

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed:  
March 29, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*In re Your Holding BV*

—  
Serial No. 86184669

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Your Holding BV, *pro se* by Valentijn Borstlap.

Kamal Preet, Trademark Examining Attorney, Law Office 112 (Angela Bishop Wilson, Managing Attorney).

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Before Cataldo, Masiello, and Goodman, Administrative Trademark Judges.

Opinion by Masiello, Administrative Trademark Judge:

Your Holding BV (“Applicant”) filed an application for registration on the Principal Register of the mark YOURHOSTING in standard characters for the following services:

Providing access to telecommunication networks; information about telecommunication; providing electronic telecommunications connections; telecommunications routing and junction services; providing telecommunications connections to a global computer network; transfer of data by telecommunications; telecommunications by e-mail, in International Class 38;

Design, creation, hosting, maintenance of websites for others; design, creation, hosting and maintenance of internet sites for third parties; Hosting the software, websites and other computer applications of others on a virtual private server, in International Class 42; and

Domain name registration services, in International Class 45.<sup>1</sup>

The Examining Attorney refused registration on the ground that Applicant's mark is merely descriptive of Applicant's services, under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1). When the refusal was made final, Applicant appealed to this Board and simultaneously filed a request for reconsideration. The Examining Attorney denied the request for reconsideration and this appeal proceeded. Applicant and the Examining Attorney have filed briefs and Applicant has filed a reply brief.

1. Evidentiary matters.

The Examining Attorney submitted with her brief, for the first time, evidence in the form of dictionary definitions of the words "your" and "host." In her brief, she asks that we take judicial notice of these definitions. As a general matter, the Board considers dictionary definitions to be suitable matter for judicial notice. *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). However, in a case relating to a refusal under Section 2(e)(1), it is inappropriate to confront Applicant with new

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<sup>1</sup> Application Serial No. 86184669 was filed on February 5, 2014. As to Classes 38 and 42, it is based on Applicant's asserted *bona fide* intent to use the mark in commerce, under Trademark Act Section 1(b), 15 U.S.C. § 1051(b). As to Class 45, it is based on Applicant's *bona fide* intent to use the mark in commerce and Applicant's European Community Registration No. 011492196, under Trademark Act Section 44(e), 15 U.S.C. § 1126(e).

evidence regarding the meaning of the words in the mark (the central issue in this case) after Applicant has filed its appeal brief. This is particularly the case inasmuch as the dictionary definitions submitted by the Examining Attorney with her brief were available during prosecution of the involved application. Under the Trademark Rules, “[t]he record in the application should be complete prior to the filing of an appeal. The Trademark Trial and Appeal Board will ordinarily not consider additional evidence filed with the Board by the appellant or by the examiner after the appeal is filed.” 37 C.F.R. § 2.142(d). *See also* TBMP § 1207.01 (October 2015). Accordingly, we have not considered the evidence filed with the Examining Attorney’s brief.

The Examining Attorney has also made of record definitions of the words “host” and “your” from the “British English” database of <collinsdictionary.com>,<sup>2</sup> rather than the “American English” section of this resource. As the Board must consider the meaning of Applicant’s mark in the United States marketplace, we have not considered these definitions. *In re Bel Paese Sales Co.*, 1 USPQ2d 1233, 1235 (TTAB 1986) (“we agree with applicant that the *Eggs, Milk and Cheese* publication and the *Financial Times* article are of no probative value as to public perception of the term in the United States since they are foreign publications ...”); *In re Consolidated Cigar Corp.*, 13 USPQ2d 1481, 1483 (TTAB1989) (“We agree with applicant that the evidence relating to generic use of ‘whiffs’ in Great Britain is, by and large,

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<sup>2</sup> Office Action of July 16, 2014 at 5-12.

irrelevant to the genericness of the term in the United States. The relevant test is, of course, consumer perception in this country.”).

