

**THIS OPINION IS NOT A
PRECEDENT OF
THE T.T.A.B.**

Mailed: January 25, 2010

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Intuitive Surgical, Inc.
v.
DaVinci Radiology Associates, P.L.

Opposition No. 91175319
to application Serial No. 78728786

Matthew Vanden Bosch for DaVinci Radiology Associates, P.L.

Michelle D. Kahn and Michelle J. Hirth of Sheppard, Mullin,
Richter & Hampton LLP for Intuitive Surgical, Inc.

Before Walters, Walsh and Cataldo,
Administrative Trademark Judges.

Opinion by Cataldo, Administrative Trademark Judge:

Applicant, DaVinci Radiology Associates, P.L., filed an
application to register on the Principal Register the mark
displayed below



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for "medical diagnostic imaging services," in International Class 44.¹

Registration has been opposed by Intuitive Surgical, Inc. ("opposer"). As grounds for opposition, opposer asserts that it is the owner of the mark, DA VINCI, previously used and registered on the Principal Register for the following goods:

computerized surgical manipulation system comprised of surgeon's console, master control, immersive video display, camera image processing equipment, surgical manipulation system software and instructional manuals provided as a unit, patient-side cart with set-up arms and manipulator slave arms, sterile adaptors to connect arms to instruments, and a full line of resposable, in other words, limited re-use tools, namely, laparoscopes, endoscopes, trocars, cannulas, cutters, clamps, elevators, gouges, knives, scope preheaters, light sources, cables and component parts, electrosurgical instruments, electrocautery instruments, laser instruments, ultrasound instruments, lens cleaning, scrub and biopsy brushes, clip applicators and clips, tack applicators and tacks, applicators, ligature carriers, needle holders, clamps, hemostats, graspers, curettes, instrument guides, ligature passing and knotting instruments, needle, retractors, snares, stylets, forceps, dissectors, calipers, scissors, suction and irrigation probes, sterile drapes, hemostats, amputation hooks, ostetomes, saws, retainers,

¹ Application Serial No. 78728786 was filed on October 7, 2005, based upon applicant's assertion of August 1, 2005 as a date of first use of the mark in commerce. Applicant has disclaimed "DIAGNOSTIC." Applicant further submitted the following description of the mark: "The mark consists of a white Vitruvian man silhouette image inside of a circle shaded brown in the lower portion blending to yellow in the upper portion, the right half of the circle is superimposed within the brown letter "D" in the brown text "DAVINCI", the text DIAGNOSTIC is yellow and the text "IMAGING" is brown, the dot over the letter "i" is yellow." In addition, applicant submitted the following color statement: "The color(s) white, brown and yellow is/are claimed as a feature of the mark."

suturing apparatus, measuring tapes, chisels and contractors, files, skin graft expanders, lancets, mallets, pliers, hammers, rasps, spatulas, and strippers; a full line of fda classes i and ii exempt surgical instruments, namely, scalpels, scalpel blades and handles, staplers, tackers, clip applicators, electrocautery tools forceps, needle holders, guides and drivers, graspers, and kiteners

in International Class 10.² Opposer further asserts that it is the owner of several trademark applications for DA VINCI-formative marks for closely related goods. Opposer argues that it has made use of its DA VINCI mark in connection with the above goods since prior to any date of first use upon which applicant is entitled to rely; and that applicant's mark, when used in connection with applicant's services so resembles opposer's DA VINCI marks for its recited goods as to be likely to cause confusion, to cause mistake, and to deceive.

Applicant's answer consists of a general denial of the allegations in the notice of opposition.³

Evidentiary Objections

Prior to coming to our determination on the merits of the case, certain evidentiary objections require our attention. Applicant has moved to strike opposer's

² Registration No. 2628871 issued on October 1, 2002. Section 8 affidavit accepted; Section 15 affidavit acknowledged.

³ In addition, applicant asserts certain affirmative defenses that are more in the nature of amplifications of its denials of the allegations contained in the notice of opposition, and have been so construed.

