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

Proceeding	85964505
Applicant	Littelfuse, Inc.
Applied for Mark	ENGINEERED TO PERFORM. BUILT TO LAST.
Correspondence Address	MICHAEL E HALL KACVINSKY DAISAK BLUNI PLLC 3120 PRINCETON PIKE, SUITE 303 LAWRENCEVILLE, NJ 08648 UNITED STATES mhall@kdbfirm.com, cseaton@kdbfirm.com, kddocketing@cpaglobal.com
Submission	Reply Brief
Attachments	Applicant's Reply Brief.pdf(1646330 bytes )
Filer's Name	Michael E. Hall
Filer's e-mail	mhall@kdbfirm.com, cseaton@kdbfirm.com, kddocketing@cpaglobal.com
Signature	/Michael E. Hall/
Date	05/22/2015



## **II. Applicant's Failure to "Deny" the Parties Goods are Related**

The Examining Attorney makes much of the fact that "the applicant does not deny that the goods could be related, or even identical,"<sup>2</sup> and "not once does the applicant deny that many of its goods could be related, or even identical, to the registered goods."<sup>3</sup> One might have thought this could fairly be inferred from the situation, but lest there be any doubt, Applicant expressly denies that any of its goods are related or identical to the goods in the cited registration.

## **III. Examining Attorney's Improper Generalization of the Goods**

Throughout prosecution and now on appeal, the Examining Attorney has been remarkably consistent in his position: "The parties' goods are related in that they are all electrical goods used in the distribution and controlling of electrical power." That statement appears in the Examining Attorney's appeal brief,<sup>4</sup> his final Office Action,<sup>5</sup> and in his non-final Office Action dated March 17, 2014.<sup>6</sup>

In Applicant's main brief (as well as in a response during prosecution), Applicant pointed out that this type of generalization is improper and cited the Board's decision in *In re W.W. Henry Co.*, 82 U.S.P.Q.2d 1213, 1215 (T.T.A.B. 2007), for the proposition that "to demonstrate that goods are related, it is not sufficient that a particular term may be found which may broadly describe the goods." In *W.W. Henry*, the Board reversed a refusal and, in response to the examining attorney's argument the parties' goods were related "because they are all used to repair surfaces," explained that was error:

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<sup>2</sup> Examining Attorney's Brief, unnumbered page 11.

<sup>3</sup> Examining Attorney's Brief, unnumbered page 11.

<sup>4</sup> Examining Attorney's Brief, unnumbered page 7.

<sup>5</sup> Examining Attorney's final Office Action, unnumbered page 4.

<sup>6</sup> Examining Attorney's non-final Office Action dated March 17, 2014, unnumbered page 4.

It is true that applicant's goods, as identified, include a Portland cement based patch for use in repairing wall and floor surfaces, while the cited registration covers a chemical filler for use in the cosmetic repair of polyolefin surfaces, and therefore they can both be broadly described as preparations for repairing surfaces. However, to demonstrate that goods are related, it is not sufficient that a particular term may be found which may broadly describe the goods. *When we examine the specific items in the identifications*, they do not appear to be related in a manner that would be likely to cause confusion.

*Id.* (citations omitted; emphasis added).

Just as it was improper for the examining attorney in *W.W. Henry* to find the goods related "because they are all used to repair surfaces," it is likewise improper for the Examining Attorney in this case to find the goods related because "they are all electrical goods used in the distribution and controlling of electrical power." Rather, as the Board stated above in *W.W. Henry*, we must "examine the specific items in the identifications."

In his brief the Examining Attorney disputes that he has done anything improper, stating that he "did not 'find' a term to generally describe both parties' goods."<sup>7</sup>

Notwithstanding this, it is beyond serious dispute that this is exactly what the Examining Attorney has done. He has been consistently clear about his generalizing of the goods. The Examining Attorney also states in his brief that Applicant "cites no law in support of"<sup>8</sup> its criticism of the Examining Attorney's improper generalization. This is simply untrue, as Applicant cited *W.W. Henry*.<sup>9</sup>

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<sup>7</sup> Examining Attorney's Brief, unnumbered page 10.

