

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: February 22, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re MAPAL Fabrik für Präzisionswerkzeuge Dr. Kress KG

—
Serial No. 79272512
—

Robert C. Faber, Max Moskowitz, and Sean P. McMahon of Ostrolenk Faber LLP,
for MAPAL Fabrik für Präzisionswerkzeuge Dr. Kress KG.

Shaila E. Lewis, Trademark Examining Attorney, Law Office 114,
Nicole Nguyen, Acting Managing Attorney.

—
Before Lykos, Shaw and Lebow,
Administrative Trademark Judges.

Opinion by Lebow, Administrative Trademark Judge:

Applicant, MAPAL Fabrik für Präzisionswerkzeuge Dr. Kress KG, LLC, seeks to
register the mark TRITAN (in standard characters) on the Principal Register for:

Machine tools being parts of machines, namely, drills for machining
steels, stainless alloys and cast materials, in International Class 7;

Adjuster for controlling data of drills for machining steels, stainless
alloys and cast materials; downloadable computer software for adjuster
for controlling the operation of drilling tools for machining steels,
stainless alloys and cast materials; computers for adjuster for use with
drilling tools for machining steels, stainless alloys and cast materials;
electronic display interfaces for adjuster for drilling tools for machining
steels, stainless alloys and cast materials; all before mentioned goods

not in use with and for electric welding apparatus, cutting apparatus, wire feeding apparatus and accessories therefor, in International Class 9; and

Erection, installation, replacement, maintenance, servicing and repair of drilling tools for machining steels, estainless (sic) alloys and cast materials; rental of mechanically operated drilling and mining tools and parts therefor, in International Class 37.¹

The Trademark Examining Attorney finally refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark, as used in connection with the goods and services identified above, so resembles the mark TRITAN (in standard characters) on the Principal Register for the goods shown below, as to be likely to cause confusion, to cause mistake, or to deceive:

Machine parts, namely, bearings, bearing seals, bushings, belts, couplings, roller chain drives and roller chains, sprockets, pulleys, collars, clutches, retaining rings, brakes, mechanical seals, starters, electric motors, sheaves, hoses, v-belts, belt drives, gears, gear boxes, linear cam shafting and pulleys; starters for motors and engines, all not for trucks or automobiles, in International Class 7.²

Applicant appealed and requested reconsideration, which was denied. The appeal has been briefed.³ We affirm the refusal for the goods and services in Classes 7 and

¹ Application Serial No. 79272512 ("the Application") was filed on February 28, 2019 as a request for extension of International Registration No. 1499595 under Section 66(a) of the Trademark Act, 15 U.S.C. § 1141f(a). Applicant claims a priority date of October 24, 2018.

² Registration No. 3262022 ("the Registration"), issued July 10, 2007; renewed.

³ Applicant's brief uses one-and-a-half line spacing for the main text. All submissions to the Board, including appeal briefs, must be double-spaced. Trademark Rule 2.126(a), 37 C.F.R. § 2.126(a). *See also* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE ("TBMP") § 1203.01 (June 2021) and the authorities cited therein. Nonetheless, the brief is of sufficient brevity that, if it were double-spaced, it would fall within the applicable page limit. *See* Trademark Rule 2.142(b)(2), 37 C.F.R. § 2.142(b)(2). Although we will exercise our discretion to consider the brief, Applicant's counsel is reminded that "future filings not in conformity with the Board's rules may not be considered." *In re MK Diamond Prods., Inc.*, 2020 USPQ2d 10882, *3 n.3 (TTAB 2020).

37, but reverse as to the goods in Class 9.

I. Examining Attorney's Evidentiary Objections

The Examining Attorney objects to Applicant's reference in its appeal brief, on pages 9 – 11, to eleven third-party registrations and four pending third-party applications not of record, and requests that the Board not consider them or any arguments related thereto.⁴ Applicant did not file a reply brief, and thus did not respond to the Examining Attorney's evidentiary objection.

Because the objected-to materials were not previously submitted and the record in an application should be complete prior to the filing of an appeal, Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d), *In re Fallon*, 2020 USPQ2d 11249, at *2 (TTAB 2020), the Examining Attorney's objection is **sustained**. The untimely evidence, and arguments based thereon, will not be considered.⁵

II. Likelihood of Confusion

The fundamental purpose of Trademark Act Section 2(d) is to prevent confusion as to source, and to protect registrants from damage caused by registration of marks likely to cause confusion. *Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 224 USPQ 327, 331 (1985). Our analysis is based on all of the probative evidence of record. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567

⁴ 20 TTABVUE 6-7 (Examining Attorney's Brief).

