

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF
THE TTAB

Hearing:
March 9, 2005

Mailed:
April 21, 2005
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

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

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 Trademark Examining Attorney have filed briefs. An oral hearing was held on March 9, 2005.²

The Trademark 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 Trademark Examining Attorney submitted the following definitions:

e- adj. An abbreviation of "electronic" that generally indicates information or functions involving the Internet.³

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.⁴

E-E: Electronics to electronics. A function of audio and especially video recording machines.⁵

² Although this panel of the Board issued a decision on November 15, 2005 affirming the refusal of the Trademark Examining Attorney based upon the record and the briefs, we granted applicant's motion to vacate that decision in an order dated January 13, 2005. While applicant had requested oral argument in this case, that request was never associated with the file. An oral hearing was then scheduled for March 9.

³ Official Internet Dictionary (1998).

⁴ Newton's Telecom Dictionary (16th ed. 2000).

⁵ Dictionary of Television and Audiovisual Terminology (1988).

lamp: a device that generates light, heat, or therapeutic radiation.⁶

In addition, the Trademark Examining Attorney submitted printouts of the following webpages 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 Trademark Examining Attorney submitted excerpts from the NEXIS database that 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 light bulb that would last 100

⁶ The American Heritage Dictionary of the English Language (3rd ed. 1992).

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 Trademark 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 Trademark 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 Trademark 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

(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. (<http://www.techweb.com/encyclopedia>)

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.⁷

⁷ In reaching our decision, we have not relied on the third-party applications and registrations of "E" marks submitted by applicant with its brief. As noted by the Trademark 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.

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). Finally, "as a general rule, initials cannot be considered descriptive unless they have become so generally understood as representing descriptive words as to be accepted as substantially synonymous therewith." Modern Optics,

Incorporated v. The Univis Lens Company, 110 USPQ 293, 295 (CCPA 1956).

After further consideration of the record and arguments herein, we are not persuaded that the letter "E" is a readily recognized shorthand for "electronic" apart from functions involving the Internet or computers. During the oral hearing, applicant's counsel made a particularly cogent argument that while the prefatory letter "E" is readily seen as connoting "electronic" in the context of the Internet, it is not perceived this way as used in connection with electronic devices ("gadgets" or "gizmos," as characterized by applicant's counsel).

We note that in the two definitions of "E" submitted by the Trademark Examining Attorney, reference is made to "information or functions involving the Internet" and "the all-purpose Internet and Web prefix." A third definition submitted by the Trademark Examining Attorney for the term "E-E" ("electronics to electronics") does not establish that "E" is "generally understood" to mean "electronics" because this particular term ("E-E") is highly technical in nature and relates to a narrow niche - namely, audio and video recording machines.

Accordingly, on further consideration, we find that the letter "E" is a frequent shorthand for "electronic"

within the context of the migration of functions from paper-to-electronic media involving the Internet or computer-based applications (e.g., "email" or "e-commerce"). However, where the popular media, dictionary definitions or earlier Board decisions indicate that the "E" prefix means the "electronic or Internet nature of an item or service ..." (In re SPX Corporation, supra), it may well be most accurate to think of Internet as a clarifying appositive modifying the word "electronic," and not the broader alternative argued by the Trademark Examining Attorney.

Hence, on the facts of this case, we cannot conclude that potential customers of applicant's products will view "E-Lamp" as a shorthand for "electronic lamp" in the context of lamps (or light bulbs) without electronic components.⁸

We recognize that the NEXIS excerpts show that several years ago there was a type of induction lamp, or light bulb, known as an "E-lamp." However, there is no evidence that this light bulb achieved a degree of success such that

⁸ We note that in the webpage printouts of Venture Lighting, applicant's E-LAMP lighting system is described as "A Revolutionary Electronic System From the Leaders of Lighting Innovations." However, while components of applicant's lighting systems may have electronic components, the lamps, or light bulbs, clearly do not.

the relevant purchasers of applicant's goods would understand the use of "E" in applicant's mark to mean "electronic". On the contrary, it would appear that this product was not particularly successful in the commercial residential market since there is no evidence of the use of "E-lamp" since the early 1990's. In short, this limited evidence of the use of "E-lamp" fails to establish that purchasers of applicant's goods would understand "E" to represent "electronic."

Finally, any doubt that we may have in reaching this conclusion, and we frankly admit that doubt exists, is resolved in favor of the applicant, that is to say, in favor of publication for opposition.

In view of the foregoing, we cannot conclude that the term E-LAMP possesses a merely descriptive significance in connection with applicant's goods.

Decision: The refusal to register under Section 2(e)(1) is reversed.