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**UNITED STATES PATENT AND TRADEMARK OFFICE**

**Trademark Trial and Appeal Board**

In re Global Mentoring Solutions, Inc.

Serial No. 76487221

Sherry H. Flax of Saul Ewing LLP for Global Mentoring Solutions, Inc.

Brendan D. McCauley, Trademark Examining Attorney, Law Office 114 (K. Margaret Le, Managing Attorney).

Before Quinn, Hohein and Hairston, Administrative Trademark Judges.

Opinion by Hohein, Administrative Trademark Judge:

Global Mentoring Solutions, Inc. has filed an application to register the term "REAL TIME LAB" for "training services in the field of computer applications and technical training for businesses via the Internet."<sup>1</sup>

Registration has been finally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that, when used in connection with applicant's services, the term "REAL TIME LAB" is merely descriptive thereof.

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<sup>1</sup> Ser. No. 76487221, filed on February 4, 2003, which is based on an allegation of a date of first use anywhere and in commerce of January 20, 2003; the words "REAL TIME" are disclaimed.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

It is well settled that a term is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it forthwith conveys information concerning any significant ingredient, quality, characteristic, feature, function, purpose, subject matter or use of the goods or services. See, e.g., *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or idea about them. Moreover, whether a term is merely descriptive is determined not in the abstract but in relation to the goods or services for which registration is sought, the context in which it is being used or is intended to be used on or in connection with those goods or services and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of such use. See *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Thus, "[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).

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Applicant contends in its brief that the term "REAL TIME LAB" has not been shown to be merely descriptive because, among other things, the Examining Attorney "has provided no evidence that a consumer who encounters the mark ... will immediately understand that Applicant's services are 'training services in the field of computer applications and technical training for businesses via the Internet.'" Applicant urges, instead, that "REAL TIME LAB is an inventive mark that creates a unique commercial impression that indicates the source of the services, not their nature" and that "consumers seeing or hearing the mark ... could not determine that Applicant provides services in the field of computer and technical applications for businesses." While conceding, in its brief, that "the term LAB is a shortened form of 'laboratory,'" applicant asserts that such term "is not descriptive of educational or training services" and, hence, that as a whole the term "REAL TIME LAB" is not merely descriptive of its services.

Applicant further contends that "LAB is used without disclaimer in dozens of marks on the Principal Register in connection with educational services." In particular, applicant points to copies it has furnished of several third-party registrations for such marks as constituting evidence that the Patent & Trademark Office ("PTO") "does not consider the term LAB to be merely descriptive in connection with educational services." However, as set forth in its brief, applicant specifically mentions only the registration for the mark "E-LAB ... ([for] on-line computer services for use by elementary and

middle school students to interact with text and graphic applications in a variety of educational subjects)" even though, because the mark is hyphenated, it is pointed out that Office practice would not require a disclaimer of "LAB" and hence such registration is simply not probative.<sup>2</sup> Moreover, of the four other registrations noted by applicant, which are for the marks and services set forth below, only one lists "educational services" which clearly are a type of "training services":

(i) the mark "MUSIC LAB" ("MUSIC" disclaimed) for "retail store services featuring musical equipment and accessories" in International Class 35; "duplication of audio tapes and compact discs for others" in International Class 40; and "providing facilities for recreation activity, namely, rehearsal space for musicians; providing sound recording studio facilities for others; rental of tape/audio recording equipment; and rental of musical instruments" in International Class 41;

(ii) the mark "GOLF LAB" ("GOLF" disclaimed) for "instruction and training in the field of golf" in International Class 41;

(iii) the mark "RADIO LAB" ("RADIO" disclaimed) for "entertainment services in the nature of a series of radio programs featuring documentaries, commentaries and

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<sup>2</sup> See TMEP Section 1213.05(a)(ii) (4th ed. 2005), which provides in relevant part that:

When a compound word is formed by hyphenating two words or terms, one of which would be unregistrable alone, no disclaimer is necessary. *"X" Laboratories, Inc. v. Odorite Sanitation Service of Baltimore, Inc.*, 106 USPQ 327, 329 (Comm'r Pats. 1955) (requirement for a disclaimer of "TIRE" deemed unnecessary in application to register TIRE-X for a tire cleaner).

