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Paper No. 10
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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **ABB Power T&D Company Inc.**

Serial No. 74/**678,832**

Anthony J. Rossi of Woodcock Washburn Kurtz Mackiewicz & Norris for ABB Power T&D Company Inc.

Cora Moorhead, Trademark Examining Attorney, Law Office 102
(**Myra Kurzbard**, Managing Attorney).

Before **Simms, Seeherman and Hairston**, Administrative
Trademark Judges.

Opinion by **Simms**, Administrative Trademark Judge:

ABB Power T&D Company Inc. (applicant) has appealed from the final refusal of the Trademark Examining Attorney to register the mark SAFEGEAR for electrical switchgear.¹ The Examining Attorney has refused registration under Section 2(e)(1) of the Act, 15 USC 1052(e)(1), on the ground that applicant's asserted mark is merely descriptive of its

¹ Application Serial No. 74/678,832, filed May 22, 1995, based upon applicant's claim of use of the mark in commerce since April 1994.

goods.² Applicant and the Examining Attorney have submitted briefs but no oral hearing was requested.

We reverse.

The Examining Attorney, referring to applicant's product literature noting that applicant's electrical switchgear "lowers costs and improves safety by controlling the effects of an arc fault," argues that the mark SAFEGEAR attributes a safety quality to applicant's goods and that applicant's product literature indicates that applicant's product is safer than conventional switchgear.

It is quite plausible that purchasers would perceive "safegear" as lauding quality and excellence to [sic] the "electrical switchgear".

Examining Attorney's appeal brief, 5. The Examining Attorney refers to dictionary definitions of the words "safe" ("Affording protection...") and "gear" ("A complete assembly that performs a specific function in a larger machine..."). The Examining Attorney has also relied upon excerpts from articles obtained from the LEXIS/NEXIS computer search systems wherein the word "safe" appeared within twenty words of the word "switchgear". Some of these excerpts are quoted below.

² It is noted that the Examining Attorney in her brief, in the final refusal and in other papers has stated that applicant's mark is "primarily merely descriptive." The Examining Attorney is reminded that Section 2(e)(1) of the Trademark Act bars

The control and protection equipment for each pair of feeders is installed in a small local kiosk. Safe switchgear operation is provided by the digital interlocking system 8TK.

Modern Power Systems, June 1993

* * * * *

Key interlocks and other tamper-proof systems prevent the accidental closing or opening of switches and switchgear out of sequence when used per system operating instructions. As with any other fail-safe systems, there are ways to override the intended use, which is to prevent the operation of the electrical system in the wrong sequence.

EC&M Electrical Construction & Maintenance, March 1995

* * * * *

...GIS switching station on the UCLA campus is the first fully SF₆ gas-insulated 38-kV switchgear in utility service in the United States. It provides safe, reliable service in a very limited space.

Electric Light & Power, August 1994

* * * * *

While this provides a quick and safe method of sensing the, [sic] travelling wave it is not as convenient as sensing current as the point of pick-up of the signal will now be in a switchgear compound rather than in a relay room.

Modern Power Systems, March 1994

* * * * *

I wondered what had happened, and then I thought of two of my people who were working in the switchgear room in the

registration of a mark which, "when used on or in connection with the goods of the applicant is merely descriptive..."

basement. Maybe something had shorted out."

Immediately he started calling on his two-way radio, fortunately, everybody was safe and accounted for...

Heating, Piping, Air-Conditioning,
February 1994

* * * * *

...leaves plenty of room for RTU and communications interface in same enclosure; Figure 6. Existing load-break switchgear in downtown vault is retrofitted with actuators, RTUs, and communications interface; Figure 7. Remote switch operator for safe manual operation of oil-filled switches is additional benefit of actuator retrofit...

Electrical World, May 1993

* * * * *

...cause or threaten the most serious disruption usually involve electrical equipment that is never supposed to fail: transformers, bus ducts, switchgear, etc. The serious mistake is to assume that the data processing installation is safe because a lot of money was spent on power conditioning systems and standby generators...

