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Paper No. 13  
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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 Robert Wienke

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Serial No. 75/479,625

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Mark J. Liss, Lynn A. Sullivan and Tamara A. Miller of  
Leydig, Voit & Mayer, Ltd. for Robert Wienke.

Angela Micheli, Trademark Examining Attorney, Law Office  
108 (David E. Shallant, Managing Attorney).

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Before Hanak, Holtzman and Rogers,  
Administrative Trademark Judges.

Opinion by Rogers, Administrative Trademark Judge:

Robert Wienke has filed an application to register the words "ACCESS GLOBAL" as a trademark for "financial services, namely insurance brokerage and underwriting, banking, real estate finance, investment brokerage, investment management and financial transactions related thereto, offered electronically and through traditional methods."<sup>1</sup>

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<sup>1</sup> Serial No. 75/479,625, filed on May 5, 1998, which alleges applicant has a bona fide intention to use the mark in commerce.

Registration has been finally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis that, when used in connection with applicant's services, the words "ACCESS GLOBAL" will be merely descriptive of such goods.<sup>2</sup>

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register on the ground of mere descriptiveness.

It is well settled that a term is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark 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 or services. See In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term

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<sup>2</sup> The Examining Attorney also argues that registration should be refused because the applicant has not complied with a requirement that he submit advertisements or promotional materials illustrating how the mark will be used. In her order denying applicant's request for reconsideration, the Examining Attorney states that this requirement was part of the earlier final refusal. Our review of the final, however, reveals no mention of this requirement. Accordingly, the requirement was never made final and neither the Examining Attorney's restatement of the requirement in the order denying applicant's request for reconsideration nor her argument regarding the requirement in her appeal brief are sufficient to place the issue before us in this appeal.

Moreover, the applicant's response to the first office action was accompanied by, in applicant's words, "a copy of a draft promotional sheet for the ACCESS GLOBAL mark." Accordingly, applicant complied with the requirement in the initial office action; at least the Examining Attorney never stated that applicant's submission was insufficient.

describe all of the properties or functions of the goods or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or aspect about them. Moreover, whether a term is merely descriptive is determined not in the abstract but in relation to the goods or services for which registration is sought, the context in which it is being used or is to be used in connection with those goods or services and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use. See In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979). Consequently, "[w]hether consumers could guess what the product [or service] is from consideration of the mark alone is not the test." In re American Greetings Corp., 226 USPQ 365, 366 (TTAB 1985).

The evidence made of record by the Examining Attorney includes two dictionary definitions for the word "access" and NEXIS articles illustrating use of either the phrase "global access" or, in the same article, "access" and "global." The evidence made of record by applicant includes "a draft promotional sheet," which is reproduced below, a list of numerous registered marks which include the term "access," and copies of many of these registrations, obtained from the Office's web-based search system.

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In his request for reconsideration of the final refusal, applicant contended that the Examining Attorney's reliance on the banking dictionary definition of "access" is misplaced because "the mark is not targeted to the banking industry, nor is the mark used exclusively in connection with banking services." Applicant further contends that his broad based services are offered to general consumers "who associate many meanings with the term 'ACCESS'," but would

"not [be] familiar with the definitions in a specialty dictionary such as a banking dictionary."<sup>3</sup> Whether general consumers would be familiar with the dictionary definition is irrelevant. Instead, what is relevant is whether consumers of banking services, which are among the services identified in applicant's application, would consider "access," in the context of applicant's use of that term in "ACCESS GLOBAL," to refer to such routine banking transactions as making deposits, withdrawals, verifying account balances or making electronic transfers. In this context, we find the Examining Attorney's reliance on the banking dictionary definition entirely proper and applicant's objection thereto misplaced.

The Examining Attorney has objected to applicant's submission, with his brief, of evidence regarding registrations and applications including the terms "access" or "global." The applicant, however, has correctly noted that the list of approximately 200 registrations including the term "access" and copies of some of those registrations were first introduced with applicant's request for reconsideration and are properly of record.<sup>4</sup> Accordingly,

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<sup>3</sup> The banking dictionary defines "Access" as the "right to use banking services. Specifically, the right to make deposits to or withdrawals from a banking account, verify an account balance, use a safe deposit box, or make electronic transfers using a bank card or other ACCESS DEVICE."

<sup>4</sup> In her action denying the request for reconsideration, the Examining Attorney did not object to the list of registrations and considered both it and the copies of registrations on the merits.

we have considered these materials, submitted as exhibit A to applicant's request for reconsideration and again with his appeal brief.

In contrast, we have not considered evidence introduced by applicant for the first time through his appeal brief. This includes a list of registrations of marks including the term "global" and copies of pages from the Office's Official Gazette (the copies submitted as exhibit B to applicant's brief). The Examining Attorney's objection is well taken in regard to these items. See Trademark Rule 2.142(d). Further, despite applicant's assertion to the contrary, a list of 122 registrations for marks including the term "global" and copies of representative registrations from that list were not included with the request for reconsideration or as an attachment to his brief.

