

From: Dombrow, Colleen

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Subject: U.S. TRADEMARK APPLICATION NO. 79088541 - VAP - 056226.14379 -  
Request for Reconsideration Denied - Return to TTAB - Message 1 of 9

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Attachment Information:

Count: 7

Files: equip1.jpg, equip1a.jpg, Hamilton\_Medical\_Flow\_Sensor\_new\_Page\_1.jpg,  
Hamilton\_Medical\_Flow\_Sensor\_new\_Page\_2.jpg, equip2-1.jpg, equip2-2.jpg,  
79088541.doc

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)  
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

APPLICATION SERIAL NO. 79088541

MARK: VAP



CORRESPONDENT ADDRESS:  
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GENERAL TRADEMARK INFORMATION:  
<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: EADS Deutschland GmbH

CORRESPONDENT'S REFERENCE/DOCKET NO:  
056226.14379

CORRESPONDENT E-MAIL ADDRESS:

**REQUEST FOR RECONSIDERATION DENIED**

**ISSUE/MAILING DATE:**  
**INTERNATIONAL REGISTRATION NO. 1054481**

The trademark examining attorney has carefully reviewed applicant's request for reconsideration and is denying the request for the reasons stated below. *See* 37 C.F.R. §2.64(b); TMEP §§715.03(a), 715.04(a). **PLEASE NOTE:** The applicant has provided an acceptable Identification of Goods in International Classes 007, 010, 028, and 042, according, this requirement has been satisfied. Additionally, U.S. Registration Number 2955513 has been cancelled and is no longer a bar to registration.

The Section 2(d) Refusal regarding U.S. Registration Number 2245552 and Identification of Goods requirement as to International Classes 012 and 017 made final in the Office action dated July 11, 2011 are maintained and continue to be final. *See* TMEP §§715.03(a), 715.04(a).

In the present case, applicant's request has not resolved all the outstanding issue(s), nor does it raise a new issue or provide any new or compelling evidence with regard to the outstanding issue(s) in the final Office action. In addition, applicant's analysis and arguments are not persuasive nor do they shed new light on the issues. Accordingly, the request is denied.

***Section 2(d) Refusal to Register:***

Specifically, as to the Section 2(d) Refusal, the applicant has amended the goods to, “Surgical apparatus and instruments, excluding apparatus for medical ventilation, artificial respiration, and resuscitation; medical apparatus and instruments for use in surgery, excluding apparatus for medical ventilation, artificial respiration, and resuscitation.” This limitation, however, does not overcome the Section 2(d) refusal to register as the goods remain related. Please see the additional evidence from [www.hamilton-medical.com](http://www.hamilton-medical.com), [www.otwo.com](http://www.otwo.com), [www.newtech-medical.com](http://www.newtech-medical.com), [www.oricaremed.com](http://www.oricaremed.com), [www.draeger.us](http://www.draeger.us), [www3.gehealthcare.com](http://www3.gehealthcare.com), and [www.medical.siemens.com](http://www.medical.siemens.com) attached to further illustrate the relatedness of the goods. For example, the evidence from [www.oricaremed.com](http://www.oricaremed.com) shows that they offer medical ventilators, surgical apparatus and instruments and medical apparatus and instruments for use in surgery including operating room tables, operating room lamps, and anesthesia machines. Accordingly, because the marks are similar and the goods are closely related, confusion as to source is likely and registration is refused under Section 2(d).

Additionally, the trademark examining attorney has attached evidence from the USPTO’s X-Search database consisting of a number of third-party marks registered for use in connection with the same or similar goods and/or services as those of both applicant and registrant in this case. This evidence shows that the goods and/or services listed therein, namely, surgical apparatus and instruments and medical apparatus and instruments for use in surgery excluding apparatus for medical ventilation, artificial respiration, and resuscitation, such as surgical lamps, surgical mirrors, surgical scissors, surgical staplers, surgical tables, and ventilators and respirators are of a kind that may emanate from a single source under a single mark. See *In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1203 (TTAB 2009); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988); TMEP §1207.01(d)(iii).

