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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Lockheed Martin Corporation

Serial No. 76214245
Serial No. 76214246

Robert B. Berube of Marsh Fischmann & Breyfogle LLP for Lockheed Martin Corporation.

Michael J. Souders, Trademark Examining Attorney, Law Office 115 (Tomas Vlcek, Managing Attorney).

Before Hohein, Chapman and Rogers, Administrative Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

The two applications involved herein were filed on February 22, 2001, by Lockheed Martin Corporation (a Maryland corporation) to register on the Principal Register the marks ETOC (application Serial No. 76214245) and the mark shown below

eTOC

(application Serial No. 76214246[1]), both for goods identified, following amendment, as "computer software for use in acquiring, integrating, and disseminating information to individuals involved in situational response activities" in International Class 9. Applicant asserts, in each application, a bona fide intention to use the mark in commerce.

The Examining Attorney has refused registration in each application under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that applicant's mark (ETOC or eTOC), when used on applicant's goods, is merely descriptive thereof.

When the refusal to register was made final, applicant appealed in each application. Applicant and the Examining Attorney have filed briefs, but applicant did not request an oral hearing.

In view of the common questions of law and fact which are involved in these two applications, and in the interests of judicial economy, we have consolidated the applications for purposes of final decision. Thus, we have issued this single opinion.

[1] For the sake of simplicity, in this decision we will refer to applicant's special form mark as "eTOC."

The Examining Attorney contends that the terms ETOC and eTOC are merely descriptive of a central feature or purpose of applicant's computer programs in that "E" or "e" refers to "electronic" and "TOC" refers to "tactical operations center," making the letters ETOC and eTOC acronyms for "electronic tactical operations center"; that applicant's brochure (submitted by applicant in response to the Examining Attorney's request for information) indicates that the prospective purchasers for applicant's goods are United States military personnel, who are among the classes of people who will immediately understand that the letters ETOC and eTOC are acronyms for "electronic tactical operations center"; that consumers for applicant's computer software will not need to engage in a multi-stage reasoning process to determine the nature of applicant's goods; that the numerous other meanings of various combinations of the letters "etoc" suggested by applicant are not controlling when looking at the marks in the context of the identified goods; and that the combination of the letter "E" or "e" with the letters "TOC" does not create a unique, incongruous meaning as applied to applicant's goods.

In support of his position, the Examining Attorney submitted (i) dictionary definitions of "e" and "tactical operations center"; (ii) printouts from the

acronymfinder.com web site showing meanings of the initials "TOC";[2] (iii) printouts of numerous excerpted stories retrieved from the Nexis database; and (iv) printouts of pages from various web sites (including applicant's web site).

The dictionary definitions of "e" are as follows:

> e- (Electronic-) The 'e' prefix may be attached to anything that has moved from paper to its electronic alternative, such as e-mail, e-cash, etc. The Computer Glossary The Complete Illustrated Dictionary (Eighth Edition 1998); and
>
> e- adj. An abbreviation of 'electronic' that generally indicate[s] information or functions involving the Internet. The Official Internet Dictionary (1998).

The military dictionary definition of "tactical operations center" is as follows:

> (DOD) A physical groupment of those elements of a general and special staff concerned with the current tactical operations and the tactical support thereof. Also called TOC. See also command post.
> www.dtic.mil.

Some examples of the excerpted stories retrieved from the Nexis database include the following:

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[2] The www.acronymfinder.com web site shows that the Examining Attorney's search of "toc" "returned 30 hits (most common definition(s) listed first)" and the fourth meaning is "Tactical Operations Center."

