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PTH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Advanced Lighting Technologies, Inc.**

Serial No. 76422584

D. Joseph English of Duane Morris LLP for **Advanced Lighting Technologies, Inc.**

Catherine Cain, Trademark Examining Attorney, Law Office
113 (Odette Bonnet, Managing Attorney).

Before **Quinn, Hairston** and Bucher, Administrative Trademark
Judges.

Opinion by **Hairston**, Administrative Trademark Judge:

Advanced Lighting Technologies, Inc. has appealed from
the final refusal of the Trademark Examining Attorney to
register the mark E-LAMP for the following goods:

metal halide lighting system components, namely,
ballasts and electrical controls in class 9; and

metal halide lamps and metal halide lighting systems consisting of lamps, ballasts, and electrical controls, sold as a unit in class 11.¹

Registration has been refused pursuant to Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that applicant's mark is merely descriptive of the identified goods.

Applicant and the Examining Attorney have filed briefs. An oral hearing was not requested.

The Examining Attorney maintains that the mark E-LAMP merely describes the nature of the identified goods, namely that they are lamps that contain electronic features or components.

In support of the refusal to register, the Examining Attorney submitted the following definitions:

e- adj. An abbreviation of "electronic" that generally indicate information or functions involving the Internet.²

E: E stands for electronic. But it's become the all-purpose Internet and Web prefix, stuck on the front of any term you want, it means to make things happen over the Internet/ Web, e.g., e-commerce, e-mail, e-check.³

E-E: Electronics to electronics. A function of audio and especially video recording machines.⁴

¹ Application Serial No. 76422584 filed June 18, 2002, on the basis of applicant's bona fide intention to use the mark in commerce.

² Official Internet Dictionary (1988).

³ Newton's Telecom Dictionary (16th ed. 2000).

⁴ Dictionary of Television and Audiovisual Terminology (1988).

lamp: a device that generates light, heat, or therapeutic radiation.⁵

In addition, the Examining Attorney submitted printouts of the following web pages wherein the term "e-lamp" is used.

After 1995, incandescent R-lamps will no longer be manufactured. The Energy Policy Act of 1992 banned these along with many of the other least energy efficient lamps. What will you put in recessed down lights and track lights?

One option will be GE's new Genura lamp. It's a product based on E-lamp technology that made a big splash in the news a couple of years ago. (<http://www.oikos.com>)

At last, the *truly* long-lived light bulb, called the E-lamp (the E is short for electronic) by developer Diablo Research and licensee Intersource Technologies (both in Sunnyvale, Calif.), the bulb survives some 20,000 hours—20 times as long as today's most durable 100-watt incandescent or fluorescent, an E-lamp has nothing to burn out. An electronic bulb doesn't suddenly go black, it just fades away. (<http://www.inc.com/magazine>)

Also, the Examining Attorney submitted excerpts from the NEXIS data base which refer to "E-lamp." The following are representative:

In June 1992, Pierre Villere was famous. His company, Intersource Technologies had just told the world about E-lamp, an electronic

⁵ The American Heritage Dictionary of the English Language (3rd ed. 1992).

light bulb that would last 100 times longer than a regular bulb and use one-fourth the power.

(USA Today, January 19, 1995);

A long-life household light bulb designed to last about seven years in normal use will soon reach the market. The General Electric bulb, known in the industry as an E-lamp because it uses electronic controls, will go on sale in Europe within weeks and in the United States before the end of the year, GE said.

(The Houston Chronicle, April 24, 1994); and

Two years ago, American Electric Power Co., the Columbus utility company, and two Silicon Valley firms unveiled their version of an E-lamp, but no bulbs were produced.

(Cleveland Plain Dealer, April 20, 1994).

Based on the above evidence, the Examining Attorney argues that not only are the individual terms, namely "E" and "LAMP" descriptive of the identified goods, but the combination E-LAMP is equally descriptive. According to the Examining Attorney, "[t]he combination of the two terms E and LAMP in applicant's mark merely describes to consumers that applicant's goods are lamps that contain an electronic component." (Final office action, p. 2).

Applicant, on the other hand, argues that the "E" prefix is not descriptive of applicant's identified goods because the prefix means information or functions involving computers. (Appeal brief, p. 3). Applicant maintains that the definitions relied on by the Examining Attorney clearly

show that the "E" prefix would be understood by average purchasers as relating to computers or the Internet.

Applicant has also submitted a definition of the prefix "e" from the website <http://www.techweb.com/encyclopedia>:

(Electronic-) The "e" prefix, with or without the hyphen, may be attached to anything that has moved from the physical world to its electronic alternative, such as, "e-mail" and "e-commerce." "E" words have become synonymous with the Internet.

Further, applicant argues that the Board has recognized that the primary meaning of the "E" prefix relates to computers and the Internet, citing *In re SPX Corporation*, 63 USPQ2d 1592 (TTAB 2002). In addition, applicant argues that the Office's practice "is to accept 'E' prefix marks for registration for goods having electrical or electronic aspects so long as the goods do not involve computers or the Internet." (Brief, p. 6). Attached to applicant's brief are four applications and two registrations for marks with the "E" prefix.

A term is considered to be merely descriptive of goods, within the meaning of Section 2(e)(1) of the Act, if it immediately describes an ingredient, quality, characteristic or feature thereof or if it directly conveys information regarding the nature, function, purpose or use

of the goods. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a single significant attribute or idea about them. In re Venture Associates, 226 USPQ 285 (TTAB 1985). Moreover, the question of whether a mark is merely descriptive must be determined not in the abstract, that is, by asking whether one who sees the mark alone can guess what the applicant's goods are, but in relation to the goods for which registration is sought, that is, by asking whether, when the mark is applied to the goods, it immediately conveys information about their nature. In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979).

We recognize that the letter "e" has a specific meaning in relation to computers and the Internet. However, the letter "e" is not limited to this specific meaning and the dictionary evidence of record establishes that one of the meanings of "e" is "electronic." Further, the web page printouts and the excerpts retrieved from the NEXIS database show that an "E-lamp" is a light bulb with electronic controls.

Also, we note that in the web page printouts of Venture Lighting, applicant's E-LAMP lighting system is described as "A Revolutionary Electronic System From the Leaders of Lighting Innovations."

In view of the foregoing, we find that the term E-LAMP immediately conveys to prospective purchasers that the identified goods are in the nature of and are components of electronic lamps or "e-lamps."

Contrary to applicant's contention, the Board did not hold in the case of In re SPX Corporation that the prefix "E" related only to computers and the Internet. Rather, the Board stated at 63 USPQ2d 1596 that the specific dictionary definitions submitted by the Examining Attorney therein showed that the prefix indicated the "electronic **or** Internet nature of an item or service..." (emphasis added).

With respect to the third-party applications and registrations submitted by applicant with its brief, as noted by the Examining Attorney, evidence submitted for the first time with a brief on appeal is normally considered by the Board to be untimely and therefore is generally given no consideration. In view thereof, we have not considered this evidence. However, even if we had considered the applications and registrations, this would not change the result herein. Third-party applications are not evidence

that the PTO has "accepted" the marks therein for registration and we note that each of these applications has been held abandoned. With respect to the two registrations, as often noted by the Board, each case must be decided on its own merits. We are not privy to the records in the files of the cited registrations and, moreover, the determination of registrability of particular marks by the Trademark Examining Groups cannot control the result in another case involving a different mark for different goods. See: *In re Nett Designs, Inc.*, 57 USPQ2d 1564 (Fed. Cir. 2001).

Decision: The refusal to register is affirmed.