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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Thomas J. Manski**

Serial No. 76203209

Serial No. 76203211

Peter Loffler for Thomas J. Manski.

Brian D. Brown, Trademark Examining Attorney, Law Office 105
(Thomas G. Howell, Managing Attorney).

Before Hanak, Walters and Holtzman, Administrative Trademark
Judges.

Opinion by Holtzman, Administrative Trademark Judge:

The above applications have been filed by Thomas J. Manski
to register the marks FLAT VUE¹ and FLAT VU² for the following
goods, as amended:

Flat video display devices in the nature of monitors,
computer displays, laptop computers, notebook computers,
televisions, cellular phones, beepers, digital assistants,

¹ Application Serial No. 76203209, filed January 31, 2001, based on applicant's assertion of a bona fide intention to use the mark in commerce.

² Application Serial No. 76203211, filed January 31, 2001, based on applicant's assertion of a bona fide intention to use the mark in commerce.

portable Internet devices, medical test equipment, namely MRI monitoring screens, computer tomography monitoring screens, and intraoperative monitoring screens for endoscopy and stereotactic surgical procedures, and electronic advertising displays. In Class 9.

The trademark examining attorney initially refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), in each application on the ground that the mark is either merely descriptive or deceptively misdescriptive of the identified goods.

In response to the refusal, applicant amended the identification of goods in both applications, including an amendment from "video display devices," to "flat video display devices," and proffered a disclaimer of the word "Flat." However, applicant continued to maintain that FLAT VUE and FLAT VU, as a whole, are not descriptive.

When the refusal in each case was made final, applicant appealed. Applicant and the examining attorney have filed briefs,³ but an oral hearing was not requested. The examining attorney has made it clear, in his briefs, that the sole basis for refusal on appeal in each case is whether the mark is merely descriptive. Because the issues in these two applications are substantially the same, the appeals have been consolidated and are being treated in a single decision.

³ These applications were assigned to a different examining attorney to write the appeal briefs.

The examining attorney argues that FLAT VUE and FLAT VU are merely descriptive in that "flat" describes a quality or feature of applicant's video display devices and that "these devices provide a VIEW and can also be used to VIEW images...." Brief, p. 6. Specifically, the examining attorney contends that "view" and thus, VUE and VU as phonetic equivalents of "view," is either a descriptive verb in that it describes the fact that "one may 'view' or watch a display monitor," or a descriptive noun in that display monitors "provide an individual or group with a way of seeing or watching images on a screen." Brief, p. 5.

In support of his position, the examining attorney has submitted dictionary definitions of "flat," a number of full-text articles from the NEXIS database showing use of "flat" in connection with video display devices, and dictionary definitions of "view" that include, "[a] way of showing or seeing something, as from a particular position or angle: a side view of the house"; and "[t]o look at; watch: view an exhibit of etchings." The examining attorney has also submitted excerpts of Nexis articles showing uses of "view" which, according to the examining attorney, show that "view" is "routinely used to describe the purpose, use or vantage point of a video display panel or monitor." Brief, p. 5. Examples of these excerpts are set forth below (emphasis added):

The unit will work with a wide range of video display types including plasma, LCoS, LCD and DLP single-lens projection, HDTV direct **view**, and rear projection. *TWICE* (January 8, 2002).

Consumers now project DV on digital projectors or stream it on the Internet - and are mystified to find extra, sometimes unwanted, detail along the edges of their images. Ditto for Avid or Final Cut Pro editors who **view** images on a computer display. *Millimeter* (January 2002).

Multi-**view** video displays test recordings, filmed from several angles, on either a split-screen or a quad-screen. SwRI has the option to display up to four different recordings at a time or to switch to one **view** at a time, much like changing a channel on a television. *Business Wire* (November 2, 2001).

The panoramic **view** configuration is good for flight simulator-type visualization or for displaying several panels of data and video displays like a virtual control room. *Advanced Imaging* (May 1, 2001).

Before you imagine a brave new world overrun with billboard-size video displays, it helps to understand that smart video aims to be transparent, to integrate virtual **views** built unobtrusively into the furniture and architecture of the room. *AV Video Multimedia Producer* (May 1, 2001).

A term is merely descriptive within the meaning of Section 2(e)(1) if it immediately conveys knowledge of the ingredients, qualities, or characteristics of the goods with which it is used. In *re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). On the other hand, a term is suggestive if, in the context of those goods, a purchaser must use imagination, thought, or some type of multi-stage reasoning to understand the

term's significance. See Plyboo America Inc. v. Smith & Fong Co., 51 USPQ2d 1633 (TTAB 1999).

The question of whether a particular term is merely descriptive must be determined not in a vacuum or on the basis of speculation, but in relation to the goods for which registration is sought. See In re Engineering Systems Corp., 2 USPQ2d 1075 (TTAB 1986).

There is no question that "flat" describes a significant characteristic of computer monitors, televisions and other such video display devices. Applicant has not argued otherwise, and in fact has essentially conceded the descriptive nature of this word by using it descriptively in his identification of goods. In any event, the evidence submitted by the examining attorney clearly shows that "flat" is descriptive of certain significant features of video display devices, namely the shallow physical depth of the screen and the lack of curvature in the surface of the screen. The question concerns the meaning of "view." If "view" is descriptive of the identified goods, then its phonetic equivalents, VUE and VU, are equally descriptive of those goods.

While the word "view" has a number of dictionary meanings, none of those meanings conveys any immediate or precise significance with respect to applicant's goods. The NEXIS evidence submitted by the Examining Attorney is similarly unpersuasive. The articles show that a "view" may be, for

example, "panoramic" or "direct" or "virtual." These words may variously describe the nature or type of image viewed on a display screen, or a viewing angle, position or perspective. However, this evidence provides no support for the examining attorney's contention that "flat" is similarly descriptive of some aspect of a view. There is no evidence that "flat" like "panoramic" or "virtual" describes a type of image or perspective. There is no evidence that "flat" like "direct" describes a viewing angle or position of the viewer. In fact, the word "flat" in the context of video display devices, at least on this record, describes the thinness and lack of curvature of the screen, not the image on the screen or the way one sees the screen. The view is not flat, the screen is flat. We also note that the examining attorney submitted no evidence showing that "view screen" or "flat view" describes a particular type of screen, e.g., a "flat view screen."

Finally, we would point out that while a person can "view" a flat screen, the record contains no evidence that the act of viewing the screen is descriptive of the screen.

Thus, we find, based on this record, that while FLAT VUE and FLAT VU may suggest applicant's goods, these terms do not directly and immediately describe any particular aspect of the goods.

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We have made our determination that the marks are not descriptive based on the record before us and keeping in mind that any doubt on the issue of mere descriptiveness is resolved in favor of applicant. A different record, perhaps presented in the context of an inter partes proceeding, may produce a different result.

As applicant has essentially conceded that FLAT is descriptive and has indicated that he is willing to disclaim this word, the following disclaimer will be entered in each application:

No claim is made to the exclusive right
to use "FLAT" apart from the mark as shown.

Decision: The refusal to register in each case is reversed. A disclaimer of "FLAT" is hereby entered in each application.