

THIS DISPOSITION IS  
NOT  
CITABLE AS PRECEDENT  
OF THE TTAB

Hearing:  
March 12, 2002

**Mailed: July 11, 2002**  
Paper No. 15  
CEW

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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In re RENCO Encoders Inc.  
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Serial No. 75/586,073  
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David Toren and Shifra N. Malina of Brown & Wood for  
RENCO Encoders Inc.

M. Catherine Faint, Trademark Examining Attorney, Law  
Office 103 (Michael Hamilton, Managing Attorney).<sup>1</sup>  
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Before Simms, Seeherman and Walters, Administrative  
Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

RENCO Encoders Inc. has filed an application to  
register the mark DYNAMIC RESOLUTION for "longitudinal  
and angle measuring apparatus, namely, linear, rotary and

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<sup>1</sup> Trademark Examining Attorney Gina Fink appeared and  
argued this case at the hearing.

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angle encoders; electrical controllers for the  
aforementioned goods.”<sup>2</sup>

The Trademark Examining Attorney has issued a final refusal to register, under Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1), on the ground that applicant’s mark is merely descriptive of its goods.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, and an oral hearing was held. We affirm the refusal to register.

The Examining Attorney contends that “dynamic resolution” is a unit of measurement; that applicant’s goods are used to take measurements; and that, as such, the term is merely descriptive of applicant’s goods, encoders that use electrical controllers.

The Examining Attorney submitted definitions of “dynamic,” from two dictionaries, as “marked by usually continuous and productive activity or change”<sup>3</sup>; and as “*adj.* - 1.a. of or relating to energy or to objects in motion. b. of or relating to the study of dynamics. 2. Characterized by continuous change, activity, or progress

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<sup>2</sup> Serial No. 75/586,073, in International Class 9, filed November 10, 1998, based on an allegation of a bona fide intention to use the mark in commerce.

<sup>3</sup> *Merriam-Webster’s Online Collegiate Dictionary*, [www.m-w.com](http://www.m-w.com), January 8, 2001.

...<sup>4</sup> We take judicial notice of the definition, in part, of the noun "dynamics" in the latter dictionary as "the study of the relationship between motion and the forces affecting motion."

The Examining Attorney also submitted an excerpt entitled "Glossary of Encoder Terms" from applicant's Internet web site wherein the following definitions appear:

*resolution* - measuring step, smallest digital unit of measuring value;

*encoder* - apparatus consisting of a measuring standard and a scanning unit (transducer, sensor);

*angle encoder* - angle measuring device, converts the shaft rotation angle into electrical signals (can be incremental or absolute);

*dynamic scanning* - scanning method by which two alternating signals of constant amplitude and slightly different frequencies are generated and where the phase between the two signals represents the measuring value;

*static scanning* - scanning method which generates periodic signals during movement; the signal periods and fractions thereof correspond to a definite linear or angular displacement.

The Examining Attorney submitted numerous third-party registrations for marks that include the disclaimed

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<sup>4</sup> *The American Heritage Dictionary of the English Language*, 3<sup>rd</sup> ed., 1992.

term "dynamic" for various electronics products<sup>5</sup>; representative excerpts of articles from the Lexis/Nexis database which include use of the term "dynamic resolution"; and excerpts from patents.<sup>6</sup>

The following are examples of the Lexis/Nexis excerpts:

An article from the September 1998 issue of *Quality* is headlined "Noncontact measurement: Can laser triangulation help you?" The excerpt states in pertinent part: "It is expected that the use of noncontact sensors in engineered systems will increase since process control is now emphasized as much as final inspection. ... Confused by the laser jargon? Here are definitions to help you ... **dynamic resolution** - the smallest detectable change in height when the sensor is moved horizontally over a NIST-traceable step gage of known height."

An article from the September 1990 issue of *Microwave Journal* is headlined "Using digitizing signal analyzers for frequency domain analysis; analysis of microwave signals." The excerpt states in pertinent part: How windowing impacts the measurement attributes, frequency resolution, **dynamic resolution** and accuracy depends on the filtering characteristics of the window."

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<sup>5</sup> Those third-party registrations for non-electronics goods are not relevant and have not been considered.

