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Oral Hearing:
September 28, 2004

Mailed: November 18, 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Kabushiki Kaisha Sony Computer Entertainment

Serial No. 76229696

George W. Lewis and Philip L. O'Neill of Jacobson Holman for
Kabushiki Kaisha Sony Computer Entertainment.

Kathleen M. Vanston, Trademark Examining Attorney, Law
Office 103 (Michael Hamilton, Managing Attorney).

Before Seeherman, Quinn and Walters, Administrative
Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

Kabushiki Kaisha Sony Computer Entertainment has filed
an application to register on the Principal Register the
mark VU COMMAND LINE for, *inter alia*, a variety of computer-
related products, including computer software, computer
programs, computer game programs and computer operating
programs, in International Classes 9 and 42.¹

¹ Serial No. 76229696, filed March 23, 2001, based on an allegation of a
bona fide intention to use the mark in commerce.

The application includes goods and services in International Classes 9, 16, 28, 35, 38, 41 and 42. The refusal pertains only to the goods and services listed below in International Classes 9 and 42, which is less than all of the classes and less than all of the goods and services in Classes 9 and 42.² The actual identification of goods and services is 52 pages long and we incorporate by reference the full identification of goods and services in the application, as amended.

Relevant goods in International Class 9:

Blank magnetic computer tapes; computer chips; computer game cartridges; computer game equipment containing memory devices, namely, disks; computer game programs; computer game software; computer game tapes; computer hardware; computer interface boards; computer memories; computer monitors; computer operating programs; computer operating systems; computer utility programs; interactive multimedia computer game programs; interactive video game programs; interactive video games of virtual reality comprised of computer hardware and software; video game cartridges; video game disks; video game software; video game tape cassettes; virtual reality game software; information microprogramming devices, namely, computer software for programming computer games; computer programs and computer application programs for designing and developing computer game programs; computer programs used for assembling, compiling and software development; computer game instruction manuals; coin-operated video games; stand alone video output game machines.

Relevant services in International Class 42:

Licensing of computer software; providing information regarding commercial sales of computer games and supply

² Even though the refusal pertains to only some of the goods and services in International Classes 9 and 42, all of the goods and services in those two classes are denied registration upon affirmance of the refusal as to some of the goods and services in those two classes. *In re Analog Devices Inc.*, 6 USPQ2d 1808 (TTAB 1988).

of computer games; providing information on sales of compact disks for video software, game software, business software, education software, multimedia software and simulation software; retail store and mail order catalog services featuring video games, DVD videos and software for video games; providing online computer games; electronic publishing services, namely, publication of books and journals of others in the field of video games; educational and instructional services, namely, conferences and seminars in the field of developing video game programs; educational and instructional services, namely, conferences and seminars in the field of computer graphics; maintenance of computer software; monitoring the computer systems of others and providing backup computer programs and facilities; rental of computers and software; updating of computer software; computer programming for others for the encryption of data for computer systems; computer programming for others for the securing of information for computer systems; providing information on computer games and computer game software appearing in magazines, manuals and books via a computer network; resulting services relating to developing computer game programs and other computer programs; providing temporary use of online nondownloadable software featuring databases in the field of computer games; providing an online computer database in the field of computer software; computer services, namely, providing online books and journals in the field of computer games.

The final refusal to register included a requirement to amend the identification of goods and services. Applicant filed a request for reconsideration that adopted the amendments proposed by the Examining Attorney; however, in her summary denial of the request for reconsideration, the Examining Attorney did not address applicant's amendments to the identification of goods and services. Neither the Examining Attorney nor applicant addressed this issue in their respective briefs. We can only conclude that the amended identification of goods and services is acceptable;

that the Examining Attorney has withdrawn the requirement for amendment to the identification; and that this issue is not before us in this appeal.

Additionally, we note that following the initial refusal to register on the ground of mere descriptiveness, applicant entered a disclaimer of "COMMAND LINE" apart from the mark as a whole. The Examining Attorney found that the disclaimer was unacceptable to obviate the descriptiveness refusal and she reiterated that the mark as a whole is merely descriptive. However, because the disclaimer entered by applicant has not been withdrawn, it remains of record.

Now before the Board is the appeal by applicant of the Trademark Examining Attorney's final refusal of registration, under Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1), on the ground that applicant's mark is merely descriptive in connection with its goods and services in International Classes 9 and 42.