In addition, such registration lacks probative value inasmuch as it is unclear whether the services recited therein are in fact a kind of "training services."

special features" in International Class 41;  
and

(iv) the mark "SCUBA LAB" ("SCUBA" disclaimed) for "providing on-line magazines, books, newsletters, sections and columns in the field of outdoor recreational events, activities and products" in International Class 41.

Similarly, applicant asserts that, as shown by the copies of various other third-party registrations which it has submitted, "the terms 'REAL TIME' are used in dozens of registered marks in connection with providing business enhancing services to a defined group of consumers." Such registrations, applicant insists, "are evidence that the PTO does not consider use of the terms REAL TIME in combination with another descriptive term as merely descriptive of a function or feature of the relevant goods or services." As listed in its brief, the following are examples of "word marks on the Principal Register that include the terms REAL TIME with another term":

REAL WORLD, REAL TIME, REAL I.T. ... ([for] providing an Internet website with information, news and advice about and for the information technology community); REALTIME COACHING ... ([for] seminars and workshops in the field of leadership training); REAL TIME INNOVATIONS ... ([for] computer software for use in real-time system development); REALTIMEPUBLISHERS.COM ... ([for] electronic publishing, namely, publication of computer-related reference books on websites of others); REALTIMESITES ... ([for] information network services, namely, designing and implementing web sites for others, graphic design, database consulting, computer security consulting and hosting web sites of others on a computer server for a global computer network); REAL TIME KNOWLEDGE ... ([for] providing information and interpretation and analysis of information in the healthcare field);

REALTIME EVENTS ... ([for, *inter alia*,] educational services, namely, providing educators and school-aged children interactive activities in the field of world wide web navigation and exploration pertaining to current events via subscriptions to websites that stimulate interaction between student, teacher and a global computer network); REAL-TIME WORKSHOP ... ([for] computer software for real-time control and simulation); REAL TIME BANKING ONLINE ... ([for] banking services); REAL DATA. REAL TIME. ... ([for] medical and dental insurance administration services, namely on-line verification of benefits, patient eligibility and tracking of benefits utilization by the insured, submissions of claims by the provider and adjudications); REAL TIME REMOTE ... ([for] teleconferencing services, namely, a marketing process that enables people and groups in remote locations to meet via on-line computer networks and telephone technology supported by professional facilitators); [and] REAL-TIME STUDIO ... ([for] computer software for use by developers in designing and documenting hardware/software applications in the field of real-time systems).

The Examining Attorney, on the other hand, asserts in his brief that, "[w]hen viewed in relation to the applicant's services, the applicant's mark [merely] describes a characteristic or feature of the applicant's services." In this regard, the Examining Attorney notes with respect to the term "real time" that he has made of record a definition of such term from The American Heritage Dictionary of the English Language (3rd ed. 1992) as meaning "the actual time in which a physical process under computer study or control occurs." In view thereof, the Examining Attorney maintains that, "[i]n relation to the applicant's training services provided via the Internet, the wording indicates that the applicant's training services take

place in actual time in which a physical process under computer study or control occurs, namely, the training takes place in actual time over the Internet."

