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**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re Meridian Medical Technologies, Inc.

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Serial No. 75/470,962

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Paul W. Kruse of Pillsbury Winthrop LLP for Meridian  
Medical Technologies, Inc.

Yong Oh (Richard) Kim, Trademark Examining Attorney, Law  
Office 115 (Tomas Vlcek, Managing Attorney).

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Before Hohein, Walters and Drost, Administrative Trademark  
Judges.

Opinion by Drost, Administrative Trademark Judge:

On April 20, 1998, Meridian Medical Technologies, Inc.  
(applicant) applied to register the mark MERIDIAN MEDICAL  
TECHNOLOGIES and design shown below on the Principal  
Register for "portable cardiac monitors which record and  
transmit medical data; electrocardiogram analyzers" in  
International Class 10.<sup>1</sup> Applicant has disclaimed the words  
"Medical Technologies."

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<sup>1</sup> Serial No. 75/470,962. The application is based on an  
allegation of a bona fide intention to use the mark in commerce.



The examining attorney ultimately refused to register the mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), because of a registration for the mark MERIDIAN, in typed form, for "cardiac rhythm management devices; namely, heart pacemakers" in International Class 10.<sup>2</sup>

After the examining attorney made the refusal final, this appeal followed.

The examining attorney's position is that the word "Meridian" is the dominant part of applicant's mark and it forms the whole of registrant's mark. Regarding the goods, the examining attorney maintains that while "the goods are obviously not identical, they are complementary to the extent that a medical professional treating a patient with a cardiac-related ailment will need to monitor the heart and analyze the resultant electrocardiogram before deciding whether a pacemaker (i.e., registrant's goods) is warranted." Applicant, on the other hand, argues that the marks "[w]hen properly viewed in their entireties ... are not similar in sound, appearance or meaning." Brief at 2.

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Regarding the goods, applicant argues that the purchasers are sophisticated professionals and "the goods are neither related nor marketed in such a way that the same purchasers would encounter them." Brief at 5.

We affirm.

In a case involving a refusal under Section 2(d), we analyze the facts as they relate to the relevant factors set out in In re Majestic Distilling Co., 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). See also In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973); Recot, Inc. v. Becton, 214 F.3d 1322, 54 USPQ2d 1894, 1896 (Fed. Cir. 2000).

We begin by comparing applicant's and registrant's marks. Applicant's mark consists of the words MERIDIAN MEDICAL TECHNOLOGIES and design, while registrant's mark consists of the word MERIDIAN (typed). The word is obviously the only element in the registrant's mark and we find that it also dominates applicant's mark.

In applicant's mark, the term "Meridian" is not only displayed in much larger type but the type is much darker and bolder than the other wording in the mark. It is clearly the most noticeable term in the mark. The other wording in the mark consists of the disclaimed words

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<sup>2</sup> Registration No. 2,336,573 issued March 28, 2000.

"Medical Technologies." It would be unlikely that applicant's additional wording would be used by prospective purchasers to distinguish the marks since both products could be considered medical technology products. The addition of disclaimed terminology, such as medical technologies, often does not distinguish marks. "[B]ecause both marks begin with 'laser,' they have consequent similarities in appearance and pronunciation. Second, the term 'swing' is both common and descriptive... Regarding descriptive terms this court has noted that the descriptive component of a mark may be given little weight in reaching a conclusion on likelihood of confusion." Cunningham v. Laser Golf Corp., 222 F.3d 943, 55 USPQ2d 1842, 1845-45 (Fed. Cir. 2000) (citations and quotation marks omitted). See also In re National Data Corporation, 753 F.2d 1056, 224 USPQ 749, 752 (Fed. Cir. 1985) ("The precedential decisions which have stated that a descriptive component of a mark may be given little weight in reaching a conclusion on likelihood of confusion reflect the reality of the market place").

Applicant's mark also has a design element although part of the design element uses the letter "I" in Meridian and the design is partially obscured by the mark's wording. Thus, applicant's simple design does not significantly

change the commercial impression of the mark. In re Dixie Restaurants, 105 F.3d 1405, 41 USPQ2d 1531, 1534 (Fed. Cir. 1997) (Court held that the addition of "The," "Cafe" and a diamond-shaped design to registrant's DELTA mark still resulted in a likelihood of confusion); Wella Corp. v. California Concept Corp., 558 F.2d 1019, 194 USPQ 419, 422 (CCPA 1977) (CALIFORNIA CONCEPT and surfer design likely to be confused with CONCEPT for hair care products).

