**O/0107/26**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO. UK00003824626**

**BY MCG HOLDING B.V. TO REGISTER THE FOLLOWING TRADE MARK:**


**IN CLASSES 9, 35, 38 AND 42**

**AND**

**IN THE MATTER OF OPPOSITION THERETO UNDER NO. 439346**

**BY TUNSTALL INTEGRATED HEALTH & CARE LIMITED**

## Background and Pleadings

1. On 30 August 2022, MCG Holding B.V. ('the Applicant') filed an application to register the trade mark shown on the cover of this decision ('the Contested Mark'). The application was published for opposition purposes in the Trade Marks Journal on 25 November 2022. Registration is sought in respect of the following goods and services (where those opposed are marked in underline):

| |
|---|
| *Class 9:*<br>*Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; Apparatus for recording, transmission or reproduction of sound or images; Data-processing equipment and computers; Computer peripheral devices; Computer programs for accessing databases and portals; Computer software, software packages, Computer software applications, downloadable, Mobile applications and web applications; Application software; computer software, software packages, downloadable computer software applications, mobile applications, web applications and application software in relation to communications, group communications, wireless broadband communications, telecommunications and bodycam technology, and related control room solutions; Applied software for businesses; Communication and networking software; VoIP software; Office and business applications; System and system support software, and firmware; Web application and server software; Communication apparatus; Telecommunications apparatus; Point-to-point communications equipment; Telecommunications networks; Parts for the aforesaid goods, included in this class; not including remote monitoring and emergency telecare alarms for use in the home by the disabled or elderly to enable them to receive care and live independently.* |
| Class 35:<br>*Advertising; Promotional activities and sales promotion; Public relations services; Business management; Business administration; Office functions; Marketing;* |

*Market canvassing, market research and market analysis; Business organisation management and business economics consultancy; Business data analysis services and Analysis of business statistics; Business intermediary services in the purchase and sale, import and export, And wholesaling services and retailing services in relation to the following goods: Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments, Apparatus and instruments for the conduction, distribution, conversion, storage, regulation and control of electric current, Parts for the aforesaid goods; Business intermediary services in the purchase and sale, import and export, And wholesaling services and retailing services in relation to the following goods: Apparatus for recording, transmission or reproduction of sound or images, Data processing equipment and computers, Computer peripherals, Computer programs for accessing databases and portals, Computer software, software packages, Computer software feature application, Mobile applications and web applications, Parts for the aforesaid goods; Business intermediary services in the purchase and sale, import and export, And wholesaling services and retailing services in relation to the following goods: software applications, Applied software for businesses, Communication and networking software, VoIP software, Office and business application software, System software and system support software, And firmware, Parts for the aforesaid goods; Business intermediary services in the purchase and sale, import and export, And wholesaling services and retailing services in relation to the following goods: web application and server software, Communication devices, Telecommunication apparatus, Device-to-device communication apparatus, telecommunication networks, Parts for the aforesaid goods; Business intermediary services in the purchase and sale, import and export, And wholesaling services and retailing services in relation to the following goods: Communications technology equipment and information technology equipment; retail services and wholesale services connected with the sale of scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments, apparatus and instruments for the conduction, distribution, conversion, storage, regulation and control of electric current, apparatus for recording, transmission or reproduction of*

*sound or images, data processing equipment and computers, computer peripherals, computer programs for accessing databases and portals, computer software, software packages, computer software feature application, mobile applications and web applications, software applications, applied software for businesses, communication and networking software, VoIP software, office and business application software, system software and system support software, firmware, web application and server software, communication devices, telecommunication apparatus, device-to-device communication apparatus, telecommunication networks, communications technology equipment, information technology equipment, and parts for the aforesaid goods; Business project management; Making available, seconding and deploying personnel, including IT and ICT specialists; Organisation of events for commercial and advertising purposes; Consultancy and information regarding the aforesaid services; The aforesaid services also provided via electronic networks, such as the Internet; none of the aforesaid including retail services and wholesale services connected with the sale of remote monitoring and emergency telecare alarms for use in the home by the disabled or elderly to enable them to receive care and live independently.*

Class 38:

*Telecommunication services; Transfer, distribution, transmission and sending of data, images and sound; Providing access to and making available of electronic communication networks, including wireless, websites, portals, electronic databases and online communication facilities; Electronic data transfer; Telephone and mobile telephone services; Computer communication and Internet access; Voice over Internet Protocol [VoIP] communication services; Consultancy and information regarding the aforesaid services; The aforesaid services also provided via electronic networks, such as the Internet; not including communication services linked to remote monitoring and emergency telecare alarms for use in the home by the disabled or elderly to enable them to receive care and live independently.*

Class 42:

*Scientific and technological services and research and design relating thereto; Industrial analysis and research services; Design, Creation, Updating, Implementing and Ordering In connection with the following goods: Software, Computer software packages, software applications (apps), Mobile applications and web applications, telecommunication services, telecommunication networks and Telecommunications equipment; Design services for data processing systems; Cloud computing; Data warehousing; Design, development and updating of computer systems, computer networks and computers; Computer programming; Computer system analysis; Automation services; Industrial automation; IT specialists, ICT specialists, information analysts and system developers, The aforesaid services also by means of a helpdesk; Design, development, programming, implementation, maintenance, management and hosting of websites; Hosting of computer sites (websites); Data mining; Electronic storage of files, data and documents; Platform as a service [PaaS]; Infrastructure as a Service [IaaS]; Software as a service [SaaS]; Development of computer systems for the internet of things (IoT); IT security, protection and restoration; Data encryption; Provision of data centre facilities; server hosting and administration; Consultancy and information regarding the aforesaid services; Including the aforesaid services provided via electronic networks, including the Internet; none of the aforesaid services relating to remote monitoring and emergency telecare alarms for use in the home by the disabled or elderly to enable them to receive care and live independently.*

2. The application claims a priority date of 23 June 2022, from EUTM 018721786, in respect of some of the applied-for terms. The goods and services to which the priority date applies are identified at Annexe 1 to this decision. (The *opposed* terms to which the priority date applies are set out at Annexe 2; those to which the priority does not apply are set out at Annexe 3).

3. On 24 February 2023, the application was opposed by Tunstall Integrated Health & Care Limited ('the Opponent') based on section 5(2)(b) of the Trade Marks Act

1994 (‘the Act’). The instant case is a partial opposition, directed against the goods and services marked in underline above at [1]. The Opponent seeks to rely upon the following four earlier registrations; each in their entirety, and to the same extent (i.e. *all* are sought to be relied upon to attack *all* of the opposed terms):

(i) UK00001541003

LIFELINE (word mark)

Filing date: 7 July 1993
Date of entry in register: 15 March 1996

Registered for the following goods, all of which are sought to be relied upon:

| |
|---|
| Class 9:<br>*Telephone apparatus; communication, control and alarm apparatus; radio transmitters; all for use in the provision of care in the community; parts and fittings for all of the aforesaid goods; all included in Class 9* |

(ii) UK00001036255

LIFELINE (word mark)

Filing date: 4 October 1974*
Date of entry in register: 4 October 1974*

*It is noted that the dates recorded for the filing of the application for the mark, and its entry into the register, are the same. In case there were any question over the accuracy of these records and/or validity of the registration, given the passage of time, I note that this registration was renewed on 8 July 2015, which indicates that, at the time of the opposition being filed (24 February 2023), the registration was live.

Registered for the following goods, all of which are sought to be relied upon:

| |
|---|
| Class 9:<br>*Communication, control and alarm apparatus, all for use by the elderly, infirm and handicapped but not including radio or television apparatus or apparatus for high fidelity or stereophonic sound reproduction or recording and not including amplifiers or loudspeakers for use therewith.* |

(iii) UK00905896295*

LIFELINE (word mark)

*This is a comparable mark pursuant to Article 54 of the of the Withdrawal Agreement, based on EUTM 005896295, which was registered prior to the withdrawal of the UK from the European Union.

Filing date: 11 May 2007
Date of entry in register: 14 November 2011

Registered for the following goods and services, all of which are sought to be relied upon:

| |
|---|
| Class 9:<br>*Fire and environmental monitoring systems; smoke detectors; fire alarms; intruder alarms; personal alarm devices; fall detectors; panic buttons; impact sensors; sensors; personal alarm radio triggers; carbon monoxide detectors; pull cord switches; emergency call buttons.* |
| Class 42:<br>*Technical services, namely monitoring the efficient provision of medical services, managing of the operation of medical electronic systems for identifying incidents and events which require action.* |
| Class 44:<br>*Monitoring of patients and care home residents.* |

| |
|---|
| Class 45:<br>*Monitoring of alarm systems; monitoring of security systems; monitoring of surveillance systems; monitoring services for fire alarms; call monitoring services and call assistance services, all relating to social and community care, residential care and patients.* |

(iv) UK00003565878

LIFELINE DIGITAL (word mark)

Filing date: 9 December 2020
Date of entry in register: 28 May 2021

Registered for the following goods and services, all of which are sought to be relied upon:

| |
|---|
| Class 9:<br>*Fire and environmental monitoring systems; smoke detectors; fire alarms; intruder alarms; personal alarm devices; fall detectors; panic buttons; impact sensors; sensors; personal alarm radio triggers; carbon monoxide detectors; pull cord switches; emergency call buttons; computer software in the field of telehealth; computer hardware in the field of telehealth; computer peripherals.* |
| Class 42:<br>*Technical services, namely monitoring the efficient provision of medical services, managing of the operation of medical electronic systems for identifying incidents and events which require action; online, non-downloadable software in the field of telehealth.* |
| Class 44:<br>*Monitoring of patients and care home residents for the purposes of assessing medical care needs.* |

| |
|---|
| Class 45:<br>*Monitoring of alarm systems; monitoring of security systems; monitoring of surveillance systems; monitoring services for fire alarms; call monitoring services and call assistance services, all relating to social and community care, residential care and patients* |

4. The Opponent claims that the parties' marks are highly similar and their respective goods identical/similar, leading to a likelihood of confusion.

