

ESTTA Tracking number: **ESTTA924089**

Filing date: **09/24/2018**

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

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	Trimble Inc.
Granted to Date of previous extension	09/23/2018
Address	935 Stewart Drive Sunnyvale, CA 94085 UNITED STATES

Attorney information	Margaret C. McHugh KILPATRICK TOWNSEND & STOCKTON LLP Two Embarcadero Center, Suite 1900 San Francisco, CA 94111 UNITED STATES TMadmin@kilpatricktownsend.com, MMcHugh@kilpatricktownsend.com, AMartinez@kilpatricktownsend.com, VCordial@kilpatricktownsend.com (415) 576-0200
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**Applicant Information**

Application No	87675502	Publication date	03/27/2018
Opposition Filing Date	09/24/2018	Opposition Period Ends	09/23/2018
Applicant	epaCUBE, Inc. Suite 600 201 Main Street Fort Worth, TX 76102 UNITED STATES		


**Goods/Services Affected by Opposition**

Class 035. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Business consultation in the nature of providing pricing and product managementsolutions for the food and grocery industry
Class 042. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Software as a Service (SaaS) services featuring software for use in pricing andproduct management

**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act Section 2(d)
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**Mark Cited by Opposer as Basis for Opposition**

U.S. Registration No.	4272052	Application Date	05/22/2012
Registration Date	01/08/2013	Foreign Priority Date	NONE
Word Mark	KNOW WHAT'S IN STORE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 042. First use: First Use: 2012/04/30 First Use In Commerce: 2012/04/30  Software as a service services (SAAS) featuring software in the nature of an integrated platform accessed via the internet or mobile telephone for the purpose of collection, assessment, and analysis of data related to the quality of fresh produce; software as a service services (SAAS) featuring software in the nature of an integrated platform accessed via the internet or mobile telephone for the purpose of measuring, rating, quantifying, and benchmarking the quality of fresh produce in retail store outlets; cloud computing featuring software for use in quality assessment, namely, software for collection, assessment, and analysis of data related to the quality of fresh produce in retail store outlets; cloud computing featuring software for measuring, rating, quantifying, and benchmarking the quality of fresh produce in retail store outlets</p>		

Attachments	85632006#TMSN.png( bytes ) Notice of Opposition re WE KNOW WHATS IN STORE Serial No. 87675502.pdf(257158 bytes )
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Signature	/Margaret C. McHugh/
Name	Margaret C. McHugh
Date	09/24/2018

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

*In re* Application Serial No. 87/675,502  
Filed: November 7, 2017  
Published: March 27, 2018 in the *Official Gazette*  
For: **WE KNOW WHAT'S IN STORE**

TRIMBLE INC.,

Opposer,

vs.

EPACUBE, INC.,

Applicant.

Opposition No. \_\_\_\_\_

**NOTICE OF OPPOSITION**

**UNITED STATES PATENT AND TRADEMARK OFFICE**

Trademark Trial and Appeal Board

P.O. Box 1451

Alexandria, Virginia 22313-1451

TRIMBLE INC. (“Opposer”), a corporation organized and existing under the laws of California with a principal place of business at 935 Stewart Drive, Sunnyvale, California 94085, believes it will be damaged by the application for registration in International Classes 35 and 42 of the mark **WE KNOW WHAT'S IN STORE** shown in Application Serial No. 87/675,502, (“the Application”), filed by epaCUBE, Inc. (“Applicant”), a corporation whose address is 201 Main Street, Suite 600, Fort Worth, TX 76102, and published in the Official Gazette on March 27, 2018, and hereby opposes registration thereof.

As grounds for opposition, Opposer alleges as follows, with knowledge concerning its own acts, and on information and belief as to all other matters:

1. By this application, Applicant is seeking to obtain, under the provision of the Trademark Act of 1946, as amended, registration upon the Principal Register of the **WE KNOW**

**WHAT'S IN STORE** mark for “business consultation in the nature of providing pricing and product management solutions for the food and grocery industry” in International Class 35 and “Software as a Service (SaaS) services featuring software for use in pricing and product management” in International Class 42 (“Applicant’s Mark”).

2. For more than 40 years, Opposer’s HarvestMark division has been a provider of food traceability and quality inspection solutions, and a market leader in delivering information that provides insights into the fresh food supply chain. Beginning with the provision of information about the freshness of food and traceability solutions, today, Opposer’s product offerings include sophisticated platforms and tools that make food data collection solutions efficient, allow complex information to be simply analyzed and reviewed, and provide insights for food producers, distributors and retailers, *inter alia*, to secure their food supply, optimize product freshness and quality, and increase revenue and profitability. (“Opposer’s Services”). In connection with these offerings, Opposer has used the **KNOW WHAT’S IN STORE** mark as a source identifier for Opposer’s Services.