2. Refusal under Section 2(e)(1).

A mark is merely descriptive of services 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 services. *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); *see also, In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). Whether a mark is merely descriptive is determined in relation to the services for which registration is sought and the context in which the mark 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). In other words, we evaluate whether someone who knows what the services are will understand the mark to convey information about them. *DuoProSS Meditech Corp. v. Inviro Med. Devices Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012). A mark need not immediately convey an idea of each and every specific feature of the services in order to be considered merely descriptive; it is enough if it describes one significant attribute, function or property of the goods. *See In re Gyulay*, 3 USPQ2d at 1010; *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); *In re MBAssociates*, 180 USPQ 338 (TTAB 1973). Moreover, the mark need not describe every one of the identified services. A descriptiveness refusal is proper with respect to all of the identified services in an International Class if the mark is descriptive of any of the services in

that class. *In re Chamber of Commerce*, 102 USPQ2d at 1219; *In re Stereotaxis Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005). The determination that a mark is merely descriptive is a finding of fact and must be based upon substantial evidence. *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007).

It is the Examining Attorney's burden to show, *prima facie*, that a mark is merely descriptive of an applicant's goods or services. *In re Gyulay*, 3 USPQ2d at 1010; *In re Accelerate s.a.l.*, 101 USPQ2d 2047, 2052 (TTAB 2012). If such a showing is made, the burden of rebuttal shifts to Applicant. *In re Pacer Tech.*, 338 F.3d 1348, 67 USPQ2d 1629, 1632 (Fed. Cir. 2003). The Board resolves doubts as to the mere descriptiveness of a mark in favor of Applicant. *In re Stroh Brewery Co.*, 34 USPQ2d 1796, 1797 (TTAB 1994).

Applicant's mark is a combination of the words "your" and "hosting." We will first consider whether the word "hosting" has descriptive meaning in the context of Applicant's services.

The record includes the following definition of the word "host":

5: a computer that controls communications in a network or that administers a database; *also*: SERVER 6.<sup>3</sup>

The Examining Attorney has submitted a Wikipedia entry for the term "Hosting environment," which states, in relevant part:

Hosting environment is the physical environment where hosting services are offered from. Typically hosting environment in telecommunication terms would be a

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<sup>3</sup> <merriam-webster.com>, Applicant's response of June 23, 2015 at 12.

*Network Operating Centre (NOC)* housing the equipment needed to host a service.

This can be broken down to include all hardware, including servers, routers and their cabinets. In most cases the equipment would be rack mounted and connected through one or more LANs. ...

Further this environment would provide connectivity to one or more telecom networks through gateways. The gateways in a hosted environment would indicate which telecom networks or systems can use the hosted services.<sup>4</sup>

The record also includes a number of examples of the use of the term “hosting” to describe certain computer services. We note the following:

Need More? Managed Hosting Works  
Behind the Scenes for You

...  
That’s where Codero’s managed hosting fits in. ... We provide the server and infrastructure you need and then manage your server environment. Even better, managed hosting solutions can be customized ...<sup>5</sup>

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**HostGator**

...  
WEB HOSTING RESELLER HOSTING VPS HOSTING

...  
What is the difference between domains vs hosting vs website? ...

**Domain Names**

Computers communicate by using numbers, called IP addresses, to contact each other ... [A] domain name tells people (i.e. their computers) that a domain is hosted on the server. ...

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<sup>4</sup> <wikipedia.org>, Office Action of December 24, 2014 at 7.

<sup>5</sup> <codero.com>, Applicant’s response of June 23, 2015 at 83.

## **Web-Hosting Servers**

The web-hosting or server is much like the space that you rent out to have your business in. It's merely the space itself. ...

Luckily, in the web-hosting world, it's very easy to furnish the space provided by your host ...

Without the hosting service, you won't have a place for your files to reside, so your domain would then become like a disconnected phone number in the phone directory, and your site files would have nowhere to stay.

## **Site Files**

The site files are what your visitors and potential customer actually see when going to site ...

The web-hosting server knows how to read these files, which explain how the webpage looks or instruct the server to do a series of computations. These computations are things like figuring out what blog article it's supposed to send back to the viewer, or what forum it's supposed to send back.

## **Our Services**

Web Hosting  
Reseller Hosting  
VPS Hosting  
Dedicated Servers  
Domain Names  
Application Hosting  
Windows Hosting<sup>6</sup>

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## **Transferring Your Hosting Account**

Moving your hosting account feels as scary as moving into a new house. ...

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<sup>6</sup> <support.hostgator.com>, Office Action of December 24, 2014 at 5-6.

*Web hosting* is server space where you store your website's files so they are accessible 24/7 ...The company providing this service for you is known as your *host*.

