

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	79144859
LAW OFFICE ASSIGNED	LAW OFFICE 116
MARK SECTION	
MARK FILE NAME	http://tmng-al.uspto.gov/resting2/api/img/79144859/large
LITERAL ELEMENT	EXAKT
STANDARD CHARACTERS	NO
USPTO-GENERATED IMAGE	NO
ARGUMENT(S)	
See attached response.	
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_8302024-20160706171253809670_EXAKT - Response to Office Action.pdf
CONVERTED PDF FILE(S) (5 pages)	\\TICRS\EXPORT16\IMAGEOUT16\791\448\79144859\xml20\RFR0002.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\791\448\79144859\xml20\RFR0003.JPG
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DESCRIPTION OF EVIDENCE FILE	Response to Office Action
GOODS AND/OR SERVICES SECTION (007)(current)	
INTERNATIONAL CLASS	007
DESCRIPTION	
<p>Machines and parts and fittings therefor, including automated machines and parts and fittings therefor, consumables and wearing parts for machines, included in this class, equipment, other than hand-operated, namely, three roll mills, pathology saws, saws, power operated saws and grinding machines for the treatment of histological tests, quality management and geology; Three roll mills and parts and fittings for material development and production for food processing industry, printing industry, electronic parts industry, cosmetics industry, chemical industry, photovoltaics industry, battery industry, capacitor industry, dental industry and pharmaceutical industry; Cutting and grinding machines for material research and development, quality assurance, production, histologic and implantation research and parts and fittings therefor; ointment mills for the mixing and production of pharmaceutical ointments and parts and fittings therefor; tube fillers for manual filling of ointment tubes; diamond band saws and grinders for histology, anatomy and pathology except hole saws; Consumables and wearing parts for three roll mills for material development and production for food processing industry, printing industry, electronic parts industry, cosmetics industry, chemical industry, photovoltaics industry, battery industry, capacitor industry, dental industry and pharmaceutical industry; consumables and wearing parts for cutting and grinding machines for cutting and grinding bone and tissue; consumables and wearing parts for ointment mills for the mixing and production of pharmaceutical ointments; consumables and wearing parts for tube fillers for manual filling of ointment tubes; consumables and wearing parts for diamond band saws and grinders for histology, anatomy and pathology</p>	

GOODS AND/OR SERVICES SECTION (007)(proposed)

INTERNATIONAL CLASS

007

TRACKED TEXT DESCRIPTION

~~Machines and parts and fittings therefor, including automated machines and parts and fittings therefor, consumables and wearing parts for machines, included in this class, equipment, other than hand-operated, namely, three roll mills, pathology saws, saws, power operated saws and grinding machines for the treatment of histological tests, quality management and geology;~~ Three roll mills and parts and fittings for material development and production for food processing industry, printing industry, electronic parts industry, cosmetics industry, chemical industry, photovoltaics industry, battery industry, capacitor industry, dental industry and pharmaceutical industry; Cutting and grinding machines for material research and development, quality assurance, production, histologic and implantation research and parts and fittings therefor; ointment mills for the mixing and production of pharmaceutical ointments and parts and fittings therefor; [diamond band saws and grinders for histology, anatomy and pathology](#); ~~tube fillers for manual filling of ointment tubes~~; Consumables and wearing parts for three roll mills for material development and production for food processing industry, printing industry, electronic parts industry, cosmetics industry, chemical industry, photovoltaics industry, battery industry, capacitor industry, dental industry and pharmaceutical industry; ~~diamond band saws and grinders for histology, anatomy and pathology except hole saws~~; [consumables and wearing parts for cutting and grinding machines for material research and development, quality assurance, production, histologic and implantation research](#); consumables and wearing parts for ointment mills for the mixing and production of pharmaceutical ointments; ~~consumables and wearing parts for cutting and grinding machines for cutting and grinding bone and tissue~~; consumables and wearing parts for diamond band saws and grinders for histology, anatomy and pathology; ~~consumables and wearing parts for tube fillers for manual filling of ointment tubes~~

