

**This Opinion is Not a  
Precedent of the TTAB**

Mailed: September 13, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re LG Electronics, Inc.*  
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Serial No. 86472855  
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Robert J. Kenney of Birch Stewart Kolasch & Birch LLP,  
for LG Electronics, Inc.

Q Queen, Trademark Examining Attorney, Law Office 111,  
Robert L. Lorenzo, Managing Attorney.

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Before Greenbaum, Adlin and Heasley,  
Administrative Trademark Judges.

Opinion by Greenbaum, Administrative Trademark Judge:

Applicant LG Electronics, Inc. filed an application to register QLED (in standard characters) on the Principal Register for goods ultimately identified as

Mobile phones; Smart phones; Software for mobile phones, namely, software for wireless content delivery; Laptop computers; Computers; Software for computers, namely, software for wireless content delivery; Computer application software, namely, software for wireless content delivery; Downloadable electronic publications in the nature of magazines in the field of information technology; Tablet computers; Remote control apparatus for televisions; Wearable computers; Smart phones that fit on the user's face in the manner of eyeglasses; Wristbands adapted or shaped to contain or attach to handheld digital

electronic media players; Computer software for wireless data communication for receiving, processing, transmitting and displaying information relating to fitness, body fat, body mass index; Personal portable devices, namely, computers for recording, organizing, transmitting, manipulating, reviewing and receiving text, data, images and audio files relating to health and wellness; Software for television, namely, software for wireless content delivery; Television receivers; Monitors for computer; Apparatus for recording, transmission or reproduction of sound or images; Digital Versatile Disc (DVD) players; Touch panels; LED panels; LED display for television; Audio-Video receivers for home theaters; Computer monitors in International Class 9.<sup>1</sup>

The Trademark Examining Attorney originally refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that QLED is merely descriptive of Applicant's goods. When Applicant amended the filing basis of the application from Section 44(d) to Section 44(e) of the Trademark Act, 15 U.S.C. § 1126(e), asserting ownership of Japan Reg. No. 5763509, issued on May 15, 2015, and amended the application to seek registration on the Supplemental Register, the Examining Attorney continued the Section 2(e)(1) refusal, and refused registration on the additional ground that QLED is generic and therefore incapable of distinguishing the identified goods under Section 23(c) of the Trademark Act, 15 U.S.C. § 1091(c).<sup>2</sup>

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<sup>1</sup> Application Serial No. 86472855 was filed on December 5, 2014, based upon Applicant's allegation of a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), and a claim of priority under Section 44(d) of the Trademark Act, 15 U.S.C. § 1126(d) based upon an application filed in Japan on the same date.

<sup>2</sup> Applicant also deleted the Section 1(b) filing basis. Applicant's unconditional amendment to the Supplemental Register mooted the Section 2(e)(1) refusal. *See* Section 26 of the Trademark Act, 15 U.S.C. § 1094 ("applications for and registrations on the supplemental

When the Examining Attorney made both refusals final, Applicant filed a request for reconsideration, which the Examining Attorney denied. Applicant then appealed to this Board. The case is fully briefed.

### I. Clarification of Issue on Appeal

Applicant addressed both refusals on the merits in its appeal brief. However, in her appeal brief, the Examining Attorney expressly withdrew the Section 2(e)(1) refusal in light of Applicant's previous amendment to the Supplemental Register. She also limited the Section 23(c) refusal to the following goods ("disputed goods"):

Mobile phones; Smart phones; Laptop computers; Computers; Tablet computers; Wearable computers; Smart phones that fit on the user's face in the manner of eyeglasses; Personal portable devices, namely, computers for recording, organizing, transmitting, manipulating, reviewing and receiving text, data, images and audio files relating to health and wellness; Monitors for computer; Apparatus for recording, transmission or reproduction of sound or images; Touch panels; LED panels; LED display for television; Computer monitors.

Accordingly, the sole issue to be decided is whether QLED is generic for the disputed goods and, thus, unregistrable on the Supplemental Register for those goods.

We AFFIRM the refusal.

### II. Evidentiary Issue

The Examining Attorney has objected to two exhibits Applicant submitted for the first time with its appeal brief. We sustain the objection. Only evidence filed during

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register shall not be subject to or receive the advantages of sections ... 1052(e) ... of this title").

examination is timely, Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d), and it should not be submitted on appeal. Applicant cannot rely on these exhibits.

