

**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

1/30/02

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Deus Technologies, L.L.C.

Serial No. 75/542,207

Mark Harrison for Deus Technologies, L.L.C.

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

Before Hanak, Hohein and Bucher, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge.

On August 25, 1998 Deus Technologies, L.L.C.
(applicant) filed an intent-to-use application seeking to
register RS RAPIDSCREEN in the form shown below for
"medical imaging system that scans chest x-rays
previously found to be negative for lung cancer by
radiologists and sends those with suspect nodules back to
the radiologists for a second look. The system cannot be
used independently to diagnose or 'screen' for lung
cancer. The system is not 'rapid' in that it actually
slows the diagnostic system down by sending back certain
x-rays previously found to be negative for another look."

Ser. No. 75/542,207

In the first Office Action the Examining Attorney stated that applicant's "identification of goods is unacceptable as indefinite." In addition, the Examining Attorney, citing Section 6 of the Trademark Act, required that applicant disclaim the exclusive right to use RAPIDSCREEN apart from the mark as shown.

Subsequently, applicant amended its identification of goods to read as follows: "Medical imaging system comprising computer hardware and software, film digitizer, monitor and printer, for assisting radiologists in diagnosing early stage lung cancer by scanning chest x-rays." This identification of goods was acceptable to the Examining Attorney.

However, applicant did not agree to the disclaimer

requirement, arguing that the term RAPIDSCREEN was not

2

Ser. No. 75/542,207

merely descriptive of its proposed goods pursuant to Section 2(e)(1) of the Trademark Act.

Subsequently, the refusal to register was made final. Applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request a hearing.

As applicant and the Examining Attorney agree, the only issue before this Board is whether the term RAPIDSCREEN is merely descriptive of applicant's goods pursuant to Section 2(e)(1) of the Trademark Act, and hence must be disclaimed pursuant to Section 6 of the Trademark Act. A mark is merely descriptive pursuant to Section 2(e)(1) of the Trademark Act if it immediately conveys information about a significant quality or characteristic of the relevant goods or services. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); In re Bed & Breakfast Registry, 791 F.2d 157, 229 USPQ 818, 819 (Fed. Cir. 1986). The mere descriptiveness of a term is not judged in the abstract, but rather is judged in relation to the goods or services for which applicant

seeks registration. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978); In re Omaha National Corp., 819 F.2d 1117, 2 USPQ2d 1859, 1861

3

Ser. No. 75/542,207

(Fed. Cir. 1987).

The Examining Attorney has made of record approximately 15 stories from the NEXIS database wherein the term "rapid screen" is used to describe various medical tests which provide quick results. Typically, these tests can be performed by an ordinary consumer, and do not require the expertise of a physician. The results of these quick or rapid tests (screens) are of limited reliability, and "positive" results indicate the need for more extensive testing conducted by medical professionals. For example, an article appearing in the November 1, 1998 issue of American Family Physician describes two rapid screens, one to test for possible alcoholism and the second to test for possible memory impairment. The first rapid screen for alcoholism consists of two simple questions, which if answered "yes" indicates the need for further testing. The rapid screen for memory impairment consists of three simple questions,

and an individual's failure to answer one or more of these questions may indicate the need for further testing. Indeed, this article concludes by cautioning that such rapid screens are "no substitute for a complete psychiatric evaluation in patients." Another article appearing on the

4

Ser. No. 75/542,207

June 4, 1998 United Press International news cycle refers to a 15 minute syphilis test as a "rapid screen." However, this article goes on to note that this rapid screen suffers from certain limitations in that it has a significant number of false "positives."

Based on the foregoing, there can be no doubt that the term "rapid screen" is descriptive of, if not generic for, various medical tests which produce quick results, but whose results require further, more comprehensive testing. However, as applied to applicant's goods, the term "rapid screen" (whether depicted as one or two words) is not merely descriptive. Applicant's medical imaging system for assisting radiologists is not a first test whose results may suggest the need for further testing. Rather, applicant's medical imaging system is

being developed as a second, backup test to review x-rays which have already been examined by radiologists and found to be "negative." Applicant is entirely correct in arguing that its RS RAPIDSCREEN medical imaging system does indeed add time to the overall diagnostic process by subjecting x-rays which have been already reviewed by radiologists to yet a second review. Moreover, nowhere is there any suggestion that this

5

Ser. No. 75/542,207

second review conducted by applicant's proposed medical imaging system will in any way be rapid.

Accordingly, based on this present record, we have, at a minimum, doubts as to whether applicant's medical imaging system can properly be described as a "rapid screen." Of course, when doubts on the question of mere descriptiveness exist, it is the policy of this Board to resolve such doubts in applicant's favor. In re Gourmet Bakers, Inc., 173 USPQ 565 (TTAB 1972). However, we hasten to add that when applicant commences use of its medical imaging system and submits to the Examining Attorney literature describing such a system, the Examining Attorney would be free to again raise the issue

of mere descriptiveness if such literature indicates that applicant's medical imaging system operates in a rapid manner or in some fashion speeds up the overall diagnostic process.

Decision: The refusal to register is reversed.