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PRECEDENT OF THE TTAB

Mailed: May 12, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re TDI Novus Inc.

Serial No. 98593408

Joseph R. Falcon III of Barley Snyder,
for TDI Novus Inc.

Maureen Reed, Trademark Examining Attorney, Law Office 115
Daniel Brody, Managing Attorney.

Before Wellington, Goodman, and Cohen,
Administrative Trademark Judges.

Opinion by Wellington, Administrative Trademark Judge:

TDI Novus Inc. (“Applicant”) seeks registration on the Principal Register of the
mark:



for:

A voice communication system for an autonomous vehicle in maritime
comprised of an apparatus to record, transcribe, translate, and parse voice
communications over the radio frequency spectrum and autonomously
providing a system generated voice transmission response that is

appropriate and in context of the transmission and any earlier transmissions, in Class 9.¹

The Trademark Examining Attorney refused registration of Applicant's mark under Trademark Act ("the Act") Section 2(d), 15 U.S.C. § 1052(d), on the ground of likelihood of confusion based on the registered standard character mark MERMADE for long lists of goods and services in Classes 9, 35, and 41, that include in relevant part:

apparatus for recording, transmission or reproduction of sound and images, in Class 9.²

After the Examining Attorney made the refusal final, Applicant requested reconsideration and filed an appeal. The Examining Attorney denied the request for reconsideration and the appeal resumed. Both Applicant and the Examining Attorney filed briefs. For the reasons explained below, we reverse the refusal.

I. Likelihood of Confusion

Section 2(d) of the Act, in relevant part, prohibits registration of a mark that "so resembles a mark registered in the Patent and Trademark Office ... as to be likely, when used on or in connection with the goods of the applicant, to cause confusion." 15 U.S.C. § 1052(d). To determine whether confusion is likely, we analyze all probative evidence relevant to the factors set out in *In re E. I. du Pont de Nemours & Co.*, 476

¹ Application Serial No. 98593408, filed June 10, 2024, based on Applicant's allegation of first use of the mark anywhere and in commerce on December 31, 2023, under Trademark Act Section 1(a), 15 U.S.C. § 1051(a).

² Registration No. 6285548 issued August 7, 2018; Sections 8 and 15 declaration accepted. The registration also covers services in Classes 37, 40 and 42; however, the refusal to registration only pertains to the above-listed Class 7 goods in the registration.

F.2d 1357, 1361 (CCPA 1973) (“*DuPont*”). See *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315 (Fed. Cir. 2003).

In every Section 2(d) case, two key *DuPont* factors are the similarity or dissimilarity of the marks and the relatedness of the respective goods or services, because 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.” *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103 (CCPA 1976). Here, we have considered each *DuPont* factor that is relevant and for which there is evidence and argument of record. See *In re Guild Mortg. Co.*, 912 F.3d 1376, 1379 (Fed. Cir. 2019).

Varying weight may be assigned to each *DuPont* factor depending on the evidence presented. See *Citigroup Inc. v. Cap. City Bank Grp. Inc.*, 637 F.3d 1344, 1356 (Fed. Cir. 2011); *In re Shell Oil Co.*, 992 F.2d 1204, 1206 (Fed. Cir. 1993) (“[T]he various evidentiary factors may play more or less weighty roles in any particular determination.”). Ultimately, however, “[e]ach case must be decided on its own facts and the differences are often subtle ones.” *Indus. Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 1199 (CCPA 1973).

A. Applicant’s Co-pending Application Argument

At the outset, we address an argument raised by Applicant for the first time in its appeal brief. Applicant asserts that its “related application Serial No. 98[5]93838 for the plain word mark MERMAID, covering identical goods in International Class 009, was examined, approved, and published for opposition on October 7, 2025,

notwithstanding the same cited registration MERMADE.”³ Applicant goes on to argue:⁴

While the USPTO is not bound by prior determinations (*In re Nett Designs, Inc.*, 236 F.3d 1339, 1342 (Fed. Cir. 2001)), consistency in examination promotes fairness and predictability (McCarthy on Trademarks § 23:122). No material facts distinguish the applications—same filing date (June 10, 2024), owner, goods, and cited mark. The present design mark adds stylization and a Wi-Fi icon, further reducing similarity ... The Board should take judicial notice of Serial No. 98[5]93838’s allowance and reverse the refusal to maintain uniformity.

