

THIS DISPOSTION IS NOT
CITABLE AS PRECEDENT OF THE TTAB FEB. 12, 99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Polo International Inc.

Serial No. 74/729,974

Matthew J. Booth of Strasberger & Price, L.L.P. for Polo
International Inc.

David M. Mermelstein, Trademark Examining Attorney, Law
Office 103 (Michael A. Szoke, Managing Attorney).

Before Hohein, Chapman and Wendel, Administrative Trademark
Judges.

Opinion by Chapman, Administrative Trademark Judge:

An application has been filed by Polo International
Inc. to register the mark DOC-CONTROL for "computer
software, namely, document management software."¹

Registration has been finally refused under Section
2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the

¹ Application Serial No. 74/729,974, filed September 15, 1995,
alleging a bona fide intention to use the mark in commerce.

basis that the mark DOC-CONTROL, when applied to the goods of the applicant, is merely descriptive of them.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs,² but an oral hearing was not requested. We affirm.

In support of the refusal to register, the Examining Attorney relies upon certain dictionary definitions, namely, (i) a definition in the Random House Unabridged Dictionary (Second Edition 1987) of "doc." as "document"; and (ii) a definition in Webster's II New Riverside University Dictionary (1994) of the term "manage" as "to direct or control the use of". The Examining Attorney also submitted printouts of three Patent and Trademark Office registrations and one application for computer software or computer packages which include a disclaimer of the term "DOC".

Applicant, in urging reversal of the refusal to

² Applicant attached to its brief two exhibits. One is a typed list of numerous registrations for marks which include the term "DOC," presumably used as an abbreviation of document, and the other is a typed list of numerous registrations for marks which include the term "DOC," presumably used as an abbreviation of doctor. The Examining Attorney properly objected to this evidence as untimely. See Trademark Rule 2.142(d). Moreover, mere lists of registrations are not sufficient to make them of record. See *In re Duofold Inc.*, 184 USPQ 638 (TTAB 1974). Applicant's exhibits to its brief it will not be considered. We hasten to add, however, that even if we had considered this evidence, it would not change the result herein.

register, argues that the mark DOC-CONTROL, when considered in its entirety, is suggestive, not merely descriptive, of applicant's goods because the term "doc" (without a period) is defined in the dictionary submitted by the Examining Attorney as "doctor" and that even though "control" may be a synonym for "manage," the "connotation of control is a higher standard than that of manage" (applicant's brief, p. 5); that a multi-stage reasoning process is necessary to infer document from DOC and manage from CONTROL, and thus, arrive at a description of a function of the goods; that there is no evidence that competitors will need to or choose to use the term DOC-CONTROL to describe their own products; and that any doubt regarding mere descriptiveness is to be resolved in applicant's favor.

It is well settled that a term is merely descriptive of goods or services, within the meaning of Section 2(e)(1), if it immediately conveys information concerning an ingredient, quality, characteristic or feature thereof, or if it directly conveys information regarding the nature, function, purpose or use of the goods or services. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978). It is not necessary that a term or phrase describe all of the properties or functions of the goods or services in order for it to be considered merely

descriptive thereof; rather, it is sufficient if the term or phrase describes a significant attribute or idea about them.

The question of whether a particular term or phrase is merely descriptive must be determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which the term or phrase is being used on or in connection with those goods or services, and the possible significance that the term or phrase is likely to have to the average purchaser of the goods or services because of the manner in which it is used. See *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). See also, *In re Consolidated Cigar Co.*, 35 USPQ2d 1290 (TTAB 1995); *In re Pennzoil Products Co.*, 20 USPQ2d 1753 (TTAB 1991); and 2 J. McCarthy, McCarthy on Trademarks and Unfair Competition, §§11:66-11:71 (1998).

Applicant is correct that the photocopy of a page from the dictionary submitted by the Examining Attorney shows definitions of both "doc" (for "doctor"), and "doc." (for "document"). However, we are not persuaded that it is the presence or absence of the punctuation which changes the meaning. Rather, the relevant meaning of either abbreviated term "doc" or "doc." will be understood as

"document" by the purchasing public in relation to the involved goods.

If applicant produced goods related to the medical field, or specifically related to physicians, then the term "DOC" would be readily understood by the public as referring to "doctor." However, here applicant's goods are computer software for document management, and "DOC" will be readily understood as referring to documents.

Nor are we persuaded that the purchasing public will perceive the different nuances suggested by applicant between the words "control" and "manage." Accordingly, we find that applicant's applied-for mark, DOC-CONTROL, is not incongruous, creates no double entendre, and does not create or present a commercial impression or meaning other than "document control." See *In re Time Solutions, Inc.*, 33 USPQ2d 1156 (TTAB 1994).

Further, the fact that applicant will be or intends to be the first (and/or only) entity to use the term DOC-CONTROL for computer software for document management is not dispositive where, as here, the term unquestionably projects a merely descriptive connotation. That is, the absence of third-party uses or registrations of the term does not, as contended by applicant, serve to raise a

presumption of registrability. See *In re Tekdyne Inc.*, 33 USPQ2d 1949, 1953 (TTAB 1994), and cases cited therein.

When consumers encounter applicant's mark DOC-CONTROL, for computer software for document management, the mark will immediately convey to them information concerning a significant feature or purpose of applicant's computer programs, namely, that applicant's software will assist in the management or control of documents.³

Decision: The refusal to register under Section 2(e)(1) is affirmed.

G. D. Hohein

B. A. Chapman

H. R. Wendel
Administrative Trademark Judges,
Trademark Trial and Appeal Board

³ Applicant, although acknowledging that it was a non-precedential case, nonetheless referred in its brief (p. 4) to *In re On Technology Corp.*, 41 USPQ2d 1475 (TTAB 1996). The Board disregards citation to any non-precedential decision (unless, of course, it is asserted for *res judicata*, law of the case, or other such issues). See *General Mills Inc. v. Health Valley Foods*, 24 USPQ2d 1270, at n. 9 (TTAB 1992).