

Section 2(d) Refusal Response

The Examining Attorney has refused Applicant's mark for VERITY (Applicant's Mark) under Section 2(d) on the ground that there may be a likelihood of confusion between Applicant's Mark and US Registrations 2795545 and 2942541 (Cited Marks).

The Examining Attorney states that Applicant's goods and the Cited Marks' goods "have complementary uses." Applicant notes, however, that Registration 2795545 "VERITY" and Registration 2942541 "VERITY ADX" are very specific in their identified goods. The Cited Marks are to be used to identify "cardiac pacing systems and pulse generators for generating heart stimulating pulses" and "Implantable cardiac stimulators, implantable cardiac monitors", respectively, only – none of which would be classified as surgical instruments or surgical equipment. Furthermore, several goods for "VERITY ADX" were deleted from the registration in 2010, showing that the registrant was not using, nor intended to use, the mark in connection with a larger variety of goods than those currently included in the registration.

Applicant respectfully points to the fact that its goods do not overlap with the goods of the Cited Marks. Furthermore, the goods to be marked as VERITY are not marketed for cardiac use. The goods applicant will mark with VERITY can be found within their Neuro Portfolio, pertinent pages of which are attached with this response.

The tools to be marked by Applicant have as their consumer base highly-educated surgeons who are sophisticated consumers with expertise in very specific areas of the medical field. The goods associated with the Cited Marks are implants and pacemakers and not surgical tools. The Cited Marks have a "specific nature", which is a "most important factor", and "only very sophisticated purchasers are here involved who would buy with great care and unquestionably know the source of the goods." In re N.A.D., Inc., 754 F.2d 996, 999-1000, 224 USPQ 969, 971 (Fed. Cir. 1985).

Applicant respectfully requests that the refusal under section 2(d) be removed, as Applicant's mark is unlikely to be confused with the Cited Marks.

Request for Information Response

Applicant attaches catalogue pages and screen shots from its website showing the tools to be marked with the wording VERITY. The identified goods are not marketed in any type of cardiac surgical procedure and are not pacemakers or implants.