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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Innova Electronics Corporation

Serial No. 90174255

Mark B. Garred of Stetina Brunda Garred & Brucker
for Innova Electronics Corporation.

Betty Chang, Trademark Examining Attorney, Law Office 115,
Daniel Brody, Managing Attorney.

Before Wolfson, Adlin and Allard, Administrative Trademark Judges.

Opinion by Adlin, Administrative Trademark Judge:

Applicant Innova Electronics Corporation seeks a Principal Register registration for the proposed mark CARAI, in standard characters[1], for

> downloadable and recorded computer application software for mobile phones, portable media players and handheld computers for automotive performance diagnostics; vehicle data acquisition and transfer devices, namely, OBD[2] code readers, OBD scanners, and programmed wireless communication devices, all of which are operative to access and transfer, either wirelessly or via a hard-wired

[1] The involved application's drawing page displays the proposed mark as CarAi, but because Applicant seeks registration in standard character format, the mixed upper and lower case display is of no significance in determining descriptiveness. *See In re Calphalon Corp.*, 122 USPQ2d 1153, 1158-60 (TTAB 2017); Trademark Rule 2.52(a) and (b), 37 C.F.R. § 2.52(a) and (b).

[2] As explained below, OBD stands for "On Board Diagnostics."

> connection, vehicle diagnostic data representative of the operating condition of a vehicle or vehicle system in International Class 9; and
>
> vehicle diagnostic services, provided using devices which access and communicate, either wirelessly or via a hard-wired connection, vehicle diagnostic data representative of the operating condition of a vehicle or vehicle system to any one or more of a vehicle diagnostic database, a diagnostic resource, namely, a vehicle parts supplier or repair facility, and a non-diagnostic resource, namely, a credit card or payment processing facility in International Class 42.[3]

The Examining Attorney refused registration on the ground that the proposed mark is merely descriptive of the identified goods and services under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1). After the refusal became final, Applicant appealed and filed a request for reconsideration that was denied. The appeal is fully briefed. **Examining Attorney's Objection Sustained**

During prosecution, Applicant submitted a dictionary definition from an online source. February 16, 2022 Request for Reconsideration TSDR 11. The Examining Attorney informed Applicant that the submitted webpage "does not specify the date it was downloaded or accessed and the complete URL," and therefore would not be considered. March 11, 2022 Denial of Request for Reconsideration TSDR 3.[4] The Examining Attorney also instructed Applicant how to properly make the evidence of record. *Id.* However, Applicant took no action until refiling the evidence as an Exhibit

[3] Application Serial No. 90174255, filed September 11, 2020 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on an alleged intent to use the mark in commerce.

[4] Citations to the application file are to the USPTO's Trademark Status & Document Retrieval ("TSDR") online database, by page number, in the downloadable .pdf format.

to its Appeal Brief, again without the date it was accessed or URL. 6 TTABVUE 14.[5] The Examining Attorney's objection to this evidence, 8 TTABVUE 6, is therefore sustained. *In re I-Coat Co., LLC*, 126 USPQ2d 1730, 1733 (TTAB 2018) ("we will no longer consider Internet evidence filed by an applicant in an *ex parte* proceeding to be properly of record unless the URL and access or print date has been identified"); Trademark Rule 2.142(d) ("The record should be complete prior to the filing of an appeal. Evidence should not be filed with the Board after the filing of a notice of appeal.").

II. Evidence and Arguments

The Examining Attorney relies on the following dictionary definitions of the proposed mark's constituent terms, and the term for which the "AI" component of Applicant's proposed mark is an acronym:

> **CAR**—"an automobile"[6]
>
> **AI**—"artificial intelligence"[7]
>
> **ARTIFICIAL INTELLLIGENCE**—"the ability of a computer or other machine to perform those activities that are usually thought to require intelligence" and "the branch of computer science concerned with the development of machines having this ability"[8]

[5] Citations to the appeal record are to TTABVUE, the Board's online docketing system. The number preceding TTABVUE corresponds to the docket entry number, and any numbers following TTABVUE refer to the page(s) of the docket entry where the cited materials appear.

[6] https://www.ahdictionary.com/word/search.html?q=car.