⁵ Trademark Rule 2.142(d) explains that if an appellant "desires to introduce additional evidence after an appeal is filed," then the appellant "should submit a request to the Board to suspend the appeal and to remand the application for further examination," which Applicant did not do in this case. For further information, see TBMP § 1207.02.

(CCPA 1973) (“*DuPont*”) (setting forth factors to be considered, hereinafter referred to as “*DuPont* factors”).

In making our determination, we consider each *DuPont* factor for which there is evidence and argument. *See In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019). Varying weights may be assigned to each *DuPont* factor depending on the evidence presented. *See Citigroup Inc. v. Capital City Bank Grp. Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011); *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1688 (Fed. Cir. 1993) (“[T]he various evidentiary factors may play more or less weighty roles in any particular determination”).

In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods or services. *See In re Chatam Int’l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1945-46 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [and services] and differences in the marks.”).

A. Similarity of the Marks

The first *DuPont* factor considers the “similarities or dissimilarities of the marks in their entireties as to appearance, sound, connotation and commercial impression.” *In re Detroit Athl.*, 903 F.3d 1297, 128 USPQ2d 1047, 1051 (Fed. Cir. 2018) (quoting *DuPont*, 177 USPQ at 567). “As the marks at issue here are identical,” Applicant notes, “the key issue to be resolved in the likelihood of confusion analysis is the

relationship between Applicant's goods and those set forth in the cited registration."⁶ We agree, meanwhile finding that the first *DuPont* factor regarding similarities of the marks weighs strongly in favor of finding likelihood of confusion.

B. Similarity of the Goods and Services and Trade Channels

The second *DuPont* factor concerns the "similarity or dissimilarity and nature of the goods or services as described in an application or registration..." and the third *DuPont* factor concerns the "similarity or dissimilarity of established, likely-to-continue trade channels." *DuPont*, 177 USPQ at 567; *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014).

"[L]ikelihood of confusion can be found 'if the respective goods [or services] are related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that they emanate from the same source.'" *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)). "[T]he greater the degree of similarity between the applicant's mark and the cited registered mark, the lesser the degree of similarity between the

⁶ 18 TTABVUE 7 (Applicant's Brief). Later, in the context of arguing the dissimilarity of the respective goods, Applicant asserts that it should not be ignored "that **Registrant's** mark TRITAN is not a coined term or an arbitrary or fanciful mark" because "[t]he prefix 'tri' designates the numeric '3' and a 'tri' aspect of Applicant's specialty drills. *Id.* at 11. While the term "tri" may be suggestive of the number "3" and Applicant's drills have three portions, nothing in the record suggests that consumers would perceive the mark TRITAN, as a whole, as suggestive. Applicant also provides a USPTO database listing of 17 registrations for marks comprised of or including the term TRITAN, arguing that "the overall mark has been adopted by many others, which evidences its near descriptiveness or suggestiveness." 18 TTABVUE 11. However, a mere listing of registrations is not sufficient to make them of record. *In re Compania de Licores Internacionales S.A.*, 102 USPQ2d 1841, 1843 (TTAB 2012); *In re Hoefflin*, 97 USPQ2d 1174, 1177 (TTAB 2010). As a result, the list has no probative value.

applicant's goods [or services] and the registrant's goods that is required to support a finding of likelihood of confusion." *Time Warner Entm't Co. v. Jones*, 65 USPQ2d 1650, 1661 (TTAB 2002). Where identical word marks are involved, as they are here, the degree of relatedness required to support a finding of likelihood of confusion declines even further. *See Shell Oil*, 26 USPQ2d at 1689 ("[E]ven when the goods or services are not competitive or intrinsically related, the use of identical marks can lead to the assumption that there is a common source"). "[I]t is sufficient for a finding of likelihood of confusion if relatedness is established for any item encompassed by the identification of goods [or services] within a particular class in the application." *In re Aquamar, Inc.*, 115 USPQ2d 1122, 1126 n.5 (TTAB 2015).

