The significance of the mark is that the HYDROS propulsion system and engine and thruster is the product of Tethers Unlimited and not that of any other space technology company. The evidence provided shows that the mark HYDROS for the goods listed is, a source identifier for a product by the Applicant.

**Evidence 1.** NASA SpinOff 2020 article titled: Water Powered Engines Offer Satellite Mobility. The A PDF of the publication is submitted with the office action response and the publication can be found at: [https://spinoff.nasa.gov/Spinoff2020/t\\_6.html](https://spinoff.nasa.gov/Spinoff2020/t_6.html).

About: The Spinoff publication by NASA profiles NASA technologies that have transformed into commercial products and services. About 50 spinoff technologies are featured annually in the publication, demonstrating the wider benefits of America’s investment in its space program.

The Article talks about the SBIR funding that allowed Applicant to build two prototypes for testing and that “under NASA’s Tipping Point Solicitation the Space Agency found a corporate partner—Millennium Space Systems—to share the cost of maturing what TUI now calls its HYDROS thrusters, in exchange for three of the resulting propulsion systems for use on its Altair small satellites.” It further explains that the HYDROS M type Thruster were delivered to Millenium and that NASA selected the HYDROS the CubeSat version, to fly on its first

Pathfinder Technology Demonstrator (PTD) project. I clear connection to the mark and the Applicant as the source of the product.

**Evidence 2.** The SatelliteToday.com Publication – VIA SATELLITE article dated January 14, 2014. Titled “Tethers Unlimited: New Thruster to Open up More Doors for CubeSats” by Caleb Henry.

A PDF of the publication is submitted with the office action response and the publication can be found at: <https://www.satellitetoday.com/innovation/2014/01/14/tethers-unlimited-new-thruster-to-open-up-more-doors-for-cubesats/>.

Via Satellite is a publication that has provided essential news and expert business analysis on the global commercial communications satellite industry for over 30 years. Its website claims that its publications are read by satellite executives of more than 160 countries and has 182,000+ Page Views Per Month, 67,500 New Users Per Month, and 44,613 Daily News Feed Subscribers.

The article talks about a new thruster being developed by Tethers Unlimited Inc (The Applicant) which will be called the HYDROS thruster and goes on the state that the United States Air Force signed a contract for 2 thrusters in December 2013. The mark HYDROS is used as a source identifier for the Thruster developed by the Applicant in this publication from 2014 January ( 5 years and 10 months prior to the trademark application). The publication is reaches those in the same channels of trade as any of the applicant’s competitors.

**Evidence 3.** Geekwire.com article dated August 2, 2016 titled “Tethers Unlimited wins \$2.2 million in contracts for satellite mini-thruster system” by Alan Boyle,. T

A PDF of the publication is submitted with the office action response and the publication can be found at <https://www.geekwire.com/2016/tethers-unlimited-hydros/>.

Geekwire was founded in 2011 and is national technology news site. Its reach consists 2M page views per month, 1.2M unique visitors per month, and 300,000 followers on Facebook, Twitter & LinkedIn.

This publication too discusses the thruster being developed by the Applicant and refers to it as the “water-fueled Hydros thrusters for satellite missions”. It states, “The company, based in Bothell, Wash., is developing the Hydros as a safe-to-launch propulsion system for CubeSats and

other small satellites”. Here again, the mark is a source identifier for the propulsion system developed by the applicant.

More recently, prominent websites like SPACENEWS.COM and Parabolic Arc have published articles regarding the propulsion system and thruster by the Applicant called HYDROS.

**Evidence 4:** Parabolic Arc publication dated June 30, 2018, Titled: “NASA Selects Tethers Unlimited’ s HYDROS-C Thruster for First PTD CubeSat Mission” by Doug Messier.

A PDF of the publication is submitted with the office action response and the publication can be found at: <http://www.parabolicarc.com/2018/06/30/nasa-selects-tuis-hydrosc-thruster-ptd-cubesat-mission/>

Parabolic Arc is a news site catering to the New Space industry with more than 35000 unique views per month.

