



170 U.S.P.Q. 174

1971 WL 16760 (Trademark Tr. & App. Bd.), 170 U.S.P.Q. 174

(Cite as: **170 U.S.P.Q. 174**)

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Department of Transportation, Federal Aviation
Administration

v.

Scanwell Laboratories, Inc.

Patent Office Trademark Trial and Appeal Board
Decided Apr. 7, 1971

United States Patents Quarterly Headnotes

TRADEMARKS

[1] Marks and names subject to ownership -- Descriptive -- Particular marks (§ 67.5081)

"V-Ring" is merely descriptive when applied to directional antennas.

TRADEMARKS

[2] Title -- In general (§ 67.861)

Contractor's assertion of proprietary interest in term contravenes provision of government contract which prohibits contractor from affixing "any restrictive markings upon any subject data" and which gives Government the right "to modify, remove, obliterate or ignore any such markings."

TRADEMARKS

[3] Cancellation -- Mark and use of parties -- Descriptive marks (§ 67.1773)

Cancellation petitioner has standing to contend that it would be damaged by continued existence of registration since petitioner (government agency) uses term in descriptive sense when it submits competitive bids to the trade for purchase of system developed for it by registrant; registration is inconsistent with petitioner's right to continue to use term in such manner.

Trademark cancellation No. 9,535 by Department of Transportation, Federal Aviation Administration,

against Scanwell Laboratories, Inc., Registration No. 814,353, issued Sept. 6, 1966. Petition granted.

T. Hayward Brown, Joseph A. Hill, and Louise O'Neil, all of Washington, D. C., for Department of Transportation, Federal Aviation Administration.

John M. Calimafde, New York, N. Y., for Scanwell Laboratories, Inc.

Before Leach, Waldstreicher, and Lefkowitz, Members.

Leach, Member.

Department of Transportation, Federal Aviation Division (hereinafter FAA) has petitioned to cancel Registration No. 814,353 of the mark "V-RING" for directional antennas for use with instrument landing systems, owned by Scanwell Laboratories, Inc. (hereinafter Scanwell). This registration issued September 6, 1966 from an application filed March 23, 1965 claiming a first use of the mark on September 16, 1963.

Nameplates filed with Scanwell's application as evidencing the manner in which the mark is affixed to its goods show the following on page 175:

As grounds for cancellation, it is alleged that the term "V-RING" is merely descriptive when applied to directional antennas, the goods for which it has been registered by Scanwell, and that FAA, since long prior to the filing of Scanwell's application to register "V-RING" has used the same in its operation***175** to describe directional localizer antenna arrays.



Both parties have filed testimony and briefs and were represented at the oral hearing held in this case.

There is no dispute as to the material facts brought out by the record herein, it appearing therefrom that Scanwell is a manufacturer of instrument landing systems for aircrafts, and that, on March 30, 1962, it submitted an unsolicited proposal to the FAA for the development for the latter party of a low cost instrument landing system utilizing an array of fifteen directional antennas which, as ultimately perfected, incorporated fifteen circular or ring shaped radiating elements each of which is shielded on the back by a V-shaped parasitic relector element. This proposal was accepted by the FAA and a contract for the development of such a system was entered into between the parties on June 14, 1962. Of particular interest here is Subparagraph G of Article I of the said contract which provides that "The contractor shall not affix any restrictive markings upon any subject data and if such data are affixed, the government shall have the right, at any time, to modify, remove, obliterate or ignore any such markings."

A prototype of the system was completed in about

September, 1963, it was exhibited at an FAA sponsored International Research and Development Symposium held in Atlantic City on September 16, 1963, and it was installed and successfully tested at the municipal airport in Jackson, Mississippi in November of that year. Although no marking was affixed to this prototype, a sign which was displayed therewith at the symposium referred to it as the "V-RING LOCALIZER ANTENNA FOR THE FUTURE", and listed Scanwell as the manufacturer thereof.

On March 23, 1964, the Director of the Systems Research and Development Service of the FAA put out a memorandum recommending that the Scanwell developed directional antenna array system be approved by the FAA for "incorporation in the common system", and it was referred to therein as "the directional V-Ring localizer antenna array". Copies of this memorandum were distributed to Scanwell and to other manufacturers of instrument landing systems.

Thereafter, the FAA made additional purchases of this directional antenna array system from Scanwell by negotiated contracts and from competitors of Scanwell by the placing of competitive bids and, in

each instance, the product as delivered was identified on the nameplates affixed thereto as a “DIRECTIONAL V-RING ANTENNA ARRAY”.

In an instruction manual for the installation and operation of the instrument landing system in question, which was prepared in April, 1965 by Scanwell for the FAA, and in a brochure thereof distributed by Scanwell in 1966 to potential customers therefor, the *176 product was variously identified as the “V-RING DIRECTIONAL ANTENNA ARRAY”, the “SCANWELL V-RING DIRECTIONAL LOCALIZER ANTENNA ARRAY”, the “V-RING ARRAY” and the like.

Although the FAA over the years has consistently used the term “V-RING” in its operations to describe the circular shaped radiating and V-shaped reflector antenna elements of the instrument landing system developed for it by Scanwell, the latter made no objection to such use until February 12, 1969, when it sent a telegram to the FAA stating that “V-RING” was a registered trademark of Scanwell and requesting of the FAA that “When your office uses the mark, we ask that you indicate the mark is registered and owned by Scanwell Laboratories, Inc.”

[1] It is abundantly clear from the record in this case that the term “V-RING” aptly describes the configuration of the primary components of the antennas used in the instrument landing system developed for the FAA by Scanwell, as it likewise is that the assertion by Scanwell of a proprietary interest

[2] in the term is in contravention of the provisions of Subparagraph G of Article I of the agreement between the parties hereinbefore referred to.

Moreover, it is also clear that Scanwell has used the term “V-RING” upon the nameplates for and in the advertising of its product not as a trademark for the product but merely as a part of the descriptive name therefor which was approved by the FAA.

[3] Scanwell, in brief, strenuously contends that since the FAA does not manufacture antennas but is merely a purchaser of such goods, it has no proper standing herein to contend that it would be damaged by the continued existence of Scanwell's registration. This contention, however, is considered to be without merit. As freely admitted to by Scanwell, the FAA uses the term V-RING “in the descriptive sense” when it submits competitive bids to the trade for the purchase of the instrument landing system developed for it by Scanwell, and the latter's registration, with the presumptions flowing therefrom, is obviously inconsistent with the right of the FAA to continue to use the same in such manner.

Decision

The petition is granted and Registration No. 814,353 will be canceled in due course.

Pat.Off. T.T.A.B.

Department of Transportation, Federal Aviation Administration v. Scanwell Laboratories, Inc.

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