

This Opinion is Not a
Precedent of the TTAB

Hearing: October 17, 2019
(Serial No. 86453853 only)

Mailed: December 9, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board

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In re Flex Ltd.
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Serial Nos. 86453853 and 86493735
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Pamela N. Hirschman, Sabrina C. Stavish and Jeanette E. Sinclair
of Sheridan Ross P.C. for Flex Ltd.

Tarah Hardy Ludlow, Trademark Examining Attorney, Law Office 110,
Chris A.F. Pedersen, Managing Attorney.

—————
Before Adlin, Heasley and Pologeorgis, Administrative Trademark Judges.

Opinion by Adlin, Administrative Trademark Judge:

Applicant Flex Ltd. filed two applications to register the mark INTELLIGENCE
OF THINGS in standard characters: Application Serial No. 86453853 for:

Supply chain management services; business management
services, namely, managing logistics, reverse logistics,
supply chain services, supply chain synchronization,
supply and demand forecasting, and product distribution
processes for others in International Class 35;¹

and Application Serial No. 86493735 for:

Custom manufacture of electronics, power supplies,
lighting and computer goods for others; technical support

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¹ The “853 Application,” filed November 13, 2014, under Section 1(b) of the Trademark Act,
based on an allegation of a bona fide intent to use the mark in commerce.

services, namely providing technical advice related to the manufacture of electronics, power supplies, lighting and computer goods in International Class 40; and

engineering services, consulting services in the field of new product development in the fields of electronics, power supplies, lighting and computers; new product design services; research and development of new products in International Class 42.²

The Examining Attorney refused both applications under Sections 1, 2, 3 and 45 of the Trademark Act, on the ground that INTELLIGENCE OF THINGS fails to function as a mark, because it does not indicate the source of Applicant's services, or identify and distinguish them from those of others. After the refusals became final, Applicant appealed and filed requests for reconsideration which were denied. Applicant and the Examining Attorney filed briefs in both applications and appeared at an oral hearing in connection with the '853 Application only. We affirm both refusals to register.

I. Appeals Consolidated

These appeals involve common questions of law and fact and the records are quite similar. Accordingly, we consolidate and decide both appeals in this single decision. *See In re Binion*, 93 USPQ2d 1531, 1533 (TTAB 2009); Trademark Trial and Appeal Board Manual of Procedure ("TBMP") § 1214 (2019).³

² The "735 Application," filed December 31, 2014 under Sections 1(b) and 44(d) of the Trademark Act, and currently based only on an allegation of a bona fide intent to use the mark in commerce under Section 1(b) of the Act.

³ Unless otherwise indicated, citations are to the record in the '853 Application, specifically to TTABVue or the downloaded .pdf version of the Trademark Status and Document Retrieval (TSDR) database.

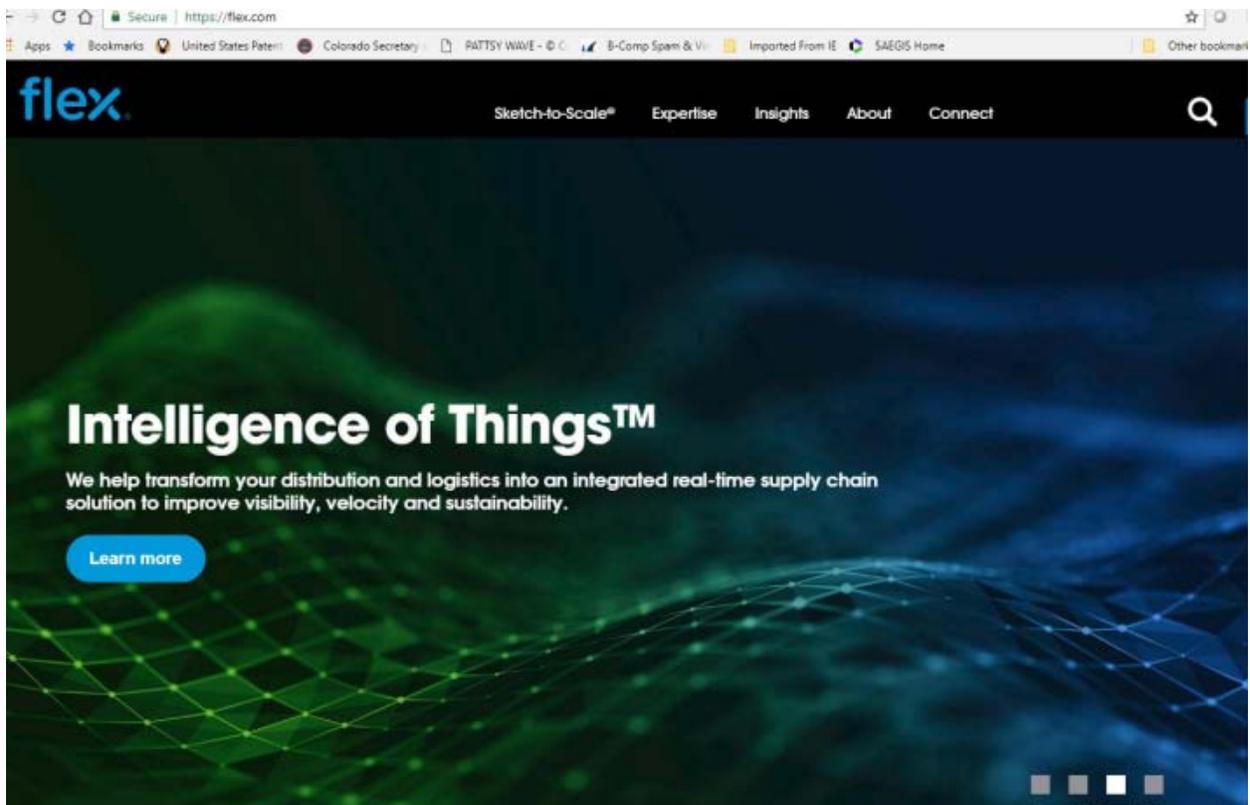
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II. Evidence of Applicant's, Third Parties' and Media Use of INTELLIGENCE OF THINGS