The article clearly makes a connection as to how the public sees the HYDROS thruster as the thruster developed by Tethers Unlimited Inc (TUI) the Applicant. Here again Hydros acts as source identifier for the thruster.

**Evidence 5.** Spacenews.com article dated August 27, 2019 titled, “Water propulsion technologies picking up steam” by Debra Werner.

A PDF of the publication is submitted with the office action response and the publication can be found at: <https://spacenews.com/water-propulsion-technologies-picking-up-steam/>

SpaceNews.com, is an awarding-winning website, which delivers essential coverage to a growing audience of more than 500,000 space professionals and enthusiasts. Its newsletters are essential reading for some of the biggest names in space.

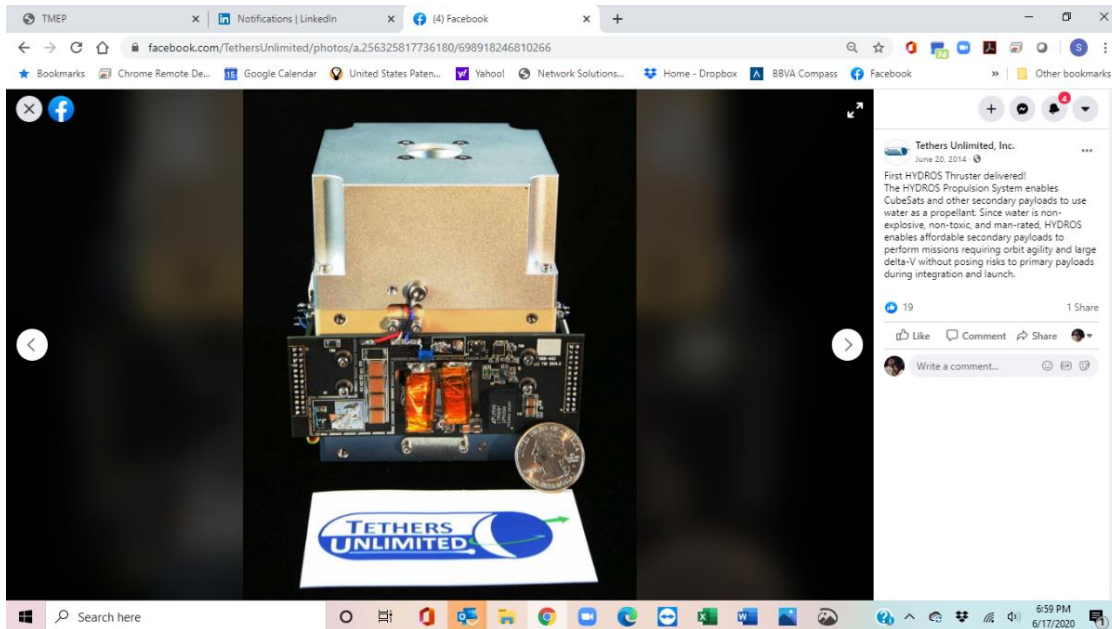
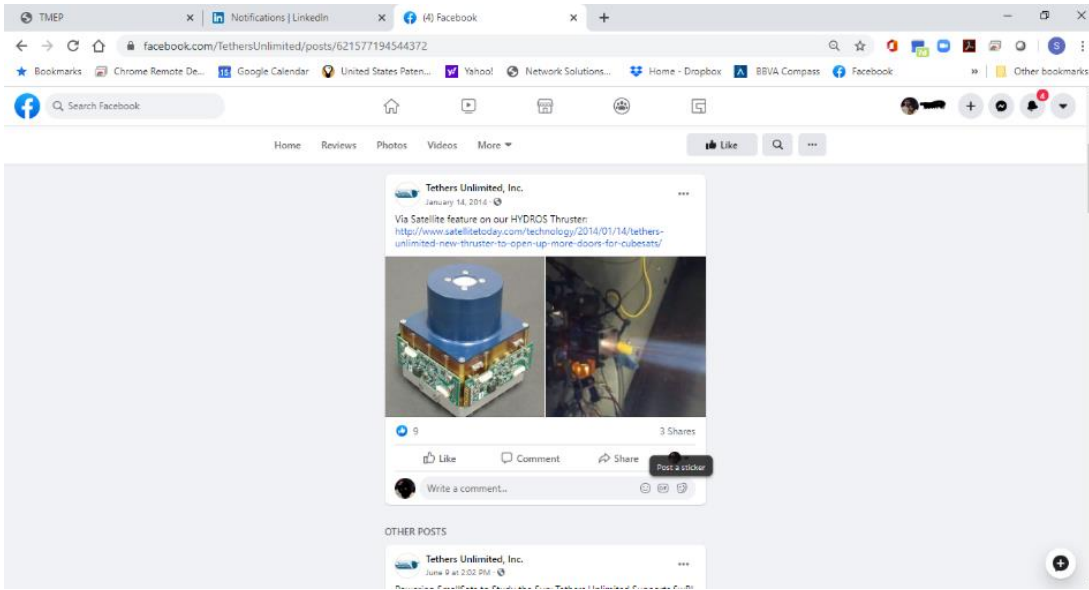
This Article talks about how water based propulsion systems are moving into mainstream in space transportation. The articles talks about several companies developing propulsion systems based on water refers to the propulsion system developed by the Applicant as the HYDROS propulsion system and thruster which was selected by NASA to fly in its first Pathfinder Technology Demonstrator in November 2019.

