

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86297229
LAW OFFICE ASSIGNED	LAW OFFICE 104
MARK SECTION	
MARK	http://tmng-al.uspto.gov/resting2/api/img/86297229/large
LITERAL ELEMENT	PLATFORMX
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size
ARGUMENT(S)	

The Applicant submits its arguments also in a PDF format for ease of reading IN THE UNITED STATE PATENT AND TRADEMARK OFFICE IN THE MATTER OF: Application for Registration of Mark: PLATFORMX Applicant: Mellanox Technologies Ltd. Serial No.: 86297229 Examiner: Cory Boone, Trad Examining Attorney; Law Office 104 Atty. Dkt. No.: T-11025-09-US Request for Reconsideration of a Final Action & an Appeal together with a Response to the Office Action Dear Examiner Boone, In response to the Action which was issued in connection with the above identified application, refusing to register the mark "PLATFORMX" based on Section 2(d) of the Trademark Act, Applicant respectfully requests that the Examiner reconsiders the refusal which is based on citation of prior Registration No. 3688488 for the mark "ACXIOM PLATFORM-X", for the following reasons: 1. Possible non-use of the Cited Mark by the Registrant & request to suspend the subject application for a short period: Registrant's cited mark was registered on September 29, 2008, date, the 6th year declaration of continued use under Section 8 has not been filed. While the Registrant has 6 weeks to meet Section 8's requirement, a fresh search conducted through Registrant's website at www.acxiom.com revealed "no results" for the cited mark, or for "PLATFORM-X" or for "PLATFORMX". Exhibits A1-A2 attached to this response, evidence these search results. In addition, a Google search for the mark "ACXIOM BI PLATFORM-X" and "ACXIOM BI PLATFORMX", retrieved only two pages of results, only press releases from 2008 and references to the cited trademark in trademarks registrations listings. Exhibits B1-B2 attached to this response evidence these Google search results. The results of these searches in Registrant's website and on Google, strongly suggest that the Registrant is no longer using the Cited Mark. Since within 6 weeks it could be that the cited registration will be cancelled for failure to submit the 6th year declaration u

Section 8, the Applicant respectfully requests that the subject application be suspended, until it is clarified, the citation will become redundant. 2. In addition, Applicant has further amended the list of goods explicitly excluding business intelligence and data analytics (the field of activity as listed under the Cited Mark) from goods, thereby clarifying its own field of activity and enhancing the difference of its products from the service of the Cited Mark. Accordingly, the list of goods of Applicant's mark was amended to read (amendments are underlined): Class 9: Computer hardware and peripherals; Semiconductors; Computer software drivers for server-to-server communications, for transmitting data across computer connections; Host channel adapters enabling server-to-server communications, for transmitting data across computer connections, and for enabling a computer to access data from storage devices; Target channel adapters enabling server-to-server communications, for transmitting data across computer connections, and for enabling a computer to access data from storage devices; Computer switches; Network routers for data centers; Computer software for enabling server-to-server communications, for transmitting data across computer connections, and for enabling a computer to access data from storage devices; all for use in the operations of servers, for communication, and for data storage; all excluding the field of intelligence and business data analytics. Explanation about the Applicant's goods: The Applicant provides hardware infrastructure with integrated software to form flexible and cost-effective servers and storage platforms for OEMs (original equipment manufacturers), such as IBM, HP, Huawei and Dell. Applicant does not provide or analyze content in the field of business intelligence and business data analytics that stream through the infrastructure (the services of the cited mark) but rather provides the infrastructure itself. Explanation about the Registrant's services that read: Class 42: Providing access by means of a computer network to computer databases and software in the fields of business intelligence and business data analytics. The Registrant of the cited mark, Acxiom Corporation, provides data analytics services to enhance marketing goals of its customers (being marketers, advertising agencies, etc.), providing insights into media consumption and shopping behavior (See attachment 4 of the Examiner in the Office Action providing information regarding the Registrant, and Exhibits C1-C2 to this response). As shown in the attached and in Registrant's website (at <http://www.acxiom.com>), Registrant's activity is described as follows: "Acxiom is an enterprise data, analytics and software as a service company. For more than 40 years, Acxiom has been a leader in harnessing the powerful potential of data to strengthen connections between people, businesses and their partners. Wouldn't it be great to know who your best customers are at any moment? Even better, to know which one is most likely to buy so you can talk directly to them? Now you can, with Acxiom." "Mined from a broad cross-section of data, Audience Propensities provides statistically-validated propensities for 13 industries that enable you to scientifically select media and more efficiently reach your intended audience. Get rich insight into potential audience spending, in-market timing, brand affinity, media consumption and shopping behavior - all tuned to specific target markets." From a review of the Registrant's website it is clear that it is engaged in a different field. Its software service enables its subscribers and users to analyze data-content thereby obtain business intelligence and enhance their marketing goals. The fact that both parties have the word PLATFORM and the letter X in their trademarks does not mean that their products or services overlap. In fact, they are markedly different. Moreover, as explained in Section 1 above, a search through Registrant's website for a product or service named ACXIOM BI PLATFORM or PLATFORM-X or PLATFORMX did not retrieve any results, suggesting that the Cited Mark is no longer used by the Registrant. There is no overlap between Applicant's products (being hardware and software for server-to-server and storage communications) and the Registrant's services (being data analytics services in the field of business intelligence and business data analytics for marketing purposes). 3. Different Good, Functions/Solutions, Sophisticated Buyers or Subscribers: The products sold under Applicant's mark and the services of the cited mark Registration differ in their functions and the buyers and subscribers of the respective products are sophisticated. Consequently, the purchase processes are carefully designed, thereby eliminating any remote likelihood of confusion. The respective products and services stream through different channels of trade and perform entirely different functions. * Applicant's products are designed to be sold to OEMS (Original Equipment Manufacturers) such as IBM, Hewlett Packard, Huawei, Dell - these OEMs incorporate Applicant's products to solve very particular and sophisticated needs of a segment of complex networks such as clusters and datacenters. * Whereas the subscribers of the cited Registration services are organizations that subscribe to a service (Registrant provides software as a service which is intended for review of content - analyzing data to obtain business intelligence and achieve