### III. Genericness

“In order to qualify for registration on the Supplemental Register, a proposed mark ‘must be capable of distinguishing the applicant’s goods or services.’ 15 U.S.C. § 1091(c). Generic terms do not so qualify.” *In re Emergency Alert Sols. Grp., LLC*, 122 USPQ2d 1088, 1089 (TTAB 2017).

A term is generic if it refers to the class or category of goods or services on or in connection with which it is used. *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807 (Fed. Cir. 2001) (citing *H. Marvin Ginn Corp. v. Int’l Ass’n of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528 (Fed. Cir. 1986) (“*Marvin Ginn*”). See *In re Cordua Rests., Inc.*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016); *Princeton Vanguard, LLC v. Frito-Lay N. Am., Inc.*, 786 F.3d 960, 114 USPQ2d 1827 (Fed. Cir. 2015). The test for determining whether a term is generic is its primary significance to the relevant public. *In re Am. Fertility Soc’y*, 188 F.3d 1341, 51 USPQ2d 1832 (Fed. Cir. 1999); *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 19 USPQ2d 1551 (Fed. Cir. 1991); *Marvin Ginn*, 228 USPQ at 530. Making this determination “involves a two-step inquiry: First, what is the genus of goods or services at issue? Second, is the term sought to be registered ... understood by the relevant public primarily to refer to that genus of goods or services?” *Marvin Ginn*, 228 USPQ at 530. The Examining Attorney must establish with “clear evidence” that a proposed mark is generic. *In re La. Fish*

*Fry Prods., Ltd.*, 797 F.3d 1332, 116 USPQ2d 1262, 1264 (citing *Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987)).

Evidence of the public's understanding of a term may be obtained from "any competent source, such as consumer surveys, dictionaries, newspapers and other publications." *Princeton Vanguard*, 114 USPQ2d at 1830 (quoting *In re Northland Aluminum Prods., Inc.*, 777 F.2d 1556, 227 USPQ 961, 963 (Fed. Cir. 1985) (BUNDT is not registrable for "ring cake mix," citing numerous cookbook recipes and newspaper articles).

A. The genus of Applicant's goods

Because the identification of goods or services in an application defines the scope of rights that will be accorded the owner of any resulting registration under Section 7(b) of the Trademark Act, 15 U.S.C. §1057(b), generally "a proper genericness inquiry focuses on the description of [goods or] services set forth in the [application or] certificate of registration." *Magic Wand*, 19 USPQ2d at 1552 (citing *Octocom Sys., Inc. v. Houston Computers Servs., Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990)). In this case, the Examining Attorney has limited the genericness refusal to the disputed goods, and Applicant does not dispute this is the appropriate genus.

The genus therefore is defined as follows:

Mobile phones; Smart phones; Laptop computers; Computers; Tablet computers; Wearable computers; Smart phones that fit on the user's face in the manner of eyeglasses; Personal portable devices, namely, computers for recording, organizing, transmitting, manipulating, reviewing and receiving text, data, images and audio files relating to health and wellness; Monitors for computer; Apparatus for recording, transmission or reproduction of

sound or images; Touch panels; LED panels; LED display for television; Computer monitors.

B. Primary Significance of QLED to the Relevant Public

We next consider whether the relevant public understands QLED primarily to refer to the genus. *Cordua Rests.*, 118 USPQ2d at 1637 (quoting *In re 1800Mattress.com IP, LLC*, 586 F.3d 1359, 92 USPQ2d 1682, 1684 (Fed. Cir. 2009)). The “relevant public” is limited to actual or potential purchasers of the identified goods. *Magic Wand*, 19 USPQ2d at 1552-53. In this case, we agree with Applicant and the Examining Attorney that the “relevant public” consists of ordinary consumers seeking the disputed goods.<sup>3</sup>

As a general rule, an abbreviation, initialism or acronym is not generic unless the wording it stands for is generic of the goods or services, and the abbreviation, acronym or initialism is readily understood by relevant purchasers to be “substantially synonymous” with the generic wording which it represents.<sup>4</sup> *See, e.g., Baroness Small Estates, Inc. v. Am. Wine Trade, Inc.*, 104 USPQ2d 1224, 1226 (TTAB 2012) (in analyzing whether CMS is generic for wine comprising grape varietal names cabernet, merlot and syrah, the Board reiterated that “The question to be answered is whether the initials for generic or merely descriptive terms, or a combination thereof, are also generally recognized and used as an accepted abbreviation for the

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<sup>3</sup> 4 TTABVUE 12 (Applicant’s Br.) and 6 TTABVUE 8 (Examining Attorney’s Br.).