FINAL DESCRIPTION

Three roll mills and parts and fittings for material development and production for food processing industry, printing industry, electronic parts industry, cosmetics industry, chemical industry, photovoltaics industry, battery industry, capacitor industry, dental industry and pharmaceutical industry; Cutting and grinding machines for material research and development, quality assurance, production, histologic and implantation research and parts and fittings therefor; ointment mills for the mixing and production of pharmaceutical ointments and parts and fittings therefor; diamond band saws and grinders for histology, anatomy and pathology; Consumables and wearing parts for three roll mills for material development and production for food processing industry, printing industry, electronic parts industry, cosmetics industry, chemical industry, photovoltaics industry, battery industry, capacitor industry, dental industry and pharmaceutical industry; consumables and wearing parts for cutting and grinding machines for material research and development, quality assurance, production, histologic and implantation research; consumables and wearing parts for ointment mills for the mixing and production of pharmaceutical ointments; consumables and wearing parts for diamond band saws and grinders for histology, anatomy and pathology

GOODS AND/OR SERVICES SECTION (009)(current)

INTERNATIONAL CLASS

009

DESCRIPTION

Laboratory equipment and laboratory requisites and consumables therefor, for a wide variety of equipment, requisites and consumables included in this class; computer software for the operating of, and for measurement in automated machines for a wide variety of items; Apparatus and instruments for scientific research in laboratories and consumables therefor

GOODS AND/OR SERVICES SECTION (009)(proposed)

INTERNATIONAL CLASS

009

TRACKED TEXT DESCRIPTION

~~Laboratory equipment and laboratory requisites and consumables therefor, for a wide variety of equipment, requisites and consumables included in this class;~~ Apparatus and instruments for scientific research in laboratories and consumables therefor; ~~computer software for the operating of, and for measurement in automated machines for a wide variety of items~~

FINAL DESCRIPTION

Apparatus and instruments for scientific research in laboratories and consumables therefor

GOODS AND/OR SERVICES SECTION (037)(current)

INTERNATIONAL CLASS

037

DESCRIPTION

Services in the field of repair and installation for a wide variety of items; The construction, repair, installation and servicing of three roll mills a for material development and production for food processing industry, printing industry, electronic parts industry, cosmetics industry, chemical industry, photovoltaics industry, battery industry, capacitor industry, dental industry and pharmaceutical industry; the construction, repair, installation and servicing of cutting and grinding machines for cutting and grinding bone and tissue; the construction, repair, installation

and servicing of ointment mills for the mixing and production of pharmaceutical ointments; the construction, repair, installation and servicing of diamond band saws and grinders for histology, anatomy and pathology; the construction, repair, installation and servicing of apparatus and instruments for scientific research in laboratories

GOODS AND/OR SERVICES SECTION (037)(proposed)

INTERNATIONAL CLASS

037

TRACKED TEXT DESCRIPTION

~~Services in the field of repair and installation for a wide variety of items~~; The construction, repair, installation and servicing of three roll mills a for material development and production for food processing industry, printing industry, electronic parts industry, cosmetics industry, chemical industry, photovoltaics industry, battery industry, capacitor industry, dental industry and pharmaceutical industry; [the construction, repair, installation and servicing of cutting and grinding machines for material research and development, quality assurance, production, histologic and implantation research](#); ~~the construction, repair, installation and servicing of cutting and grinding machines for cutting and grinding bone and tissue~~; the construction, repair, installation and servicing of ointment mills for the mixing and production of pharmaceutical ointments; the construction, repair, installation and servicing of diamond band saws and grinders for histology, anatomy and pathology; the construction, repair, installation and servicing of apparatus and instruments for scientific research in laboratories

FINAL DESCRIPTION

The construction, repair, installation and servicing of three roll mills a for material development and production for food processing industry, printing industry, electronic parts industry, cosmetics industry, chemical industry, photovoltaics industry, battery industry, capacitor industry, dental industry and pharmaceutical industry; the construction, repair, installation and servicing of cutting and grinding machines for material research and development, quality assurance, production, histologic and implantation research; the construction, repair, installation and servicing of ointment mills for the mixing and production of pharmaceutical ointments; the construction, repair, installation and servicing of diamond band saws and grinders for histology, anatomy and pathology; the construction, repair, installation and servicing of apparatus and instruments for scientific research in laboratories

SIGNATURE SECTION

RESPONSE SIGNATURE

/Howard J. Shire/

SIGNATORY'S NAME

Howard J. Shire, Esq.