<sup>8</sup> Examining Attorney's Brief, unnumbered page 10.

<sup>9</sup> Applicant's Main Brief, page 6. Applicant also cited *In re RA Brands, L.L.C.*, Serial No. 85721641 (T.T.A.B. September 23, 2014) (non-precedential). Applicant also sought to highlight the untenable nature of the Examining Attorney's sweeping generalization that goods are related because "they are all electrical goods used in the distribution and controlling of electrical power." Specifically, Applicant pointed out that "[u]nder the Examining Attorney's approach, a device sold to the U.S. Navy and used for controlling electricity in a nuclear reactor on a submarine would be related to a device used to control electricity in an electric guitar." Applicant's Main Brief, page 6. The Examining Attorney criticizes this "purported

#### **IV. Examining Attorney's Improper Comparisons of Specific Goods**

It is well established that “[t]he 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.” T.M.E.P. § 1207.01(a)(iii). And “if applicant or registrant has included limitations in its identification of goods, we do not ignore them.” *In re Truth Hardware Corporation*, Serial No. 78421793 (T.T.A.B. September 21, 2006) (non-precedential). For example, the Board recently reversed a refusal where the goods in the cited registration were “electric motors for land vehicles,” explaining the proper analysis:

We further observe that Registrant’s “motors for land vehicles” is modified by the term “electric” meaning that the Examining Attorney must show that Applicant’s services are not just related to any type of “motors for land vehicles” but specifically to those electric in nature.

*In re Randakk’s Cycle Shakk, LLC*, Serial No. 86128904 (T.T.A.B. April 22, 2015) (non-precedential).

Applicant does not believe these principles are in any way controversial, but as explained below the Examining Attorney’s approach to this case diverges considerably from them. Aside from improperly generalizing the goods, the Examining Attorney also repeatedly truncates and cherry-picks wording from Applicant’s goods and registrant’s goods in order to find them related. Below are the Examining Attorney’s comparisons.

##### Examining Attorney’s Goods Comparison No. 1

First, the Examining Attorney alleges:

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analogy” because it “bears no resemblance to the case at hand.” Examining Attorney’s Brief, unnumbered page 10. The Examining Attorney missed the point, for it was not an analogy at all; rather, the juxtaposition of two obviously-unrelated goods was intended to highlight how misguided the Examining Attorney’s generalization is as an approach to the relatedness inquiry.

the applicant's goods include "power cable couplers" while the registered goods include "power cable terminations and joints."<sup>10</sup>

What the Examining Attorney fails to acknowledge is that the *complete* clause in Applicant's identification is "portable power cable couplers for use in underground and aboveground mining" and the complete clause in the cited registration is "power cable terminations and joints, namely, pre-molded terminations and joints for use on dielectric cable systems." Why are these goods related? Aside from the improper generalization addressed above, the Examining Attorney offers no explanation.

#### Examining Attorney's Goods Comparison No. 2

The Examining Attorney also alleges:

applicant's goods include "electrical equipment for electrical protection" and five types of "protection relays" while the registered goods include "current limiting protectors" and "protective electric relays."<sup>11</sup>

Applicant's goods include "electrical equipment for electrical protection"? That sounds like very broad language – until one realizes the Examining Attorney has egregiously cherry-picked words from Applicant's identification:

Prefabricated modular buildings and e-houses sold as a housing component of custom-designed, medium- and low-voltage **electrical equipment** for use in the mining industry, oil and gas industry, and other industrial applications **for electrical** distribution, **protection**, and control

Later in his brief, the Examining Attorney acknowledges he "should have included ellipses" but, he continues, "[t]he application also includes five types of electrical

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<sup>10</sup> Examining Attorney's Brief, unnumbered pages 7-8.

<sup>11</sup> Examining Attorney's Brief, unnumbered page 8.

