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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Numa, Inc.

v.

Sequent Computer Systems, Inc.

Consolidated Cancellation No. 29,387
and Opposition No. 116,011

Donald S. Holland of Holland & Bonzagni for Numa, Inc.

Ethan Horwitz and Kandis M. Koustenis of Goodwin Procter LLP for Sequent Computer Systems, Inc.

Before Simms, Seeherman and Hanak, Administrative Trademark Judges.

Opinion by Hanak, Administrative Trademark Judge:

On June 4, 1999 Numa, Inc. (Numa) filed a petition seeking to cancel Registration No. 2,234,568 owned by Sequent Computer Systems, Inc. (Sequent). This registration is for the mark NUMA-Q in typed drawing form and it covers "computer hardware, namely multiple interconnected processors." The registration issued on March 23, 1999.

In its cancellation petition, Numa alleged ownership of Registration No. 2,208,447. This registration is for the mark NUMA in typed drawing form for “installation, maintenance and repair of computer hardware” and “computer programming for others in the field of medical imaging.” This registration issued on December 8, 1998, over three months before Sequent’s registration for NUMA-Q issued on March 23, 1999. As grounds for cancellation, Numa alleged that the contemporaneous use of NUMA for Numa’s services and NUMA-Q for Sequent’s goods is likely to cause confusion, deception or mistake. While Numa did not make specific reference to Section 2(d) of the Trademark Act, it is clear that this is the legal basis for Numa’s petition for cancellation. In paragraph 2 of its cancellation petition, Numa stated that it attached two copies of its registration for NUMA “showing status and title.” However, in point of fact, what Numa attached to its cancellation petition were photocopies of its original registration certificate for NUMA.

In response, Sequent denied the pertinent allegations of the cancellation petition, and in particular, Sequent denied that there existed a likelihood of confusion. In addition, Sequent filed a counterclaim seeking to cancel Numa’s registration for NUMA on the basis that NUMA is a well known acronym for Non-Uniform Memory Access, and

therefore “is generic for the services identified in [Numa’s] registration.” (Answer and Counterclaim paragraphs 11-12).

On November 9, 1999 Numa filed an opposition against Sequent’s application Serial No. 75/478,272 for the mark NUMACENTER depicted in typed drawing form. The goods of this application are “computer hardware, namely, multiple interconnected processors, and computer software for use therewith to facilitate the interconnection and interoperation of such hardware, and instruction manuals distributed as a unit therewith.” Numa alleged that the mark NUMACENTER was confusingly similar to Numa’s registered mark NUMA and to Numa’s unregistered mark NUMASTATION which Numa alleged that it had used on computer hardware and software since at least as early as December 17, 1997. In this regard, it should be noted that Sequent’s application to register NUMACENTER is an intent-to-use application which was filed on May 1, 1998, over four months after Numa’s claimed first use date of December 17, 1997 of its unregistered mark NUMASTATION.

In response, Sequent filed an answer which denied the pertinent allegations of the notice of opposition, and a counterclaim seeking to cancel Numa’s federal registration of NUMA on the basis that it is generic for the reasons just discussed above.

In response, Numa filed an answer to the counterclaim denying the pertinent allegations.

This Board's files do not reflect that Numa filed an answer to Sequent's counterclaim in the cancellation proceeding. However, the parties jointly moved to consolidate the two proceedings, and the Board granted this motion to consolidate. Because Sequent's counterclaim in the cancellation is identical to its counterclaim in the opposition, and because Numa denied the pertinent allegations of the counterclaim in the opposition, we find that Numa has denied the counterclaim in the cancellation. In this regard, we note that Sequent has never argued that Numa failed to deny Sequent's counterclaim in the cancellation.

Both parties filed briefs. Neither party requested a hearing.

Before discussing the merits of this matter, we must deal with certain evidentiary objections raised by Sequent. First, Sequent objects to the fact that Numa cited in its brief an unpublished Board decision. Sequent's objection is well taken, and this Board has not considered this unpublished decision. General Mills, Inc. v. Health Valley Foods, 24 USPQ2d 1270, 1275 n.9 (TTAB 1992).