<sup>4</sup> The same analysis applies when we determine whether an abbreviation, initialism or acronym is merely descriptive of the wording it stands for. *Modern Optics, Inc. v. Univis Lens Co.*, 234 F.2d 504, 110 USPQ 293, 295 (CCPA 1956) 295 (“as a general rule, initials cannot be considered descriptive unless they have become so generally understood as representing descriptive words as to be accepted as substantially synonymous therewith”).

term itself.”); *In re Council on Certification of Nurse Anesthetists*, 85 USPQ2d 1403, 1411 (TTAB 2007) (“it is not automatically the case that the initial letters of a generic term are recognized as being substantially synonymous with such term”); *Capital Project Mgmt. Inc. v. IMDISI Inc.*, 70 USPQ2d 1172 (TTAB 2003) (“TIA” is substantially synonymous with generic term “time impact analysis” and thus is generic for type of construction project schedule analysis services); *In re Gen. Aniline & Film Corp.*, 136 USPQ 306, 306-07 (TTAB 1962) (holding “PVP” substantially synonymous with generic term “polyvinylpyrrolidone” and therefore generic for the synthetic resin polyvinylpyrrolidone).

The Examining Attorney maintains that QLED is an acronym for and substantially synonymous with the generic term “quantum dot light emitting diode,” a type of display technology that is a key feature of the disputed goods, and that relevant consumers would readily recognize QLED as such. In support of the refusal, the Examining Attorney submitted a number of printouts from the Internet, the most probative of which are summarized below.

1. In answer to the question “What is a QLED or QDLED?,” the “QLED Introduction” webpage from the QLED-Info.com website (accessed December 16, 2014)<sup>5</sup> explains that “QD LED or QLED is considered as a next generation display technology after OLED-Displays. QLED means Quantum dot light emitting diodes and are a form of light emitting technology ... that can provide an alternative for applications such as display technology.” The webpage lists

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<sup>5</sup> January 6, 2015 First Office Action, TSDR 5.

several “QLEDs advantages,” noting that “QLEDs are a reliable, energy efficient, tunable color solution for display and lighting applications that reduce manufacturing costs, while employing ultra-thin, transparent or flexible materials.” In particular, “QLEDs have the potential to be more than twice as power efficient as OLEDs...,” “large-area QLEDs” can be printed “on ultra-thin flexible substrates [which] will reduce luminaire manufacturing cost,” and “QLEDs will enable designers to develop new display and lighting forms not possible with existing technologies.” The QLED NEWS column on the webpage includes links to other articles/websites including “QD-Vision Full-Color QLED Displays achieves significance efficiency and performance improvements,” and “NanoPhotonica Develops Breakthrough Technology for QLED Flat Panel Displays.”

2. A May 15, 2013 press release from QD Vision, Inc. on its website qdvision.com, titled “QD Vision Announces Breakthrough QLED Efficiency Results,”<sup>6</sup> “announced breakthrough results on next generation quantum dot light emitting devices (QLEDs) which are currently in advanced development stage. QLEDs are a quantum dot based light emitting technology, which in the future will be used in applications such as electronic displays and solid-state lighting.” According to the press release, “QLED performance is already suitable for use in certain products that require precision color solutions in an ultra-slim form factor, including monochrome visible and infrared displays,” and this “recent

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<sup>6</sup> January 6, 2015 First Office Action, TSDR 4.



breakthrough QLED efficiency result ... demonstrates the potential of quantum dots to be the most compelling light emitting material today and for next generation displays.”

3. A September 20, 2013 article by Lucian Armasu on the AH AndroidHeadlines website entitled “Quantum Dots Could Be the Future for Our Mobile Displays”<sup>7</sup> compares “QLED vs LCD” and “QLED vs OLED” displays, explaining that “The big promise of quantum dots displays (or QLED displays), is that they can offer accurate colors more easily and a bigger gamut of colors compared to regular LCD’s,” “QLED might not reach the same level of color contrast and color gamut as OLED, but it should get close enough,” “Unlike AMOLED, which has a pretty big burn-in problem, because the organic molecules degrade pretty quickly, QLED doesn’t have this problem, so that’s a pretty big advantage for QLED over OLED displays,” and “In theory, QLED seems to be the most promising, and the best of both worlds between LCD and OLED, but it will depend on how many other manufacturers will adopt it and try to improve it, because Sony has just begun using it in smartphones ....”
4. A December 7, 2010 article by Kate Greene in the MIT Technology Review titled “Quantum Dot Displays Start to Shine”<sup>8</sup> reports that LG Display partnered with an MIT spinoff company “to develop displays that use quantum-dot light-emitting diodes (QLEDs) as their pixels” for “larger

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<sup>7</sup> January 6, 2015 First Office Action, TSDR 7.

