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Paper No.13
RFC

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Underground Systems, Inc.

Serial No. 75/639,325

Marilyn Matthes Brogan of Frommer Lawrence & Haug LLP for
Underground Systems, Inc.

M. Catherine Faint, Trademark Examining Attorney, Law
Office 103 (Michael Hamilton, Managing Attorney).

Before Simms, Cissel and Bucher, Administrative Trademark
Judges.

Opinion by Cissel, Administrative Trademark Judge:

On February 9, 1999, applicant filed the above-
identified application to register the mark "MULTIGAS" on
the Principal Register for "sensors and analyzers for
testing the presence and measuring the concentration of
gases," in Class 9. The application was based on
applicant's assertion that it possessed a bona fide
intention to use the mark in commerce on these goods.

The Examining Attorney refused registration under Section 2(e)(1) of the Lanham Act, 15 U.S.C. Section 1052(d), on the ground that the mark applicant seeks to register is merely descriptive of the goods identified in the application. She included dictionary definitions¹ of "multi" as a prefix meaning "many; much; multiple"; and of "gas" as "a substance in the gaseous state." She concluded that the mark "MULTIGAS" is merely descriptive of sensors and analyzers for testing the presence and measuring the concentration of gases because it identifies a feature or characteristic of the goods, namely that they can sense and analyze multiple gases.

Responsive to the refusal of registration, applicant presented argument that the mark is a coined word which is suggestive, rather than merely descriptive, of the goods set forth in the application because "a certain degree of thought or imagination is required to come to any conclusion about Applicant's sensors and analyzers when presented with the MULTIGAS mark." No evidence in support of this conclusion was presented.

The Examining Attorney was not persuaded by applicant's arguments, and the refusal to register was made

¹ The American Heritage Dictionary of the English Language, third edition (1992), Houghton Mifflin Co., (electronic version).

final by the second Office Action. Attached to the final refusal were seven excerpts from published articles retrieved from the Nexis database. In each excerpt, the term "multigas" is used to describe gas sensors and analyzers. Examples include the following:

They are compatible with a variety of commercially available liquid and gas instruments, including multigas photo acoustic infrared analyzers, electromechanical sensors, and mass spectrometers for maximum flexibility in measuring a variety of compounds and concentration levels.

Also under development and expected to be available in mid-1998 is a multigas analyzer that uses a series of semiconductor-based microsensors to detect hydrogen, CO₂, acetylene, and ethylene as they diffuse into a sensor chamber immersed in transformer oil.

Multigas analyzer is capable of measuring HCL, SO₂, NO_x, CO, CO₂, HC, CH₄, H₂O, N₂O, and O₂(with optional built-in zirconia sensor).

The device is available as a single point monitor, a multipoint monitor, or is part of a multipoint, multigas monitoring system.

The alliance hopes to develop reliable, compact and highly sensitive multigas sensors at a lower cost than the current continuous emissions monitors.

and

Neotronics N.A. Inc.'s Multigas is a certified intrinsically safe analyzer designed for continuous monitoring and analysis of oxygen, carbon monoxide and methane in underground, ambient monitoring, and in combustion applications.

The Examining Attorney took the position that this evidence establishes conclusively that prospective purchasers of these products are likely to understand the term sought to be registered as a description of the capability of these devices to sense and analyze multiple types of gases.

Responsive to the final refusal to register, along with a Notice of Appeal, applicant filed a request for reconsideration. Applicant made the apparently contradictory arguments that the mark is at once suggestive of its goods, and, at the same time, that applicant "chose the designation MULTIGAS because it had an attractive sound and appearance and, in applicant's view, is arbitrary and distinctive as applied to its goods." Submitted with the request for reconsideration were copies of several unpublished decisions of the Board, as well as an advertisement for applicant's product.

The Examining Attorney was not persuaded by applicant's reconsideration request, the final refusal to register was maintained, and both applicant and the Examining Attorney filed briefs on appeal. Applicant did not request an oral hearing before the Board.

The sole issue before the Board in this appeal is whether Section 2(e)(1) of Lanham Act precludes registration

of the term "MULTIGAS" in connection with sensors and analyzers for testing the presence and measuring the concentration of gases. Based on careful consideration of the record in this application, the arguments presented by applicant and the Examining Attorney and the relevant legal precedent on this issue, we hold that the term applicant seeks to register is merely descriptive of the goods specified in the application.

It is well settled that a term is merely descriptive of goods within the meaning of Section 2(e)(1) of the Act if it immediately and forthwith conveys information with regard to an ingredient, quality, characteristic, function, feature, purpose or use of the relevant goods. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); In re Bed & Breakfast Registry, 791 F.2d 157, 229 USPQ 818 (Fed. Cir. 1986); In re Bright-Crest, Ltd., 204 USPQ 591 (TTAB 1979). Whether a term is merely descriptive must be determined in relation to the identified goods, rather than in the abstract. In re Omaha National Corp., 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987). The test, therefore, is not whether from consideration of only the mark, one could determine or speculate what the goods are. Instead, the issue is whether the mark would inform one who knows what the goods are about a particular feature,

characteristic, purpose or intended use of the goods. It is not necessary that a term describe all of the purposes, functions, characteristics or features of the goods in order to be merely descriptive of them. It is enough if the term describes one significant attribute of the goods. In re H.U.D.D.L.E., 216 USPQ 358 (TTAB 1982); In re MBAssociates, 180 USPQ 338 (TTAB 1973).

In the case at hand, the dictionary definitions and excerpts from publications submitted by the Examining Attorney, as well as the sales brochure submitted by applicant, make it abundantly clear that "MULTIGAS" is descriptive of applicant's sensors and analyzers for testing the presence and measuring the concentration of gases because the sensors and analyzers test for multiple gases. No thought, imagination or mental gymnastics would be required for potential purchasers of these goods to understand from the mark "MULTIGAS" that a significant feature or characteristic of the goods is their ability to sense and analyze multiple gases.

Applicant's arguments to the contrary are not well taken. There is no logical or evidentiary support for applicant's contention that its mark is suggestive, much less that it is arbitrary in connection with the goods set forth in the application. Applicant cannot distinguish the

descriptive uses shown by the excerpted articles submitted by the Examining Attorney. In fact, applicant itself (in its argument in its brief, p.3) characterizes its products as alternatives to "standard existing commercial multiple gas measuring units."

As the Examining Attorney points out in her brief, the copies of unpublished decisions submitted by applicant are not proper for our consideration. TBMP Section 101.03. Moreover, even if we were to have considered applicant's inappropriate submissions, our decision in this case would not have changed. Nothing in any of those cases is inconsistent with our finding here that the record in the instant case establishes that in connection with the goods specified in the application, the term sought to be registered would immediately convey to prospective purchasers information about a significant characteristic or feature of the goods.

Accordingly, for the reasons set forth above, the refusal to register is affirmed.

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