Headline: US Army Orders IBCT TOCs
The US Army Aviation and Missile Command has awarded TRW a US$14 million contract to supply tactical operations centers (TOCs) for use by the First and Second Brigades of the Initial Brigade Combat Team (IBCT). "International Defense Review," February 1, 2001;

Headline: ARMY ISR Riflemen Get the Picture
…Today's rifleman has access to information the extent of which General Patton could only dream. Individual soldiers can receive JSTARS and other info on a remote laptop terminal or at the truck-mounted Tactical Operations Center (TOC). The TOC is available down to platoon level when "jumping" from one location to another. "Journal of Electronic Defense," February 1, 2001;

Headline: Computers in Combat: Double-Edged Swords
…If a battleground boundary changes, the brigade tactical operations center (TOC) can update it on the computer screen. The data flow down to the battalion and up to the division. "National Defense," June 1, 2001;

Headline: Concurrent Technologies Corp.
Concurrent Technologies Corp. (Johnstown, PA) received a $3.7-million installment of a $33.4-million contract for the development and prettying of the Next-Generation Command and Control System (NGCCS) Tactical Operation Center (TOC) 3-D. "Journal of Electronic Defense," October 1, 2000;

Headline: The War in Indochina
…Col. Pham Van Phuoc, Long Khanh Province chief, stood in his TOC (tactical operations center) in Xuan Loc-backed by the bright, precise

acetate overlay maps that U.S. officers are so fond of. "Newsweek," April 28, 1975;

Headline: Battalion Commander: If There's a World War III, Wess Clark May Be Your Man at the Front
…When Wess Clark arrived at the downrange tactical operation center (TOC) for the second week of Blackhawk Blizzard, his executive officer told him … . "The Washington Post," May 10, 1981;

Headline: The Point of the Spear
…The Americans also went equipped for night fighting. Each battalion's Tactical Operations Center (TOC) moved forward in four 577 command trucks… . "U.S. News & World report," March 11, 1991;

Headline: Motorola to design Army battlefield command system
Motorola Systems Solutions Group has won a $44.8 million contract from the U.S. Army to design and integrate 64 Tactical Operations Centers (TOCs) over the next five years, the company announced.
The TOCs are mobile battlefield command and control centers formed by loading data processing equipment and digital communications onto tactical vehicles. "Aerospace Daily," July 23, 1999;

Headline: Force XXI makes impact on ADA
…Vane said during the past year, he has developed his critical information requirements, which were posted in the operations center. Also he has met with contractors who are building the tactical operations centers of the future, particularly the future Brigade TOCs. "BMD Monitor," December 12, 1997;

Headline: The Cutting Edge…At a Military ‘Boot Camp’--Complete With Actual M-1 Tanks--Software Maker Novalogic Shows Just What It’s Simulating
…A couple of tanks are parked near the TOC (tactical operations center), and with no less than four Army lawyers looking on, we’re allowed to climb aboard and poke around. “Los Angeles Times,” July 28, 1997;

Headline: Army to Complete TMD Investment Strategy by Fall. Theater Missile Defense Advanced Warfighting Experiment
The special operations forces were inserted behind enemy lines by helicopters or parachutes and given target areas to reconnoiter. Using satellite communications radios, SOF called in GPS coordinates of targets to commanders in tactical operations centers (TOC). “Defense Daily,” June 6, 1995;

Headline: Lockheed Wins $689-Million Theater Defense Contract
…Under the four-year demonstration/validation contract, Lockheed will build two truck-mounted launchers, two tactical operations center (TOC) shelters, and 20 missiles to be used for flight testing at White Sands Missile Range. “Aviation Week & Space Technology,” September 21, 1992; and

Headline: Qatar Post to Become Operational
…Roughly around 1,000 CENTCOM personnel will operate its forward-deployed headquarters using a mobile command post called the Tactical Operations Center, or TOC, a high-tech communications post that was flown into Qatar in December for Operation

> Internal Look, a planning exercise.
> "White House Weekly," February 4, 2003.

Some examples of the third-party web sites include the following:

> The IBCT Tactical Operations Center
> …When it comes to the point where the rubber meets the road, however, the actual tactical operations center (TOC) is where situational awareness is converted into combat command decisions.
> www.armymag.nsf;
>
> Tactical Operations Center (TOC)
> The Tactical Operations Center (TOC) is "Mission Control" for MSI's management and support services.
> www.marsys.com; and
>
> Defense Department Retools for a Net-Centric Future
> …Now battle supremacy rests with the computer enabled. …One such project, the Electronic Tactical Operations center (eTOC), aims to give the military secure, Internet… .
> www.washingtontechnology.com.

