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Mailed: March 2, 2007

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re The Phone Works Inc.

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Serial No. 78126947

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Eugene E. Renz, Jr. for The Phone Works Inc.

Howard Smiga, Trademark Examining Attorney, Law Office 102  
(Thomas V. Shaw, Managing Attorney).

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Before Drost, Zervas and Kuhlke, Administrative Trademark  
Judges.

Opinion by Zervas, Administrative Trademark Judge:

The Phone Works Inc. has appealed from the final  
refusal of the examining attorney to register PATTI (in  
typed or standard character form) as a trademark for the  
following services in International Class 38:

"Telecommunication services, namely, providing personnel  
attendance and tracking services, namely, prompt  
notification of call-outs and lateness for on-premise  
employees and the tracking [of] off-premise employees,

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including but not limited to independent contractors and sales representatives, enabling employers to facilitate the invoicing of time and expenses for such employees via the Internet, telephone and interactive voice response systems."<sup>1</sup>

The examining attorney has finally refused registration under two bases. First, he has finally refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), in view of Registration No. 2330637 for the mark PATI; and second, he has finally refused registration because the identification of services is indefinite, citing Trademark Rule 2.71(a), 37 C.F.R. § 2.71(a), and TMEP §§ 814 and 1402.01(d).<sup>2</sup>

Both applicant and the examining attorney have filed briefs. Applicant requested an oral hearing, but later, in a paper filed on October 30, 2006, withdrew its request for an oral hearing.

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<sup>1</sup> Application Serial No. 78126947, filed May 7, 2002, asserting a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

<sup>2</sup> The final Office action also includes a refusal under Section 2(d) in view of Registration No. 2111092 for the mark PATI. However, the Office cancelled this registration on August 7, 2004 due to the registrant's failure to file a Section 8 declaration. The examining attorney noted the cancellation of Registration No. 2111092 in footnote 1 of his brief and stated that it "is no longer a bar to registration."

Turning to the Section 2(d) refusal, because Office records show that Registration No. 2330637 was cancelled on December 23, 2006 under Section 8 of the Trademark Act, 15 U.S.C. § 1058, the examining attorney's refusal under Section 2(d) is moot.

We now consider the examining attorney's requirement regarding the identification of services. The examining attorney maintains that the exact nature of the services is unclear; and that applicant's services "appear to be a business-related tracking and monitoring service that uses telephone and telecommunication contacts rather than a telecommunication-type service." Additionally, the examining attorney challenges the wording "including but not limited to" in the identification of services, stating that the "identification of services must be specific and all-inclusive" and that applicant may replace this wording with "namely."<sup>3</sup>

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<sup>3</sup> In his final Office action, the examining attorney has proposed the following identification of services:

Business employee personnel reporting and tracking services, namely, providing personnel attendance and tracking services by means of notification of call-outs and lateness for on-premise employees and the tracking [of] off-premise employees, enabling employers to facilitate the invoicing of time and expenses for such employees via the Internet, telephone and interactive voice response system.

Applicant has not addressed the examining attorney's requirement regarding its identification of services in its brief. However, at p. 3 of its response filed on March 3, 2002, applicant stated that it is in the "business of providing services which track personnel attendance via the Internet, telephone and by an interactive voice response system"; and that "Applicant's tracking service also facilitates off-premise employee[s] to record their work time without the need for them to drive to the office and turn in a time sheet and expense report." Additionally, applicant, with its March 3, 2002 response to the examining attorney's request in his initial Office action for samples of advertisements or promotional materials for services of the same type, submitted a brochure concerning applicant's services. The brochure, entitled "Personnel Reporting [,] An Integrated Web and Automated Telephone Service," states in relevant part:

Personnel Reporting is an integrated web and interactive voice response service offered exclusively by The Phone Works.

Personnel Reporting is a call-out service which allows your staff to report an unscheduled call-out or lateness by using its 24-hour automated system ...

In addition, Personnel Reporting is an automated job log-in service which your remote worker can access for location tracking and/or time worked verification ...

Personnel Reporting collects all the necessary information, which is immediately available to designated administrators via the Web. This will enable your company to quickly make adjustments in order to reduce business disruption.

Applicant's identification of services begins with "Telecommunications services, namely, providing personnel attendance and tracking services." Because "personnel attendance and tracking services" are entirely different from "telecommunications services," the current identification is unclear and not definite. Further, from applicant's statements in the record regarding its services and the description of applicant's services in the brochure, it appears that applicant's services are an employee tracking and monitoring service rather than a telecommunications service. To characterize applicant's services as telecommunications services is hence inaccurate. Further, as the examining attorney maintains, the wording "including but not limited to" is open-ended and hence indefinite. See TMEP § 1402.02(b) ("The identification should state common names for goods or services, be as complete and specific as possible and avoid indefinite words and phrases. The terms "including," "comprising," "such as," "and the like," ... and other indefinite terms and phrases are almost always

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unacceptable. ... Vague terminology should be replaced by "namely" and "consisting of" whenever possible.)

Accordingly, we agree with the examining attorney that the present identification of services is not definite.

**Decision:** The examining attorney's refusal to register applicant's mark because the identification of services is not definite is affirmed.