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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Iowa Manufacturing Inc.**

Serial No. 74/**651,205**

H. Robert Henderson of Henderson & Sturm for applicant.

Karen A. McGee, Trademark Examining Attorney, Law Office
104 (Sidney Moskowitz, Managing Attorney).

Before Quinn, Hairston and Holtzman, Administrative
Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application has been filed by Iowa Manufacturing
Inc. to register on the Supplemental Register the term THE
WEDGE for "metal clamps, namely work bench-top tool
mounting clamps."¹

The Trademark Examining Attorney has refused
registration on the Supplemental Register because the

¹ Application Serial No. 74/651,205, filed March 24, 1995,
alleging dates of first use of September 8, 1994.

proposed mark is incapable of identifying applicant's goods and distinguishing them from those of others. More specifically, the Examining Attorney asserts that the term sought to be registered is generic.

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney have filed briefs. An oral hearing was not requested.

Applicant argues, in urging that the refusal be reversed, that the mark sought to be registered is not a generic name for the clamping mechanism of applicant's product. The essence of applicant's position is summed up as follows (brief, p. 5):

Applicant, however, respectfully submits that the evidence does not show that a wedge is a clamp, or that a clamp is a wedge. A clamp is considered generally to comprise a pair of relatively movable parts, whereas a wedge is generally considered to comprise a single part. Applicant does not deny that the evidence shows there is a particular tool called a wedge clamp; however, there is no evidence Applicant's term THE WEDGE relates to a wedge clamp. Thus, Applicant's mark is not a generic name of the clamping mechanism of Applicant's product.
[citations omitted]

In support of its position, applicant submitted informational literature about its product. Applicant also has referred to a dictionary.²

The Examining Attorney maintains that the term sought to be registered is generic. The Examining Attorney contends that the category of goods is "metal clamps," and that the term "wedge clamp" is a widely known type of metal clamp. In support of the refusal, the Examining Attorney relied upon excerpts retrieved from the NEXIS database which show generic uses of the term "wedge clamps." The Examining Attorney concludes that "the relevant public upon encountering the mark THE WEDGE for clamps--even clamps for mounting tools--would understand the term primarily to refer to a 'wedge clamp.'" (brief, p. 9)

With respect to genericness, the Office has the burden of proving this refusal with "clear evidence" of genericness. In re Merrill, Lynch, Pierce, Fenner & Smith, Inc., 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987). 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. H. Marvin

² Although the dictionary listings were not submitted, such evidence is proper subject matter for judicial reliance.

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Ginn Corporation v. International Association of Fire Chiefs, Inc., 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986). 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).

The identification of goods involved here reads "work bench-top tool mounting clamps." The NEXIS evidence clearly establishes that a "wedge clamp" is a widely known type of clamping mechanism used to secure machine tools to a stable surface. The following excerpts are representative of the Examining Attorney's evidence:

The wedge clamp is one of the oldest forms of clamping mechanisms used in industry. From older wedge action vises and clamps to specialty workholders, the wedge clamp has been part of workholding since the beginning of mass production. Although wedge clamps are not as prevalent as some other forms of clamps, the wedge action principle is still widely adapted in a variety of other workholding devices. *Modern Machine Shop*, September 1989

Wedge Clamps can support virtually any benchtop tool including power miter saws, router tables and scroll saws. *Home Mechanix*, September 1995

Flat wedge and conical wedge are the two forms of wedge clamps used for workholding.

Modern Machine Shop, December, 1989

The most common form of clamps are: strap clamps, screw clamps, wedge clamps, cam clamps, and toggle clamps.

Modern Machine Shop, June 1989

Also of record is applicant's literature describing the product as, in relevant part, "heavy-duty aluminum extruded body and wedge clamps." Applicant, in its response filed on April 17, 1997, described its goods as "a portable support attachment to a work bench--by a wedge clamp device--for securing power tools to the top of the bench."

The broad category of goods involved here is work bench-top tool mounting clamps. This category includes, as shown by applicant's own literature and by the NEXIS articles, wedge clamps. The term "wedge" simply names the distinctive characteristic of applicant's clamps. See: *In re Sun Oil Co.*, 426 F.2d 401, 165 USPQ 718 (CCPA 1970)[CUSTOM BLENDED was held generic for gasoline]; and *J. Kohnstam, Ltd. v. Louis Marx & Co.*, 280 F.2d 437, 126 USPQ 362 (CCPA 1960)[MATCHBOX for toy vehicles was held generic because that category of toy cars was sold in matchbox-sized boxes]. Accordingly, we find that the designation

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THE WEDGE would be understood by the relevant public as referring to that category of clamps, that is, the type of clamp used in applicant's product. Remington Products Inc. v. North American Philips Corp., 892 F.2d 1576, 13 USPQ2d 1444, 1449 (Fed. Cir. 1990). See also: In re Central Sprinkler Co., 49 USPQ2d 1194 (TTAB 1998)[ATTIC held generic for automatic sprinklers for fire protection]. The addition of the definite article "THE" which essentially makes the adjective "wedge" (as in "wedge clamp") into a noun here does not, in our view, convert the generic term into a registrable trademark. See: In re G. D. Searle & Co., 360 F.2d 650, 149 USPQ 619 (CCPA 1966)[THE PILL held generic for a birth control oral contraceptive]; and In re Computer Store, Inc., 211 USPQ 72 (TTAB 1981)[THE COMPUTER STORE held generic for computer outlet sales services].

Decision: The refusal to register is affirmed.

T. J. Quinn

P. T. Hairston

T. E. Holtzman
Trademark Administrative
Judges, Trademark Trial
and Appeal Board

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