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PTH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re ChromTech Ltd

Serial No. 78219790

ChromTech Ltd, pro se.

Leigh Case, Trademark Examining Attorney, Law Office 105
(Thomas G. Howell, Managing Attorney).

Before Hairston, Bucher and Kuhlke, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

An application has been filed by ChromTech Ltd to
register the mark CHIRAL-AGP for "chromatographic column
for scientific laboratory use."¹

Registration has been refused under Section 2(e)(1) of
the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground
that applicant's mark, when applied to the identified

¹ Serial No. 78219790, filed February 27, 2003, alleging a date
of first use anywhere and a date of first use in commerce of June
1989.

goods, is merely descriptive of them. When the examining attorney made the refusal final, applicant filed a notice of appeal. Both applicant and the examining attorney have filed briefs, but an oral hearing was not requested.

The examining attorney maintains that applicant's goods "include a chiral selector, and that 'AGP' means 'alpha-acid glycoprotein'; a component of the goods." (8/19/03 Office action, p. 2). The examining attorney argues that the combination of CHIRAL-AGP therefore merely describes applicant's goods.

In support of the refusal, the examining attorney relies on the following statements from applicant's website:

CHIRAL-AGP (USP chiral column L41)

A chiral HPLC-column for direct resolution of enantiomers

The chiral selector in the CHIRAL-AGP phase is alpha-acid glycoprotein (AGP). This very stable protein has been immobilized onto spherical 5 micrometer silica particles. The protein tolerates high concentrations of organic solvents, high and low pH, and high temperatures. The column is used in the reversed-phase and can be used for direct resolution of enantiomers, without derivation. The CHIRAL-AGP column separates enantiomers of an extremely broad range of drug compounds:

- amines (primary, secondary, tertiary, and quaternary)
- acids (strong and weak)

- nonprotolytes (amides, esters, alcohols, sulphoxides, etc.)

CHIRAL AGP is most likely the column with the broadest applicability of all chiral columns available today.

In addition, the examining attorney submitted printouts of the websites of Advanced Separation Technologies, Inc.; Analytical Sales & Products, Inc.; J.T. Baker; and Bodman Industries, which show that each of these companies offers for sale "Chiral-AGP" columns. The examining attorney also relies upon an excerpt from the online encyclopedia Wikipedia. The excerpt is taken from the entry "Chirality (chemistry)" and states, in relevant part, "In chemistry (especially organic chemistry), a molecule is chiral (and said to have chirality) if its overall structure and overall three-dimensional configuration is always chiral in accordance with the geometric definition (it can't be mapped to its mirror images) regardless of how the molecule is conformed." Further, the examining attorney submitted the results of a search of "agp" from "Acronym Finder" that shows "AGP" is an abbreviation for, inter alia, "alpha-acid glycoprotein." The examining attorney also submitted a printout taken from the "Chromatography Forum" Message Board on the Internet which makes reference to a scientific paper titled: "Transforming chiral liquid chromatography

methodologies into more sensitive liquid chromatography-electrospray ionization mass spectrometry without losing enantioselectivity.”

Applicant, in urging reversal of the refusal to register argues that “[c]hiral is a common word in the chemical nomenclature which can be used in many ways.” Further, applicant contends that AGP is not a standard accepted abbreviation of alpha-acid glycoprotein. Rather, according to applicant, there are many abbreviations for alpha-acid glycoprotein in scientific literature, including AAG, AG, α ; AG and α -GP. According to applicant, authors of scientific articles create their own abbreviations to avoid repeating the term alpha-acid glycoprotein. Thus, it is applicant’s contention that the combined term CHIRAL-AGP is not descriptive of its goods. With respect to the examining attorney’s evidence showing use of CHIRAL-AGP by others, applicant states that it is the only manufacturer of CHIRAL-AGP columns and these companies are distributors of applicant’s goods. Further, applicant contends that the Office has registered three third-party “CHIRAL” marks which are similar to the one sought to be registered by applicant. The marks are CHIRALCEL for chromatography columns, CHIRALBEADS for

chemicals and analyzing chemicals, and CHIRALSELECT for laboratory services.

