

As a threshold matter, the identification is sufficient to identify the goods and services at issue. For the Class 5 application, Applicant states that the specific chemical components of the system can vary depending on the application of the goods. As such, Applicant cannot list list primary components of any particular formulation system. The mark identifies the formulation that controls how and when the active principle is delivered. So the goods can be used for a wide variety of applications, and the actual therapeutic use of the drug (e.g., disease state or physical condition) is irrelevant to the goods because the goods are used to control the delivery of the therapeutic principle.

With regards to the substantive refusal, Applicant respectfully states that the mark is not merely descriptive of the applied for goods and services. In short, there is no evidence demonstrating that the mark's descriptiveness. The office action assumes and asserts, without any support, that the applied-for goods and services comprise a micropump as defined in the dictionary entry submitted with the office action. This is not the case. As provided in the identification, the applied-for goods and services relate to a microparticulate system and is not subject to the definition or the list of types and technologies provided in the submitted dictionary definition.

Further, the mere conclusion that the Mark suggests the Applicant's applied-for goods and services is insufficient to establish that a mark is merely descriptive. *Ex parte Colvin, Mendenhall & Co.*, 98 USPQ 415, 416 (Com. Pat. 1953), holds that, even where there is a well-established meaning for a term: "Marks should not be denied registration simply because there are dictionary definitions of the words which . . . might possibly be deemed to be descriptive of the involved goods or services." See *In re Clarke*, 133 USPQ 491 (TTAB 1962) (overruling refusal to register ACTIVITY VECTOR ANALYSIS where Examining Attorney relied on dictionary definitions and "roundabout reasoning"); *In re Perceptive Management Associates, Inc.*, 150 USPQ 758 (TTAB 1966) (overruling refusal to register PERCEPTIVE where dictionary definitions did not persuade the Board "that the term has anything other than a possible suggestive significance as applied to applicant's services"); see also *Philip Morris Inc. v. R. J. Reynolds Tobacco Co.*, 207 USPQ 451, 455 (TTAB 1980) (holding that even a combination of descriptive words may result in an arbitrary unitary designation that is registrable). In short, there is no evidence—and certainly not sufficient evidence—to support a refusal based on the alleged descriptiveness of the mark.

The submitted definition refers to MEMS (microelectromechanical devices, for example, devices that can be formed on silicon wafers in plasma chambers) to provide mechanical function. As such, these "micropumps" are really small mechanical pumps. Applicant's products are no mechanical pumps. Applicant's goods and services relate to pharmaceutical formulations, also called "systems." See Exhibit A (an example showing the discussion of formulation systems). But the formulation does not include a mechanical pump of any kind.

Applicant respectfully requests that its mark proceed to publication.