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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	85560074
Applicant	Savi Technology, Inc.
Applied for Mark	SMTS
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:  
SAVI TECHNOLOGY, INC.  
Application No.: 85560074  
Filed: March 5, 2012  
For: SMTS

International Class 009

Examiner Margery A. Tierney  
Law Office 111

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

***EX PARTE APPEAL***

**APPLICANT'S BRIEF**

**TABLE OF AUTHORITIES**

<b>CASES</b>	<b>PAGE NOS.:</b>
<i>Avtex Fibers Inc. v. Gentex Corporation</i> .....	4
223 USPQ 625 (TTAB 1984)	
<i>BellSouth Corp. v. Planum Technology Corp.</i> ,.....	3
14 USPQ2d 1555, 1556 (TTAB 1990)	
<i>In re Abcor Development Corp.</i> ,.....	3
200 USPQ 215 (CCPA 1978)	
<i>In re Bright-Crest, Ltd.</i> ,.....	3
204 USPQ 591 (TTAB 1979)	
<i>In re Consol. Specialty Rests. Inc.</i> ,.....	7
71 USPQ 2d 1921 (TTAB 2004)	
<i>In re Davey Prods. Pty Ltd.</i> ,.....	7
92 USPQ 2d 1198 (TTAB 2009)	
<i>In re eCash Technologies, Inc.</i> ,.....	5
S.N. 74/605,417 (November 29, 2000)	
<i>In re Engineering Systems Corp.</i> ,.....	3
2 USPQ2d 1075 (TTAB 1986)	
<i>In re Finisar Corp.</i> ,.....	7
78 USPQ 2d 1618, 1631 (TTAB 2006)	
<i>In re Fitch IBCA Inc.</i> ,.....	7
64 USPQ 2d 1058 (TTAB 2002))	
<i>In re Gregory</i> ,.....	7
70 USPQ 2d 1792, 1793 (TTAB 2004)	
<i>In re IA Corp.</i> ,.....	3
S.N. 75/419,109 (October 11, 2000)	
<i>In re IP Carrier Consulting Group</i> ,.....	7, 8
84 USPQ2d 1028 (TTAB 2007)	
<i>In re Joint-Stock Co. "Baik"</i> ,.....	7
80 USPQ 2d 1305 (TTAB 2006)	
<i>In re Omaha National Corp.</i> ,.....	4
819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987)	

*In re Quick-Print Copy Shop, Inc.*,.....3  
205 USPQ 505, 507 (CCPA 1980)

*In re Rodale Inc.*,.....7  
80 USPQ 2d 1696 (TTAB 2006)

*In re Steven Madden, Ltd.*,.....7, 8  
Serial No. 85313681 (November 29, 2013)

*In re Styleclick.com Inc.*,.....4  
57 USPQ 2d 1445 (TTAB 2001)

*In re TMS Corporation of the Americas*,.....3  
200 USPQ 57 (TTAB 1978)

*In re Total Quality Group, Inc.*,.....7  
51 USPQ2d 1474 (TTAB 1999)

*In re White*,.....7  
80 USPQ 2d 1654 (TTAB 2006)

*Modern Optics, Inc. v. Univis Lens Co.*,.....3  
234 F.2d 504, 110 USPQ 293 (CCPA 1956)

*Stix Products, Inc. v. United Merchants & Manufacturers Inc.*,.....3  
295 F.Supp. 479 (S.D.N.Y.1968)

## **I. INTRODUCTION**

Appellant, Savi Technology, Inc. (hereinafter, "Applicant") hereby appeals from the Examining Attorney's (hereinafter, "Examiner") refusal to register the above identified mark.

The Examiner refused registration of Applicant's mark "SMTS" on the ground that in the Examiner's opinion, the proposed mark is an acronym that generically describes the services recited in the application and therefore the mark cannot be registered pursuant to Section 2(e)(1) of the Lanham Act . The Applicant disagrees with both the factual and legal determinations of the Examiner, and respectfully requests that the Board reverse the Examiner's decision.