<sup>8</sup> July 29, 2015 Second Office Action, TSDR 2.

displays, such as computer screens and televisions.” The article also discusses the manufacturing benefits of “QLEDs over OLEDs.”

5. A May 29, 2015 post by Ron Mertens on the OLED-info website entitled “Samsung reportedly aims to commercialize QLED TVs by 2020”<sup>9</sup> reports that “Samsung is considering developing Quantum-Dot displays (QLEDs) for TV panels that will compete with OLED TVs.” The post explains that “Samsung is already producing LCD TVs enhanced with quantum-dots films that enhance the color gamut, but these aren’t QLED TVs. A QLED is similar to an OLED – an emissive display that uses the QDs as light emitting materials.” Further, “Samsung has been developing QLEDs for a long time – and in 2011 they presented a prototype full-color display. ... (LG also wanted to develop QLEDs back in 2010).” The author opines “I cannot believe personally that Samsung will let LG (and other players) take over the OLED TV market until QLEDs are ready [in] 2020.” At the bottom of the webpage, the post provides links to “Similar Entries,” including “Samsung developed the world’s first full color QLED display,” “NanoPhotonica develops new QLED display technology,” and “LG Display and QD Vision to jointly develop QLED displays.”
6. A May 14, 2013 feature by Lisa Zyga on the PHYS.ORG website titled “Quantum dot LED approaches theoretical maximum efficiency”<sup>10</sup> compares QLEDs with OLEDs, stating “Quantum dot LEDs (QLEDs) are a promising

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<sup>9</sup> July 29, 2015 Second Office Action, TSDR 5.

<sup>10</sup> July 29, 2015 Second Office Action, TSDR 7-8.

technology for creating large-area displays that could have applications for TVs, cell phones, and digital cameras.” The feature concludes with a link allowing the reader to “Explore further: Quantum-dot LED screens may soon rival OLEDs and LCDs.”

7. A June 2, 2015 story on the ScienceDaily website (sourced from the Institute for Basic Science) titled “Quantum dot light emitting diodes meet wearable devices”<sup>11</sup> explains that scientists have developed “an ultra-thin wearable quantum dot light emitting diodes (QLEDs)” in the form of an “electronic tattoo [that] is based on current quantum dot light emitting diode (QLED) technology. Colloidal quantum dot (QLED’s) have attracted great attention as next generation displays.”
8. The landing page for ColorIQ.com (accessed August 23, 2016)<sup>12</sup> claims that “QD Vision is the leader in quantum dot technology for QLED displays” for televisions and monitors.
9. A July 28, 2016 press release from Acute Market Reports posted on the openpr.com website<sup>13</sup> announces a new study on the “Quantum Dot and Quantum Dot Display (QLED) Market, Shares, Strategies and Forecasts, Worldwide, Nanotechnology, 2013 to 2019.” The table of contents includes a section titled “QLED Quantum Dot Display Is Better than OLED.”

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<sup>11</sup> July 29, 2015 Second Office Action, TSDR 10.

<sup>12</sup> August 23, 2016 Final Office Action, TSDR 3.

<sup>13</sup> August 23, 2016 Final Office Action, TSDR 4.

10. An October 25, 2016 post by Davis Hsieh on the IHS Markit technology blog titled “QLED: Quantum Dot OLED or Quantum Dot LCD with LED backlight, or both?”<sup>14</sup> opines that “[r]ecently[,] interest in quantum-dot light-emitting diode (QLED) TVs has been increasing, particularly in the quantum dot (QD) market. The QLED TV is not a new concept. For years, there has been controversy over whether the ultimate type of TV would be QLED or organic light-emitting diode (OLED).”

11. An August 2015 article on the Konica Minolta website titled “Quantum Dot LEDs Present Cost Effective Solution to LED Lights”<sup>15</sup> explains that “Quantum Dot LEDs (or QLEDS)” are used in TVs, displays, and wearable products.

