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Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Moxa Technologies Co., Ltd.

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Serial No. 78587313

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Lin-Yun Cheng of Pro-Techtor International Services for Moxa Technologies Co., Ltd.

Paul F. Gast, Trademark Examining Attorney, Law Office 106 (Mary I. Sparrow, Managing Attorney).

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Before Bucher, Drost and Walsh, Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Moxa Technologies Co., Ltd. seeks registration on the Principal Register of the following mark:

ioLogik

for goods recited in the application as follows:

> "computer networking products, namely, modems, media converters, routers, computer servers, communication servers, terminal servers, multiplexers, gateways, network interface cards for computers in the form of printed circuits, wireless LAN cards for connecting portable computer devices to computer networks, hubs, fiber optic couplers, switches, computer network

> management hardware and computer network management software and associated networking software used to manage virtual or physical servers; electrical power supplies; printed circuit boards; integrated circuits; computer chips; analog-to-digital converters; digital-to-analog converters; signal processors; computer hardware, namely, multiport microchip cards for controlling serial devices such as modems and other industrial machines" in International Class 9.[1]

The Trademark Examining Attorney refused registration on the ground that the mark was merely descriptive under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), because the proposed mark describes the fact that the goods will feature Input and Output logic or be used with items that do, and hence, the ioLogik mark is the phonetic equivalent of common descriptive terminology in the area of computers and computer related goods.

After the Trademark Examining Attorney made the refusal final, applicant appealed to this Board. We affirm the refusal to register.

Preliminary matters

In support of its argument that the instant refusal is inconsistent with past practices of the United States Patent and Trademark Office, applicant included in its brief

[1] Application Serial No. 78587313 was filed by Moxa Technologies Co., Ltd. on March 15, 2005 based upon applicant's allegation of a *bona fide* intention to use the mark in commerce.

several tables containing lists of prior registrations. However, the Trademark Examining Attorney has correctly objected to the mere submission of a list of registrations, as this does not make these registrations part of the record. *In re Delbar Products, Inc.*, 217 USPQ 859 (TTAB 1981); and *In re Duofold Inc.*, 184 USPQ 638 (TTAB 1974). To make registrations proper evidence of record, soft copies of the registrations or the complete electronic equivalent (*i.e.*, printouts of the registrations taken from the electronic search records of the United States Patent and Trademark Office) must be submitted. *See In Re J.T. Tobacconists,* 59 USPQ2d 1080, 1081 n. 2 (TTAB 2001); *In re Styleclick.com Inc.*, 57 USPQ2d 1445, 1446 n. 2 (TTAB 2000); *Raccioppi v. Apogee Inc.*, 47 USPQ2d 1368, 1370 (TTAB 1998); *In re Broadway Chicken Inc.*, 38 USPQ2d 1559, 1560 n.6 (TTAB 1996); *Weyerhaeuser Co. v. Katz*, 24 USPQ2d 1230, 1231-32 (TTAB 1992).

Additionally, the record must be complete prior to appeal. 37 C.F.R. § 2.142(d); TBMP §§ 1207.01 *et seq.* *See Rexall Drug Co. v. Manhattan Drug Co.*, 284 F.2d 391, 128 USPQ 114 (CCPA 1960); and *In re Psygnosis Ltd.*, 51 USPQ2d 1594 (TTAB 1999). Consequently, applicant may not rely on these tables or lists of prior registrations.

Is term merely descriptive?

A mark is merely descriptive, and therefore unregistrable pursuant to the provisions of Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), if it immediately conveys "knowledge of a quality, feature, function, or characteristics of the goods or services." *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007) [ASPIRINA is merely descriptive of analgesic product]. *See also In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987) [APPLE PIE merely descriptive of potpourri mixture]; and *In re Quik-Print Copy Shops, Inc.*, 616 F.2d 523, 205 USPQ 505, 507 (CCPA 1980). To be "merely descriptive," a term need only describe a single significant quality or property of the goods. *Gyulay*, 3 USPQ2d at 1009. Descriptiveness of a mark is not considered in the abstract, but in relation to the particular goods or services for which registration is sought. That is, when we analyze the evidence of record, we must keep in mind that the test is not whether prospective purchasers can guess what applicant's goods are after seeing applicant's mark alone. *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978) [GASBADGE merely descriptive of a "gas monitoring badge"; "Appellant's

