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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Alcatel Lucent

Serial No. 79010903

K. Bradford Adolphson of Ware, Fressola, Van Der Sluys & Adolphson for Alcatel Lucent.

Michael Tanner, Trademark Examining Attorney, Law Office 117 (Loretta C. Beck, Managing Attorney).

Before Hairston, Walters and Bucher, Administrative Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

Alcatel Lucent has filed an application to register the standard character mark USER-CENTRIC BROADBAND on the Principal Register for the goods and services listed below.[1] The application includes a disclaimer of BROADBAND apart from the mark as a whole.

[1] Serial No. 79010903 has a filing date of November 10, 2004, is based on an International Registration under Section 66(a) of the Trademark Act, 15 U.S.C. §1141f(a), and includes an allegation of a bona fide intention to use the mark in commerce.

International Class 9:
Telephones; cellular and wireless telephones; satellite telephones; telephone headsets; carrying cases for cellular telephones; antennas for cellular telephones; microphones and loudspeakers for hand free use of cellular telephones; telecommunication management software for managing USB connections between cellular telephones and computers; removable covers for telephone receivers not made of paper; prepaid magnetically encoded telephone calling cards; intercoms; telephone answering machines; facsimile machines; pagers; portable media players; telecommunication routers, switches, multiplexers, demultiplexers, gateway hardware, and servers; LAN (local area network), MAN (metropolitan area network), WAN (wide area network), SAN (storage area network) and VPN (virtual private network) hardware and operating software; digital subscriber line access nodes; digital subscriber line access multiplexers; modems for transmitting and receiving voice and data in digital form over telecommunications networks; Telecommunications lines management software for transmitting and receiving voice and data in digital form over telecommunications networks; adapters, interface cards and electronic boxes for accessing telecommunications networks; digital loop carrier units; telecommunication switches, namely, packet switches, frame relay switches, time division multiplex (TDM) switches, asynchronous transfer mode (ATM) switches, voice switches, cell-based switches, frame-based switches; time division multiplexers; telecommunication service switches for receiving and routing telecommunications signals and initiating advanced network services; intelligent network application software that facilitates advanced telecommunication network services, namely telecommunication software providing local number portability; telecommunication software for accessing, managing, securing, operating and monitoring telecommunications networks and telephony systems; telecommunication software for quality control and detection of defaults and incidents in telecommunications networks; telecommunication software for facilitating electronic mail; software for facilitating voice messaging; computer e-commerce software to allow users to perform electronic business transactions via a global computer network; software for accounting and for billing telecommunications costs; software for analyzing telecommunications flow, time and costs; software for managing telephone directories; software for maintaining confidentiality of computer communications by using personal user identifications, access control, and encryption; telecommunications hardware and software for the transmission of digital signals over a fiber optic cable system; telecommunication network hardware and software, namely, optical gateway managers, optical amplifiers and optical cross-connects, and computer operating software therefor; high capacity cross-connect telecommunications switching devices for use in the transport of voice, data, video and imaging information; electronic and optical communications instruments and components, namely, optical transmitters, optical receivers,optical data links, optical transceivers, cable television transmitters, digital transmitters, and communication link testers for testing communication links; fiber optics; fiber optic connectors;

fiber optic cables; optical fibers sold as a component of fiber optic cables; optical signal communication cables and conductors; fiber optic couplers, filters and terminating devices; lasers not for medical use; electrical connectors; telecommunications and computer connection cables; transceiver base stations for use with cellular radio communications network; electronic controllers for transceiver base stations for use with cellular radio communications network; electronic switches for cellular radio communications network; software for controlling, monitoring and maintaining cellular radio communications network; satellites; satellite monitoring stations; satellite surveillance stations; software for facilitating and monitoring satellite telecommunications; unmanned spacecraft with onboard equipment, namely, complete satellites; on-board satellite equipment, namely, radio and television transmitters and receivers; satellite equipment, namely, photoelectric solar arrays, batteries, and computer hardware and software for altitude and orbit control, temperature control, data processing, and satellite monitoring; computer hardware and software for satellite telemetry and mission control communications; satellite payload equipment, namely, antennas and pointing apparatus therefor, and computer hardware and software for controlling satellite antenna, and transponders.