1. The Examining Attorney's Argument and Evidence

The Examining Attorney presented evidence which, she argues, "indicates that bearings, bushings, and couplings"⁷ – machines parts identified in the Registration – "are integrally related to applicant's drilling machinery, and these goods are widely used together in the manufacture of goods made of steel and the drilling of deep bores."⁸ She highlights the following evidence, in particular:

⁷ 20 TTABVUE 13 (Examining Attorney's Brief).

⁸ *Id.* A "bore" is "a hole or passage made by or as if by use of a drill, and as a verb, it refers to the making of such a hole. A "bearing" is "a machine or structural part that supports another part" or "a device that supports, guides, and reduces the friction of motion between fixed and moving machine parts." A "bushing" is "a fixed or removable cylindrical metal lining used to constrain, guide, or reduce friction." And a "coupling" is "a device that links or connects." THE AMERICAN HERITAGE DICTIONARY, accessed February 17, 2022. The Board may take judicial notice of dictionary definitions from online sources when the definitions themselves are derived from dictionaries that exist in printed form or have regular fixed editions. *See In re White Jasmine LLC*, 106 USPQ2d 1385, 1392 n.23 (TTAB 2013); *In re Red Bull GmbH*, 78 USPQ2d 1375, 1378 (TTAB 2006).

-- E.B. Atmus Co., Inc. (ebatmus.com) advertises the sale of bearings, belts and sheaves, chain and sprockets, couplings, and other machine tools on its website.⁹ The same web page promotes the bearings, machining equipment, drills, and other products of third-party manufacturer Nachi-Fujikoshi:

NACHI-FUJIKOSHI manufactures cutting tools, bearings, machining equipment, ultra-precision machining equipment, hydraulic equipment, robots, special steels, industrial furnaces, and coating equipment. ... Nachi America is the sole authorized U.S. distributor for Nachi-Fujikoshi Corporation. ...

Nachi America's Cutting Tool Division manufactures drills ... designed to meet and exceed the exacting requirements of the industry's highest-precision machine tools. ...

Nachi America's Bearing Division makes a full range of bearings, including innovative flush-ground angular contact bearings, high capacity spherical bearings, and other high-precision solutions for most bearing applications. ...

Nachi's Steel Division makes a wide range of special steels for tools, ... high-speed machining and other applications, not just for their own use but for other manufactures as well.¹⁰

-- Nachi America, Inc.'s own website (nachimera.com) also promotes the sale of Nachi's cutting tools, including machine tools, bearings, and specialty steels.¹¹ For example, on its "Drills" page, Nachi promotes various drills, including drills with "coating suitable for drilling multiple materials," drills "ideally suited for flat bottom applications in the oil and gas, automotive, and general industries," and drills

⁹ August 4, 2020 Final Office Action, TSDR 6.

¹⁰ *Id.*

¹¹ *Id.* at 7-12.

“engineered to handle a full range of applications.”¹² On its “Bearings” page, Nachi promotes its various “high speed and high precision bearings,” “parts that are at work in automobiles, industrial machinery, and equipment in various other sectors.”¹³ And on its “Specialty Steel” page, Nachi states that it applies its expertise “with materials to meet the diverse needs of varied industries....”¹⁴

According to the Examining Attorney, the evidence from E.B. Atmus and Nachi “demonstrates that applicant’s goods and services and registrant’s goods are provided and marketed by the same source under the same mark.”¹⁵

-- CarrLane (carrlane.com), a drill and bushing manufacturer, has a page on its website titled “Understanding Standard Drill Bushings” that discusses the relationship between drills and bushings.¹⁶ According to the article:

Drill bushings are a major element in most of today’s drill jigs. They act as precision guiding devices for drills, reamers, taps, counterbores, and similar shank-mounted cutting tools. ... Although they serve mainly as guides for tools, cutting drill bushings also have other uses. They work well in assembly tools, inspection tools, and similar devices that require precise alignment and location of cylindrical parts.¹⁷

The Examining Attorney asserts that “this evidence shows that bushings are integral to drilling machinery.”¹⁸

¹² *Id.* at 7-9.

¹³ *Id.* at 10.

¹⁴ *Id.* at 11.

¹⁵ 20 TTABVUE 13 (Examining Attorney’s Brief).

¹⁶ August 4, 2020 Final Office Action, TSDR 13-41.

¹⁷ *Id.* at 13.