‘protection relays.’”<sup>12</sup> While it is true in the most literal sense that the words “protection relays” appear five times in Applicant’s identification, the Examining Attorney again omits relevant parts of the identification. Here, the first two times “protection relays” appear they are *component parts* of a control center that itself is a *component* of an electric substation:

skid mounted and aboveground and underground electric substations, namely, skid mounted aboveground and underground portable low-to-medium voltage electric power centers for monitoring and controlling mining operations consisting of medium voltage switch or breaker, low-to-medium voltage transformer, electronic motor control centers, namely, control consoles and programmable logic controllers, power take-off and automation panels for monitoring, diagnosing problems and controlling the distribution and flow of electrical power, featuring motor **protection relays**, ground fault relays, arc flash relays, feeder **protection relays**, custom key pads, variable frequency drives<sup>13</sup>

The third, fourth, and fifth time “protection relays” appear in Applicant’s identification they name specific protection relays – *motor* protection relays, *feeder* protection relays, and *pump* protection relays – that are limited to “use in the mining industry, oil and gas industry, and other industrial applications”:

electric relays, namely, **motor protection relays**, ground fault relays, arc flash relays, **feeder protection relays**, **pump protection relays**, timers, flashers, power and voltage monitors, pump controllers, liquid level and load sensors, and current transformers, ***all for use in the mining industry, oil and gas industry, and other industrial applications***

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<sup>12</sup> Examining Attorney’s Brief, unnumbered page 10.

<sup>13</sup> See, e.g., *In re Buhler Techs. GmbH*, Serial No. 79034792 (T.T.A.B. February 12, 2009) (emphasis added) (“We do not find that, for instance, applicant’s ‘pumps sold in combination for use in hot tubs,’ which appear to be a **component part** of a finished product, are related to the ‘heat pumps’ identified in Registration No. 2714907. Nor do we find that applicant’s ‘air filters for air conditioning units’ and ‘partial air flow filters as parts of machines,’ again **component parts** of finished products, are related to the ‘filters and air cleaners for industrial use’ identified in Registration No. 0875430.”).

Turning now to the Examining Attorney's characterization of registrant's goods as "protective electric relays," this too is inexcusable cherry-picking. Registrant's goods are in reality identified as:

microprocessor-based power management systems comprised of power distribution switchgear with **protective electric relays** for controlling automatic switching operations in overhead and underground loop distribution circuits

In other words, these goods are a *power management system* comprised of switchgear that itself features protective electric relays for controlling automatic switching operations in overhead and underground loop distribution circuits. For the Examining Attorney to state that the goods in the cited registration include "protective electric relays" is highly misleading.

The only instance in which the Examining Attorney *accurately* describes either Applicant's goods or registrant's goods is when he indicates the goods in the cited registration include "current limiting protectors." However, aside from the Examining Attorney's incorrect belief that Applicant's goods are related to registrant's goods simply because "they are all electrical goods used in the distribution and controlling of electrical power," the Examining Attorney never makes any attempt to explain, much less prove, why registrant's "current limiting protectors" are related to Applicant's "motor protection relays, . . . feeder protection relays, pump protection relays, . . . all for use in the mining industry, oil and gas industry, and other industrial applications."

With respect to Applicant's limitation "all for use in the mining industry, oil and gas industry, and other industrial applications," the Examining Attorney takes the position that "the would-be limitations contained in the applicant's identification are rendered virtually meaningless by the language 'and other industrial applications,' which