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testimonial deposition of Mr. Benjamin Gong and associated exhibits as irrelevant and "beyond the scope of Applicant's defense" (brief, p. 4). In addition, applicant has moved to strike as irrelevant Exhibits 2-7, consisting of copies of opposer's asserted applications for its various DA VINCI formative marks, from opposer's first notice of reliance.

However, the Board generally does not strike testimony depositions on grounds other than untimeliness or improper or inadequate notice. See TBMP §§533.03 and 707.03(c) and authorities cited therein. Further, the Board does not strike evidence timely and properly introduced by notice of reliance. See TBMP §§532 and 707.02(c) and authorities cited therein. Rather, the Board will consider any objections raised to such testimony and evidence in our evaluation of the probative value thereof at final hearing. See *Id.* We note in addition that none of the testimony or exhibits sought to be excluded is outcome determinative.

In view of the foregoing, we have considered all of the testimony and exhibits submitted by the parties. In doing so, we have kept in mind the above-noted objections, and we have accorded whatever probative value the subject testimony and exhibits merit.

The Record

By operation of Trademark Rule 2.122, 37 C.F.R. §2.122, the record in this case consists of the pleadings and the

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file of the involved application. In addition, during its assigned testimony period, opposer submitted the testimony depositions, with exhibits, of Dr. Thomas Boyle, a diagnostic radiologist; Mr. Christopher Simmonds, opposer's Senior Director of Marketing Services; Mr. David Scott, opposer's Senior Product Manager for Vision Systems; Mr. Steven Annen, opposer's Director of Marketing for Product Development; and Mr. Benjamin Gong, opposer's Vice President of Finance. In addition, opposer filed notices of reliance upon the following: (1) status and title copies of its pleaded registration showing that opposer is the current owner and that such registration is valid and subsisting; (2) copies of its six pending trademark applications for various DA VINCI-formative marks; (3) a notice of abandonment for one of opposer's DA VINCI-formative trademark applications; (4) copies of opposer's discovery requests to applicant and applicant's responses thereto; and (5) entries from various printed publications.

During its assigned testimony period, applicant submitted a notice of reliance upon (1) third-party registrations for DA VINCI-formative marks; (2) the file history of opposer's pleaded registration and one of its asserted applications; (3) copies of applicant's discovery requests to opposer and opposer's responses thereto; and (4) a copy of 21 C.F.R. § 862.2160.

Opposer and applicant filed main briefs on the case, and opposer filed a reply brief.

Opposer's Standing and Priority of Use

Because opposer has properly made its pleaded registration of record, we find that opposer has established its standing to oppose registration of applicant's mark. *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842 (Fed. Cir. 2000); and *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982). Moreover, because opposer's pleaded registration is of record, Section 2(d) priority is not an issue in this case as to the DA VINCI mark therefor and goods covered thereby. *See King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

Likelihood of Confusion

Our likelihood of confusion determination under Section 2(d) is based on an analysis of all of the facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. *See In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). *See also Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005); *In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003); and *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

Opposer asserts that it "has protectable rights in its unregistered marks" (brief, p. 27) that are the subject of its pending applications noted above.⁴ Opposer further asserts that it has made prior use of the marks in its asserted applications. We note, however, that the marks in its applications are less similar to applicant's involved mark than the DA VINCI mark in opposer's pleaded registration. Also, and as noted above, opposer's asserted applications all recite goods that are essentially identical to those in its pleaded registration. We will therefore concentrate our discussion of the issue of likelihood of confusion on that mark of opposer's which is closest to the mark for which applicant is seeking registration, namely the DA VINCI mark in opposer's pleaded registration.

The Marks

We turn to the first *du Pont* factor, i.e., whether applicant's mark and opposer's DA VINCI mark are similar or dissimilar when viewed in their entirety in terms of appearance, sound, connotation and overall commercial impression. See *Palm Bay Imports, Inc. v. Veuve Clicquot, supra*. The test, under the first *du Pont* factor, is not whether the marks can be distinguished when subjected to a

⁴ One of opposer's applications asserted above, for the mark DA VINCI S for goods essentially identical to those recited in its pleaded registration, matured into a registration subsequent to the close of testimony herein.

