

THIS DISPOSITION IS NOT  
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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 **Unisys Corporation**

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Serial No. 74/**716,137**

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**Thomas J. Scott, Esq.** for Unisys Corporation.

**Josette M. Beverly**, Trademark Examining Attorney, Law Office 102  
(**Myra Kurzbard**, Managing Attorney).

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Before **Cissel**, **Seeherman** and **Hohein**, Administrative Trademark  
Judges.

Opinion by **Hohein**, Administrative Trademark Judge:

Unisys Corporation has filed an application to register the term "SERVER/CLIENT" as a service mark for the "installation of computer software, namely, a series of object-oriented software development tools used to build programs, run and manage networks" in International Class 37 and "computer software consultation and computer programming for others of a series of object-oriented software development tools used to build programs, run and manage networks" in International Class 42.<sup>1</sup>

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<sup>1</sup> Ser. Number 74/716,137, filed on August 3, 1995, which alleges dates of first use of April 24, 1995.

Registration has been finally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis that, when used in connection with applicant's services, the term "SERVER/CLIENT" is merely descriptive of them.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested.<sup>2</sup> We affirm the refusal to register.

In support of her position, the Examining Attorney has made of record and relies upon dictionary definitions of the following terms:

"**server**," which in relevant part the IBM Dictionary of Computing (10th ed. 1994) at 612 sets forth as "[a] functional unit that provides shared services to workstations over a network; for example, a file server, a print server, a mail server" and the Microsoft Press Computer Dictionary (2d ed. 1994) at 355 lists as, "[o]n a local area network, a computer running administrative software that controls access to all or part of the network and its resources (such as disk drives and printers). A computer acting as a server makes resources available to computers acting as workstations on the network. Compare client"; and

"**client**," which in pertinent part the former at 107 defines as "[a] functional unit that receives shared services from a server" and the latter at 75 signifies as meaning, "[i]n object-oriented programming, a member of a class (group) that uses the services of another class to which it is not related.

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<sup>2</sup> Although applicant also appealed the mere descriptiveness refusal as it pertained to the services of "advertising, promoting and marketing of computer software of others via distributing advertising information via electronic, hard copy and trade shows presentations" in International Class 35, applicant states in its brief that it "hereby amends the application to cancel the services recited in International Class 35 in their entirety." In view thereof, the application stands abandoned as to the services recited in International Class 35.

.... On a local area network, a computer that accesses shared network resources provided by another computer (called a server)."

The Examining Attorney has also submitted as support for her position a number of excerpts from the "NEXIS" database in which the terms "server" and "client" are used. The following examples are representative (**emphasis added**):<sup>3</sup>

"**Server** and **client** software comes on two disks, and you install Imagery HSM at a Microsoft Windows client." -- LAN Times, March 4, 1996;

"The product combines the LanRover remote access **server** and **client** software from Shiva with the Integrator router ...." -- Newsbytes News Network, February 23, 1996;

"The world's first free-of-charge secure **server/client** software is available from INTERWEB INC which incorporates the SSL protocol and is complete with the Netscape Commerce Server ...." -- Telecomworldwire, February 6, 1996;

"Progressive Networks Inc. writes **server/client** software to make the World Wide Web sing-or at least talk." -- Communications-Week, January 8, 1996;

"OLAP also requires **server** and **client** software." -- Computerworld, January 8, 1996;

"This product represents a major opportunity for resellers, not just with the installation and configuration of **server** and **client** software, but with the training and the likelihood of moving into advanced tools for sales forces that are constantly on the road." -- Computer Reseller News, December 4, 1995; and

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<sup>3</sup> While we note that the wire service articles may not have been disseminated to the purchasing public, they nevertheless are an indication of how those writing about developments in the software trade would utilize the "server/client" terminology.

"USoft Thursday announced two **server/client** software product sets .... 'By leveraging Actuate Reporting System technology, we take an important step toward assembling a comprehensive **server/client** software environment, complete with the tools end users need to quickly access key decision support information,' said Michael Seashols ...." -- Business Wire, November 30, 1995.