marketing and business goals. These services are tailored to the business intelligence required by the subscribers. The purchase process is carefully designed among the different buyers of the parties, thereby eliminating likelihood of confusion. As a result, the conditions surrounding the marketing of the respective products are such that they could not be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the goods or services come from a common source. * In today's network world, the variety of products and services increase at tremendous rates. Regardless of the rapid influx of computer network products, they may be utterly different from one another and not at all related. Simply because software is identified as useable in a network environment there should not be an automatic finding that the products and services are related. * The respective buyers are highly sophisticated. The purchasers described above, buy the Applicant's infrastructure or subscription Registrant's services with a clear understanding of the different needs and requirements of the products and services and are aware of the full spectrum of the respective products' and services' capabilities. The law is very precisely summarized in McCarthy on Trademarks, Section 23:101, pages 23-196: Many cases state that where the relevant buyer class is composed of professionals or commercial buyers familiar with the field, they are sophisticated and not to be confused by trademarks that are closely similar. That is, it is assumed that such professional buyers are more likely to be confused than the ordinary customer. Thus, while two marks might be sufficiently similar to confuse an ordinary consumer, a professional buyer or an expert in the field may be more knowledgeable and will not be confused. (citations omitted). * The purchase processes for the respective goods are calculated and require direct inspection of the products and the services as well as their qualities and source. Due to the nature of Applicant's products, direct sales efforts and direct contact with OEM purchasers are required. These channels do not resemble shelf purchases and specifically call for personal contact with buyers who, in most instances, need maintenance services following the purchase. The purchase process is both intimate and carefully tailored. Hasty or uncalculated "spare of the moment" decisions are not likely. * Case law is quite explicit with regard to the issue of purchase in network environments. Where the decision is made by a sophisticated buyer and concerns a product whose purchase requires after careful examination of the product, it may be sufficient to negate a likelihood of confusion even between marks of great similarity. See for example, Stouffer Corp. v. Health Valley Natural Foods, Inc., 1 USPQ2d 1900 (TTAB 1986); In re Software Design, Inc., 220 USPZ 662 (TTAB 1983); Litton Sys., Inc. v. Whirlpool Corp., 221 USPQ 112 (Fed. Cir. 1984). * Indeed, as stated above, as in the case at hand, the purchase patterns for the respective products and services are very specific. This fact, together with the difference in nature of the products and the sophistication of the buyers and different channels of trade of the respective products, further supports the conclusion that any possibility of confusion is negated. Again, the buyers of Applicant's goods do not make purchase decisions hastily. As a matter of necessity, the purchase patterns call for careful consideration and do not allow for impulse purchasing habits. Evidently, the services of the Registrant are also tailored to the business intelligence required by the user and sold to very sophisticated users and data analyzers.

4. Arguments raised in response to the 1st Office Action: The Applicant respectfully reiterates the arguments raised in its response to the first Office Action, as submitted on March 7, 2015 including its attachments, and incorporates them herein by reference.

5. Conclusion Applicant respectfully requests (i) a short suspension of the subject application in order to allow for possible cancellation of Registrant's Cited Mark for non-use as three indications listed in Section 1 of this decision support high probability that the cited mark is no longer in use; and/or (ii) withdrawal of the refusal under Section 2(d) based on the prior Registration, as the applicant amended its list of goods, by excluding Registrant's financial activity and distinguishing between the descriptions of its goods and the services of the Registrant, and further explained and clarified that the functions of the goods versus Registrant's services and their purchase processes require special and direct contact with the respective parties, which lead to the conclusion that confusion with the Cited Mark is not likely. Respectfully submitted, /Tally Eitan/ Tally (Avital) Eitan Attorney for Applicant (C) State Bar No. 129,566

EVIDENCE SECTION

EVIDENCE FILE NAME(S)

ORIGINAL

[evi_21214310136-20150906105519541869_ . Exhibit A1 No results You searched for PLATFORM-](#)

PDF FILE	X_Acxiom.pdf
CONVERTED PDF FILE(S) (2 pages)	\\TICRS\EXPORT16\IMAGEOUT16\862\972\86297229\xml8\RFR0002.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\862\972\86297229\xml8\RFR0003.JPG
ORIGINAL PDF FILE	evi_21214310136-20150906105519541869_ . Exhibit A2 No results_ You searched for paltformx_ A
CONVERTED PDF FILE(S) (2 pages)	\\TICRS\EXPORT16\IMAGEOUT16\862\972\86297229\xml8\RFR0004.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\862\972\86297229\xml8\RFR0005.JPG
ORIGINAL PDF FILE	evi_21214310136-20150906105519541869_ . exhibit B1 ACXIOM BI PLATFORM_ Google Search 1st page.pdf
CONVERTED PDF FILE(S) (2 pages)	\\TICRS\EXPORT16\IMAGEOUT16\862\972\86297229\xml8\RFR0006.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\862\972\86297229\xml8\RFR0007.JPG
ORIGINAL PDF FILE	evi_21214310136-20150906105519541869_ . Exhibit B2 ACXIOM BI PLATFORM_ Google Search 2nd page.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT16\IMAGEOUT16\862\972\86297229\xml8\RFR0008.JPG
ORIGINAL PDF FILE	evi_21214310136-20150906105519541869_ . Exhibit C1 about Registrant Acxiom_
CONVERTED PDF FILE(S) (4 pages)	\\TICRS\EXPORT16\IMAGEOUT16\862\972\86297229\xml8\RFR0009.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\862\972\86297229\xml8\RFR0010.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\862\972\86297229\xml8\RFR0011.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\862\972\86297229\xml8\RFR0012.JPG
ORIGINAL PDF FILE	evi_21214310136-20150906105519541869_ . Exhibit C2 About - Acxiom.pdf
CONVERTED PDF FILE(S) (2 pages)	\\TICRS\EXPORT16\IMAGEOUT16\862\972\86297229\xml8\RFR0013.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\862\972\86297229\xml8\RFR0014.JPG
ORIGINAL PDF FILE	evi_1-21214310136-20150906105519541869_ . sideration Appeal Arguments in response to OA-PLATFORMX.pdf