As further support therefor, the Examining Attorney notes that he has made of record, with his denial of applicant's request for reconsideration of the final refusal,<sup>3</sup> various "excerpted articles in which the wording REAL TIME was used to describe training services." Relevant examples thereof include the following (emphasis added):

"Barco ... has created a new product that will allow pilots-in-training to fly and battle against one another in **real time** at a level of realistic immersion not possible with current technology ...." -- Dayton Daily News (Ohio), August 23, 2004;

"[A] chat box is included on the screen for employees to e-mail questions to the lecturer in **real time**." -- Dallas Morning News, May 25, 2003 (article headlined: "Accounting firm offers online school; Web-based learning helps employees expand skills while companies save time and money");

"The company specializes in beaming interactive 'virtual classrooms' to clients, enabling instructors to teach material in **real-time** to students at schools that could be hundreds of miles apart." -- York Dispatch (Pennsylvania), February 18, 2002;

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<sup>3</sup> Curiously, it is noted that the electronic file record for this application contains two separate denials of applicant's request for reconsideration, although neither bears a mailing date. Specifically, one of the denials, which begins with "Applicant is requesting reconsideration of a final refusal dated 12/30/03," is two pages in length and, while it refers to both "attached definitions provided in previous office actions" and "attached web pages," does not appear to contain any attachments. The other such denial, which starts with "Applicant is requesting reconsideration of a final refusal dated December 30, 2003," is three pages in length and contains, as attachments, dictionary definitions, excerpted articles and web pages. For purposes of this appeal, we have considered this latter document to be the operative denial of reconsideration.

"Availability of Web-based training courses: As more and more training becomes available via the Web, location becomes unimportant. Additionally, employees can take part in **real-time** chats with classmates and instructors over the Web at their leisure" -- Info World, December 11, 2000;

"What the company does is provide a variety of ... information, learning and e-commerce. It also offers services to companies and organizations with **real-time**, interactive online conferences, training, seminars, media outreach and analyst and employee meetings." -- Sunday Oregonian, November 12, 2000;

"A virtual training service being launched today by Hewlett-Packard will help e-workers and e-students enjoy e-classes taught by e-instructors in **real time** over the Internet." -- USA TODAY, December 13, 1999;

"For example, webcasting--a system where training and seminars are conducted in **real time** using the Internet and software--is becoming increasingly popular ...." -- Florida Times-Union (Jacksonville, Florida), August 19, 1999;

"Still, how do companies choose among the thousands of training options that exist, from instructor-led, **real-time** virtual classrooms to learning games ...." -- InternetWeek, April 5, 1999 (article headlined: "Trainers Say Self-Paced Web Courses Work Best");

"The tutorials themselves are multimedia presentations featuring videos, oral and written explanations, and other techniques designed to guide the employee through increasingly sophisticated levels of legal information. Interactive questions and answers can be used to monitor employee participation and comprehension. And since the training itself is on a "**real time**" basis, a sales manager ... can use the computer to get updated 'dos and don'ts' while en route." -- Legal Times, November 23, 1998; and

"Centra has a unique opportunity to capture part of the explosive training technology market with products that create **real-time** virtual classroom environments in ways that chat rooms, video conferencing, computer-based training and other component technologies can't do alone." -- Boston Globe, September 15, 1996.

The above excerpts serve to establish, according to the Examining Attorney, that "in relation to the applicant's services[,] the term REAL TIME is descriptive of a characteristic or feature of the training services, namely, the training services via the Internet are provided in real time." The Examining Attorney also observes that, in light of applicant's disclaimer of the words "REAL TIME," "the applicant has conceded that this wording is descriptive in relation to the applicant's services" and thus, "by the applicant's own admission, this portion of the mark is descriptive."

Utilizing a similar approach, the Examining Attorney argues with respect to the term "lab" that "[i]n relation to the applicant's services, the term LAB describes the academic period devoted to work or study." In particular, the Examining Attorney notes that he has made of record definitions from The American Heritage Dictionary of the English Language (3rd ed. 1992) of the term "lab" as signifying "[a] laboratory," which in turn is defined as meaning, *inter alia*, "**1. a.** A room or building equipped for scientific experimentation or research. **b.** An academic period devoted to work or study in such a place" and "**3.** A place for practice, observation or testing." The Examining Attorney maintains, in view thereof, that "[i]n relation to the

applicant's services, the term indicates a characteristic or feature of when the training services occur" and that, [i]n particular, the training services are in the nature of a training lab in the field of computer applications and technical training for business via the Internet." He also points out that, as additional evidence of the mere descriptiveness of such term, he has made of record five third-party registrations "in which the term LAB was disclaimed for educational services". Such registrations are as follows:

