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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re epcSolutions, Inc.

Serial No. 76675389

John S. Hale of Gipple & Hale for epcSolutions, Inc.

Kathleen M. Vanston, Trademark Examining Attorney, Law
Office 107 (J. Leslie Bishop, Managing Attorney).

Before Bucher, Grendel and Taylor, Administrative Trademark
Judges.

Opinion by Grendel, Administrative Trademark Judge:

Applicant epcSolutions, Inc. seeks registration on the
Principal Register of the mark ASSET OVER INTERNET PROTOCOL
(in standard character form) for goods identified in the
application, as amended, as "computer network systems
comprised of computer hardware and software for creating
radio frequency identification tags for assets and tracking

those same assets in transit," in Class 9.¹ Applicant has voluntarily disclaimed the exclusive right to use INTERNET PROTOCOL apart from the mark as shown.

The Trademark Examining Attorney has issued a final refusal to register applicant's mark on the ground that the mark is merely descriptive of the goods identified in the application. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1).

Applicant has appealed the final refusal. Applicant and the Trademark Examining Attorney have filed briefs on appeal.

After careful consideration of the evidence of record and the arguments of counsel, we affirm the refusal to register.

A term is deemed to be 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

¹ Serial No. 76675389, filed on April 11, 2007. The application is based on applicant's asserted bona fide intention to use the mark in commerce. Trademark Act Section 1(b), 15 U.S.C. §1051(b). As discussed below, in the application as filed, applicant identified its goods as "an asset over internet protocol network for work in process, fixed assets, finished goods assets and human assets, tagged with RFID tags."

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); *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 on or in connection with those goods or services, and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use. That a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Moreover, it is settled that "[t]he question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods or services are will understand the mark to convey information about them." *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002). See also *In re Patent & Trademark Services Inc.*, 49 USPQ2d

1537 (TTAB 1998); *In re Home Builders Association of Greenville*, 18 USPQ2d 1313 (TTAB 1990); and *In re American Greetings Corporation*, 226 USPQ 365 (TTAB 1985).

Applying these principles in the present case, we find as follows.

To review, applicant's mark is ASSET OVER INTERNET PROTOCOL (INTERNET PROTOCOL disclaimed), and applicant's goods are identified in the application (as amended) as "computer network systems comprised of computer hardware and software for creating radio frequency identification tags for assets and tracking those same assets in transit."

First, we find that the word ASSET in applicant's mark merely describes a significant feature and purpose of applicant's goods, i.e., computer hardware and software for use in connection with the management and tracking of a company's physical assets. As stated in applicant's original identification of goods (see above at footnote 1), such assets include "fixed assets" and "finished goods assets." Applicant also uses "assets" descriptively in its current identification of goods, stating that its hardware and software are used to create radio frequency identification (RFID) tags used "for assets and tracking those same assets in transit."

The record shows third-party descriptive use of "assets" and "asset tracking software" in connection with the tracking of assets by means of RFID (emphasis added):

Getting the Most from RFID ... In recent months, radio frequency identification (RFID) has become easier to use and more powerful. As a result, it's gaining wider adoption among companies that need to **track inventory, equipment, or other assets.**²

RFID Fixed Asset Tracking Software - The RFTrack.NET fixed asset tracking platform helps organizations improve the visibility of their assets by enabling them to automate physical asset inventories, **track the movement of assets**, and monitor assets in real-time for security and safekeeping. ... RFTrack.NET is a web-based application that is designed to easily integrate with and complement your existing Asset Management, fixed Asset Accounting, and other back-end systems or operate as a stand-alone system. It can be purchased as an On-Premise license or as an On-Demand (hosted) subscription.³

WiseTrack is Asset Tracking Software designed to control and manage mobile and fixed assets. WiseTrack centrally manages: what assets you have, where they are, who uses them, and all costs associated to the items. WiseTrack is a comprehensive **asset tracking** solution with extensive bar coding and numerous Radio Frequency Identification (RFID) technologies and functions.⁴

² www.cisco.com - IQ Magazine (2d quarter 2006). (February 29, 2008 final Office action.)

³ www.inlogic.com. (October 1, 2008 denial of request for reconsideration.)

⁴ www.wisetrack.com. (October 1, 2008 denial of request for reconsideration.)