CONVERTED PDF FILE(S) (8 pages)	\\TICRS\EXPORT16\IMAGEOUT16\862\972\86297229\xml8\RFR0015.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\862\972\86297229\xml8\RFR0016.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\862\972\86297229\xml8\RFR0017.JPG
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	\\TICRS\EXPORT16\IMAGEOUT16\862\972\86297229\xml8\RFR0021.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\862\972\86297229\xml8\RFR0022.JPG
DESCRIPTION OF EVIDENCE FILE	Exhibits A1-A2 - printouts from a search on Registrant's website showing no results for mark Exhibits B1-B2 - printouts from a Goggle search showing no current use by Regis the cited mark; only press releases from the year 2008 Exhibits C1-C2 - printouts from Registrant's website describing the different field of Registrant's services
GOODS AND/OR SERVICES SECTION (current)	
INTERNATIONAL CLASS	009
DESCRIPTION	
Computer hardware and peripherals; Semiconductors; Software drivers for operating software; Host channel adapters, enabling server-to-server communications, for transmitting data across computer connections, and enabling a computer to access data from storage devices; Target channel adapters enabling server-to-server communications, for transmitting data across computer connections, and for enabling a computer to access storage devices; Computer switches; Network routers for data centers; Computer software for enabling server-to-server communications, for transmitting data across computer connections, and for enabling a computer to access data from storage devices; all for the server, communication and data storage	
FILING BASIS	Section 1(b)
FILING BASIS	Section 44(d)
FOREIGN APPLICATION NUMBER	265608
FOREIGN APPLICATION COUNTRY	Israel
FOREIGN FILING DATE	06/01/2014
GOODS AND/OR SERVICES SECTION (proposed)	
INTERNATIONAL CLASS	009
TRACKED TEXT DESCRIPTION	

Computer hardware and peripherals; Semiconductors; ~~Software drivers for operating software; Computer software drivers for operating software used for transmitting data across computer connections; Host channel adapters enabling server-to-server communications, for transmitting data across computer connections, and for enabling a computer to access data from storage devices;~~ Host channel adapters enabling server-to-server communications, for transmitting data across computer connections, and for enabling a computer to access data from storage devices; Target channel adapters enabling server-to-server communications, for transmitting data across computer connections, and for enabling a computer to access data from storage devices; Computer switches; Network switches for data centers; Computer software for enabling server-to-server communications, for transmitting data across computer connections, and for enabling a computer to access data from storage devices; ~~all for the server, communication and data storage;~~ all for the operations of servers, for communication, and for data storage; excluding the field of intelligence and business data analytics

FINAL DESCRIPTION

Computer hardware and peripherals; Semiconductors; Computer software drivers for operating software used for transmitting data across computer connections; Host channel adapters enabling server-to-server communications, for transmitting data across computer connections, and for enabling a computer to access data from storage devices; Target channel adapters enabling server-to-server communications, for transmitting data across computer connections, and for enabling a computer to access data from storage devices; Computer switches; Network switches for data centers; Computer software for enabling server-to-server communications, for transmitting data across computer connections, and for enabling a computer to access data from storage devices; all for the operations of servers, for communication, and for data storage; all excluding the field of intelligence and business data analytics

FILING BASIS	Section 1(b)
FILING BASIS	Section 44(d)
FOREIGN APPLICATION NUMBER	265608
FOREIGN APPLICATION COUNTRY	Israel
FOREIGN FILING DATE	06/01/2014

SIGNATURE SECTION

RESPONSE SIGNATURE	/TE/
SIGNATORY'S NAME	Tally (Avital) Eitan
SIGNATORY'S POSITION	Attorney of record, California bar member
DATE SIGNED	09/06/2015
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO

FILING INFORMATION SECTION

SUBMIT DATE	Sun Sep 06 12:01:29 EDT 2015
TEAS STAMP	USPTO/RFR-212.143.101.36- 20150906120129964970-8629 7229-5408c5d81bf63991f1f3 a7f9272d2b28e661af436df17 5a18cb370a39d304f97b-N/A- N/A-20150906105519541869

PTO Form 1960 (Rev 9/2007)

OMB No. 0651-0050 (Exp. 07/31/2017)

Request for Reconsideration after Final Action To the Commissioner for Trademarks:

Application serial no. **86297229** PLATFORMX(Standard Characters, see <http://tmng-al.uspto.gov/resting2/api/img/86297229/large>) has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

The Applicant submits its arguments also in a PDF format for ease of reading IN THE UNITED STATES PATENT AND TRADEMARK OFFICE IN THE MATTER OF: Application for Registration of Mark: PLATFORMX Applicant: Mellanox Technologies Ltd. Serial No.: 86297229 Examiner: Cory Boone, Trademark Examining Attorney; Law Office 104 Atty. Dkt. No.: T-11025-09-US Request for Reconsideration of a Final Office Action & an Appeal together with a Response to the Office Action Dear Examiner Boone, In response to the Office Action which was issued in connection with the above identified application, refusing to register the mark "PLATFORMX" based on Section 2(d) of the Trademark Act, Applicant respectfully requests that the Examiner reconsiders the refusal which is based on citation of prior Registration No. 3688488 for the mark "ACXIOM BI PLATFORM-X", for the following reasons: 1. Possible non-use of the Cited Mark by the Registrant & request to suspend the subject application for a short period: Registrant's cited mark was registered on September 29, 2009. To date, the 6th year declaration of continued use under Section 8 has not been filed. While the Registrant has a couple of weeks to meet Section 8's requirement, a fresh search conducted through Registrant's website at www.acxiom.com revealed "no results" for the cited mark, or for "PLATFORM-X" or for "PLATFORMX". Exhibits A1-A2 attached to this response, evidence these search results. In addition, a Google search for the cited mark "ACXIOM BI PLATFORM-X" and "ACXIOM BI PLATFORMX", retrieved only two pages of results, listing only press releases from 2008 and references to the cited trademark in trademarks registrations listings. Exhibits B1-B2 attached to this response evidence these Google search results. The results of these searches in Registrant's own website and on Google, strongly suggest that the Registrant is no longer using the Cited Mark. Since within three weeks it could be that the cited registration will be cancelled for failure to submit the 6th year declaration under Section 8, the Applicant respectfully requests that the subject application be suspended, until it is clarified whether the citation will become redundant. 2. In addition, Applicant has further amended the list of goods explicitly

