

RESPONSE TO OFFICE ACTION

Applicant Premium Oilfield Technologies, LLC respectfully requests that the Examining Attorney reconsider the Section 2(d) refusal to register the mark PATRIOT in U.S. Application Serial No. 88361316 (the “Mark”) in International Class 007 for “Vibratory screen separators.” The Examining Attorney based the 2(d) refusal on U.S. Registration No. 4956049 for the mark PATRIOT in International Class 007 for “Conveyor belts” (the “Cited Mark”).

For the reasons set forth below, Applicant respectfully contends that its PATRIOT Mark is not likely to cause confusion with the Cited Mark because of the number and nature of similar marks in use on the USPTO register, including within International Class 007, the dissimilarity of the goods sold in connection with the marks, the dissimilarity of the established, likely to continue trade channels, and the conditions under which and buyers to whom sales are made. As a result, Applicant’s mark is registerable over the Cited Mark.

I. Argument Regarding 2(d) Refusal

The Examining Attorney refused registration of Applicant’s Mark PATRIOT in International Class 007 under Section 2(d) of the Lanham Act, asserting that Applicant’s Mark is likely to be confused with a prior registration for PATRIOT in International Class 007. Applicant submits that its Mark is not likely to be confused with the Cited Mark and respectfully requests that the refusal be withdrawn.

Determination of the issue of likelihood of confusion is based on an analysis of all the probative facts in evidence that are relevant to the factors set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (Fed. Cir. 1973). Those factors include: the number and nature of similar marks in use, the relatedness of the goods described in the application and registration, the similarity or dissimilarity of established, likely to continue trade channels, and the conditions under which and buyers to whom sales are made. *Id.*

A likelihood of confusion may be negated even between identical marks, if “the goods and services are not related or marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source.” T.M.E.P. §1207.01(a)(i). In considering the relevant *Du Pont* factors, there is not a likelihood of confusion among prospective purchasers between Applicant’s Mark and the Cited Mark.

A. There Is Widespread Use of “Patriot” on the Trademark Register.

Applicant’s Mark is for PATRIOT in International Class 007 for “vibratory screen separators.” There are no other PATRIOT marks in Class 007 for vibratory screen separators. However, there is extensive third-party use of PATRIOT on goods and services on the USPTO register and within International Class 007. Active third-party registrations are relevant to show that a mark is so commonly used that the public will look to other elements to distinguish the source of the goods. *See, e.g., In re i.am.symbolic, llc*, 866 F.3d 1315, (Fed. Cir. 2017); TMEP 1207.01(d)(iii).

There are more than 680 live applications and registrations on the USPTO Register that include the word PATRIOT within the mark (Exhibit A). There are more than 105 live registrations and 9 live applications for just the mark PATRIOT or PATRIOTS on the Register (Exhibit B). Within International Class 007 alone, there are at least 17 registrations, owned by 15 different entities, for PATRIOT (Exhibit C).

The abundance of “Patriot” marks on the trademark register, including within International Class 007, demonstrates that the consuming public is exposed to numerous parties using the mark in connection with goods and services and will not readily associate the term PATRIOT as emanating from the Cited Mark. Instead, consumers will look to other elements to distinguish the source of the goods or services. *See In re i.am.symbolic, llc*, 866 F.3d 1315, 123 USPQ2d 1744 (Fed. Cir. 2017); *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 1373-74, 73 USPQ2d 1689, 1693 (Fed. Cir. 2005). Moreover, the extensive use of PATRIOT on the register means the Cited Mark is relatively weak and entitled to only a narrow scope of protection. *See Palm Bay Imps., Inc.*, 396 F.3d at 1373-74. When considering the differences between the goods, trade channels, and conditions under which sales are made (discussed in more detail below), Applicant’s Mark is outside the narrow scope of protection afforded to the Cited Mark.

Accordingly, consumers will be apt to distinguish between the Mark and the Cited Mark due to the variety of third party uses of PATRIOT.

B. Applicant’s Goods Are Not Similar to the Cited Mark’s Goods and They Travel in Different Trade Channels.

Applicant’s Mark is for use in connection with “vibratory screen separators.” The Cited Mark is for use in connection with “conveyor belts.” The Examining Attorney does not posit that these goods are the same or similar. Indeed, vibratory screen separators are not used as a medium to transport materials as is the case with conveyor belts. Instead, the Examining Attorney states that the goods are sold or provided through the same trade channels and used by the same consumers in the same fields of use. However, that is not accurate.

