

**THIS OPINION IS NOT A
PRECEDENT OF THE T.T.A.B.**

Mailed:
May 27, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re ERNI Lektroapparate GmbH

Serial No. 79025177

Aimee L. Kaplan of Collard & Roe, P.C. for ERNI
Lektroapparate GmbH.

Dayna J. Browne, Trademark Examining Attorney, Law Office
104 (Chris Doniger, Managing Attorney)

Before Grendel, Walsh and Bergsman, Administrative
Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

On April 11, 2006, applicant ERNI Lektroapparate GmbH
applied to register the mark MicroBridge, in standard
character format, on the Principal Register for goods
ultimately identified as follows:

Electrical and electronic devices, plug connectors and
their parts, namely contact pins for male plugs and
contact springs for female plugs, not including
adjustable resistors, in Class 9; and,

Electrical insulators made of plastic for contact pins
for plug connectors, male plug, and contact springs
for female plugs, but not for adjustable resistors, in
Class 17.

Serial No. 79025177

The application (Serial No. 79025177) is based on a request for protection filed under the provision of Section 66a of the Trademark Act of 1946, 15 U.S.C. §1144f(a).

The Examining Attorney refused to register the mark under Section 2(d) of the Trademark Act of 1946, 15 U.S.C. §1052(d), because applicant's mark, when used in connection with the goods described in the application, is likely to cause confusion with the mark MICROBRIDGE, in standard character format, for "electronic components, namely, adjustable resistors," in Class 9.¹

Our determination of likelihood of confusion under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). *See also, In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities or dissimilarities of the marks and the similarities or dissimilarities of the goods. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA

¹ Registration No. 3069703, issued March 21, 2006.

1976) ("The fundamental inquiry mandated by §2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks").

- A. The similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression.

We turn first to the *du Pont* likelihood of confusion factor focusing on the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression. *In re E. I. du Pont De Nemours & Co., supra*. In this case, the marks - - MicroBridge and MICROBRIDGE - - are legally identical.

- B. The similarity or dissimilarity and nature of the goods.

It is well settled that the goods of the applicant and the registrant do not have to be identical or directly competitive to support a finding that there is a likelihood of confusion. It is sufficient if the respective goods are related in some manner and/or that the conditions surrounding their marketing are such that they would be encountered by the same persons under circumstances that could, because of the similarity of the marks used in connection therewith, give rise to the mistaken belief that they emanate from or are associated with a single source.

Serial No. 79025177

In re Albert Trostel & Sons Co., 29 USPQ2d 1783, 1785 (TTAB 1993); *In re International Telephone & Telegraph Corp.*, 197 USPQ 910, 911 (TTAB 1978).

Moreover, in an *ex parte* appeal, likelihood of confusion is determined on the basis of the goods as they are identified in the application and the cited registration. *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981); *In re William Hodges & Co., Inc.*, 190 USPQ 47, 48 (TTAB 1976). See also *Octocom Systems, Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) ("The authority is legion that the question of registrability of an applicant's mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant's goods, the particular channels of trade or the class of purchasers to which the sales of goods are directed").

Finally, the greater degree of similarity between applicant's mark and the mark in the cited registration, the lesser degree of similarity between the applicant's goods and the registrant's goods that is required to support a finding of likelihood of confusion. Where, as here, the applicant's mark is identical to the registrant's mark, there need only be a viable relationship between the

Serial No. 79025177

respective goods in order to find a likelihood of confusion. See *In re Shell Oil, Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993); *In re Opus One Inc.*, 60 USPQ2d 1812, 1815 (TTAB 2001); *In re Concordia International Forwarding Corp.*, 222 USPQ 355, 356 (TTAB 1983).

As indicated above, applicant's products are essentially plug connectors (excluding adjustable resistors)² and the registrant's goods are adjustable resistors.³ A "resistor" is "[a]n electronic component that resists, limits or regulates the flow of electrical current

² Neither the applicant, nor the Examining Attorney, specifically addressed the electrical insulators for plug connectors, in Class 17. Because the electrical insulators appear to be an accessory to applicant's core plug connector products that could be included within the term "and their parts" in the Class 9 description, our discussion regarding applicant's products include the goods in Class 17.