[7] https://www.ahdictionary.com/word/search.html?q=ai.

[8] https://www.ahdictionary.com/word/search.html?q=artificial+intelligence.

January 20, 2021 Office Action TSDR 4, 6; August 16, 2021 Office Action TSDR 5. She also relies on the Investopedia entry for "Artificial Intelligence (AI)," according to which AI "refers to the simulation of human intelligence in machines that are programmed to think like humans and mimic their actions. The term may also be applied to any machine that exhibits traits associated with a human mind such as learning and problem-solving." August 16, 2021 Office Action TSDR 7.

The Examining Attorney further relies on evidence that AI is used in automobile diagnostics. The concept of using AI for automobile diagnostics is decades old, as revealed by a 1986 SAE International technical paper entitled "Using Artificial Intelligence in Vehicle Diagnostic Systems," which "explores the concept of using expert [AI] systems as external diagnostic aids in the repair of motor vehicles." March 11, 2022 Denial of Request for Reconsideration TSDR 4.

In the years since the SAE paper was released, using AI for vehicle diagnostics has gone from concept to completion. An article on "donga.com" entitled "Hyundai Develops World's First Artificial Intelligence Auto Diagnosis System" describes the company's "technology for using artificial intelligence (AI) and deep learning to determine and diagnose vehicle malfunctions." March 11, 2022 Denial of Request for Reconsideration TSDR 12.

An article in The Drive entitled "This AI-Driven App Can Diagnose Engine Problems from Sound Alone" explains the importance of On-Board Diagnostics to the evolution of using AI for vehicle diagnostics:

> On-Board Diagnostics (OBD) was a welcome miracle when they arrived on the scene in the late '80s and early '90s.

> Since then, the tech has evolved into the more mature OBD-II, which can more accurately pinpoint malfunctions and may soon even operate wirelessly if an auto industry scare campaign falls flat.

Id. at 11. The article also describes newer developments in the field, including vehicle diagnostics "by way of a smartphone app, one which plies artificial intelligence and audio recordings to diagnose drivetrain faults." *Id.*

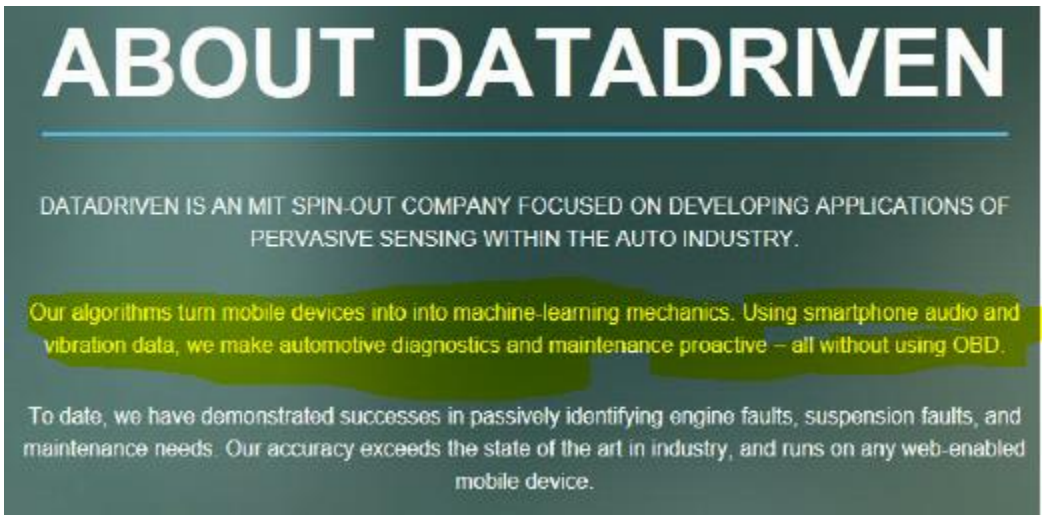
A page on "trendhunter.com" describes the CARNOSTIC vehicle diagnostic system, "an artificial intelligence (AI)-powered solution for drivers that will enable them to keep a closer eye on how their car is performing," as shown below:

Id. at 5. The system "features a streamlined app to overview information the device captures and will continuously analyze data through AI to predict problems before they arise." *Id.* Like the goods Applicant intends to offer under its proposed mark, the CARNOSTIC system works with a vehicle's OBD system. According to "trendhunter.com":

> Plugging into the OBD-II port found in all newer vehicles, the device will instantly go to work utilizing the hundreds of sensors that are found in cars to keep an eye on how it's functioning. If a problem is detected, the system will let the driver know immediately and provide them with information regarding exactly what's going on to prevent unnecessary repair costs that could come about at the mechanic.

