

This Opinion is Not a
Precedent of the TTAB

Mailed: June 13, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Power8 Tech Inc.

Serial Nos. 97455448 and 97455459

Jonathan O. Owens of Haverstock & Owens, a Law Corporation
for Power8 Tech Inc.

Gisele Agosto Hincapie, Trademark Examining Attorney, Law Office 102,
Mitchell Front, Managing Attorney.

Before Heasley, Dunn, and Lavache,
Administrative Trademark Judges.

Opinion by Dunn, Administrative Trademark Judge:

Power8 Tech Inc. (Applicant) seeks registration on the Principal Register of the marks POWER CAPSULE and POWER TUNNEL, both in standard characters, for the same goods:¹

Compressed air containers made of metal for energy storage; water and gas containers made of metal for energy storage, in International Class 6;

¹ Application Serial No. 97455448 (POWER CAPSULE) and 97455459 (POWER TUNNEL) were both filed June 13, 2022 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based upon Applicant's allegation of a bona fide intention to use the mark in commerce.

Electricity generators, in International Class 7;

Compressed air containers for energy storage being an integral component of alternative energy generation power plants; water and gas containers for energy storage being an integral component of alternative energy generation power plants, in International Class 11.

The applications were assigned to the same Trademark Examining Attorney, who has refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that Applicant's proposed marks, POWER CAPSULE and POWER TUNNEL, are merely descriptive of a feature or characteristic of Applicant's goods. When the refusals were made final, Applicant appealed and requested reconsideration in each application. After the Examining Attorney denied the requests for reconsideration, the appeals were resumed.

These appeals present common questions of law and fact, and the records are substantially similar. In the interest of judicial economy, we consolidate the cases and decide them in this single opinion. *See In re Pohl-Boskamp GmbH & Co. KG*, 2013 TTAB LEXIS 7, at *3; TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 1214 (June 2024). We have considered all arguments and evidence filed in each case. Where the evidence or arguments overlap or apply only to the POWER CAPSULE mark, we cite to the record and briefs for Application Serial No. 97455448. Where the evidence or arguments apply only to the POWER TUNNEL mark, we cite to the record and briefs for Application Serial No. 97455459 and will list the application number.

We affirm the refusal to register each application.

I. Refusal as Merely Descriptive of the Goods

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 of the applicant is merely descriptive . . . of them.” 15 U.S.C. § 1052(e)(1). A term is “merely descriptive” within the meaning of Section 2(e)(1) if it “immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used.” *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 1300 (Fed. Cir. 2012) (*quoting In re Bayer AG*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)). Descriptiveness must be assessed “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.” *In re Bayer AG*, 488 F.3d at 963-964.

None of the goods are restricted to any particular consumer. Electrical generators by their nature are available to homeowners as well as commercial, corporate, and governmental bodies. However, containers for energy storage, especially those for use in power plants, are not an ordinary consumer item.² Accordingly, we find that the average purchaser of Applicant’s Class 6 and 11 goods is a commercial, corporate or governmental entity with large energy use. *See In re TriVita, Inc.*, 783 F.3d 872, 875

² Applicant’s promotional materials specify that its target customers include members of the global corporate renewable energy initiative such as Apple, Google, Amazon, and Meta, the industrial sector, solar farms, and those in need of power grids. June 15, 2023 Response TSDR 14.

(Fed. Cir. 2015) (“TriVita is correct that descriptiveness is determined from the viewpoint of the relevant purchasing public.”).

A. Descriptiveness of component terms

Evidence that a term is merely descriptive to the relevant purchasing public may be obtained from any competent source. *In re N.C. Lottery*, 866 F.3d 1363, 1367 (Fed. Cir. 2017). For example, dictionaries, newspapers, or surveys may provide evidence of mere descriptiveness. *In re Chamber of Commerce*, 675 F.3d at 1300. Competent sources that may indicate the public’s perception of the mark in the relevant commercial context include specimens showing use of the mark, websites, publications, and use on labels, packages, or in advertising material directed to the goods and services. *In re N.C. Lottery*, 866 F.3d at 1368.

