

**To:** Biostar Technology International, LLC ([anderson@revisionlegal.com](mailto:anderson@revisionlegal.com))  
**Subject:** U.S. TRADEMARK APPLICATION NO. 88054147 - VECTOR - N/A  
**Sent:** 10/20/2018 10:18:17 AM  
**Sent As:** ECOM111@USPTO.GOV  
**Attachments:** [Attachment - 1](#)  
[Attachment - 2](#)  
[Attachment - 3](#)

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)  
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

**U.S. APPLICATION  
SERIAL NO.** 88054147

**MARK:** VECTOR

**\*88054147\***

**CORRESPONDENT**

**ADDRESS:**

ANDERSON J. DUFF  
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**APPLICANT:** Biostar  
Technology International,  
LLC

**CORRESPONDENT'S  
REFERENCE/DOCKET  
NO:**

N/A

**CORRESPONDENT E-  
MAIL ADDRESS:**

[anderson@revisionlegal.com](mailto:anderson@revisionlegal.com)

**OFFICE ACTION**

**STRICT DEADLINE TO RESPOND TO THIS LETTER**

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW. A RESPONSE TRANSMITTED THROUGH THE TRADEMARK ELECTRONIC APPLICATION SYSTEM (TEAS) MUST BE RECEIVED BEFORE MIDNIGHT **EASTERN TIME** OF THE LAST DAY OF THE RESPONSE PERIOD.

**ISSUE/MAILING DATE:** 10/20/2018

**TEAS PLUS OR TEAS REDUCED FEE (TEAS RF) APPLICANTS – TO MAINTAIN LOWER FEE, ADDITIONAL REQUIREMENTS MUST BE MET, INCLUDING SUBMITTING DOCUMENTS ONLINE:**

Applicants who filed their application online using the lower-fee TEAS Plus or TEAS RF application form must (1) file certain documents online using TEAS, including responses to Office actions (see TMEP §§819.02(b), 820.02(b) for a complete list of these documents); (2) maintain a valid e-mail correspondence address; and (3) agree to receive correspondence from the USPTO by e-mail throughout the prosecution of the application. See 37 C.F.R. §§2.22(b), 2.23(b); TMEP §§819, 820. TEAS Plus or TEAS RF applicants who do not meet these requirements must submit an additional processing fee of \$125 per class of goods and/or services. 37 C.F.R. §§2.6(a)(1)(v), 2.22(c), 2.23(c); TMEP §§819.04, 820.04. However, in certain situations,

TEAS Plus or TEAS RF applicants may respond to an Office action by authorizing an examiner's amendment by telephone or e-mail without incurring this additional fee.

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

## **SECTION 2(d) REFUSAL- LIKELIHOOD OF CONFUSION**

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 1742216. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the attached registration.

### **Marks of the Parties Compared**

The applicant applied to register the mark VECTOR for “medical products, namely, biofeedback sensors; biofeedback therapy device; biofeedback therapy apparatus incorporating biofeedback software; integrated medical examination systems comprising medical devices and computer software for information management for use in assessment of patients.” The registered mark is VECTOR for “medical ultrasound equipment for use in diagnosing and monitoring soft tissue conditions”. The marks of the parties are confusingly similar.

### **Marks of the Parties Compared**

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely a consumer would be confused, mistaken, or deceived as to the source of the goods and/or services of the applicant and registrant(s). *See* 15 U.S.C. §1052(d). Determining likelihood of confusion is made on a case-by-case basis by applying the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973). *In re i.am.symbolic, llc*, 866 F.3d 1315, 1322, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017). However, “[n]ot all of the [du Pont] factors are relevant to every case, and only factors of significance to the particular mark need be considered.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1366, 101 USPQ2d 1713, 1719 (Fed. Cir. 2012) (quoting *In re Mighty Leaf Tea*, 601 F.3d 1342, 1346, 94 USPQ2d 1257, 1259 (Fed. Cir. 2010)). The USPTO may focus its analysis “on dispositive factors, such as similarity of the marks and relatedness of the goods [and/or services].” *In re i.am.symbolic, llc*, 866 F.3d at 1322, 123 USPQ2d at 1747 (quoting *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)); *see* TMEP §1207.01.

In this case, the following factors are the most relevant: similarity of the marks, similarity and nature of the goods and/or services, and similarity of the trade channels of the goods and/or services. *See In re Vittera Inc.*, 671 F.3d 1358, 1361-62, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593, 1595-96 (TTAB 1999); TMEP §§1207.01 *et seq.* The marks of the parties are highly similar as to connotation and commercial impression.

