December 16, 2015

Via email at Jennifer.Chicoski@USPTO.GOV

Ms. Jennifer Chicoski
Administrator
Trademark Classification Policy & Practice
United States Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

Re: Comments on Revisions to Nice Class Headings

Dear Ms. Chicoski:

I write on behalf of the American Bar Association Section of Intellectual Property Law (“ABA-IPL Section” or “Section”) to respond to the United States Patent and Trademark Office’s invitation for comments on the final proposal of the e-Forum on the Nice Class Headings Revision Proposal for the Committee of Experts (the “NCL e-Forum”).

The American Bar Association is the largest voluntary professional association in the world and the ABA-IPL Section is the largest intellectual property law association with approximately 20,000 members. The views expressed in this letter are those of the Section. These comments have not been approved by the ABA House of Delegates or Board of Governors and should not be considered as views of the American Bar Association.

The Section has reviewed the final proposal of modifications to the Class headings and explanatory notes of classes 6, 10, 14, 16, 17, 18, 20, 21, 22, 24, 28 and 31, submitted jointly by Japan, Switzerland, the United States, the Office for Harmonization in the Internal Market (Trade Marks and Designs) and the International Bureau (“IB”).

The Section supports the NCL e-Forum’s goals of making the Class headings and explanatory notes more user-friendly and representative of the items in the classes. The Section generally believes that the proposed modifications achieve these goals.
The Section supports the NCL e-Forum’s continued goal to harmonize the revisions throughout the proposal for the 12 classes involved in this project, as well as the remaining classes. For example, the USPTO proposed, and the final revisions contain, the addition of “metal containers for storage or transport” to the Class 6 heading to indicate to the user that such goods are classified in Class 6 based on their material composition and their function.

However, the word “safes” remains in the heading “as is” even though the IB has said that they, too, are classified according to their material composition and their function. The Section therefore supports the USPTO’s suggestion of incorporating the function of “safes” into the class heading itself to achieve harmonization and consistency throughout the proposal.

The Section commends the NCL e-Forum’s work in updating and modernizing the Class headings and explanatory notes, and appreciates the opportunity to offer these comments.

Very truly yours,

Theodore H. Davis Jr.
Section Chair
American Bar Association
Section of Intellectual Property Law

Encl. (Final proposal for Class Heading Revision dated October 28, 2015)
This project contains a joint draft proposal for modifications to the class headings and explanatory notes of classes 6, 10, 14, 16, 17, 18, 20, 21, 22, 24, 28 and 31, submitted jointly by Japan, Switzerland, United States of America, the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) and the International Bureau (IB).

The proposed modifications are in track changes on the bases of the class headings and explanatory notes as approved by the Committee of Experts for NCL10-2016 plus the modifications that will enter into force with NCL11-2017 (in yellow background).
CLASS 6

Common metals and their alloys, ores;
metal building materials;
transportable buildings of metal;
materials of metal for railway tracks;
non-electric cables and wires of common metal[FB1];
ironmongery, small items of metal hardware[FB2];
pipes and tubes of metal;
metal containers for storage or transport, safes[FB3].
ores.

Explanatory Note

Class 6 includes mainly unwrought and partly wrought common metals, including ores, as well as simple products made of them, certain goods made of common metals.

This Class includes, in particular:
– metals in foil or powder form for further processing, for example, for 3D printers[FB4];
– metal building materials, for example, materials of metal for railway tracks, pipes and tubes of metal;
– small items of metal hardware, for example, bolts, screws, nails, furniture casters, window fasteners;
– transportable buildings or structures of metal, for example, prefabricated houses, swimming pools, cages for wild animals, skating rinks;
– certain goods made of common metals not otherwise classified by function or purpose, for example, all-purpose boxes of common metal[FB5], statues, busts and works of art of common metal.

This Class does not include, in particular:
– metals and ores used as chemicals in industry or scientific research for their chemical properties, for example, bauxite, mercury, antimony, alkaline and alkaline-earth metals bauxite (Cl. 1);
– mercury, antimony, alkaline and alkaline-earth metals (Cl. 1);
– metals in foil and powder form for use in painting, decorating, printing and art (Cl. 2);
– electric cables (Cl. 9) and non-electric cables and ropes, not of metal (Cl. 22);
– pipes being parts of sanitary installations (Cl. 11), flexible pipes, tubes and hoses, not of metal (Cl. 17) and rigid pipes, not of metal (Cl. 19);
– cages for household pets (Cl. 21);
– certain goods made of common metals that are classified according to their function or purpose, for example, hand tools, hand operated (Cl. 8), paper clips (Cl. 16), furniture (Cl. 20), kitchen utensils (Cl. 21), household containers (Cl. 21). (consult the Alphabetical List of Goods).
**CLASS 10**

Surgical, medical, dental and veterinary apparatus and instruments; artificial limbs, eyes and teeth; orthopaedic articles; suture materials; therapeutic and assistive devices adapted for the disabled; massage apparatus; apparatus, devices and articles for nursing infants; sexual activity apparatus, devices and articles.