Id.

The "mit.edu" website includes information about DATADRIVEN, "an MIT spin-out company focused on developing applications of pervasive sensing within the auto industry," as shown below:



Id. at 8 (highlighting added). DATADRIVEN claims that its algorithms turn "mobile devices into machine-learning mechanics. Using smartphone audio and vibration

data, we make automotive diagnostics and maintenance proactive – all without using OBD." *Id.*

Based on this evidence, the Examining Attorney argues that the proposed mark CARAI "means 'artificial intelligence for cars'." 8 TTABVUE 4. More specifically, in the context of the identified goods and services, "this wording describes software, devices and services for diagnosing an automobile's performance, featuring artificial intelligence."

Applicant did not submit any admissible evidence. It argues, however, that CARAI is suggestive rather than merely descriptive, because it is "too broad to describe these goods with any immediacy or particularity." 6 TTABVUE 8. That is, while Applicant concedes that "a consumer may well view the wording 'CAR AI' as meaning "*artificial intelligence for automobiles*," the proposed mark nevertheless does not describe the goods and services identified in the involved application "***with particularity***." *Id.* (italicization and emphasis in original). Although "vehicle data acquisition and transfer devices, such as a code reader or scanner, may be useful in acquiring and processing certain data which could be broadly characterized as 'car AI,' those devices in and of themselves would never necessarily be described or thought of by a consumer under the broad 'car AI' nomenclature." *Id.* Finally, Applicant points out that "the Examining Attorney has not presented any evidence demonstrating that any consumers who know what the goods and services are would not just as plausibly understand the mark to describe the on-board artificial intelligence capabilities of a

vehicle which are to be diagnosed, as opposed to describing the artificial intelligence features of goods and services which are used to facilitate that diagnosis." *Id.* at 9.

III. Decision

The record leaves no doubt that CARAI is merely descriptive because it "immediately conveys knowledge of a quality, feature, function, or characteristic" of Applicant's goods and services. *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (quoting *In re Bayer AG*, 82 USPQ2d at 1831); *In re Abcor Dev.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). Specifically, the mark conveys that Applicant's goods, which include "software … for automotive performance diagnostics" and "devices … to access and transfer … vehicle diagnostic data," utilize AI in connection with cars. Similarly, the mark conveys that Applicant's "vehicle diagnostic services" utilize AI in connection with cars. Applicant essentially concedes the point. *See* 6 TTABVUE 8 (Applicant "does not necessarily disagree with the Examining Attorney's conclusion that, based on the cited dictionary definitions for 'CAR' and 'AI,' a consumer may very well view the wording 'CAR AI' as meaning '*artificial intelligence for automobiles*."); 9 TTABVUE 6 ("Applicant fundamentally has no quarrel with the argument that CAR AI means '*artificial intelligence for automobiles*.").

Relevant consumers, including mechanics and car owners, will immediately understand that Applicant's goods and services utilize AI in connection with cars because AI is commonly and increasingly used in vehicle diagnostics. Indeed, OBD, which Applicant's identified "OBD code readers" and "OBD scanners" utilize, has existed for over 30 years, and fits within the definition of "artificial intelligence," as

it is "a computer or other machine" that performs "those activities [automotive diagnostics] that are usually thought to require intelligence." Apparently, with the emergence of OBD-II, it is not just sophisticated mechanics with specialized computer systems and devices that perform automotive diagnostics through artificial intelligence. Now, ordinary motorists with smartphones may employ artificial intelligence to perform vehicle diagnostics. March 11, 2022 Denial of Request for Reconsideration TSDR 5 (CARNOSTICS is "an artificial intelligence (AI)-powered solution for drivers that will enable them to keep a closer eye on how their car is performing"); *id.* at 8 (DATADRIVEN algorithms turn "mobile devices into machine-learning mechanics"); *id.* at 11.