abstract test is deficient – not only in denying consideration of evidence of the advertising materials directed to its goods, but in failing to require consideration of its mark 'when applied to the goods' as required by statute"]. Rather, the proper test in determining whether a term is merely descriptive is to consider the applied-for mark in relation to the goods or services for which registration is sought, the context in which the mark is used, and the significance that the mark is likely to have on the average purchaser encountering the goods or services in the marketplace. *In re Omaha National Corp.*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987) [the term "first tier" describes a class of banks]; *In re Pennzoil Products Co.*, 20 USPQ2d 1753 (TTAB 1991) [MULTI-VIS is merely descriptive of "multiple viscosity motor oil"]; *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986) [DESIGN GRAPHIX merely descriptive of computer graphics programs]; and *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979) [COASTER-CARDS merely descriptive of a coaster suitable for direct mailing].

Hence, the ultimate question before us is whether the ioLogik term conveys information about a significant feature

or characteristic of applicant's goods with the immediacy and particularity required by the Trademark Act.

A mark is suggestive, and therefore registrable on the Principal Register without a showing of acquired distinctiveness, if imagination, thought or perception is required to reach a conclusion on the nature of the goods or services. "Whether a given mark is suggestive or merely descriptive depends on whether the mark 'immediately conveys … knowledge of the ingredients, qualities, or characteristics of the goods … with which it is used,' or whether 'imagination, thought, or perception is required to reach a conclusion on the nature of the goods.'" (citation omitted) *In re Gyulay*, 3 USPQ2d at 1009; *In re Home Builders Association of Greenville*, 18 USPQ2d 1313 (TTAB 1990) [NEW HOME BUYER'S GUIDE merely descriptive of "real estate advertisement services"]; and *In re American Greetings Corp.*, 226 USPQ 365 (TTAB 1985) [APRICOT is merely descriptive of apricot-scented dolls].

In arguing for registrability, applicant contends that its mark is, at worst, suggestive of computer and network related goods but does not immediately tell consumers something about the goods. Applicant argues that the letters "IO" have many different meanings – not necessarily

"input/output." Moreover, applicant argues that its mark consists of a stylized one-word, fanciful and arbitrary mark, "IOLOGIK" lacking a definition entry in any English-language dictionary. To conceive of this mark as "IO" (input/output) and "Logic" (computer science terminology) separately, applicant argues, requires a great deal of thought and imagination in order for the relevant public to perceive any significance of the mark as it relates to the applicant's goods. Applicant has also taken the position that this refusal is inconsistent with the practice of the United States Patent and Trademark Office, and finally, that any doubt with respect to the descriptiveness of its mark must be resolved in favor of Applicant.

By contrast, the Trademark Examining Attorney's argument concerning the descriptiveness of the term begins with definitions of the component parts. He points out that the term "IO" (or "I/O") is a readily understood designation for "Input and Output" – the communication between an information processing system such as a computer, and the outside world.[2] The Trademark Examining Attorney has also demonstrated this fact from third-party registrations:

[2] www.acronymfinder.com "What does IO stand for? In this case, it means Input/Output."

I/O PLUS	for "computer programs for monitoring computer systems" in International Class 9;[3]
VSAM I/O PLUS	for "pre-recorded computer software for operating main frame computer systems" in International Class 9;[4]
OPEN I/O	for "signal interface modules for use in industrial control and data acquisition systems" in International Class 9;[5]
I/O FLEX	for "SCSI controller; input and output controller" in International Class 9;[6]
DATA I/O	for "computer circuit boards and computer programs all for use in the field of programmable semi-conductor devices, namely, computer circuit boards and computer programs used for programming, designing, handling, marking, testing, sorting and labeling programmable semi-conductor devices and circuits containing programmable semi-conductor devices; and programming and handling equipment for use in programming, testing, sorting, handling, marking and labeling programmable semi-conductor devices" in International Class 9;[7]

[3] Registration No. 1648498 issued on June 18, 1991; renewed. No claim is made to "I/O" apart from the mark as shown.

[4] Registration No. 1858391 issued on October 18, 1994; renewed. No claim is made to "VSAM I/O" apart from the mark as shown.