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side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods offered under the respective marks is likely to result.

In this case, we find that applicant's mark,



is highly similar to opposer's mark, DA VINCI. In comparing the marks, we find that DAVINCI is the dominant element of applicant's mark, and accordingly it is entitled to more weight in our analysis. It is a well-established principle that, in articulating reasons for reaching a conclusion on the issue of likelihood of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on a consideration of the marks in their entireties. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

In applicant's mark, the term "DIAGNOSTIC" is disclaimed, and the term is at best highly descriptive of applicant's "medical diagnostic imaging services" and is

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subordinate to DAVINCI. In addition, the term "IMAGING," while not disclaimed also is clearly descriptive of applicant's services. The design of the Vitruvian man inside a circle is a stylization of a famous sketch by Leonardo Da Vinci⁵ and further reinforces DAVINCI as the dominant portion of applicant's mark. Moreover, when a mark comprises both wording and a design, the wording is normally accorded greater weight because it would be used by purchasers to request the goods or services. *In re Appetito Provisions Co.*, 3 USPQ2d 1553 (TTAB 1987). For these reasons, we consider DAVINCI to be the dominant feature of applicant's mark. Moreover, the significance of the term DAVINCI in applicant's mark is reinforced by its location as the first word in the mark. *Presto Products Inc. v. Nice-Pak Products, Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) ("it is often the first part of a mark which is most likely to be impressed in the mind of a purchaser and remembered"). See also *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992) (upon encountering the marks, consumers must first notice the identical lead word).

In comparing the two marks, we note that the applicant's mark incorporates the entirety of registrant's DA VINCI mark. Likelihood of confusion is often found where

⁵ Opposer's Notice of Reliance, Exhibit 11.

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the entirety of one mark is incorporated within another. *In re Denisi*, 225 USPQ 624, 626 (TTAB 1985) (PERRY'S PIZZA for restaurant services specializing in pizza and PERRY'S for restaurant and bar services); *Johnson Publishing Co. v. International Development Ltd.*, 221 USPQ 155, 156 (TTAB 1982) (EBONY for cosmetics and EBONY DRUM for hairdressing and conditioner); *In re South Bend Toy Manufacturing Company, Inc.*, 218 USPQ 479, 480 (TTAB 1983) (LIL' LADY BUGGY for toy doll carriages and LITTLE LADY for doll clothing).

The presence or absence of a space between virtually the same words, in this case DAVINCI in applicant's mark and opposer's DA VINCI mark, is not a significant difference. *Stockpot, Inc. v. Stock Pot Restaurant, Inc.*, 220 USPQ 52, 54 (TTAB 1983), *aff'd*, 737 F.2d 1576, 222 USPQ 665 (Fed. Cir. 1984) ("There is no question that the marks of the parties [STOCKPOT and STOCK POT] are confusingly similar. The word marks are phonetically identical and visually almost identical"); and *In re Best Western Family Steak House, Inc.*, 222 USPQ 827, 827 (TTAB 1984) ("There can be little doubt that the marks [BEEFMASTER and BEEF MASTER] are practically identical"). The wording DAVINCI comprising the first words of applicant's mark is nearly identical to opposer's DA VINCI mark.

As to sound, it is settled that there is no correct way to pronounce a trademark. See *In re Belgrade Shoe*, 411 F.2d

1352, 162 USPQ 227 (CCPA 1969) and *Interlego AG v. Abrams/Gentile Entertainment Inc.*, 63 USPQ2d 1862 (TTAB 2002). See also *In re Microsoft Corp.*, 68 USPQ2d 1195 (TTAB 2003) (it is not possible to control how consumers will vocalize marks). Nonetheless, we see no reason why DAVINCI and DA VINCI would not be identical in pronunciation. Thus, when taken as a whole, the marks DAVINCI DIAGNOSTIC IMAGING and design and DA VINCI are somewhat similar in sound. Furthermore, while the term DAVINCI or DA VINCI in the marks appears to be arbitrary as suggested by opposer⁶ or perhaps suggests genius or rebirth as suggested by applicant,⁷ there is no reason why the terms would not have the same connotation as applied to applicant's services or opposer's goods. Thus, the marks are highly similar in connotations and convey highly similar overall commercial impressions.

