

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re SeaChange Technology, Inc.

Serial No. 74/687,944

Michael J. Bevilacqua of Hale & Dorr for SeaChange
Technology, Inc.

Gary R. Thayer, Trademark Examining Attorney, Law Office 103
(Michael A. Szoke, Managing Attorney).

Before Seeherman, Quinn and Hairston, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

SeaChange Technology, Inc. has filed an application to register VIDEO CLUSTER for goods which were subsequently identified as "computer video server network comprising a cluster of video servers for use in the cable television and telephone industries; computer operating software for use in connection with computer video server networks for use in the cable television and telephone industries."¹

¹ Application Serial No. 74/687,944, filed June 13, 1955, asserting a bona fide intention to use the mark in commerce.

Registration has been finally refused pursuant to Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that the mark is merely descriptive of the identified goods. Specifically, the Examining Attorney maintains that the mark describes a "central characteristic of the goods, namely that the video servers are configured in the form of a cluster, i.e., a video cluster." Applicant has appealed.

Applicant and the Examining Attorney have filed briefs on the case, but no oral hearing was requested.

In support of the refusal to register, the Examining Attorney submitted an excerpt from The Computer Glossary wherein "video" is defined at page 425 as:

An audio/visual playback and recording technology used in TV. It also refers to computer screens and terminals.

Additionally, he submitted an excerpt from Spencer's Illustrated Computer Dictionary wherein "cluster" is defined at page 48 as "[a] station that consists of a control unit and the terminals connected to it." Further, he submitted the following definitions from the Glossary of Computer Terms (1997)²:

Clustering: Using two or more systems that

² Although the submission is technically untimely, the Board can take judicial notice of dictionary definitions. *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 312 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983). Accordingly, we have considered this evidence in reaching our decision.

work together. It generally refers to multiple computer systems that are linked together in order to handle variable workloads or to provide continued operation in the event one fails.

Video server: A computer that delivers multiple digital video streams concurrently for video on demand applications. Video servers are usually computers that are specialized for this purpose.

Finally, the Examining Attorney submitted approximately twenty-five excerpts from the NEXIS data base which reference the terms "video" and/or "cluster" in connection with servers.³ The following are representative samples of the NEXIS excerpts with "**video**" and "**cluster**" highlighted:

The experiment used a ISDN-compatible network controller, called a **cluster** server, which provides full **video** motion, full color **video** and voice communications - as well as data - over the same set of wires.
("Phone newscast;" The San Diego Union-Tribune; October 15, 1989);

AppleTalk clients in Minx Network **Video** Systems work with a **cluster** server to handle network functions and voice-activated switching of audio and video during conferences.
("Macs an afterthought at Net Expo;" MacWeek; February 28, 1994);

The heart of the MINX system is a **cluster** server that functions as a PBX for **video** calls. It connects stations directly or

³ We note that at least eleven of the excerpts are from wire services. Inasmuch as it is uncertain whether these stories were ever published in the United States and, therefore, were exposed to the relevant purchasing public, they are of no value in deciding the issue in this appeal. See *In re Bel Pease Sales Co.*, 1 USPQ2d 1233, 1235 (TTAB 1986).

through a codec over Switched 56 or ISDN lines.
("Minx NVS 100; Datapoint Corp;" PC Magazine; April 25, 1995);

The base unit is StreamSwitch 7000, a three-slot modular switch for the workgroup or server **clusters** capable of supporting six to 12 ports, depending on configurations of Ethernet . . .
("ATM vs. IP Switching;" Client/Server Computing; August 1996); and

HP announced a similar Web server **cluster** offering in the first quarter this year. As customers start to run real business applications on the Internet or their intranets, being able to **cluster** servers so that one can pick up the slack if another crashes "really hits the nail on the head," he said.
("IBM cozies up to the Web;" Computerworld; August 5, 1996).

Applicant, in urging reversal of the refusal to register, argues that at most VIDEO CLUSTER is suggestive of the identified goods; that the Examining Attorney has offered no evidence that the term is commonly used in the field; and that purchasers would not immediately understand the nature of the goods from the mark.

It is well settled that a term is considered to be merely descriptive of goods, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes an ingredient, quality, characteristic or feature thereof or if it directly conveys information regarding the nature, function, purpose or use of the goods. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA

1978). It is not necessary that a term describe all of the properties or functions of the goods in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or idea about them. Moreover, whether a term is merely descriptive is determined not in the abstract, but in relation to the goods for which registration is sought. In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979).

The evidence shows that the terms "video" and "cluster" have descriptive significance in connection with the identified goods. Moreover, applicant's own identification of its goods as being a "computer video server network comprising a **cluster** of **video** servers" makes clear that these are appropriate terms to describe the identified goods. In our view, the relevant purchasers of applicant's goods would be knowledgeable about video servers, and to such individuals the term VIDEO CLUSTER would be understood to mean a cluster of video servers or "video server cluster." Stated differently, applicant's mark VIDEO CLUSTER is simply a concise way of informing prospective purchasers of a central characteristic of applicant's computer video server network, namely, that it consists of a "video cluster server." See e.g., DeWalt, Inc. v. Magna Power Tool Corp., 289 F.2d 656, 129 USPQ 275 (CCPA 1961) [POWER SHOP is a short form of power work shop, and thus, is

merely descriptive of woodworking saws]; and Remington Products Inc. v. North American Philips Corp., 892 F.2d 1576, 13 USPQ2d 1444 (Fed. Cir. 1990) [TRAVEL CARE is a short form of travel personal care, and thus, is merely descriptive of personal care products and accessories for travelers].

Further, it is not necessary that a designation be in common usage in the particular industry in order for it to be merely descriptive. In re National Shooting Sports Foundation, Inc., 219 USPQ 1018, 1020 (TTAB 1983). Thus, the absence here of any third-party uses of the term VIDEO CLUSTER does not mean, contrary to applicant's contention, that the term is not merely descriptive of the identified goods.

Decision: The refusal to register is affirmed.

E. J. Seeherman

T. J. Quinn

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

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