[5] Registration No. 2190055 issued on the Supplemental Register on September 15, 1998.

[6] Registration No. 2354833 issued on June 6, 2000; Section 8 affidavit (six-year) accepted and Section 15 affidavit acknowledged. No claim is made to "I/O" apart from the mark as shown.

[7] Registration No. 2687749 issued under Section 2(f) of the Act on February 18, 2003.

I/O MAGIC	for "computer memory cards; optical scanners; CD-ROM players; DVD players; computer keyboards; video cameras; video graphics accelerator cards and adapters; software for accelerating computer graphics; digital cameras; data communication equipment, namely high speed data/fax/voice computer modem" in International Class 9;[8]
I/O SOFTWARE	for "computer software utilizing biometrics and other authentication technologies for use in controlling access to computers and applications, encryption of files and data, securing e-mail and electronic communications, cryptographic key management, securing access to web sites and servers on the global computer network, validating financial transactions, and controlling access to restricted areas and equipment" in International Class 9;[9]

Additionally, the Trademark Examining Attorney submitted the following dictionary entry:

> **log·ic** (lòj îk) *noun* as
> "… 5. *Computer Science*.
> *a.* The nonarithmetic operations performed by a computer, such as sorting, comparing, and matching, that involve yes-no decisions.
> *b.* Computer circuitry.
> *c.* Graphic representation of computer circuitry…"

[8] Registration No. 2623403 issued on September 24, 2002. No claim is made to "I/O" apart from the mark as shown.

[9] Registration No. 2658088 issued under Section 2(f) of the Act on December 10, 2002. No claim is made to the word "Software" apart from the mark as shown.

Finally, the Trademark Examining Attorney submitted for the record a representative sampling of Internet stories showing the manner in which the combined terminology, "IO Logic," is used in the context of computer related goods having the same descriptive properties as applicant's listed goods:

> "…EnCore modules are designed to plug into a custom baseboard which provides an opportunity to incorporate additional custom ***I/O logic*** as well as connectors to access to the outside world."
> …
> "… ETX modules are designed to plug into a custom baseboard with I/O connectors and custom ***I/O logic***."[10]
>
> The World's Lowest Cost Ladder Logic PLCs (with built-in RS485 Two-Wire Network Port)
> …
> Creates ladder program using meaningful names:
> - Uses simulator to fully test programs on the PC screen before downloading
> - On-line monitoring of all ***I/O logic*** states on ladder diagram or on full screen
> - Forced-setting/resetting of i/os can be done directly from computer screen.[11]
>
> "… 3. JED PC543: a new single board computer using the AMD ELAN SC300 … effectively a 386, 33 MHz computer with up to 4 Mb. DRAM and 8 Mb. FLASH. This PC/104 is an ideal embedded controller where multiple serial ports are needed: this board features FIVE serial ports! As well, it has a full-featured bi-directional parallel port, a RTC, a JBUS port with 20 I/O lines from a 5202 or

[10] www.ampro.com/html/Overview_Products.html

[11] http://www.tri-plc.com/e10intro.htm

5204 Xilinx gate array (add your own ***I/O logic***). For development or code update purposes, there is a floppy disk interface on board connected to the LPT port connector...just plug in a drive and download."[12]

CamSoft's PC-Based CNC Machine Tool Control

…

How is logic programmed?

Unlike most other CNC controllers you do not need to purchase and program logic with third party software. We provide you with complete seamless digital ***I/O logic*** commands running in concert with the motion and other system logic on the PC itself totally within software. NO external PLC devices or ladder logic is needed. CamSoft offers a much easier logic programming method using simple commands that are referenced by terminal strip number or descriptive names. This method is preferred by installers that need to diagnose, modify and test the logic before they begin physical wiring. This is the only method that allows remote ***I/O logic*** diagnostics via a modem. We have our own ***I/O logic***, which is much easier than learning PLC ladder logic. It even provides for very complex multiple I/O threads where as ladder is sequential and only branches off. Hundreds of every type of commands including IF THEN, LOOPS, TIMERS and WAITUNTIL are provided in simple to read text files that compile when the system starts. We utilize several manufacturers' I/O boards to give a wide choice of inputs/outputs. CamSoft wrote

