

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB

AUG. 12, 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 **Platinum Technology, Inc.**

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Serial No. 75/072,617

Martin R. Greenstein of TechMark for Platinum Technology,  
Inc.

**David H. Stine**, Trademark Examining Attorney, Law Office  
103 (Michael Szoke, Managing Attorney)

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

Opinion by Simms, Administrative Trademark Judge:

Platinum Technology, Inc. (applicant) has appealed  
from the final refusal of the Trademark Examining Attorney  
to register the mark SQL-ARCHIVE for

computer software for use in data management,  
storage management, file migration, and the  
backup, restoration and archiving of computer  
system files in networked and heterogeneous  
computing environments; computer software for  
library management of computer files; computer  
system software tools and utilities for backup,  
restoration and management of files; and

instructional manuals sold as a unit therewith in Int. Class 9.<sup>1</sup>

The Examining Attorney has refused registration under Section 2(e)(1) of the Act, 15 USC §1052(e)(1), arguing that applicant's mark merely describes goods which consist of archive software which uses the SQL ("structured query language") in performing its function. That is to say, the Examining Attorney argues that applicant's computer software performs the function of archiving files using the SQL language.

Applicant's identification generically lists "archiving of computer system files" as one of the primary functions of the software. Moreover, even the most cursory review of applicant's own descriptive literature indicates that the goods are used to back up and archive files, using SQL language... Pages 1-4 of the applicant's literature indicates that the goods produce a "readable representation of the SQL" and that the backup file output generated by use of the subject software "consists of SQL statements." It is respectfully submitted that software which consists of an archive of SQL statements and which uses SQL language to perform an archiving function may be aptly described as an "SQL archive." This term is directly and clearly descriptive of both a primary function and the specific nature of the applicant's computer software.

Examining Attorney's appeal brief, 3. Further, the Examining Attorney believes that the combination of

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<sup>1</sup> Application Serial Number 75/072,617, filed March 14, 1996, based upon an allegation of applicant's bona fide intention to use the mark in commerce.

the terms SQL and ARCHIVE is a standard construction which is not incongruous. In summation, the Examining Attorney argues that applicant's computer programs archive computer files using SQL, archive SQL data, or consist of an archive of SQL data for use as a backup copy of computer files, and the mark SQL-ARCHIVE is thus merely descriptive of applicant's goods. The Examining Attorney has made of record computer dictionary definitions of "SQL" and "archive."

Applicant, on the other hand, while admitting that the initialism SQL is commonly used in the computer industry to mean "structured query language," argues that the mark as a whole is suggestive because imagination and thought are required in order to understand applicant's goods. Applicant argues that its asserted mark has no meaning in the industry, although it concedes that the separate elements have some significance in the computer field. Counsel states that applicant's products do not archive a language. Applicant describes its products as performing a series of complex functions, including logical backups, physical backups, restoration, verification, initialization and others. Applicant indicates that the product operates on data and files

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stored in various forms and media, including the Microsoft SQL Server and the Sybase System10 system. See Applicant's Response, 2. Applicant contends that, while it may use a structured query language as part of its archive process, one must first dissect the mark and then engage in mental gymnastics in order to arrive at a descriptive meaning for applicant's mark. Applicant also points to its ownership of the registered mark NETARCHIVE and such third-party registered and applied-for marks as ARCHIVEMANAGER and TAX ARCHIVE for CDs for storage of tax returns as evidence that its mark is not merely descriptive. Applicant also notes its ownership of other registrations and applications which include the component SQL, such as SQL-EASE, SQL SPY and SQL COMMANDER. Finally, applicant argues that any doubt should be resolved in favor of publication.

With respect to the third-party registrations, the Examining Attorney argues that they are not conclusive on the issue of mere descriptiveness of the asserted mark.

Although this application is based on applicant's bona fide intent to use the mark, applicant, with its first response, submitted a copy of its SQL-ARCHIVE

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user guide, noted above. A portion of that brochure is reproduced below.

Upon careful consideration of this record and the arguments of the attorneys, we believe that the Examining Attorney has made out a prima facie case that the asserted mark is merely descriptive of applicant's goods. There is no question that applicant's software uses the SQL language. Moreover, as the Examining Attorney has noted, applicant's software is used, among other things, to archive computer files. In other words, applicant's

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computer programs use the SQL language to archive files. Potential purchasers encountering applicant's mark used in connection with goods with these features will require no thought or imagination to understand immediately the nature of applicant's goods.

Decision: The refusal to register is affirmed.

R. L. Simms

E. J. Seeherman

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