¹⁸ 20 TTABVUE 13 (Examining Attorney’s Brief).

-- Messinger Bearings (messingerbearings.com) a bearings manufacturer, produces bearings for various markets, including the aggregates and mining, rock crushing, machine tool, crane bearings, pulp and paper, steel making, coal pulverizing, tunnel boring, beverage bottling, and government defense markets. One page on its website, titled “Tunnel Boring Machine Bearings,” explains that it “manufactures and repairs some of the larger bearings found on the business end of these tunnel boring machines.”¹⁹ As the Examining Attorney notes, Messinger’s website “indicates that they manufacture various types of bearings, including bearings as large as 25 feet in diameter, roller bearings, and ball bearings, and they repair and remanufacture bearings for the steel making, machine tool, tunnel boring, and other industries.”²⁰ She also points that Applicant’s brochure, which has the heading titled “DRILLING, BORING AND COUNTERSINKING,” explains that its drills may be used “in difficult drilling situations, such as deep bores up to 8xD....”²¹ “Thus,” she argues, “bearings are used in deep boring and steel machining.”²²

-- American Machine Tools Co. (americanmachinetools.com) (“AMT”) manufactures a variety of machine tools, including line boring tools, lathe machines, iron workers, pipe benders, milling machines, and others.²³ Its Line Boring Tools page indicates that AMT’s equipment “is the easiest and most economical way to

¹⁹ March 29, 2021 Reconsideration Letter, TSDR 4-5.

²⁰ 20 TTABVUE 14 (Examining Attorney’s Brief).

²¹ *Id.* at 12-13 (referring to Applicant’s brochure attached to Applicant’s February 4, 2021 Request for Reconsideration, TSDR 12).

²² *Id.* at 20.

²³ March 29, 2021 Reconsideration Letter, TSDR 6-43.

rebore holes round and concentric again”; “is intended for repairing holes up to 8 inch diameter in heavy construction equipment such as cranes, backhoes, endloaders, excavators and tractors powered by your variable speed magnetic drill press”; and “can also be used to rebore holes in machinery frames, steel mill lades, bridge support pivots, etc.”²⁴ One particular line boring kit on its site, which is “powered by your magnetic drill,” has chrome that “resists burrs and scoring to still fit the bearings use after use”; has a “built-in bearing” that “takes the load of the boring shaft to prevent overloading the internal drill press bearings”; and has “2 Bearing Plates” to reduce vibration when boring.”²⁵ Another such kit has “self-aligning bearings” and an optional “Boring Bar Kit with bushings, cones and cutters.”²⁶ AMT also has a “PowerFeed” tool that attaches to a drill press, which fits an alternate model of AMT’s line boring equipment “by inserting a bushing.”²⁷

Additionally, various customer photos on the site show AMT’s equipment being used to bore steel, such as the one shown below:



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²⁴ *Id.* at 6-7.

²⁵ *Id.* at 8-9.

²⁶ *Id.* at 10.

²⁷ *Id.* at 20.

²⁸ *Id.* at 27.

The Examining Attorney argues that the evidence from AMT “demonstrates that drilling machinery relates to bearings and bushings because they are used together to bore holes and manufacture steel.”²⁹

-- KBS Bearings / Silverstone Machinery Industry Co., Ltd (kbsbearings.com), a bearings and bushings manufacturer, explains on its “About Us” page that it “specialize[s] in producing all type linear ball bushings”³⁰ and that “KBS linear bushings can be extensively adapted not only for the precision instruments like computer and auxiliary devices, automatic equipment, coordinate measuring instruments, but also for the accurate sliders in multi-spindle drilling machine, punching press, tool grinder, automatic gas cutter, printing equipment, food wrapping machine, and general industrial machines.”³¹

-- American Roller Bearing Company (amroll.com) promotes various products and services on its website for use in the primary metals, oil field, mining, and other industries.³² It “primarily makes heavy duty bearings that are used in various industries in the US and around the world.”³³ Applicant’s identification in Class 37 recites the “rental of mechanically operated drilling and mining tools and parts therefor” as one of its services.

-- Materion (materion.com) offers products in a variety of industries, including the

²⁹ 20 TTABVUE 14 (Examining Attorney’s Brief).

³⁰ March 29, 2021 Reconsideration Letter, TSDR 50-51.

³¹ *Id.*

³² *Id.* at 52-54.