could be almost anything.”<sup>14</sup> Applicant disagrees because “[a] term in an identification of goods should be read to have its ordinary meaning,” *In re Thor Tech, Inc.*, 85 U.S.P.Q.2d 1474, 1477 (T.T.A.B 2007), and thus while the exact contours of “industrial applications” may be open to debate – as with every other word in the English language – only a philosopher would say it “could be almost anything.” Words have meaning. Applicant’s limitation clearly confines the goods in question to those used in industrial applications, which would exclude domestic goods purchased by the general public. So, to give one example, one of Applicant’s “motor protection relays” would not be available at a Home Depot for purchase by someone working on an automobile.<sup>15</sup> It follows that to the extent there is any theoretical overlap in purchasers between Applicant’s motor protection relays/feeder protection relays/pump protection relays on the one hand, and registrant’s “current limiting protectors” on the other, that overlap would exist only among sophisticated purchasers. Under these circumstances, a finding of likelihood of confusion “is unwarranted because it would involve at most only a *de minimis* number of sophisticated purchasers. In other words, any overlap in customers is too small to be significant much less dispositive.” *Elec. Design & Sales Inc. v. Elec. Data Sys. Corp.*, 21 U.S.P.Q.2d 1388, 1392 (Fed. Cir. 1992).<sup>16</sup> Indeed, the Board has frequently found customer overlap only among sophisticated purchasers to be an important factor weighing against likelihood of confusion.

For example, in *In re Bunn-O-Matic Corporation*, Serial No. 77137482 (T.T.A.B.

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<sup>14</sup> Examining Attorney’s Brief, unnumbered page 10.

<sup>15</sup> For instance, reversing a refusal where the applicant’s goods were identified as “*industrial* electric food processing machines, namely, machines for slicing food products for packing and packaging *in commercial quantities*,” the Board found that “[i]n presenting her arguments the Examining Attorney consistently disregards or discounts the importance of the terms ‘industrial’ and ‘in commercial quantities.’” *In re Formax, Inc.*, Serial Nos. 77298497 and 77298501 (T.T.A.B. October 14, 2009) (non-precedential).

<sup>16</sup> The Examining Attorney states he “is actually in agreement with the applicant that the purchasers of the goods at issue are probably quite knowledgeable.” Examining Attorney’s Brief, unnumbered page 12.

March 30, 2010) (non-precedential), the Board found no likelihood of confusion between Applicant's mark TITAN for "large volume beverage brewing and dispensing equipment, namely, heated coffee and tea brewers and servers" and the identical cited mark TITAN for a variety of cooking and cooling equipment. The Board noted that Applicant's goods were by their very nature for commercial use, and therefore that while the cited goods were both for commercial and household use, the only overlap in consumers would occur in the commercial context:

[W]hile registrant's identified goods are broader, encompassing such goods made for commercial and domestic uses, they overlap in use with applicant's goods only in the commercial venue. In the commercial venue, applicant has established that the respective goods are expensive and are likely to be purchased carefully by knowledgeable buyers.<sup>17</sup>

#### Examining Attorney's Goods Comparison No. 3

The Examining Attorney states that "[b]oth the applicant's goods and the registrant's goods also include 'switches' and 'switchgear.'"<sup>18</sup> The word "switch" appears only once in Applicant's identification and it appears as shown below:

skid mounted and aboveground and underground electric substations, namely, skid mounted aboveground and underground portable low-to-medium voltage electric power centers for monitoring and controlling mining operations consisting of medium voltage **switch** or breaker, low-to-medium voltage transformer, electronic motor control centers, namely,

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<sup>17</sup> See also *In re The Boler Co.*, Serial No. 77059048 (T.T.A.B. February 17, 2009) ("While any trailer owner may purchase tires for the trailer, the only overlap in customers would be the careful, sophisticated purchasers of applicant's products. Only the purchasers of trailer suspension systems would be exposed to both marks. Therefore, we find that the degree of care likely to be exercised by purchasers of trailer suspension systems and tires does not support a finding of likelihood of confusion." – refusal reversed); *In re RAM Oil, Ltd., LLP*, Serial Nos. 77280977 and 77280981 (T.T.A.B. September 3, 2009) (non-precedential) ("Since the only overlap in customers is the careful, sophisticated purchasers of registrant's services, these are the only purchasers who are exposed to both marks." – refusals reversed); *In re Deceuninck N. Am. LLC*, Serial No. 77465459 (T.T.A.B. May 27, 2009) (non-precedential) ("[T]he overlap that we can see between applicant's window and door systems and the registrant's exterior insulation and finishing systems are architects and/or builders. We presume that these professionals are knowledgeable and sophisticated with respect to the products that they purchase and the vendors from whom those purchases are made." – refusal reversed though marks were identical).