International Class 37:
Installation, maintenance and repair of electronic communication and telecommunications networks, systems, equipment, apparatus, and devices; installation, maintenance and repair of electronic telematic communication and telecommunications networks, systems, equipment, apparatus, and devices.

International Class 38:
Telecommunications services, namely, electronic, electric, and digital transmission of voice, data, images, signals, and messages; electronic mail services; rental of equipment for telecommunications; computer aided transmission of messages and images; providing multiple-user telecommunications connections to the Internet.

The examining attorney has issued a final refusal to register on two grounds. First, he has refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark so resembles the mark USERCENTRIC, previously registered for "engineering and design services for data processing systems; computer consultation services; computer software design and updating

for others"[2] that, if used on or in connection with applicant's goods and services, it would be likely to cause confusion or mistake or to deceive.

Second, the examining attorney has refused registration under Section 2(e)(1) of the Trademark Act, §15 U.S.C. 1052(e)(1), on the ground that applicant's mark is merely descriptive in connection with its goods and services.

Applicant has appealed. Both applicant and the examining attorney have filed briefs and submitted evidence.

Likelihood of Confusion

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. *See In re E. I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). *See also Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005); *In re Majestic Distilling Company, Inc.,* 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003); and *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in

[2] Registration No. 2675482 issued January 14, 2003, to Kim, Yong K., in International Class 42.

the essential characteristics of the goods and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976); and *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999) and the cases cited therein.

We turn, first, to a determination of whether applicant's mark and the registered mark, when viewed in their entireties, are similar in terms of appearance, sound, connotation and commercial impression. The test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impressions that confusion as to the source of the goods or services offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *See Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975).

The examining attorney contends that the marks are substantially similar, arguing that USER-CENTRIC is the dominant portion of applicant's mark; that the hyphen in this portion of applicant's mark is immaterial and, thus, the dominant portion of applicant's mark is identical to the registered mark in its entirety; and that, while the individual terms USER and CENTRIC may be weak, the record

contains insufficient evidence to indicate that the registered mark, USERCENTRIC, is weak, noting that evidence of extensive use by applicant of its mark does not establish that the registered mark is weak.

Applicant references evidence it submitted, *infra*, showing numerous uses of the terms USER CENTRIC and USERCENTRIC in Google search results, as well as CENTRIC or USER formative marks in third-party applications and registrations, as evidence that the cited registered mark is not arbitrary, that the terms USER and CENTRIC are in common use, and that the cited registered mark is a weak mark. Applicant concludes that its use of a hyphen between USER and CENTRIC and the addition of the term BROADBAND is sufficient to distinguish its mark from the mark in the cited registration.

The evidence of record submitted by applicant includes the following:

- Lists of Google search results for the searches "user centric broadband" (27,600 hits); and "user centric broadband" "not including alcatel" (185 hits). Applicant alleges this demonstrates that the vast majority of uses of the phrase refer to applicant.
- Lists of Google search results for the searches "user centric (500,000 hits); and "usercentric" (35,000

hits). Applicant alleges this evidence demonstrates that the cited registered mark is not arbitrary.

- Three third-party registrations for, respectively, USER-CENTERED SOLUTIONS, USERCENTRIC and CENTRICS, each for goods and/or services pertaining to computer hardware or software or design; a list of 143 third-party applications and registrations of CENTRIC formative marks for a wide variety of goods and services; a list of 150 third-party applications and registrations of USER formative marks for a wide variety of goods and services; and copies of three cancelled third-party registrations for USERFRIENDLY marks for computer related services; and one live third-party registration for the mark USER FRIENDLY CONSULTING for computer software systems analysis, with a disclaimer of CONSULTING. Applicant alleges that this evidence demonstrates that USER and CENTRIC formative marks are weak and common on the register.[3]

