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Subject: U.S. TRADEMARK APPLICATION NO. 86308556 - INTELLIGENT RACK - 115285-01550 -
EXAMINER BRIEF

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UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

U.S. APPLICATION SERIAL NO. 86308556

MARK: INTELLIGENT RACK



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GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/trademarks/index.jsp>

TTAB INFORMATION:

<http://www.uspto.gov/trademarks/process/appeal/index.jsp>

APPLICANT: RIIP, Inc.

CORRESPONDENT'S REFERENCE/DOCKET NO:

115285-01550

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EXAMINING ATTORNEY'S APPEAL BRIEF

RIIP, Inc., (applicant), a corporation existing under the laws of Delaware, has appealed the examining attorney's final refusal to register the mark INTELLIGENT RACK for use on "computer hardware; computer hardware adapted to be installed on racks; electronic controllers for computer systems; electronic controllers for computer systems adapted to be installed on racks; electronic sensors, namely, electronic environmental sensors for temperature, humidity and other environmental

information; electronic positioning tags; asset management systems comprising computer hardware and software for data centers; infrastructure management systems comprising computer hardware and software for data centers; electrical power management systems comprising power distribution units for computer data centers; power electronics for datacenters, namely, power distribution units (PDUs); and KVM switches,” as amended. Registration was refused pursuant to Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis that the mark merely describes a feature or characteristic of the applicant’s goods.

STATEMENT OF FACTS

On June 12, 2014, the applicant applied to register the mark INTELLIGENT RACK for use on “computer hardware; computer hardware adapted to be installed on racks; electronic controllers for computer systems; electronic controllers for computer systems adapted to be installed on racks; electronic sensors, namely, electronic environmental sensors for temperature, humidity and other environmental information; electronic positioning tags; asset management systems comprising computer hardware and software for data centers; infrastructure management systems comprising computer hardware and software for data centers; electrical power management systems for data centers; power electronics for datacenters, namely, power distribution units (PDUs); and KVM switches.”¹

¹ The goods identified in the brief are the applicant’s amended identification submitted in the response dated April 2, 2015.

On October 2, 2014, the examining attorney refused registration on the Principal Register under Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1), because the applied-for mark merely describes a feature or characteristic of the applicant's goods. The examining attorney also required additional information about the goods.

The applicant responded on April 2, 2015, arguing the mark is not descriptive and providing samples of the applicant's website showing and describing the identified goods. The examining attorney found the applicant's arguments against the refusal unpersuasive, and on April 15, 2015, issued a final refusal pursuant to Section 2(e)(1).

On October 14, 2015, the applicant filed a notice of appeal, and on December 14, 2015, filed an appeal brief.

ARGUMENTS

A mark is merely descriptive if it describes an ingredient, quality, characteristic, function, feature, purpose, or use of an applicant's goods. TMEP §1209.01(b); *see, e.g., In re TriVita, Inc.*, 783 F.3d 872, 874, 114 USPQ2d 1574, 1575 (Fed. Cir. 2015) (quoting *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004)); *In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005) (citing *Estate of P.D. Beckwith, Inc. v. Comm'r of Patents*, 252 U.S. 538, 543 (1920)).

“A mark may be merely descriptive even if it does not describe the ‘full scope and extent’ of the applicant’s goods or services.” *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004) (citing *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 1346, 57 USPQ2d 1807, 1812 (Fed. Cir. 2001)); TMEP §1209.01(b). It is enough if a mark describes only one significant function, attribute, or property. *In re The Chamber of Commerce of the U.S.*, 675 F.3d 1297, 1300, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); TMEP §1209.01(b); see *In re Oppedahl & Larson LLP*, 373 F.3d at 1173, 71 USPQ2d at 1371.

The applied-for mark INTELLIGENT RACK refers to a frame or cabinet for mounting computer components used for real-time monitoring of power distribution units (PDUs). The dictionary definitions attached to the Office action dated October 2, 2014, at 18, 23, and 30, show that the term “intelligent” is defined as “guided or controlled by a computer; especially: using a built-in microprocessor for automatic operation, for processing of data, or for achieving greater versatility.” The term “rack” is defined as “a framework, stand, or grating on or in which articles are placed.” In the context of computers, the term “rack” refers to “a frame or cabinet for mounting computer components.” Taken together, INTELLIGENT RACK would be perceived by consumers as describing a frame or cabinet for mounting computer components containing built-in microprocessor for automatic operation, for processing of data, or for achieving greater versatility.

