

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Hearing: October 19, 2023

Mailed: October 20, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re Nasogastric Feeding Solutions Ltd.*  
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Application Serial No. 90529600<sup>1</sup>  
Application Serial No. 90529653  
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Mary Margaret L. O'Donnell of Blue Filament Law PLLC,  
for Nasogastric Feeding Solutions, Ltd.

Madeline Nadeau, Trademark Examining Attorney, Law Office 104,  
Zachary Cromer, Managing Attorney.

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Before Bergsman, Shaw, and Johnson,  
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Nasogastric Feeding Solutions Ltd. (“Applicant”) seeks registration on the  
Principal Register of the marks ENTERAL ACCESS TECHNOLOGIES (in standard

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<sup>1</sup> Consolidated by order of the Board on November 7, 2022, 7 TTABVUE.

characters)<sup>2</sup> and the composite mark ENTERAL ACCESS TECHNOLOGIES,<sup>3</sup> reproduced below, both for the medical devices identified below:

Medical testing instruments for aspirate testing and nasogastric feeding tube placement testing; aspirate testing and nasogastric feeding tube placement testing equipment for medical use; Test probes for medical use; Testing probes for medical purposes; aspirate testing and nasogastric feeding tube placement testing apparatus for medical purposes; Apparatus for carrying-out diagnostic tests for medical purposes; Carbon dioxide detectors for medical use; pH detectors for medical use; Carbon dioxide indicators for medical use; pH indicators for medical use; Medical apparatus for detecting carbon dioxide in the airways; Nasal aspirators; Oronasal aspirators; Colorimetric comparators for medical use; Apparatus for testing the acidity or alkalinity of enteral aspirates; Apparatus for detecting carbon dioxide in enteral aspirates; Colorimetric testers for testing the acidity or alkalinity of enteral aspirates; Colorimetric testers for detecting carbon dioxide in enteral aspirates; Colorimetric testers for testing the acidity or alkalinity of and for detecting carbon dioxide in, enteral aspirates; Apparatus for enteral feeding; Enteral feeding pumps; Tubes for enteral feeding; Vents for enteral feeding; Valves for enteral feeding; Enteral feeding feed bags; Enteral feeding collection bags; Nasogastric feeding tubes; Nasogastric feeding tube tips; Orogastric feeding tubes; Orogastric feeding tube tips; Nasogastric tubes; Nasogastric tube tips, in International Class 10.

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<sup>2</sup> Serial No. 90529600 filed February 15, 2021, under Section 1(b) ) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant's bona fide intent to use the mark in commerce, and Section 44(d) of the Trademark Act, 15 U.S.C. § 1126(d), based on UK application No. UK00003595781 filed February 15, 2021, and registered August 6, 2021.

<sup>3</sup> Serial No. 90529653 filed February 15, 2021, under Section 1(b) ) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant's bona fide intent to use the mark in commerce, and Section 44(d) of the Trademark Act, 15 U.S.C. § 1126(d), based on UK application No. UK00003595814 filed February 15, 2021, and registered July 9, 2021.




Applicant describes its composite mark as follows:

The mark consists of a purple circle with four curved lines inside. To the right of the circle is the stylized wording “ENTERAL ACCESS” in grey above the stylized wording “TECHNOLOGIES” in grey. The color white represents transparent area and is not part of the mark.

The color(s) Purple, and grey is/are claimed as a feature of the mark.

The Examining Attorney refused to register Applicant’s mark ENTERAL ACCESS TECHNOLOGIES (in standard characters) under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that the proposed mark ENTERAL ACCESS TECHNOLOGIES describes the passage or entry to the stomach, such as “tubes for enteral feeding,” “valves for enteral feeding,” “vents for enteral feeding,” “nasogastric feeding tubes,” and related goods for enteral feeding.<sup>4</sup>



With respect to Applicant’s mark , the Examining Attorney refused to register the mark on the ground that Applicant refused to comply with the final requirement to disclaim the exclusive right to use the term “ENTERAL ACCESS TECHNOLOGIES” under Section 6(a) of the Trademark Act, 15 U.S.C. § 1056(a).

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<sup>4</sup> Examining Attorney’s Brief (16 TTABVUE 5).

When we cite to the briefs, we refer to TTABVUE, the Board’s docketing system, by docket entry number followed by the page number in the downloadable .pdf format (e.g., 16 TTABVUE 5).

In response to the final refusals, Applicant, in the alternative, offered to disclaim the exclusive right to use “Enteral” and “Technologies.”<sup>5</sup>

Because the applications involve common issues of law and fact, the Board granted Applicant’s request to consolidate the appeals.<sup>6</sup> We refer to the record in Serial No. 90669600 unless otherwise indicated.