In addition, the Examining Attorney relies on applicant's brochure and applicant's web site, respectively, which include uses describing the features of applicant's product such as the following:

> "The U.S. Army is committed to transforming the way it operates. … Lockheed Martin's solution to this challenging command and control (C^2) need is eTOC -- the Electronic Tactical Operations Center. … eTOC is a scalable solution that takes advantage of the Internet and web-enabling technologies

> to provide the warfighter relevant, decisive data.”; and
>
> “Lockheed Martin Wires Warfighters to the Web With Electronic Tactical Operations Center Initiative … Lockheed Martin is working to put a dot.com face on the modern battlefield with its Electronic Tactical Operations Center (eTOC) research and development effort. … eTOC integrates data from several disparate Army C2 systems to deliver mission-critical information… The eTOC web page displays an interactive graphical map of battlefield geography and forces… The web-based nature of eTOC is key to the systems advanced adaptability, performance and ease of use… .”

Applicant urges reversal of the refusal to register on the basis that the Examining Attorney improperly dissected the marks rather than considering each mark as a whole in determining descriptiveness; that applicant’s marks do not include any hyphen after the “E/e” or any periods after the letters “T,” “O” or “C”; that the mark is suggestive because it requires imagination and mature thought to reach a conclusion about the goods, and, specifically, that consumers must engage in a 6-stage reasoning process to understand the meaning of the letters; that the acronym “TOC” refers to many things other than “tactical operations center,” such as “Table of Contents” and “Total Organic Carbon”; that “the common [dictionary] definitions [of the four involved words] yield a prohibitively large number of

alternative combinative meanings, which, in and of itself, undermines the conclusion [that the marks] ‘immediately’ convey an attribute of Applicant’s computer software” (brief, p. 7); that the letters may be understood by consumers in any order, such as “ET” and “OC,” or “ETO” and “C”; that the only meaning for “etoc” in the www.acronymfinder.com web site is “estimated time of completion”; that the combination of the “arguably ubiquitous ‘E’ with another arguably descriptive component into a single composite mark does not necessarily render the mark as a whole descriptive” (brief, pp. 7-8) as is particularly shown by nine third-party registrations of marks including “e” and other letters or words, all registered subsequent to the case of In re Styleclick.com Inc., 57 USPQ2d 1445 (TTAB 2000); that the “Examining Attorney has provided evidence of an acronym relationship between ‘TOC’ and the phrase ‘tactical operations center,” but he has not provided evidence that ‘ETOC/eTOC’ is an acronym for “electronic tactical operations center” (brief, p. 9), and, in fact, there is evidence of “ETOC/eTOC” used by applicant in promoting its goods or by others as a source indicator of applicant’s computer software; that the Examining Attorney has not established, as required by the case of Modern Optics, Inc. v. Univis Lens Co., 234 F.2d

504, 110 USPQ 293 (CCPA 1956), that the letters ETOC/eTOC are "accepted as substantially synonymous" with "electronic tactical operations center"; and that the marks are at most, suggestive, not merely descriptive, of applicant's computer software.

Applicant submitted for the record the following: (i) a photocopy of its promotional brochure; (ii) printouts from its searches of various combinations of the letters comprising "etoc" on the www.acronymfinder.com web site; (iii) printouts from its search of the letters "asic" on the www.acronymfinder.com web site; (iv) printouts from the USPTO's Trademark Electronic Search System (TESS) of nine third-party registrations; and (v) photocopies of Webster's II New College Dictionary (1999) definitions of the words "electronic," "tactical," "operation" and "center."[3]

The test for determining whether a mark is merely descriptive is whether the term or phrase 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 Nett Designs

[3] Applicant submitted the dictionary definitions for the first time with its brief on appeal and requested that the Board take judicial notice thereof. Applicant's request for judicial notice is granted. See TBMP §704.12(a) (2d ed. June 2003).