The applicant’s goods are identified in the application and in the screenshot of its website provided in the response dated April 2, 2015, as PDUs, computer hardware adapted to be installed on racks, and electronic environmental sensors for temperature, humidity and other environmental

information. The excerpts on the record from fifteen (15) websites, including the applicant's own blog, demonstrate that the term "intelligent rack" is commonly used in the relevant industry to refer to computer components used for real-time monitoring of power distribution units (PDUs). For example, note the following:

- **Intelligent racks** provide data center managers with relevant, real-time information about server power, workload, and space so that they can quickly and easily deploy new servers, reallocate power distribution, and map workload to the systems that need it most. <http://siliconangle.com/blog/2012/07/23/how-intelligent-racks-benefit-data-center-management/>. Office action dated October 2, 2014, at 2.
- Metered PDUs also come with some **intelligent racks** that monitor and regulate temperature and room humidity, thus making it even easier to avoid crashes. <http://www.9articles.org/choosing-a-power-distribution-unit-remote-power-control-is-best/>. Office action dated October 2, 2014, at 8.
- Today's **intelligent rack** PDUs offer more than just power distribution – they are a launch pad for remote power monitoring, environmental sensors, data center infrastructure management, and so much more. <http://www.raritan.com/blog>. Office action dated October 2, 2014, at 15.
- The market for **intelligent rack** PDUs is forecasted by IMS Research to grow nearly twice as fast as non-intelligent units over the next five years, because these units can monitor and track power consumption within a rack or enclosure in a data center.

<http://www.cablinginstall.com/articles/2012/11/ims-intelligent-rack-pdu-report.html>. Office

action dated April 15, 2015, at 20.

- The MIE-PX **Intelligent Rack** PDUs offer a wide variety of solutions to meet your data center needs. [...] Not only do the MIE-PX models offer power distribution, they also provide real-time monitoring, monitoring sensors, data center infrastructure management, and much more. <http://www.martinenclosures.com/product/intelligent-rack-pdus/>. Office action dated April 15, 2015, at 28.

The applicant's goods are the same or similar as those described in the excerpted websites. Therefore, the applied-for mark INTELLIGENT RACK merely describes a feature or characteristic of the applicant's goods.

The applicant contends that its mark is "at worst, suggestive, such that it [is] susceptible to multiple connotations and requires some thought and cogitation by relevant consumers in order for them to perceive any significance of the INTELLIGENT RACK mark as it relates to a significant aspect of Applicant's goods." Applicant's appeal brief at 5. The examining attorney disagrees. The determination of whether a mark is merely descriptive is made in relation to an applicant's goods, not in the abstract. *DuoProSS Meditech Corp. v. Invivo Med. Devices, Ltd.*, 695 F.3d 1247, 1254, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012); *In re The Chamber of Commerce of the U.S.*, 675 F.3d 1297, 1300, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); TMEP §1209.01(b); see, e.g., *In re Polo Int'l Inc.*, 51 USPQ2d 1061, 1062-63 (TTAB 1999) (finding DOC in DOC-CONTROL would refer to the "documents" managed by applicant's software rather than the term "doctor" shown in a dictionary definition); *In re Digital Research Inc.*, 4 USPQ2d

1242, 1243-44 (TTAB 1987) (finding CONCURRENT PC-DOS and CONCURRENT DOS merely descriptive of “computer programs recorded on disk” where the relevant trade used the denomination “concurrent” as a descriptor of a particular type of operating system).

“Whether consumers could guess what the product is from consideration of the mark alone is not the test.” *In re Am. Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

As applied to the applicant’s goods, the mark INTELLIGENT RACK merely refers to a frame for mounting computer components used for real-time monitoring of power distribution units (PDUs). The evidence of record leaves no doubt that the term “intelligent rack” is merely descriptive and is commonly used in the relevant industry to refer to the applicant’s goods. There is nothing mysterious or incongruous about the mark. In fact, the applicant describes its own goods as “high quality, **intelligent rack** power distribution units” and “offer[ing] real-time remote power monitoring of current (amps), voltage, power (kVA, kW) and energy consumption (kWh)...” (emphasis added). Applicant’s response dated April 2, 2015, at 2.

Applicant further argues that the applied-for mark “can be characterized as a ‘double entendre’ capable of more than one interpretation.” Applicant’s brief at 6. This argument lacks merit.

Unquestionably, the evidence proves that the combination of the terms “intelligent” and “rack” refers to a specific and unique thing that describes the applicant’s goods. Again, determining the descriptiveness of a mark is done in relation to an applicant’s goods, 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 The Chamber of Commerce of the U.S.*, 675 F.3d 1297, 1300, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (citing *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 963-64, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)); TMEP §1209.01(b). Descriptiveness of a mark is not considered in the abstract. *In re Bayer Aktiengesellschaft*, 488 F.3d at 963-64, 82 USPQ2d at 1831. “That a term may have other meanings in different contexts is not controlling.” *In re Franklin Cnty. Historical Soc’y*, 104 USPQ2d 1085, 1087 (TTAB 2012) (citing *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979)); TMEP §1209.03(e).

CONCLUSION

Based on the record evidence and case law, the proposed mark is merely descriptive of a feature or characteristic of the applicant’s goods. The examining attorney, therefore, respectfully requests that the Board affirm the refusal to register the mark on the Principal Register.

Respectfully submitted,

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