

This Opinion is not a  
Precedent of the TTAB

Mailed: October 14, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re Appian Corporation*  
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Serial No. 87890076  
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Christopher S. Geyer of Associate General Counsel, IP & Litigation  
for Appian Corporation.

Jenny Park, Trademark Examining Attorney, Law Office 104,  
Zachary Cromer, Managing Attorney.

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Before Wellington, Goodman and Hudis,  
Administrative Trademark Judges.

Opinion by Goodman, Administrative Trademark Judge:

Appian Corporation (“Applicant”) seeks registration on the Principal Register of  
the mark INTELLIGENT CONTACT CENTER (in standard characters) for

Computer software development tools; Computer software  
for application and database integration; Computer  
software for use in customer relationship management  
(CRM); Computer telephony software; Digital telephone  
platforms and software in International Class 9; and

Software design and development; Business technology  
software consultation services; Computer software  
consultancy; Computer software development;  
Customizing computer software; Design, development and

implementation of software; Maintenance of computer software in International Class 42.<sup>1</sup>

The Trademark Examining Attorney refused registration of Applicant's mark under Trademark Act Section 2(e) (1), 15 U.S.C. §1052(e) (1) on the basis that the mark is merely descriptive of the recited goods and services.

After the Trademark Examining Attorney made the refusal final, Applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. We affirm the refusal to register.

#### I. Mere Descriptiveness

Section 2(e) (1) of the Trademark Act prohibits the registration of a mark which, when used on or in connection with the goods or services of an applicant, is merely descriptive of them. A term is merely descriptive if it immediately conveys knowledge of a significant quality, characteristic, function, feature or purpose of the goods or services it identifies. *See, e.g., In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); *In re Gauley*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); *In re Abor Dev. Corp.*, 200 USPQ 215, 217-18 (CCPA 1978) (a term is merely descriptive if it describes the ingredients, qualities, characteristics, features, or parts of the goods or services, or if it immediately conveys

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<sup>1</sup> Application Serial No. 87890076 was filed on April 24, 2018, based upon Applicant's assertion of a *bona fide* intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

Page references to the application record refer to the online database pages of the USPTO's Trademark Status & Document Retrieval (TSDR) system. References to the briefs on appeal refer to the Board's TTABVUE docket system.

information regarding a function, purpose, use, or property of the goods or services). The question is whether someone who knows what the goods or services are will understand the mark to convey information about them. *Doorposts Ameritech Corp. v. Inver Med. Devices Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012).

When two or more merely descriptive terms are combined, the determination of whether the composite mark also has a merely descriptive significance turns on whether the combination of terms evokes a new and unique commercial impression. If each component retains its merely descriptive significance in relation to the goods or services, the combination results in a composite that is itself merely descriptive. *See e.g., In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370, (Fed. Cir. 2004) (PATENTS.COM merely descriptive of computer software for managing a database of records that could include patents, and for tracking the status of the records by means of the Internet); *In re Petroglyph Games, Inc.*, 91 USPQ2d 1332, 1341-42 (TTAB 2009) (BATTLECAM merely descriptive for computer game software); *In re Carlson*, 91 USPQ2d 1198, 1203 (TTAB 2009) (URBANHOUSING merely descriptive of real estate brokerage, real estate consultation and real estate listing services). In considering a mark as a whole, the Board may weigh the individual components of the mark to determine the overall impression or the descriptiveness of the mark and its various components. *In re Oppedahl & Larson*, 71 USPQ2d at 1372.

A. Evidence of Mere Descriptiveness

“[E]vidence [that a term is merely descriptive] may be obtained from any competent source, such as dictionaries, newspapers, or surveys.” *See In re Stereotaxis, Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005) (citations omitted). Internet evidence of third-party websites and an applicant’s website also may be offered as evidence of descriptiveness. *In re Promo Ink*, 78 USPQ2d 1301, 1303 (TTAB 2006).

The following evidence is of record:

Dictionary definitions for “intelligent”:

guided and controlled by a computer;<sup>2</sup>

able to learn and understand;<sup>3</sup>

(of a device, machine or building) able to vary its state or action in response to varying situations, varying requirements and past experience;<sup>4</sup>

(of a computer terminal) incorporating a microprocessors and having its own processing capability.<sup>5</sup>

The definition of “contact center”:

An integrated and usually automated communications system that coordinates all telephone and electronic contacts between an organization and the public.<sup>6</sup>

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<sup>2</sup> Merriam-Webster Dictionary, merriam-webster.com, September 16, 2019 Office Action at TSDR 40.

