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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re RF Monolithics, Inc.

Serial No. 78526998

William A. Munck and Cami Dawson Boyd of Munck Butrus P.C. for RF Monolithics, Inc.

Rebecca Gan, Trademark Examining Attorney, Law Office 103
(Michael Hamilton, Managing Attorney).

Before Hohein, Holtzman and Drost, Administrative Trademark Judges.

Opinion by Hohein, Administrative Trademark Judge:

RF Monolithics, Inc. has filed an application to register on the Principal Register in standard character form the term "RFMESH" for "communication equipment, namely, hardware, software and firmware for use in creating, using and maintaining mesh networks, including stand-alone nodes, radio frequency modules, and related components for reading, sharing, processing and controlling information among such stand-alone nodes, radio frequency modules, and related components" in International Class 9.¹

¹ Ser. No. 78526998, filed on December 3, 2004, which is based on an allegation of a bona fide intention to use such term in commerce.

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 goods, the term "RFMESH" is merely descriptive thereof.

Applicant has appealed and briefs have been filed.² 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

² Applicant, in its main brief, "refers to the evidence in the record at the USPTO and before the Board, including, but not limited to the attached Exhibit 'A' consisting of true and correct copies of Wikipedia definitions (or more importantly the lack thereof) for the terms 'rfmesh,' 'rf mesh,' 'rf' and 'mesh.'" The Examining Attorney, in her brief, states that she "formally objects to Applicant's new *alleged* evidence," correctly noting that ordinarily, as provided by Trademark Rule 2.142(d), "evidence must be made of record prior to appeal" (*italics and underlining in original*). Applicant, in its reply brief, contends that "the Examining Attorney is incorrect in his [sic] assertion that Appellant has somehow submitted 'new' evidence in connection with Appellant's Appeal Brief," arguing that, instead, "[t]he evidence submitted with Appellant's Appeal Brief consists of enhanced duplicates of evidence submitted to the USPTO ... prior to the filing of the appeal and in connection with its ... Request for Reconsideration" of the final refusal (*underlining and emphasis in original; footnote omitted*). In particular, applicant maintains that while "[t]here are minor variations in the 'print parameter' of the evidence attached to Appellant's [Request for Reconsideration] ... and that attached to the Appeal Brief," applicant "did not submit new evidence and rely on any minor differences in the form of the attachments." In view thereof, and inasmuch as the Wikipedia evidence submitted with applicant's request for reconsideration plainly is properly of record and applicant is not relying on any "minor differences" therein as reflected in the attachments accompanying its main brief, the Examining Attorney's objection is sustained to the extent that we have considered only the Wikipedia evidence submitted by applicant with its request for reconsideration.

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, in its main brief, asserts that at most the term "RFMESH" is suggestive rather than merely descriptive of its goods, arguing that (underlining in original):³

The terms "RF," "MESH" and "RFMESH,"
individually or in any combination, wholly
fail to describe the goods associated with

³ Although applicant, citing *In re Pennzoil Products Co.*, 20 USPQ2d 1753, 1758 (TTAB 1991), repeatedly maintains that "the Examining Attorney has not met the burden of showing by clear evidence that Appellant's mark is primarily merely descriptive," it is pointed out that "clear evidence" is the standard for showing that a term is generic rather than just merely descriptive. See, e.g., *In re Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987). Where, as here, the refusal of registration is grounded on mere descriptiveness, the Examining Attorney need only demonstrate a *prima facie* case thereof by a preponderance of the evidence. See, e.g., *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987).

the Proposed Mark. In fact, the terms fail to describe any type of communication equipment, any type of hardware, software and/or firmware for use in creating, using and maintaining mesh networks. When taken as a whole, the Proposed Mark is not merely descriptive of the Appellant's goods. Instead, Appellant's mark requires imagination, cognition or gathering of further information in order for the relevant target market to perceive ANY significance of the term as it relates to the Appellant's goods.

Accordingly, and because "[a]ppellant's mark fails to invoke an *immediate* idea or connection with the associated goods with any degree of particularity" (italics in original), applicant insists that the term "RFMESH" is not merely descriptive. Applicant also contends that such term is "more than just a sum of its parts" (underlining in original), arguing that even if the constituent terms "RF" and "MESH" are regarded as merely descriptive, the combination thereof "evokes [a] new and unique commercial impression" and thus is suggestive of its goods. Moreover, while likewise acknowledging that, "at first blush, one may conclude that the mark RFMESH is somehow related to a 'mesh' of radio frequency (RF) components or devices," applicant nonetheless urges that "the mark RFMESH is to be used in connection with all kinds of communication equipment for use in creating, using and maintaining mesh networks including stand-alone nodes (i.e., non-RF components)" (underlining in original). Applicant consequently reiterates its contention that, "[a]t best, Appellant's mark [is suggestive because it] requires imagination, cognition or gathering of further information in order for the

relevant target market to perceive ANY significance of the term as it relates to the Appellant's goods."