## **II. STATEMENT OF FACTS**

On March 5, 2012, Applicant filed its application to register the word mark SMTS on the principal register for

"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 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.”

On June 15, 2012, the Examiner issued her rejection based on Section 2(e)(1) and the Applicant responded on March 14, 2013. On April 11, 2013, the Examiner issued her second and final refusal.

### III. ARGUMENT

In support of the objection the examiner cites to the [www.acronymfinder.com](http://www.acronymfinder.com) database that ascribes a number of meanings of the term “SMTS.” Specifically, the Examiner cites that the term may signify “Software Management Tracking System” or “Software Maintenance Tracking System.” The Applicant disagrees that the evidence cited by the Examiner establishes that the term is merely descriptive of the Applicant’s services—a conclusion that is further belied by the examiner own ascription of multiple meanings to the term.

Even if the mark SMTS describes “software management tracking system” or “software maintenance tracking system”, the services recited by the Applicant are separate, distinct and directed to a materially different market than those consumers that may be interested in purchasing products to track or maintain *software* across an enterprise or network. “Software Management Tracking Systems”, as understood by the Applicant, may be used by IT professionals to find or locate software that has been installed on computers within a system or network. As such, it is submitted that the market for such services is for software owners and developers as well as those that purchase, install and maintain software on a system.

Assuming the Examiner’s premise that SMTS has the meanings ascribed by the Examiner, the services that provided in association with the mark by applicant are neither

synonymous nor related to services that are ascribed to the term SMTS by the Examiner. Secondly, as explained herein, the acronym finder database cited by the Examiner is not appropriate evidence to base a rejection because it is not reliable.

Accordingly, the Applicant respectfully requests reversal.

**A. The Mark SMTS Does Not Describe the Goods Recited in the Application.**

Under Section 2(e) of the Lanham Act, to be considered “descriptive,” a mark must immediately convey information concerning a significant quality, characteristic, function, ingredient, attribute or feature of the product or services in connection with which it is used, or intended to be used. *In re Abcor Development Corp.*, 200 USPQ 215, 217-8 (CCPA 1978). See also *Stix Products, Inc. v. United Merchants & Manufacturers Inc.*, 295 F.Supp. 479, 488 (S.D.N.Y.1968); *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986); *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). The immediate idea must be conveyed with a degree of particularity. *In re TMS Corporation of the Americas*, 200 USPQ 57, 59 (TTAB 1978). Therefore if some exercise of imagination, thought or perception is required to reach a conclusion as to the nature of the goods or services, the mark is suggestive, rather than merely descriptive, and thus registerable. *In re IA Corp.*, S.N. 75/419,109 (October 11, 2000) (citing language from *In re Quick-Print Copy Shop, Inc.* 205 USPQ 505, 507 (CCPA 1980); *BellSouth Corp. v. Planum Technology Corp.*, 14 USPQ2d 1555, 1556 (TTAB 1990)).

It is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the impact that it is

likely to make on the average purchaser of such goods or services. *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 (1978).

The test for determining whether a series of initials is merely descriptive was established by the Court of Claims in *Modern Optics, Inc. v. Univis Lens Co.*, 234 F.2d 504, 110 USPQ 293 (CCPA 1956). There the court adopted that not all initials of combinations of descriptive words are *ipso facto* unregistrable. While each case may be decided on the basis of the particular facts involved, 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.” 110 USPQ at 295. See also, *Avtex Fibers Inc. v. Gentex Corporation*, 223 USPQ 625 (TTAB 1984).

Here, it is respectfully submitted that the consumers for the goods sold by applicant would not recognize that the abbreviation SMTS describes the goods. *In re Omaha National Corp.*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987) (Holding that in determining the average consumer’s recognition of the abbreviation, the court must look at the average or ordinary prospective customers of applicant’s identified goods).