3. Since at least as early as 2012, Opposer (and its predecessor-in-interest) has continually and exclusively used in interstate commerce the mark **KNOW WHAT’S IN STORE** in relation to these services, including but not limited to use in connection with software as a service and cloud computing services offered through an integrated platform used in collecting, assessing and analyzing data for the fresh food supply chain, and related consulting services. The mark is inherently distinctive for Opposer’s services, and, through substantial use, has acquired additional strength and recognition as a trademark used exclusively by Opposer to identify and distinguish Opposer’s Services.

4. As a result of its continuous use and exclusive use of this mark as a source identifier, Opposer owns enforceable common law rights to **KNOWN WHAT'S IN STORE** for Opposer's Services, and related goods and services.

5. Opposer also owns the following active and subsisting U.S. trademark registration:

<u>Mark</u>	<u>Filing Date</u>	<u>First Use</u>	<u>Registration No.</u>	<u>Goods/Services</u>
<b>KNOWN WHAT'S IN STORE</b>	05/22/2012	04/30/2012	4,272,052	IC 42: Software as a service services (SAAS) featuring software in the nature of an integrated platform accessed via the internet or mobile telephone for the purpose of collection, assessment, and analysis of data related to the quality of fresh produce; software as a service services (SAAS) featuring software in the nature of an integrated platform accessed via the internet or mobile telephone for the purpose of measuring, rating, quantifying, and benchmarking the quality of fresh produce in retail store outlets; cloud computing featuring software for use in quality assessment, namely, software for collection, assessment, and analysis of data related to the quality of fresh produce in retail store outlets; cloud computing featuring software for measuring, rating, quantifying, and benchmarking the quality of fresh produce in retail store outlets

A copy of the Certificate of Registration, and the TSDR Record showing the current status of the foregoing, is attached hereto as Exhibit A.

6. The above trademark registration has attained incontestable status.

7. Due to Opposer's six years of continuous use, substantial sales and Opposer's

investment of time and resources, as well as the quality of Opposer's services, the **KNOW WHAT'S IN STORE** mark enjoys extremely valuable good will. The **KNOW WHAT'S IN STORE** mark is recognized by consumers as a source identifier for Opposer's Services.

8. The Application, opposed herein, was filed on November 7, 2017 on an intent-to-use basis, well after Opposer had commenced use of and registered its **KNOW WHAT'S IN STORE** mark.

9. Opposer has priority of use to the **KNOW WHAT'S IN STORE** mark over Applicant and is the senior user of the **KNOW WHAT'S IN STORE** mark in connection with its services.

10. The services identified in the Application, namely, "Software as a Service (SaaS) services featuring software for use in pricing and product management" and "business consultation in the nature of providing pricing and product management solutions for the food and grocery industry" are closely related services to the services with which Opposer uses the **KNOW WHAT'S IN STORE** mark, as product management solutions commonly overlap with product quality assessments within the grocery industry. Further, Opposer's Services offered under its mark include product management solutions, as well as pricing, and other data analytics to increase profitability.

11. On information and belief, Applicant's services and the services for which Opposer uses its **KNOW WHAT'S IN STORE** mark may be offered, at least in part, to the same, substantially the same, or related classes of purchasers and distributed through the same channels of trade. The "food and grocery industry" identified in the specification in the Application is directly overlapping with the industry to which Opposer offers and sells Opposer's Services.

12. Applicant's Mark is essentially identical to Opposer's **KNOW WHAT'S IN STORE** mark, as it encompasses Opposer's mark in full.

13. Opposer has not authorized Applicant's Mark, and Opposer is not associated with Applicant in any way.

14. Because Applicant's Mark and Opposer's Mark are similar, are used or intended to be used for closely related services, and Applicant offers or intends to offer its services to purchasers or prospective purchasers of Opposer's services, the public is likely to believe that Applicant's services originate from Opposer, or that Applicant's services are in some way associated with or sponsored by Opposer, resulting in a likelihood of confusion, mistake or deception in the trade and among purchasers as to the source, origin or sponsorship of the parties' respective services.

15. Use and registration of Applicant's Mark for Applicant's services, as described above, will result in damage and detriment to Opposer, its reputation, and the substantial goodwill that it has built in the **KNOW WHAT'S IN STORE** mark.

16. Pursuant to the allegations stated above, registration of Applicant's Mark shown in the opposed application will result in damage to Opposer under the provisions of § 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

**WHEREFORE**, Opposer prays that this Opposition be sustained and that registration of U.S. Trademark Application Serial No. 87/675,502 be denied.

Please charge any necessary fee regarding this Notice of Opposition to the Deposit Account of Kilpatrick Townsend & Stockton LLP, 20-1430, and credit any overpayment to such deposit account.

