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APRIL 19, 99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Industrial Communications and
Electronics, Inc.

Serial No. 75/111,023

Robert A. Vanderhye of Nixon & Vanderhye for Industrial
Communications and Electronics, Inc.

Jason Turner, Trademark Examining Attorney, Law Office 108
(David Shallant, Managing Attorney).

Before Hairston, Chapman and Bucher, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Industrial Communications and Electronics, Inc. has
filed an application to register the term INDUSTRIAL
COMMUNICATIONS (COMMUNICATIONS is disclaimed) on the
Supplemental Register for services which were subsequently

identified as "communication tower construction and maintenance services."¹

Registration has been finally refused under Section 23 of the Trademark Act, 15 U.S.C. §1091, on the basis that INDUSTRIAL COMMUNICATIONS is incapable of distinguishing applicant's services because, according to the Examining Attorney, the term identifies the genus of applicant's services.

Applicant has appealed the final refusal to register on the Supplemental Register. Briefs have been filed, but no oral hearing was requested.

In support of the refusal to register, the Examining Attorney has made of record, inter alia, dictionary definitions taken from Webster's II New Riverside University Dictionary (1994):

industrial: Of, relating to, or derived from industry.

industry: The commercial production and sale of goods and services.

communication: A system for sending and receiving messages, as by mail, telephone, or television.

¹ Application Serial No. 75/111,023 filed May 28, 1996, alleging a date of first use and first use in commerce of around January 1, 1995.

Also, the Examining Attorney submitted excerpts of stories taken from the NEXIS database which, according to the Examining Attorney, "reveal the generic nature of the term [INDUSTRIAL COMMUNICATIONS] as applied to applicant's services." (Final Office Action) Some of these excerpts show use of the term "industrial communications" and others show use of the words "communication towers" in connection with the word "industry."² Several of the excerpts are set forth below:

. . . Fiber Optic Cable Business Unit to focus on specialty fiber optic cable for the hazardous environment, wireless and **industrial communications** industries. This unit specializes in gas-blocked and hermetic-armor cables which use a welded, corrugated copper tube to protect the . . .
(Nuclear Waste News, July 20, 1995);

Scientific and **industrial communications** equipment developer Dynatech Corp. plans to acquire Itronix Corp., a subsidiary of Telxon Corp., in a cash transaction. . . . Itronix manufactures mobile field-service computing and communication devices such as ruggedized computers with wireless communications capabilities.
(Electronic News, December 23, 1996);

The Defense Department has invested hundreds of billions of dollars in equipment that works in the agency's currently assigned frequencies. Then there are the cordless

² We note that a number of the excerpts were taken from wire services. Inasmuch as it is uncertain whether those stories were ever published and, therefore, were exposed to the purchasing public, they are of limited value in deciding the issue in this appeal. See, e.g., *In re Bel Pease Sales Co.*, 1 USPQ2d 1233, 1235 (TTAB 1986).

phones, baby monitors, **industrial communications** systems and other devices crowded elsewhere on the spectrum.
(Chicago Tribune, September 1, 1996);

While divisions between public and private interests have slowed the construction of wireless **communications towers** across the country, **industry** leaders say cooperation between both parties in San Antonio . . .
(San Antonio Business Journal, October 31, 1997);

Despite the complaints from several communications **industry** representatives, the commission introduced an ordinance regulating **communication towers**.
(The Orlando Sentinel, July 18, 1997);
and

City and county officials gathered Friday at the Sheraton in Lakeland to spend a day listening to advice about what they can do when their moratoriums on **communications towers** expire. At issue is how to accommodate the cellular communications **industry**, which needs increased capacity . . .
(The Ledger, Lakeland, Florida, March 8, 1987).

The test for registrability of a service mark on the Supplemental Register is whether the matter sought to be registered is capable of identifying applicant's services and distinguishing them from like services rendered by others. If the designation is understood by the relevant purchasing public as referring to the category or genus of services, the designation is not serving as a source identifier for the services and distinguishing them from

like services rendered by others. If the designation is incapable of performing this function, it cannot be registered on the Supplemental Register. See *In re Marvin Ginn Corp. v. International Association of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528 (Fed Cir. 1986).