Applicant did not submit a copy of the companion application.

In response, the Examining Attorney asserts that “prior decisions and actions of other trademark examining attorneys in applications for other marks have little evidentiary value and are not binding upon the USPTO or the Trademark Trial and Appeal Board,” citing the TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) §1207.01(d)(vi) and supporting caselaw.⁵

In addition, the Examining Attorney points out that Applicant “only provided the serial number for this application and an email alerting applicant to a Notice of Publication as additional evidence in its appeal brief,” and notes that “merely listing a serial number does not make an application part of the record.”⁶ The Examining

³ 6 TTABVUE 18.

⁴ 6 TTABVUE 19.

⁵ We further note that TMEP §702.03(a) discusses companion applications and provides that generally a single examining attorney should be responsible for their examination for registration. The TMEP further provides that that in cases where multiple examining attorneys are involved each “examining attorney must review the electronic record of the earlier companion application before taking action in a later companion case, and should act consistently, unless it would be clear error to do so.” TMEP §702.03(a)(ii).

⁶ 8 TTABVUE 8.

Attorney concludes that “[b]ecause the co-pending application and email notification were not submitted into the record prior to appeal, they should not be considered.”⁷

The Examining Attorney is correct in that we cannot consider any evidence submitted for the first time with an appeal brief because the evidentiary record must be complete prior to the filing of an ex parte appeal to the Board. Trademark Rule 2.142(d). The Board also does not typically accept a mere listing of a registration or application to make it of record. *See* TRADEMARK AND TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 1208.02 (2025) (discussion of evidence involving registrations and applications in appeals).

Accordingly, we give no further consideration to Applicant’s argument or reliance on the companion application.⁸

B. Comparison of the Marks

We turn now to the first *DuPont* factor, which focuses on the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation, and commercial impression. *See Palm Bay Imps. v. Veuve Clicquot Ponsardin Maison Fondee en 1772*, 396 F.3d 1369, 1371 (Fed. Cir. 2005). (quoting *DuPont*, 476 F.2d at 1361). Similarity as to any one of these elements may be sufficient to support a finding that the marks are confusingly similar. *See Krim-Ko Corp. v. Coca-Cola Co.*,

⁷ 8 TTABVUE 8.

⁸ We would also be remiss if we did not point out that Applicant should have raised its request for consistent treatment with the companion application prior to filing this appeal. Indeed, even after filing the appeal, Applicant was not without recourse as it could have requested the application be remanded for purposes of introducing evidence involving its companion application and allow further consideration in light of that evidence. *See* TBMP § 1209.04.

390 F.2d 728, 732 (CCPA 1968) (“It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.”); *accord In re Inn at St. John’s, LLC*, No. 87075988, 2018 TTAB LEXIS 170, at *13, *aff’d mem.*, 777 F. App’x 516 (Fed. Cir. 2019).

In this case, Applicant’s word and design mark,  , is described in the application as “consist[ing] of the stylized word MERMAID. The letters M, E, R, M, I, and D are presented in lowercase, while the letter A is capitalized. Above the letter I in the mark is a design of a wireless signal icon represented by three curved lines.”

The registered mark is MERMADE in standard characters.

In terms of sound, the marks are likely to be pronounced the same. As to appearance, there are some differences, namely, the registered mark is spelled differently and the letters AI are accentuated with a “wireless signal icon” above the letter I. Nevertheless, the marks remain close in appearance because they share the same first five letters and the registered mark is likely to be perceived as a novel spelling of MERMAID.

