

To: Izon Science Limited (nytrademarks@klgates.com)
Subject: U.S. TRADEMARK APPLICATION NO. 77751792 - IZON - N/A
Sent: 9/11/2009 11:58:06 AM
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[Attachment - 2](#)
[Attachment - 3](#)
[Attachment - 4](#)
[Attachment - 5](#)
[Attachment - 6](#)
[Attachment - 7](#)
[Attachment - 8](#)
[Attachment - 9](#)
[Attachment - 10](#)
[Attachment - 11](#)
[Attachment - 12](#)

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77751792

MARK: IZON

77751792

CORRESPONDENT ADDRESS:

FRANK L. POLITANO
K&L GATES LLP
1 NEWARK CTR FL 10
NEWARK, NJ 07102-5237

RESPOND TO THIS ACTION:

<http://www.uspto.gov/teas/eTEASpageD.htm>

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Izon Science Limited

CORRESPONDENT'S REFERENCE/DOCKET NO :

N/A

CORRESPONDENT E-MAIL ADDRESS:

nytrademarks@klgates.com

OFFICE ACTION

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

ISSUE/MAILING DATE: 9/11/2009

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

Section 2(d) Refusal – Likelihood Of Confusion

Registration of the applied-for mark is refused because of a likelihood of confusion with the marks in U.S. Registration Nos. 3645710, 3188278,

and 3645716. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the 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 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 of 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. *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 Opus One, Inc.*, 60 USPQ2d 1812 (TTAB 2001); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593 (TTAB 1999); *In re Azteca Rest. Enters., Inc.*, 50 USPQ2d 1209 (TTAB 1999); TMEP §§1207.01 *et seq.*

Applicant is applying for IZON for use with Analysis, sensing, measuring and control apparatus and instruments for scientific use; nanoparticle analysis apparatus and instruments; scientific instruments for detecting the presence of very small particles; scientific instruments for measuring and counting viruses; control apparatus; scientific, technical and electric apparatus and instruments; parts and fittings for all the aforesaid goods.

The prior registrations are as follows:

- IXON for use with, in part, Spectacles in the nature of non-prescription sunglasses, sport eyewear, namely, motorcycle goggles; spectacle cases; and
- IZON for use with EYEWEAR, NAMELY, EYEGLOSS LENSES, SPECTACLES, AND CONTACT LENSES FOR REFRACTIVE CORRECTION OF BOTH LOW AND HIGH ORDER OPTICAL ABERRATIONS.

Comparison of the Marks

In a likelihood of confusion determination, the marks are compared for similarities in their appearance, sound, meaning or connotation and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973); TMEP §1207.01(b). Similarity in any one of these elements may be sufficient to find a likelihood of confusion. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1043 (TTAB 1987); *see* TMEP §1207.01(b).

In this case, the marks are identical (IZON) or phonetically equivalent (IXON).

Comparison of the Goods

The goods of the parties need not be identical or directly competitive to find a likelihood of confusion. *See Safety-Kleen Corp. v. Dresser Indus., Inc.*, 518 F.2d 1399, 1404, 186 USPQ 476, 480 (C.C.P.A. 1975); TMEP §1207.01(a)(i). Rather, they need only be related in some manner, or the conditions surrounding their marketing are such that they would be encountered by the same purchasers under circumstances that would give rise to the mistaken belief that the goods come from a common source. *In re Total Quality Group, Inc.*, 51 USPQ2d 1474, 1476 (TTAB 1999); TMEP §1207.01(a)(i); *see, e.g., On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086-87, 56 USPQ2d 1471, 1475-76 (Fed. Cir. 2000); *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1566-68, 223 USPQ 1289, 1290 (Fed. Cir. 1984).

Applicant's identified goods are related to the registrant's identified goods because applicant's broadly identified goods encompass the prior registrants' more narrowly identified goods. Likelihood of confusion is determined on the basis of the goods and/or services as they are identified in the application and registration. *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 1267-68, 62 USPQ2d 1001, 1004-05 (Fed. Cir. 2002); *In re Shell Oil Co.*, 992 F.2d 1204, 1207 n.4, 26 USPQ2d 1687, 1690 n.4 (Fed. Cir. 1993); TMEP §1207.01(a)(iii).