In this case, the uses of "industrial communications" made of record by the Examining Attorney show the term used to refer to equipment or systems. However, applicant does not here seek to register the term for equipment or systems, but rather for communication tower construction and maintenance services. Similarly, while according to the Examining Attorney, the dictionary definitions show that the term can be interpreted as a commercial system for sending and receiving messages, registration of the term is not sought for such a system. Further, while some of the NEXIS excerpts show that communication towers themselves are owned and/or used by various industrial firms, such evidence is not probative of whether the term INDUSTRIAL COMMUNICATIONS is generic for the services involved in this case. In our view, this evidence simply does not make out a sufficient case for holding INDUSTRIAL COMMUNICATIONS generic for communication tower construction and maintenance services. We note that there is no evidence that the term INDUSTRIAL COMMUNICATIONS has been used by

other entities to render the type of services rendered by applicant. While not determinative of the registrability of a term on the Supplemental Register, the absence of such evidence is a factor to be considered.³

We should add that this is not a case where the term sought to be registered identifies the central characteristic of the services. See, e.g., *In re Bonni Keller Collections Ltd.*, 6 USPQ2d 1224 (TTAB 1987) ["LA LINGERIE" held incapable of distinguishing applicant's retail store services in the field of lingerie]; and *In re Wickerware, Inc.*, 227 USPQ 970 (TTAB 1985) ["WICKERWARE" held incapable of distinguishing applicant's mail-order and distributorship services]. In those cases, the matter sought to be registered identified the product featured in the offer of services.

Finally, even if doubts remained on the question of capability, any doubt on the issue would have to be resolved in favor of the applicant. *In re Municipal Market Data, Inc.*, 229 USPQ 472 (TTAB 1986).

³ We should point out that in reaching our decision herein, we did not consider a canceled third-party registration (Registration No. 1,522,581 for the mark INDUSTRIAL COMMUNICATIONS for newsletters). This registration was listed in a search report submitted by applicant. As correctly noted by the Examining Attorney, the submission of a search report is not the proper way to make third-party registrations of record.

Decision: The refusal to register on the Supplemental Register is reversed.

P. T. Hairston

B. A. Chapman
Administrative Trademark
Judges, Trademark Trial and
Appeal Board

Bucher, Administrative Trademark Judge, Dissenting:

Inasmuch as I do not share the doubts of the majority of this panel on the question of registrability, I would affirm the refusal to register on the Supplemental Register. I conclude that "industrial communications" is generic and thus incapable of distinguishing applicant's services from the services of others. The Trademark Examining Attorney has, in my opinion, sustained the Trademark Examining Operation's rather heavy burden of proving genericness through an evidentiary record.

Applicant argues that the category of services at issue herein is merely the "construction and maintenance of communications towers," and that the record contains no

evidence that the relevant public refers to this category of services as "industrial communications." Applicant contends that even if the term "industrial communications" might be found to be generic for wireless communication services, the term is not generic for the erection of towers.

According to applicant,

the Examining Attorney... fails to recognize cases [having fact] situations closer to the present than the cases cited in the Examining Attorney's appeal brief...[such as] *Ex parte Heatube Corp.*, 109 USPQ 423 (Com. 1956) (HEATUBE registerable for tubular heating elements) and *Ex parte Mixdorff Krein Mfg. Co.*, 115 USPQ 362 (Com. 1957) (LONGTONG registerable for long barbecue forks); *Bellbrook Dairies, Inc. v. Hawthorn-Mellody Dairy, Inc.*, 253 F.2d 431, 433, 117 USPQ 213, 214 (CCPA 1958), ("Vita-Slim" registerable for skim milk), and *Ex parte Club Aluminum Products Co.*, 105 USPQ 44 (Com. 1955) (Cook-n-Look registerable for transparent glass covers for cooking utensils).

Applicant's Reply Brief, p. 3.

Finally, applicant argues that the refusal to register its mark is inconsistent with the Office's past practice⁴ concerning an identical mark for related goods.

⁴ See discussion at pp. 19 - 21, *infra*.

On the other hand, the Examining Attorney maintains that the matter sought to be registered ("Industrial Communications") is generic -- naming a central characteristic of applicant's services.

In support of the refusal, the Examining Attorney submitted dictionary listings of the terms "industrial" and "communications," as well as excerpts from printed publications retrieved from the NEXIS database. Furthermore, he points to applicant's informational brochures entitled "Wireless Solutions ... To Run Your Business Smarter." This glossy marketing brochure touts the fact that applicant is "leading the way in wireless."

