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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Savi Technology, Inc.

Serial No. 85560074

Andrew C. Aitken of IP LAW LEADERS PLLC for Savi Technology, Inc.

Margery A. Tierney, Trademark Examining Attorney, Law Office 111 (Robert L. Lorenzo, Managing Attorney).

Before Wolfson, Greenbaum, and Hightower, Administrative Trademark Judges.

Opinion by Wolfson, Administrative Trademark Judge:

Savi Technology, Inc. ("applicant") seeks registration on the Principal Register of the mark **SMTS** (in standard characters) for the following goods in International Class 9:[1]

> computer hardware and computer software for use in tracking, monitoring, and managing the condition, status, location, security and integrity of tangible assets, equipment, vehicles and cargo; computer hardware and computer software for use with GPS, GPRS, RFID, and satellite communication technologies for monitoring and

[1] Application Serial No. 85560074 was filed on March 5, 2012, based on applicant's bona fide intent to use the mark in commerce.

> managing tangible assets, equipment, vehicles and cargo; computer hardware and computer software for use in collecting, analyzing, and displaying data on the identity, location, and status of tangible assets, equipment, vehicles, and cargo; computer hardware and computer software for use in analyzing and displaying mapped routes to monitor the identity, location, and status of tangible assets, equipment, vehicles, and cargo; computer hardware and computer software to detect, alert, and respond to tampering and unauthorized access to tangible assets, equipment, vehicles, and cargo; computer hardware and computer software for use in providing real-time alerts and updates on the location of tangible assets, equipment, vehicles and cargo to improve transit times, identify diversion of tangible assets from established routes and locations, identify theft, and recover stolen tangible assets; computer hardware and computer software for real-time identification and tracking of the location, movement and condition of high-value tangible assets; computer hardware and computer software for use by large organizations, manufacturers, heavy industry and governments to manage tangible assets in distributed supply chains and complex logistics.

The Trademark 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 applicant's mark is merely descriptive of a feature or quality of applicant's goods. In addition, the examining attorney required additional product information about the goods pursuant to Trademark Rule 2.61(b). In response, applicant submitted a promotional flyer and pages from its website that describe and promote its goods.

After the examining attorney made the refusal final, applicant appealed to this Board. Applicant and the examining attorney filed briefs. We reverse the refusal to register.

Applicable Law

Trademark Act § 2(e)(1) prohibits registration of a mark which is merely descriptive of the applicant's goods or services. 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 Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012). *See also, In re Gyulay,* 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods and/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 feature about them. Moreover, whether a term is merely descriptive is determined not in the abstract, but in relation to the goods and/or services for which registration is sought. *See In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). Thus, "[w]hether consumers could guess what the product is from consideration of the mark alone is not the test." *In re American Greetings Corp.*, 226 USPQ 365 (TTAB 1985). In this case, the issue is whether the term SMTS directly conveys to consumers information about the purpose or function of computer software or hardware that tracks, monitors, and manages the condition, status, location, security and integrity of tangible assets, equipment, vehicles and cargo.

A mark consisting of an abbreviation, initialism, or acronym will be refused registration if the words it represents are descriptive of the goods or services at

issue and if the abbreviation, initialism, or acronym is generally understood as "substantially synonymous" with the descriptive words it represents. *In re Thomas Nelson, Inc.*, 97 USPQ2d 1712, 1715 (TTAB 2011) (holding NKJV substantially synonymous with merely descriptive term "New King James Version" and thus merely descriptive of bibles), *citing Modern Optics, Inc. v. Univis Lens Co.,* 234 F.2d 504, 110 USPQ 293, 295 (CCPA 1956) ("[A]s 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."). Accordingly, for SMTS to be considered descriptive of applicant's computer software and hardware:

> (1) the term SMTS must be found to be an abbreviation, initialism, or acronym for specific wording;
>
> (2) that specific wording must be merely descriptive of applicant's computer software/hardware; and
>
> (3) a relevant consumer viewing the term SMTS in connection with applicant's goods will recognize it as the equivalent of the merely descriptive wording it represents.

In re Thomas Nelson, Inc., 97 USPQ2d at 1715-16 (*citing In re Harco Corp.*, 220 USPQ 1075, 1076 (TTAB 1984)). *See also, Baroness Small Estates, Inc. v. Am. Wine Trade, Inc.,* 104 USPQ2d 1224, 1230-31 (TTAB 2012) (holding CMS not substantially synonymous with the grape varietals "cabernet, merlot, syrah" and therefore not merely descriptive for wine); TMEP § 1209.03(h) (April 2014).