<sup>3</sup> Merriam-Webster Dictionary, merriam-webster.com, *Id.* at TSDR 43.

<sup>4</sup> Oxford Dictionary, oxforddictionaries.com, August 22, 2018 Office Action at TSDR 2.

<sup>5</sup> *Id.*

<sup>6</sup> Oxford Dictionary, oxforddictionaries.com, August 22, 2018 Office Action at TSDR 5; February 1, 2019 Response to Office Action at TSDR 27-28.

The definition of “call center”:

An office set up to handle a large volume of telephone calls, especially for taking orders and providing customer service.<sup>7</sup>

Third-party registrations used in the manner of a dictionary with respect to the term “intelligent.”<sup>8</sup>

Third-party website evidence explaining the difference between a “contact center” and “call center.”<sup>9</sup> Following are some excerpts:

A contact center is a business division within an organization that manages customer interactions. Unlike a call center which receives requests only by telephone, the contact center handles inbound and outbound customer communication over multiple channels such as telephone, web, chat, email, messaging apps, social media, text, fax, and traditional mail. Contact centers use various types of advanced technology to help resolve customer issues quickly, to track customer engagements, and to capture interaction and performance data. Contact centers are usually operated either by an internal department or outsourced to a third party provider.<sup>10</sup>

A contact center—also referred to as a customer interaction center or e-contact center—is a central point from which all customer contacts are managed. <sup>11</sup>

Contact centers and call centers are both centers for customer service, and the two terms are often used interchangeably, but a contact center supports more services than a typical call center. Contact centers offer omnichannel customer support, including email, chat, voice over IP

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<sup>7</sup> Oxford Dictionary, oxforddictionaries.com February 1, 2019 Response to Office Action at TSDR 32.

<sup>8</sup> September 16, 2019 Office Action at TSDR 8-39.

<sup>9</sup> February 1, 2019 Response to Office Action at TSDR 14-28; 37-67. The URL on Applicant’s website evidence was cut-off and in some cases not legible and missing the date accessed. However, since the Examining Attorney did not object, we have considered this evidence. *In re Mueller Sports Medicine, Inc.*, 126 USPQ2d 1584, 1586-87 (TTAB 2018).

<sup>10</sup> *Id.* at 37.

<sup>11</sup> *Id.* at 41.

(VoIP) and website support. A call center typically uses phones as the main channel of communication and can handle a mass volume of calls.<sup>12</sup>

Contact centers are used for inbound communication, outbound communication or a hybrid of both. Contact center agents also interact with customers via webchat, phone, email or other communication channels.<sup>13</sup>

Applicant responded as follows to the Examining Attorney's Information

Requests:

Who are the users of the applicant's software?

Users of the software are mainly employees in organizations that have a contact center including "agents and managers," as well as "administrators."<sup>14</sup>

What is the main purpose or function of the applicant's software?

The main purpose of Applicant's "Intelligent Contact Center" is to enable forward-thinking customer-oriented companies to meet the needs of customers who engage the organization through multiple communications channels. Thus the Intelligent Contact Center enables companies to meet the expectations of customers who "want their service experiences" with each communication channel in the contact center "to be personalized" and "effortless," with the result that "their inquiries [are] resolved quickly with a single touchpoint."<sup>15</sup>

Are the Applicant's software goods used at contact centers?

Assuming the examiner uses "contact center" to refer to a physical facility that handles customer service yes. Applicant's Intelligent Contact Center software "powers contact centers at the world's leading organizations." ... And to the extent the term "contact center" is used to refer to a department within an organization, Applicant's software and goods are used within that department.<sup>16</sup>

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<sup>12</sup> *Id.* at 42.

<sup>13</sup> *Id.* at 42.

<sup>14</sup> August 22, 2019 Response to Office Action at TSDR 7.

<sup>15</sup> *Id.* at 8.

<sup>16</sup> *Id.*

Are the applicant's software goods and services used to automate contact centers?

