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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 Fabasoft AG

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Serial No. 79008774

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Stewart J. Bellus of Collard & Roe, P.C. for Fabasoft AG.

Giselle M. Agosto, Trademark Examining Attorney, Law Office 102 (Thomas V. Shaw, Managing Attorney).

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Before Drost, Cataldo, and Taylor, Administrative Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

On September 21, 2004, Fabasoft AG (applicant) applied to register the mark EGOV-APPS in standard character form on the Principal Register for the following goods and services:

> Computer software for business process management and workflow management, namely, automating, systematizing and structuring the administration and management of large industrial enterprises and public authorities, telecommunication enterprises, and the services involved with financial and planning services; computer software for document and information

management, storage, archiving and retrieval; data processing equipment, namely, computer hardware, keyboards, monitors, mouse, printers, scanners and computer peripherals; magnetic data carriers, namely, pre-recorded compact discs featuring software for business process management and workflow management, namely, automating, systematizing and structuring the administration and management of large industrial enterprises and public authorities, telecommunication enterprises, and the services involved with financial and planning services; compact discs and DVDs for data processing; computers; computer software for use in database management and for word processing in the fields of business process management and workflow management, namely, automating, systematizing and structuring the administration and management of large industrial enterprises and public authorities, telecommunication enterprises, and the services involved with financial and planning services in Class 9.

Maintenance and repair of computer hardware in Class 37.

Education services, namely, classes, seminars, conferences and workshops in the field of computer and software training, word and data processing in Class 41.

Professional consultation in the field of information technology; computer consultation; computer programming for others in Class 42.

Serial No. 79008774. The application (extension of protection) was filed under the provision of 15 U.S.C. § 1141f(a), Section 66a of the Trademark Act.

The examining attorney has refused to register applicant's term on the ground that the mark is merely descriptive for the identified goods and services under

Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1).

The examining attorney argues (Brief at unnumbered p. 5) that:

> The mark consists of the terms EGOV and APPS joined by a hyphen. EGOV is a frequently used acronym recognized in commerce that stands for the term "Electronic government." There are no other known meanings of the term. There is evidence that both the acronym and the term "electronic government" are descriptive terms.

Furthermore, the examining attorney submitted a definition of "apps" as meaning "computer application" and she argues that "applicant uses the term in connection with computer software, computer software training, data processing, information technology and computer programming. As such, applicant is using the term in connection with goods and services which are tools used in egov." Brief at unnumbered p. 6.

In turn, applicant argues that "[n]o consumer seeing the EGOV-APPS mark would immediately grasp the goods and services with which Applicant's mark is used." Brief at unnumbered p. 5. Applicant also points to several other registrations and argues that those marks indicate that its mark is not merely descriptive.

After the examining attorney made the refusal final, applicant filed a notice of appeal.

For a mark to be merely descriptive, it must immediately convey "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). *See also In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); *In re Quik-Print Copy Shops, Inc.*, 616 F.2d 523, 205 USPQ 505, 507 (CCPA 1980). Courts have long held that to be "merely descriptive," a term need only describe a single significant quality or property of the goods. *Gyulay*, 3 USPQ2d at 1009; *Meehanite Metal Corp. v. International Nickel Co.*, 262 F.2d 806, 120 USPQ 293, 294 (CCPA 1959). While we must consider the mark in its entirety, "[i]t is perfectly acceptable to separate a compound mark and discuss the implications of each part thereof … provided that the ultimate determination is made on the basis of the mark in its entirety." *In re Hester Industries, Inc.*, 230 USPQ 797, 798 n.5 (TTAB 1986).

We begin by summarizing the evidence (emphasis added) that the examining attorney has submitted to support her argument that the mark is merely descriptive. First, "Egov" and "E-Gov" are acronyms for "electronic government." www.acronymnfinder.com.

Second, **E-Government** is defined as:

> [T]he use by government agencies of information technologies (such as Wide Area Networks, the Internet, and mobile computing) that have the ability to transform relations with citizens, businesses and other arms of government. These technologies can serve a variety of different ends: better delivery of government services to citizens, improved interactions with business and industry, citizen empowerment through access to information, or more efficient government management. The resulting benefits can be less corruption, increased transparency, greater convenience, revenue growth, and/or cost reduction.
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> www.worldbank.org

Third, the examining attorney also submitted other evidence to show how the terms E-Gov, Apps, and application are used or defined.

