

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

Mailed:
December 4, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Aspect Software, Inc.

Serial No. 78925898

Daniel J. Bourque of Bourque & Associates for Aspect
Software, Inc.

April K. Roach, Trademark Examining Attorney, Law Office
115 (J. Brett Golden, Managing Attorney).

Before Quinn, Drost and Bergsman, Administrative Trademark
Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Aspect Software, Inc. ("applicant") filed an intent-
to-use application to register the mark UNIFIED IP, in
standard character format, for the goods as amended
identified below:

Customer contact centers, namely,
computer hardware and associated
software for initiating, integrating,
routing, controlling and monitoring
inbound and outbound customer contact
through multiple channels including
public switched telephone networks
(PSTN), VoIP telephone contacts, email,
web and facsimile contacts;
telecommunication systems comprised of

central and private telephone switches, voice response units and telephone dialers; computer software used for managing customer contact centers and customer contacts through multiple channels, namely, software for managing and routing customer contact via telephone, e-mail, web and facsimile; computer software used to support the activities of contact center customer service representatives and contact center managers; computer software used for intelligent contact routing via telephone, e-mail, web and fax; computer software used to manage web chat, interactive voice response, real-time and historical contact center report generation and telephone blending by managing both inbound and outbound telephone calls; computer software used to create desktop and management tools for customer contact centers, in Class 9 (hereinafter "customer contact center hardware and software").

The Trademark Examining Attorney refused to register applicant's mark under Section 2(e)(1) of the Trademark Act of 1946, 15 U.S.C. §1052(e)(1), on the ground that applicant's mark is merely descriptive. According to the Examining Attorney, "UNIFIED IP immediately describes that the goods serve as a single unified system for integrating the functions of a customer call center and use Internet Protocol standards."¹

¹ Examining Attorney's Brief, unnumbered pp. 5 and 9.

To support the descriptiveness refusal, the Examining Attorney submitted the following relevant evidence:

1. A dictionary definition of the word "unify" meaning "to make into a unit or a coherent whole." *Merriam-Webster Online* (m-w.com). See also The American Heritage Dictionary of the English Language (4th ed. 2000) (bartleby.com) ("to make into or become a unit: consolidate").
2. A dictionary definition of the term IP meaning "Internet Protocol." The American Heritage Dictionary of the English Language (4th ed. 2000) (bartleby.com). See also *MSN.Encarta* (encarta.msn.com).
3. A dictionary definition of the term "Internet Protocol" meaning a "data transmission standard: the standard that controls the routing and structure of data transmitted over the Internet." *MSN.Encarta* (encarta.msn.com).
4. Excerpts from applicant's website (aspect.com) displaying use of the mark UNIFIED IP.²

A. Applicant makes the following statements on its Products Overview page:

[O]ur IP Strategy enables you to integrate VoIP into your contact center environment how and when you want to.

* * *

The Aspect Software IP strategy takes advantage of the openness and ubiquity of Voice over Internet Protocol (VoIP) and the maturity of Session Initiation Protocol (SIP) to provide the foundation for a new and better contact center. Aspect Software

