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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Microbook International, Inc.

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Serial No. 76509326

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David V. Radack of Eckert Seamans Cherin & Mellott, LLC for  
Microbook International, Inc.

Florentina Blandu, Trademark Examining Attorney, Law Office 112  
(Janice O'lear, Managing Attorney).

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Before Bucher, Holtzman and Walsh, Administrative Trademark  
Judges.

Opinion by Holtzman, Administrative Trademark Judge:

An application has been filed by Microbook International,  
Inc. (applicant) to register MICROREADER for goods which were  
ultimately identified as "electronic textual viewing unit  
comprising (i) a housing and (ii) a screen for displaying text"  
in International Class 9.<sup>1</sup>

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<sup>1</sup> Application Serial No. 76509326, filed on April 25, 2003, based on  
an allegation of a bona fide intention to use the mark in commerce.

The trademark examining attorney has refused registration on the ground that the mark is merely descriptive of the goods within the meaning of Section 2(e)(1) of the Trademark Act, 15 U.S.C. Section 1052(e)(1).

In her first Office action, the examining attorney argued, based on a dictionary definition of "microreader" and Internet references to that term, that applicant's mark MICROREADER is merely descriptive of devices that are used for reading materials in microform, such as microfilm and microfiche. In addition, the examining attorney issued a requirement for a more definite identification of goods and a request for information about the goods under Trademark Rule 2.61(b).

In response, applicant amended its identification and submitted a product information sheet along with a photograph of a prototype of the product. In addition, applicant explained that its device does not read materials in microform, such as microfilm and microfiche, but that, instead, the unit is essentially an "ebook" which, as described by applicant, is a textual viewing unit for displaying, mainly, texts of books.

Based on the information provided by applicant, the examining attorney issued a final refusal on the basis that the term is descriptive of applicant's device that "enables the compilation of data at a small scale, data which is intended to be read." The examining attorney introduced a dictionary

definition of "micro" from *The American Heritage Dictionary of the English Language, Third Edition* (1992), and excerpts from applicant's website and third-party websites to support her position.

This appeal ensued. Both applicant and the examining attorney filed briefs. An oral hearing was not requested.

The examining attorney contends that MICROREADER is merely descriptive of one or more significant features of applicant's goods. In particular, the examining attorney argues:

...it can be inferred [from the Internet references] that applicant's goods have the capability to format text in such a way as to reduce the information in the e-books to a minuscule scale. The device in question may be carried in a purse or in a pocket, which leads one to believe that the device in question is small. Such a device can feature an entire e-book only if it reduces the text to microscopic size/abnormally small, hence the term MICRO. The reduced information is for reading purposes and it is intended for readers, hence the term READER. (Brief at 4.)

The dictionary listing made of record by the examining attorney defines "micro" as "basic or small-scale" and, as requested by the examining attorney, we will take judicial notice of the definition of "reader" from that same dictionary as "one that reads."<sup>2</sup>

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<sup>2</sup> The Board may properly take judicial notice of dictionary definitions. See, e.g., *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

The excerpts of third-party websites introduced by the examining attorney describe applicant's MICROREADER device as follows:

MicroReader is a Java MIDlet that can view, search and edit text files stored locally on the MultiMediaCard of Siemens...or in the memory of M50, MT50 or S55.

Use it as an eBook reader, text editor, extended address/phone book and simple database with information you need have available at all times. No conversion software or complex installation is required; MicroReader reads and saves standard text files that can be exchanged with other applications... <http://home.c2i.net>.

MicroReader is a text file viewer and editor able to deal with very big files, even eBooks. It can also search for names and information in the files, recognize phone numbers, set up phone calls and send SMS, making it usable as an address book with thousands of entries. <http://midlet.org>

In addition, the following information about applicant's MICROREADER device appears on applicant's website at [www.e-microbook.com](http://www.e-microbook.com):

Displays text and plays MP3 audio files that are read from secure, read-only, digitally encrypted multimedia cards (MMCs)

MicroReader fits in a jacket pocket or purse.

Seventy to eighty MicroBook cards can be stored in the bookshelf space of a single hardbound book

It is the examining attorney's contention, based on her view of the evidence, that MICROREADER "informs the consumers that the goods offer to the reader information that has been reduced to an abnormally small size, micro size."