(i) Reg. No. 2,543,232, issued on February 26, 2002, for the mark "FRONTIER LAB" ("LAB" disclaimed) for "educational and entertainment services, namely, conducting interactive exhibitions, conferences, seminars, classes and workshops in the field of science and technology";

(ii) Reg. No. 2,524,136, issued on January 1, 2002, for the mark "THE LENDING LAB" and design ("THE LENDING LAB" disclaimed), for "educational services, namely, conducting meetings, seminars and workshops and providing an educational research and resource center, all in the field of credit union management for the purpose of assisting credit unions in their lending efforts and sales of lending related insurance products."

(iii) Reg. No. 2,426,664, issued on February 6, 2001, for the mark "SUCCESS LAB" ("LAB" disclaimed) for "providing educational services, namely, supplemental learning programs directed to students from elementary to high-school grade levels";

(iv) Reg. No. 2,384,628, issued on September 12, 2000, for the mark "BERKELEY LAB" and design ("LAB" disclaimed) for, *inter alia*, "educational services, namely, conducting seminars, conferences, [and] workshops in the field of ... computing sciences ... and events in the field of scientific research"; and

(v) Reg. No. 1,412,652, issued on October 7, 1986, for the mark "THE LEARNING LAB" and design ("THE LEARNING LAB" disclaimed) for "educational services--namely, tutoring services, and teaching students learning and motivational skills."

The Examining Attorney, furthermore, observes that he has made of record "excerpted articles [which] show use of the term LAB in connection with computers and training, instructional or educational services." Representative samples thereof are as follows (emphasis added):

"Church envisioned a vast corporate training center with 600 computer stations, which would be used by large corporations to train employees and executives. 'We don't know of anyone with over 40 computer **labs**' used for corporate training, said Church." -- Saint Paul Pioneer Press (Minnesota), March 22, 2004;

"The area--called the Teachers Training Center--will feature computer **labs**, meeting rooms and other technological features that provide a place for employees to hone their skills." -- Fort Worth Star Telegram (Texas), January 18, 2004;

"The facility will allow expansion of the computer **lab** for the computer training program . . . ." -- Commercial Appeal (Memphis, Tennessee), December 4, 2003;

"Training rooms in the building include a computer **lab** . . . ." -- Augusta Chronicle (Georgia), September 4, 2003;

"A computer **lab** will offer advanced software training for workers who need special skills." -- News & Record (Greensboro, North Carolina), August 22, 2003;

"... a computer **lab** for employees to access training on the Web . . . ." -- Atlanta Journal-Constitution, June 8, 2003;

"The casino and resort ... has a computer **lab** that it uses for job training." -- Sun Herald (Biloxi, Mississippi), October 23, 2001; and

"The center's two computer **labs** can be used for training a company's work force ...." -- Hattiesburg American (Mississippi), July 8, 2001.

The Examining Attorney maintains, in view thereof, that "[s]ince the applicant's services are provided via the Internet and are in the field of computer applications, the term LAB used in relation to the services immediately describes the nature of the services relating to computer lab instruction or the academic period devoted to the training via the Internet."

While conceding in his brief that "[a] mark which combines descriptive terms may be registrable if the composite creates a unitary mark with a separate, nondescriptive meaning," the Examining Attorney concludes, in light of the above evidence of the mere descriptiveness of the terms "real time" and "lab" in relation to applicant's training services, that:

When viewed together, the wording ... REAL TIME LAB indicates the exact nature of the applicant's services as training services in the field of computer applications and technical training for business which takes place over the Internet. Thus, the applicant's mark is merely a combination of descriptive terms which do not create a unitary mark with a separate, nondescriptive meaning.