Applicant argues, “As clearly evidenced by the eleven registrations cited in the previous Office Action, an extensive number of registrations containing the letters “VAP” exist and the scope of protection afforded each of those individual registrations, is inherently narrowed. See *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 1373, 73 U.S.P.Q.2d 1689, 1693 (Fed. Cir. 2005) (Holding that if evidence establishes that the consuming public is exposed to third-party use of similar marks with similar goods, this evidence “is relevant to show that a mark is relatively weak and entitled to only a narrow scope of protection.”).” This argument, however, is not persuasive. Specifically, the wording VAP is not diluted for International Class 010 surgical goods. Because the applicant’s mark VAP plus design and the registrant’s mark VAPS are highly similar and the goods are closely related, confusion as to source is likely and registration is refused under Section 2(d).

The applicant further argues, “The goods of the cited registration (“medical and veterinary apparatus, namely, apparatus for medical ventilation, artificial respiration, and resuscitation”) are identified narrowly and are contained within a specific medical field. Any possible likelihood of confusion of those goods with those of the instant application is eliminated by the amendment herein and the sophisticated nature of the purchasers of

medical items.” This argument, however, is not persuasive. The fact that purchasers are sophisticated or knowledgeable in a particular field does not necessarily mean that they are sophisticated or knowledgeable in the field of trademarks or immune from source confusion. TMEP §1207.01(d)(vii); *see In re Cynosure, Inc.*, 90 USPQ2d 1644 (TTAB 2009); *In re Decombe*, 9 USPQ2d 1812 (TTAB 1988); *In re Pellerin Milnor Corp.*, 221 USPQ 558 (TTAB 1983). Further, the attached evidence shows that the applicant’s goods are closely related to the registrant’s goods. Because the applicant’s mark is similar to the registrant’s mark and the goods are closely related, confusion as to source is likely and registration is refused under Section 2(d). **PLEASE NOTE:** If applicant deletes, “Surgical apparatus and instruments, excluding apparatus for medical ventilation, artificial respiration, and resuscitation; medical apparatus and instruments for use in surgery, excluding apparatus for medical ventilation, artificial respiration, and resuscitation” from the identification, this refusal will be withdrawn.

***Identification of Goods in International Classes 012 and 017***

As to the Identification of Goods requirement, in applicant’s request for reconsideration, the applicant attempted to amend International Class 012 to, “Parts of plastic fiber and resin materials for vehicles, in particular parts of plastic fiber and resin materials for aeronautical vehicles, lorries, passenger vehicles and racing cars, namely, structural parts; support structures for automobiles, airplanes and helicopters, namely, structural parts for automobiles, airplanes and helicopters; accessories of plastic fiber and resin materials for vehicles, namely, spoilers, roof racks, engine hoods; bicycle frames and components; motor bike frames and components” and International Class 017 to, “Goods and semi-finished goods of plastic fiber and resin materials, in particular containers or housing parts of plastic fiber and resin materials included in this class, namely, industrial packaging containers of plastic fiber and resin materials, containers for solid and liquid materials of plastic fiber and resin materials; goods and semi-finished goods of plastic fiber and resin materials, in particular containers or housing parts of plastic fiber and resin materials included in this class, namely, inflexible tubes”.

*As to International Class 012:*

The following proposed wording for goods and/or services in International Class 012 is not acceptable because it is beyond the scope of the goods and/or services in the application as filed: “bicycle frames and components; motor bike frames and components.” *See* 37 C.F.R. §2.71(a); TMEP §1904.02(c)(iv). Specifically, this wording is beyond the scope of the identification because in the original identification, the goods in Class 012 were limited to “parts of fibre-composite materials (plastic fibres and resin) and “accessories of fibre-composite materials (plastic fibres and resin). However, the proposed wording does not limit these goods to fibre-composite materials (fibres and resin). Accordingly, the wording exceeds the scope of the original identification.

Identifications may be amended only to clarify or limit the goods and/or services; adding to or broadening the scope of the goods and/or services is not permitted. 37 C.F.R. §2.71(a); *see* TMEP §§1402.06 *et seq.* In addition, in an application filed under Trademark Act Section 66(a), an applicant may not change the classification of goods and/or services from that assigned by the International Bureau in the corresponding

international registration. 37 C.F.R. §2.85(d); TMEP §§1402.01(c), 1904.02(b). The scope of the identification for purposes of permissible amendments is limited by the assigned international class. 37 C.F.R. §2.85(f); TMEP §§1402.07(a), 1904.02(c). Further, in a multiple-class Section 66(a) application, an applicant may not transfer goods and/or services from one existing international class to another. 37 C.F.R. §2.85(d); *see* TMEP §§1402.07(a), 1904.02(c).