When we view the marks in their entireties, we find that the marks are similar in sound and appearance. There is no basis to find that the meanings of the marks are significantly different, and therefore, we conclude that their overall commercial impressions are similar.

The next question is whether the goods of applicant and registrant are related. Registrant's goods are heart pacemakers and applicant's goods are cardiac monitors and electrocardiogram analyzers. "In order to find that there is a likelihood of confusion, it is not necessary that the goods or services on or in connection with which the marks are used be identical or even competitive. It is enough if there is a relationship between them such that persons encountering them under their respective marks are likely to assume that they originate at the same source or that there is some association between their sources."

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McDonald's Corp. v. McKinley, 13 USPQ2d 1895, 1898 (TTAB 1989). See also In re Opus One Inc., 60 USPQ2d 1812, 1814-15 (TTAB 2001).

Applicant asserts that the "goods in this case are no less different, and thus unrelated, than spark plugs and sportswear;" that the goods move through different channels of trade; and that they are not marketed to the same purchasers. Brief at 5. However, it seems obvious that physicians treating patients for heart problems would use electrocardiogram analyzers and cardiac monitors and recommend or prescribe pacemakers to patients.<sup>3</sup> We simply disagree with applicant's unsupported assertion that the goods are unrelated and that they travel in different channels of trade to different purchasers. While we agree with applicant that purchasers of these products are not ordinary purchasers, even relatively sophisticated purchasers are likely to believe that there is some association between the goods in this case when very similar marks are used on these goods. In re Hester Industries, Inc., 231 USPQ 881, 883 (TTAB 1986) ("While we do not doubt that these institutional purchasing agents are

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<sup>3</sup> The examining attorney's evidence on this point consists almost entirely of registrations not based on use in commerce, and is of little value.

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for the most part sophisticated buyers, even sophisticated purchasers are not immune from confusion as to source where, as here, substantially identical marks are applied to related products"). See also In re Total Quality Group Inc., 51 USPQ2d 1474, 1477 (TTAB 1999) ("[E]ven careful purchasers are not immune from source confusion").

In response to the refusal to register, applicant submitted a list of other registrations it asserts are for the mark MERIDIAN in International Class 10. Response dated June 1, 2001 at 3. The list sets out registration and serial numbers, the marks, and their status. One registration and one application were listed as "dead." Subsequently, applicant submitted copies of the six "live" registrations with its appeal brief. The examining attorney objected to the registrations, and we agree that applicant cannot submit new evidence with its appeal brief. 37 CFR § 2.142(d). We will consider the list to be of record because it was previously submitted; however, it is not persuasive. In re Smith and Mehaffey, 31 USPQ2d 1531, 1532 n. 3 (TTAB 1994) ("Moreover, the Board will not consider copies of a search report or information taken

from a private company's data base as credible evidence of the existence of the registrations listed therein").<sup>4</sup>

While applicant applied under the intent-to-use provision of the Trademark Act, in its brief, applicant asserts that it has been using the mark "since at least as early as 1997" and that there has been no actual confusion. Brief at 5. Even if this statement of applicant's counsel was evidence, we have no specimens of use or evidence of how extensively the goods under the mark have been marketed. Also, we point out that the "lack of evidence of actual confusion carries little weight." Majestic Distilling, 65 USPQ2d at 1205.

When the mark MERIDIAN MEDICAL TECHNOLOGIES and design is used on cardiac monitors and electrocardiogram analyzers, there is likely to be confusion with the mark MERIDIAN used on pacemakers. If we had any doubts concerning this issue, which we do not, we would have to resolve them against the applicant and in favor of the registrant. In re Hyper Shoppes (Ohio) Inc., 837 F.2d 463, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988).

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<sup>4</sup> We note in passing that the registrations involve significantly different goods and services, and they do not support an argument that applicant's and registrant's marks can coexist without confusion for pacemakers and cardiac monitors and electrocardiogram analyzers. In re J.M. Originals Inc., 6 USPQ2d 1393, 1394 (TTAB 1988).

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Decision: The refusal to register applicant's mark under Section 2(d) is affirmed.