excluding business intelligence and data analytics (the field of activity as listed under the Cited Mark) from its list of goods, thereby clarifying its own field of activity and enhancing the difference of its products from the services of the Cited Mark. Accordingly, the list of goods of Applicant's mark was amended to read (amendments are underlined): Class 9: Computer hardware and peripherals; Semiconductors; Computer software drivers for operating software used for transmitting data across computer connections; Host channel adapters enabling server-to-server communications, for transmitting data across computer connections, and for enabling a computer to access data from storage devices; Target channel adapters enabling server-to-server communications, for transmitting data across computer connections, and for enabling a computer to access data from storage devices; Computer switches; Network routers for data centers; Computer software for enabling server-to-server communications, for transmitting data across computer connections, and for enabling a computer to access data from storage devices; all for the operations of servers, for communication, and for data storage; all excluding the field of intelligence and business data analytics. Explanation about the Applicant's goods: The Applicant provides hardware infrastructure with integrated software to form flexible and cost-effective servers and storage platforms for OEMs (original equipment manufacturers), such as IBM, HP, Huawei and Dell. Applicant does not provide or analyze content in the fields of business intelligence and business data analytics that stream through the infrastructure (the services of the cited mark) but rather provides the infrastructure itself. Explanation about the Registrant's services that read: Class 38: Providing access by means of a computer network to computer databases and software in the fields of business intelligence and business data analytics? The Registrant of the cited mark, Acxiom Corporation, provides data analytics services to enhance marketing goals of its customers (being marketers, advertising agencies, etc.), get insights into media consumption and shopping behavior (See attachment 4 of the Examiner in the Office Action providing information regarding the Registrant, and Exhibits C1-C2 to this response). As shown in the attachments and in Registrant's website (at <http://www.acxiom.com>), Registrant's activity is described as follows: "Acxiom is an enterprise data, analytics and software as a service company. For more than 40 years, Acxiom has been a leader in harnessing the powerful potential of data to strengthen connections between people, businesses and their partners. Wouldn't it be great to know who your best customers are at any moment? Even better, to know which ones are most likely to buy so you can talk directly to them? Now you can, with Acxiom?" Mined from a broad cross-section of data, Audience Propensities provides statistically-validated propensities for 13 industries that enable you to more scientifically select media and more efficiently reach your intended audience. Get rich insight into potential spending, in-market timing, brand affinity, media consumption and shopping behavior ? all tuned to specific vertical markets.? From a review of the Registrant's website it is clear that it is engaged in a different field. Its software as a service enables its subscribers and users to analyze data-content thereby obtain business intelligence and enhance their marketing goals. The fact that both parties have the word PLATFORM and the letter X in their trademarks does not mean that their products or services overlap. In fact, they are markedly different. Moreover, as explained in Section 1 above, a search through Registrant's website for a product or service named ACXIOM BI PLATFORM X or PLATFORM-X or PLATFORMX did not retrieve any results, suggesting that the Cited Mark is no longer in use by the Registrant. There is no overlap between Applicant's products (being hardware and software for server to server and storage communications) and the Registrant's services (being data analytics services in the fields of business intelligence and business data analytics for marketing purposes). 3. Different Good, Functions/Solutions and Sophisticated Buyers or Subscribers: The products sold under Applicant's mark and the services of the cited Registration differ in their functions and the buyers and subscribers of the respective products are sophisticated. Consequently, the purchase processes are carefully designed, thereby eliminating any remote likelihood of confusion. The respective products and services stream through different channels of trade and perform entirely different functions. * Applicant's products are designed to be sold to OEMS (Original Equipment Manufacturers) such as IBM, Hewlett Packard, Huawei, Dell ? these OEMs incorporate Applicant's products to solve very particular and sophisticated needs of a segment of complex networks such as clusters and datacenters. * Whereas the subscribers of the cited Registration services are organizations that

subscribe to a service (Registrant provides software as a service) ? a service which is intended for review of content - analyzing data to obtain business intelligence and achieve marketing and business goals. These services are tailored to the business intelligence required by the subscriber. * The purchase process is carefully designed among the different buyers of the parties, thereby eliminating likelihood of confusion. As a result, the conditions surrounding the marketing of the respective products are such that they could not be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the goods or services come from a common source. * In today?s network world, the variety of products and services increase at tremendous rates. Regardless of the rapid influx of computer network products, they may be utterly different from one another and not at all related. Simply because software is identified as useable in a network environment there should not be an automatic finding that the products and services are related. * The respective buyers are highly sophisticated. The purchasers described above, buy the Applicant?s infrastructure or subscribe to Registrant?s services with a clear understanding of the different needs and requirements of the products and services and are aware of the full spectrum of the respective products? and services? capabilities. The law is very precisely summarized in McCarthy on Trademarks, Section 23:101, pages 23-196: Many cases state that where the relevant buyer class is composed of professionals or commercial buyers familiar with the field, they are sophisticated enough not to be confused by trademarks that are closely similar. That is, it is assumed that such professional buyers are less likely to be confused than the ordinary customer. Thus, while two marks might be sufficiently similar to confuse an ordinary consumer, a professional buyer or an expert in the field may be more knowledgeable and will not be confused.? (citations omitted). * The purchase processes for the respective goods are calculated and require careful inspection of the products and the services as well as their qualities and source. Due to the nature of Applicant?s products, direct sales efforts and direct contact with OEM purchasers are required. These channels do not include off the shelf purchases and specifically call for personal contact with buyers who, in most instances, need maintenance services following the purchase. The purchase process is both intimate and carefully tailored. Hasty or uneducated ?spare of the moment? decisions are not likely. * Case law is quite explicit with regard to the issue of purchasing environments. Where the decision is made by a sophisticated buyer and concerns a product whose purchase is made after careful examination of the product, it may be sufficient to negate a likelihood of confusion even between marks of great similarity. See for example, *Stouffer Corp. v. Health Valley Natural Foods, Inc.*, 1 USPQ2d 1900 (TTAB 1986); *In re Software Design, Inc.*, 220 USPZ 662 (TTAB 1983); *Litton Sys., Inc. v. Whirlpool Corp.*, 221 USPQ 97, 112 (Fed. Cir. 1984). * Indeed, as stated above, as in the case at hand, the purchase patterns for the respective products and services are very specific. This fact, together with the difference in nature of the products and services, the sophistication of the buyers and different channels of trade of the respective products, further supports the conclusion that any possibility of confusion is negated. Again, the buyers of Applicant?s goods do not make the purchase decision hastily. As a matter of necessity, the purchase patterns call for careful consideration and do not allow for impulse purchasing habits. Evidently, the services of the Registrant are also tailored to the business intelligence required by the user and sold to very sophisticated users and data analyzers. 4. Arguments raised in response to the 1st Office Action: The Applicant respectfully reiterates the arguments raised in its response to the first Office Action, as submitted on March 7, 2015 including its attachments, and incorporates them herein by reference. 5. Conclusion Applicant respectfully requests (i) a short suspension of the subject application in view of possible cancellation of Registrant?s Cited Mark for non-use as three indications listed in Section 1 of this response, support high probability that the cited mark is no longer in use; and/or (ii) withdrawal of the refusal under Section 2(d) based on the prior Registration, as the applicant amended its list of goods, by excluding Registrant?s field of activity and distinguishing between the descriptions of its goods and the services of the Registrant, and further explained and clarified that the functions of the goods versus Registrant?s services and their purchase processes require special and direct contact with the respective parties, which lead to the conclusion that confusion with the Cited Mark is not likely. Respectfully submitted, /Tally Eitan/ Tally (Avital) Eitan Attorney for Applicant

EVIDENCE

Evidence in the nature of Exhibits A1-A2 - printouts from a search on Registrant's website showing no results for the cited mark Exhibits B1-B2 - printouts from a Goggle search showing no current use by Registrant of the cited mark; only press releases from the year 2008 Exhibits C1-C2 - printouts from Registrant's website describing the different field of Registrant's services has been attached.