In this case, applicant's goods are identified broadly. Therefore, it is presumed that the application encompasses all goods of the type described, including those in the registrant's more specific identification, that they move in all normal channels of trade, and that they are available to all potential customers. *See* TMEP §1207.01(a)(iii); *see, e.g., In re Americor Health Servs.*, 1 USPQ2d 1670, 1670-71 (TTAB 1986); *In re Equitable Bancorporation*, 229 USPQ 709, 710 (TTAB 1986).

The examining attorney must resolve any doubt regarding a likelihood of confusion in favor of the prior registrant. TMEP §1207.01(d)(i); *see Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1025 (Fed. Cir. 1988).

The similarity in the marks and the goods creates a likelihood of confusion among consumers as to the source of the goods. Therefore, applicant's mark is refused registration under Section 2(d) of the Trademark Act.

Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

Prior Pending Application

The filing date of pending Application Serial No. 77077393 precedes applicant's filing date. See attached referenced application. If the mark in the referenced application registers, applicant's mark may be refused registration under Trademark Act Section 2(d) because of a likelihood of confusion between the two marks. See 15 U.S.C. §1052(d); 37 C.F.R. §2.83; TMEP §§1208 *et seq.* Therefore, upon receipt of applicant's response to this Office action, action on this application may be suspended pending final disposition of the earlier-filed referenced application.

In response to this Office action, applicant may present arguments in support of registration by addressing the issue of the potential conflict between applicant's mark and the mark in the referenced application. Applicant's election not to submit arguments at this time in no way limits applicant's right to address this issue later if a refusal under Section 2(d) issues.

Nonetheless, applicant must respond at this time to the above refusal and following requirements in order to avoid abandonment of the application.

Identification of Goods

The wording in the identification of goods is indefinite and must be clarified because it is too broad and could include goods in other international classes. See TMEP §§1402.01, 1402.03. Applicant may substitute the following wording, if accurate:

Class 9: Analysis, sensing, measuring and control apparatus and instruments for scientific use, namely, **{specify common commercial name of goods}**; nanoparticle analysis apparatus and instruments; scientific instruments for detecting the presence of **{specify small particles with greater specificity or indicate a field of use}**; scientific instruments for measuring and counting viruses; control apparatus, **namely, {specify common commercial name}**; scientific, technical and electric apparatus and instruments, **namely, {specify common commercial name}**; **component parts** for all the aforesaid goods

Class 42: Research, design and development services, **namely**, research, design and development of analysis, sensing, measuring, and control apparatus for scientific use

Identifications of goods can be amended only to clarify or limit the goods; adding to or broadening the scope of the goods is not permitted. 37 C.F.R. §2.71(a); see TMEP §§1402.06 *et seq.*, 1402.07. Therefore, applicant may not amend the identification to include goods that are not within the scope of the goods set forth in the present identification.

For assistance with identifying and classifying goods and/or services in trademark applications, please see the online searchable *Manual of Acceptable Identifications of Goods and Services* at <http://tess2.uspto.gov/netathtml/tidm.html>. See TMEP §1402.04.

Multiple Class Application

If applicant prosecutes this application as a combined, or multiple-class application, then applicant must comply with each of the following for those goods and/or services based on an intent to use the mark in commerce under Trademark Act Section 1(b):

- (1) Applicant must list the goods and/or services by international class; and
- (2) Applicant must submit a filing fee for each international class of goods and/or services not covered by the fee already paid (current fee information should be confirmed at <http://www.uspto.gov>).

See 15 U.S.C. §§1051(b), 1112, 1126(e); 37 C.F.R. §§2.34(a)(2)-(3), 2.86(a); TMEP §§1403.01, 1403.02(c).