³ Both applicant and the Examining Attorney refer to applicant's products as plug connectors. Therefore, for purposes of this decision, we construe applicant's description of goods to be limited to plug connectors and their parts. However, as written, the description of goods includes "electrical and electronic devices" excluding adjustable resistors. With the exception of adjustable resistors, there is no language limiting the types of "electrical and electronic devices" (e.g., electrical and electronic devices, namely, plug connectors), and we should not read any other limitations or restrictions into the description of goods. *Octocom Systems, Inc. v. Houston Computers Services Inc.*, 16 USPQ2d at 1787; *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 940 (Fed. Cir. 1983). Accordingly, a strict construction of applicant's description of goods includes all types of electrical and electronic devices, including resistors other than adjustable resistors.

Serial No. 79025177

in an electronic circuit. Since the device has resistance it used in a circuit for protection and current control.”⁴

An “adjustable resistor” is “[a] resistor that has the resistance wire partially exposed to enable the amount of resistance in use to be adjusted occasionally by the user.”⁵

If a resistor is an electronic component and an adjustable resistor is a resistor, then an adjustable resistor is an electronic component.

Wikipedia describes an “electronic component” as follows:

An electronic component is a basic element usually packaged in a discrete form with two or more connecting leads or metallic pads. Components are intended to be connected together, usually by soldering to a printed circuit board, to create an electronic circuit with a particular function (for example an amplifier, radio receiver, or oscillator). Components may be packaged singly (resistor, capacitor, transistor, diode etc (sic)) or in more or less complex groups as integrated circuits (operational amplifier, resistor array, logic gate etc.).⁶

⁴ *Wēbopēdia* (webopedia.com) attached to applicant’s February 2, 2007 Response.

⁵ *Modern Dictionary of Electronics*, p. 13 (7th ed. 1999). See also *The Illustrated Dictionary of Electronics*, p. 15 (8th ed. 2001). The Board may take judicial notice of dictionary evidence. *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 213 USPQ 594 (TTAB 1982), *aff’d*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

⁶ March 1, 2007 Office Action.

We also note that the *Wikipedia* entry for electronic components identified electrical connectors and plugs as "interconnecting electronic components."

In view of the foregoing, we find that resistors, adjustable resistors, electronic connectors and plugs are all electrical or electronic devices or components.

The Examining Attorney also submitted six (6) registrations for marks for resistors and electrical connectors and/or plugs, owned by five (5) entities, based on use in commerce. Although third-party registrations based on use in commerce are not evidence that the marks have been used in commerce, they have some probative value because they serve to suggest that the listed products may emanate from a single source. *In re Albert Trostel & Sons Co.*, 29 USPQ2d at 1785-1786; *In re Mucky Duck Mustard Co., Inc.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988).

Applicant argued that the search by the Examining Attorney for registrations comprising plugs or connectors and resistors in the description of goods was too broad, and that the Examining Attorney's search should have been restricted to adjustable resistors.⁷ However, applicant's argument is based on the false premise that resistors per

⁷ Applicant's Brief, p. 2.

Serial No. 79025177

se in the description of goods exclude adjustable resistors. As indicated above, unless there is a restriction or limitation in the description of goods, the term resistors includes all types of resistors, including adjustable resistors.

Applicant also argued that "there are numerous third-party registrations registered for use with 'plug connectors' but not 'adjustable resistors.'"⁸ Applicant submitted copies of six (6) such registrations. Again, applicant's argument is based on the false premise that the term resistors in the description of goods for the third-party registrations does not include adjustable resistors. Also, the fact that there are some third-party registrations that include plug connectors, but not adjustable resistors, does not prove that those products are not related. Those registrants simply chose to register their marks on a variety of electrical and electronic components that include plug connectors, but not adjustable resistors. For example, the fact that Luberg Automation Components GmbH & Co. KG (Registration No. 3239942) registered its mark LION and design for sensors,

⁸ Applicant's Brief, p. 2.