Original PDF file:

[evi_21214310136-20150906105519541869_.Exhibit_A1_No_results_You_searched_for_PLATFORM-X_Acxiom.pdf](#)

Converted PDF file(s) (2 pages)

[Evidence-1](#)

[Evidence-2](#)

Original PDF file:

[evi_21214310136-20150906105519541869_.Exhibit_A2_No_results_You_searched_for_paltformx_Acxiom.pdf](#)

Converted PDF file(s) (2 pages)

[Evidence-1](#)

[Evidence-2](#)

Original PDF file:

[evi_21214310136-20150906105519541869_.exhibit_B1_ACXIOM_BI_PLATFORM-X_-_Google_Search_1st_page.pdf](#)

Converted PDF file(s) (2 pages)

[Evidence-1](#)

[Evidence-2](#)

Original PDF file:

[evi_21214310136-20150906105519541869_.Exhibit_B2_ACXIOM_BI_PLATFORM-X_-_Google_Search_2nd_page.pdf](#)

Converted PDF file(s) (1 page)

[Evidence-1](#)

Original PDF file:

[evi_21214310136-20150906105519541869_.Exhibit_C1_about_Registrant_Acxiom_AOS.pdf](#)

Converted PDF file(s) (4 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

Original PDF file:

[evi_21214310136-20150906105519541869_.Exhibit_C2_About_-_Acxiom.pdf](#)

Converted PDF file(s) (2 pages)

[Evidence-1](#)

[Evidence-2](#)

Original PDF file:

[evi_1-21214310136-20150906105519541869_.sideration_Appeal_Arguments_in_response_to_OA-PLATFORMX.pdf](#)

Converted PDF file(s) (8 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

[Evidence-6](#)

[Evidence-7](#)

[Evidence-8](#)

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 009 for Computer hardware and peripherals; Semiconductors; Software drivers for operating software; Host channel adapters, enabling server-to-server communications, for transmitting data across computer connections, and for enabling a computer to access data from storage devices; Target channel adapters enabling server-to-server communications, for transmitting data across computer connections, and for enabling a computer to access data from storage devices; Computer switches; Network routers for data centers; Computer software for enabling server-to-server communications, for transmitting data across computer connections, and for enabling a computer to access data from storage devices; all for the server, communication and data storage

Original Filing Basis:

Filing Basis: Section 1(b), Intent to Use: *For a trademark or service mark application:* As of the application filing date, the applicant had a bona fide intention, and was entitled, to use the mark in commerce on or in connection with the identified goods/services in the application. ***For a collective trademark, collective service mark, or collective membership mark application:*** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by members on or in connection with the identified goods/services/collective membership organization. ***For a certification mark application:*** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by authorized users in connection with the identified goods/services, and the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant.

Filing Basis: Section 44(d), Priority based on foreign filing: *For a trademark or service mark application:* As of the application filing date, the applicant had a bona fide intention, and was entitled, to use the mark in commerce on or in connection with the identified goods/services, and asserts a claim of priority based upon a foreign application. ***For a collective trademark, collective service mark, or collective membership mark application:*** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by members on or in connection with the identified goods/services/collective membership organization, and asserts a claim of priority based upon a foreign application. ***For a certification membership mark application:*** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by authorized users in connection with the identified goods/services, the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods or services that meet the certification standards of the applicant, and the applicant asserts a claim of priority based upon a foreign application. Claim of priority is based on [Israel application number 265608 filed 06/01/2014]. 15 U.S.C. Section 1126(d), as amended.

Proposed:

Tracked Text Description: Computer hardware and peripherals; Semiconductors; ~~Software drivers for~~

~~operating software; Computer software drivers for operating software used for transmitting data across computer connections; Host channel adapters, enabling server-to-server communications, for transmitting data across computer connections, and for enabling a computer to access data from storage devices; Host channel adapters enabling server-to-server communications, for transmitting data across computer connections, and for enabling a computer to access data from storage devices;~~ Target channel adapters enabling server-to-server communications, for transmitting data across computer connections, and for enabling a computer to access data from storage devices; Computer switches; Network routers for data centers; Computer software for enabling server-to-server communications, for transmitting data across computer connections, and for enabling a computer to access data from storage devices; ~~all for the server, communication and data storage;~~ all for the operations of servers, for communication, and for data storage; all excluding the field of intelligence and business data analytics

Class 009 for Computer hardware and peripherals; Semiconductors; Computer software drivers for operating software used for transmitting data across computer connections; Host channel adapters enabling server-to-server communications, for transmitting data across computer connections, and for enabling a computer to access data from storage devices; Target channel adapters enabling server-to-server communications, for transmitting data across computer connections, and for enabling a computer to access data from storage devices; Computer switches; Network routers for data centers; Computer software for enabling server-to-server communications, for transmitting data across computer connections, and for enabling a computer to access data from storage devices; all for the operations of servers, for communication, and for data storage; all excluding the field of intelligence and business data analytics

Filing Basis: Section 1(b), Intent to Use: *For a trademark or service mark application:* As of the application filing date, the applicant had a bona fide intention, and was entitled, to use the mark in commerce on or in connection with the identified goods/services in the application. ***For a collective trademark, collective service mark, or collective membership mark application:*** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by members on or in connection with the identified goods/services/collective membership organization. ***For a certification mark application:*** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by authorized users in connection with the identified goods/services, and the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant.

