

Applicant originally applied to register the mark SoftSeal under the following description:

(Class 010) Respiratory masks for medical purposes; Surgical masks

The Examiner issued a refusal under Section 2(d) because of an alleged likelihood of confusion with the following marks:

US Reg. No. 3,948,176

Mark: SOFTSEAL

G/s: (Class 005) Hemostatic Bandages for control of bleeding from topical wounds

US Reg. No. 3,306,941

Mark: SOFT-SEAL

G/s: (Class 010) Tracheal tubes

Regarding the relatedness of the goods, the Office Action says that the goods listed by the Registrants are highly related to Applicant's goods. Internet evidence was provided allegedly showing the relevant goods. The Examiner cites examples of breathing masks designed to connect to oxygen therapy equipment or rebreathing apparatus.

Applicant has amended the goods description in the instant application to clarify that Applicant's goods are filter masks designed to filter airborne contaminants: The currently amended application recites:

(Class 010) Respiratory masks for medical purposes designed to filter airborne contaminants; Surgical masks designed to filter airborne contaminants

See for example, the Specimen submitted at filing in the instant application, showing examples of respiratory filter masks. In contrast, the masks cited by the Examiner appear to be specialized breathing mask used as accessories to oxygen therapy equipment or rebreathing apparatus. The cited masks fit the patient's face to guide oxygen and therapeutic air to the nose and mouth of the patient via tubing connected to ports built into the mask. They are typically semi-rigid plastic masks and do not include a filter. On the contrary, Applicant's filter masks are made of a flexible air filter material and do not include connections to any tubing or equipment and otherwise have no connection ports. Applicant's filter masks serve the purpose of filtering ambient air inhaled by the user, and thus have an entirely different use, purpose and functionality compared to the cited masks.

Applicant also notes that it owns a prior and active registration for the mark SoftSeal, similarly covering industrial respiratory protection masks (see U.S. Trademark Registration No. 4,739,369 for the mark SoftSeal), which are also filter masks designed to filter and protect the user from airborne contaminants (see e.g. Specimen, which includes images of exemplary industrial respiratory protection masks, which have the same general structure and functionality of the masks described in the instant good/services description).