Response Guidelines

There is no required format or form for responding to an Office action. The Office recommends applicants use the Trademark Electronic Application System (TEAS) to respond to Office actions online at <http://www.uspto.gov/teas/index.html>. If applicant responds on paper via regular mail, the response should include the title "Response to Office Action" and the following information: (1) the name and law office number of the examining attorney, (2) the serial number and filing date of the application, (3) the date of issuance of this Office action, (4) applicant's name, address, telephone number and e-mail address (if applicable), and (5) the mark. 37 C.F.R. §2.194(b)(1); TMEP §302.03(a).

In the response, applicant should explicitly address each refusal and/or requirement raised in the Office action. If a refusal has issued, applicant may wish to argue against the refusal, i.e., submit arguments and/or evidence as to why the refusal should be withdrawn and why the mark should register. To respond to requirements, applicant should set forth in writing the required changes or statements.

The response must be signed by applicant or someone with legal authority to bind applicant (***i.e., a corporate officer of a corporate applicant, the equivalent of an officer for unincorporated organizations or limited liability company applicants, a general partner of a partnership applicant,***

each applicant for applications with multiple individual applicants). TMEP §§605.02, 712. The signer must personally sign and date the response or manually enter their electronic signature in the signature block. TMEP §605.02

If applicant has questions about its application or this Office action, please contact the assigned trademark examining attorney at the telephone number below.

/Heather Biddulph/
Heather Biddulph
Law Office 104
Phone No. (571) 272-8190
Fax No. (571) 273-8190

RESPOND TO THIS ACTION: Applicant should file a response to this Office action online using the form at <http://www.uspto.gov/teas/eTEASpageD.htm>, waiting 48-72 hours if applicant received notification of the Office action via e-mail. For *technical* assistance with the form, please e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned examining attorney. **Do not respond to this Office action by e-mail; the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

DESIGN MARK

Serial Number

77077393

Status

NOTICE OF ALLOWANCE - ISSUED

Word Mark

IZON

Standard Character Mark

Yes

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Ophthonix, Inc. CORPORATION DELAWARE 1491 Poinsettia Avenue Vista
CALIFORNIA 92081

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Eyewear, namely, eyeglasses, eyeglass lenses and prescription sunglass
lenses.

Prior Registration(s)

3188278

Filing Date

2007/01/05

Examining Attorney

ROSSMAN, MARY

Attorney of Record

Jennifer Lee Taylor

IZON

DESIGN MARK

Serial Number

77453771

Status

REGISTERED

Word Mark

IXON

Standard Character Mark

Yes

Registration Number

3645710

Date Registered

2009/06/30

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Access Equip Motos France SOCIÉTÉ PAR ACTIONS SIMPLIFIÉE (SAS) FRANCE
Rue de Saint-veran Macon FRANCE 71000

Goods/Services

Class Status -- ACTIVE. IC 012. US 019 021 023 031 035 044. G & S:
Pannier bags for motorcycles; saddlebags for motorcycles; motor
vehicle alarm systems.

Goods/Services

Class Status -- ACTIVE. IC 016. US 002 005 022 023 029 037 038 050.
G & S: Map covers of leather or imitation of leather, in particular
for motorbikes.

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Spectacles in the nature of non-prescription sunglasses, sport
eyewear, namely, motorcycle goggles; spectacle cases; protection
devices for personal use against accidents not including helmets,
namely, articles of protective clothing for wear by motorcyclists for
protection against accident or injury, face protection shields; gloves
for protection against accidents; reflective vests for personal

protection against accidents; reflectors for the prevention of accidents, namely, optical reflectors; gloves for protection against accidents; clothing for protection against accidents, irradiation and fire; clothes for protection against fire; shoes for protection against accidents and fire; ear plugs not for medical purposes; safety restraints other than for vehicle seats or sports equipment; radios; CD-ROM players; bags specially adapted for protective helmets.