Filing Basis: Section 44(d), Priority based on foreign filing:***For a trademark or service mark application:*** As of the application filing date, the applicant had a bona fide intention, and was entitled, to use the mark in commerce on or in connection with the identified goods/services, and asserts a claim of priority based upon a foreign application. ***For a collective trademark, collective service mark, or collective membership mark application:*** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by members on or in connection with the identified goods/services/collective membership organization, and asserts a claim of priority based upon a foreign application. ***For a certification membership mark application:*** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by authorized users in connection with the identified goods/services, the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods or services that meet the certification standards of the applicant, and the applicant asserts a claim of priority based upon a foreign application. Claim of priority is based on [Israel application number 265608 filed 06/01/2014]. 15 U.S.C. Section 1126(d), as amended.

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /TE/ Date: 09/06/2015

Signatory's Name: Tally (Avital) Eitan

Signatory's Position: Attorney of record, California bar member

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the owner's/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the owner/holder in this matter: (1) the owner/holder has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner's/holder's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 86297229

Internet Transmission Date: Sun Sep 06 12:01:29 EDT 2015

TEAS Stamp: USPTO/RFR-212.143.101.36-201509061201299

64970-86297229-5408c5d81bf63991f1f3a7f92

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Acxiom(R) Introduces Software-as-a-Service Business ... ✓

www.businesswire.com/.../Acxiom-Introduces-Software-as-a-Service-Bus...
 Aug 25, 2008 - LITTLE ROCK, Ark.-(BUSINESS WIRE)--Acxiom® Corporation (Nasdaq: ACXM) today announced the release of Acxiom BI Platform-X™, the ...

acxiom bi platform-x - Justia Trademarks ✓

trademarks.justia.com › Trademarks › Categories › Telecommunications
 ACXIOM BI PLATFORM-X is a trademark of Acxiom Corporation. Filed in November 4 (2008), the ACXIOM BI PLATFORM-X covers providing access by means ...

Acxiom(R) Introduces Software-as-a-Service ... - Reuters ✓

www.reuters.com/article/2008/.../idUS121749+25-Aug-2008+BW2008082...
 Aug 25, 2008 - ... Ark.-(Business Wire)-- Acxiom(R) Corporation (Nasdaq: ACXM) today announced the release of Acxiom BI Platform-X(TM), the industry's first ...

ACXIOM BI PLATFORM-X - Trademarkia ✓

www.trademarkia.com › ... › Computer & Software Services & Scient...
 Jul 14, 2009 - ACXIOM BI PLATFORM-X - write and read reviews and find this brand information for products/services associated with the ACXIOM BI ...

Acxiom introduces business information software | BtoB ... ✓

adage.com/article/btob/acxiom-introduces-business.../272508/
 Aug 27, 2008 - The company said Acxiom BI Platform-X brings together consumer data, information technology and analytical tools to deliver results at a low ...

ACXIOM BI PLATFORM-X - Trademarks411, Trademark ... ✓

www.trademarks411.com/marks/77606723-acxiom-bi-platform-x
 The trademark ACXIOM BI PLATFORM-X was filed on November 04, 2008 and assigned serial number 77606723. The applicant of record is Acxiom ...

Acxiom: Business Intelligence On-Demand - Current Analysis ✓

www.currentanalysis.com/COMPETE/FrontEnd/Report.aspx?rid...rss
 Sep 2, 2008 - The on-demand Acxiom BI Platform-X complements the data enrichment company's current IT services and allows it to target new prospects ...

acxiom bi platform-x - Markify ✓

trademark.markify.com/trademarks/uspto/acxiom+bi...x/77606723
 Nov 4, 2008 - Trademark information for ACXIOM BI PLATFORM-X, owned by Acxiom Corporation..

ACXIOM BI PLATFORM-X (Торговая марка ... ✓

ru.unibrander.com/.../acxiom-bi-platform-x.html - Translate this page ✓
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Acxiom Launches SaaS Business Intelligence Solution ... ✓

www.highbeam.com › ... › Jul - Sep 2008 › August 28, 2008
 Aug 28, 2008 - Acxiom, a provider of IT infrastructure services and business intelligence solutions, announced the release of Acxiom BI Platform- X, ...

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ACXIOM BI PLATFORM-X. Goods and Services: providing access by means of a computer network to computer databases and sof... LIVE (Circa: 2008).

Acxiom Corp.(Business Briefs) - HighBeam Research

www.highbeam.com > ... > Arkansas Business > September 2008
Sep 1, 2008 - Acxiom Corp. has released Acxiom BI Platform-X, a software-as-a-service platform for information processing and analysis. Offered on a ...

http://www.findownersearch.com/easy-c-regenerating ...

www.findownersearch.com/sitemap_brand31.xml.gz
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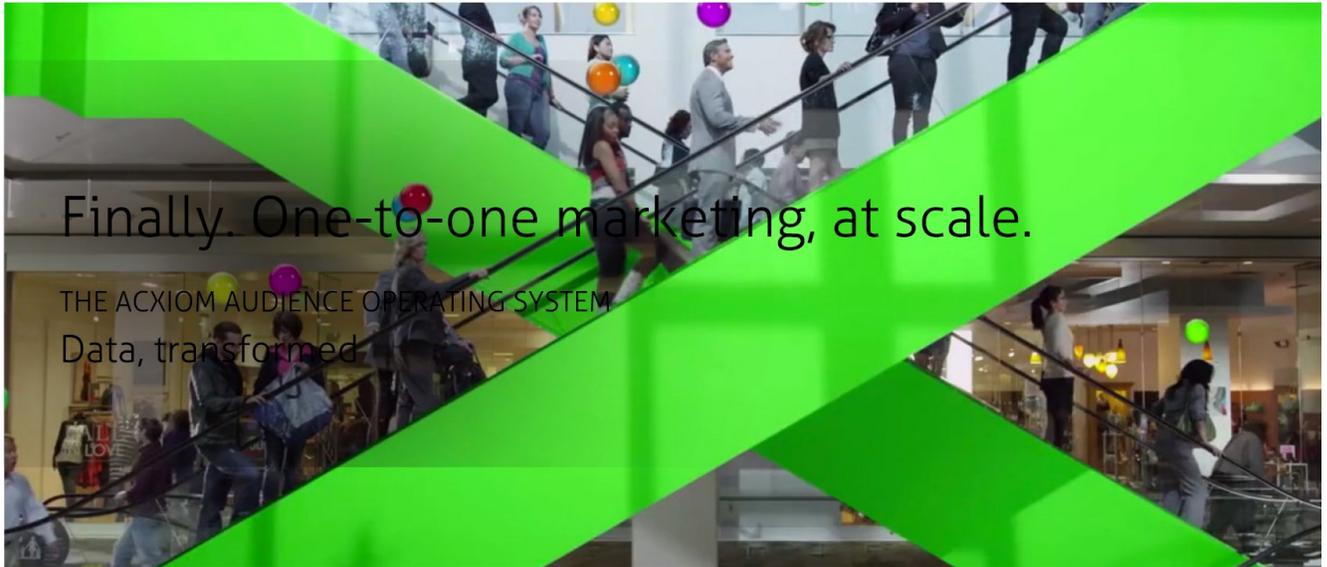
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Marketing at scale doesn't offer an understanding for the customer who operates across different channels. With these customers interacting with brands across multiple mediums, online and off, effective marketing needs to bring this information together in a single view.

