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Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re K²T, Inc.

Serial No. 75/471,626

Ansel M. Schwartz, Esq. for K²T, Inc.

Scott Baldwin, Trademark Examining Attorney, Law Office 112
(Janice O'Lear, Managing Attorney).

Before Quinn, Hohein and Rogers, Administrative Trademark
Judges.

Opinion by Hohein, Administrative Trademark Judge:

K²T, Inc. has filed an application to register the term
"SCENEMODELER" for "laser range sensors for use in the
architecture, engineering and construction industries."¹

Registration has been finally refused under Section
2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the

¹ Ser. No. 75/471,626, filed on April 21, 1998, which is based on an
allegation of a bona fide intention to use such term in commerce.

basis that, when used in connection with applicant's goods, the term "SCENEMODELER" is merely descriptive of them.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

It is well settled that a term is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it forthwith conveys an immediate idea of any ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. See, e.g., In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987) and In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods 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 idea about them. Moreover, whether a term is merely descriptive is determined not in the abstract but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use. See In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979). Thus,

"[w]hether consumers could guess what the product [or service] is from consideration of the mark alone is not the test." In re American Greetings Corp., 226 USPQ 365, 366 (TTAB 1985).

By way of background, applicant claims that its goods are used "to obtain data about the surroundings where the laser range sensors are placed." According to applicant:

The surroundings include rooms, or facilities where architects, engineers or contractors are designing or redesigning the room or facilities. The laser range sensors obtain data of the actual room or facility being examined, and not a model of the room or facility.

Applicant asserts that, in view thereof, the term "SCENEMODELER is not [merely] descriptive because it does not describe 'laser range sensors.'" While acknowledging that "the term 'scene' suggests a physical location and the term 'modeler' suggests a representation of something," applicant maintains that "[n]o one by reading the mark would know what goods are associated with the mark" and, instead, "would probably think it is something to do with making a picture." Applicant also argues that its "mark creates ambiguity or incongruity, which requires purchasers to pause and reflect on the significance of the words of the mark to even possibly attempt to understand what are the associated goods" because "there is no clue of what type of scene" its

laser range sensors are used to model.² Applicant dismisses the evidence (discussed below) offered by the Examining Attorney, including excerpts from its own web site, by simply claiming that "none of the examples ... links the subject mark to the goods."

The Examining Attorney, on the other hand, contends that the term "SCENEMODELER" merely describes "a characteristic, feature or use of the applicant's goods" because such goods "are used for three-dimensional object or scene modeling." Relying, in part, on dictionary definitions from the electronic version of The American Heritage Dictionary of the English Language (3rd ed. 1992), which in relevant portion lists "scene" as a noun meaning "1. Something seen by the viewer; a view or prospect" and sets forth "modeler" as a nominative form of the verb "model," which in turn is defined as "1. To make or construct a model of," the Examining Attorney urges that "the combined term "**scene modeler**" may be used to refer to a device that makes a model of a scene."

² In addition, applicant raises the argument that, while "the Examining Attorney has cited dictionary definitions for the separate words" comprising the term "SCENEMODELER," no definition has been offered for "the mark as a whole." The fact, however, that such term is not found in the dictionary is simply not controlling on the question of registrability. See In re Gould Paper Corp., 824 F.2d 1017, 5 USPQ2d 1110, 1112 (Fed. Cir. 1987) and In re Orleans Wines, Ltd., 196 USPQ 516, 517 (TTAB 1977).

In further support of his position, the Examining Attorney points out that:

In fact, as evidenced by the excerpted articles from the examining attorney's search in a computerized database, the combined term "scene modeler" is used in the relevant industry to describe devices used for three dimensional (3-D) image and scene rendering.

Specifically, the Examining Attorney refers to the following excerpts as shedding light on the meaning of the "SCENEMODELER" term which applicant seeks to register (**emphasis added**):

"... will export Poser models in PICT to 2-D image editors, or in RIB or DXF format to CAD or **scene modelers** for more-elaborate 3-D rendering." -- Macworld, October 1995; and

"We have reviewed the RenderMan Interface proposal and found it to provide a powerful, extensible interface specification between **scene modelers** and scene renderers to permit the synthesis of very complex scenes and simulations." -- Business Wire, May 18, 1988.