... purchase a hosting account that fits your needs. ...

The steps to transfer your hosting are:

- Setting Up Your Hosting ...<sup>7</sup>

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### Who Hosts My Website?

...

Tips on Finding your Web Hosting Provider

The best way to find the company hosting your website is to find out who you are paying. You may want to search through your email for keywords such as "nameserver," "hosting," "account," and "payment" to locate any email you received from your hosting company.<sup>8</sup>

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Transfer your hosting to us ...

This page describes how to transfer both domain **registration** and website **hosting** from your old provider to DreamHost. ...

Transferring your site to DreamHost

Select the topic that fits your needs:

- I have my registration and hosting at the same company and just want to sign up for a new account
- I have my registration and hosting at the same company but want to set up the site here before I transfer it ...

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<sup>7</sup> <support.godaddy.com>, Office Action of July 16, 2014 at 16-17.

<sup>8</sup> <cpanel.net>, *id.* at 19.

After you sign up, you will have a hosting plan with a domain set with no registration pointing to it yet. ...<sup>9</sup>

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Microsoft Hosting

... Find a Hosting Provider

...

Subscribe to the Hosting Newsletter created specifically for hosting partners. ...<sup>10</sup>

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With all the benefits associated with mission critical hosting inside a world class data centre, LAUNCH Cloud is best-in-class managed cloud hosting at the click of a mouse.<sup>11</sup>

With respect to the meaning of “hosting,” the record also includes numerous third-party registrations in which the services are identified by use of the term “hosting.”<sup>12</sup> Examples of such services are:

Hosting of digital content;

Server hosting;

Cloud hosting provider services;

Application service provider (ASP), namely, providing, hosting, managing, developing, and maintaining applications, software, websites and databases ...;

Hosting of e-commerce and other business internet web sites for others;

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<sup>9</sup> <wiki.dreamhost.com>, *id.* at 25-29.

<sup>10</sup> <microsoft.com>, *id.* at 23-24.

<sup>11</sup> <macquarietelecom.com>, Office Action of July 16, 2014 at 13-14.

<sup>12</sup> Office Action of July 16, 2014 at 13-37.

Hosting the software, websites and other computer applications of others on a virtual private server;

Webhosting;

Hosting websites on the internet.

On the record before us, it is clear that the term HOSTING is widely used to describe a variety of computer services. There is no question that HOSTING describes Applicant's services in Class 42, because those services, as identified, include "hosting ... of websites for others; ... hosting ... of internet sites for third parties; Hosting the software, website and other computer applications of others on a virtual private server." Moreover, Applicant acknowledged during prosecution "that the term 'hosting' by itself has a descriptive significance for the service that we list under the IC 42 category for our application ..." <sup>13</sup> See also Applicant's brief at 9: "... we host client websites and the client bears that responsibility for the content only." <sup>14</sup>

Applicant argues, however, that a refusal of registration is not appropriate with respect to Applicant's services in Classes 38 and 45, because "hosting is not a synonym for domain name registrations [in Class 45] or telecom services [in Class 38] ..." <sup>15</sup> We disagree. Applicant's services in Class 38 are identified very broadly, and include "providing electronic telecommunications connections"; "telecommunications routing"; and "transfer of data by telecommunications." Such

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<sup>13</sup> Applicant's response of June 23, 2015 at 2, 86.

<sup>14</sup> 7 TTABVUE 10.

<sup>15</sup> Applicant's brief at 5, 8, 7 TTABVUE 6, 9.

services include within their scope a very broad range of services. As the dictionary definition of “host” and the third-party uses of “hosting” in the marketplace show, HOSTING describes the service of providing “a computer that controls communications in a network” and the service of providing “hardware, including servers [and] routers” that “provide connectivity to one or more telecom networks.” These services are well within the scope of Applicant’s identified Class 38 services, such as “providing ... connections,” “routing,” and “transfer of data.” Thus, HOSTING describes at least some of the services encompassed by Applicant’s Class 38 services.