**Explanatory Note**

Class 10 includes mainly surgical, medical, dental and veterinary apparatus, instruments and articles generally used for the diagnosis, treatment or improvement of function or condition of persons and animals.

**This Class includes, in particular:**

- special furniture for medical use;
- supportive bandages and special clothing for medical purposes, for example, compression garments, stockings for varices, strait jackets, orthopaedic footwear;
- articles, instruments and devices for menstruation, contraception and childbirth, for example, menstrual cups, pessaries, condoms, childbirth mattresses, forceps;
- hygienic rubber articles (consult the Alphabetical List of Goods);
- therapeutic and prosthetic articles and devices for implantation composed of artificial or synthetic materials, for example, surgical implants composed of artificial materials, artificial breasts, brain pacemakers, biodegradable bone fixation implants;
- furniture especially made for medical purposes, for example, armchairs for medical or dental purposes, air mattresses for medical purposes, operating tables.

**This Class does not include, in particular:**

- medical dressings and sanitary absorbent articles, for example, plasters, bandages and gauze for dressings, breast-nursing pads, babies’ napkins and napkins for incontinents, tampons (Cl. 5);
- surgical implants comprised of living tissue (Cl. 5);
- tobacco-free cigarettes for medical purposes (Cl. 5) and electronic cigarettes (Cl. 34);
- wheelchairs and mobility scooters (Cl. 12);
- massage tables and hospital beds (Cl. 20).
CLASS 14

Precious metals and their alloys;
jewellery, precious and semi-precious stones;
horological and chronometric instruments.

Explanatory Note

Class 14 includes mainly precious metals and certain goods made of, goods in precious metals or coated therewith, as well as and, in general jewellery, clocks and watches, and component parts therefor.

This Class includes, in particular:

- jewellery, including (i.e., imitation jewellery, for example, paste jewellery; and jewellery of precious metal and stones);
- cuff links, tie pins, tie clips
- key rings, key chains, jewellery charms;
- jewellery boxes;
- component parts for jewellery, clocks and watches, for example, clasps and beads for jewellery, movements for clocks and watches, clock hands, watch springs, watch crystals.

This Class does not include, in particular:

- smartwatches (Cl. 9[FB11]);
- charms, other than for jewellery (Cl. 26);
- objects of art not made of precious metals or coated therewith that are classified according to the material of which they are made, for example, works of art of metal (Cl. 6), of stone, concrete or marble (Cl. 19), of wood, wax, plaster or plastic (Cl. 20), of porcelain, terra-cotta or glass (Cl. 21);
- certain goods in made of precious metals or coated therewith that are classified according to their function or purpose (consult the Alphabetical List of Goods), for example, metals in foil and powder form for use in painting, decorating, printing and art (Cl. 2), amalgam of gold for dentists dental amalgams of gold (Cl. 5), cutlery (Cl. 8), electric contacts (Cl. 9), pen nibs of gold (Cl. 16), teapots (Cl. 21), gold and silver embroidery (Cl. 26), cigar boxes (Cl. 34);
- objects of art not of precious metals (classified according to the material of which they consist).
CLASS 16

Paper and cardboard;
printed matter;
bookbinding material;
photographs;
stationery and office requisites, except furniture;
adhesives for stationery or household purposes;
artists’ and drawing materials;
paintbrushes;
typewriters and office requisites (except furniture);
instructional and teaching materials, models except apparatus;
plastic materials for sheets, films and bags for wrapping and packaging;
printers’-type;
printers’ types, printing blocks.

Explanatory Note

Class 16 includes mainly paper, and cardboard, and certain goods made from of those materials, as well as and office requisites.