³³ *Id.* at 52.

aerospace, appliance, automotive, construction mining, heavy equipment, mining equipment, consumer electronics, defense, energy, manufacturing industrial, medical, and telecom industries.³⁴ According to its Construction Mining page, Materion’s “high performance alloys for bushing and bearings” are used by leading construction and mining companies,” and its “alloys are ideal for use in surface and underground mining, construction and heavy manufacturing equipment....”³⁵ We note again that Applicant’s recitation identifies the “rental of mechanically operated drilling and mining tools and parts therefor.”

-- MetalTek International (metaltek.com) provides metal casting and alloy products including “Bushings for Mining Industry” for use “in vigorous application.”³⁶

-- SC Industries, Inc. (scindustriesinc.com) offers precision machining services and equipment, and on its “Bearings & Bushings” page touts that it is known as the “‘Bushings Specialists,’ which is why customers in the heavy-duty vehicle industry continually engage [it] to provide long-wearing high durability products.”³⁷ SC describes one project where it “fabricated this hardened steel bearing bushing for use in mining equipment.”³⁸

³⁴ *Id.* at 55-56.

³⁵ *Id.*

³⁶ *Id.* at 58-59.

³⁷ *Id.* at 62-65.

³⁸ *Id.* at 62-63.

2. Applicant's Argument and Evidence

a. Complex versus Ordinary / Tools versus Parts

Applicant asserts that “the Examining Attorney’s arguments concerning the relatedness of [the] goods ... are too simplistic and superficial” because the goods identified in the Application are complex and unique tools, whereas the goods identified in the Registration are simply internal machine components.³⁹ Applicant elaborates:

Applicant uses the wording “machining steels, stainless alloys and cast materials” in connection with its goods throughout the description of goods and services to indicate the complex nature of the goods. The Applicant’s goods in class 7 are “tools”, and not any drilling tool but very unique tools, namely drills for “machining steels, stainless steels and cast materials.” The overall description of the “goods” reveals that these are not “every day” drills, but drills that are associated with an “adjuster for controlling data of drills for machining...and cast materials; ...software for adjuster for controlling the operation of drilling tools... and cast materials; computers for adjuster for use with drilling tools...and cast materials; ...display interfaces for adjuster for drilling tools...and cast materials...” Tools are machines that are operated by humans and sometimes by very sophisticated computers.

The machine or equipment parts such as the Registrant’s “bearings, bearing seals, bushings, belts, couplings, roller chain drives and roller chains, sprockets, pulleys, collars, clutches, retaining rings, brakes, mechanical seals” are internal components of other machines. Bearings and bearing seals and the like are not “tools”. They are INTERNAL machine components.⁴⁰

Separately, Applicant asserts that:

Applicant’s goods are not ordinary consumer drills that would be purchased in a home improvement store for everyday building projects. Applicant’s goods are designed for producing goods made of steels, stainless alloys and cast materials.

³⁹ 18 TTABVUE 7 (Applicant’s Brief).

⁴⁰ *Id.* at 7-8.

On the other hand, the goods set forth in the cited registration are finished goods in the nature of power transmission components.⁴¹

In support of this last contention, Applicant refers to specimens of use submitted in support of the Registration for a “sheave” and a “roller chain,” two of the goods listed in the Registration, which are noted on the specimen as being power transmission components.⁴²

Applicant’s attempt to distinguish the respective goods based on their degree of complexity is somewhat incoherent. Nothing in the record supports the contention that complex and simple goods are not used together, or that such goods cannot be complimentary or emanate from the same source. Rather, the evidence shows that bearings and bushings, both identified in the Registration, are sometimes provided by the same source under the same mark.

For example, Nashi manufactures and promotes both “drills ... designed to meet and exceed the exacting requirements of the industry’s highest-precision machine tools” and “a full range of bearings, ... and other high-precision solutions for most bearing applications.”⁴³ CarrLane manufactures and promotes both drills and brushings, explaining that “[d]rill brushings are a major element in most of today’s drill jigs,” which act as precision guiding devices for drills and counterbores and “work

⁴¹ *Id.* at 10 (citing specimens attached to Applicant’s February 4, 2021 Request for Reconsideration, TSDR 27-30, emphasis in original).

⁴² *Id.* (citing specimens attached to Applicant’s February 4, 2021 Request for Reconsideration, TSDR 27-30).