Please direct all notices, pleadings and process regarding this matter to:

Margaret C. McHugh  
Alexandra N. Martinez  
Kilpatrick Townsend and Stockton, LLP  
Two Embarcadero Center, Suite 1900  
San Francisco, CA 94111-3834  
Telephone: (415) 576-0200  
Facsimile: (415) 576-0300  
Email: [tmadmin@kilpatricktownsend.com](mailto:tmadmin@kilpatricktownsend.com), [mmchugh@kilpatricktownsend.com](mailto:mmchugh@kilpatricktownsend.com),  
[amartinez@kilpatricktownsend.com](mailto:amartinez@kilpatricktownsend.com)

Respectfully submitted,

KILPATRICK TOWNSEND & STOCKTON LLP

Dated: September 24, 2018

By: /Alexandra N. Martinez/  
Margaret C. McHugh  
Alexandra N. Martinez  
*Attorneys for Opposer*



**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing **Notice of Opposition** has been served by email on September 24, 2018 upon Applicant at the following address of record:

dodom@winstead.com  
tmdocket@winstead.com

/Vivian Cordial/  
Vivian Cordial

# **EXHIBIT A**

# United States of America

United States Patent and Trademark Office

## KNOW WHAT'S IN STORE

**Reg. No. 4,272,052**

**Registered Jan. 8, 2013**

**Int. Cl.: 42**

**SERVICE MARK**

**PRINCIPAL REGISTER**

YOTTAMARK, INC. (DELAWARE CORPORATION)  
SUITE 101  
1400 BRIDGE PARKWAY  
REDWOOD CITY, CA 94065

FOR: SOFTWARE AS A SERVICE SERVICES (SAAS) FEATURING SOFTWARE IN THE NATURE OF AN INTEGRATED PLATFORM ACCESSED VIA THE INTERNET OR MOBILE TELEPHONE FOR THE PURPOSE OF COLLECTION, ASSESSMENT, AND ANALYSIS OF DATA RELATED TO THE QUALITY OF FRESH PRODUCE; SOFTWARE AS A SERVICE SERVICES (SAAS) FEATURING SOFTWARE IN THE NATURE OF AN INTEGRATED PLATFORM ACCESSED VIA THE INTERNET OR MOBILE TELEPHONE FOR THE PURPOSE OF MEASURING, RATING, QUANTIFYING, AND BENCHMARKING THE QUALITY OF FRESH PRODUCE IN RETAIL STORE OUTLETS; CLOUD COMPUTING FEATURING SOFTWARE FOR USE IN QUALITY ASSESSMENT, NAMELY, SOFTWARE FOR COLLECTION, ASSESSMENT, AND ANALYSIS OF DATA RELATED TO THE QUALITY OF FRESH PRODUCE IN RETAIL STORE OUTLETS; CLOUD COMPUTING FEATURING SOFTWARE FOR MEASURING, RATING, QUANTIFYING, AND BENCHMARKING THE QUALITY OF FRESH PRODUCE IN RETAIL STORE OUTLETS, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 4-30-2012; IN COMMERCE 4-30-2012.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 85-632,006, FILED 5-22-2012.

JOHN GARTNER, EXAMINING ATTORNEY



*David J. Kyffers*

Director of the United States Patent and Trademark Office

Generated on: This page was generated by TSDR on 2018-09-24 17:37:21 EDT

Mark: KNOW WHAT'S IN STORE

KNOW WHAT'S IN STORE

US Serial Number: 85632006

Application Filing Date: May 22, 2012

US Registration Number: 4272052

Registration Date: Jan. 08, 2013

Register: Principal

Mark Type: Service Mark

Status: A Sections 8 and 15 combined declaration has been accepted and acknowledged.

Status Date: Apr. 28, 2018

Publication Date: Oct. 23, 2012

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## Mark Information

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Mark Literal Elements: KNOW WHAT'S IN STORE

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

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## Goods and Services

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Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks \*.\* identify additional (new) wording in the goods/services.

**For:** Software as a service services (SAAS) featuring software in the nature of an integrated platform accessed via the internet or mobile telephone for the purpose of collection, assessment, and analysis of data related to the quality of fresh produce; software as a service services (SAAS) featuring software in the nature of an integrated platform accessed via the internet or mobile telephone for the purpose of measuring, rating, quantifying, and benchmarking the quality of fresh produce in retail store outlets; cloud computing featuring software for use in quality assessment, namely, software for collection, assessment, and analysis of data related to the quality of fresh produce in retail store outlets; cloud computing featuring software for measuring, rating, quantifying, and benchmarking the quality of fresh produce in retail store outlets

International Class(es): 042 - Primary Class

U.S Class(es): 100, 101

Class Status: ACTIVE

Basis: 1(a)

First Use: Apr. 30, 2012

Use in Commerce: Apr. 30, 2012

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## Basis Information (Case Level)

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Filed Use: Yes

Currently Use: Yes

Amended Use: No

Filed ITU: No

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

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## Current Owner(s) Information

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Owner Name: TRIMBLE INC.

