

THIS DISPOSITION IS
NOT CITABLE AS
PRECEDENT OF THE
TTAB

Mailed:
9 March 06

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Manhattan Scientifics, Inc.

Serial No. 75809667

James C. Wray, Esq. for Manhattan Scientifics, Inc.

Wendy B. Goodman, Trademark Examining Attorney, Law Office
103 (Michael Hamilton, Managing Attorney).

Before Walters, Rogers, and Drost, Administrative Trademark
Judges.

Opinion by Drost, Administrative Trademark Judge:

On September 24, 1999, applicant Manhattan
Scientifics, Inc. applied to register the mark MICROFUEL,
in typed or standard character form, on the Principal
Register for goods ultimately identified as "fuel cells and
fuel cell tanks for producing electrical energy; chemical
fuel for fuel cells provided as a unit with the foregoing"
in Class 9. The application (Serial No. 75809667) is based

on an allegation of applicant's bona fide intention to use the mark in commerce.

The examining attorney¹ refused registration on the ground that the mark was merely descriptive under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), because:

MICRO refers to something that is "very small." FUEL is "a material used to produce heat or power by burning" (*The Merriam-Webster's® Collegiate Dictionary, Tenth Edition*, copyright © 1993). As the evidence attached to the First Office Action supports, "micro-fuel" is the source fuel for an electrochemical process involving hydrogen and oxygen. The process takes place in a "fuel cell" which operates similar to a battery. A "fuel cell" is "an electrochemical cell in which the energy of a reaction between a fuel, such as liquid hydrogen, and an oxidant, such as liquid oxygen, is converted directly and continuously into electrical energy." (*The American Heritage® Dictionary of the English Language, Fourth Edition* copyright © 2000).

Examining Attorney's Brief at 3.²

Applicant argues that nowhere "in the applicant's mark do the words 'fuel' and 'cell' appear together. In fact, the word 'cell' does not appear at all. According to the Examining Attorney's submitted definitions, at most the Applicant's mark would mean a 'very small material used to

¹ The current examining attorney was not the original examining attorney in this case.

² We grant the examining attorney's request that we take judicial notice of the referenced dictionary definitions. University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., 213 USPQ 594, 596 (TTAB 1982), aff'd, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

produce heat or power by burning.’ The Applicant’s goods are fuel cells and related fuel.” Reply Brief at 1. Applicant also maintains that “MICROFUEL does not define the goods or services and is not a key element.” Brief at 4.

When the examining attorney made the refusal final, applicant appealed to this board.

In cases involving the issue of descriptiveness, we look to see whether the mark immediately conveys knowledge of the ingredients, qualities, or characteristics of the goods or services. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); In re Quik-Print Copy Shops, Inc., 616 F.2d 523, 205 USPQ 505, 507 (CCPA 1980); In re MBNA America Bank N.A., 340 F.3d 1328, 67 USPQ2d 1778, 1780 (Fed. Cir. 2003) (A “mark is merely descriptive if the ultimate consumers immediately associate it with a quality or characteristic of the product or service”).

Descriptiveness of a mark is not considered in the abstract, but in relation to the particular goods or services for which registration is sought. In re Abcor Dev. Corp., 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978).

While we consider the mark in its entirety, it “is perfectly acceptable to separate a compound mark and discuss the implications of each part thereof ... provided

that the ultimate determination is made on the basis of the mark in its entirety." In re Hester Industries, Inc., 230 USPQ 797, 798 n.5 (TTAB 1986).

We begin our discussion by reviewing the evidence that has been submitted on the issue of descriptiveness. The evidence consists of numerous NEXIS and Internet articles. A sample of the articles (emphasis added) follows.

But while solar cells may extend battery life for today's gadgets, tomorrow's power guzzlers will need more energy than batteries can provide. That's where **micro fuel** cells hold promise, Bradford said.

Fuel cells work by attracting a fuel in this case, methanol to an electrically charged membrane where it reacts with a catalyst to release power in the form of electrons.

