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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Global Locate, Inc.

Serial No. 76/118,575

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for Global Locate, Inc.

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104 (Sidney I. Moskowitz, Managing Attorney).

Before Seeherman, Hanak and Hairston, Administrative
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Global Locate, Inc. has appealed from the final refusal to register the mark GLOBAL LOCATE for "signal processing integrated circuits that interact with a global positioning system and telecommunications equipment—namely, cellular telephones and radio pagers—to identify the

geographical position of persons or objects.¹ Registration has been refused pursuant to 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 the goods.

Applicant and the Examining Attorney have filed briefs.² An oral hearing was not requested.

It is the Examining Attorney's position that GLOBAL LOCATE is merely descriptive because "the function or use of the applicant's 'signal processing integrated circuits that interact with a global positioning system and telecommunications equipment' is to locate 'the geographic position of persons or objects' wherever in the world they may be." Brief, p. 3. In support of this position the Examining Attorney has submitted dictionary definitions of "global" ("of, relating to, or involving the entire earth; worldwide") and "locate" ("to determine or specify the position or limits of; *locate Albany on the map; managed to*

¹ Application Serial No. 76/118,575, filed August 29, 2000, and asserting a bona fide intention to use the mark in commerce.

² With her brief the Examining Attorney submitted a copy of the exhibits she had previously made of record with her first Office action. It is not necessary to file duplicate copies of exhibits, as the Board reviews the entire file, not just the briefs, when rendering a decision. If there are excerpts from articles which the Examining Attorney (or applicant) believes are particularly useful, and wishes to bring them to the Board's attention, it is preferable to reference the relevant portions of the articles in the brief, rather than submit an additional copy of the entire article.

locate the site of the old artists' colony.)³ The Examining Attorney has also submitted evidence from patents and the NEXIS database which show that terms such as "global locators," "global locating device," and "location based products" are used in the relevant industry:

Headline: Users of global locators face Saturday deadline

But Bottazzi was unaware of a looming y2K-like deadline that could affect the performance of his GPS receiver. After 8 p.m. Saturday, some receivers, mainly older models, may not work....

"Asbury Park Press," August 16, 1999

Global locating device raising privacy issues

...on your cellular phone, the operator will be able to quickly narrow in on your location, no matter where you are.

"Broward Daily Business Review," July 18, 2000

Headline: Trimble Searching Markets for Global Location Devices

After GPS capabilities were unveiled during the war, commercial applications developed, including use by hikers, boaters, cyclists and explorers.

"The Business Journal-San Jose," June 15, 1992

A global locating device, such as a global position system (GPS) receiver, inputs a user's location into the microprocessor.

Patent No. 6,297,766.

Public safety can benefit tremendously from application of global locating

³ The American Heritage Dictionary of the English Language, 3d ed. © 1992.

technology, if it can be done reliably, accurately and economically. Cell telephones are becoming ubiquitous in the U.S. and around the globe, giving users the ability to place a call, in particular an emergency call....
Patent No. 6,144,336

The Examining Attorney also points to applicant's claim of ownership of Registration No. 2,322,616 for the same mark, GLOBAL LOCATE, for "identifying the geographic position of persons or objects using telecommunication equipment computer chips, computer hardware and computer software." This registration issued on the Supplemental Register, and thus is an acknowledgement by applicant of the descriptiveness of the mark for the services.

Although applicant has cited cases from a variety of circuits for principles of law governing the question of whether a term is merely descriptive, we will set forth those principles promulgated by our primary reviewing court, the Court of Appeals for the Federal Circuit, as well as the Board's own case law. A mark that is merely descriptive is prohibited from registration by Section 2(e)(1) of the Act unless acquired distinctiveness is shown, while a suggestive mark is registrable without such a showing. Whether a given mark is suggestive or merely descriptive depends on whether the mark immediately conveys knowledge of the ingredients, qualities or characteristics

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of the goods [or services] with which it is used, or whether imagination, thought, or perception is required to reach a conclusion on the nature of the goods [or services].

In this case, we find that GLOBAL LOCATE immediately conveys knowledge of a characteristic of applicant's integrated circuits, namely, that the purpose of the circuits "that interact with a global positioning system and telecommunications equipment to identify the geographical position of persons or objects" is to locate persons or objects wherever they may be in the world. As noted, terms such as "global locating" and "global locator" are the normal way in which a global positioning system and related goods are identified, and therefore there is nothing unusual about the terminology or phrase GLOBAL LOCATE when used for goods such as those identified in this application. Moreover, applicant has acknowledged, through its registration on the Supplemental Register, the descriptiveness of this term for services whose purpose is closely related to the purpose of these goods. That is, the registration is to identify the geographic position of persons or objects using telecommunications equipment, computer chips, computer hardware and computer software, and the goods in the application are integrated circuits

that are used "to identify the geographical position of persons or objects." In the same manner that consumers would understand GLOBAL LOCATE to describe the purpose of applicant's services, they will understand the mark to describe the purpose of its goods.

Applicant points to the fact that there are other definitions for the words "global" and "locate" and also that

a potential consumer faced with the term "GLOBAL LOCATE" would not immediately think of the goods of the Applicant, but, might instead think of a product that is used for locating a file in a computer system hard drive, or server, or lateral area network (LAN) as is done in the Computer Sciences field [a reference to the definition of "global" of "Computer Science. Of or relating to an entire program, document, or file."] In another example, a potential consumer might think of a service that will locate a residence for a person or locate a new headquarters or office for a business to another town, state or country. In still another example, a potential consumer faced with the applied for mark might think of a product, program or service to locate a person or information about that person, to locate a business or information about that business, or to locate information in general about a variety of things via the world wide web or the Internet.

Brief, pp. 13-14.

The difficulty with both of these arguments is that they fail to recognize the principle, set forth by the predecessor to our primary reviewing Court and consistently followed by that Court and this Board, that the determination of whether a term is merely descriptive must not be made in the abstract, but in relation to the goods or services for which registration is sought. See, for example, **In re Abcor Development Corp.**, 588 F.2d. 811, 200 USPQ 215 (CCPA 1978); **In re Engineering Systems Corp.**, 2 USPQ2d 1075 (TTAB 1986).

It is clear that in the context of integrated circuits that interact with a global position system to identify the geographical position of persons or objects, the term GLOBAL LOCATE will immediately be understood as describing the function or purpose of the circuits, and that no imagination or thought would be required to reach a conclusion on the nature of the goods.

Applicant also asserts that competitors do not need to use the term GLOBAL LOCATE to describe their products, and points to the NEXIS evidence submitted by the Examining Attorney indicating that other companies use terms other than GLOBAL LOCATE. However, the terms referenced by applicant appear to be trademarks used by competitors, e.g., the TJ1004 integrated circuit, the Navstream single

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chip integrated circuit. The fact that competitors do not use GLOBAL LOCATE as a trademark does not show that it is not a descriptive term, or that they would not find it useful to use the term descriptively. Moreover, given how relatively recently GPS technology has been available for non-military uses, even if applicant were the only company to use the term GLOBAL LOCATE would not be significant. A party is not entitled to exclusive use of a merely descriptive term simply because it is the first to use such term as a trademark. (In saying this, we are aware that this application is based on an intent to use the mark, and as far as this record indicates, applicant has not commenced actual use of the mark.)

Decision: The refusal of registration is affirmed.