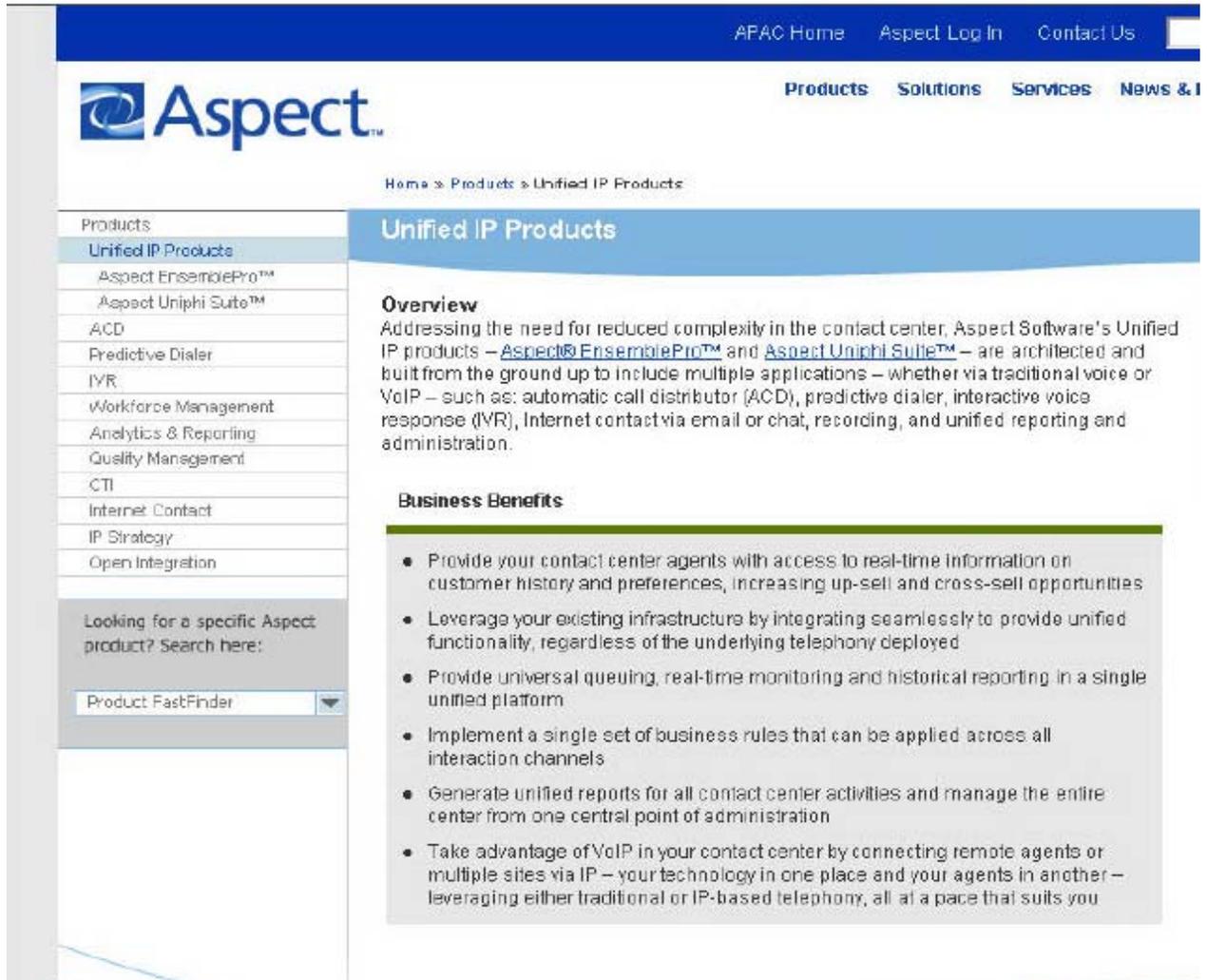
² Applicant began using the mark in 2006 (Applicant's Supplemental Brief, p. 3).

gives customers the choice between embracing either closed or open source IP to address increasingly dynamic processes and practices with its open Unified IP Contact Center product line, or to migrate to IP over time with its Signature product line.

* * *

Unified IP Contact Center product line: **Architected around Internet Protocol standards**, the Aspect Software Unified IP™ Contact Center products bring extreme flexibility to dynamic organizations. Aspect® EnsemblePro® and Aspect® Uniphi Suite™, **specifically created to unite multiple capabilities in [a] single platform**, enable customers to unlock additional functionality as needed. These proven capabilities include automatic call distribution (ACD), predictive dialing, speech self service, internet contact via email or chat, recording, logging and quality management, all with unified reporting, routing and administration. **Unified IP Contact Center products allow customers their choice of transport - open source IP, closed source IP or traditional voice.** (Emphasis added).

