

THIS OPINION IS  
NOT A PRECEDENT OF  
THE TTAB

Mailed: May 10, 2011

**UNITED STATES PATENT AND TRADEMARK OFFICE**

---

**Trademark Trial and Appeal Board**

---

In re Cambridge Theranostics Limited

---

Serial No. 79049471

---

Charles T.J. Weigell of Fross Zelnick Lehrman & Zissu, P.C. for  
Cambridge Theranostics Limited.

Myriah A. Habeeb, Trademark Examining Attorney, Law Office 105  
(Thomas G. Howell, Managing Attorney).

---

Before Holtzman, Mermelstein and Wolfson, Administrative  
Trademark Judges.

Opinion by Holtzman, Administrative Trademark Judge:

Cambridge Theranostics Limited (applicant) has filed an  
application to register on the Principal Register the mark  
ATHEROABZYME in standard characters, for goods ultimately  
identified as:<sup>1</sup>

Diagnostic substances, reagents and preparations for  
medical use; diagnostic kits consisting primarily of  
diagnostic substances, reagents and preparations for  
medical use and for use in disease testing;  
diagnostic testing materials for medical use, namely,

---

<sup>1</sup> Application Serial No. 79049471, filed December 21, 2007, based on  
Section 66(a) of the Trademark Act.

reagents and media for use in relation to human beings who have or are at risk of developing atherosclerotic conditions, cardiovascular conditions, metabolic syndromes, diabetes, hypertension, strokes, coronary diseases, heart diseases, heart failure, peripheral artery occlusive disease; diagnostic testing materials for medical use, namely, reagents and media for testing the blood; diagnostic testing materials for medical use, namely, lipid lycoproteins, blood serums, plasma, immobilized lipid antigens; chemical products for medical diagnostic use, namely, reagents and media for use in relation to human beings who have or are at risk of developing atherosclerotic conditions, cardiovascular conditions, metabolic syndromes, diabetes, hypertension, strokes, coronary diseases, heart diseases, heart failure, peripheral artery occlusive disease; chemical products for medical diagnostic use, namely, reagents and media for testing the blood; chemical products for medical diagnostic use, namely, lipid lycoproteins, blood serums, plasma, immobilized lipid antigens, in Class 5.

The trademark examining attorney has refused registration on the ground that the mark is merely descriptive of the goods under Section 2(e)(1) of the Trademark Act.

When the refusal was made final, applicant appealed. Applicant and the examining attorney have filed briefs.

A term is merely descriptive within the meaning of Section 2(e)(1) if it immediately conveys knowledge of a quality, characteristic, function, feature, purpose or use of the goods with which it is used. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). On the other hand, a term is suggestive if, in the context of those goods, a purchaser must use imagination, thought, or some type of multi-stage reasoning to

understand the term's significance. See *Plyboo America Inc. v. Smith & Fong Co.*, 51 USPQ2d 1633 (TTAB 1999).

In determining whether a designation is merely descriptive, we must analyze the designation not in the abstract, but in relation to the goods for which registration is sought, the context in which the mark is used or is intended to be used, and the impact that it is likely to make on the average purchaser of such goods. In *re Remacle*, 66 USPQ2d 1222 (TTAB 2002).

Applicant's goods include diagnostic testing materials for atherosclerotic and cardiovascular conditions. As indicated on applicant's website, [cambridgetheranostics.co.uk](http://cambridgetheranostics.co.uk), applicant's diagnostic test is "for use by physicians to detect and measure the active atherogenic process." Thus, we determine whether the mark is descriptive from the perspective of these medical professionals who would be the purchasers and users of the goods.

We consider first the meaning of the individual terms *ATHERO* and *ABZYME* in the mark to determine whether their combination results in a term which immediately conveys information regarding applicant's diagnostic testing materials. Contrary to applicant's contention, "it is perfectly acceptable to separate a compound mark and discuss the implications of each part thereof...provided that the ultimate determination is made on the basis of the mark in its entirety." In *re Hester Industries, Inc.*, 230 USPQ 797, 798 n.5 (TTAB 1986). See also *In re Save*

Venice New York Inc., 259 F.3d 1346, 59 USPQ2d 1778, 1782 (Fed. Cir. 2001) ("It is not erroneous...for the examiner to consider the significance of each element within the composite mark in the course of evaluating the mark as a whole."). It is necessary to understand the meaning of each of the terms comprising the mark ATHEROABZYME before the meaning of the mark as a whole can be understood.