In view of the similarities between the marks as a whole in appearance, sound, connotation and overall commercial impression, this *du Pont* factor favors opposer.

Strength of Opposer's Mark

In coming to our determination regarding the similarity of the parties' marks, we have considered applicant's arguments directed to the strength of opposer's DA VINCI mark. Applicant argues that "there are other registered trademarks with term [sic] DA VINCI or DAVINCI in the health

⁶ Brief, p. 31.

care field, namely for ceramics for use in cosmetic dentistry, dental ceramics, manufacturing of custom dental porcelain veneers and dental laboratory services.”⁸

Applicant further argues that “there are other registered DA VINCI trademarks for goods with robotic features such as automated laboratory instruments and machines to make paper.”⁹ However, the Federal Circuit has made it clear that:

The probative value of third-party trademarks depends entirely upon their usage. *E.g., Scarves by Vera, Inc. v. Todo Imports, Ltd.*, 544 F.2d 1167, 1173 (2d Cir. 1976) (“The significance of third-party trademarks depends wholly upon their usage. Defendant introduced no evidence that these trademarks were actually used by third parties, that they were well promoted or that they were recognized by consumers.”)... As this court has previously recognized where the “record includes no evidence about the extent of [third-party] uses ... [t]he probative value of this evidence is thus minimal.” *Han Beauty, Inc. v. Alberto-Culver Co.*, 236 F.3d 1333, 1338 (Fed. Cir. 2001) (emphasis added).

Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772, 396 F.3d 1689, 73 USPQ2d 1689, 1693 (Fed. Cir. 2005).

Here, applicant has presented no evidence of use so we must accord this evidence minimal weight. Even if we considered the registrations, we note that the dental ceramics and dental services, as well as the automated

⁷ Brief, p. 14.

⁸ Brief, p. 29; applicant’s notice of reliance, exhibits 4-7, 22-24, 34, 55.

⁹ *Id.*, applicant’s notice of reliance, exhibits 27, 37.

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laboratory instruments and paper-making machines, are less similar to the goods and services recited in the pleaded registration and involved application herein. The goods and services recited in the additional third-party registrations made of record by applicant are even farther afield from the goods and services at issue herein, including day camp services (No. 3260987), office and institutional furniture (No. 3577959), golf clubs (No. 2967121), and food products (No. 1338226).

We add that it is proper to consider these types of registrations as a form of a dictionary definition. *In re Box Solutions Corp.*, 79 USPQ2d 1953, 1955 (TTAB 2006) (“[T]hird-party registrations can be used in the manner of a dictionary definition to illustrate how a term is perceived in the trade or industry”). *See also In re J.M. Originals Inc.*, 6 USPQ2d 1393, 1394 (TTAB 1987) (“[T]hird party registrations are of use only if they tend to demonstrate that a mark or a portion thereof is suggestive or descriptive of certain goods and hence is entitled to a narrow scope of protection”).

In this case, use by third-parties of the term DAVINCI or DA VINCI on a wide range of goods and services suggests that the term possesses a desirable connotation as a result of its association with the famous Renaissance individual of the same name. However, regarding the nature of the term

DAVINCI or DA VINCI in the context of medical diagnostic imaging services and computerized surgical manipulation systems, the third-party evidence does not support a finding that prospective purchasers will conclude that such term suggests a feature of the goods or services or even that it necessarily is a laudatory term.

Therefore, considering the above third-party registrations for other less closely related products and services and the prior case law, we find that the term DAVINCI or DA VINCI for the goods identified in opposer's registration, to the extent that it is laudatory, is only slightly laudatory, and it is not entitled to only a narrow scope of protection.

