

From: Tierney, Margery

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Subject: U.S. TRADEMARK APPLICATION NO. 85560074 - SMTS - N/A - Request for Reconsideration  
Denied - Return to TTAB

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**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)  
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

**U.S. APPLICATION SERIAL NO.** 85560074

**MARK:** SMTS



**CORRESPONDENT ADDRESS:**

ANDREW C AITKEN

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**GENERAL TRADEMARK INFORMATION:**

<http://www.uspto.gov/trademarks/index.jsp>

**APPLICANT:** Savi Technology, Inc.

**CORRESPONDENT'S REFERENCE/DOCKET NO:**

N/A

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**REQUEST FOR RECONSIDERATION DENIED**

**ISSUE/MAILING DATE:** 10/30/2013

The trademark examining attorney has carefully reviewed applicant's request for reconsideration and is denying the request for the reasons stated below. See 37 C.F.R. §2.64(b); TMEP §§715.03(a)(2)(B), (a)(2)(E), 715.04(a). The requirement(s) and/or refusal(s) made final in the Office action dated April 11, 2013 are maintained and continue to be final. See TMEP §§715.03(a)(2)(B), (a)(2)(E), 715.04(a).

In the present case, applicant's request has not resolved all the outstanding issue(s), nor does it raise a new issue or provide any new or compelling evidence with regard to the outstanding issue(s) in the final Office action. In addition, applicant's analysis and arguments are not persuasive nor do they shed new light on the issues. Accordingly, the request is denied.

### **Applicant's Arguments**

Applicant continues to assert that the Examining Attorney's reliance on Acronymfinder.com and other internet evidence is not reliable or relevant. Applicant's attention is directed to the following cases in which the TTAB has regularly accepted evidence from Acronym Finder and its online version as probative in determining descriptiveness. See *Baroness Small Estates Inc. v. American Wine Trade Inc.*, 104 USPQ2d 1224 (TTAB 2012); *In re BetaBatt Inc.*, 89 USPQ2d 1152 (TTAB 2008); *In re IP Carrier Consulting Group*, 84 USPQ2d 1028 (TTAB 2007); *In re Microsoft Corp.*, 68 USPQ2d 1195 (TTAB 2003); *In re Zanova Inc.*, 59 USPQ2d 1300 (TTAB 2001); *In re Styleclick.com Inc.*, 57 USPQ2d 1445 (TTAB 2000); *Department of Justice, Federal Bureau of Investigation v. Calspan Corporation*, 196 USPQ 326 (TTAB 1977).

Moreover, material obtained from the Internet is generally accepted as competent evidence. See *In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202-03 (TTAB 2009) (accepting Internet evidence to show relatedness of goods in a likelihood of confusion determination); *In re Rodale Inc.*, 80 USPQ2d 1696, 1700 (TTAB 2006) (accepting Internet evidence to show genericness); *In re White*, 80 USPQ2d 1654, 1662 (TTAB 2006) (accepting Internet evidence to show false suggestion of a connection); *In re Joint-Stock Co. "Baik"*, 80 USPQ2d 1305, 1308-09 (TTAB 2006) (accepting Internet evidence to show geographic significance); *In re Consol. Specialty Rests. Inc.*, 71 USPQ2d 1921, 1927-29 (TTAB 2004) (accepting Internet evidence to show geographic location is well-known for particular goods); *In re Gregory*, 70 USPQ2d 1792, 1793, 1795 (TTAB 2004) (accepting Internet evidence to show surname significance); *In re Fitch IBCA Inc.*, 64 USPQ2d 1058, 1060-61 (TTAB 2002) (accepting Internet evidence to show descriptiveness); TBMP §1208.03; TMEP §710.01(b).

Applicant also continues to contend that its software manages and tracks “tangible assets” not computer software thus rendering its mark suggestive. What is important is that applicant’s software manages and tracks or maintains and tracks not what it manages and tracks or what it maintains or tracks. The mark SMTS (the abbreviation for *software management tracking system* or *software maintenance tracking system*) describes the function of its software. Either meaning of the mark describes a feature and function of applicant’s computer software. “A mark may be merely descriptive even if it does not describe the ‘full scope and extent’ of the applicant’s goods.” *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004) (citing *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 1346, 57 USPQ2d 1807, 1812 (Fed. Cir. 2001)); TMEP §1209.01(b). It is enough if a mark describes only one significant function, attribute, or property. *In re The Chamber of Commerce of the U.S.*, 675 F.3d 1297, 1300, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); TMEP §1209.01(b); Finally, the fact that SMTS has other meanings is irrelevant. Descriptiveness is considered in relation to the relevant goods. *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1254, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012). “That a term may have other meanings in different contexts is not controlling.” *In re Franklin Cnty. Historical Soc’y*, 104 USPQ2d 1085, 1087 (TTAB 2012) (citing *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979)); TMEP §1209.03(e).

The filing of a request for reconsideration does not extend the time for filing a proper response to a final Office action or an appeal with the Trademark Trial and Appeal Board (Board), which runs from the date the final Office action was issued/mailed. *See* 37 C.F.R. §2.64(b); TMEP §715.03, (a)(2)(B), (a)(2)(E), (c).

If time remains in the six-month response period to the final Office action, applicant has the remainder of the response period to comply with and/or overcome any outstanding final requirement(s) and/or refusal(s) and/or to file an appeal with the Board. TMEP §715.03(a)(2)(B), (c). However, if applicant has already filed a timely notice of appeal with the Board, the Board will be notified to resume the appeal. *See* TMEP §715.04(a).

/Margery A. Tierney/

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