

This Opinion is Not a
Precedent of the TTAB

Mailed: January 31, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Rows GmbH

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Serial No. 79299493

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Timothy J. Maier of Maier & Maier, PLLC,
for Rows GmbH.

Ryan Cianci, Trademark Examining Attorney, Law Office 116,
Elizabeth F. Jackson, Managing Attorney.

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Before Cataldo, Larkin and English,
Administrative Trademark Judges.

Opinion by English, Administrative Trademark Judge:

Rows GmbH (“Applicant”) seeks registration on the Principal Register of the standard-character mark ROWS for the following goods and services, as amended:

downloadable software for creating and sharing spreadsheets, data processing, database management, and the creation of web applications; downloadable electronic databases for featuring information for the creation of web applications in International Class 9; and

software as a service (SaaS) feature [sic] software for creating and sharing spreadsheets, data processing, database management, and the creation of web applications; rental of computer programs; rental of

computer programs for featuring software tools for developing software, websites and web applications; computer software consultancy; software creation; software development in International Class 42.¹

The Trademark Examining Attorney refused registration on the ground that Applicant's mark is merely descriptive of the goods and services identified in Applicant's application under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1).² When the refusal was made final, Applicant appealed and requested reconsideration. The Examining Attorney denied Applicant's request for reconsideration, and the appeal was resumed. We affirm the refusal to register.

I. Decision

A. Applicable Law

Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), prohibits registration of a mark which, when used on or in connection with an applicant's goods or services, is merely descriptive of them, unless the mark has acquired distinctiveness under Section 2(f) of the Act, 15 U.S.C. § 1051(f).³ A term is merely descriptive of goods or

¹ Application Serial No. 79299493; filed October 2, 2020 under Section 66(a) of the Trademark Act, 15 U.S.C. § 1141f, to extend the protection of International Registration No. 1564124 to the United States. Applicant amended the goods and services to the current identifications in its March 22, 2022 Request for Reconsideration, TSDR 278; May 3, 2022 Denial of Request for Reconsideration, TSDR 2.

² In the September 22, 2021 Final Office Action, TSDR 3-4, May 3, 2022 Denial of Request for Reconsideration, TSDR 3, and Examining Attorney's Brief, 8 TTABVUE 4, the Examining Attorney makes passing references to Applicant's proposed mark as "generic." The Examining Attorney, however, did not expressly refuse registration on the ground that ROWS is generic for Applicant's goods and services so we do not consider whether the proposed mark is generic.

³ Applicant has not claimed acquired distinctiveness under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f), in an attempt to overcome the descriptiveness refusal.

services if it immediately conveys information concerning a quality, characteristic, feature, function, purpose or use of the goods or services. *See, e.g., In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); *see also In re TriVita, Inc.*, 783 F.3d 872, 114 USPQ2d 1574, 1575 (Fed. Cir. 2015); *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); *In re Omniome, Inc.*, 2020 USPQ2d 3222, at *3 (TTAB 2020) (quoting *In re N.C. Lottery*, 866 F.3d 1363, 123 USPQ2d 1707, 1709 (Fed. Cir. 2017)).

The term need not describe each feature of the identified goods or services to be found descriptive. *Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219. It is enough if the term describes a single significant feature, quality, characteristic, function, ingredient, purpose or use of the goods or services. *Id.*; *see also Omniome*, 2020 USPQ2d 3222, at *3; *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1513 (TTAB 2016); *In re Positec Grp. Ltd.*, 108 USPQ2d 1161, 1171 (TTAB 2013) (“[I]f the mark is descriptive of some identified items – or even just one – the whole class of goods still may be refused by the examiner.”).