**Owner Address:** 935 STEWART DRIVE  
SUNNYVALE, CALIFORNIA 94085  
UNITED STATES

**Legal Entity Type:** CORPORATION

**State or Country** DELAWARE  
**Where Organized:**

## Attorney/Correspondence Information

### Attorney of Record

**Attorney Name:** Margaret C. McHugh  
**Attorney Primary Email Address:** [mmchugh@kilpatricktownsend.com](mailto:mmchugh@kilpatricktownsend.com)  
**Docket Number:** 92800-949140  
**Attorney Email Authorized:** Yes

### Correspondent

**Correspondent Name/Address:** Margaret C. McHugh  
KILPATRICK TOWNSEND & STOCKTON LLP  
1100 Peachtree Street, Suite 2800  
Mailstop: IP Docketing - 22  
Atlanta, GEORGIA 30309  
UNITED STATES  
**Phone:** (415) 576-0200  
**Fax:** (415) 576-0300  
**Correspondent e-mail:** [mmchugh@kilpatricktownsend.com](mailto:mmchugh@kilpatricktownsend.com) [tmadmin@kilpatricktownsend.com](mailto:tmadmin@kilpatricktownsend.com)  
**Correspondent e-mail Authorized:** Yes

### Domestic Representative - Not Found

## Prosecution History

Date	Description	Proceeding Number
Apr. 28, 2018	NOTICE OF ACCEPTANCE OF SEC. 8 & 15 - E-MAILED	
Apr. 28, 2018	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	76293
Apr. 28, 2018	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	76293
Apr. 17, 2018	TEAS SECTION 8 & 15 RECEIVED	
Jan. 08, 2018	COURTESY REMINDER - SEC. 8 (6-YR) E-MAILED	
Dec. 02, 2016	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Nov. 30, 2016	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Jul. 23, 2015	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Jul. 23, 2015	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Jul. 01, 2015	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Aug. 19, 2014	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Jan. 08, 2013	REGISTERED-PRINCIPAL REGISTER	
Oct. 23, 2012	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Oct. 23, 2012	PUBLISHED FOR OPPOSITION	
Oct. 03, 2012	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Sep. 12, 2012	APPROVED FOR PUB - PRINCIPAL REGISTER	
Sep. 12, 2012	ASSIGNED TO EXAMINER	77769
May 30, 2012	NOTICE OF PSEUDO MARK MAILED	
May 29, 2012	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
May 25, 2012	NEW APPLICATION ENTERED IN TRAM	

## Maintenance Filings or Post Registration Information

**Affidavit of Continued Use:** Section 8 - Accepted

**Affidavit of Incontestability:** Section 15 - Accepted

## TM Staff and Location Information

**TM Staff Information - None**  
**File Location**

# Assignment Abstract Of Title Information

## Summary

Total Assignments: 2

Registrant: YottaMark, Inc.

### Assignment 1 of 2

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: [5560/0320](#)

Pages: 10

Date Recorded: Jun. 24, 2015

Supporting Documents: [assignment-tm-5560-0320.pdf](#)

#### Assignor

Name: [YOTTAMARK, INC.](#)

Execution Date: Apr. 17, 2015

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

#### Assignee

Name: [TRIMBLE NAVIGATION LIMITED](#)

Legal Entity Type: CORPORATION

State or Country Where Organized: CALIFORNIA

Address: 935 STEWART DRIVE  
SUNNYVALE, CALIFORNIA 94085

#### Correspondent

Correspondent Name: MARGARET C. MCHUGH

Correspondent Address: KILPATRICK TOWNSEND & STOCKTON LLP  
TWO EMBARCADERO CENTER, 8TH FLOOR  
SAN FRANCISCO, CA 94111-3833

#### Domestic Representative - Not Found

### Assignment 2 of 2

Conveyance: MERGER EFFECTIVE 10/01/2016

Reel/Frame: [5927/0405](#)

Pages: 9

Date Recorded: Nov. 22, 2016

Supporting Documents: [assignment-tm-5927-0405.pdf](#)

#### Assignor

Name: [TRIMBLE NAVIGATION LIMITED](#)

Execution Date: Sep. 30, 2016

Legal Entity Type: CORPORATION

State or Country Where Organized: CALIFORNIA

#### Assignee

Name: [TRIMBLE INC.](#)

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Address: 935 STEWART DRIVE  
SUNNYVALE, CALIFORNIA 94085

#### Correspondent

Correspondent Name: MARGARET C. MCHUGH

Correspondent Address: KILPATRICK TOWNSEND & STOCKTON LLP  
TWO EMBARCADERO CENTER, SUITE 1900  
SAN FRANCISCO, CA 94111

#### Domestic Representative - Not Found