Second, Sequent alleges that Numa never properly made of record its registration for NUMA, namely, Registration

No. 2,208,447. However, pursuant to Trademark Rule 2.122(b) Numa's Registration No. 2,208,447 was automatically made of record in both the cancellation and opposition proceedings when Sequent filed its counterclaims seeking to cancel this registration. Trademark Rule 2.122(b) reads, in pertinent part for our purposes, as follows: "The file of each … registration … against which a petition or counterclaim for cancellation is filed forms part of the record of the proceeding without any action by the parties and reference may be made to the file for any relevant and competent purpose." Sequent makes the argument that while the file of NUMA Registration No. 2,208,447 is properly part of the record, the registration itself is not. Sequent cites absolutely no authority for this unique interpretation of Trademark Rule 2.122(b). The file of the NUMA Registration No. 2,208,447 contains a copy of the registration itself. Accordingly, Registration No. 2,208,447 for NUMA is properly of record.

Third, Sequent objects to much of the rebuttal testimony of Lawrence W. Smith, Numa's president. By way of background, neither party conducted any discovery. During its opening testimony period, Numa made of record no evidence. During its testimony period, Sequent made of record the deposition (with exhibits) of Michael J. Flynn, a retired professor from Stanford University who is an expert

in the field of computer design, computer organization and computer architecture. Sequent also made of record by means of notices of reliance excerpts from various publications and dictionaries where the term NUMA appeared in an effort to establish that this term is generic.

Sequent does not object to that portion of the rebuttal testimony of Mr. Smith (Numa's president) which deals with whether or not NUMA is generic for the services set forth in Numa's Registration No. 2,208,447. Rather, Sequent objects to that portion of Mr. Smith's testimony which deals with the actual uses of Numa's registered mark NUMA, as well as exhibits relating to that testimony, such as the "history notebook."

Sequent's objection is well taken with regard to Mr. Smith's testimony concerning when Numa first used its NUMA mark and the extent of Numa's use of its NUMA mark. However, with regard to Mr. Smith's testimony as to who are the users of the services set forth in Numa's Registration No. 2,208,447, Sequent's objection is not well taken. In determining the genericness of a term, it is fundamental "that whether a term is entitled to trademark [or service mark] status turns on how the mark is understood by the purchasing public." Magic Wand Inc. v. RDB Inc., 940 F.2d 638, 19 USPQ2d 1551, 1553 (Fed. Cir. 1991)(emphasis added) and cases cited therein. Dr. Flynn testified that amongst

those individuals knowledgeable about the workings of computers, NUMA was a well recognized acronym for Non-Uniform Memory Access. In response, Mr. Smith testified that the purchasers of Numa's services under its registered mark NUMA were not knowledgeable about computers, but rather were technologists and physicians in the field of nuclear medicine.

Fourth, Sequent has objected to Numa's reliance on its purported rights in its unregistered mark NUMASTATION. While Numa did not plead rights in this unregistered mark in its cancellation petition, Numa did plead rights in this unregistered mark in its notice of opposition. Sequent contends that Numa failed to introduce any evidence with regard to its purported unregistered mark NUMASTATION. Sequent is not correct on this latter point. In his rebuttal testimony, Mr. Smith did discuss Numa's unregistered mark NUMASTATION. (Smith deposition page 21). However, this was entirely improper rebuttal testimony. If Numa wished to establish common law rights in its mark NUMASTATION, it should have done so in its opening testimony. In short, we have given no consideration whatsoever to Numa's purported mark NUMASTATION.

Fifth, in its brief, Numa makes reference to the fact that it sought a second registration of NUMA for "computer hardware and software sold as a unit for medical imaging."

(Numa's brief page 4). Because Numa offered no testimony concerning this application during its opening testimony period, we have given absolutely no consideration to this application.

We turn now to the merits of this matter. We will consider first Sequent's duplicate counterclaims to cancel Numa's Registration No. 2,208,447 for the mark NUMA on the basis that it is generic for the services set forth therein, namely, "installation, maintenance and repair of computer hardware" and "computer programming for others in the field of medical imaging." Obviously, if Sequent's counterclaims are successful, then Numa's cancellation petition and opposition must fail because the only rights which Numa has established in this proceeding are through its Registration No. 2,208,447. As just noted, Numa has established no common law rights in NUMA, NUMASTATION or any other mark.

At the outset, we note that "a proper genericness inquiry focuses on the description of services set forth in the certificate of registration." Magic Wand, 19 USPQ2d at 1552 and cases cited therein. For example, the word "apple" when applied to a popular fruit would be generic, but it would not be generic when applied to computers. Of course, it need hardly be said that Sequent bears the burden of proving that NUMA is generic for the services set forth in

Registration No. 2,208,447, a fact which Sequent itself acknowledges at page 5 of its brief.