As the majority points out in citing to H. Marvin Ginn Corp. v. International Ass'n of Fire Chiefs, 782 F.2d 987, 990, 228 USPQ 528, 530 (Fed. Cir. 1986), determining whether an alleged mark is generic involves a sometimes difficult, two-step factual analysis - (1) Identify the genus of the services at issue; and (2) Decide whether the term sought to be registered is understood by the relevant public primarily to refer to that genus of services?

With respect to demonstrating the generic nature of an alleged mark, the Office has the burden of proving this refusal with "clear evidence" of genericness. See In re

Merrill, Lynch, Pierce, Fenner & Smith, Inc., 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987). Evidence of the relevant public's perception of a term may be acquired from any competent source, including newspapers, magazines, dictionaries, catalogs and other publications. In re Leatherman Tool Group, Inc., 32 USPQ2d 1443, 1449 (TTAB 1994), citing In re Northland Aluminum Products, Inc., 777 F.2d 1566, 227 USPQ 961, 963 (Fed. Cir. 1985).

Before beginning any legal analysis, we should be clear factually exactly what type of service applicant provides. Applicant is clearly competing in the field of wireless communications targeted to business customers. From applicant's brochure (specimens of record), we learn that at least in the New England states, applicant is considered to be a leader in wireless communications directed to industrial concerns. The original recital covered the whole gamut of wireless, telecommunications services targeted to industry.⁵ However, after the initial Office action, where the Trademark Examining Attorney refused to register this matter on the Supplemental

⁵ "Wireless communication services, mobile radio and electronic repair services, communication tower construction and maintenance, communications systems and equipment sales, and tower and antenna site marketing and sales." Application papers executed on May 22, 1996.

Register based upon genericness, the recital of services was gradually whittled down during the prosecution of this application, to the current "communication tower construction and maintenance services."

It is clear from the specimens of record that "wireless communications" refers to communications using radio signals, taking place between two users, when one or both use a portable, unwired receiver/transmitter. Base stations receive and transmit radio signals sent through an antenna. The antenna(s) is (are) mounted on a structure tall enough to send and receive these radio signals without interference. A metal tower is generally the structure that holds the antennas.

As noted above, in spite of the broad initial recital, what now remains in the recital is merely the installation and servicing of these large industrial towers.⁶ Such towers come in vastly different sizes depending upon their precise use and location. Presumably some of applicant's towers will be single-user monopoles; others will be large, self-supporting towers; and the largest type would be guyed

⁶ Since May 1996, even a closely related service like "antennae site marketing" was among the array of applicant's services dropped out of this application.

towers.⁷ From a brief review of the technology or a quick review of applicant's brochure, it is clear that these cell sites and their attendant towers are an integral component of wireless technology. In short, without the towers, wireless communications as we know it would be most impractical, if not impossible.

The first step of our analysis under Marvin Ginn, *supra*, is to answer the question of 'what is the genus of the services at issue?' Based upon the original recital and the brochure, one might choose the broader business in which applicant is engaged: wireless communications; two-way radio communications; telecommunications systems for the use of large companies; etc. Applicant seems to agree that the phrase "industrial communications" might well be incapable of achieving trademark significance for the broader recital, e.g., their entire wireless/two-way telecommunications systems marketed exclusively to commercial enterprises.⁸ Rather, applicant's argument on appeal seems to be that the Trademark Examining Attorney has not demonstrated that anyone else in the more narrow

⁷ E.g., similar to that pictured in applicant's specimen of record, ranging all the way from 500' up to 1500' tall.

⁸ "It is irrelevant whether 'Industrial Communications' is generic with respect to two-way radio communications ..." Reply Brief, p. 2.

business of 'erecting and maintaining radio towers' is using the words "industrial communications" as a source indicator.

The predecessor to our current reviewing court took dictionary definitions and proceeded to apply common sense in Cummins Engine Company, Inc. v. Continental Motors Corporation, 149 USPQ 559 (CCPA 1966) ["TURBODIESEL" found generic for internal combustion engines and engine parts]:

In our view, the definitions alone indicate that "turbodiesel" is a word which by its nature will convey a specific and correct meaning which is such that it cannot become a trademark as a result even of origination and first use. (citation omitted). The term "turbodiesel," as we see it, is a natural composite form for a class of engines into which appellant's engines fall. We recognize that the engines to which the term has been applied by appellant are not turbines plus diesels, but diesel engines having exhaust driven turbine superchargers. However, it is not required that the name precisely describe and define the goods in order to be incapable of registration under section 23. We think "turbodiesel," to be naturally and adequately nominative of engines having exhaust driven turbine superchargers.