After notices of publication issued in both of the involved applications, Applicant filed a Statement of Use in the '853 Application only. After reviewing the specimen filed with the Statement of Use, the Examining Attorney issued the failure to function refusals in both applications, based in large part on evidence regarding how third parties and the media use and define the term INTELLIGENCE OF THINGS.

A. Applicant's Specimen

Applicant filed the specimen reproduced below with its Statement of Use in the '853 Application:



B. Third-Party Uses of INTELLIGENCE OF THINGS

The Examining Attorney introduced evidence showing how third parties use and define INTELLIGENCE OF THINGS. In essence, the evidence of record reveals that third parties use the phrase INTELLIGENCE OF THINGS to refer to the ongoing development and next phase of the Internet of Things (“IoT”),⁴ specifically its increasing use of artificial intelligence (“AI”). For example:

An article on Western Digital’s “datamakepossible.com” site entitled “AI +IoT=The **Intelligence of Things**” states that “there’s a technological evolution coming. A merging of a sensor-laden world with an artificially intelligent one. It’s called the **Intelligence of Things**, and it will change our lives forever.” July 3, 2018 Office Action TSDR 12-14.

An article on the “symbio.com” website entitled “**Intelligence of Things** Economy” states that in this field, devices “are exchanging analyzed information” within “purpose-built service ecosystems” September 10, 2018 Office Action TSDR 171-176.

A blog post on “lindabernardi.com” entitled “The Immersion of Things” indicates there has been an “evolution of inversion.” Specifically, there has been a progression from things, to IoT, to **Intelligence of Things**, to, ultimately, Immersion of Things, which is “when devices become experiences.” The post states that “[t]rue **intelligence of things** will happen when all things know how to interoperate independently and intelligently, when devices talk to each other and achieve optimum function via intelligence.” *Id.* at 160-161.

An article by Samsung’s Mobile Communications Business president on the “hdguru.com” website entitled “Samsung

⁴ According to both Applicant and the Wikipedia entry for “Internet of Things,” also known as “IoT,” the term “refers to the interconnectivity of digital devices,” specifically their connections to the Internet and each other. 13 TTABVUE 14 (Applicant’s Appeal Brief at 13); August 27, 2018 Office Action response TSDR 10-40.

Shows Developers ‘**Intelligence of Things**’ with Bixby 2.0” asserts that “Samsung has coined the ‘**Intelligence of Things**.’” The article defines the term as “the integration of intelligence into the IoT to ‘make life easier.’” *Id.* at 150-155.

A post on the Insurance Blog accessible at “accenture.com” entitled “‘**Intelligence of Things**’ Will Change Our World and Insurance” asserts “[p]erhaps it’s time that we change the definition of IoT from ‘The Internet of Things’ to ‘**The Intelligence of Things**.’” According to the article, “what [‘intelligence of things’] devices have in common is that they aren’t just connected to the Internet or your phone; it is that they are using artificial intelligence (AI) and machine learning to provide additional services to the customer, with many having the ability to improve over time.” *Id.* at 145-149.

An article posted on the Massachusetts Institute of Technology (“MIT”) News website (“news.mit.edu”) quotes MIT’s Vice President for Open Learning, who stated that “Internet of things could just as well be called ‘**intelligence of things**.’” *Id.* at 96-103.

An article on the “ups.com” website entitled “How IoT will change our society” opens with the following: “Some call the Internet of Things (IoT) the **Intelligence of Things** or the Internet of *Everything*.” *Id.* at 89-95.

The “digikey.com” website includes a description of products under the heading “Analog Devices IoT and the **Intelligence of Things**.” *Id.* at 68-73.

A section of the “virtusa.com” website, under the heading “**The Intelligence of Things**,” includes the subheading “IoT meets AI,” and states “[i]ntelligent products and services are moving from being standalone entities to being elements within collaborative webs of intelligent things.” *Id.* at 59-62.