Applicant maintains that MICROREADER does not immediately describe the goods. Applicant reiterates that its device is essentially an "ebook," that is, a textual viewing unit which displays, mainly, texts of books. According to applicant, the text can either be downloaded directly to the ebook from the Internet or can be stored on a magnetic memory card which is inserted into the unit, similar to cartridges that are inserted into handheld game units such as "Gameboy." Applicant disputes the examining attorney's characterization of "MICRO" as meaning "abnormally small" and suggesting something that cannot be seen with the naked eye; and moreover argues that the fact that the goods are used by readers is not enough to make the term descriptive of its product. Applicant concludes that MICROREADER would not be commonly understood as referring to an "E-book-type" reading device.

A term is merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act if it immediately conveys knowledge of a quality, characteristic, feature, function, purpose or use of the goods with which it is used. See, e.g., *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978). A mark does not have to describe every such attribute of the goods in order to be found merely descriptive; it is sufficient for the purpose if the mark

describes a single significant attribute. See *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537 (TTAB 1998); and *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985). Moreover, the question of whether a particular term is merely descriptive must be determined not in the abstract or on the basis of guesswork, but in relation to the goods for which registration is sought. See *In re Remacle*, 66 USPQ2d 1222 (TTAB 2002); and *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986).

Applicant seeks to register MICROREADER for an "electronic textual viewing unit comprising (i) a housing and (ii) a screen for displaying text." Applicant characterizes this device as essentially an "ebook," which is an electronic version of a printed book. We find, in the context of the goods so described, that MICROREADER is merely descriptive of a significant feature and function of the goods, i.e., that it is a small or compact device that reads ebook text files from a particular media and makes the text viewable on a screen.<sup>3</sup>

The term "reader" has a recognized meaning in the context of electronics products. We take judicial notice of the definition of "reader" in *The New Oxford American Dictionary* (Second Edition 2005) as a computer term meaning "a device or piece of software

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<sup>3</sup> We disagree with the examining attorney's contention that "reader" describes the intended user, i.e., the reader, of the ebook. Nor do we agree with the examining attorney's characterization of the ebook text as "microscopic."

Serial No. 76509326

used for reading or obtaining data stored on tape, cards, or other media." An entry from that same dictionary defines the term "read," in the computer context, as "copy or transfer (data); enter or extract (data) in an electronic storage device: *the commonest way of reading a file into the system.*" (Italics in original).

Applicant's electronic device is an ebook, and the text of the ebook is stored on a memory card which is inserted into the ebook. In order for the ebook to be viewable by the consumer, the device would first have to "read" the text on the memory card into the system, and convert the text into a viewable form on the screen. Thus, we find that applicant's device falls squarely within the dictionary meaning of a "reader." That is, applicant's device is, or functions as, a "reader" of text file data stored on memory cards. Further, a "reader" device is essential to the use of the ebook by the consumer because without it, the text of the ebook would not be viewable.

It can be seen from the Internet evidence submitted by the examining attorney that the use of applicant's device as a "reader" of ebook text is at least one significant function of the device. The website at <http://homec2i.net> describes the MICROREADER "as an **eBook reader**, text editor, extended address/phone book and simple database..."; and further states

that "MicroReader **reads** and saves standard text files that can be exchanged with other applications... ." (Emphasis added.)

The Internet evidence also shows that consumers would understand the descriptive significance of a "reader," and its use and function in connection with ebooks. The information about MICROREADER contained on the third-party websites is clearly directed to consumers. For example, <http://home.c2i.net> states, "Use it as an eBook reader...no conversion software or complex installation is required." Similarly, applicant's website indicates that the product requires "no software packages, no keyboard, no need to know computer commands." Applicant's "reader" device is, thus, promoted to consumers essentially as a self-contained unit that is easy to use.

The "MICRO" or small size of applicant's "READER" is a significant feature of the device. We note the definition of "micro" supplied by the examining attorney and we take judicial notice from *Microsoft Computer Dictionary* (fifth edition 2002) as "in nonexact measurements, small or compact." Thus, applicant's "MICROREADER" is a small or compact "reader" device which, as stated on applicant's website, "can fit into a jacket or purse."

In view of the foregoing, we find that MICROREADER, when used in connection with applicant's goods, immediately conveys significant information to the relevant public about those goods.

**Decision:** The refusal to register is affirmed.