

**THIS OPINION IS NOT A
PRECEDENT OF
THE T.T.A.B.**

Mailed: September 24, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Genetic Testing Institute, Inc.

Serial No. 77129308

Mark K. Johnson, Esq. for Genetic Testing Institute, Inc.

Christine Blomquist,¹ Trademark Examining Attorney, Law
Office 104 (Chris Doninger, Managing Attorney).

Before Rogers, Zervas and Cataldo,
Administrative Trademark Judges.

Opinion by Cataldo, Administrative Trademark Judge:

Genetic Testing Institute, Inc. has applied to register on the Principal Register the mark PF4 IGG in standard characters for "diagnostic reagents for assisting in identifying IgG antibodies to an antigen comprising PF4 and heparin; diagnostic test kits comprised of medical diagnostic reagents and assays for testing body fluids for

¹ The above application originally was examined by another examining attorney, but subsequently was reassigned to the attorney whose name is shown to prepare the appeal brief.

assisting in identifying IgG antibodies to an antigen comprising PF4 and heparin" in International Class 5.²

The trademark examining attorney has refused registration under Section 2(e)(1) of the Trademark Act on the ground that applicant's mark is merely descriptive of a feature or quality of applicant's goods.

When the refusal was made final, applicant appealed. Applicant and the examining attorney filed briefs on the issue under appeal.

Applicant contends that its proposed mark does not describe its goods because the mark "can be used to describe numerous potential scientific goods such as pharmaceuticals, chemical laboratory products, etc."

(brief, p. 2). Applicant further contends that its goods are intended to be used by "a scientist or medical practitioner wanting to diagnose a specific type of thrombocytopenia" (brief, p. 3). Applicant argues:

IgG is a human antibody that is found in the form of IgG 1, IgG 2, IgG 3 and IgG 4. There are no IgG antibodies. Applicant's kit detects only IgG 2. If a person having knowledge in the diagnostic field were asked if a kit called PF4 IgG detected IgG 2 antibodies rather than IgG 4 antibodies, they would not know because the name does not describe the type of antibody detection. (brief, p. 2.)

² Application Serial No. 77129308 was filed on March 13, 2007, based on applicant's assertion of its bona fide intent to use the mark in commerce on the recited goods.

Applicant argues in addition that "the mark does not even describe if an IgG is detected or if a PF4 is intended to be detected." (*Id.*)

The examining attorney maintains that the mark merely describes a feature or quality of the goods. In support of the refusal, the examining attorney has made of record dictionary definitions of IgG and PF4. According to these definitions, IgG is defined as follows:

a class of immunoglobulins including the most common antibodies circulating in the blood that facilitate the phagocytic destruction of microorganisms foreign to the body, that bind to and activate complement, and that are the only immunoglobulins to cross over the placenta from mother to fetus; 2. an antibody of the class IgG.³

IgG further is defined as follows:

immunoglobulin class G. This antibody accounts for three quarters of the immunoglobulins in the blood of healthy people. It is widely distributed in the tissues and is the only immunoglobulin class that passes through the placenta to the fetus. It is concerned with protection against a wide range of infecting organisms. Note that the term gamma globulin refers to the whole class of immunoglobulins, not simply to IgG.⁴

PF4 is defined as follows: "platelet factor 4."⁵

Platelet factor 4 is defined as follows:

³ Merriam-Webster OnLine Dictionary, 2006-2007.

⁴ Collins Dictionary of Medicine, retrieved from www.xreferplus.com.

⁵ Current Med Talk A Dictionary of Medical Terms, Slang & Jargon, 1994.

A platelet-derived heparin-binding protein present in alpha granules and secreted therefrom during platelet aggregation as a high molecular weight tetramer associated with chondroitin sulfate; PF4 is involved in immune modulation, chemotaxis and inhibition of bone resorption and angiogenesis, and with heparin, is an antigenic target for the IgG and IgM antibodies formed in heparin-induced thrombocytopenia.⁶

We hereby take judicial notice of the following definition of thrombocytopenia: "an abnormal decrease in the number of platelets in circulatory blood."⁷

The examining attorney has further made of record the following articles retrieved from Internet webpages:

Heparin-induced thrombocytopenia (HIT) associated with severe thrombotic events is a well-recognized complication of heparin therapy. ... An immunological mechanism has been emphasized to be involved in the development of HIT and thrombosis. It has been proposed that heparin complexed to platelet factor 4 (PF4) is a target for IgG antibodies. The immune complexes generated consist of heparin, PF4 and IgG, bind to circulating platelets via the Fc receptor and induce a cycle of platelet activation and consumption.
(<http://proquest.urni.com>)

Heparin-induced thrombocytopenia (HIT) is an immune-mediated disorder caused by IgG antibodies that bind to platelet factor 4 (PF4). The PF4

⁶ Id.

⁷ The American Heritage Dictionary of the English Language, 4th ed. 2006. The Board may take judicial notice of dictionary definitions, including online dictionaries which exist in printed format. See *In re CyberFinancial.Net Inc.*, 65 USPQ2d 1789, 1791 n.3 (TTAB 2002). See also *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).

becomes immunogenic when it binds to heparin 1-3. Multimolecular complexes of Heparin, PF4, and IgG form on platelet surfaces and the occupancy of the platelet Fc receptors by HIT-IgG results in platelet activation. ...
(<http://proquest.urni.com>).