The evidence submitted above proved that the relevant public in this case the Space Industry, NASA and as well as the general public who follow technology advancements in space associate the mark HYDROS with the Applicant identify the mark HYDROS as the source of a product or service rather than the product or service itself.

In addition, according to TMEP § 1212 and 15 U.S.C. §1052(f), where a mark has become distinctive, when used “on or in connection with the applicant’s goods in commerce” The applicant may present any competent evidence to establish that a mark has acquired distinctiveness. Actual evidence of acquired distinctiveness may be submitted regardless of the length of time the mark has been used. See Ex parte Fox River Paper Corp., 99 USPQ 173, 174 (Comm’r Pats. 1953).

The applicant mark has been exclusively used since 2013 for the listed goods. A contract was signed in late 2013 with the United States Airforce to develop 2 units, which was delivered in 2015. The applicant listed the first date of use in commerce as 2017 in the application because this was the earliest date in which a commercial unit was delivered. However, the mark has been used in order contracts and development contracts promotion and advertisement of the goods since 2014 and the first prototype unit was delivered in 2014. In fact the mark has been in continuous use in interstate commerce as early as January 2014 and therefore more that 5 year prior to the Trademark Application. (See Via Satellite Article of January of 2014 and press releases by Applicant below)





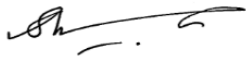
Since then the applicant has developed and delivered HYDROS flight units for NASA as well as to its competitors. Following is a list of recent deliveries of flight units provided by Rob Hoyt the CEO of Tethers Unlimited Inc. (The Applicant)

- 3 HYDROS-M units to Millennium Space Systems in 2018.
- 1 HYDROS-C unit to NASA in 2019
- Applicant has received an order for 1 HYDROS-C unit from Southwest Research Institute in 2020 (SWRI cited by the examiner)
- Applicant has received a RFQ from Millennium Space Systems for 12 HYDROS-M units in May 2020

Based on the above evidence the Applicant respectfully submits that in if Examining attorney is not persuaded that the mark is in fact suggestive and not merely descriptive of the goods, in the alternative, the applicant claims that the mark has acquired distinctiveness according to TMEP § 1212 and 15 U.S.C. §1052(f).

The Applicant has responded to all issues raised in the Office Action. If any further information or response is required, please contact the Applicant's attorney. The attorney may be reached by email at shirazi@dula.com.

Respectfully submitted,



Shirazi Jaleel-Khan Esq.

Attorney of Record

New York and Texas Bar Member