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U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Maytag Corporation

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Serial No. 74/276,765

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Jeffrey A. Handelman of Brinks, Hofer, Gilson & Lione,  
attorney for applicant.

Steven R. Fine, Trademark Examining Attorney, Law Office 107  
(Thomas Lamone, Managing Attorney).

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Before Simms, Hanak and Walters, Administrative Trademark  
Judges.

Opinion by Walters, Administrative Trademark Judge:

Maytag Corporation has filed a trademark application to register on the Principal Register the mark MICRO-MESH for "filters for dishwashing machines."<sup>1</sup>

Following an amendment to the identification of goods, the Examining Attorney 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 of the

goods identified in the application.<sup>2</sup> Subsequently, applicant claimed that its applied-for mark has acquired distinctiveness under Section 2(f) of the Trademark Act, 15 U.S.C. 1052(f). In support of its claim, applicant submitted the declaration of an officer attesting to applicant's substantially exclusive and continuous use of the mark in connection with the identified goods since May, 1969.

The Examining Attorney then refused registration on the ground that the mark, as used in connection with the identified goods, is generic; or, alternatively, if applicant's mark is finally determined not to be generic, that applicant's mark is so highly descriptive of the identified goods that applicant's allegation of acquired distinctiveness, under Section 2(f), based solely on its claim of use since May, 1969, is insufficient evidence of acquired distinctiveness. Subsequently, applicant requested that its application be amended to the Supplemental Register.

The Trademark Examining Attorney has finally refused registration under Section 2(e)(1) of the Trademark Act, 15

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<sup>1</sup> Serial No. 74/276,765, in International Class 7, filed May 18, 1992, based on use of the mark in commerce, alleging dates of first use and first use in commerce of May, 1969.

<sup>2</sup> The Examining Attorney also refused registration on the ground that the subject matter does not function as a mark as evidenced by the specimens of record. Applicant responded by submitting substitute specimens accompanied by the necessary declaration attesting to the use thereof by applicant. As the Examining Attorney did not raise this

U.S.C. 1052(e)(1), on the ground that MICRO-MESH, when used in connection with filters for dishwashing machines, is generic and, thus, incapable of functioning as a source identifying mark.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested.

Before proceeding, we need to clarify several procedural incongruities in this record to properly frame the issues before us in this appeal. First, at the time applicant submitted its claim of acquired distinctiveness, under Section 2(f), and its subsequent request to amend its application to the Supplemental Register, applicant did not indicate that these amendments were offered in the alternative. See, Section 1212.02(e), *Trademark Manual of Examining Procedure* (TMEP). However, in its response of February 16, 1996, applicant clarified that it still maintains that its mark is, at most, suggestive as used in connection with the applied-for goods; that, if its mark is determined to be merely descriptive, applicant offers, alternatively, its claim of acquired distinctiveness, under Section 2(f); and that, if its claim of acquired distinctiveness is determined to be insufficient, applicant offers, alternatively, its amendment of the application to

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issue again, we assume that applicant's submission was acceptable and that the refusal has been withdrawn.

the Supplemental Register. As the Examining Attorney does not object, we accept applicant's arguments in the alternative.

Second, while the Examining Attorney did not so expressly state, we assume from the record that the Examining Attorney has refused to enter applicant's amendment of its application to the Supplemental Register and, thus, the application comes before us in this appeal as an application on the Principal Register. In fact, in his brief herein (at unnumbered p. 5), the Examining Attorney reverses his earlier position regarding applicant's submission in connection with its claim under Section 2(f) and states: "With regard to the Section 2(f) claim, the examining attorney agrees that, if the Board finds the applicant's proposed mark to be registrable, the evidence of record is sufficient to permit registration on the Principal Register under Section 2(f)." In view of this statement, applicant's alternative amendment of its application to the Supplemental Register becomes moot and, should we find applicant's mark to be merely descriptive but not generic, the question of the sufficiency of applicant's submission under Section 2(f) is not before us.

Thus, the only questions before us, to which we now turn, are whether MICRO-MESH, as used in connection with

filters for dishwashing machines, is generic and, if not, whether it is merely descriptive.