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[12] http://www.jedmicro.com.au/jedds/JEDDS.htm We note that to the extent that websites such as this one are from English language, foreign sources, they may nonetheless be relevant to determine if the mark is merely descriptive. *Bayer Aktiengesellschaft*, 82 USPQ2d at 1835 ("Information originating on foreign websites or in foreign news publications that are accessible to the United States public may be relevant to discern United States consumer impression of a proposed mark").

its own assembler drivers to access these cards in the unprecedented 10khz range."[13]

Writing Windows NT Server Applications in MFC Using I/O Completion Ports

…

"… The big benefit of using C++ to implement the server is that we can strictly separate the ***I/O logic*** from the client interactions. In other words, as long as a client that is attached to CServerDatabaseProtocol with the Associate member function has an m_se variable and a Dispatch function, we can associate any client to the interaction without changing a thing to the CServerDatabaseProtocol object. We can even define CClientObject as a base class, derive different client types from it, and attach clients from any derived class to the CServerDatabaseProtocol object."[14]

Compucorp 122E 'Scientist' Programmable Desktop Calculator

…

"The brains and personality of the calculator are contained on two plug-in circuit boards. Each board measures approximately 8" x 10", and are populated mostly by the HTL chips. The boards plug into a [sic] edge connectors, which provide the 'backplane' for communication between the two boards. The boards appear to be of a general design, such that different configurations of chips needed for the various machines in the 100-series of calculators can be accommodated by the same circuit boards. A surprisingly small sprinkling of discrete components is mixed in with the International Class's -- it appears that very few 'glue' components were needed to tie the various chips together. The boards have nomenclature on them indicating their general function. The top board is called the "***I/O LOGIC***" board. This board has a number of edge connectors arranged across the back and sides of the board for plugging in the keyboard, display, and I/O expansion subassemblies. This board appears to contain all of the necessary logic for

[13] http://www.camsoftcorp.com/prod02.asp

[14] http://msdn2.microsoft.com/en-us/library/ms810436.aspx

> scanning the keyboard, multiplexing the display, decoding and executing the microcode operations, the various mathematics core functions such as the adder/subtractor, and perhaps some of the working registers."[15]
>
> National Semiconductor Unveils Trusted Chip for PCs
> …
> "The devices contain a Trusted Platform Module, or TPM, which securely stores such data as passwords and digital certificates. National began shipping discrete TPMs several years ago and has now integrated it with other ***I/O logic*** to save cost."[16]
>
> Reconfigurable PCI and Sbus Interface Cards
>
> "Developed reconfigurable PCI and Sbus Interface cards for Sun Microsystems Inc. These boards allow rapid prototyping of custom "co-processors," "soft" peripherals and/or ***I/O logic*** with little or no physical hardware development…"[17]

In response to this evidence of the descriptiveness of the term, ioLogik , applicant argues that the position of the Trademark Examining Attorney is inconsistent with the past practice of the United States Patent and Trademark Office. As noted above, we have given no consideration to these alleged registrations. However, we hasten to add that even if we had considered these third-party registrations, they would not be conclusive on the question of

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[15] http://www.oldcalculatormuseum.com/compucorp122e.html

[16] http://www.eweek.com/c/a/Security/National-Semiconductor-Unveils-Trusted-Chip-for-PCs/

[17] http://www.brightstareng.com/index.html

descriptiveness, and would not have changed the outcome herein. Judging only by the nature of many of the composite marks, we observe that under Office practice, the running together of distinctive and merely descriptive matter in creating a new composite does not force a refusal based on mere descriptiveness of the entire mark or the requirement for a disclaimer of the descriptive portion thereof. Other marks arguably represent jarring incongruities, double entendres, or the goods and services involved in the registrations appear to be quite unlike those of applicant. By contrast, the Trademark Examining Attorney has properly placed into the record registrations having goods similar to those of applicant with "I/O," for example, within the composite mark, demonstrating that the United States Patent and Trademark Office does consider these terms to be merely descriptive of goods such as applicant's. The term is disclaimed or registered under Section 2(f) of the Act, or the mark is registered on the Supplemental Register.

