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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Microcell Corporation

Serial No. 75/931,409

Steven J. Hultquist of Intellectual Property/Technology Law
for Microcell Corporation.

Heather D. Thompson, Trademark Examining Attorney, Law
Office 103 (Michael Hamilton, Managing Attorney).

Before Hairston, Chapman and Rogers, Administrative
Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

An application has been filed by Microcell Corporation
to register on the Principal Register the mark FIBERCELL
for the following goods, as amended: "electrochemical fuel
cells, batteries, and power supplies" in International
Class 9. The application was filed on February 29, 2000,
based on applicant's assertion of a bona fide intention to
use the mark in commerce.

Citing Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), the Examining Attorney has finally refused registration on the ground that if applicant's mark were used on or in connection with the goods identified in the application, it would be merely descriptive thereof.

Applicant has appealed, and both applicant and the Examining Attorney have filed briefs. Applicant did not request an oral hearing.

The test for determining whether a term is merely descriptive under Section 2(e)(1) of the Trademark Act is whether the term immediately conveys information concerning a significant quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used or is intended to be used. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978); *In re Venture Associates*, 226 USPQ 285 (TTAB 1985); and *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). The determination of mere descriptiveness must be made in relation to the goods or services for which registration is sought, the context in which the term or phrase is being or will be used on or in connection with those goods or services, and the impact that it is likely to make on the average purchaser of such goods or services. See *In re Consolidated Cigar Co.*, 35 USPQ2d 1290 (TTAB

1995); and In re Pennzoil Products Co., 20 USPQ2d 1753 (TTAB 1991). That is, the question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods or services are will understand the mark to convey information about them. See In re Home Builders Association of Greenville, 18 USPQ2d 1313 (TTAB 1990); and In re American Greetings Corp., 226 USPQ 365 (TTAB 1985).

The Examining Attorney argues that the term "fiber" refers to the fibrous nature of applicant's fuel cells and batteries which are filled with "filamentary electrodes" and "packed into a cell structure or container that is filled with acid" (applicant's response filed December 5, 2000, p. 3), and that "cell" in this usage refers to the definition in The American Heritage Dictionary (1996) set forth as "5. Electricity a. A single unit for electrolysis or conversion of chemical into electrical energy; usually consisting of a container with electrodes and an electrolyte. Also called electrochemical cell." The Examining Attorney further contends that the words combined into "FIBERCELL" remain merely descriptive of a feature or characteristic of the involved goods, specifically purchasers would immediately understand that the cells are

comprised in part of fibers; that even if, as argued by applicant, the combination of words may be capable of different meanings, the question of descriptiveness must be determined not in the abstract, but in the context of purchaser perception in relation to the involved goods; and that the evidence clearly shows that FIBERCELL is merely descriptive of applicant's "electrochemical fuel cells, batteries, and power supplies."

As evidence in support of the refusal to register, the Examining Attorney submitted (i) dictionary definitions of the involved words; (ii) printouts of several excerpted stories retrieved from the Nexis database regarding "fiber(s)" as part of "fuel cell" technology; and (iii) a printout from the "nist.gov" website of a "Project Brief ATP [Advanced Technology Program] Competition 2001 (October 2001)" titled "Fabrication of Fuel Cells from Microcell Fibers," sponsored by applicant.

Applicant contends that the mark FIBERCELL is not merely descriptive of its goods, electrochemical fuel cells, batteries, and power supplies; that the Examining Attorney has inappropriately dissected applicant's mark into separate words, without considering the mark as a whole; that a combination of two or more descriptive terms may result in a composite mark which is not merely

descriptive; that here the words are each capable of multiple meanings (i.e., "fiber" might be seen by consumers as referring to a thread, a root, a strand of nerve tissue, indigestible material in human food, with the primary meaning being biological or botanical, and "cell" could refer to a cellular telephone, stem cells, terrorist cells, or prison cells); that because the mark connotes multiple associative meanings, it is therefore suggestive in relation to applicant's goods; that it would require mature thought to understand the meaning of applicant's mark in relation to the goods; that there is no evidence that others in the relevant field need to use FIBERCELL to describe their goods; and that doubt on the issue of mere descriptiveness is resolved in applicant's favor.

However, applicant acknowledges that "the term 'FIBERCELL' may suggest the components of applicant's new and unique electrochemical cell," but contends that "purchasers would not immediately make the connection of a compartment packed with filamentary electrodes that are not visible from the surface." (Applicant's response filed December 5, 2000, p. 7). Moreover, applicant concedes "that the applicant's goods for which the mark is sought to be registered include structures containing hollow fiber elements forming or comprising electrode elements," but

contends that the involved fibers are extremely small (sub-millimeter), and thus, the fiber structures must be multiplied into arrays and bundled structures and the individual fibrous element is "lost in the resultant assembly." (Applicant's response filed July 26, 2001, p. 2).