We are not persuaded by applicant's argument that "asset" is not descriptive because it could refer to essentially anything of value, such as jewelry, one's home, or one's education. (Brief at 3.) As noted above, our mere descriptiveness determination is based on the use of the term in connection with the goods identified in the application, not in the abstract. That a term might have different meanings in other contexts is not determinative. *See In re Bright-Crest, Ltd., supra*, 204 USPQ at 593. In the context of applicant's goods, "asset" clearly refers to a company's physical assets such as inventory and equipment.

Based on this evidence, including applicant's own usage, we find that ASSET is merely descriptive of applicant's goods. Relevant purchasers will immediately understand that ASSET in applicant's mark refers to and describes a key feature of the nature, purpose and application of applicant's hardware and software, i.e., that it enables the tracking of physical assets. Furthermore, we find that the word ASSET in applicant's mark is merely descriptive notwithstanding applicant's omission of the word "tracking" from the mark. *Cf. In re Central Sprinkler Co.*, 49 USPQ2d 1194 (TTAB 1998) (ATTIC generic for "automatic sprinklers for fire protection,"

i.e., "attic sprinklers," despite applicant's omission of the word "sprinkler" from mark); *Micro Motion Inc. v. Danfoss A/S*, 49 USPQ2d 1628 (TTAB 1998) (MASSFLO generic for "flowmeters for the measurement of flow of mass of liquids," i.e., "mass flowmeters," despite applicant's omission of "meter" from mark); *In re U.S. Cargo Inc.*, 49 USPQ2d 1702 (TTAB 1998) (CARGO in mark U.S. CARGO highly descriptive of "towable trailers for carrying cargo...," i.e., "cargo trailers," despite applicant's omission of "trailer" from mark).

Next, we find that OVER INTERNET PROTOCOL in applicant's mark merely describes applicant's goods, which employ or utilize an "over Internet Protocol" in performing their function. According to the evidence of record:

Internet Protocol, or IP, is the common "language" that allows different types of information, such as e-mail and other data, voice communications, and video, travel seamlessly over the same network.⁵

The Internet Protocol (IP) is the method or protocol by which data is sent from one computer to another on the Internet.⁶

We note that applicant has voluntarily disclaimed INTERNET PROTOCOL.

⁵ www.cisco.com, *IQ Magazine* (4th quarter 2005). (Feb. 29, 2008 final Office action.)

⁶ www.searchvoip.techtarget.com. (June 29, 2007 first Office action.)

Regarding OVER INTERNET PROTOCOL, the record shows that when specific applications utilize an Internet Protocol, they are commonly identified by combining a descriptor of the application with the words "over Internet Protocol." For example:

Voice over Internet Protocol (VoIP) is a technology that allows you to make voice calls using a broadband Internet connection instead of a regular (or analog) phone line.⁷

What exactly IS IPTV (television over Internet Protocol)?⁸

In its brief at pages 3-4, applicant acknowledges the mere descriptiveness of "Internet Protocol" and "over Internet Protocol":

The phrase "Internet Protocol" has become ubiquitous, both used by itself and in combination with other descriptors. Hence, for example, Voice Over Internet Protocol (VoIP) describes voice transmissions over the Internet and is widely understood to refer to Internet telephony. Similarly, Video Over Internet Protocol (Video-IP) or Internet Protocol TV (IPTV) simply describe technology. ... Moreover, there are hundreds of different Internet protocols, used for a wide variety of uses...

Based on this evidence, we find that the words OVER INTERNET PROTOCOL in applicant's mark are merely descriptive of applicant's goods in that they immediately

⁷ www.fcc.gov. (February 29, 2008 final Office action.)

⁸ www.youtube.com. (February 29, 2008 final Office action).

describe a key aspect of how the goods function, i.e., by means of an over Internet Protocol.

We have found that ASSET and OVER INTERNET PROTOCOL, considered separately, are merely descriptive of applicant's goods. We also find, more importantly, that the composite term ASSET OVER INTERNET PROTOCOL is merely descriptive of the goods.

As noted above, an application which functions by means of an over Internet Protocol is identified by combining a term which describes the application and the words "over Internet Protocol." In this case, ASSET directly describes the a key feature of the application for which applicant's goods are used, i.e., the tracking of assets, and OVER INTERNET PROTOCOL directly describes how that asset tracking function is performed, i.e. by means of an over Internet Protocol. The merely descriptive significance of ASSET and of OVER INTERNET PROTOCOL is not negated by combining the two terms; the combination does not create a composite that is incongruous or otherwise distinctive. The composite term is as merely descriptive as the two terms are when considered separately.

