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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	79124239
Applicant	VULCANIC
Applied for Mark	VULCANIC
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIALS AND APPEALS BOARD

Applicant	Vulcanic
Serial Nos. 79/124238 79/124239	Filing Date: November 8, 2012
Trademark	VULCANIC
Law Office: 109	Trademark Attorney: Lobo

Applicant's Appeal Brief

Applicant, Vulcanic has appealed the Trademark Examining Attorney's refusal to register the trademarks VULCANIC and VULCANIC with Design in International Classes 009 and 011 (collectively the "VUCANIC Marks").

The Examining Attorney refused registration under Trademark Act §2(d), 15 U.S.C. §1052(d) on the grounds that the mark is likely to be confused with U.S. Registration Nos. 1,281,328 (VULCAN CAL-STAT) and 1609678 (VULCAN).

When determining the likelihood of confusion, the Examining Attorney's determination must be based on an analysis of all probative factors in evidence that are relevant to factors bearing on the likelihood of confusion. *In re E.I. du Pont de Nemours & Co.,* 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In the instant case, the Examining Attorney failed to give adequate weight to the differences between the respective marks and the instances of third-party use that demonstrate that the term VULCAN is weak with respect to the goods identified in the

cited registrations. A careful evaluation of all the relevant *Dupont* factors in this case favors registration of Applicant's mark.

FACTS AND PROSECUTION HISTORY

Applicant filed Requests for Extensions of Protection under Section 66 of the Lanham Act for the VULCANIC Marks on November 8, 2012. The Examining Attorney issued Office Actions dated March 14, 2013, refusing registration under Trademark Act § 2(d), 15 U.S.C. §1052(d)[1] and requiring amendments to the identification of goods. Applicant filed a Response to Office Action on September 16, 2013 arguing against the refusal to register and amending the identification of goods. The Examining Attorney issued Final Office Actions dated October 18, 2013 maintaining the Section 2(d) refusals with respect International Classes 9 and 11 in view of U.S. Registration Nos. 1,609,678 and 1,281,328 and maintaining the requirement for amendments to the identifications of goods for International Classes 9 and 11. Applicant filed a timely Notice of Appeal with the Trademark Trial and Appeal Board ("Board") on April 17, 2014. After receiving extensions of time to file the Appeal Brief, Applicant filed a Request for Reconsideration on November 8, 2014, in which it amended the identifications of goods for International Classes 9 and 11. The Examining Attorney accepted the amended identification but maintained the statutory refusals in a Denial of Reconsideration dated December 10, 2014. The Board subsequently reinstated the Appeal, and Applicant now submits its brief of the appeal.[2]

[1] The original Office Action refused registration in view of the following registrations: 4001176; 666879; 666878; 2663624; 674532; 2193936; and 2913935 as well as 1609678 and 1281328.
[2] Applicant is submitting a single Appeal Brief pursuant to the Motion for Consolidation filed March 10, 2015.

ISSUE

The sole issue on appeal is whether the VULCANIC Marks are likely to cause confusion with the cited registrations within the meaning of Section 2(d).

ARGUMENT

To determine whether a likelihood of confusion exists under Section 2(d), the Board follows the test articulated in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1367, 177 USPQ 563 (CCPA 1973). The Du Pont test requires balancing the following factors, when relevant:

1. The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.
2. The similarity or dissimilarity of and nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use.
3. The similarity or dissimilarity of established, likely-to-continue trade channels.
4. The conditions under which and buyers to whom sales are made, i.e. "impulse" vs. careful, sophisticated purchasing.
5. The fame of the prior mark (sales, advertising, length of use).
6. The number and nature of similar marks in use on similar goods.
7. The nature and extent of any actual confusion.
8. The length of time during and conditions under which there has been concurrent use without evidence of actual confusion.
9. The variety of goods on which a mark is or is not used (house mark, "family" mark, product mark).
10. The market interface between applicant and the owner of a prior mark.
11. The extent to which applicant has a right to exclude others from use of its mark on its goods.
12. The extent of potential confusion, i.e., whether *de minimis* or substantial.
13. Any other established fact probative of the effect of use.