The **Intelligence of Things** website (“**intelligenceofthings.com**”) includes this introduction: “‘Things’ (as opposed to people) have become intelligent. They can communicate and can take actions based on

information gleaned from sensors, smart devices, databases, systems and information from the worldwide web” *Id.* at 44-51.

The Webpage for a “BrightTALK Summit” online conference/webinar entitled “The **Intelligence of Things**” states “[d]iscover the next revolution in IoT as the industry pushes for intelligent devices with stream processing, edge computing, and A.I. innovations.” One of the sessions is entitled “A.I. and IoT.” *Id.* at 21-25.

An article on the “atos.net” site entitled “Analytics and Artificial Intelligence are fueling the growth for Internet of Things” states “IoT is becoming ‘**Intelligence of Things**’ – making devices intelligent, not just focused on connectivity but focused on making sense of IoT data to create business value.” December 12, 2018 Denial of Request for Reconsideration TSDR 65-67.

George Washington University’s Center for the Connected Consumer’s website (“postsocial.gwu.edu”) includes a section on the “GW Inaugural Conference on the **Intelligence of Things.**” The conference description states “[a]s smart devices (voice assistants, appliances, cars, robots, drones, watches, you name it), continue their rapid convergence with AI and deep learning models, a new IoT is coming into being that experts are calling the ‘**Intelligence of Things.**’” *Id.* at 38-43.

A blog posting entitled “The ‘**Intelligence of Things**’ on the “telenet.be” website states: “The Internet of Things, commonly referred to as IoT, seems to be playing on the minds of perhaps every technocrat and business strategist across industries. The ability to connect millions of devices and sensors, and get meaningful and actionable insights from the data generated by these, seeks to fundamentally alter the way a business is run or operations conducted ... And when these smart devices and sensors connect to each other and make decisions based on ambient conditions, we see an ecosystem where IoT interfaces with Artificial Intelligence (decision making capability in these devices and sensors) to create something that is termed the **Intelligence of Things** January 7, 2019 Office Action in ’735 Application TSDR 111-113.

The record includes additional, similar examples of third party use of INTELLIGENCE OF THINGS. July 3, 2018 Office Action TSDR 26-30, 156-159, 166-170.

C. Media Uses of INTELLIGENCE OF THINGS

The Examining Attorney submitted a number of news and business articles which mention INTELLIGENCE OF THINGS, as well as short excerpts from additional articles, showing only the portion that discusses INTELLIGENCE OF THINGS. With respect to the mere excerpts, we have only relied upon and cited in this decision those that include sufficient context for us to understand how the term INTELLIGENCE OF THINGS is being used.

1. Complete Articles

The Examining Attorney introduced the following articles in their entirety:

An article in an India-focused magazine, “theweek.in,”⁵ entitled “**Intelligence of Things**” focuses on Watson, an “artificial intelligence technology” developed by IBM, and the 2016 World of Watson Conference. The article explains that among other things, Watson’s ability to understand natural language and unstructured data enables it to perform tasks formerly performed only by humans,

⁵ While some evidence of record is from foreign sources, we have nevertheless considered it, primarily because of the highly technical nature of Applicant’s services. *See e.g. In re Bayer AG*, 488 F.3d 960, 82 USPQ2d 1828, 1835 (Fed. Cir. 2007); *In re Well Living Lab Inc.*, 122 USPQ2d 1777, 1781 n.10 (TTAB 2017); *In re Int’l Bus. Machines Corp.*, 81 USPQ2d 1677, 1681 n.7 (TTAB 2006) (“it is reasonable to consider a relevant article” regarding computer technology from a foreign English-language website); *In re Cell Therapeutics Inc.*, 67 USPQ2d 1795, 1797-98 (TTAB 2003); *In re Remacle*, 66 USPQ2d 1222, 1224 n.5 (TTAB 2002) (“it is reasonable to assume that professionals in medicine, engineering, computers, telecommunications and many other fields are likely to utilize all available resources, regardless of country of origin or medium”).

including driving, analyzing human emotions and winning in “Jeopardy.” July 3, 2018 Office Action TSDR 15-25.

An article on “firstpost.com” entitled “**Intelligence of Things: Tens of Billions of Connected Devices Are Expected By 2020, and They’ll All be Infused with AI**” states that “today’s AI and Internet of Things (IoT) are converging to create “the **intelligence of things.**” The article indicates that the “three pillars” of the intelligence of things are artificial intelligence, machine learning and data. *Id.* at 7-11.

A Forbes article entitled “Learning to Live With the **‘Intelligence of Things’**” states that when the Internet of Things and artificial intelligence converge, “they are creating a new **‘intelligence of things’** that will impact how businesses can best serve customers.” According to the article, “[w]ith the Internet ‘in’ everything, look for a wide variety of new use cases, such as ... “[s]ensor data correlated from vehicle locations, pallets of goods and employees, **boosting the efficiency of the logistics chain.**” *Id.* at 4-6.

