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**THIS DISPOSITION  
IS NOT CITABLE AS PRECEDENT  
OF THE T.T.A.B.**

Paper No. 13  
PTH

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Cimmetry Systems Inc.

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Serial No. 75/465,820

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Lawrence E. Abelman of Ableman, Frayne & Schwab for  
Cimmetry Systems Inc.

Leslie L. Richards, Trademark Examining Attorney, Law  
Office 106 (Mary I. Sparrow, Managing Attorney).

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Before Quinn, Hairston and Walters, Administrative  
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Cimmetry Systems Inc. has appealed from the final  
refusal of the Trademark Examining Attorney to register the  
mark CIMMETRY SYSTEMS and design, as shown below,

for the following goods and services:

computer software for use in document format support, namely document display, document printing, file access, network file access, linking files, markup, all in file formats, consolidation of files; viewing, downloading and printing of files from a global computer network; and viewing, copying and printing e-mail attachments to documents in class 9;

computer education and training services in class 41; and

technical support for others in the field of computers; computer consultation; custom design of computer software for others in class 42.<sup>1</sup>

Applicant has disclaimed the word "SYSTEMS" apart from the mark as shown and the application contains the statement that "The mark consists of the words CIMMETRY SYSTEMS with the letters CS in a rectangle."

Registration has been refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, if used in connection with the identified goods and services, would so resemble the mark SYMMETRY registered for "computers,"<sup>2</sup> as to be likely to cause confusion or mistake or to deceive.

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<sup>1</sup> Serial No. 75/465,820 filed April 10, 1998; asserting a bona fide intention to use the mark in commerce.

<sup>2</sup> Registration No. 1,496,641 issued July 19, 1988; Section 8 affidavit accepted; Section 15 affidavit received.

Applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested.

The Examining Attorney maintains that the marks are confusingly similar in overall commercial impression and that the computer software and computer services applicant intends to offer under the involved mark are closely related to registrant's computers. In connection with the refusal, the Examining Attorney submitted eighteen third-party registrations of marks which cover computer software, computer education and training services, computer consultation services, and/or computer software design for others, on the one hand, and computers, on the other hand. This evidence was submitted to support the Examining Attorney's position that the same entities offer computers as well as computer software and computer services under the same mark.

Applicant, in urging reversal of the refusal to register, contends that the marks are dissimilar; that its computer software and computer services are different from registrant's computers; that the relevant purchasers of its goods and services use a high degree of care; and that registrant's SYMMETRY mark is entitled to only a narrow scope of protection. Applicant submitted copies of four

third-party registrations of marks which include the word SYMMETRY.

Our determination 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 likelihood of confusion issue. In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and services. Federated Food, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

With respect to the marks, we recognize that registrant's mark SYMMETRY and the CIMMETRY portion of applicant's mark sound alike. However, when we consider the marks in their entirety, and particularly the visual impact of applicant's mark, there are specific differences between registrant's SYMMETRY mark and applicant's CIMMETRY SYSTEMS and design mark. Not only is the CIMMETRY portion of applicant's mark spelled differently from registrant's mark SYMMETRY, but applicant's mark includes the word "SYSTEMS," which although disclaimed, cannot be ignored, and a prominent design feature with the fanciful letters "CS". This results in a mark that, when considered in its

entirety, is different in overall commercial impression from registrant's mark.

Insofar as the goods and services are concerned, we note the third-party registrations submitted by the Examining Attorney which have probative value to the extent that they suggest that the listed goods and services are of a type which may emanate from a single source. In re Albert Trostel & Sons Co., 29 USPQ2d 1783, 1786 (TTAB 1993). While we find that this evidence is sufficient to establish that the involved goods and services are commercially related, there are, nonetheless, specific differences between applicant's specialized computer software for use in document format support and computer services, on the one hand, and registrant's computers, on the other hand.

An argument made by applicant requires comment although it did not affect our decision herein. With respect to applicant's argument that registrant's SYMMETRY mark is entitled to a narrow scope of protection, we note that none of the third-party registrations submitted by applicant cover goods and services of the type involved in this appeal or goods and services which are even arguably related thereto. In short, the third-party registrations do not establish that the word SYMMETRY is highly

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suggestive or otherwise weak as an element of marks for computer goods and services.

In view of the cumulative differences between the marks SYMMETRY and CIMMETRY SYSTEMS and design and the involved goods and services, we find that there is no likelihood of confusion in this case.

**Decision:** The refusal to register under Section 2(d) of the Act is reversed.