ESTTA Tracking number:

ESTTA679239 06/19/2015

Filing date:

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	79142478	
Applicant	iRezQ AB	
Applied for Mark	IREZQ	
Correspondence Address	SARAH E NAGAE CHRISTENSEN OCONNOR JOHNSON KINDNESS 1201 THIRD AVENUE, SUITE 3600 SEATTLE, WA 98101 UNITED STATES efiling@cojk.com	
Submission	Appeal Brief	
Attachments	53359 Appeal Brief 061915.pdf(103728 bytes)	
Filer's Name	Sarah E. Nagae	
Filer's e-mail	sarah.nagae@cojk.com	
Signature	/Sarah E. Nagae/	
Date	06/19/2015	



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-		
In	re iRezO AB.	

Application Serial No. 79142478

Applicant

APPLICANT'S EX PARTE APPEAL BRIEF

I. INTRODUCTION

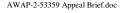
Applicant iRezQ AB ("applicant") hereby appeals the decision of the Trademark Office refusing registration of its trademark, IREZQ.

AWAP-2-53359 Appeal Brief.doc



TABLE OF AUTHORITIES

FEDERAL CASES	<u>Page</u>
Association of Co-Operative Members, Inc. v. Farmland Industries, Inc., 684 F.2d 1134 (5th Cir. 1982)	6
CBS, Inc. v. Morrow, 708 F.2d 1579 (Fed. Cir. 1983)	7
Giant Food, Inc. v. Nation's Foodservice, Inc., 710 F.2d 1565 (Fed. Cir. 1983)	7
In re Computer Communications, Inc., 485 F.2d 1392 (CCPA 1973)	6
In re Elbaum, 211 U.S.P.Q. 639 (T.T.A.B. 1981)	5
In re Viterra Inc., 671 F.3d 1358 (Fed. Cir. 2012)	7
OTHER	
3 J. Thomas McCarthy, <i>McCarthy on Trademarks and Unfair Competition</i> , § 23:47 (4 th ed. 2006)	6
Richard L. Kirkpatrick, Likelihood of Confusion In Trademark Law, § 4:9.2 (2006)	6





II. APPLICANT'S MARK

Applicant has applied to register the mark IREZQ for "Computer software and application software for controlling the operation of audio devices, mobile phones, and the transmission of data, for use in the fields of safety, and prevention of personal injuries, and protection of property; computer software and application software to detect vehicle and personal locations; computer software and application software for provision of traffic information; downloadable databases in the fields of safety, and prevention of personal injuries, and protection of property; temperature sensors; optical sensors; movement sensors; acceleration sensors; humidity sensors; alarm sensors" in International Class 9.

III. THE EXAMINING ATTORNEY'S REFUSAL

The Examining Attorney refuses registration under Section 2(d) of the Trademark Act on the basis of a likelihood of confusion with the mark IREZ and Design in U.S. Registration No. 3526573 as shown below for "Video cameras; Webcams; Computer programs for driving, operating and interfacing video cameras with computers; Computer peripherals."



DOCKET A L A R M

AWAP-2-53359 Appeal Brief.doc

IV. Marks Themselves Are Not Sufficiently Similar to Find a Likelihood of Confusion

Applicant's mark is the five-letter word, IREZQ. The registered mark is the four-letter word IREZ. The registered mark has two syllables ("i-rez") while applicant's mark has three ("i-rez-q"). Overall, the marks do not look alike or sound alike due to the presence of the letter Q in the applicant's mark.

During prosecution, applicant presented quantitative evidence of the relative rareness of marks having word(s) ending with the letter Q. Specifically, applicant submitted the results of a TESS search for live applications/registrations for marks containing words ending in Q which have goods in class 9. The search returned 1395 live marks (see Exhibit A to 8/25/14 Response to Office Action). To compare the relative frequency of marks in class 9 having word(s) that end in Q with marks in class 9 that end in other letters, we conducted searches for a sampling of marks ending in other letters. For this sample, we chose the first five letters of the alphabet, A, B, C, D and E, and the letter Z because it also appeared to be a less-commonly used last letter. These searches returned the following:

Last Letter of Word(s) in Mark	Number of Marks Returned	Comparison with Number of Marks Returned With Word(s) Ending in Q	Exhibit Number in Response to Office Action
A	21053	15.09 There are 1509% more marks that end in A than there are marks that end in Q.	Exhibit B
В	3825	2.74 There are 274% more marks that end in B than there are marks that end in Q.	Exhibit C



DOCKET

Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time** alerts and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