With AOS, marketers can make better decisions about which channel is the most important for reaching customer bases.

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Guesswork and hunches about your audience and their preferences won't stand up in the shifting world of today's highly-connected consumer.

With AOS, advertisers can make better decisions about where audiences are and what segments matter. By analyzing campaign results across multiple dimensions, advertisers can understand re-campaign activity and provide better campaign advice (<http://www.acxiom.com/>)



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CMP=701C0000000VPAT&LS=WEB%20-%20MICRO%20SITE&STATUS=RESPONDED)

MARKETING DRIVEN BY DATA

([HTTP://MARKETING.ACXIOM.COM/RS/ACXIOM/IMAGES/ACXIOMS_AUDIENCE_OPERATING_AOS.PDF](http://marketing.acxiom.com/rs/acxiom/images/acxioms_audience_operating_aos.pdf))

REACH YOUR AUDIENCE. WHEREVER THEY GO

([HTTP://MARKETING.ACXIOM.COM/RS/ACXIOM/IMAGES/THE_FUTURE_IS_CROSS-CHANNEL-MARKETING-AT-SCALE.PDF](http://marketing.acxiom.com/rs/acxiom/images/the_future_is_cross-channel-marketing-at-scale.pdf))

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You want to sell your valuable inventory but you need to understand your audience and provide a means to target them effectively. If consumers are swamped with irrelevant offers, their engagement decreases and you may lose reach and revenue opportunity.

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Acxiom is an enterprise data, analytics and software as a service company focused on strengthening connections between people, businesses and their partners.

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and software as a service company. For more than 40 years, Acxiom has been a leader in harnessing the powerful potential of data to strengthen connections between people, businesses and their partners.

The Acxiom Story

It's about more than making better marketing decisions. If it were that simple, we would have been crowded out years ago by the "me too" companies – the ones who claim to have more data and more insight than anyone else.

So what's our story? We believe our value is in helping our clients do something they never dreamed possible. Giving them that certain moment when clarity becomes confidence. Finding a whole new customer segment. Reaching everyone who needs to be reached. Understanding those tiny market nuances. There's more, of course, but these are the kinds of things that make the difference to our clients – the things that help them sleep at night.



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- Acxiom Impact
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN THE MATTER OF:

Application for Registration of Mark: **PLATFORMX**

Applicant: **Mellanox Technologies Ltd.**

Serial No.: **86297229**

Examiner: **Cory Boone, Trademark Examining Attorney; Law Office 104**

Atty. Dkt. No.: **T-11025-09-US**

**Request for Reconsideration of a Final Office Action & an Appeal
together with a Response to the Office Action**

Dear Examiner Boone,

In response to the Office Action which was issued in connection with the above identified application, refusing to register the mark "PLATFORMX" based on Section 2(d) of the Trademark Act, Applicant respectfully requests that the Examiner reconsiders the refusal which is based on citation of prior Registration No. 3688488 for the mark "**ACXIOM BI PLATFORM-X**", for the following reasons:

1. **Possible non-use of the Cited Mark by the Registrant & request to suspend the subject application for a short period:** Registrant's cited mark was registered on September 29, 2009. **To date, the 6th year declaration of continued use under Section 8 has not been filed.**

While the Registrant has a couple of weeks to meet Section 8' requirement, a fresh search conducted through **Registrant's website** at www.acxiom.com revealed "**no results**" for the cited mark, or for "PLATFORM-X" or for "PLATFORMX".

Exhibits A1-A2 attached to this response, evidence these search results.

In addition, a **Google search** for the cited mark "ACXIOM BI PLATFORM-X" and "ACXIOM BI PLATFORMX", retrieved only two pages of results, **listing only press releases from 2008** and references to the cited trademark in trademarks registrations listings.

Exhibits B1-B2 attached to this response evidence these Google search results.

The results of these searches in **Registrant's own website** and on Google, strongly suggest that the Registrant is no longer using the Cited Mark. Since within three weeks it could be that the cited registration will be cancelled for failure to submit the 6th year declaration under Section 8, **the Applicant respectfully requests that the subject application be suspended, until it is clarified whether the citation will become redundant.**

2. In addition, Applicant has further amended the list of goods explicitly excluding business intelligence and data analytics (the field of activity as listed under the Cited Mark) from its list of goods, thereby clarifying its own field of activity and enhancing the difference of its products from the services of the Cited Mark.

Accordingly, the list of goods of **Applicant's mark** was amended to read (amendments are underlined):

Class 9: “Computer hardware and peripherals; Semiconductors; Computer software drivers for operating software used for transmitting data across computer connections; Host channel adapters enabling server-to-server communications, for transmitting data across computer connections, and for enabling a computer to access data from storage devices; Target channel adapters enabling server-to-server communications, for transmitting data across computer connections, and for enabling a computer to access data from storage devices; Computer switches; Network routers for data centers; Computer software for enabling server-to-server communications, for transmitting data across computer connections, and for enabling a computer to access data from storage devices; all for the operations of servers, for communication, and for data storage; all excluding the field of intelligence and business data analytics.”

Explanation about the Applicant's goods:

The **Applicant** provides hardware infrastructure with integrated software to form flexible and cost-effective servers and storage platforms for OEMs (original equipment manufacturers), such as IBM, HP, Huawei and Dell. **Applicant does not provide or analyze content in the fields of business intelligence and business data analytics** that stream through the infrastructure (**the services of the cited mark**) but rather provides the infrastructure itself.