See In re E.I. du Pont de Nemours & Co., 476 F.2d at 1361. The Court expressly disavows that any one factor is necessarily dispositive in the analysis of confusion. The Examining Attorney's

determination must be based on an analysis of all probative factors in evidence that is relevant to factors bearing on the likelihood of confusion. The Examining Attorney cannot merely rely on the similarity of the mark and the supposed similarity of services to refuse registration on the grounds of likelihood of confusion where the balance of the evidence indicates that there is a *de minimis* likelihood of confusion. *Electronic Design and Sales, Inc. v. Electronic Data Systems Corp.*, 954 F.2d 713, 21 USPQ 2d 1388, 1391 (Fed. Cir. 1992) ("We are not concerned with mere theoretical possibilities of confusion, deception, or mistake or with *de minimis* situations but with the practicalities of the commercial world, with which the trademark laws deal.") (quoting *Witco Chem. Co. v. Whitfield Chem. Co.*, 164 USPQ 43, 44-45 (CCPA 1969).

The refusal to register under Section 2(d) should be reversed for the following reasons: (1) Applicant's Mark and those in the cited registrations are sufficiently different to avoid confusion and; (2) the dominant terms in the cited registrations are weak as a result of common use and registration by third parties so that consumers will consider the differences in the marks more so than the similarities in determining the source of the associated goods.

I. APPLICANT'S MARK IS SUFFICICIENTLY DIFFERENT FROM THE CITED REGISTRATIONS TO AVOID CONFUSION.

The examining attorney has cited the following registrations as obstacles to registration under Section 2(d):

Registration No.	Mark	Goods
1,609,678	VULCAN	Heating, cooling and air conditioning apparatus, namely, heat transfer elements and enclosures therefor, heating and ventilating units and parts therefor; diffusers for forced air heating and cooling systems, and fluid and electric radiators, namely, finned tube heat transfer elements and enclosures

1,281,328	VULCAN CAL-STAT	Thermostats

Under *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973), the first factor requires examination of "the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression." When considering the similarity of the marks, "[a]ll relevant facts pertaining to appearance, sound, and connotation must be considered before similarity as to one or more of those factors may be sufficient to support a finding that the marks are similar or dissimilar." *Recot, Inc. v. M.C. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1899 (Fed. Cir. 2000). Although there is some similarity between the marks, their overall commercial impression is sufficiently different to avoid confusion.

When considering the similarity of marks, "[a]ll relevant facts pertaining to the appearance and connotation must be considered." *Recot, Inc. v. M.C. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1897 (Fed. Cir. 2000). In evaluating the similarities between marks, the emphasis must be on the recollection of the average purchaser who normally retains a general, rather than specific, impression of trademarks. *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975).

The meaning or connotation of mark can overcome similarities in sound and appearance. Even marks that are identical in sound and/or appearance may create sufficiently different commercial impressions when applied to the respective parties' goods or services so that there is no likelihood of confusion. *See, e.g., In re Sears, Roebuck and Co.*, 2 USPQ2d 1312 (TTAB 1987) (CROSS-OVER for bras held not likely to be confused with CROSSOVER for ladies' sportswear, the Board finding that the term was suggestive of the construction of applicant's

bras, but was likely to be perceived by purchasers either as an entirely arbitrary designation or as being suggestive of sportswear that "crosses over" the line between informal and more formal wear when applied to ladies' sportswear); *In re British Bulldog, Ltd.*, 224 USPQ 854 (TTAB 1984) (PLAYERS for men's underwear held not likely to be confused with PLAYERS for shoes, the Board finding that the term PLAYERS implies a fit, style, color and durability adapted to outdoor activities when applied to shoes, but "implies something else, primarily indoors in nature" when applied to men's underwear); *In re Sydel Lingerie Co., Inc.*, 197 USPQ 629 (TTAB 1977) (BOTTOMS UP for ladies' and children's underwear held not likely to be confused with BOTTOMS UP for men's clothing, the Board finding that the term connotes the drinking phrase "Drink Up" when applied to men's suits, coats and trousers, but does not have this connotation when applied to ladies' and children's underwear).

In this case, the term VULCAN in the registered marks is defined as "the ancient Roman good of fire and metalworking"[3] In contrast, the literal element of Applicant's mark – VULCANIC – has no recognized meaning. It is a play on the term volcanic, defined as "of or relating to a volcano."[4] Applicant requests that the Board take judicial notice of the dictionary definitions. *In re La Peregrina Ltd.*, 86 USPQ2d 1645, 1647 n.3 (TTAB 2008).