Whether a term is merely descriptive is determined in relation to an applicant’s goods and services, not in the abstract. *DuoProSS Meditech Corp. v. Inviro Med. Devices Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012) (“The commercial impression that a mark conveys must be viewed through the eyes of a consumer.”); *In re Fallon*, 2020 USPQ2d 11249, at *7 (TTAB 2020). Further, the question is whether someone who knows the goods or services will understand the term to convey information about them. *Real Foods Pty Ltd. v. FritoLay N. Am., Inc.*,

906 F.3d 965, 128 USPQ2d 1370, 1374 (Fed. Cir. 2018); *Fallon*, 2020 USPQ2d 11249, at *7. A mark is suggestive rather than merely descriptive if it requires imagination, thought, and perception on the part of someone who knows what the goods or services are to reach a conclusion about their nature from the mark. *See, e.g., Fallon*, 2020 USPQ2d 11249, at *7; *Fat Boys*, 118 USPQ2d at 1515.

B. Analysis

Dictionary definitions reflect the common usage of terms and, therefore, are evidence of the public's understanding of a term. *Real Foods*, 128 USPQ2d at 1374 (quoting *Royal Crown Cola Co. v. Coca-Cola Co.*, 892 F.3d 1358, 127 USPQ2d 1041, 1046 (Fed. Cir. 2018)); *see also, e.g. In re Zuma Array Ltd.*, 2022 USPQ2d 736, at *8 (TTAB 2022) (dictionaries are one source of evidence of the public's understanding of a term); *Fallon*, 2020 USPQ2d 11249, at *7 (same). The record includes the following pertinent definitions:

Spreadsheet:

“A computer program used to create and manipulate spreadsheets. *Many students sent us graphs prepared with **computer spreadsheet programs**.*”⁴

“A computer program that allows the entry, calculation, and storage of data in columns and **rows**”;⁵

⁴ September 22, 2021 Final Office Action, TSDR 10 (Lexico “Powered by Oxford”) (bold emphasis added). We take judicial notice that “software” is a computer program. *See* Merriam-Webster Dictionary defining “software” as “programs for a computer.” <https://www.merriam-webster.com/dictionary/software> (last visited January 30, 2023). The Board may take judicial notice of dictionary definitions. *In re Integra Biosciences Corp.*, 2022 USPQ2d 93, at *2, n.2 (TTAB 2022) (citing *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff'd*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016)).

⁵ September 22, 2021 Final Office Action, TSDR 11 (Merriam-Webster Dictionary) (emphasis added).

“An electronic document in which data is arranged in the **rows** and columns of a grid and can be manipulated and used in calculations”;⁶

Row:

“[A] number of objects arranged in a usually straight line; ... *also*: the line along which such objects are arranged ... a horizontal arrangement of items.”⁷

Applicant’s software and software as a service, both for creating spreadsheets, are encompassed within the above definitions of “spreadsheet.” Accordingly, a subset of Applicant’s goods is “spreadsheets” while a subset of Applicant’s services is software as a service featuring “spreadsheets.” Indeed, Applicant refers to its downloadable software and software as a service as a “spreadsheet” as shown in the image below from its website:⁸

⁶ *Id.* at 10 (Lexico “Powered by Oxford”) (emphasis added).

⁷ March 24, 2021 Office Action, TSDR 8 (Merriam-Webster Dictionary); *see also* September 22, 2021 Final Office Action, TSDR 8-9 (substantially similar definition for “row” in The American Heritage Dictionary and Lexico “Powered by Oxford”).

⁸ March 24, 2021 Office Action, TSDR 9; *see also id.* at 11 (“Rows is a spreadsheet that works like you expect, so you don’t have to learn a new tool to get work done.”); *id.* at 14 (“Spreadsheets for everyone.”); March 22, 2022 Request for Reconsideration, TSDR 15 (“ROWS ... The spreadsheet with superpowers[.] ... Rows reinvented spreadsheets so teams do more, crazy fast.”). The Office “commonly looks to an applicant’s website when it is made of record for possible evidence of descriptive use of a proposed mark.” *In re Berkeley Lights, Inc.*, 2022 USPQ2d 1000, at *9 (TTAB 2022).

The record also includes an example of a third-party referring to third-party computer programs for creating spreadsheets simply as “spreadsheets.” May 3, 2022 Denial of Request for Reconsideration, TSDR 6 (February 26, 2022 article on Guru99.com referring to MS Excel WPS, LibreOffice, and Google Sheets as “spreadsheets”).