As support for such conclusion, the Examining Attorney asserts that, with his denial of applicant's request for reconsideration, he made of record information "excerpted [from] web pages from the examining attorney's search on the Internet" which "directly

addresses the use of the entire wording in the mark to indicate the descriptive nature of the wording in relation [to] the services." Such information specifically includes the following (emphasis added):

"Thompson NETg ... announced today the introduction of Toolwire LiveLabs OnDemand, which provides **real-time lab** exercises for the latest Cisco and Microsoft Networking environments." -- [www.netg.com/PressRoom/PressReleases/print.aspx?pressid=110](http://www.netg.com/PressRoom/PressReleases/print.aspx?pressid=110);

"This comprehensive course provides an in depth look into the factors needed to configure and setup Local and Wide Area Networks. The institute is the only facility that offers this extensive hands on experience in a **real time lab**. Arthur McNeil's lab is fully equipped with network equipment, hardware and software." -- [www.training-classes.com/course\\_hierarchy/courses/479 Network .php](http://www.training-classes.com/course_hierarchy/courses/479_Network_.php);

"If you or your customers cannot make it to one of our labs either in Atlanta or Minneapolis, Arrow provides a convenient cost-effective solution--LabBridgeTM. Our online services provide web conferencing capabilities with data and audio integrated in a highly interactive, visual environment. Host a single person or a group of people in a **real-time lab** presentation with tools that are scalable, reliable and secure through a standard Internet browser." -- [www.arrownacp.com/supportnet/products/Storage.htm](http://www.arrownacp.com/supportnet/products/Storage.htm);

"LiveLabs OnDemand ... are considered the best **real-time lab** exercises in the industry today. No where else on the Web can IT specialists get unscheduled, live practical hands-on experience with real software and networking environments without owning their own equipment, or risking a real production system" -- [www.toolwire.com/llod.html](http://www.toolwire.com/llod.html); and

"In the Fall of 1995 the department got an Instrumentation and Laboratory Improvement grant from the National Science Foundation [sic]. The funding has provided resources to

upgrade and re-organize the offerings of the hardware-oriented classes. In the **real-time laboratory** we have both DOS/Windows (2 stations) and UNIX (2 Sun and 2 IBM workstations) hardware platforms connected on the LAN with the external hardware ... and real-time development software." -- [www.google.com/search?hl=-en&lr=&ie=UTF-8&q=2real+time+laboratory2-+classes](http://www.google.com/search?hl=-en&lr=&ie=UTF-8&q=2real+time+laboratory2-+classes).

Moreover, as the Examining Attorney also asserts, "the website snap shots of the Google search of 'real time lab' and 'real time laboratory' provided as evidence in the [denial of the] request for reconsideration further support the descriptive nature of the entire wording in the mark in relation to the services provided." The most pertinent examples thereof are set forth below (emphasis added):

"ERAU **Real-Time Lab** .... Welcome to Embry-Riddle. Real-Time Courses Outline Plan Executive Summary Final Report ...." -- [www.rt.db.erau.edu/](http://www.rt.db.erau.edu/);

"Learning Real-Time Programming concepts through VxWorks .... A dedicated **real-time laboratory** ...." -- [www.windriver.com/-universities/publications/Komecki\\_Paper\\_Austin.pdf](http://www.windriver.com/-universities/publications/Komecki_Paper_Austin.pdf); and

"UofMN, Computer Science Dept., **Real-Time Laboratory**" -- [www-users.itlabs.umn.edu/classes/Fall-2003/csci5980-voyles/](http://www-users.itlabs.umn.edu/classes/Fall-2003/csci5980-voyles/).