The article “The **Intelligence of Things: Streaming analytics comes to Iot**” on the “readwrite.com” site states that while IoT devices “gather lots of data, they’re not very intelligent or self-aware in their own right.” The author opines that the devices require “the right intelligence and security onboard” for them to “become aware,” which he refers to as the “**Intelligence of Things.**” September 10, 2018 Office Action TSDR 162-165.

A post on the “siliconangle.tv” website promotes a conference entitled “When IOT Met AI: The **Intelligence of Things.**” *Id.* at 82-86.

An Infoworld article (“infoworld.com”) entitled “Toward the **artificial intelligence of things**” includes this subheading: “Meet the **artificial intelligence of things** (AIoT), where artificial intelligence dovetails with the internet of things (IoT).” *Id.* at 36-43.

Amazon offers a book by Robert A. Frederick entitled “**The Intelligence of Things: A World of Connected Devices, People and Experiences.**” *Id.* at 33.

An article in Information Age (“information-age.com”) entitled “Intelligent ecosystems and the **intelligence of things**” has the following subheading: “With AI set to impact almost every sector over the coming years, can parallels be drawn with intelligent ecosystems in the natural world? And how can this impact the IoT evolution?” *Id.* at 26-32.

An article in IoT Now entitled “Tapping into the **Intelligence of Things**” discusses the importance of obtaining “intelligence” from IoT devices. December 12, 2018 Denial of Request for Reconsideration TSDR 82-86.

According to a “medium.com” article entitled “**The Intelligence of Things,**” “[s]ome people suggest that IoT should stand for the ‘**Intelligence of Things**’ rather than the “Internet of Things” ... Coupled with artificial intelligence, machine learning, and analytics, enormous volumes of IoT data can be analyzed in real time to improve decision making and deliver better business outcomes – whether that’s increasing **manufacturing efficiency, reducing asset downtime** ... January 7, 2019 Office Action in ’735 Application TSDR 47-50.

(emphasis added).

2. Excerpts

The Examining Attorney submitted the following excerpts or abstracts, among others:

A Broadcast & CableSat article on “total consumer tech revenue” quotes Steve Koenig, CTA’s Vice President of Market Research, as stating that the “new Internet of Things is the ‘**Intelligence of Things**.’” September 10, 2018 Office Action TSDR 9.

An SQL Server Pro article about Samsung’s IoT-enabled pop-up store states that “Internet of Things World

demonstrates how the next generation of IoT will converge to unlock the **intelligence of things** in the industrial, enterprise and consumer realms.” *Id.* at 11.

A Straits Times (Singapore) article about “big data” quotes SAS Chief Marketing Officer Randy Guard as stating that “connectivity is not enough,” and that “with analytics and (the Internet of Things), we should also call this the **Intelligence of Things**.” *Id.* at 15.

A Mondaq Business Briefing article about “Internet of Things trade secrets” states that the “Internet of Things (IoT), sometimes known as the **Intelligence of Things**, is a network of interconnected physical objects, each embedded with sensors that collect and upload data to the Internet for analysis or control.” *Id.* at 17.

Another Mondaq Business Briefing article about Internet of Things patents states “[t]he ‘Internet-of-Things’ (IoT), sometimes known as the **‘intelligence of things’** is a network of interconnected physical objects, each embedded with sensors that collect and upload data to the internet for analysis or control.” *Id.* at 19.

An abstract of a paper available on the University of Southampton website entitled “**Intelligence of Things: Opportunities and challenges**” states “The Internet of Things (IoT) is a promising technology that can connect and communicate virtual and physical objects globally ... On the other hand, Artificial Intelligence (AI) is applied to many fields of science ... Integrating IoT with AI will create a powerful technology that can solve many of (sic) IoT problems that relate to the huge amount of data created by different IoT devices” January 7, 2019 Office Action in ’735 Application TSDR 38-40.

(emphasis added).

III. Analysis

“The Trade-Mark Act is not an act to register words but to register trademarks. Before there can be registrability, there must be a trademark (or a service mark) and, unless words have been so used, they cannot qualify for registration.” *In re Standard*

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Oil Co., 275 F.2d 945, 125 USPQ 227, 229 (CCPA 1960). Thus, we start our analysis with the Act’s definition of a service mark, which is “any word, name, symbol, or device, or any combination thereof ... [used] to identify and distinguish the services of one person ... from the services of others and to indicate the source of the services, even if that source is unknown.” 15 U.S.C. § 1127. *See also In re Bose Corp.*, 546 F.2d 893, 192 USPQ 213, 216 (CCPA 1976) (“the classic function of a trademark is to point out distinctively the origin of the goods to which it is attached”).