Both applicant and the Examining Attorney have filed briefs and an oral hearing was held. We affirm the refusal to register.

The Examining Attorney contends that the mark is merely descriptive, stating that COMMAND LINE describes the area on the computer monitor screen that accepts typed commands in a command-driven system; that VU is an acronym meaning "vector unit," which is a processing unit designed to process

vectorized data, in other words, graphics data; that the individually descriptive terms VU and COMMAND LINE when combined do not create a mark with a separate non-descriptive meaning; and that the mark as a whole, VU COMMAND LINE, "describes computer programs and related hardware and programming and design services that use or contain command lines to direct vector unit processing ... [in other words] it essentially describes a tool used in the development of graphics for computer software." (Brief, p. 6.)

In support of her position, the Examining Attorney submitted excerpts of articles retrieved from the LEXIS/NEXIS database and excerpts from Internet websites. The following are several representative examples:

The setup disk that is created by most operating systems during installation should also have some **command line** programs on it, including *Attrib.exe*. [*PC Magazine*, June 5, 2001.]

command line: in a command-driven system, the area on screen that accepts typed-in commands. [*TechEncyclopedia*, www.techweb.com, June 13, 2001.]

"Development Techniques for Using Simulation to Remove Risk in Software/Hardware Integration":
"Cygnus Next Generation Playstation Simulation Environment":

This section describes the Next Generation Playstation Simulator and environment developed by Cygnus Solutions for SONY Computer Entertainment.

The new system is capable of drawing 66 million polygons per second, which places it among

the world's fastest rendering engines. These impressive results are due to the two Vector Processing Units (VPUs) shown in Figure 2. Each VPU contains a **Vector Unit (VU)**, and Vector Interface FIFO (VIF), and local instruction and data memory. A **VU** can issue one integer instruction and one vector instruction per cycle. ... The last stage in the graphics pipeline is the Graphics Processing Unit, or GPU. [www.redhat.com, June 15, 2001.]

"CodeWarrior for PlayStation®2"
Version 3.01

CodeWarrior for PlayStation 2 provides editing, compiling and debugging capabilities, and the solid debugging of GCC STABS and CodeWarrior DWARF formats. And it's the most versatile tool suite in game development today ... The tool suite is also designed to allow you to write code once and then port it to other game console products with minimal changes.

Whether you're a first-timer or a seasoned developer of PlayStation 2 titles, you'll appreciate the high performance and versatility of the latest version of CodeWarrior for PlayStation 2 tools.

Benefits:

- **VU** debugging tools now include a DMA debugger and a **VU** static code analyzer.

Features:

MultiCore Debugger:

- Modified DVP assembler pref panel for multiple preprocessors (including Sony's **vector unit command line** tool, VCL) *NEW*

- **VU** analyzer lets you look at cycle counts from **VU** instructions

CWComUtil:

- Command-line execution window
- [www.metrowerks.com, May 6, 2002.]

"Acronyms" by EDA Incorporated:

VU = vector units

[www.i-edainc.com/acronyms/v.]

"Vector graphics" - Vector graphics is the creation of digital images through a sequence of commands of mathematical statements that place lines and shapes in a given two-dimensional or three-dimensional space. ... In vector graphics, the file that results from a graphic artist's work is created and saved as a sequence of vector statements.

[www.whatis.com, April 25, 2002.]

"A New Series of Scalable Vector Parallel Computers Offering Highest Performance at Lowest Prices":

. . .
The Fujitsu Siemens VPP300 Series is designed to fulfill all requirements for a high-speed computer in a computer center as well as in a decentralized environment.

. . .
Architecture:

. . .
The **Vector Unit (VU)** is a powerful vector processor featuring large-capacity vector and mask registers and ultrahigh-speed vector pipes.
[www.fujitsu-siemens.de, April 25, 2002.]

Applicant describes its relevant goods and services to be identified by the mark VU COMMAND LINE as follows (Brief, p. 2):

[The mark is intended to identify] a video game software development tool ... It is intended for use by computer programmers for creating video games for Applicant's PLAYSTATION 2 (PS2), Applicant's popular and widely available home entertainment system.