SIGNATORY'S POSITION

Attorney of Record, New York Bar Member

SIGNATORY'S PHONE NUMBER

212.425.7200

DATE SIGNED

07/06/2016

AUTHORIZED SIGNATORY

YES

CONCURRENT APPEAL NOTICE FILED

YES

FILING INFORMATION SECTION

SUBMIT DATE

Wed Jul 06 17:28:02 EDT 2016

TEAS STAMP

USPTO/RFR-X.XX.XXX.X-2016
0706172802906085-79144859
-55061cd82cb94a44e2798f78
037dbdfadda3ad1a4356e349c
24e02bc18996fbc-N/A-N/A-2
0160706171253809670

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PTO Form 1960 (Rev 10/2011)

OMB No. 0651-0050 (Exp 07/31/2017)

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. **79144859** EXAKT (Stylized and/or with Design, see <http://tmng-al.uspto.gov/resting2/api/img/79144859/large>) has been

amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

See attached response.

EVIDENCE

Evidence in the nature of Response to Office Action has been attached.

Original PDF file:

[evi_8302024-20160706171253809670_.EXAKT_-_Response_to_Office_Action.pdf](#)

Converted PDF file(s) (5 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 007 for Machines and parts and fittings therefor, including automated machines and parts and fittings therefor, consumables and wearing parts for machines, included in this class, equipment, other than hand-operated, namely, three roll mills, pathology saws, saws, power operated saws and grinding machines for the treatment of histological tests, quality management and geology; Three roll mills and parts and fittings for material development and production for food processing industry, printing industry, electronic parts industry, cosmetics industry, chemical industry, photovoltaics industry, battery industry, capacitor industry, dental industry and pharmaceutical industry; Cutting and grinding machines for material research and development, quality assurance, production, histologic and implantation research and parts and fittings therefor; ointment mills for the mixing and production of pharmaceutical ointments and parts and fittings therefor; tube fillers for manual filling of ointment tubes; diamond band saws and grinders for histology, anatomy and pathology except hole saws; Consumables and wearing parts for three roll mills for material development and production for food processing industry, printing industry, electronic parts industry, cosmetics industry, chemical industry, photovoltaics industry, battery industry, capacitor industry, dental industry and pharmaceutical industry; consumables and wearing parts for cutting and grinding machines for cutting and grinding bone and tissue; consumables and wearing parts for ointment mills for the mixing and production of pharmaceutical ointments; consumables and wearing parts for tube fillers for manual filling of ointment tubes; consumables and wearing parts for diamond band saws and grinders for histology, anatomy and pathology

Original Filing Basis:

Filing Basis Section 66(a) , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

Proposed:

Tracked Text Description: ~~Machines and parts and fittings therefor, including automated machines and parts and fittings therefor, consumables and wearing parts for machines, included in this class, equipment, other than hand-operated, namely, three roll mills, pathology saws, saws, power operated saws and grinding machines for the treatment of histological tests, quality management and geology;~~ Three roll mills and parts and fittings for material development and production for food processing industry, printing industry, electronic parts industry, cosmetics industry, chemical industry, photovoltaics industry, battery industry, capacitor industry, dental industry and pharmaceutical industry; Cutting and grinding machines for material research and development, quality assurance, production, histologic and implantation research and parts and fittings therefor; ointment mills for the mixing and production of pharmaceutical ointments and parts and fittings therefor; [diamond band saws and grinders for histology, anatomy and pathology](#); ~~tube fillers for manual filling of ointment tubes~~; Consumables and wearing parts for three roll mills for material development and production for food processing industry, printing industry, electronic parts industry, cosmetics industry, chemical industry, photovoltaics industry, battery industry, capacitor industry, dental industry and pharmaceutical industry; [diamond band saws and grinders for histology, anatomy and pathology except hole saws](#); [consumables and wearing parts for cutting and grinding machines for material research and development, quality assurance, production, histologic and implantation research](#); consumables and wearing parts for ointment mills for the mixing and production of pharmaceutical ointments; ~~consumables and wearing parts for cutting and grinding machines for cutting and grinding bone and tissue~~; consumables and wearing parts for diamond band saws and grinders for histology, anatomy and pathology; ~~consumables and wearing parts for tube fillers for manual filling of ointment tubes~~

