

This Opinion is not a
Precedent of the TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Rockwell Automation, Inc.
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Serial No. 86285538
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Elisabeth Townsend Bridge, of Whyte Hirschboeck Dudek S.C.,
for Rockwell Automation, Inc.

Barbara Rutland, Trademark Examining Attorney, Law Office 101,
Ronald R. Sussman, Managing Attorney.

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Before Seeherman, Zervas and Wolfson,
Administrative Trademark Judges.

Opinion by Zervas, Administrative Trademark Judge:

Rockwell Automation, Inc. (“Applicant”) seeks registration on the Principal Register of the proposed standard character mark **RAPID Line Integration** for “Computer software for use in industrial automation manufacturing equipment, namely, application software and operator interface software used to integrate manufacturing line, equipment and controls” in International Class 9.¹ Applicant has

¹ Application Serial No. 86285538 was filed on May 19, 2014, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based upon an allegation of a *bona fide* intention to use the mark in commerce.

disclaimed the term LINE INTEGRATION pursuant to a requirement by the Examining Attorney.

The Examining Attorney determined that **RAPID Line Integration** is merely descriptive of Applicant's identified services, and refused registration of Applicant's mark pursuant to Section 2(e)(1) of the Trademark Act on the ground that the mark is merely descriptive.

After the refusal was made final, Applicant appealed the refusal. Briefs have been filed by both Applicant and the Examining Attorney. We reverse the refusal.

Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), prohibits the registration of a mark which, when used on or in connection with the goods of the applicant, is merely descriptive of them. A term is merely descriptive if it immediately conveys knowledge of a significant quality, characteristic, function, feature or purpose of the goods or services it identifies. *See, e.g., In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987). Determining the descriptiveness of a mark is done in relation to an applicant's identified goods and/or services, the context in which the mark is being used, and the possible significance the mark would have to the average purchaser because of the manner of its use or intended use. *See In re Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219 (citing *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 963-64, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)). Descriptiveness of a mark is not considered in the abstract. *In re Bayer Aktiengesellschaft*, 82 USPQ2d at 1831. In other words, 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 Medical Devices Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012).

“The Office bears the burden of setting forth a *prima facie* case in support of a descriptiveness refusal.” *In re Sun Microsystems, Inc.*, 59 USPQ2d 1084, 1085 (TTAB 2001).

The Examining Attorney maintains that the component terms of the mark are individually descriptive and that the combination of the terms is also merely descriptive of computer software used to integrate “manufacturing line, equipment and controls.”²

With regard to the term “line integration,” the Examining Attorney notes that the term “line” is in Applicant’s identification of goods, that the definition of record of “integration” is “the process of combining with other things in a single larger unit or system,”³ and that the combined wording merely describes software used in “manufacturing line integration or the process of combining manufacturing lines in a single larger unit or system.”⁴ Moreover, Applicant disclaimed the term “line integration” in response to the Examining Attorney’s requirement therefor, thereby conceding the descriptiveness of the term. The Examining Attorney is correct that the disclaimer of a term pursuant to a requirement by the Examining Attorney is a

² 6 TTABVUE 6.

³ *Macmillan Publishers Limited English Dictionary*, attached to September 12, 2014 Office Action.

⁴ 6 TTABVUE 8.

concession that the term is merely descriptive. See *In re Pollio Dairy Prods. Corp.*, 8 USPQ2d 2012, 2014 (TTAB 1988) (“By its disclaimer of the word LITE, applicant has conceded that the term is merely descriptive as used in connection with applicant’s goods. See *Quaker State Oil Refining Corp. v. Quaker Oil Corp.*, 161 USPQ 547 (TTAB 1969), *aff’d*, 453 F.2d 1296, 172 USPQ 361 (CCPA 1972). The issue as to the descriptiveness of the word LITE is not before us and applicant’s arguments relative thereto have not been considered.”). Applicant does not argue in its brief that “line integration” is not merely descriptive of its goods.

With regard to the term “rapid,” the Examining Attorney cites to the following material submitted with the final Office Action as showing descriptive significance of “rapid” in the automated manufacturing field:

ParamountInd.com, “Paramount is innovatively establishing new levels of achievement in rapid manufacturing, producing finished parts for highly-specialized applications direct from 3D CAD digital input, thus dispensing with the costly and time-consuming process of tool making ... Applications for Rapid Manufacturing [include] packaging.”

p2pfoundation.net, “Rapid Manufacturing is a broad term including the use of Rapid Prototyping, Rapid Tooling, and the direct use of Layer Manufacturing technologies to produce final products quickly. . . . Rapid Manufacturing is a new area of manufacturing developed from a family of technologies known as Rapid Prototyping. These processes have already had the effect of both improving products and reducing their development time; this in turn resulted in the development of the technology of Rapid Tooling, which implemented Rapid Prototyping techniques to improve its own processes. Rapid Manufacturing has developed as the next stage, in which the need for tooling is eliminated. It has been shown that it is economically feasible to use existing commercial Rapid Prototyping systems to manufacture series parts in quantities of up to 20,000 and customized parts in quantities of hundreds of thousands. This form of manufacturing can be incredibly cost-effective and the process is far more flexible than conventional manufacturing.”

Wikipedia.org, “Rapid Manufacturing ... refers to methods and production methods for fast and flexible production of components and series by tool[-]less production directly from CAD data.”

