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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Lockheed Martin Corporation

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Serial No. 85073741

Jennifer Fraser of Connolly Bove Lodge & Hutz LLP for Lockheed Martin Corporation.

Shaunia P. Carlyle, Trademark Examining Attorney, Law Office 110 (Chris A. F. Pedersen, Managing Attorney).

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Before Bucher, Bergsman and Masiello, Administrative Trademark Judges.

Opinion by Masiello, Administrative Trademark Judge:

Lockheed Martin Corporation has applied to register on the Principal Register the mark PC ON A STICK in standard character form for the following goods, as amended:

Computer software for computer system and application development, deployment and management; computer operating system software; computer operating programs and computer operating systems; computer software and firmware for operating system programs; computer storage devices, namely, blank flash drives and high-speed storage subsystems for storage of computer operating programs and systems either locally or via a telecommunications network; computer memory

hardware; and computer hardware, in International Class
9.

The trademark examining attorney refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that applicant's mark merely describes the goods. The examining attorney took the position that PC is a commonly recognized abbreviation for "personal computer"; that STICK is a slang expression meaning a memory module, such as a USB stick; and that the mark directly conveys to consumers that applicant's goods "enable the user to carry the essence of their PC with them on a flash drive. The product enables a flash drive to function as a virtual PC."¹ In support of the refusal to register, the examining attorney submitted the following items of evidence:

- definitions of the word "stick" from the online reference THE FREE DICTIONARY, accessed at <<http://encyclopedia2.thefreedictionary.com/stick>> on September 27, 2010, stating that a "stick" is "Slang for [a] memory module. RAM chips for personal computers are typically mounted on a thin, long printed circuit board (see memory module). ...See also USB stick"
- definitions of the term "PC" from the online reference MACMILLAN DICTIONARY, accessed on September 27, 2010 at <<http://www.macmillandictionary.com/dictionary/american/PC>>, defining PC as "personal computer; a computer that is designed to be used by one person at home or in an office";
- an online article dated January 18, 2010 by "Gizmag Team" found at <www.gizmag.com> entitled "Lockheed Martin IronClad PC-on-a-Stick secures Desktop and Data for Telecommuters," which discusses a USB drive offered by applicant under the mark IRONCLAD and refers to the product as "a 'PC on a stick'";
- information relating to U.S. Reg. No. 3131454 for the trademark PASSWORD STICK, on the Supplemental Register, from the online records of the U.S. Patent and Trademark Office, offered to demonstrate that the Patent and

¹ April 30, 2011 Office action.

Trademark Office has previously treated the designation STICK as merely descriptive of “Portable USB computer hardware”;

- an online article dated January 19, 2010 by Shane McGlaun found at <www.slashgear.com> entitled “Lockheed Martin announces IronClad secure PC on a stick,” which discusses a USB drive offered by applicant under the mark IRONCLAD and refers to the product as “a new PC on a stick”;
- an undated online article by Gina Trapani found at <<http://lifehacker.com>> entitled “Geek to Live: Build your ‘PC on a stick’ with MojoPac,” which discusses “a portable software MojoPac, a standalone Windows installation that runs directly from a flash drive or iPod” and states, “Plug in your MojoPac-enabled portable drive into your buddy’s PC, launch Windows from it, and use any application or document directly from the drive...”;
- an online article dated May 14, 2007 by Gregg Keizer found at <<http://news.techworld.com>> entitled “Microsoft and SanDisk put PC on a stick; Flash drive personlises XP & Vista – but will it launch Office?,” which discusses “a new generation of USB drives and memory cards that let users carry a personalized desktop and applications to any Windows PC”;
- an online article dated December 22, 2010 found at <www.synergyinc.net> entitled “Shiny New Gadget of the Month: PC On A Stick Technology,” which discusses the MojoPac product and states, “Thanks to new ‘PC On A Stick’ technologies, you can carry your desktop around on a simple USB device. Simply plug this specially equipped USB device into any PC and you’re instantly working on what appears to be your own desktop.”

The record also contains specimens of use of the mark submitted by applicant, consisting of one piece of product literature² depicting and describing applicant’s IRONCLAD brand product, and one photograph³ of the IRONCLAD product bearing the mark PC ON A STICK. The product literature provides insight regarding the nature of some of applicant’s goods. See the discussion below.

