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Exparte Appeal

Number: 86152117**Status:** Pending**Filing Date:** 05/20/2015**Status Date:** 05/20/2015**General Contact Number:** 571-272-8500**Paralegal Name:** LALITA GREENE**Plaintiff****Name:** Forney Industries Inc.**Correspondence:** William W. Cochran

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Serial #: 86152117Application File**Application Status:** Ex Parte Appeal Pending**Prosecution History**

#	Date	History Text
3	05/20/2015	INSTITUTED
<u>2</u>	05/20/2015	<u>APPEAL ACKNOWLEDGED</u>
<u>1</u>	05/20/2015	<u>APPEAL TO BOARD</u>

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06-25-2015

U.S. Patent & TMO/TM Mail Rpt Dt. #22

ESTTA Tracking number: **ESTTA673428**

Filing date: **05/20/2015**

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

Application Serial No.	86152117
Applicant	Forney Industries Inc.

Notice of Appeal

Notice is hereby given that Forney Industries Inc. appeals to the Trademark Trial and Appeal Board the refusal to register the mark depicted in Application Serial No. 86152117.

The refusal to register has been appealed as to the following classes of goods/services:

- Class 006. First Use: 2011/03/00 First Use In Commerce: 2011/03/00
All goods and services in the class are appealed, namely: Metal hardware springs, metal chains, steel chains, metal rods for brazing and welding, silver solder, lead free solderwire used in metal working, metal welding cable, welding wire
- Class 007. First Use: 2007/10/00 First Use In Commerce: 2007/10/00
All goods and services in the class are appealed, namely: Welding torches, power-operated grinding wheels, abrasive wheels for power-operated grinders, wire brushes for use in machines, gas-operated welding machines, sanding discs for metal working, weldingkits comprising torches and gauges; parts for compressed-air tools, namely, couplings valves, switches, compressors, clamping tools and injectors, cutting attachments, nozzles, torch handles and goggles, precision machine tools, namely, hard metal tools, poly crystalline diamond(PCD) tools, and diamond-coated and diamond-uncoated tools, and hard metal tools, all for use in the cutting and forming of materials by others; wire brushes for use in machines
- Class 008. First Use: 2011/03/00 First Use In Commerce: 2011/03/00
All goods and services in the class are appealed, namely: Hacksaw blades, files
- Class 009. First Use: 2011/07/00 First Use In Commerce: 2011/07/00
All goods and services in the class are appealed, namely: Welding helmets, welding masks, weldinglens for use in helmets and shields, respirators other than for artificial respiration, dust masks, battery terminal connector clamps, jumper cables, protective ear coverings, safety eyewear, magnetsfor industrial purposes
- Class 011. First Use: 2012/02/00 First Use In Commerce: 2012/02/00
All goods and services in the class are appealed, namely: Propane torch for clearing vegetation and propane torch for heating roofing materials, propane torch for melting ice and flashlights
- Class 016. First Use: 2008/08/00 First Use In Commerce: 2008/08/00
All goods and services in the class are appealed, namely: Paint markers for highlighting and marking metals, window markers, Industrial marking products, namely, soapstone
- Class 017. First Use: 2011/03/00 First Use In Commerce: 2011/03/00
All goods and services in the class are appealed, namely: Plastic tape for use in auto safety

Respectfully submitted,
/William W. Cochran/
05/20/2015

William W. Cochran

Attorney of record

Cochran Freund & Young LLC

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UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

MAILED: May 20, 2015

IN RE:
Forney Industries Inc.

SERIAL NO. 86152117

APPEAL RECEIVED: 05/20/2015

BRIEF DUE: 7/19/2015

William W. Cochran
Cochran Freund & Young LLC
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ESTTA673428

The appeal and appeal fee in the above-entitled application were received on the date indicated above.

The Trademark Rules of Practice provide that the brief of the applicant must be filed within sixty days after the date of the appeal. Applicant must also indicate, not later than ten days after the due date for applicant's reply brief, if an oral hearing is desired.

If applicant has pending, or has filed with its notice of appeal, a request for reconsideration, an amendment, an amendment to allege use, a request to divide, or a petition in connection with its application, applicant should contact the Board at 571-272-8500 and speak to the paralegal to whom this appeal has been assigned.

Randy Nieders

From: Randy Nieders <rjnieders@att.net>
Sent: Sunday, June 14, 2015 2:27 PM
To: Emily.carlsen@uspto.gov
Subject: FW: Registration # 86152117 and 86269096
Attachments: DACO Decision.pdf

Sorry, too much data, I removed the files all but the Dismissal,

From: Randy Nieders [<mailto:rjnieders@att.net>]
Sent: Sunday, June 14, 2015 1:47 PM
To: 'Emily.carlsen@uspto.gov'
Subject: Registration # 86152117 and 86269096

Emily K. Carlsen
Trademark Attorney
Law Office 103

Emily, I am sending this to make you aware of a change of events regarding the Forney Claims and Registrations above. The reason I am writing this is that they Sued me and my Company, DACO of Missouri, DBA as KDAR Company for color infringement in regards to their color trademark. You have ruled several times on their requests and since the owner, Steve Anderson, CEO President of Forney Industries specifically named my company in their responses I am obligated to inform you of the outcome of that law suit.

For reference to his signed declaration that names my company, I have attached both of your responses and their responses referring to the law suit.

Case 86152117, you sent the Office out refusal on 4/14/14
They responded on 10/14/14 with the declaration from Steven Anderson, CEO and President that refers to my Company and the law suit in section 8 and 13 of his declaration
You sent a Final Refusal on 11/19/2014 and the filed an Appeal on May 20, 2014, that looks like it was late by one day.

Case 86269096, you sent the Office out refusal on 9/16/2014 that was filed for the same color trademark as above
They responded on 3/17/2015 with the declaration from Steven Anderson, CEO and President that refers to my Company and the law suit in section 8 and 13 of his declaration
You sent final refusal on this case 5/14,2015

On May 29,2015, the United States District Court for the District of Colorado, Case 14-cv-01236-CMA-MEH, Filed a complete Dismissal under Summary Judgement, dismissing the case with Prejudice in favor of the defendant DACO of Missouri, Inc
Please see attached decision.

No need to respond, but I wanted you to know about the court decision in reference to Steven Anderson, CEO and President of Forney in his declaration referring to the suit.

Respectively submitted,

Randal Nieders

• President
DACO of Missouri, Inc
314-406-2764

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