

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: January 22, 2013

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re ENTECH S.R.L.

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Serial No. 79093424

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Kourtney A. Mulcahy of Hinshaw & Culbertson LLP for ENTECH S.R.L.

Nakia D. Henry, Trademark Examining Attorney, Law Office 111 (Robert Lorenzo,
Managing Attorney).

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Before Bucher, Taylor and Lykos,
Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

ENTECH S.R.L. (“applicant”) seeks registration on the Principal Register of
the following mark:



for goods identified as follows:

metal handles for doors and closing manuals systems comprised of
door locks, door latches, door knobs, door stoppers, door plates, and
door bells in International Class 6; and

electronic door closing systems in International Class 9.¹

¹ Application Serial No. 79093424 was filed on 12/09/2010, pursuant to Section 66(a) of the Trademark Act. The application includes the following description: “The mark consists of

The examining attorney has refused registration of applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d). The examining attorney has taken the position that applicant's mark, when used in connection with the identified goods, so resembles the mark **INTECH DOOR BLOCK** registered for "door locks" in International Class 6,² as to be likely to cause confusion, to cause mistake or to deceive.

After the examining attorney made the refusal final, applicant appealed to this Board. Applicant and the examining attorney have fully briefed the issues in this appeal. We affirm the refusal to register.

I. Evidentiary Issue

Before proceeding to the merits of the refusal, we address a preliminary evidentiary matter. Applicant has submitted third-party registrations to support its argument that were attached to its appeal brief for the first time in the proceeding. However, the record in an application must be complete prior to the filing of an appeal, and the examining attorney has properly objected to these third-party registrations as untimely. We agree with the examining attorney's objection, and this evidence has not been considered. 37 C.F.R. § 2.142(d); *In re Fitch IBCA Inc.*, 64 USPQ2d 1058, 1059 n.2 (TTAB 2002); *In re Trans Cont'l Records Inc.*, 62 USPQ2d 1541, 1541 n.2 (TTAB 2002); and TBMP §§ 1203.02(e), 1207.01.

the wording "ENtECH," with the letter "t" presented in lower case lettering. The application also notes: "Color is not claimed as a feature of the mark."

² Registration No. 2175235 issued on July 21, 1998; renewed. No claim is made to the exclusive right to use the term "Door Block" apart from the mark as shown.

II. Likelihood of Confusion

A. Applicable Law

Our determination under Trademark Act § 2(d) is based on an analysis of the probative facts in evidence that are relevant to the factors bearing on a likelihood of confusion. *See In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). *See also Palm Bay Imp., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005); *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003); and *In re Dixie Rests. Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997). In considering the evidence of record on these factors, we keep in mind that “[t]he fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.” *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976); *see also In re Azteca Rest. Enters., Inc.*, 50 USPQ2d 1209 (TTAB 1999).

B. Arguments of applicant and the examining attorney

In urging registrability, applicant contends that when compared in their entireties, the respective marks are dissimilar as to sight, sound, connotation and overall commercial impression; that “Tech” formatives (and marks with similar spellings) are commonly used in related fields, and hence, the cited mark should be granted a narrow scope of protection; that while registrant’s goods simply serve to lock a door, applicant’s goods consist of entire door closing systems; and that given

these differences in the types of products, registrant's and applicant's respective goods are targeted to quite different classes of consumers.

By contrast, the examining attorney argues that applicant's mark is quite similar to the most dominant portion of registrant's mark; that the respective goods are closely related, if not identical, and hence, we must further presume that the channels of trade and the customers will be the same; and finally that any remaining doubt regarding a likelihood of confusion must be resolved in favor of the prior registrant.

C. Relationship of the goods

We turn our attention first to the relationship of the good as described in the application and registration. *Octocom Systems, Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). *See also Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002). It is settled that it is not necessary that the respective goods be identical or even competitive in order to find that they are related for purposes of our likelihood of confusion analysis. That is, the issue is not whether consumers would confuse the goods themselves, but rather whether they would be confused as to the source of the goods. *See In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984). The goods need only be sufficiently related that consumers would be likely to assume, upon encountering the goods under similar marks, that the goods originate from, are sponsored or authorized by, or are otherwise connected to the same source. *See In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); and *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991).

Applicant lists its goods as “metal handles for doors and closing manuals systems comprised of door locks, door latches, door knobs, door stoppers, door plates, and door bells; and electronic door closing systems.” Registrant’s goods are simply listed as “door locks.” Hence, applicant’s broadly-identified goods explicitly include as one of the components, registrant’s exact identification of goods, namely, door locks. And just like a manual closing system, an electronic door closing system could well include components for opening and closing a portal electronically, such as a handle, knob, door opener, and/or door lock. Copies of use-based, third-party registrations may serve to suggest that the goods are of a type which may emanate from a single source. *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988), *aff’d*, 864 F.2d 149 (Fed. Cir. 1988). *See also In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993). In this context, the examining attorney submitted for the record third-party registrations demonstrating that door locks are used in connection with all types of door closing systems. Additionally, the examining attorney supplied evidence from the Internet to demonstrate that these goods are commonly sold within similar channels of trade and/or are sold by one entity to the same classes of ordinary consumers.