Insofar as the applicant’s goods are described with specificity, they consist of various types of computer software, firmware for operating system software, and

² Applicant’s response submitted on March 28, 2011.

³ Applicant’s response submitted on October 31, 2011.

various computer storage devices. In addition, the identified goods include “computer hardware” and “computer memory hardware.”

The question before the Board is whether the mark PC ON A STICK, viewed in its entirety, merely describes the goods identified in the application. “A term is merely descriptive if it immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used.” *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987). Whether a particular term is merely descriptive is determined in relation to the goods or services 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 Development Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978); *In re Remacle*, 66 USPQ2d 1222, 1224 (TTAB 2002). The mark need not describe all of the recited goods and services in an application in order to be deemed merely descriptive. Rather, a descriptiveness refusal is proper if the mark is descriptive of any of the goods or services for which registration is sought. *In re Stereotaxis Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005); *In re Chamber of Commerce of the United States of America*, 102 USPQ2d 1217 (Fed. Cir. 2012). The determination that a mark is merely descriptive is a finding of fact and must be based upon substantial evidence. *In re Bayer Aktiengesellschaft*, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007).

The dictionary definitions offered by the examining attorney are, in our view, sufficient to establish that PC is a generic word meaning “personal computer,” and that STICK is a generic term that would be understood, in the field of computer-

related products, to describe memory storage devices of types that are included among applicant's identified goods (for example, "flash drives" and certain types of "computer memory hardware.") Moreover, the evidence indicates that STICK would accurately describe the USB flash drives detailed in applicant's product literature. As applicant's goods are computer-related products, it is appropriate to interpret the significance of the mark in accordance with these computer-related meanings. *In re Vehicle Information Network Inc.*, 32 USPQ2d 1542, 1544 (TTAB 1994) (descriptiveness is determined on the basis of the description of the goods set forth in the application). When the applicant's mark is considered in its entirety, and interpreted according to the ordinary meaning of its component terms as they are understood in the field of computer products, it means "a personal computer installed on, contained within, held upon or otherwise connected to a memory storage device such as a flash drive or other compact data storage medium."

Those goods of applicant that are identified as "software," "computer operating programs," "firmware for operating system programs," and "computer operating systems" are all types of computer software.⁴ Such goods are not

⁴ Software is defined as the "data, programs, routines, and symbolic languages, requisite to computer operations." WEBSTER'S II NEW RIVERSIDE DICTIONARY (1984), p. 1105. Firmware is defined as "'a fixed form of software programmed into read-only memory.'" COLLINS ENGLISH DICTIONARY - COMPLETE & UNABRIDGED 10th Edition (2009). Retrieved November 13, 2012, from Dictionary.com website: <http://dictionary.reference.com/browse/firmware>. The Board may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), including online dictionaries that exist in printed format or have regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006).

“computers.”⁵ A computer’s essential function is the processing of data. Software, in essence, is the set of instructions that directs the operations of the computer, but software cannot, itself, perform data processing functions. Accordingly, those goods are not, in our view, described by the mark.⁶

A closer question is whether the mark merely describes applicant’s other goods, identified as “computer storage devices, namely, blank flash drives and high-speed storage subsystems for storage of computer operating programs and systems,” “computer memory hardware,” and “computer hardware.”

The record contains little evidence to elucidate the full scope of the identified goods. However, applicant’s product literature shows a product described as a “USB flash drive,” marketed under the mark IRONCLAD.⁷ The advertisement states that a user may “house your operating system, applications and data” on the flash drive. It explains further:

IronClad technology shrinks your laptop hard drive to a 3-inch flash drive, portable and small enough to fit in your pocket or attach to your keychain. Plug an IronClad drive into virtually any laptop or PC, and it turns into your own computer. IronClad will bypass the computer’s hard drive and run directly off the flash drive – from your operating

⁵ A computer is “a device, usually electronic, that processes data according to a set of instructions.” COLLINS ENGLISH DICTIONARY - COMPLETE & UNABRIDGED 10th Edition (2009). Retrieved November 13, 2012, from Dictionary.com website: <http://dictionary.reference.com/browse/computer>.

⁶ The evidence in the record does indicate that a STICK is an appropriate medium for the storage of software. Accordingly, the word STICK is arguably descriptive of applicant’s software products, which might be offered on a storage medium of the type known as a STICK. However, this fact does not change our assessment of the mark as viewed in its entirety.