With respect to genericness, the Office has the burden of proving genericness by "clear evidence" thereof. *In re Merrill, Lynch, Pierce, Fenner & Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987). In support of his contention that MICRO-MESH is generic as used in connection with the identified goods, the Examining Attorney has submitted excerpts of patents from the LEXIS/LEXPAT Research Database. A number of the patents excerpted are for dishwashers and include, as part of each invention, reference to a "fine mesh filter." Several excerpts from patents for inventions in a variety of different fields follow:

. . . disclose a filter composed of a micro mesh screen, usually made of woven fabric, conforming to the face of the CRT . . . (Patent No. 5,122,619; Radiation shield for display terminals)

Catalyst particles in the range of 35 to 40 microns were collected by the use of a micro mesh sieve. (Patent No. 4,826,802; Method for preparation of antimony and tellurium-containing metal oxide catalysts)

In the screening, JIS standard sieves are used for particle sizes of 44 mu and more, and micro-mesh sieves . . . for particle sizes of less than 44 mu. (Patent No. 4,750,940; Novel resin-coated metallic pigment and a process for producing the same)

The calcined oxides are then crushed and sieved through a 250 micro mesh. (Patent No. 4,694,219)

The lacquer formed on the surface of the disc is first strained through a series of micro-mesh filters and then poured over the surface of the disc while the disc is rotated at about 10 rpm. (Patent No. 3,938,810; Center hole formation in an information storing disc)

When these devices are fabricated in accordance with the present invention, there is obtained a supported fine or micro-mesh straining medium which is not only free from the limitations imposed by organic adhesives, . . . (Patent No. 3,747,770; filter screen)

. . . improved results may be obtained by providing a micro-mesh screen for filtering particles or debris from the liquid flowing through the bore which would be too large to pass readily through the aperture. (Patent No. 3,739,268; particle sensing apparatus, method and flow direction collar therefor)

The wet particles are transported to a fine or micro mesh screen where the water is allowed to run off. (Patent No. 3,881,912; Welding filler material)

. . . in order to be successful, the micromesh filter must have a non-stratified deposit of wet coffee grounds thereon, in order to permit the correct rate of coffee infusion therethrough. (Patent No. 3,695,168; Drip coffee maker)

The Examining Attorney also submitted excerpts of several articles, from the LEXIS/NEWS database, from various newspapers and consumer publications indicating that various household appliances, such as dishwashers, stoves, coffeemakers and deep fryers have filters. In addition to one article referring to applicant's product herein, following are examples of several excerpts:

*Los Angeles Times* (November 6, 1991): states that a Bosch dishwasher's filter system includes a "self-cleaning micro filter";

*HFD - The Weekly Home Furnishings Newspaper*  
(January 15, 1990): states that a Boneco drip  
coffeemaker "features a stainless-steel micromesh  
filter with some two million perforations . . .

*Travel Weekly* (September 12, 1988): in discussing  
the arrangement of lighting to minimize  
reflections and glare on video display terminals,  
states "when standard lighting is too bright for  
comfortable VDT use, hoods or micromesh filters  
for the VDT screen may help."

Additionally, we take notice of the following

dictionary definitions:<sup>3</sup>

**micro** *adj.* 1. extremely small 2. minute in scope  
or capability.

**micro-** a combining form with the meanings "small"  
(*microcosm; microgamete*); "very small in  
comparison with others of its kind"  
(*microcassette; microlith*); "too small to be seen  
by the unaided eye" (*microfossil; micro-organism*);  
"dealing with extremely small quantities of a  
substance" (*microdissection; microscopic*); . . .  
"one millionth" (*microgram*).

**mesh** 1. any knit, woven or knotted fabric of open  
texture 3. any arrangement of interlocking metal  
lines or wires with evenly spaced, uniform small  
openings between, as used in jewelry or sieves ...  
7. *Elect* a set of branches that forms a closed  
path in a network so that removal of a branch  
results in an open path.

The critical issue in genericness cases is whether  
members of the relevant public primarily use or understand  
the term sought to be registered to refer to the genus  
(category or class) of goods in question. *In re Women's*

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<sup>3</sup> *The Random House Dictionary of the English Language*, 2nd ed., 1987.  
We note that the Examining Attorney submitted dictionary excerpts  
pertaining to these same terms; however, the submission did not indicate

*Publishing Co. Inc.*, 23 USPQ2d 1876, 1877 (TTAB 1992). Our primary reviewing court has set forth a two-step inquiry to determine whether a mark is generic: First, what is the genus (category or class) of goods at issue? Second, is the term sought to be registered understood by the relevant public primarily to refer to that genus (category or class) of goods? *H. Marvin Ginn Corporation v. International Association of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986).

