

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB 6/2/00  
U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

---

Trademark Trial and Appeal Board

---

In re *Evolving Systems, Inc.*

---

Serial No. 75/217,681

---

Thomas D. Bratschun of Swanson & Bratschun L.L.C. for  
*Evolving Systems, Inc.*

Glenn G. Clark, Trademark Examining Attorney, Law Office  
115 (Tomas V. Vlcek, Managing Attorney).

---

Before Hanak, Hohein and Hairston, Administrative Trademark  
Judges.

Opinion by Hairston, Administrative Trademark Judge:

Evolving Systems, Inc. has filed an application to  
register the mark NUMBERMANAGER for "computer software for  
use in telecommunications, namely to route customer data  
from a regional network to carriers within the network and

to verify the customer data for facilitating number portability."<sup>1</sup>

The Trademark Examining Attorney 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 mark, if applied to applicant's goods, would be merely descriptive of them.

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney have filed briefs on the case.

It is the Examining Attorney's position that NUMBERMANAGER directly conveys information about the purpose or function of applicant's computer software. According to the Examining Attorney, in today's market, telephone carriers must allow customers to keep their existing telephone numbers when they change their telephone service providers. This ability is known as "number portability." The Examining Attorney maintains that NUMBERMANAGER is merely descriptive of applicant's computer software because it is designed to manage customer data which includes the customer's number.

---

<sup>1</sup> Serial No. 75/217,681, filed December 23, 1996, alleging a bona fide intention to use the mark in commerce.

In support of the refusal to register, the Examining Attorney made of record an excerpt from the Random House Unabridged Dictionary wherein "number" is defined as, inter alia, "a code of numerals, letters, or a combination of these assigned to a particular telephone."

Applicant, on the other hand, argues that its computer software performs numerous processing and updating functions, and does not merely manage telephone numbers as suggested by the Examining Attorney. According to applicant, the mark NUMBERMANAGER at most suggests the idea that applicant's software routes customer data from a regional network to carriers within the network and verifies the customer data for facilitating number portability.

Further, applicant points out that no competitors are using NUMBERMANAGER to describe like products, and that competitors would not need to use this term to describe their products because many other terms are available.

The test for determining whether a mark is merely descriptive is whether the involved term immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of a product or service. In re Bright-Crest, Ltd., 204 USPQ 591 (TTAB 1979); In re Engineering Systems Corp., 2 USPQ2d 1075 (TTAB

1986). It is not necessary, in order to find a mark merely descriptive, that the mark describe each feature of the goods, only that it describe a single, significant attribute or idea about them. In re Venture Lending Associates, 226 USPQ 285 (TTAB 1985). Further, it is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought. In re Recovery, 196 USPQ 830 (TTAB 1977).

In this case, we find that the Examining Attorney has not established that, when applied to applicant's goods, the term NUMBERMANAGER immediately describes, without conjecture or speculation, a significant feature of function of applicant's computer software. We believe that some cogitation or mental processing would be required for prospective customers of applicant's goods to readily perceive the merely descriptive significance of NUMBERMANAGER as it pertains to computer software used to route customer data from a regional network to carriers within the network and to verify the customer data for facilitating number portability. We note, in this regard, that applicant, at its website, provides a detailed explanation of the function of its NUMBERMANAGER computer

Ser No. 75/217,681

software. It seems to us that, if the term NUMBERMANAGER immediately conveyed to prospective purchasers the precise function of applicant's services, such a detailed explanation would be unnecessary, particularly here, where the purchasers are sophisticated.

We should point out that absent from this record is any evidence of third-party use of the term NUMBERMANAGER by competitors for like goods. We note that the Examining Attorney, in his first Office Action, stated that a search of the NEXIS database of "NUMBER MANAGER" and "NUMBERMANAGER" disclosed 3,586 stories. However, the Examining Attorney made of record only one story. That story referred to applicant's NUMBERMANAGER computer software.

Finally, we recognize that we must resolve whatever doubt we may have regarding the merely descriptive character of the mark in favor of applicant and the mark should be published for opposition. See, *In re Rank Organization Ltd.*, 222 USPQ 324, 326 (TTAB 1984) and cases cited therein.

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

E. W. Hanak

P. T. Hairston  
Administrative Trademark Judges  
Trademark Trial and Appeal Board

Hohein, Administrative Trademark Judge, dissenting:

I respectfully dissent since, as sufficiently shown by the record and as persuasively argued by the Examining Attorney, the term NUMBERMANAGER is merely descriptive of the purpose or function of applicant's "computer software for use in telecommunications, namely to route customer data from a regional network to carriers within the network and to verify the customer data for facilitating number portability." Such term immediately describes, without speculation or conjecture, precisely what applicant's software is designed to do, namely: manage the portability of a telephone number among competing local telephone service providers and/or other telecommunications carriers.

While, as the majority notes, "applicant points out that no competitors are using NUMBERMANAGER to describe like products, and that competitors would not need to use this term to describe their products because many other terms are available,"<sup>2</sup> the portion of applicant's Internet

---

<sup>2</sup> In particular, applicant argues in its brief that:

website which the Examining Attorney has made of record significantly reveals among other things that, with respect to "local number portability" ("LNP"), applicant's NUMBERMANAGER software is "[t]he only 'off-the-shelf' ... product solution of its type on the market today ... to manage LNP services." Thus, not only does it appear that there are no readily available competitive products to applicant's software in the LNP field,<sup>3</sup> but in any event it

---

The Examining Attorney presents no evidence that the term NUMBERMANAGER is used with products competitive to Applicant's portability facilitating software. While the Examining Attorney maintains [that] his search [of the NEXIS database] showed 3586 appearances of "number manager" or "numbermanager," the only story provided pertains to Applicant's services. The absence of competitor's [sic] use of "number manager" in Applicant's field is additional evidence that the mark is not "merely descriptive." *Concurrent Technologies, Inc. v. Concurrent Technologies Corp.*, 12 USPQ2d 1054, 1058 (TTAB 1989).