⁷ On October 31, 2011, applicant filed another specimen of use showing that applicant associates the mark PC ON A STICK with the IRONCLAD product.

system to your everyday applications. This gives you the convenience of your own desktop, either standalone or networked, with no risk of your sensitive data ever touching the hard drive of the computer you're using and leaving no trace that you were there. IronClad drives are secure enough to use at computer kiosks, shared laptops, or public workstations.

The product described in the advertisement appears to exemplify the goods that are identified in the application as “computer storage devices, namely, blank flash drives,” “computer memory hardware,” and “computer hardware.”

The record also contains two online news items that describe the IronClad product in association with the mark at issue.⁸ The characterization of applicant's product in these news items as an encrypted USB flash drive capable of holding the contents of a laptop's hard drive, including operating system and software applications, is essentially consistent with the description set forth in the applicant's product literature, discussed above. The examiner's contentions as to the descriptiveness of the mark (both in her brief and in her Office actions) appear to relate specifically to the goods described in the applicant's advertisement and in the two online news items.

The examining attorney contends that applicant's mark “is simply descriptive of the goods in that the user may have the contents of, or access to, their personal computer (PC), by means of a memory device (STICK).”⁹ This argument shows that applicant's goods relate in some way to a PC and a STICK, but it does not

⁸ “Lockheed Martin IronClad PC-on-a-Stick secures Desktop and Data for Telecommuters” and “Lockheed Martin announces IronClad secure PC on a stick,” made of record with the examining attorney's office action of September 27, 2010.

⁹ Examiner's brief at p. 8.

sufficiently address the relevant standard for analysis under Section 2(e)(1). It is not enough that the words PC and STICK have some relevance to the nature of the applicant's goods, if the manner in which these words are used in the applicant's mark does not actually describe the goods.

A mark is descriptive within the meaning of Section 2(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 Bayer AG*, 82 USPQ2d at 1831; and *In re Abcor Dev.*, 200 USPQ at 217-18. In addition, in order to be merely descriptive, the mark must, of course, lack any additional distinctive matter that would be registrable under the Trademark Act. *See Abcor*, 200 USPQ at 217, n. 7. A mark need not be entirely devoid of all meaning in relation to the goods in order to be registrable. If the mark suggests information about the goods in a way that requires imagination, thought, or perception to reach a conclusion as to the nature of the goods, it may be registered. *In re George Weston Ltd.*, 228 USPQ 57 (TTAB 1985).

As we have discussed above, insofar as the mark may be said to have a meaning, it appears to refer to a personal computer installed on or contained within a memory storage device. According to this interpretation, we find that PC ON A STICK is not merely descriptive of "computer storage devices, namely, blank flash drives" or "computer memory hardware." Such goods, as exemplified by the applicant's product literature, are not in themselves "computers" of any kind, whether "on a stick" or otherwise. Applicant's product may be a STICK for use with

a computer, but the product itself does not, and cannot, perform the essential data processing functions of a computer. Indeed, according to the applicant's product literature and the two news items that describe the applicant's product, the user of the product must provide his or her own computer in order to use the applicant's product for computational purposes. This appears to be true of flash drives and other memory storage media in general, and the record is devoid of evidence to the contrary.¹⁰

The applicant's product literature indicates that applicant's flash drive product is capable of storing essentially all of the data and computer software applications (including an operating system) that may be found on a typical user's PC. It further explains that insertion of the flash drive into a different computer will allow that computer to function as if it were the user's own PC. In our view, the mark PC ON A STICK does suggest this function and purpose of the applicant's goods, but it does not do so forthwith and with immediacy. Rather, the mark is both elliptical and exaggerative. The term PC is used elliptically to stand in for "all of the data and software content of a PC." PC is also exaggerative, as the mark suggests that the product is the equivalent of a PC actually contained within a STICK (although having the content of one's PC stored on a stick is not in fact the

¹⁰ The record contains nothing to inform the Board of the true nature of the goods identified as "computer storage devices, namely...high-speed storage subsystems for storage of computer operating programs and systems." If these goods are similar in nature to applicant's flash drives, our decision regarding such goods applies equally to these "subsystems." We acknowledge the possibility that such goods may be (unlike the other identified goods) "computers." However, lacking any evidence to indicate that such subsystems could reside "on a stick," we have no evidentiary basis for affirming the examining attorney's refusal with respect to these goods. See our later discussion herein of applicant's goods identified as "hardware."

same as having all of the computing power of a PC installed on a STICK). In order to understand the meaning of the mark in the context of these goods, a customer must undertake a multistage reasoning process, through which he or she may appreciate the suggestion that the STICK does not contain a PC, but rather all of the data and software content of a PC. The indirect way in which the mark conveys this information renders it suggestive rather than merely descriptive of the nature of applicant's computer storage devices.