In support of its arguments, applicant submitted and made of record with its request for reconsideration of the final refusal excerpts from "Wikipedia, the free encyclopedia" with respect its searches of the terms "RF," "Mesh" and "rfmesh." While the search of the latter term retrieved "[n]o results found" and the search of the term "Mesh," among other things, indicated that "[a] mesh is similar to fabric or a web in that it has many connected or weaved pieces," the search of the term "RF" yielded 15 meanings for which such term "may stand for" or "may be," including: "Volumetric flow rate/"rate of flow (RF)"; "Rheumatoid factor, a blood test used to diagnose rheumatoid arthritis"; "Right fielder, a defensive position in baseball"; and "IATA code for Florida West International Airways." We note, however, that in relevant part, that is, when viewed in the context of "communication equipment," the pertinent meanings that "Rf or RF may stand for" are listed as: "Radio frequency, a term in broadcasting" and "RF connectors, electrical connectors designed to word at radio frequencies."

The Examining Attorney, in her brief, argues that "the evidence in this case amply demonstrates that the term 'RFMESH' references a [mesh] network technology using radio frequency" communication equipment and, therefore, is merely descriptive of applicant's goods. Specifically, she asserts that (footnotes omitted; brackets in original):

In her first Office Action, Examining Attorney attached evidence that the term "RF"

is an acronym for "radio frequency." Examining Attorney also attached evidence that "mesh" references a topology or network wherein "devices are connected with [redundant] interconnections between network nodes." Finally, Examining Attorney provided evidence that demonstrates that the term "RF Mesh" is used in the technology field to reference a type of networking architecture encompassing mesh networks and RF-based communication media. Specifically, an RF mesh network is a network comprised of different nodes that communicate with each other via radio frequency instead of, e.g., cable lines.

In light of such evidence, the Examining Attorney concludes that "'RFMESH' or 'RF mesh' immediately describes Applicant's communication equipment ... because ... Applicant's equipment facilitates communication across, e.g., an RF-based mesh network architecture," insisting that:

Nothing in Applicant's juxtaposition of "RF mesh" is unique or non-descriptive as to Applicant's hardware, software, and firmware for use in maintaining mesh networks incorporating RF-base communication media. Indeed, allowing registration of the proposed mark would enable Applicant to strip the terminology "RF mesh" from the public domain as it applies to hardware, software, and firmware for use in maintaining RF-based mesh networks, fettering Applicant's competitors from accurately describing their products and services.

In addition, she maintains that "[t]he fact that Applicant's hardware, software, and firmware may also be used in connection with mesh networks that do not incorporate RF-based media is irrelevant."

As to the evidence relied upon by the Examining Attorney, the record reveals that an excerpt from "Webopedia," which touts itself as "[t]he #1 online encyclopedia dedicated to

computer technology," sets forth the following discussion with respect to the term "RF" (*italics in original*):

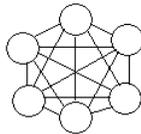
Short for *radio frequency*, any frequency within the electromagnetic spectrum associated with radio wave propagation. When an RF current is supplied to an antenna, an electromagnetic field is created that then is able to propagate through space. Many wireless technologies are based on RF field propagation.

....

Radio frequency is also abbreviated as *rf* or *r.f.*.

Another excerpt of record from the same online encyclopedia contains the following discussion of the term "mesh" (*italics in original*):

Also called *mesh topology* or a *mesh network*, mesh is a network topology in which devices are connected with many redundant interconnections between network nodes. In a true mesh topology every node has a connection to every other node in the network.



There are two types of mesh topologies: full mesh and partial mesh.

Full mesh topology occurs when every node has a circuit connecting it to every other node in a network. Full mesh is very expensive to implement but yields the greatest amount of redundancy, so in the event that one of those nodes fails, network traffic can be directed to any of the other nodes. Full mesh is usually reserved for backbone networks.

Partial mesh topology is less expensive to implement and yields less redundancy than full mesh topology. With partial mesh, some

nodes are organized in a full mesh scheme but others are only connected to one or two in the network. Partial mesh topology is commonly found in peripheral networks connected to a full meshed backbone.

Also of record and relied upon by the Examining Attorney are the following three website excerpts, which state in relevant part as follows (emphasis added; italics in original):

"INNCOM Expands Wireless Communication Offering to Include Reliable **RF Mesh** Net Technology

As mesh net architecture has minimized interference issues with Radio Frequency technology and made it more dependable and suitable for guestroom energy management and backbone communications systems

... INNCOM International Inc. has expanded its industry-leading line-up of wireless communication solutions by adding Radio Frequency systems based on a cutting-edge mesh net routing architecture that minimizes traditional RF signal interference issues and makes the technology suitable for many guestroom applications and backbone communication needs.

