THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: November 26, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

American Medical Rehabilitation Providers Association
v.
UB Foundation Activities, Inc.

Opposition No. 91158512
(Consolidating Cancellation No. 92043381)

Deborah M. Lodge and Lesley Bowling Sachs of Patton Boggs, LLP, for American Medical Rehabilitation Providers Association.

Paul I. Perlman of Hodgson Russ LLP, for UB Foundation Activities, Inc.

Before Grendel, Zervas, and Ritchie de Larena, Administrative Trademark Judges.

Opinion by Ritchie de Larena, Administrative Trademark Judge:

On September 23, 2008, the Board denied American Medical Rehabilitation Providers Association's (AMRPA) claims of genericness, and, in the alternative, no acquired distinctiveness, in this consolidated proceeding.

AMRPA has timely filed a request for reconsideration of the Board's decision. In its request, AMRPA argues that the Board's decision is in error because (1) the Board "misapplied" the test set forth by the Court of Appeals for the Federal Circuit to determine genericness in *H. Marvin Ginn Corp. v. International Association of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986); and (2) the Board "misconstrued or ignored key evidence" from the record.

With respect to applicant's first contention, the Board applied the *H. Marvin Ginn* test with the two pertinent inquiries of: "(1) What is the class of goods or services at issue? and (2) Does the relevant public understand the designation primarily to refer to that class of goods or services?" (Decision at 6). In accordance with the evidence and arguments of record, we determined that "the genus of goods covered by both the 'FIM' and 'THE FIM SYSTEM' marks is 'rehabilitation assessment tools.'" *Id*. AMRPA now argues in its request for reconsideration that this genus is too broad, and should be defined "more narrowly as medical rehabilitation assessment tools, with the relevant subgenus of coded forms, guides, and measurement instruments for gauging medical rehabilitation in the field of patient independence." Applicant did not

make this argument previously, and we are not persuaded that our identification of the genus was erroneous on the record before us. Accordingly, we decline to change our application of the *H. Marvin Ginn* test.

Second, AMRPA argued that the Board "misconstrued or ignored key evidence," citing five evidentiary findings in particular. We have reviewed each of these, and are not persuaded by AMRPA's contention that our findings were in error. In particular, regarding the evidence cited by AMRPA in Sections 2A and 2B of its request for reconsideration, as to third-party references to "FIM," we considered these, as discussed in the opinion, for "[e]vidence of the relevant public's understanding of [the] term ['FIM']," (Decision at 7, citing *In re Northland Aluminum Products, Inc.*, 777 F.2d 1556, 227 USPQ 961, 963 (Fed. Cir. 1985)). Regarding the dictionary definition cited by AMRPA in Section 2D of its request for reconsideration, and the Board's evidentiary finding cited in Section 2E therein, as mentioned in our decision, we considered all evidence of record for the appropriate probative value it may have, whether specifically mentioned in the decision or not. Finally, regarding the witness testimony cited by AMRPA in Section 2C of its request for reconsideration, we again note that we considered all

evidence of record for the appropriate probative value it may have. More specifically, we re-emphasize the following portions of witness testimony cited in our decision at 7: (Zollar 4/24/07 dep. at 90:12-15; Adams dep. at 39:1-6; DeJong dep. at 55:14-56:2 and 81-88).

In view of the foregoing, AMRPA's request for reconsideration is denied.