5. Section 6A of the Act provides that where the date on which the registration procedure of the earlier mark was completed more than 5 years prior to the application date (or priority date) of the applied-for mark, the Opponent may be required to prove use of the earlier mark. Three of the Opponent's four earlier marks were registered for more than five years prior to the priority date[1] and/or filing date of the contested application. Section 6A of the Act is, therefore, engaged in respect of earlier marks (i) to (iii). For each of these three registrations, the Opponent has made a statement of use for all of the goods/services sought to be relied upon.

6. The Applicant filed a Defence and Counterstatement in which it denies: that the parties' marks are highly similar; that the parties' goods are identical/similar; and, therefore, denies that there is a likelihood of confusion. The Applicant puts the Opponent to proof in respect of its statement of use in respect of earlier marks (i) to (iii).

7. The Opponent is represented by Appleyard Lees IP LLP. The Applicant is represented by Maguire Boss.

8. Both parties filed evidence and written submissions during the evidence round. A hearing was granted at the request of the Opponent. A skeleton argument was filed by the Opponent in advance of the hearing. The Applicant indicated that it would

[1] As noted, the priority date only applies to some of the specification. The terms to which the priority applies are set out Annexe 1.

not attend the hearing and filed written submissions in lieu thereof. Further written submissions were requested from the Opponent within seven days of the hearing, for reasons that will be addressed later in this decision (at [17]).

**EVIDENCE**

9. The Opponent's evidence comes from Jonathan Furniss, Senior Finance Manager and Company Secretary of the Opponent company. Mr Furniss has made two Witness Statements; dated 13 July 2023 and 10 November 2023, respectively. The former is accompanied by six exhibits: JF0 – JF5. The latter is accompanied by fourteen exhibits: JFA1 – JFA14.

10. The Applicant's evidence comes from David Tate, a trade mark attorney of the Applicant's representative firm. Mr Tate's Witness Statement is dated 12 September 2023, and it is accompanied by fourteen exhibits: DT1 – DT14.

11. I have read all of the evidence and will refer to it in my decision, to the extent that it is relevant.

**HEARING**

12. A hearing took place before me, via video conference, on Tuesday 14 May 2024. Ms Beverley Robinson, of Appleyard Lees IP LLP, appeared for the Opponent.

**RELEVANCE OF EU LAW**

13. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

14. The following decision has been made after careful consideration of the papers before me, and the Opponent's oral submissions.

**DECISION**

**Earlier marks**

15. In accordance with section 6 of the Act, the Opponent's marks are earlier marks by virtue of their filing dates, all of which fell before the priority date and/or filing date of the contested application.

**My approach**

16. As noted, earlier marks (i), (ii) and (iii) are subject to the proof of use requirements, whereas earlier mark (iv) is not. At the hearing, the Opponent submitted that, for reasons of procedural economy, the opposition based upon the earlier mark (iv) should be considered first, arguing that the opposition should succeed in its entirety based on this earlier right alone.[2] I, therefore, propose to first address the opposition based on earlier mark (iv), before proceeding to consider the matter of proof of use in respect of the remaining three earlier marks.

A note on the Applicant's proposed 'fall-back' specification

17. The Applicant filed its submissions in lieu of the hearing on Friday 10 May at 13.46 GMT, thereby complying with the prescribed deadline. Aside from addressing live issues in the proceedings, the Applicant introduced a proposed 'fall-back' specification, reproduced at Annexe 4 to this decision. The Applicant's 'fall-back' position will be addressed fully at [33]. This development in the Applicant's case was communicated to the Opponent and the Registry on the Friday afternoon prior to the hearing on the morning of the following Tuesday. Given the intervening weekend, I did not consider it reasonable to expect the Opponent's representative to have had sufficient opportunity to: consider the lengthy alternative specification;

[2] Opponent's Skeleton Argument, [8].

advise and seek instruction from the Opponent; and fully prepare oral submissions on the matter in time for the hearing. During the hearing, I granted the Opponent seven days in which to file further written submissions on its case in the light of the Applicant's proposed 'fall-back' position. This direction was subsequently confirmed to both parties in writing.

18. Before I begin my assessment of the likelihood of confusion based on earlier mark (iv), it is, therefore, necessary to assess whether the alternative specification is an acceptable 'fall-back' position. Should I find that the 'fall-back' specification *is* acceptable, I will conduct my assessment of the section 5(2)(b) opposition based on the Applicant's original *applied-for* specification. Should the opposition succeed to any extent on *that* footing, I will proceed to decide the opposition based on the 'fall-back' specification.

19. If, on the other hand, I find that the Applicant's alternative specification is *not* acceptable, I will proceed to determine the opposition on the basis of the goods and services as set out in the application.

**Section 5(2)(b) opposition in reliance on earlier mark (iv)**

Relevant legislation

20. Section 5(2)(b) of the Act reads as follows:

> '5(2) A trade mark shall not be registered if because –
>
> (a)…
>
> (b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected
>
> there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.'

Relevant case law

21. The following principles are derived from the decisions of the Court of Justice of the European Union ("CJEU") in *Sabel BV v Puma AG,* Case C-251/95; *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc,* Case C-39/97; *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97; *Marca Mode CV v Adidas AG & Adidas Benelux BV,* Case C-425/98; *Matratzen Concord GmbH v OHIM*, Case C-3/03; *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH,* Case C120/04; *Shaker di L. Laudato & C. Sas v OHIM,* Case C-334/05P; and *Bimbo SA v OHIM,* Case C-591/12P:

(a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them they have kept in their mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

(k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

**Comparison of the goods and services**

22. Section 60A of the Act provides:

‘For the purpose of this Act goods and services-

(a) are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification.

(b) are not to be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.

(2) In subsection (1), the 'Nice Classification' means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, which was last amended on 28 September 1975.'

23. The CJEU in *Canon*, Case C-39/97, stipulates that all relevant factors relating to the parties' goods and services must be taken into account:

'[23] In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary'.

24. Goods or services will be found to be in a competitive relationship only where one is substitutable for the other.[3] In *Boston Scientific Ltd v OHIM*,[4] the General Court ('GC') described "complementary" in the following terms: "[...] there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking".[5] In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods.

25. Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281[6], identified the following factors for assessing similarity of the respective goods and services:

[3] *Lidl Stiftung & Co KG v EUIPO*, Case T-549/14.
[4] Case T-325/06.
[5] Paragraph 82.
[6] *British Sugar Plc v James Robertson & Sons Ltd* [1996] R. P. C. 281, pp 296-297.

(a) The respective uses of the respective goods or services;

(b) The respective users of the respective goods or services;

(c) The physical nature of the goods or acts of service;

(d) The respective trade channels through which the goods or services reach the market;

(e) In the case of self-serve consumer items, where in practice they are respectively found, or likely to be found, in supermarkets and, in particular, whether they are, or are likely to be, found on the same or different shelves;

(f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

26. Goods (or services) may be grouped together for the purposes of assessment, as Geoffrey Hobbs Q. C. (as he then was), sitting as the Appointed Person, said in *Separode Trade Mark* BL O-399-10:

> 'The determination must be made with reference to each of the different species of goods listed in the opposed application for registration; if and to the extent that the list includes goods which are sufficiently comparable to be assessable for registration in essentially the same way for essentially the same reasons, the decision taker may address them collectively in his or her decision.'

27. Case law establishes that '… Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise" but "Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question.'[7]

[7] *YouView TV Ltd v Total Ltd,* [2012] EWHC 3158 (Ch).

A note on the field of 'Telehealth'

28. Three of the Opponent's terms within the specification for earlier mark (iv) have been limited to 'the field of telehealth'. For ease of reference, those terms are:

> *computer software in the field of telehealth; computer hardware in the field of telehealth* (Class 9);
> and
> *online, non-downloadable software in the field of telehealth.* (Class 42)

29. It is appropriate at this point to consider what is meant by the field of 'telehealth'. The Opponent's evidence contains an article from the 'Procurement of Housing' website titled 'Tunstall Healthcare recommended to partners by Digital Office for Scottish Local Government', dated circa 2022.[8] I note the following text:

> '[…] groundbreaking technology solutions from global market leading company, Tunstall Healthcare, have been added to the digital telecare security assessed suppliers list.
>
> […]
>
> The assessed list forms part of the Office's Digital Telecare Security Assessment Scheme to support health and social care partnerships across Scotland, and suppliers with the transition to digital telecare'.

30. A document (presumed to be dated circa 2020/2021, due to the references to precautions regarding the Covid-19 pandemic) comprising a 'Case study' on the benefits of one of the Opponent's 'telecare' services refers to items such as, inter alia, 'telecare sensors' to detect falls.[9]

[8] Second Witness Statement of Jonathan Furniss, [8]; Exhibit JFA2.
[9] As above, [12]; Exhibit JFA4.

31. I am able to infer from the content of these materials that 'telecare', essentially, entails the provision of aspects of care services by remote means. I find that the field of 'telehealth' relates to the provision of aspects of healthcare by remote or digital means. In my view, there will be much overlap between 'Telecare' and 'Telehealth'.

32. Ms Robinson, very helpfully, elaborated on this matter in her oral submissions, characterising 'telehealth' as the provision of the social side of health/caring services remotely with the use of technology. She submitted that the aim of 'telecare' was to enable receivers of care, often elderly people, but also those with long-term illnesses or conditions, to maintain their independence in their own homes. Ms Robinson further submitted that examples of services delivered in this field were not confined to medical care, but also extended to general safety in the home: e.g. use of a device to monitor a saucepan which alerts the service-provider monitoring centre that a pan has over-boiled due to a hob being left on. It is my understanding that this example is known as a 'Flame Supervision Device' (FSD) or 'Flame Failure Device' (FFD), whose purpose is to switch off the gas supply in case the flame is extinguished, particularly in the situation to which Ms Robinson referred.

The Applicant's proposed fall-back specification

33. As noted, the Applicant has proposed a 'fall-back' specification and requested that, should the opposition against the application, as it currently stands, succeed to any extent, the Registrar consider the Applicant's proposed amended specification.[10] I now consider whether the proposed amended specification is acceptable as a 'fall-back' position.

