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

Paper No. 9  
PTH

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Photo Access Corporation

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Serial No. 75/616,258

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Christopher J. Palermo of McDermott, Will & Emery for Photo Access Corporation.

Caroline Fong Weimer, Trademark Examining Attorney, Law Office 113 (Odette Bonnet, Acting Managing Attorney).

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Before Simms, Hairston and Drost, Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

An application has been filed by Photo Access Corporation to register the mark PHOTOCHIP for "electronic integrated circuits that provide image processing functions."<sup>1</sup>

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<sup>1</sup> Serial No. 75/616,258, filed January 4, 1999, alleging a bona fide intention to use the mark in commerce.

The Trademark Examining Attorney has 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, if applied to applicant's goods, would be merely descriptive of them.

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney have filed briefs in the case.

The Examining Attorney maintains that "chip" is the generic name for applicant's electronic integrated circuits and that the mark PHOTOCHIP, when applied to these goods, merely describes the function of the goods, which is to produce photos. In this connection, the Examining Attorney submitted an excerpt from The American Heritage Dictionary of the English Language (3d. ed.) 1992 wherein "chip" is defined as "an integrated circuit." In addition, she submitted an excerpt from Webopedia, an on-line encyclopedia, wherein digital photography is described as:

The art and science of producing and manipulating digital photographs - photographs that are represented as bit maps. Digital photographs can be produced in a number of ways:

- Directly with a digital camera
- By capturing a frame from a video
- By scanning a conventional photograph

Once a photograph is in digital format, you can apply a wide variety of special effects to it

with image enhancing software.<sup>2</sup>

The Examining Attorney also conducted a search of the NEXIS data base for stories containing the words "digital cameras" and/or "digital images" and "photo." The following are representative of the stories which were retrieved:

The ePhoto CL30 Klik! digital camera is ideal for those digital camera users looking to take unlimited digital photos . . . .  
(Imaging Update, November 1999); and

Among prototypes demonstrated in 8 days of Telecom '99 was visual communicator developed by Motorola that integrates wireless phone and digital camera, allowing users to e-mail still photos . . . .  
(Communications Daily, October 18, 1999).

Applicant, on the other hand, contends that the matter sought to be registered is not merely descriptive because it does not directly convey information about applicant's particular goods. Rather, applicant argues, the mark is just suggestive. According to applicant, its electronic integrated circuits do not "take photographs" in the conventional sense, but instead provide digital

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<sup>2</sup> This encyclopedia entry accompanied the Examining Attorney's appeal brief. Although evidence furnished after an appeal is technically untimely, pursuant to the Examining Attorney's request, we take judicial notice of the entry. *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 213 USPQ 594 (TTAB 1982), aff'd, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

manipulation of image data after an image is formed by an optical sensor. Applicant argues that, even if, as the Examining Attorney maintains, the term photo is considered to describe a digital image, such term does not describe image processing functions that are applied to digital images. Further, applicant notes that the Examining Attorney has failed to submit any evidence of use of the matter sought to be registered in a descriptive manner.

It is well settled that a term is considered to be merely descriptive of goods, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes an ingredient, quality, characteristic or feature thereof or if it directly conveys information regarding the nature, function, purpose or use of the goods. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or idea about them. Moreover, whether a term is merely descriptive is determined not in the abstract but in relation to the goods for which registration is sought. In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979).

The dictionary listing for "chip" shows the term to be synonymous with integrated circuit. Moreover, the excerpts retrieved from the NEXIS database show that the images captured and stored in digital cameras are referred to as photographs or "photos."

When the two descriptive words PHOTO and CHIP are combined in the mark PHOTOCHIP, we agree with the Examining Attorney that the mark as a whole is merely descriptive of "electronic integrated circuits that provide image processing functions." That is, the relevant purchasers seeing this mark in connection with the goods will immediately understand that the goods are integrated circuits or chips for use in processing photos. See e.g., *In re Dodd International, Inc.*, 222 USPQ 268 (TTAB 1983) [FILTER BEADS is merely descriptive of gravel pack material to increase fracture conductivity of sand for increasing production from oil and gas reserves].

The fact that applicant's integrated circuits do not take photographs in the conventional sense is of no moment. It is clear from applicant's identification of goods that its integrated circuits "provide image processing functions" and the evidence submitted by the Examining Attorney establishes that the images captured by digital cameras are referred to as "photos."

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Finally, it is not necessary that a designation be in common usage in the particular industry in order for it to be merely descriptive. In re National Shooting Sports Foundation, Inc., 219 USPQ 1018, 1020 (TTAB 1983).

**Decision:** The refusal to register is affirmed.