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September 3, 2004
Paper No. 9
GDH/gdh

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re *Ziptronix, Inc.*

Serial No. 78134622

Laura M. Kelley of Myers Bigel Sibley & Sajovec, P.A. for
Ziptronix, Inc.

Jacqueline A. Lavine, Trademark Examining Attorney, Law Office
116 (Meryl Hershkowitz, Managing Attorney).

Before *Hohein, Chapman and Holtzman*, Administrative Trademark
Judges.

Opinion by *Hohein*, Administrative Trademark Judge:

Ziptronix, Inc. has filed an application to register
the term "ZIPRAM" on the Principal Register for "integrated
circuits" in International Class 9; "custom manufacture of
integrated circuits for others" in International Class 40; and
"custom design of integrated circuits for others" in
International Class 42.¹

Registration has been finally refused under Section
2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the

¹ Ser. No. 78134622, filed on June 11, 2002, which is based on an
allegation of a bona fide intention to use the such term in commerce.

ground that, when used in connection with applicant's goods and services, the term "ZIPRAM" is merely descriptive thereof.

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 (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).

Applicant, while conceding in its brief that "'zip' can refer to compression formats, and 'ram' can refer to a type of computer memory," asserts that because "these terms have other meanings as well," the combination thereof into the term "ZIPRAM" is not merely descriptive of its goods and services. In particular, applicant notes that it has made of record the following definitions which it "found in a search on Mirriam-Webster.com" [sic]:

ZIP: to close or open with or as if with a zipper; to enclose or wrap by fastening a zipper; to cause (a zipper) to open or shut; to move, act, or function with speed and vigor; to travel with a sharp hissing or humming sound; to impart speed or force to; to add zest, interest or life to; to transport or propel with speed.

While acknowledging "the fact that a term may have different meanings is not controlling," applicant contends in view thereof that its "ZIPRAM mark is not limited to 'compression formats' and 'computer memory'," as argued by the Examining Attorney in her final refusal. Applicant maintains, therefore, that "it is not readily apparent from the term ZIPRAM exactly what the goods or services offered are," especially since, applicant admits, "[i]ntegrated circuits have many functions other than providing compression formats and computer memory." Applicant accordingly concludes that:

Based on the numerous definitions shown above and the fact that the proposed uses of the mark are much broader than "compression formats" and "computer memory", the mark

ZIPRAM is at most merely suggestive of a portion of Appellant's goods and services.

The Examining Attorney, on the other hand, although conceding in her brief that a "mark that combines descriptive terms may be registrable if the composite creates a unitary mark with a separate, nondescriptive meaning," argues that in this case, however, "each component retains its descriptive significance in relation to the goods or services, [such that] the combination results in a composite that is itself descriptive." In particular, the Examining Attorney, while also conceding in her brief that "ZIP has many meanings," cites a "definition from PCWebopaedia.com where ZIP is defined as a [popular data] compression format"² and urges that "the relevant meaning here is a 'compression format' as relating to computers." Noting further that "RAM is defined as a [type of] 'computer memory' [that can be accessed randomly]," as set forth in the definition of record from PCWebopaedia.com,³ the Examining

² Although indicating that several "definitions were attached in the Final Office Action," the Examining Attorney states in her brief that "apparently the definition regarding ZIP was not properly reproduced on the paper" and thus, since such may not be of record, requests that the Board "take judicial notice of this definition because it comes from a standard reference work." Inasmuch as it is settled that the Board may properly take judicial notice of definitions from dictionaries and other standard reference works, the Examining Attorney's request is granted. See, e.g., *In re Hartop & Brandes*, 311 F.2d 249, 135 USPQ 419, 423 n. 6 (CCPA 1962); *Hancock v. American Steel & Wire Co. of New Jersey*, 203 F.2d 737, 97 USPQ 330, 332 (CCPA 1953); *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983); and *Marcal Paper Mills, Inc. v. American Can Co.*, 212 USPQ 852, 860 n. 7 (TTAB 1981).

³ While the Examining Attorney, in her brief, specifically refers to "Dictionary.com and MirriamWebsters.com" [sic] where a RAM is defined as a 'computer memory,' it is noted that no such references are of record.

Attorney asserts that the "relevant meaning of RAM is computer memory, a synonym for random access memory," and that "[c]omputer memory may be found on integrated circuits, which are applicant's goods and the subject of applicant's manufacturing and design services." In view thereof, the Examining Attorney maintains that, when the descriptive terms "ZIP" and "RAM" are combined:

Clearly ZIPRAM refers to [an integrated circuit that contains] a computer memory that is in a compressed format. There is nothing unique about the combination of the terms to find a separable unitary meaning. The examining attorney has submitted definitions showing that ZIPRAM is merely descriptive and not entitled to registration on the Principal Register.

In addition, while referred to in her final refusal but not mentioned in her brief, the Examining Attorney has made of record "evidence from the Google Research Database showing that ZIP RAM is a commonly used term to refer to a type of ram." Among the articles referred to are the following (emphasis added):

"Picture showing the DSP socket and the **ZIP RAM** banks [in the Amiga A3000 computer]. -- <http://www.amiga-hardware.com/a3000plus.-html>;

"2 MB (up to 4Mb possible with socketed **zip ram** chips)" -- <http://www.old-computers.-com/museum/computer.asp?st=1&c=706>;

"As you may know the A3000 and the Tower make use of ZIP-type Memory which was inexpensive in the past but now is highly overpriced.