34. The 'fall-back' specification is more or less twice the length of the specification applied for. The Opponent has submitted the following:

[10] Applicant's written submissions in lieu of a hearing, Page 6, III.

‘As a general point, the proposed limitations are complex in nature, unclear and imprecise, and accordingly render the scope of protection afforded by any resulting registration legally uncertain.’[11]

35. I agree with the Opponent’s submission, for reasons that I will now explain.

Class 9

36. Many of the terms have had limitations applied to them which are ‘multi-layered’. For example, the term:

‘software packages, Computer software applications, downloadable, Mobile applications and web applications for the provision of mission-critical communication in mission-critical environments in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce’

37. There appear to be three ‘layers’ of restriction contained within this one term: i. ‘for the provision of mission-critical communication’; ii. ‘in mission-critical environments’; and iii. ‘in the fields of public safety …etc’.

38. My view is that these layers make it difficult to determine, in practice, precisely what goods would be excluded/included by the term. Aside from this term lacking sufficient clarity when considered in isolation, there is a further layer of restriction added by way of a broader limitation towards the end of the class 9 specification:

‘none of the aforementioned goods relating to telecare or telehealth.’

39. Aside from the lack of clarity due to the number of layers, I consider the broad limitation noted above at [38] to give rise to artificial distinctions. I have noted that ‘telehealth’ and ‘telecare’, broadly speaking, entail the provision of aspects of care/healthcare by remote means, e.g. via channels in the digital realm. Many of

[11] Opponent’s further written submissions, [3] and [25].

the Applicant's individual terms (including the example above at [36]) have been limited to the field of 'healthcare' (amongst several other fields). In my view, the broad limitation noted above at [38] does not succeed in carving out an identifiable sub-category of the goods. To my mind, whether or not a software product in the field of 'healthcare' is related to 'telecare or telehealth' does not amount to a clear demarcation between goods encompassed by the term.

40. More examples:

> i. 'Point-to-point communications equipment for mission-critical communication in the field […] of healthcare […], and parts therefor'
>
> and
>
> ii. 'end-to-end mission critical communication platforms for voice, data and video, to enable communication by first responders in mission-critical environments, and parts therefor'

It is my understanding that 'point-to-point' communication, put simply, entails a connection between two communication points (typically called 'endpoints' or nodes). A longstanding example is a simple telephone call. More recently, point-to-point communications encompass digital channels of communication between the two parties (e.g. via fibre optic cables or wireless technology such as radio waves). For reasons analogous to those above at [39], the broad limitation 'none of the aforementioned goods relating to telecare or telehealth' purports to make an artificial distinction with respect to the first of the above terms. Similarly, with regard to the second term, the broad limitation would purport to exclude first responders to an emergency where the alert had been conveyed via a 'telecare' system.

41. I now address the addition of the qualification 'mission-critical', of which there are seventy-three instances within the fall-back specification. The Opponent has submitted that a mission-critical environment 'refers to an environment where an

interruption of service can have a serious effect'.[12] I agree with this definition. It is my understanding that a 'mission-critical' service, for instance, will be one that is considered crucial to the operation of a business or organisation. I consider that the use of 'mission-critical' within the first term noted above at [40] likely indicates communications that are crucial for the delivery of healthcare services. It is my view that the addition of the qualification 'mission-critical' is more or less ineffectual because it is difficult to conceive of any commercial undertaking/care provider/emergency service for whom the equipment or systems in question are *not* essential to the running of the organisation. The impotence of the 'qualification' is most stark where the goods are limited to the field of healthcare. I therefore find the 'mission-critical' restriction to be artificial.

42. The Opponent has submitted that the Applicant's broad limitation 'not including computer peripherals' at the end of the class 9 specification is 'contradictory' because the specification already includes goods which are, by their nature, computer peripherals; for example, 'body worn cameras'.[13] It is my understanding that 'computer peripherals' encompass hardware devices which connect to a computer to enhance its functionality, without being a core component. Examples include, inter alia: keyboards, mice, speakers, printers, web-cams, and external data storage devices (e.g. USB drives). It is my view that a 'body worn camera' is a standalone device capable of functioning without necessarily being attached to a computer. Whilst I acknowledge that data from a body worn camera can be transferred to another device, I do not consider this capability to render it a 'computer peripheral'. I therefore respectfully disagree with the Opponent's submission.

Class 35

43. Many of the Applicant's class 35 terms have been restricted in the same or similar ways as the class 9 goods. I find that the restrictions added to the class 35 terms are similarly defective. For example: 'retail services and wholesale services

[12] Opponent's further written submissions, [4].
[13] As above, [3], [10] and [17].

connected with the sale of […] body-worn cameras […] adapted for use by workers in mission-critical environments in the fields of […] healthcare […]'. My view is that the restriction is: too 'layered'; artificial, given the broad restriction excluding telecare or telehealth; and artificial by virtue of the 'mission-critical' qualification.

Classes 38 and 42

44. The services in classes 38 and 42 have been limited in more or less the same ways as those already identified. For reasons analogous to those provided above at [36] to [42], I find the fall-back specifications to be unacceptable.

45. In the light of the foregoing, I find the Applicant's proposed 'fall-back' position to be unacceptable. I, therefore, proceed to determine the opposition based on the goods and services applied for.

**Comparison of the contested terms as applied-for against the Opponent's specification for earlier mark (iv)**

46. The goods and services to be compared are set out at Annexe 6 to this decision.

Class 9

A note on the limitation present in the Applicant's class 9 specification.

47. The Applicant's specification includes the following limitation which purports to refer to all of the preceding terms:

> *'not including remote monitoring and emergency telecare alarms for use in the home by the disabled or elderly to enable them to receive care and live independently.'*

48. I find that the purpose of this restriction is, in essence, to exclude any monitoring or alarm devices, used in the home, whose core function is to alert a person or facility remotely of an emergency in the user's home. I recognise that this limitation

will not apply to all of the preceding terms. For example, it is clear that the 'software' goods do not encompass any devices. I propose to address the effect of the limitation as and when it arises in the course of my comparison of the parties' goods and services.

49. I now proceed to conduct the comparison.

50. Ms Robinson has set out a table in her Skeleton Argument identifying which of the parties' class 9 goods are identical according to the principle in *Meric.*[14] This table is reproduced at Annexe 5 to this decision. Despite submitting that the opposition should first be considered based on the earlier mark (iv), this table appears to encompass terms from all four earlier marks.[15] For example, the term 'telephone apparatus' is not present within the specification for earlier mark (iv), but it is present in earlier mark (i). Furthermore, the table does not indicate the earlier mark to which each comparator relates. The collation of the Opponent's terms in this manner is unhelpful given that the three single-word LIFELINE marks are subject to proof of use. To include comparators from the specifications of earlier marks (i), (ii) or (iii) at this stage is, therefore, premature.

51. I, therefore, invited Ms Robinson to focus firstly on the terms within the specification of earlier mark (iv). I also requested that, for each of the contested terms, the closest comparator within the specification be identified. Ms Robinson made the following oral submission:

> 'The LIFELINE DIGITAL registration covers all four classes, so it is one of the broader specifications of the four earlier rights. In class 9, in particular, it covers computer software and hardware in the field of telehealth. We would argue that that is obviously very similar to most of the class 9 Applicant's goods. When you are talking about computer hardware for telehealth, it basically includes all kinds of computer-type devices or electronic devices that are used in telehealth, so: 'life-saving and teaching apparatus and instruments, apparatus and

[14] Opponent's Skeleton Argument, [26].
[15] As above.

instruments for conducting, transforming, accumulating, regulating or controlling electricity, apparatus for recording and the reproduction of sounds or images, communication apparatus, telecommunications apparatus'. When you look at all of the Applicant's goods, they could all fall into that category of computer hardware, computer software and computer peripherals.'

52. For reasons that will become apparent, I respectfully disagree with the Opponent's argument that *all* of the Applicant's class 9 goods fall within one or other of these of the Opponent's terms:

*computer software in the field of telehealth;*
*computer hardware in the field of telehealth;*
*computer peripherals.*

53. I do, however, find *some* of the parties' goods to be identical, whether by reason of being synonymous, or according to the principle in 'Meric'; and I set out those points of identicality, as follows, in paragraphs [54] to [62].

Contested term: *Computer peripheral devices*

54. The Applicant's *Computer peripheral devices* are synonymous with the Opponent's *computer peripherals.*

Contested term: *Data-processing equipment and computers*

55. The Applicant's broad term *Data-processing equipment and computers* will encompass the Opponent's *computer hardware in the field of telehealth.* The Applicant's term has not been restricted by field; and both 'data-processing equipment' and 'computers' are examples of computer hardware.

Contested terms: *Computer programs for accessing databases and portals; Computer software, software packages, Computer software applications, downloadable, Mobile applications and web applications; Application software; computer software, software packages, downloadable computer software*

*applications, mobile applications, web applications and application software in relation to communications, group communications, wireless broadband communications, telecommunications and bodycam technology, and related control room solutions; Applied software for businesses; Communication and networking software; VoIP software;*[16] *Office and business applications; System and system support software, and firmware; Web application and server software*

56. I consider that each of the Applicant's broad terms will encompass the Opponent's narrower term *computer software in the field of telehealth.* Although many of the software goods listed above have specific functions, they are not, in my view, confined to any particular field or area of expertise. For example, 'applied software for businesses' could encompass software used by (inter alia) businesses whose activity is 'telehealth'. By the same token, 'web application and server software' could be used in any field, including 'telehealth'.

Contested terms: *Communication apparatus; Telecommunications apparatus; Point-to-point communications equipment*

57. I find that each of the Applicant's terms, to the extent that the items of apparatus/equipment are not 'remote monitoring and emergency telecare alarms' for home use, will encompass the Opponent's term *emergency call buttons.* The presence of the limitation in the Applicant's specification does not prevent this finding of 'Meric' identity because the Opponent's 'emergency call buttons' could be used in a variety of business, industrial and non-domestic settings.