"Athero-" is a recognized prefix in the medical field. As indicated in the dictionary listings below, the prefix denotes "atheroma":

A combining form representing atheroma or atheromatous in compound words: atherosclerosis.<sup>2</sup>

*pref.* Soft gruel-like deposit; atheroma: atherogenesis.<sup>3</sup>

The term "atheroma" refers to a medical condition marked by "an abnormal fatty deposit in an artery."<sup>4</sup> Words that are formed by the "athero-" prefix all relate to this condition, as

---

<sup>2</sup> dictionary.infoplease.com based on the *Random House Unabridged Dictionary* (1997).

<sup>3</sup> *The American Heritage Medical Dictionary* (2007) (credoreference.com). We take judicial notice of this definition, as well as the additional definitions obtained from the website, credoreference.com, which appear later in this opinion. The Board may take judicial notice of online dictionaries which exist in printed format or have regular fixed editions. See *Boston Red Sox Baseball Club LP v. Sherman*, 88 USPQ2d 1581, 1590 n. 8 (TTAB 2008). See also *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

<sup>4</sup> *MedlinePlus Merriam-Webster* (2.merriam-webster.com).

illustrated by the following examples (*italics added*):

- atherogenic** adjective Causing *atheroma*.  
Derived words: *atherogenesis* noun.<sup>5</sup>
- atherogenesis** *athero(ma)* -genesis.  
Formation of atheromatous deposits,  
especially on the innermost layer of  
arterial walls. n.<sup>6</sup>
- atheromatous** Of, pertaining to, or having the nature of,  
*atheroma*.<sup>7</sup>
- atherosclerosis** a common form of arteriosclerosis in  
which deposits of yellowing plaques  
(*atheromas*) containing cholesterol,  
other lipoid material, and lipophages  
are formed on the inner walls of large  
and medium-sized arteries.  
*atherosclerotic*. adj.<sup>8</sup>

The second term in the mark, "abzyme," is defined as  
"<immunology> An antibody with catalytic activity."<sup>9</sup> Applicant  
explains that abzymes catalyze, "i.e., accelerate," lipid  
oxidation in the body. Applicant states that its goods test for  
levels of abzymes in the blood, and that "a high level of  
abzyme activity in the sample" may indicate an atherogenic  
condition. Br., pp. 5-6.

The examining attorney submitted a printout of applicant's  
patent application (Serial No. 988929) for a method of treating

---

<sup>5</sup> *Collins English Dictionary* (2000) (credoreference.com).

<sup>6</sup> *The American Heritage Dictionary of the English Language* (2007)  
(credoreference.com).

<sup>7</sup> mondofacto.com.

<sup>8</sup> mercksource.com ("Powered by Dorland's Medical Dictionary for  
Healthcare Consumers").

<sup>9</sup> mondofacto.com. As described in wikipedia.org, "abzyme" is derived  
from the terms "antibody" and "enzyme."

atherogenic conditions. As explained in the patent application, "abzymes" are a diagnostic marker for atherosclerosis:

The principal cause of lipid oxidation is catalytic antibodies known as 'abzymes'.... Abzymes are a key pathogenic factor in the development of atherosclerosis and are an important diagnostic marker for atherosclerosis-related conditions as well as being a target for therapeutic intervention.

Thus, as individual terms, the prefix "ATHERO," which would be understood by physicians as referring to atheroma or an atherogenic condition, describes the medical condition for which applicant's goods test, and "ABZYME" describes a type of antibody for which the goods test. Ultimately, the term ATHEROABZYME as a whole describes the function or use of applicant's testing materials, and it describes the goods more completely than either word alone. The medical professionals who would be the purchasers for applicant's diagnostic test would immediately understand that the goods test for the presence of an atherogenic condition, and more particularly, for the presence of the marker for this condition. As we noted earlier, applicant states that its goods are used to "detect and measure the active atherogenic process." There is nothing in the combination of ATHERO and ABZYME that results in any new or incongruous meaning, or a different commercial impression which would change the two merely descriptive terms into a suggestive mark as a whole.

While not disputing that its goods test for abzyme activity, applicant argues that "athero-" is not synonymous with a merely descriptive term and has no intrinsic descriptive meaning. To support this contention applicant submitted seven third-party registrations for various "athero"-prefixed marks all covering goods and services in the cardiovascular field. These registrations include Reg. No. 3144225 (ATHEROVAC for pharmaceutical preparations for the treatment of atherosclerosis); Reg. No. 2808642 (ATHEROMEN for pharmaceutical preparations for the treatment of cardiovascular diseases); Reg. No. 2287817 (ATHEROMALYSIS for providing health information for the prevention of atherosclerotic cardiovascular disease); Reg. No. 3366620 (ATHEROX for medical test devices for serologic risk assessment of atherosclerotic cardiovascular disease).

