

Mailed:
August 26, 2003

This Opinion is Not
Citable as Precedent
of the TTAB

Paper No. 11
GFR

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Northrop Grumman Corporation

Serial No. 76/243,647

Douglas W. Kenyon of Hunton & Williams for Northrop Grumman Corporation.

Danielle I. Mattessich, Trademark Examining Attorney, Law Office 105 (Tom Howell, Managing Attorney).

Before Chapman, Rogers and Drost,
Administrative Trademark Judges.

Opinion by Rogers, Administrative Trademark Judge:

Northrop Grumman Corporation¹, based on an application originally filed by Newport News Shipbuilding and Drydock Company, seeks registration, on the Principal Register, of the mark set forth below.

¹ Applicant, in its brief, uses Northrup Grumman; USPTO Assignment Branch records list Northrop Grumman. We have used the latter.



The application, filed on the basis of the original applicant's stated bona fide intention to use the mark in commerce, lists the services for which the mark will be used as "engineering, testing and design services in the field of naval shipbuilding; research and development in the field of naval shipbuilding." Northrop Grumman Corporation is now the applicant, following its acquisition of the original applicant and its parent; Northrop Grumman Newport News is now the designation for a division of Northrop Grumman Corporation. Brief, p. 3 and Assignment Branch records at Reel/Frame 2528/0572.

The original examining attorney issued a priority office action requiring only that applicant submit a disclaimer of the words VIRGINIA ADVANCED SHIPBUILDING AND CARRIER INTEGRATION CENTER, reasoning that they will be perceived as descriptive when used in conjunction with applicant's identified services. See Sections 2(e)(1) and

6 of the Lanham Act, 15 U.S.C. §§ 1052(e)(1) and 1056. In support of the action, the examining attorney attached dictionary definitions of each of the words in the phrase.

Applicant argued against a perceived refusal to register its entire mark as descriptive, following which the examining attorney made clear in a final office action that the entire mark was not being refused and only a disclaimer was required. Applicant filed an appeal and requested reconsideration, offering to disclaim VIRGINIA and INTEGRATION CENTER but arguing that the remainder of the phrase was at worst suggestive and therefore registrable. The proffered disclaimers were rejected and the request for reconsideration denied. The appeal was resumed and has been briefed. Oral argument was not requested.

We must determine whether the examining attorney has made of record sufficient evidence to establish that the phrase VIRGINIA ADVANCED SHIPBUILDING AND CARRIER INTEGRATION CENTER, if used, will be perceived as merely descriptive when used in conjunction with applicant's services. In assessing the evidence and the likely perception of the term as used by applicant, we do so from the point of view of the average or ordinary consumer for applicant's services. See In re Omaha National

Corporation, 819 F.2d 1117, 2 USPQ2d 1859, 1861 (Fed. Cir. 1987). Moreover, whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration of the term is sought, the context in which it is being used (or will be used) on or in connection with those goods or services, and the possible significance that the term would have to the average purchaser because of the manner of its use. See In re Nett Designs, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001).

In addition to the dictionary definitions, the examining attorney has made of record 9 of 13 articles retrieved by a search in a computerized database for the term VASCIC, each of which includes not only the term VASCIC but also the phrase VIRGINIA ADVANCED SHIPBUILDING AND CARRIER INTEGRATION CENTER. Finally, the examining attorney has made of record reprints of web pages from three different web sites: first, there are pages from the Virginia Advanced Shipbuilding and Carrier Integration Center Board (<http://dls.state.va.us/lrc/authorities/VAShipbldg.htm>); second, there are pages from a web site of applicant's (http://www.northgrum.com/tech_cd/nn/nn_vascic.html); and, third, there is a page from "Pilot Online Special Report: Peninsula Projects"

(wysiwyg://Main.102/http://www.pilotonlin...ects/newportnews/
vascic/main_vascic.html).

In refusing registration, the examining attorney has argued that the entire phrase VIRGINIA ADVANCED SHIPBUILDING AND CARRIER INTEGRATION CENTER is descriptive and must be disclaimed because "Virginia" is a geographic term and "immediately conveys to consumers the geographic place where the services originate"; that "advanced" immediately conveys to consumers the sophisticated nature of applicant's services; that "shipbuilding and carrier"² immediately conveys the focus of applicant's services as in the field of naval shipbuilding; and that "integration center" immediately conveys that applicant's services involve use of a specialized facility for integrating the technological systems of naval ships. The examining attorney further argues that the meanings of these terms do not change when the words are strung together in a phrase, so that the phrase in its entirety is readily understood without need of considered thought or supposition. In addition, the examining attorney argues that the Commonwealth of Virginia's General Assembly has

² There is no dispute between applicant and the examining attorney, and the record in any event reveals, that "carrier" is a reference to aircraft carriers and would be so perceived as such by prospective purchasers of applicant's services.

specifically defined, in legislation, the nature of an "Advanced Shipbuilding and Carrier Integration Center." Brief, p. 4, quoting from material attached to the denial of applicant's request for reconsideration.