As a general matter, the covered goods and services are not used to automate contact center functions, but rather to aid contact center agents in the course of their provision of services to customers during their communications with the contact center. ...<sup>17</sup>

Applicant's low-code platform as a service, which provides the technological underpinning for the covered goods and services, does integrate with robotics process automation technologies that automate general, repetitive business functions. This automation functionality is made available through the "Integrated Contact Center™" software platform though the functionality is not intended to be utilized to replace human agents but to free them from low-value tasks...<sup>18</sup>

"Explanation [by Applicant] of additional factual information regarding Applicant's Goods and Services":

Applicant "seeks to register the mark INTELLIGENT CONTACT CENTER in regards to software and services for use *in* a contact center. ..." (emphasis in original)<sup>19</sup> Applicant sells and implements a software platform for use in a contact center but does not sell the contact center itself.<sup>20</sup>

[A] number of documents developed by Applicant independent of this response ... draw a sharp distinction between the Applicant's "CONTACT CENTER" software platform and a physical/departmental contact center, by expressly stating the software platform is used in a contact center. ...<sup>21</sup>

Intelligent Contact Center does not refer to a physical facility, but to a computer software platform .... That platform includes base functionality, such as case management, but can also be extended by

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<sup>17</sup> *Id.* at 9.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 3.

<sup>20</sup> *Id.* at 4.

<sup>21</sup> *Id.*

allowing customers to build software applications that are used in a contact center.<sup>22</sup>

Copies of Applicant's literature/website were submitted by Applicant and the Examining Attorney<sup>23</sup>:

Realize the power of the Appian Intelligent Contact Center™ to transform your operations and build a next generation contact center.<sup>24</sup>

Transform your contact center with the speed and impact of Appian.<sup>25</sup>

Applicant's software "powers contact centers at many of the world's leading organizations."<sup>26</sup>

The Appian Intelligent Contact Center™ makes it easy for organizations to build next generation contact center applications that accelerate customer experience, increase agent efficiency and deliver business impact.<sup>27</sup>

Forward thinking leaders are leveraging technology to transform their operations into Intelligent Contact Centers. ... Read the full whitepaper for insight into how organizations are building next generation contact center applications.<sup>28</sup>

Transform your contact center with an innovative platform that enables you to quickly deliver an integrated customer experience across channels and customer touchpoints.<sup>29</sup>

**BUILD A NEXT GENERATION CONTACT CENTER WITH THE POWER OF INTELLIGENT AUTOMATION.**<sup>30</sup>

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<sup>22</sup> *Id.* at 6.

<sup>23</sup> August 22, 2018 Office Action at TSDR 8-11; August 22, 2019 Response to Office Action at TSDR 12-42.

<sup>24</sup> August 22, 2019 Response to Office Action at TSDR at 17.

<sup>25</sup> *Id.* at 13.

<sup>26</sup> *Id.* at 12.

<sup>27</sup> *Id.* at 26.

<sup>28</sup> *Id.* at 35.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 16.



The Appian Intelligent Contact Center™ makes it easy for organizations to build next generation contact center applications that improve customer engagement, increase agent efficiency and deliver strategic business impact. Intelligent automation with RPA, AI and BPM enables greater agent efficiency.<sup>31</sup>

Applicant’s software offers “Intelligent Agent and Manager Desktops” “Intelligent Automation” “AI solutions” “AI-assisted Next Best Action suggestions to support agents” and “Robotic Process Automation.”<sup>32</sup>

#### Intelligent Automation

Automate work and orchestrate processes, integrate systems, and apply business rules with Business Process Management (BPM), Robotic Process Automation (RPA) and Artificial Intelligence (AI). Agents are supported by robotics and coached by artificial intelligence, allowing them to focus on advising customers, delivering personalized offers, and pursuing upsell opportunities.<sup>33</sup>

Artificial intelligence includes chatbots, virtual assistants, predictive personalization, voice sentiment analysis and other AI-infused approaches in their service strategy to improve customer experience ...<sup>34</sup>

#### B. Arguments

Applicant argues that INTELLIGENT CONTACT CENTER is suggestive and not descriptive of its goods and services and that its use of “contact center” would not immediately convey to the average purchaser knowledge of some quality, feature, function, or characteristic of Applicant’s goods and services.<sup>35</sup> Applicant submits that the Examining Attorney’s “unstated assumption is that Applicant uses the name of a

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 13.

<sup>33</sup> *Id.* at 17.

<sup>34</sup> *Id.* at 19.

