

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT  
OF THE TTAB

Mailing: 8/22/2006

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Coherix Corporation

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Serial No. 78146593

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Susan M. Kornfield, Alan N. Harris and Angela Alvarez Sujek  
of Bodman LLP<sup>1</sup> for Coherix Corporation.

Yong Oh (Richard) Kim, Trademark Examining Attorney, Law  
Office 115 (Tomas V. Vlcek, Managing Attorney).

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Before Quinn, Bucher and Walsh, Administrative Trademark  
Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application was filed by Coherix Corporation to  
register the mark TEMPORAL HOLOGRAM for "digital imaging of  
an object at different times."<sup>2</sup>

The trademark examining attorney refused registration  
under Section 2(e)(1) of the Trademark Act, 15 U.S.C.

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<sup>1</sup> These attorneys were not appointed as counsel for applicant  
until after the appeal brief was filed. Applicant's somewhat  
inconsistent arguments and statements during prosecution may be  
attributed, at least in part, to the fact that no fewer than four  
different law firms have represented applicant.

<sup>2</sup> Application Serial No. 78146593, filed July 23, 2002, based on  
an allegation of a bona fide intention to use the mark in  
commerce.

§1052(e)(1), on the ground that applicant's mark, if used in connection with applicant's services, would be merely descriptive of them.

When the refusal was made final, applicant appealed. Applicant and the examining attorney filed briefs.

Applicant concedes that the individual words comprising its mark are descriptive, but contends that the combination of the words results in a "unitary mark with a unique meaning" that is just suggestive. (Request for Reconsideration, p. 3). Applicant also states that "TEMPORAL HOLOGRAM, at most, may describe a good that is a hologram that relates to time," but that the mark does not describe the service of producing and comparing digital images." (Response, 7/4/03). Applicant asserts that "time will always be a necessary factor in the creation of any hologram." Applicant, relying on a dictionary definition of "frequency," states that "all holograms are going to have some relation to frequency and time because, by its very definition, it is the timing, or frequency, of the light wave that helps to create the hologram." (Response, 11/5/04). In its appeal brief, applicant indicated that it is "required to keep the exact nature of the TEMPORAL HOLOGRAM service concept confidential at the public level, because of its patent-pending status." (Appeal Brief, p.

2). Nevertheless, applicant earlier offered a glimpse at the nature of applicant's services. Applicant states that it intends to provide:

a service creating a comparison of images, or holograms, of a product generated at different times over the useful life of the product. For example, an image of the product could be taken when the product is manufactured and additional image(s) of the product could be taken after the product is placed in service. The images can be compared to providing information regarding differences between the product at different times, to provide information regarding changes or wear that may occur over the product's life. (Response, 7/24/03).

In response to the examining attorney's inquiries, applicant admitted that applicant's services can involve holograms. Applicant further stated that the "temporal" aspect of applicant's digital images originates in the concept that images of a product are taken at different times in order to provide information regarding changes or wear that may occur over the product's life. According to applicant, the mark requires the customer to use imagination to connect the mark with images used to compare and evaluate a product at different points in time. In support of its arguments, applicant submitted a printout of a listing of "hits" when the term "temporal hologram" was searched using GOOGLE's search engine. According to

applicant, the word "temporal" in "temporal hologram" "has been used in many contexts to describe scientific and mathematical relationships, including the timing of pulsing light used to create a hologram, the timing of the frequency of the light wave, the time-space relationship that is utilized in order to assist in reading a hologram, and the holographic image of a time spectrum." At no time, applicant contends, "is the word 'temporal' used by any of these websites to describe Applicant's services of collecting holographic images over the lifetime of a product." (Response, 11/5/04). Applicant also submitted an Internet article and a dictionary definition of the term "frequency."

The examining attorney maintains that applicant's services involve holograms that display an object at different times. Thus, the examining attorney contends, the descriptiveness of the individual words "TEMPORAL" and "HOLOGRAM" is evident because "the holograms are temporal to the extent that they are time-based." (Appeal Brief, p. 3). According to the examining attorney, the combination of the two merely descriptive terms results in a composite that itself is merely descriptive. In support of the refusal, the examining attorney submitted dictionary

definitions of the terms "temporal" and "hologram;" and an article retrieved from the Internet.<sup>3</sup>

A term is merely descriptive of goods or services, within the meaning of Trademark Act Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. See, e.g., *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (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 or is intended to be used on or in connection with those goods or services, and the possible significance

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<sup>3</sup> This article concerns a specialized medical process that appears to have no relationship to the type of services rendered by applicant. In this connection, we note that the examining attorney does not refer to this evidence in his brief.