Applicant's combination of the descriptive terms "CAR" and "AI" does not make the composite term "CARAI" registrable. Not only is each term merely descriptive of Applicant's goods and services, but when those terms are combined, the resulting combination CARAI does not evoke a new nondescriptive commercial impression. To the contrary, in Applicant's proposed mark, each component retains its merely descriptive significance in relation to the goods and services, and Applicant does not suggest any alternative commercial impression resulting from the combination of these immediately descriptive terms. The composite term CARAI is therefore merely descriptive. *See, e.g.*, *In re Oppedahl & Larson LLP,* 373 F.3d 1171, 71 USPQ2d 1370 (Fed. Cir. 2004) (PATENTS.COM merely descriptive of computer software for managing a database of records that could include patents, and for tracking the status of the records by means of the Internet); *In re Petroglyph Games, Inc.*, 91

USPQ2d 1332 (TTAB 2009) (BATTLECAM merely descriptive for computer game software); *In re Carlson*, 91 USPQ2d 1198 (TTAB 2009) (URBANHOUZING merely descriptive of real estate brokerage, real estate consultation and real estate listing services); *In re Tower Tech Inc.*, 64 USPQ2d 1314 (TTAB 2002) (SMARTTOWER merely descriptive of commercial and industrial cooling towers); *In re Sun Microsystems Inc.,* 59 USPQ2d 1084 (TTAB 2001) (AGENTBEANS merely descriptive of computer programs for use in developing and deploying application programs).

It does not matter that the proposed mark is "broad." *In re Patent & Trademark Svcs., Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998) ("Here, PATENT & TRADEMARK SERVICES, INC. describes significant aspects of applicant's services, and the fact that the phrase does not specify exactly which patent and trademark services applicant offers does not mean that applicant is entitled to exclusively appropriate the phrase."); *In re Entenmann's Inc.*, 15 USPQ2d 1750, 1751 (TTAB 1990), *aff'd unpub'd*, 928 F.2d 411 (Fed. Cir. 1991) ("While it is true that in order to be held merely descriptive, a term must describe with some particularity a quality or ingredient of the product in question, it need not describe it exactly."). In fact, as indicated, and Applicant's arguments to the contrary notwithstanding, the proposed mark need not name the identified goods and services. Where, as here, it conveys knowledge of a quality, feature, function, or characteristic of the goods and services, it is merely descriptive.

"The question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows

what the goods or 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) (quoting *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002)). Here, consumers who know that Applicant's goods and services are for automobile diagnostics will immediately understand CARAI to convey information about them, specifically that Applicant's devices and services employ AI and are used for cars. Thus, Applicant's suggestion that "CARAI" could be understood to "describe the on-board artificial intelligence capabilities of a vehicle which are to be diagnosed," 6 TTABVUE 9, is not relevant. *In re Chopper Indus.*, 222 USPQ 258, 259 (TTAB 1984) ("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."). *See also*, *In re IP Carrier Consulting Grp.*, 84 USPQ2d 1028, 1034 (TTAB 2007); *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979).

IV. Conclusion

The record leaves no doubt that CARAI is merely descriptive of Applicant's goods featuring, and services employing, artificial intelligence for cars. Absent a showing that Applicant's mark has acquired distinctiveness, Applicant's competitors in the vehicle diagnostics industry should remain free to use CARAI and variations thereof for their own automobile diagnostics goods and services that use artificial intelligence. *See In re Abcor Dev.*, 200 USPQ at 217 ("The major reasons for not protecting [merely descriptive] marks are … to maintain freedom of the public to use the language involved, thus avoiding the possibility of harassing infringement suits

by the registrant against others who use the mark when advertising or describing their own products.").[9]

Decision: The refusal to register Applicant's proposed mark on the Principal Register because it is merely descriptive under Section 2(e)(1) of the Trademark Act is affirmed.

[9] Applicant essentially asks that we issue an advisory opinion about genericness, a refusal that the Examining Attorney mentioned during prosecution, but never issued. 6 TTABVUE 11. We decline to do so because the issue is not before us.