Accordingly, applicant’s goods in both classes are considered closely related, if not identical, to registrant’s door locks for purposes of our likelihood of confusion analysis, and this *du Pont* factor favors a finding of likelihood of confusion.

D. Similarities of the Marks

Applicant has applied to register the mark EN+EOH. The registered mark is **INTECH DOOR BLOCK**, with a disclaimer of the words “Door Block.”

In comparing the marks, we must consider the marks in their entirety as to appearance, sound, connotation and commercial impression, to determine the similarity or dissimilarity between them. *Palm Bay*, 73 USPQ2d at 1692. The test under this *du Pont* factor is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods offered under the respective marks is likely to result.

Because the similarity or dissimilarity of the marks is determined based on the marks in their entirety, the analysis cannot be predicated on dissecting the marks into their various components; that is, the decision must be based on the entire marks, not just part of the marks. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

On the other hand, different features may be analyzed to determine whether the marks are similar. *Price Candy Company v. Gold Medal Candy Corporation*, 220 F.2d 759, 105 USPQ 266, 268 (CCPA 1955). In fact, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on a consideration of the marks in their entirety. *In re National Data Corp.*, 224 USPQ at 751. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *See Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975).

Although the disclaimed portion of registrant's mark cannot be ignored, and the marks must be compared in their entirety, generic matter that has been dis-

claimed is typically less significant when comparing marks. *See In re Dixie Rests., Inc.*, 105 F.3d 1405, 1407, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1060, 224 USPQ 749, 752 (Fed. Cir. 1985). Therefore, we agree with the examining attorney that the leading term “INTECH” is the dominant term of registrant’s mark. As to sound, the dominant “INTECH” portion of registrant’s mark is phonetically quite similar to applicant’s “ENtECH” mark. In some reported cases, the similarity in sound alone has been found sufficient to support a finding that the marks are confusingly similar. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988), *See also In re 1st USA Realty Prof'ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007). Accordingly, this *du Pont* factor also weighs in favor of a finding of likelihood of confusion.

E. The number and nature of similar marks in use on similar goods

The sixth *du Pont* factor requires consideration of any evidence pertaining to “the number and nature of similar marks in use on similar goods.” In this context, applicant notes that the examining attorney had earlier in the prosecution of this application also based her likelihood of confusion refusal on three additional citations:



for, *inter alia*, “... metal handles and knobs for doors, drawers and cupboards ...” in International Class 6;³

³ Registration No. 2827646 issued on March 30, 2004; Section 8 affidavit (6-yr) accepted and Section 15 affidavit acknowledged.

TRENTECH

for “physical and electronic security systems, namely, automated security gates, motion sensitive security lights, personal security alarms, electronically operated high security lock cylinders, facilities management hardware and software, namely, software to control building environmental, access and security systems; personnel badge identification systems, namely, magnetic identifying cards, encoded electronic chip cards for identifying particular users of computers and mobile phones” in International Class 9;
“technical services, namely, installation and maintenance of physical and electronic security systems” in International Class 37; and
“design, development and technical consultation in connection with physical and electronic security systems” in International Class 42;⁴ and

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for “... electric theft prevention installations, namely, electronic anti-theft system comprised of a bar code scanner that allows manufacturers to temporarily disable electronic goods during the manufacturing process and allows retailers to enable such goods upon receiving the purchase price for the goods; electric locks; fire alarms; electrical controlling devices, namely, electronic push buttons use[d] for bells; electric door openers; time attendance system comprised of computers and clocks; fingerprint reader” in International Class 9.⁵

As discussed above, applicant also attempted with its appeal brief to place into the record a number of third-party registrations having quite different marks for largely unrelated goods in International Classes 9 and 6. We have given these untimely submitted registrations no consideration, but should hasten to add that even if we had considered them, they would not change the re-

⁴ Registration No. 3409010 issued on April 8, 2008.

⁵ Registration No. 3841690 issued on August 31, 2010. This registration issued under the provisions of Section 66A of the Trademark Act and has no indication of use in the United States.

sult herein.⁶ In fact, it should surprise no one that there are plenty of composite marks in class 9 containing formatives suggesting “technology,” such as “tech,” “tec,” “tek,” “techs,” “tex,” etc. However, inasmuch as there is no evidence in this record on which we could find the designation “Intech” within registrant’s cited mark to be weak, either commercially or conceptually, we consider this to be, at best for applicant, a neutral factor in this case.

F. Balancing the factors

In view of the facts that the cited mark **INTECH DOOR BLOCK** has not been shown to be commercially weak, that the respective marks are quite similar, and that the goods are closely related if not overlapping, we find that applicant’s registration of the mark **EN+TECH** is likely to cause confusion.

Decision: The refusal under Trademark Act § 2(d) to register applicant’s mark **EN+TECH** is hereby affirmed.

⁶ These purportedly included the following marks for goods in Class 9: **INTECH21** and design (for energy management systems), **STARTECH.COM** (for computer goods and services), **TECHNOX STORE** (for electronic adapters), **INSTRUTECH** (for pressure control devices), **TECH-LABS** and design (for interactive training materials), **PRO-TECH 8 FUSION** (for protective work gloves), **COILTEK** (for sophisticated metal-detecting equipment), and a single mark for decorative metal sheets in Class 6: **ARTTEC**.