Whether the phrase INTELLIGENCE OF THINGS falls within this definition and functions as a mark depends on whether the relevant public, i.e. purchasers or potential purchasers of Applicant’s services, would perceive the term as identifying Applicant’s services and their source or origin. *See e.g. In re TracFone Wireless, Inc.*, 2019 USPQ2d 222983, *1-2 (TTAB 2019); *In re Aerospace Optics, Inc.*, 78 USPQ2d 1861, 1862 (TTAB 2006) (“To be a mark, the term must be used in a manner calculated to project to purchasers or potential purchasers a single source or origin for the goods.”); *In re Volvo Cars of North Am. Inc.*, 46 USPQ2d 1455, 1459 (TTAB 1998) (“A critical element in determining whether a term or phrase is a trademark is the impression the term or phrase makes on the relevant public.”); *In re Safariland Hunting Corp.*, 24 USPQ2d 1380 (TTAB 1992). “To make this determination we look to the specimens and other evidence of record showing how the designation is actually used in the marketplace.” *In re Eagle Crest Inc.*, 96 USPQ2d 1227, 1229 (TTAB 2010) (citations omitted).

Here, the specimen reveals not only that Applicant uses INTELLIGENCE OF THINGS on a page of its website that mentions some of Applicant's services, but also that Applicant claims service mark rights in the term (evidenced by use of the trademark symbol ("™")). That does not necessarily mean that INTELLIGENCE OF THINGS functions as a service mark, however. Indeed, "[n]ot every word, name, phrase, symbol or design, or combination thereof which appears on a product functions as a trademark," and "[m]ere intent that a phrase function as a trademark is not enough in and of itself to make it a trademark." *In re Pro-Line Corp.*, 28 USPQ2d 1141, 1142 (TTAB 1993). *See also In re TracFone Wireless*, 2019 USPQ2d 222983; *In re Wal-Mart Stores, Inc.*, 129 USPQ2d 1148, 1152 (TTAB 2019) ("The mere fact that a phrase proposed for registration appears on the specimens of record does not establish its use as a service mark.").

In this case, notwithstanding Applicant's use of the term and apparent intent that it function as a service mark, the evidence from third-parties and the media reveals that INTELLIGENCE OF THINGS does not perform the desired service mark function and does not fall within the Act's definition of a service mark, including because it would be perceived not as a mark, but as a merely informational and widely used phrase. Therefore, Applicant's competitors and other third parties should be able to freely use the widespread and increasingly important phrase INTELLIGENCE OF THINGS.

A. The Evidence Shows That the Term Will Not Be Perceived as a Service Mark

The evidence reveals INTELLIGENCE OF THINGS does not fall within the definition of a service mark. In fact, many third parties and media sources⁶ have a common and consistent understanding of the phrase INTELLIGENCE OF THINGS, which refers not to Applicant or its services, but instead to the merging of the Internet of Things and artificial intelligence.

For example, as the “firstpost.com,” Forbes and SQL Server Pro articles put it, INTELLIGENCE OF THINGS refers to IoT’s “convergence” with AI. July 3, 2018 Office Action TSDR 4-11; September 10, 2018 Office Action TSDR 11. Accenture’s Insurance Blog even questions whether “it’s time that we change the definition of IoT from ‘The Internet of Things’ to ‘The Intelligence of Things.’” July 3, 2018 Office Action TSDR 145-149. The record contains a number of similar formulations, all referring to IoT and its increasing utilization of AI:

- “From the Internet of Things to Intelligence of Things.” *Id.* at 26-30 (HVAC blog).
- “Specifically, there has been a progression from things, to IoT, to Intelligence of Things, to, ultimately, Immersion of Things” *Id.* at 160-161 (“lindabernardi.com”).
- “Internet of things could just as well be called ‘intelligence of things.’” *Id.* at 96-103 (“news.mit.edu”).

⁶ The media’s use and own perception of the term is relevant to how the public perceives it. *See Harry Winston, Inc. and Harry Winston S.A. v. Bruce Winston Corp.*, 111 USPQ2d 1419, 1428 (TTAB 2014) (publications “are frequently competent to show, on their face, matters of relevance to trademark claims (such as public perceptions), regardless of whether the statements are true or false.”)

- “Some call the Internet of Things (IoT) the Intelligence of Things or the Internet of *Everything*.” *Id.* at 89-95 (“ups.com”).
- “IoT is becoming ‘Intelligence of Things’ – making devices intelligent, not just focused on connectivity but focused on making sense of IoT data to create business value.” December 12, 2018 Denial of Request for Reconsideration TSDR 65-67 (“atos.net”).
- “Meet the artificial intelligence of things (AIoT), where artificial intelligence dovetails with the internet of things (IoT).” September 10, 2018 Office Action TSDR 36-43 (“infoworld.com”).
- “Some people suggest that IoT should stand for the ‘Intelligence of Things’ rather than ‘Internet of Things’” January 7, 2019 Office Action in ’735 Application TSDR 47-50 (“medium.com”).
- The “new Internet of Things is the ‘Intelligence of Things.’” September 10, 2018 Office Action TSDR 9.
- “[W]ith analytics and (the Internet of Things), we should also call this the Intelligence of Things.” *Id.* at 15 (“Straits Times (Singapore)).
- The “Internet of Tings (IoT), sometimes known as the Intelligence of Things, is a network of interconnected physical objects” *Id.* at 19.