Class 007 for Three roll mills and parts and fittings for material development and production for food processing industry, printing industry, electronic parts industry, cosmetics industry, chemical industry, photovoltaics industry, battery industry, capacitor industry, dental industry and pharmaceutical industry; Cutting and grinding machines for material research and development, quality assurance, production, histologic and implantation research and parts and fittings therefor; ointment mills for the mixing and production of pharmaceutical ointments and parts and fittings therefor; diamond band saws and grinders for histology, anatomy and pathology; Consumables and wearing parts for three roll mills for material development and production for food processing industry, printing industry, electronic parts industry, cosmetics industry, chemical industry, photovoltaics industry, battery industry, capacitor industry, dental industry and pharmaceutical industry; consumables and wearing parts for cutting and grinding machines for material research and development, quality assurance, production, histologic and implantation research;

consumables and wearing parts for ointment mills for the mixing and production of pharmaceutical ointments; consumables and wearing parts for diamond band saws and grinders for histology, anatomy and pathology

Filing Basis Section 66(a) , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 009 for Laboratory equipment and laboratory requisites and consumables therefor, for a wide variety of equipment, requisites and consumables included in this class; computer software for the operating of, and for measurement in automated machines for a wide variety of items; Apparatus and instruments for scientific research in laboratories and consumables therefor

Original Filing Basis:

Filing Basis Section 66(a) , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

Proposed:

Tracked Text Description: ~~Laboratory equipment and laboratory requisites and consumables therefor, for a wide variety of equipment, requisites and consumables included in this class; Apparatus and instruments for scientific research in laboratories and consumables therefor; computer software for the operating of, and for measurement in automated machines for a wide variety of items~~

Class 009 for Apparatus and instruments for scientific research in laboratories and consumables therefor

Filing Basis Section 66(a) , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 037 for Services in the field of repair and installation for a wide variety of items; The construction, repair, installation and servicing of three roll mills a for material development and production for food processing industry, printing industry, electronic parts industry, cosmetics industry, chemical industry, photovoltaics industry, battery industry, capacitor industry, dental industry and pharmaceutical industry; the construction, repair, installation and servicing of cutting and grinding machines for cutting and grinding bone and tissue; the construction, repair, installation and servicing of ointment mills for the mixing and production of pharmaceutical ointments; the construction, repair, installation and servicing of diamond band saws and grinders for histology, anatomy and pathology; the construction, repair, installation and servicing of apparatus and instruments for scientific research in laboratories

Original Filing Basis:

Filing Basis Section 66(a) , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

Proposed:

Tracked Text Description: ~~Services in the field of repair and installation for a wide variety of items;~~ The construction, repair, installation and servicing of three roll mills a for material development and production for food processing industry, printing industry, electronic parts industry, cosmetics industry, chemical industry, photovoltaics industry, battery industry, capacitor industry, dental industry and pharmaceutical industry; the construction, repair, installation and servicing of cutting and grinding machines for material research and development, quality assurance, production, histologic and implantation research; ~~the construction, repair, installation and servicing of cutting and grinding machines for cutting and grinding bone and tissue;~~ the construction, repair, installation and servicing of ointment mills for the mixing and production of pharmaceutical ointments; the construction, repair, installation and servicing of diamond band saws and grinders for histology, anatomy and pathology; the construction, repair, installation and servicing of apparatus and instruments for scientific research in laboratories

Class 037 for The construction, repair, installation and servicing of three roll mills a for material development and production for food processing industry, printing industry, electronic parts industry, cosmetics industry, chemical industry, photovoltaics industry, battery industry, capacitor industry, dental industry and pharmaceutical industry; the construction, repair, installation and servicing of cutting and grinding machines for material research and development, quality assurance, production, histologic and implantation research; the construction, repair, installation and servicing of ointment mills for the mixing and production of pharmaceutical ointments; the construction, repair, installation and servicing of diamond band saws and grinders for histology, anatomy and pathology; the construction, repair, installation and servicing of apparatus and instruments for scientific research in laboratories

Filing Basis Section 66(a) , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Howard J. Shire/ Date: 07/06/2016

Signatory's Name: Howard J. Shire, Esq.