Goods/Services

Class Status -- ACTIVE. IC 018. US 001 002 003 022 041. G & S: Leather and imitation of leather, animal skins, hides; trunks and traveling bags; umbrellas, parasols and walking sticks, whips and saddlery; fastenings and trees for saddles; leather straps; school bags, business card cases, pocket wallets; leather ware, namely, key cases; briefcases; purses, not of precious metals; sling bags for carrying children, traveling bags; bags for campers, namely, all-purpose camping equipment carrying bags; rucksacks, hand bags, leather and textile shopping bags; bags for climbers, namely, rucksacks, backpacks; beach bags, garment bags for travel; leather ware, namely, leather bags; all purpose carrying bags for use with motocross safety gear, including helmets.

Goods/Services

Class Status -- ACTIVE. IC 025. US 022 039. G & S: Clothes, namely, shirts, jackets, pants, sweatshirts, scarves, collars, bandanas, socks, belts and underwear; shoes except orthopedic shoes, headwear; clothes, shoes, headgear of leather or imitation of leather, namely, shirts, jackets, pants, one piece motorcycle suits, and gloves; jackets, trousers, vests, suits in particular intended for riding motorbikes; necklets, visors, collar protectors, balaclavas, bandanas; masks covering the mouth and nose against the cold, namely, ski masks; socks, belts, money belts; underwear; shoes, boots; sports shoes; non-slipping devices for shoes, namely, boot covers with non-skid soles; shoes and boots for riding motorbikes; overshoes; overboots; gloves, undergloves; overgloves; mittens; all these goods being intended for riding motorbikes.

Foreign Country Name

FRANCE

Foreign Priority

FOREIGN PRIORITY CLAIMED

Foreign Application Number

083553292

Foreign Filing Date

2008/02/04

Foreign Registration Number

083553292

Print: Sep 11, 2009

77453771

Foreign Registration Date

2008/02/04

Foreign Expiration Date

2018/02/04

Prior Registration(s)

3389060

Translation Statement

The mark "IXON" has no meaning in a foreign language.

Filing Date

2008/04/21

Examining Attorney

CORWIN, CHARLOTTE

Attorney of Record

Brooks R. Bruneau

IXON

DESIGN MARK

Serial Number

77454754

Status

REGISTERED

Word Mark

IXON

Standard Character Mark

No

Registration Number

3645716

Date Registered

2009/06/30

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Owner

Access Equip Motos France SOCIÉTÉ PAR ACTIONS SIMPLIFIÉE (SAS) FRANCE
Rue de Saint-veran Macon FRANCE 71000

Goods/Services

Class Status -- ACTIVE. IC 012. US 019 021 023 031 035 044. G & S:
Pannier bags for motorcycles; saddlebags for motorcycles; motor
vehicle alarm systems.

Goods/Services

Class Status -- ACTIVE. IC 016. US 002 005 022 023 029 037 038 050.
G & S: Map covers of leather or imitation of leather, in particular
for motorbikes.

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Spectacles in the nature of non-prescription sunglasses, sport
eyewear, namely, motorcycle goggles; spectacle cases; protection
devices for personal use against accidents not including helmets,
namely, articles of protective clothing for wear by motorcyclists for
protection against accident or injury, face protection shields; gloves
for protection against accidents; reflective vests for personal

protection against accidents; reflectors for the prevention of accidents, namely, optical reflectors; gloves for protection against accidents; clothing for protection against accidents, irradiation and fire; clothes for protection against fire; shoes for protection against accidents and fire; ear plugs not for medical purposes; safety restraints other than for vehicle seats or sports equipment; radios; CD-ROM players; bags specially adapted for protective helmets.

Goods/Services

Class Status -- ACTIVE. IC 018. US 001 002 003 022 041. G & S: Leather and imitation of leather, animal skins, hides; trunks and traveling bags; umbrellas, parasols and walking sticks, whips and saddlery; fastenings and trees for saddles; leather straps; school bags, business card cases, pocket wallets; leather ware, namely, key cases; briefcases; purses, not of precious metals; sling bags for carrying children, traveling bags; bags for campers, namely, all-purpose camping equipment carrying bags; rucksacks, hand bags, leather and textile shopping bags; bags for climbers, namely, rucksacks, backpacks; beach bags, garment bags for travel; leather ware, namely, leather bags; all purpose carrying bags for use with motocross safety gear, including helmets.