<sup>35</sup> Applicant’s brief, 4 TTABVUE 17, 20.

department (i.e., a contact center) to refer to the users of software used in that department.”<sup>36</sup> Applicant argues that the Examining Attorney’s evidence does not show that “contact center” refers to users or employees of a contact center or that the contact center agents are purchasers of department-wide software or Applicant’s software platform.<sup>37</sup>

Applicant contends that it “sells a software platform, not a physical location or a customer service department.”<sup>38</sup> Applicant points to its own evidence that shows a “‘contact center’ refers to ‘a physical location out of which customer service operations are handled or an organizational business unit that is responsible for handling customer service operations’” and asserts that this “concept [of a contact center] [] is much broader than, and not equivalent to, the users/employees within that business unit.”<sup>39</sup> Applicant also argues that the cases cited by the Examining Attorney, *In re Planalytics, Inc.*, 70 USPQ 2d 1453 (TTAB 2004) and *In re Camel Manufacturing Co.*, 222 USPQ 1031 (TTAB 1984), that found terms that describe intended users are merely descriptive, does not support the Examining Attorney’s position because “contact center” does not refer to end users but an organizational unit.<sup>40</sup>

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<sup>36</sup> *Id.* at 7.

<sup>37</sup> *Id.* at 5, 17.

<sup>38</sup> *Id.* at 17.

<sup>39</sup> *Id.* at 5, 7.

<sup>40</sup> *Id.* at 10. While the Examining Attorney may have made different arguments and cited to different cases in support of the refusal, (i.e., the term contact center identifies the user of the goods and services) the basis for the refusal did not change. The Examining Attorney, as well as the Applicant, is entitled to raise new arguments and/or additional case citations that pertain to the ground for a refusal. *In re Eagle Crest, Inc.* 96 USPQ2d 1227, 1229 (TTAB 2010). Additionally, the Board need not find that the Examining Attorney’s rationale was

To support its position that INTELLIGENT CONTACT CENTER is suggestive, Applicant references its prior responses that explained how and where its software is used and how the software platform makes the contact center intelligent:

Applicant's software platform [provides] —a fundamentally different, superior, transformed version of the customer's contact center. This type of contact center is 'intelligent' in two ways. First, contact center agents are guided by artificial intelligence, which assists in providing coaching that enables them to "provid[e] 'real-time recommendations'" and freeing them "to 'focus on advising customers, delivering personalized offers, and pursuing upsell opportunities.'" (referencing August 22, 2019 Office Action Response at 8).<sup>41</sup>

By relying on the intelligence provided by Applicant's software, contact centers are able to 'accelerate customer experience, increase agent efficiency, and deliver business impact.' (referencing August 22, 2019 Office Action Response at 3-4.)<sup>42</sup>

"Thus, use of Applicant's software results in a contact center that relies on artificial intelligence to deliver personalized results, increase agent efficiency and produce greater business impact."<sup>43</sup>

The Examining Attorney argues that the proposed mark is merely descriptive because INTELLIGENT CONTACT CENTER conveys an immediate idea of an important feature, purpose or use of Applicant's goods and services.<sup>44</sup> The Examining Attorney submits that INTELLIGENT CONTACT CENTER "immediately conveys that it is used by contact centers for the purpose of providing integrated contact centers that have computer guided or intelligent automations" when used in

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correct in order to affirm the refusal to register, but rather may rely on a different rationale. *Id.*

<sup>41</sup> *Id.* at 19.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 19, 20.

<sup>44</sup> Examining Attorney's brief, 6 TTABVUE 3.

connection with the goods and services.<sup>45</sup> In addition to the evidence in the record, the Examining Attorney points to “Applicant’s own explanation of the nature of its goods and services” as supportive of her position that INTELLIGENT CONTACT CENTER is merely descriptive.<sup>46</sup>

As to Applicant’s arguments regarding the meaning of “contact center,” the Examining Attorney agrees that “contact center” refers to a physical location or an organizational unit. However, the Examining Attorney submits that this definition is still applicable and supports a descriptiveness finding, pointing out that “Applicant has clearly stated for the record that ‘Applicant sells and implements a software platform for use in a contact center.’”<sup>47</sup> The Examining Attorney also argues that there is no need to establish that employees within a contact center are the intended users since Applicant has admitted on the record and on its website that “that the goods and services are intended for use by and in ‘contact centers’ responsible for conducting customer service operations.”<sup>48</sup>

The Examining Attorney contends that consumers “would immediately understand that the proposed mark ‘INTELLIGENT CONTACT CENTER’ refers to the fact that Applicant’s software platform is used by contact centers for the purpose

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<sup>45</sup> *Id.* at 3, 5.