'INNCOM has been ... integrating the latest, most stable and reliable **RF mesh** net wireless communication technology ...,' said Rick Quirino, Chief Operating Officer. 'With the advent of mesh net architecture, RF is a feasible option for both guestrooms and communication backbones. Realizing the advantages of **RF mesh** net, we have embraced this technology as a viable wireless communications option.'

Signal integrity

RF technology has been around for years, but it's fought an uphill battle as a successful communications option in guestrooms because of inherent signal interference issues--that is, until **RF mesh** net technology came into the picture recently, Quirino said.

....

'The bottom line is that INNCOM offers hotels all the guestroom communications vehicles possible to meet their application and architecture needs--whether its wired, infrared or **RF mesh** net,' Quirino said." -- www.inncom.com/cfm/press.cfm/pr/64 as of July 19, 2005;

"ACCESS/ONE® NETWORK OWS IS A COHERENT MULTI-RADIO, MULTI-CHANNEL, AND MULTI-RF WIRELESS MESH NETWORK SYSTEM THAT BRINGS EXTENDED RANGE, COMPREHENSIVE MANAGEMENT AND ENHANCED SECURITY TO LARGE SCALE METROPOLITAN AND REGIONAL NETWORKS.

Access/One Network OWS enables the deployment of 802.11 networks across large urban areas, rural counties and entire regions--ideal for government agencies, public utility and transportation providers, and mobile users who want uninterrupted service on a citywide basis. Unlike traditional access points that offer limited coverage within predefined hot spots, or single radio/single **RF mesh** solutions that won't scale, Access/One Network OWS provisions wireless hot zones that can extend over hundreds of square miles.

....

Download our System Description Brochure to learn more about how the Access/One Network delivers the highest performance multi-radio, multi-channel, and multi-RF wireless mesh networking system for outdoor deployments." -- www.strixsystems.com/products/ows.asp as of July 19, 2005; and

"Mesh Network Technology

....

The SensiNet Networking Protocol is the most robust mesh networking solution available. Based on practical field testing, SensiNet provides an **RF mesh** networking solution that leverages frequency diversity to ensure reliable point-to-point connections." -- www.bb-elec.com/wireless_

mesh_network_technology.asp as of July 190,
2005.

Upon consideration of the evidence and arguments presented, we agree with the Examining Attorney that, when considered in its entirety, the term "RFMESH" is merely descriptive of applicant's "communication equipment, namely, hardware, software and firmware for use in creating, using and maintaining mesh networks, including stand-alone nodes, radio frequency modules, and related components for reading, sharing, processing and controlling information among such stand-alone nodes, radio frequency modules, and related components." The pertinent excerpts noted above plainly demonstrate that the terms "RF" and "MESH" respectively signify, in the context of applicant's goods, "radio frequency" and "mesh network" and that such terms individually are merely descriptive of characteristics or aspects of applicant's radio frequency mesh network communication equipment. When those terms are combined, no new and unique commercial impression is created. Instead, the resulting term "RFMESH" immediately and particularly conveys, without the need for speculation or conjecture, that a significant characteristic or aspect of applicant's communication equipment, namely, its "hardware, software and firmware," is that the equipment is for use in creating, using and maintaining a radio frequency mesh network, including stand-alone nodes, radio frequency modules, and related components for reading, sharing, processing and controlling information among such stand-alone nodes, radio frequency modules, and related components. To purchasers, designers and users of radio frequency mesh networks,

there is nothing in the term "RFMESH" which is or would be incongruous, ambiguous or even 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 such persons. Rather, the term "RFMESH" conveys forthwith that a significant aspect or characteristic of applicant's goods is that its communication equipment, namely, hardware, software and firmware for use in creating, using and maintaining mesh networks, including stand-alone nodes, radio frequency modules, and related components for reading, sharing, processing and controlling information among such stand-alone nodes, radio frequency modules, and related components, is RF mesh-based.

Moreover, while the record appears to show that no one else in the communications equipment field is using the telescoped form of the terminology "RF MESH" and that applicant intends to be the first in such field to use the telescoped term "RFMESH" in connection with its goods, it is well settled that such does not entitle applicant to the registration thereof where, as here, the term "RFMESH" has been shown to immediately convey only a merely descriptive significance in the context of applicant's communication equipment. 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, as to applicant's argument that it intends to use the term "RFMESH" in connection with a variety of

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communication equipment for use in creating, using and maintaining mesh networks, including "non-RF components," suffice it to say that it is well established that registration must be denied if a term is merely descriptive of any of the goods for which registration is sought. See, e.g., In re Quik-Print Copy Shop, Inc., 616 F.2d 523, 205 USPQ 505, 507 (CCPA 1980).

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