Contested terms: *scientific […] apparatus and instruments*

58. It is my understanding that, in broad terms, the contested *scientific […] apparatus and instruments* are intended to measure, monitor or analyse certain states of affairs/phenomena. I, therefore, find that the Applicant's broad term will encompass several of the Opponent's terms, including *fire and environmental monitoring systems.*

[16] It is my understanding that 'VoIP' is an acronym for 'Voice over Internet Protocol'.

Contested term: *Apparatus for recording, transmission or reproduction of sound or images*

59. I find that the Applicant's goods will be encompassed by the Opponent's *computer peripherals,* given that goods such as web-cams and speakers are examples of computer peripherals.

Contested term: *signalling […] apparatus and instruments*

60. In simple terms, I consider 'signalling' apparatus/instruments to comprise devices that convey messages or alerts, an example of which is an alarm that emits a sound. The Applicant's term will, therefore, encompass the Opponent's *fire alarms.*[17]

Contested term: *life-saving […] apparatus and instruments*

61. I consider 'life-saving apparatus' to cover equipment used to protect people in mortal distress. Examples include life jackets, devices to send distress signals and resuscitation aids I find that the Applicant's term will encompass the Opponent's *emergency call buttons*.

Contested term: *photographic […] apparatus and instruments*

62. I find that the Applicant's goods*,* to the extent that they include web-cams (which record both static and moving images), are encompassed by the Opponent's *computer peripherals.* In case my finding is premised upon too liberal a construction of 'photographic apparatus', and, therefore, wrong, the level of similarity between the competing goods will be at least medium.

63. With the exception of certain of the 'Parts for' goods, which are addressed later in this decision (at [83] to [27]), I do not consider the remainder of the Applicant's

[17] The Applicant's term encompasses several other of the Opponent's class 9 goods, but it is not necessary to note every one of these.

class 9 goods to be identical to any of the Opponent's goods. I, therefore, proceed to consider them applying the usual 'Treat' factors.

Contested term: *cinematographic, […] apparatus and instruments*

64. Cinematography, as I understand it, is the art of making films. I will compare the contested term to the Opponent's *computer peripherals* in so far as they include web-cams. Whilst I appreciate that 'web-cams' are, as a matter of fact, used to capture moving images, my view is that it would be artificial/overly liberal to treat them as instruments used in the artistic sense of film-making. In the real world, web-cams are ordinarily used either as visual aids during remote communication, or to capture moving images as mere records, as opposed to creating film as art. Bearing in mind the purposes, methods of use, users, and trade channels for the respective goods, and the matters of competition and complementarity, I do not find any similarity between them.

Contested term: *optical […] apparatus and instruments*

65. It is my understanding that 'optical' apparatus/equipment covers, inter alia, devices that process light in order to create an image. Examples will likely include telescopes, microscopes and binoculars. The respective goods have different specific purposes: the manipulation of light to *create* the image (optical apparatus) versus the *recording* of the image (web-can). I will, again, use the Opponent's *computer peripherals* in so far as they include web-cams, as the comparator. I acknowledge that a web-cam (and any kind of camera) will, by necessity, have some sort of optical component to enable images to be made. However, it would be going too far, in my view, to *conflate* web-cams with optical apparatus/equipment. Bearing in mind the purposes, methods of use, users, and trade channels for the respective goods, and the matters of competition and complementarity, I do not find any similarity between them.

Contested term: *measuring […] apparatus and instruments*

66. I will compare the contested term to the Opponent's *carbon monoxide detectors.* The Opponent's goods function by measuring the concentration of carbon monoxide before sounding an alarm when the level has become dangerous. However, the ultimate purpose of a carbon monoxide detector is to *alert the user* when the concentration of the gas becomes dangerous. The functionality of the good does not extend to providing definite measurements of carbon monoxide concentrations. Bearing in mind the purposes, methods of use, users, and trade channels for the respective goods, and the matters of competition and complementarity, I do not find any similarity between them.

Contested term: *nautical […] apparatus and instruments*

67. I note that the Opponent's specification includes the term *sensors.* It is my understanding that ships are equipped with equipment which uses sensors to measure, inter alia, the speed and position of the ship and the depth of the water. However, in the absence of any evidence or precise submissions on this point, if I were to premise a finding of identity/similarity on this piece of knowledge, I would risk straying beyond the limit of judicial notice. Furthermore, there is nothing in the Opponent's evidence to indicate that it operates in a nautical field. Bearing in mind the purposes, methods of use, users, and trade channels for the respective goods, and the matters of competition and complementarity, I do not find any similarity between them. There is no obvious point of identicality or similarity between the contested term and any other of the Opponent's offerings, either.

Contested term: *surveying […] apparatus and instruments*

68. It is my understanding that sensors can be used for measuring distances and mapping areas. However, in the absence of evidence or precise submissions, I am unable to find any obvious identicality or similarity between the contested terms and the Opponent's *sensors.* For reasons analogous to those above at [66], I am unable to make a finding of identicality/similarity between the parties' offerings.

Contested term: *checking (supervision) […] apparatus and instruments*

69. Broadly speaking, I find that the contested term encompasses equipment that monitors something. I refer back to my earlier note, at [32], of Ms Robinson's description of device that I understand to be a 'Flame Supervision Device'. I consider it likely that the contested term, which is very broad, would probably encompass such devices. However, it is not obvious whether any of the *Opponent's* terms would encompass this device, in any event. It may be that the Opponent's *environmental monitoring systems* is the most appropriate comparator. However, in the absence of any precise submission to support a particular point of identicality/similarity, I am unable to find any level of similarity between the parties' offerings. Alternatively, it may be the case that 'supervision', in the context of the goods at stake, is to be read in the ordinary sense of the word and that it simply refers to apparatus used in order to 'check' on something. However, in the absence of any precise submission to tell me where the point of identicality/similarity lies, I am unable to find any obvious overlap between the parties' offerings.

Contested term: *teaching apparatus and instruments*

70. I invited Ms Robinson to identify the closest comparator within the Opponent's specification and to make the comparison by applying the usual 'Treat' factors. Ms Robinson submitted that the contested goods ought to be compared to the Opponent's 'computer peripherals' or 'computer software/hardware in the field of telehealth'; and her argument can be summarised as follows:

    i. Computer software/hardware in the field of telehealth constitutes a communication system between the care provider and the care user. Teaching apparatus could teach the care providers/users to use certain instruments and devices in order to monitor particular health considerations.

    ii. The respective goods have a similar nature.

    iii. The respective goods are similar in purpose 'because computer software and hardware can have a teaching element, particularly when used in the telecare and telehealth sector'.

iv. Part of the telecare services entails the users operating certain medical and 'support' equipment in their own homes and the users need to be taught how to use the equipment.

71. With respect, I do not find the above submission to be entirely clear. I remind myself that when interpreting a term, it must be given its ordinary and natural meaning. I consider that the Applicant's broad term 'teaching apparatus and instruments' will cover items whose core purpose is to teach or train. I note that the Nice Classification system ('the Nice System') includes the following example in its Explanatory Note for goods in Class 9:

'training apparatus and simulators, for example, resuscitation mannequins, simulators for the steering and control of vehicles'.

72. I appreciate that the example above is not intended to be exhaustive of every item of teaching apparatus or equipment within class 9. However, I find that for goods to be regarded as 'teaching apparatus' or 'teaching instruments', their primary purpose must be to teach, train or instruct. Whilst computer hardware and software 'in the field of telehealth', as part and parcel of a system of communication between a care provider and a care user, would inevitably be used whilst demonstrating/teaching others how to use the system, this, to my mind, does not necessarily render the goods 'teaching apparatus/instruments'. If that were the case, then, in practice, any kind of software or hardware could be deemed a 'teaching instrument' by virtue of the fact that others could be taught how to use it. I find that the core purposes of the Opponent's software and hardware 'in the field of telehealth' are the roles that they fulfil in the delivery of 'telecare'. The competing goods will, therefore, have different core purposes. I find that the Opponent's software/hardware in the field of telecare will be purchased predominantly by individuals in need of telecare services (or relatives of those in need of the care) or by professionals in the field of telecare. The Applicant's goods, on the other hand, will typically be purchased by professionals intending to deliver some sort of training or teaching. Trade channels will unlikely overlap. I find the goods to be neither competitive nor complementary. All things considered, I do not find any

similarity between the contested term and any of the Opponent's terms that Ms Robinson has highlighted.

Contested term: *weighing […] apparatus and instruments*

73. The Applicant's term will include a variety of goods; from those for domestic use (e.g. household weighing scales) to those in industrial settings (e.g. balances for laboratory use). To my mind, the closest comparator within the Opponent's specification is *[…] environmental monitoring systems*, in class 9. In my view, 'environmental monitoring systems' is a very broad term encompassing devices/equipment whose function is to detect changes in the environment. Examples will include the monitoring of, inter alia: air or water; soil quality; as well as a multitude of phenomena in ecosystems. The Applicant's goods are used to measure the weight of objects or substances. The parties' respective offerings will coincide in purpose to the very broad extent that both are used to take measurements, although their specific purposes will differ. I find that methods of use will also differ. Weighing typically entails the placement of the item or substance to be weighed onto some sort of scale or platform. On the other hand, the array of goods encompassed by the Opponent's term will likely be employed in a variety of ways that differ from the act of 'weighing'. To the extent that each broad term will encompass some goods for domestic use (e.g. carbon monoxide detectors (Opponent's term) and kitchen scales (Applicant's term)) both will be purchased by the general public. Similarly, to the extent that each term may include equipment for laboratory use, both will be purchased by professionals. However, such general overlaps in user are, to my mind, fairly unremarkable, and of no consequence. Given the breadth of the competing terms, trade channel overlap is likely, albeit not particularly noteworthy. For example, a supplier of laboratory equipment may sell a huge range of scientific goods, including those encompassed by either of the parties' terms (e.g. a device for measuring gases (Opponent) versus a balance for laboratory use (Applicant)). The competing goods are unlikely in a competitive relationship, neither being obviously substitutable for each other. I do not find complementarity, either; neither being useful or important for the other. All things considered, I find no similarity between the parties' goods.

Contested term: *Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity*

74. The Opponent has submitted the following:[18]

> 'The Applicant's "apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity" are most similar to "environmental monitoring systems" and "sensors", which can be used in the distribution or use of electricity'.