Applicant must amend this wording to substitute goods and/or services in International Class 012 that are within the scope of the goods and/or services in the application as filed. *See* TMEP §§1402.07(a), 1904.02(c)(iv). In the alternative, applicant may delete the unacceptable wording from the identification. However, once an application has been expressly amended to delete goods and/or services, those items may not be later re-inserted. TMEP §§1402.07(e), 1904.02(c)(iv).

Further, please note that the wording “components” is indefinite and applicant must specifically identify the International Class 012 components by common commercial or generic name. In the identification of goods, applicant must use the common commercial or generic names for the goods, be as complete and specific as possible, and avoid the use of indefinite words and phrases. If applicant uses indefinite words such as “accessories,” “apparatus,” “**components**,” “devices,” “equipment,” “materials,” “parts,” “systems” or “products,” such words must be followed by “namely,” followed by a list of the specific goods identified by their common commercial or generic names. *See* TMEP §§1402.01, 1402.03(a).

*As to International Class 017:*

The wording “Goods and semi-finished goods of plastic fiber and resin materials, in particular containers or housing parts of plastic fiber and resin materials included in this class, namely, industrial packaging containers of plastic fiber and resin materials, containers for solid and liquid materials of plastic fiber and resin materials” in the amended identification of goods and/or services is indefinite. Specifically, the wording “containers for solid and liquid materials of plastic fiber and resin materials” is indefinite because the applicant has not clearly identified the type of container for the record. *See* 37 C.F.R. §2.32(a)(6); TMEP §§1402.01, 1402.03. Further, this amendment is unacceptable because it does not set forth goods and/or services in the international class assigned by the International Bureau (IB). *See* 37 C.F.R. §2.71(a); TMEP §1904.02(c)(iv).

In an application filed under Trademark Act Section 66(a), an applicant may not change the classification of goods and/or services from that assigned by the IB in the corresponding international registration. 37 C.F.R. §2.85(d); TMEP §§1401.03(d), 1904.02(b). The scope of the identification for purposes of permissible amendments is limited by the assigned international class. 37 C.F.R. §2.85(f); TMEP §§1402.07(a), 1904.02(c). If an applicant amends the identification to a class other than that assigned by the IB, the amendment will not be accepted because it will exceed the scope and those goods and/or services will no longer have a basis for jurisdiction under U.S. law. TMEP §1402.01(c). Further, in a multiple-class Section 66(a) application, an applicant may not

transfer goods and/or services from one existing international class to another. 37 C.F.R. §2.85(d); *see* TMEP §§1402.07(a), 1904.02(c).

Therefore, applicant must amend this wording to identify goods and/or services in International Class 017 that are within the scope of the goods and/or services in the application as filed. *See* TMEP §§1402.07(a), 1904.02(c)(iv). In the alternative, applicant may delete the unacceptable wording from the identification. However, once an application has been expressly amended to delete goods and/or services, those items may not be later re-inserted. TMEP §§1402.07(e), 1904.02(c)(iv). Specifically, please note that industrial packaging containers of plastic are properly classified in International Class 020. For proper classification in International Class 017, these goods must be made of rubber. Further, applicant must clarify that the “containers for solid and liquid materials” are for industrial packaging use for proper classification in International Class 017.

Applicant may adopt the following identification in International Classes 012 and 017, if accurate:

International Class 012:

Parts of plastic fiber and resin materials for vehicles, in particular parts of plastic fiber and resin materials for aeronautical vehicles, lorries, passenger vehicles and racing cars, namely, structural parts; support structures for automobiles, airplanes and helicopters, namely, structural parts for automobiles, airplanes and helicopters; accessories of plastic fiber and resin materials for vehicles, namely, spoilers, roof racks, engine hoods; **Accessories of plastic fiber and resin materials for vehicles, namely, bicycle frames and components in the nature of bicycle kickstands; Accessories of plastic fiber and resin materials for vehicles, namely, motor bike frames and components in the nature of handlebars.**

International Class 017:

Goods and semi-finished goods of plastic fiber and resin materials, in particular containers or housing parts of plastic fiber and resin materials included in this class, namely, industrial packaging containers of **rubber, industrial packaging** containers for solid and liquid materials of **rubber**; goods and semi-finished goods of plastic fiber and resin materials, in particular containers or housing parts of plastic fiber and resin materials included in this class, namely, inflexible tubes.

Identifications of goods and/or services can be amended only to clarify or limit the goods and/or services; adding to or broadening the scope of the goods and/or services 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 and/or services that are not within the scope of the goods and/or services 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/netahhtml/tidm.html>. *See* TMEP §1402.04.

