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18 FEB 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Stair Systems, Inc.

Serial No. 76352749

Stephen P. McNamara for Stair Systems, Inc.

John C. Tingley, Trademark Examining Attorney, Law Office
106 (Mary I. Sparrow, Managing Attorney).

Before Seeherman, Hanak and Hohein, Administrative
Trademark Judges.

Opinion by Hanak, Administrative Trademark Judge.

Stair Systems, Inc. (applicant) seeks to register in
typed drawing form VIRTUAL REAL TIME for "computer software
and computer workstations for display and review of medical
diagnostic images." The intent-to-use application was
filed on December 21, 2001. During the examination
process, applicant disclaimed the exclusive right to use
the words "real time" apart from the mark in its entirety.

Citing 2(e)(1) of the Trademark Act, the Examining
Attorney has refused registration on the basis that
applicant's mark is merely descriptive of applicant's
goods. When the refusal to register was made final,

applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request a hearing.

A mark is merely descriptive pursuant to Section 2(e)(1) of the Trademark Act if it immediately conveys information about a significant quality or characteristic of the relevant goods or services. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); In re Bed & Breakfast Registry, 791 F.2d 157, 229 USPQ 818, 819 (Fed. Cir. 1986). Moreover, a mark need only describe one significant quality or characteristic of the relevant goods or services in order to be held merely descriptive. In re Gyulay, 3 USPQ2d at 1010.

At page 1 of its brief, applicant elaborates on the nature of its product by stating that it is "a proprietary image capture and display system for use by radiologists and medical technicians to capture, store and review medical images captured in CAT scan, MRI and other diagnostic imaging procedures."

At page 2 of its brief applicant concedes that "the term 'real time' is a common term meaning 'computer systems having immediate processing of an input.' The term is associated with an immediate processing output following an input."

Continuing at page 3 of its brief, applicant "submits that it is commonly understood in connection with software and computers that 'virtual' means an electronic simulation of some aspect of a real-world object or activity."

Based upon applicant's own statements, we find that the mark VIRTUAL REAL TIME is merely descriptive of applicant's "computer software and computer workstations for display and review of medical diagnostic images." Applicant's own product literature makes it clear that the medical diagnostic images are displayed in "real time," that is to say, immediately. Moreover, applicant's medical diagnostic images are indeed electronic simulations (i.e. virtual simulations).

At page 3 of its brief, applicant argues that "VIRTUAL REAL TIME is an oxymoron - it communicates the idea that something is real time, but at the same time it is only a virtual version of real time. These self-contradictory ideas make the mark suggestive, not 'merely descriptive.'" We fail to comprehend applicant's reasoning. A computer workstation can both provide real time (immediate) data, and at the same time provide this data in an electronic simulation form, that is to say, in virtual form.

At page 4 of its brief, applicant cites the case of In re Colonial Stores, Inc., 394 F.2d 549, 157 USPQ 382 (CCPA

1968) where the Court held that the mark SUGAR & SPICE for bakery products was not merely descriptive because it had a double meaning in that it conveyed not only certain of the ingredients in the bakery products, but it also brought to mind a famous children's nursery rhyme. In stark contrast, applicant's mark VIRTUAL REAL TIME has no such double meaning.

Moreover, it should be noted that the Examining Attorney has made of record approximately 100 newspaper and magazine stories where the entire term "virtual real time" appears. For example, an article appearing in the May 28, 1999 edition of the Los Angeles Times describes computers "that supply virtual real time information on customers' accounts." In other words, such computers provide the account information immediately (real time) in an electronic format (virtual).

Another article appearing in the November 24, 2001 edition of the Milwaukee Journal Sentinel describes a "computer-based voice-recognition system." This system is designed "for people who have difficulty hearing and can be helped by reading the text as it is being typed in virtual real time." In other words, this computer system can immediately recognize words as they are being spoken and place them in an electronic visual format.

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Decision: The refusal to register is affirmed.