Id. at 561.

If indeed applicant is involved in the business of "industrial communications," it would be disingenuous of this Board to agree with applicant that shaving off key

components of this service changes the genus. Query, for example, in the Cummins Engine case, *supra*, if applicant had changed its goods from "internal combustion engines and parts thereof" to a narrower identification -- to one specific engine part, for example, "injection pumps for diesel engines" -- would the result have been to find that this very same term ("Turbodiesel") was suddenly capable of achieving trademark significance?⁹

A plausible argument has been made that the broad general category of services involved herein is wireless communications services. However, a service may be in more than one category¹⁰ and here applicant argues that its currently recited services fall only within the more narrow category of erecting industrial communications towers. To name the genus of the services here at issue in somewhat more detail, it may be "communication tower construction and maintenance services," "erecting and maintaining wireless communications towers," "erecting and maintaining two-way radio communications towers," "erecting and

⁹ The correct answer to this hypothetical question becomes even more obvious if the whittling down was done in the context of an on-going dispute over genericness of the alleged mark.

¹⁰ See In re Central Sprinkler Co., 49 USPQ2d (TTAB 1998) [ATTIC is generic for "automatic sprinklers for fire protection"]; and In re Web Communications, 49 USPQ2d 1478, (TTAB 1998) ["WEB COMMUNICATIONS" is generic for company providing

maintaining business communications towers," "erecting and maintaining telecommunications towers for the use of large companies," or even "erecting and maintaining industrial communications towers."

The second step is answering the question of 'whether the term sought to be registered is understood by the relevant public primarily to refer to that genus of goods or services?' H. Marvin Ginn Corp., at 530. The critical issue in genericness cases such as this one is whether members of the relevant public primarily use or understand the term sought to be registered to refer to the genus (category or class) of goods in question.

It behooves the Board to look more specifically at the evidence of record, which must control our determination herein. The record includes dictionary definitions, LEXIS-NEXIS evidence and the applicant's own specimens of record.

The majority opinion sets out the dictionary definitions of record for the words "industrial"¹¹ and

consulting services to businesses seeking to establish sites on the Internet, or World Wide Web].

¹¹ To clarify my understanding of what industrial means in this alleged mark, I would construe "industrial" in this application to refer to the class of customers of applicant, and not applicant itself, which may well own many of the communications towers used by its customers. Compare majority's treatment of "industrial" from NEXIS evidence, p. 5.

"communications," as placed into the record by the Trademark Examining Attorney. When these two familiar words are joined into a single phrase, neither applicant nor the majority has claimed this union creates a unique combination, having some novel meaning other than that which English usage would ascribe to those individual words. In fact, upon melding the individual dictionary definitions, one would assume immediately that this service involves electronic communications by commercial enterprises.

Upon encountering the term "industrial communications" for communications towers, the relevant public surely would understand the term primarily to refer to towers for industrial communications, that is, industrial communications towers. Accordingly, I find that the term "industrial communications" would be readily understood by the relevant public as necessarily including this narrower category of services. Remington Products Inc. v. North American Philips Corp., 892 F.2d 1576, 13 USPQ2d 1444, 1449 (Fed. Cir. 1990)...

The Examining Attorney also introduced numerous excerpts from printed publications retrieved from the NEXIS database. The excerpts show, for example, that "...Nextel

has 140 *communications towers* in metro Atlanta and is focusing on local service *industries...*" (*The Atlanta Journal and Constitution*, June 5, 1997). The record contains references to "industrial communications" to refer to the exact field occupied by applicant. In fact, the record is replete with numerous excerpts from printed publications that reporters and third-party competitors in the trade use the terms "industrial telecommunications" services in pager, radio and telephone services directed to large companies. The NEXIS publications show that the term is a commonly used term and that people in business are familiar with the term. The "relevant public" herein would specifically comprise those in the large companies responsible for procuring wireless communications. Such individuals would readily understand "industrial communications" to refer to the entire system, or to any single, integral service or component of the system -- including the construction and maintenance of radio communication towers. In fact, query whether common sense alone does not lead one to conclude that the phrase "industrial communications" is so commonly used in everyday parlance that it is most unlikely purchasers could ever recognize it as a trademark in the context in which applicant is using it?