⁴³ August 4, 2020 Final Office Action, TSDR 6-12.

well ... in similar devices that require precise alignment.”⁴⁴ And Messinger Bearings produces bearings for various markets, i.e., the steel making market, including “some of the larger bearings found on the business end of these tunnel boring machines.”⁴⁵

Applicant’s further attempt to distinguish the respective goods by categorizing them as “tools” as opposed to “parts” is similarly unpersuasive. According to Applicant, its drills – “stripped of non-essential or repetitive text” in the identification – are “drills for machining steels, stainless alloy and cast materials.” However, the prefatory language proceeding that description – “machine tools being **parts of machines**” – is an essential part of the identification of goods. Indeed, Applicant’s drills for machining, as identified, are specifically limited to those that are parts (or components) of machines.⁴⁶ As such, they are not standalone products, but like Registrant’s goods, are parts or components of machines.⁴⁷ Applicant’s emphasis on Registrant’s goods as being “INTERNAL” components of a machine, as opposed to Applicant’s drills which are presumably external components, is a distinction without a difference.

Moreover, the fact that the Application also identifies “adjuster[s] for controlling

⁴⁴ *Id.* at 13-41.

⁴⁵ March 29, 2021 Reconsideration Letter, TSDR 4-5.

⁴⁶ The USPTO’s ID Manual (<https://idm-tmng.uspto.gov/id-master-list-public.html>) lists “drilling machines” as an acceptable description of goods. However, Applicant chose to identify its goods as “machine tools being parts of machines, namely, ... drills”

⁴⁷ Applicant’s drill brochure is consistent with this assessment, showing drills promoted with different features, not of which are attached to any machine. *See* Applicant’s February 4, 2021 Request for Reconsideration, TSDR 11-22. A “drill” is “an implement with cutting edges or a pointed end for boring holes in hard materials, usually by a rotating abrasion or repeated blows; a bit.” THE AMERICAN HERITAGE DICTIONARY, accessed February 17, 2022.

data of drills for machining,” as well as software, computers, and display interfaces for such adjusters, which are also standalone goods in the identification, does not affect our understanding of Applicant’s drill parts. An identification of goods and services may list any number of goods and services, which may or may not be similar, but the description of each stands on its own.

Applicant’s contention that the respective goods are distinguishable because Applicant’s goods are used to produce other goods, whereas Applicant’s goods are “finished goods,” is also unavailing. The goods in both the Application and Registration are parts or components of machines and, as the third-party use demonstrates, bearings and bushings are used as components in various machinery, including those that drill. While Registrant may sell its goods as power transmission components, the identification of goods in the Registration does restrict their use to that function. Accordingly, we may not read such a restriction into it. *See, e.g., Levi Strauss & Co. v. Abercrombie & Fitch Trading Co.*, 719 F.3d 1367, 1373, 107 USPQ2d 1167, 1173 (Fed. Cir. 2013); *In re i.am.symbolic, LLC*, 123 USPQ2d at 1748 (“It is well established that the Board may not read limitations into an unrestricted registration or application.”); *In re Thor Tech*, 90 USPQ2d 1634, 1638 (TTAB 2009) (“We have no authority to read any restrictions or limitations into the registrant’s description of goods.”). Instead, we must presume that Registrant offers its bearings, bushings and couplings in all channels of trade and to all classes of consumers interested in bearings, bushings and couplings.

b. Ubiquity of Bearings / Class of Customers

Applicant argues that “[v]irtually, every product ‘out there’ that has spinning wheels uses one or another type of ‘bearing’”; that “[c]onsumers who purchase drilling and machining tools, particularly the highly sophisticated drills herein, do not know and do not care about internal components such as bearings and the like,” which “are present in millions of different products”; and that “[t]he consumers who purchase or who can be deemed to be ‘users’ of bearings are machine designers or repair personnel. They are not the same ‘consumers’ in the sense of the ordinary meaning of ‘consumers’ in the English language.”⁴⁸

This is another unsupported and unpersuasive argument. To the extent bearings are used as internal components “in millions of different products” including drilling machinery, as Applicant suggests, such use would support a finding of relatedness, not detract from it. We also view with skepticism Applicant’s unsupported contention that purchasers of drilling and machine tools “do not know or do not care about internal components such as bearings and the like,” which seems unlikely. Why would the purchasers of such purportedly “highly sophisticated” drills care about external parts, but not internal parts?