The Goods and Services

With respect to the similarity of opposer's goods and applicant's services, it is well established that the goods or services of the parties need not be similar or competitive, or even offered through the same channels of trade, to support a holding of likelihood of confusion. It is sufficient that the respective goods or services of the parties are related in some manner, and/or that the conditions and activities surrounding the marketing of the goods or services are such that they would or could be encountered by the same persons under circumstances that could, because of the similarity of the marks, give rise to

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the mistaken belief that they originate from the same source. See *Hilson Research, Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423 (TTAB 1993); and *In re International Telephone & Telephone Corp.*, 197 USPQ 910, 911 (TTAB 1978).

The services recited in the involved application are "medical diagnostic imaging services." As identified, these services are not limited to any specific type of diagnostic imaging and, as a result, must be presumed to include diagnostic imaging services in all fields of medicine, including surgery. See *Paula Payne Products v. Johnson Publishing Co.*, 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973) ("Trademark cases involving the issue of likelihood of confusion must be decided on the basis of the respective descriptions of goods [or services].")

Furthermore, in its brief, applicant explains that, through its licensee, it "provides the following medical diagnostic imaging services: The capture and radiologist interpretation of images generated with modalities such as MRI, CT, PET/CT, and Digital Mammography."¹⁰ Applicant further indicates that its services "would also include the capture and interpretation of, among others, plain film x-rays."¹¹ MRI, or magnetic resonance imaging, is a non-invasive medical imaging technology which is "particularly

¹⁰ Brief, p. 18-9.

useful for imaging the brain and spine, as well as the soft tissues of joints and the interior structure of bones."¹² In addition, "MRI is being used increasingly during operations, particularly those involving very small structures in the head and neck, as well as for preoperative assessments and planning. Intraoperative MRIs have shown themselves to be safe as well as feasible, and to improve the surgeon's ability to remove the entire tumor or other abnormality."¹³ CT, or computer tomography, scans "are used to image a wide variety of body structures and internal organs."¹⁴ "Physicians may order CT of the sinuses to provide an accurate map for surgery."¹⁵ PET, or positron emission tomography, scans "are generally used to measure metabolic rates quantitatively in normal and abnormal tissues"¹⁶ and are particularly useful in the detection of "brain tumors and assessment of the degree of malignancy."¹⁷ Thus, as identified and also based upon the evidence of record, applicant's services provide a variety of medical diagnostic imaging, including imaging used in connection with surgery.

¹¹ Brief, p. 19.

¹² The Gale Encyclopedia of Medicine, Vol. 3, Third Ed. (2006).

¹³ *Id.*

¹⁴ The Gale Encyclopedia of Medicine, Vol. 2, Third Ed. (2006).

¹⁵ *Id.*

¹⁶ Magill's Medical Guide, Fourth Revised Ed., Volume 4 (2008).

¹⁷ *Id.*

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The goods in opposer's pleaded registration are a "computerized surgical manipulation system," including such components as "immersive video display," "camera image processing equipment" and surgical instruments. Simply put, opposer's goods allow a surgeon to perform surgery with the aid of a computer, along with video and camera imaging.¹⁸ As noted above, applicant's services include medical diagnostic imaging used for surgical applications. Such services are related to opposer's goods in that the images created by the recited services may be used to facilitate surgical procedures performed using opposer's computerized surgical manipulation system. The parties disagree whether, as identified, opposer's goods under its DA VINCI mark allow display of diagnostic images, including those created by applicant's licensee.¹⁹ Nonetheless, while applicant argues that its services are neither related to nor competitive with opposer's goods,²⁰ applicant presents no arguments or evidence to support a finding that the images created by its licensee may not be used in connection with surgery performed using opposer's goods. The issue is not whether purchasers would confuse the goods or services themselves, but rather whether there is a likelihood of confusion as to

¹⁸ Annen Testimony, p. 1, 14, 25-6; Simmonds Testimony, 12-4; Scott Testimony, p. 8, 10, 13-4, 16-7, 19-20, 22, 24-5.

