

This is in response to the Office Action dated July 11, 2017.

The examining attorney has raised two issues that require a response: (i) likelihood of confusion; and (ii) descriptiveness.

Likelihood of Confusion

Registration No. 3956152, cited by the examining attorney, has been cancelled. Accordingly, applicant respectfully requests that the objection under Section 2(d) be withdrawn.

Descriptiveness

The examining attorney offers as evidence that applicant's mark is descriptive examples of use of the term "wedge" in the phrase "wedge pressure catheters." Wedge-pressure catheters have a very specific purpose – they are used in measuring pulmonary artery wedge pressure (PAWP). As the accompanying evidence shows, the reference to "wedge" in this context refers not to the shape of the catheter, but to the fact that in performing the PAWP procedure, a catheter tip is "wedged" into a pulmonary artery for purposes of measuring pressure to measure pulmonary artery occlusion. See the attached explanations. The term "wedge" used in connection with this specific type of catheter refers to the procedure in which the catheter is used – a procedure to measure "wedge pressure." Hence, the term "wedge pressure" refers to a particular type of catheter used only in this procedure. The examining attorney's evidence does not demonstrate that the term "wedge" is used or understood to describe catheters, or applicant's catheter in particular.

Applicant's catheter is not a wedge-pressure catheter. Nor does the term "wedge" describe the shape or any feature or use of applicant's catheter.

The term "wedge" can function as a verb or a noun. As used in the term "wedge-pressure catheter," as explained above, the term refers to the process in which a catheter is wedged into an artery to measure "wedge pressure." Applicant's catheters are not used in this way, nor are catheters generally. While "wedge pressure" may refer to a very specialized type of catheter - those identified by the examining attorney – the term "wedge" alone is not commonly used to describe any other type of catheter, nor would it be understood to describe applicant's or any other catheter.

Applicant submits with its response definitions from three online dictionaries. These definitions are consistent in defining "wedge" as:

1) a piece of metal, wood, rubber, etc. with a pointed edge at one end and a wide edge at the other, either pushed between two objects to keep them still or forced into something to break pieces off it and 2) a piece of something, especially food, in the shape of a triangle (<https://dictionary.cambridge.org/us/dictionary/english/wedge>);

1) a piece of hard material with two principal faces meeting in a sharply acute angle, for raising, holding, or splitting objects by applying a pounding or driving force, as from a hammer and 2) a piece of anything of like shape (*a wedge of pie*) (<http://www.dictionary.com/browse/wedge>);

1) a piece of wood, metal, etc. having one thick end and tapering to a thin edge that is driven between two objects or parts of an object to secure or separate them: "*the door was secured by a wedge*" and 2) An object or piece of something shaped like a wedge: "*a wedge of cheese*" (<https://en.oxforddictionaries.com/definition/wedge>).

The definitions are also consistent in defining the function of a wedge as to fix something in position, force something into a narrow space (as in the examples cited by the examining attorney), or to split or separate something with a wedge.

Applicant's catheter is not shaped like a wedge, nor does it function as a wedge (either to separate or to immobilize). Nor has the examining attorney provided any evidence that this term is used to describe catheters *other than* the specialized catheters that are actually referred to as "wedge-pressure catheters."

Applicant's catheter functions to help lessen the gap that would otherwise be present between a guidewire and the overlaying access catheter through which the guidewire passes. The WEDGE product rests between the guidewire and the access catheter. The shape of applicant's catheter could be described as bulbous or ovular – not wedge-shaped. Applicant's catheters do not act as a wedge. Rather, they act as a conduit to allow placement of devices. A catheter that prevented movement of a guidewire or an access catheter would not be a usable product in a medical procedure.

Applicant's mark derives from Applicant's internal name for the development project for the WEDGE product. WEDGE is a variation of the internal project name. Applicant considered WEDGE preferable to the project name as a mark for the goods, and determined to use this variation of the name it had been using internally for its development project.

In sum, the term "WEDGE" is arbitrary with respect to applicant's goods, and has no significance with respect to the goods. As noted by the examining attorney, descriptiveness must be determined in relation to applicant's goods, not in the abstract. In this case, the term "wedge" is not used by applicant, nor in the relevant trade, as a descriptor for catheters.