

**THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB**

Mailed:  
July 17, 2007

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**  
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In re BioArray Solutions, Ltd.  
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Serial No. 78675381  
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Eric Mirabel, Esq., Attorney for BioArray Solutions, Ltd.

Steven W. Jackson, Trademark Examining Attorney, Law Office  
107 (J. Leslie Bishop, Managing Attorney).

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Before Hairston, Grendel, and Wellington, Administrative  
Trademark Judges.

Opinion by Wellington, Administrative Trademark Judge:

BioArray Solutions, Ltd. filed an intent-to-use application for the mark EXACTMATCH (in standard character format) for the following services, as amended: "medical research services, namely, method of identifying compatible donors and recipients of transfused blood using genetic markers, including markers for minor group antigens."<sup>1</sup>

The examining attorney issued a final refusal of registration on the ground that the mark is merely descriptive pursuant to Section 2(e)(1) of the Lanham Act,

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<sup>1</sup> Application Serial No. 78542726, filed July 21, 2005.

15 U.S.C. §1052(e)(1). Applicant has appealed the final refusal.

Both applicant and the examining attorney have filed briefs. For the reasons discussed below, we affirm the refusal to register.

A term is merely descriptive if it immediately conveys knowledge of a significant quality, characteristic, function, feature or purpose of the services with which it is used. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). Whether a particular term is merely descriptive is determined in relation to the services for which registration is sought and the context in which the term is used, not in the abstract or on the basis of guesswork. *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978); *In re Remacle*, 66 USPQ2d 1222, 1224 (TTAB 2002). In other words, the issue is not whether one can guess what the services are based on the mark alone, but whether someone who knows what the services are will understand the mark to convey information about the services. *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1316-1317 (TTAB 2002); *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998); *In re Home Builders Association of Greenville*, 18 USPQ2d 1313, 1317 (TTAB

1990); *In re American Greetings Corp.*, 226 UPSQ 365, 366 (TTAB 1985).

The examining attorney has made of record evidence which shows that the phrase "exact match" is used in connection with blood transfusions, blood donations and medical procedures requiring blood transfusions to describe a particular degree of compatibility between the donated blood and the transfusion recipient. For example, the examining attorney's submissions show the following use of the term (emphasis added):

Those who need a Blood transfusion require an exact match of certain Blood traits of the Blood donor with their own. Statistically, because these traits are inherited, a patient's most likely match is another family member. Unfortunately, over 70% of African American Blacks can not find a Blood type match within their own families. They, therefore, require an unrelated individual willing to be tested and then to donate Blood.

[<http://www.bloodbook.com/african.html>]

Sickle cell anemia patients receive up to four units of red blood cells per treatment, and those who require a blood transfusion must find an exact match of specific blood traits.

[[http://www.beaufortgazette.com/features/body\\_and\\_soul/story](http://www.beaufortgazette.com/features/body_and_soul/story)]

Patients who are to undergo surgical procedures for which a blood transfusion might be required may elect to donate a supply of blood for the purpose ahead of time. The blood is stored at the hospital for the exclusive use of the patient. This procedure assures that the blood type is an exact match. It also assures that no infection will be transmitted through the blood transfusion.

[<http://www.healthatoz.com/healthatoz/Atoz/common/standard/transform.jsp>]

Most of us will need a blood transfusion some time in our lives. But often, those who need a lot of blood require blood that's an exact match, not just a matched blood type.

[<http://www.psbc.org/about/raredonor.htm>]

Based on this evidence, we find that the term "exact match" is merely descriptive when used in connection with applicant's services as they are recited in the application, i.e., "medical research services involving identifying compatible donors and recipients of transfused blood using genetic markers, including markers for minor group antigens." The term directly describes a significant feature, function or purpose of the services, i.e., they provide or consist of a means or method of finding or identifying an "exact match" between "compatible donors and recipients of transfused blood."

We further find that the mark applicant seeks to register, EXACTMATCH, is legally equivalent to the term "exact match" as it appears in the evidence of record. The descriptiveness of the term is not negated by applicant's mere combination of the two words into a single compound term. *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110, 1111-1112 (Fed. Cir. 1987) (SCREENWIPE held generic as applied to premoistened antistatic cloths for cleaning computer and television screens); *In re Tower Tech, Inc.* ,

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64 USPQ2d 1314 (TTAB 2002) (SMARTTOWER merely descriptive of "commercial and industrial cooling towers and accessories therefor, sold as a unit").

Applicant argues that the examining attorney's evidence of usage of the term "exact match" refers only to blood donor-recipient compatibility based on the commonly used blood types: A, B, O and AB blood types, including identifying a positive Rhesus presence (ABO/Ph blood types). Applicant states that its services can be distinguished from said use because it provides donor-recipient blood compatibility services "based on comparison of the antigens predicted to be present in donor and recipient under designated matching rules, including rules in which mismatched donors are not rejected unless the mismatch is clinically significant and a rule that a mismatch is not significant where the recipient expresses antigens the donor does not (but not the other way around). Thus, compatible donors and recipients are often not identical and may have unmatched antigens and antibodies." (Applicant's Brief, p. 2). Applicant asserts that one of the purposes of its services is to identify not only "exact" matches, but also "approximate matches (within an acceptance level) that will nonetheless be compatible." (Applicant's Brief, p. 5, emphasis in original).

We are not persuaded by this argument. The issue of mere descriptiveness must be determined on the basis of the goods or services as identified in the application, and not on the basis of what applicant's actual services might be. The "compatible donors and recipients of transfused blood" identified in the application must be presumed to include donors and recipients whose level of compatibility is an "exact match," as that term of art is used in the relevant field. Whatever may be applicant's particular means or method of "identifying blood donor-recipient compatibility," the evidence of record establishes that relevant purchasers will readily and immediately understand the term "exact match" to refer to a significant feature or purpose of applicant's recited services, i.e., that they enable the user to identify or locate an "exact match" between blood donors and recipients. That applicant's actual services also might be designed or capable of identifying "approximate" matches is not dispositive and does not negate the mere descriptiveness of "exact match" or EXACTMATCH as used in connection with applicant's services as broadly recited in the application.

For the reasons discussed above, we find that EXACTMATCH is merely descriptive of applicant's recited services.

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Decision: The refusal to register is affirmed.