Applicant argues that its mark is not merely descriptive because although asset tracking by means of RFID is an established technology, and over Internet

Protocol is an established technology, the two technologies have never been combined before, and relevant purchasers therefore would have no basis for understanding ASSET OVER INTERNET PROTOCOL to have any meaning as applied to these novel goods.

In fact, while Applicant concurs that RFID technology and the Internet are well known, the combination of the two is unknown to the general consumer. ... Applicant emphasizes that these are extant technologies being combined in a heretofore unknown manner. As such, the mark "Asset Over Internet Protocol" cannot possibly be merely descriptive because it is neither used nor understood to have a meaning. Because this is a new technology, there is not any identification within the industry, or within the general public, that would identify the use of RFID technology with this mark. The word mark ASSET OVER INTERNET PROTOCOL does not convey immediate information and is not merely descriptive as a consumer or individual would not make a correlation between the mark and the goods. The fact that RFID data can be transmitted via the internet is not relevant to a descriptiveness rejection.

(Applicant's Brief at 4-5.) We are not persuaded by this argument.

First, as noted above, "[t]he question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods or services are will understand the mark to convey information about them." *In re Tower Tech Inc*, supra, 64 USPQ2d at 1316-17.

Second, it is not dispositive of our mere descriptiveness determination that an applicant may be the first or only user of the term in question. *In re Central Sprinkler Co., supra*, 49 USPQ2d at 1199.

Third, and in any event, it appears from the evidence of record that combining RFID asset tracking software and the Internet is not as unusual or unexpected as applicant claims. For example (emphasis added):

WiseTrack is **Asset Tracking Software...a comprehensive asset tracking solution** with extensive bar coding and numerous Radio Frequency Identification (**RFID**) Technologies ... Web Based Asset Tracking Solutions including asset enrollment and **downloading via a web browser or TCP/IP connection.**⁹

For instance, **RFID** can be used in combination with wireless sensor networks (WSN) and actuators to monitor, store and relay information having to do with a wide variety of physical conditions along with **asset identification and location in real-time via the Internet...**¹⁰

Commentary: The year of living RFID" ... **RFID is one of many technologies that will extend the Internet to the physical world.** ... In 2004, many companies will need to adopt RFID. Retailers like Wal-Mart Stores and Tesco and organizations like the U.S. Department of Defense and the Food and Drug Administration are asking companies to use RFID to track assets, products and materials. ... What to expect in 2005... RFID traffic will flow to existing applications and over existing

⁹ www.wisetrack.com. (October 1, 2008 denial of request for reconsideration.)

¹⁰ www.linuxinsider.com. (October 1, 2008 denial of request for reconsideration.)

networks. **Eventually, RFID data will travel over an Internet Protocol network...**¹¹

RFID Fixed Asset Tracking Software - The RFTrack.NET fixed asset tracking platform helps organizations improve the visibility of their assets by enabling them to automate physical asset inventories, **track the movement of assets**, and monitor assets in real-time for security and safekeeping. ... RFTrack.NET is a **web-based application** that is designed to easily integrate with and complement your existing Asset Management, fixed Asset Accounting, and other back-end systems or operate as a stand-alone system. It can be purchased as an On-Premise license or as an On-Demand (hosted) subscription."¹²

Finally, we note that in the identification of goods set forth in the application as originally filed, applicant itself used the term "asset over internet protocol" in a merely descriptive manner, and indeed in a generic manner, to identify its goods, i.e., "[a]n asset over internet protocol network for work in process, fixed assets, finished goods assets and human assets, tagged with RFID tags." We find that applicant's own use of "asset over internet protocol" in this manner belies its claim that the mark is not merely descriptive.

For all of the reasons discussed above, we find that the mark applicant seeks to register, ASSET OVER INTERNET

¹¹ www.news.com (January 26, 2004 article at c/news.com). (February 29, 2008 final Office action.)

¹² www.inlogic.com. (October 1, 2008 denial of request for reconsideration.)

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PROTOCOL, is merely descriptive of the goods identified in the application, i.e., "computer network systems comprised of computer hardware and software for creating radio frequency identification tags for assets and tracking those same assets in transit." We therefore find that registration of applicant's mark on the Principal Register is barred by Trademark Act Section 2(e)(1).

Decision: The refusal to register is affirmed.