

To: Elizabeth Oliner(liz@olinerlaw.com)
Subject: U.S. Trademark Application Serial No. 97118878 - AEROGT LABS
Sent: August 26, 2022 08:23:27 AM EDT
Sent As: tmng.notices@uspto.gov

Attachments

[Lab](#)
[Laboratory](#)

**United States Patent and Trademark Office (USPTO)
Office Action (Official Letter) About Applicant's Trademark Application**

U.S. Application Serial No. 97118878

Mark: AEROGT LABS

Correspondence Address:

ELIZABETH OLINER
OLINER LAW
345 GROVE STREET, 2ND FLOOR
SAN FRANCISCO CA 94102 UNITED STATES

Applicant: TOYOTech, LLC

Reference/Docket No. N/A

Correspondence Email Address: liz@olinerlaw.com

NONFINAL OFFICE ACTION

The USPTO must receive applicant's response to this letter within six months of the issue date below or the application will be [abandoned](#). Respond using the Trademark Electronic Application System (TEAS). A link to the appropriate TEAS response form appears at the end of this Office action.

Issue date: August 26, 2022

The referenced application has been reviewed by the assigned trademark examining attorney.

The trademark examining attorney has searched the USPTO database of registered and pending marks

and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). 15 U.S.C. §1052(d); TMEP §704.02.

Applicant must respond timely and completely to the issue(s) below to enable further prosecution of the application. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

Disclaimer

Applicant must disclaim the wording “LABS” because it is merely descriptive of an ingredient, quality, characteristic, function, feature, purpose, or use of applicant’s goods and/or services. *See* 15 U.S.C. §1052(e)(1); *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1251, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012); TMEP §§1213, 1213.03(a).

The examining attorney relies on evidence in the form of the attached dictionary definition and/or web evidence. The evidence shows the wording means or refers to laboratories which means a place for scientific studies. In relation to the identified goods and services, the wording is merely descriptive because it designates a feature, quality or characteristic of the goods and services. Specifically, the identified goods and services are sufficiently broad to include or encompass or feature scientific studies. Thus, consumers who encounter the wording in relation to the goods and services would immediately understand that the wording refers to a salient aspect. The wording therefore must be disclaimed

Applicant may respond to this issue by submitting a disclaimer in the following format:

No claim is made to the exclusive right to use “LABS” apart from the mark as shown.

For an overview of disclaimers and instructions on how to provide one using the Trademark Electronic Application System (TEAS), see the [Disclaimer webpage](#).

Identification of the goods

Applicant is advised that the **bolded** wording is not acceptable and must be clarified because it either lacks sufficient specificity and/or is too broad thus might include goods in other classes and/or is misclassified. *See* 37 C.F.R. §2.32(a)(6); TMEP §1402.01. Applicant must amend the identification to specify the common commercial or generic name of the goods. *See* TMEP §1402.01. If the goods have no common commercial or generic name, applicant must describe the product, its main purpose, and its intended uses. *See id.*

Further guidance for the amendment of the identification is embedded or provided below, as appropriate. Applicant may adopt any or all of the suggestions so long as they are accurate. If applicant does not adopt a suggestion, then applicant must amend the identification so that it is as specific as the suggestions or the language found in the U.S. Acceptable Identification of Goods and Services Manual.

The current identification of the goods is:

International Class 009: Scientific apparatus and instruments for use in testing wireless **technology**, microelectronics, **biotechnology**, **microsystem techniques**, semiconductor and **nanotechnology**; computer hardware and downloadable computer software for use in testing and measuring wireless

technology, microelectronics, biotechnology, microsystem techniques, semiconductor and nanotechnology; **embedded software** for use in testing and measuring wireless technology, microelectronics, biotechnology, microsystem techniques, semiconductor and nanotechnology

- The wording "technology, biotechnology, microsystem techniques, nanotechnology" are fields and not goods for which the instruments are used to test. Please specify the goods for which the scientific apparatus and instruments test. Alternatively, applicant may name each of the testing apparatus by its generic name.
- The "embedded software" must be further specified to identify the goods in which the software is embedded for proper classification. That is due to the fact that embedded software is recorded software that is sold as a component of the finished goods in which it is embedded. Goods that are components sold as part of other finished goods are classified in the same class as the finished goods. Therefore, embedded software in scientific testing apparatus would be in Class 9 but embedded software in machines would be in Class 7. The testing function in the current wording is not sufficient to specify the type of goods in which the software are embedded.