<sup>46</sup> *Id.* at 6.

<sup>47</sup> *Id.* at 7.

<sup>48</sup> *Id.* at 8.

of providing integrated contact centers that have computer guided or intelligent automation” when used in connection with Applicant’s goods and services.<sup>49</sup>

### C. Analysis

Based on the evidence of record, we find that the proposed mark INTELLIGENT CONTACT CENTER is merely descriptive of Applicant’s goods and services. The terms “intelligent” and “contact center” individually have descriptive meanings when used in connection with these goods and services; together, the term “intelligent contact center” retains this descriptive meaning.

The definitions of “intelligent” include “guided and controlled by a computer” and “[being] able to learn and understand.”<sup>50</sup> Applicant’s software offers intelligent automation through artificial intelligence (AI),<sup>51</sup> robotic process automation (RPA) and business process management (BPM).<sup>52</sup> This software platform assists contact center agents by using robotics and artificial intelligence to free up agents from more mundane tasks.<sup>53</sup> It provides contact center agents with “AI-assisted Next Best Action suggestions to support agents” and artificial intelligence solutions,<sup>54</sup> guiding

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<sup>49</sup> *Id.* at 9.

<sup>50</sup> Merriam-Webster Dictionary, merriam-webster.com, September 16, 2019 Office Action at TSDR 40, 43.

<sup>51</sup> Artificial intelligence is defined as 1: a branch of computer science dealing with the simulation of intelligent behavior in computers and 2: the capability of a machine to imitate intelligent human behavior. Merriam-Webster Dictionary, merriam-webster.com (accessed October 8, 2020). We take judicial notice of the dictionary definition. The Board may take judicial notice of dictionary definitions in online dictionaries that exist in printed format. *In re S. Malhotra & Co. AG*, 128 USPQ2d 1100, 1104 n.9 (TTAB 2018).

<sup>52</sup> August 22, 2019 Response to Office Action at TSDR 13, 17.

<sup>53</sup> *Id.* at 17.

<sup>54</sup> *Id.* at 13.

contact center agents by providing coaching that enables them to provide real-time recommendations.

As to Applicant's services that implement its software platform as well as provide design, customization, development, and maintenance services, "intelligent" describes services that implement and design software that incorporates intelligent automation and artificial intelligence solutions for businesses. The third-party registration evidence supports the conclusion that "intelligent" is descriptive of software goods and services such as those offered by Applicant.<sup>55</sup>

"Contact center" "is defined as a business division within an organization that manages customer interactions. ... [and] handles inbound and outbound customer communication over multiple channels such as telephone, web, chat, email, messaging apps, social media, text, fax, and traditional mail."<sup>56</sup> It can also be a physical location, "a central point from which all customer contacts are managed."<sup>57</sup> Applicant explains that it "sells and implements a software platform for use in a contact center."<sup>58</sup> Therefore, "contact center" describes a feature of Applicant's goods and services.

The individually merely descriptive terms, "intelligent" and "contact center" retain their descriptive character when combined in Applicants proposed mark, creating a composite that is merely descriptive. When used in connection with

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<sup>55</sup> September 16, 2019 Office Action at TSDR 8-39.

<sup>56</sup> February 1, 2019 Response to Office Action at TSDR 37.

<sup>57</sup> *Id.* at 41.

<sup>58</sup> August 22, 2019 Response to Office Action at TSDR 4.

Applicant's goods and services, INTELLIGENT CONTACT CENTER merely describes to consumers that the goods and services employ artificial intelligence and intelligent automation and are used in a contact center. The combination of the two individual terms does not evoke a new and unique commercial impression apart from their descriptive meaning. Applicant's proposed mark, as a whole, is therefore merely descriptive of the features and purposes of Applicant's goods and services.

## II. Conclusion

We conclude that INTELLIGENT CONTACT CENTER is merely descriptive of Applicant's goods and services.

**Decision:** The Section 2(e)(1) refusal to register INTELLIGENT CONTACT CENTER is affirmed.