Finally, the Examining Attorney observes that, "[f]urther bearing-out the descriptive nature of the proposed mark, the applicant's own web site clearly indicates that" (**emphasis added**):

SceneModeler is a data collection and processing system which **combines a fast, high resolution, high fidelity distance measurement sensor with processing software which creates 2D drawings or 3D models exportable to industry standard CAD and modeling software.**

Additionally, applicant's web site refers to its "SCENEMODELER" products as "THE FASTEST WAY TO MEASURE AND MODEL AS-BUILT CONDITIONS" and notes that such can be variously used (1) in architectural and engineering applications to "[c]reate existing condition models and drawings of infrastructure, buildings and urban areas"; (2) in construction projects to "[c]reate accurate as-built plans, cut fill estimations, site contours and existing condition models"; (3) in petroleum and process plants to "[q]uickly generate accurate models of pipe layouts, process configurations, and infrastructure"; (4) in transportation projects to "[c]heck rail alignments, generate facility models for renovations, layouts for traffic studies, and models for environmental studies"; (5) in ship construction "for ship checking and construction fit ups" and to "[m]easure and model complex hull, deck and bulkhead configurations quickly and easily"; and (6) in general simulation and modeling to "[q]uickly and easily create accurate models for computer graphics and simulation/training applications."

Applicant's web site also highlights samples of "projects [which] have been included to help illustrate the many uses of SceneModeler for creating as-built drawings and models," including "Virtual Reality," "Facility Modeling" and "Processing Plant" applications as well as "Architectural Modeling and

Visualization." Furthermore, "[a]s an example of SceneModeler's capabilities," applicant's web site indicates that applicant "scanned an exhibition hall containing the T-Rex [dinosaur] and processed the resulting data into floor plans, rendered models, and photo-realistic models useful for virtual reality applications." Applicant's web site, moreover, states that "[f]or process plant modeling applications, SceneModeler technology can't be beat" and illustrates models of portions of a process plant which "were quickly generated using Architect point-to-geometry software." In view thereof, the Examining Attorney concludes, as noted earlier, that "since the applicant's goods are used for three-dimensional (3-D) object or scene modeling, the proposed mark 'SCENEMODELER' merely describes a characteristic, feature or use of the applicant's goods."

We agree with the Examining Attorney that, when considered in relation to the goods, rather than in the abstract as improperly urged by applicant, the term "SCENEMODELER" is merely descriptive of applicant's goods. In particular, it is our view that, when applied to "laser range sensors for use in the architecture, engineering and construction industries," the term "SCENEMODELER" would be regarded by purchasers and potential customers for the goods as immediately describing, without any conjecture or speculation, a significant purpose,

feature or use of applicant's goods, namely, that they are used to model scenes, through the data obtained or collected by applicant's goods from whatever scene a model is to be made, including those of buildings and infrastructure construction projects, petroleum and process plants, transportation facilities, and ships. There is simply nothing in the term "SCENEMODELER" which, when used in connection with applicant's goods, requires the exercise of imagination, cogitation or mental processing or necessitates the gathering of further information in order for the merely descriptive significance thereof to be immediately perceived. Clearly, to customers and users of applicant's goods, such term readily conveys that a principal purpose, feature or use of applicant's laser range sensors is that they function or serve as scene modelers, that is, they are utilized to sense and model whatever view or image must be generated for particular architectural, engineering and/or construction applications. Nothing in such term is bizarre, incongruous, indefinite or ambiguous when considered in the context of applicant's goods.

Accordingly, because the term "SCENEMODELER" forthwith conveys a significant purpose, feature or use of applicant's "laser range sensors for use in the architecture, engineering and construction industries," it merely describes what such goods do and hence is unregistrable within the meaning of the

statute. See, e.g., In re Intelligent Instrumentation Inc., 40 USPQ2d 1792, 1794-95 (TTAB 1996) [term "VISUAL DESIGNER" held merely descriptive of "computer programs for controlling the acquisition of data from measurement devices for the purposes of analysis, display, testing and automatic control"] and In re Tekdyne Inc., 33 USPQ2d 1949, 1952-53 (TTAB 1994) [term "MICRO-RETRACTOR" found merely descriptive of "surgical clamps"].

Decision: The refusal under Section 2(e)(1) is affirmed.