<sup>18</sup> Examining Attorney's Brief, unnumbered page 8.

control consoles and programmable logic controllers, power take-off and automation panels for monitoring, diagnosing problems and controlling the distribution and flow of electrical power, featuring motor protection relays, ground fault relays, arc flash relays, feeder protection relays, custom key pads, variable frequency drives

This voltage switch is a component part of an electric substation for monitoring and controlling mining operations. Here again, the Examining Attorney's characterization of Applicant's goods is more than a little misleading.

The word "switchgear" appears only once in Applicant's identification and it appears as shown below:

electronic controls for motors and custom-built **switchgear** for use in the mining industry, oil and gas industry, and other industrial applications

This is not switchgear, as the Examining Attorney asserts, but rather *electronic controls* for custom-built switchgear. By now it is clear the Examining Attorney's characterizations of the parties' goods – even when he uses quotation marks – should be carefully checked against a complete and accurate listing of the parties' goods.

#### Examining Attorney's Goods Comparison No. 4

The Examining Attorney points to a data sheet about Applicant's e-houses, a portion of which is reproduced below:

**ELECTRICAL MODULAR BUILDING/E-HOUSES**



**Description**

Littelfuse Startco offers fully integrated electrical and automation systems. Our products include prefabricated, modular, skid-mounted enclosures for switchgear and auxiliary equipment. We deliver self-contained units, which are completely coordinated, assembled and tested inside our controlled factory environment. The primary switchgear and control applications include low- and/or medium-voltage switchgear and motor control centre enclosures; relay panel enclosures; and RTU and SCADA enclosures.

**Roof System**

- R20 or more fibreglass insulation. Mineral wool is optional
- 26 gauge white steel liner panel
- 6 mill vapour barrier

**Wall System**

- Doors, receptacles, assemblies, walls, and other major components are 22 gauge pre-painted panels
- R20 or more fibreglass insulation. Mineral wool is optional
- 26 gauge white steel liner panel
- 6 mill vapour barrier

**Skid**

- Welded I-beam perimeter
- Welded C-Channel joists
- ¼" checker floor plate
- SP-6 sandblast

**General Specifications**

Applicant submitted this data sheet during prosecution to explain the nature of its e-houses, which are now identified as follows:

Prefabricated modular buildings and e-houses sold as a housing component of custom-designed, medium- and low-voltage electrical equipment for use in the mining industry, oil and gas industry, and other industrial applications for electrical distribution, protection, and control

The Examining Attorney alleges that Applicant’s above-identified goods

are highly similar to the registrant’s electrical products, and in particular the registrant’s “microprocessor-based power management systems comprised of power distribution switchgear with protective electric relays for controlling automatic switching operations in overhead and

underground loop distribution circuits.”<sup>19</sup>

Again, the Examining Attorney does not even try to explain why Applicant’s goods are “highly similar” to registrant’s goods. Are registrant’s power management systems, which are stated to be “for controlling automatic switching operations in overhead and underground loop distribution circuits,” for use in residential neighborhoods where power lines may be overhead and underground? On the most fundamental level, goods are not related simply because the Examining Attorney declares them to be. And to avoid any doubt, Applicant firmly denies they are related.<sup>20</sup>

Examining Attorney’s Goods Comparison No. 5

The Examining Attorney states:

the registrant’s “switch gears used in transmission and distribution of electrical power” are presumed to occupy all trade channels, and to encompass the applicant’s “custom-built switchgear for use in the mining industry”<sup>21</sup>

There are three problems with this statement. First, the Examining Attorney again truncates the registrant’s goods, which are actually “vacuum switches, namely, switches and switch gears used in transmission and distribution of electrical power.” Second, as pointed out above, Applicant’s goods are not “custom-built switchgear” but rather “*electronic controls for . . . custom-built switchgear for use in the mining industry, oil and gas industry, and other industrial applications.*”

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<sup>19</sup> Examining Attorney’s Brief, unnumbered page 8.