When we compare the marks in their entireties, we consider them to be more similar than dissimilar. Although, as applicant correctly notes, we must compare the marks in their entireties, one feature of a mark may be more significant than another, and it is not improper to give

[3] The third-party applications are of no probative value because they are evidence only of the fact that they have been filed. Likewise, expired or cancelled registrations are of no probative value.

more weight to this dominant feature in determining the commercial impression created by the mark. See In re National Data Corp., 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985) ("There is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties. Indeed, this type of analysis appears to be unavoidable.") The term USER-CENTRIC is the first term in applicant's mark and is essentially identical to registrant's mark in its entirety. The hyphen separating USER and CENTRIC in applicant's mark is immaterial. There is no indication that USER-CENTRIC has a different meaning from USERCENTRIC due either to the hyphen, the addition of the word BROADBAND, or in connection with the respective goods and services. Based on the definitions of "broadband" in the record, the additional wording in applicant's mark, BROADBAND, is clearly merely descriptive in connection with the identified telecommunications goods and services and it is disclaimed. While USER-CENTRIC may be a suggestive term, it is the dominant term in applicant's mark.

Therefore, considered in their entireties, we find applicant's mark, USER-CENTRIC BROADBAND, to be substantially similar to the registered mark, USERCENTRIC,

in appearance, sound, connotation and overall commercial impression.

Turning to consider the goods and services involved in this case, we note that the question of likelihood of confusion must be determined based on an analysis of the goods or services recited in applicant's application vis-à-vis the goods or services recited in the registration, rather than what the evidence shows the goods or services actually are. *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987). *See also, Octocom Systems, Inc. v. Houston Computer Services, Inc.,* 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1992); and *The Chicago Corp. v. North American Chicago Corp.*, 20 USPQ2d 1715 (TTAB 1991). Further, it is a general rule that goods or services need not be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is enough that goods or services are related in some manner or that some circumstances surrounding their marketing are such that they would be likely to be seen by the same persons under circumstances which could give rise, because of the marks used therewith, to a mistaken belief that they originate from or are in some way associated with the same producer or that there is an association between the producers of each parties' goods or services. *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991), and cases cited

therein; and *Time Warner Entertainment Co. v. Jones*, 65 USPQ2d 1650, 1661 (TTAB 2002).

The examining attorney contends that the goods and services are related; that the evidence of record supports the conclusion that entities that offer services of the type identified in the cited registration also offer the types of goods and services identified in the application. He makes the following statement in this regard:

> The registrant's engineering and design services, computer consultation services, and computer software design and updating services are not limited as to a particular field or channel of trade. Thus, the registrant's services necessarily include the design and updating of each different type of software contained in the application, the design and updating of the data processing hardware in the application, as well as computer consulting services concerning not only the installation of electronic communication and telecommunications networks, but also, computer consulting services regarding the computer and telecommunications products in the application. (Brief, p. 12.)

The examining attorney states that due to the breadth of the goods and services identified in the application, there are no limitations as to channels of trade or classes of purchasers; that, as such, the classes of purchasers encompass both sophisticated purchasers and the general public; and that even sophisticated purchasers exercising a degree of care are not immune to trademark confusion.

To demonstrate, in connection with his likelihood of confusion refusal, that the respective goods and services

are related, the examining attorney submitted thirteen third-party registrations which include, in the identifications of goods and services, the same or similar identified services of applicant and the cited registrant.

Applicant argues that it is "one of the largest telecommunication equipment companies in the world"; that its identified goods are "intimately related to [its] telecommunications and telecommunication equipment business" and its goods and services are "used to establish communication amongst millions of users"; whereas, registrant's identified "custom" services are directed towards a particular user's computer and do not have "anything to do with BROADBAND." (Brief, pp. 12-13.) Applicant contends, further, that both applicant's goods and services and registrant's services are highly technical in nature and will be purchased with care by discriminating, knowledgeable purchasers.

