

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB      APRIL 27, 99  
U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Hewlett-Packard Company

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Serial No. 75/066,504

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M. Iris Hess of Ladas & Parry for Hewlett-Packard Company.

Barney L. Charlon, Trademark Examining Attorney, Law Office  
105 (Thomas G. Howell, Managing Attorney).

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Before Cissel, Hairston and Wendel, Administrative  
Trademark Judges.

Opinion by Wendel, Administrative Trademark Judge:

Hewlett-Packard Company has filed an application to register the mark AD for "computer firmware and software tool to measure and evaluate the average intensity of acoustic signals in a two-dimensional ultrasound image in real time for medical applications."<sup>1</sup>

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<sup>1</sup> Serial No. 75/066, 504, filed March 1, 1996, on the basis of a bona fide intention to use the mark in commerce. An amendment to allege use was filed October 14, 1997, setting forth dates of first use of June 10, 1996, and was accepted on December 12, 1997.

Registration has been finally refused on the ground that the mark is merely descriptive under Section 2(e)(1) of the Trademark Act. Applicant and the Examining Attorney have filed briefs, but no oral hearing was requested.

Applicant describes its goods as "an integrated software analysis package...to plot and quantitate the intensities obtained within a region of interest in a two-dimensional ultrasound image across time and generate a time-intensity curve in the field of contrast echocardiography." Applicant claims that not only did it develop the new technology embodied in its goods, but it also adopted the mark ACOUSTIC DENSITOMETRY for this technology.<sup>2</sup> Applicant's present mark, AD, is described by applicant as the acronym coined from its full mark.

The Examining Attorney, in his brief, first focuses on whether the term "acoustic densitometry" in itself is descriptive of applicant's goods. He points out that even though applicant may be the first, or perhaps the only, user of the term, this does not detract from the fact that the term may still be merely descriptive of the technology involved in the products with which the term is being used.

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<sup>2</sup> Applicant filed an application, Serial No. 75/066,505, to register the mark ACOUSTIC DENSITOMETRY for the same goods, which was also refused under Section 2(e)(1), but the application has since been abandoned.

He introduces definitions from *Dorland's Illustrated Medical Dictionary* (1994) of the individual words "acoustic," as "pertaining to sound," and "densitometry," as "determination of variations in density by comparison with that of another material, or with a certain standard."<sup>3</sup> He also notes the promotional material applicant has submitted with its brief, in which applicant has described its new software in terms of permitting users to "display and analyze average acoustic densities within an ultrasound image," in connection with echocardiography.<sup>4</sup> On the basis of this evidence, the Examining Attorney contends that the term "acoustic densitometry" is merely descriptive of applicant's goods.<sup>5</sup>

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<sup>3</sup> Although these definitions were not previously made of record by the Examining Attorney, the Board may take judicial notice of dictionaries and, accordingly, has considered the definitions. See *Marcal Paper Mills, Inc. v. American Can Co.*, 212 USPQ 852 (TTAB 1981).

<sup>4</sup> Although this evidence was not submitted until applicant's brief, the Examining Attorney has not objected to the evidence, but rather has relied upon it in his brief. Accordingly, we have also considered the material.

<sup>5</sup> The Examining Attorney has further requested that the Board take judicial notice of an excerpt from the reference work, *Textbook of Echocardiography and Doppler in Adults and Children* (1996) in connection with the use of this term. Under FRE 201(b), the Board may take judicial notice of facts that are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. We do not find a medical textbook to lie within this scope and, thus, have not given any consideration to the excerpt in making our decision. See TBMP § 712.01.

The Examining Attorney then turns to the dispositive issue in this case, whether the acronym, or initials, AD will be perceived by the relevant public as being substantially synonymous with the term "acoustic densitometry" and, as a result, are also merely descriptive of applicant's goods. He argues that the initials will simply be viewed as an abbreviation for the descriptive term "acoustic densitometry", and thus have the same descriptive significance. In support of his position, the Examining Attorney has introduced excerpts from press releases found on the NEXIS database in which applicant uses the initials as an abbreviation in describing its new software as including "HP-developed Acoustic Densitometry (AD) technology."<sup>6</sup> He has also made of record a full copy of a press release dated June 6, 1996 in which applicant, in introducing its "HP Acoustic Densitometry (AD) software," uses AD not only in referring to its "AD software," but also in describing the "AD images" stored by means of this software. Finally, he has introduced an abstract of an article in the *Journal of the American*

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<sup>6</sup> *Business Wire*, June 26, 1996. We note that applicant has also specifically defined "Acoustic Densitometry" in this release as the technology "designed to accurately quantify changes in ultrasound image intensity due to the presence of contrast agents... ."