**I. Whether ENTERAL ACCESS TECHNOLOGIES is merely descriptive**

**A. Applicable law**

Section 2(e)(1) of the Trademark Act prohibits registration on the Principal Register of “a mark which, (1) when used on or in connection with the goods [and services] of the applicant is merely descriptive . . . of them,” unless the mark has been shown to have acquired distinctiveness under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f). A mark is “merely descriptive” within the meaning of Section 2(e)(1) if it conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods and services. *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); *In re N.C. Lottery*, 866 F.3d 1363, 123 USPQ2d 1707, 1709 (Fed. Cir. 2017). “A mark need not immediately convey an idea of each and every specific feature of the goods in order to be considered merely descriptive; it is enough if it describes one significant

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<sup>5</sup> July 20, 2022 Request for Reconsideration (TSDR 3 and 6).

When we cite to the record, we refer to the USPTO Trademark Status and Document Retrieval (TSDR) system in the downloadable .pdf format by date, action, and page number (e.g., July 22, 2022 Request for Reconsideration (TSDR 3)).

<sup>6</sup> 6 and 7 TTABVUE.

attribute, function or property of the goods.” *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1513 (TTAB 2016) (citing *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987)).

Whether a mark is merely descriptive is “evaluated ‘in relation to the particular goods for which registration is sought, the context in which it is being used, and the possible significance that the term would have to the average purchaser of the goods because of the manner of its use or intended use,’” *Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219 (quoting *In re Bayer AG*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)), and “not in the abstract or on the basis of guesswork.” *Fat Boys*, 118 USPQ2d at 1513 (citing *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978)). We ask “whether someone who knows what the goods . . . are will understand the mark to convey information about them.” *Real Foods Pty Ltd. v. Frito-Lay N. Am., Inc.*, 906 F.3d 965, 128 USPQ2d 1370, 1374 (Fed. Cir. 2018) (quoting *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012) (internal quotation omitted)).

A mark is suggestive, and not merely descriptive, if it requires imagination, thought, and perception on the part of someone who knows what the goods are to reach a conclusion about their nature from the mark. *See, e.g., Fat Boys*, 118 USPQ2d at 1515.

If one must exercise mature thought or follow a multi-stage reasoning process in order to determine what characteristics the term identifies, the term is suggestive rather than merely descriptive.

*In re Tennis in the Round, Inc.*, 199 USPQ 496, 497 (TTAB 1978).

“We ‘must consider the *commercial impression* of a mark as a whole.” *In re Fallon*, 2020 USPQ2d 11249, at \*7 (TTAB 2020) (quoting *Real Foods*, 128 USPQ2d at 1374). “In considering [the] mark as a whole, [we] ‘may not dissect the mark into isolated elements,’ without consider[ing] . . . the entire mark,” *id.* (quoting *Real Foods*, 128 USPQ2d at 1374) (internal quotation omitted), “but we ‘may weigh the individual components of the mark to determine the overall impression or the descriptiveness of the mark and its various components.” *Id.* (quoting *Real Foods*, 128 USPQ2d at 1374) (internal quotation omitted)). “Indeed, we are ‘required to examine the meaning of each component individually, and then determine whether the mark as a whole is merely descriptive.” *Id.* (quoting *DuoProSS*, 103 USPQ2d at 1758).

“Where a mark consists of multiple words, the mere combination of descriptive words does not necessarily create a non-descriptive word or phrase.” *In re Omniome, Inc.*, 2020 USPQ2d 3222, at \*4 (TTAB 2019). “If the words in the proposed mark are individually descriptive of the identified goods, we must determine whether their combination ‘conveys any distinctive source-identifying impression contrary to the descriptiveness of the individual parts.” *Fallon*, 2020 USPQ2d 11249, at \*7 (quoting *Fat Boys*, 118 USPQ2d at 1515-16) (internal quotation omitted)). “If each word instead ‘retains its merely descriptive significance in relation to the goods, the combination results in a composite that is itself merely descriptive.” *Id.* (quoting *Fat Boys*, 118 USPQ2d at 1516) (internal quotation omitted)). “A mark comprising a combination of merely descriptive components is registrable only if the combination of terms creates a unitary mark with a non-descriptive meaning, or if the composite

has a bizarre or incongruous meaning as applied to the goods or services.” *Omniome, Inc.*, 2020 USPQ2d 3222, at \*4.

In determining how the relevant consuming public perceives Applicant’s proposed marks ENTERAL ACCESS TECHNOLOGIES and ENTERAL ACCESS TECHNOLOGIES and design in connection with its identified goods, we may consider any competent source, including dictionary definitions and Applicant’s own advertising material and explanatory text. *See N.C. Lottery*, 123 USPQ2d at 1709-10; *Bayer*, 82 USPQ2d at 1831.

## **B. Evidence**

We begin our review of the evidence by defining the terms comprising Applicant’s mark ENTERAL ACCESS TECHNOLOGIES.

