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Paper No. 12
HWR

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Indspec Chemical Corporation

Serial No. 75/706,370

Diane R. Meyers of Eckert Seamans Cherin & Mellott, LLC
for Indspec Chemical Corporation.

Jennifer Stiver Chicoski, Trademark Examining Attorney, Law
Office 115 (Tomas V. Vlcek, Managing Attorney).

Before Cissel, Wendel, and Rogers, Administrative Trademark
Judges.

Opinion by Wendel, Administrative Trademark Judge:

Indspec Chemical Corporation has filed an application
to register the mark HPR for "chemicals, namely aromatic
diols for use as polymer components or additives in
manufacturing."¹

Registration has been finally refused under Section
2(e)(1) on the ground that the mark is merely descriptive
when used in connection with applicant's goods. The

¹ Serial No. 75/706,370, filed May 14, 1999, claiming a first use
date and a first use in commerce date of January 6, 1998.

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refusal has been appealed and both applicant and the Examining Attorney have filed briefs. An oral hearing was not requested.

The Examining Attorney maintains that applicant's mark HPR is merely an abbreviation or acronym for a common commercial name for applicant's goods. She notes that the goods are referred to on the specimens by the chemical name of "resorcinol di(beta-hydroxypropyl)ether" and elsewhere are referred to as "hydroxypropyl ether of resorcinol" or "bis(hydroxpropoxylated) ether of resorcinol." The term HPR, the Examining Attorney argues, is simply a shorthand abbreviation which has been used in technical journals and writings for purposes of simplification. As such, she maintains that the term HPR does not identify applicant as the source of the goods, but rather identifies the material itself.

In support of her position, the Examining Attorney has made of record several articles from the NEXIS database, two of which are highly pertinent. In the first article, which is directed to the work of applicant in the field of aromatic diols, the following uses of HPR are noted:

Indspec Chemical Corp., manufacturer of the materials, says it has also expanded this family of aromatic diol extenders to include other diols which

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are liquids: hydroxypropyl ether of resorcinol (HPR), liquid HER... and the hydroxypropyl ethyl ether of resorcinol (HPER). ...

Cast elastomers made using polyester prepolymer extended with HPR were softer and showed lower tensile, tear and high compression set properties compared to HER-based elastomers. The HPR-based elastomers also showed very low rebound properties. Cast films are much clearer and ... compared to HER or HQEE-made elastomers.

Urethanes Technology (February 1, 1999).

In the second article, which contains a contact address for one of the authors at Indspec, HPR is used as follows:

HPR-EXTENDED CAST ELASTOMERS

HPR is the bis (hydroxypropoxylated) ether of Resorcinol. ...

Although the structure of HPR is similar to HER and HQEE, the presence of methyl groups on the chain has a pronounced effect on the cured elastomer properties.

In the case of cast urethanes made using polyester prepolymers extended with HPR, the elastomeric materials were found to be softer ... Interestingly, HPR-based elastomers showed very low rebound properties and were nearly transparent unlike the opaque HER or HQEE-made elastomers. ...

As well as developing HPR, Indspec Chemicals is also formulating a new family of Resorcinol-based liquid diols that is expected to bring unique properties to polyurethane applications. By controlling the reaction conditions and co-reactants such as ethylene and propylene carbonates, two new aromatic diols, namely HER (HER-LIQ) and Hydroxyethoxy propoxy ethyl ether of Resorcinol (HPER) have been developed.

Adhesive Technology (March 1, 1999).

Applicant contends that HPR is an arbitrary term being used by applicant to identify its brand of aromatic diols,

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which have several chemical names. Applicant argues that HPR is not merely descriptive in that it does not immediately convey the name of the goods. Insofar as the articles relied upon by the Examining Attorney are concerned, applicant argues that because these articles are about applicant's products, they reflect trademark usage of HPR, in that they show that applicant is the source of these goods. Finally, applicant contends that HPR could stand for any number of chemical products, naming several possibilities.

A term or phrase is merely descriptive within the meaning of Section 2(e)(1) if it immediately conveys information about characteristics, features or qualities of the goods or services with which it is being 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).

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We find the articles made of record by the Examining Attorney, in particular those quoted above, clear evidence that HPR has been adopted by both applicant itself and others in the trade as a shorthand means of referring to an aromatic diol product, namely, resorcinol di(beta-hydroxypropyl)ether. There is no indication anywhere in these articles that HPR is being used in a trademark sense to refer to the source of applicant's goods; instead, HPR is simply being used as an abbreviation or shorthand means of referring to the product itself, in the same manner as other shorthand terms such as HER or HQEE are being used to refer to other products. Clearly, people reading these articles, who presumably would be potential customers for these products, upon seeing the manner in which HPR is being used, would view HPR as referring to the particular material, rather than indicating the source thereof. HPR merely conveys information as to the nature of the specific product, and as such, is merely descriptive. Although applicant argues that it should not be penalized for the failure of others to acknowledge its trademark rights, applicant itself has used HPR in the same descriptive manner. Cf. *In re Pharmaceutical Innovations, Inc.*, 217 USPQ 365 (TTAB 1983)(evidence of the context in which the

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mark is used in advertising materials is probative of the reaction of prospective purchasers to the mark).

While the Examining Attorney has made references to HPR being generic in that it is an abbreviation for a common name for the goods, the issue of genericness is not before us. The only question is mere descriptiveness. Whether or not applicant's goods have more than one common name and whether or not HPR might be viewed as an acronym for any one of these names is irrelevant. The fact remains that HPR is being used in a descriptive manner to refer to the nature of the goods and would be perceived as such by prospective purchasers.

Finally, applicant's argument that HPR could equally well refer to other chemical compounds is to no avail. As pointed out above, the letters HPR are not considered in the abstract, but in relation to the particular goods with which they are being used. Here, HPR is being used in connection with aromatic diols, and the evidence shows that HPR is being used in a descriptive manner as a shorthand means of referring to a particular diol.

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

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