B. The Unified IP Products page



5. An undated press release or news story in the *Asterisk VoIP News website (asteriskvoipnews.com) announcing the 2006 fourth quarter release of applicant's Unified IP solution. The press release reports that the "Aspect Software IP strategy takes advantage of the openness and ubiquity of Voice over Internet Protocol (VoIP)" and that it "gives customers the choice between embracing IP to address increasingly dynamic processes and practices with its open Unified IP Contact Center product line or to migrate over time to IP with its Signature product line."

"Our Unified IP strategy recognizes the evolution, standardization and market acceptance of IP, notably SIP, as well as the maturation and market acceptance of a unified contact center offering. And we are seeing increased market opportunities as a result of this natural convergence," said Gary Barnett, chief technology officer and executive vice president of technical services of Aspect Software. "Additionally, as this convergence occurs, we uniquely understand that businesses are demanding a choice of IP plumbing: open source or closed source IP and Aspect Unified IP clearly meets this need."

6. A press release, dated December 21, 2006, in the VoIP News website (voip-news.com) with the following announcement: "IBM and 3Comm to Deliver Unified IP Telephony Suite for Small and Mid-Size Business." The proposed venture will allow users to "integrate IP telephony capabilities" with business applications.
7. An excerpt from a registration form for a webinar in the TechRepublic website (techrepublic.com) entitled "Migrating Mobile Services to a Unified IP Infrastructure." The webinar reviews ways in which mobile operators can offer all of their services over a unified IP transport infrastructure.
8. An announcement regarding the "Cisco Unified IP Conference Station and IP Phone Vulnerabilities" published on February 22, 2007 in the SecuriTeam website (securiteam.com).³ This document provides a warning regarding security issues in Cisco's Unified IP Conference Station and instructions

³ The announcement was also made available in another website (<http://seclists.org>) whose identity is not clear. It could be WatchFire or Insecure.org.

for working around it. Cisco's Unified IP Phones provide integrated phone service for networks.

9. An excerpt from the TWAComm.com website advertising the sale of "Cisco 7900 Unified IP Phones: Voice Over IP phones used with Cisco's Unified Communications system."
10. A press release, dated November 16, 2006, in the WebEx website (webex.com) announcing "Litescape Technologies to Deliver Unified IP Communications Applications Through WebEx Connect." The press release announces collaboration between Litescape Technologies and WebEx to link desktop applications with communication applications in an IP-based network.

In addition, the Examining Attorney submitted excerpts from websites using the word "unified" to describe integrated communication networks, including communication networks for telecommunication contact centers. Also, the Examining Attorney submitted excerpts from websites using the term IP in connection with Internet Protocol communications.

On the other hand, applicant contends that UNIFIED IP is not merely descriptive for the following reasons:

1. UNIFIED IP is not descriptive of customer contact center hardware and software, as well as telephony equipment, simply because Internet Protocol may be utilized as a means of communication and interconnection by the hardware and software. In other words, because there are

multiple communication protocols that may be encompassed by the description of goods, "Internet Protocol communication is NOT a limitation on the goods sold under the present mark for which registration is sought."⁴

(Emphasis in the original).

2. UNIFIED IP has multiple meanings;
3. Applicant's use of UNIFIED IP in association with other marks has strengthened the consumer's perception of UNIFIED IP as a mark;
4. The term UNIFIED IP is so broad that it does not directly convey any meaning; and,
5. The term UNIFIED IP is not in common usage by others to describe customer contact centers.⁵

Applicant submitted evidentiary exhibits with both its appeal brief and its supplemental appeal brief. The Examining Attorney objected to the exhibits that were not previously made of record during the prosecution of the application. "The record in the application should be complete prior to the filing of an appeal." Trademark Rule 2.142(d), 37 CFR §2.142(d).⁶ With respect to the exhibits

⁴ Applicant's Brief, p. 6; Supplemental Brief, pp. 11-12.