Goods/Services

Class Status -- ACTIVE. IC 025. US 022 039. G & S: Clothes, namely, shirts, jackets, pants, sweatshirts, scarves, collars, bandanas, socks, belts and underwear; shoes except orthopedic shoes, headwear; clothes, shoes, headgear of leather or imitation of leather, namely, shirts, jackets, pants, one piece motorcycle suits, and gloves; jackets, trousers, vests, suits in particular intended for riding motorbikes; necklets, visors, collar protectors, balaclavas, bandanas; masks covering the mouth and nose against the cold, namely, ski masks; socks, belts, money belts; underwear; shoes, boots; sports shoes; non-slipping devices for shoes, namely, boot covers with non-skid soles; shoes and boots for riding motorbikes; overshoes; overboots; gloves, undergloves; overgloves; mittens; all these goods being intended for riding motorbikes.

Foreign Country Name

FRANCE

Foreign Priority

FOREIGN PRIORITY CLAIMED

Foreign Application Number

083553293

Foreign Filing Date

2008/02/04

Foreign Registration Number

083553293

Foreign Registration Date

2008/02/04

Foreign Expiration Date

2018/02/04

Prior Registration(s)

3389060

Description of Mark

The mark consists of the word "IXON" in stylized lettering.

Colors Claimed

Color is not claimed as a feature of the mark.

Translation Statement

The mark has no meaning in a foreign language.

Filing Date

2008/04/22

Examining Attorney

CORWIN, CHARLOTTE

Attorney of Record

Brooks R. Bruneau

AXON

DESIGN MARK

Serial Number

78976578

Status

REGISTERED

Word Mark

IZON

Standard Character Mark

Yes

Registration Number

3188278

Date Registered

2006/12/19

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Ophthonix, Inc. CORPORATION DELAWARE 1491 Poinsettia Avenue Vista
CALIFORNIA 92081

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
EYEWEAR, NAMELY, EYEGLASS LENSES, SPECTACLES, AND CONTACT LENSES FOR
REFRACTIVE CORRECTION OF BOTH LOW AND HIGH ORDER OPTICAL ABERRATIONS.
First Use: 2005/05/19. First Use In Commerce: 2005/06/02.

Filing Date

2004/07/20

Examining Attorney

WILLISTON, JENNIFER

Attorney of Record

Jennifer Lee Taylor

IZON

To: Izon Science Limited (nytrademarks@klgates.com)
Subject: U.S. TRADEMARK APPLICATION NO. 77751792 - IZON - N/A
Sent: 9/11/2009 11:58:09 AM
Sent As: ECOM104@USPTO.GOV
Attachments:

IMPORTANT NOTICE REGARDING YOUR TRADEMARK APPLICATION

Your trademark application (Serial No. 77751792) has been reviewed. The examining attorney assigned by the United States Patent and Trademark Office (“USPTO”) has written a letter (an “Office action”) on **9/11/2009** to which you must respond (*unless the Office letter specifically states that no response is required*). Please follow these steps:

1. **Read** the Office letter by clicking on this **link** http://tportal.uspto.gov/external/portal/tow?DDA=Y&serial_number=77751792&doc_type=OOA&mail_date=20090911 **OR** go to <http://tportal.uspto.gov/external/portal/tow> and enter your serial number to access the Office letter. If you have difficulty accessing the Office letter, contact TDR@uspto.gov.

PLEASE NOTE: The Office letter may not be immediately available but will be viewable within 24 hours of this e-mail notification.

2. **Contact** the examining attorney who reviewed your application if you have any questions about the content of the Office letter (contact information appears at the end thereof).

3. **Respond** within 6 months, calculated from **9/11/2009** (*or sooner if specified in the Office letter*), using the Trademark Electronic Application System (TEAS) [Response to Office Action form](#). If you have difficulty using TEAS, contact TEAS@uspto.gov.

ALERT:

Failure to file any required response by the applicable deadline will result in the [ABANDONMENT](#) (loss) of your application.

Do NOT hit “Reply” to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses.