

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB SEPT, 3, 99
U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re *Century Mfg. Co.*

Serial No. 75/126,260

John A. Clifford of Merchant, Gould, Smith, Edell, Welter &
Schmidt, P.A. for *Century Mfg. Co.*

Gerald T. Glynn, Trademark Examining Attorney, Law Office
102 (*Thomas V. Shaw*, Managing Attorney).

Before *Hairston*, *Chapman* and *Wendel*, Administrative
Trademark Judges.

Opinion by *Hairston*, Administrative Trademark Judge:

An application has been filed by Century Mfg. Co. to
register the mark SMARTCLAMP for "battery chargers for use
with lead acid and gel-cell batteries."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. 75//126,260, filed June 27, 1996, which
alleges a bona fide intention to use the mark in commerce.

ground that, when used on applicant's goods, the mark is merely descriptive of them.

Applicant has appealed. Briefs have been filed², but an oral hearing was not requested.

According to the Examining Attorney, SMARTCLAMP describes a characteristic of battery chargers, namely, that the clamp, which is an essential part of a battery charger, is controlled by a microprocessor or electronic device.

Applicant, however, argues that the Examining Attorney has improperly dissected applicant's mark, and that SMARTCLAMP is only suggestive of battery chargers. Further, applicant argues that SMARTCLAMP is not a term which is commonly used in the trade. Applicant points to

² Applicant, for the first time with its brief, submitted two exhibits. Exhibit A consists of print-outs of registered marks from the TRADEMARKSCAN database which include the word "SMART" for goods classified in International Class 9 (Electrical apparatus and instruments). Exhibit B consists of print-outs of registered marks from the "CASSIS" database which include the word "SMART" for goods classified in International Class 9 as well as several other classes. Under Trademark Rule 2.142(d), evidence submitted for the first time with a brief on appeal is generally considered to be untimely and therefore usually given no consideration. Also, the submission of print-outs from a private company's database is not the proper way to make third-party registrations of record. See *In re Hub Distributing, Inc.*, 218 USPQ 284 (TTAB 1983). In view thereof, we have not considered these exhibits in reaching a decision herein. We hasten to add that, even if we had considered the exhibits, our decision herein would be the same.

the results of a NEXIS search which shows only one use of SMARTCLAMP in connection with battery chargers and that is as a reference to applicant's product.

The test for determining whether a mark is merely descriptive is whether the involved term immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used, or intended to be used. In re Bright-Crest, Ltd., 204 USPQ 591 (TTAB 1979). Further, it is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the impact that it is likely to make on the average purchaser of such goods or services. In re Recovery, 196 USPQ 830 (TTAB 1977).

In this case, we agree with the Examining Attorney that SMARTCLAMP is merely descriptive of the identified goods. We note that applicant itself acknowledges that its battery chargers are microprocessor-controlled. In particular, applicant's battery chargers are "fail-safe" in that they sense polarity and correct for reversed battery connections. We take judicial notice of Webster's New World Dictionary of Computer Terms (3d ed. 1988) wherein

"smart" is defined as: "Having some computational ability of its own. Smart devices usually contain their own microprocessors or microcomputers."

Further, applicant has acknowledged that the cables of a battery charger end in a clamping mechanism, i.e., battery clamps. It is clear, therefore, that the term "CLAMP" identifies a significant feature of battery chargers.

We find that when the words SMART and CLAMP are combined, the term SMARTCLAMP immediately conveys to prospective purchasers information about applicant's battery chargers, namely, that the battery clamps are controlled by a microprocessor. See e.g., In re Cryomedical Sciences Inc., 32 USPQ2d 1377 (TTAB 1994) [SMARTPROBE held merely descriptive of disposable cryosurgical probes having microprocessors]. We recognize that the clamps may not house the microprocessor. However, the clamps are part of the battery charger, and thus, are part of the device which is controlled by the microprocessor.

We should point out that it is not necessary that a designation be in common usage in the particular industry in order for it to be merely descriptive. In re National Shooting Sports Foundation, Inc., 219 USPQ 1018, 1020 (TTAB

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1983). The absence, therefore, on this record of any third-party uses of the term SMARTCLAMP is not persuasive of a different result.

Decision: The refusal to register is affirmed.

P. T. Hairston

B. A. Chapman

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