

This Opinion is Not a
Precedent of the TTAB

Mailed: January 23, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Angel Medical Systems, Inc.

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Serial No. 85797225

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Morton J. Rosenberg and Nicole B. Rackiewicz of Rosenberg Klein & Lee,
for Angel Medical Systems, Inc.

Mary J. Rossman, Trademark Examining Attorney, Law Office 109,
Dan Vavonese, Managing Attorney.

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Before Seeherman, Bucher and Adlin,
Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Angel Medical Systems, Inc. (“Applicant”) seeks registration on the Principal Register of the mark **CARDIAC CONCIERGE** (*in standard character format*) for services recited as follows:

medical services; providing medical information on-line via the internet and telephone; providing healthcare information by telephone and electronic communications and coordinating the provision of healthcare information by others; providing a data base in the field of healthcare and featuring inputting and collection of data and information

all for treatment and diagnostic purposes in International Class 44.¹

The Trademark Examining Attorney has refused registration of Applicant's mark on the ground that the mark is merely descriptive within the meaning of Trademark Act Section 2(e)(1), 15 U.S.C. § 1052(e)(1), and because Applicant failed to comply with her requirement that it provide the Office with information and materials about its intended services pursuant to 37 C.F.R. § 2.61(b). After the Trademark Examining Attorney made the refusals final, Applicant appealed to this Board.

I. Descriptiveness

A term is merely descriptive if it immediately conveys knowledge of a significant quality, characteristic, function, feature or purpose of the services it identifies. *See, e.g., In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987). Determining the descriptiveness of a mark is done in relation to an applicant's identified services, the context in which the mark is being used, and the possible significance the mark would have to the average purchaser because of the manner of its use or intended use. *See In re Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219, *citing In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)). Descriptiveness of a mark is not considered in the abstract. *Id.* In other words, the question is whether someone who knows what the services are will

¹ Application Serial No. 85797225 was filed on December 7, 2012, based upon Applicant's allegation of a *bona fide* intention to use the mark in commerce under Section 1(b) of the Trademark Act. No claim is made to the exclusive right to use the word "Cardiac" apart from the mark as shown.

understand the mark immediately to convey information about them. *In re MBNA America Bank N.A.*, 340 F.3d 1328, 67 USPQ2d 1778, 1780 (Fed. Cir. 2003).

Applicant argues that its proposed mark is not merely descriptive but is, *at worst*, suggestive. Applicant contends that an exercise of imagination is required to link Applicant's **CARDIAC CONCIERGE** mark to the services recited in the application. *Gyulay*, 3 USPQ2d at 1009.

As noted by the Trademark Examining Attorney, Applicant has not contested the descriptiveness of the term "Cardiac." In fact, the application includes a disclaimer of the word "Cardiac," consistent with a conclusion that this term is merely descriptive.

As to the word "Concierge" (as used in the context of medical services/"concierge medicine"), the Examining Attorney offered for the record the following dictionary definitions:

concierge adjective

...

6. pertaining to or being medical care for which the patient pays the doctor an annual fee for special or extra services: *concierge medicine*; *concierge physicians*.²

concierge medicine *n.*

A health care arrangement in which patients pay an enrollment fee in order to receive care at a medical practice.³

concierge medicine (also known as **retainer medicine**) is a relationship between a patient and a primary care physician in which the patient pays an annual fee or retainer. This may or may not be in addition to other charges. In exchange for the retainer, doctors provide enhanced care, including principally a commitment to limit patient loads to ensure adequate time and availability for each patient.⁴

² RANDOM HOUSE DICTIONARY, <http://dictionary.reference.com/browse/concierge?s=t>, as accessed by the Trademark Examining Attorney.

³ THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (5th Ed. 2014), <https://www.ahdictionary.com/word/search.html?q=concierge+medicine>, an entry of which the Trademark Examining Attorney requested we take judicial notice. The Board may take judicial notice of standard reference works such as encyclopedias. *In re London & Edinburgh Insurance Group Ltd.*, 36 USPQ2d 1367, 1370 (TTAB 1995).

⁴ http://en.wikipedia.org/wiki/Concierge_medicine, as accessed by the Trademark Examining Attorney on November 5, 2013, at 19-22 of 127.

Applicant apparently agrees with these definitions as providing relevant connotations for the word “Concierge” in the context of medical services:

The term “Concierge,” while used in connection with the emerging field of *concierge medicine*, is not descriptive of medical services themselves. The Examining Attorney has provided a host of webpages making reference to the term “concierge” yet all relate to “concierge medicine” as a type of medical practice. *Concierge medicine is a growing trend in the medical community offered as an alternative to traditional medicine where patients pay a monthly or annual fee in exchange for, among other things, the ability to make same-day appointments, no wait times, longer appointments and the opportunity for patients to have more time with their physicians.* On account of these perks, patients are often willing to pay a premium for membership at a concierge medical practice.

Applicant’s brief at 7 (*emphasis* supplied). In other words, Applicant effectively concedes that the term “concierge” has a merely descriptive and commonly understood meaning in connection with its identified “medical services.”

