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Subject: U.S. TRADEMARK APPLICATION NO. 86149523 - ATEK ACCESS TECHNOLOGIES - 401975 -  
Request for Reconsideration Denied - Return to TTAB

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**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)  
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

**U.S. APPLICATION SERIAL NO.** 86149523

**MARK:** ATEK ACCESS TECHNOLOGIES



**CORRESPONDENT ADDRESS:**

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**GENERAL TRADEMARK INFORMATION:**

<http://www.uspto.gov/trademarks/index.jsp>

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**APPLICANT:** ATEK Access Technologies, LLC

**CORRESPONDENT'S REFERENCE/DOCKET NO:**

401975

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**REQUEST FOR RECONSIDERATION DENIED**

**ISSUE/MAILING DATE:** 5/16/2015

*This Action is in response to the applicant's Request for Reconsideration filed on April 24, 2015. Before the issuance of this Action the examining attorney and attorney of record spoke several times via email and telephone in an attempt to resolve the Amendment of Identification of Goods issue via an Examiner's Amendment. The applicant is encouraged to adopt the examining*

*attorney's Identification of Goods Amendment suggestions identified below to obviate this refusal.*

*In addition, the Section 2(d) Likelihood of Confusion Refusal has been modified and limited to International Class 9 only. The attorney of record and the examining attorney discussed the option to divide out International Class 9 from this application in order to move the other international classes forward towards registration.*

*The applicant has satisfied the disclaimer requirement addressed in the Final Office Action. See TMEP §§715.03(a)(ii)(B), 715.04(a).*

The trademark examining attorney has carefully reviewed applicant's request for reconsideration and is denying the request for the reasons stated below. See 37 C.F.R. §2.63(b)(3); TMEP §§715.03(a)(ii)(B), 715.04(a). The following requirement(s) and/or refusal(s) made final in the Office action dated October 24, 2014 are maintained and continue to be final:

- Section 2(d) Likelihood of Confusion Refusal – Partial, International Class 9 Only
- Amendment of Identification of Goods – Partial as to the Goods Identified Below in International Classes 6 and 9 Only

See TMEP §§715.03(a)(ii)(B), 715.04(a).

In the present case, applicant's request has not resolved all the outstanding issue(s), nor does it raise a new issue or provide any new or compelling evidence with regard to the outstanding issue(s) in the final Office action. In addition, applicant's analysis and arguments are not persuasive nor do they shed new light on the issues. Accordingly, the request is denied.

If applicant has already filed a timely notice of appeal with the Trademark Trial and Appeal Board, the Board will be notified to resume the appeal. See TMEP §715.04(a).

If no appeal has been filed and time remains in the six-month response period to the final Office action, applicant has the remainder of the response period to (1) comply with and/or overcome any outstanding final requirement(s) and/or refusal(s), and/or (2) file a notice of appeal to the Board. TMEP §715.03(a)(ii)(B); see 37 C.F.R. §2.63(b)(1)-(3). The filing of a request for reconsideration does not stay or extend the time for filing an appeal. 37 C.F.R. §2.63(b)(3); see TMEP §§715.03, 715.03(a)(ii)(B), (c).

#### **SECTION 2(d) LIKELIHOOD OF CONFUSION REFUSAL – PARTIAL INTERNATIONAL CLASS 9 ONLY**

*This refusal has been limited to International Class 9 only. In the applicant's Request for Reconsideration the applicant included a Coexistence Agreement with the owner of the cited registered marks. As discussed with the attorney of record, this Agreement does not obviate the finding of likelihood of confusion. The Agreement does not address the applicant's current applied-for mark and the Agreement is from 2008. Therefore, this refusal is maintained and continued to be Final.*

Registration of the applied-for mark remains refused as to International Class 9 because of a likelihood of confusion with the marks in U.S. Registration Nos. **2564858** and **2704493**. Trademark Act Section 2(d), 15 U.S.C. §1052(d); see TMEP §§1207.01 *et seq.* See the previously enclosed registrations.

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely that a potential consumer would be confused or mistaken or deceived as to the source of the goods and/or services of the applicant and registrant. See 15 U.S.C. §1052(d). The court in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) listed the principal factors to be considered when determining whether there is a likelihood of confusion under Section 2(d). See TMEP §1207.01. However, not all the factors are necessarily relevant or of equal weight, and any one factor may be dominant in a given case, depending upon the evidence of record. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d 1344, 1355, 98 USPQ2d 1253, 1260 (Fed. Cir. 2011); *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); see *In re E. I. du Pont*, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity of the goods, and similarity of trade channels of the goods. See *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593 (TTAB 1999); TMEP §§1207.01 *et seq.*

### *Similarity of the Marks*

The respective marks are all substantially similar in sound, appearance, and meaning. Although marks are compared in their entireties, one feature of a mark may be more significant or dominant in creating a commercial impression. See *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 751 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii). Greater weight is often given to this dominant feature when determining whether marks are confusingly similar. See *In re Nat'l Data Corp.*, 753 F.2d at 1058, 224 USPQ at 751. In addition, consumers are generally more inclined to focus on the first word, prefix, or syllable in any trademark or service mark. See *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1372, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005); *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) (“it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered” when making purchasing decisions). Therefore, in this case, the dominant and first word (or only word) in the marks in this comparison is the term “ATEK.” Consumers are likely to focus on the dominant word “ATEK” in all of the marks in this comparison, and are likely to be confused as to the source of the origin of the marks in this comparison.

In addition, the marks sound similar because of the presence of the term “ATEK” in all of the marks. Similarity in sound alone may be sufficient to support a finding that the marks are confusingly similar. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); see *In re 1st USA Realty Prof'ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007); TMEP §1207.01(b)(iv).

Lastly, in addition to being substantially similar in regards to sound and appearance, the connotation and commercial impression does not change between the marks when used in connection with the applicant and registrant's goods. Thus, the marks are confusingly similar.

### *Similarity of the Goods*

In addition to the marks being similar in regards to sound, appearance, and meaning, the marks are also used in connection with similar goods. In this case the applicant's mark is used in connection with a variety of electronic and computer related goods, such as “Electronic motion sensitive switches,

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