A term is deemed to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the applicant's goods or services in order to be considered merely descriptive; it is enough that the term describes one significant attribute, function or property of the goods or services. See *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); and *In re MBAssociates*, 180 USPQ 338 (TTAB 1973).

Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services, and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use or intended use. That a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593

(TTAB 1979). It is settled that "[t]he question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods and services are will understand the mark to convey information about them." In re Tower Tech Inc., 64 USPQ2d 1314 (TTAB 2002); see also In re Home Builders Association of Greenville, 18 USPQ2d 1313 (TTAB 1990); and In re American Greetings Corporation, 226 USPQ 365 (TTAB 1985).

Applying these principles in the present case, we find that the mark applicant seeks to register, CHIRAL-AGP, is merely descriptive of the goods identified in the application, "chromatographic columns for scientific laboratory use." It is clear from the evidence of record that "chiral" is a term used in the chromatography field to describe molecules. The encyclopedia excerpt of record supports this conclusion.² Additionally, applicant's website includes the following statement about applicant's chromatographic column: "The chiral selector in the

² In this regard, we also judicially notice the following definition from Hawley's Condensed Chemical Dictionary (2001):

chiral: In chemistry this term describes asymmetric molecules that are mirror images of each other, i.e., they are related like right and left hands. Such molecules are also called enantiomers and are characterized by optical activity.

CHIRAL-AGP phase is alphas-acid glycoprotein (AGP). This very stable protein has been immobilized onto spherical 5 micrometer silica particles." The website of Advanced Separation Technologies, Inc. states the following about the chromatographic columns it sells: "Direct reversed phase resolution of chiral molecules." We find therefore that the term CHIRAL merely describes a feature or characteristic of applicant's goods in that they are chiral chromatographic columns.

Likewise, we find that AGP is merely descriptive of applicant's goods. It is clear from the statements at applicant's website that alphas-acid glycoprotein is a component of applicant's goods. The acronym entry shows that AGP is a shortened form or abbreviation for alphas-acid glycoprotein. That there may be other abbreviations or symbols for alphas-acid glycoprotein is of no moment. The fact remains that AGP is one of such abbreviations and, indeed on this record, appears to be the most frequently used abbreviation for alphas-acid glycoprotein in the field of chromatography. Thus, AGP, considered in the context of applicant's goods, conveys that the chiral selector in such goods is alphas-acid glycoprotein.

The next question is whether the term CHIRAL-AGP considered in its entirety is merely descriptive. When the

terms CHIRAL and AGP are joined with a hyphen, the resulting term CHIRAL-AGP immediately conveys to the relevant purchasers that applicant's goods are chiral alpha-acid glycoprotein columns. Nothing requires the exercise of imagination, cogitation or mental processing or gathering of further information in order for such purchasers to readily perceive the merely descriptive significance of the term CHIRAL-AGP as it pertains to applicant's goods.

Insofar as the third-party registrations are concerned, as often noted by the Board, each case must be decided on its own merits. The determination of registrability of particular marks by the Trademark Examining Groups cannot control the result in another case involving a different mark. In *re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) ["Even if some prior registrations had some characteristics similar to [applicant's application], the PTO's allowance of such prior registrations does not bind the Board or this court."].

Finally, with respect to applicant's argument that it is the only manufacturer of CHIRAL-AGP columns, it is well settled that the fact that an applicant may be the first or only user of a term does not justify registration of the

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term where the only significance projected by the term is merely descriptive, as we find to be the case here. See *In re National Shooting Sports Foundation, Inc.*, 219 USPQ 1018 (TTAB 1983).

In sum, we find that CHIRAL-AGP directly and immediately informs the purchasers of applicant's chromatography columns that they are chiral alpha-acid glycoprotein columns.

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