Applicant questions the probative value of the Examining Attorney’s evidence, claiming that some of the evidence is from industry publications and press releases and concerns rumors of products that have not yet been released. However, Applicant does not explain why this “forward-looking” evidence from tech enthusiasts and business analysts is not probative of the understanding of the term QLED to the relevant consuming public, especially when it concerns TVs, smartphones, and other disputed goods. As the Federal Circuit has stated, “The test is not only whether the relevant public would itself *use* the term to describe the genus, but also whether the relevant public would *understand* the term to be generic.” *1800Mattress.com*, 92

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<sup>14</sup> January 24, 2017 Denial of Request for Reconsideration, TSDR 10.

<sup>15</sup> January 24, 2017 Denial of Request for Reconsideration, TSDR 14.

USPQ2d at 1685 (emphasis in original). Obviously, some members of the relevant consuming public would research the types of TVs, smartphones, etc. that currently are available, and the expected next generation of these items, and would encounter materials like those cited above, some of which are consumer-focused. Moreover, other evidence discussed above shows that Sony is selling QLED smartphones, and companies such as Samsung, LG Display and QD Visions have been developing products with QLED displays for at least the last six or seven years.

In addition, Applicant contends that there is no consensus as to the meaning or understanding of QLED. However, Applicant does not dispute that the acronym QLED is “substantially synonymous” with the generic term “quantum dot light emitting diodes,” or suggest an alternative meaning for the acronym QLED. Moreover, Applicant appears to directly contradict this argument by maintaining that some of the evidence concerning Samsung QLED TVs shows that Samsung is not selling QLED TVs “as that term is commonly understood.”<sup>16</sup> In any event, Applicant’s argument is belied by the consistent use of QLED revealed in the articles summarized above, all of which include the actual words that the acronym represents, i.e., “quantum dot light emitting diodes.”

Applicant also argues that QLED “is not a designation for a key aspect for a designation of the goods.”<sup>17</sup> We disagree. The bulk of the evidence discussed above uses the terms “quantum dot light emitting diodes” and “QLED” interchangeably to

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<sup>16</sup> App. Br., 4 TTABVUE 10.

<sup>17</sup> App. Br., 4 TTABVUE 12.

refer to a particular type of display technology, and as an alternative to LCD and OLED display technology, for TVs, computer screens, monitors, smartphones, and the other disputed goods, all of which have displays. The evidence clearly demonstrates that the type of display technology is a key aspect of the disputed goods.

Applicant also points to the QD Vision website as evidence that QLED is not generic because that website uses the TM designation with the term QLED. However, “[t]he presence of the letters ‘TM’ cannot transform an otherwise unregistrable designation into a mark.” *In re Active Ankle Sys. Inc.*, 83 USPQ2d 1532, 1538 n.5 (TTAB 2007) (citations omitted).

Finally, Applicant contends that “[c]onsumers of QLED products would not be able to successfully determine on their own whether the product contains true quantum dot technology that relies on an electrical field or a different type of technology that uses a blue LED to backlight quantum dots.”<sup>18</sup> However, the question is not whether consumers can tell “on their own” whether a TV, smartphone, or other disputed goods contains “true quantum dot technology” or another type of technology to “backlight quantum dots.” The question is whether “quantum dot light emitting diodes” is generic for the disputed goods, and whether QLED is readily understood by relevant purchasers to be “substantially synonymous” with “quantum dot light emitting diodes.” The evidence clearly demonstrates both.

In view of the foregoing, we find that the designation QLED would be perceived by the relevant public as generic for the disputed goods.

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<sup>18</sup> App. Br., 4 TTABVUE 13.

**Decision:** The refusal to register QLED on the Supplemental Register on the ground that it is generic for the disputed goods is AFFIRMED.

However, because the refusal is limited to the disputed goods, the application will register on the Supplemental Register for the remaining goods, namely:

Software for mobile phones, namely, software for wireless content delivery; Software for computers, namely, software for wireless content delivery; Computer application software, namely, software for wireless content delivery; Downloadable electronic publications in the nature of magazines in the field of information technology; Remote control apparatus for televisions; Wristbands adapted or shaped to contain or attach to handheld digital electronic media players; Computer software for wireless data communication for receiving, processing, transmitting and displaying information relating to fitness, body fat, body mass index; Software for television, namely, software for wireless content delivery; Digital Versatile Disc (DVD) players; Audio-Video receivers for home theaters in International Class 9.