### **Comparison of Goods/Services**

In another analysis of likelihood of confusion, the respective goods and/or services need only be related in some manner or the conditions surrounding their marketing be such that they will be encountered by the same consumers under circumstances that would lead to the mistaken belief that the goods and/or services originate from the same source. *Gen. Mills Inc. v. Fage Dairy Processing Indus.*, 100 USPQ2d 1584, 1597 (TTAB 2012); TMEP §1207.01(a)(i); *see On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d at 1086, 56 USPQ2d at 1475; *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1566-68, 223 USPQ 1289, 1290 (Fed. Cir. 1984).

Here, the goods of the parties are closely related as they specialized in medical products such as medical ultrasound equipment for use in diagnosing and monitoring soft tissue conditions; biofeedback sensors; biofeedback therapy device; biofeedback therapy apparatus incorporating biofeedback software; integrated medical examination systems comprising medical devices and computer software for information management for use in assessment of patients. These goods are usually produced, manufactured or marketed together. Also, the products travel through a common trade channel. Thus consumers may assume the goods are emanating from a common source.

The overriding concern is not only to prevent buyer confusion as to the source of the goods and/or services, but to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. *See In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt regarding a likelihood of confusion determination is resolved in favor of the registrant. TMEP §1207.01(d)(i); *see Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988). Accordingly, application is refused registration under section 2(d).

Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

Applicant should note the following additional ground for refusal.

### **PRIOR PENDING APPLICATION**

The effective filing date of pending U.S. Application Serial No. **88014414** precedes applicant's filing date. See attached referenced application. If the mark in the referenced application registers, applicant's mark may be refused registration under Trademark Act Section 2(d) because of a likelihood of confusion between the two marks. See 15 U.S.C. §1052(d); 37 C.F.R. §2.83; TMEP §§1208 *et seq.* Therefore, upon receipt of applicant's response to this Office action, action on this application may be suspended pending final disposition of the earlier-filed referenced application.

In response to this Office action, applicant may present arguments in support of registration by addressing the issue of the potential conflict between applicant's mark and the mark in the referenced application. Applicant's election not to submit arguments at this time in no way limits applicant's right to address this issue later if a refusal under Section 2(d) issues.

### **INFORMALITY**

If applicant responds to the refusal(s), applicant must also respond to the requirement(s) set forth below.

### **IDENTIFICATION OF GOODS**

The identification of goods is indefinite and must be clarified because it is too broad. The nature of biofeedback apparatus must be disclosed as medical for a proper classification. See 37 C.F.R. §2.32(a)(6); TMEP §1402.01. Applicant must amend the identification to specify the common commercial or generic name of the goods. See TMEP §1402.01. If the goods have no common commercial or generic name, applicant must describe the product, its main purpose, and its intended uses. See *id.*

Applicant may adopt the following wording, if accurate:

“Medical products, namely, biofeedback sensors; biofeedback therapy device; biofeedback *medical* therapy apparatus incorporating biofeedback software; integrated medical examination systems comprising medical devices and computer software for information management for use in assessment of patients” in **International Class 10**.

Applicant may amend the identification to clarify or limit the goods and/or services, but not to broaden or expand the goods and/or services beyond those in the original application or as acceptably amended. See 37 C.F.R. §2.71(a); TMEP §1402.06. Generally, any deleted goods and/or services may not later be reinserted. See TMEP §1402.07(e).

### **ID MANUAL IS AVAILABLE ONLINE**

For assistance with identifying and classifying goods and services in trademark applications, please see the USPTO's online searchable [U.S. Acceptable Identification of Goods and Services Manual](#). See TMEP §1402.04.

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. See 37 C.F.R. §§2.62(c), 2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant's rights. See TMEP §§705.02, 709.06.

Attorney Advisor  
Law Office 111  
USPTO  
571-272-9376  
zack.bello@uspto.gov

**TO RESPOND TO THIS LETTER:** Go to [http://www.uspto.gov/trademarks/teas/response\\_forms.jsp](http://www.uspto.gov/trademarks/teas/response_forms.jsp). Please wait 48-72 hours from the issue/ mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail [TEAS@uspto.gov](mailto:TEAS@uspto.gov). For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

**All informal e-mail communications relevant to this application will be placed in the official application record.**

**WHO MUST SIGN THE RESPONSE:** It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

**PERIODICALLY CHECK THE STATUS OF THE APPLICATION:** To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov) or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

**TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS:** Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

**Print: Oct 17, 2018**

**74067483**

**TYPED DRAWING**

**Serial Number**

74067483

**Status**

REGISTERED AND RENEWED

**Word Mark**

VECTOR

**Standard Character Mark**

No

**Registration Number**

1742216

**Date Registered**

1992/12/22

**Type of Mark**

TRADEMARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(1) TYPED DRAWING

**Owner**

SIEMENS MEDICAL SOLUTIONS USA, INC. CORPORATION DELAWARE 51 Valley  
Stream Parkway Malvern PENNSYLVANIA 19355

**Goods/Services**

Class Status -- ACTIVE. IC 010. US 044. G & S: medical ultrasound  
equipment for use in diagnosing and monitoring soft tissue conditions.  
First Use: 1990/07/00. First Use In Commerce: 1990/07/00.