⁵ Applicant's Brief, p. 4; Supplemental Brief, pp. 9-10.

⁶ The Examining Attorney requested the Board to remand the application so he could submit additional evidence pursuant to Trademark Rule 2.142(d) ("After an appeal is filed, if the

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that were not made of record during the prosecution of the application, the objection is sustained and the exhibits have not been considered. See *In re Fitch ICCA Inc.*, 64 USPQ2d 1058, 1059 n.2 (TTAB 2002); *In re Trans Continental Records, Inc.*, 62 USPQ2d 1541, 1541 n.2 (TTAB 2002).

Moreover, the Examining Attorney's objection to the list of registrations incorporating the word "Unified" produced from an unidentified source is also well taken. The mere submission of a list of registrations or a copy of registrations from a private search report does not make the registrations part of the record. Third-party registrations may be made of record only by filing copies of the registrations made from USPTO records. *In re Ruffin Gaming LLC*, 66 USPQ2d 1924, 1925 n.3 (TTAB 2002). Even if the list of registrations were considered, they would have very little probative value because they are not complete copies of the registrations, and therefore there is no way of knowing whether the registrations issued with, or without, a disclaimer of the exclusive right to use the word "Unified."

appellant or the examiner desires to introduce additional evidence, the appellant or the examiner may request the Board to suspend the appeal and to remand the application for further examination"). The Board granted the Examining Attorney's request.

Finally, we note that applicant attached copies of exhibits to its briefs that had been previously submitted during the prosecution of the application. Because the documents were already of record, their submission with the briefs were unnecessary. See *ITC Entertainment Group Ltd. v. Nintendo of America Inc.*, 45 USPQ2d 2021, 2022-2023 (TTAB 1998) (submission of duplicative papers is a waste of time and resources, and it is a burden on the Board).

A term is merely descriptive if it immediately conveys knowledge of a significant quality, characteristic, function, feature or purpose of the products it identifies. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987). Whether a particular term is merely descriptive is determined in relation to the goods 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 question is not whether someone presented only with the mark could guess what the products are. Rather, the question is whether someone who knows the products will understand the mark to convey information about them. *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1316-1317 (TTAB 2002); *In re Patent & Trademark*

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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 USPQ 365, 366 (TTAB 1985).

"On the other hand, if one must exercise mature thought or follow a multi-stage reasoning process in order to determine what product characteristics the term indicates, the term is suggestive rather than merely descriptive." *In re Tennis in the Round, Inc.*, 199 USPQ 496, 497 (TTAB 1978). *See also, In re Shutts*, 217 USPQ 363, 364-365 (TTAB 1983); *In re Universal Water Systems, Inc.*, 209 USPQ 165, 166 (TTAB 1980).

Finally, in determining whether a mark is merely descriptive, we must consider the mark in its entirety. As argued by applicant, common words may be descriptive when standing alone, but when used together in a composite mark, they may become a valid trademark. *See Concurrent Technologies Inc. v. Concurrent Technologies Corp.*, 12 USPQ2d 1054, 1057 (TTAB 1989). However, if each component retains its descriptive significance in relation to the services, without the composite term creating a unique or incongruous meaning, then the resulting combination is also merely descriptive. *In re Tower Tech., Inc.*, 64 USPQ2d at 1317-1318.

We start our analysis of the registrability of UNIFIED IP by inquiring whether UNIFIED IP describes a quality, characteristic, function, feature or purpose of "customer contact center hardware and software," not whether we can guess what the products are by looking at the mark. The evidence shows that UNIFIED IP directly describes a communication network utilizing Internet Protocol (e.g., IBM and 3Comm formed a joint venture to develop a "Unified IP Telephony Suite for Small and Mid-Size Business" to "integrate IP telephony capabilities" with business applications; the webinar "Migrating Mobile Services to a Unified IP Infrastructure" reviews the ways in which mobile operators can offer all of their services over a unified IP transport infrastructure; Cisco sells unified IP phones to provide integrated phone service for networks; and, Litescape Technologies and WebEx formed a joint venture to deliver unified IP communications by linking desktop applications with communication applications in an IP-based network).