Fuel cells will provide many times more power than batteries of equivalent volume and can completely eliminate the need to plug in, said Chris Dyer, an entrepreneur who is also editor of the Journal of Power Sources, a scholarly publication.

"When you run out of energy, you should be able to just pop in a new fuel cartridge and be off again," Dyer said. But that's proven easier said than done.

Micro-fuel cell designers have favored methanol as a fuel because it's readily available and, being liquid, easier to store than hydrogen gas. But methanol has to be mixed with water for cells to work. And managing this mixture requires pipes, pumps, insulation and venting so that excess water evaporates but the device being fueled doesn't get too hot.

"You are making what is essentially a chemical engineering plant into something the size of a deck of cards," Dyer said...

Its Mobion **micro fuel** cell uses a special membrane that recycles waste water, allowing the manufacturer to pack pure methanol, and thus more power, into its fuel cartridges.
Seattle Times, 19 July 2004.

MTI MicroFuel Cells, a subsidiary of Mechanical Technology Inc. has received the 2004 Frost & Sullivan Technology Innovation Award for its new **micro fuel** cell technology.

Times Union (Albany, New York), 20 October 2004.

His goal is to develop and produce analog integrated circuits used with **micro fuel** cells - devices that will provide long-lasting power for cell phones to laptops.

East Valley Tribune (Mesa, Arizona), 04 September 2004.

By 2012, **micro fuel**-cell technology is expected to power 13.5 percent of laptops.

Seattle Times, 20 August 2004.

In some fashion, fuel cells are simply chemically advanced batteries, although instead of being recharged or thrown away, they are simply refueled. But hydrogen is a highly efficient means of storing and transmitting energy and so "**micro fuel** cells" are looked at as a likely replacement for batteries in consumer electronics. Already these **micro-fuel** cells are capable of powering laptops for more than 10 hours of continuous use - technology development is under way to make such fuel cells hot swappable.

Boulder County Business Report, 15 April 2004.

As for Solicore, it's just starting to mass produce products. And it faces competition in the developing market for new batteries, possibly including **micro-fuel** cell technologies.

Morning Call (Allentown, Pennsylvania), 09 November 2003.

Micro-fuel cells would be a fantastic replacement for the myriad disposable and rechargeable batteries that inhabit our cellphones, digital organizers, laptops, tablet PCs and digital cameras.

Hartford Courant, 09 October 2003.

Unlike conventional batteries that store electricity, **micro fuel** cells generate electricity through a chemical reaction between oxygen and a fuel such as hydrogen or methanol. The cells continue to produce electricity as long [as] there is fuel.

San Francisco Chronicle, 01 September 2003.

Currently, Manhattan Scientifics is working on developing **micro-fuel** cell technology and holographic media.

Albuquerque Tribune, 12 August 1999.

Manhattan Scientifics said that it has come up with a "pre-prototype" **micro fuel** cell that could be used to power a cell phone.

New York Daily News, 31 December 1998.

The examining attorney also submitted several Internet stories concerning "micro fuel cells," including some from applicant's website. One example is applicant's press release dated 21 January 1998, that is entitled: "Los Alamos Physicist Creates New Energy Source for Cellular Phones, Other Portable Electronics." The body of the press release refers to "Today's Los Alamos ceremony marks the formal acceptance of the first of Manhattan Scientifics' delivery of the first \$500,000 to Energy Related Devices, as well as a substantial equity interest of Manhattan Scientifics' equity to Hockaday, in exchange for the intellectual property relating to micro fuel cell technology."

Another press release from applicant is entitled "Manhattan Scientifics Completes Fuel Cell Powered Phone Call. Device Converts Alcohol to Electricity." The press release reports that "Hockaday has successfully made a cellular telephone call using a phone powered by an alcohol

fueled pre-prototype micro fuel cell.”³ The press release also refers to: “The successful demonstration of the pre-prototype marks another significant milestone in the development of the micro-fuel cell... For commercial use, the tiny energy source will be engineered to be smaller and lighter than a conventional rechargeable battery.”