The LEXICO OXFORD ENGLISH DICTIONARY (lexico.com) defines “Enteral” as “(chiefly of nutrition) involving or passing through the intestine, either naturally via the mouth and esophagus, or through an artificial opening.”<sup>7</sup>

The MERRIAM-WEBSTER DICTIONARY defines “Access,” inter alia, as “a way by which a thing or place may be approached or reached: PASSAGEWAY.”<sup>8</sup>

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<sup>7</sup> January 21, 2022 Office Action (TSDR 6); *see also* December 13, 2021 Response to Office Action (TSDR 15-18) (MERRIAM-WEBSTER DICTIONARY (merriam-webster.com) defining “Enteral” as an adjective for “Enteric” that means “of, or relating to, or being a medicinal preparation treated so that it will pass through the stomach unaltered to be disintegrated in the intestines.”).

<sup>8</sup> December 13, 2021 Response to Office Action (TSDR 26); *see also* January 21, 2022 Office Action (TSDR 5).

The MERRIAM-WEBSTER DICTIONARY defines “Technology,” inter alia, as “the science or the application of knowledge to practical purposes” and “a technical method of achieving a practical purpose.”<sup>9</sup>

The record includes the following Internet evidence regarding “Enteral Access”:

- DoubleCHEK website (enteralacesstech.com)<sup>10</sup>

#### DoubleCHEK

Enteral Access Technologies is an ISO 13485 certified medical device developer and manufacturer. At E.A.T., we are dedicated to revolutionizing enteral access by providing clinicians with better tools to safely place lifesaving naso/oro gastric feeding and decompression tubes.<sup>11</sup>

- National Library of Medicine website (pubmed.ncbi.nlm.nih.gov)<sup>12</sup>

#### Enteral Access Devices: Types, Functions, Care, and Challenges

##### Abstract

Enteral access feeding devices are placed in patients who have a functional and accessible gastrointestinal (GI) tract

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<sup>9</sup> December 13, 2021 Response to Office Action (TSDR 29).

<sup>10</sup> June 11, 2021 Office Action (TSDR 6-8).

This is a screenshot of Applicant’s website. December 13, 2021 Response to Office Action (TSDR 13).

Applicant incorrectly asserts that it is not sufficient to constitute evidence of descriptiveness. *Id.* See *In re Berkeley Lights, Inc.*, 2022 USPQ2d 1000, \*12 (TTAB 2022) (quoting *Omiome*, 2020 USPQ2d 3222, at \*10) (“[p]roof of mere descriptiveness may originate from [an applicant’s] own descriptive use of its proposed mark, or portions thereof in its materials,” and that “ ‘an applicant’s own website and marketing materials may be ... ‘the most damaging evidence’ in indicating how the relevant purchasing public perceives a term.”).

<sup>11</sup> June 11, 2021 Office Action (TSDR 7).

<sup>12</sup> *Id.* at TSDR 9-10; see also Aspen website (aspenjournals.online.wiley.com) posting the article in different website. *Id.* at TSDR 12-13.



but are not able to consumer or absorb enough nutrients to sustain adequate nutrition and hydration.<sup>13</sup>

- ScienceDirect website (sciencedirect.com)<sup>14</sup>

### Gastrointestinal Endoscopy

#### Enteral nutrition access devices

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Enteral access allows the short- and long-term delivery of nutrients and medications to the GI tract of patients who cannot maintain their needs with oral intake. ...

This review covers the current endoscopic options for enteral access devices including short-term options such as endoscopically placed nasoenteric feeding tubes and long-term solutions such as PEG tubes, PEG with jejunal extension (PEGJ), and direct percutaneous endoscopic jejunostomy (DPEJ) tubes.<sup>15</sup>

- Patient Room website (patient-room.com)<sup>16</sup>

### Avanos Enteral Access Dilation System

Avanos Enteral Access Dilation System empowers clinicians to reach the desired dilation without having to rely on multiple tools. This comprehensive telescoping devices has added advantages, such as the reduction of repeat passing over the guidewire. Moreover, this serial dilator features a built-in peel-away sheath which makes an easier tube placement.

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<sup>13</sup> *Id.* at TSDR 9.

<sup>14</sup> *Id.* at TSDR 14-16.

<sup>15</sup> *Id.* at TSDR 16; *see also* American Society for Gastrointestinal Endoscopy Journal (glejournal.org) posting the article in different website. January 21, 2022 Office Action (TSDR 9-10).

<sup>16</sup> June 11, 2021 Office Action (TSDR 24).

- CardinalHealth website (cardinalhealth.com)<sup>17</sup>

Right Tube, Right Time: Exploring Enteral Access Device Options and Safer Technologies

Overview

People who cannot eat any or enough food because of an illness, decreased appetite, difficulty swallowing, or a surgical procedure interfering with normal digestion process, may be prescribed enteral nutrition. Enteral nutrition is also known and referred to as tube feeding and requires an enteral access device to develop nutrition.

- Purdue University website (nutrition.pharmacy.purdue.edu)<sup>18</sup>

Enteral Access Devices: Types, Function, Care, and Challenges.

A presentation of the variety of existing devices can be placed through the nares, mouth, stomach, or small intestine to provide liquid nutrition, fluids, and medications directly to the GI tract.