<sup>20</sup> This case is unusual because in the experience of the undersigned, an examining attorney will state his or her reasons for believing the goods are related (third-party registrations, website evidence, etc.), and the applicant will then address those reasons. In this case, however, the Examining Attorney frequently asserts without any explanation at all, so there is little for Applicant to do except say that it disagrees with the assertions.

<sup>21</sup> Examining Attorney’s Brief, unnumbered page 8.

Third and finally, the Examining Attorney misstates the law. Registrant's goods are not presumed "to occupy all trade channels," but rather "all *normal* channels of trade" for such goods. T.M.E.P. § 1207.01(a)(iii) (emphasis added). *See also In re Chalet Chocolates, Inc.*, 212 U.S.P.Q. 968, 969 (T.T.A.B. 1982) ("Since registrant's goods [cheese fondue] sold under the identical mark are not in any way restricted to particular trade channels, it must be assumed that registrant's goods move through all trade channels suitable for goods of that type. While the Trademark Attorney's position is that registrant's goods may be sold door to door by others to raise funds in the same way that applicant's goods are sold, the Board is of the view that this mode of distribution is not the usual, ordinary or suitable mode of distribution of cheese fondue."); *In re Apollo Real Estate Acquisition LLC*, Serial No. 77466914 (T.T.A.B. December 1, 2009) (non-precedential) ("The problem with [the examining attorney's] conclusion is that there is no evidence that the normal channels of trade for offering 'private equity investment in real estate for private equity investors' is the same as or overlaps with the normal channels of trade for providing 'consulting services in the field of real estate market analysis.'").

Applying this principle to the present case, and using accurate wording from Applicant's goods and registrant's goods, what basis in law or fact does the Examining Attorney have for asserting registrant's "vacuum switches, namely, switches and switch gears used in transmission and distribution of electrical power" encompass Applicant's "electronic controls for . . . custom-built switchgear for use in the mining industry, oil and gas industry, and other industrial applications"? The Examining Attorney's assertions cannot withstand scrutiny.

## V. Examining Attorney's Miscellaneous Arguments

Page 9 of the Examining Attorney's brief largely consists of a form paragraph stating that various "goods in the electrical, electronic, and/or electromechanical fields have been found to be related . . . ," along with a string cite to various cases involving garage door openers, loudspeakers, electric washing machines, etc. It is unclear what point the Examining Attorney is making. If he is arguing or suggesting there is some type of rule regarding relatedness of electrical, electronic, and/or electromechanical goods, he is mistaken. *See* T.M.E.P. § 1207.01(a)(iv) ("[T]here can be no rule that certain goods or services are *per se* related, such that there must be a likelihood of confusion from the use of similar marks in relation thereto."). If the Examining Attorney is citing those cases not for a legal proposition, but rather for some type of factual support, Applicant has no idea why other cases involving different marks for different goods on different records would be relevant to this case. If Applicant were to cite a group of cases finding no likelihood of confusion between various electrical, electronic, and/or electromechanical goods, it would likewise prove nothing at all.<sup>22</sup>

Moving on, the Examining Attorney also makes the following statements in support of his argument Applicant's goods are related to registrant's goods:

- the term "electric" or a close variation thereof appears 12 times in the applicant's identification of goods, and eight times in the registrant's;

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<sup>22</sup> *Cf. In re RBR, LLC*, Serial No. 77451496 (T.T.A.B. April 5, 2010) (non-precedential) ("[W]e note that the examining attorney did not submit any evidence to support his assertion that these various clothing items are related. There is no *per se* rule that various clothing items are related and citation to prior cases is not sufficient to build a record in support of the case at hand. There are also cases where clothing items are found not to be sufficiently related.").

