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THE TTAB

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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 MEMC Electronic Materials, Inc.

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Serial No. 78228569

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William D. O'Neill of Senniger Powers for MEMC Electronic Materials, Inc.

Darryl M. Spruill, Trademark Examining Attorney, Law Office 112 (Janice O'Lear, Managing Attorney).

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Before Quinn, Walsh and Cataldo, Administrative Trademark Judges.

Opinion by Cataldo, Administrative Trademark Judge:

MEMC Electronic Materials, Inc., a Delaware corporation, has applied to register the mark PERFECT SILICON in standard character form on the Principal Register for "silicon wafers."<sup>1</sup>

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<sup>1</sup> Application Serial No. 78228569, filed March 21, 2003, based on applicant's assertion of a bona fide intent to use the mark in commerce on the goods. Applicant has disclaimed the exclusive right to use "SILICON" apart from the mark as shown.

The trademark examining attorney refused registration under Section 2(e)(1) of the Trademark Act on the ground that applicant's mark is merely descriptive of a feature or quality of applicant's goods.

When the refusal was made final, applicant appealed. Applicant and the examining attorney filed main briefs and applicant filed a reply brief. An oral hearing was not requested.

Applicant contends its proposed mark is just suggestive and does not immediately convey to consumers the nature of the goods. More specifically, applicant claims that "[t]he word 'perfect' is vague and general enough, and has enough different meanings, that it can mean different things to different people who are representative of the average prospective consumer of Appellant's goods."

Applicant has relied upon dictionary definitions of the word "perfect," and printouts from the United States Patent and Trademark Office's Trademark Electronic Search System (TESS) of third-party registrations for marks consisting of the word "PERFECT" followed by a disclaimed term.

According to applicant, the third-party registrations "demonstrate the Trademark Office's consistency in applying the standards for determining mere descriptiveness" with regard to "PERFECT" formative marks.

The Examining Attorney maintains that the mark merely describes a feature or quality of the goods. In particular, the examining attorney argues that the mark consists of the laudatorily descriptive term "PERFECT" and the disclaimed, generic, term "SILICON;" and that, in combination, the terms comprising the mark merely describe silicon wafers that are free of defects, of high quality, and superior to other similar goods. In support of the refusal, the examining attorney has relied upon dictionary definitions of the word "perfect," and made of record articles retrieved from the Nexis database and Internet web pages. Excerpts from these articles and web pages follow (emphasis added):

Two years ago, the Arlington plant produced a **perfect silicon** wafer on which every chip worked. (Fort Worth Star-Telegram, November 21, 2002)

...merchant manufacture of silicon wafers in the world. We pioneered key processes such as the SECROWSKY method of crystal growing and the development of [indiscernible], wafer-polishing processes, our MDZ product feature, and **perfect silicon** in the form of our OPTIA product family. (FD Fair Disclosure Wire, October 28, 2002)

MEMC Electronics Inc., a company that makes near-**perfect silicon** wafers for computer chips, was sloppy with a common industrial degreaser in the 1960s. (St. Louis Post-Dispatch, December 19, 1994)

Some suppliers have started promoting so-called "**perfect**" silicon wafers that are made from high-purity ingots. But they cost more than today's prime production wafers because the crystals are grown at much slower rates to eliminate defects. ([www.siliconstrategies.com](http://www.siliconstrategies.com))

Semiconductor manufacturers will need high-quality wafers in order to manufacture next-generation chips, the Korean researchers point out. However, they emphasize that growing the defect-free crystals that would be required for a "**perfect**" silicon wafer is an expensive, time-consuming proposition... ([www.micromagazine.com](http://www.micromagazine.com))

...Such a defect free layer can be obtained by several different means, examples are epi-wafers, **perfect silicon** wafers and annealed wafers...**Perfect silicon** wafers are made from crystal that is pulled so slowly that the crystal does not contain defects... ([www.asm.com](http://www.asm.com))

