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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Stryker Corporation

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Serial No. 78690726

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Liane L. Churney of Flynn, Thiel, Boutell & Tanis, P.C. for  
Stryker Corporation.

S. Michael Gaafar, Trademark Examining Attorney, Law Office  
116 (Michael W. Baird, Managing Attorney).

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Before Bucher, Grendel and Taylor, Administrative Trademark  
Judges.

Opinion by Grendel, Administrative Trademark Judge:

Stryker Corporation, applicant herein, seeks  
registration on the Principal Register of the mark COUPLED  
VISUALIZATION (in standard character form) for goods  
identified in the application as "surgical image guidance  
software; computer hardware; surgical cameras," in Class 9,

and "surgical instruments, namely, endoscopes, flexible endoscopes, and endoluminal surgical tools," in Class 10.<sup>1</sup>

The Trademark Examining Attorney has issued a final refusal to register applicant's mark on the ground that the mark is merely descriptive of the goods identified in the application. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1).

Applicant has appealed the final refusal. After careful consideration of the evidence of record and the arguments of counsel, we affirm the refusal to register.

A term is deemed to be merely descriptive of goods or services, within the meaning of Trademark Act Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose 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). A term need not immediately convey an idea of each and every specific feature of the applicant's goods or services in order to be considered merely descriptive; it is enough that the term describes one

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<sup>1</sup> Serial No. 78690726, filed on August 11, 2005. The application is based on applicant's asserted bona fide intention to use the mark in commerce. Trademark Act Section 1(b), 15 U.S.C. §1051(b).

significant attribute, function or property of the goods or services. See *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); *In re MBAssociates*, 180 USPQ 338 (TTAB 1973).

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 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 its use. That a term may have other meanings in different contexts is not controlling.

*In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979).

Moreover, it is settled that "[t]he question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods or services are will understand the mark to convey information about them." *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002).

See also *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537 (TTAB 1998); *In re Home Builders Association of Greenville*, 18 USPQ2d 1313 (TTAB 1990); and *In re American Greetings Corporation*, 226 USPQ 365 (TTAB 1985).

Applying these principles in the present case, we find as follows.

The Trademark Examining Attorney has made of record several dictionary definitions of "visualize" or "visualization" which establish that the term has a specific meaning in the medical context in which applicant's goods obviously are used. The MSN Encarta Dictionary defines "visualize" as: MEDICINE make image of internal organs: to produce an image of an internal organ or other part of the body by using x-rays or other means such as magnetic resonance imaging. Dorland's Illustrated Medical Dictionary defines "visualization" as: "the act of viewing, or of achieving a complete visual impression of an object, as by radiography."

The Trademark Examining Attorney also has made of record a definition of "couple" from the Merriam-Webster Online Dictionary: "to connect for consideration together."

Based on these definitions, we find that a "coupled visualization," in the medical context readily would be understood to denote visualizations or images which are coupled so they can be considered together. The Trademark Examining Attorney has made of record a printout from applicant's website, which in pertinent part describes applicant's goods as follows (emphasis added):

The Stryker Trauma Navigation System was developed to help surgeons achieve precise implant placement during trauma surgical procedures. The initial benefits of this revolutionary new system can provide the user are: ... **real-time navigation of basic trauma instrumentation on multiple fluoroscopic views...**

The term "coupled visualization" directly describes this "multiple fluoroscopic views" feature of applicant's goods.

In addition, the mere descriptiveness of COUPLED VISUALIZATION as applied to applicant's goods is apparent from applicant's own explanation (in its brief) of the nature and features of the goods (emphasis added):