- Clinical Gastroenterology website (journals.lww.com)<sup>19</sup>

Enteral Access Options and Management in the Patient With Intestinal Failure

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Enteral access is an important option in the management of patients with intestinal failure. ... Enteral access can also be an important comfort measure in those patients requiring chronic decompression of the gut or in need of antegrade purgatives. It is important that clinicians caring for these highly complex patients be knowledgeable in

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<sup>17</sup> January 21, 2022 Office Action (TSDR 7).

<sup>18</sup> *Id.* at TSDR 8.

<sup>19</sup> *Id.* at TSDR 11-12.

enteral access options and experienced in the subsequent care of these tubes.<sup>20</sup>

- Clinical Nutrition website (clinicalnutritionjournal.com)<sup>21</sup>

Enteral access in adults

1. Introduction

Enteral access allows the short- and long-term delivery to the digestive tract of patients who cannot maintain their requirements with oral intake.

The record includes, inter alia, the following Internet evidence regarding use of the term “Technology”:

- World Health Organization website (who.int)<sup>22</sup>

Health technology assessment

What is a health technology assessment?

A health technology assessment is the application of organized knowledge and skills in the form of devices, medicines, vaccines, procedures and systems developed to solve a health problem and improve quality of lives.

- MTS website (medicaltechnologyschools.com)<sup>23</sup>

The Ten Hottest Medical Technologies In 2021

- Proclinical website (preclinical.com)<sup>24</sup>

Top 10 new medical technologies of 2019

Technology and medicine have gone hand and hand for many years. Consistent advances in pharmaceuticals and

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<sup>20</sup> *Id.* at TSDR 11.

<sup>21</sup> *Id.* at TSDR 13.

<sup>22</sup> June 11, 2021 Office Action (TSDR 11).

<sup>23</sup> *Id.* at TSDR 17-18.

<sup>24</sup> *Id.* at TSDR 22-23.

the medical field have saved millions of lives and improved many others. As the years pass by and technology continues to improve, there is no telling what medical advances will come next.<sup>25</sup>

Finally, Applicant submitted copies of 38 third-party registrations for marks including the word “Access” or variations thereof for medical devices, apparatuses, and apparel.<sup>26</sup> The registrations listed below are illustrative:

- Registration No. 1848532 for the mark ACCESS, in typed drawing form, for an “electronic analyzer for the medical analysis of bodily fluids.”<sup>27</sup>
- Registration No. 1902566 for the mark ACCESS, in typed drawing form, for “dental impression material applicators, namely syringes and syringe tips.”<sup>28</sup>
- Registration No. 2966949 for the mark ASK MERIT ACCESS SAFETY KIT, in standard character form, for “medical devices, namely, safety needles and safety needle kits.”<sup>29</sup>

### **C. Arguments**

The Examining Attorney contends that ENTERAL ACCESS TECHNOLOGIES is merely descriptive because it conveys a purpose or characteristic of the applied for goods.<sup>30</sup> “Specifically, medical practitioners use the term ENTERAL ACCESS to

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<sup>25</sup> *Id.* at TSDR 22.

<sup>26</sup> July 20, 2023 Request for Reconsideration (TSDR 18-60).

<sup>27</sup> *Id.* at TSDR 18.

<sup>28</sup> *Id.* at TSDR 19.

<sup>29</sup> *Id.* at TSDR 20.

<sup>30</sup> Examining Attorney’s Brief (16 TTABVUE 2).

describe devices that provide a passage to medical patients' internal organs, such as the stomach.”<sup>31</sup>

[T]he wording ENTERAL ACCESS describes a purpose of Applicant's goods because Applicant provides goods for passage or entry to the stomach, such as “tubes for enteral feeding,” “valves for enteral feeding,” “vents for enteral feeding,” “nasogastric feeding tubes,” and related goods for enteral feeding. Additionally, Applicant uses the wording “enteral access” as the established medical term of art stating on their own website stating, “we are dedicated to revolutionizing enteral access by providing clinicians with better tools ... that's why we developed DoubleCHEK. (emphasis added). [Attachment to Office Action dated January 21, 2022 at page 18]. The evidence shows ENTERAL ACCESS is a medical term of art used to describe devices for enteral feeding and applicant's identification of goods and website indicate Applicant's goods are enteral access devices; accordingly, the wording ENTERAL ACCESS merely describes the applied for goods.

The evidence in the record from the Merriam-Webster dictionary shows the term TECHNOLOGIES is the plural form of the word technology, which means “the practical application of knowledge especially in a particular area.” [Attachment to Office Action dated January 21, 2022 at page 11]. The word technology, or the plural thereof, is frequently used to describe medical devices developed through the application of knowledge.<sup>32</sup>

Applicant argues, to the contrary, that ENTERAL ACCESS TECHNOLOGIES is not merely descriptive because, in part, ENTERAL ACCESS TECHNOLOGIES begins with the letters comprising the word “Eat,” “creating a play on the overall wording of the marks and the feeding goods they represent.”<sup>33</sup>

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<sup>31</sup> *Id.* at 16 TTABVUE 3-4.