1. POWER

POWER is defined as “a particular form of mechanical or physical energy.”³ We take judicial notice that electricity is defined as “electric current or power.”⁴ As set forth above, each class of goods in the applications includes a synonym or form of “power,” namely “energy” (Classes 6 and 11) and “electricity” (Class 7). The identification of goods therefore serves as evidence of the mere descriptiveness of the term POWER as applied to Applicant’s goods. *See In re NextGen Management, LLC*,

³ InfoPlease.com/dictionary/power, November 7, 2023 Office Action TSDR 7; November 7, 2023 Office Action TSDR 8-9 (Serial No. 97455459).

⁴ *Merriam-Webster.com Dictionary*, <https://www.merriam-webster.com/dictionary/electricity>. Accessed Jun. 5 2025. The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format or have regular fixed editions. *In re Cordua Rests. LP*, 2014 TTAB LEXIS 94, at *6 n.4, *aff’d*, 823 F.3d 594 (Fed. Cir. 2016).

2023 TTAB LEXIS 1, *13 (“With respect to the term PORTAL, Applicant has identified its services as ‘an Internet website portal in the healthcare field to provide a patient and caregivers with the patient's drug prescription information.’ Use of a term in an application's recitation of services strongly suggests that the term is merely descriptive.”).

The record also includes 17 third party registrations (Nos. 7178991, 4591600, 5211862, 6496361, 5094896, 2349443, 6742613, 2362565, 1914539, 3305667, 3630174, 5888431, 6895804, 6727706, 5487511, 7297009, and 4857511) for marks incorporating the term POWER used with energy generation or storage in which POWER is disclaimed or the subject of a claim of acquired distinctiveness.⁵ Registration No. 4430315 issued on the Supplemental Register for POWER TUBE for various batteries and related goods, including a “renewable battery system to provide backup power.”⁶

2. CAPSULE

The term CAPSULE is defined as “a compact often sealed and detachable container or compartment” and also has a mathematical meaning of “a basic three-dimensional geometric shape consisting of a cylinder with hemispherical ends” that can be used for “containers for pressurized gases.”⁷ The examining attorney requested

⁵ March 18, 2024 Office Action TSDR 7-44; March 18, 2024 Office Action TSDR 7-44 (Serial No. 97455459).

⁶ March 18, 2024 Office Action TSDR 27-28; March 18, 2024 Office Action TSDR 27-28 (Serial No. 97455459).

⁷ November 7, 2023 Office Action TSDR 7-20; October 1, 2024 Office Action TSDR 7. A corroborating mathematical definition is located at id., TSDR 9.

information about the goods, and Applicant responded as follows in the POWER CAPSULE application:

Applicant respectfully submits that the goods do and will consist of sealed containers that allow for transport of liquid and/or air to and from the sealed containers. One or more sealed containers may be connected via pipes or tubes to allow the transport of liquid and/or air. The movement of the liquid and/or air within the sealed containers create pressure, which is used to drive a converter, which in turn generates electricity.

Applicant respectfully submits that a purpose of the goods is to provide clients with a solution alternative to solar and wind solutions to generate power.⁸

The record includes excerpts from third party webpages describing patents, indicating that “capsule” is a shape used in the energy industry:




⁸ June 14, 2023 Office Action TSDR 8.

⁹ October 1, 2024 Office Action TSDR 15.

https://www.academia.edu/115239927/Pocket_hydro_turbine_into_capsule_hydro_turbine

ACADEMIA

Pocket-hydro turbine into capsule hydro turbine

 Afif Azhar
2018

The capsule hydro turbine (CaHT) is a continuous power machine in which a wheel or rotor typically fitted whereas produce electricity. It is designed like a capsule shape which has two twin turbines on both output to generate energy as an alternative power supply. The device is capable of producing output of 12v to power up electrical appliances. The device consist of dynamos, turbines, charging circuit, battery, inverter, and wire

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[https://www.sciencedirect.com/science/article/pii/S0360544221016418#:~:text=A%20triboelectric%20energy%20harvester%20\(TEH,harvesting%20energy%20from%20ambient%20vibration](https://www.sciencedirect.com/science/article/pii/S0360544221016418#:~:text=A%20triboelectric%20energy%20harvester%20(TEH,harvesting%20energy%20from%20ambient%20vibration)

A capsule-structured triboelectric energy harvester with stick-slip vibration and vibro-impact

Huai Zhao, Huajiang Ouyang  

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<https://doi.org/10.1016/j.energy.2021.121393> 

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Highlights

- A hybrid frictional slider-in-capsule triboelectric energy harvester is proposed.

