

**THIS OPINION
IS NOT A PRECEDENT OF
THE TTAB**

Mailed: May 29, 2009

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re AgRobotics, LLC

Serial No. 77138973

J. Charles Dougherty of Wright, Lindsey & Jennings for
AgRobotics, LLC.

John D. Dalier, Trademark Examining Attorney, Law Office 106
(Mary I. Sparrow, Managing Attorney).

Before Hairston, Walters and Rogers, Administrative
Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

AgRobotics, LLC has filed an application to register on
the Principal Register the standard character mark AUTOPROBE
for "self-powered, mobile soil sampling machines," in
International Class 12, and "agricultural services, namely,
soil sampling, testing, and analysis," in International
Class 42.¹

¹ Serial No. 77138973, filed March 23, 2007, based on an allegation of a
bona fide intention to use the mark in commerce.

The examining attorney has issued a final refusal to register, under Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1), on the ground that applicant's mark is merely descriptive in connection with its services.

Applicant has appealed. Both applicant and the examining attorney have filed briefs. We affirm the refusal to register.

The examining attorney submitted the following definitions, in pertinent part, of the words "auto" and "probe":

Auto: *prefix* "2. Automatic: autopilot."

Probe: *noun* "1. An exploratory action, expedition, or device, especially one designed to investigate and obtain information on a remote or unknown region: electronic probes into the crust of the earth" and "3. The act of exploring or searching with or as if with a device or an instrument." *verb* "1. To explore with or as if with a probe: probe a wound to find its extent; probing the anthill with a stick," and "2. To delve into; investigate" and "to conduct an exploratory investigation; search."

The American Heritage® Dictionary of the English Language (3rd ed. 1992).

The examining attorney contends that "applicant's goods are automatic probing devices or, at the very least, possess an automatic self propelled probing function as one of several features of the goods"; that, according to applicant, the goods are capable of extracting soil from the probe itself and properly storing each soil sample; that extracting and storing soil samples "are presumably automatic and self

propelled functions of the probe portion of the applicant's devices"; and that, presumably "the services will feature the use of self propelled probing devices to obtain research data." (Brief, pp. **.) Applicant does not dispute these assumptions made by the examining attorney about the operation of the machine. The examining attorney concludes "[g]iven that the applicant's goods are self propelled probing devices and that the services feature the use of self propelled probing devices, the wording 'AUTO' and 'PROBE,' when taken together as a whole and viewed in relation to the goods and services, provide an apt description of the goods and services within the meaning of Section 2(e)(1)." (Id.)

Applicant contends that its combination of the terms "AUTO" and "PROBE" creates a nondescriptive mark. Applicant argues that "auto" has other meanings in the context of its goods, such as automobile and, in this context, it is suggestive of devices powered like automobiles. Applicant also states that the composite is not descriptive because the AUTO portion does not directly modify PROBE; the device performs several functions other than just inserting a probe into the ground as it also must extract soil from the ground and store each sample in a manner that can identify from where the sample was taken; and it is not the probe that is encompassed by "auto," it is the entire machine.

The test for determining whether a mark is merely descriptive is whether it immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used, or intended to be used. *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007); *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986); *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). It is not necessary, in order to find that a mark is merely descriptive, that the mark describe each feature of the goods or services, only that it describe a single, significant quality, feature, etc. *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985). Further, it is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the impact that it is likely to make on the average purchaser of such goods or services. *In re Recovery*, 196 USPQ 830 (TTAB 1977).

We agree with the examining attorney's analysis of the mark in the context of the identified goods and services. While "auto" may commonly be understood to mean "automobile" as well as "automatic," in the context of these robotic soil sampling machines, it is likely that the purchasers of these

machines will immediately understand the AUTO portion of the mark as referring to the "automatic," i.e., "self-powered," quality of these machines.² The fact that the machine "automatically" obtains the soil sample, extracts the sample from the probe and stores it, is a significant, if not the defining, aspect of the machine. Moreover, the PROBE portion of the mark exactly identifies the device on the machine that extracts the soil, as well as identifying the action of the device in "probing" the soil to remove a sample. While AUTO may suggest or describe the automatic nature of the entire machine, it also describes the automatic nature of the probe device and the act of probing the soil. Therefore, we find that the combination of the two merely descriptive terms AUTO and PROBE results in a compound mark, AUTOPROBE, which is equally merely descriptive of the identified machines. Because the identified goods are the principal means for rendering the identified services, we find that the mark is equally merely descriptive of these services.

Both applicant and the examining attorney cite numerous cases in support of their respective positions. However, each case must be decided on its own facts.

² That a term may have other meanings in different contexts is not controlling. *In re Polo International Inc.*, 51 USPQ2d 1061 (TTAB 1999); and *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979).

When we consider the record and all of applicant's arguments relating to the issue of descriptiveness, including those arguments not specifically addressed herein, we conclude that when applied to applicant's goods and services, the term AUTOPROBE immediately describes, without the need for conjecture or speculation, a significant feature or function of applicant's goods and services, as discussed herein. Nothing requires the exercise of imagination, cogitation, mental processing or gathering of further information in order for purchasers of and prospective customers for applicant's goods and services to readily perceive the merely descriptive significance of the term AUTOPROBE as it pertains to those goods and services.

Decision: The refusal under Section 2(e)(1) of the Act is affirmed.