

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Trademark Application of  
D.LIGHT Design, Inc.

Serial No.: 77635586

Filing Date: 2008-12-18

Mark:  


LAURIE ANN MAYES  
Trademark Examining Attorney

Law Office 101

Attorney Docket No.  
379334-999007



04-22-2010

U.S. Patent & Trademark Office Report of Office Action

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**REQUEST FOR RECONSIDERATION AFTER FINAL ACTION**

This responds to the Final Office Action dated October 21, 2009.

**AMENDMENTS**

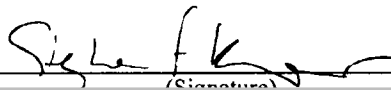
Please delete the identification of good in Class 011 in its entirety, and replace it with:

LIGHT FIXTURES AND LAMPS INTENDED FOR USE WITHOUT  
REGULAR ACCESS TO AN ELECTRIC GRID AND NOT FOR USE IN  
POOLS, SPAS AND LANDSCAPE LIGHTING; ELECTRIC FANS;  
REFRIGERATORS

**CERTIFICATION UNDER 37 C.F.R. 1.10**

I hereby certify that this paper is being deposited with the United States Postal Service as Express Mail, Label No.  
**EM198031890US** in the envelope addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451  
on April 21, 2010.

Stephen F. Kampmeier  
(Name)

  
(Signature)

April 21, 2010  
(Date of Signature)

Serial No.: 77635586  
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**RESPONSE**

**Reg. Nos. 3213915 and 3272795**

The Examiner indicated in her final office action that the refusal as to Reg. Nos. 3213915 and 3272795 was limited to applicant's light fixtures and lamps and that this refusal could be overcome through an appropriate amendment to the identification of those goods. By this response, those goods now explicitly exclude any "use in pools, spas and landscape lighting."

This amendment makes explicit that there is no overlap or relation between the goods as described in the application and the two cited registrations. Additionally, the two identifications now also reflect the marked differences in intended consumers and likely-to-continue channels of trade. The careful, sophisticated purchasing required with regard to an electric light intended for use in a pool or spa is also a relevant factor in a likelihood of confusion analysis. *See e.g.*, "Do not operate unit for more than ten (10) seconds out of the water as submersion is required for cooling," in "Polaris D'Light: Installation and Operation Instructions" available on April 21, 2010 at <http://www.polarispool.com/technicalsupport.aspx> (attached as Exhibit A). These factors, separately and collectively, speak against a finding of a likelihood of confusion. TMEP § 1207.01.

**Reg. No. 2,777,467**

The Examining Attorney has refused registration of this mark as to "batteries, battery chargers" due to a perceived likelihood of confusion with DLIGHT (Reg. No. 2,777,467).

Applicant notes:

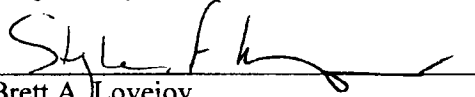
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1. No Affidavit or Declaration of Use (15 U.S.C. §§ 1058) was timely filed on or before 2009-10-28 for DLIGHT (Reg. No. 2,777,467);
2. No appropriate remedial filing has been made to date;
3. The registration will be cancelled, if the owner of said registration does not file an affidavit or declaration of use or excusable nonuse before the end of the grace period. 37 C.F.R. §§2.160(a) and 2.164(b).

Applicant respectfully requests that the examining attorney confirm the status of the cited registration before issuing any final refusal of registration under Trademark Act §2(d). TMEP § 716.02(e).

Based on this submission and the amendment made in this office action response, Applicant respectfully requests that the Examiner withdraw her objections and permit this application pass to publication.

Date: April 21, 2010

Respectfully submitted,  
By:   
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ATTORNEYS FOR APPLICANT

# EXHIBIT A

# Polaris D'Light

## Installation and Operation Instructions

### Important Information

The Polaris D'Light® is designed for installation in an approved niche enclosure. (Sold separately.)

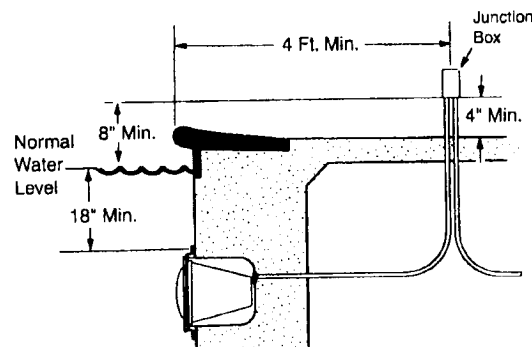
The D'Light meets National Electric Code (NEC) and Canadian Electrical Code requirements. Installation should be performed by a licensed electrician, and conform to all national, state and local codes.

#### **WARNING: To reduce risk of electrical shock:**

- **Read and follow all installation instructions.** Improper installation could result in personal injury and/or property damage, and can void the warranty.
- **Install D'Light so top of fixture is at least 18" (45.7 cm) below the normal water level. Total submersion is required for cooling.**
- Do not operate unit for more than ten (10) seconds out of the water as submersion is required for cooling.
- Use a Class A ground fault circuit interrupter (GFCI) in the branch circuit. Do not use extension cords.
- Power transformer for 12VAC lights should be the isolated winding type with a metal barrier between the primary and secondary windings. Output rating must be: 12VAC, 300 Watt lamp maximum.
- Use solid copper bonding conductor, no smaller than No. 8 AWG (8.4 mm<sup>2</sup>), 6 AWG (13.3 mm<sup>2</sup>) in Canada, to connect the D'Light to the pool/spa structure.
- Permanently ground the light in accordance with NEC or Canadian Electrical Code, and all applicable local code requirements.

Install the D'Light in a vertically oriented wall only.  
**Do not install in pool or spa floors.**

Install the electrical junction box at least 8" (20.23 cm) above the pool water level and no less than 4" (10.16 cm) above the deck or ground. The box must be at least 4' (1.2 m) from the perimeter of the pool unless separated from the pool by a wall or other permanent barrier. Check all applicable codes to ensure compliance.



Multiple D'Light units can be synchronized if wired to the same AC power circuit.

### Installation

**Warning: Disconnect electrical power before installation or repairs.**

#### Niche

The D'Light is designed for installation in an approved niche enclosure (sold separately).

The niche must be installed so the upper most portion of the D'Light fixture is at least 18" (45.7 cm) below the normal water level.

Install and bond conduit to the niche according to NEC or Canadian Electrical Code, and comply with local code requirements.