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Hearing:
February 14, 2002

Paper No. 14
RFC

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Sharp Kabushiki Kaisha

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Serial No. 75/555,194

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Robert W. Adams of Nixon & Vanderhye P.C. for Sharp Kabushiki Kaisha.

Gina M. Fink, Trademark Examining Attorney, Law Office 103 (Michael Szoke, Managing Attorney).

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Before Cissel, Chapman and Wendel, Administrative Trademark Judges.

Opinion by Cissel, Administrative Trademark Judge:

On September 17, 1998, applicant, a Japanese corporation, filed the above-referenced application to register the mark "CONTINUOUS GRAIN SILICON" on the Principal Register for "liquid crystal display panels," in Class 9. The basis for filing the application was applicant's assertion that it possessed a bona fide intention to use the mark in commerce in connection with these products.

The Examining Attorney refused registration under Section 2(e)(1) of the Lanham Act, 15 U.S.C. Section 1052(e)(1), on the ground that the proposed mark is merely descriptive of the goods set forth in the application. She contended that the term sought to be registered refers to a feature of applicant's liquid crystal display panels.

In support of the refusal to register, she submitted copies of excerpts from articles appearing in printed publications. Examples include the following:

"Through a new technology called continuous-grain silicon (CGS), researchers can now build what they call a system-on-panel or paper-thin computer…" (PC Magazine, March 24, 1998); and

"Called continuous grain silicon, the technology enables fully digital circuits to be incorporated into a liquid crystal display panel, Sharp said… The prototype uses three 2.6 inch ultra high definition continuous grain silicon thin film transistor panels and offers a resolution of more than 1.3 million pixels, or 1280 by 1024." [emphasis added]. (Computergram International, January 28, 1998).

In an apparent reference to the fact that the second excerpt refers to applicant, citing In re National Shooting Sports Foundation, Inc., 219 USPQ 1018 (TTAB 1983), the Examining Attorney noted that the fact that an applicant may be the first and only user of a merely descriptive designation does not justify registration if the term is merely descriptive.

Applicant responded to the refusal to register with argument that the term it intends to use as a mark does not merely describe liquid crystal display panels. Applicant contended that the mark would not immediately tell potential purchasers the nature or characteristics of applicant's goods, but rather, that the mark is suggestive because it requires imagination, thought, and perception in order to determine the nature of the goods from consideration of the mark.

The Examining Attorney made the refusal to register final in the second Office Action. Additional excerpts from published articles were submitted in support of the refusal. Included were the following:

"the future of display technology lies in liquid crystal on silicon, light-emitting polymer, reflective TFT LCDs and field emissive displays, according to papers presented at this year's Euro-Display conference in Berlin." (Electronics Times, September 13, 1999);

"… as I described in that article, APTi (Advanced Peripherals Technology Inc.), a joint-venture of Toshiba and IBM, originally developed this projector, basing it on the reflective silicon-wafer LCD technology developed by IBM Japan. Last summer, silicon-wafer based LCDs (commonly called CMOs, for complementary metal oxide semiconductor) and their associated projectors were quite the rage." (ABI/Inform, September, 1999);

"… thus, researchers claimed that silicon films with completely different grain microstructures can be created adjacent to one another when irradiated with the same pulse…" (Electronic Materials Technology News, September, 1997);

and

"LCD manufacturers are constantly challenged to produce higher-performance displays at lower cost… Film-thickness uniformity is especially critical as optimal laser-energy density varies widely with amorphous silicon film thickness. After crystallization, PECVK also tends to produce larger grain size and therefore higher mobilities at lower laser-energy densities than LPCVD… In solid-phase furnace annealing, the amorphous silicon film is implanted with silicon ions and annealed for as long as 40 hr(s).

The resulting polysilicon grain size depends on the dose, implantation energy, and precursor films. Higher doses result in larger grains…" (Solid State Technology, May, 1997).

Also submitted in support of the refusal were dictionary definitions of the word "continuous" as meaning

"uninterrupted in time, sequence, substance, or extent. See synonyms at continual… attached together in repeated units: a continuous form fed into a printer… Mathematics: Of or relating to a line or curve that extends without break or irregularity."

The Examining Attorney also referred to excerpted articles from a search conducted in a computerized patent database in which applicant's name, "Sharp Kabushiki," and "grain silicon" appeared. The first of the stories states as follows:

"In other words, a high-mobility TFT can be realized when the TFT is formed so that the conducting direction of the TFT is made substantially parallel to the growing direction of the crystal grains of the silicon film; on the other hand, when the TFT is formed so that the conducting direction of the TFT is made substantially perpendicular to the growing direction of the crystal grains of silicon film, thin boundary trap density in the edge portion of the drain region can be reduced." (Patent No. 5,821,562).