Applicant's goods may be clarified or limited, but may not be expanded beyond those originally itemized in the application or as acceptably amended. *See* 37 C.F.R. §2.71(a); TMEP §1402.06. Applicant may clarify or limit the identification by inserting qualifying language or deleting items to result in a more specific identification; however, applicant may not substitute different goods or add goods not found or encompassed by those in the original application or as acceptably amended. *See* TMEP §1402.06(a)-(b). The scope of the goods sets the outer limit for any changes to the identification and is generally determined by the ordinary meaning of the wording in the identification. TMEP §§1402.06(b), 1402.07(a)-(b). Any acceptable changes to the goods will further limit scope, and once goods are deleted, they are not permitted to be reinserted. TMEP §1402.07(e).

For assistance with identifying and classifying goods and services in trademark applications, please see the USPTO's online searchable [U.S. Acceptable Identification of Goods and Services Manual](#). *See* TMEP §1402.04.

Identification of services

The **bolded** portion(s) of the identification of services is unacceptable and must be clarified because it either lacks sufficient specificity and/or is too broad and/or is mis-classified. *See* 37 C.F.R. §2.32(a)(6); TMEP §1402.01. Generally, applicant must amend the identification to specify the common commercial or generic name of the services. *See* TMEP §1402.01. If the services have no common commercial or generic name, applicant must describe or explain the nature of the services using clear and succinct language. *See id.* Some suggestions are embedded in the identification and are in *italics*.

Applicant may adopt any or all of the suggestions so long as they are accurate. If applicant does not adopt a suggestion, then applicant must amend the identification so that it is as specific as the suggestions or the language found in the U.S. Acceptable Identification of Goods and Services Manual.

For assistance with identifying and classifying goods and services in trademark applications, please see the USPTO's online searchable [U.S. Acceptable Identification of Goods and Services Manual](#). *See* TMEP §1402.04.

The current identification of services is:

International Class 042: Engineering services; development of precision systems and devices for wireless technology; consulting in the fields of wireless technology equipment; research services in the field of wireless technology, microsystem technology and **nanotechnology**; research services in the field of bio-sensorics and chemical sensorics; **technical consulting for third parties concerning handling production plants and process equipment**; providing temporary use of non-downloadable software for data processing; designing of computer software for others

- The "nanotechnology" consulting is not acceptable because nanotechnology can be applied in a variety of fields, e.g. scientific and medical. As consulting services are classified in accordance with the subject matter of the consultation, the exact nature of the nanotechnology application must be specified for proper consideration.
- The "technical consulting for third parties concerning handling production plants and process equipment" likewise is too broad as technical consultation is also classified in accordance with subject matter. In general, following are examples of acceptable identifications for consultation services: "providing business consultation" is classified in International Class 35, "providing financial consultation" is classified in International Class 36, "providing transportation consultation" is classified in International Class 39. The wording "technical" is insufficient to narrow the services to Class 42; and the wording "handling of production plants..." can involve business plans in Class 35, financial studies in Class 36 and scientific and technological upgrades of equipment in Class 42. Applicant must amend to specify further.

Applicant's services may be clarified or limited, but may not be expanded beyond those originally itemized in the application or as acceptably amended. *See* 37 C.F.R. §2.71(a); TMEP §1402.06. Applicant may clarify or limit the identification by inserting qualifying language or deleting items to result in a more specific identification; however, applicant may not substitute different goods and/or services or add goods and/or services not found or encompassed by those in the original application or as acceptably amended. *See* TMEP §1402.06(a)-(b). The scope of the goods and/or services sets the outer limit for any changes to the identification and is generally determined by the ordinary meaning of the wording in the identification. TMEP §§1402.06(b), 1402.07(a)-(b). Any acceptable changes to the goods and/or services will further limit scope, and once goods and/or services are deleted, they are not permitted to be reinserted. TMEP §1402.07(e).