An article from www.designtechnica.com is entitled “Micro Fuel Cells to Gain in Popularity.” The article goes on to report that: “The hype surrounding micro fuel cells is understandable. Their ability to deliver more energy per volume weight compared to existing lithium-ion rechargeable battery technologies is a much-awaited benefit... Micro fuel cells score over traditional batteries in many other facets. In addition to being several times lighter, micro fuel cells are simpler and quicker to recharge.” We note that the description of “micro fuel cells” is consistent with the definition of “micro” that the examining attorney included with the first Office

³ We note that while applicant’s own literature uses the term “micro fuel” descriptively, it does occasionally use the term with a TM symbol as in the next sentence, i.e., “N.M. laboratory where the new Micro-Fuel Cell™ is under development.” The occasional use of the TM symbol does not establish that the term is not descriptive. In re A La Vieille Russie Inc., 60 USPQ2d 1895, 1901 (TTAB 2001). In addition, in this example, applicant does not use the TM symbol after the term for which it seeks registration MICROFUEL but rather after the term “Micro-Fuel Cell.”

action that defined "micro" as "very small." As the article above notes, micro fuel cells are an improvement over traditional batteries because they can produce more power and they are several times lighter than traditional batteries. Therefore, the definition of "micro" would describe a "fuel cell" that is very small. Fuel cells that are lighter and produce more power are described by the term "micro fuel cells."

When we consider the question of descriptiveness, we look at the term in relation to applicant's goods or services. In this case, applicant's goods are "fuel cells and fuel cell tanks for producing electrical energy; chemical fuel for fuel cells provided as a unit with the foregoing." These fuel cells, when they are used in association with consumer electronics such as laptops and digital organizers, are referred to as "micro fuel cells." In this case, however, there is even more evidence. Applicant has described its technology as "micro fuel technology." Furthermore, press reports and NEXIS and Internet articles similarly use the term to describe this new technology. As a result, we conclude that the term MICROFUEL when used in association with applicant's goods immediately describes a feature or characteristic of the goods, i.e., that they are smaller, powerful fuel cells

used to power electrical devices. The descriptiveness of the term is evident regardless of whether the generic term "cell" is present in the term. Applicant's goods are identified as fuel cells and fuel for these cells and the term "micro fuel" is used to describe the fuel that powers such fuel cells. The term is, therefore, merely descriptive of applicant's goods.

We now address several additional points. We note that the fact that applicant spells its term without a space between the words is not sufficient. Even spelled as one word, the terms "Micro" and "Fuel" are clearly discernable in the mark and the combined term is merely descriptive. See Abcor, supra (GASBADGE at least merely descriptive for "gas monitoring badges"); Cummins Engine Co. v. Continental Motors Corp., 359 F.2d 892, 149 USPQ 559 (CCPA 1966) (TURBODIESEL generic for a type of engine); In re Orleans Wines, Ltd., 196 USPQ 516 (TTAB 1977) (BREADSPRED descriptive for jams and jellies that would be a spread for bread); In re Perkin-Elmer Corp., 174 USPQ 57 (TTAB 1972) (LASERGAGE merely descriptive for interferometers utilizing lasers). Also, even if applicant were the first user of the term MICROFUEL for the identified goods that fact would not justify the registration of an otherwise merely descriptive term. In

re Interco Inc., 29 USPQ2d 2037, 2039 (TTAB 1993); In re Gould, 173 USPQ 243, 245 (TTAB 1972). Finally, while there are a few ambiguous references in which the term "Micro Fuel" may be used as a trademark, the vast majority of the references clearly are using the term in its various spellings to describe a type of fuel cell.

We conclude by finding that applicant's mark MICROFUEL is merely descriptive for the identified goods.

Decision: The refusal to register is affirmed.