Inc., 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001); In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215 (CCPA 1978); In re Eden Foods Inc. 24 USPQ2d 1757 (TTAB 1992); and In re Bright-Crest, Ltd., 204 USPQ 591 (TTAB 1979). Further, it is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the term or phrase is being used or is intended to 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).

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). Rather, the question is whether someone who knows what the goods or services are will understand the term or phrase to convey information about them. See In re Home Builders Association of Greenville, 18 USPQ2d 1313 (TTAB 1990).

As a general rule, initials are not considered merely descriptive unless they are so generally understood as

representing descriptive words as to be substantially synonymous therewith. See Modern Optics, Inc. v. Univis Lens Co., 234 F.2d 504, 110 USPQ 293 (CCPA 1956).

We find that this record establishes that "E" and/or "e" is an abbreviation for "electronic," and "toc" is an abbreviation for "tactical operations center"; that "electronic tactical operations center" is merely descriptive of applicant's "computer software for use in acquiring, integrating, and disseminating information to individuals involved in situational response activities"; and that the marks, ETOC and eTOC, would be recognized by the relevant consumers as no more than an abbreviation of the descriptive phrase.

The dictionary definitions of "e," as well as applicant's own uses of the letter in its brochure and on its web site, establish "e" as meaning "electronic" in the context of applicant's computer software.[4] That is, the

[4] We note that applicant made the argument in the application for the mark eTOC that "the presence of the small 'e' in the subject mark 'eTOC' makes a possible recognition that 'eTOC' is an acronym for 'electronic tactical operations center' less likely since many widely recognized acronyms (e.g., IBM, GE) often appear in capital letters." Applicant's request for reconsideration in Serial No. 76/214,246, filed November 27, 2002 (via certificate of mailing), p. 3. We disagree and in fact, it appears to us that the mark utilizing a small "e" is perhaps even more likely to evoke a prefix meaning "electronic." This does not mean that we have any doubt as to the meaning of the term ETOC as also being understood by the relevant purchasers as meaning "electronic tactical operations center." To the

evidence shows that this prefix indicates the electronic or Internet nature of the goods. See In re Styleclick.com Inc., 57 USPQ2d 1445 (TTAB 2001); and Continental Airlines Inc. v. United Air Lines Inc., 53 USPQ2d 1395 (TTAB 2000).

Further, the Nexis and Internet evidence demonstrates that the letters "TOC" are clearly an abbreviation for "tactical operations center" in the context of applicant's goods; and that "TOC" is merely (and highly) descriptive in relation to applicant's specific computer software. The overall letters "ETOC" and "eTOC" (in the special form shown above) would be immediately understood by the relevant consumers (e.g., U.S. military personnel) as conveying information about a significant feature or purpose of applicant's goods ("computer software for use in acquiring, integrating, and disseminating information to individuals involved in situational response activities"). A significant function or purpose of applicant's computer software, as identified, is to facilitate the acquisition, integration and dissemination of information by command and control personnel in a tactical operations center to the appropriate individuals involved in situational response

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contrary, we have no doubt that both of the involved marks would be readily understood by relevant purchasers as meaning "electronic tactical operations center."

activities. Clearly, applicant's computer software is associated with the electronic and Internet aspects of tactical operations centers. Moreover, on applicant's web site, it refers to "electronic tactical operations centers" in referring to its computer software. The relevant purchasers would clearly understand that applicant's software is intended to be used in connection with or to create electronic tactical operations centers. 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); In re Intelligent Instrumentation Inc., 40 USPQ2d 1792 (TTAB 1996); and In re Time Solutions, Inc., 33 USPQ2d 1156 (TTAB 1994).

Simply put, it would be readily apparent to the purchasers of the identified computer software (e.g., the U.S. Army and other branches of the armed services) that ETOC and eTOC consists of the prefix "E/e" followed by the well-known (at least to the military) abbreviation meaning "tactical operations center."