75. In the absence of submissions from either party as to what goods are covered by the Applicant's broad term, I find that it will include items such as, inter alia: 'trip switches'; fuses; transformers; electrical circuitry. Given the various functions performed by the items enumerated in the broad term, it is appropriate to split the term for the purposes of making the comparison.

Contested term: *Apparatus and instruments for conducting […] electricity*

76. Based on my general knowledge as an ordinary member of the general public, electricity flows through materials capable of carrying electricity, those materials being conductors. The best-known example is, perhaps, metal wires. The Applicant's term will, therefore, encompass a range of goods which are sought for their electrical conductivity, including, inter alia: metal contacts or connectors in electrical circuitry; electrical wires; metal pins in electrical plugs; metal tracking in circuit boards; filaments in light bulbs; electric cables; continuity testers (i.e. devices to test whether a circuit is broken). I compare the Applicant's goods to the Opponent's *sensors*. Broadly speaking, sensors detect certain features in a given environment. In relation to electrical matters, 'trip switches' involve sensors which detect an overload of electrical current triggering the current to be switched off, thus preventing overheating which could present a fire risk. The parties' goods will share a broad purpose in that both are used in electrical circuitry. However, their specific purposes will diverge: the *conducting* of electricity versus the *sensing* of

[18] Opponent's further written submissions, [12].

*electrical current overload*. Users will necessarily overlap, given that both are components of electrical systems. Trade channels will also be shared. The respective goods will likely differ in terms of their physical appearance. The respective goods are not in competition, neither being substitutable for the other. I do, however, find complementarity where a sensor is purchased for electrical use. In these circumstances, the parties' goods will be important for each other. All things considered, I find a low to medium level of similarity between the parties' goods.

Contested term: *Apparatus and instruments for […] switching […] electricity*

77. I find that the 'switching' of electricity involves the control of its flow by means of breaking or completing the electrical circuit by way of a switch. Noting the Opponent's submission above at [74], I compare the contested term to the Opponent's *sensors*. Both goods are used in electrical matters. I also find their *specific* purposes to be very closely related: whilst the Applicant's goods will cover 'switches' i.e. the components that actually break or complete the electrical circuit, the Opponent's sensors will play an important role in sensing the events in order to *trigger* those switches to break a circuit in the event of current overload (e.g. trip switches). Users and trade channels will overlap. There is no competition between the goods. However, they are complementary; sensors will be crucial to the use of trip switches. I find the parties' goods to be highly similar. I also find the contested goods similar to the Opponent's *pull cord switches.*

Contested term: *Apparatus and instruments for […] transforming […] electricity*

78. It is my understanding that a 'transformer' is important in the distribution of power – used in large scale infrastructure power grids as well as in electrical goods such as phone chargers and power adapters. I have been provided with no explanation or evidence of how *Apparatus and instruments for […] transforming […] electricity* may relate to any of the opponent's goods. I compare these contested goods to the Opponent's *sensors*. Both goods are used in electrical systems; and users and trade channels will likely coincide. There may be complementarity, but I have no evidence to guide me on that. Their specific purposes and methods of use will

likely differ, and I do not consider the goods to be in competition. I find a low level of similarity between the parties' goods.

Contested term: *Apparatus and instruments for […] accumulating […] electricity*

79. I have been provided with no explanation or evidence of how *Apparatus and instruments for […] accumulating […] electricity* may relate to any of the opponent's goods. Even comparing the opponent's sensors, I have not been put in position to enable my assessment of the similarity between the goods. In these circumstances, I disregard the attack against these contested goods.

Contested term: *Apparatus and instruments for […] regulating or controlling electricity*

80. An example of the regulation or control of electricity is the use of transformers, which has been addressed above. I compare the Applicant's goods to the Opponent's *sensors*. For reasons analogous to those above at [78], I find at least a low level of similarity between the parties' goods.

Contested term: *Telecommunications networks*

81. To my mind, a telecommunications network is the entire infrastructure that constitutes the system that enables communication at a distance – such as by telephone or mobile networks, the internet or an intranet (i.e. a private internal computer network, used by employees within a business, for example). Telecommunications networks are interconnected systems that allow the electronic exchange of voice, data, and video over distances using wired (fibre or copper) or wireless (radio or satellite) links, routing signals through nodes to connect users and devices nationally, internationally and globally. It seems to me that, while the networks are essentially physical infrastructure, to exclude the inherent role of software in such networks would be artificial.

82. I, therefore, compare the Applicant's *Telecommunications networks* to the Opponent's *computer software in the field of telehealth.* The core purpose of the

Applicant's goods is to create and sustain channels of remote long distance communication. The core purpose of the Opponent's software, on the other hand, might be said to enable electronic systems, used in the field of telehealth, to operate – to facilitate, for instance, remotely monitoring patient health and welfare in their homes. The software would likely serve to maintain the personal information of users to coordinate responses to their telehealth needs. I consider that the respective goods will overlap in purpose only to the broad extent that both play a part in enabling communication using electronic devices and systems. Users will inevitably overlap given that a telecommunications network is crucial to the operation of almost every business, but particularly one in the field of telehealth. I have no evidence to suggest that a provider of a telecommunications network would likely also provide software in the field of telehealth, so cannot assess trade channels as a factor in similarity. The goods will differ in terms of their methods of use. Furthermore, the physical nature of the respective goods will also differ; a telecommunications network will comprise pieces of physical equipment as well as software, whereas the Opponent's goods are software alone (in both instances, the 'software' goods may be recorded on physical media, or they may exist purely in electronic form). I do not find the respective goods to be competitive, neither being substitutable for the other. A telecommunications network will be an essentially important part of a telecare system, but I do not consider the goods to be complementary, since I have no evidence to suggest that customers may think that the responsibility for those goods lies with the same undertaking. All things considered, I find, at best, a very low level of similarity between the parties' goods.

Contested term: *Parts for the aforesaid goods, included in this class*

83. The Applicant's class 9 specification includes both physical goods and 'software' goods. In my view, the wording 'parts for' is to be understood as physical parts which are components of the *physical* goods present in the specification. I, therefore, find that the broad term applies only to the following of the Applicant's goods:

> *Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and*

*teaching apparatus and instruments; Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; Apparatus for recording, transmission or reproduction of sound or images; Data-processing equipment and computers; Computer peripheral devices; Communication apparatus; Telecommunications apparatus; Point-to-point communications equipment; Telecommunications networks*

84. When comparing the Applicant's broad term to the Opponent's goods, I bear in mind that in *Les Éditions Albert René v OHIM*[19] the GC found that:

> '61... The mere fact that a particular good is used as a part, element or component of another does not suffice in itself to show that the finished goods containing those components are similar since, in particular, their nature, intended purpose and the customers for those goods may be completely different.'

85. Although I have found many of the contested goods enumerated above at [83] to have some level of similarity with the Opponent's goods, it does not necessarily follow that *parts for* those contested goods will also be similar. Conversely, the fact that I have found certain of the contested goods to have no identicality/similarity with those of the Opponent, does not necessarily mean that *parts for* those goods will have no identicality/similarity. It is, therefore, important to assess the 'parts for' aspect of the contested specification *independently* of any previous findings in respect of the contested goods to which the parts relate.

86. The contested term is clearly extremely broad and will encompass a vast array of disparate items such as, inter alia: chipsets; wires; sensors. It would be near impossible to enumerate every possible component for the 'aforesaid' goods in the Applicant's specification. Neither party has sought to provide any specific examples of points of identicality/similarity in this regard. It appears to me that the most appropriate comparators within the Opponent's specification are the following:

[19] Case T-336/03.

*Sensors* – I find that sensors are most often component parts of devices, rather than standalone pieces of equipment.

*computer hardware in the field of telehealth* – as already noted, I find that this term will encompass both 'finished goods' by way of computer peripheral devices, as well as the physical components within them. It is an inescapably broad term that will encompass any physical tangible item within an electronic device, where that device is used in the field of telehealth.

*Pull-cord switches* – I consider that these will often be component parts of other goods.

Contested term: Parts for […] *photographic, signalling* […] *apparatus and instruments; Apparatus for recording, transmission or reproduction of sound or images; Data-processing equipment and computers; Computer peripheral devices; Communication apparatus; Telecommunications apparatus; Point-to-point communications equipment; Telecommunications networks*

[my underline added]

87. The above broad term will encompass parts for electronic and digital devices/equipment, whether by necessity (e.g. in the case of data-processing equipment) or because there are electronic/digital versions of the goods to which the component parts relate. The goods in question are not limited to any particular field. They may, therefore, relate to the field of telehealth. In my view, it is inevitable that the contested term will encompass components including microchips, semiconductors, circuits boards and wires. The Opponent's extremely broad term *computer hardware in the field of telehealth* will encompass the vast array of tangible physical components that make up the Applicant's goods. In the light of the foregoing, the sheer breadth of the competing terms leads me to find that the parties' goods are identical based on the principle in 'Meric'.

Contested term: *Parts for Scientific, nautical, surveying, […] weighing, measuring, […] checking (supervision),* […] *apparatus and instruments.*

[my underline added]

88. I consider scientific, nautical, surveying, weighing, measuring and checking (supervision) apparatus and instruments to be examples of equipment which could have sensors as component parts. I, therefore, find that the contested term will encompass the Opponent's term *sensors.* The parties' goods are, therefore, identical based on the principle in 'Meric'.