<sup>32</sup> *Id.* at 16 TTABVUE 5.

<sup>33</sup> Applicant's Brief, p. 1 (14 TTABVUE 2).

Here, where Applicant's acronym forms the word EAT, the mark ENTERAL ACCESS TECHNOLOGIES clearly creates wordplay that removes such designation from the merely descriptive category.<sup>34</sup>

In addition, Applicant argues that the word "Access" has multiple meanings, thereby creating a double entendre "depending on whether the marks is viewed as ENTERAL ... ACCESS TECHNOLOGIES or ENTERAL ACCESS ... TECHNOLOGIES";<sup>35</sup> that is, whether consumers perceive "access" as modifying "enteral" or "technologies."<sup>36</sup>

Applicant contends that "[b]ecause no such item as an 'enteral access technology' exists and Applicant's mark contains distinctive wording," ENTERAL ACCESS TECHNOLOGIES is not merely descriptive when used in connection with "medical equipment relating to feeding tubes, placement of such tubes and testing."<sup>37</sup>

Accordingly, Applicant concludes that ENTERAL ACCESS TECHNOLOGIES is inherently distinctive for the following reason:

Applicant believes that the wording as a whole is distinctive, particularly with regard to the multi-layered meanings, the lack of a set descriptive meaning for the wording as a whole, the uncertainty as to whether "access" references "enteral" or "technologies," the double entendres introduced by the acronym and by the myriad meanings of "access," the absence of any such thing as an "enteral access technology," the absence of any evidence or dictionary definitions for "enteral access technology," and

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<sup>34</sup> *Id.* at p. 5 (14 TTABVUE 6).

<sup>35</sup> *Id.* at pp. 1-2 (14 TTABVUE 2-3).

<sup>36</sup> *Id.* at p. 5 (14 TTABVUE 6).

<sup>37</sup> *Id.* at p. 2 (14 TTABVUE 3).

the “EAT” wordplay introduced by the beginning letter of each of these terms.<sup>38</sup>

Applicant also asserts that the word “Access” does not have any descriptive significance when used in connection with medical products:<sup>39</sup>

That is, nothing in Applicant’s mark immediately indicates to a potential customer the nature of Applicant’s goods with the level of particularity rising to the level of mere descriptiveness or that such term is “only” descriptive. Indeed, ACCESS is subject to myriad meanings as set forth in the Office Actions, Responses, and Requests for Reconsideration, and evidence attached thereto. ACCESS is not merely a “means of entering.” As noted by both the Examining Attorney and Applicant and as references in the parties’ respective filings and dictionary evidence attached to the Office Actions and Responses/Requests for Reconsideration, the word “access” has multiple meanings and connotations outside of “entry.” Indeed, such wording can also mean or refer to a pathway, a way forward, freedom, permission, the ability to reach or attain something (like a goal) and can be indicative of a route, a passageway, a path, a key, or a way to, or a way through. Indeed, in addition to the EAT wordplay noted above that is introduced by the mark as a whole, Applicant’s ENTERAL ACCESS TECHNOLOGIES mark also readily conveys at least two additional meanings: (1) a means of obtaining a way to use a medical development for enteral or feeding purposes and (2) a path, and a way forward to achieve or obtain a feeding goal or greater freedom in the face of supported feeding needs.<sup>40</sup>

Finally, Applicant contends that because the word “Access” has been registered multiple times without disclaimers or claims of acquired distinctiveness, the USPTO

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<sup>38</sup> *Id.* at pp. 4-5 (14 TTABVUE 5-6).

<sup>39</sup> *Id.* p. 5 (14 TTABVUE 6).

<sup>40</sup> *Id.* at pp. 5-6 (14 TTABVUE 6-7).

has determined that “Access” is not merely descriptive when used in connection with medical devices.<sup>41</sup>

#### **D. Analysis**

Applicant is seeking to register its marks for medical equipment, including, inter alia, the goods listed below:

Apparatus for enteral feeding; Enteral feeding pumps; Tubes for enteral feeding; Vents for enteral feeding; Valves for enteral feeding; Enteral feeding feed bags; Enteral feeding collection bags; Nasogastric feeding tubes; Nasogastric feeding tube tips; Orogastric feeding tubes; Orogastric feeding tube tips; Nasogastric tubes; Nasogastric tube tips.

The marks in question need not describe all the goods identified in the application; they need only be merely descriptive of one of them. *Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219.

The above-noted goods all refer to equipment for feeding through an opening (i.e., an access). Specifically,

- “Apparatus for enteral feeding” is an instrument or equipment used for passing through the stomach or intestine.
- “Enteral feeding pumps” are devices for feeding through the stomach or intestines.
- “Tubes for enteral feeding” are cylindrical structures or devices for feeding through the stomach or intestine.

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<sup>41</sup> *Id.* at pp. 2 and 7-11 (14 TTABVUE 3 and 8-12).