Applicant repeatedly makes the point that there are numerous associations possible between these letters and many common words, and that consumers will not immediately know the nature of the goods offered by applicant under either of the proposed marks. The other associations

between the letters “etoc” and other words are not relevant when considered in the context of applicant’s identified goods. That is to say, applicant’s argument that the letters could refer to any number of other unrelated matters, such as, “estimated time of completion” or “elapsed time optical character,” and several other meanings of various combinations of the letters “e,” “t,” “o” and “c,” is irrelevant in the context of applicant’s goods. See In re Acuson, 225 USPQ 790 (TTAB 1985); and In re Bright-Crest, supra.

The record is clear that the relevant purchasers would immediately understand the meaning of these letters as “electronic tactical operations center.” That is, the initials ETOC and eTOC have become generally understood by the relevant purchasers as being substantially, if not solely in this case, synonymous with the words “electronic tactical operations center.” In the Modern Optics case, supra, the Court found that the involved initials “CV” were neither the necessary nor the obvious descriptor of the involved product. In the applications now before this Board, quite the contrary is shown by the evidence relating to ETOC and eTOC.

Moreover, the combination of the letters “E/e” and “TOC” does not create an incongruous, ambiguous or unique

mark. Rather, applicant's designations, ETOC and eTOC, when used in connection with applicant's identified goods, immediately describe, without need of conjecture or speculation, the primary purpose, function or feature of applicant's goods, as discussed above. Nothing requires the exercise of imagination or mental processing or gathering of further information for purchasers of and prospective customers for applicant's services to readily perceive the merely descriptive significance of the letters ETOC and eTOC as pertaining to applicant's goods.

We are not persuaded that the relevant purchasers would go through the 6-stage mental exercise put forth by applicant. Rather, it is clear that these initials ETOC and eTOC are not vague and would be recognized by the purchasers of applicant's software, not as indicating source in applicant, but as meaning "electronic tactical operations center."

With respect to the nine third-party registrations, made of record by applicant, for marks including the letter "e" and other letters or words, and all but one covering goods identified as various specific computer software, some have different connotations (e.g., ESTUDIO (for "amplifiers and electronic effect pedals for use with guitars and musical instruments"), ETREEV, E STAT).

Although there are a few third-party registrations of marks combining the letter “e” with arguably descriptive terms (e.g., ETEE, E-CURRENCY), this evidence is not persuasive of a different result in this case. While uniform treatment under the Trademark Act is an administrative goal, the Board’s task in an ex parte appeal is to determine, based on the record before us, whether applicant’s mark is merely descriptive. As often noted by the Board, each case must decided on its own merits. We are not privy to the records of the third-party registration files and, moreover, the determination of registrability of those particular marks by the Trademark Examining Attorneys cannot control the merits in the case now before us. See In re Nett Designs Inc., supra, 56 USPQ2d at 1566 (“Even if some prior registrations had some characteristics similar to [applicant’s application], the PTO’s allowance of such prior registrations does not bind the Board or this court.”)

Finally, even if applicant was the first (and/or became the only) entity to use the terms “ETOC” and/or “eTOC” in relation to computer software for use in acquiring, integrating, and disseminating information to individuals involved in situational response activities, such is not dispositive where, as here, the term

unquestionably projects a merely (and highly) descriptive connotation. See In re Central Sprinkler Co., 49 USPQ2d 1194, 1199 (TTAB 1998); and In re Tekdyne Inc., 33 USPQ2d 1949, 1953 (TTAB 1994). We believe competitors would have a competitive need to use these initials. See 2 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, §11:18 (4th ed. 2001).

Suffice it to say that, based on the record before us, applicant's other arguments (e.g., applicant does not use a hyphen after the letter "E" or "e") do not persuade us of a different result herein.

Decision: The refusal to register on the Principal Register under Section 2(e)(1) of the Trademark Act in each application is affirmed.