The advertisement features a light beige background. On the left, the headline reads "The spreadsheet where teams work faster" in a bold, black, sans-serif font. Below this, a paragraph states: "Rows is the first true spreadsheet with built-in integrations and a slick sharing experience. Made for teams to build and share their work, all in one place." A yellow button with a right-pointing arrow and the text "Watch product video" is positioned below the paragraph. On the right side, there is a stylized illustration of two hands in white sleeves with red cuffs, one holding a red-bordered document and the other holding a white-bordered document. At the bottom center, the text "Trusted by these and other spreadsheet lovers" is displayed. Below this text are six logos: SWORD HEALTH, Chattermill, Helping, Pitch, LOYALTY PRIME, and Eat Tasty.

The record further shows that “rows” are a significant feature of spreadsheets. As the above definitions reflect, spreadsheets allow users to enter, store, arrange and manipulate data in **rows**. The Examining Attorney also introduced screenshots from YouTube video tutorials for Applicant’s spreadsheets (with closed captioning) highlighting the significance of “rows” in its spreadsheets.

1. The first set of screenshots is from a video titled “Rows in 5 minutes – Getting Started[.]” The video explains that “[f]or most custom functions, you can find recommended **rows** and tables that allow you to easily generate data.”⁹ One “Topic” shown in the video is “Fill a table from a selected **row**.”
2. The second set of screenshots is from a video titled “Create a form and log data in Rows.” The video indicates that “Header is the first **row**” in the spreadsheet

⁹ *Id.* at 18-19.

and users can “(Always) add new **rows**’ anytime” by “click[ing] the button” called “Always add new **rows**”.¹⁰

The commercial context of the YouTube tutorials for Applicant’s goods and services “demonstrates that a consumer would immediately understand the intended meaning of [ROWS]. In other words, the evidence shows that the [term ROWS] is less an identifier of the source of goods or services and more a description of a feature or characteristic of those goods or services.” *N.C. Lottery*, 123 USPQ2d at 1710; *see also In re Abcor Dev. 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.”); *Fallon*, 2020 USPQ2d 11249, at *10 (“[W]e find that the text used on [Applicant’s] website is the most compelling evidence of the mere descriptiveness of Applicant’s proposed mark[.]”); *cf. In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110, 1112 (Fed. Cir. 1987) (applicant’s specimen showed SCREENWIPE generically referred to a wipe for screens); *In re Mecca Grade Growers, LLC*, 125 USPQ2d 1950, 1958 (TTAB 2018) (an applicant’s own use of its mark on its website may be the most probative and damaging evidence of the genericness of its claimed mark).

The record further includes screenshots from third-party websites explaining how to add, delete, freeze and hide/unhide rows in spreadsheets:¹¹

¹⁰ *Id.* at 20-21.

¹¹ May 3, 2022 Denial of Request for Reconsideration, at TSDR 5-17.

- Guru99.com: “A **row** is a series of data placed out horizontally in a table or spreadsheet. It is a horizontal arrangement of the objects, words, numbers and data”;
- Apple.com: “Add or remove **rows** and columns in Numbers on Mac[.] You can add, delete, and rearrange **rows** and columns in a table. There are three types of **rows** and columns”;
- BusinessInsider.com: “How to insert multiple **rows** in Google Sheets in 2 ways, using your PC or Mac”;
- Libreoffice.org: “Adding or Deleting a **Row** or Column to a Table Using the Keyboard”;
- Microsoft.com: “Insert and delete **rows** and columns to organize your worksheet better”;¹²
- OnlyOffice.com: “Worksheet formatting”: “You can insert an entire **row** above the selected one or a column to the left of the selected column”; and
- Zoho.com: “Hide a **row/column/sheet**”; “Unhide a hidden **row** or column”; “Freeze **Rows/Columns**.”

The third-party evidence reflects the importance of creating and manipulating rows in spreadsheets.