> e-
> electronic
> http://encarta.msn.com
>
> Gov – Government
> www.acronymnfinder.com
>
> apps – "computer application"
> application – "7. *Computer Science.* A computer program with a user interface."
> http://dictionary.com
>
> The Orkand Corporation … "is an emerging leader in **e-government (e-Gov)** electronic records management…"
> Thomas & Herbert
> "e-Gov solutions"
> www.fedpage.com
>
> Oracle
> Enterprise Architecture Breakthroughs Drive **E-Gov**, Homeland Security
> www.softechmag.com
>
> Mobile – new frontiers for enterprise apps UI in India
> The architecture is pretty simple. The backend enterprise/**e-gov apps** may be in 32EE (or .NET). With

the connectivity to the backend services… With **e-gov apps** coming up in a big way, most of the apps can be extended to villages…
www.jroller.com[1]

eGovernment (a contraction of electronic government, which is also known as **e-gov**, digital government, online government or transformational government) is the application of information and communications technology to enhance the effectiveness of the legislature, judiciary or administration.
www.wikipedia.org

eGov is the linchpin for all five of the President's Management Agenda initiatives.
www.xml.gov

The coverage of IJEGR [International Journal of Electronic Government] is international and focused on original research in electronic government applications, management, and policy. Areas of interest include, but are not limited to the following:
- Best practices in e-government
- Electronic government applications
http://mailman.isi.edu

E-Government applications definitely are getting more comprehensive and complex.
www.techflow.com

The role of government in delivering better services is perceptible with many public organizations transforming their strategies and deploying **eGov applications.**
www.ccsr.cse.dmu.ac.uk

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[1] We note that some of these articles may be from foreign sources but potential purchasers of applicant's goods and services are likely to seek information on the internet from both U.S. and foreign sources. Therefore, we will give these references some weight. *In re Remacle*, 66 USPQ2d 1222, 1224 n.5 (TTAB 2002) ([I]t is reasonable to consider a relevant article from an Internet web site, in English, about medical research in another country, Great Britain in this case, because that research is likely to be of interest worldwide regardless of its country of origin").

The examining attorney's evidence demonstrates that the term "e-" is an abbreviation for "electronic," "Gov" is an abbreviation of "Government," and "Apps" is an abbreviation for "computer applications." Thus, the term EGOV-APPS would be an a shortening of the combined term electronic government computer applications.

In this case, we do not rely on just the fact that the dictionary as well as the acronym dictionary indicate that the individual terms would have a descriptive meaning when the terms are combined. There is evidence that the combined term EGOV would be recognized as the term "electronic government." *See, e.g.,* www.fedpage.com ("an emerging leader in e-government (e-Gov) electronic records management") and www.xml.gov ("eGov is the linchpin for all five of the President's Management Agenda initiatives"). Thus, the term "EGOV" when it is combined with "Apps" would refer to electronic government applications. Finally, there is evidence of the descriptive use of the combined term EGOV-APPS and E-GOV applications.

Also, the addition of the hyphen is not significant. *In re Vanilla Gorilla, L.P.*, 80 USPQ2d 1637, 1640 (TTAB 2006) (presence of punctuation mark (a hyphen) in the mark "3-0'S" does not negate mere descriptiveness of mark); *In re S.D. Fabrics, Inc.*, 223 USPQ 54, 55 (TTAB 1984)

(presence of slash in the mark "designers/fabric" does not negate mere descriptiveness of mark).

Next, we must determine if prospective purchasers would understand that the term EGOV-APPS is merely descriptive of applicant's goods and services. The test is not whether these purchasers, when presented with the term, can correctly guess what the goods and services are. Descriptiveness of a mark is not considered in the abstract, but in relation to the particular goods or services for which registration is sought. *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978) ("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"). Therefore, we must consider the mark in relation to applicant's goods and services.