Contested term: *Parts for* […] *life-saving […] apparatus and instruments*

[my underline added]

89. I consider the Opponent's *pull cord switches* (also, perhaps, *emergency call buttons*) to be component parts of, for example, devices to send distress signals. The find the parties' goods to be identical according to the principle in 'Meric'

Contested term: *Parts for* […] *teaching apparatus and instruments*

[my underline added]

90. I consider the Opponent's *computer peripherals* to be the most appropriate comparator, here. My view is that it is likely less 'distant' from the contested goods than the three 'component' goods that I have identified above at [86]. The goods will overlap in purpose to the broad extent that both will be needed for, say, a flight simulator (as an example of teaching apparatus) to operate, although their specific roles will differ. Methods of use will also be different. To my mind, users will be distinct; end-users of flight simulators will be trainee or 'hobbyist' pilots. Although, strictly speaking, the component parts will necessarily be used by those operating the simulators, the *purchasers* of those components will, in my view, be predominantly manufacturers of the virtual reality headsets (or engineers who

service and repair them). Trade channels will, therefore, be separate. The goods will likely be very different in terms of their physical appearance, one being a component whilst the other being a peripheral device. There is no competition between the goods, neither being substitutable for the other. I do not find complementarity, either: although component parts are plainly necessary for the peripheral devices in which they are integrated, the average consumer would, in my view, unlikely presume both the peripheral devices and the component parts (having been purchased by the manufacturer of those peripheral devices) to originate from the same brand. I find, at best, a very low level of similarity between the parties' goods. I do not consider that comparison of the contested term with any other of the Opponent's offerings would place the Opponent in any better position.

Contested term: *Parts for* […] *Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity;*

[my underline added]

91. The Opponent's *sensors* will cover, inter alia, sensors for measuring various features of electrical circuits; e.g. current flow, conductivity. I, therefore, find the parties' goods to be identical according to the principle in 'Meric'.

Contested term: *Parts for cinematographic, optical* […] *apparatus and instruments*

[my underline added]

92. I do not consider any of the three 'component' goods that I have highlighted at [86] to bear any obvious similarity. Bearing in mind the usual 'Treat' factors, I can see no obvious points of similarity between the contested goods and any other of the Opponent's offerings.

Class 35

93. Broadly speaking, the contested services fall into two main groups: '*business intermediary services* in the purchase and sale, import and export, and wholesaling and retailing services' [of the subsequent list of goods]' and 'wholesaling and retailing' of the goods listed. The 'Consultancy and information regarding the aforesaid services' amounts to a third 'group'. The following 'qualification' and 'limitation' terms apply to all of the preceding terms within the Applicant's class 35 specification:

> *'The aforesaid services also provided via electronic networks, such as the Internet';*
>
> and
>
> *'none of the aforesaid including retail services and wholesale services connected with the sale of remote monitoring and emergency telecare alarms for use in the home by the disabled or elderly to enable them to receive care and live independently'.*

94. Ms Robinson's oral submission can be summarised as follows:

> The opposed class 35 services all relate to the Applicant's class 9 goods that the Opponent claims are identical/similar to the Opponent's class 9 goods. On this basis, the Applicant's class 35 services are said to be similar to the Opponent's class 9 goods. It was argued that there was complementarity such that consumers would understand the providers of the class 9 goods to also provide things like consultancy, information services and retail services in respect of those goods.

95. I will deal first with the Applicant's retail and wholesale services. In this regard, I bear in mind *Oakley, Inc v OHIM*,[20] in which the GC held that although retail services are different in nature, purpose and method of use to goods, retail services for particular goods may be complementary to those goods, and distributed through the same trade channels, and, therefore, similar to a degree.

[20] Case T-116/06, at paragraphs [46]-[57].

96. I also note that, on the basis of the European court's judgments in *Sanco SA v OHIM,*[21] and *Assembled Investments (Proprietary) Ltd v. OHIM,*[22] upheld on appeal in *Waterford Wedgewood Plc v. Assembled Investments (Proprietary) Ltd,*[23] Geoffrey Hobbs Q.C. (as he then was) sitting as the Appointed Person in the MissBoo case,[24] concluded that:

> i) Goods and services are not similar on the basis that they are complementary if the complementarity between them is insufficiently pronounced that, from the consumer's point of view, they are unlikely to be offered by one and the same undertaking;
>
> ii) In making a comparison involving a mark registered for goods and a mark proposed to be registered for retail services (or vice versa), it is necessary to envisage the retail services normally associated with the opponent's goods and then to compare the opponent's goods with the retail services covered by the applicant's trade mark;
>
> iii) It is not permissible to treat a mark registered for 'retail services for goods X' as though the mark was registered for goods X;
>
> iv) The General Court's findings in *Oakley* did not mean that goods could only be regarded as similar to retail services where the retail services related to exactly the same goods as those for which the other party's trade mark was registered (or proposed to be registered).

97. I also note Mr Hobbs' finding according to which the retail of goods is more than the mere selling of them. The selling must involve 'real and significant performance of […] selecting an assortment of goods for sale and offering a variety of retail

[21] Case C-411/13P.
[22] Case T-105/05, at paragraphs [30] to [35].
[23] Case C-398/07P.
[24] *Tony Van Gulck v Wasabi Frog Ltd,* Case BL O/391/14, [9].

services aimed at inducing customers to purchase [….]'.[25] This reflects the explanatory note in the Nice System regarding Class 35: 'the bringing together, for the benefit of others, of a variety of goods, […] enabling customers to conveniently purchase those goods […]'.

Contested term: *retail services and wholesale services connected with the sale of scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments, apparatus and instruments for the conduction, distribution, conversion, storage, regulation and control of electric current*

98. I have found a number of the goods to which the contested wholesaling and retailing services relate to be either identical or similar to the Opponent's class 9 goods. Where those goods have been found to be *identical*, the users and trade channels for the retail and wholesale services relating to those goods will inevitably overlap. I now consider whether, in this instance, the respective offerings would be seen as originating from the same undertaking. My view is that the particular goods concerned are not goods where one would typically expect the producer of those goods to also be the brand under which the retail or wholesale of those goods is offered. For example, I do not consider it to be typical for a brand of cameras to, under the same brand name, also provide the retail and wholesale channels for the sale of its goods. Whilst it may be possible to purchase goods directly from the producers, as noted above at [97], mere sales do not necessarily constitute instances of retail/wholesale services. I find that, in this instance, user and trade channel overlap, without more, are insufficient to support a finding of similarity. In the light of the foregoing, and in the absence of evidence to indicate otherwise, I find no similarity between the parties' offerings. Where the contested retail/wholesale services relate to goods that I have found to have mere similarity (as opposed to identicality) with the Opponent's class 9 goods, it follows that a finding of 'no similarity' between the parties' retail/goods offerings has even greater force here.

[25] AS above, [25].

Contested term: *retail services and wholesale services connected with the sale of Parts for scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments, apparatus and instruments for the conduction, distribution, conversion, storage, regulation and control of electric current*

[my underline added]

99. It is my view that the average consumer would unlikely presume the producer of the component parts to which the Applicant's retail/wholesale services relate would also provide the retail/wholesale outlets for those component parts. For reasons analogous to those provided above at [98], I make a finding of 'no similarity'.

Contested term: *retail services and wholesale services connected with the sale of […] apparatus for recording, transmission or reproduction of sound or images, data processing equipment and computers, computer peripherals, communication devices, telecommunication apparatus, device-to-device communication apparatus, communications technology equipment, information technology equipment*

100. I have found the goods to which the Applicant's retail and wholesale services relate to be identical to goods within the Opponent's class 9 specification. Broadly speaking, the goods concerned are electronic or digital devices. Users and trade channels will inevitably overlap. Based on my knowledge as an ordinary member of the general public, I consider that a significant proportion of average consumers will be aware of certain well-known 'electronics' brands which sell via retail outlets and their online equivalents under their own brand, a well-known example being 'Apple'. It is conceivable that a producer of the goods concerned might also provide wholesale channels under the same brand. I, therefore, find the parties' offerings to be complementary. All things considered, I find the parties' offerings to be similar to a low degree. The presence of either of the overarching terms noted above at [93] does not prevent this finding.

Contested term: *retail services and wholesale services connected with the sale of parts for […] apparatus for recording, transmission or reproduction of sound or images, data processing equipment and computers, computer peripherals, communication devices, telecommunication apparatus, device-to-device communication apparatus, communications technology equipment, information technology equipment*

[my underline added]

101. Users and trade channels will necessarily overlap. However, to my mind, the average consumer would unlikely presume the producer of the component parts to which the Applicant's retail/wholesale services relate would also provide the retail/wholesale outlets for those component parts. Whilst, as noted at [105], electronic or digital goods might be expected to be sold in retail outlets under the brand that also produces those goods, my view is that this is unlikely to be the case with the *component parts* of those goods, which are purchased predominantly by manufacturers or repairers of the goods for which the component parts are intended. I find that, in this instance, user and trade channel overlap, without more, are insufficient to support a finding of similarity. All things considered, I find no similarity in respect of these services.

Contested terms: *retail services and wholesale services connected with the sale of […] computer programs for accessing databases and portals, computer software, software packages, computer software feature application, mobile applications and web applications, software applications, applied software for businesses, communication and networking software, VoIP software, office and business application software, system software and system support software, firmware, web application and server software*

102. I have found the goods to which the Applicant's retail/wholesale services relate to be identical to the Opponent's *computer software in the field of telehealth.* I consider software for use in telehealth to be fairly specialised. Users and trade channels will necessarily overlap. However, I do not find the above contested *retail services and wholesale services* to be complementary to the Opponent's *computer*

*software in the field of telehealth.* Although a telehealth software provider may make direct sales to consumers, I have no evidence to suggest that it would be typical for it to also provide retail/wholesale outlets for those goods. As noted, the mere selling of one's own goods does not amount to the bringing together of an array of goods for customers to conveniently view and purchase those goods. Indeed, the Nice System explicitly states the following in respect of class 35 services: 'For the purposes of classification, the sale of goods is not considered to be a service'. User and trade channel overlap, without more, are insufficient to support a finding of similarity. I do not find any similarity between the parties' offerings.

103. As noted earlier at [83], although the wording 'and parts for the aforesaid goods' is positioned after the term in which 'software' goods as well as physical goods are enumerated, I find that 'parts' would ordinarily be understood as only applying to *physical* goods.