We find the record as a whole demonstrates that Applicant’s goods and services include or feature spreadsheets and that “rows” are a significant feature of

¹² We take judicial notice that “worksheet” is synonymous with “spreadsheet.” See Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/worksheet> (last visited January 30, 2023).

spreadsheets. Accordingly, Applicant's proposed mark ROWS immediately describes a significant feature of Applicant's goods and services.

In an attempt to overcome the refusal, Applicant argues that the "primary definition" of "spreadsheet" in the record is the definition from The American Heritage Dictionary, "which specifically pertains to software [and] does not reference rows, whatsoever,"¹³ and that there are "inconsistencies" in the above definitions that "further evidence ... the multistep reasoning required to define a relationship between rows to make a spreadsheet[.]"¹⁴ Applicant does not explain why The American Heritage Dictionary contains the "primary definition" for the term. Nor do we find a basis for disregarding the other definitions of record. We further do not find the definitions of "spreadsheet" inconsistent. In any event, where, as here, "any one of the meanings of a word is descriptive, the word may be merely descriptive." *In re Mueller Sports Med., Inc.*, 126 USPQ2d 1584, 1590 (TTAB 2018) ("It is well settled that so long as any one of the meanings of a term is descriptive, the term may be considered to be merely descriptive.") (quoting *In re Chopper Indus.*, 222 USPQ 258, 259 (TTAB 1984)); *In re IP Carrier Consulting Grp.*, 84 USPQ2d 1028, 1034 (TTAB 2007).

Applicant further maintains that its mark is suggestive because "ROWS is not merely descriptive of the function of the software, which is creating and sharing

¹³ Reply Brief, 9 TTABVUE 5.

¹⁴ *Id.*

spreadsheets.”¹⁵ According to Applicant, “none of the dictionary definitions for the word ROW[S] reference software or more specifically software for creating and sharing spreadsheets, data processing, database management, and the creation of web applications. The September 22, 2021 Office Action ... cites a definition of ‘spreadsheet’ in order to create a nexus between ROWS and [Applicant’s] identified software goods and services. Therefore, ROWS has no direct meaning in relation to [Applicant’s] goods and services.”¹⁶

This argument is unpersuasive. As explained, software for creating a spreadsheet is referred to simply as a “spreadsheet,” so a spreadsheet is not a function of Applicant’s goods and services but rather is a subset of the goods and services themselves. It is immaterial that the definition for the word “row” does not reference “software for creating and sharing spreadsheets.” Consumers familiar with Applicants’ spreadsheets and software as a service will immediately understand that “rows,” namely, “horizontal arrangement[s] of items,”¹⁷ are a significant feature of such goods and services.

Applicant further argues its mark is inherently distinctive because “a reasonable consumer would require several mental steps to associate the word ROWS with such a product.”¹⁸ Specifically, Applicant argues that consumers will have to: (1) “[c]onsider the several meanings [for] the term ROWS” (including “to propel with or

¹⁵ *Id.* at 6.

¹⁶ Appeal Brief, 6 TTABVUE 10.

¹⁷ March 24, 2021 Office Action, TSDR 8.

¹⁸ Appeal Brief, 6 TTABVUE 11.

as if with oars”, “to engage in a row or have a quarrel,” and “a street or area dominated by a specific kind of enterprise or occupancy,”); (2) “[c]onsider” Applicant’s goods and services; (3) “[r]ecognize” that the types of goods and services Applicant offers for creating and sharing spreadsheets “may utilize or present data in a particular manner, such as a series of rows or columns”; (4) “[d]etermine” that Applicant’s specific goods and services “can present or utilize data in a series of rows or columns”; and (5) “[r]each the conclusion that the term ROWS could describe one aspect of the organization of data presented or utilized by [Applicant’s] goods and services.”¹⁹