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¹⁰ October 1, 2024 Office Action TSDR 16.

¹¹ October 1, 2024 Office Action TSDR 50.

<https://patents.google.com/patent/RU194758U1/en>

Google Patents

CAPSULE FOR HYDROGEN GENERATOR BASED ON WATER OXIDA

Abstract

translated from Russian

The utility model relates to power equipment, namely to the design of capsules (cartridges) used in hydrogen generators for autonomous power sources on fuel cells, and can be used to create small power plants for stationary distributed energy. The capsule for a hydrogen generator includes a housing with an internal cavity containing a solid reagent for producing hydrogen, and provided with end caps made with the possibility of tight connection with the housing. The capsule is made with the possibility of supplying a liquid reagent inside the capsule and is equipped with a filter element that allows the passage of hydrogen and the retention of solid reaction products and water inside

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<https://www.sciencedirect.com/science/article/pii/S0960148105003216>

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Outline

Abstract

Keywords

Nomenclature

1. Introduction

2. Thermal analysis of paraffin wax

3. Numerical solution

4. Results and discussion



Renewable Energy

Volume 31, Issue 13, October 2006, Pages 2025-2041

Latent heat thermal energy storage using cylindrical capsule: Numerical and experimental investigations

A. Felix Regín, S.C. Solanki, J.S. Saini

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https://www.researchgate.net/publication/383727746_A_novel_mechanical_energy_storage_solution_using_underground_CO2_hydrate_capsules

¹² October 1, 2024 Office Action TSDR 40.

¹³ October 1, 2024 Office Action TSDR 92.

A novel mechanical energy storage solution using underground CO₂ hydrate capsules

January 2024

DOI: [10.1201/9781003431749-607](https://doi.org/10.1201/9781003431749-607)

Conference: Proceedings of the XVIII ECSMGE 2024 · At: Lisbon, Portugal

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3. TUNNEL

TUNNEL is defined as “a tube-shaped structure.”¹⁵ The record includes a third-party webpage explaining how tunnels are used in pumped storage hydro plants:

When power from the plant is needed, water stored in an upper reservoir is released into an underground tunnel. The water rushes down the intake tunnel. The force of the water drives huge turbines, which are underground at the base of a dam. The spinning turbines are connected to large generators, which produce the electricity. The water then flows through a discharge tunnel into a lower reservoir. When demand for electricity is low, the turbines spin backwards and pump the water back up into the upper reservoir to make it available to generate electricity when it's needed. www.duke-energy.com.¹⁶

The examining attorney requested information about the goods, and Applicant responded as follows in the POWER TUNNEL application:

Applicant respectfully submits that the goods do and will consist of tunnels that allow for the generation of power. A tunnel is a close-ended tunnel that has an inlet/outlet connected with a liquid source and a hydrogenator (e.g. water turbine). A portion of the space in the tunnel contains gas. When water enters the tunnel via the inlet/outlet, the water fills the space inside the tunnel, creating gas pressure. The gas pressure is used to drive the hydrogenator, which in turn generates electricity. The tunnel is not a wind tunnel.

¹⁴ October 1, 2024 Office Action TSDR 119.

¹⁵ AHDictionary.com, November 7, 2023 Office Action TSDR 46 (Serial No. 97455459).

¹⁶ November 7, 2023 Office Action TSDR 50 (Serial No. 97455459) (subtitles omitted).