The filing of a request for reconsideration does not extend the time for filing a proper response to a final Office action or an appeal with the Trademark Trial and Appeal Board (Board), which runs from the date the final Office action was issued/mailed. *See* 37 C.F.R. §2.64(b); TMEP §§715.03, 715.03(a), (c).

If time remains in the six-month response period to the final Office action, applicant has the remainder of the response period to comply with and/or overcome any outstanding final requirement(s) and/or refusal(s) and/or to file an appeal with the Board. TMEP §715.03(a), (c). However, if applicant has already filed a timely notice of appeal with the Board, the Board will be notified to resume the appeal when the time for responding to the final Office action has expired. *See* TMEP §715.04(a).

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# HAMILTON•G5: Now available in the USA

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### HAMILTON•G5

**Designed for more safety and simplicity**

Aren't there already more monitoring parameters, more ventilation modes and more settings available than most users ever need? The new HAMILTON-G5 ICU ventilator was designed to be simpler for the user and safer for the patient. Rather than bringing you even more curves and loops, its **Ventilation Cockpit™** integrates complex data into intuitive graphics that answer two essential questions:

- > What is my patient's lung condition, and what kind of ventilation do they need?
- > When should I take my patient off the ventilator?

See for yourself and [try the simulation online](#).

**Safe and simple ventilation with ASV closed-loop control**

PHILIPPS UNIVERSITÄT SAARLAND  
KLINIK FÜR ANESTHESIE UND REANIMATION  
Klinik für Anästhesie und Reanimation

### HIGHLIGHTS



- > Unique **Ventilation Cockpit™** for simplified operation and monitoring
- > **Intelligent Ventilation** with ASV for patient-oriented ventilation of virtually all patients
- > **P/V Tool** maneuvers to record static pressure/volume curve (option)
- > For infant, pediatric and adult patients

> [Simulation software](#)

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**New single use pediatric/adult Flow Sensor**

HAMILTON MEDICAL now offers a new single use Flow Sensor compatible with HAMILTON-G5, GALILEO, HAMILTON-C2, RAPHAEL, AMADEUS FT, and VEOLAR FT ventilators.

This new single use Flow Sensor eliminates all disadvantages of today's single use Flow Sensor. This new Flow Sensor prevents kinked distal tubing's by angled connections. With the universal connector on the patient side, every commercially available interface can be directly attached without an additional adapter. And finally, by the asymmetrical connectors the Flow Sensor cannot be attached wrongly.

Please only use from now on the new single use pediatric/adult Flow Sensor (PN 281637) since the old sensor will be terminated soon.

[Read more about the new single use pediatric/adult Flow Sensor](#)

**Flow sensors**

HAMILTON MEDICAL offers Flow Sensors for adult/pediatric and neonatal applications. The Flow Sensors provide the clinician with valuable data from the airway opening. Precise volume, flow, and pressure data allows better patient assessment. The Flow Sensors are designed to work reliably in the presence of moisture and secretions.

I am a ...

What users say

Clinical resources

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You have just tried to access the following Web site:  
[http://www.hamilton-medical.com/notify-NotifyUser\\_NONE\\_coach?](http://www.hamilton-medical.com/notify-NotifyUser_NONE_coach?)

## New HAMILTON single use Flow Sensor



The HAMILTON MEDICAL Flow Sensor is a required accessory of the HAMILTON MEDICAL ventilators such as GALILEO, RAPHAEL, HAMILTON-G5 and HAMILTON-C2.

### Benefits of the new Flow Sensor

- Proximal pressure and flow monitoring
- Adapter free connection to almost all patients interfaces
- Angled tubing connection to prevent kinked tubings
- No wrong mounting possible
- Each Flow Sensor has ID code



#### Manufacturer

HAMILTON MEDICAL AG  
Via Crusch 8  
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[www.hamilton-medical.ch](http://www.hamilton-medical.ch)  
[www.intelligentventilation.org](http://www.intelligentventilation.org)

## New single use pediatric/adult Flow Sensor

Compatible with HAMILTON-G5, GALILEO, HAMILTON-C2, RAPHAEL, AMADEUS<sup>FT</sup>, and VEOLAR<sup>FT</sup> ventilators. 15M x 15F/22M connectors. Includes a single use 22M x 22M calibration adapter.