To cut to the quick, we find that the testimony of Sequent's own expert clearly demonstrates that NUMA is not generic for the "installation, maintenance and repair of computer hardware." Indeed, Dr. Flynn did not even testify that NUMA is descriptive for the "installation, maintenance and repair of computer hardware."

At various times, Dr. Flynn defined the acronym NUMA. For example, when asked what the meaning of the term NUMA was with respect to computers, Dr. Flynn replied as follows: "That NUMA is an acronym for Non-Uniform Memory Access, and that the term is used to describe a shared memory multiprocessor computer architecture or computer organization in which the memory access is determined by – the memory access time is determined by the location of the physical memory addressed." (Flynn deposition pages 55-56). This Board has consulted the Microsoft Computer Dictionary (5th ed. 2002) and that dictionary defines NUMA in essentially the same manner as did Dr. Flynn, namely: "Acronym for Non-Uniform Memory Access. A multiprocessing architecture that manages memory according to the distance from the processor. Banks of memory at various distances require different amounts of access time, with local memory accessed faster than remote memory." Thus, the acronym NUMA

is arguably generic when applied to a multiprocessor computer architecture in which memory access time is determined by distance or location.

However, that does not mean that NUMA is generic for the services set forth in NUMA Registration No. 2,208,447. At pages 69 and 70 of his deposition, Dr. Flynn was asked on cross-examination whether NUMA stood for the installation of computer hardware. Dr. Flynn answered in the negative. Dr. Flynn was asked whether NUMA denoted the maintenance of computer hardware. Again, Dr. Flynn answered in the negative. Dr. Flynn was asked whether NUMA stood for the repair of computer hardware. Again, Dr. Flynn answered in the negative. Finally, Dr. Flynn was asked whether the term NUMA denotes or identifies the combination of the installation, maintenance and repair of computer hardware. Once again, Dr. Flynn answered in the negative.

A few minutes later in his deposition, Dr. Flynn was asked a slightly varied form of the foregoing question, namely: “Does NUMA designate the following class of services, installation, maintenance, and repair of computer hardware, in your opinion as an expert?” Dr. Flynn responded in the negative. Thereafter, Dr. Flynn was asked the following question: “In your opinion as an expert, does the phrase NUMA describe any characteristic of the following, installation, maintenance and repair of computer

hardware?" Dr. Flynn replied in the negative. (Flynn deposition page 73).

Based upon the testimony of Dr. Flynn, an expert selected by Sequent, we find that NUMA is not a generic term for the "installation, maintenance and repair of computer hardware." For reasons which we do not understand, Numa's counsel never asked the same series of questions of Dr. Flynn with regard to the second set of services in NUMA Registration No. 2,208,447, namely "computer programming for others in the field of medical imaging." However, as Sequent readily acknowledges at page 5 of its brief, it was incumbent upon Sequent to prove that NUMA was generic for "computer programming for others in the field of medical imaging." To be quite blunt, Sequent has offered absolutely no proof that NUMA is generic (or even descriptive) for this latter class of services. Accordingly, Sequent's counterclaims are dismissed.

Before leaving the issue of Sequent's genericness counterclaims, we wish to clarify one point. Earlier in this decision we stated that we would consider that portion of Mr. Smith's testimony which described the type of purchasers of Numa's services as set forth in its Registration No. 2,208,447. We did so because determining "whether a term is entitled to trademark [or service mark] status turns on how the mark is understood by the purchasing

public." Magic Wand, 19 USPQ2d at 1553. With regard to the first class of services in Registration No. 2,208,447 – installation, maintenance and repair of computer hardware – Sequent may argue in the future that because these services were not restricted to the field of medical imaging, therefore the relevant purchasers include not only technologists and physicians in the field of nuclear medicine (as Numa argues), but also computer experts (as Sequent argues). If Sequent were to make such an argument, it would be with merit. In other words, the relevant purchasing public would include computer experts. However, based upon the testimony of Dr. Flynn, we find that even amongst computer experts, the term NUMA is not generic for the "installation, maintenance and repair of computer hardware."

We turn now to a consideration of Numa's petition to cancel Sequent's Registration No. 2,234,568 for the mark NUMA-Q. As previously noted, Numa's cancellation petition is premised on Section 2(d) of the Trademark Act on the basis that the contemporaneous use of Sequent's mark NUMA-Q and Numa's mark NUMA is likely to cause confusion. However, before we reach the issue of likelihood of confusion, it is incumbent upon Numa to prove the first prong of any Section 2(d) claim, namely, priority of use.