The "Project Brief—Fabrication of Fuel Cells from Microcell Fibers," sponsored by applicant and appearing on the nist.gov website, includes the following statements:

Develop a new fuel-cell technology based on a novel microfiber membrane structure...; and

Fuel cells, which cleanly convert chemical energy to electrical energy, are common in space and military systems but remain too costly and difficult to make for general uses such as stand-alone power for homes and business or for electric vehicles. Microcell Corp. plans to overcome the barriers to commodity applications by exploiting its patented "microcell" design concept, in which all components are fabricated within a fiber ranging from 500 to 1,000 micrometers in diameter, and the fibers (or microcells) are connected and packed together to make a fuel cell module....

Moreover, the following are examples of the several excerpted stories retrieved from the Nexis database, showing use of the term "fiber" in relation to "fuel cells":

Headline: Electrode Improves Oxygen Diffusion

...The particularly inexpensive, lightweight, homogenous and porous gas diffusion electrode for polymer membrane fuel cells is made of a carbonized-carbon fiber..., "Fuel Cell Technology News," January 2000;

Headline: Fiber Strengthens Flexible Plate

...The graphite sheet is embedded with ceramic fibers extending from its opposite planar surfaces into the sheet, making it gas permeable so it can be used as an electrode in fuel cells...., "Fuel Cell Technology News," September 2000;

Headline: Energy; Award-winning Innovations

...Fuel cell manufacturers traditionally develop their own humidification systems, however, many are heavy, expensive, and not very efficient. The Enthalpy Wheel, developed by Ronald DuBose from Emprise Corp., Marietta, Ga., is smaller, less expensive, and lighter than competing systems, and will work for any alkaline, phosphoric acid, or proton exchange membrane fuel cell application. The honeycomb wheel is made of acrylic fiber..., "R & D," September 1, 2000; and

Headline: 25 Winning Technologies

..."GM would like to use the fibers in a number of applications including lithium-ion batteries, fuel cells, and interior and exterior door panels...", "Industry Week," December 16, 1996.

We agree with the Examining Attorney that the mark FIBERCELL immediately and directly conveys information

about a significant feature of "electrochemical fuel cells, batteries, and power supplies," specifically, that applicant's fuel cells and batteries contain fibers or fibrous elements. This record shows that the relevant purchasing public would so perceive the term as indicating this feature of applicant's goods, regardless of whether the purchaser can actually see the fibers contained within the fuel cell or battery.

Purchasers will readily perceive "fiber" to refer to the fiber elements contained within applicant's fuel cells and batteries, and the word "cell" in the context of the fuel cells and batteries, will be perceived as referring to fuel cells. We see no reason why purchasers would view the word "fiber," when used with fuel cells and batteries, to mean, as applicant suggests, primarily a biological or botanical concept. Nor would they perceive the word "cell," when considered in relation to applicant's goods, as referring to a telephone or a prison or terrorists. Thus, the two words separately have a readily understood meaning in the industry, and when combined as the term FIBERCELL and used on or in connection with applicant's goods, the term is merely descriptive of a significant feature of the goods.

The combination of these two words does not create an incongruous or creative mark. Rather, applicant's mark FIBERCELL, if applied to applicant's identified goods, would immediately describe, without conjecture or speculation, a significant feature of applicant's goods, as discussed herein. Nothing requires the exercise of imagination or mental processing or gathering of further information in order for purchasers of and prospective customers for applicant's goods to readily perceive the merely descriptive significance of the term FIBERCELL as it pertains to applicant's goods. See *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); *In re Omaha National Corporation*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987); and *In re Intelligent Instrumentation Inc.*, 40 USPQ2d 1792 (TTAB 1996).

Finally, even if applicant became the first (and/or only) entity to use the term "FIBERCELL" in relation to "electrochemical fuel cells, batteries and power supplies," such is not dispositive where, as here, the term unquestionably projects a merely descriptive connotation. See *In re Tekdyne Inc.*, 33 USPQ2d 1949, 1953 (TTAB 1994), and cases cited therein. We believe that competitors would have a competitive need to use this term. See 2 J. Thomas

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McCarthy, McCarthy on Trademarks and Unfair Competition,
§11:18 (4th ed. 2000).

Decision: The refusal to register under Section
2(e)(1) is affirmed.