

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB MARCH 31, 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 *Aspen Analytics, Inc.*

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Serial No. 75/381,307

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*Ludmila I. Zamiatina, Acting President*, for Aspen  
Analytics, Inc.

Dominic Ferraiuolo, Trademark Examining Attorney, Law  
Office 102 (*Thomas Shaw*, Managing Attorney).

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

Opinion by *Cissel*, Administrative Trademark Judge:

On October 29, 1997, applicant applied to  
register the mark shown below

on the Principal Register for what were subsequently  
identified by amendment as "prepackaged computer  
software and computer downloadable software for use

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in designing and creating origami objects and animations." The basis for filing the application was applicant's assertion that it possessed a bona fide intention to use the mark in commerce in connection with these goods.

Although the application as filed indicated that the goods were in Class 9, the Office subsequently changed the classification to Class 16. This appears to have been an administrative error. Accordingly, the improper amendment by the Office to the classification of this application is vacated, and the application stands as it was originally filed, in Class 9.

The Examining Attorney refused registration under Section 2(e)(1) of the Act on the ground that the mark sought to be registered is merely descriptive of the goods identified in the application. His position is that computer software providing a visual representation of the paper-folding technique known as "origami" is encompassed within the identification-of-goods clause in the application, as amended, and that the proposed mark is therefore merely descriptive of the goods specified in the application because it identifies

the subject matter presented by means of such software.

Responsive to the first Office Action, the applicant did comply with the Examining Attorney's requirement to disclaim the exclusive right to use "ORIGAMI" apart from the mark as shown. With respect to the refusal to register, applicant argued that the way it identified the goods with which it intends to use the mark does not imply that the goods provide a visual representation of the paper-folding techniques employed in the creation of origami.

The Examining Attorney, however, maintained and made final the refusal to register based on descriptiveness. He concluded that applicant's claim that its software will not be used for "visual" origami is inconsistent with the identification-of-goods clause, wherein applicant specifies that the goods are to be used in designing and creating origami animations. Attached to the final refusal were dictionary definitions of the term "visual" as meaning, among other things, "visible," "of, relating to, or employing visual aids."

Applicant filed a timely notice of appeal. Both applicant and the Examining Attorney filed briefs.

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Applicant did not request an oral hearing before the Board.

The test for determining whether a mark is, or would be, merely descriptive in connection with particular goods is well settled. A mark is unregistrable under Section 2(e)(1) of the Lanham Act, 15 U.S.C. 1052(e)(1), if it describes a quality, characteristic, function, feature, purpose or use of the relevant goods. In re Bright-Crest, Ltd., 204 USPQ 591 (TTAB 1979). The issue of descriptiveness is not determined by consideration of the mark alone, in the abstract, but rather in relation to the identified goods. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215 (CCPA 1978). Further, the fact that a term could have other meanings which are not necessarily descriptive of the goods in question is not dispositive. What matters is the way the term would be viewed by prospective purchasers in relation to the goods with which it is, or will be, used. In re Hycon Manufacturing Co., 169 USPQ 622 (TTAB 1971). The term need not describe all of the properties or features or characteristics of the goods in question in order for it to be considered to be merely descriptive of them. Rather, it is sufficient if the

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term describes a single significant attribute or idea about them. In re Pennzoil Products Co., 20 USPQ2d 1753 (TTAB 1991).

In the case at hand, the mark applicant intends to use in connection with the specified computer software is unregistrable under Section 2(e)(1) of the Act because it describes a characteristic, feature, function or intended use of the software. Contrary to the arguments presented by applicant, the identification-of-goods clause in the application clearly includes software to be used in creating animations of origami. The definition of "visual" of record establishes that the word is synonymous with "visible," and "employing visual aids." The application plainly states that applicant's goods will create animations of origami. The only way a computer can produce an animation of origami is by displaying, visibly, the animation as a visual aid on the computer monitor. Simply put, the proposed mark would immediately inform purchasers and potential users of applicant's goods that the software provides a visual means by which to create origami art.

In its brief, applicant argues that software for applied design goes beyond mere visualization, and is much more clearly defined by the interactive nature of the software and by the automation component it embodies. Applicant goes on to concede, however, that "most of the state of the art design and project automation software products visualize their application subject matter in one way or another, but this is not what to any significant extent identifies their content and specifics." Applicant contends that the way it has identified its goods places emphasis on the creative and productive aspects of the software "and does not specify in any way it's 'visualization' aspects."

We agree with applicant that the language used in the application does not specify the visible nature of the origami animations the software produces, and we also agree that there may well be other features or characteristics of this software that are more significant than, or equally significant with, the fact that the software will allow the computer to act as a visual aid in the creation of origami art. These facts, however, are not determinative of the issue on appeal in

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applicant's favor. The mark sought to be registered is merely descriptive within the meaning of the Lanham Act because a significant characteristic of the software identified in the application is that it can produce visual origami animations, i.e., it can produce the animations by using the computer as a visual aid.

Accordingly, the refusal to register is affirmed and registration to applicant is denied.

R. F. Cissel

B. A. Chapman

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

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