We agree with the examining attorney and find that applicant's goods and services are sufficiently related to the services in the cited registration that, if identified by confusingly similar marks, confusion as to source is likely. Applicant's goods in International Class 9 include "telecommunications lines management software," "intelligent network application software that facilitates advanced telecommunication network services …," accounting and

workflow software for telecommunications businesses, and software for operating, facilitating and maintaining a wide variety of telecommunications networks and systems, among other software products. Applicant's services include installation, maintenance and repair of electronic communication and telecommunications networks and systems, in International Class 37, and a wide variety of telecommunications services in International Class 38.

The cited registrant's services are broadly identified as "engineering and design services for data processing systems; computer consultation services; computer software design and updating for others."

Clearly, at least some of applicant's software pertains to data processing systems in the telecommunications field and, thus, these goods in International Class 9 are related to, if not overlapping with, registrant's identified engineering and design services for data processing systems. Similarly, registrant's broadly worded "computer consultation services" would encompass applicant's "installation, maintenance and repair of electronic communication and telecommunications networks, systems," etc., in International Class 37. Finally, applicant's telecommunications services in International Class 38 would include, for example, services rendered by an Internet services provider who would both provide transmission of

voice, data, etc., and "Help" advice in the form of troubleshooting problems for either individual or institutional customers, which would properly fall within the category of registrant's "computer consultation services." As previously indicated, our likelihood of confusion determination must be based on the respective identifications of goods and services, not what evidence may show the goods and services to be in the marketplace. In this case, both applicant's and registrant's identifications are written very broadly. The factor of the similarity or relationship of the goods and services weighs against applicant.

We are not convinced otherwise by applicant's arguments to the contrary. In particular, registrant's identification of services is broadly written and is not limited to "custom" services, as defined and argued by applicant. The size of applicant's company and the scope of its business does not impact our finding that many of the goods and the services offered by applicant are related to, or fall within the scope of, the services in the cited registration. Likewise, the fact that the respective goods and services may be highly technical in nature does not thereby limit the purchasers of those goods and services to discriminating, knowledgeable purchasers. In fact, both applicant's and registrant's identifications of goods and services are so

broadly written as to encompass selling such goods and rendering such services to all types of consumers for such goods and services, which would, with respect to some of the goods and all of the services, encompass general consumers as well as technologically-sophisticated consumers.

Therefore, we conclude that in view of the substantial similarity in the commercial impressions of applicant's mark, USER-CENTRIC BROADBAND, and registrant's mark, USERCENTRIC, their contemporaneous use on the overlapping and related goods and services involved in this case is likely to cause confusion as to the source or sponsorship of such goods and services.

Mere Descriptiveness

The examining attorney contends that applicant's mark merely describes the kinds of telecommunications products and services it offers. The examining attorney argues that as it appears in applicant's mark as a whole, USER-CENTRIC is merely an adjective modifying the highly descriptive term BROADBAND and, thus, USER-CENTRIC BROADBAND merely describes a specific type of telecommunications product or service. The examining attorney makes the following statement in this regard:

> [T]he term USER-CENTRIC BROADBAND merely identifies a feature or characteristic of the applicant's telecommunications goods and services, namely, that the applicant's broadband telecommunications services and products focus on the user and are specially designed to fulfill the

> particular and unique needs of the person employing them. Indeed, the applicant's own advertising supports this finding. (Brief, p. 15.)

The evidence of record submitted by the examining attorney to establish the descriptiveness of the individual terms in connection with the identified goods and services includes the following:

- Definitions from various dictionaries of the individual terms "**user**" (e.g., "an individual who uses a computer, program, network, or related service for work or entertainment," *www.computeruser.com,* 2004); "**centric**" (e.g., "centered upon or focused upon that named by the first element," *www.infoplease.com/dictionary* 2004); and "**broadband**" (e.g., "of, relating to, or being a communications network in which a frequency range is divided into multiple independent channels for simultaneous transmission of signals – as voice, data or video," *Merriam-Webster Online Dictionary* 2004).
- Several excerpts from applicant's website and from white papers published thereon, for example:

> *www.alcatel.com*, excerpt dated March 29, 2005: In today's increasingly competitive environment, borders between communication, information and entertainment are becoming blurred. Nevertheless, telecommunication operators are striving to deliver differentiable services that provide them with a sustainable competitive advantage and help to expand their market share. … Each of these competitive dynamics affords operators exciting opportunities to catalyze

revenue and market share growth in a **user-centric broadband** world.

www.alcatel.com, webpage entitled "User-Centric Broadband Networks, includes the following explanation, in part (emphasis in original): Broadband service was initially introduced by operators to deliver high-speed Internet access. … As the network operators invest in improving the quality, cost, performance and reliability of their broadband networks, a new breed of competitors that have easy access to these enhanced networks are starting to deliver innovative services as overlay on top of them ….

. . .

…[W]e have a vision of a future network centered around a single Open Services Delivery Environment (OSDE) that not only supports all services, but also controls a single IP/optical backbone. … This new network will enable operators to offer flexible bundles of multiple services with a level of quality largely superior to what can be offered with the overlay model.

User-Centric Broadband (UCBS) Services and Network

Service attributes

A satisfactory experience for users relies on a number of factors, including:

- Broadband access everywhere with fixed and wireless options.
- Seamless connectivity …
- User device awareness.
- Single user profile and identity management ….

. . .

Network architecture and service delivery

The UCBS transformation is from a broadband network built to deliver a single service (High Speed Internet; HIS) to one capable of providing multiple services. These include triple play (voice, high speed Internet access, video) and will be extended with interactive gaming and home working, with many combinations and applications on top. The new model will make the network provider a significant and differentiating player in the service delivery value chain.

. . .

www.alcatel.com, webpage entitled "Winning the Video Consumer with **User-Centric Broadband**," includes the following explanation:
User-Centric Broadband Services are services centered on the users (consumer and business user) which simplify their broadband experience. Users can access them using any device, any broadband connectivity, with a single sign-on, consistent personalization and transparent synchronization across the devices. Services in which users feel unique and known, and do not have to think about where to access them. (emphasis added.)

- Lists of Google search results for the searches "**user-centric broadband**" (13,000 hits) and "**user centric broadband**" (40,400 hits for both phrases).

- Excerpt from Computerworld (Malaysia),[4] March 2005, article about Alcatel:

At its annual Enterprise Forum in Paris recently, Alcatel reiterated its vision of a **user-centric broadband** service that was first announced late last year.

. . .

Growth in a **user-centric broadband** market will create new opportunities for the telecommunications service providers, where user-centric applications can be delivered as premium services to increase the average revenue per user for services providers.

- White papers by applicant with the following titles:

1. "User-Centric Broadband Services: Demand Drivers and Market Opportunities (Exploiting untapped user demand for next-generation services enables operators to generate revenue while building a sustainable competitive advantage)" [Strategy White Paper]

[4] We find this excerpt probative despite the fact that it is from a Malaysian publication due to the global nature of the identified goods and services.

2. "User-Centric Broadband Networks (Seamless delivery of profitable new services to residential and business users requires intelligent quality-aware IP networks)" [Technology White Paper]

3. "Winning the Video Consumer with User-Centric Broadband (A user-centric approach enables operators to offer clearly differentiated services that address changing consumer demands for video entertainment, thereby exploiting their competitors weaknesses)" [Customer Applications]

4. "Making User-Centric Broadband in Access a Reality (A seamless combination of fixed, mobile and broadcast access offers users an 'always best connected' experience)" [Strategy White Paper]

Also in support of his position, the examining attorney submitted in his brief an excerpt from *The Cambridge International Dictionary of English* (2002), of which we take judicial notice, defining the suffix "centric" as "having the stated thing as your main interest, e.g., Eurocentric."