We must consider the meaning of the proposed mark to consumers who know Applicant’s goods and services. *See, e.g., DuoProSS*, 103 USPQ2d at 1757; *Fallon*, 2020 USPQ2d 11249, at *7. These consumers will not have to guess or process through the various definitions for the word “row” to determine what definition is pertinent. *See In re Canine Caviar Pet Foods, Inc.*, 126 USPQ2d 1590, 1598 (TTAB 2018) (“That a term may have other meanings in different contexts is not controlling.”); *IP Carrier Consulting*, 84 USPQ2d at 1034 (“The fact that [a term] has multiple meanings, some of which are not descriptive, is not controlling or relevant to the descriptiveness analysis. So long as any one of the meanings of a word is descriptive, the word may be merely descriptive.”). Rather, consumers of Applicant’s goods and services will immediately understand the term “rows” as referring to “the line[s] along which ... objects are arranged” or “a horizontal arrangement of items” because this is how spreadsheets, including Applicant’s spreadsheets, display data.

¹⁹ *Id.*

Consumers need not engage in any multi-step reasoning to understand that Applicant's proposed mark ROWS refers to a feature of its spreadsheets and software as a service that display data in rows. The connection is straightforward and immediate.

Applicant further argues that its mark should be allowed to register because “[r]egistration ... would not (1) inhibit competition in the sale of particular goods or services; or (2) deny freedom of the public to use the word ROWS, creating the possibility of harassing infringement suits.”²⁰ Although these are “major reasons for not protecting” merely descriptive terms, *Abcor*, 200 USPQ at 217, the test for descriptiveness is not whether registration will inhibit competition or deny others the right to use the term. “[T]he correct test is whether the mark conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods.” *Fat Boys*, 118 USPQ2d at 1514 (explaining that the competitors’ use and need tests have been superseded; “[t]he ‘degree of imagination test’ is still relevant as it is part of the concept of suggestiveness”); *see also, e.g., Zuma Array*, 2022 USPQ2d 736, at *16 (no requirement that examining attorney prove that others have used the mark or need to use it); *Fallon*, 2020 USPQ2d 11249, at *11 (same); *In re Walker Mfg. Co.*, 359 F.2d 474, 149 USPQ 528, 530 (CCPA 1966) (“The question . . . is not whether the Board or others may or would utilize ‘CHAMBERED PIPE’ to describe applicant’s goods, but whether this designation does, in fact, describe such goods. That there are other words which others may employ to describe or define applicant’s goods does not,

²⁰ *Id.* at 10.

in any way, lessen the descriptive character of the words ‘CHAMBERED PIPE.’ ...”) (quoting Board decision with approval). When we apply that test, it is clear that the term ROWS immediately describes a significant feature or characteristic of Applicant’s spreadsheets and spreadsheets as a service.

Lastly, Applicant introduced printouts from the Office’s Trademark Status and Document Retrieval (TSDR) database and application file histories for the following third-party standard-character marks registered on the Principal Register without claims of acquired distinctiveness under Section 2(f) of the Trademark Act or disclaimers.

- DATAROW subject to Registration No. 6563779 for “Software as a service (SAAS) services featuring software for creating, editing, viewing, organizing, storing, searching, and sharing queries; software as a services (SAAS) services featuring software for analyzing and charting query results; software as a services (SAAS) services featuring software for analyzing, exploring, charting, processing, visualizing, sorting, filtering, importing, and exporting data; software as a services (SAAS) services featuring software for data transmission, storage, processing and reproduction; software as a services (SAAS) services featuring software for accessing, querying and analyzing information stored in databases and data warehouses; software as a services (SAAS) services featuring software for monitoring data query history and performance; software as a services (SAAS) services featuring software for collaborating on data queries and data analysis; software as a services (SAAS) services featuring software for database management and administration; software as a services (SAAS) services featuring software for securing databases; software as a services (SAAS) services featuring software for managing, logging, and auditing access to database objects; software as a services (SAAS) services featuring software for managing database tables and connections; software as a services (SAAS) services featuring software for storing and restoring database tables; software as a services (SAAS) services featuring software development tools; computer software rental; electronic data storage” in International Class 42.²¹

²¹ March 22, 2022 Request for Reconsideration, TSDR 27-100; *see also id.* at 270-71.