This Class includes, in particular:

– paper knives and paper cutters;
– cases, covers and devices for holding or securing paper, for example, document files, money clips, holders for cheque books, paper-clips, passport holders, scrapbooks;
– certain office machines, for example, typewriters, duplicators, franking machines for office use, pencil sharpeners;
– painting articles for use by artists and interior and exterior painters, for example, artists’ watercolour saucers, painters’ easels and palettes, paint rollers and trays;
– certain disposable paper products, for example, bibs, handkerchiefs and table linen of paper;
– certain goods made of paper or cardboard not otherwise classified by function or purpose, for example, paper bags, envelopes and containers for packaging, statues, figurines and works of art of paper or cardboard, such as figurines of papier mâché, framed or unframed lithographs, paintings and watercolours;
– plastic sheets, sacks and bags for wrapping and packaging;
– table linen of paper.

This Class does not include, in particular:

– certain goods made of paper and cardboard that are classified according to their function or purpose (consult the Alphabetical List of Goods);
– paints (Cl. 2);
– hand tools for artists, (for example, spatulas, sculptors’ chisels) (Cl. 8);
– teaching apparatus, for example, audiovisual teaching apparatus, resuscitation mannequins (Cl. 9), and toy models (Cl. 28);
– certain goods made of paper or cardboard that are classified according to their function or purpose, for example, photographic paper (Cl. 1), abrasive paper (Cl. 3), paper blinds (Cl. 20), table cups and plates of paper (Cl. 21), bed linen of paper (Cl. 24), paper clothing (Cl. 25), cigarette paper (Cl. 34).
CLASS 17

Unprocessed and semi-processed rubber, gutta-percha, gum, asbestos, mica and substitutes for all these materials;
plastics and resins in extruded form for use in manufacture;
packing, stopping and insulating materials;
flexible pipes, tubes and hoses, not of metal.

Explanatory Note

Class 17 includes mainly electrical, thermal and acoustic insulating materials and plastics, being for use in manufacture in the form of sheets, blocks and rods, and as well as certain goods made of the materials in this classrubber, gutta-percha, gum, asbestos, mica or substitutes therefor.

This Class includes, in particular:
– rubber material for recapping tyres;
  – padding and stuffing materials of rubber or plastics;
– floating anti-pollution barriers;
– adhesive tapes, other than stationery and not for medical or household purposes;
– plastic films, other than for wrapping and packaging, for example, anti-dazzle films for windows;
– elastic threads and threads of rubber or plastic, not for textile use;
– certain goods made of the materials in this class not otherwise classified by function or purpose, for example, foam supports for flower arrangements, padding and stuffing materials of rubber or plastics, rubber stoppers, shock-absorbing buffers of rubber, rubber bags or envelopes for packaging.

This Class does not include, in particular:
– pipes being parts of sanitary installations (Cl. 11) and rigid pipes of metal (Cl. 6) and not of metal (Cl. 19);
– insulating glass for building (Cl. 19);
– certain goods made of the materials in this class that are classified according to their function or purpose, for example, gum resins (Cl. 2), rubber for dental purposes (Cl. 5), asbestos screens for firemen (Cl. 9), adhesive rubber patches for repairing inner tubes (Cl. 12), rubber erasers (Cl. 16) (consult the Alphabetical List of Goods).
CLASS 18

Leather and imitations of leather;
animal skins, and hides;
luggage and carrying bags, trunks and travelling bags;
umbrellas and parasols;
walking sticks;
whips, harness and saddlery;
collars, leashes and clothing for animals.

Explanatory Note

Class 18 includes mainly leather, imitations of leather, and certain goods made of those materials, travel goods and saddlery.

This Class includes, in particular:

- luggage and carrying bags, for example, suitcases, trunks, travelling bags, shopping bags, sling bags for carrying infants, school bags, game bags;
- luggage tags;
- business card cases and pocket wallets;
- boxes and cases of leather or leatherboard.

This Class does not include, in particular:

- clothing, footwear, and headgear of leather for humans (Cl. 25) (consult the Alphabetical List of Goods);
- bags and cases adapted to the product they are intended to contain, for example, bags adapted for laptops (Cl. 9), bags and cases for cameras and photographic equipment (Cl. 9), cases for musical instruments (Cl. 15), golf bags with or without wheels, bags especially designed for skis and surfboards (Cl. 28);
- certain goods made of leather, imitations of leather, animal skins and hides, that are classified according to their function or purpose, for example, leather strops (Cl. 8), polishing leather (Cl. 21), chamois leather for cleaning (Cl. 21), leather belts for clothing (Cl. 25) (consult the Alphabetical List of Goods).
CLASS 20

Furniture, mirrors, picture frames;
containers, not of metal, for storage or transport;
unworked or semi-worked bone, horn, ivory, whalebone or mother-of-pearl;
shells;
meerschaum;
yellow amber.