.... Of course you could still pay somewhere between \$10 to \$15 USD per meg for SC **ZIP Ram**. The **ZIP Ram** only provides a slight speed advantage, about 15%." -- <http://ucug.org/amiga/aminews/1997/971110-powersolutions.html>; and

"Since I get different symptoms everytime [sic] I rearrange my ZIP chips I am assuming this is a **ZIP RAM** problem. Does anyone know of any **ZIP RAM** diagnostic software? Something that will probe the memory and tell me what is wrong, what chips are dead or connected improperly." -- <http://mail-index.netbsd.org/port-amiga/-2000/12/17/0000.html>.

Moreover, in addition to the definition of "ZIP" from "PCWebopaedia.com" which, as indicated above, is relied on by the Examining Attorney, the record contains the following, and more complete, definition of "RAM" retrieved from the same source (italics in original):

Pronounced *ramm*, acronym for *random access memory*, a type of computer memory that can be accessed randomly, that is, any byte of memory can be accessed without touching the preceding bytes. RAM is the most common type of memory found in computers and other devices, such as printers.

....
In common usage, the term *RAM* is synonymous with *main memory*, the memory available to programs.

Furthermore, judicial notice is taken of the following pertinent definitions. Specifically, we note that The Computer Glossary (9th ed. 2001) sets forth "zip" at 453 as "(ZIP) (**Z**ig-**Z**ag **I**nline **P**ackage) Similar to a DIP [chip], but smaller and tilted on its side for mounting on boards with limited space." The same dictionary also lists both "RAM" and "RAM chip" at 322 as, respectively, "**(R**andom **A**ccess **M**emory) A group of memory chips that function as the computer's primary workspace" and "**(R**andom **A**ccess **M**emory chip) A memory chip" and defines "memory" at 241 as

"[t]he computer's workspace (physically a collection of RAM chips."⁴

Likewise, judicial notice is taken that the Computer Desktop Encyclopedia (9th ed. 2001) sets forth "zip" at 1103 in more detail as "(ZIP) (**Zig-Zag Inline Package**) A chip package similar to a DIP [chip], but both rows of pins come out of one side in an alternating pattern." The same reference work also defines "RAM" more specifically at 822 as "**(Random Access Memory)** A group of memory chips, typically of the dynamic RAM (DRAM) type, which functions as the computer's primary workspace" and lists definitions of "RAM chip" at 822 and "memory" at 593 which, respectively, are identical to the definitions thereof noted above from The Computer Glossary.⁵

In view thereof, the Examining Attorney maintains in her brief that:

[W]hile ZIP could also refer to a zipper and RAM could refer to an animal, considering applicant's computer related goods and services, clearly ZIPRAM is more likely to be understood to refer to memory circuits embedded with compressed formats. Descriptiveness is considered in relation to the relevant goods and services. The fact that a term may have different meanings in other contexts is not controlling on the

⁴ For clarity, judicial notice is additionally taken that such dictionary defines "chip" at 56 as:

A set of microminiaturized, electronic circuits that are designed for use as processors and memory in computers and countless consumer and industrial products. The terms *chip*, *integrated circuit* and *microchip* are synonymous.

⁵ It is also pointed out that the Computer Desktop Encyclopedia defines "chip" at 133 in the same manner as set forth in The Computer Glossary.

question of descriptiveness. *In re Chopper Industries*, 222 USPQ 258 (TTAB 1974); *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979); *In re Champion International Corp.*, 183 USPQ 318 (TTAB 1974); TMEP §1209.03(e).

She also contends, as to applicant's argument that its goods and services involve more than just integrated circuits which provide compression formats and computer memory, that "a term need not describe all of the purposes, functions, characteristics or features of the goods and/or services to be merely descriptive." Instead, she properly notes that "it is sufficient that the term describe only one attribute of the goods and/or services to be found merely descriptive," citing "*In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); *In re MBAssociates*, 180 USPQ 338 (TTAB 1973); [and] TMEP §1209.01(b)."

Upon consideration of the evidence and arguments presented, we agree with the Examining Attorney that, when considered in its entirety, the term "ZIPRAM" is merely descriptive of applicant's goods and services. Such term, as shown by the evidence noted above, immediately conveys, without speculation or conjecture, not only that its integrated circuits include those which, as applicant admits, provide compression formats and computer memory, but that its RAM chips include those available in a standardized zig-zag in-line package. The term also merely describes a significant attribute of applicant's services, which involve both the custom manufacture and the custom design of such integrated circuits or chips (as applicant's goods are also known) as RAM chips with zip features such as either a compression format or a zig-zag in-line package.

See, e.g., In re Wickerware, Inc., 227 USPQ 970, 971 (TTAB 1985) ["WICKERWARE" for "mail order and distributorship services in the field of wicker furniture and accessories" designates "a central characteristic of appellant's services" and thus is not registrable]. Plainly, when viewed in the context of applicant's goods and services, rather than in the abstract as applicant essentially urges, there is nothing in the term "ZIPRAM" which, to those who would purchase and/or utilize integrated circuits, would be ambiguous, incongruous or otherwise require the exercise of any imagination, cogitation or mental processing or would necessitate the gathering of further information in order for the merely descriptive significance of such term to be readily apparent. In short, because the term "ZIPRAM" designates a type or category of integrated circuits that provide computer memory in a compression format or in a zig-zag in-line package and, hence, also conveys forthwith the nature of the products which are custom manufactured and/or designed by applicant for others, such term accordingly is merely descriptive of applicant's goods and services within the meaning of the statute.

Decision: The refusal under Section 2(e)(1) is affirmed as to all three classes of goods and services.