However, unlike the cited case, in which the record showed an absence of any descriptive use of the term at issue (CONCURRENT TECHNOLOGIES), either by the parties therein or any third parties, in the particular trade (printed electronic circuit boards), here the absence of evidence of descriptive use (in that the Examining Attorney neglected to put in any of the 3585 other instances located by his search) is simply not evidence of the absence of descriptive use.

<sup>3</sup> It appears from the sole story furnished by the Examining Attorney from his NEXIS search that local number portability is a relatively recent legal requirement. Specifically, the article, which in relevant part is headlined "Evolving Systems' Completes Development of its Local Number Portability Software (LNP) Solutions," states that:

LNP provides consumers with the ability to keep their existing telephone number when switching between local telephone service providers. LNP, which was

is well settled that the fact that there may be other words or phrases, such as those set forth in applicant's brief,<sup>4</sup> which equally describe any competitive telephone number management products is immaterial and does not justify registration. See, e.g., Roselux Chemical Co., Inc. v. Parsons Ammonia Co., Inc., 299 F.2d 855, 132 USPQ 627, 632 (CCPA 1962); and In re Eden Foods Inc., 24 USPQ2d 1757, 1761 (TTAB 1992).

More importantly, applicant does not take issue with the fact that, as confirmed by the dictionary definition made of record by the Examining Attorney, the term "number," in the context of applicant's product, signifies a telephone number. Applicant nevertheless contends that, rather than functioning to "merely `manage phone numbers` as suggested by the Examining Attorney or perhaps route or assign phone numbers as one encountering the NUMBERMANAGER mark might imagine," its NUMBERMANAGER software performs

---

mandated by the Telecommunications Act of 1996, will become operational in the cities of Atlanta, Chicago, Houston, Los Angeles, Minneapolis, New York and Philadelphia beginning on October 1, 1997. The rest of the top 100 telephone services markets are to be LNP-capable by the end of 1998. Wireless service providers are also mandated to support LNP by June 30, 1999.

<sup>4</sup> According to applicant, such possibilities include, "[f]or example, `number portability facilitator,` `ported customer data conveyer,` `subscriber data organizer,` `subscriber data

numerous functions, such as receiving subscription, network and service provider data, processing and storing that data, updating network elements, and responding to and performing audits. The information set forth in the portion of record from applicant's Internet website makes clear, however, that such functions are all part of what collectively applicant's software is designed to do in order to serve its primary function or purpose of enabling local telecommunications carriers to manage the portability of customer or subscriber telephone numbers.

Stated otherwise, how applicant's product works, that is, the details of the various individual processes and/or record-keeping steps that it manages as explained at applicant's website, need not be indicated by the term NUMBERMANAGER. It is sufficient, instead, that such term describes, with the requisite degree of particularity, exactly what applicant's LNP software does, which is to serve as a telephone number portability manager for local telecommunications carriers. Such capability would inevitably be shortened to simply the term "number manager" or, as applicant has done, NUMBERMANAGER. See, e.g., In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 219

---

processor, ' `subscriber updater,' and `subscriber information provisioning,' to name but a few."

Ser No. 75/217,681

(CCPA 1978) (Rich, J., concurring) [given the fact that "the users of language have a universal habit of shortening full names--from haste or laziness or just economy of words," term GASBADGE held merely descriptive of a gas monitoring badge since "I regard it as inevitable that a gas monitoring badge will be called a gas badge as the name of the goods to the same extent as gas monitoring badge is the [full] name"].

Plainly, to the technologically knowledgeable and highly sophisticated telephone network managers and system technicians who would be the principal buyers and/or users of applicant's LNP software, there is nothing in the combination of the terms "NUMBER" and "MANAGER" into the term "NUMBERMANAGER" which is ambiguous, incongruous or susceptible to a plausible meaning other than telephone number manager. This is especially so since, as actually used in the context of applicant's website, such term is displayed as "NummberManager" and it is clear, as evidenced by the following excerpt therefrom, that the term conveys forthwith the principal purpose or function of applicant's LNP software:

**NumberManager**

**The solution For Number Portability Service  
Management**

Today's Service Management Systems are not equipped to deal with the provisioning of a new application like local number portability. Managing LNP service changes, modifications, and disconnects demands a proven, highly reliable Local Service Management System solution that effectively communicates with the regional-level Number Portability Administration Center, network element management systems, and individual network elements.

**This is exactly what NumberManager Provides.**

Accordingly, because no degree of cogitation or mental processing would be required for purchasers or prospective customers of applicant's goods to readily perceive the merely descriptive significance of NUMBERMANAGER as it pertains to computer software used to route customer data from a regional network to carriers within the network and to verify the customer data for facilitating number portability, I would affirm the refusal to register. See, e.g., In re Intelligent Instrumentation Inc., 40 USPQ2d 1792, 1794-95 (TTAB 1996) [term VISUAL DESIGNER merely describes significant purpose or function of computer programs which permit programming applications to be visually designed instead of being written in a programming language]; and In re Time Solutions Inc., 33 USPQ2d 1156, 1158 (TTAB 1994) [phrase YOUR HEALTH INSURANCE MANAGER merely describes significant feature or function of software programs for personal record keeping and

**Ser No.** 75/217,681

processing of medical records, health insurance and claims  
in that such software manages personal health insurance  
matters].

G. D. Hohein  
Administrative Trademark Judge,  
Trademark Trial and Appeal Board