Explanatory Note

Class 20 includes mainly furniture and parts therefor, as well as certain goods made of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastic.

This Class includes, in particular:
- metal furniture and furniture for camping, gun racks, newspaper display stands;
- indoor window blinds and shades;
- bedding, for example, mattresses, spring mattresses, pillows;
- looking glasses, furniture and toilet mirrors;
- registration number plates, not of metal;
- small items of non-metallic hardware, for example, bolts, screws, dowels, furniture casters, collars for fastening pipes;
- letter boxes, not of metal or masonry.

This Class does not include, in particular:
- special furniture for laboratories (Cl. 9) or for medical use (Cl. 10);
- outdoor blinds of metal (Cl. 6), not of metal and not of textile (Cl. 19), of textile (Cl. 22);
- bed linen, eiderdowns and sleeping bags (Cl. 24);
- certain mirrors for specific uses, for example, mirrors used in optical goods (Cl. 9), mirrors used in surgery or dentistry (Cl. 10), rearview mirrors (Cl. 12), sighting mirrors for guns (Cl. 13), classified according to their function or purpose (consult the Alphabetical List of Goods);
- certain goods made of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastic, that are classified according to their function or purpose, for example, beads for making jewellery (Cl. 14), wooden floor boards (Cl. 19), baskets for domestic use (Cl. 21), plastic cups (Cl. 21), reed mats (Cl. 27) (consult the Alphabetical List of Goods);
- special furniture for laboratories (Cl. 9);
- special furniture for medical use (Cl. 10);
- bed linen (Cl. 24);
- eiderdowns (Cl. 24).
CLASS 21

Household or kitchen utensils and containers;
combs and sponges;
brushes, (except paintbrushes);
brush-making materials;
articles for cleaning purposes;
steelwool;
unworked or semi-worked glass, (except building glass used in building);
glassware, porcelain and earthenware.

Explanatory Note

Class 21 includes mainly small, hand-operated utensils and apparatus for household and kitchen use, as well as toilet utensils, glassware and articles in certain goods made of porcelain, ceramic, earthenware or glass.

This Class includes, in particular:

– utensils and containers for household and kitchen use, for example, fly swatters, bread boards, corkscrews, cocktail shakers, piggy banks, kitchen utensils, pails, cooking pots and pans, of iron, of aluminium, of plastics or of other materials;
– small hand-operated apparatus for mincing, grinding or pressing;
– electric combs, electric and non-electric;
– electric toothbrushes, electric and non-electric;
– dish stands and decanter stands.

This Class does not include, in particular:

– certain goods made of glass, porcelain and earthenware that are classified according to their function or purpose (consult the Alphabetical List of Goods); cleaning preparations, soaps, etc. (Cl. 3);
– small apparatus for mincing, grinding or pressing, which are driven by electricity (Cl. 7);
– razors and shaving apparatus, hair and nail clippers, (hand instruments), metal implements and utensils for manicure and pedicure, electric and non-electric, for example, manicure sets, emery boards, cuticle nippers (Cl. 8);
– lice combs, tongue scrapers (Cl. 10);
– cooking utensils, electric (Cl. 11);
– toilet mirrors (Cl. 20);
– certain goods made of glass, porcelain and earthenware that are classified according to their function or purpose, for example, porcelain for dental prostheses (Cl. 5), spectacle lenses (Cl. 9), glass wool for insulation (Cl. 17), earthenware tiles (Cl. 19), building glass (Cl. 19), glass fibres for textile use (Cl. 22).
CLASS 22

Ropes and string;

nets;

tents, awnings and tarpaulins;

awnings of textile or synthetic materials;

sails;

sacks for the transport and storage of materials in bulk;

padding, cushioning and stuffing materials, (except of paper, cardboard, rubber or plastics);

raw fibrous textile materials and substitutes therefor.

Explanatory Note

Class 22 includes mainly canvas and other materials for making sails, rope, padding and stuffing materials and raw fibrous textile materials.

This Class includes, in particular:

– cords and twines in-made of natural or artificial textile fibres, paper or plastics;
– fishing nets, hammocks, rope ladders;
– vehicle covers, not fitted;
– certain sacks and bags for transporting or storing goods and materials in bulk (consult the Alphabetical List of Goods), not otherwise classified by function or purpose, for example, bags for washing hosiery, body bags, mail bags;
– packaging bags of textile;
– animal fibres and raw textile fibres, for example, animal hair, cocoons, jute, raw or treated woold, raw silk.