Signatory's Position: Attorney of Record, New York Bar Member

Signatory's Phone Number: 212.425.7200

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which

includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the owner's/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the owner/holder in this matter: (1) the owner/holder has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner's/holder's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 79144859

Internet Transmission Date: Wed Jul 06 17:28:02 EDT 2016

TEAS Stamp: USPTO/RFR-X.XX.XXX.X-2016070617280290608

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dfadda3ad1a4356e349c24e02bc18996fbc-N/A-

N/A-20160706171253809670

Section 2(d) Refusal – Likelihood of Confusion

The Examining Attorney continues to refuse registration of Applicant's mark under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d), citing U.S. Registration Nos. 4700674, 4238115, 3770511, 3476409, 3300633, 1721541, 4466076, 3856727, 3931526, 3931525, and 2124251 ("Cited Marks"). Applicant respectfully disagrees with the Examining Attorney's findings. No potential for confusion exists because of the different goods and services, the sophistication of the potential consumers of those goods, and services, and their high cost.

As an initial matter, please note that Applicant has deleted many goods and services from its application. In doing so, Applicant is confident that the Examining Attorney's concerns regarding the Cited Marks will be allayed, making it clear that there is no likelihood of confusion with the Cited Marks. Applicant's remaining goods and services are as follows:

Class 07: Three roll mills and parts and fittings for material development and production for food processing industry, printing industry, electronic parts industry, cosmetics industry, chemical industry, photovoltaics industry, battery industry, capacitor industry, dental industry and pharmaceutical industry; Cutting and grinding machines for material research and development, quality assurance, production, histologic and implantation research and parts and fittings therefor; ointment mills for the mixing and production of pharmaceutical ointments and parts and fittings therefor; Consumables and wearing parts for three roll mills for material development and production for food processing industry, printing industry, electronic parts industry, cosmetics industry, chemical industry, photovoltaics industry, battery industry, capacitor industry, dental industry and pharmaceutical industry; consumables and wearing parts for cutting and grinding machines for material research and development, quality assurance, production, histologic and implantation research; consumables and wearing parts for ointment mills for the mixing and production of pharmaceutical ointments; consumables and wearing parts for diamond band saws and grinders for histology, anatomy and pathology

Class 09: Apparatus and instruments for scientific research in laboratories and consumables therefor.

Class 37: The construction, repair, installation and servicing of three roll mills a for material development and production for food processing industry, printing industry, electronic parts industry, cosmetics industry, chemical industry, photovoltaics industry, battery industry, capacitor industry, dental industry and pharmaceutical industry; the construction, repair, installation and servicing of cutting and grinding machines for material research and development, quality assurance, production, histologic and implantation research; the construction, repair, installation and servicing of ointment mills for the mixing and production of pharmaceutical ointments; the construction, repair, installation and servicing of diamond band saws and grinders for histology, anatomy and pathology; the construction, repair, installation and servicing of apparatus and instruments for scientific research in laboratories.

The Examining Attorney has stated that portions of Applicant's goods and services are described broadly enough to encompass the goods and services covered by the Cited Marks. Applicant strongly disagrees and asks that the Examining Attorney reconsider this broad interpretation of Applicant's goods and services now that Applicant has narrowed the description of goods and services.

Applicant's Goods and Services are Different From and Unrelated to Those of the Cited Marks

The Cited Marks do not cover Applicant's goods and services, and are wholly unrelated to them. For example, the Cited Marks' goods and services include: i) laboratory incubators, liquid handlers, pipettors, aspirators and mixers, ii) hand-held power tools, iii) horticultural sweepers, conditioners, and harvesters, iv) photometers, v) computer programs used to maintain control system tuning for pattern recognition and analysis and for performance evaluation, vi) power-operated lubricant dispensers for machines, vii) apparatuses for monitoring quantities of metals in gases, viii) custom construction and installation of cabinets and furniture, and ix) radiopaque

markers for use in X-ray photography. None of these is among Applicant's goods or services, and they are all dissimilar to Applicant's goods and services, which obviates any possible confusion. Unlike Applicant's goods and services, the Registrants' goods and services are marketed to individuals who are **not** seeking industrial machinery and related services for use in the food processing, printing, electronic parts, cosmetics, chemical, photovoltaics, battery, capacitor, dental and pharmaceutical industries. Applicant's goods and services and the Registrants' goods and services simply do not overlap and are not related.

