

<p>This Opinion is not a Precedent of the TTAB</p>
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Mailed: July 25, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Tennibot Inc.

Serial No. 98243344

Umar R. Bakhsh of Eversheds Sutherland (US) LLP,
for Tennibot Inc.

Noopur Amin, Trademark Examining Attorney, Law Office 133,
Laurie Kaufman, Managing Attorney.

Before Dunn, Casagrande, and Bradley,
Administrative Trademark Judges.

Opinion by Casagrande, Administrative Trademark Judge:

This appeal concerns the application of Tennibot Inc. (Applicant) to register the mark TENNISOS (in standard characters) on the Principal Register for goods identified as:

Computer software platforms, downloadable, for presentation of data and communicating with robotic systems; Computer software platforms, recorded, for presentation of data and communicating with robotic systems; Downloadable software in the nature of a mobile application for presentation of data and communicating with robotic systems; Downloadable computer application software for mobile phones, namely, software for presentation of data and communicating with robotic systems; Downloadable computer application software for mobile

computers, namely, software for presentation of data and communicating with robotic systems; Downloadable computer software platforms for presentation of data and communicating with robotic systems; Recorded computer software platforms for presentation of data and communicating with robotic systems.¹

The Trademark Examining Attorney finally refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that the mark was merely descriptive of the listed goods.² Applicant appealed,³ and the appeal is now fully briefed.⁴ For the reasons explained below, we affirm the refusal to register.

I. Preliminary issue

Applicant attaches new evidence to its appeal brief. The Examining Attorney objects, correctly arguing that the evidentiary record should be complete before appeal.⁵ See Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d); *In re Medline Indus., Inc.*, No. 87680078, 2020 WL 1485709, at *3 (TTAB 2020). If, after an appeal is filed, an applicant (or an examining attorney) wants to place more evidence in the record, the proper way is to request the Board to suspend the appeal and remand for additional

¹ Applicant filed Application Serial No. 98243344 on October 27, 2023, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), asserting a date of first use anywhere at least as early as June 15, 2023, and in commerce at least as early as August 1, 2023.

² See Oct. 28, 2024, Final Office Action, at TSDR 1-4. Citations in this opinion to the application record refer to the version of the record downloaded in .pdf format from the Trademark Status and Document Retrieval (TSDR) database of the United States Patent and Trademark Office (USPTO).

³ See 1 TTABVUE. References to the briefs, other filings in the case, and the record cite the Board's TTABVUE docket system. The number preceding "TTABVUE" represents the docket number assigned to the cited filing in TTABVUE and any number immediately following "TTABVUE" identifies the specific page(s), if any, to which we refer.

⁴ See 4 TTABVUE (Applicant's Brief); 6 TTABVUE (Examining Attorney's Brief); 7 TTABVUE (Applicant's Reply Brief).

⁵ See 6 TTABVUE 3.

prosecution proceedings. *See generally* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 1207.02 (2025). Applicant did not do this. We therefore sustain the objection and will ignore the evidence Applicant attached to its appeal brief.

II. Analysis

Section 2(e)(1) of the Trademark Act prohibits registration of any “mark which, (1) when used on or in connection with the goods [or services] of the applicant is merely descriptive ... of them.” 15 U.S.C. § 1052(e)(1). “A term is merely descriptive if it immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used.” *In re Chamber of Com. of the U.S.*, 675 F.3d 1297, 1300 (Fed. Cir. 2012) (citations omitted); *In re Abcor Dev. Corp.*, 588 F.2d 811, 813 (CCPA 1978) (“conveys information regarding a function, or purpose, or use of the goods”).⁶ “A mark need not recite each feature of the relevant goods or services in detail to be descriptive, it need only describe a single feature or attribute.” *Chamber of Com.*, 675 F.3d at 1300 (cleaned up; citation omitted). “[T]he question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods and services are will understand the mark to convey information about them.” *Earnhardt*

⁶ Mere descriptiveness is not an insurmountable disqualification from registration. Marks that are merely descriptive qualify for registration if they acquire distinctiveness as an indicator of source. *See, e.g.*, 15 U.S.C. § 1052(f). Applicant has not claimed acquired distinctiveness.

v. Kerry Earnhardt, Inc., 864 F.3d 1374, 1378 (Fed. Cir. 2017) (cleaned up; citations omitted).