In this case, petitioner Numa has not properly established that it first used its mark NUMA on October 22, 1993 as claimed in its Registration No. 2,208,447. For that matter, Numa has not properly established any first use date for its mark NUMA. While Mr. Smith (Numa's president) testified that Numa first used its mark NUMA in 1993, such testimony was given during Numa's rebuttal testimony period. Such testimony should have been given during Numa's opening testimony period. Because Numa made of record no evidence during its opening testimony period, it has not properly established any first use date for its registered mark NUMA.

By the same token, Sequent has not established any first use date for its registered mark NUMA-Q. The only evidence which Sequent made of record dealt with the purported genericness of the mark NUMA.

Of course, Numa and Sequent may rely upon the filing dates of the applications which matured into their respective registrations for purposes of priority. See Section 7(c) of the Trademark Act. As previously noted, the NUMA registration issued over three months prior to the issuance of the NUMA-Q registration. However, Sequent's NUMA-Q registration has an application filing date of December 15, 1995. The NUMA registration has an application filing date of July 14, 1997. Hence, priority rests with Sequent. Accordingly, Numa's petition to cancel Sequent's

Registration No. 2,234,568 for the mark NUMA-Q must fail because Numa has simply failed to prove the first prong of any Section 2(d) claim, namely, priority of use.

Finally, we turn to Numa's opposition to Sequent's application Serial No. 75/478,272 to register the mark NUMACENTER. Numa's opposition is premised on Section 2(d) of the Trademark Act, and it is based solely on the rights which Numa derives from its Registration No. 2,208,447 for the mark NUMA. As previously noted, Mr. Smith's testimony about Numa's rights in its unregistered mark NUMASTATION is improper because it was taken during the rebuttal testimony period.

Obviously, in the opposition Sequent lacks a registration for NUMACENTER. Accordingly, Numa may rely upon its Registration No. 2,208,447 for the mark NUMA on which to base its opposition. King Candy Co. v. Eunice King's Kitchen, Inc., 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

In any likelihood of confusion analysis, two key, although not exclusive, considerations are the similarities of the marks and the similarities of the goods or services. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976)("The fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of

differences in the essential characteristics of the goods [or services] and differences in the marks.”).

Considering first the goods and services, we note that the NUMA registration is a multiple class registration encompassing the “installation, maintenance and repair of computer hardware” (Class 37) and “computer programming for others in the field of medical imaging” (Class 42). Obviously, the words “installation, maintenance and repair of computer hardware” contain no limitation whatsoever as to the type of computer hardware, and therefore must be interpreted to include computer hardware of all types. This would include the particular type of computer hardware set forth in the NUMACENTER application, that is to say, “computer hardware, namely, multiple interconnected processors.” Accordingly, in our likelihood of confusion analysis we will direct our consideration to whether there exists a likelihood of confusion resulting from the contemporaneous use of NUMA for the “installation, maintenance and repair of [all types of] of computer hardware” and NUMACENTER for “computer hardware, namely, multiple interconnected processors.” Cf. Tuxedo Monopoly, Inc. v. General Mills Fun Group, Inc., 648 F.2d 1335, 209 USPQ 986 (CCPA 1981).

Considering next the marks, Sequent’s mark NUMACENTER encompasses Numa’s NUMA mark in its entirety and then adds

the word CENTER to it. Two of the definitions of the word "center" are as follows: "a store or establishment devoted to a particular subject or hobby" and a "shopping center." Random House Webster's Dictionary (2001). In our judgment, a consumer familiar with the mark NUMA for the installation, maintenance and repair of all types of computer hardware would, upon seeing the mark NUMACENTER for a particular type of computer hardware, simply assume that NUMACENTER indicates the store to which one goes for NUMA installation, maintenance and repair services. Moreover, even if a consumer did not understand CENTER to mean store, we feel that he or she would nevertheless believe that Sequent's NUMACENTER computer hardware and Numa's NUMA computer hardware maintenance, installation and repair services emanated from the same source, or were sponsored or approved by the same source, because the CENTER portion of Sequent's mark is not sufficiently distinguishing in nature.