It is clear from the record that there is only one VIRGINIA ADVANCED SHIPBUILDING AND CARRIER INTEGRATION CENTER in the Commonwealth of Virginia; that it was created as a joint effort of the Commonwealth of Virginia, the city of Newport News and the Newport News Shipbuilding and Drydock Company (since acquired by applicant); and that it is a research and development center. As noted on applicant's web site, "[t]he center serves as a proving ground for advanced shipbuilding and operation technologies before they are introduced on ships," and "is a state-of-the-art facility [for] develop[ing] new technologies for aircraft carriers, submarines and other advanced shipbuilding programs." Indeed, applicant acknowledges in its brief that as operator and manager of the VASCIC facility it "is charged with developing new technologies for aircraft carriers and ships."

Applicant does not dispute the nature of the center or its creation as a joint venture, but notes that it has "the exclusive right to operate and manage the VASCIC facility." Applicant asserts several reasons why VIRGINIA ADVANCED

SHIPBUILDING AND CARRIER INTEGRATION CENTER is not descriptive of the services identified in its application and which are provided at or through its Newport News, Virginia facility. First, it asserts that the phrase is comprised of words that, individually, "suggest, but do not describe, the services." Second, applicant asserts, in essence, that there is no physical shipbuilding or carrier integration done at the VASCIC center, where applicant offers "technology services... not the actual shipbuilding services," and getting from one to the other is the "mental leap" that "makes the mark suggestive rather than descriptive." Third, applicant argues that there are no competitors who would need to use the phrase, so "there is no policy reason to refuse registration."

As the record demonstrates, the Commonwealth of Virginia, in enacting legislation to fund the development of the center now operated and managed by applicant, denominated it as the VIRGINIA ADVANCED SHIPBUILDING AND CARRIER INTEGRATION CENTER. It has been referred to by that name in news stories about the center's development and operation. It is referred to by that name on applicant's web site. The phrase describes applicant's services insofar as it denominates the facility from which the services are provided. Because the facility is reputed

to be a state-of-the-art facility for research, design, systems integration and other engineering services, the identification of applicant's services as provided from or through that center serves to identify an attribute of the services that would be significant to prospective purchasers of the identified services. Such purchasers would have no need to engage in any mental processing to understand that when VIRGINIA ADVANCED SHIPBUILDING AND CARRIER INTEGRATION CENTER is used in conjunction with "engineering, testing and design services in the field of naval shipbuilding [and] research and development in the field of naval shipbuilding" it will designate a significant feature or attribute of the services, i.e., state-of-the-art services from a public-private partnership in Virginia.

We disagree with applicant's conclusion that the individual words, which form the phrase VIRGINIA ADVANCED SHIPBUILDING AND CARRIER INTEGRATION CENTER, are suggestive rather than descriptive. Moreover, we see nothing incongruous or ambiguous about the resulting whole, when the words are joined, that would render the whole suggestive rather than descriptive.

We also disagree with applicant's conclusion that the terms "shipbuilding" and "carrier integration" are not

descriptive because the services it provides through the VASCIC facility do not include the actual physical building of a ship that is designed, or physically integrating systems that would be developed and tested by such services.³

Any competitor of applicant that is or will be providing advanced engineering, testing and design services, or research and development services in the field of naval shipbuilding, should be free to identify such services as emanating from an ADVANCED SHIPBUILDING AND CARRIER INTEGRATION CENTER. Though applicant, as the manager and operator of the only such facility in Virginia, may be the only defense contractor that will be able to use VIRGINIA in conjunction with ADVANCED SHIPBUILDING AND CARRIER INTEGRATION CENTER, the addition of VIRGINIA to the longer phrase does not render the whole non-descriptive. Cf. Washington Speakers Bureau Inc. v. Leading Authorities Inc., 33 F.Supp.2d 488, 49 USPQ2d 1893, 1899 (E.D. Va. 1999) ("Thus, were a lecture agency to adopt the name 'The Speakers Bureau,' it would be unable to protect this name as a trademark because the phrase "The Speakers Bureau" is

³ Indeed, the record makes clear that applicant's Newport News, Virginia facility actually builds naval ships and is engaged in carrier integration. It merely happens at a different part of the shipyard from where the VASCIC center is located.

generic and merely indicates the general nature of services a lecture agency provides. In the instant case, however, the addition of 'Washington' to the phrase 'Speakers Bureau' converts the generic name to a descriptive mark."). Thus, even though applicant may be correct in asserting that there will be no competitor that will need to use the entire, specific phrase VIRGINIA ADVANCED SHIPBUILDING AND CARRIER INTEGRATION CENTER, it does not follow that the phrase is therefore non-descriptive. See In re Alpha Analytics Investment Group LLC, 62 USPQ2d 1852, 1856 (TTAB 2002) ("it is well settled that the fact that an applicant may be the first or only user of a term does not justify registration of the term where the only significance projected by the term is merely descriptive").

Decision: The requirement under Section 6 of the Trademark Act, 15 U.S.C. § 1056, for a disclaimer of VIRGINIA ADVANCED SHIPBUILDING AND CARRIER INTEGRATION CENTER apart from the mark as a whole, is affirmed.

The refusal of registration in the absence of a disclaimer will be set aside and the mark published for opposition if applicant, no later than 30 days from the mailing date hereof, submits an appropriate disclaimer. See Trademark Rule 2.142(g).