<sup>6</sup> A number of the excerpted articles and patents pertain to photographic imaging and other types of visual imaging. The term "dynamic resolution" appears to have a distinct meaning in relation to visual imaging. No connection between this use of the term and the field of goods of applicant is established in the record before us. Therefore, such evidence has not been considered to be relevant.

Of the patents submitted, two appear to relate to electronics and contain the following statements:

Universal garage door opener (No. 6,072,404): ...  
The algorithm for the unknown decoding process is therefore a **dynamic resolution** process in which the system resolution is calculated based upon the minimum pulse width of the transmission signal to be sampled. ...

Power controller and method of operating an electrical smoking system (No. 6,040,560): ...  
Accordingly, the digital executions of the logic circuit 195' for the **dynamic resolution** of t[off](or duty cycle) can be undertaken as described above using given values of target power and phase duration or alternatively, with given values of total energy perphase, together with the set of given phase durations.

Applicant argues that there is no dictionary definition of the term "dynamic resolution"; that "dynamic" has many meanings; that one of the meanings of "dynamic" is "movement and energy, whereas the definition of "resolution" is "firmness, solving and courage," and that these two contradictory terms form a unique "oxymoronic trademark." Applicant contends that the patents and article excerpts submitted by the Examining Attorney are inapposite because they do not pertain to location encoders.

During the oral hearing of this case, applicant's counsel conceded that "resolution" is a term of measurement in relation to these goods; that "high

resolution" and "coarse resolution" are both terms used in this field; clarified that measurement is a function of applicant's goods; and that applicant's goods obtain measurements at discrete intervals of time. Also at the hearing, the Examining Attorney described the goods as operating by measuring the time between alternating signals and applicant's counsel did not dispute this statement.

The test for determining whether a mark is merely descriptive is whether it immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used, or intended to be used. *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986); *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). It is not necessary, in order to find a mark merely descriptive, that the mark describe each feature of the goods or services, only that it describe a single, significant quality, feature, etc. *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985). Further, it is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in

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which the mark is used, and the impact that it is likely to make on the average purchaser of such goods or services. *In re Recovery*, 196 USPQ 830 (TTAB 1977).

We turn to a consideration of the evidence and note that these are clearly highly technical goods and, because this is an intent-to-use application, we do not have specimens to provide additional information as to the specifics of applicant's goods.<sup>7</sup> The excerpts of articles and patents submitted by the Examining Attorney demonstrate that the term "dynamic resolution" is a unitary term having a recognized meaning in the electronics field. Thus, applicant's attempts to apply separate definitions of "dynamic" and "resolution" to conclude that "dynamic resolution" is an oxymoron is disingenuous and unpersuasive.

Further, it is very clear from this record, particularly applicant's own glossary from its Internet web site, that the term "resolution" is a term of measurement in this field of goods and that encoders operate by taking measurements of various electronic

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<sup>7</sup> Oral hearings are valuable, in part, because such hearings allow the Board to question an applicant's attorney about the nature of the goods or services involved. However, in this case, applicant's attorney was inappropriately vague and she was unable to answer questions about the specific nature of the goods.

signals. Therefore, we conclude that "resolution" is a merely descriptive term in connection with applicant's goods.

It is also clear from the above-quoted sections of applicant's glossary that an encoder includes a scanning unit to obtain measurements and that the term "dynamic" is used to describe a type of scanning, in juxtaposition to "static scanning." The term "dynamic" is used in this context in its relevant ordinary dictionary sense, *i.e.*, "marked by usually continuous and productive activity or change." Used in this same sense in combination with the term "resolution," the term "dynamic resolution" will be understood by relevant consumers in this field as describing a significant aspect of the measurement process. This conclusion is supported by the uses of the term "dynamic resolution" in the other electronics-related articles and patent excerpts of record. We are not convinced otherwise by applicant's arguments to the contrary.

In conclusion, when applied to applicant's goods, the term DYNAMIC RESOLUTION immediately describes, without conjecture or speculation, a significant feature or function of applicant's goods. Nothing requires the exercise of imagination, cogitation, mental processing or

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gathering of further information in order for purchasers of and prospective customers for applicant's goods to readily perceive the merely descriptive significance of the term DYNAMIC RESOLUTION as it pertains to applicant's goods.

*Decision:* The refusal under Section 2(e)(1) of the Act is affirmed.