The differences in the marks is made more important by the relatively common occurrence of VULCAN as a trademark in the relevant industry. The sixth *Du Pont* factor concerns the extent to which multiple parties use the same terms. Evidence of widespread third-party use, in a particular field, of marks containing a certain shared term is competent to suggest that purchasers have been conditioned to look to the other elements of the marks as a means of

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[3] "vulcan." *Dictionary.com Unabridged.* Random House, Inc. 10 Mar. 2015. <Dictionary.com http://dictionary.reference.com/browse/vulcan>.

[4] "volcanic." *Dictionary.com Unabridged.* Random House, Inc. 10 Mar. 2015. <Dictionary.com http://dictionary.reference.com/browse/volcanic>.

distinguishing the source of goods or services in the field. *In re Broadway Chicken,*_38 USPQ2d 1559, 1555-56 (TTAB 1996). Third party registrations and business directory information are competent to demonstrate third party market usage of term. *Id.* The initial Office Action in this matter made of record multiple trademark registrations featuring the term VULCAN in International Classes 9 and 11 – namely:

- U.S. Reg. No. 4001176 VULCAN for (CLASS 11) Hand dryers, electrical hand dryers, warm air hand dryers

- U.S. Reg. No. 1609678 VULCAN for (CLASS 11) heating, cooling and air conditioning apparatus, namely, heat transfer elements and enclosures therefor, heating and ventilating units and parts therefor; diffusers for forced air heating and cooling systems, and fluid and electric radiators, namely, finned tube heat transfer elements and enclosures

- U.S. Reg. No. 666879 VULCAN (& DESIGN) for (CLASS 11) ovens, ranges, and deep fat fryers

- U.S. Reg. No. 666878 VULCAN for (CLASS 11) cooking equipment-namely, ranges; broilers; combination broilergriddle-toasters; and ovens

- U.S. Reg. No. 674532 VULCAN for (CLASS 11) electric cooking ranges, deep fat fryers, food warmers, kettles, meat roasters, coffee urns, and mixers

- U.S. Reg. No. 2193936 VULCAN (& DESIGN) for (CLASS 11) gas, electric, and steam cooking equipment, namely ovens, ranges, broilers, and deep fat fryers;

- U.S. Reg. No. 2193935 VULCAN for (CLASS 11) gas, electric, and steam cooking equipment; namely - ovens, ranges, broilers, and deep fat fryers

- U.S. Reg. No. 1281328 VULCAN for (CLASS 9) Thermostats

- U.S. Reg. No. 2663624 VULCAN for (CLASS 9) Computer software for use in audio and/or video production and recording, record production, and film production, for use in television, cable television, radio and satellite broadcasting, for use in providing access to a global computer networks, wide-area computer networks and local-area computer networks, for use in computer software development, and in the fields of music, art, science, technology and telecommunications, medicine and health, finance and investment, education and entertainment; pre-recorded multimedia software recorded on CD-ROMs featuring music, art, [science, technology and telecommunications, medicine and health, finance and investment,] education and entertainment; [computer games recorded on software, disks, CD-ROMS, cartridges and tapes; computer hardware; interactive multimedia computer programs in the fields of music, art, science, technology

> and telecommunications, medicine and health, finance and investment, education and entertainment;] pre-recorded audio and video tapes, DVDs, compact discs and laser discs featuring music, entertainment, and news and information pertaining to the fields of music, art, science, technology and telecommunications, medicine and health, finance and investment, education and entertainment; [electronic books featuring music, entertainment, and news and information pertaining to the field of music, art, science, technology and telecommunications, medicine and health, finance and investment, education and entertainment, recorded on multimedia software, namely, CD-ROMs, audio and video cassettes, compact discs and laser discs; and computer software which allows a user to create audio and audio visual displays and programs and sight and sound effects for presentation at public events;] databases in the fields of music, art, science, technology and telecommunications, medicine and health, finance and investment, education and entertainment, recorded on computer media

See Office Action dated March 14, 2013.