Moreover, a proposed mark that is merely descriptive does not become registrable simply because other similar marks may appear on the Principal Register. *In re Scholastic Testing Services, Inc.*, 196 USPQ 517 (TTAB 1977). For example, terms once considered to be arbitrary or suggestive may lose their distinguishing characteristics

through use in a descriptive manner over a period of time. *In re Digital Research, Inc.*, 4 USPQ2d 1242, 1243 (TTAB 1987); *In re International Spike, Inc.*, 190 USPQ 505, 507 (TTAB 1976). This happens most often with terminology in the rapidly changing field of high tech goods and services. Accordingly, the Trademark Examining Attorney must make descriptiveness determinations based upon the evidence in the record at the time registration is sought. *In re Sun Microsystems, Inc.*, 59 USPQ2d 1084 (TTAB 2001); *In re Styleclick.com Inc.*, 57 USPQ2d 1445, 1448 (TTAB 2000) ["A year or two is an eternity in 'Internet time,' given the rapid advancement of the Internet into every facet of daily life"].

There can be no question but that applicant's types of electronic devices have as significant components Input and Output functions controlled by nonarithmetic operations. While applicant's mark does not describe every feature or characteristic of its goods, there is no requirement that a mark must do this before it can be found to be merely descriptive of the goods. *Gyulay*, 3 USPQ2d at 1009; *Meehanite Metal*, 120 USPQ 293, 294 (CCPA 1959). Clearly, applicant's mark describes a feature or characteristic of the goods to the extent that it immediately conveys

information about the circuitry of computer processors and boards.

In part, applicant bases its position that this mark is suggestive on the fact that its mark is a slight misspelling of the commonly-used term "I/O Logic." However, we find that applicant's merely changing the final letter "c" to a letter "k" is insignificant in avoiding a finding that its mark is merely descriptive.

It has long been held that a novel spelling does not overcome evidence of descriptiveness if purchasers would perceive the different spelling as the equivalent of the descriptive term. "The word, therefore is descriptive, not indicative of the origin or ownership of the goods; and being of that quality, we cannot admit that it loses such quality and becomes arbitrary by being misspelled. Bad orthography has not yet become so rare or so easily detected as to make a word the arbitrary sign of something else than its conventional meaning …." *Standard Paint Co. v. Trinidad Asphalt Mfg. Co.*, 220 U.S. 446, 455 (1911). *See also Armstrong Paint & Varnish Works v. Nu-Enamel Corp.*, 305 U.S. 315 (1938) [NU-ENAMEL; NU held equivalent of "new"]; *In re Quik-Print Copy Shops*, 205 USPQ at 507 n.9 [QUIK-PRINT held descriptive: "There is no legally significant difference here between 'quik' and 'quick'"]; *In re Hercules Fasteners,*

Inc., 203 F.2d 753, 97 USPQ 355 (CCPA 1953) (FASTIE, as phonetic spelling of "fast tie," connotes that which unites or joins quickly, and hence the notation is descriptive of the function and character of tube sealing machines]; *Andrew J. McPartland, Inc. v. Montgomery Ward & Co., Inc.*, 164 F.2d 603, 76 USPQ 97 (CCPA 1947), *cert. denied*, 333 U.S. 875, 77 USPQ 676 (1948) [KWIXTART, phonetic spelling of "quick start," is descriptive of electric storage batteries]; *In re Hubbard Milling Co.*, 6 USPQ2d 1239 (TTAB 1987) [MINERAL-LYX held generic for mineral licks for feeding livestock]; and *In re State Chemical Manufacturing Co.*, 225 USPQ 687 (TTAB 1985) [FOM equivalent to word "foam," is descriptive for foam rug shampoo].

Similarly here, the slight differences between IOLOGIK and I/O LOGIC do not result in its mark creating a different connotation. Applicant proposed mark would be understood by many, if not most, consumers as simply being a slight misspelling of I/O LOGIC.

Finally, we find that the other *de minimis* differences between applicant's special form mark and the usage seen in the Internet articles – e.g., the absence of a back slash ("io" rather than "i/o" or "I/O") or a space ("ioLogic" rather than "io Logic"), and the addition of inverted

triangles as the dots on the letters "I" – do not obviate the statutory bar presented by Section 2(e)(1) of the Act.

Decision: The refusal to register under Section 2(e)(1) of the Act is hereby affirmed on the ground that applicant's mark is merely descriptive for the identified goods.