Serial No. 79025177

actuators and plug connectors does not mean that plug connectors and adjustable resistors are not related.

The registrant's web site indicates that registrant's MICROBRIDGE adjustable resistors may be used in connection with a wide variety of other electrical and electronic components such as sensors, regulators, optical components, and amplifiers.⁹

Applicant's web site indicates that some of applicant's connectors may be used in connection with resistors.

ERbic - Field Bus Interface Connector System

For different ERbic bus systems, the interface connectors combine compact dimensions with horizontal and vertical cable termination. The color coding describes different bus systems, nodes, and termination versions with integrated termination resistors.¹⁰

Thus, according to applicant's web site, resistors may be attached to other components via various electrical or electronic connectors.

Finally, a press release on applicant's web site states that "[t]he new MiniBridge connectors are ideally suited for diverse sensor, actuator, power-supply, and data

⁹ March 1, 2007 Office Action.

¹⁰ March 1, 2007 Office Action. We also note that applicant manufactures or sells resistors although the mark used to identify those products was not identified.

applications in the fields of automotive and industrial electronics, computer technology, consumer electronics, and medical-device technology.”¹¹ While not referring to the MicroBridge products, the press release demonstrates that applicant’s plug connectors are used in connection with a wide variety of applications.

Based on all of the evidence made of record, we find that applicant’s plug connectors and the registrant’s adjustable resistors are related products.¹² In reaching this decision, we are well aware of the twenty (20) cases cited by applicant to support its argument that because the products fall within the same general category, it does not automatically mean that they are related. However, in this case, the evidence shows that the products at issue are commonly used and sold together so that when they are sold under identical marks, consumers will believe that they emanate from a single source.

C. The similarity or dissimilarity of established, likely-to-continue trade channels and classes of consumers.

The evidence of record demonstrates that applicant’s plug connectors and the registrant’s products move in the

¹¹ August 30, 2007 Office Action.

¹² Applicant’s exclusion of adjustable resistors in the description of goods does not remove the likelihood of confusion.

same channels of trade and are sold to the same classes of consumers. Specifically, the following evidence attached to the August 30, 2007 Office Action is probative that the channels of trade and classes of consumers are similar:

1. An excerpt from the LappUSA web site (www.lappusa.com) advertising terminating resistors and connectors;
2. An excerpt from the Mitutoyo America Corporation catalog advertising connectors and adjustable resistors;
3. Excerpts from the Steven Engineering web site (www.stevenengineering.com) advertising plug connectors and resistors;
4. Excerpts from the Tyco Electronics web site (www.tycoelectronics.com) advertising fixed resistors and plug connectors; and,
5. Applicant's press release, referenced *supra*, that shows that applicant's connectors are suitable for diverse applications in connection with other electrical and electronic components.

D. The conditions under which and buyers to whom sales are made (i.e., "impulse" vs. careful, sophisticated purchasing).

Applicant argued that its "consumers are extremely sophisticated and are purchasing specific products. For example, many computer manufacturers are clients of

Applicant. These customers are purchasing very specific products and are aware of the specific channels of trade in which Applicant's products are sold."¹³ As indicated *supra*, applicant's plug connectors are sold in the same channels of trade and to the same classes of consumers as registrant's adjustable resistors. Moreover, applicant failed to describe the sales process in sufficient detail to explain how consumers exercising a high degree of care will be able to distinguish the source of related products identified by identical trademarks. In other words, the fact that consumers may exercise a high degree of care does not *ipso facto* mean that there will not be a likelihood of confusion when identical marks are used on related goods.

E. Balancing the factors.

Having found that the marks of the parties are legally identical, that applicant's goods in Classes 9 and 17 are related to registrant's adjustable resistors (even accounting for applicant's exclusion of adjustable resistors in its description of goods), that the goods move in the same channels of trade and are sold to the same classes of consumers, we conclude that applicant's mark MicroBridge for the goods identified in classes 9 and 17,

¹³ Applicant's Brief, pp. 2-3.

Serial No. 79025177

is likely to cause confusion with the mark MICROBRIDGE for adjustable resistors.

Decision: The refusal to register is affirmed.