The examining attorney has submitted evidence that the initials SMTS form an initialism that is generally recognized in the computer industry as meaning

"software management tracking system" or "software maintenance tracking system."[2] This satisfies the first factor under *Thomas Nelson* in that the applied-for mark is an initialism for specific wording. However, the meaning of that specific wording is unclear. None of the acronym dictionaries introduced into the record include any information regarding the meaning of the words "software maintenance (or management) tracking system"; they simply equate SMTS with the phrase without further clarification.

The Office bears the burden of showing that the applied-for mark is merely descriptive by a preponderance of the evidence. *See Anheuser-Busch Inc. v. Holt*, 92 USPQ2d 1101, 1105 (TTAB 2009). In this case, the examining attorney submitted pages from the website *ZDNet* that consists of a list of the names of computer programs that manage and track assets (under the heading "Articles on assets asset [sic] software management tracking"), together with truncated information as to their functions.[3] The term "SMTS" does not appear on this website. Rather, the phrase "asset tracking management software" is used to describe a category of computer software that tracks assets such as inventory, sales, vendors, and projects. The examining attorney argues that applicant's goods "include a

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[2] *Acronym Finder* answers the question "What does SMTS stand for" by returning 11 hits, one of which is "Software Management Tracking System." Office action June 15, 2012; at http://www.acronymfinder.com. The *Free Dictionary by Farlex* also defines SMTS as "Software Management Tracking System." Final Office action April 11, 2013; at http://acronyms.thefreedictionary.com. The *Acronym Geek* online dictionary defines "SMTS" as being an initialism for "Software Maintenance and Tracking System." Final Office action April 11, 2013; at http://www.acronymgeek.com. Finally, the *Acronym Attic* website defines SMTS as "Software Maintenance Tracking System." Final Office action April 11, 2013; at http://www.acronymattic.com.

[3] Office action June 15, 2012; at http://www.zdnet.co.uk.

management and tracking function"[4] and points to applicant's promotional literature wherein it states that one of the key features of applicant's SMTS software is to provide "real-time asset management for greater accuracy in location and movement tracking" of cargo and vehicles.[5] The remainder of the evidence, however, does not support the position that the term SMTS is known as an acronym for a vehicle and/or driver tracking system, but rather that SMTS is a niche term utilized in a narrow computer specialty market to describe a computer program used to manage or maintain computer software systems. As such, it does not describe a function of applicant's goods.

The majority of the evidence submitted by the examining attorney utilizes the term SMTS in connection with employment in the computer field:

> 1. On the *Indeed.com* website, under the "salary search" tab, there is a statement of comparable salary for an "SMTS Software Development Engineer Salary in Sunnyvale, CA"; and under "Jobs that may interest you," there is an announcement that Advanced Micro…-Sunnyvale, CA may be looking for an "SMTS Software Development Eng."[6]
>
> 2. On the website *New Orleans Jobs*, there is a vacancy announcement for a System Administrator. The summary of responsibilities section includes a statement that the successful candidate will be required to "identify user problems and submit NALCOMIS Trouble Report (TR)/Change Proposal (CP) via Software Maintenance Tracking System (SMTS)….".[7]
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> 3. An online resume posted by someone seeking employment as a software engineer includes the following

[4] Examining attorney's Brief, p.3 (unnumbered); 9 TTABVUE 4.
[5] Id., p. 8; 9 TTABVUE 9.
[6] Office action June 15, 2012; at http://webcache.googleusercontent.com.
[7] Office action June 15, 2012; at Google's cache of http://jobneworleans.com.

> job experience: "as programmer in the information system department in the following projects: … SMTS (Software Maintenance Tracking System)."[8]
>
> 4. On the website *ResumeMyCareer.com,* a copy of a sample resume is attached to help job seekers create professional resumes. The sample is for an "Executive Assistant Admin" position. It lists, as a key highlight, the job of "enhanc[ing] R-ADM application using the software Maintenance Tracking System (SMTS)" and links this to the function of reviewing, analyzing and prioritizing "change proposals submitted by Fleet users recommending changes to functions within the Application."[9]
>
> 5. From the USAJOBS website, there is a questionnaire directed to candidates for the position of "Logistics Management Specialist." One question asks for a self-assessment of the candidate's ability to "lead the Fleet Design Team to provide guidance for all submitted Trouble Reports (TRs) within the Software Maintenance Tracking System (SMTS) and Change Proposals for the system tested."[10]

Further evidence shows that the term SMTS has a defined meaning in the computer field:

> 6. A single slide from what appears to be a *SPAWAR* PowerPoint presentation entitled "SMTS Software Maintenance Tracking System."[11] The slide is depicted below:[12]