Thus, the evidence shows that the phrase: (1) does not identify a single source or origin, or Applicant’s identified services; and (2) would not be “perceived” by relevant consumers as identifying Applicant’s services or their source.

B. INTELLIGENCE OF THINGS is Merely Informational

That INTELLIGENCE OF THINGS merely conveys information rather than identifying goods or services or their source is clear from how the term is used. For

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example, Western Digital’s “datamakepossible.com” site presents INTELLIGENCE OF THINGS as an equation: “AI + IoT=The Intelligence of Things.” July 3, 2018 Office Action TSDR 12-14. Samsung’s Mobile Communications Business president defines INTELLIGENCE OF THINGS in a remarkably similar manner: “the integration of intelligence into the IoT to ‘make life easier.’” September 10, 2018 Office Action TSDR 150-155. Accenture’s Insurance Blog phrases it similarly, asserting that what IoT devices have in common “is that they aren’t just connected to the Internet or your phone; it is that they are using artificial intelligence (AI) and machine learning to provide additional services to the customer, with many having the ability to improve over time.” *Id.* at 145-149. *See also id.* at 59-62 (“IoT meets AI”) and 82-86 (“When IOT Met AI”).

What all of these examples have in common is that they do not use INTELLIGENCE OF THINGS to refer to Applicant’s services or Applicant itself. The phrase merely conveys information about the services. *See In re Standard Oil*, 125 USPQ at 229 (finding that GUARANTEED STARTING amounts “to no more than a sort of condensed announcement that the applicant will guarantee the work done in order to insure the starting of the customer’s car”); *In re DePorter*, 129 USPQ2d 1298, 1299 (2019) (affirming failure to function refusal where “use of the wording #MAGICNUMBER108 in these messages identifies the subject matter of these tweets and posts as relating to and expressing support for the Chicago Cubs and their World Series win”); *In re Wal-Mart*, 129 USPQ2d at 1152 (INVESTING IN AMERICAN JOBS does not function as a mark because it is “merely an informational statement

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that Applicant is selling certain goods that are made or assembled in America in areas of the store where the signage appears”); *D.C. One Wholesaler, Inc. v. Chien*, 120 USPQ2d 1710 (TTAB 2016) (**I ♥ DC** fails to function as a mark because it is “an expression of enthusiasm, affection or affiliation with respect to the city of Washington, D.C.”); *In re Melville Corp.*, 228 USPQ 970 (TTAB 1986) (BRAND NAMES FOR LESS for retail clothing stores fails to function as a mark because it is merely an informational statement); *In re Brock Residence Inns, Inc.*, 222 USPQ 920 (TTAB 1984) (affirming refusal to register FOR A DAY, A WEEK, A MONTH OR MORE! because it “is simply an ordinary informational statement about the availability of rooms for various lengths of time”); *In re Schwauss*, 217 USPQ 361 (TTAB 1983) (FRAGILE in stylized form does not function as a mark for labels and bumper stickers, but is instead “presented as a message or informational statement, rather than a source indicator”).

This case is analogous to *In re Phoseon Technology, Inc.*, 103 USPQ2d 1822, 1827 (TTAB 2012), in which we found that SEMICONDUCTOR LIGHT MATRIX fails to function as a mark for light curing systems because it “identifies a technology, not the source of the UV curing system.” Here, as in *Phoseon*, Applicant’s proposed mark merely identifies the technology (IoT with artificial intelligence) Applicant uses to provide its identified services. *See also In re Bose Corp.*, 192 USPQ at 213 (affirming refusal to register SYNCOM for loudspeakers because it identified a speaker-testing computer system rather than the speakers themselves).

In short, because INTELLIGENCE OF THINGS is merely informational, it does not function as a service mark.

C. INTELLIGENCE OF THINGS is Widely Used

We have listed many examples showing that INTELLIGENCE OF THINGS is widely used, by, among others: (1) Applicant's competitors such as UPS in the supply chain and logistics management field and Samsung in the electronics manufacturing and engineering fields; (2) other technology companies; and (3) the technology media. Widely used informational phrases such as INTELLIGENCE OF THINGS often fail to function as service marks. *In re Wal-Mart*, 129 USPQ2d at 1153 (“Common use of a phrase by third parties merely for the purpose of imparting information makes it less likely that the public will perceive it as identifying a single commercial source and less likely that it will be recognized by purchasers as a trademark.”); *D.C. One Wholesaler*, 120 USPQ2d at 1716 (“because the ubiquity of the phrase **I ♥ DC** on apparel and other souvenirs of many makers has given it a significance as an expression of enthusiasm, it does not create the commercial impression of a source indicator, even when displayed on a hangtag or label”); *In re Hulting*, 107 USPQ2d 1175, 1177 (TTAB 2013) (“The more commonly a phrase is used, the less likely that the public will use it to identify only one source and the less likely that it will be recognized by purchasers as a trademark.”) (quoting *In re Eagle Crest*, 96 USPQ2d at 1229); *In re Volvo Cars*, 46 USPQ2d at 1459 (“the primary significance of the phrase DRIVE SAFELY, as used by applicant, and as likely to be perceived by purchasers and prospective purchasers, is merely that of an everyday, commonplace safety admonition”).