- PAGES subject to Registration No. 3044896 for “computer programs for creating, editing and printing documents comprised of text and graphics and utility programs for use therewith; user manuals in electronic form distributed therewith” in International Class 9.²²
- NUMBERS subject to Registration No. 3369199 for “computer software for creating spreadsheets, tables, graphs, and charts, and for organizing and analyzing data, for home, education, business, and developer use” in International Class 9.²³

Applicant also included printouts from the Office’s Trademark Electronic Search System (TESS) database for a number of third-party “row”-formative marks Registered on the Principal Register without a claim of acquired distinctiveness or a disclaimer including the following most pertinent marks:

- ISN ROW (standard characters) subject to Registration No. 5639329 and



the mark POWERED BY ISN subject to Registration No. 5639331 both for “Computer software and computer mobile application software for field workers to track and share training, qualifications, records, and experience with employers and clients; computer software and computer mobile application software for the collection, retrieving, reviewing, editing, organizing, modifying, transmission, storage, displaying and sharing of data and information and document management; computer software and computer mobile application software for social and business networking activities, and connecting contractor and field worker users with potential employers, employees and clients” in Class 9.²⁴

- TRILLION-ROW SPREADSHEET (SPREADHSEET disclaimed) subject to Registration No. 4317907 for “Platform as a service (PAAS) featuring computer software platforms for database management; Providing a website featuring non-downloadable software for database management; Providing a website featuring resources, namely, non-downloadable software for database management; Software as a service (SAAS) services

²² *Id.* at 101-74.

²³ *Id.* at 175-255.

²⁴ *Id.* at 256-59.

featuring software in the field of database management” in International Class 42.²⁵

Applicant “asserts that the similar multi-step reasoning in finding these marks suggestive is correlative and relevant [to whether Applicant’s mark is merely descriptive]. Regardless of differences in the specific goods and services or the marks themselves, the analysis remains the same and like the cited registrations, the function of [Applicant’s] software goods and services is several logical steps removed from the wording ROWS and the logical steps required to associate ROWS with the function of [Applicant’s] software goods and services make the mark suggestive and not merely descriptive.”²⁶

As we have repeatedly explained, each case must be determined on its own merits. *In re Datapipe, Inc.*, 111 USPQ2d 1330, 1336 (TTAB 2014) (“Although the United States Patent and Trademark Office strives for consistency, each application must be examined on its own merits.”); *see also In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) (“The Board must decide each case on its own merits.”); *In re Ala. Tourism Dept.*, 2020 USPQ2d 10485, at *11 (TTAB 2020) (consistency in examination is desirable but the Board “must yield to proper determinations under the Trademark Act and rules”) (internal quotations omitted). Here, there is sufficient evidence in the record to establish that the word ROWS immediately describes a significant feature of Applicant’s spreadsheet software and

²⁵ *Id.* at 266-67.

²⁶ Reply Brief, 9 TTABVUE 6; *see also* Appeal Brief, 6 TTABUVE 13.

spreadsheet software as service, namely, that data is displayed in rows. Even if Applicant's proposed mark shares similarities with the prior registered marks, we are bound by the record before us, not by prior registration decisions involving different marks and records. *In re theDot Commc'ns Network LLC*, 101 USPQ2d 1062, 1067 (TTAB 2011) ("Third-party registrations are not conclusive on the question of descriptiveness. Each case must stand on its own merits, and a mark that is merely descriptive should not be registered on the Principal Register simply because other such marks appear on the register."); *see also Nett Designs*, 57 USPQ2d at 1566 ("Even if some prior registrations had some characteristics similar to Nett Designs' application, the PTO's allowance of such prior registrations does not bind the Board or this court.").

II. Conclusion

Based on the record before us, we find that the term ROWS immediately describes a significant characteristic and feature of a subset of Applicant's goods and services, namely, that Applicant's spreadsheets and spreadsheets as a service feature "rows."

Decision: The refusal to register Applicant's proposed mark under Section 2(e)(1) of the Trademark Act is affirmed.