This Class does not include, in particular:

– metal ropes (Cl. 6);
– certain nets and bags (consult the Alphabetical List of Goods);
– strings for musical instruments (Cl. 15) and for sports rackets (Cl. 28);
– padding and stuffing materials of paper or cardboard (Cl. 16), rubber or plastics (Cl. 17);
– certain nets and bags that are classified according to their function or purpose, for example, safety nets (Cl. 9), luggage nets for vehicles (Cl. 12), garment bags for travel (Cl. 18), hair nets (Cl. 26), golf bags (Cl. 28), nets for sports (Cl. 28);
– packaging bags, not of textile, which are classified according to the material of which they are made, for example, packaging bags of paper or plastics (Cl. 16), of rubber (Cl. 17), of leather (Cl. 18).
CLASS 24

Textiles and substitutes for textiles;
bed covers;
table covers; household linen;
curtains of textile or plastic.

Explanatory Note

Class 24 includes mainly textiles (piece goods) and textiles and fabric covers for household use.

This Class includes, in particular:

- household linen, for example, bedspreads, pillow shams, towels of textile;
- bed linen of paper;
- sleeping bags, sleeping bag liners;
- mosquito nets.

This Class does not include, in particular:

- certain special textiles (consult the Alphabetical List of Goods);
- electrically heated blankets, for medical purposes (Cl. 10) and not for medical purposes (Cl. 11);
- table linen of paper (Cl. 16);
- asbestos safety curtains (Cl. 17), bamboo curtains and bead curtains for decoration (Cl. 20);
- horse blankets (Cl. 18);
- certain textiles and fabrics for specific uses, for example, fabrics for bookbinding (Cl. 16), insulating fabrics (Cl. 17), geotextiles (Cl. 19).
**CLASS 28**

Games, toys and playthings;
video game apparatus;
gymnastic and sporting articles;
decorations for Christmas trees.

**Explanatory Note**

Class 28 includes mainly toys, apparatus for playing games, sports equipment, amusement and novelty items, as well as certain articles for Christmas trees.

This Class includes, in particular:

- amusement and game apparatus, including controllers therefor: adapted for use with an external display screen or monitor;
- amusement and novelty items, for example, carnival masks, paper party hats, confetti, practical jokes and party favours;
- fishing tackle hunting and fishing tackle, for example, fishing rods, landing nets for anglers, decoys, hunting game calls;
- equipment for various sports and games.

This Class does not include, in particular:

- certain gymnastic and sporting articles (consult the Alphabetical List of Goods);
- Christmas tree candles (Cl. 4), electric lights for Christmas trees (Cl. 11), confectionery and chocolate decorations for Christmas trees (Cl. 30);
- diving equipment (Cl. 9);
- sex toys and love dolls (Cl. 10);
- electrical lamps (garlands) for Christmas trees (Cl. 11);
- fishing nets (Cl. 22);
- clothing for gymnastics and sports (Cl. 25);
- confectionery and chocolate decorations for Christmas trees (Cl. 30);
- certain gymnastic and sporting articles, for example, protective helmets, goggles and mouthguards for sports (Cl. 9), sporting firearms (Cl. 13), gymnasium mats (Cl. 27), as well as certain fishing and hunting equipment, for example, hunting knives, harpoons (Cl. 8), hunting firearms (Cl. 13), game bags (Cl. 18), fishing nets (Cl. 22), that are classified according to other functions or purposes.
CLASS 31

Raw and unprocessed Agricultural, aquacultural, horticultural and forestry products; raw and unprocessed grains and seeds; fresh fruits and vegetables; fresh herbs; seeds; natural plants and flowers; bulbs, seedlings and seeds for planting; live animals; foodstuffs and beverages for animals; malt.

Explanatory Note

Class 31 includes mainly land and sea products not having been subjected to any form of preparation for consumption, live animals and plants, as well as foodstuffs for animals.

This Class includes, in particular:

- raw woods;
- raw cereals;
- unprocessed cereals;
- plant residue;
- unprocessed algae;
- unsawn timber;
- fertilised eggs for hatching;
- fresh mushrooms and truffles;
- litter for animals, for example, aromatic sand, sanded paper for pets;
- mollusca and crustacea (live).

This Class does not include, in particular:

- cultures of micro-organisms and leeches for medical purposes (Cl. 5);
- dietary supplements for animals (Cl. 5);
- semi-worked woods (Cl. 19);
- artificial fishing bait (Cl. 28);
- rice (Cl. 30);
- tobacco (Cl. 34).

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