Applicant respectfully submits that a purpose of the goods is to provide clients with a solution alternative to solar and wind solutions to generate power.¹⁷

In sum, the term POWER in both marks is merely descriptive of the function of Applicant's goods – the generating power function of the Class 7 “electricity generators,” as well as the storing power function of the Class 6 “compressed air containers made of metal for energy storage; water and gas containers made of metal for energy storage,” and the Class 11 “compressed air containers for energy storage being an integral component of alternative energy generation power plants; water and gas containers for energy storage being an integral component of alternative energy generation power plants.” The terms CAPSULE and TUNNEL are merely descriptive of a main feature of Applicant's goods – the containers and/or tube-shaped structures which combine water and air so as to create the pressure necessary to create and store power.

Our conclusion is not altered by Applicant's argument and evidence that each term also has alternate non-descriptive definitions:¹⁸

In this instant matter, “POWER” is both a broad and ambiguous term that encompasses numerous definitions. In fact, the definition of “POWER” provided by the Office is the 18th definition of 29 definitions (<https://www.infoplease.com/dictionary/power>), following various definitions relating to strength and ability, leadership and influence, protection and security, and -10- TRADEMARK Attorney Docket No.: YW-00600 progress and change. Similarly, “CAPSULE” is also a broad and ambiguous term that encompasses numerous definitions. The first definition of “CAPSULE” provided by the Office is the 6th definition of 6 definitions (<https://www.merriam-webster.com/dictionary/capsule>), following various definitions relating to medicine, botany, and space. The Office then added yet another definition related to shape in the Denial mailed October 1, 2024.

¹⁷ June 15, 2023 Office Action TSDR 8 (Serial No. 97455459).

¹⁸ 6 TTABVUE 11-12.

As stated, our concern is the significance of the terms to the relevant consumer of the goods seeking energy generation, such as a homeowner, or energy storage, such as a commercial, corporate or governmental entity. Again, descriptiveness “is considered 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.” *In re Bayer AG*, 488 F3d at 963-964. That a term may have other meanings in different contexts is not controlling on the question of descriptiveness. *In re NextGen Mgmt., LLC*, 2023 TTAB LEXIS 1, at *8.

B. Descriptiveness of combined terms

The combined terms POWER CAPSULE and POWER TUNNEL will be found merely descriptive if the individual components retain their descriptive meaning in relation to the goods and the combination does not form a mark which has a distinct nondescriptive meaning of its own as a whole. *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1174-75 (Fed. Cir. 2004) (“However, if those two portions individually are merely descriptive of an aspect of appellant's goods, the PTO must also determine whether the mark as a whole, i.e., the combination of the individual parts, conveys any distinctive source-identifying impression contrary to the descriptiveness of the individual parts.”).

1. POWER CAPSULE

The record includes a description of Applicant’s goods from Applicant’s website:

Power Capsule can be easily understand as a land-based pumped storage hydroelectricity station. The scale of the system also can be tailored to the design and the size of the site. In addition, it can cooperate with systems such as waste heat recovery for full-time power generation. Offering the innovative invention of "Energy Generation" and "Energy Storage" at the same time.

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Applicant also submitted promotional material which describes POWER CAPSULE as technology incorporated in Applicant's compressed air pumped-storage hydroelectricity energy storage system, which combines energy generation and energy storage:

Power Capsule And Power Tunnel Technology

Energy storage phase

Utilizing Power energy Grid "**Off-peak period**", or from wind turbine, solar power with Power8 patented technology to **pump water** into specialized design Water Capsule/Tunnel to compress the air to the Air Capsule/Tunnel to complete **storage phase**.

