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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Virtual Geosatellite LLC

Serial No. 78712951

David Bogart Dort of Dort Patent, P.C. for Virtual Geosatellite LLC.

Mary D. Munson-Ott, Trademark Examining Attorney, Law Office 104 (Chris Doninger, Managing Attorney).

Before Hairston, Cataldo and Taylor, Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Virtual Geosatellite LLC filed an application to register the mark VIRTUAL GEO (in standard character form) on the Principal Register for the following services:

broadcasting services and provision of telecommunication access to; communications via multinational communication networks; data transmission and reception services via telecommunication means; electronic exchange of data stored in databases accessible via telecommunication networks; high bit-rate data transmission services for telecommunication network operators; leasing of telecommunication lines;

providing access to telecommunication networks; providing electronic telecommunication connections; providing telecommunications connections to a global computer network; providing third party users with access to telecommunication infrastructure; satellite communication services; satellite television broadcasting; satellite transmission services; satellite, cable, network transmission of sounds, images, signals and data; signal transmission for electronic commerce via telecommunication systems and data communication systems; telecommunication access services; telecommunication services, namely, local and long distance transmission of voice, data, graphics by means of telephone, telegraphic, cable, and satellite transmissions; telecommunication services, namely, local and long distance transmission of voice, data, graphics by means of telephone, telegraphic, cable and satellite transmissions; telecommunications reseller services, namely, providing long distance telecommunication services; telecommunications services, namely, personal communication services, telephone telecommunications services provided via prepaid telephone calling cards; transfer of data by telecommunication; transmission of data, sound and images by satellite; transmission of sound and vision via satellite or interactive multimedia networks in International Class 38.¹

The trademark examining attorney refused registration under Section 2(e)(1) of the Trademark Act on the ground that applicant's mark, if used in connection with applicant's services, would be merely descriptive of them.

When the refusal was made final, applicant appealed.

¹ Serial No. 78712951, filed September 14, 2005, based on an allegation of a bona fide intention to use the mark in commerce.

Applicant and the examining attorney filed briefs.

The examining attorney's determination in this case is based on the following analysis:

The applicant intends to use the mark "VIRTUAL GEO" in connection with various telecommunications services in International Class 38 as set forth in full above. The applicant specifies that several of these telecommunications services are delivered via satellite. Where the applicant does not indicate the specific means of providing the telecommunications services, the wording of the identification is broad enough to include delivery via satellite. As demonstrated by the enclosed evidence, "VIRTUAL GEO" merely describes an operational feature of the applicant's various telecommunications services, namely, use of virtual geo satellites or other satellites operating in virtual geo orbit or formation for service delivery." (Brief, unnumbered p. 3).

In support of her position, the examining attorney submitted an entry from the American Heritage Dictionary showing "virtual" defined as "created, simulated, or carried on by means of a computer or computer network; and an entry from the Encarta Dictionary showing "geo-" as a prefix for "1. earth, soil • *geomagnetic* • *geophyte* 2. geography, global • *geostrategy*," In addition, the examining attorney furnished an excerpt from "Wikipedia" for "Geostationary orbit" which states in relevant part that:

A geostationary orbit (GEO) is a geosynchronous orbit directly above the earth's equator (0° latitude). From the ground, a geostationary object appears motionless in the sky and is therefore the

orbit of most interest to operators of artificial satellites (including communication and television satellites). Due to the constant 0° latitude, satellite locations may differ by longitude only.

In addition, the examining attorney furnished several Internet printouts wherein the term "GEO" is used in connection with satellites:

The Optical ground station was constructed at Teide Observatory, Tenerife, Canary Islands for laser communication experiments from ground to geostationary (GEO) satellites.

The spot-4LEO satellite was launched in 1998 with laser communication terminal aboard for communication experiments with GEO satellites.
www.mao.kiev.ua/staff/kuzkov/air.html+geostationary

Instruments onboard geostationary (GEO) satellites have the capability of viewing regions during the complete diurnal cycle. Unfortunately, except for the recently launched Geostationary Earth Radiation Budget Instrument (GERB), there are no well-calibrated broadband measurements available from GEO.

<http://ams.comex.com/ams/13SATMET>

Two needs have recently converged to provide new observation time options for S'COOL participants. First, many teachers have reported that their biggest challenge in implementing S'COOL in the classroom is dealing with the changing overpass times for the Terra and Aqua spacecraft. Second, the CERES team has begun concentrating on data products obtained using geostationary (geo) satellites that take the CERES data a step further (see shaded oval in figure).