In light of the above, and in view of the fact that, in its brief, applicant "readily acknowledges the extensive, well-known use" of the terms "client/server software, server software, client software, and server and client software"<sup>4</sup> "in the computer industry prior to its adoption and use of SERVER/CLIENT," the Examining Attorney maintains that the term "SERVER/CLIENT" is merely descriptive of applicant's services.

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<sup>4</sup> We judicially notice in this regard the following definition of the term "client/server architecture" from the Microsoft Press Computer Dictionary (2d ed. 1994) at 75, which is set forth both in the excerpts thereof made of record by the Examining Attorney in reliance upon the definition of "client" and in the excerpt therefrom attached to applicant's brief:

An arrangement used on local area networks that makes use of "distributed intelligence" to treat both the server and the individual workstations as intelligent, programmable devices, thus exploiting the full computing power of each. This is done by splitting the processing of an application between two distinct components: a "front-end" client and a "back-end" server. The client component, itself a complete, stand-alone personal computer (vs. the "dumb" terminal found in older architecture such as the time-sharing mainframe), offers the user its full range of power and features for running applications. The server component, which can be another personal computer, a mini-computer, or a mainframe, enhances the client component by providing the traditional strengths offered by minicomputers and mainframes in a time-sharing environment: data management, information sharing between clients, and sophisticated network administration and security features.

It is settled that the Board may properly take judicial notice of dictionary definitions. See, e.g. *Hancock v. American Steel & Wire Co. of New Jersey*, 203 F.2d 737, 97 USPQ 330, 332 (CCPA 1953) and *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

The Examining Attorney, in particular, argues that because "the terms 'server' and 'client' are used in conjunction with one another to refer to a type of data processing architecture" and "applicant's services feature server/client software products and services, the proposed mark is merely descriptive."

Applicant, on the other hand, contends that its combination of two generic terms results, due to its unique and never before used "juxtaposition of the words in the common term, client/server," in a mark which is suggestive of its services inasmuch as "the emphasis in these software services is on the server applications in a client/server environment." Specifically, in support of its contentions, applicant has submitted an evaluation by the ButlerBloor Organization which, in addition to noting that "USoft is a wholly owned, but independent, subsidiary of Unisys" and that "[f]or some time Unisys has felt a need to move into the open systems, client/server market-place," further states in describing and evaluating the "Product Architecture" involved in applicant's services and associated goods that:

USoft calls itself the server/client software company. This is well thought out. It makes the reader stop and think. Most particularly, it reflects the emphasis on the server. Unlike some so-called competitive products, which are really client development tools and actually do very little at the server level, USoft is server-centric. On the other hand, USoft have [sic] not neglected client performance either. In particular, USoft applications should not have the scalability problems associated with some well known 4GLs. This is reflected in USoft's target markets, which range from large workgroups up to enterprise-wide applications.

In view thereof, and in light of the admissions in its brief, applicant essentially maintains that (emphasis and underlining in original):

In fact, it is just this extensive, well-known use of the terms, client/server software, client-server software, server software and client software, which provides the basis of Applicant's ingenuity in creating the new mark, **SERVER/CLIENT**. If the prior terms not been so well-known and accepted by the computer industry, this new mark, comprising in part, the juxtaposition of the elements in the prior term[,] would never have had the impact it has had. Although this mark may be suggestive of the type of establishment from which the services emanate, it does not merely describe the type of establishment from which the goods [sic] emanate. This position is supported in the ButlerBloor report wherein it states, "USoft calls itself the server/client software company. This is well thought out. It makes the reader stop and think." These are the words of persons well familiar with the terms, client/server software, client-server software, server software and client software, and are evidence that it does take imagination, effort, thought and an extra mental step to make the association that **SERVER/CLIENT** services[,] while provided for products in a client/server environment[,] are different.

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 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 or services. See *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). Consequently, "[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).