It is well settled that a term is considered to be merely descriptive of goods and/or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes an ingredient, quality, feature or characteristic thereof or if it directly conveys information regarding the nature, function, purpose or use of the goods and/or services. See Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052. See also *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods and/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 feature about them. Moreover, whether a term is merely descriptive is determined not in the abstract, but in relation to the goods and/or services for which registration is sought. See *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). Thus, "[w]hether consumers could guess what the product is from consideration of the mark alone is not the test." *In re American Greetings*

Corp., 226 USPQ 365 (TTAB 1985).

In the instant case, the evidence made of record by the examining attorney supports a finding that, as applied to applicant's goods, the term PF4 IGG would immediately describe, without conjecture or speculation, a significant characteristic or feature of such goods. Specifically, the dictionary definitions of record support a finding that IGG is a common class of antibody, and PF4 is platelet factor 4, a protein that binds with IgG antibodies during an abnormal decrease in the number of platelets in circulatory blood induced by heparin. Thus, as defined, PF4 IGG merely describes goods that identify platelet factor 4 bound to IgG antibodies. Applicant's "diagnostic reagents for assisting in identifying IgG antibodies to an antigen comprising PF4 and heparin; diagnostic test kits comprised of medical diagnostic reagents and assays for testing body fluids for assisting in identifying IgG antibodies to an antigen comprising PF4 and heparin" appear to be intended to perform this function. Thus, as defined, PF4 IGG merely describes a central function, feature or characteristic of the recited goods.

While a combination of descriptive terms may be registrable if the composite creates a unitary mark with a separate, nondescriptive meaning, *In re Colonial Stores*,

Inc., 394 F.2d 549, 157 USPQ 382 (CCPA 1968), the mere combination of descriptive words does not necessarily create a nondescriptive word or phrase. See *In re Associated Theatre Clubs Co.*, 9 USPQ2d 1660, 1662 (TTAB 1988). If each component retains its descriptive significance in relation to the goods or services, the combination results in a composite that is itself descriptive. See *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004). Based upon the evidence of record, we find that PF4 IGG immediately describes a feature or characteristic of applicant's goods, namely, that they are used to identify platelet factor 4 bound to IgG antibodies.

In addition, the Internet articles submitted by the examining attorney establish that members of the science and medical community recognize that PF4 and IgG bind together with heparin to form immune complexes. As such, this evidence supports a finding that prospective users of applicant's goods, identified by applicant as scientists and medical practitioners, are accustomed to encountering these terms used to describe a feature thereof, namely, that they are intended to identify PF4 IGG immune complexes. Material obtained from the Internet is acceptable in ex parte proceedings as evidence of potential

exposure to a term by the relevant public. *See In re Fitch IBCA, Inc.*, 64 USPQ2d 1058 (TTAB 2002).

We are not persuaded by applicant's argument that its mark is not merely descriptive because it could describe a wide variety of goods. As noted above, we must consider whether the applied-for mark is merely descriptive not in the abstract, but rather in relation to the identified goods for which registration is sought. *See In re Bright-Crest, Ltd., supra.* The record evidence demonstrates that PF4 IGG merely describes a feature or characteristic of the identified diagnostic reagents and test kits that include such reagents.

Nor are we persuaded that the mark is not merely descriptive because it does not identify either heparin, or the class of IgG antibodies and the particular PF4 complex its kits are intended to detect. Applicant cites to no authority for its apparent position that a mark must identify all the underlying requirements necessary to use its test kits and reagents or the specific antibodies or proteins detected thereby in order for the mark to be found merely descriptive as intended to be used therewith. As further noted above, it is not necessary that a term describe all of the properties of the identified goods in order for it to be considered to be merely descriptive of

such goods; rather, it is sufficient if the term describes a significant attribute or feature thereof. *See Id.*

Moreover, we note that even if applicant is the first and/or at present the only intended user of the term PF4 IGG in connection with the identified goods, it is well settled that such intended use does not entitle applicant to the registration thereof where, as here, the term has been shown to immediately convey only a merely descriptive significance in the context of applicant's goods. *See, e.g., In re National Shooting Sports Foundation, Inc.*, 219 USPQ 1018, 1020 (TTAB 1983); and *In re Mark A. Gould, M.D.*, 173 USPQ 243, 245 (TTAB 1972).

Finally, we note that applicant has not submitted any evidence to rebut the examining attorney's prima facie case that applicant's proposed mark merely describes its goods. All applicant has provided is argument regarding what a proposed purchaser would conclude when confronted with applicant's mark. *See In re Vsesoyuzny Ordena Trudovogo Krasnogo Znameni*, 219 USPQ 69, 70 (TTAB 1983) (assertions in briefs are not evidence). *See also In re Minnetonka*, 212 USPQ 772, 777 (TTAB 1981) (determining whether a mark has acquired distinctiveness is based on the facts as they exist and are revealed by the evidence in the record at the time the application is acted upon).

Ser No. 77129308

Accordingly, we find that applicant's mark is merely descriptive as contemplated by Section 2(e)(1) of the Act.

Decision: The refusal to register is affirmed.