Contested term: *retail services and wholesale services connected with the sale of […] telecommunication networks […]*

104. I refer back to my finding that a 'telecommunications network' comprises the entire 'set-up' that creates a system of communication. I have found the goods to which the Applicant's retail/wholesale services relate to have, at best, a very low degree of similarity to the Opponent's *computer software in the field of telehealth* in class 9. Users and trade channels will overlap, given the following:

- the Opponent's 'telehealth' software may be part of a 'telecommunications network', where that network is in the field of 'telehealth', though the actual telecoms network infrastructure will be discrete;
- the Applicant's restriction to its class 35 specification '*none of the aforesaid including retail services and wholesale services connected with the sale of remote monitoring and emergency telecare alarms for use in the home by the disabled or elderly to enable them to receive care and live*

*independently'* only excludes a specific product in 'telecare', namely 'remote monitoring and emergency telecare alarms […]';

- the 'telecommunication networks' to which the contested services apply can be used in the general field of telecare, save for the above-mentioned narrow restriction;
- the Opponent's 'telehealth' software may be sold through the same retail/wholesale channels selling 'telecommunications networks'.

105. I now consider the matter of complementarity. I have already found, at [102], that a producer of software goods would unlikely, under the same brand, provide the retail/wholesale outlets through which such goods are sold. To my mind, where software goods, particularly in the fairly niche area of 'telecare'/'telehealth', *are* sold by their producers, this would likely be through direct sales. I also find that a *provider of retail/wholesale* services in respect of 'telecommunications networks' is unlikely to also be the producer of those goods – certainly I have no evidence in this regard. My view is that the average consumer would unlikely presume the same undertaking to be responsible for both the Opponent's *computer software in the field of telehealth* and the Applicant's *retail/wholesale services* in respect of telecommunications networks. In the light of the foregoing, I do not find the parties' offerings to be similar.

Contested term: *retail services and wholesale services connected with the sale of* parts for *[…] telecommunication networks […]*

[my underline added]

106. I have found the goods to which the Applicant's services relate (i.e. parts for telecommunications networks) to be identical to the Opponent's *computer hardware in the field of telehealth.* Users and trade channels will inevitably overlap. However, the same undertaking both *producing* the parts for telecommunication networks as well as *providing the retail/wholesale channels* through which the goods are sold is, in my view, an unlikely prospect. It follows that the parties' offerings are not complementary. User and trade channel overlap, without more,

are insufficient to support a finding of similarity in this case. I find no similarity between the parties' offerings

The contested 'Business intermediary' services':

107. I now turn to the Applicant's 'Business intermediary' services, for which there are five separate (and somewhat convoluted) terms within the specification. Before I proceed to make my comparisons, it is appropriate to set out my understanding of the terms and, therefore, their scope. All five of the terms concerned have the same structure. For convenience, I will take the first of the terms as my point of reference in this regard:

> *'Business intermediary services in the purchase and sale, import and export, And wholesaling services and retailing services in relation to the following goods: Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments, Apparatus and instruments for the conduction, distribution, conversion, storage, regulation and control of electric current, Parts for the aforesaid goods'*
>
> [my underline added]

108. It is not entirely clear how this term is to be interpreted. To my mind, there are two possible constructions:

> i. One possibility is that 'business intermediary services' is at the core of the term and is to be read as relating to each of the services enumerated after it (i.e. 'purchase and sale', 'import and export' and 'wholesaling services and retailing services'), which, in turn, relate to the goods enumerated thereafter.
>
> ii. Another possible interpretation is that 'business intermediary services' is *not* at the core of whole term, but simply one service amongst those subsequently enumerated (i.e. 'purchase and sale', 'import and export' and 'wholesaling

services and retailing services') which, in turn, relate to the goods listed thereafter.

109. To my mind, the ambiguity arises because of the 'layered' manner in which the term is structured, rather than a lack of clarity as to the meanings of the words within it.

110. I note the following guidance from the Manual of trade marks practice: The Classification guide:[26]

> '3.8 **Interpreting specifications of services**
>
> In relation to descriptions of services, extra care should be taken when defining the scope of a specification. In *the Avenet Incorporated v. Isoact Limited* case (1998 FSR 16), Jacob J. said:
>
> > "In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase".'

111. I also bear in mind judgment of the Supreme Court in *Sky UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024],[27] per Lord Kitchin:

> '365. […] The correct approach, as a matter of principle, in considering a specification of services which is defined by terms which are not clear or precise, is to confine the terms used to the substance or core of their possible meanings: see, for example, *Reed Executive plc v Reed Business Information Ltd* [2004] EWCA Civ 159; [2004] RPC 40, at para 43. So too, if a specification of goods is defined by terms which are ambiguous, then it should be confined to those goods which are clearly covered. These principles are consistent with first, the requirement that the specifications of goods and services must be clear

[26] Published 23 August 2018; updated 15 October 2025.
[27] UKSC 36.

and precise so that others know what they can and cannot do; and secondly, general fairness because any ambiguity is the responsibility of the owner of the mark. If despite this, the words used are still unclear so that they cannot be interpreted, then it is permissible to disregard them. But, in my opinion, that will rarely be the case'.

112. My view is that, on the face of it, either construction i. or ii. noted at [108], is plausible. However, I note the presence elsewhere in the specification of several terms 'prefixed' with the wording '*retail services and wholesale services connected with the sale of* [relating to the same goods listed in the term presently being considered]'.[28] Therefore, construction ii. of the term would duplicate those retail/wholesale services already present. I, therefore, consider construction i. to be the most likely, i.e. that 'business intermediary services' is at the core of the term and is to be read as applying to each of the modes of sale/purchase subsequently enumerated; those modes of sale, in turn, relating to the goods listed thereafter. I proceed to make my comparisons on this basis.

Contested term: *Business intermediary services in the purchase and sale, import and export, And wholesaling services and retailing services in relation to the following goods: Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments, Apparatus and instruments for the conduction, distribution, conversion, storage, regulation and control of electric current, Parts for the aforesaid goods* [my underline added]

113. I first consider the meaning of 'business intermediary' in the context of the services at stake. The Oxford English Dictionary defines an intermediary as, inter alia, 'one who acts between others; an intermediate agent; a go-between middleman, mediator'.[29] It is my understanding that intermediaries in business in general will include brokers and agents. I also recognise that 'retailer' and 'wholesaler' are themselves examples of intermediaries in that they act as the link

[28] These have already been compared to the Opponent's specification at [103] – [111].
[29] Oxford English Dictionary (online version), accessed 31 October 2025 at 11:45 GMT.

between the seller (i.e. producer of the goods) and the ultimate purchaser of those goods. However, in the instant case, based on my construction of the contested term, the intermediary services concerned relate to the purchase/sale, import/export services. In other words, the provider of the Applicant's services is a third party acting as the link between the *producer* of the goods and the *retailer/wholesaler/importer* etc, as the case may be. An example of a business intermediary in this context is a 'distributor', positioned between the producer and the retailer/wholesaler/importer etc, in the supply chain.

114. Even though some of the goods to which the contested services ultimately relate have been found to be identical/similar to the Opponent's goods, I do not consider there to be any similarity between the contested services and any of the Opponent's offerings, for the following reasons. Users and Trade channels will be separate. The respective offerings will be very different in nature. The parties' offerings are neither competitive nor complementary. I do not find any similarity between the parties' offerings.

115. The above reasoning applies equally to the following contested services, in respect of which I also find 'no similarity':

*Business intermediary services in the purchase and sale, import and export, And wholesaling services and retailing services in relation to the following goods: Apparatus for recording, transmission or reproduction of sound or images, Data processing equipment and computers, Computer peripherals, Computer programs for accessing databases and portals, Computer software, software packages, Computer software feature application, Mobile applications and web applications, Parts for the aforesaid goods;*

*Business intermediary services in the purchase and sale, import and export, And wholesaling services and retailing services in relation to the following goods: software applications, Applied software for businesses, Communication and networking software, VoIP software, Office and business application software, System software and system support software, And firmware, Parts for the aforesaid goods;*

*Business intermediary services in the purchase and sale, import and export, And wholesaling services and retailing services in relation to the following goods: web application and server software, Communication devices, Telecommunication apparatus, Device-to-device_communication apparatus, telecommunication networks, Parts for the aforesaid goods;*

*Business intermediary services in the purchase and sale, import and export, And wholesaling services and retailing services in relation to the following goods: Communications technology equipment and information technology equipment.*

Contested term: *Consultancy and information regarding the aforesaid services*

[my underline added]

116. For the following reasons, I respectfully disagree with Ms Robinson's argument, noted at [94], that the contested 'consultancy and information' services are complementary to the Opponent's *goods*. Firstly, it is important to note that the above contested services relate to the *Applicant's services* preceding the contested term, and *not* the *Opponent's goods*. For the contested services that I have found to be not similar (i.e. the 'business intermediary services'), it follows that 'consultancy and information regarding' those services will also not be similar.

117. Where I have found any of the 'aforesaid services' to be similar to the Opponent's goods (i.e. those at [100]), this has been only to a low level. I accept that 'consulting and the provision of information in relation to' the retail/wholesale services through which the goods are sold will likely be part and parcel of those retail/wholesale services. I, therefore, find that, for the class 35 services that I have found to have a low level of similarity, there is a corresponding level of similarity as the to the 'consultancy and information' aspect of those services. The parties' offerings are similar to a low degree.

118. Before I proceed to consider the next class of contested services, it is appropriate to make a brief note on the following over-arching qualification present in the Applicant's class 35 specification:

'*The aforesaid services also provided via electronic networks, such as the Internet*'

119. I consider it to be a notorious fact that a great number of services are delivered online. I find the class 35 services to which the abovementioned qualification relates to be such that they would ordinarily be provided online, as well as from physical outlets or premises, as the case may be. I, therefore, find the qualification to be more or less redundant given the ubiquity of the online 'realm' in business and everyday life.

Class 38

120. Ms Robinson submitted that the following of the Opponent's terms were the most appropriate comparators against which to compare the contested class 38 services:

i. *computer peripherals;* (Class 9)
ii. *Technical services, namely monitoring the efficient provision of medical services, managing of the operation of medical electronic systems for identifying incidents and events which require action;* (Class 42)

iii. *Monitoring of alarm systems;* (Class 45)
and

iv. *call monitoring services and call assistance services, all relating to social and community care, residential care and patients;* (Class 45)

121. When I invited Ms Robinson to identify which of these comparators represented the Opponent's best case, she maintained that all needed to be considered 'because the class 38 specification is so broad'. No submissions were offered as

to which of the four comparators was most appropriate for each of the contested terms.