Explanation about the Registrant's services that read:

Class 38: “Providing access by means of a computer network to computer databases and software **in the fields of business intelligence and business data analytics**”

The **Registrant** of the cited mark, **Acxiom Corporation**, provides data analytics services to enhance marketing goals of its customers (being marketers, advertising agencies, etc.), get insights into media consumption and shopping behavior (See

attachment 4 of the Examiner in the Office Action providing information regarding the Registrant, and Exhibits C1-C2 to this response).

As shown in the attachments and in Registrant's website (at <http://www.acxiom.com>), Registrant's activity is described as follows:

"Acxiom is an enterprise data, analytics and software as a service company. For more than 40 years, Acxiom has been a leader in harnessing the powerful potential of data to strengthen connections between people, businesses and their partners."

...

"Wouldn't it be great to know who your best customers are at any moment? Even better, **to know which ones are most likely to buy** so you can talk directly to them? Now you can, with Acxiom..."

...

"Mined from a broad cross-section of data, Audience Propensities provides statistically-validated propensities for 13 industries that enable you to more scientifically select media and more efficiently reach your intended audience. Get rich insight into potential spending, in-market timing, brand affinity, media consumption and shopping behavior – all tuned to specific vertical markets."

From a review of the Registrant's website it is clear that it is engaged in a different field. **Its software as a service enables its subscribers and users to analyze data-content thereby obtain business intelligence and enhance their marketing goals.**

The fact that both parties have the word PLATFORM and the letter X in their trademarks does not mean that their products or services overlap. In fact, they are markedly different.

Moreover, as explained in Section 1 above, a search through Registrant's website for a product or service named "ACXIOM BI PLATFORM X" or "PLATFORM-X" or "PLATFORMX" – did not retrieve any results, suggesting that the Cited Mark is no longer in use by the Registrant.

There is no overlap between Applicant's products (**being hardware and software for server to server and storage communications**) and the Registrant's services (**being data analytics services in the fields of business intelligence and business data analytics for marketing purposes**).

3. **Different Good, Functions/Solutions and Sophisticated Buyers or Subscribers:**

The products sold under Applicant's mark and the services of the cited Registration differ in their functions and the buyers and subscribers of the respective products are sophisticated. Consequently, the purchase processes are carefully designed, thereby eliminating any remote likelihood of confusion. The respective products and services stream through different channels of trade and perform entirely different functions.

- **Applicant's** products are designed to be sold to **OEMS (Original Equipment Manufacturers) such as IBM, Hewlett Packard, Huawei, Dell** – these OEMs incorporate Applicant's products to solve very particular and sophisticated needs of a segment of complex networks such as **clusters** and **datacenters**.
- Whereas the subscribers of the **cited Registration** services are **organizations** that subscribe to a service (Registrant provides software as a service) – a service which is intended for review of content - analyzing data to obtain business intelligence and achieve marketing and business goals. These services are tailored to the business intelligence required by the subscriber.
- The purchase process is carefully designed among the different buyers of the parties, thereby eliminating likelihood of confusion. As a result, the conditions surrounding the marketing of the respective products are such that they could not be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the goods or services come from a common source.
- In today's network world, the variety of products and services increase at tremendous rates. Regardless of the rapid influx of computer network products, they may be utterly different from one another and not at all related. Simply because software is identified as useable in a network environment there should not be an automatic finding that the products and services are related.
- The respective buyers are highly sophisticated. The purchasers described above, buy the Applicant's infrastructure or subscribe to Registrant's services with a clear understanding of the different needs and requirements of the products and services and are aware of the full spectrum of the respective products' and services' capabilities. The law is very precisely summarized in McCarthy on Trademarks, Section 23:101, pages 23-196:

“Many cases state that where the relevant buyer class is composed of professionals or commercial buyers familiar with the field, they are sophisticated enough not to be confused by trademarks that are closely similar. That is, it is assumed that such professional buyers are less likely to be confused than the ordinary customer. Thus, while two

marks might be sufficiently similar to confuse an ordinary consumer, a professional buyer or an expert in the field may be more knowledgeable and will not be confused.” (citations omitted).

- The purchase processes for the respective goods are calculated and require careful inspection of the products and the services as well as their qualities and source. Due to the nature of Applicant's products, direct sales efforts and direct contact with OEM purchasers are required. These channels do not include off the shelf purchases and specifically call for personal contact with buyers who, in most instances, need maintenance services following the purchase. The purchase process is both intimate and carefully tailored. Hasty or uneducated “spare of the moment” decisions are not likely.
- Case law is quite explicit with regard to the issue of purchasing environments. Where the decision is made by a sophisticated buyer and concerns a product whose purchase is made after careful examination of the product, it may be sufficient to negate a likelihood of confusion even between marks of great similarity. See for example, Stouffer Corp. v. Health Valley Natural Foods, Inc., 1 USPQ2d 1900 (TTAB 1986); In re Software Design, Inc., 220 USPZ 662 (TTAB 1983); Litton Sys., Inc. v. Whirlpool Corp., 221 USPQ 97, 112 (Fed. Cir. 1984).
- Indeed, as stated above, as in the case at hand, the purchase patterns for the respective products and services are very specific. This fact, together with the difference in nature of the products and services, the sophistication of the buyers and different channels of trade of the respective products, further supports the conclusion that any possibility of confusion is negated. Again, the buyers of Applicant's goods do not make the purchase decision hastily. As a matter of necessity, the purchase patterns call for careful consideration and do not allow for impulse purchasing habits. **Evidently, the services of the Registrant are also tailored to the business intelligence required by the user and sold to very sophisticated users and data analyzers.**

4. **Arguments raised in response to the 1st Office Action**: The Applicant respectfully reiterates the arguments raised in its response to the first Office Action, as submitted on March 7, 2015 including its attachments, and incorporates them herein by reference.

..continued on the following page..

5. **Conclusion**

Applicant respectfully requests (i) **a short suspension of the subject application** in view of possible cancellation of Registrant's Cited Mark for none-use as three indications listed in Section 1 of this response, support high probability that the cited mark is no longer in use; and/or (ii) **withdrawal of the refusal under Section 2(d)** based on the prior Registration, as the applicant amended its list of goods, by excluding Registrant's field of activity and distinguishing between the descriptions of its goods and the services of the Registrant, and further explained and clarified that the functions of the goods versus Registrant's services and their purchase processes require special and direct contact with the respective parties, which lead to the conclusion that confusion with the Cited Mark is not likely.

Respectfully submitted,

/Tally Eitan/

Tally (Avital) Eitan

Attorney for Applicant

California State Bar No. 129,566

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