The third-party registrations provide no support for applicant's position. First, the existence of different marks combining "athero-" with different suffixes has no bearing on the question of whether the particular combination of terms in this case is descriptive. It is well settled that each case must be decided on its own merits, based on the particular mark, the particular goods and services, and the particular record in each application. In re Scholastic Testing Services, Inc., 196 USPQ 517 (TTAB 1977).

Moreover, if anything, the frequent registration of "ATHERO" in the cardiovascular field serves to show that the term "athero" is recognized as having a particular meaning in the field and, as a result, provides further evidence that the meaning of "athero" in relation to the goods in this case would be perceived as descriptive. See *In re Box Solutions Corp.*, 79 USPQ2d 1953, 1955 (TTAB 2006) ("Third-party registrations can be used in the manner of a dictionary definition to illustrate how a term is perceived in the trade or industry").

Applicant argues that "athero-" as a prefix should be treated the same as other prefixes, such as "poly-", that applicant claims have been held suggestive and registrable when combined to form coined terms. Applicant relies for support on *Polaroid Corp. v. Anken Chemical & Film Corp.*, 343 F.2d 771, 145 USPQ 191 (CCPA 1965) (POLYCOPY not merely descriptive of photocopy machines) and *In re Wisconsin Tissue Mills*, 173 USPQ 319 (TTAB 1972) (POLYTISSUE not merely descriptive of a combination paper and plastic table covers) among other cases.

At the outset, there was no finding in those cases that prefixes in general or "poly" in particular would never be considered descriptive. Obviously, it would depend on the facts and circumstances of the particular case.<sup>10</sup> Furthermore, in

---

<sup>10</sup> Indeed, at least one other case found the combined form of "poly" descriptive, *In re Crown Zellerbach Corporation*, 121 USPQ 591 (TTAB



contrast to "poly" which, according to applicant, has multiple recognized meanings, the term "athero-" has a singular and specific meaning in the medical field.

There is no question that the combined term ATHEROABZYME describes a type of antibody present in an atherogenic condition. Moreover, it appears to be the generic name of the antibody. The examining attorney has submitted printouts of various portions of applicant's website that are replete with references to "AtheroAbzyme(s)" as identifying a class of antibody. A few examples are listed below (emphasis added):

- About Cambridge Theranostics  
CTL has identified a new causative factor of lipid oxidation, which is a critical step in the development of atherosclerosis.... The newly discovered **AtheroAbzymes**<sup>™</sup> are a class of antibody that directly oxidise LDL leading to the initiation of exacerbation of atherosclerotic plaque formation.
- Cardio and Vascular Protection  
...CTL [applicant] found that most, if not all patients with atherosclerosis, have a type of antibody that can interact with LDL and cause its oxidation; a class of circulating antibodies that exhibit lipid oxidising catalytic activity. These catalytic antibodies, "**AtheroAbzymes**", generate damage in plasma lipoproteins, leading to their deposition on the arterial wall and hence the triggering and progression of atherosclerosis.

Thus **AtheroAbzymes** are a primary active element in atherogenesis, and high levels of **AtheroAbzymes** will result in the production of atherogenic lipids, even in patients with relatively low plasma lipid levels. Detection of **AtheroAbzymes** can therefore give a

---

1959) (POLY PAPER merely descriptive of polyethylene coated paper, finding "poly" synonymous with "polyethylene").

unique insight into active atherogenesis and the means of limiting the progression of disease associated with it. CTL has now developed a diagnostic test that measures **AtheroAbzyme**<sup>®/™</sup><sup>11</sup> activity.

- Cardio and Vascular Protection  
[In discussing "a New Drug Target in the Treatment of Atherosclerosis"]:

Two anti-microbial drugs were selected on the basis of their additional ability to inhibit **AtheroAbzymes** (Doxycycline and Azithromycin). The **anti-AtheroAbzyme activity** of the latter was about 10 fold higher in vitro than the former (table 1).

After Abzyme-positive patients with [coronary heart disease] were given daily administration of 500mg of Azithromycin... The treatment was continued for two months until **AtheroAbzyme activity** became undetectable in the serum of all patients

- Nestle license Novel Heart Disease product to Cambridge Theranostics  
Dr. Ivan Petyaev, Founder CSO said "Having identified one of the key factors of atherosclerosis, we were delighted to partner with Nestle to develop CT003. This substance is a powerful inhibitor of **AtheroAbzymes**<sup>™</sup> and exhibits an excellent safety profile."