- “Vents for enteral feeding” are external openings for the escape of liquids or gases or the relief of pressure used in the feeding through the stomach or intestine.
- “Valves for enteral feeding” are devices by which the flow of liquids or materials may be controlled during feeding through the stomach or intestine.
- “Enteral feeding collection bags” are containers used to hold nutritional products during feeding through the stomach or intestine.
- “Nasogastric feeding tubes” are cylindrical structures or devices used for feeding of the stomach through the nasal passages.<sup>42</sup>
- “Nasogastric feeding tube tips” are a device attached to the end of the nasogastric feeding tubes.
- “Orogastric feeding tubes” are cylindrical structures or devices for traversing the digestive tract from the mouth to the stomach for purposes of feeding.<sup>43</sup>
- “Orogastric feeding tube tips” are a device attached to the of the orogastric feeding tubes.

Within the context of the medical equipment noted above, relevant purchasers will immediately recognize ENTERAL in Applicant’s mark as designating nutritional

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<sup>42</sup> The MERRIAM-WEBSTER DICTIONARY (merriam-webster.com) (accessed October 13, 2023) defines “nasogastric” as “being or performed by intubation of the stomach through the nasal passages.” It defines “intubation” as “the introduction of a tube into a hollow organ or party (such as the trachea or stomach) especially to maintain an open passage or gain access to the interior.”

The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format or have regular fixed editions. *In re tapio GmbH*, 2020 USPQ2d 11387, at \*3 n.10 (TTAB 2020).

<sup>43</sup> The MERRIAM-WEBSTER DICTIONARY (merriam-webster.com) (accessed October 13, 2023) defines “orogastric” as “traversing or affecting the digestive tract from the mouth to the stomach.”

materials passing through to the intestine, either naturally via the mouth and esophagus, or through an artificial opening; ACCESS in Applicant's mark as referring to the passage through which the nutritional materials move; and TECHNOLOGIES as meaning the application for technology to solve a feeding problem. Each individual word has a descriptive meaning.

These words maintain their descriptive significance in the mark as a whole. The evidence shows that Applicant's mark ENTERAL ACCESS TECHNOLOGIES when considered as a whole, immediately conveys the purpose or features of the identified medical equipment, a method or application of feeding nutritional materials to patients through an opening. Applicant, in its website states that it is "dedicated to revolutionizing enteral access by providing clinicians with better tools to safely place lifesaving naso/oro gastric feeding and decompression tubes."<sup>44</sup> In other words, Applicant is applying its technology for enteral access feeding.

The third-party use of the term "Enteral Access" further supports this. For example,

- National Library of Medicine website that states, "Enteral access feeding devices are placed in patients who have a functional and accessible gastrointestinal (GI) tract but are not able to consume or absorb enough nutrients to sustain adequate nutrition and hydration."<sup>45</sup>

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<sup>44</sup> June 11, 2021 Office Action (TSDR 7).

<sup>45</sup> *Id.* at TSDR 9.

- ScienceDirect website that states, “Enteral access allows the short- and long-term delivery of nutrients and medications to the GI tract of patients who cannot maintain their needs with oral intake.”<sup>46</sup>

- CardinalHealth website that states, “Enteral nutrition is also known and referred to as tube feeding and requires an enteral access device to develop nutrition.”<sup>47</sup>

Applicant counters that the word “Access” in the mark ENTERAL ACCESS TECHNOLOGIES has multiple meanings and, thus, does not rise to the level of specificity required to find that ENTERAL ACCESS TECHNOLOGIES is merely descriptive. According to Applicant, besides a means of entering, “Access” could refer “to a pathway, a way forward, freedom, permission, the ability to reach or attain something (like a goal) and can be indicative of a route, a passageway, a path, a key, or a way to, or a way through.”<sup>48</sup>

We are skeptical that prospective consumers would attribute any of these meanings to the word “Access” as it appears in Applicant’s mark. “That a term may have other meanings in different contexts is not controlling.” *In re Franklin Cnty. Hist. Soc’y*, 104 USPQ2d 1085, 1087 (TTAB 2012) (citing *In re Bright-Crest, Ltd.*, 204 USPQ2d 591, 593 (TTAB 1979)). Here, the combination of ENTERAL, ACCESS, and

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<sup>46</sup> *Id.* at TSDR 16.

<sup>47</sup> January 21, 2022 Office Action (TSDR 7).

<sup>48</sup> Applicant’s Brief, pp. 5-6 (14 TTABVUE 6-7).

TECHNOLOGIES increases the descriptive significance of ACCESS by limiting its meaning to enteral technologies.

Alternatively, Applicant contends the following:

Indeed, in addition to the EAT wordplay noted above that is introduced by the mark as a whole, Applicant's ENTERAL ACCESS TECHNOLOGIES mark also readily conveys at least two additional meanings: (1) a means of obtaining a way to use a medical development for enteral or feeding purposes and (2) a path, and a way forward to achieve or obtain a feeding goal or greater freedom in the face of supported feeding needs.<sup>49</sup>

However, we find that these alternatives, when used in the mark ENTERAL ACCESS TECHNOLOGIES, also are merely descriptive.