Applicant's surgical system is comprised of the above goods [identified in the application], and is intended for use by a surgeon during an operating procedure to provide the surgeon with additional information above and beyond what can simply be gathered with an endoscope alone. More specifically, an endoscope is inserted into a small opening made in the patient for the purpose of producing an image of the interior of the patient's body. This image is typically transmitted to a monitor and displayed thereon so that the surgeon can see what the endoscope "sees" for the purpose of diagnosis and treatment. The instant system, however, in addition to this conventional function of an endoscope, goes much further. **In this regard, the patient image generated by the endoscope is compared to a library of stored anatomical images (obtained by various modalities) via Applicant's software.** The image generated by the endoscope and the stored image or images with which the endoscopic image is compared are not ever visually combined or coupled with one another on a display. Instead, after the above comparison is made, Applicant's system shows the endoscopic

image on a monitor in the operating room along with markers or prompts which provide guidance and information to the surgeon for the purpose of diagnosis, navigation and/or treatment. **Thus, the stored anatomical images are utilized to help the surgeon identify, diagnose and treat what the endoscope is "showing" the surgeon.**

Thus, applicant's goods allow the surgeon to consider and compare two or more images or visualizations of the area being treated, in order to aid in the performance of the surgery. Even if (as applicant contends) the two visualizations or images are not displayed together on the monitor at the same time, they nonetheless are "coupled" in that they allow the surgeon to compare and consider both images during the course of the surgical procedure. Likewise, the "markers and prompts" displayed on the monitor presumably are derived or transferred from the previously stored images to which the endoscopic image is compared.

More importantly, the particular configuration of applicant's goods that is set forth in the explanation quoted above, especially the asserted fact that the visualizations are not displayed simultaneously on a single monitor, is not dispositive. Applicant's goods, as identified in the application, do not limit the goods to any particular configuration but instead describe the goods

quite broadly. Nothing in the identification of goods would preclude applicant from configuring the system in such a way that the two visualizations are viewed together.

For these reasons, we find that COUPLED VISUALIZATION immediately describes a key feature of the goods, i.e., that the goods allow the surgeon to consider and compare two or more images or visualizations during the course of surgery.

Furthermore, we note that the evidence of record includes materials, submitted by applicant itself, that demonstrate merely descriptive use of COUPLED VISUALIZATION in the context of endoscopy. The written materials from a tutorial entitled "Advanced Virtual Medicine: Techniques and Applications for Virtual Endoscopy" include the following text (emphasis added):

In contrast, virtual endoscopy is a convenient alternative [to traditional endoscopy]. It is based on a 3D scan of the respective body region. Examples for these scans are CT (Computed Tomography) scans of the abdominal area, MRI (Magnet Resonance Imaging) scans of the head, or rotational angiography of blood vessels at the skull base. Based on the resulting volumetric data, the organs of interest are visualized and inspected from interior ("endo") view-points. Depending on the original endoscopic procedure, which is mimicked by virtual endoscopy, different goals can be achieved. These goals range from: ... intra-operative navigation: currently, the position of a "real" endoscope is tracked by an infrared-based 3D navigation system and mapped

into the image stack acquired previous to the operation. With virtual endoscopy, this position and orientation information can be exploited to provide a **coupled visualization** of optical and virtual endoscopy. In particular the virtual endoscopy can provide information which is not available to the optical endoscope, due to the limited flexibility and field of view.

Applicant's goods, as broadly identified in the application, would encompass the "traditional" endoscopy system that the tutorial article says is currently in use, as well as the apparently more advanced "virtual endoscopy" system described by the tutorial article. It is clear from all of the evidence placed into the record by the Trademark Examining Attorney that rapid technological advances in imaging equipment and software algorithms are resulting in significant strides in the field of "image guided surgery." Precise, real-time surgical navigation is made possible because of the consolidation of multiple image overlay systems. The major benefits are tied to superimposed images from multimodalities, not the possibility of multiple images on a single video display monitor. This may entail a pairing of images from a live, endoscopic camera image with recently-stored, advanced auto segmentation images, as described by applicant. Whether characterized as a single fusion of various automatic images, side-by-side compound images, panoramic views, or

simultaneous images from different vantage points, the term "Coupled Visualization" is descriptive because of the nature of the imaging technologies that applicant uses, not whether or not the product includes multiple views in a single display.

In short, a key feature of applicant's goods as they are identified in the application is that they allow the surgeon to consider and compare two visualizations of the patient during surgery. COUPLED VISUALIZATION directly and immediately describes this feature of the goods. The mark is merely descriptive of the goods, and therefore it is unregistrable under Section 2(e)(1).

Decision: The refusal to register is affirmed.