Applicant's patent application similarly contains numerous references to "AtheroAbzyme" as indicating a type of abzyme, such as the following:

A lipid oxidising abzyme (**or AtheroAbzyme TM**) is a catalytic antibody, in particular an IgG molecule, which binds to lipids and catalyses the oxidation thereof.

---

<sup>11</sup> Regarding the use of the registration symbol in this example, applicant states that the mark is registered outside the United States. Br., p. 15.

Altogether seventeen **AtheroAbzyme TM positive** patients with CHD, 45-60 years old, were recruited for this trial.

After 2 months of treatment with lactolycopene/INNEOV, **AtheroAbzyme TM activity** was reduced to undetectable levels in all fourteen patients.

Applicant's own generic use of the term ATHEROABZYME to identify a class of antibody is strong evidence that the term is at least descriptive of applicant's goods that test for that antibody and that it would be perceived as descriptive by the relevant public. See, e.g., *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978) ("Evidence of the context in which a mark is used...in advertising material...is probative of the reaction of prospective purchasers to the mark"); and *In re Educational Communications, Inc.*, 231 USPQ 787, 790 (TTAB 1986) ("applicant's own highly descriptive usages of the components of its asserted mark...is strong evidence of its generic nature"). Indeed, the website specifically states that applicant's diagnostic test "measures AtheroAbzyme®/™ activity."

The combined term "atheroabzyme(s)" is also used by others in the medical field to refer to a class of antibody and a "traditional biomarker" for coronary heart disease. The first example below is an excerpt of a clinical study entitled "Trial of Lycopene/Ateronon for Secondary Prevention of Coronary Heart Disease" which was sponsored by Brigham and Women's Hospital.

The study was conducted in collaboration with applicant; however, the details of the study were provided by the sponsor. Two additional examples of third-party use follow (emphasis added):

- Purpose: The purpose of this study is to determine whether Ateronon, a nutritional supplement that contains lycopene from tomatoes has a favorable effect on carotid atherosclerosis, lipid levels, and other biomarkers of coronary heart disease  
Detailed Description: ... Secondary aims expand to whether Ateronon leads to favorable 1-year changes in coronary biomarkers related to oxidative stress and endothelial dysfunction; blood pressure; plasma carotenoids; **AtheroAbzyme** levels; and other traditional coronary biomarkers.  
*clinicaltrials.gov*
- Find A PhD  
Project details  
Dietary phytochemicals and a pro-atherogenic enzyme...  
...Atherosclerosis is the major cause of [cardiovascular disease], and a major causal factor for the formation of growth of atherosclerotic plaques in the presence of oxidised LDL. The discovery of catalytic antibodies that are present in atherosclerotic plaques and which oxidise LDL (**atheroabzymes**) provided a mechanism to explain how LDL become oxidised in vivo. These observations were validated clinically: (i) in patients with coronary artery disease the level of **atheroabzyme activity** correlated with the degree of coronary artery stenosis.... This project will seek to investigate a range of phytochemicals, and their physiological metabolites, for their ability to inhibit this **atheroabzyme**. ...  
*findaphd.com*
- Azithromycin treatment for...  
...After two weeks of treatment, significant reduction of **atheroabzyme activity** was observed (graph 3).  
*seril.hostaim.com*

It is clear from the evidence of record including the dictionary references, third-party use and applicant's own use, that ATHEROABZYME describes a class of antibody, or at least an antibody that is present in atherogenic conditions. The medical professionals who would be the purchasers of applicant's goods would without any guesswork or the gathering of any further information, immediately understand the meaning of the term in relation to applicant's goods which test for the presence of this antibody.

Applicant's contention that none of the evidence shows descriptive use of the mark for applicant's "exact goods," i.e., diagnostic kits and testing materials, is not well taken. As noted above, applicant's website specifically states that its diagnostic test "measures AtheroAbzyme®/™ activity." Moreover, it is well settled that terms that describe the purpose or function of the goods may be merely descriptive of the goods under Section 2(e)(1). See, e.g., *In re W. A. Sheaffer Pen Co.*, 158 F.2d 390, 72 USPQ 129 (CCPA 1946) (FINE LINE descriptive of mechanical pencils that can produce a "fine line"); *In re Wallyball, Inc.*, 222 USPQ 87 (TTAB 1984) (WALLYBALL descriptive of sports clothing used for playing game of wallyball); *In re National Presto Industries, Inc.*, 197 USPQ 188 (TTAB 1977) (BURGER descriptive of a function of applicant's cooking utensils); and *In re Orleans Wines, Ltd.*, 196 USPQ 516 (TTAB

1977) (BREADSPRED merely descriptive of function or use of jams and jellies to be spread on bread or are as a spread for bread).

