

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT

JULY 27, 99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Ipswitch, Inc.

Serial No. 75/116,174

Donna M. Weinstein of Fish & Richardson for applicant.

Mary E. Crawford, Trademark Examining Attorney, Law Office
102 (Thomas V. Shaw, Managing Attorney).

Before Hanak, Quinn and Bottorff, Administrative Trademark
Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application has been filed by Ipswitch, Inc. to register the designation IPSWITCH for "computer software for use in the access and the transfer of information across local, national, world-wide, and global computer networks."¹

¹ Application Serial No. 75/116,174, filed June 5, 1996, alleging dates of first use of December 18, 1991.

The Trademark Examining Attorney has refused registration under Section 2(e)(1) of the Act on the ground that applicant's designation, when applied to applicant's goods, is merely descriptive of them.

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney filed briefs. An oral hearing was not requested.

The sum of applicant's position, as set forth in its two-page appeal brief, that the refusal to register should be reversed is as follows:

Applicant's mark is not the descriptive two-word term "IP switch", but rather the coined, unified term IPSWITCH, which is an amalgam word play based on IP switch and the Massachusetts town of Ipswich where applicant was founded (see enclosed excerpt on Ipswich from Webster's Geographical Dictionary). Thus applicant's mark incorporates a clear double entendre and so cannot be deemed merely descriptive. [citations omitted]

The excerpt shows that Ipswich is a town located in Massachusetts, with a population of 8,544.

The Examining Attorney states that "IP switch" is a commonly used and readily understood term meaning "Internet protocol switch" which, according to the Examining Attorney, is "a technology that combines Internet protocol

switching and the routing of information to allow for high speed network access." The Examining Attorney maintains that the term "IP switch" is merely descriptive of applicant's computer software, and that this descriptiveness is not lost when the words are telescoped to form a unitary designation. The Examining Attorney contends that the relevant consuming public is not likely to recognize the purported double entendre suggested by applicant. In support of the refusal, the Examining Attorney relies on a representative sample of excerpts retrieved from the NEXIS database showing several hundreds of hits for the term "IP switch." A few examples show the following:

Ipsilon Networks, Inc. is the premier provider of high performance IP switches, designed to accelerate today's IP networks to 21st-century throughput.
Business Wire, August 25, 1997

While adding voice support to IP switches and routers will add about a 10 percent-per-port premium to the cost of the devices...
PC Week, August 11, 1997

Frame Relay Technologies, Inc. (FRT) has introduced a new line of IP switches that promise faster throughput and cost one-tenth of the company's previous generation switches.
Network World, August 4, 1997

If you answered yes to either question, you are a good candidate to start shopping for an IP switch...To get a handle on how IP switches work, you need a clear understanding of a switch's very function...Not all IP-switching products work the same way...The biggest complaints about IP switching technologies are a rigid requirement for specific hardware or lack of support for protocols other than IP.

Computer Shopper, July 1997

The IP switch provides more network flexibility, security and service options than some corporate networks.

CommunicationsWeek, July 7, 1997

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 of record leaves no doubt, and applicant essentially does not dispute, that the term "IP switch" (two-word term) is, at the very least, merely descriptive of applicant's goods. Although "IP switch" clearly is merely descriptive when applied to computer software used in Internet protocol switching, the crux of applicant's argument is that the unitary term IPSWITCH is not.

We find that the mere telescoping of "IP switch" to form the designation IPSWITCH does not result in an inherently distinctive mark. In considering the evidence of record we recognize that there is no use of "IPswitch" as one word. Nonetheless, the clear and, in fact, the only connotation of the applied-for designation is "IP SWITCH." Whether shown as two typed terms or one telescoped typed term, both versions would be pronounced the same and viewed as having the same connotation. There is nothing unique or incongruous about the telescoping of "IP switch" into the one-word designation IPSWITCH. The mere deletion of a space between the typed terms "IP" and "switch" is not enough to turn a merely descriptive designation into a registrable mark. See, e.g., Cummins Engine Co., Inc. v. Continental Motor Corp., 359 F.2d 892, 149 USPQ 559 (CCPA

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1966); In re Gould Paper Corp., 834 F.2d 1017, 5 USPQ2d 1110 (Fed. Cir. 1987); and In re Wickerware, Inc., 227 USPQ 970 (TTAB 1985).

As should be obvious from our above discussion, we certainly are not persuaded by applicant's double entendre argument. Given the facts that Ipswich is a relatively small town, that applicant currently has no connection with the town,² and that the designation sought to be registered is spelled differently from the town, it is unreasonable to think that purchasers would perceive the double entendre suggested by applicant. Rather, our view is that this double meaning, to the extent there is any at all, undoubtedly would be lost on most, if not all purchasers. The commonly understood meaning of "IP switch" simply overwhelms the other meaning suggested by applicant.

² Although applicant states that it was founded in Ipswich, the record is silent as to the likelihood that purchasers would ever be aware of that fact. In the words of the Examining Attorney, "[w]hile the town of Ipswich may have meaning to the applicant, it is unlikely that it will have any meaning to the relevant consumers of the goods."

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Decision: The refusal to register is affirmed.

E. W. Hanak

T. J. Quinn

C. M. Bottorff
Administrative Trademark
Judges, Trademark Trial
and Appeal Board

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