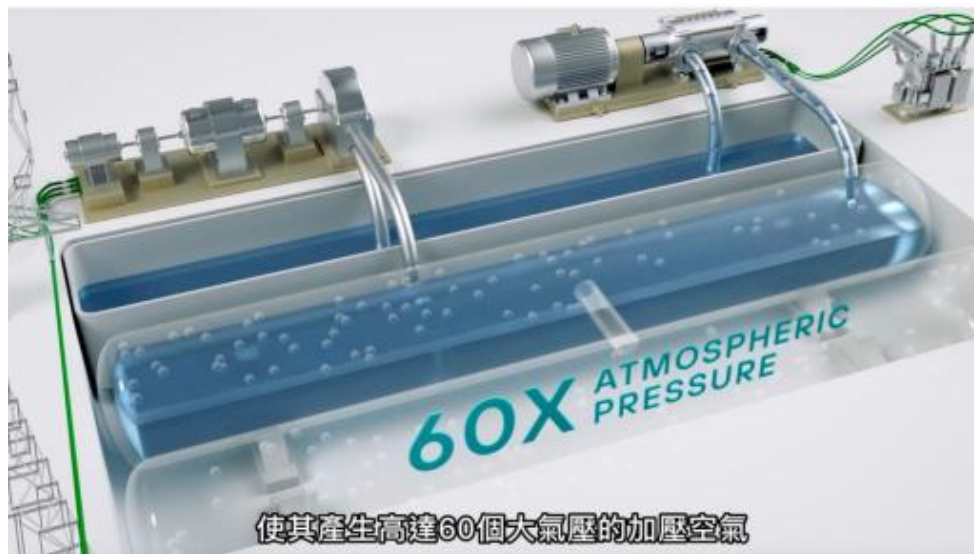
¹⁹ November 7, 2023 Office Action TSDR 22-23; April 3, 2023 Office Action TSDR 12-13 (Serial No. 97455459).

Energy generation phase:

When energy is needed during “**peak period**”, Power8 patented technology will **release the pressure** from air Capsule/Tunnel to the water-air mixed Capsule/Tunnel and pushing water to the water turbine to complete **generation phase**. In the meantime, water is recycled in closed system making it a truly energy saving system.

Specification:

1. Steel container: 2m ~20m diameter capsule/tunnel or 20m by 10m high tank plus high pressure steel with UHPC cement RC (customized to site)
2. Pressure: 60 kg ~ 100 kg/cm²
3. Water turbine,
4. Water pump
5. Water tank
6. Steel concrete reinforcement structure
7. 1 kW requires 3.5m³ (includes Air/Water/tanks) at 60 Kg/cm²



Why Power Capsule And Power Tunnel?

1. The most efficient solution toward Carbon neutral
2. Solve the inconsistency and instability of Solar PV and Wind
3. Effectively balance the peak and off-peak energy. “peak-shaving” and “off-peak loading” to improve power grid’s resiliency
4. Each set of Power Capsule and Power Tunnel system provides 50 to 100 kWh of energy that modularized and customized to different sites
5. Can be built on top of waste heat, solar or wind power system to generate higher efficiency power accomplishing 100% green energy goal
6. Energy Capsule system is the only solution provides both energy storage and energy creation
7. PHS 2.0 is physics, Battery is chemistry

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Based on the descriptiveness of the component terms, and Applicant’s promotional material demonstrating how the terms can be combined to describe energy generation and storage, the combined term POWER CAPSULE is merely descriptive of Applicant’s goods. *In re Finisar Corp.*, 2006 TTAB LEXIS 57, *3-4 (“We are persuaded by the evidence of record that the separate terms SMART and SFP are merely descriptive of applicant’s identified goods and that when combined do not present a unique or incongruous meaning.”), *aff’d per curiam*, 223 Fed. App’x 984 (Fed. Cir. 2007).

Applicant unconvincingly argues that the term POWER CAPSULE is not merely descriptive because it does not have a well-defined meaning in the energy industry; because the combination creates a double entendre; and because similar marks combining POWER and a term for a container (POWERBOX and POWER PUCK)

²⁰ June 14, 2023 Response TSDR 11-12, 15.

have been registered by third parties.²¹ On the first point, the fact that an applicant may be the first and only user of a merely descriptive designation does not justify registration if the only significance conveyed by the term is merely descriptive.” See *In re Fat Boys Water Sports LLC*, 2016 TTAB LEXIS 150, *10 (“Under the current standard [for assessing mere descriptiveness], there is no requirement that the Examining Attorney prove that others have used the mark at issue or that they need to use it, although such proof would be highly relevant to an analysis under Section 2(e)(1).”). See also *KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.*, 543 U.S. 111, 122 (2004) (acknowledging “the undesirability of allowing anyone to obtain a complete monopoly on use of a descriptive term simply by grabbing it first.”).