Applicant’s goods are used in the oil and gas industry. Specifically, the vibratory screen separators are shale shakers. *See* <https://www.premiumoilfield.com/mud-handling/screens.html>. Shale shakers are a critical component of an oil and gas drilling rig used to remove large solids from the drilling fluid. *See* https://en.wikipedia.org/wiki/Shale_shakers. As a result, the trade channel and consumers for Applicant’s “vibratory screen separators” are within the oil and gas industry. The Cited Mark, on the other hand, is for “conveyor belts,” which has a different trade channel and consumer audience. The Cited Mark’s conveyor belts are used for commercial, industrial use. Notably, there is no mention on the Cited Mark’s owner’s website of any oil and gas application for its conveyor belt. *See* <https://www.fennerdunlopamericas.com/products/belting-products/patriot-x>. To illustrate this point, a consumer looking for a conveyor belt for use in its warehouse is a very different consumer than an oil and gas well drilling contractor searching for a shale shaker for its drilling rig. That

alone demonstrates the different trade channel and consumers between Applicant's Mark and the Cited Mark.

The Examining Attorney cites three examples of businesses that purportedly sell both conveyor belts and products similar to a vibratory screen separators as evidence that the trade channels and consumers are the same. *See* Office Action, p. 3. However, the cited examples do not demonstrate a likelihood of confusion. Importantly, none of the examples are for use in the oil and gas industry.

The first evidence cited by the Examining Attorney is a product sold by Eriez. Specifically, the product is listed under a heading for "vibratory feeders and conveyors," demonstrating that the product is for use in conveying raw materials. The description of the product's use does not mention the oil and gas industry, and does not appear to be for use in connection with drilling oil wells. Instead, the product appears to offer commercial conveyor belt consumers an option for material separation while conveying materials. Applicant's goods, on the other hand, are not used to convey materials.

The second piece of evidence cited by the Examining Attorney is a product sold by Innovative Magnetic Technologies Inc. *See* Office Action, p. 3. That product is designed to "capture tramp metal before metal detectors in vibratory conveyors." *See* <https://www.imt-inc.com/products/vibratory-magnetic-separators/>. The description states that "IMT's unique VIBRA-SEP magnetic plate design allows operations to easily retrofit a tramp metal separation solution without any modification to the existing conveying system." *Id.* The product therefore is an add-on feature for a conveyor belt that has vibration and separation capabilities. It is not a screen separator, but instead is a vibrating conveyor belt with magnetic capabilities to trap certain types of metals. And, notably, the industries listed for the product's use does not include the oil and gas industry. *Id.*

The third and final evidence cited by the Examining Attorney is to All Industrial Tool Supply's website with a link, but the link only results in being directed to the home page with a note that the intended page "has moved or no longer exists." Applicant could not find any conveyor belts or vibratory screen separators on the website.

The above evidence only strengthens Applicant's position that there is no likelihood of confusion. The fact that companies selling conveyor belts also offer separation or vibratory features for use with those conveyor belts—and the products do not appear to have any application in the oil and gas industry—does not demonstrate similar trade channels or consumers. Instead, it reinforces the principle that consumers looking for conveyor belt technology would visit companies such as those cited by the Examining Attorney and the owner of the Cited Mark, while consumers looking for vibratory screen separators, like shale shakers, within the oil and gas industry would look to Applicant. As a result, the consumers who will encounter the Cited Mark are different (consumers looking to buy commercial conveyor belts) from those who will encounter Applicant's Mark (oil and gas companies looking to drill a well).