Similarly, Applicant’s “Domain name registration services” in Class 45 entail, as a necessary component, computer servers (“nameservers”) that host the information necessary to route inquiries addressed to a registrant’s domain name to the registrant’s correct Internet address. Such servers meet the dictionary definition of “host,” inasmuch as they “administer a database” and “control [ ] communications in a network.” Applicant argued during prosecution that “To register domainnames [sic] has no connection with hostingservices. The service of registering domainnames is a pure administrative operation by a registrar to register domainname requests at an internet governing body ...”<sup>16</sup> We are not persuaded. The service of undertaking to “register” a domain name would be meaningless if it did not involve the step of placing the customer’s domain name information on a

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<sup>16</sup> Applicant’s response of November 26, 2014 at 5.

nameserver. Accordingly, we find that the term HOSTING describes Applicant's Class 45 services.

Inasmuch as we have found that HOSTING describes services in each of the three International Classes in the application, it does not matter that, as Applicant contends, "one can sell these services autonomous from each other."<sup>17</sup>

Although we have found that HOSTING is descriptive with respect to services in each class of Applicant's application, we must consider whether YOURHOSTING, as a whole, is merely descriptive within the meaning of Section 2(e)(1). Applicant contends that the addition of the word YOUR results in a suggestive mark. "[A] suggestive mark 'requires imagination, thought and perception to reach a conclusion as to the nature of the goods,' while a merely descriptive mark 'forthwith conveys an immediate idea of the ingredients, qualities or characteristics of the goods.'" *DuoProSS Meditech Corp. v. Inviro Med. Devices Ltd.*, 103 USPQ2d at 1755, quoting *In re Abcor Dev. Corp.*, *supra*. Applicant argues:

[W]hen a potential customer considers our webhosting services, these services are not yet his so it takes a creative mental process on his part to reach this possible conclusion about the nature of these services.

...

[T]here's no such thing as hosting your own website. Hosting is per definition, ... a service that is provided by others ...

... "Yourhosting" ... suggests merely a kind of servile almost submissive role or attitude towards our potential customers and in that sense it puts the prospective customer in a uncertain position what the term "Yourhosting" means ...the adding of the word "your" in

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<sup>17</sup> Applicant's brief at 7, 7 TTABVUE 8; Applicant's reply brief at 5, 10 TTABVUE 6.

front of “hosting” suggests an “at your service” mentality from us.

... In other words the average customer will be left in a state of uncertainty about the intended or “real” meaning of the term “Yourhosting” in relation to the offered services. He or she can only make a guess about it what the “your” part points to in the composition Yourhosting.<sup>18</sup>

The word YOUR is such a common element of daily speech that we do not need a dictionary definition to acknowledge at least that it is an adjective indicating possession in the grammatical “second person” (*i.e.*, “you,” whether singular or plural). When used in this way in ordinary speech, there is virtually no likelihood that a customer in the United States market would perceive the word YOUR as unusual, incongruous, or of such unclear meaning as to place the customer in “a state of uncertainty about the intended or ‘real’ meaning of the term ...,” as Applicant suggests. The record contains several examples of use of the word YOUR in this grammatically conventional way in the commercial context of hosting services, showing that businesses use this grammatical formulation to address their customers (emphasis added):

When a site visitor enters *your* domain name into a browser, the domain is then translated into *your* server IP address, then the server sends that user *your* site files ...<sup>19</sup>

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<sup>18</sup> Applicant’s brief at 9, 7 TTABVUE 10.

<sup>19</sup> <support.hostgator.com>, Office Action of December 24, 2014 at 5.

Tips on Finding *your* Web Hosting Provider ... to find the company hosting *your* website. ... *your* web host's website.<sup>20</sup>

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We provide the server and infrastructure you need and then manage *your* server environment<sup>21</sup>

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... to launch and manage *your* hosted solutions ... Spread the word about *your* hosted services ...<sup>22</sup>

The evidence also includes examples of use of the phrase YOUR HOSTING in the same sense (emphasis added):

Transferring *Your Hosting* Account

Moving *your hosting* account feels as scary as moving into a new house. ...

The steps to transfer *your hosting* are:

- Setting Up Your Hosting ...<sup>23</sup>

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Locate any email you received from *your hosting* company.<sup>24</sup>

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Transfer *your hosting* to us ...<sup>25</sup>

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<sup>20</sup> <cpanel.net>, Office Action of July 16, 2014 at 19-20.

<sup>21</sup> <codero.com>, Applicant's response of June 23, 2015 at 83.