Refusals for mere descriptiveness are based on evidence bearing on public perception of the proposed mark. *See, e.g., In re Slokevage*, 441 F.3d 957, 960 (Fed. Cir. 2006); *In re Nett Designs, Inc.*, 236 F.3d 1339, 1341 (Fed. Cir. 2001). “Evidence of the public’s understanding of the term may be obtained from any competent source, such as purchaser testimony, consumer surveys, listings in dictionaries, trade journals, newspapers, and other publications.” *Real Foods Pty Ltd. v. Frito-Lay N. Am., Inc.*, 906 F.3d 965, 974 (Fed. Cir. 2018) (cleaned up; citation omitted). We may also consider Applicant’s own use of the mark. *See, e.g., In re N.C. Lottery*, 866 F.3d 1363, 1367-68 (Fed. Cir. 2017) (public’s understanding of a mark can be evidenced by sources including “labels, packages, or in advertising material directed to the goods” or services) (citations omitted); *Nett Designs*, 236 F.3d at 1342 (looking at applicant’s specimen (an advertising brochure) in determining whether consumers would perceive mark as descriptive); *In re Am. Soc’y of Clinical Pathologists, Inc.*, 442 F.2d 1404, 1406 (CCPA 1971) (applicant’s printed pamphlet, submitted as specimen, used as evidence that term “REGISTRY” would be perceived as descriptive of applicant’s services).

Here, the Examining Attorney argues that mark TENNISOS comprises two component terms: the first word TENNIS (the sport), to which is added the ending “OS.”⁷ The Examining Attorney placed in evidence a dictionary definition that “OS”

⁷ See 6 TTABVUE 4.

is short for “operating system.”⁸ The record also contains an article defining “operating system” as a “program that, after being initially loaded into the computer ..., manages all of the other application programs in a computer”⁹ There are also several articles using the abbreviation “OS” for “operating system.” These articles describe several types of computer operating systems, including mobile operating systems.¹⁰ Applicant does not dispute that “OS” is a known abbreviation for “operating system.”

The Examining Attorney argues that, in the context of Applicant’s software goods “for presentation of data and communicating with robotic systems,” this computer-related meaning is the meaning of “OS” that consumers perceive.¹¹ Applicant appears to agree, stating that “a consumer that encounters the Mark on Applicant’s website could understand TENNISOS to refer to the application that communicates with the Tennibot,” which is the robotic product Applicant sells.¹² Indeed, Applicant’s own specimens refers to TENNISOS in this manner. Below is an excerpt from Applicant’s original specimen:

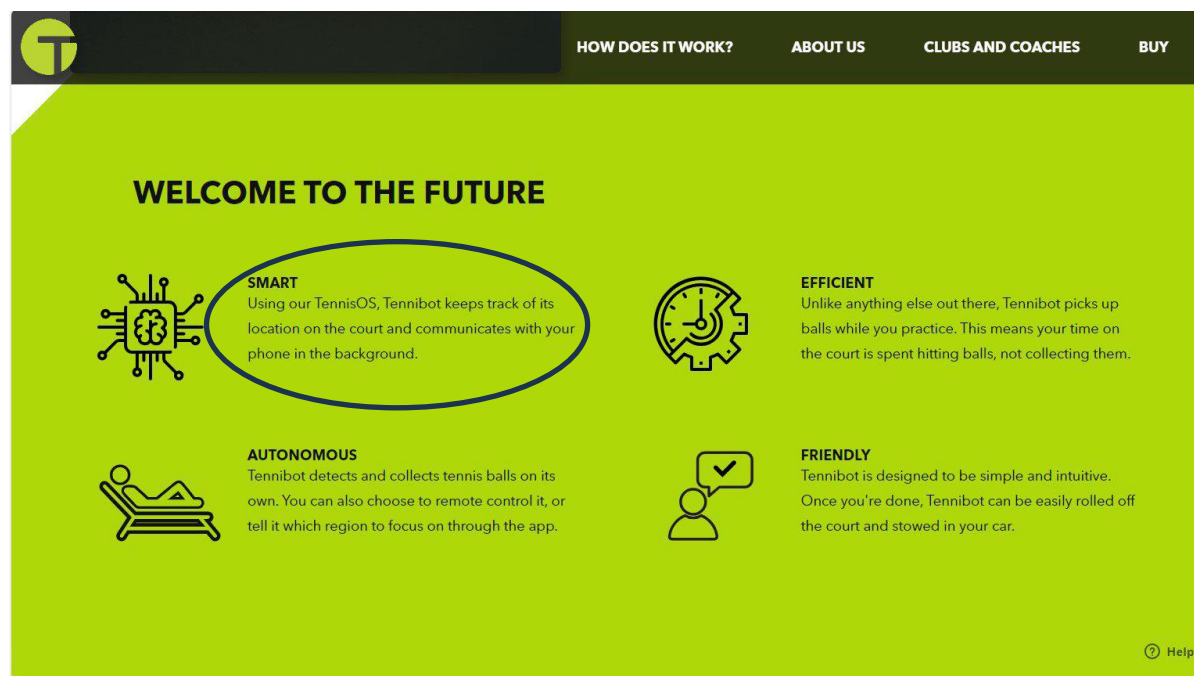
⁸ See Oct. 28, 2024, Final Office Action, at TSDR 9 (Collins Dictionary).