The Examining Attorney reasoned that such uses of the term "grains of silicon" by applicant in describing its product establish that the words sought to be registered by applicant would immediately inform prospective purchasers of liquid crystal display panels that these products "feature silicon-wafer technology that produces grain sizes that are of such quality that the display appears to be uninterrupted in time, sequence, substance, or extent… in other words, continuous." (November 19, 1999 Office Action, p. 3.)

Applicant requested reconsideration of the final refusal to register, arguing that the Examining Attorney had not shown use of applicant's mark by anyone other than applicant in connection with liquid crystal display panels. The Examining Attorney was not persuaded by applicant's argument. Along with her response, she included yet another article she retrieved in her search of articles containing the term "continuous grain silicon." That article from Business Communications, headlined "Continuous Grain Silicon Technology," states as follows:

"Sharp Electronics Corp. (Mawah, NJ) announced its first ever product incorporating the company's revolutionary continuous grain silicon [CG-Silicon] LCD technology--a 60-in. high definition rear projection display… The new CG-Silicon rear projector integrates three 2.6 in. wide continuous grain silicon TFT LCD panels that deliver a total resolution of 3.93 million pixels, among

the highest in the industry… By analyzing the CG-Silicon thin film semiconductor with a high resolution electron microscope and an electron beam differentiation image, it was proved that the CG-Silicon semiconductor has an unprecedented level of crystal orientation as well as atomic level continuity in its silicon grain boundary. CG-Silicon retains an atomic level continuity at the boundary level between the silicon grain, thereby permitting electrons to travel through the semiconductor about 600 times faster than an amorphous silicon TFT and about 4 times faster than an ordinary low temperature polysilicon TFT." [emphasis added].

A similar article appeared on applicant's Web site under the title "Sharp Develops the World's First Continuous Grain Silicon (CSG) Technology." The Examining Attorney made this of record with the Office Action of June 2, 2000. In this article, applicant claims that it "developed a continuous grain silicon (CGS) LCD," which "retains an atomic-level continuity at the boundary between its silicon grain," thus enabling "fully digital circuits to be incorporated into liquid crystal display panels for use in super-compact high-definition projection type LCDs and large-screen ultra high-definition LCDs." Further on in the same article, applicant states that "the CGS semiconductor had an unprecedented level of crystal orientation as well as atomic-level continuity in its silicon grain boundary."

The Examining Attorney denied applicant's request for reconsideration.

Applicant timely filed a Notice of Appeal, which was followed by its appeal brief. The Examining Attorney filed her brief on appeal, and applicant filed a reply brief. As noted above, both applicant and the Examining Attorney presented arguments at the oral hearing before the Board.

Based on careful consideration of the record in this application, the arguments made by applicant and the Examining Attorney and the relevant legal precedents, we hold that the refusal to register must be affirmed. Use of the term by applicant and by others in reference to this new technological feature or characteristic of liquid crystal display panels establishes that "CONTINUOUS GRAIN SILICON" is merely descriptive in connection with these products.

The test for a mere descriptiveness within the meaning of Section 2(e)(1) Lanham Act is not disputed. A term is unregistrable under this section of the Act if it immediately conveys significant information concerning a quality, characteristic, or feature of the goods. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); In re Bed & Breakfast Registry, 791 F.2d 157, 229 USPQ 818 (Fed. Cir. 1986); In re MetPath Inc., 223 USPQ 88 (TTAB 1984); In re Bright-Crest, Ltd., 204 USPQ 591 (TTAB 1979). It is not necessary that a term describe all of the

qualities, characteristics or features of the goods in order to be refused registration under Section 2(e)(1). It is enough if the term describes one significant attribute of the goods. In re MBAssociates, 180 USPQ 338 (TTAB 1973).

We agree with the Examining Attorney that the descriptive nature of applicant's mark is plainly revealed in the information excerpted from applicant's own Web page. In its Web page, as noted above, applicant claims that it shared in the development of "a continuous grain silicon (CGS) LCD," and further explains that this breakthrough technology retains atomic-level continuity at its "silicon grain" boundary. The article excerpted from Business Communications by the Examining Attorney shows similar use of these words by the writer, who in that instance is not apparently affiliated with applicant. We understand both of these examples as demonstrating that the grain of the silicon in applicant's liquid crystal displays is continuous. "CONTINUOUS GRAIN SILICON" merely describes this feature or characteristic of the goods, so the term is unregistrable under Section 2(e)(1) of the Act.

Applicant's arguments to the contrary are not well taken. As noted above, even if applicant were the only one using the term sought to be registered to describe these

products, the refusal to register would still be proper. Contrary to applicant's arguments, the issue is not whether there is such a thing as "grain silicon," nor is it whether from consideration of only the mark, one could correctly speculate as to the nature of the goods with which it is used. The issue is whether the term sought to be registered, "CONTINUOUS GRAIN SILICON," when considered in its entirety, conveys significant information concerning a feature or characteristic of the goods set forth in the application. Because the mark as a whole does this, it is unregistrable under Section 2(e)(1) of the Act.

Decision: The refusal to register is affirmed.