The researchers' first step was to remove the heavy oxidation that's ordinarily applied to a silicon wafer, thus exposing a **perfect silicon** surface. ([www.componentbazaar.com](http://www.componentbazaar.com))

There are simply no truly effective techniques which can offer a result or a specification from which one can decide whether this or the other material will be suitable for this or the other application. Advances in "**Perfect Silicon**" (silicon that is completely micro-defect free) offers this certainty. ([www.futurefab.com](http://www.futurefab.com))

In addition, applicant and the examining attorney recite several definitions of the term "perfect." Both agree that "perfect" may be defined, *inter alia*, as "being entirely without fault or defect" or "completely suited for a

particular purpose or situation."<sup>2</sup>

It is well settled that a term is considered to be merely descriptive of goods and/or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes an ingredient, quality, characteristic or feature thereof or if it directly conveys information regarding the nature, function, purpose or use of the goods and/or services. See Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052. See also *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods and/or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or feature about them. Moreover, whether a term is merely descriptive is determined not in the abstract, but in relation to the goods and/or services for which registration is sought. See *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). Thus, "[w]hether consumers

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<sup>2</sup> Applicant cites to Merriam Webster's Collegiate Dictionary, Tenth Edition, 2000 as the source of its definitions. The examining attorney cites to Merriam Webster Dictionary Online ([www.m-w.com](http://www.m-w.com)) and Bartleby.com ([www.bartleby.com](http://www.bartleby.com)) for his definitions. We note that copies of the proffered definitions were not submitted. Nonetheless, inasmuch as neither applicant nor the examining attorney has objected to the definitions set forth by the other, we will consider them in our determination herein.

could guess what the product is from consideration of the mark alone is not the test." *In re American Greetings Corp.*, 226 USPQ 365 (TTAB 1985).

In the instant case, the evidence made of record by the examining attorney supports a finding that, as applied to applicant's goods, the term PERFECT SILICON would immediately describe, without conjecture or speculation, a significant characteristic or feature of the goods, namely, that they are made of silicon that is without fault or defect, or otherwise completely suited for a particular purpose. It is settled that excerpts from articles taken from the Nexis database are competent evidence of how a mark may be perceived. *See In re Shiva Corp.*, 48 USPQ2d 1957 (TTAB 1998). It is further settled that material obtained from the Internet is acceptable in ex parte proceedings as evidence of potential public exposure to a term. *See In re Fitch IBCA, Inc.*, 64 USPQ2d 1058 (TTAB 2002). Prospective purchasers, upon confronting the term PERFECT SILICON for applicant's goods, would immediately perceive that the goods are silicon wafers that are free from defects, and completely suitable for purposes requiring silicon wafers produced to such standards of quality.

The third-party registrations submitted by applicant

are of little help in determining the registrability of the mark at issue in this case. As often noted by the Board, each case must be decided on its own set of facts, and we are not privy to the facts involved with these registrations. *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) ["Even if prior registrations had some characteristics similar to [applicant's] application, the PTO's allowance of such prior registrations does not bind the Board or this court."] See also *In re Best Software Inc.*, 58 USPQ2d 1314 (TTAB 2001). While uniform treatment under the Trademark Act is highly desirable, our task here is to determine, based upon the record before us, whether applicant's mark is registrable.

We note applicant's argument that the examining attorney's evidence "demonstrates the vagueness of 'perfect' as it applies to PERFECT SILICON, and provides even further evidence that PERFECT SILICON is suggestive, rather than merely descriptive, of its goods." Applicant's Brief, p. 8. However, in setting forth its argument, applicant appears to ignore many of the above-referenced excerpts demonstrating that PERFECT SILICON immediately conveys a significant quality or feature of applicant's silicon wafers. Applicant's conjecture regarding the

possible meanings of its mark is simply unpersuasive in light of the examining attorney's above-referenced evidence that applicant's mark is merely descriptive as applied to its goods.

Accordingly, we find that applicant's mark is merely descriptive as contemplated by Section 2(e)(1) of the Act.

Decision: The refusal to register is affirmed.