Applicant's VU COMMAND LINE video game software development tool performs a variety of highly specialized tasks involved in writing programming for video games [for] Applicant's PLAYSTATION 2 home entertainment system. More specifically, it is a vector code optimize processor and is used by

programmers for editing, compiling and debugging vector code for the PS2 home entertainment system.

Applicant contends that the above-described video game software development tool "is neither a type of 'command line' nor a type of 'Vector Unit.'" (Brief, p. 2.)

Applicant makes the following argument in support of its position that the mark is not merely descriptive (Brief, p. 4-5):

Nothing in the words VU COMMAND LINE, separately or together, denotes or connotes a video game software development tool. Although the terms might imply to a computer professional some connection with graphics code, the actual meaning of the mark is vague and unclear. The mark does not describe what Applicant's product does or how it works.

Applicant argues that, while VU and COMMAND LINE may have descriptive elements, the composite mark, VU COMMAND LINE, is arbitrary as applied to applicant's goods; that a "command line" is "a non-specific feature of all kinds of software[,] ... has no application to the particular performance or results of the Applicant's video game development tool[,] ... does not refer to any intrinsic quality or feature of the Applicant's goods[,] ... [and] neither modifies nor is modified by VU" (Brief, p. 6)

The test for determining whether a mark is merely descriptive is whether it immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of the product or service in connection

with which it is used, or intended to be used. *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986); *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). It is not necessary, in order to find that a mark is merely descriptive, that the mark describe each feature of the goods or services, only that it describe a single, significant quality, feature, etc. *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985). 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 mark is used, and the impact that it is likely to make on the average purchaser of such goods or services. *In re Recovery*, 196 USPQ 830 (TTAB 1977).

As a further elaboration on these propositions, the mere descriptiveness of a mark is not determined from the standpoint of all consumers, but rather is determined from the standpoint of the relevant purchasing public of the goods and/or services for which registration is sought. *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 19 USPQ 1551, 1552-53 (Fed. Cir. 1991); and *In re Montrachet S.A.*, 878 F.2d 375, 11 USPQ2d 1393, 1394 (Fed. Cir. 1989).

The evidence establishes, and applicant does not dispute, that "VU" is a common acronym for "vector unit"

which is part of the hardware/software systems used for creating computer graphics and video game graphics; and that "command line" is a commonly used term defining the area on a computer screen that accepts typed-in commands in a command-driven system.

Applicant may describe its goods as a software development tool, which is certainly encompassed by the identification of goods in this intent-to-use application; however, we must consider the descriptiveness of the mark in the context of the entire identification of goods and services, which includes an extensive list of goods and services, all very broadly defined. The evidence establishes that each of the individual components of applicant's mark, "VU" and "COMMAND LINE," is descriptive, as described above, of a significant feature of, at least, the following identified goods in International Class 9:

Computer operating programs; computer operating systems; information microprogramming devices, namely, computer software for programming computer games; computer programs and computer application programs for designing and developing computer game programs; and computer programs used for assembling, compiling and software development.

Each term is also descriptive of a significant feature of, at least, the following identified services in International Class 42:

resulting services relating to developing computer game programs and other computer programs; providing temporary use of online nondownloadable software featuring databases in the field of

computer games; providing an online computer database in the field of computer software.

Additionally, each of the merely descriptive individual components of the composite mark retain their meaning, *i.e.*, VU is a common acronym for "vector unit," a processing unit for graphics data, and, as applicant acknowledges with its disclaimer, COMMAND LINE merely describes the area on the computer monitor screen that accepts typed commands in a command-driven system. While applicant has argued that the mark as a whole has a different or unique non-descriptive connotation, it has not indicated what that connotation is, and the Board finds that no unique or different non-descriptive meaning is created by the combination of these two merely descriptive terms.

In conclusion, the mark, VU COMMAND LINE, is merely descriptive in connection with applicant's goods and services in International Classes 9 and 42, because it immediately describes, without conjecture or speculation, two significant features of applicant's goods and services as described above. Nothing requires the exercise of imagination, cogitation, mental processing or gathering of further information in order for purchasers of and prospective customers for applicant's goods and services to readily perceive the merely descriptive significance of the term VU COMMAND LINE as it pertains to applicant's goods and services in International Classes 9 and 42.

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Decision: The refusal to register under Section 2(e)(1) of the Trademark Act is affirmed as to the goods and services in International Classes 9 and 42. The mark in this application shall proceed to publication, in due course, in the remaining classes.