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See also Reed v. Amoco Oil Co., 611 F.Supp. 9, 225 USPQ 876 (M.D. Tenn. 1984) (“...courts are reluctant to allow one to obtain monopoly rights to the use of a common word or phrase ... The more common a phrase is, the more it appears in everyday parlance, less is the likelihood that the phrase identifies the source of a certain product, and less is the likelihood that it deserves trademark protection ...”). Here, as in these “widespread use” cases, INTELLIGENCE OF THINGS is too commonly used by too many third parties for it to identify any particular goods or services or the sources thereof.⁷

Furthermore, granting either registration Applicant seeks “would achieve the absurd result of hampering others in their use of the common” phrase INTELLIGENCE OF THINGS for goods or services which feature or are rendered through “intelligent” IoT devices. *In re Schwauss*, 217 USPQ at 362. *See also In re Volvo Cars*, 46 USPQ2d at 1460 (“to grant exclusive rights to applicant in this ordinary and commonly used safety admonition would interfere with the rights of others in the automobile industry to freely use the familiar phrase” to promote safe driving). In short, the phrase INTELLIGENCE OF THINGS is too commonly used in Applicant’s fields, and for its identified services, for it to be perceived as a service mark. Applicant should not be able to deny potential competitors (who according to the record also use the phrase) the right to use it freely.

⁷ “In order to maintain the Examining Attorney’s refusal, we need not find that the evidence shows third-party use of the alleged mark on goods ‘in commerce.’” *In re DePorter*, 129 USPQ2d at 1302.

D. Applicant's Proposed Failure to Function Test and Other Arguments in Favor of Registration are Unavailing

Based on many of the cases cited by the Examining Attorney in support of the refusals (a number of which are cited in this decision), Applicant proposes that the Board adopt a new test for determining whether a proposed mark functions as such. It argues that its proposed test synthesizes the caselaw on failure to function, and, not surprisingly, that under its proposed test the refusals are inappropriate.

Applicant specifically contends that a phrase fails to function as a mark only when it “(i) has a single, well understood meaning or message, (ii) is widely used by the general public to convey the well understood meaning or message, and (iii) relates to a topic of nationwide awareness or is the type of phrase that is ‘uttered on a daily basis, almost automatically without thought.’” 13 TTABVUE 10 (Applicant’s Appeal Brief at 9) (citing *In re Volvo Cars*, 46 USPQ2d at 1460). We disagree that Applicant’s proposed test is consistent with the relevant caselaw, and therefore decline to apply it, for several reasons.

First, the question is not whether the term has a “single, well understood meaning,” without regard to the identified services. Marks are always analyzed – and in fact only exist – in connection with particular goods or services; unlike copyrights and patents, trademarks and service marks do not provide their owner with a “right in gross.” *United Drug Co. v. Theodore Rectanus Co.*, 248 U.S. 90, 97 (1918) (“There is no such thing as property in a trade-mark except as a right appurtenant to an established business or trade in connection with which the mark is employed.”). Thus, we must consider the proposed mark in connection with the goods or services

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identified in the involved applications. *See; In re Peace Love World Live, LLC*, 127 USPQ2d 1400, 1403-04 (TTAB 2018) (finding that ornamental phrase I LOVE YOU on a bracelet “does not identify and distinguish the source of the bracelet, especially where there is so much jewelry decorated with the term I LOVE YOU in the marketplace.”); *D.C. One Wholesaler*, 120 UPQ2d at 1716 (considering “the relevant field of goods, and especially in the field of such goods marketed as souvenirs,” and finding that term in question fails to function as a mark in part because “the marketplace is awash in products that display the term”); *In re Eagle Crest*, 96 USPQ2d at 1230 (focusing on the clothing identified in the application, and finding that phrase ONCE A MARINE, ALWAYS A MARINE would not function as a mark because “consumers would be accustomed to seeing this phrase displayed on clothing items from many different sources”).⁸ Here, the evidence establishes that INTELLIGENCE OF THINGS has a consistent and well-understood meaning in connection with Applicant’s supply chain, logistics and electronics manufacturing and engineering services, among others.