**Filing Date**

1990/06/11

**Examining Attorney**

BLOHM, LINDA E.

**Attorney of Record**

Jenny G. Ko

**DESIGN MARK**

**Serial Number**

88014414

**Status**

NEW APPLICATION - ASSIGNED TO EXAMINER

**Word Mark**

VECTOR SURGICAL

**Standard Character Mark**

Yes

**Type of Mark**

TRADEMARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(4) STANDARD CHARACTER MARK

**Owner**

Vector Surgical, LLC LIMITED LIABILITY COMPANY WISCONSIN Suite 430  
20975 Swenson Drive Waukesha WISCONSIN 53186

**Goods/Services**

Class Status -- ACTIVE. IC 010. US 026 039 044. G & S: Medical devices used to mark tissue during and/or after surgery; Intraoperative tissue orientation markers; Surgical tissue orientation system comprising sterile tissue dyes, applicators, fixative and radiographic markers; Bias compression bandages for surgical use. First Use: 2005/09/15. First Use In Commerce: 2005/09/15.

**Prior Registration(s)**

3269620

**Filing Date**

2018/06/25

**Examining Attorney**

STRINGER, DANIEL

**Attorney of Record**

Barbara Grahn

# VECTOR SURGICAL

**To:** Biostar Technology International, LLC ([anderson@revisionlegal.com](mailto:anderson@revisionlegal.com))  
**Subject:** U.S. TRADEMARK APPLICATION NO. 88054147 - VECTOR - N/A  
**Sent:** 10/20/2018 10:18:19 AM  
**Sent As:** ECOM111@USPTO.GOV  
**Attachments:**

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)**

**IMPORTANT NOTICE REGARDING YOUR  
U.S. TRADEMARK APPLICATION**

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED  
ON **10/20/2018** FOR U.S. APPLICATION SERIAL NO. 88054147

Please follow the instructions below:

**(1) TO READ THE LETTER:** Click on this [link](#) or go to <http://tsdr.uspto.gov>, enter the U.S. application serial number, and click on "Documents."

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

**(2) TIMELY RESPONSE IS REQUIRED:** Please carefully review the Office action to determine (1) how to respond, and (2) the applicable response time period. Your response deadline will be calculated from **10/20/2018** (*or sooner if specified in the Office action*). A response transmitted through the Trademark Electronic Application System (TEAS) must be received before midnight **Eastern Time** of the last day of the response period. For information regarding response time periods, see <http://www.uspto.gov/trademarks/process/status/responsetime.jsp>.

**Do NOT hit "Reply" to this e-mail notification, or otherwise e-mail your response** because the USPTO does NOT accept e-mails as responses to Office actions. Instead, the USPTO recommends that you respond online using the TEAS response form located at [http://www.uspto.gov/trademarks/teas/response\\_forms.jsp](http://www.uspto.gov/trademarks/teas/response_forms.jsp).

**(3) QUESTIONS:** For questions about the contents of the Office action itself, please contact the assigned trademark examining attorney. For *technical* assistance in accessing or viewing the Office action in the Trademark Status and Document Retrieval (TSDR) system, please e-mail [TSDR@uspto.gov](mailto:TSDR@uspto.gov).

**WARNING**

**Failure to file the required response by the applicable response deadline will result in the ABANDONMENT of your application.** For more information regarding abandonment, see <http://www.uspto.gov/trademarks/basics/abandon.jsp>.

**PRIVATE COMPANY SOLICITATIONS REGARDING YOUR APPLICATION:** Private companies **not** associated with the USPTO are using information provided in trademark applications to mail or e-mail trademark-related solicitations. These companies often use names that closely resemble the USPTO and their solicitations may look like an official government document. Many solicitations require that you pay "fees."

Please carefully review all correspondence you receive regarding this application to make sure that you are responding to an official document from the USPTO rather than a private company solicitation. All official USPTO correspondence will be mailed only from the "United States Patent and Trademark Office" in Alexandria, VA; or sent by e-mail from the domain "@uspto.gov." For more information on how to handle private company solicitations, see [http://www.uspto.gov/trademarks/solicitation\\_warnings.jsp](http://www.uspto.gov/trademarks/solicitation_warnings.jsp).