With regard to the marks’ commercial impressions or connotations, Applicant argues that “the Wi-Fi symbol and the stylized ‘A’ are not ornamental flourishes; they are integral communicative elements. They signal to consumers that [Applicant’s] goods are technologically advanced, network-enabled, and specific to wireless

communication systems, not general apparatus as covered by the cited registration.”⁹

We agree only to the extent that the Wi-Fi icon may connote an Internet element and the more prominent letters AI may suggest “artificial intelligence” in connection with the goods. Still, we find consumers encountering Applicant’s mark are likely to understand it as conjuring the mythical half-human sea creature, a “mermaid.” Similarly, the registered mark will be viewed as novel spelling of the same term and thus project a very similar meaning as Applicant’s mark.

Overall, we find the marks to be more similar than dissimilar. Accordingly, the first *DuPont* factor weighs in favor of a conclusion that confusion is likely.

C. The Goods

We turn now to the second and third *DuPont* factors, which concern the relatedness of the goods and the channels of trade for the goods. *DuPont*, 476 F.2d at 1361. In this analysis, we must consider the goods as they are identified in Applicant’s application and the cited registration. *See Stone Lion Cap. Partners, L.P. v. Lion Cap. LLP*, 746 F.3d 1317, 1323 (Fed. Cir. 2014) (quoting *Octocom Sys., Inc. v. Houston Comp. Servs. Inc.*, 918 F.2d 937, 942 (Fed. Cir. 1990)). It is sufficient for a finding of likelihood of confusion as to a class of goods in the application if relatedness is established for any one of the recited goods within that class in the application. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 1336 (CCPA 1981).

Before we may compare and analyze Applicant’s goods vis-à-vis any of the goods listed in the cited registration, it is imperative to have a clear understanding as to

⁹ 8 TTABVUE 15.

the nature of Applicant's goods. In doing so, we may consider extrinsic evidence to acquire a better understanding of the goods. *See, e.g., In re Thor Tech*, No. 78634024, 2009 TTAB LEXIS 253, at *12 n.10 (although extrinsic evidence may not be used to limit or restrict the identified goods or services, it is nonetheless proper to consider extrinsic evidence in the nature of dictionary entries to define the terminology used to describe the goods or services); *In re Trackmobile Inc.*, No. 78401595, 1990 TTAB LEXIS 20, at *5 (“[W]hen the description of goods for a cited registration is somewhat unclear, ... it is improper to simply consider that description in a vacuum and attach all possible interpretations to it when the applicant has presented extrinsic evidence showing that the description of goods has a specific meaning to members of the trade.”), cited in *In re W.W. Henry Co.*, No. 78401595, 2007 TTAB LEXIS 7, at *8-9 (evidence accepted to show registrant's goods would be used by industrial plastics manufacturers, not handypersons).

Again, the application describes the goods as:

A voice communication system for an autonomous vehicle in maritime comprised of an apparatus to record, transcribe, translate, and parse voice communications over the radio frequency spectrum and **autonomously providing a system generated voice transmission response that is appropriate and in context of the transmission and any earlier transmissions.**

The wording above in bold is to highlight the technical nature of Applicant's goods as well unique features within the field of maritime traffic communication. Applicant argues that the identification “leaves no ambiguity: Applicant's product is an integrated AI-assisted communication system for autonomous vessels, designed for

industrial, navigational, and governmental maritime use.”¹⁰ As noted, while we are constrained to compare the goods as identified in the application and cited registration, the materials submitted by Applicant evidence the precise and technical nature of Applicant’s maritime voice communication system for autonomous vehicles, and the system’s features, including:¹¹



The materials Applicant submitted corroborate its contention that its goods, as identified in the application, are “specialized hardware systems for maritime autonomous vehicles” and, as such, target consumers in a “niche market of maritime industry professionals.”¹²

¹⁰ 6 TTABVue 16.

