Nimbus Concepts, LLC (“Applicant”) seeks registration on the Principal Register of the mark LARGE FIELD DIRECTIONAL RADIOFREQUENCY ABLATION (in standard characters) for “medical devices, namely, minimally invasive devices that facilitate the identification, separation, or ablation of biological tissue” in International Class 10.1

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1 Application Serial No. 85706983 was filed on August 17, 2012, based upon Applicant’s allegation of a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act.
The Examining Attorney has refused registration of Applicant’s mark under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that, when used in connection with Applicant’s services, LARGE FIELD DIRECTIONAL RADIOFREQUENCY ABLATION would be merely descriptive of such goods. When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. We affirm the refusal to register.

A term is deemed to be merely descriptive of goods or services, within the meaning of Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. 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 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the applicant’s goods or services in order to be considered merely descriptive; it is enough that the term describes one significant attribute, function or property of the goods or services. In re H.U.D.D.L.E., 216 USPQ 358 (TTAB 1982); and In re MBAssociates, 180 USPQ 338 (TTAB 1973). It is well-established that the determination of mere descriptiveness must be made not in the abstract, but in relation to the goods or services for which registration is sought. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215 (CCPA 1978); In re Vehicle Identification Network, Inc., 32 USPQ2d 1542 (TTAB 1994) (descriptiveness of mark in an intent-to-use application determined by services identified in application).
The Examining Attorney views the mark as a combination of three terms or phrases, namely, “large field,” “directional” and “radiofrequency ablation,” each of which is merely descriptive of a feature of the mark, and maintains that they retain their descriptive significance when combined together.

“Large field”

The Examining Attorney relies on the following evidence concerning the term “large field” to support her finding that the term refers to the size of an area of radiation or ablation and indicates that the goods are used to produce a large area of ablation during surgery:

- The definition of “large” as “great in size or amount” and “field” defined as “the site of a surgical operation,” both taken from the online Merriam-Webster Dictionary accessed at merriam-webster.com.²

- Applicant’s U.S. patent application, stating, “relative to other large field lesion technology, the needle is of an uncomplicated and robust design, does not require additional support equipment, and is economical to manufacture.”³

- Webpage from www.ncbi.nlm.nih.gov, stating, “It is difficult to diagnose and treat the rare complication of BPF, while, the larger field of ablation might be helpful to postpone the tumor local progression.”⁴

- Webpage from www.inkling.com, stating, “This larger heating zone may give a more uniform temperature in the ablation zone, leading to a larger field of cell death.”⁵

² We take judicial notice of these definitions, submitted with the Examining Attorney’s brief. The Board may take judicial notice of dictionary definitions, Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co., 213 USPQ 594 (TTAB 1982), aff’d, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), including online dictionaries that exist in printed format or regular fixed editions. In re Red Bull GmbH, 78 USPQ2d 1375 (TTAB 2006).

³ Feb. 21, 2014 Office action, p. 2; and June 18, 2013 Response, pp. 2-71.

⁴ Feb. 21, 2014 Office action, p. 11.

⁵ Id. at 13.
“Directional”

Turning next to the term “directional,” the Examining Attorney submitted the following:

- The definition of “directional” as “relating to or showing direction” and “operating most effectively in a particular direction” from the online *Merriam-Webster Dictionary* accessed at merriam-webster.com.6

- A report titled “Nimbus Electrosurgical RF Multi-tined Expandable Electrode,” dated January 2013, ostensibly discussing Applicant’s product, which describes tines that diffuse radiofrequency current density in target tissue to increase the functional electrode surface area. According to the document, the increased functional electrode surface area proportionately increases the volume of the tissue heated thereby producing a larger ablation zone compared to standard mono-polar cannula. Further, according to the report, the tines “are unilaterally offset from the axis of the central cannula [and] create a directional lesion that enables selective targeting of the nociceptive pathway with decreased collateral tissue damage.”7

- An abstract of a patent from deepdyve.com entitled “Directional ablation catheter with myopotential sensing electrodes,” stating, “One aspect of the invention relates to an improved ablation arrangement. The ablation arrangement includes a transmission line suitable for the transmission of electromagnetic energy and an antenna coupled to the transmission line. The ablation arrangement further includes a reflector that cooperates with the antenna to produce a directional electromagnetic field that is sufficiently strong to cause tissue ablation.”8

- U.S. patent claims from patexia.com for an invention entitled “Directional microwave ablation instrument with offset energy delivery portion,” one claim reciting a “directional ablation instrument for ablation of a targeted tissue, comprising ....”9

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6 We take judicial notice of the definition of “directional,” submitted with the Examining Attorney’s brief.
7 Id. at 8.
8 July 29, 2013 Office action, pp. 2-3.
9 Id. at 7.
“Radiofrequency Ablation”

With regard to the term “radiofrequency ablation,” the Examining Attorney relies on these materials:

- The definition of “radiofrequency” as “any of the electromagnetic wave frequencies that lie in the range extending from below 3 kilohertz to about 300 gigahertz” and of “ablation” as “the process of ablating; especially: surgical removal,” both from the online version of *Merriam-Webster’s Dictionary* accessed at merriam-webster.com.10

- A posting in medilegence.com stating, “Radiofrequency ablation devices work by sending alternating current through the tissue” to create a lesion.11

- A webpage from angiodynamics.com discussing a “StarBurst Radiofrequency Ablation System.”12

- A webpage from biomedical-engineering-online.com discussing “Finite Element Analysis of Hepatic Radiofrequency Ablation Probes.”13

- A webpage from mayoclinic.org titled “Radiofrequency ablation for cancer.”

