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Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re STMicroelectronics NV

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Serial No. 77500550

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Molly Buck Richard, James F. Struthers, Ann K. Burns and Aaron A. Weiss of Richard Law Group for STMicroelectronics NV

Anne Farrell, Trademark Examining Attorney, Law Office 105 (Thomas G. Howell, Managing Attorney).

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Before Hairston, Bucher and Zervas, Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

STMicroelectronics NV seeks registration on the Principal Register of the mark **FLEXILOGIC** *(in standard character format)* for goods identified in the application as "computer hardware and software for noise reduction, spatial and strength processing, temporal tracking and gesture recognition of touch input devices" in International Class 9.[1]

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[1] Application Serial No. 77500550 was filed on June 17, 2008 based upon applicant's allegation of a *bona fide* intention to use the mark in commerce.

This case is now before the Board on appeal from the final refusal of the Trademark Examining Attorney to register this mark based upon Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d). The Trademark Examining Attorney has found that applicant's mark, when used in connection with the identified goods, so resembles the mark **FLEXILOGIC** *(in standard character format)* for "computer software design for others"[2] in International Class 42, as to be likely to cause confusion, to cause mistake or to deceive.

The Trademark Examining Attorney and applicant have fully briefed the case.

We reverse the refusal to register.

In support of her refusal, the Trademark Examining Attorney contends that inasmuch as the goods and services are closely related, and neither the application nor the registration contain any limitations on the trade channels for the respective goods and services, with identical marks, even purchasers knowledgeable about these products are not immune from source confusion.

By contrast, in urging registrability, applicant argues that the Trademark Examining Attorney has failed to provide any reliable evidence that its goods are related to

[2] Registration No. 2726238 issued on June 17, 2003; Section 8 affidavit (six-year) accepted.

software design services for others, that they would travel in the same channels of trade, or that they would be targeted to the same consumers. Additionally, applicant argues that even if one could theorize about a potential of overlap, the highly-sophisticated purchasers of applicant's complex components would not be likely to be confused.

As we turn to a consideration likelihood of confusion, our determination is based upon our analysis of all of the probative facts in evidence that are relevant to the factors bearing on this issue. *See In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973).

Applicant's goods, as seen above, include "computer hardware and software for noise reduction, spatial and strength processing, temporal tracking and gesture recognition of touch input devices." Registrant's services are recited broadly: "computer software design for others." The Trademark Examining Attorney argues that registrant's software design services, as recited, could logically include "*computer software design in the field* of noise reduction, spatial and strength processing, temporal tracking and gesture recognition of touch input devices."

However, applicant argues that as identified herein, its complex components deliver specific performance

features to touch input electronic devices such as personal digital assistants (PDA's) and mobile phones. These are mass-produced, electronic components sold to original equipment manufacturers that completely lose their identity within consumer electronic goods.

There is certainly no *per se* rule that every computer program is related to all software design services. In an attempt to show such a relationship, the Trademark Examining Attorney has placed into the record sixteen third-party registrations that include software design services as well as computer software. However, we agree with applicant that such registrations having specialized computer software unrelated to applicant's goods have no probative value as to the relatedness of applicant's software to design services in general. None of these registrations list high-tech components comparable to those identified by applicant. The fact that a single source might offer certain specialized types of software alongside software design services targeted to the design of thos same specialized types of software does not support the Trademark Examining Attorney's contention that *applicant's specialized* software is related to software design services *generally*.

Notwithstanding registrant's broad recitation of software design services, without some evidence demonstrating

a commercial relationship, we cannot presume that *all* software design services are related to any and all computer software and hardware in International Class 9, irrespective of the wording of the latter identification of goods.

Turning to a closely-related *du Pont* factor, we also cannot presume without some showing that applicant's type of software would travel in the same trade channels as registrant's software design services, or that they would be targeted to the same consumers.

As to the conditions under which applicant's sales are made, even if one could theorize about some area of logical overlap between software design services for others and applicant's specialized goods, applicant argues that given the highly sophisticated purchasers of applicant's goods, confusion would not be likely. Even without any explicit restriction on the classes of purchasers in the identification of goods, it is clear that these complex and specialized goods have a niche market. Although applicant has not proffered evidence in this regard, we conclude that manufacturers of touch input electronic devices (PDA's and smartphones) will consummate a purchase of applicant's type of components only after the exercise of great care. Absent some reason to believe there will be a

commonality in channels of trade or classes of purchasers, we are unwilling to presume that applicant's sophisticated goods are related in any way to registrant's broad recitation of software design for others.

In conclusion, despite the fact that the marks are identical, we find no evidence that these goods and services are related or move through the same channels of trade, and conclude that applicant's goods are, on their faces, traded to sophisticated purchasers who would exercise great care in purchasing applicant's goods.

Decision: The refusal to register this mark based upon Section 2(d) of the Lanham Act is hereby reversed.