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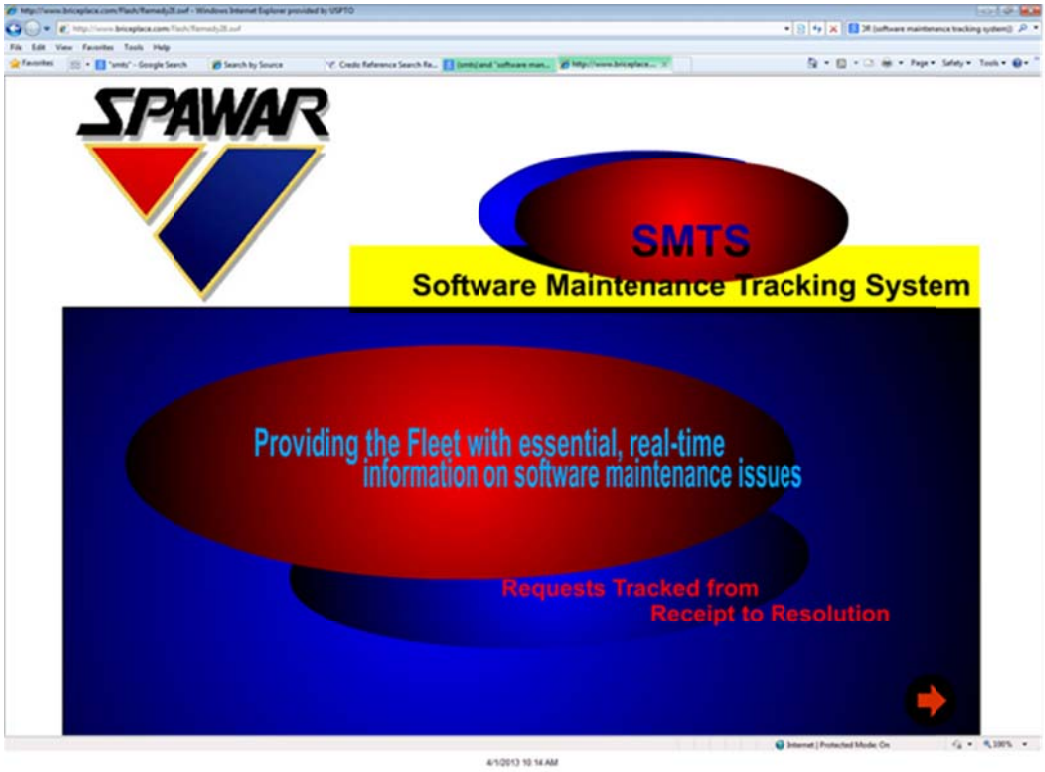
[8] Office action June 15, 2012; at http://webcache.googleusercontent.com (Google's cache of http://maishareef.com/myresume.php as the page appeared on June 6, 2012).
[9] Final Office action April 11, 2013; at http://www.resumemycareer.com.
[10] Final Office action April 11, 2013; at https://applicationmanager.gov.
[11] Although there is an arrow at the bottom right of the slide, suggesting there are additional slides to this presentation, no further slides were provided.
[12] Final Office action April 11, 2013; at http://www.briceplace.com.



7. A page that refers to SPAWAR; this page is a continuation of a larger document, but as it is detached it is not possible to determine what it came from. It reads: "problems with the ATLASS II+ software are identified by the Fleet and are submitted via the Software Maintenance Tracking system (SMTS) to the developer at SPAWAR….This work is then tasked to the developer and is included in the next scheduled maintenance release."[13]

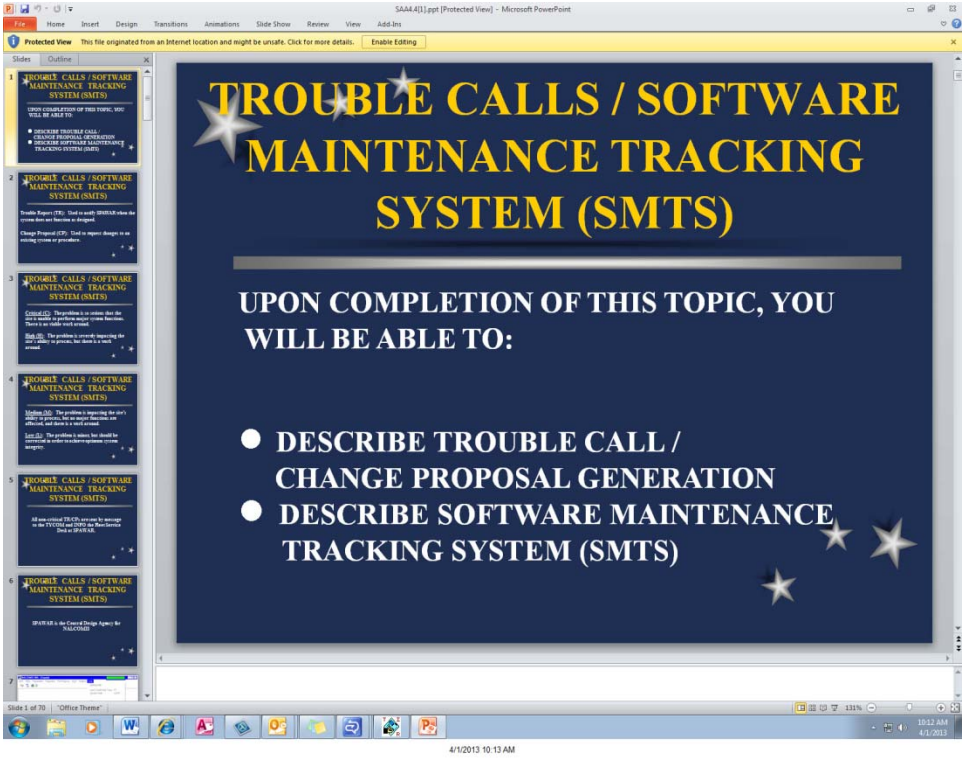
8. A page from a contract, which lists the following as one of its terms:

Provide Software Management Tracking System (SMTS) supply input. This includes monitoring and correction of Trouble Reports (TRs) and Change Proposals (CPs), coordination of Fleet TR/CP prioritization for logistics and supply chain AIS and application software releases, bi-monthly extraction of SMTS trouble reports to facilitate NAVSUP prioritization action, identification and

[13] Final Office action April 11, 2013; at www.globalsecurity.org.

resolution of TRs/CPs, clarification of SMTS input, and TR/CP trend analysis.[14]

9. A copy of a single PowerPoint slide as follows:[15]



The wording in the small slides to the left of the main slide (presumably the 2d-6th slide in the presentation) read as follows:[16]

- Trouble Report (TR): Used to modify SPAWAR when the system does not function as designed. Change Proposeal (CP): Used to request changes to an existing system or procedure.

- Critical (C): The problem is so serious that the site is unable to perform major system functions. There is no viable work around. High (H): The problem is severly impacting the site's ability to process, but there is a work around.

[14] Final Office action April 11, 2013; at http://www.serco-na.com.
[15] Office action June 15, 2012; at http://www.slideworld.com/slideshows.aspx.
[16] We note that each slide has the same heading (in yellow lettering) as does the first slide: Trouble Calls/Software Maintenance Tracking System (SMTS).

- Medium (M): The problem is impacting the site's ability to process, but no major functions are affected, and there is a work around. Low (L): The problem is minor, but should be corrected in order to achieve optimum system integrity.
- All non-critical TR/CPs are sent by message to the TYCOM and INFO the Fleet Service Desk at SPAWAR.
- SPAWAR is the Central Design Agency for NALCOMIS.

Based on the above record, we find that the initialism SMTS is applied to a type of computerized tracking system designed to manage or maintain computer software, specifically by means of "trouble reports" and "change proposals." While applicant's software manages and tracks "tangible assets in a supply chain," such as "trucks, equipment and cargo," its software is not an SMTS system as that term is described in the record. Thus, the second *Thomas Nelson* factor is not satisfied.

As to the relevant consumer class, applicant's purchasers are logistics managers of shipments of cargo, not IT computer professionals. There is nothing in the record to suggest that applicant's customers would understand the highly technical meaning of the wording "software maintenance (or management) tracking system." The examining attorney argues that it is immaterial whether applicant's goods manage or maintain software as opposed to vehicle delivery schedules. The difficulty with this argument is that it ignores the niche market in which the initialism carries any meaning; that SMTS may be a recognized kind of software to consumers in the software field does not mean that consumers in the freight shipping industry will understand the meaning of SMTS as other than what

applicant's brochures show it to mean, i.e., SAVI Mobile Tracking System. The primary function of applicant's goods is to track and manage the whereabouts (condition, status, location, security and integrity) of equipment, vehicles, and cargo (tangible assets). The goods are not designed to track or manage (or maintain) computer software. Accordingly, relevant consumers are not likely to perceive the acronym SMTS as meaning "software maintenance (or management) tracking system."

Thus, while the evidence of record shows that the term **SMTS** is a recognized initialism for "software maintenance (or management) tracking system" in the computer industry, it has not been shown that relevant purchasers of applicant's vehicle tracking software would similarly perceive the initialism SMTS in this manner. Accordingly, the term is not merely descriptive for the goods at issue in this proceeding. In this way, anyone who believes that the term is, in fact, descriptive, may oppose and present evidence on this issue to the Board.

Decision: The refusal to register applicant's mark **SMTS** under Trademark Act § 2(e)(1) is reversed.