Also unavailing is Applicant’s unsupported contention that “[t]he consumers who purchase or who can be deemed to be ‘users’ of bearings are machine designers or repair personnel,” and they “are not the same ‘consumers’ in the sense of the ordinary

⁴⁸ 18 TTABVUE 8 (Applicant’s Brief).

meaning of ‘consumers’ in the English language.”⁴⁹ Machine parts, including drills, naturally need to be replaced when they become defective. Applicant’s identification of “replacement, maintenance, servicing and repair of drilling tools for machining” as services it provides acknowledges that reality. Thus, it seems that “repair personnel” may be users or purchasers of both the goods in the Application and the Registration. Regardless, the third-party use evidence establishes that the trade channels and classes of consumers for Applicant’s drilling machinery and Registrant’s bearings overlap because bearings manufacturers provide their bearings to a variety of industries, including the steel machining industry. Nashi, for example, promotes both Applicant’s goods (cutting tools including drills) and Registrant’s goods (bearings) under the same mark.

3. Findings as to Relatedness

Based on the evidence of record, and keeping in mind the lessened degree of relatedness needed because identical words marks are involved, we find that the bearings and bushings in the Registration are integrally related to drills, including the “machine tools being parts of machines, namely, drills for machining steels, stainless allows and cast materials” identified in Class 7 of the Application, and are often provided through the same trade channels to some of the same customers. Because the evidence supports a finding that bearings and bushings are integrally related to drilling machinery, we further find that they are related to the Applicant’s services of “erection, installation, replacement, maintenance, servicing and repair of

⁴⁹ *Id.*

drilling tools for machining steels” in Class 37 because bearings and bushings are parts of drill machinery subject to such servicing. Moreover, although the Examining Attorney does not present argument specifically directed to the issue, we also find that the Application’s Class 37 services of “rental of mechanically operated drilling and mining tools and parts therefor” necessarily includes parts such as bearings and bushings.

On the other hand, the Examining Attorney presented no argument to support a finding that Applicant’s Class 9 goods of “adjuster[s] for controlling data of drills...,” and computer software, computers, and electronic display interfaces for such adjusters, are related to any of Registrant’s Class 25 goods. Nor does the evidence support such a contention.

Based on the foregoing, the second and third *DuPont* factors weigh in favor of finding likelihood of confusion with respect to Applicant’s goods and services in Classes 7 and 37, but against such a finding for the goods in Class 9.

III. Balancing the *DuPont* Factors

Having considered all evidence and arguments bearing on the relevant *DuPont* factors, we conclude that Applicant’s mark TRITAN for “machine tools being parts of machines, namely, drills for machining steels, stainless alloys and cast materials” in Class 7, and “erection, installation, replacement, maintenance, servicing and repair of drilling tools for machining steels, estainless (sic) alloys and cast materials; rental of mechanically operated drilling and mining tools and parts therefor” in Class 37, is likely to cause confusion with Registrant’s mark TRITAN for “Machine parts, namely,

bearings, bearing seals, bushings, belts, couplings, roller chain drives and roller chains, sprockets, pulleys, collars, clutches, retaining rings, brakes, mechanical seals, starters, electric motors, sheaves, hoses, v-belts, belt drives, gears, gear boxes, linear cam shafting and pulleys; starters for motors and engines, all not for trucks or automobiles.” As discussed above, the first, second and third *DuPont* factors each weigh in favor of finding a likelihood of confusion.

However, we do not find a likelihood of confusion with Registrant’s TRITAN mark as Applicant’s “adjuster for controlling data of drills for machining steels, stainless alloys and cast materials; downloadable computer software for adjuster for controlling the operation of drilling tools for machining steels, stainless alloys and cast materials; computers for adjuster for use with drilling tools for machining steels, stainless alloys and cast materials; electronic display interfaces for adjuster for drilling tools for machining steels, stainless alloys and cast materials; all before mentioned goods not in use with and for electric welding apparatus, cutting apparatus, wire feeding apparatus and accessories therefor,” in Class 9. This is because while the first *DuPont* factor weighs in favor of finding a likelihood of confusion, the second critical factor concerning the relatedness of the goods does not.

Decision: The refusal to register is affirmed under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), for the goods and services in Classes 7 and 37, but reversed as to the goods in Class 9.