In the present case, it is our view that, when applied to applicant's services of computer software installation, computer software consultation and computer programming for others of a series of object-oriented software development tools used to build programs, run and manage networks, the term "SERVER/CLIENT" immediately describes, without conjecture or speculation, a significant feature or characteristic of applicant's services, namely, the server/client software associated or produced for use therewith. As the dictionary definitions and "NEXIS" excerpts make clear, there is nothing in the combination of the words "SERVER" and "CLIENT" into the term "SERVER/CLIENT" which is incongruous, indefinite, or even "ingenious" about such term when considered in the context of

applicant's services, nor does the inclusion of the slash ("/") between the component words make the combined term a registrable mark. See, e.g., Johnson Controls, Inc. v. Concord Battery Corp., 228 USPQ 39, 44 (TTAB 1985) and cases cited therein.

Clearly, to the administrators of local area networks and others who develop, install and maintain such networks for businesses and other enterprises, there is nothing in the term "SERVER/CLIENT" which would require such purchasers and users of applicant's services to utilize imagination, cogitation or mental processing or necessitate the gathering of further information in order to perceive readily and precisely the merely descriptive significance thereof. The individual words comprising the term "SERVER/CLIENT" plainly have a meaning when combined which ordinary usage would ascribe to those terms in combination and the fact that such term is not found in the dictionary is 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 fact, inasmuch as applicant's services are "server-centric" in that the focus thereof is on the server rather than the client, it is plain that reversing the constituent words in the established terminology "client/server" to form the term "SERVER/CLIENT" merely underscores the emphasis placed by applicant on the server in enterprise-wide applications development. Specifically, in referring to "A ROLE REVERSAL THAT IS CHANGING THE COMPUTING INDUSTRY" applicant's advertising



literature, which it submitted as specimens of use, explains the focus of its "SERVER/CLIENT" services in the following manner:

Introducing a new perspective on a familiar concept. We call it SERVER/CLIENT. It's an architecture that balances the sizzle of the first generation client/server graphical screen generators with the power and resources of the server environments.

USoft has harnessed this technology to deliver the only adaptable solution for planning, building and managing distributed enterprise-wide business applications. Over 250 corporations, supporting up to thousands of users worldwide, have discovered the advantages of Server/Client applications.

Thus, as noted in the Examining Attorney's brief:

The fact that the applicant has transposed the terms "server" and "client" from its commonly recognized designation "client/server" does not make the use of the terms any less descriptive. It is well settled 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. *In re National Shooting Sports Foundation, Inc.*, 219 USPQ 1018 (TTAB 1983). Therefore, the applicant's objection to the later usage of some third parties of the term "server/client" is not persuasive. *See In re Lantech, Inc.*, [222 USPQ] 977, 979 (TTAB 1983). The term "server/client" unequivocally projects a merely descriptive connotation. As indicated by the examining attorney and conceded ... by the applicant, the public is already familiar with the terms "server," "client," and the combined term "client/server." The examining attorney disagrees with the applicant's assertion that "it is just this ingrained familiarity with the client/server term that gives the mark, SERVER/CLIENT, its effectiveness as a distinctive trademark." .... It is because of this "ingrained familiarity" that it does not take a vast amount of imagination or mental pause for a prospective purchaser to understand the meaning of the term "server/client" when viewing the mark ... [in association with] applicant's services.

Rather, in view of the common usage and understanding of the combined terms "server" and "client" in the computer industry, the prospective purchaser of the applicant's services would immediately understand the use, purpose or application of the applicant's services when viewing the mark ... [in connection therewith].

In particular, the "NEXIS" excerpts which refer to "server and client software" make it clear that in the context of applicant's services, the term "SERVER/CLIENT" would not be regarded or understood as so unusual or different as to be incongruous, indefinite or even, as applicant asserts, "ingenious".

Accordingly, because the term "SERVER/CLIENT" conveys forthwith a significant feature or purpose of applicant's computer software installation services, its computer software consultation services and its computer programming services for others, all of which are characterized by a series of object-oriented software development tools used to build programs, run and manage networks, it is merely descriptive of such services within the meaning of the statute.

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

R. F. Cissel

E. J. Seeherman

G. D. Hohein  
Administrative Trademark Judges,  
Trademark Trial and Appeal Board

**Ser. No.** 74/716,137