We have noted the applicant's argument that the concept of a personal computer physically held on a stick is so outlandish as to render the mark comical, incongruous, and therefore suggestive (primarily because personal computers are "often cumbersome" and "clunky").¹¹ The Board does not share this view. Computers for personal use (such as tablet computers and some "smart" telephones) are often quite small in size, and advances in miniaturization indicate that very tiny computers are hardly a comical concept.

We also note the applicant's argument that the designation ON A STICK brings to mind novelty food items consisting of various types of food "that one would not typically expect to be 'on a stick'."¹² We agree that this cultural reference might add to the distinctiveness of applicant's mark. However, in the field of consumer goods, the computer-related meanings of the terms PC and STICK are so strong that they might well overwhelm the impression created by the reference to foods.

¹¹ Applicant's brief at 6.

¹² Applicant's brief at 7.

Accordingly, we do not adopt this factor as a separate ground for finding the applicant's mark sufficiently distinctive to be registered.

The examining attorney has presented evidence showing use of the designation PC ON A STICK by third parties in connection with goods of applicant and goods of others that are similar in nature to applicant's flash drives, and suggests that this evidence demonstrates the manner in which customers in the marketplace will interpret the applicant's mark. With respect to the two articles that refer to applicant's own flash drive product as a PC ON A STICK, the context suggests not that the writers spontaneously chose this wording to describe the product, but that the product was presented and promoted by applicant as PC ON A STICK, and that the writers merely adopted this terminology. While this interpretation of the articles is not unquestionable, it is more likely than the examining attorney's suggestion that the writers used this wording because it aptly describes the goods. Therefore, these two articles provide little indication of how the mark would be interpreted in the marketplace.

The three news items that use the designation PC ON A STICK in reference to the goods of others require somewhat closer review.¹³ We note that each of the three writers acknowledged that the product discussed is not in fact a PC but, rather, for use with a PC, and that the computer must be found elsewhere. Thus it

¹³ We note applicant's objection that the article "MicroSoft and SanDisk put PC on a stick" was published abroad and should be given no consideration. Neither applicant nor the examining attorney has provided enough information to allow the Board to determine the details of publication of these articles. However, in light of our decision, it is not necessary for the Board to consider the relevance of this article.

is clear that each writer understood that to call the goods a PC ON A STICK was an exaggeration, and that the true sense of the expression PC ON A STICK was that the data and software content of a PC could be contained on the STICK. It is reasonable to conclude that, in using the expression PC ON A STICK, each of these writers independently and coincidentally exercised the same expressive license that the applicant used in developing its trademark. There is nothing in the record to indicate that they used this expression because it was already widely used in the trade or the marketplace. While a substantial amount of evidence of this type might lead to a different conclusion, these three news items alone are scant evidence of the meaning of applicant's mark to customers and the trade.

The examining attorney's Office Action of April 30, 2011 suggests in essence that, regardless of the ordinary meaning of the words that compose applicant's mark, the mark should be deemed merely descriptive because it has become a term of art. ("While the mark is not descriptive in a dictionary sense, it is a descriptive term of art in the field."). In our view, the evidence of third-party use discussed above is insufficient to allow the Board to make any such finding.

Finally, we address whether PC ON A STICK is merely descriptive of goods identified as "computer memory hardware; and computer hardware." These terms are extremely broad and could include within their scope many diverse types of electronic goods, including computers and PCs. The record contains no evidence indicating the existence of any product that could accurately be described as a PC ON A STICK. In the absence of such evidence, there is no basis for a finding that

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the applicant's mark is merely descriptive of the goods identified as "computer hardware" and "computer memory hardware." *In re Bayer AG*, 82 USPQ2d at 1831.

Accordingly, the Board finds that the mark PC ON A STICK is not merely descriptive of the applicant's identified goods.

Decision: The refusal to register is reversed and this application will be forwarded to publication.