- the term “distribution” appears three times in the applicant’s identification of goods, and four times in the registrant’s;
- the term “control” or a close variation thereof appears 10 times in the applicant’s identification of goods, and once in the registrant’s.<sup>23</sup>

This is one of the strangest arguments the undersigned has ever seen an examining attorney make. What matters is how goods are identified in an application or registration, not how many times this or that word appears. Relatedness is not a word-counting exercise.

Finally, although the Examining Attorney at no time during prosecution introduced any evidence to support the refusal, the Examining Attorney states he has “provided what is always the best possible evidence in a Section 2(d) refusal: the plain language of the parties’ identifications of goods.”<sup>24</sup> Certainly Applicant agrees that identifications of goods/services are very important in every Section 2(d) analysis, and Applicant would further agree that in some very limited situations it is proper to find likelihood of confusion based solely on the identifications. Such instances might include scenarios in which (i) one party’s goods are indisputably a subset of the other party’s (e.g., “furniture” vs. “furniture, namely, tables”), in which case the goods are legally identical; (ii) one party’s services are retail store services featuring the other party’s goods;<sup>25</sup> and (iii) the goods are by their very nature complementary (e.g., “windows” vs. “window locks”). Applicant does not intend this to necessarily be an exhaustive list; the

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<sup>23</sup> Examining Attorney’s Brief, unnumbered page 10.

<sup>24</sup> Examining Attorney’s Brief, unnumbered page 11.

<sup>25</sup> See *In re Thomas*, 79 U.S.P.Q.2d 1021, 1023 (T.T.A.B. 2006) (“Applicant’s goods are ‘jewelry.’ Registrant’s services involve the retail sale of those goods. These are competitive, inherently related goods and services.”).

point is simply that there are a limited number of circumstances in which likelihood of confusion can legitimately be found based *solely* on the identifications of goods.

Looking at the Examining Attorney's strained attempts to compare Applicant's goods with registrant's goods – in most cases without even an explanation why they are allegedly related – Applicant respectfully submits this is not a case where a simple comparison of the identifications is enough to find the goods related. Applicant believes this case is similar to a case in which the Board found no likelihood of confusion between NEO for various optical network components for use in communications networks, and the identical mark NEO for many types of audio and visual equipment:

[E]ven though the marks at issue [are] identical, it is still the case that where, as here, the respective goods on their face are distinctly different, it is incumbent upon the Examining Attorney to present evidence showing that there is at least a viable commercial relationship between the respective goods in order to establish that contemporaneous use of the marks at issue would be likely to cause confusion.

*In re NeoPhotonics Corp.*, Serial No. 78331853 (T.T.A.B. October 10, 2008) (non-precedential). *See also The PaperClip Club, LLC*, Serial No. 77501562 (T.T.A.B. March 2, 2010) (non-precedential) (“The examining attorney bears the burden of presenting evidence to support her refusal. Where, as in this case, the respective goods and services, on their face, do not appear to be sufficiently related, it is incumbent on the examining attorney to present evidence establishing such relationship. Mere argument and conclusory assertions do not suffice.”).

**VI. Conclusion**

Applicant's goods are not related to registrant's goods. If they were, the Examining Attorney would not have to resort to truncating the parties' goods to make them appear similar, cherry-picking words, or counting the number of times the word "electric" appears in the identifications. He would have evidence to show the goods are related, or at the very least a coherent, plausible explanation why the goods are related. He has not provided any of this. Accordingly, Applicant respectfully requests that the Board reverse the refusal.

Respectfully submitted,

Date: May 22, 2015

/Michael E. Hall/

Michael E. Hall  
Kacvinsky Daisak Bluni PLLC  
3120 Princeton Pike, Suite 303  
Lawrenceville, New Jersey 08648  
609-270-4918  
[mhall@kdbfirm.com](mailto:mhall@kdbfirm.com)

Applicant's Attorney