⁹ See June 28, 2024, Nonfinal Office Action, at TSDR 6; *see also* Oct. 28, 2024, Final Office Action, at TSDR 6.

¹⁰ See Oct. 28, 2024, Final Office Action, at TSDR 28-36 (Android OS), 37-40 (mobile operating systems generally), 43-46 (“QUBES OS”), 47-60 (operating systems generally); *see also id.* at 61 (Wikipedia article discussing Apple’s “mac OS” operating system).

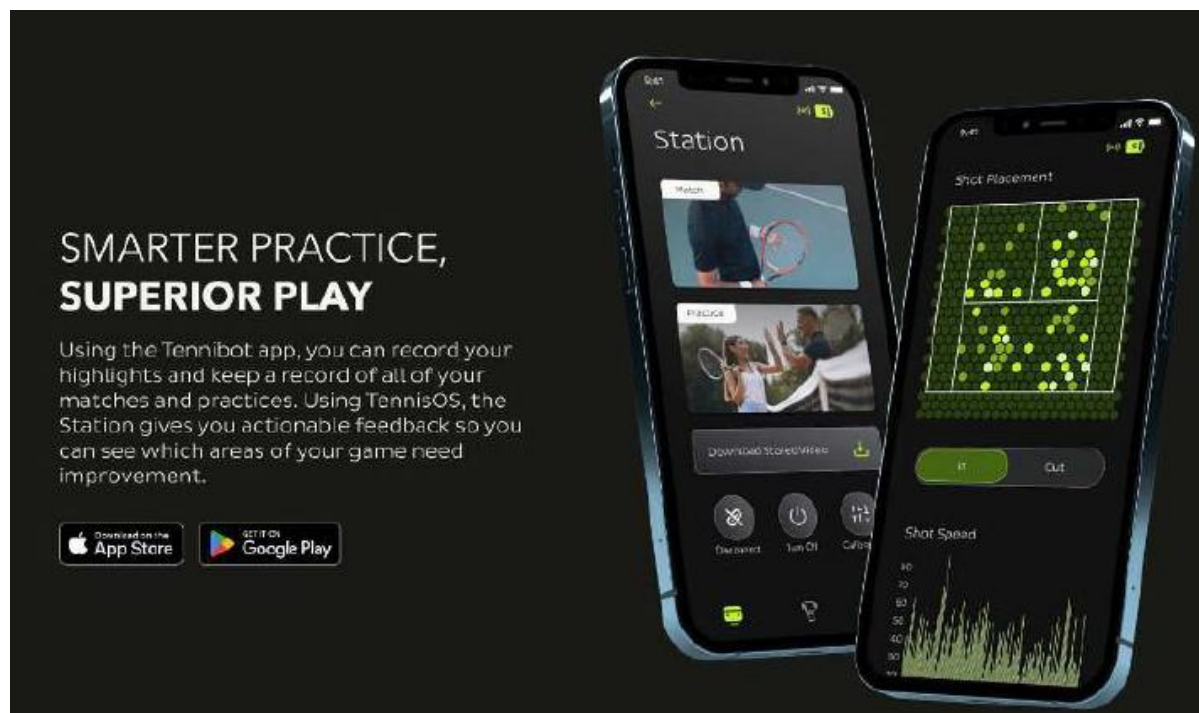
¹¹ See 6 TTABVUE 6-7.

