

The Examiner has refused registration based on a “likelihood of confusion” with Biotix BLADE® mark. The applicant offers the following arguments in response:

1. The manner in which the applicant and registrant have identified their goods suggests little likelihood of confusion. Registrant, Biotix, describes its mark as being used for a very specific and narrow category of “laboratory equipment, namely, pipette tips.” By contrast, the applicant states that its mark will be used for “laboratory instruments, namely, sample preparation instruments for analytical analysis using microwave technology.” Although both registrant and applicant describe goods used in a laboratory, the registrant’s goods are small handheld tools whereas the applicant’s is an elaborate, sizeable, complex, expensive technical apparatus incorporating the use of microwave technology. The goods using the registrant’s mark and the goods using the applicant’s mark have no connection to one another except that they can both be used in a laboratory.

2. The buyers involved in purchasing these categories of goods are sophisticated. Although this does not necessarily mean they are immune from source confusion, and although the Examiner’s decision must be based on the least sophisticated potential purchaser, the decision to buy a very costly instrument such as applicant’s would be done only by an individual with laboratory knowledge and skill and only with great care and after significant research. The purchaser would therefore know the source of the goods being purchased.

3. The distribution channels for registrant’s and applicant’s goods are narrower than suggested by the Examiner. On the websites attached to the Examiner’s Office Action, neither the registrant’s pipette tips nor any others appear alongside a costly, elaborate, expensive technical apparatus such as a “sample preparation instrument for analytical analysis using microwave technology.”

The Examiner has asked for a response to two questions in the Inquiry section of the Office Action. In response, the applicant offers the following information:

1. The term “blade” has no unique meaning in connection with the applicant’s industry nor is it a term of art.

2. The applicant’s goods do not consist of blades such as knives or other cutting tools. Blades, knives or cutting tools are not components of the applicant’s goods. The applicant’s goods are complex instruments that employ microwaves and solvents to prepare samples for analysis.