Again, the question of whether a proposed mark is merely descriptive is not determined by asking whether one can guess, from the mark itself, what the goods are, but rather by asking, when the mark is seen on or in connection with the goods, whether it immediately conveys information about their nature. *In re MBNA Am. Bank N.A.*, 340 F.3d 1328, 67 USPQ2d 1778, 1780 (Fed. Cir. 2003); *In re Tower Tech*, 64 USPQ2d 1314, 136-17 (TTAB 2002); *In re Patent & Trademark Serv. Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998). In this appeal, no imagination or thought is required by prospective consumers to discern the nature of Applicant's goods. To the contrary, to purchasers encountering Applicant's medical equipment, Applicant's proposed mark immediately conveys, without conjecture or speculation, the precise nature of Applicant's goods.

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<sup>49</sup> *Id.* at p. 6 (14 TTABVUE 7).

As noted above, Applicant contends that consumers are likely to perceive its mark as a double entendre. In evaluating whether a mark is a double entendre and therefore not merely descriptive, we note the Board's guidance in *In re The Place Inc.*, 76 USPQ2d 1467, 1470 (TTAB 2005):

“Double entendre” is defined as “ambiguity of meaning arising from language that lends itself to more than one interpretation.” *Webster's Third New International Dictionary* (1993) at p. 678. As stated in TMEP § 1213.05(c), “A ‘double entendre’ is a word or expression capable of more than one interpretation. For trademark purposes, a ‘double entendre’ is an expression that has a double connotation or significance as applied to the goods or services. ... The multiple interpretations that make an expression a ‘double entendre’ must be associations that the public would make fairly readily.”

A mark thus is deemed to be a double entendre only if both meanings are readily apparent **from the mark itself**. If the alleged second meaning of the mark is apparent to purchasers only after they view the mark in the context of the applicant's trade dress, advertising materials or other matter separate from the mark itself, then the mark is not a double entendre. *See In re Wells Fargo & Company*, 231 USPQ 95 (TTAB 1986).

...

A mark is not a double entendre if the second meaning is grasped by purchasers only when the mark is used with “other indicia,” even if that other indicia is itself not merely descriptive.

The record does not support a finding that any alternative meaning of the word “Access” in Applicant's mark (or Applicant's mark ENTERAL ACCESS TECHNOLOGIES in its entirety) might be called to mind. *Compare In re Colonial Stores Inc.*, 394 F.2d 549, 157 USPQ 382, 385 (CCPA 1968) (SUGAR & SPICE not merely descriptive for bakery products; “[t]he immediate impression evoked by the

mark may well be to stimulate an association of ‘sugar and spice’ with [the nursery rhyme] ‘everything nice’”) with *The Place*, 76 USPQ2d at 1470 (holding THE GREATEST BAR laudatory and merely descriptive of restaurant and bar services; “[i]f the alleged second meaning of the mark is apparent to purchasers only after they view the mark in the context of the applicant’s trade dress, advertising materials or other matter separate from the mark itself, then the mark is not a double entendre.”). Thus, when considered as a whole, the mark does not have a separate non-descriptive meaning.

We are equally skeptical of Applicant’s assertion that consumers will perceive the first letters of Applicant’s mark ENTERAL ACCESS TECHNOLOGIES as creating the acronym EAT. Applicant’s composite mark, reproduced below, provides no such hint.



Similar to creating a double entendre, if the acronym from the mark is apparent to purchasers only after they view the mark in the context or Applicant’s trade dress, advertising materials or other matter separate and apart from the mark as displayed in the drawing, then the commercial impression does not engender the acronym. *Cf. The Place*, 76 USPQ2d at 1470; *see also In re i.am.symbolic, llc*, 116 USPQ2d 1406, 1412 (TTAB 2015), *aff’d.*, 866 F.3d 1315, 123 USPQ2d 1744 (Fed. Cir. 2017) (In considering the similarity between the marks, we must compare Applicant’s mark with the cited mark *as shown in the registration certificate.*”); *In re Aquitaine Wine*

*USA, LLC*, 126 USPQ2d 1181, 1186 (TTAB 2018) (“[W]e do not consider how [the parties] actually use their marks in the marketplace, but rather how they appear in the registration[s]. We must compare the marks as they appear in the drawings, and not on any [packaging] that may have additional wording or information.”).

Nevertheless, assuming arguendo, some consumers perceive the first letters of the mark ENTERAL ACCESS TECHNOLOGIES forming the word “Eat,” we fail to see how that detracts from the descriptive significance of the mark ENTERAL ACCESS TECHNOLOGIES.<sup>50</sup> At best Applicant still would be required to disclaim the exclusive right to use the term ENTERAL ACCESS TECHNOLOGIES.