- A webpage from bostonscientific.com stating “Boston Scientific introduces a radiofrequency ablation system designed to provide complete, predictable thermal ablation.”14

Applicant states in footnote 1 in its brief that “Applicant is willing to disclaim ‘RADIOFREQUENCY ABLATION.’”

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10 We take judicial notice of the definitions of “radiofrequency” and “ablation,” submitted with the Examining Attorney’s brief.


12 Id. at 5.

13 Id.

14 Id.
The above evidence demonstrates that “radiofrequency ablation” is a type of medical procedure and that there are devices which perform this feature; and that “large field” is a term that refers to the site of a surgical operation, indicating that the size of the site. As for “directional,” the January 2013 report on Applicant’s device states that the device creates a directional lesion and the patent abstract discusses a directional electromagnetic field that creates tissue ablation. “Directional,” as applied to Applicant’s goods, informs the consumer that the goods are capable being used for procedures which create directional lesions through directional electromagnetic fields. Thus, the evidence sufficiently demonstrates that the proposed mark merely describes certain features of Applicant’s goods.

Applicant argues that “Applicant’s mark is typical of many marks that consumers encounter in the marketplace: a highly suggestive mark that tells consumers something general about the product, without being specific or immediately telling consumers anything with a degree of particularity. The information given by the mark is indirect and vague”; that “the Examining Attorney offered two meanings for ‘LARGE FIELD’” (the area of treatment and the range of frequencies used in Applicant’s goods); and that while “the Examiner states that the term ‘DIRECTIONAL’ has been used to describe ablation devices, the Examiner has not explained, nor does the evidence show, specifically what feature or quality of the goods the term is alleged to describe … it is not immediately clear precisely what information the term ‘DIRECTIONAL’ conveys.”15

15 Brief at unnumbered pp. 4 - 5.
In light of the evidence in the record, the “information given by the mark” is not “indirect and vague.” Rather, the evidence demonstrates that the terms each identify certain characteristics of Applicant’s goods. In addition, the meaning of “large field” is clear from the weight of the evidence, describing the area of treatment; and “directional” informs consumers that the goods are capable of being used for procedures which create directional lesions through directional electromagnetic fields. In sum, we are not persuaded by Applicant’s arguments.

Applicant also argues that its mark is unitary, and that the combination of the terms in a unitary mark makes the mark at least suggestive.\textsuperscript{16} Applicant explains:

The term “large” by itself might be understood to describe the size of the applicant’s goods. However, when used in connection with the other terms, the term could suggest a variety of meanings, whether related to the goods “large” area of intended use, the goods use of “large” radio frequencies, or the “large” utility of the goods. Similarly, “directional” takes on a different meaning when combined with the terms “large” and “field.” Depending on how consumers understand “large” and “field,” “directional” could be refer to the intended orientation of the medical device, the directional flow of radiofrequency energy, or the geometry of the device’s antennae. Therefore, any meaning ascribed to an individual terms based on the term’s use alone, without the other terms in the mark, is inconclusive. Therefore, Applicant’s mark is a unitary mark and the distinctiveness of the mark must be considered as a whole rather than based on the distinctiveness of individual terms within the mark.\textsuperscript{17}

It is true that if the combination of descriptive terms creates a unitary mark with a unique, incongruous, or otherwise nondescriptive meaning in relation to the goods and/or services, the combined mark may be registrable. See \textit{In re Colonial Stores, Inc.}, 394 F.2d 549, 157 USPQ 382 (CCPA 1968); \textit{In re Positec Grp. Ltd.}, 108

\textsuperscript{16} \textit{Id.} at 7.

\textsuperscript{17} \textit{Id.}
USPQ2d 1161 (TTAB 2013). Such is not the case here. Applicant’s mark immediately conveys information about Applicant’s goods.

The Examining Attorney’s evidence of record supports a determination that Applicant’s mark, LARGE FIELD DIRECTIONAL RADIOFREQUENCY ABLATION, when considered in relation to the aforementioned goods, immediately informs prospective purchasers as to a “quality, feature...or characteristic” of Applicant’s goods.

In sum, we find that the Office has met its burden of demonstrating that Applicant’s proposed mark LARGE FIELD DIRECTIONAL RADIOFREQUENCY ABLATION when used in connection with the identified goods is merely descriptive.

Decision: The descriptiveness refusal to register Applicant’s mark under Section 2(e)(1) of the Trademark Act is affirmed.