Applicant contends that the examining attorney has reached an incorrect conclusion by improperly dissecting its mark; that its mark as a whole is, at most, suggestive; that "the compound formative USER-CENTRIC formed by hyphenating two words should be considered to be unitary since it creates a commercial impression separate from and apart from any possible unregistrable component thereof." (Brief, pp. 15-16.) Applicant argues that "because the lack of relationship between USER-CENTRIC and BROADBAND creates a mental pause …, the word BROADBAND has a stronger impact in the mark than a merely descriptive word normally would." (Reply Brief, p. 4.) Applicant challenges the examining

attorney's evidence of numerous uses of USER-CENTRIC BROADBAND in Google search results with a follow-up Google search showing that the vast majority of the references are to applicant. Applicant disputes the examining attorney's contention that its own advertising uses the mark in a descriptive manner, noting that "the mark [is] used as an adjective modifying the generic term 'services' not as a noun or verb in a descriptive manner" (brief, pp. 16-17), adding that as a result of mere oversight, the mark was not capitalized in applicant's advertising. Finally, applicant asks how its mark can be considered merely descriptive when the cited registered mark is not merely descriptive. In its reply brief (p. 2), applicant states that "the phrase USER-CENTRIC is not a delivery means for broadband and there is no evidence of record indicating that USER-CENTRIC is a feature or class of broadband goods and services or has any specific relationship to broadband whatsoever."

The test for determining whether a mark is merely descriptive is whether it immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used, or intended to be used. *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007); *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986); and *In re Bright-Crest, Ltd.*, 204 USPQ 591

(TTAB 1979). It is not necessary, in order to find that a mark is merely descriptive, that the mark describe each feature of the goods or services, only that it describe a single, significant quality, feature, etc. *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985). Further, it is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the impact that it is likely to make on the average purchaser of such goods or services. *In re Recovery*, 196 USPQ 830 (TTAB 1977).

USER-CENTRIC BROADBAND merely identifies a feature or characteristic of the applicant's telecommunications goods and services, namely, as stated by the examining attorney, that the applicant's broadband telecommunications services and products focus on the user and are specially designed to fulfill the particular and unique needs of the person employing them. The fact that applicant may be the first to use USER-CENTRIC BROADBAND does not render the term an inherently distinctive mark. *In re National Shooting Sports Foundation, Inc.*, 219 USPQ 1083 (TTAB 1983). Applicant argues that the term USER-CENTRIC is a unitary term that creates a commercial impression separate and apart from the meanings of its individual components. We agree that USER-

CENTRIC is a unitary term. However, applicant has not established that as a unitary term USER-CENTRIC has a meaning different from, or incongruous with, the meaning of the two individual terms, "user" and "centric," so that USER-CENTRIC is somehow unique. In fact, we find that USER-CENTRIC serves merely as an adjective modifying the noun BROADBAND, so that the mark as a whole merely describes a broadband communications network that can offer differentiated services to its users. The term is so used descriptively in the evidence of record, including the excerpts from applicant's own website and the titles of its White Papers. Thus, we find that USER-CENTRIC BROADBAND is merely descriptive in connection with the identified International Class 9 products used to render the services, as well as in connection with the telecommunications service itself, in International Class 38, and the installation, maintenance and repair of this service and its component parts, in International Class 37. It is immaterial in the case before us that the term USER-CENTRIC is registered for services specified herein because we must decide the issue of mere descriptiveness on the facts before us. Similarly, third-party registrations for either "user" or "centric" formative marks are not relevant herein.

In conclusion, when applied to applicant's goods and services, the term USER-CENTRIC BROADBAND immediately

describes, without conjecture or speculation, a significant feature or function of applicant's goods and services. Nothing requires the exercise of imagination, cogitation, mental processing or gathering of further information in order for purchasers of and prospective customers for applicant's services to readily perceive the merely descriptive significance of the term USER-CENTRIC BROADBAND as it pertains to applicant's goods and services.

Decision: The refusals under Sections 2(d) and 2(e)(1) of the Act are affirmed as to International Classes 9, 37 and 38.