Furthermore, the Trademark Examining Attorney provided for the record pages from a number of websites showing that this type of “retainer medicine” is increasingly popular across the country. In particular, the *Concierge Medicine Journal*, below, shows multiple entries:



Concierge Medicine Grows in Greenville South Carolina SEPTEMBER 18, 2013

VIDEO: What Is It Like At A Concierge Medicine Practice? By Choice Physicians of South Florida OCTOBER 15, 2013

Nevadan at Work: Family doctor disavows insurance, turns to concierge [sic] medicine OCTOBER 16, 2013


Time for Concierge Medicine? The Mid-Size Practice May Be In Trouble. OCTOBER 18, 2013

Carr Medical Specialties Opens Concierge Medical Clinic in Lutherville, MD OCTOBER 19, 2013

How Concierge Medicine and HSAs Work Together to Cut Health Care Costs OCTOBER 31, 2013

Obamacare Sparks Concierge Medicine Trend NOVEMBER 1, 2013

⁵ <https://conciergemedicinejournal.wordpress.com/>

 Inova VIP 360°	Wish you had around-the-clock access to top-rated doctors in Northern Virginia? The Inova VIP 360° Program is Northern Virginia's premier concierge medicine program and offers personalized care and near-immediate access to Inova's top doctors and world-class healthcare. ⁶
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Based on the foregoing, we find that the individual terms “Cardiac” and “Concierge” are merely descriptive of Applicant’s services.⁷

The next question we must determine is whether, when these terms are combined, they create a new, unique or inventive commercial impression or incongruous meaning that requires mental gymnastics to understand information about the services. *In re MBNA America Bank N.A.*, 67 USPQ2d at 1780.

The Trademark Examining Attorney has submitted excerpts from third-party websites showing concierge medicine specifically focused on the field of cardiology, using terms such as “concierge cardiology,” “cardiology concierge,” and “cardiac concierge.” We find the following two to be particularly persuasive:

“UCSF ‘Cardiology Council’ raises ethical issues: **cardiac concierge care?” An article from Family Practice News**

A program at the University of California-San Francisco Medical Center that offers amenities to donors has some people asking if better care can be bought.
The Cardiology Council was established in 1997 as a way for UCSF to support clinical and academic programs in its cardiology division. ...⁸

⁶ www.inova.org/healthcare-services/vip-360/index.jsp, as accessed by the Trademark Examining Attorney on November 4, 2013, at 29-31 of 127.

⁷ Both the Trademark Examining Attorney and Applicant have submitted third-party registrations which contain the word “Concierge.” The registrations submitted by the Office show that the USPTO has in recent years treated the term “Concierge” as being descriptive of healthcare services. Applicant has submitted registrations having no limitations on the use of this term. We need not get into the details of this “battle of the registrations”; we note only that each case must be decided on its own set of facts.

⁸ Citing to two online references to a digital document authored by Mary Ellen Schneider and published by the International Medical News Group on June 1, 2004, the Trademark Examining Attorney submitted screen-prints from AccessMyLibrary and PicassoMio that she accessed on March 28, 2013, at 19-22 of 45.

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CARDIOLOGY, PC

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serving your **health**
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North County's Comprehensive
CARDIOVASCULAR DIAGNOSTIC FACILITY
and Concierge Cardiology Services

Cardiology Concierge Service

OFFERING THE HIGHEST QUALITY MEDICAL CARE AND TREATMENT

Why Choose Cardiac Concierge Care?

Medicine and access to medical care is changing and not necessarily in a good way. Patients are being required to deal with more bureaucracy to obtain medical and preventative care. This is unacceptable especially when it comes to heart disease. Heart disease remains one of the top killers in this country. Early detection and prevention remain paramount in preventing death. We have developed a new program, which is one of the first in the country, to bring private individualized heart care to patients. With our program you will receive complete cardiac care. You will once again be an individual patient not just a number in the computer. Heart disease is truly a life and death situation, there is no time for delay in care.

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We agree with the Trademark Examining Attorney that these websites demonstrate that the composite term “Cardiac Concierge” combines two merely descriptive words, and that the resulting designation **CARDIAC CONCIERGE** is equally descriptive. Someone who knows what the services are, upon encountering this term, will immediately understand that Applicant is offering “concierge” type medical services directed to “cardiac” care.

In reaching this conclusion, we have considered Applicant’s argument that **CARDIAC CONCIERGE** does not immediately convey information about its recited services. Applicant argues that providing healthcare information and data are distinguishable from the prototypical concierge medical services.

We are not persuaded by this argument. If a mark is descriptive of any of the goods or services for which registration is sought, it is proper to refuse registration as to the

⁹ <http://coastcardio.com/conciergeservices.html> as accessed by the Trademark Examining Attorney on March 28, 2013, at 12-14 of 45.

entire class. *In re Analog Devices Inc.*, 6 USPQ2d 1808 (TTAB 1988) *aff'd without pub. op.*, 871 F.2d 1097, 10 USPQ2d 1879 (Fed. Cir. 1989). The recitation of services in this application begins with the broad and unmodified listing of “medical services.” Thus, even if, *arguendo*, we were to find that the mark is not merely descriptive of some of the recited services,¹⁰ on the basis of Applicant’s recitation of “medical services” alone we must find the mark to be merely descriptive.

II. Requirement for Further Information

The Trademark Examining Attorney argues that Applicant’s failure to comply with her requirement for information and materials is an additional ground for refusal of registration. However, in light of our decision on mere descriptiveness, we do not need to reach this issue.

Decision: The refusal to register Applicant’s applied-for term **CARDIAC CONCIERGE** under Section 2(e)(1) of the Lanham Act is hereby affirmed.

¹⁰ The Trademark Examining Attorney has also submitted evidence showing that the term is merely descriptive for the narrower services of providing medical information and a database online.