The Examining Attorney's evidence establishes that filters are an important component of dishwashing machines and that such filters must be composed of a "fine mesh" to remove tiny food particles from the wash liquid to prevent the particles from re-adhering to dishes. The Examining Attorney readily admits that he has no evidence of any use of the term MICRO-MESH, whether hyphenated or not, for use in connection with filters for dishwashing machines. However, he argues that the evidence of use of this term in connection with filters in other contexts is extensive and covers a broad range of goods. The Examining Attorney argues that, as fine mesh filters are referred to as MICRO-MESH filters and are used in many contexts, we should consider all filters, rather than only dishwashing machine filters, to be the genus of goods herein. The Examining

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the edition number or publication date of the dictionary and, further,



Attorney also concludes, without further explanation, that the relevant public would understand MICRO-MESH to refer primarily to that genus of goods.

On the other hand, but also without explanation, applicant maintains that the genus of goods in question is dishwashing filters; and that, "while some members of the consuming public may use the mark MICRO MESH in a descriptive manner, there is no evidence that they use or understand the term to refer to the genus of goods in question, namely, filters for dish washing machines." (Applicant's brief, p. 10.)

The evidence establishes that filters are used in a many different contexts - so different, in fact, that to consider all filters to be the genus of goods for our consideration herein would be to establish an inappropriately broad category. We conclude from the record that the appropriate genus of goods at issue is filters for dishwashing machines. Thus, we turn to consider the relevant public's understanding of the term MICRO-MESH in connection with dishwashing machines. In this regard, we find the record almost completely devoid of evidence.<sup>4</sup> We find the dictionary definitions of MICRO and MESH and the single reference to a "micro filter" in the *Los Angeles*

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the photocopy of the definition of MESH was unreadable.

<sup>4</sup> Regardless of the genus of goods, the use of MICRO MESH in the technical description of the invention in a patent is not persuasive evidence of how the relevant public would understand the term.

*Times* article quoted herein to be insufficient evidence in this regard. Thus, based on the record before us, we conclude that MICRO-MESH is not generic in connection with dishwashing machine filters.

Thus, we turn to the only other question before us, whether MICRO-MESH is merely descriptive as used in connection with filters for dishwashing machines. The test for determining whether a mark is merely descriptive is whether the involved term immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of a product or service. *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979); *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986). It is not necessary, in order to find a mark merely descriptive, that the mark describe each feature of the goods, 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).

There is ample evidence in the record that dishwashing machine filters are made of a "fine mesh" and, further, that MICRO means "extremely small." We find that, when applied to applicant's goods, the term MICRO-MESH is merely descriptive. It immediately describes, without conjecture or speculation, a significant feature or function of applicant's goods, namely that the filter consists of a fine, *i.e.*, extremely small, mesh. 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 goods to readily perceive the merely descriptive significance of the term MICRO-MESH as it pertains to filters for dishwashing machines.

*Decision:* The refusal to register on the ground that the mark herein is generic of the identified goods is reversed. The refusal to register, under Section 2(e)(1) of the Act, on the ground that the mark herein is merely descriptive in connection with the identified goods is affirmed.<sup>5</sup> In view of the Examining Attorney's acceptance of applicant's claim of acquired distinctiveness herein

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<sup>5</sup> Ordinarily, after finding that MICRO-MESH is not generic in connection with the identified goods, applicant's claim of acquired distinctiveness under Section 2(f) would avoid the refusal to register on the ground that the mark is merely descriptive in connection with the identified goods under Section 2(e)(1). However, as applicant has submitted its Section 2(f) claim in the alternative, we must determine whether the mark is merely descriptive, which we have done. Thus, we affirm the refusal under Section 2(e)(1).

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under Section 2(f) of the Act this application will be forwarded for publication in due course.

R. L. Simms

E. W. Hanak

C. E. Walters  
Administrative Trademark Judges,  
Trademark Trial and Appeal Board