

THIS DISPOSITION IS  
NOT CITABLE AS  
PRECEDENT OF THE TTAB

Mailed:  
17 August 2006  
AD

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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Emerald Bioagriculture Corporation  
v.  
Biosafe Systems, LLC

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Cancellation No. 92042503

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Request for Reconsideration

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John C. Blattner of Butzel Long for Emerald Bioagriculture Corporation.

Robert S. Smith, Esq. for Biosafe Systems, LLC.

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Before Bucher, Drost, and Kuhlke, Administrative Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

On February 9, 2006, we granted Emerald Bioagriculture Corporation's (petitioner) petition to cancel respondent's (Biosafe Systems, LLC) registration (No. 2,765,685). Respondent subsequently requested reconsideration of that decision, which we denied on June 28, 2006. On July 18, 2006, respondent filed a second request for reconsideration. In the second request for reconsideration (pp. 1-2),

respondent attaches numerous pages from the website [www.onelook.com](http://www.onelook.com).

The search facility enables a search for all English words and phrases starting respectively with the letter strings "auxi" and "oxy." Exhibits 1 and 2 show respectively the 128 "auxi" terms and the 608 "oxy" terms. Exhibit 3 is a print out from the web site [www.thefreedictionary.com](http://www.thefreedictionary.com) showing the pronunciation of representative terms "auxiliary" and "oxygen." It is abundantly clear that literate people will not pronounce the first syllable of any of the "auxi" words and phrases the same as any of the "oxy" words and phrases.

Thus, the expert witness testimony offered by petitioner is in direct conflict with essentially every English-language dictionary in the world.<sup>1</sup>

We again deny respondent's request for reconsideration. It is far too late in this proceeding to introduce new evidence to challenge the testimony of petitioner's expert. Even if respondent had submitted this evidence earlier in the briefing process, it would have been subject to a motion to strike. TBMP § 801.05 (2d ed. rev. 2004) (A "party may move to strike evidentiary matter attached to a brief where the evidentiary matter was not properly made of record during the time for taking testimony"). In addition, the board does not take judicial notice of online dictionaries. In re Total Quality Group, Inc., 51 USPQ2d 1474, 1476 (TTAB 1999). Therefore, there is no new evidence that is properly of record and respondent's argument does not persuade us

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<sup>1</sup> We note that respondent only attached the pronunciations for "auxiliary" and "oxygen." See [www.thefreedictionary.com](http://www.thefreedictionary.com), Exhibit 3.

that the underlying decision should be modified. We add that the list of words and the [www.thefreedictionary.com](http://www.thefreedictionary.com) pronunciations hardly demonstrates that the testimony is in "conflict with essentially every English-language dictionary in the world."

Applicant's second request for reconsideration is denied. The decision dated February 9, 2006 stands.