¹⁹ Opposer's brief, p. 35-6; applicant's brief, p. 19-21; reply brief, p. 8-10.

²⁰ Brief, p. 19-21.

the source thereof. *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984).

In other words, applicant's services, as identified, provide medical diagnostic imaging without restriction and thus must be presumed to include imaging used to assist in diagnosis of conditions that may be remedied through surgery. As discussed above, the evidence of record further supports such a finding. As a result, we find that applicant's services may be used in connection with opposer's goods which are used for computer, camera and video-aided surgery. Applicant's services are therefore related to opposer's goods, and this *du Pont* factor also favors opposer.

Channels of Trade

Because of our finding above that the goods and services are related, and because there are no recited restrictions as to their channels of trade or classes of purchasers, we must assume that the goods and services are available in all the normal channels of trade to all the usual purchasers for such goods and services, and that the channels of trade and the purchasers for opposer's goods as well as applicant's services would be the same. See *Interstate Brands Corp. v. McKee Foods Corp.*, 53 USPQ2d 1910 (TTAB 2000). See also *Octocom Systems, Inc. v. Houston Computers Services Inc.*, *supra* ("The authority is legion

that the question of registrability of an applicant's mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant's goods, the particular channels of trade or the class of purchasers to which the sales of goods are directed.") See also *Paula Payne Products v. Johnson Publishing Co.*, *supra*. In this case, physicians, surgeons in particular, will encounter both opposer's goods and applicant's services, and these goods and services are presumed to move in all channels of trade that would be normal for purchase and use by surgeons.

We find that, as a result of the foregoing, this *du Pont* factor also favors opposer.

Conditions of Sale

The next *du Pont* factor discussed by the parties is that of the conditions of sale. Applicant asserts that opposer's goods are expensive, and would be purchased by careful and sophisticated users.²¹ Applicant further asserts that the end users of opposer's goods are hospital administrators and surgeons, while the purchasers of its services are medical patients.²² However, applicant's narrow view of the purchasers of the parties' goods and

²¹ Brief, p. 26-7.

²² *Id.*

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services ignores the fact that its services will be retained by physicians, including surgeons, and that opposer's goods will be used to perform surgical procedures. In other words, the same medical professionals are likely to encounter the parties' marks as used in connection with their respective goods and services. Moreover, it is settled that sophisticated purchasers are not necessarily knowledgeable in the field of trademarks or immune from source confusion. *See In re Decombe*, 9 USPQ2d 1812, 1814-1815 (TTAB 1988).

Thus, this *du Pont* factor also favors opposer.

Actual Confusion

Another *du Pont* factor discussed by the parties is the lack of instances of actual confusion. Applicant asserts that the absence of actual confusion suggests no likelihood of confusion. However, it is not necessary to show actual confusion in order to establish likelihood of confusion. *See Weiss Associates Inc. v. HRL Associates Inc.* 902 F.2d 1546, 223 USPQ 1025 (Fed. Cir. 1990). Moreover, on the record before us there is no evidence as to whether there has been any opportunity for confusion to occur. Thus, this *du Pont* factor is neutral.

Summary

We have carefully considered all of the evidence pertaining to priority of use and the relevant *du Pont*

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factors, as well as all of the parties' arguments with respect thereto, including any evidence and arguments not specifically discussed in this opinion.

We conclude that opposer has established its standing to bring this proceeding; its priority of use; and that a likelihood of confusion exists between its DA VINCI mark and applicant's DAVINCI DIAGNOSTIC IMAGING and design mark, as used in connection with their respective goods and services. To the extent that any of applicant's points raise a doubt about our conclusion, all doubt on the issue of likelihood of confusion must be resolved in favor of the prior user and against the newcomer. *See San Fernando Mfg. Co. v. JFD Electronics Components Corp.*, 565 F.2d 683, 196 USPQ 1, 2 (CCPA 1977).

DECISION: The opposition is sustained, and registration to applicant is refused.