¹¹ Submitted with Applicant’s Request for Reconsideration filed on August 4, 2025.

¹² Applicant’s Request for Reconsideration filed on August 4, 2025, at TSDR p. 3.

The Examining Attorney, on the other hand, argues that the involved goods are in-part “legally identical,” focusing exclusively on the “apparatus for recording, transmission or reproduction of sound and images” listed in the cited registration.¹³ Specifically, the Examining Attorney contends that Registrant’s “broadly worded apparatus for recording and transmission of sound presumably encompasses applicant’s more narrow apparatus for recording and transmission of voice communications to maritime vehicles.”¹⁴

We understand and appreciate the Examining Attorney’s argument. However, in this case, we find Applicant’s maritime traffic communication system to be more than just an “apparatus.” That is, as described in the application, although Applicant’s goods incorporate an “apparatus” that records, the goods are advanced maritime voice communication systems utilizing a radio frequency spectrum for autonomous maritime vehicles. The system also “autonomously provides ... a generated voice transmission response that is appropriate and in context of the transmission and any earlier transmissions.” In other words, Applicant’s system is much more than a mere apparatus that records, transmits or reproduces sound; rather, Applicant’s system incorporates incoming transmissions and generates intelligent responses—again, all within the field of maritime traffic and for autonomous marine vehicles.

In sum, we find Applicant’s goods are so specialized that, without more, we do not find them related to the goods in the cited registration. Accordingly, the second

¹³ 8 TTABVUE 3.

¹⁴ 8 TTABVUE 3.

DuPont factor weighs against a finding that confusion is likely.

D. Consumer Care

Under the fourth *DuPont* factor, we consider the conditions under which the goods are likely to be purchased, e.g., whether on impulse or after careful consideration, as well as the degree, if any, of sophistication of the consumers. *DuPont*, 476 F.2d at 1361.

Applicant argues:¹⁵

Applicant's goods are sold to highly specialized entities such as maritime engineering firms, defense contractors, and autonomous vessel operators, markets governed by technical procurement, regulatory compliance, and performance validation. These buyers purchase through controlled bidding and RFP processes, not impulse retail. The channels of trade are thus not only distinct but mutually exclusive from the registrant's general distribution network.

Applicant, however, did not submit any evidence such as consumer declarations or affidavits to substantiate its contention regarding the purchasing process. Nevertheless, given the intrinsic nature of Applicant's goods, we agree that consumers its system will be discriminating professionals or equally sophisticated purchasing agents with specialized knowledge in autonomous marine vehicle industry. This is a niche class of consumers who understandably will exercise greater than ordinary care. *See Edwards Lifesciences Corp. v. VigiLanz Corp.*, No. 91154210, 2010 TTAB LEXIS 84, at *51 ("Just based on the products involved in this proceeding, one would expect that all of the purchasers would exercise a high degree of care when making their purchasing decision.").

¹⁵ 6 TTABVUE 17.

The fourth *DuPont* factor therefore weighs against a likelihood of confusion.

II. Conclusion

The first *DuPont* factor favors a finding of a likelihood of confusion because Applicant's mark and the cited mark are overall more similar than not in sight, sound and connotation. However, the second and fourth *DuPont* factors support a finding that confusion is unlikely primarily because Applicant's goods are voice communication systems for autonomous marine vehicles using generated messages based on incoming messages and these systems are used in the niche maritime transportation field. Consumers of Applicant's goods will be owners or operators of autonomous marine vehicles. Purchasers of Applicant's voice communication systems for autonomous maritime vehicles are also likely to exercise more care in their purchasing decisions given the technical nature of the Applicant's systems and given the inherent safety concerns involving autonomous marine vehicles.

We find the first *DuPont* factor is outweighed by the second and fourth *DuPont* factors and, on balance, we thus conclude that Applicant's mark is not likely to cause confusion with the registered mark.

Decision: The refusal under Trademark Act Section 2(d) to register Applicant's mark is reversed.