Moreover, confusion is unlikely in cases such as this where the additional matter in the application creates a commercial impression that is distinct from the cited registration. This occurs because (1) the marks in their entireties convey significantly different commercial impressions; and/or (2) the matter common to the marks is not likely to be perceived by purchasers as distinguishing source because it is merely descriptive or diluted. *See, e.g., Shen Manufacturing Co. v. Ritz Hotel Ltd.,* 393 F.3d 1238, 73 USPQ2d 1350 (Fed. Cir. 2004) (RITZ and THE RITZ KIDS create different commercial impressions); *In re Farm Fresh Catfish Co.*, 231 USPQ 495 (TTAB 1986) (CATFISH BOBBERS (with "CATFISH" disclaimed) for fish held not likely to be confused with BOBBER for restaurant services); *In re Shawnee Milling Co.*, 225 USPQ 747 (TTAB 1985) (GOLDEN CRUST for flour held not likely to be confused with ADOLPH'S GOLD'N CRUST and design (with "GOLD'N CRUST" disclaimed) for coating and seasoning for food items); *In re S.D. Fabrics, Inc.*, 223 USPQ 54 (TTAB 1984) (DESIGNERS/FABRIC (stylized) for retail fabric store services held not likely to be confused with DAN RIVER DESIGNER FABRICS and design for textile fabrics). The design element in

U.S. Trademark Application Serial No. 79/124238 further distinguishes it from each of the cited registrations.

II. THE GOODS ASSOCIATED WITH THE PENDING APPLICATIONS ARE DISTINCT FROM THOSE IDENTIFIED IN THE CITED REGISTRATIONS.

Even if the marks are considered similar, that does not end the inquiry as to the likelihood of confusion. A finding that confusion is likely requires a determination that the goods are sufficiently related that consumers will be confused as to their source. In conducting this analysis, the nature and scope of a party's goods or services must be determined on the basis of the goods or services recited in the application or registration. *See, e.g.*, *Stone Lion Capital Partners, L.P. v. Lion Capital LLP*, ___ F.3d ____, 110 USPQ2d 1157, 1162 (Fed. Cir. Mar. 26, 2014); *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1370, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012); *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 1267, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002); *J & J Snack Foods Corp. v. McDonald's Corp.*, 932 F.2d 1460, 1463, 18 USPQ2d 1889, 1892 (Fed. Cir. 1991); *Octocom Sys., Inc. v. Houston Computer Servs., Inc.*, 918 F.2d 937, 942, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990); *Canadian Imperial Bank of Commerce, N.A. v. Wells Fargo Bank*, 811 F.2d 1490, 1493, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987); *Paula Payne Prods. Co. v. Johnson Publ'g Co.*, 473 F.2d 901, 902, 177 USPQ 76, 77 (C.C.P.A. 1973); *In re Giovanni Food Co.*, 97 USPQ2d 1990, 1991 (TTAB 2011); *In re Iolo Techs., LLC*, 95 USPQ2d 1498, 1500 (TTAB 2010). In this case, Applicant's identification of goods is sufficiently narrow to avoid confusion with the extremely narrow identification of goods in the cited registration.

It is well-settled that even in cases where the marks are identical (and in this case they are not) confusion is not likely if the goods or services are not related. *See In re British Bulldog,*

Ltd., 224 USPQ 854 (TTAB 1984) (no likelihood of confusion between PLAYERS for shoes and PLAYERS for men's underwear); *Electronic Design & Sales Inc. v. Electronic Data Systems Corp.*, 954 F.2d 713, 21 USPQ2d 1388 (Fed. Cir. 1992) (no likelihood of confusion between EDS for power supplies or battery chargers versus E.D.S. for computer services).

Further, a general relationship between the goods or services at issue is insufficient to establish a likelihood of confusion. *See General Electric Company v. Graham Magnetics Incorporated*, 197 USPQ 690, 694 (TTAB 1977); *Harvey Hubbell Incorporated v. Tokyo Seimitsu Co., Ltd.*, 188 USPQ 517, 520 (TTAB 1975).