The record establishes prima facie that ATHEROABZYME is merely descriptive of applicant's goods. Neither the arguments and evidence discussed above, nor the arguments which follow serve to rebut this showing.

To begin with, the mere fact that applicant depicts "AtheroAbzyme" with initial capital letters on its website, even in some instances in association with the "TM" notation, may serve to emphasize the term and make it stand out in the text, but it does not change it into a non-descriptive term. See *In re Hannifin Corporation*, 122 USPQ 298 (TTAB 1959) ("An apt descriptive name of a product remains an apt descriptive name irrespective of how it is spelled or displayed"); and *In re Volvo Cars of North America Inc.*, 46 USPQ2d 1455, 1461 (TTAB 1998) ("use of the notice indicating that DRIVE SAFELY [for automobiles] is a trademark of applicant does not transform this unregistrable phrase into a trademark indicating source or origin.").

Applicant also argues that the examining attorney has relied on applicant's "old website" from "earlier in 2009"<sup>12</sup> which, according to applicant, has now been changed and corrected to

---

<sup>12</sup> Req. for Recon., December 2, 2009, (unnumbered) p. 3.

show "proper and consistent" trademark use. Applicant submitted a copy of its printed product brochure and manual for its diagnostic tests dated June 2009, along with a printout of a page from its website showing that applicant now refers to the "AtheroAbzymes" as "Atherogenic Lipid-Oxidising Antibodies (ALOA)." As the examining attorney points out, however, the content of other portions of the website did not in fact change. The examining attorney submitted printouts from the current version of the website, wherein applicant continues to refer to "atheroabzyme(s)" in a generic manner, stating that applicant "discovered atheroabzymes," that "These catalytic antibodies, 'AtheroAbzymes'," trigger the progression of atherosclerosis, that the development of diseases correlates with the level of "atheroabzyme activity" and that there are drugs to "inhibit atheroabzymes." In any event, even if the website has changed, the "old" pages still provide evidence of applicant's use of the term and the relevant public's understanding of the term.

In addition, applicant argues that while references to the mark on its website are, as applicant describes it, "inconsistent and ambiguous," other evidence shows use of ATHEROABZYME as a mark for its goods, pointing to, for example, the appearance of "AtheroAbzyme ELISA" to refer to its diagnostic test on its product manual. Applicant then concludes that "this 'mixed use' is not definitive evidence of descriptive usage by Applicant."

Br., p. 15. This is not a case of a mixed record as applicant contends. The "mixed" record in *In re Merrill Lynch, Pierce, Fenner, & Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987) reflected the fact that a substantial amount of evidence showed *recognition* that the applicant was indeed the source of applicant's CASH MANAGEMENT ACCOUNT brokerage services. That is clearly not the situation here. The record in this case contains no evidence of use or recognition of ATHEROABZYME by any third party as a mark.

Applicant further argues that the third-party use is de minimis, and also that applicant "believes each refers to Applicant and its research." Br., p. 14. However, it is not necessary that a term be in common usage in the particular field in order for it to be merely descriptive. See *In re National Shooting Sports Foundation, Inc.*, 219 USPQ 1018, 1020 (TTAB 1983). Even if the record reflected no use of this term by others, and even if applicant were the only user of the term "atheroabzyme" it would not be dispositive where, as here, the term unquestionably conveys a merely descriptive connotation. *Id.* See also *In re Active Ankle Systems Inc.*, 83 USPQ2d 1532, 1538 (TTAB 2007) ("Even if applicant was the first and/or sole user of a generic term or phrase,...that does not entitle applicant to register such a term or phrase as a mark."). In addition, while these third parties may be familiar with



applicant and its research, the term "atheroabzyme" is used by these third parties in a generic manner to denote a particular type of antibody, and not to indicate the source of any goods.

When we consider the record and all of applicant's evidence and arguments, including those arguments not specifically addressed herein, we conclude that ATHEROABZYME immediately describes, without any guesswork or the exercise of any thought or imagination, the purpose or function of applicant's diagnostic tests, and that the prospective purchasers of the diagnostic tests would readily understand the descriptive meaning of ATHEROABZYME in relation to those goods.

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