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 Polo International Inc., 51 USPQ2d 1061 (TTAB 1999); and In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979). It is settled that:

....the question of whether a mark is merely descriptive must be determined not in the abstract, that is, not by asking whether one can guess, from the mark itself, considered in a vacuum, what the goods or services are, but rather in relation to the goods or services for which registration is sought, that is, by asking whether, when the mark is seen on the goods or services, it immediately conveys information about their nature.

In re Patent & Trademark Services Inc., 49 USPQ2d 1537, 1539 (TTAB 1998).

When two or more merely descriptive terms are combined, the determination of whether the composite mark also has a merely descriptive significance turns on the question of whether the combination of terms evokes a new and unique commercial impression. If each component retains its merely descriptive significance in relation to the goods or services, the combination results in a composite that is itself merely descriptive. See, e.g., In

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re Tower Tech, Inc., 64 USPQ2d 1314 (TTAB 2002) [SMARTTOWER merely descriptive of commercial and industrial cooling towers]; In re Sun Microsystems Inc., 59 USPQ2d 1084 (TTAB 2001) [AGENTBEANS merely descriptive of computer programs for use in development and deployment of application programs]; In re Putnam Publishing Co., 39 USPQ2d 2021 (TTAB 1996) [FOOD & BEVERAGE ONLINE merely descriptive of news information services for the food processing industry]; and In re Copytele Inc., 31 USPQ2d 1540 (TTAB 1994) [SCREEN FAX PHONE merely descriptive of facsimile terminals employing electrophoretic displays].

We find that the mark sought to be registered, TEMPORAL HOLOGRAM, when used in connection with services described as "digital imaging of an object at different times," is merely descriptive thereof.

The examining attorney introduced dictionary definitions of the terms comprising applicant's mark. The term "temporal" is defined in pertinent part as "of, relating to, or limited by time; lasting only for a time." The American Heritage Dictionary of the English Language (3d ed. 1992). The term "hologram" means "a three-dimensional image reproduced from a pattern of interference produced by a split coherent beam of radiation (as a laser)." Merriam-Webster Online Dictionary (www.m-w.com).

Applicant has confirmed, as noted above, that applicant's services can involve holograms, and that the "temporal aspect of applicant's digital images originates in the concept [that] the images of the product are taken at different times" in order to "provide information regarding changes or wear that may occur over the product's life." Applicant also confirmed, as noted above, its view that the terms "temporal" and "hologram" are individually descriptive as used in connection with applicant's services.

Based on the meanings of the individual terms and applicant's own statements regarding these terms and the services for which the mark would be used, we conclude that the combination TEMPORAL HOLOGRAM also is as merely descriptive as the individual terms. When the proposed mark is viewed in the context of applicant's services, the term immediately informs prospective customers that applicant's digital imaging involves the use of holograms to provide a sequence of images of a product over some interval of time. While this later connotation of "temporal" (e.g., "relating to time") in the context of a new application in manufacturing, equipment maintenance or quality control is different from the technical usage of "temporal" in the creation of a holographic image, we find

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that this second meaning is also merely descriptive of applicant's recited services. That is, applicant's proposed usage does not create a bizarre or incongruous usage, or a non-descriptive double entendre. Cf. In re Colonial Stores Inc., 394 F.2d 549, 157 USPQ 382 (CCPA 1968) [SUGAR & SPICE for bakery products]; In re Simmons Co., 189 USPQ 352 (TTAB 1976) [THE HARD LINE for mattresses and bed springs]; In re Delaware Punch Co., 186 USPQ 63 (TTAB 1975) [THE SOFT PUNCH for noncarbonated soft drink]; and In re National Tea Co., 144 USPQ 286 (TTAB 1965) [NO BONES ABOUT IT for fresh pre-cooked ham].

The fact that applicant may be the first and only user of the merely descriptive term TEMPORAL HOLOGRAM for this type of service does not justify registration inasmuch as the only significance conveyed by the term is merely descriptive. In re National Shooting Sports Foundation, Inc., 219 USPQ 1018 (TTAB 1983).

**Decision:** The refusal to register is affirmed.