Based on the evidence properly of record, we have no doubt that "access" is merely descriptive. In regard to applicant's banking services, it will signify that consumers will have the type of access to their accounts that is typical of the relationship between any bank and its customers. In regard to all of applicant's services, the term will signify that applicant's customers will be able to access applicant's services electronically via the Internet.

The registrations for marks including the term "access" do not persuade us otherwise. As the Examining Attorney has correctly observed, some of them are not probative because the registrations are on the Supplemental Register or issued

under Section 2(f) of the Trademark Act. Others do not involve services similar to applicant's services. In any event, as the Examining Attorney has noted, each case must be determined on its own record and the Board is not bound by decisions made by other Examining Attorneys in regard to other applications.

As with the term "access," we have no doubt that the term "global" too is descriptive. It will signify that applicant's customers will have worldwide or global access to his services. Applicant's own proposed promotional literature reveals that the services are available "Anytime[,] Anywhere."

We are not persuaded otherwise by applicant's argument that "global" "is vague and has many meanings," as the argument is without support in the record. We find inapposite applicant's argument that the term "global" "does not relate to the place of origin of the services or the bounds within which the Applicant functions" and, therefore, the term "cannot be a basis for a geographically descriptive or misdescriptive rejection." Those are not the bases for refusal.

Applicant acknowledges the NEXIS evidence which shows that "global access" is a descriptive phrase<sup>5</sup>, yet applicant

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<sup>5</sup> The NEXIS evidence establishes that "global access" is used descriptively in connection with banking services. See, for example:

"...new technology and global access are reshaping the future of private banking..." Private Banker International (June 1997).

argues that "[b]y inverting the order of the terms and not using intervening words between the terms, Applicant created a mark that is not merely descriptive but rather suggests to consumers the expansive nature of the services." We disagree with applicant's assessment.

When merely descriptive terms are combined, "the key issue is whether the combination invokes a new and unique commercial impression." In re Uniroyal, Inc., 215 USPQ 716, 718 (TTAB 1982) ("We find nothing here to indicate that the term "STEELGLAS" means anything to consumers other than a combination of "steel" and "glass".). *Accord*, In re Copytele Inc., 31 USPQ2d 1540, 1542 (TTAB 1994) ("While applicant is correct that a non-descriptive trademark may be fashioned from the incongruous combination of several words that are, individually, merely descriptive of an applicant's goods, we fail to see anything incongruous in the combination of the words "SCREEN FAX PHONE."). See also, In re Quik-Print Copy Shop, Inc., 205 USPQ 505, 507 (CCPA 1980) (Court rejected appellant's argument that

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"With Internet banking, consumers can access their accounts using any computer that has Internet access and a Web browser. For consumers it offers convenience; for the banks it offers cheaper transactions and global access to customers." The Plain Dealer (October 19, 1998).

"His complaint to state banking officials revealed that New Jersey banking statutes are woefully inadequate when it comes to global access accounts." Asbury Park Press (November 27, 1998).

combination of "mundane words" "quick" and "print" created fanciful and distinctive term.).

Applicant's reliance on the decision of In re Hutchinson Technology, 858 F.2d 552, 7 USPQ2d 1490 (Fed. Cir. 1988), is misplaced. Applicant asserts that, like the term "technology" in the *Hutchinson* case, "ACCESS GLOBAL" is vague and consumers considering the mark "would have no idea what types of services the Applicant offers." As stated earlier, however, in any analysis under Section 2(e)(1) of the statute, a mark proposed for registration is not considered in the abstract but in relation to the identified goods or services.

When applicant's "ACCESS GLOBAL" mark is considered in conjunction with its identified services, which include banking and other financial transactions services available electronically, the terms are not vaguely suggestive; rather, they immediately inform the consumer that for applicant's services, access is global. Applicant's transposition of the descriptive phrase "global access" does not create a double entendre, imbue the resulting phrase with any new meaning or incongruity, or create any vagueness in meaning that would require a consumer to engage in any mental reasoning to discern the significance of "ACCESS GLOBAL" for applicant's services.

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See In re Away Chemical Corp., 217 USPQ 275, 276 (TTAB 1982) ("the transposition of 'tablets for pans' to 'pan-tablets'" is insufficient to overcome "basic descriptive cast" of the involved mark); and In re Dairimetrics, Ltd., 169 USPQ 572, 573 (TTAB 1971) (ROSE MILK, though not found in any dictionaries, is synonymous in meaning to "recognized descriptive name" "Milk of Roses" for a rose scented cosmetic preparation).

In short, we see nothing in either the combination or ordering of the terms "access" and "global," in applicant's proposed "ACCESS GLOBAL" mark, that would lead consumers to think of the designation as anything other than an indicator that applicant's services are accessible worldwide.

Decision: The refusal of registration is affirmed.