In addressing the issue of confusion, the Examining Attorney should consider Section 1207.01(a)(i) of the Trademark Manual of Examining Procedure, which states:

If the goods or services in question are not related or marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source, then, even if the marks are identical, confusion is not likely.

Here, the goods and services of the Applicant and the goods and services of the Cited Marks are unrelated and are marketed and promoted differently and to different customers, precluding any likelihood of confusion.

Moreover, the eleven Cited Marks are all owned by different entities, and coexist peacefully on the Register without any apparent confusion. The fact that the Office has allowed so many registrations of the Cited Marks, which all contain the term EXACT or XACT, means that each of these arguably similar marks is entitled, at best, to only a limited scope of protection. Just as the Cited Marks all coexist, so too can Applicant's mark, for Applicant's different goods and services.

The Customers are Sophisticated and Careful and the Goods/Services are Expensive

Applicant's goods and services will be offered to customers seeking specialized industrial equipment and services for very specific uses in the food processing, printing, electronic parts, cosmetics, chemical, photovoltaics, battery, capacitor, dental and pharmaceutical industries. These goods and services are expensive and obviously not impulse purchases, nor are they purchased "off the shelf". They are obviously not purchased by the average "man in the street", but by professional purchasers who are familiar with the technical requirements for those goods and services. Purchasing industrial equipment and services requires significant sophistication and care. Since great care will be taken in buying these expensive items, these sophisticated purchasers are not likely to be confused by arguably similar marks. See, *e.g.*, Checkpoint Systems, Inc. v. Check Point Software Technologies, Inc., 269 F. 3d 270, 286, 60 USPQ2d 1609, 1617 (3rd Cir. 2001) (when relevant products are expensive and buyers are sophisticated or professional purchasers, courts have generally found no likelihood of confusion); Heartsprings, Inc. v. Heartspring, Inc., 143 F.3d 550, 557, 1998 U.S. App. LEXIS 7635 **19, 46 U.S.P.Q. 2d 1481 (10th Cir. 1998) (where "consumers exercise a high degree of care" and the services at issue are expensive, confusion is unlikely). In sum, sophisticated consumers who are careful in buying Applicant's expensive goods and services are in no danger of confusing the goods and services of the Applicant with those of the Registrants. Nor would these sophisticated consumers be likely to believe the different goods and services would originate from a single source, given the differing, respective goods and services.

The Federal Circuit's decision in In re N.A.D. Inc., 754 F.2d 996, 999-1000, 224 U.S.P.Q. 969, 971 (Fed. Cir. 1985) is especially instructive. In that case, the applicant sought registration of NARKOMED for "anesthesia machines for use in surgery". The application had been denied due to registrations for NARCO MEDICAO SERVICES for "rental and leasing of hospital and surgical equipment and consultation services relating to the operation of such equipment", and NARCO and design for a long list of specialized medical equipment including "apparatuses for administration of anesthesia". The Federal Circuit found no likelihood of confusion notwithstanding the marks' and goods' similarities. A "most important factor" in reaching this conclusion was the fact that "only very sophisticated purchasers are here involved who would buy with great care and unquestionably know the source of the goods." The considerable cost of the applicant's goods was also persuasive, even though the cost was not of record.

The present application presents an analogous situation in terms of consumer sophistication. Applicant's machines and other technical apparatus and instruments are elaborate, sizable and complex products, which are purchased only in consultation with persons having appropriate technical knowledge. Consumers of Applicant's expensive goods and services are very careful purchasers who know from whom they are buying. Confusion is highly unlikely.

Conclusion

Accordingly, Applicant respectfully submits that its mark is not likely to cause confusion with the Cited Marks, and the refusal under Section 2(d) should be withdrawn.