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**THIS DISPOSITION  
IS NOT CITABLE AS PRECEDENT  
OF THE T.T.A.B.**

Hearing:  
July 12, 2001

Paper No. 17  
HRW

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Equidyne Systems, Inc.

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Serial No. 75/457,016

William P. Christie of Christie, Parker & Hale, LLP  
for Equidyne Systems, Inc.

Julia Hardy Cofield, Trademark Examining Attorney, Law  
Office 115 (Tomas Vlcek, Managing Attorney).

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Before Hanak, Wendel and Holtzman, Administrative Trademark  
Judges.

Opinion by Wendel, Administrative Trademark Judge:

Equidyne Systems, Inc. has filed an application to register the mark INJEX for "needle-free medical drug delivery system; namely, needle-free injectors, disposable needle-free ampules, cocking and carrying cases for needle-free injectors, fluid transfer couplers, and accessories therefore."<sup>1</sup>

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<sup>1</sup> Serial No. 75/457,016, filed March 25, 1998, based on an allegation of a bona fide intention to use the mark in commerce.

Registration has been finally refused under Section 2(e)(1) of the Trademark Act on the ground that the mark is merely descriptive. The refusal has been appealed. Both applicant and the Examining Attorney filed briefs and both participated in an oral hearing.

The Examining Attorney maintains that the term INJEX is the phonetic equivalent of the term "injects" and as such is merely descriptive of the purpose or use of applicant's injection system. To support her refusal, she has made of record the dictionary definition of the word "injects" as follows:

- 2 a. *Medicine* To introduce(a drug or vaccine, for example) into a body part.
  - b. To treat by means of injection: *injected the patient with digitalis.*
- The American Heritage Dictionary of the English Language* (3<sup>rd</sup> ed. 1992).

She argues that the fact that applicant's product is "needle-free" is irrelevant; the purpose of applicant's injection system is to inject substances into the body. Furthermore, the dictionary definition of "inject" does not limit this activity to the use of syringes or needles.

Applicant argues that its mark INJEX is not the phonetic equivalent of the word "injects"; that INJEX has a "ks" sound at the terminus of the second syllable, while "injects" has a "kts" sound; and that the proper

pronunciation of INJEX is with the stress on the first syllable while for "injects" the stress is on the second syllable. Applicant contends that in the dictionary definitions which it has attached to its reply brief for the term "inject," a connection is made between the word "inject" and the use of a needle or syringe. For example, in a later edition of the same source relied upon by the Examining Attorney, applicant notes the following definition of "inject:"

2 a. *Medicine* To introduce (a drug or vaccine, for example) into a body part, especially by means of a syringe.

*The American Heritage Dictionary of the English Language* (4<sup>th</sup> ed. 2000).

Applicant argues that, by contrast, its product is needle-free and thus INJEX is a fanciful term, without dictionary definition, coined by applicant for use on its needle-free drug delivery systems. Applicant also contends that INJEX is fanciful in that it is the "incongruous suggestion that a medical drug delivery system is able to function in a needle-free manner to eventually introduce medication into the body that catches the consumer's attention." (Brief, p.5).

A term is merely descriptive within the meaning of Section 2(e)(1) if it immediately conveys information about a characteristic, purpose, function, use or feature of the

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goods or services with which it is being used or is intended to be used. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978). Whether or not a particular term or phrase is merely descriptive is determined not in the abstract, but rather in relation to the goods or services for which registration is sought, the context in which the designation is being used, and the significance the designation is likely to have to the average purchaser as he or she encounters the goods or services bearing the designation, because of the manner in which it is used. See *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). It is not necessary that the term describe all the characteristics or features of the goods or services in order to be merely descriptive; it is sufficient if the term describes one significant attribute thereof. See *In re Pennzoil Products Co.*, 20 USPQ2d 1753 (TTAB 1991). Furthermore, a slight misspelling of a descriptive term which would be perceived by purchasers as the equivalent of the descriptive term is subject to the same proscription of Section 2(e)(1) as the descriptive term itself. See *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986); *In re State Chemical Manufacturing Co.*, 225 USPQ 687 (TTAB 1985) and the cases cited therein.

In the first place, we find the term INJEX to be the phonetic equivalent or close to the phonetic equivalent of the word "injects." Despite applicant's arguments as to the correct pronunciation of the term INJEX, we believe that the average purchaser would be highly likely to pronounce the term very similarly, if not identically, to the word "injects." It is well settled that there is no correct pronunciation of a mark, particular when the mark is a coined term such as applicant's. See Jules Berman & Associates, Inc. v. Consolidated Distilled Products, Inc., 202 USPQ 67 (TTAB 1979). Thus, we can not agree that purchasers would make the distinctions in pronunciation that applicant is advocating. Moreover, the slight misspelling of the word "injects" as INJEX would not detract from the descriptive significance of the term. We are convinced that purchasers would perceive applicant's mark INJEX as the equivalent of the word "injects."

As the equivalent of the word "injects," the term INJEX is merely descriptive of applicant's drug injection system. Even the dictionary definitions of the word "inject" submitted by applicant do not eliminate the possibility of an injection by means other than a needle or syringe. Applicant's identification of its goods make it clear that this is an injection system using "needle-free injectors."

The drug delivery may be done subcutaneously, but the delivery still falls within the definition of "injects," or an "injection," in that the drug is introduced into a body part. The injector "injects" the drug; the remainder of the components of applicant's delivery system function as part of this injection system. As such, INJEX is merely descriptive of a function or purpose of applicant's drug delivery system.

Applicant's argument as to the incongruity of using the term INJEX with a needle-free drug delivery system is to no avail. While one may question why applicant wishes to draw purchasers' attention by use of the term INJEX for a system which is needle-free, the fact remains that this is a form of injection system and the term INJEX does no more than convey the information to purchasers that an injection can be achieved by means of the system. The descriptive significance of the term is readily apparent.

Accordingly, we find the term INJEX would be merely descriptive if used in connection with applicant's needle-free medical drug delivery system.

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

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