

Oral Hearing:  
September 21, 1999

Paper No. 12  
GDH/gdh

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB MARCH 30, 00

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re *Instrumentation Metrics, Inc.*

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Serial No. 75/301,355

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Michael A. Glenn of Glenn Patent Group for *Instrumentation Metrics, Inc.*

Cheryl S. Goodman, Trademark Examining Attorney, Law Office 102  
(Thomas V. Shaw, Managing Attorney).

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Before *Quinn, Hohein and Holtzman*, Administrative Trademark  
Judges.

Opinion by *Hohein*, Administrative Trademark Judge:

*Instrumentation Metrics, Inc.* has filed an application to register the mark "INSTRUMENTATION METRICS" for an "optical processing unit comprising a spectrometer, guided light source and electromagnetic radiation detector; [and] signal processing software for use in non-invasive blood analyte measurement devices" in International Class 9 and "non-invasive blood analyte measurement devices" in International Class 10.<sup>1</sup>

Registration has been finally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis

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<sup>1</sup> Ser. No. 75/301,355, filed on June 2, 1997, based upon an allegation of a bona fide intention to use the mark in commerce.

that, when used in connection with applicant's goods, the mark "INSTRUMENTATION METRICS" is merely descriptive of them.

Applicant has appealed. Briefs have been filed and an oral hearing was held. We reverse the refusal to register.

The Examining Attorney, noting that printouts of excerpts which she has made of record from various websites indicate that applicant manufactures "[m]edical instrumentation" and provides "[c]linical diagnostic software" for use in the biomedical field and that, in particular, blood may be analyzed in metric or volume units, argues that "while INSTRUMENTATION METRICS may not describe the exact use or purpose of the [applicant's] goods, the wording describes with enough particularity a significant quality of the goods, namely that they are instruments for measurement." In support of her position, the Examining Attorney has made of record and relies upon definitions of the following:

(a) the word "instrumentation," which Webster's Ninth New Collegiate Dictionary at 627 defines in relevant part as a noun meaning "instruments for a particular purpose";<sup>2</sup>

(b) the term "-metric," which Webster's Ninth New Collegiate Dictionary at 748 lists as an adjectival combining form signifying

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<sup>2</sup> We judicially notice that the word "instrument" is defined by the same dictionary at 627 as signifying, in pertinent part, "a measuring device for determining the present value of a quantity under observation". It is settled that the Board may properly take judicial notice of dictionary definitions. See, e.g., *Hancock v. American Steel & Wire Co. of New Jersey*, 203 F.2d 737, 97 USPQ 330, 332 (CCPA 1953) and *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

"of or relating to (such) an art, process or science of measuring"; and

(c) the word "metric," which Webster's On-line Dictionary at [www.m-w.com](http://www.m-w.com) variously defines as connoting "1. Relating to measurement; involving, or proceeding by, measurement. 2. Of or pertaining to the meter as a standard of measurement; of or pertaining to the decimal system of measurement of which a meter is the unit; as, the metric system; a metric measurement. <chemistry> Metric analysis by volume, volumetric analysis ...."; and which The Computer Desktop Encyclopedia sets forth as meaning "[m]easurement. Although metric generally refers to the decimal-based metric system of weights and measures, software engineers often use the term as simply 'measurement.' For example, 'is there a metric for this process?'"<sup>3</sup>

In view thereof, and because applicant's goods include non-invasive blood analyte measurement devices and signal processing software for use therewith, the Examining Attorney maintains that such goods "are INSTRUMENTATION METRICS or instruments for measurement, specifically, instruments for use in blood analyte measurement." In particular, the Examining Attorney contends that such phrase is merely descriptive because:

The use of METRICS after INSTRUMENTATION does not affect the descriptiveness of the proposed mark or change its meaning. Just as METRICS INSTRUMENTATION identifies measurement instruments, INSTRUMENTATION METRICS also identifies measurement instruments or instruments for measurement.