In addition, the Examining Attorney points out that:

Most notably, the applicant's own website at [http://www\[.\]globalmentoring.com/-rtl\\_overview.htm](http://www[.]globalmentoring.com/-rtl_overview.htm) and the applicant's specimen of record further support the conclusion that the wording in the [applicant's] mark is descriptive in relation to applicant's services. According to the specimen, the applicant's services provide a virtual lab without the cost of equipment[,] i.e.,[,] the academic period is provided online. In addition, the specimen indicates that the training is provided in real time. The

specimen states: ["Increasing complexity in the world of information technology has created the demand for interactive ['real time['] IT training.["] Thus, the specimen of record supports the descriptive nature of the applicant's mark in relation to the applicant's services.

The information used to describe the applicant's services on the applicant's web site supports the conclusion that the [applicant's] mark is descriptive. The website indicates the services are web-based services[,] namely, a "virtual web-based training environment where employees can get hands-on IT practice without risking ... disrupting or damaging mission critical networks." Thus, the virtual or real time training provides lab practice. ....

As to the specimen of use, we further note that such advertising touts "Global Mentoring Solutions' new Real Time Lab™ Learning System" as "[a] virtual lab--without the cost of equipment" and states *inter alia*, as to "Why Real time Lab™ works so well," that "Real Time Lab™ permits your engineers to experiment and go beyond a lab's suggested solution" and that "Students can sign up for labs at a time that is most convenient for them."

The Examining Attorney consequently maintains in his brief that "[t]he plain meaning of the wording in the applicant's mark when viewed in relation to the applicant's services, in addition to the nature of the wording as used in the marketplace as evidenced by the excerpted articles and web pages of record[,] establish the [merely] descriptive nature of the applicant's training services as [being] a real time lab." With respect, however, to applicant's reliance on the absence of disclaimers of the terms "REAL TIME" or "LAB" in various third-party

registrations as evidence supporting applicant's argument that the Patent and Trademark Office does not consider such terms to be merely descriptive of educational or training services, the Examining Attorney contends that:

[T]hird-party registrations are not conclusive on the question of descriptiveness. Each case must be considered on its own merits. A proposed mark that is merely descriptive does not become registrable simply because other similar marks appear on the register. *In re Scholastic Testing Service, Inc.*, 196 USPQ 517 (TTAB 1977); TMEP §1209.03(a). .... The evidence of record fully supports the examining attorney's conclusion that the applicant's mark is [merely] descriptive in relation to the applicant's services.

Upon consideration of the evidence and arguments presented, we agree with the Examining Attorney that, when considered in its entirety, the term "REAL TIME LAB" is merely descriptive of applicant's "training services in the field of computer applications and technical training for businesses via the Internet." The evidence made of record by the Examining Attorney, along with applicant's specimens of use, demonstrate that such term immediately conveys, without need for speculation or conjecture, that a significant feature, function, or characteristic of applicant's services is that they provide, in real time, a virtual or online lab for trainees to learn. Stated otherwise, the term "REAL TIME LAB" merely describes, in the context of applicant's training services, an academic period devoted to work or study, or a place for practice, observation or testing, of the lessons being taught that is provided to students as or while the training is rendered. In the context of such

services, there is nothing in the term "REAL TIME LAB" which is incongruous, ambiguous or suggestive, nor is there anything which would require the exercise of imagination, cogitation or mental processing, or necessitate the gathering of further information, in order for the merely descriptive significance thereof to be readily apparent to customers for and users of applicant's training services. Instead, the term "REAL TIME LAB" conveys forthwith that a significant aspect of the provision of such services is the virtual or online availability to students, during the actual time in which training is provided (*i.e.*, in real time), of an academic period for studying or a place for practicing (*i.e.*, a lab) the course subject matter which is being offered.