While geo satellites scan the Earth as often as every 15 minutes (and are often used in your TV weather report), currently CERES uses only imagery taken every 3 hours.

www.larc.nasa.gov/SCOOL/geo

GEO systems orbit the Earth at a fixed distance of 35,786 km (22,300 miles). The

satellite's speed at this altitude matches that of the Earth's rotation, thereby keeping the satellite stationary over a particular spot on the Earth. Examples of GEO systems include INTELSAT, Inmarsat, and PanAmSat.
www.satellitetelevisionnetworkusa.com

Further, the examining attorney maintains that applicant's website confirms that the applied-for mark VIRTUAL GEO is short for "virtual geostationary." Specifically, the examining attorney points to the following information at applicant's website:

VirtualGeo™ (n.) (1) A revolutionary approach in satellite orbit placement (2.) Virtual Geostationary, LLC Owner and operator of the VirtualGeo™ broadband and satellite system (3.) From Virtual Geostationary, meaning Geo- Earth-Stationary -- Fixed: projecting digital information on a global scale. (4) A new paradigm in broadband delivery.

...

The Virtual Geo satellite system involves a highly innovative orbital architecture employing satellites in highly elliptical orbits positioned and phased to reproduce the commercially significant characteristics of satellites in the geostationary arc. Satellites in the Virtual Geo formation do not interfere with satellites in the Geo arch or with terrestrial fixed services.

Finally, the examining attorney maintains that the term "virtual geo" is used in a descriptive manner in several patents owned by applicant: U.S. Patent 7277673 states, in relevant part: "A new geo like space called virtual geo space is disclosed to the present invention;"

U.S. Patents 5845206 and 6954613 state, in relevant part: "the virtual geo satellite orbits at an average altitude of 16-18,000 miles;" and U.S. Patent 6954613 also states, in relevant part: "the virtual geo satellite system of the disclosed system also enables complete communications coverage of the earth without requiring a ground network."

Applicant, in urging reversal of the refusal to register, argues that its identified services are "not described by the concept of virtual geo," and "'Virtual Geo' is not a commonly used to [sic] term as recited by the Trademark Examining Attorney, and in fact is only recited by the Applicant in its promotional literature (not as a descriptive, but as a proprietary orbital design that is not related to telecommunication services)." (Brief, p.3).

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 USPQ215, 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 significant attribute, function or property of the goods or services. See *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); and *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 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 its use or intended use. Moreover, if the mark is descriptive of any of the goods or services for which registration is sought, it is proper to refuse registration as to the entire class. *In re Analog Devices Inc.*, 6 USPQ2d 1808 (TTAB 1988), *aff'd* without pub. op., 871 F.2d 1097, 10 USPQ2d 1879 (Fed. Cir. 1989).

The evidence of record clearly demonstrates that the term VIRTUAL GEO, as used in connection with satellite transmission and communication services, immediately conveys that such services simulate the characteristics of geostationary satellites. Thus, we find that the applied-for mark, VIRTUAL GEO, is merely descriptive of applicant's various satellite transmission and communication services.

The record shows that applicant uses the combined term VIRTUAL GEO in a descriptive manner in its patents and on its website. When considered in the context of applicant's satellite transmission and communication services, applicant's web site makes clear that such services reproduce or simulate geostationary satellites, and customers of applicant's services would understand that its services operate in this manner. Consequently, the term VIRTUAL GEO immediately describes, without the need for speculation or conjecture, a significant feature or characteristic of the satellite transmission and communication services rendered by applicant. Further, the dictionary definitions and third-party web sites show the descriptive nature of the term as a whole. Specifically, VIRTUAL has descriptive significance as applied to applicant's services which reproduce or simulate the characteristics of geostationary satellites. Further, the record includes examples from websites showing that "GEO" is a commonly used and recognized shortened form of the term "geostationary."

Applicant argues that the term VIRTUAL GEO is not in common use, but rather is only used by applicant in a proprietary manner. It is well-established, however, that a term need not be in common use in an industry to be

descriptive, and the mere fact that an applicant is the first and only user of such term does not justify registration where, as here, the term is merely descriptive of applicant's services. In re National Shooting Sports Foundation, Inc., 219 USPQ 1018 (TTAB 1983).

Finally, we note that applicant has requested that we either reverse the refusal or allow it to amend the application to remove "any mention of satellites, which should remove any descriptiveness issue with regard to the satellite orbitals." (Brief, p. 3). Trademark Rule 2.142(g) provides that an application which has been considered and decided on appeal will not be reopened except for entry of a disclaimer under Section 6 of the Trademark Act, or upon the order of the Director. Thus, the Board has no authority to remand the application to the examining attorney for consideration of an amendment to the identification of services.

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