Multiple class application requirements

The application identifies goods and/or services in more than one international class; therefore, applicant must satisfy all the requirements below for each international class based on Trademark Act Section 1(b):

- (1) **List the goods and/or services by their international class number** in consecutive numerical order, starting with the lowest numbered class.
- (2) **Submit a filing fee for each international class** not covered by the fee(s) already paid (view the [USPTO's current fee schedule](#)). The application identifies goods and/or services that may be classified in more class(es) than those for which fee(s) has/have been paid. Applicant must either submit the filing fees for the classes not covered by the submitted fees or restrict the application to the number of classes covered by the fees already paid.

See 37 C.F.R. §2.86(a); TMEP §§1403.01, 1403.02(c).

For an overview of the requirements for a Section 1(b) multiple-class application and how to satisfy the requirements online using the Trademark Electronic Application System (TEAS) form, see the [Multiple-class Application webpage](#).

Response guidelines

Applicant should include the following information on all correspondence with the Office: (1) the name and law office number of the trademark 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).

If applicant does not respond to this Office action within six months of the issue/ mailing date, or responds by expressly abandoning the application, the application process will end and the trademark will fail to register. See 15 U.S.C. §1062(b); 37 C.F.R. §§2.65(a), 2.68(a); TMEP §§718.01, 718.02. Additionally, the USPTO will not refund the application filing fee, which is a required processing fee. See 37 C.F.R. §§2.6(a)(1)(i)-(iv), 2.209(a); TMEP §405.04.

When an application has abandoned for failure to respond to an Office action, an applicant may timely file a petition to revive the application, which, if granted, would allow the application to return to active status. See 37 C.F.R. §2.66; TMEP §1714. The petition must be filed within two months of the date of issuance of the notice of abandonment and may be filed online via the Trademark Electronic Application System (TEAS) with a \$100 fee. See 37 C.F.R. §§2.6(a)(15)(ii), 2.66(a)(1), (b)(1).

How to respond. [Click to file a response to this nonfinal Office action](#).

/K. Margaret Le/
K. Margaret Le
(571) 272-9456
margaret.le@uspto.gov

RESPONSE GUIDANCE

- **Missing the response deadline to this letter will cause the application to [abandon](#).** The response must be received by the USPTO before midnight **Eastern Time** of the last day of the response period. TEAS maintenance or [unforeseen circumstances](#) could affect an applicant's ability to timely respond.
- **[Responses signed by an unauthorized party](#)** are not accepted and can **cause the application to [abandon](#)**. If applicant does not have an attorney, the response must be signed by the individual applicant, all joint applicants, or someone with [legal authority to bind a juristic applicant](#). If applicant has an attorney, the response must be signed by the attorney.

- If needed, **find** [contact information for the supervisor](#) of the office or unit listed in the signature block.



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Some compound words (like *bus rapid transit*, *dog whistle*, or *identity theft*) don't appear on the drop-down list when you type them in the search bar. For best results with compound words, place a quotation mark before the compound word in the search window.

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THE USAGE PANEL

The Usage Panel is a group of nearly 200 prominent scholars, creative writers, journalists, diplomats, and others in occupations requiring mastery of language. Annual surveys have gauged the acceptability of particular usages and grammatical constructions.

Lab ^{ˈlæb} (lăb)

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n. often **lab**
A Labrador retriever.

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Lab.

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abbr.
Labrador

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lab ^{ˈlæb} (lăb)

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n.
A laboratory.

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Indo-European Roots
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The Indo-European appendix covers nearly half of the Indo-European roots that have left their mark on English words. A more complete treatment of Indo-European roots and the English words derived from them is available in our [Dictionary of Indo-European Roots](#).



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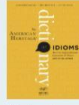
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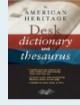
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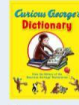
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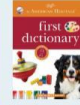
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lab·o·ra·to·ry (lăb'ɔ-rə-tôr'ē)

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n. pl. lab·o·ra·to·ries

1.
 - a. A room or building equipped for scientific experimentation or research.
 - b. An academic period devoted to work or study in such a place.
2. A place where drugs and chemicals are manufactured.
3. A place for practice, observation, or testing.