281637 Flow Sensor, pediatric/adult, single use, box of 10 sets



## Flow Sensor in regular use

New single use Flow Sensor  
PN 281637



Current single use Flow Sensor  
PN 279331  
(will be terminated soon)



## Flow Sensor calibration

The following list gives a short overview about the calibration of both flow sensors. For the calibration follow the instruction given by each ventilator operator's manual.

New single use Flow Sensor  
PN 281637

Current single use Flow Sensor  
PN 279331

First position of calibration (expiration)



An single use calibration adapter is enclosed to every Flow Sensor



Second position of calibration (inspiration)



CONTACT INFO ☰

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MEDICAL TECHNOLOGIES INC

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■ Facemasks - Resuscitation & Anesthesia

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- AUTOMATIC TRANSPORT VENTILATORS
- PUBLIC ACCESS RESUSCITATION CAREvent CPAP
- SMART BAG MO MANUAL RESUSCITATOR
- TRAINING AIDS
- DEMAND VALVES
- OXYGEN REGULATORS
- MULTI PATIENT UNIT
- ASPIRATORS
- CARRYING CASES & CYLINDERS
- FACEMASKS**
- BURN RELIEF
- AIRWAY MANAGEMENT
- CPR PERSONAL PROTECTIVE DEVICES
- EASY GRIP BVMs
- OXYGEN THERAPY

**O-Two Medical Technologies Silicone and PVC Facemasks**



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**" Superior Mask-To-Face seal without the need for inflated air cuffs"!**

With a wide choice in style, material and size, O-Two Medical Technologies Inc. provides a comprehensive range of resuscitation and anesthesia facemasks to meet any respiratory requirement.

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Player 9 Series  
FREE

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DESCRIPTION

From the truly Universal, "one-size-fits-all!" Facemask (available in both PVC and silicone) to the disposable, inflated cuff, range for adults to neonates, the high quality and superior design of these masks makes them the perfect choice for both hospital and pre-hospital use.

The silicone range includes "Donut" style neonate/infant masks as well as the flanged design of the O-Two Medical Technologies "Everseal Edge" range. These are ideal anesthesia masks as they will withstand autoclaving. The three sizes of clear PVC, Everseal masks, are ideal for pre-hospital use where disinfection after use is normally undertaken by cold chemical sterilant such as an activated glutaraldehyde or a 10% bleach solution.

Where a single-use mask is required, the Disposable Inflated Cuff range meets the users needs with a range of three products with a soft sealing cushion and clear plastic body. All masks have standard 22mm or 15mm (infant/neonate) inlet connectors and they come conveniently packaged in cases of 12 units.

Features

- Virtually Indestructible.
- No air filled cuffs to leak or become punctured.
- Inner "Everseal" to facilitate mask-to-face seal even in the presence of facial hair.
- Standard 22 mm OD Connector to allow attachment of other resuscitation equipment.

Part Number and Product Description

FACE MASKS - PVC

02FM1999-Cs	O-Two Medical Technologies Universal Mask (Case/12)
02FM5000-Cs	O-Two Medical Technologies Medium Mask (#2) with Anatomical Chin Cup (Case/12)
02FM5001-Cs	O-Two Medical Technologies Large Mask (#3) with Anatomical Chin Cup (Case/12)

FACE MASKS - SILICONE

02FM5097-Cs	O-Two Medical Technologies Silicone Universal Mask (Case/12)
02FM5098-Cs	O-Two Medical Technologies Silicone Medium Mask (#2) with Anatomical Chin Cup (Case/12)
02FM5099-Cs	O-Two Medical Technologies Silicone Large Mask (#3) with Anatomical Chin Cup (Case/12)
02FM5100-Cs	O-Two Medical Technologies Silicone Toddler/Child Mask (Case/12)
02FM5101-Cs	O-Two Medical Technologies Silicone Infant Mask (Case/12)
02FM5102-Cs	O-Two Medical Technologies Silicone Neonatal Mask (Case/12)
02FM5205-Cs	O-Two Medical Technologies Disposable Cuffed Neonatal #1 Mask (Case/12)
02FM5207-Cs	O-Two Medical Technologies Disposable Cuffed Child/Small Adult #3 Mask (Case/12)
02FM5210-Cs	O-Two Medical Technologies Disposable Cuffed Adult #4 Mask (Case/12)

O-Two Medical Technologies Inc. reserves the right to change, modify, or update the product specifications, product data and product information contained herein at any time without prior notice.