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**THIS DISPOSITION
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Paper No. 11
JQ

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Osiris Therapeutics, Inc.**

Serial No. 75/516,973

William Squire of Carella, Byrne, Bain, Gilfillan, Cecchi,
Stewart & Olstein for applicant.

Fred Mandir, Trademark Examining Attorney, Law Office 105
(Thomas G. Howell, Managing Attorney).

Before Seeherman, Quinn and Wendel, Administrative
Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application has been filed by Osiris Therapeutics,
Inc. to register the mark ALLOGEN for "allogeneic human
mesenchymal stem cells for medical therapy namely, for use
in conjunction with transplantation of tissues and solid
organs."¹

¹ Application Serial No. 75/516,973, filed July 10, 1998, based
on an allegation of a bona fide intention to use the mark in
commerce.

The Trademark Examining Attorney has refused registration under Section 2(e)(1) of the Trademark Act on the ground that applicant's mark, if used in connection with applicant's goods, would be merely descriptive thereof.

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney filed briefs. An oral hearing was not requested.

The Examining Attorney maintains that the applied-for mark is merely descriptive, citing to excerpts retrieved from the MEDLINE database which show, according to the Examining Attorney, "informational non-trademark use of the term 'allogen' in relation to the transplantation of tissues or organs." (brief, p. 3) The Examining Attorney concludes that the term is used in the field to describe allogeneic matter.

Applicant argues that the mark sought to be registered is not an English word and, thus, would not have a readily recognized meaning when encountered by purchasers. Applicant critiques the MEDLINE evidence submitted by the Examining Attorney, contending that the cited uses of "allogen" are either misuses or errors in translation from a foreign language. Applicant also asserts that the evidence shows "conflicting uses of a possible abbreviation

for other terms such as allogeneic or alloantigen."

(brief, p. 6) Applicant has referred to a dictionary listing of the term "allogeneic," and has introduced product literature.

It is well settled that a term is considered to be merely descriptive of goods, 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. 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 merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or feature of them. Moreover, whether a term is merely descriptive is determined not in the abstract, but in relation to the goods for which registration is sought, the context in which it is being used on or in connection with those goods, and the possible significance that the term would have to the average purchaser of the goods because of the manner of its use. In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979). Accordingly, whether consumers could guess what the product is from consideration of the mark

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alone is not the test. In re American Greetings Corp., 226 USPQ 365, 366 (TTAB 1985).

The term "allogeneic" is defined as "having cell types that are antigenically distinct; in transplantation biology, denoting individuals (or tissues) that are of the same species but antigenically distinct, as opposed to syngeneic and xenogeneic." *Dorland's Illustrated Medical Dictionary* (28th ed. 1994).

The Examining Attorney has submitted excerpts retrieved from the National Library of Medicine's MEDLINE database. The excerpts show uses of the term "allogen," including the following: "allogen-specific T-cell proliferation;" "allogen blood-forming precursor cells;" "allogen-induced gamma-interferon production;" "allogen cartilage preserved in thiomersalate has been transplanted;" "allogen plasma;" "transplantation of allogen or autogen bone-chips;" "modified MHC can be considered a universal allogen;" "allogen transfusions;" and "allogen induced lymphoproliferative responses."

Given the dictionary definition of the term "allogeneic" and the use thereof as a descriptor in the identification of goods ("allogeneic human mesenchymal stem cells"), there can be no dispute as to the mere descriptiveness of this term. The real question here is

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whether a shortened form of the term is also merely descriptive. We find that it is.

The MEDLINE excerpts clearly show that there has been some usage of the term "allogen" in a descriptive manner in the medical transplantation field. Individuals researching this area of medicine would be exposed therefore to this usage. Given the meaning of "allogeneic" relative to cells used in transplantation, and the use of "allogen" in the English text of articles pertaining to this area, we find that individuals in this field would view the term "allogen" as a merely descriptive term, no different than they would view the term "allogeneic." Applicant's arguments relating to misuses, conflicting uses or errors in translation are unsupported by the record.

Decision: The refusal to register is affirmed.

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