<sup>22</sup> <microsoft.com>, Office Action of July 16, 2014 at 23.

<sup>23</sup> <support.godaddy.com>, *id.* at 16-17.

<sup>24</sup> <cpanel.net>, *id.* at 19.

<sup>25</sup> <wiki.dreamhost.com>, *id.* at 25-29.

These examples of ordinary commercial usage of the words “your hosting” are sufficient for us to find that they would forthwith convey to relevant customers an immediate idea of the nature of Applicant’s services, without exercise of additional imagination, thought, or perception. That is, customers would immediately understand that “your hosting” refers to the their hosting services, their hosting account, or the business that provides their hosting services. The fact that Applicant has combined the words “your hosting” into the single term YOURHOSTING is immaterial. *In re Greenliant Systems Ltd*, 97 USPQ2d 1078, 1084 (TTAB 2010); *In re 3Com Corp.*, 56 USPQ2d 1060, 1062 (TTAB 2000); *Micro Motion Inc. v. Danfoss A/S*, 49 USPQ2d 1628, 1631 (TTAB 1998). It is clear from the evidence that YOURHOSTING would be recognized as the combination of the words “your” and “hosting” and that this would be readily apparent to any relevant customer. Applicant has presented no evidence to show that deleting the space between the words would alter the meaning of the words “your hosting” as they are widely understood in the marketplace.

Applicant has made of record a number of third-party registrations of marks that purportedly consist of the word YOUR combined with merely descriptive wording,<sup>26</sup> suggesting that this evidence indicates a practice of the USPTO to find such marks non-descriptive. The marks in most of the registrations include suggestive wording that would, logically, render inappropriate a finding of mere descriptiveness.<sup>27</sup> In

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<sup>26</sup> Applicant’s response of June 23, 2015 at 38-71.

<sup>27</sup> Several of the registrations provide no support at all for Applicant’s position: the registration of YOUR FULL SERVICE SEMITRAILER DEALER was issued under Section

any event, each application must be examined on its own merits. Examining attorneys and the Board are not bound to approve for registration an applicant's mark based solely upon the registration of other assertedly similar marks for other goods or services on different evidentiary records. *In re Boulevard Entm't Inc.*, 334 F.3d 1336, 67 USPQ2d 1475, 1480 (Fed. Cir. 2003) (“the PTO must decide each application on its own merits, and decisions regarding other registrations do not bind either the agency or this court,” *citing In re Nett Designs*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001)).

The record shows that Applicant's mark YOURHOSTING immediately conveys information regarding the nature of Applicant's services. Accordingly, we find that Applicant's mark is merely descriptive of Applicant's services within the meaning of Trademark Act Section 2(e)(1).

We note Applicant's request that we allow registration of the mark on the Supplemental Register in the event that we affirm the refusal under Section 2(e)(1).<sup>28</sup> However, a request for registration on the Supplemental Register must be examined by the Examining Attorney during prosecution of the application; and the Board cannot reopen the application to allow Applicant to amend the application to make such a request. 37 C.F.R. § 2.142(g) (“An application which has been

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2(f); and in the registration of YOUR PROKITCHEN SHARED KITCHEN & CULINARY INCUBATOR (and design), all of the wording has been disclaimed. Such treatment indicates that the USPTO considered the wording of these marks, including the word YOUR, to be merely descriptive.

<sup>28</sup> Applicant's reply brief at 6, 10 TTAVUE 7.

considered and decided on appeal will not be reopened except for the entry of a disclaimer... or upon order of the Director....”).<sup>29</sup>

**Decision:** The refusal to register Applicant’s mark is AFFIRMED on the ground that the mark is merely descriptive of Applicant’s services, under Trademark Act Section 2(e)(1).

**Goodman, Administrative Trademark Judge, dissenting in part:**

I respectfully dissent from the Board's decision as to International Class 45, as I do not believe the Examining Attorney has met her burden of establishing that YOURHOSTING is merely descriptive of “domain name registration services.”

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<sup>29</sup> Note also that, to the extent that an application is based solely on Trademark Act Section 1(b) (*i.e.*, Classes 38 and 42 of the present application), an applicant may not request registration on the Supplemental Register until the applicant has filed an acceptable allegation of use. 15 U.S.C. § 1091(a), 37 C.F.R. § 2.47(d).