As the Board stated in *General Electric*:

> It is, however, not enough to find one term that may generically describe the goods. More must be shown: that is, *a commercial or technological relationship must exist between the goods such that the use of the trademark in commercial transactions on the goods is likely to produce opportunities for purchasers or users of the goods to be misled about their source or sponsorship.*

General Electric, 197 USPQ at 694 (emphasis supplied); *see also Harvey Hubbell*, 188 USPQ at 520 ("In determining whether products are identical or similar, the inquiry should be whether they appeal to the same market, not whether they resemble each other physically or whether a word can be found to describe the goods of the parties"). Consistent with this precedent, there are numerous Board cases finding no likelihood of confusion between even identical marks for goods or services used in a common industry, where the goods or services at issue differ from each other and there is insufficient evidence to establish a reasonable basis for assuming that they would be encountered by the same purchasers. *See, Borg-Warner Chemicals, Inc. v. Helena Chemical Co.*, 225 USPQ 222, 224 (TTAB 1983) (no likelihood of confusion between BLEND EX for stabilizing chemical composition for fertilizers and pesticides versus BLENDEX for synthetic resigns used in the industrial arts - "while both products are chemical compositions,

said products neither overlap nor move in common trade channels"); *In re Fesco*, 219 USPQ 437 (TTAB 1983) (no likelihood of confusion between FESCO & Design for distributorship services in the field of farm machinery and equipment versus FESCO for a variety of fertilizer processing and machinery and equipment); *Chase Brass & Copper Co., Inc. v. Special Springs, Inc.*, 199 USPQ 243 (TTAB 1978) (no likelihood of confusion between BLUE DOT for springs for engine distributors versus BLUE DOT for brass rods, both products used in new automobile manufacture); *Autac, Inc. v. Walco Sys., Inc.*, 195 USPQ 11 (TTAB 1977) (no likelihood of confusion between AUTAC for thermocouple automatic temperature regulators for brushless wire preheaters versus AUTAC for retractile electric cords, both products used in the wire manufacturing industry); *Hi-Country Foods Corp. v. Hi Country Beef Jerky*, 4 USPQ2d 1169 (TTAB 1987) (no likelihood of confusion between HI-COUNTRY & Design for various fruit juices versus HI-COUNTRY (stylized) for meat snack foods in the nature of jerky and sausage).

Confusion as to source is unlikely unless the goods or services of the applicant and the registrant are so related that the circumstances surrounding their marketing are such that they are likely to be encountered by the same persons under circumstances that would give rise to the mistaken belief that they originate from the same source. *See, e.g., On-line Careline Inc. v. America Online Inc.,* 229 F.3d 1080, 56 USPQ2d 1471 (Fed. Cir. 2000).

It is well-settled that even where marks are used on goods or services in the same category, the finding that marks are similar does not automatically result in a conclusion that a likelihood of confusion exists. *Electronic Design & Sales Inc. v. Electronic Data Systems*, 21 USPQ2d 1388 (Fed. Cir. 1992 (holding no likelihood of confusion between EDS for power supplies and batter charges versus EDS for computer services; *In re British Bulldog, Ltd.*, 224 USPQ 854 (TTAB 1984) (finding no likelihood of confusion between PLAYERS for shoes and

PLAYERS for underwear); *In re Reach Electronics, Inc.*, 175 USPQ 734 (TTAB 1972) (finding no likelihood of confusion between REAC for measuring, testing and computing equipment and REACH for communication equipment).

Moreover, numerous cases have found no likelihood of confusion between even identical marks for goods and services used in a common industry – where the goods and services are different from each other and the record does not provide a sufficient evidentiary basis for inferring they would be encountered by the same consumers under circumstances leading to confusion as to source. *See Hi Country Foods Corp v. Hi Country Beef Jerky*, 4 USPQ2d 1169 (TTAB 1987) (no confusion likely between HI-COUNTRY for fruit juice and HI-COUNTRY for meat snacks); *Borg-Warner Chemicals, Inc. v. Helena Chemical Co.*, 225 USPQ 222 (TTAB 1983) (finding BLENDEX for stabilizing chemical composition of fertilizes/pesticides not likely to cause confusion with BLENDEX for synthetic resins used in industrial arts); *In re Fesco*, 219 USPQ 437 (TTAB 1983) (finding no likelihood of confusion between FESCO for farm machinery distributorships and FESCO for fertilizer processing machinery and equipment); *Chase Brass & Copper Co., Inc. v. Special Springs, Inc.*, 199 USPQ 243 (TTAB 1978).

