

**THIS DISPOSITION  
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Paper No. 10  
BAC

11/29/00

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Amoco/Enron Solar

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Serial No. 75/423,093

Robert E. Blankenbaker, Esq. of BP Amoco Corporation for Amoco/Enron Solar.

Michael H. Kazazian, Trademark Examining Attorney, Law Office 113 (Meryl Hershkowitz, Managing Attorney)

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Before Hohein, Hairston and Chapman, Administrative Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

On January 26, 1998, Amoco/Enron Solar (a Delaware general partnership) filed an application to register the mark DIRECTPV on the Principal Register for "public utility services, namely providing solar generated electricity" in International Class 39. The application is based on applicant's assertion of a bona fide intention to use the mark in commerce.

The Examining Attorney has finally refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis that the mark DIRECTPV, if

used in connection with the identified services of applicant, is merely descriptive of them.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs. Applicant did not request an oral hearing.

The Examining Attorney contends that a term need only describe one function or aspect of the services in order to be considered merely descriptive; and that the mark DIRECTPV "immediately describes the services, namely, that the applicant uses photovoltaic technology in order to provide electricity directly to its customers through the direct conversion of sunlight into electricity" (brief, p. 2). The Examining Attorney further contends that "direct" refers to the direct conversion of solar energy into electricity and/or the direct provision of such electricity to consumers; that when considered in relation to applicant's services the letters PV refer to "photovoltaic"; that each of the component elements of the mark is "highly descriptive"; and that applicant's use of such elements together does not create a unitary mark with a nondescriptive meaning.

In support of his refusal, the Examining Attorney submitted dictionary definitions of the word "direct" and

the acronym "PV"<sup>1</sup>; several excerpted stories from the Nexis database; and a few pages from some different websites referring to "photovoltaics."

Applicant contends, on the other hand, that its mark is suggestive, rather than merely descriptive, in relation to applicant's services; that while "PV" is a common acronym for "photovoltaics" within the scientific community, it is not understood as such by the general public, to whom applicant's services will be offered; and that DIRECTPV is a pseudoword capable of a number of different inferences, none of which are merely descriptive of applicant's "public utility services, namely providing solar generated electricity," especially since applicant's services do not involve the generation of electricity or solar energy.

Applicant further contends that the Nexis evidence submitted by the Examining Attorney is not persuasive because none of the excerpts use the word "direct" in the sense of providing electricity directly to consumers, and the stories do not reflect a descriptive use of the term "DIRECTPV" with regard to applicant's identified services.

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<sup>1</sup> The Examining Attorney's request that the Board take judicial notice of some dictionary definitions attached to his appeal brief is granted. See TBMP §712.01.

Finally, applicant argues that it should be allowed a registration because a registration which issued for the mark DIRECTV for "satellite broadcasting services provided directly to the consumer" (Registration No. 1,872,038) is much clearer in meaning than is applicant's mark, DIRECTPV, in relation to its services.<sup>2</sup>

It is well settled that "a term is descriptive if it forthwith conveys an immediate idea of the ingredients, qualities or characteristics of the goods [or services]" (emphasis added). In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978). Moreover, the immediate idea must be conveyed with a "degree of particularity." In re TMS Corporation of the Americas, 200 USPQ 57, 59 (TTAB 1978); and In re Entenmann's Inc., 15 USPQ2d 1750, 1751 (TTAB 1990), aff'd, unpub'd, Fed. Cir. February 13, 1991.

Of course, 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

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<sup>2</sup> Applicant did not provide a photocopy of the third-party registration and a mere reference to the registration is insufficient. See In re Duofold, Inc., 184 USPQ 638 (TTAB 1974). However, because the Examining Attorney did not object to consideration thereof and instead treated it on the merits, we have considered the information about the third-party registration. We note, however, that the existence of this third-party registration is not a basis for our decision herein.

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 (TTAB 1979). See also, *In re Consolidated Cigar Co.*, 35 USPQ2d 1290 (TTAB 1995); and *In re Pennzoil Products Co.*, 20 USPQ2d 1753 (TTAB 1991).

The burden of proving that applicant's mark is merely descriptive rests with the Examining Attorney. Viewing the record in its entirety, we find that the Examining Attorney has not established a prima facie showing that the mark DIRECTPV is merely descriptive of applicant's public utility service of providing solar generated electricity. Rather, consumers would have to exercise a multi-stage reasoning process to determine any specific descriptive meaning of DIRECTPV in relation to applicant's services. See *In re Sundown Technology Inc.*, 1 USPQ2d 1927 (TTAB 1986); and *In re Tennis in the Round Inc.*, 199 USPQ 496 (TTAB 1978). That is, even if the general public understood "PV" to mean "photovoltaics," and further that "photovoltaics" refers to the direct conversion of sunlight into electricity, nonetheless the term "direct," as evidenced by the dictionary submissions, is a term with

several different yet commonly understood meanings, and the evidence of record does not establish that, in light thereof, the mark DIRECTPV conveys an immediate idea of a significant feature, function or characteristic of applicant's services. The Nexis excerpts submitted by the Examining Attorney are unpersuasive because they do not show the term "direct" used descriptively in the context argued by the Examining Attorney nor in relation to applicant's services.

In sum, the record before us does not show that the term DIRECTPV has a readily recognized meaning with regard to the involved services. That is, the mark DIRECTPV does not immediately evoke an impression or an understanding of a feature, function or characteristic of applicant's public utility services. Rather, on this ex parte record, we conclude that the mark DIRECTPV requires a degree of imagination or several steps of thought to determine any significant feature, function or purpose of applicant's services.

Finally, to the extent that we may have any doubt as to whether a term is merely descriptive, we resolve such doubt, in accordance with the practice of the Board, in favor of the applicant and pass the application to publication. See *In re Gourmet Bakers Inc.*, 173 USPQ 565

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(TTAB 1972). In this way, anyone who believes that the term is, in fact, descriptive, may oppose and present evidence on this issue to the Board.

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

G. D. Hohein

P. T. Hairston

B. A. Chapman  
Administrative Trademark Judges,  
Trademark Trial and Appeal Board