⁸ The focus remains on the identified goods or services in other contexts where the question is whether the term functions as or is capable of functioning as a mark. *Inwood Labs., Inc. v. Ives Labs., Inc.*, 456 U.S. 844, 850 n.10 (1982) (“a product feature is functional if it is essential to the use or purpose of the article or if it affects the cost or quality of the article”) (emphasis supplied); *In re ActiveVideo Networks, Inc.*, 111 USPQ2d 1581, 1588 (TTAB 2014) (meteorological meanings of “cloud” irrelevant to whether CLOUDTV is generic for computer goods and services, because “the determination of whether a proposed mark is capable of achieving significance as a source identifier must be made in relation to the goods and services for which registration is sought, not in the abstract”). Of course, the focus is also on the identified goods and services even when the issue is not whether a mark is capable or functions as a mark. *Octocom Syst. Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) (in context of likelihood of confusion, stating “[t]he authority is legion that the question of registrability of an applicant’s mark must be decided on the basis of the identification of goods set forth in the application ...”).

Second, and similarly, we are not concerned here with the “general public.” Rather, we must consider Applicant’s proposed mark from the perspective of purchasers, potential purchasers and users in Applicant’s industry, and specifically those who may purchase Applicant’s services. *In re Aerospace Optics*, 78 USPQ2d at 1862 (focusing on “purchasers or potential purchasers”); *In re Volvo Cars*, 46 USPQ2d at 1460 (focusing on “American drivers” and finding that DRIVE SAFELY fails to function as a mark because it is a “commonplace safety admonition” and granting exclusive rights in the term “would interfere with the rights of others in the automobile industry to freely use the familiar phrase”).⁹

Here, the relevant public includes those in the fields of supply chain and logistics management services, and electronics manufacturing and engineering services. The record reveals that the Internet of Things and artificial intelligence are important in these fields, and increasingly so, and that in these fields INTELLIGENCE OF THINGS is a commonly used phrase that merely conveys information, specifically the combination of IoT and AI.¹⁰

⁹ We also focus on the relevant industry in other contexts. *See In re Todd Co.*, 290 F.2d 597, 129 USPQ 408, 410 (CCPA 1961) (finding a mark capable of distinguishing source based in part on “the practice in this industry”); *In re Frankish Enter. Ltd.*, 113 USPQ2d 1964, 1973 (TTAB 2015) (focusing on the “monster truck field”); *Sheetz of Del., Inc. v. Doctor's Assocs. Inc.*, 108 USPQ2d 1341, 1351 (TTAB 2013) (“The relevant public for a genericness determination is the purchasing or consuming public for the identified goods.”) (citing *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 19 USPQ2d 1551, 1553 (Fed. Cir. 1991)); *Stuart Spector Designs, Ltd. v. Fender Musical Instruments Corp.*, 94 USPQ2d 1549, 1555 (focusing on “whether the configurations are so common in the industry as to be generic”); *In re File*, 48 USPQ2d 1363, 1367 (TTAB 1998) (focusing on the “bowling industry” as a whole).

¹⁰ In any event, there is no evidence that INTELLIGENCE OF THINGS has any meaning other than the “IoT + AI” meaning revealed by the record.

Finally, and for the same reasons, the phrase need not be a “topic of nationwide awareness” in the sense that the public at large is aware of it or uses it often. Our concern, again, must lie with how the phrase is perceived by the relevant public, which consists of purchasers, potential purchasers and users of Applicant’s identified services. This is illustrated by *In re Bose Corp.*, 192 USPQ at 213 (affirming refusal to register SYNCOM), *In re DePorter*, 129 USPQ2d at 1298 (refusing to register #MAGICNUMBER108 which was Chicago Cubs rather than nationally-focused) and *In re Phoseon Technology*, 103 USPQ2d at 1822 (refusing to register SEMICONDUCTOR LIGHT MATRIX). None of these terms or phrases constituted a “topic of nationwide awareness,” yet they were refused registration because they failed to function as marks.

Turning to Applicant’s remaining arguments, even if Applicant coined or was the first to use the phrase INTELLIGENCE OF THINGS, that is not relevant to whether it functions as a service mark. *See In re DePorter*, 129 USPQ2d at 1303; *Cf. In re Mecca Grade Growers, LLC*, 125 USPQ2d 1950, 1959 (TTAB 2018) (in context of genericness refusal). And to the extent Applicant relies on third-party registrations to argue that its proposed mark should also be registered, the argument is not well taken. Indeed, “neither the Trademark Examining Attorney nor the Board is bound to approve for registration an Applicant’s mark based solely upon the registration of other assertedly similar marks for other goods or services having unique evidentiary records.” *In re Datapipe, Inc.*, 111 USPQ2d 1330, 1336 (TTAB 2014); *see also In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) (“The Board

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must decide each case on its own merit Even if some prior registrations had some characteristics similar to Nett Designs' application, the PTO's allowance of such prior registrations does not bind the Board or this court.”).

IV. Conclusion

Because it is merely informational in the context of Applicant's identified services, widely used by the relevant public in the relevant markets, and would not be perceived as an indicator of source, INTELLIGENCE OF THINGS fails to function as a service mark under Sections 1, 2, 3 and 45 of the Trademark Act. 15 U.S.C. §§ 1051-1053, 1127.

Decision: The refusals to register the phrase INTELLIGENCE OF THINGS because it does not function as a service mark are affirmed in both of the involved applications.