

THIS DECISION IS NOT A
PRECEDENT OF THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board

In re IO Data Centers, LLC

Serial No. 77902194
Filed December 29, 2009

Oral Hearing May 8, 2012

Todd S. Sharin, Gilbribe Tusa Last & Spellane LLC, for
applicant.

Julie Thomas Veppumthara, Law Office 107, J. Leslie Bishop,
Managing Attorney.

**Before Cataldo, Taylor, and Mermelstein, Administrative
Trademark Judges.**

Opinion by Mermelstein, Administrative Trademark Judge:

Applicant IO Data Centers, LLC, seeks registration on
the Principal Register of the mark I/O ANYWHERE (in
standard characters) for use on "high density enclosures
for computer servers and computer equipment."¹ Applicant
appeals from the examining attorney's final requirement to
disclaim the exclusive right to use "I/O" apart from the
mark as shown.

¹ Based on applicant's declaration of a *bona fide* intent to use
the mark in commerce under Trademark Act § 1(b); 15 U.S.C.
§ 1051(b).

We affirm.

I. Relevant Facts and Law

There appears to be no significant disagreement between applicant and the examining attorney over the basic facts and law applicable to this case, so we start with the common ground.

A. Definition of "I/O"

"I/O" is a commonly-used term in the field of computing, used to describe vital functions, hardware, and software in any computer system. According to the evidence of record,

[I/O s]tands for "Input/Output" and is pronounced simply "eye-oh." Computers are based on the fundamental idea that every input results in an output. For example, if you are running a word processor program and type a sentence on your keyboard, the text will appear on the screen. The keyboard is an input device and the screen is an output device. You might also print the text using a printer, which is another output device. The computer's CPU handles all the I/O operations, sending the data it receives to the correct path. The path may be to the video card, to the hard drive, or to the RAM, just to name a few.

The ports on the outside of a computer are commonly referred to as "I/O ports" because they are what connect input and output devices to the computer. Software developers use I/O to describe how a program will function, depending on what a user enters. For example, if the user presses the space bar key in a game, say "Super Jumper Man," the character on the screen will jump. Multiply that by several thousand other scenarios of user input and you have yourself a

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computer game.

TECH TERMS DICTIONARY (2005-2010), www.techterms.com/definition/io (visited June 1, 2010).

In addition to the devices attached to an individual computer (such as a mouse, display screen, audio speaker, or scanner), I/O devices also include the hardware which connects computers to other computers or networks, such as modems, which manage both input and output. See COMPUTER, TELEPHONY & ELECTRONICS INDUSTRY GLOSSARY, www.csgnetwork.com/glossaryi.html (visited Dec. 15, 2010).

B. Relevant Law

"The Director may require the applicant to disclaim an unregistrable component of a mark otherwise registrable." Trademark Act § 6(a); 15 U.S.C. § 1056(a). Merely descriptive or generic terms are unregistrable under Trademark Act § 2(e)(1), and therefore are subject to a disclaimer requirement if the mark is otherwise registrable. Failure to comply with a disclaimer requirement is a ground for refusal of registration. See *In re Omaha Nat'l Corp.*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987); *In re Box Solutions Corp.*, 79 USPQ2d 1953, 1954 (TTAB 2006).

A term is merely descriptive if it immediately conveys knowledge of a significant quality, characteristic,

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function, feature or purpose of the goods with which it is used. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009-10 (Fed. Cir. 1987). Whether a particular term is merely descriptive is determined in relation to the products for which registration is sought and the context in which the term is used, not in the abstract or on the basis of guesswork. *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978); *In re Remacle*, 66 USPQ2d 1222, 1224 (TTAB 2002). In other words, the issue is whether someone who knows what the products are will understand the mark to convey information about them. *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1316-1317 (TTAB 2002); *In re Patent & Trademark Serv. Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998); *In re Home Builders Ass'n of Greenville*, 18 USPQ2d 1313, 1317 (TTAB 1990); *In re Am. Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985). "On the other hand, if one must exercise mature thought or follow a multi-stage reasoning process in order to determine what product or service characteristics the term indicates, the term is suggestive rather than merely descriptive." *In re Tennis in the Round, Inc.*, 199 USPQ 496, 497 (TTAB 1978); *In re Shutts*, 217 USPQ 363, 364-365 (TTAB 1983); *In re Universal Water Sys., Inc.*, 209 USPQ 165, 166 (TTAB 1980).

II. Discussion

As noted, applicant seeks to register I/O ANYWHERE for use on "high density enclosures for computer servers and computer equipment." It is plain to us that applicant's goods comprise enclosures² for – among other things – I/O devices. It is clear from the evidence of record that "computer equipment" includes I/O devices, and "computer servers" are themselves I/O devices on a network level.³

Applicant argues that its mark is "one step removed" from the examining attorney's descriptiveness analysis because its goods are "**enclosures** for computer equipment, and **not** the computer equipment" itself, and that its mark is at most suggestive of the identified goods, because it

² Applicant asserts in its brief that its "enclosures" "will be offered as standalone structures. . . ." Nonetheless, applicant's identification of goods is not limited to such structures, and we must thus consider it to include all "high density enclosures for computer servers and computer equipment," including, for example, cases and rack systems for servers and computer equipment which meet applicant's identification of goods.

³ We take notice of the definition of a "server" as "[a] computer that manages centralized data storage or network communications resources. A server provides and organizes access to these resources for other computers linked to it." AMERICAN HERITAGE SCIENCE DICTIONARY (2002), <http://dictionary.reference.com/browse/server> (visited June 22, 2012). "What actually counts as I/O depends on what level of detail you are considering...." FREE ONLINE DICTIONARY OF COMPUTING (2010), <http://foldoc.org//I%2fO> (visited Dec. 15, 2010) (attached to final Office action). A server sending and receiving data on a network is an I/O device no less than the circuits and software in a desktop computer which control data sent to and from printers, keyboards, and other common peripherals.