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<sup>3</sup> Inasmuch as judicial notice may also be properly taken of standard reference works such as encyclopedias, the request by the Examining Attorney in her brief that "the TTAB take judicial notice of the dictionary definition [of "metric" from The Computer Desktop Encyclopedia] attached" to such brief is approved. See, e.g., *In re Hartop & Brandes*, 311 F.2d 249, 135 USPQ 419, 423 (CCPA 1962) at n. 6.

It is well settled that a term or phrase is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it forthwith conveys information concerning any significant ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. See, e.g., *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987) and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term or phrase describe all of the properties or functions of the goods or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term or phrase describes a significant attribute or idea about them. Moreover, whether a term or phrase is merely descriptive is determined not in the abstract but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services and the possible significance that the term or phrase would have to the average purchaser of the goods or services because of the manner of its use. See *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Thus, "[w]hether consumers could guess what the product [or service] is from consideration of the mark alone is not the test." *In re American Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

However, a mark is suggestive if, when the goods or services are encountered under the mark, a multi-stage reasoning process, or the utilization of imagination, thought or perception, is required in order to determine what attributes of

the goods or services the mark indicates. See, e.g., In re Abcor Development Corp., supra at 218, and In re Mayer-Beaton Corp., 223 USPQ 1347, 1349 (TTAB 1984). As has often been stated, there is a thin line of demarcation between a suggestive mark and a merely descriptive one, with the determination of which category a mark falls into frequently being a difficult matter involving a good measure of subjective judgment. See, e.g., In re Atavio, 25 USPQ2d 1361 (TTAB 1992) and In re TMS Corp. of the Americas, 200 USPQ 57, 58 (TTAB 1978). The distinction, furthermore, is often made on an intuitive basis rather than as a result of precisely logical analysis susceptible of articulation. See In re George Weston Ltd., 228 USPQ 57, 58 (TTAB 1985).

In the present case, we are constrained to agree with applicant that, even if a designation such as "METRICS INSTRUMENTATION" (which is not applicant's mark) could be regarded, as asserted by the Examining Attorney, as merely descriptive of applicant's goods (and plainly its non-invasive blood analyte measurement devices are a kind or type of metric instrumentation), reversing the component words thereof to form the phrase "INSTRUMENTATION METRICS" results in a mark which is no more than suggestive of applicant's goods. As applicant persuasively points out in its main brief, the combination of the words "instrumentation" and "metrics" so as to form the phrase "INSTRUMENTATION METRICS" creates an incongruity, given the similarities in meaning of the words individually, which requires a multi-stage reasoning process or imagination in order for customers or prospective purchasers of applicant's optical

processing units, non-invasive blood analyte measurement devices, and signal processing software for use with such devices to be able, perhaps, to ascribe any particular significance to the phrase when used in connection with applicant's goods. See, e.g., Aluminum Fabricating Co. of Pittsburgh v. Season-All Window Corp., 259 F.2d 314, 119 USPQ 61, 63 (2d Cir. 1958) [mark "SEASON-ALL," unlike the term "ALL-SEASON," is not merely descriptive of aluminum storm windows and doors]. Here, while the mark "INSTRUMENTATION METRICS" vaguely suggests that applicant's goods are some sort of instruments for metric-based measurement, such mark does not forthwith convey, with sufficient particularity, the purpose, function or use of applicant's goods or describe any significant aspect, feature or quality thereof.

Finally, to the extent that there may nevertheless be any doubt as to whether applicant's mark is merely descriptive or suggestive of its goods, we resolve such doubt, in accordance with the Board's practice, in favor of the publication of applicant's mark for opposition. See, e.g., In re Morton-Norwich Products, Inc., 209 USPQ 791 (TTAB 1981) and In re Gourmet Bakers, Inc., 173 USPQ 565 (TTAB 1972).

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

T. J. Quinn

G. D. Hohein

**Ser. No.** 75/301,355

T. E. Holtzman  
Administrative Trademark Judges,  
Trademark Trial and Appeal Board