The Examining Attorney argues that “[w]hile applicant’s software may not be literally used for ‘rapid manufacturing’ as defined by the evidence, the identification of goods is broadly worded such that it can be read to include computer software used to integrate manufacturing line, equipment and controls in a rapid manufacturing production environment.”⁵

The problem with the Examining Attorney’s argument is that the evidence does not establish that software of the type described in Applicant’s identification of goods is used in connection with rapid manufacturing. The evidence concerning rapid manufacturing submitted by the Examining Attorney does not mention the use of such software in a rapid manufacturing environment, or show that rapid manufacturing requires “interface software used to integrate manufacturing line, equipment and controls.” Simply put, the evidence in the record is not sufficient to support the Examining Attorney’s contention that “the identification of goods is broadly worded such that it can be read to include computer software used to integrate manufacturing line, equipment and controls in a rapid manufacturing production environment.”

The Examining Attorney also argues that if “rapid” in Applicant’s mark does not refer to “rapid manufacturing,” “the descriptive nature of the wording ‘RAPID’ may

⁵ 6 TTABVUE 10.

be found in the ordinary meaning of the term, which may refer to ‘acting or moving quickly; fast.’ Therefore, ‘RAPID’, in the applied-for mark, merely describes goods involving fast manufacturing.”⁶

The Examining Attorney adds that “one of the goals of Applicant’s software appears to be to increase the speed of the manufacturing line or the integration time,”⁷ and points to Applicant’s February 24, 2014 response which states:

Applicant’s RAPID LINE INTEGRATION software is designed to integrate all the various manufacturing equipment within one manufacturing line. Working as a common interface with each piece of equipment, many of which are manufactured by different OEM manufacturers, there is no need to modify or customize any equipment to link with the other equipment on the line. Each piece of equipment does not need to create its own “handshake” with the next piece down the line. Instead, all the equipment is installed with the RAPID LINE SOFTWARE so that each piece can be **quickly** and easily implemented into the manufacturing line. The entire line can be integrated together with ease, any portion of the line repaired or replaced with **speed** and efficiency, and the overall downtime of the manufacturing line reduced significantly.⁸

(Emphasis in original.)

Applicant’s promotional material includes the following instances where Applicant has discussed the integration feature of its goods:

1. RAPID Line Integration can be implemented **faster** than most traditional methods allowing most users to begin optimizing the line sooner with timely and accessible information including:

⁶ 6 TTABVUE 8.

⁷ 6 TTABVUE 10.

⁸ Applicant’s February 24, 2015 response.

- Real-time and historical information available immediately on the plant floor human machine interface (HMI).
- Integrated fault and event handling enables detailed downtime and true root cause reporting.
- Advanced analytics and custom reporting via web based reporting services.⁹

(Emphasis in original.)

2. The RAPID Line Integration solution from Rockwell Automation provides a flexible, repeatable approach to integrating manufacturing lines. Utilizing a common equipment interface, the system enables users to configure, control and analyze line performance from a standard operator station. By doing so, this approach can lower the total cost and time of deploying and optimizing manufacturing equipment.

Applicant argues that imagination, thought and perception on the part of the purchaser is needed to understand the nature of Applicant's Goods; and that "[t]he purpose or function of the Applicant's Goods is to create a common equipment interface, which enables manufacturers to more easily and economically commission new manufacturing lines or upgrade a line more efficiently. The goal of the Applicant's Goods is to limit the amount of downtime. The goal is not to run 'fast' software programs or to even increase the speed of the manufacturing line or the integration time."¹⁰

As far as the references to speed in Opposer's promotional material, Applicant states, "these minor references are not taken in their proper context, with the

⁹ *Id.*, Exh. B.

¹⁰ 4 TTABVUE 7.

Examining Attorney erroneously concluding that the Applicant's Goods are described as 'functioning in a fast or rapid manner.'"¹¹ Applicant adds:

While Applicant's Goods "can be implemented faster than most traditional methods"¹² of line integration, this does not properly describe the goods, their function, or their purpose as required for a descriptive mark. Instead, Applicant's Goods are used to optimize a manufacturing line with a simplified, repeatable interface across all equipment which provides the ability to produce reliable and real-time reporting for performance and to identify manufacturing issues.¹³

We agree with Applicant that imagination or thought are required to arrive at the meaning for RAPID in Applicant's mark proposed by the Examining Attorney. With regard to the Examining Attorney's argument that the purpose of Applicant's software is to speed up the manufacturing line, there is nothing in the record to show that software of the type identified in the application makes a manufacturing line faster or speedier. As for the Examining Attorney's argument that Applicant's software yields "faster" integration of the components of a manufacturing line, we find that the evidence does not convey an immediate or precise significance of "rapid" with respect to Applicant's software. *See U.S. West Inc. v. BellSouth Corp.*, 18 USPQ2d 1307, 1312 (TTAB 1990) ("THE REAL YELLOW PAGES" is not merely descriptive of a classified telephone directory since "REAL" does not "convey any immediate or precise significance with respect to applicant's goods ..."). There is but a thin line of distinction between a suggestive and a merely descriptive term, and it

¹¹ *Id.*

¹² The Examining Attorney does not indicate the source of the quoted phrase.

¹³ 4 TTABVUE 8.

is often difficult to determine when a term moves from the realm of suggestiveness into the sphere of impermissible descriptiveness. *In re Recovery, Inc.*, 196 USPQ 830, 831 (TTAB 1977). *See also, In re Future Ads LLC*, 103 USPQ2d 1571, 1574 (TTAB 2012).

Decision: The refusal to register Applicant's mark **RAPID Line Integration** is reversed.