Applicant asserts that POWER CAPSULE is a double entendre. To support this argument, it points to a webpage showing that a search of the Bing search engine for POWER CAPSULE produced results in which two of the top three results displayed refer to health supplements (and one referred to an external battery charger).²²

For trademark purposes, a double entendre is “an expression that has a double connotation or significance as applied to the goods or services.” *In re Calphalon Corp.*, 2017 TTAB LEXIS 98, *29 (citation omitted). While the evidence may demonstrate that POWER CAPSULE has more than one meaning, that is in the abstract. The two results for health supplements do not demonstrate that the relevant consumer of

²¹ 6 TTABVUE 12, 13-14, 15-16. Applicant failed to submit the registrations but merely described them in its June 17, 2024 Response TSDR 4-5. Because the Examining Attorney did not object, but discussed the third-party registrations as if properly of record, we have considered them as well.

²² January 19, 2024 Response TSDR 10-12.

Applicant's energy generation and storage goods will perceive POWER CAPSULE as connoting both generators and containers for power and health supplements. *See In re Yarnell Ice Cream, LLC*, 2019 TTAB LEXIS 208 *22 ("Applicant's double entendre argument--that the mark also refers to information regarding its products--is unsupported by the record.").

Finally, the registrations for the marks POWERBOX and POWER TUBE do not support finding that Applicant's mark POWER CAPSULE is not merely descriptive. Each case must be decided on its own facts. *See In re Cordua Rests., Inc.*, 823 F.3d 594, 600 (Fed. Cir. 2016) ("The PTO is required to examine all trademark applications for compliance with each and every eligibility requirement ... even if the PTO earlier mistakenly registered a similar or identical mark suffering the same defect."). In addition, though the third-party marks do contain POWER, they are otherwise different in view of the other wording in the marks

2. POWER TUNNEL

Based on the descriptiveness of the component terms, and Applicant's promotional material demonstrating how the terms can be combined to describe energy generation and storage, the combined term POWER TUNNEL is merely descriptive as applied to Applicant's goods. *In re Finisar Corp.*, 2006 TTAB LEXIS 57, *3-4.

We are not persuaded by Applicant's arguments that the term POWER TUNNEL is not merely descriptive because a "consumer would not be able to guess what the mark is used for," and "similarly situated third party registrations demonstrate that

marks containing the terms ‘POWER’ and a generally descriptive structure are registrable on the Principal Register.²³

The first argument incorrectly assumes that descriptiveness is assessed in a vacuum. “[T]he question is whether someone who knows what the [goods] are will understand [POWER TUNNEL] to convey information about them.” *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1254 (Fed. Cir. 2012) (citation omitted). As shown by Applicant’s promotional materials excerpted above, tunnels for generation and storage of energy are integral to Applicant’s goods.

The second argument we have already addressed. Third party registrations for the marks POWERBOARD, POWERBLOCK, POWERBAND, POWERAIR, POWERARM, and POWERBEAM do not support finding that Applicant’s mark POWER TUNNEL is not merely descriptive.²⁴ Each case must be decided on its own facts. *See Cordua Rests., Inc.*, 823 F.3d at 600.

In sum, we find that prospective purchasers of the identified goods in Class 6, 7, and 11 who encounter the terms POWER CAPSULE and POWER TUNNEL will be immediately informed that Applicant’s goods involve generating and storing energy. The terms are merely descriptive of the goods. 15 U.S.C. § 1052(e)(1).

²³ 6 TTABVUE 12, 15 (Serial No. 97455459).

²⁴ Again, Applicant did not submit these registrations, but merely discussed them in its June 17, 2024 Response TSDR 5-6 (Serial No. 97455459). Because the Examining Attorney discussed the registrations as if properly of record, we do too.

II. Decision

The refusal to register Applicant's proposed marks POWER CAPSULE and POWER TUNNEL are affirmed as to all three classes of goods in each application.