Under the type of analysis in which the Court engaged in the case of In re Gould Paper Corp., 834 F.2d 1017, 5 USPQ2d 1110 (Fed. Cir. 1987) [the term SCREENWIPE is generic for pre-moistened, anti-static cloth for cleaning computer and television screens], the term "industrial communications" for erecting communications towers for industrial clients must also be found to be generic. The fact that applicant has chosen not to include the term "tower" in the specific mark sought to be registered herein should not lead to the registrability of the phrase "Industrial Communications" standing alone. The simple fact is that the term "Industrial Communications," when applied to erecting communications towers for industrial clients, "immediately and unequivocally describes the purpose, function and nature of the [services]." In re Gould Paper Corp., supra at 1112.

We note that applicant has taken the position that the Trademark Examining Attorney's refusal to register its mark is inconsistent with the Office's past practice concerning an identical mark for related goods - specifically under now-cancelled federal Reg. No. 1,522,581, for newsletters.

First, as pointed out by the Trademark Examining Attorney, this registration should not be considered on the

merits for procedural reasons. The Trademark Examining Attorney objected to applicant's submission of a search report in his Office action of August 2, 1997 and again in the appeal brief (p. 4). He correctly stated that applicant's submission of evidence of these registrations was not in the proper form. Applicant did finally provided soft copies of the third-party registrations with its reply brief.¹²

The Trademark Examining Attorney is correct that in order to make third-party registrations of record, soft copies of the registrations or photocopies of the appropriate U.S. Patent and Trademark Office electronic printouts should be submitted *prior to the time of the appeal*. See *Weyerhaeuser Co. v. Katz*, 24 USPQ2d 1230 (TTAB 1992). Hence, the copies of registrations submitted at the time of its appeal brief are rejected as untimely. Applicant clearly did not comply with the established rule that the evidentiary record in an application must be complete prior to the filing of the notice of appeal, See, 37 CFR 2.142(d); *In re Smith and Mehaffey*, 31 USPQ2d

¹² Of course, the issue was never whether applicant's earlier claims about what the document(s) contained were factually correct.

1531, 1532 (TTAB 1994), and the Trademark Examining Attorney objected in a timely manner and then refused to treat it of record.

Nonetheless, I find applicant's point to be irrelevant. Even if I were to consider applicant's cancelled registration, the fact that applicant had in the past obtained a registration of the term "Industrial Communications" for a "newsletter" is not persuasive of a different result in the instant case. Especially since the relevant goods were *newsletters*, the fact that the term "Industrial Communications" was once registered for such use is of no moment herein:

The chief difficulty in categorizing publications comes about because "unlike most goods whose appearance will convey their nature, periodicals must depend principally on their titles to convey their character. Courts have been reluctant to find a magazine title generic, perhaps in part because the magazines in such cases were not literally the class title designated but were about that class." *CES Publishing Corp. v. St. Regis Publications, Inc.*, 531 F.2d 11, 188 USPQ 612, 615 (2nd Cir. 1975); see also *Technical Publishing Company v. Lebhar-Friedman, Inc.*, 729 F.2d 1136, 222 USPQ 839, 841 (7th Cir. 1984) [recognizing that since magazine titles are primary means of conveying contents of magazines, "many magazine titles fall near the line between generic and descriptive marks"].

In re Waverly Inc., 27 USPQ2d 1620, 1622 (TTAB 1993).

Furthermore, while each case must be decided on its own facts, and uniform treatment under the Trademark Act is highly desirable, the task of the Board herein is to determine, based upon the record before us, whether applicant's mark is registrable.

In reaching my decision, I cannot overlook how the relevant public will encounter the matter sought to be registered within applicant's own printed materials. Applicant's specimen of record, which is a glossy, marketing brochure, says that "Choosing the right wireless communications system can save your *company* time and money...", "...hundreds of *companies* throughout New England have chosen two-way communications systems from [applicant]," "Since 1974, [applicant] has been helping *businesses* use advanced wireless communications solutions to run smarter...", "Find out how a wireless system from [applicant] can help your *business* run more effectively" [emphasis supplied].