Applicant's UNIFIED IP mark identifies computer hardware and software for initiating, integrating, routing, controlling and monitoring inbound and outbound customer contact through multiple channels including VoIP telephone contacts, email, and web contacts. As evidenced by

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applicant's website, this encompasses Internet Protocol channels. Applicant's UNIFIED IP products were designed and built around Internet Protocol technology (e.g., "Architected around Internet Protocol standards, the Aspect Software Unified IP™ Contact Center products bring extreme flexibility to dynamic organizations"; "specifically created to unite multiple capabilities in single platform"; and "Unified IP Contact Center products allow customers their choice of transport - open source IP, closed source IP or traditional voice"). Indeed, applicant's UNIFIED IP products use VoIP and other traditional or IP-based telephony.

The fact that applicant's customer contact center hardware and software encompasses more than communications derived from Internet Protocol channels does not render the mark suggestive. It is not necessary that a term describe all of the purposes, functions, characteristics or features of a product to be considered merely descriptive; it is enough if the term describes one significant function, attribute or property. *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004) ("A mark may be merely descriptive even if it does not describe the 'full scope and extent' of the applicant's goods or services," citing *In re Dial-A-Mattress Operating Corp.*,

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240 F.3d 1341, 57 USPQ2d 1807, 1812 (Fed. Cir. 2001)); *In re Gyulay*, 3 USPQ2d at 1010.

The examining attorney's evidence also shows that applicant's competitors use the term "unified" to describe hardware and software with the capability of handling multiple functions or types of communication.

When the terms "unified" and IP are combined together, as applicant has combined them, they retain their descriptive meanings in relation to the goods (hardware and software used in connection with *inter alia* Internet Protocol communications), without the composite term creating a unique or incongruous meaning.

With respect to applicant's argument that the term UNIFIED IP has multiple meanings, it is well settled that descriptiveness must be determined in relation to the goods for which registration is sought. Therefore, the fact that a term may have a different meaning(s) in a different context is not controlling. See *In re Chopper Industries*, 222 USPQ 258, 259 (TTAB 1984); *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979); *In re Champion International Corp.*, 183 USPQ 318, 320 (TTAB 1974). As discussed above, UNIFIED IP has meaning as a communication network utilizing Internet Protocol. There is no double entendre or incongruity in applicant's use of the term "unified IP."

Applicant also contends that its "prior use of UNIFIED IP as a trademark, and in association with its other marks, has strengthened the customer's perception that UNIFIED IP is not merely descriptive of customer contact centers."⁷ Applicant appears to be arguing that its use of UNIFIED IP as a trademark has acquired distinctiveness. This argument does not address the issue of whether the term at issue is merely descriptive. Further, the application does not claim the benefits of Section 2(f).

Finally, applicant argues that "the mark sought to be registered is not in common usage by others as a description of the same or related goods."⁸ First, the evidence of record contradicts applicant's contention. Moreover, the fact that an applicant may be the first and only user of a merely descriptive term does not justify registration if the only significance conveyed by the term is merely descriptive. *See In re Sun Microsystems, Inc.*, 59 USPQ2d 1084, 1087 (TTAB 2001); *In re Acuson*, 225 USPQ 790, 792 (TTAB 1985).

⁷ Applicant's Brief, pp. 8-9; Applicant's Supplemental Brief, pp. 14-15.

⁸ Applicant's Brief, p. 4.

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In view of the foregoing, we find that the term UNIFIED IP, if used in connection with customer contact center hardware and software, is merely descriptive.

Decision: The refusal to register is affirmed.