The examining attorney argues that "applicant uses the term in connection with computer software, computer software training, data processing, information technology and computer programming. As such, applicant is using the term in connection with goods and services which are tools used in egov." Brief at unnumbered pp. 6-7. Applicant's goods include computer software for automating the

administration of public authorities as well as other software that would be described as computer applications used in electronic government. Applicant's services involving professional consultation in the field of information technology; computer consultation; computer programming for others; maintenance and repair of computer hardware; and computer and software training are all broad enough to include these services in the area of electronic government computer applications. When these prospective purchasers encounter the term EGOV-APPS in the context of applicant's goods and services, regardless of what other meanings the terms may have in a different context, they will immediately understand that the goods and services are related to electronic government computer applications. *In re Polo International Inc.*, 51 USPQ2d 1061, 1063 (TTAB 1999) ("If applicant produced goods related to the medical field, or specifically related to physicians, then the term 'DOC' would be readily understood by the public as referring to 'doctor.' However, here applicant's goods are computer software for document management, and 'DOC' will be readily understood as referring to documents"). *See also In re Sun Microsystems Inc.*, 59 USPQ2d 1084, 1087 (TTAB 2001):

> We disagree, however, with applicant's conclusion that AGENTBEANS is suggestive or fanciful and find that the terms "agent" and "beans" when combined are no less descriptive than the terms are individually, considered in conjunction with applicant's goods. See, e.g., *In re Copytele Inc.* 31 USPQ2d 1540 (TTAB 1994) (combination of SCREEN FAX PHONE held merely descriptive and without incongruity resulting from combination, and *In re Lowrance Electronics*, 14 USPQ2d 1251 (TTAB 1989) (generic terms COMPUTER and SONAR held just as generic and not incongruous when used in combination).

Applicant also argues (Brief at unnumbered p. 3) that the Office:

> [H]as allowed registration of the EGOV SOLUTIONS mark (Reg. No. 2,969,010) for "designing and implementing websites for other" as well as the EGOV.NET mark (Reg. No. 2,868,064) for goods nearly identical to those in this application for EGOV-APPS. The EGOV USER GROUP mark (Registration No. 2,822,855) was also registered for use with similar goods and services… Furthermore, Applicant respectfully points out its EGOV-ACADEMY mark (Registration No. 3,086,962) for which no disclaimer was required.

The examining attorney has offered the followed analysis of these registrations (Denial of Request for Reconsideration at 2) in response to applicant's argument that these registrations support applicant's argument that its mark is not merely descriptive:

> EGOV.NET (This mark was only allowed for registration in the Supplemental Register. This is an admission that the mark is merely descriptive of the goods and services identified in the application, which are the same as those identified in [the] present application…)
>
> EGOV SOLUTIONS (The term EGOV was seen as descriptive in this case and was disclaimed. The mark was carried

> onto the Principal Register by the term SOLUTIONS. This case is not analogous to the present case because the individual components of the composite term EGOV-APPS are both descriptive.)[2]
>
> EGOV-ACADEMY (The mark was initially refused on the Principal Register because the individual parts of the composite were found to be descriptive. Only after applicant deleted Class 41 educational services, was the application allowed on the Principal since the term ACADEMY was no longer descriptive. The term EGOV was not disclaimed because the hyphen, connecting both terms, created a physical connection between the individual parts of the composite. In the present case, the term APPS is descriptive for all goods and services identified).
>
> EGOV USER GROUP (The record does not explain why the term EGOV was not disclaimed…)

To the extent that we consider other records in determining descriptiveness in this case, it would seem that the registrations that applicant introduced provide more support for the examining attorney's position than applicant's. One is on the Supplemental Register (No. 2,868,064) and, in another, the term EGOV has been disclaimed (No. 2,969,010). Such registrations would tend to support the examining attorney's position. *In re Historic Wharf's Associates, Inc.*, 222 USPQ 92, 93 n.1 (TTAB 1984) ("[E]ven if the additional evidence had been considered, it could hardly have altered our conclusions in

[2] This registration appears to be owned by a third party. The other registrations are apparently owned by applicant.

this case since the third party registrations comprised concededly descriptive marks or matter (i.e., two were Supplemental Register registrations and one involved a disclaimer of descriptive matter analogous to 'WOODEN BOAT SHOW')"). The fact that applicant has one registration for a different EGOV mark does not foreclose a determination that its current mark is merely descriptive.

We agree that the registrations in the record, if they were considered, would not dictate a different result in this case. "It is well settled that each case must be taken on its own facts." *Sun Microsystems*, 59 USPQ2d at 1087. *See also In re Best Software Inc.*, 63 USPQ2d 1109, 1113 (TTAB 2002).

The evidence here shows that EGOV-APPS is an abbreviation for the term "electronic government applications." When this term is used in association with applicant's goods and services, we have no doubt that potential purchasers would immediately understand that applicant's term merely describes those goods and services.

Decision: The refusal to register is affirmed.