At least to my eyes, given these uses of the words "business," "company," *et al*, in the context of addressing customers of applicant's wireless/two-way communications

systems, "Industrial Communications" is much more in the nature of a type of service than of a source identifier. Furthermore, the literature uses the generic term "communications" in its ordinary dictionary sense. This is totally consistent with the fact that applicant voluntarily disclaimed the word "communications" in these application papers for a registration on the Supplemental Register.

In another case also involving goods (rather than services), Micro Motion Inc. v. Danfoss A/S, 49 USPQ2d 1628 (TTAB 1998), this Board found the word "Massflo" to be generic for flowmeters for measuring flow of mass of fluid, reasoning as follows:

In this case, because the term MASSFLO directly names the most important or central aspect or purpose of applicant's goods, that is that the meters are mass flowmeters (meters that measure mass flow), this term is generic and should be freely available for use by competitors.

The above evidence and analysis should make it clear that "industrial communications" is generic, and should be freely available for use by applicant's competitors -- whether they consider themselves to be in the wireless communications business or merely the business of erecting communications towers. See In re Northland Aluminum Products, Inc., supra [BUNDT for coffee cake held generic]; In re Sun Oil Co., 426 F.2d 401, 165 USPQ 718 (CCPA 1970)

[CUSTOMBLENDED for gasoline held generic because category of gasoline was blended personally for the motorist]; In re Helena Rubinstein, Inc., 410 F.2d 438, 161 USPQ 606 (CCPA 1969) [PASTEURIZED for face cream held generic]; In re Preformed Line Products Co., 323 F.2d 1007, 139 USPQ 271 (CCPA 1963) [PREFORMED for preformed electrical equipment held generic]; Roselux Chemical Co., Inc. v. Parsons Ammonia Co., Inc., 299 F.2d 855, 132 USPQ 627 (CCPA 1962) [SUDSY for aqua ammonia containing a synthetic detergent held generic]; Servo Corp. of America v. Servo-Tek Products Co., 289 F.2d 955, 129 USPQ 352 (CCPA 1961) [SERVO for servomechanisms held generic]; J. Kohnstam, Ltd. v. Louis Mark & Co., 280 F.2d 437, 126 USPQ 362 (CCPA 1960) [MATCHBOX for toy vehicles held generic because that category of toy cars was sold in matchbox-sized boxes]; In re Pennzoil Products Co., 20 USPQ2d 1753 (TTAB 1991) [MULTI-VIS for multiple viscosity motor oil held generic]; In re Reckitt & Colman, North America Inc., 18 USPQ2d 1389 (TTAB 1991) [PERMA PRESS for soil and stain removers held generic]; In re National Patent Development Corp., 231 USPQ 823 (TTAB 1986) [ULTRA PURE for biological interferons for medical use held generic]; Fluid Energy Processing & Equipment Co. v. Fluid Energy, Inc., 212 USPQ 28 (TTAB 1981) [FLUID ENERGY for hydraulic/pneumatic equipment held generic]; Copperweld

Corp. v. Arcair Co., 200 USPQ 470 (TTAB 1978) [COPPERCLAD for copper-coated carbon electrodes held generic]; In re Demos, 172 USPQ 408 (TTAB 1971) [CHAMPAGNE for salad dressing held unregistrable]; and Ethicon, Inc. v. Deknatel, Inc., 183 USPQ 503 (TTAB 1963) [COTTONY for sutures held generic].

I agree with the Examining Attorney that if an industrial purchasing agent were seeking to find someone to erect a communications tower, it would be reasonable for him/her to refer to this product as an "industrial communications" tower. That applicant may have been the first company to adopt this matter in this context, or is currently the only entity using the term "industrial communications" (with the word "towers" implied), does not undercut the fact that the term "industrial communications" tower is understood to be a type of tower. See Southwire Co. v. Kaiser Aluminum & Chemical Corp., 196 USPQ 566, 572 (TTAB 1977).

Hence, in spite of the heavy burden placed on the Trademark Examining Attorney to demonstrate genericness, I believe that given the facts contained within the record of this application, our prevailing case law clearly supports the common sense position taken by the Trademark Examining

Attorney. Accordingly, I disagree with the conclusion of my colleagues, I would find that the asserted mark is generic, and hence not registrable on the Supplemental Register.

D. E. Bucher

Administrative Trademark
Judge, Trademark Trial and
Appeal Board