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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Prosthodontics Intermedica, P.C.

Serial No. 77201064

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Prosthodontics Intermedica, P.C.

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(Brett Golden, Managing Attorney).

Before Seeherman, Bergsman and Kuczma, Administrative
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Prosthodontics Intermedica, P.C. has appealed from the
final refusal of the trademark examining attorney to
register NO BONE SOLUTIONS, in standard character format,
for "dentistry services, namely, providing dental
examinations; dentistry services, namely dental implant
services; dentistry services, namely, providing dental

treatment pertaining to dental implants.”¹ Registration has been refused pursuant to Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that the mark is merely descriptive of the identified services and, specifically, that it tells the relevant consumers in the dentistry field that applicant’s services are designed as a solution for people who do not have sufficient bone available for particular dental procedures.

In support of the refusal, the examining attorney has submitted web pages taken from various websites, and also has pointed to materials submitted by applicant itself, that discuss how to handle dental implants when patients have little or no bone:

Subperiosteal Implant Solution
Treatment Choice for Deficient Jawbone

...

Dentists, periodontists and oral surgeons who have access to and, perhaps more importantly, experience in subperiosteal surgeries, almost routinely offer this implant device as a viable solution for patients who have been told no options remain for using common dentures and or traditional implants due to inadequate bone structure.

Dental Implants, www.dental-implants.com

Bone graft surgery is commonly used in implant dentistry for the purpose of either fortifying a

¹ Application Serial No. 77201064, filed June 8, 2007. As originally filed, the application was based on Section 1(b) of the Trademark Act (intent-to-use). During the course of prosecution, applicant filed an amendment to allege use, asserting first use and first use in commerce as early as July 1, 2007.

particular implant site (extractions sometimes cause tiny amounts of bone loss) or for larger scale jawbone rehabilitation when loss is more significant.

Difficult extractions, gum disease ... commonly signal the need for bone augmentation when dental implants are desired for replacing a tooth or creating a fixed bridge.

No Bone for Implants? [subhead]

Patients who have this condition, whether it affects one tooth or several, are often told they are not a candidate for implants.

Unfortunately, the number of dentists and specialists who have the access to advanced technologies that are designed to overcome unique bone health problems such as this are relatively few.

[this webpage also lists, as a site topic, "Solutions for No Bone"]

Michigan Reconstructive Implant Dentistry,
www.michiganreconstructiveimplantdentistry.com

There are several articles that appear to refer to applicant and its protocol. In these articles, the term "no bone" is used descriptively to refer to the condition of a patient who has the problem of no bone to hold dental implants:

Man with NO BONE gets Dental Implants [headline]

Dr. Balshi performs an advanced dental surgery for a man with has no bone using the TEETH IN AN HOUR protocol and PI trademarked No Bone Solutions!

Dental Lab, December 29, 2009, www.worksinusa.com

Woman patient with NO BONE gets Dental Implants at Pi Dental Center! [headline]

Woman patient with a dental history nightmare receives Dental Implants from Dr. Thomas J. Balshi of Pi Dental Implant Center. With little to no bone in the maxilla, Dr. Balshi delivers Dental Implants using the most advanced tools in

dental technology. A Partially Guided Zygomatic case.

Icyou Interactive Content For Your Health,
November 13, 2008, www.icyou.com

Case of the Month [article]

...

For patients with no remaining alveolar bone, the No Bone Solution™ protocol demonstrated in this article is an ideal treatment that avoids major bone grafting and the long associated healing and treatment time. ... It also provides patients with little or no bone with a non-removable solid set of teeth in just one day.

The Journal of Implant & Advanced Clinical Dentistry, April 2009, www.dentalimplants-usa.com

Indiana Implant Dentist Receives training in Cutting Edge Protocol to Rescue the Denture Sufferers [title]

...This specialized surgery will allow patients who previously were not able to wear implant supported teeth on the upper jaw, due to lack of supportive bone, to do so without multiple and expensive bone enhancing surgeries...

"The Zygomatic Implant technique will allow me to help the patients with advanced bone loss that have been wearing ill fitting dentures for years and have been told by their dentist that they have no solutions as the only solution for them is to wear a lousy upper denture..."

www.prweb.com

Another article, again referring to applicant's procedures, uses "No Bone Solutions" in a descriptive fashion in the title of the article:

No Bone Solutions for the Severely Atrophic Maxilla [title]

...

Typically, a patient who decides to pursue dental implant rehabilitation is suffering from poor overall dental health. In some cases, due to prolonged periods of edentulism, rehabilitation of the extremely atropic edentulous maxilla is

compromised, as the alveolar bone volume is often inadequate. Patients with advanced or severely resorbed alveolar crests present a daunting situation regarding bone harvesting and dental rehabilitation. ...

This report discusses patient treatment of the atrophic maxilla using the zygoma bone for anchorage of dental implants.

Dentistry Today.com, March 2008,
www.dentistrytoday.com

A term is deemed to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. 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 to be merely descriptive; rather, it is sufficient that the term describes one significant attribute, function or property of the goods or services. 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 the 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, if the mark is descriptive of any of the goods or services for which registration is sought, it is proper to refuse registration as to the entire class. In re Analog Devices Inc., 6 USPQ2d 1808 (TTAB 1988), aff'd without pub. op., 871 F.2d 1097, 10 USPQ2d 1879 (Fed. Cir. 1989).

It is clear from the evidence of record that applicant's identified dental implant services and service of providing dental treatment pertaining to dental implants can be used for patients who do not have the necessary bone tissue to hold or anchor dental implants. When viewed in connection with these services, the mark NO BONE SOLUTIONS immediately conveys to potential purchasers or users of these services a major characteristic of the services, i.e., that applicant provides a solution or protocol for treating patients who do not have the bone necessary for implants. Accordingly, the mark is merely descriptive.

Applicant has argued that "the public cannot identify dentistry or dental implants from the Mark itself, and the public cannot discern what services in particular as part

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of dentistry may be offered without further examination." Brief, unnumbered p. 3. However, as noted above, the determination of whether a term is merely descriptive is not made in the abstract; in other words, it is not a question as to whether someone viewing the mark by itself will understand what the goods or services are. Rather, the question is whether, when one knows what the services are, one will understand from the mark a characteristic of the services. When the mark is used in the context of dental implant services and treatment pertaining to dental implants, it immediately conveys that the services provide a protocol or solution for providing dental implants when the patient has no bone to hold the implant.

Decision: The refusal of registration is affirmed.