

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB 8/7/00

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Integra Lifesciences Corporation

Serial No. 75/330,844

Alan H. Bernstein of Caesar, Rivise, Bernstein, Cohen &
Pokotilow, Ltd. for Integra Lifesciences Corporation.

Martha L. Fromm, Trademark Examining Attorney, Law Office
106 (Mary Sparrow, Managing Attorney).

Before **Cissel**, Chapman and Rogers, Administrative Trademark
Judges.

Opinion by Cissel, Administrative Trademark Judge:

On July 25, 1997, applicant filed an application to register the mark "REGENERATION TEMPLATE" on the Principal Register for "an extracellular matrix to be surgically implanted at the site of tissue which has been irreversibly damaged by accident, disease or surgery to provide conditions necessary to promote healthy cell growth," in Class 10. The basis for filing the application was applicant's assertion that it possessed a bona fide

intention to use the mark in connection with these goods in commerce.

The Examining Attorney refused registration under Section 2(e)(1) of the Lanham Act on the ground that the term sought to be registered is merely descriptive of the goods specified in the application. Attached to the refusal to register were copies of dictionary definitions of "regeneration" as "renewal or restoration of a body or bodily part after injury or as a normal process," and "template" as "a molecule (as DNA) that serves as a pattern for the generating of another macromolecule (as messenger RNA)" or "something that establishes or serves as a pattern." She concluded from these definitions that the proposed mark "REGENERATION TEMPLATE" identifies the likely function and intended result of the goods with which applicant intends to use the mark.

Applicant's response to the refusal to register did not persuade the Examining Attorney to withdraw the refusal. In the second Office Action, the Examining Attorney made the refusal final.

Attached to the final refusal were a sampling of articles from the Nexis® database wherein the term applicant seeks to register is used in a generic sense. Many other articles show descriptive use of the individual

words which make up the proposed mark. One of the articles is a transcription of an interview conducted on October 1, 1997 for an MSNBC Business Video with applicant's chief operating officer, George McKinney. Throughout the interview, Mr. McKinney repeatedly uses the proposed mark as a generic term for applicant's product, "Integra Artificial Skin," which he refers to as a "dermal regeneration template." He explains that applicant's dermal regeneration template is a synthetic or natural material that constitutes an extracellular matrix which "effectively tricks the body into ... reconstructing its own body part." In addition to its Integra Artificial Skin dermal regeneration template, applicant apparently has developed other products that are dental regeneration templates. Mr. McKinney explains that these are used for periodontal work, whereas applicant's dermal regeneration templates "replace[s] the dermos of the skin."

The Examining Attorney concluded that the evidence of record supported her conclusion that the relevant purchasing public, upon seeing the proposed mark used in connection with the goods set forth in the application, would immediately know the exact nature of the products.

Applicant timely filed a Notice of Appeal. Both applicant and the Examining Attorney filed briefs.

Ser No. 75/330,884

Submitted with the Examining Attorney's brief were additional definitions of the two words which make up the term applicant seeks to register. These definitions are consistent with those already of record and with the excerpted articles which use "regeneration template" as the name of the type of product that applicant produces.

Applicant did not request an oral hearing before the Board, so we have resolved this appeal based on the written arguments and record before us.

It is well settled that a mark is merely descriptive of the goods with which it is or will be used if it immediately and forthwith conveys information concerning an ingredient, quality, characteristic, function, feature, purpose or use of the relevant goods. In re MetPath Inc., 223 USPQ 88 (TTAB 1984); In re Bright-Crest, Ltd., 204 USPQ 591 (TTAB 1979).

The record in this application clearly establishes that the term sought to be registered is merely descriptive of an extracellular matrix to be surgically implanted at the site of tissue which has been irreversibly damaged by accident, disease or surgery, to provide conditions necessary to promote healthy cell growth. The dictionary definitions of record support this conclusion. The excerpts from published articles support it as well.

Ser No. 75/330,884

If there could be any doubt remaining as to whether the term applicant seeks to register describes the goods identified in the application, the statements attributed to applicant's chief operating officer make it clear that even applicant regards "REGENERATION TEMPLATE" as an apt descriptive name for this type of product.

Under the circumstances, the refusal to register under Section 2(e)(1) of the Lanham Act must be affirmed.

R. F. Cissel

B. A. Chapman

G. F. Rogers
Administrative Trademark Judges,
Trademark Trial & Appeal Board

Ser No. 75/330,884