Thus, it is not likely that consumers would associate or confuse the goods under Applicant's Mark with the Cited Mark. Indeed, the TTAB and courts have found no likelihood of

confusion involving identical trademarks on numerous occasions due to the differences in the goods and trade channels, similar to the present situation: *In re Princeton Tectonics, Inc.*, 95 U.S.P.Q.2d 1509 (T.T.A.B. 2010) (no likelihood of confusion between the federal registrations of EPIC for personal headlamps versus electric lighting fixtures); *California Fruit Growers Exch. v. Sunkist Baking Co.*, 166 F.2d 971 (7th Cir. 1947) (SUNKIST for bread versus fruits and vegetables); *Fed. Telegraph and Radio Corp. v. Fed. Television Corp.*, 180 F.2d 250 (2d Cir. 1950) (FEDERAL for television receivers versus radio receivers); *Intext, Inc. v. Informatics, Inc.*, 185 U.S.P.Q. 569 (T.T.A.B. 1975) (ICS); *Kaufman Knitting Co. v. Oberman Mfg. Co.*, 125 U.S.P.Q. 196 (T.T.A.B. 1960) (TUB-DUDS for women's shirts, blouses and sportswear including slacks versus men's trousers and slacks); *Cambridge Rubber Co. v. Cluett, Peabody & Co.*, 128 U.S.P.Q. 549 (C.C.P.A. 1961) (WINTER CARNIVAL for women's boots versus men's and boy's underwear); *In re Cook United, Inc.*, 185 U.S.P.Q. 444 (T.T.A.B. 1975) (GRANADA for men's suits, coats and trousers versus ladies' pantyhose and hosiery); *Esquire Sportswear Mfg. Co. v. Genesco Inc.*, 141 U.S.P.Q. 400 (T.T.A.B. 1964) (SLEEX for brassieres and girdles versus slacks for men and young men).

C. The Conditions Under Which Sales Are Made Demonstrate Confusion is Unlikely.

In addition, the conditions under which consumers purchase Applicant's and the Cited Mark's goods further demonstrates that there is not a likelihood of confusion. The goods sold in connection with Applicant's Mark are used in the drilling of oil and gas wells. The drilling of an oil well is a highly sophisticated process that involves numerous industry professionals, including various drilling contractors, service contractors, engineers, geologists, and health and safety personnel. Moreover, it is extremely expensive to drill a well, as costs can range from several million dollars to one-hundred million dollars. See https://en.wikipedia.org/wiki/Oil_well. As stated above, Applicant's Mark is used in connection with the sale of shale shakers for use in the oil and gas industry. Shale shakers are a critically important part of the drilling of an oil well.

As stated by Wikipedia:

Drilling fluids are integral to the drilling process and, among other functions, serve to lubricate and cool the drill bit as well as convey the drilled cuttings away from the bore hole. . . . Shale shakers are the primary solids separation tool on a rig. . . . Shale shakers are considered by most of the drilling industry to be the most important device in the solid control system as the performance of the successive equipment directly relates to the cleanliness of the treated drilling fluid.

https://en.wikipedia.org/wiki/Shale_shakers. As a result of the sophistication, importance, and incredible expense of drilling a well, and the importance of the shale shakers in that process, prospective consumers who will encounter Applicant's PATRIOT mark will be highly sophisticated contractors and industry professionals. Those sophisticated consumers are not making impulse purchases, but instead will purchase the goods sold under Applicant's Mark only after developing a careful understanding of the product and the product's reputation. That point

is further supported by the fact that consumer purchasing the goods sold under Applicant's Mark typically spend tens of thousands of dollars on the goods.

These conditions mean that consumers will know in great detail the source of the goods they are using and will readily be able to distinguish between Applicant's Mark and the Cited Mark *See, e.g., In re N.A.D., Inc.*, 754 F.2d 996, 999-1000, 224 USPQ 969, 971 (Fed. Cir. 1985) (concluding that, because only sophisticated purchasers exercising great care would purchase the relevant goods, there would be no likelihood of confusion merely because of the similarity between the marks); *Primrose Ret. Cmtys., LLC v. Edward Rose Senior Living, LLC*, 122 USPQ2d 1030, 1039 (TTAB 2016) (stating that "even in the case of the least sophisticated purchaser, a decision as important as choosing a senior living community will be made with some thought and research" and therefore concluding that there is no likelihood of confusion).

In sum, there is no likelihood of confusion between Applicant's PATRIOT mark and the Cited Mark due to the numerous number and nature of similar marks in use on the USPTO register, including within International Class 007, the dissimilarity of the goods sold in connection with the marks, the dissimilarity of the established, likely to continue trade channels, and the conditions under which sales are made with sophisticated and knowledgeable buyers. Applicant therefore respectfully requests that the refusal be withdrawn and that Applicant's Mark proceed to register.