

18 October, 2004

Holley Nethercote
PO Box 4067
RINGWOOD
VIC 3134

Application No: 1007874
Applicant: Plantech Consulting Group Pty Ltd
Trade mark: Plantech
Your ref: APC:NF:20438

Report No. 1

I have examined your application to register this trade mark.
The following pages explain why I cannot presently accept your application, and how the matters raised might be addressed.

Please call me at any time during business hours if you want to talk about your application. I recognise how important this trade mark is to you and your business and I will be happy to discuss the application with you.

You have up to **18 January 2006** (15 months from the date of this report) in which to resolve all the issues I have raised, unless your application is withdrawn or rejected before that date. As I need time to process your response to this report please submit your written response, including any submissions in support of your application for registration, any time up to **three weeks** before the above date. If you require more time to finalise the application you must apply for an extension of time before the final date and pay the fee of \$100 per month.

I look forward to hearing from you.

Charmion Lawson
Trade Mark Examiner
02 6283 2843

Conflicting Trade Marks

A trade mark can be difficult to register if it closely resembles an earlier filed trade mark and is used on similar goods or services as this can cause confusion in the marketplace when the trade marks are in use.

(Section 44 *Trade Marks Act 1995*)

My reasons for not accepting your application:

The following applies to Classes 35 and 36 only:

Your trade mark is identical to or closely resembles the following earlier filed trade mark and is for similar goods or services:

923203 (Class 44 only)

- Your trade mark closely resembles the conflicting trade mark because 923203 is PlanTec and your mark is PLANTECH. They are aurally and orally identical, and visually differ only by one letter and the capitalisation of the P and the T in the cited mark. Consumers are likely to think that the same services and closely related goods sold under the marks PlanTec and PLANTECH come from the same trade source;

AND

- Your goods are closely related to the cited proprietor's services, and your services are the same.

I have enclosed details of the trade mark mentioned above.

The action you can consider:

You can address this matter if you:

- Provide evidence of prior use, honest concurrent use and/or other circumstances (please see the attachment named "Information for Providing Evidence of Honest Concurrent Use, Prior Use or Other Circumstances").

You could also look at the following web site for further information. Follow the links to 'Trade Marks', 'Conflicting Trade Marks (citations)' in the 'Frequently Asked Questions Section' or alternatively follow the links to 'Trade Marks', 'Forms & Publications', 'Trade Marks Manual of Practice and Procedure':

www.ipaustralia.gov.au

You may be entitled to request that the final date for acceptance of your application be deferred under the provisions of the Trade Marks Act (section 36). I have attached an information sheet called "Deferment of Acceptance of an Application for Registration of a

Trade Mark".

If you would like to take advantage of this, please request deferment, in writing, as soon as possible. You will be notified when your application has been deferred and also when deferment ends.

You may still deal with any of the matters raised in my report, including those relating to the conflicting trade mark/s, while your application is deferred.

Please note that if you cannot overcome the grounds for rejection, you may ask to have classes 9 and 42 deleted from your application, which will be accepted for the remaining classes.

IP Australia

Trade Mark : 923203 International Registration : 784237

Word: PlantTec
Image:

Class/es: 42, 44
Status: Registered/Protected
Kind: n/a
Lodgement date: 25/06/2002
Convention date: 19/02/2002
Sealing date: 7/01/2003
Acceptance adv: 19/09/2002
Registered from: 25/06/2002
Registration adv: 23/01/2003
Renewal due: 25/06/2012

Owners: PlantTec Biotechnologie GmbH, Forschung und Entwicklung
Hermannswerder 14,
Postdam
D-14473
GERMANY

Address for service: International Bureau, WIPO
34, chemin des Colombettes
P.O. Box 18
1211 Geneva 20,
SWITZERLAND
0000

Goods & Services:

Class: 42

Scientific and industrial research; design and development of computer software

Class: 44

Veterinary and agricultural services

Endorsements:

EVIDENCE OF HONEST CONCURRENT USE, PRIOR USE or OTHER CIRCUMSTANCES
Subsections 44(3) and 44(4) Trade Marks Act 1995

<i>Types of evidence</i>	<p>This matter may be addressed if you can show one of the following:</p> <ul style="list-style-type: none"> • Your trade mark was honestly adopted and has been used for a significant period of time concurrent with the earlier filed trade mark <u>and before your filing date</u> (honest concurrent use). • You or the person from whom you acquired the trade mark have <u>continuously</u> used your trade mark on the same or similar goods or services from <u>before the filing date</u> of the earlier filed trade mark(s) until at least the date you filed your application (prior use). • Other circumstances (see below)
<i>Your response</i>	<p>You may send me a letter and a witnessed declaration.</p> <p>The letter is your official response to my report. The letter should clearly set out the following:</p> <ul style="list-style-type: none"> • the number of your trade mark application; • the name of the applicant (as it appears on your original application); • any submissions in support of your application. <p>The declaration provides the information I need to determine whether the use of your trade mark is sufficient to accept your trade mark for registration. The declaration needs to be made out by:</p> <ul style="list-style-type: none"> • you; or • if the applicant is a company, a principal officer or other authorised employee of the company (for example a director); or • someone else who is authorised by you to make the declaration (for example, a lawyer).
<i>What the Declaration should address - Honest Concurrent Use</i>	<p>The declaration should address the following:</p> <ol style="list-style-type: none"> 1. the name of the person making the declaration; 2. the position of the person making the declaration (if the applicant is a company); <ul style="list-style-type: none"> • when the trade mark was chosen (this must be before your filing date); • why the trade mark was chosen; • who has used the trade mark: • you or your company; • someone you or your company has authorised or allowed to use the trade mark; or • a predecessor in title (the person from whom you acquired the trade mark); • whether you knew of the earlier filed trade mark;