It is submitted that the term SMTS is neither generally understood nor substantially synonymous with the services recited. There is no evidence that persons that are employed in the logistics industry consider the term SMTS merely descriptive of the services recited. In contrast, there are numerous exhibits of record showing the use of the letters “SMTS” refer to a wide variety of goods and services from transportation services (Southeast Missouri Transportation Services) to a teacher’s association (Saskatchewan Mathematics Teacher’s Society). While the record shows that there are limited instances where the combination of initials “SMTS” refers to some sort of a tracking system, it is a

mere exception, rather than a rule, that the two latter letters “TS” in the proposed mark “SMTS” constitutes a generic designation of “tracking systems.”

These circumstances are not like the issue addressed by the Board relating to the prefix “E-“ for goods and services having some relationship or connection with the Internet. *In re Styleclick.com Inc.*, 57 USPQ 2d 1445 (TTAB 2001). There the Board acknowledged that various “E-“ prefix is now “commonly recognized and understood by virtually everyone as a designation for the Internet.” Here the combination of two letters “TS” is not commonly recognized and understood by the general public as a designation for a tracking system. *In re Styleclick.com Inc.*, 57 USPQ 2d 1445 (TTAB 2001) (holding that the mark E FASHION as merely descriptive for electronic services in the field of apparel and fashion). See also *In re eCash Technologies, Inc.*, S.N. 74/605,417 (November 29, 2000).

Moreover, the average consumer of the goods and services for Applicant’s products would not be familiar with the use of the term SMTS in connection with IT services nor make an association between the applicant’s services and the unrelated IT services that may have used the acronym SMTS. Therefore the record is unconvincing that “SMTS” is a generally recognized term for a mobile tracking system.

In connection with the first meaning of the term, in addition to [www.acronymfinder.com](http://www.acronymfinder.com) (hereinafter “AcronymFinder website”), the Examiner further cites to an article published in the internet by ZDNet that used the acronym SMTS to refer to Software Management Tracking System. As discussed above, as understood by the applicant a “Software Management Tracking System” is used to identify the existence of a software product in a particular network environment or enterprise. This meaning is

confirmed by the ZDNET article and further references to [indeed.com](https://www.indeed.com) and the New Orleans Jobs website at <http://jobsneworleans.com> cited by the Examiner. The latter meaning cited by the Examiner, Software Maintenance Tracking Systems, apparently refers to techniques used to ensure that **software** that has been installed on the network is properly updated and maintained in networks or enterprises.

In contrast, as clearly recited in the application, the goods that are recited relate to both hardware and software for the tracking or monitoring of “tangible assets, including equipment, vehicles, and cargo.” These goods are provided to customers that are interested in the management of “tangible assets in distributed supply chains and complex logistics.” *Id.* As such, the goods described in the present application are completely unrelated to either software management tracking services or software maintenance tracking services. Software tracking and software maintenance services relate to the tracking of intangible software, computer programs or applications that reside on a computer network. Such products may be used by IT professionals – not logistics managers seeking to locate and track tangible assets. On information and belief, the term SMTS has never been used to describe tracking efforts as it relates to hardware, such as trucks, equipment and cargo. While the term computer software is included in the applicant’s goods and services, it is merely a component or tool that is used to track and monitor a customer’s tangible assets in a supply chain.

In addition, it is respectfully submitted that the customers for the applicant’s goods and the channels of trade of applicant’s products are materially different from those that may purchase either software tracking or software maintenance programs or services. The

applicant directs its sales and marketing efforts to logistics managers and professionals. In contracts, as best understood, the likely customers of software tracking and software maintenance products and services would be information technology professionals. And this market is confirmed by the Examiner's citation to the ZDNet web-based publication which is described as an "enterprise IT-focused online publication." In summary, both the respective customers and channels of trade are different.