The examining attorney has limited the refusal to registration to the following goods and services:

International Class 9: Scientific, measuring, signaling, checking and supervision, and teaching apparatus and instruments, namely, electricity conduits, electricity distribution consoles, electricity limiters, electricity routers for managing and optimizing energy loads within machines and within a building ; electricity voltage regulators ; LCD monitors for displaying electricity usage ; electrical distribution boxes ; electrical distribution circuit boards ; electric batteries ; electric couplings ; electrical junction boxes ; electric cables ; electric installations for the remote control of industrial operations ; electronic devices, namely, energy meters for tracking and monitoring energy usage ; electric resistors ; temperature controllers for industrial applications ; temperature indicators ; temperature probes for non-medical use ; thermostats; mercury level gauges ; boiler control instruments ; fire alarms ; measurement converters ; data processing equipment and computers ; computer software recorded on data media for controlling heating and cooling apparatus ; apparatus for recording, transmission or reproduction of sound or

images; blank magnetic data carriers ; prerecorded video discs featuring information regarding heating and cooling systems ; computer screens and monitors

International Class 011: Heating installations and cooling units for industrial purposes ; steam generating installations ; refrigerating machines and installations ; drying apparatus for use in heating, ventilation, air conditioning, and refrigeration systems ; climate control devices consisting of ventilation control devices; heating installations for heating air, fluids, solids, corrosive preparations, water and any other liquids ; heating installations for infrared heating ; heating apparatus for solid, liquid or gaseous fuels ; heating radiators ; electric heaters for commercial use ; electric radiators ; heating boilers ; electrical boilers ; automatic waters feeders being parts of heating boilers ; electric heating stoves, not for cooking; heat pumps ; heaters for vehicles ; electric hot air generators for use in heating ; heat accumulators ; heat regenerators, not being parts of machines ; heating elements ; electric heating filaments ; fireplaces, domestic ; solar collectors for heating ; immersion heaters ; electric heating cables ; electrical heating tapes ; heating element cartridges ; temperature control devices, namely, thermoregulators and heat exchangers, not parts of machines; cooling installations for cooling air, fluids, water and any other liquids ; air conditioning units ; ventilation fans for air conditioning units ; ventilation air-conditioning installations for vehicles ; air conditioning apparatus and installations ; cooling installations for liquids ; ventilation hoods ; air filtering installations ; electric air purifiers and deodorizers ; fans being parts of air-conditioning installations ; refrigerating installations and machines ; apparatus and installations for refrigeration and cooling . coolers for furnaces ; steam accumulators ; steam generating installations ; humidifiers for central heating radiators ; infrared generators for heating and drying ; fuel economizers in the nature of energy recovering ventilators

In this case there is insufficient evidence to conclude that the goods of the respective parties are sufficiently related to cause confusion, especially with respect to Applicant's goods in International Class 9. Applicant's Class 9 goods primarily serve to control electrical energy loads in buildings. This can be distinguished from heating and cooling apparatus associated with the cited registrations.

III. APPLICANT PROVIDES GOODS TO HIGHLY SOPHISTICATED PURCHASERS UNDER CIRCUMSTANCES THAT MINIMIZE CONFUSION.

The differences in the goods are particularly important where the purchasers of the goods in question are highly sophisticated and less prone to confusion. The nature of Applicant's products – highly technical apparatus – requires careful consideration and deliberation, all of

which reduces the likelihood of confusion. *Astra Pharmaceutical Products, Inc. v. Beckman Instruments, Inc.*, 220 USPQ 786 (1st Cir. 1983) (holding that purchasers of local anesthetic preparations, cardiovascular medicines, and pre-filled syringes on one hand, and purchasers of computerized blood analysis machines, on the other hand, are distinct professionals and unlikely to be confused.); *See also Electronic Design & Sales Inc.*, 21 USPQ2d 1388, 1392 (Fed. Cir. 1992).

CONCLUSION

In view of the arguments presented, Applicant respectfully requests that the Trademark Trial and Appeal Board reverse the Examining Attorney's refusal to register Applicant's VULCANIC Marks and pass the applications to publication.

Respectfully submitted,

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