

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB JUNE 29, 00

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Autometric Incorporated

Serial No. 75/278,761

Jim Zegeer, Esq. for applicant.

Glenn G. Clark, Trademark Examining Attorney, Law Office
115 (Tomas Vlcek, Managing Attorney).

Before Walters, Wendel and Bucher, Administrative Trademark
Judges.

Opinion by Walters, Administrative Trademark Judge:

Autometric Incorporated has filed a trademark
application to register the mark ENVIRONMENTAL WORK BENCH
for "computer software, namely, software for analyzing
gridded weather data fields and displaying the results in
three-dimensional time-sequenced animation showing changing
conditions to create a comprehensive environment with

imagery."¹ The application includes a disclaimer of WORK BENCH apart from the mark as a whole.²

The Trademark Examining Attorney has finally refused registration, under Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1), on the ground that applicant's mark is merely descriptive of its goods.³

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs,⁴ but an oral hearing was not requested. We affirm the refusal to register.

The Examining Attorney contends that applicant's software is used, essentially, to predict and monitor changes to the environment; that "workbench" is defined as "a programming environment in which hardware and software

¹ Serial No. 75/278,761, in International Class 9, filed April 21, 1997, based on use of the mark in commerce, alleging first use as of November, 1994 and use in commerce as of April, 1995.

² Although the Examining Attorney has stated that he will not accept the disclaimer, we interpret his statement as indicating that he does not consider the disclaimer to resolve the issue of the alleged descriptiveness of the mark as a whole. We consider the disclaimer to be of record.

³ The Examining Attorney issued a final requirement for acceptable specimens of use of the mark on the goods, but withdrew that requirement in his brief. Therefore, the acceptability of the specimens is not an issue before us in this appeal.

⁴ Applicant submitted an untimely reply brief that has not been considered, in accordance with the Board's order of March 28, 2000. Nor have we considered the evidence submitted therewith, which was untimely regardless of the timeliness of the reply brief.

items are shared by several users"⁵; and that, therefore, the mark ENVIRONMENTAL WORK BENCH "merely describes the salient functions, features, uses, characteristics and purposes of the relevant goods." In support of his position, the Examining Attorney submitted dictionary definitions of "environment" as well as "workbench" and excerpts of articles from the LEXIS/NEXIS data base showing use of the term "workbench" in connection with software products. The Examining Attorney also submitted a print-out from applicant's Internet web site, dated July 23, 1998, wherein applicant states about its ENVIRONMENTAL WORK BENCH product that "Autometric created the environment that permits 3D modeling and visualization of radioactive particle transport in the atmosphere."

Applicant disagrees that the mark is merely descriptive and submitted a copy of its brochure, which contains the following paragraph:

See what the numbers tell you! Analyze gridded data fields with multiple parameters per grid point. Create a comprehensive environment with imagery, maps, and modeled data that can be animated to show changes with time.

The test for determining whether a mark is merely descriptive is whether the involved term immediately conveys information concerning a quality, characteristic,

⁵ *Webster's New World Dictionary of Computer Terms* (3rd ed. 1988).

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); *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986). It is not necessary, in order to find a mark merely descriptive, that the mark describe each feature of the goods, only that it describe a single, significant quality, feature, etc. *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985). 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).

Applicant has disclaimed and does not dispute the merely descriptive nature of the term WORK BENCH in connection with the identified computer software. Further, the evidence supports this conclusion. Regarding the term ENVIRONMENTAL, we take judicial notice of several entries from *The Random House Dictionary of the English Language, Unabridged* (2nd ed. 1987) defining the term "environment" as "1. The aggregate of surrounding things, conditions, or influences, surroundings; milieu" and "4. *Computers*. The

hardware or software configuration or the mode of operation, of a computer system." Both definitions are applicable in this case. Not only does applicant's software provide and manipulate meteorological and other data about the environment so that users can study the environment, but the software is an environment, in the computer sense, permitting the collation and analysis of such data. This latter sense of the word is specifically used by applicant at least twice in the evidence of record and in its identification of goods. There is no evidence indicating that the combination of the two descriptive terms into the mark ENVIRONMENTAL WORK BENCH alters the merely descriptive significance of those individual terms.

In the present case, it is our view that, when applied to applicant's goods, the term ENVIRONMENTAL WORK BENCH immediately describes, without conjecture or speculation, a significant feature or function of applicant's goods, as discussed above. Nothing requires the exercise of imagination, cogitation, mental processing or gathering of further information in order for purchasers of and prospective customers for applicant's goods to readily perceive the merely descriptive significance of ENVIRONMENTAL WORK BENCH as it pertains to applicant's software products.

Serial No. 75/278,761

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

C. E. Walters

H. R. Wendel

D. E. Bucher
Administrative Trademark Judges,
Trademark Trial and Appeal Board