[Medieval Latin *labōrātōrium*, from Latin *labōrāre*, to labor, from *labor*, labor.]

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United States Patent and Trademark Office (USPTO)

USPTO OFFICIAL NOTICE

Office Action (Official Letter) has issued
on August 26, 2022 for
U.S. Trademark Application Serial No. 97118878

A USPTO examining attorney has reviewed your trademark application and issued an Office action. You must respond to this Office action in order to avoid your application abandoning. Follow the steps below.

- (1) **[Read the Office action](#)**. This email is NOT the Office action.
- (2) **Respond to the Office action by the deadline** using the Trademark Electronic Application System (TEAS). Your response must be received by the USPTO on or before 11:59 p.m. **Eastern Time** of the last day of the response period. Otherwise, your application will be **[abandoned](#)**. See the Office action itself regarding how to respond.
- (3) **Direct general questions** about using USPTO electronic forms, the USPTO **[website](#)**, the application process, the status of your application, and whether there are outstanding deadlines to the **[Trademark Assistance Center \(TAC\)](#)**.

After reading the Office action, address any question(s) regarding the specific content to the USPTO examining attorney identified in the Office action.

GENERAL GUIDANCE

- **[Check the status](#) of your application periodically** in the **[Trademark Status & Document Retrieval \(TSDR\)](#)** database to avoid missing critical deadlines.
- **[Update your correspondence email address](#)** to ensure you receive important USPTO notices about your application.
- **[Beware of trademark-related scams](#)**. Protect yourself from people and companies that may try to take financial advantage of you. Private companies may call you and pretend to be the USPTO or may send you communications that resemble official USPTO documents to trick you. We will never request your credit card number or social security number over the phone. And all official USPTO correspondence will only be emailed from the domain “@uspto.gov.” Verify the correspondence originated from us by using your Serial Number in our database, **[TSDR](#)**, to confirm that it appears under the “Documents” tab, or contact the **[Trademark Assistance Center](#)**.

- **Hiring a U.S.-licensed attorney.** If you do not have an attorney and are not required to have one under the trademark rules, we encourage you to hire a U.S.-licensed attorney specializing in trademark law to help guide you through the registration process. The USPTO examining attorney is not your attorney and cannot give you legal advice, but rather works for and represents the USPTO in trademark matters.

User: Khuong Le

Statistics for Case 97118878						
#	Search	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/Search Duration
1	97126015[sn]	1	0	0	0	0:00
2	*aer*[bi,ti] and live[ld]	4392	0	0	0	0:02
3	("g t" "gt")[bi,ti] not dead[ld]	572	0	0	0	0:04
4	("2" "two" to)[bi,ti] and live[ld]	87369	0	0	0	0:04
5	g[bi,ti] and live[ld]	10566	0	0	0	0:02
6	t[bi,ti] and live[ld]	16693	0	0	0	0:01
7	3 5 6	27308	0	0	0	0:01
8	2 and 4	48	0	9	9	0:01
9	2 and 7	12	0	5	5	0:01
10	4 and 7	1491	0	0	0	0:03
11	10 and "009"[cc]	724	0	0	0	0:03
12	11 and ("009" a b "200")[ic]	168	0	6	6	0:03
13	11 and ("042")[ic]	113	0	6	6	0:02
14	*g?t*[bi,ti] and live[ld]	100310	0	0	0	0:05
15	2 and 14	73	0	7	7	0:01
16	*t?g*[bi,ti] and live[ld]	35907	0	0	0	0:07
17	2 and 16	37	0	1	1	0:01
18	2 and 3	1	0	1	1	0:01
19	3 and "009"[cc]	271	0	7	7	0:02
20	*lab*[bi,ti] and live[ld]	15817	0	0	0	0:01
21	20 and (2 3)	12	0	4	4	0:01
22	20 and (5 6)	81	0	3	3	0:02
23	*aer\$g\$t*[bi,ti] and live[ld]	22	0	7	7	0:01

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