Finally, both the NUMA registration and the NUMACENTER application depict the marks in typed drawing form. This means that Sequent's "application [for the mark NUMACENTER] is not limited to the mark depicted in any special form," and hence we are obligated "to visualize what other forms the mark might appear in." Phillips Petroleum Co. v. C.J. Webb Inc., 442 F.2d 1376, 170 USPQ 35, 36 (CCPA 1971). See also INB National Bank v. Metrohost Inc., 22 USPQ2d 1585,

1588 (TTAB 1992). Sequent could depict its mark NUMACENTER such that the NUMA portion was emphasized, thus making the mark NUMACENTER even more similar to Numa's registered mark NUMA. Accordingly, we find that there exists a likelihood of confusion if the marks NUMA and NUMACENTER were to be used for at least certain of their respective services and goods. Of course, to the extent that there are doubts on the issue of likelihood of confusion, we are obligated to resolve those doubts in favor of Numa. Century 21 Real Estate Corp. v. Century Life of America, 970 F.2d 874, 23 USPQ2d 1698, 1707 (Fed. Cir. 1992); In re Shell Oil Co., 992 F.2d 1204, 26 USPQ2d 1687, 1691 (Fed. Cir. 1993).

Decision: Sequent's counterclaims seeking to cancel the NUMA registration are dismissed. Numa's petition to cancel the NUMA-Q registration is denied. Numa's opposition to Sequent's application to register NUMACENTER is sustained. In short, Numa retains its registration of NUMA and Sequent retains its registration of NUMA-Q. Sequent does not obtain a registration for NUMACENTER.

Seeherman, Administrative Trademark Judge, concurring in part and dissenting in part:

I respectfully dissent from that part of the opinion sustaining Numa, Inc.'s (hereafter plaintiff) opposition to the application of Sequent Computer Systems, Inc. (hereafter defendant) to register NUMACENTER as a trademark for "computer hardware, namely, multiple interconnected processors, and computer software for use therewith to facilitate the interconnection and interoperation of such hardware, and instruction manuals distributed as a unit therewith."

As the majority has pointed out, plaintiff has not made any evidence of record in support of its opposition to the registration of defendant's NUMACENTER mark. Plaintiff's registration for NUMA is of record, though, as a result of defendant's counterclaim to cancel that registration. Thus, the only evidence as to the relatedness of plaintiff's services and defendant's goods is the identification of services which appears in plaintiff's registration.

Plaintiff's services are identified as "installation, maintenance and repair of computer hardware" in Class 37.[1] Under settled principles of trademark law, and as the

[1] As the majority notes, this registration also covers "computer programming for others in the field of medical imaging" in Class 42, but since the Class 37 services are more broadly defined, I agree with the majority that the focus of the discussion of the issue of likelihood of confusion should be directed to them.

majority points out, these services of installation, maintenance and repair of computer hardware is broad enough to encompass the installation, maintenance and repair of the computer hardware identified in defendant's application, namely, multiple interconnected processors.

Multiple interconnected processors are specialized computer equipment. They are not the same as the personal computers which members of the general public would purchase for home use. Rather, they are sophisticated equipment which would be used for complex tasks in which multiple processors would be required. Because of the very nature of the goods, the consumers would generally be large corporations or government agencies, and the people making the purchasing decisions would be computer professionals who would be knowledgeable about such equipment.

As shown in the majority opinion, NUMA is an acronym for a computer architecture known as "non-uniform memory access."[2] The evidence submitted by defendant shows that NUMA (acronym) architecture is a feature of applicant's identified goods. For example, the "what's? com" listing for NUMA provides the following explanation:

> NUMA (non-uniform memory access) is a method of configuring a cluster of

[2] Because in our opinions we normally depict both trademarks and acronyms in all capital letters, I will indicate in a parenthetical following the term whether I am referring to NUMA as the acronym or the trademark.

> microprocessors in a multiprocessing system so that they can share memory locally, improving performance and the ability of the system to be expanded. ... NUMA adds an intermediate level of memory shared among a few microprocessors so that all data accesses don't have to travel on the main bus.
>
> NUMA can be thought of as a "cluster in a box." The cluster typically consists of four microprocessors (for example, four Pentium microprocessors) interconnected on a local bus (for example, a Peripheral Component Interconnect bus) to a shared memory.... http://whatis/techtarget.com

See, also, the following definition: "Non-Uniform Memory Access: <architecture> (NUMA) A memory architecture, used in multiprocessors, where the access time depends on the memory location. A processor can access its own local memory faster than non-local memory (memory which is local to another processor shared between processors)." "FOLDOC Free On-Line Dictionary of Computing," foldoc.doc.ic.ac.uk