As to the third-party registrations relied upon by applicant, it is indeed the case that the majority of those specifically mentioned by applicant (as recited previously herein) do not contain a disclaimer. In particular, none contains a disclaimer of "LAB," although half (six of 12) of the others do contain a disclaimer of "REAL TIME" or its equivalents "REAL-TIME" and "REALTIME"<sup>4</sup> and thus, in such instances, evidence the mere descriptiveness thereof in connection with the identified goods and services. Nonetheless, to the extent that a

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<sup>4</sup> See Reg. No. 2,691,292, issued on February 25, 2003 for the mark "REAL TIME KNOWLEDGE"; Reg. No. 2,258,519, issued on July 6, 1999 for the mark "REAL-TIME INNOVATIONS"; Reg. No. 1,987,523, issued on July 16, 1996 for the mark "REAL-TIME WORKSHOP"; Reg. No. 2,648,106, issued on November 12, 2002, for the mark "REAL DATA. REAL TIME."; Reg. No. 2,507,504, issued on November 13, 2001 for the mark "REAL-TIME STUDIO"; and Reg. No. 2,187,475, issued on September 8, 1998 for the mark "REAL TIME REMOTE."

majority of the third-party registrations which applicant specifically mentions could arguably be said to lend some support to applicant's position, they fail to demonstrate that the term "REAL TIME LAB" is suggestive rather than merely descriptive of applicant's services or collectively serve to create any doubt with respect thereto, given the evidence introduced by the Examining Attorney, including the countervailing evidence of five third-party registrations in which the term "LAB" is disclaimed with respect to marks for educational services.

In any event, it is well settled that while uniform treatment under the Trademark Act is an administrative goal, our task in an ex parte appeal is to determine, based on the record before us, whether applicant's mark is merely descriptive. As has often been noted by the Board, each case must be decided on its own merits. We are not privy to the records of any of the third-party registration files and, moreover, the determination of registrability of the particular marks which are the subjects thereof is simply not controlling in this case. In particular, as our principal reviewing court noted in *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001), "[e]ven if some prior registrations had some characteristics similar to [applicant's] application, the ... allowance of such prior registrations does not bind the Board or this court." See also, *In re Broyhill Furniture Industries Inc.*, 60 USPQ2d 1511, 1514 (TTAB 2001); and *In re Pennzoil Products Co.*, 20 USQP2d 1753, 1758 (TTAB 1991). Instead, the question of whether a mark is merely descriptive must be determined based on the evidence of

record at the time registration is sought. See, e.g., In re Sun Microsystems Inc., 59 USPQ2d 1084, 1088 (TTAB 2001) [in holding "AGENTBEANS" merely descriptive of computer software for use in development and deployment of application programs on a global computer network, Board noted its agreement "with the Examining Attorney that the 'vocabulary used in the computer field changes rapidly' and [that] registration of some of the [third-party] marks may have resulted from the lack of evidence that would have supported a refusal at the time the underlying applications were reviewed"]; and TMEP Section 1209.03(a) (4th ed. 2005). Here, the dictionary definition of "real time" and the Examining Attorney's submission of "excerpted articles in which the wording REAL TIME was used to describe training services" are sufficient to establish the merely descriptive significance of such wording in relation to applicant's training services, irrespective of whether applicant's disclaimer thereof is regarded as an admission that such wording is merely descriptive.

More importantly, as to whether the term "REAL TIME LAB," when considered in its entirety, is merely descriptive of applicant's training services, the web page excerpts made of record by the Examining Attorney demonstrate that such term, like its equivalent expressions "REAL-TIME LAB" and "REAL-TIME LABORATORY," has become a readily understood term of art in the field of computer training exercises and online learning presentations. Coupled with the dictionary definitions noted previously and the statements recited earlier from both applicant's advertising specimen of use and its web page, the

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evidence of record herein on the whole demonstrates that, as explained above, the term "REAL TIME LAB" forthwith conveys a significant feature, function or characteristic of applicant's "training services in the field of computer applications and technical training for businesses via the Internet." Such term accordingly is merely descriptive of applicant's services within the meaning of the statute.

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