<p><i>What the Declaration should address - Honest Concurrent Use (cont'd)</i></p>	<ul style="list-style-type: none"> • when the trade mark was first used <u>in Australia</u> (please give the year and, if possible, the month); • whether it has been used continuously (or, if it has not been used continuously, when and for how long it has been used); • where the trade mark has been used (states and regions <u>in Australia</u>); • the goods or services the trade mark has been used in connection with; • examples of how the trade mark has been used (you should attach promotional materials and advertising and outline where and how the materials and advertising have been used); • how much you have spent each year (in Australian Dollars) on advertising and promotional materials in connection with the trade mark; • annual turnover figures in Australian Dollars. If the trade mark has been used on a wide range of goods or services the figures should be broken down to refer to goods or services of a similar nature; and • any other information you think could be relevant showing how the trade mark has been used.
<p><i>What the Declaration should address - Prior Use</i></p>	<p>The declaration should address the following:</p> <ul style="list-style-type: none"> • the name of the person making the declaration; and • the position of the person making the declaration (if the applicant is a company); <ol style="list-style-type: none"> 1. when the trade mark was first used <u>in Australia</u> (please give the year and, if possible, the month); 2. whether the trade mark has been used continuously since its first use; 3. whether the trade mark was still being used when you lodged your application; <ul style="list-style-type: none"> • the goods or services the trade mark has been used in connection with.
<p><i>Other circumstances</i></p>	<p>There may be 'other circumstances' that will allow your trade mark to be accepted. If you are considering this option you may wish to telephone me first to discuss the requirements.</p>
<p><i>Freedom Of Information (FOI)</i></p>	<p>IP Australia understands that some information provided may be sensitive and may be exempt from release under the FOI Act. When documents contain information, which could fall within the scope of exemptions provided in the FOI Act, you will be consulted prior to the decision to release the documents.</p>
<p><i>Legal Advice</i></p>	<p>A trade mark attorney may be able to assist you with advice and outline the likely costs, risks and benefits of the trade mark options available for your business.</p>

Deferment of Acceptance of an application for registration of a trade mark

Section 36 Trade Marks Act 1995

<i>What is deferment</i>	<p>You have fifteen months from the date on Report No. 1 to deal with any problems with the application. If an earlier filed conflicting trade mark is a barrier to the acceptance of your trade mark you may be able to apply to have your application deferred. Deferring an application has the effect of suspending or temporarily stopping the "clock". However you must request deferment within fifteen months of the date of Report No. 1.</p> <p>The circumstances where deferment applies are set out below.</p>
<i>When deferment is allowed</i>	<p>Deferment is available in any or all of the following circumstances:</p> <ul style="list-style-type: none"> ➤ you are waiting to see whether the conflicting trade mark application(s) and/or International Registration Designating Australia (IRDA) will be accepted for registration; and/or ➤ you are seeking to establish honest concurrent use under subsection 44(3), or prior use under subsection 44(4) in respect of the conflicting trade mark application(s), registration(s), IRDA and/or Protected International Trade Mark(s); and/or ➤ registration of the conflicting trade mark(s) has expired but the 12 months in which renewal is possible has not ended; and/or ➤ the relevant International Registration has expired but the 6 months in which renewal is possible has not yet ended; and/or ➤ you have filed an application for removal for non-use in respect of the conflicting trade mark(s); and/or ➤ you have filed an application for cessation of protection for non-use in respect of the conflicting IRDA(s) or Protected International Trade Mark(s); and/or ➤ you have initiated proceedings to have the Register rectified in respect of the conflicting trade mark registration(s) and the proceedings have not been finalised. ➤ you have initiated proceedings to have the Record of International Registration rectified in respect of the conflicting Protected International Trade Mark(s) and the proceedings have not been finalised.
<i>How to request deferment</i>	<p>Your request to defer an application must</p> <ul style="list-style-type: none"> ➤ be made in writing, setting out the grounds on which deferment is being sought (see above); and ➤ be made within the first fifteen months after Report No. 1 is issued.

<p><i>How long the application can be deferred for and how much time will remain when deferment ends.</i></p>	<p>An application may remain deferred for a varying length of time (from weeks to years) depending on the situation. When deferment ends, you will be advised of the time remaining in which to have your application in order for acceptance. This will be the amount of time left of the initial 15 month period allowed for acceptance.</p> <p>For example: If deferment was granted 6 months after the first report was issued, there would still be 9 months remaining in which to gain acceptance once the deferment ends. However, you should note that if you have not requested deferment until very late in the fifteen months allowed, you will then have very little time left to you within which to have your application in order for acceptance, once its deferment ends.</p>
<p><i>Please note</i></p>	<p>If the conflicting trade mark was filed on the same day as your application the maximum period of deferment allowed is six months.</p>