EC&M Electrical Construction & Maintenance, May 1992

* * * * *

...serves to switch the auxiliaries to the start up grid when disturbances in the power supply occur, during normal operation, so that safe shut down of the complete plant is achieved.

The auxiliaries switchgear feeds the voltage levels of 6 kV and 380 V ac and [sic] well as 222 V and 24 V dc.

Modern Power Systems, September 1990

* * * * *

The facility is designed for the repair of radiologically contaminated electrical and mechanical apparatus, including motors, generators, switchgear, and pumps. The center provides safe, high-quality, and quick turnaround repairs of contaminated equipment on a 24-hour, 7-day-a-week...

Nuclear News, October 1988

* * * * *

Although some of these excerpts reveal use of the word "safe" in connection with the operation of switchgear, it should be noted that in many of the references the term "safe" modifies or describes other equipment.³

Applicant argues that, at most, the term SAFEGEAR is suggestive of an aspect or characteristic of its goods and that some imagination and perception is required to determine the nature of its goods. Noting that its goods include both housing and electrical components within the

³ In other excerpts, the adjective "safe" is used to describe communication and conveyor control equipment and electrical power:

One of the major suppliers [sic] of flame-proof switchgear and intrinsically safe communication and conveyor control equipment is...

and

Four-color brochure on sealed lead-acid batteries that provide clean, safe standby power for office environments. The sealed batteries are spillproof, maintenance-free and provide backup power for computers, PBXs, cellular telephones, switchgear and control devices...

housing, applicant's attorney argues that the mark SAFEGEAR is not descriptive of any particular type of switchgear.

Applicant's unique arc-resistant construction for its switchgear controls the effects of an internal arc fault, which could be catastrophic due to the high pressures and hot gasses generated upon the occurrence of an internal arc fault in the switchgear. Applicant's unique construction for its switchgear channels such high pressures and hot gasses safely away from personnel.

Applicant's appeal brief, 5.

It is applicant's position that the Examining Attorney has submitted no articles showing the descriptive use of the term SAFEGEAR or use of the term "safe" to describe a characteristic of switchgear. In some articles, applicant maintains, the term "safe" is used to describe the maintenance of equipment and, in most, the term is used to modify a noun other than switchgear. Applicant also notes that the Examining Attorney has submitted no evidence of third-party use of this term, and argues that manufacturers of electrical switchgear are free to inform the purchasing public that their electrical switchgear is safe by indicating that they make "safe electrical switchgear." At most, the evidence shows that the combination of words conveys that "gear" of some type is safe, not that switchgear is safe, applicant argues.

Whether a term is merely descriptive is not determined in the abstract, but in relation to the goods for which registration is sought, the context in which it is used and the possible significance that the mark would have to the average purchaser because of the manner of use. In re Bright-Crest, Ltd., 204 USPQ 591 (TTAB 1979). Of course, there is often a thin line of separation between a suggestive term and a merely descriptive term, and the determination of which category a mark falls into may be somewhat subjective.

Upon careful consideration of this record, we agree with applicant that the mark SAFEGEAR is, at most, suggestive of applicant's electrical switchgear. While the term "safe" is undoubtedly a term that one could use to describe an aspect of some electrical switchgear, there is simply no evidence in this record that electrical switchgear or switchgear is ever referred to by the shortened word "gear." Compare Remington Products Inc. v. North American Philips Corp., 892 F.2d 1576, 13 USPQ2d 1444 (Fed. Cir. 1990)(TRAVEL CARE held merely descriptive for certain personal care products for travelers). If this were the case, then an argument could be made that applicant's mark might be merely descriptive of such "safe gear." However, in the absence of such evidence and because we believe that

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some, although perhaps not much, imagination or reasoning is required, we hold that the mark SAFEGEAR is not merely descriptive of applicant's electrical switchgear.

Decision: The refusal of registration is reversed.

R. L. Simms

E. J. Seeherman

P. T. Hairston
Administrative Trademark
Judges, Trademark Trial
and Appeal Board