With respect to the argument that there is no such item as an “ental access technology,” the fact that Applicant may be the first and only user of that designation does not justify registration if the only significance conveyed by the term is merely descriptive. See *Fat Boys Water Sports* 118 USPQ2d at 1514; *In re Nat’l Shooting Sports Found., Inc.*, 219 USPQ 1018, 1020 (TTAB 1983); see also *KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.*, 543 U.S. 111, 122, 72 USPQ2d 1833, 1838 (2004) (trademark law does not countenance someone obtaining “a complete monopoly on use of a descriptive term simply by grabbing it first”); *Clairol, Inc. v. Roux Distrib. Co.*, 280 F.2d 863, 126 USPQ2d 397, 398 (CCPA 1960) (even novel ways of referring to the goods may nonetheless be descriptive).<sup>51</sup>

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<sup>50</sup> Applicant argues that “where Applicant’s [the first letters in Applicant’s mark] forms the word EAT, the mark ENTERAL ACCESS TECHNOLOGIES clearly creates wordplay that removes such designation from the merely descriptive category.” Applicant’s Brief, p. 5 (14 TTABVUE 6).

<sup>51</sup> Applicant, in its brief, refers to the absence of any dictionary definition for “ental access technology.” Applicant’s Brief, p. 5 (14 TTABVUE 6). The fact that a term is not found in a

We note the 38 third-party registrations consisting in whole or in part of the word “Access” in connection with goods in International Class 10. These prior registrations do not conclusively rebut our finding that Applicant’s mark ENTERAL ACCESS TECHNOLOGIES, in its entirety, is merely descriptive in the context of this appeal. We decide each case on its own merits based on its own record. Even if some prior registrations have characteristics similar to Applicant’s mark, the USPTO’s allowance of these registrations does not bind us. *See In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001).

We find Applicant’s mark ENTERAL ACCESS TECHNOLOGIES merely descriptive in connection with the applied-for medical equipment.

## **II. Disclaimer requirement**

Section 6(a) of the Trademark Act, 15 U.S.C. § 1056(a), provides that “[t]he Director may require the applicant to disclaim an unregistrable component of a mark otherwise registrable,” such as a component that is generic or merely descriptive under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1). *See In re Richardson Ink Co.*, 511 F.2d 559, 185 USPQ 46, 47 (CCPA 1975) (an applicant is not entitled to register composite word mark “unless descriptive and unregistrable

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dictionary is not controlling on the question of registrability if the examining attorney can show that the term has a well understood and recognized meaning. *See In re Hikari Sales USA, Inc.*, 2019 USPQ2d 111514, at \*1, \*8 (TTAB 2019) (citing *In re ActiveVideo Networks, Inc.*, 111 USPQ2d 1581, 1603 (TTAB 2014); *In re Dairimetics, Ltd.*, 169 USPQ 572, 573 (TTAB 1971)) (holding ALGAE WAFERS merely descriptive of fish food although the term was not found in the dictionary); *In re Orleans Wines, Ltd.*, 196 USPQ 516, 516-17 (TTAB 1977) (holding BREADSPRED merely descriptive of jellies and jams although the term was not found in the dictionary).



subject matter contained therein is disclaimed.”); *In re Candy Bouquet Int’l Inc.*, 73 USPQ2d 1883, 1889 (TTAB 2004) (“The purpose of a disclaimer is to permit the registration of a mark that is registrable as a whole but contains matter that would not be registrable standing alone . . .”).

Failure to comply with a disclaimer requirement is grounds for refusing registration. *See In re La. Fish Fry Prods., Ltd.*, 797 F.3d 1332, 116 USPQ2d 1262, 1264 (Fed. Cir. 2015); *In re Slokevage*, 441 F.3d 957, 78 USPQ2d 1395, 1399-1400 (Fed. Cir. 2006); *In re Stereotaxis Inc.*, 429 F.3d 1039, 77 USPQ2d 1087 (Fed. Cir. 2005).

Because we find ENTERAL ACCESS TECHNOLOGIES merely descriptive, Applicant must disclaim the exclusive right to use “Enteral Access Technologies.” *See In re Clutter Control, Inc.*, 231 USPQ 588, 590 (TTAB 1986) (“When words which are merely descriptive, and hence unregistrable, are presented in a distinctive design, the design may render the mark as a whole registrable, provided that the words are disclaimed, under Section 6 of the Trademark Act.”).

**Decision:** We affirm the Section 2(e)(1) refusal in application Serial No. 90529600 on the ground that the mark ENTERAL ACCESS TECHNOLOGIES is merely descriptive for the applied-for goods in International Class 10.

We affirm the refusal based on Applicant’s failure to comply with the requirement to disclaim the exclusive right to use the term “Enteral Access Technologies” in application Serial No. 90529653 on the ground that it is merely descriptive.

However, in the event Applicant submits the required disclaimer within thirty days of the date of this decision, the requirement for the disclaimer will have been met and the application will proceed to publication for opposition.<sup>52</sup> Trademark Rule 2.142(g), 37 C.F.R. § 2.142(g).

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<sup>52</sup> A proper disclaimer reads as follows: “No claim is made to the exclusive right to use of ‘Enteral Access Technologies’ apart from the mark as shown.”