

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB DEC 18, 98

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Patient Comfort, Inc.

Serial No. 75/055,648

Bernhard Kreten for Patient Comfort, Inc.

Fred Mandir, Trademark Examining Attorney, Law Office 105
(Thomas G. Howell, Managing Attorney).

Before Cissel, Hanak and Bucher, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Applicant, Patient Comfort, Inc., has filed an
application for registration of the mark "FACE" for its
"anesthesia monitoring apparatus."¹

The Trademark Examining Attorney issued a final
refusal to register based upon Section 2(e)(1) of the

Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that applicant's mark, "FACE," when used on this anesthesia monitoring apparatus, is merely descriptive of the goods because it identifies a characteristic or feature of the goods.

Applicant has appealed the final refusal to register. Briefs have been filed, but applicant did not request an oral hearing. We affirm the refusal to register.

Applicant has adopted and uses the mark, "FACE," on a monitor designed to track activity in four facial muscle groups (frontalis, corrugator, zygomaticus, and orbicularis oculi) by means of electromyography (EMG). This device is used on hospital patients requiring general anesthesia, in operating rooms, recovery wards and intensive care units. By telling the physician the patient's depth of anesthesia (an "anesthetic depth assessment"), this device permits the precise dosage of anesthetic drug to be determined. Since it is able to measure microvoltages of facial muscles, this device detects subtle changes in spontaneous EMG background activity even when unaccompanied by observable motion or facial changes. By helping the doctor calibrate the

¹ Serial No. 75/055,648, filed February 9, 1996, alleging dates of use as early as June 1993.

correct dosage of anesthetic, this machine maximizes patient comfort and thereby minimizes patient recovery times.

This device displays and records EMG activity from the four facial muscle groups, as well as a derived variable, the "awareness index," which is an algebraic function of EMG activity across the four muscle groups in the face.

Historically, some electroencephalographic (EEG) monitors have included frontalis sensors to identify the EMG artifact (which sometimes obscures the lower level EEG signals), and as a warning of impending emergence from anesthesia. However, applicant claims that recording EMG from multiple facial muscle sources is superior to using a single EMG site, such as the frontalis muscles.

The Trademark Examining Attorney contends that inasmuch as the four sets of sensors must be attached to the patient's face in order for the monitoring device to function, "face" is a key characteristic of the goods. Indeed, the abstract of the patent made part of the record supports this conclusion. Furthermore, the word "face" itself occurs twenty-five (25) times in the text of the

patent, while the word "facial" can be found one-hundred eleven (111) times within this single patent document.

A mark does not have to describe every quality, feature,² purpose, function, etc., of the goods or services in order to be found merely descriptive; it is sufficient for §2(e)(1) purposes that the mark describes a single significant quality, feature, function, etc. See *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985). The question of whether a mark is merely descriptive is not determined in the abstract -- i.e., the Trademark Examining Attorney does not need to be able to guess, based solely upon the mark itself, what the goods might be. Rather, we ask in relation to specific goods for which registration is sought whether the mark immediately conveys information about the nature of the goods. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978) ["GASBADGE" is merely descriptive of device to determine and monitor personal exposure to gaseous pollutants]; *In re Eden Foods Inc.*, 24 USPQ2d 1757 (TTAB 1992) ["DOUBLE CERTIFIED ORGANIC," for pasta, is merely descriptive]; and *In re American Screen Process Equipment Co.*, 175 USPQ 561 (TTAB

² For example, in the instant case, the fact that a sensor is also mounted on the patient's hand to detect and remove artifact readings does not detract from the outcome herein.

1972) ["CAM-LOK" is merely descriptive as applied to screen printing frames].

In the present case, the Board agrees with the Trademark Examining Attorney that the word "face" immediately conveys information concerning a significant feature or critical characteristic of a device used for facial electromyography.

Physicians and engineers within the field of biomedical engineering will continue to invent around applicant's anesthetic depth assessment device. In the search for innovative monitoring modalities for determining with greater accuracy the depth of anesthesia, EMG sensors on the face should continue to be key methods of monitoring the patient. Competitors need to be able freely to use the word "face" as a significant feature of such goods. Even at present, an anesthesiologist might well refer to such a device as simply a "face monitor" when trying to distinguish this type of monitor from various other anesthesia monitoring devices (e.g., like a "heart monitor," a device for measuring electric activity of the brain, etc.).

Decision: We affirm the refusal of the Trademark
Examining Attorney to register this matter.

R. F. Cissel

E. W. Hanak

D. E. Bucher

Administrative Trademark
Judges, Trademark Trial and
Appeal Board