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would "requir[e] imagination, thought, and perception to reach a conclusion as to the nature of Applicant's goods. . . ." App. Br. at 1 (emphasis in original). "Applicant's goods are NOT the computer equipment stored therein. They are neither computers not accessories or peripherals to computers. Applicant's goods are simply high-tech storage vessels, which provide a secure and ideal environment for computers to function [in] independent of the vessel in which they are stored." Reply Br. at 3.

It is well-settled that in considering descriptiveness, "[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 at 1316-17; *In re Patent & Trademark Servs. Inc.*, 49 USPQ2d at 1538-39; *In re Am. Greetings Corp.*, 226 USPQ at 366. Moreover, a descriptive mark need not provide information on all features or aspects of the relevant goods or services; "it need only describe a single feature or attribute" of the goods or services. *In re Chamber of Commerce of the United States of America*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012).

In this case, we find the term I/O to be descriptive

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of a feature, function, or attribute of applicant's identified goods, namely, that the goods include – among other things – high density enclosures for "I/O" equipment. Although applicant's goods do not comprise the I/O equipment itself, but rather enclosures for it, the term I/O is descriptive of such enclosures because it informs the potential purchaser of a use or purpose for the enclosures, *i.e.*, to house I/O devices.

By analogy, if the term in question were "CAMERA," we would likely find it descriptive of goods identified as "camera cases," because "camera" is descriptive of the type of case or the use for which it is intended. But CAMERA would be no less descriptive if the goods were instead identified as "cases for photographic equipment," because although it is broader, photographic equipment clearly includes cameras, and cases for photographic equipment includes cases for cameras. A mark is descriptive if it identifies *any* significant feature, function, or characteristic of *any* of the identified goods; to be descriptive, the mark need not relate to all of the goods or all features, functions, or characteristics of them.

Applicant argues that its potential purchasers

would at best *imagine* the goods and services^[4] offered under the Mark relate to computers in one way or another. The fact that the Mark is not used in connection with, and Applicant does not offer for sale or sell, "input/output devices" is proof positive the Mark is at minimum suggestive and likely worthy of an arbitrary and fanciful classification. In fact, if these consumers were to reach the conclusion that the subject goods and services were computers or computer peripherals, they would be WRONG!

App. Br. at 5 (emphasis in original). This argument simply applies the wrong test. Whether applicant's customers would believe (or guess) from looking at the mark that applicant's goods "were computers or computer peripherals" is clearly not the relevant question. Instead, the question is whether such customers – knowing what the goods are – would understand the mark to describe some feature, function, or characteristic of them. The examining attorney's argument is that "I/O" identifies the type of computer equipment (or one type of computer equipment) for which applicant's enclosures are suitable, and we agree that it does. Whether applicant itself sells I/O devices

⁴ Applicant refers several times in its brief to the goods and services it offers or intends to offer under the mark. To be clear, the current application refers only to the goods noted above. Applicant's use or intended use of the mark on or in connection with any other goods or services is not an issue in this appeal. (Although applicant claimed ownership of Registration No. 3414361 for the mark I/O DATA CENTERS (stylized) for services, applicant makes no argument in its briefs that we should consider its prior registration as a factor in this appeal.)

or whether applicant's customers would believe that it does is irrelevant.

Finally, we believe that applicant's potential customers would immediately understand the significance of the term I/O to applicant's goods, without the exercise of imagination or multi-step reasoning. As noted, the term I/O is widely used in the field of computing, and those purchasing high density enclosures for computer equipment and computer servers would undoubtedly be well-acquainted with it. Such purchasers, when encountering the term I/O in applicant's mark, would immediately, and without conjecture, understand the mark to describe a use or function of applicant's goods, namely, that they are (or include) enclosures suitable for I/O devices.

III. Conclusion

We have carefully considered all of the evidence and argument properly presented,⁵ including any matters we have

⁵ We note applicant's argument in its reply brief that "the Examining Attorney improperly objects solely to a part of the mark and without consideration of the mark as a whole." *E.g.*, Reply Br. at 5-6. Although not well-developed, we understand this argument as urging that applicant's mark, I/O ANYWHERE, is unitary, and that a disclaimer of I/O is therefore unnecessary, even if the term is descriptive. See generally, TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 1213.05 (8th ed. 2011). This argument was not raised during examination or in applicant's opening brief, and we give it no consideration. Arguments raised for the first time in a reply brief may be considered untimely, and therefore waived, *Threshold.TV Inc. v. Metronome Enters. Inc.*, 96

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not specifically discussed. We conclude that the term I/O is merely descriptive of a characteristic or use of applicant's goods, and that the term must be disclaimed pursuant to Trademark Act § 6(a).

Decision: The refusal to register in the absence of a disclaimer of I/O is AFFIRMED.

However, this decision will be set aside if, within thirty days of the mailing date of this order, applicant submits to the Board a proper disclaimer of "I/O." See Trademark Rule 2.142(g); TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE § 1218 (3d ed. rev. 2012). The disclaimer should be worded as follows: "No claim is made to the exclusive right to use I/O apart from the mark as shown." TMEP § 1213.08(a)(i).

USPQ2d 1031, 1035 (TTAB 2010), and in any event, we will not usually consider an argument on appeal which was not made to the examining attorney, either prior to appeal or on remand, *In re Lar Mor Int'l, Inc.*, 221 USPQ 180, 183 (TTAB 1983).