Applicant has also submitted a literal stack of articles taken from various publications which describe NUMA architecture as a feature of multiple interconnected processors, including the following:

> NUMA allows applications designed for the shared memory model of SMP machines to run on internal clusters of unlimited processors, creating a virtual MPP (massively parallel-processing) machine. "PC Week," October 16, 1995
>
> NUMA is a more scalable memory-sharing system. With SMP, it's difficult to

> hook together a large number of processors because they must all access all memory at the same speed over short bus lengths, a process that can actually lead to performance slowdowns. NUMA overcomes this by connecting large groups of processors and memory at varying speeds over greater distances to enable a faster, more-powerful computing platform.
> "Informationweek," November 29, 1999
>
> IBM's acquisition of Sequent could prove complementary for the company, because the latter has concentrated heavily on the non-uniform memory architecture (Numa) approach. This typically relies on running applications with multiple processors across a high-speed backplane in a single box. It is differentiated from symmetric multiprocessing (SMP) servers because it assigns a separate piece of memory to each processor in the server, reducing bus overload.
> "Computer Weekly," October 28, 1999

As a result, when the relevant class of consumers views the mark NUMACENTER in connection with applicant's goods, they will perceive the element NUMA as a descriptive term for a characteristic of the goods, rather than seeing it as a reference to plaintiff's NUMA trademark. Moreover, although in other contexts, as the majority states, the word CENTER may not be a highly distinguishing feature of a mark, in the context of applicant's goods the term CENTER would either be perceived as arbitrary and the dominant element of NUMACENTER, or it would be seen, when used in combination with NUMA, as reinforcing the acronym significance of NUMA. For example, consumers may view NUMACENTER as suggesting

that the non-uniform memory access architecture is a central feature (center) of the multiple processors.

In the context of these goods, I am simply not persuaded by the majority's statement that, because two meanings of "center" are a store and a shopping center, consumers would assume that NUMACENTER, when used on multiple interconnected processors, indicates the store to which one goes for NUMA (trademark) installation, maintenance and repair services. There is no indication in this record that either defendant's goods or the service of installation, maintenance or repair of such goods would be offered through a store. Again, multiple interconnected processors are highly sophisticated equipment, and there is no evidence that they would be offered through stores in the way that a general consumer item such as a home computer would. Because of the highly sophisticated nature of the identified goods, I do not believe that we can assume, without evidence, that one would go to a store to arrange for their installation or that one would take them to a store to have them maintained or repaired. Accordingly, I do not think that purchasers will view the term CENTER in defendant's mark as indicating plaintiff's store.

As noted above, the majority has found plaintiff's services to be related to defendant's goods by assuming that plaintiff's services would encompass the installation,

maintenance and repair of multiple interconnected processors, a proposition with which I agree. However, if the services are viewed in this way, plaintiff's mark NUMA obviously has a highly suggestive significance, as it refers to a characteristic of the multiple interconnected processors, i.e., processors having a NUMA (acronym) architecture.[3] The strength of plaintiff's mark must be considered in determining likelihood of confusion. Because of the highly suggestive nature of the mark as it applies to the services as defined in this manner, the mark NUMA is entitled to a very limited scope of protection. In my view, the differences in the marks, i.e., the additional element CENTER in defendant's mark, is sufficient in this case to distinguish them.

It must also be remembered that plaintiff's services as encompassed by its identification, i.e., the installation, maintenance and repair of multiple interconnected processors, and defendant's multiple interconnected processors, will be purchased by highly sophisticated and knowledgeable people who will exercise great care in buying the processors or hiring a company to install, maintain and

[3] Because we have found that defendant did not prove in its counterclaim that NUMA is a generic term for plaintiff's services, and because the ground of mere descriptiveness under Section 2(e)(1) was not pleaded, the registration must be deemed valid under the presumptions of Section 7(b) of the Act. Therefore it must be viewed as being distinctive, albeit highly suggestive.

repair them. These purchasers are not likely to simply assume that the goods and services emanate from or are sponsored by the same source solely because both marks have the common element NUMA when this element is a recognized acronym for a feature of the goods.

Given these considerations, as discussed above, I would find that plaintiff has not met its burden in proving that defendant's use of NUMACENTER is likely to cause confusion with plaintiff's registered mark NUMA. Accordingly, I would dismiss the opposition.