¹² See 4 TTABVUE 4.



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Applicant's substitute specimen refers to TENNISOS in the same way:



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¹³ See Oct. 27, 2023, Specimen (oval added to identify where the mark is used).

¹⁴ See Sept. 27, 2024, Response to Nonfinal Office Action, at TSDR 11.

Despite how it uses TENNISOS to refer to the means by which its tennis robot works and is controlled, Applicant nevertheless insists that consumers will perceive “OS” as referring to “oversize” tennis rackets.¹⁵ This argument cites and depends on evidence attached for the first time to Applicant’s appeal brief, which we’ve excluded, as explained above. As a consequence, there is no evidence of record supporting this argument. But even if we were to consider the late-filed evidence, we think the evidence that consumers would perceive “OS” as short for “operating system” is significantly more convincing than a couple of sports equipment ads using “OS” as shorthand for their oversize rackets, since Applicant’s identified goods are software and Applicant uses the term in connection with describing the means by which users of its tennis robot communicate with and operate Applicant’s robot.

Applicant argues that, since “[t]he language of tennis and the language of computers have not traditionally been associated,” the combined term TENNISOS creates an “incongruity.”¹⁶ Applicant elaborates that the combination of “tennis” with “OS” “creates an unused combination of ideas that requires some measure of imagination and mental pause to understand the nature of Applicant’s goods.”¹⁷ We disagree.

We see this argument more as one about the novelty of the combination, rather than its incongruity, since there’s no inherent contradiction or incompatibility in

¹⁵ See 4 TTABVUE 4.

¹⁶ See *id.*; see also 7 TTABVUE 4.

¹⁷ See 4 TTABVUE 4 (cleaned up).

using a computer term and a sports term together. And we see two problems with it. First, the fact that no one may previously have used “TENNIS” and “OS” together before does not mean that the combined term can avoid being found merely descriptive of the goods if the evidence shows that the term describes a feature or characteristic or function of the goods. *See, e.g., Clairol, Inc. v. Roux Distrib. Co.*, 280 F.2d 863, 865 (CCPA 1960) (“Even though ‘color bath’ may have been a novel way of describing a liquid for coloring hair, the words were, as used by appellee, nevertheless descriptive of its hair coloring liquid”); *In re Bailey Meter Co.*, 102 F.2d 843, 844 (CCPA 1939) (that applicant may have been “the first and only one to adopt and use the mark sought to be registered does not prove that the mark is not descriptive”); *see also KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.*, 543 U.S. 111, 122 (2004) (Lanham Act does not countenance someone obtaining “a complete monopoly on use of a descriptive term simply by grabbing it first” and thereby “depriv[ing] commercial speakers of the ordinary utility of descriptive words”) (citation omitted); *Dalton v. Honda Motor Co.*, 425 F. App’x 886, 893 n.5 (Fed. Cir. 2011) (“[T]he fact that an applicant may be the first and only user of a merely descriptive or generic designation does not justify registration if the only significance conveyed by the term is merely descriptive.”) (citation omitted).

Second, this argument gets the question backwards. The issue isn’t whether, seeing the mark, the consumer would thereby be able to “understand the nature” of the product at issue. “Rather, the question is whether someone who knows what the

goods and services are will understand the mark to convey information about them.”
Earnhardt, 864 F.3d at 1378. (citation omitted).

Applicant’s final point is to urge us to pass its application on to registration under the rule that “all doubt must be resolved in favor of [the applicant]” in descriptiveness cases.¹⁸ This rule, however, applies only where we have such doubt, *see, e.g., In re MBNA Am. Bank, N.A.*, 340 F.3d 1328, 1336 (Fed. Cir. 2003), and, here, on this record, we do not.

Decision: Because we find that the mark is merely descriptive of the identified goods, we affirm the refusal to register.

¹⁸ *See* 7 TTABVUE 6-7.