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*Society of Echocardiography*, Vol. 10, No.5 (June 1997) from which the following excerpt is noted:

Time-domain-based integrated backscatter values obtained with the use of acoustic densitometry (AD) were compared with values determined from a spectral-based analysis of the radio-frequency (RF) signals with a modified Hewlett-Packard Sonos 1500 imaging system.

The Examining Attorney maintains that this article demonstrates not only the use by persons in the medical field of the term "acoustic densitometry" in a descriptive sense, but also the general practice of using initials as a synonym for a scientific term, including AD for "acoustic densitometry."

Applicant, on the other hand, maintains that the term "acoustic densitometry" in itself is not descriptive of applicant's firmware and software and, thus, it follows that the initials AD are not merely descriptive of the same. Applicant argues that the only usages of record of the term "acoustic densitometry" or the initials AD are in reference to applicant's own product, and that there is no evidence of use of the term or the initials AD by others in the medical field. Applicant states that even the article from the *Journal of the American Society of Echocardiography* relied upon by the Examining Attorney identifies applicant's product as the one being used in the

test procedure and that the reference therein to "acoustic densitometry" in lower case letters was an "editorial or typographical error."

A term or phrase is merely descriptive within the meaning of Section 2(e)(1) if it immediately conveys information about a characteristic, purpose, function or feature of the goods with which it is being used. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215 (CCPA 1987). As a general rule, initials are not considered merely descriptive unless they are so generally understood as representing descriptive words as to be substantially synonymous therewith. Modern Optics, Inc. v. Univis Lens Co., 234 F.2d 504, 110 USPQ 293 (CCPA 1956). In the present case, in order to hold the mark AD merely descriptive of applicant's computer firmware and software tool, we must find (1) that AD is an abbreviation of the term "acoustic densitometry"; (2) that "acoustic densitometry" is merely descriptive of the product and (3) that AD would be recognized by the relevant public as no more than an abbreviation of this descriptive term. See In re Harco Corp., 220 USPQ 1075 (TTAB 1984).

We have no problem determining that the initials AD serve as an abbreviation for the term "acoustic densitometry." Applicant, in its press releases and the

promotional material submitted with its brief, uses the initials immediately following the term, as the equivalent thereof, and then makes references to its product as "AD software." In the specimens of record we also see use by applicant of AD as a shortened form for "Acoustic Densitometry."

Turning to the term "acoustic densitometry", we agree with applicant that the uses of the term upon which the Examining Attorney is relying are uses by applicant in describing its new product and the technology involved therein. The fact that applicant is the first, or even the only, one to use the term, however, does not detract from any descriptive significance it may possess. See *In re National Shooting Sports Foundation, Inc.*, 219 USPQ 1018 (TTAB 1983). From the dictionary definitions alone of the words "acoustic" and "densitometry," we find that the term "acoustic densitometry" would be readily understood as describing the function of applicant's firmware and software tool, i.e., the measurement and evaluation of the intensity of acoustic signals, which in the specific field of echocardiography becomes the measurement of the changes in acoustic signal intensity due to the presence of a contrast agent. Applicant has provided no other term to describe or name the technology to which its software tool

is directed, which might lead the relevant public to view "Acoustic Densitometry" as an indication of a particular source of the software tool, rather than its function.

Accordingly, the issue narrows down to whether the initials AD will be recognized and understood by the relevant public as being synonymous with the term "acoustic densitometry" and therefore having the same descriptive significance. Here also we agree that applicant was the first to use AD as an abbreviation for this term and thus the public would not have had prior exposure to the initials being used in this context. Nonetheless, we find that applicant has done no more than follow the accepted practice in the medical field of using initials as an abbreviation for a technical term, for the sake of convenience. Applicant's own promotional material, its specimens, and its press releases show use and identification of AD as an abbreviation for "acoustic densitometry." We consider this ample evidence to demonstrate that the relevant public, namely, those in the medical field, will recognize and interpret AD as an abbreviation for the sake of convenience, possessing the same descriptive significance as the term "acoustic densitometry." See *Intel Corp. v. Radiatien Inc.*, 184 USPQ 54 (TTAB 1974)[although applicant may have been the

first to design a commercially marketable programmable read only memory device and may have been the first to utilize the notation PROM in connection therewith, use of the shorthand designation was a natural extension of the commonly used acronym ROM and the aptness and convenience of using the term was immediately apparent to those involved in the electronics industry].

Accordingly, we find the mark AD merely descriptive of the function or purpose of applicant's computer firmware and software tool.<sup>7</sup>

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

R. F. Cissel

P. T. Hairston

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

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<sup>7</sup> Applicant's request for the Board to exercise its authority under Section 18 and allow applicant to submit evidence of acquired distinctiveness under Section 2(f) or to transfer the application to the Supplemental Register is not well taken. An application which has been considered and decided on appeal will

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not be reopened except for purposes of entry of a disclaimer.  
See Trademark Rule 2.142(g).