**B. The [www.acronymfinder.com](http://www.acronymfinder.com) web page is not reliable evidence.**

On separate and independent grounds, it is submitted that the basis for Examiner's refusal, namely the citation to the [www.acronymfinder.com](http://www.acronymfinder.com) (hereinafter AcronymFinder") is not well founded. Although material obtained from the Internet can be accepted as evidence *In re Davey Prods. Pty Ltd.*, 92 USPQ 2d 1198, 1202-03 (TTAB 2009); *In re Rodale Inc.*, 80 USPQ 2d 1696, 1700 (TTAB 2006); *In re White*, 80 USPQ 2d 1654, 1662 (TTAB 2006); *In re Joint-Stock Co. "Baik"*, 80 USPQ 2d 1305, 1308-09 (TTAB 2006); *In re Consol. Specialty Rests. Inc.*, 71 USPQ 2d 1921, 1927-29 (TTAB 2004); *In re Gregory*, 70 USPQ 2d 1792, 1793, 1795 (TTAB 2004); *In re Fitch IBCA Inc.*, 64 USPQ 2d 1058, 1060-61 (TTAB 2002)), Internet search results alone carry limited probative value. *In re Fitch IBCA Inc.*, 64; USPQ2d 1058 (TTAB 2002); TBMP § 1208.03; See also, *In re Finisar Corp.*, 78 USPQ 2d 1618, 1631 (TTAB 2006).

More particularly, the weight given to the Internet evidence may vary depending on the existence, or lack, or corroborating sources. See Commissioner for Trademarks Lynne G. Beresford's August 7, 2006 Response to INTA'S Letter dated June 23, 2006; *In re IP Carrier Consulting Group*, 84 USPQ2d 1028 (TTAB 2007) (holding that there is an inherent

reliability issue with Wikipedia entries because Wikipedia is a collaborative website that permits anyone to edit the contents.); See also, *In re Steven Madden, Ltd.*, Serial No. 85313681 (November 29, 2013) (quoting *In re IP Carrier Consulting Group* to question the reliability of the online evidence, namely Wikipedia entry.) Therefore, it is submitted that before the Examiner can base its rejection on the AcronymFinder its reliability must be assessed. Further in this regard, the TTAB has found that an online dictionary is not considered reliable unless it also appears in print form. See *In re Total Quality Group, Inc.*, 51 USPQ2d 1474, 1476 (TTAB 1999).

It is submitted that the reliability of the particular webpage relied upon the Examiner is materially undermined in view of the actual guidelines published by the website. Specifically, for AcronymFinder, anyone can submit an acronym (See <http://www.acronymfinder.com/guidelines.htm>). Therefore, similar to the Wikipedia pages, entries and recent edits in AcronymFinder may contain significant misinformation, false or debatable information, unexpected oversights and omissions, vandalism or unchecked information. In addition, similar to Wikipedia entries deemed unreliable by the Board in *In re IP Carrier Consulting Group* and *In re Steven Madden, Ltd.*, the AcronymFinder website does not take responsibility for the accuracy of the information (See <http://www.acronymfinder.com/terms.htm> “We've done our best to ensure the accuracy of the AcronymFinder database, however, we do not take responsibility for the accuracy of any of the information in the acronym database). In view of the website's own admonition, the existence of the term SMTS on Acronymfinder website the Examiner should be given no weight to the reference.

The additional evidence relied upon the Examiner, namely the use of abbreviation in the ZDNet article is *de minimus* and also not authoritative in view of the entire record. The existence of a relatively few instances of use of a term that are consistent with the Examiner's argument does not establish that the term is "well known in the field of software in the computer industry." Moreover, the position is inapposite because the relevant market is not the software in the computer industry. The Applicant's market it is the logistics industry.

### C. The Applicant's Other Purported Activities

In the final office action the Examiner also argues that the Applicant offers a management and maintenance functions. It is submitted, that whether the Applicant offers such services is not relevant because it has not sought a registration for such services in connection with the mark. In any event, to the extent that Applicant provides these services, they are once again rendered in connection with the management and maintenance of tangible asserts – not software. For example, the "Journey Management" feature cited by the examiner relates to "multiple assets" and the "Vehicle and Driver Management System" relates to information "about the vehicle."

## IV. CONCLUSION

In view of the foregoing, the applicant requests that the refusal be reversed and the mark be allowed and approved for publication.

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