Contested term: *Telecommunication services*

122. The contested term is inescapably broad. Put simply, it encompasses services which facilitate communication, between at least two parties, over distance. Examples of services encompassed by the term include, inter alia: provision of internet access; transmission of information over digital networks; telephone and voicemail services. I compare the Applicant's services to the Opponent's class 9 goods, *computer peripherals.* 'Computer peripherals' will encompass, inter alia, items such as modems and routers; i.e. items of hardware that connect a computer or network to the internet. In so far as 'telecommunication services' encompasses the provision of internet access, the necessary device to access the internet is typically provided as part of the service. Users and trade channels will, therefore, overlap in this regard. Although both offerings will be necessary to enable a user to enjoy access to the internet, each will play a different role: the *service* facilitates the access overall (i.e. it provides the communication channels, the infrastructure on which it depends, and the overall functionality); whereas the *peripheral device* (e.g. modem) is what enables connection to the internet. The respective offerings will have distinct natures; one being an act of service, the other being a physical device. The parties' offerings are not competitive, neither being substitutable for the other. It is my understanding that many modems and routers, provided as part and parcel of an internet provision service, bear the Internet Service Provider's ('ISP') own branding; even though these devices might not have been manufactured by the ISP. The modem/router will be important for the provision of internet access; and I consider that a significant proportion of average consumers might presume the ISP to be responsible for both the service and the device provided as part of that service – the goods and services are therefore complementary. All things considered, I find at least a low level of similarity between the parties' offerings. The presence of the following limitation to the Applicant's class 42 specification does not prevent this finding, because the Opponent's class 9 *computer peripherals* are not subject to any limitation.

Contested term: *Providing access to and making available of electronic communication networks, <u>including</u> wireless, websites, portals, electronic databases and online communication facilities*

[my underline added]

123. The use of the word 'including', in my view, is to be treated as akin to 'for example' or 'inter alia'; it is not to be treated as a 'limiting' qualification akin to 'namely'. I, therefore, consider the contested service to be the broad term 'providing access to and making available of electronic networks' with the various 'categories' of access listed thereafter being mere examples of what is covered. Taking the provision of 'wireless' access to electronic communication networks as an example of service included the by the term, I compare it to the Opponent's class 9 goods, *computer peripherals.* For reasons analogous to those set out above at [122], I find the parties' offerings to have at least a low level of similarity.

Contested term: *Computer communication and Internet access*

124. I compare the contested services to the Opponent's *computer* peripherals in class 9, and I find them to have at least a low level of similarity for reasons analogous to those set out at [122].

Contested term: *Telephone and mobile telephone services*

125. Ms Robinson has not identified which of the four comparators listed at [120] gives the Opponent its best case with regard to the contested term. It is, therefore, necessary for me to make a finding on what each of those terms covers:

i. *computer peripherals;* (Class 9) – this has already been addressed above at [42] and implicitly addressed at various points thus far in my decision.

ii. *Technical services, namely monitoring the efficient provision of medical services, managing of the operation of medical electronic systems for identifying incidents and events which require action;* (Class 42) – these are

narrow terms that concern specific tasks; i.e. checking the efficiency of medical service provision; and managing electronic systems used to 'triage' medical incidents/events.

iii. *Monitoring of alarm systems;* (Class 45) – broadly speaking, this term entails being ready to respond in some way to alarms or alerts.

and

iv. *call monitoring services and call assistance services, all relating to social and community care, residential care and patients;* (Class 45) – it is my understanding that this service entails the supervision of care workers regarding completing their duties and patient visits etc. For example, to check the efficiency and effectiveness of the services being delivered, from an operational perspective.

126. I will first compare the contested term to the Opponent's *computer peripherals* in class 9. An example of a computer peripheral is a 'dongle', a device that plugs in to a computer to provide internet access. It is my understanding, as an ordinary member of the public, that major mobile telephone providers typically also provide 'mobile broadband' dongles. A dongle can be used with a mobile phone to the extent that it 'taps in' to the mobile network to provide internet access to other devices. This method of connecting to the internet is often referred to as 'hot-spotting'. I bear in mind that, although dongles are often used with mobile phones, their use is not primarily *for* mobile phones. The respective offerings will have different primary purposes: to enable communication by voice via mobile phones (Applicant) versus the ability to 'hotspot' to the internet (Opponent). User overlap is inevitable given that the majority of people own a mobile phone. Such overlap is, therefore, not particularly remarkable. Trade channels will be shared. The parties' offerings are not competitive, neither being substitutable for the other. I do not find complementarity, either, for the following reason. I acknowledge that providers of telephone and mobile phone networks typically also provide *internet services*; and, as part of their internet service offering, they typically provide dongles. However, the contested services are *telephone and mobile* services; and

I do not regard these services as particularly useful or important to dongles. All things considered, I do not find the parties' offerings to be similar. If I am wrong about that, then the level of similarity will be no more than very low. I do not consider that comparison of the contested term with any other of the Opponent's terms would put the Opponent in a better position.

Contested terms: *Transfer, distribution, transmission and sending of data, images and sound; Electronic data transfer*

127. Put simply, I find that the above services entail the provision of electronic communications channels, the most well-known example being the provision of internet access. I compare these terms to the Opponent's *computer peripherals* in class 9. For reasons analogous to those set out at [122], I find at least a low level of similarity between the parties' offerings.

Contested term: *Voice over Internet Protocol [VoIP] communication services*

128. I understand 'VoIP' to be an acronym for 'Voice over Internet Protocol', which, in simple terms, is a system to enable voice calls to be made over the internet.[30] Examples of services encompassed by the contested term are the provision of a teleconferencing system for businesses, as well as familiar VoIP 'Apps' such as 'Zoom' and 'WhatsApp'. I compare the Applicant's service to the Opponent's *computer peripherals* in class 9. I find that teleconferencing services will typically include the provision of the physical kit or device required to conduct a teleconference. The necessary VoIP device in a teleconferencing set-up would fall within the Opponent's 'computer peripherals'. By analogy with my comparison at [122], I find at least a low level of similarity between the parties' offerings.

Contested term: *Consultancy and information regarding the aforesaid services*

129. With the exception of *Telephone and mobile telephone services,* I have found the Applicant's 'aforesaid' contested class 38 services to have at least a low level

[30] Collins English Dictionary (online version), accessed 3 November 2025 at 16:30 GMT.

of similarity to the Opponent's offerings. I consider the provision of consultancy and information to be part and parcel of the 'aforesaid services'. I, therefore, find the above contested term to have a commensurate level of similarity with the Opponent's offerings. With the exception of *Telephone and mobile telephone services*, I find the parties' goods and services to have at least a low level of similarity.

130. I do not consider *Consultancy and information regarding […] Telephone and mobile telephone services* to be similar to any of the Opponent's terms.

131. My comments at [118] and [119] as to the effect of the over-arching qualification '*The aforesaid services also provided via electronic networks, such as the Internet'* apply equally here.

Class 42

132. The Opponent has highlighted the following as particular points of similarity:

- the opposed 'scientific and technological services' are similar to the Opponent's class 42 term *Technical services, namely monitoring the efficient provision of medical services, managing of the operation of medical electronic systems for identifying incidents and events which require action;*[31]

*and*

- the opposed services 'in connection with software, hardware, computer systems and telecommunications' are highly similar to the Opponent's: *computer peripherals* (Class 9); *online, non-downloadable software in the field of telehealth* (Class 42) and 'monitoring services' in class 45. [32]

[31] Opponent's further written submissions, [21].
[32] As above, [22].

Contested term: […] *technological services* […]

133. The Collins English dictionary defines 'technology' as the methods, systems and devices, which are the result of scientific knowledge, being used for practical services.[33]

134. The contested term is very broad and will encompass a vast array of services which employ technological methods to complete tasks/solve problems. I find that the contested term will encompass the Opponent's narrow term *Technical services, namely monitoring the efficient provision of medical services, managing of the operation of medical electronic systems for identifying incidents and events which require action.* Therefore, the parties' services are identical according to the principle in 'Meric'.

Contested term: *Computer system analysis*

135. I compare the contested term to the Opponent's *Technical services, namely […] managing of the operation of medical electronic systems for identifying incidents and events which require action.* I consider the managing of the operation of an electronic system to be an example of *Computer system analysis.* I find that the contested term will encompass the Opponent's narrower term. The parties' services are, therefore, identical according to the principle in 'Meric'.

Contested term: *Scientific […] services […]*

136. It is my understanding that 'science', put simply, is the quest for knowledge by the testing of theories through experiment. The Oxford English Dictionary defines 'science' as, inter alia, 'knowledge or understanding acquired by study'.[34] It follows that 'scientific' must describe that which is related to science. The contested term 'scientific services' is inescapably broad. The Nice System includes the following 'Explanatory Note' for Class 42:

[33] Collins English Dictionary (online version), accessed 4 November 2025, at 14:44 GMT.
[34] Oxford English Dictionary (online version), accessed 6 November 2025, at 10:37 GMT.

'Class 42 includes mainly services provided by persons in relation to the theoretical and practical aspects of complex fields of activities, for example, scientific laboratory services, engineering, computer programming, architectural services or interior design.'

137. In my view, 'technological' and 'scientific' are not necessarily the same thing, although scientific services will very often involve the use of technological know-how by way of the equipment/devices employed to perform the scientific service. For example: 'chemical analysis'[35] is a *scientific* service in that it involves the testing of a substance to determine its composition; with the equipment/devices employed in the acts of testing being examples of *technological* solutions for chemical analysis.

138. I do not consider the Opponent's *Technical services, namely […] managing of the operation of medical electronic systems for identifying incidents and events which require action,* identified by Ms Robinson as the appropriate comparator (noted at [125]) to be particularly 'scientific'. However, I will proceed to make my comparison. I consider the Opponent's term to cover *technological*, rather than *scientific*, services. In my view, it is difficult to see how the parties' services would overlap in terms of purpose. Whilst a user of the Applicant's 'scientific' service might also happen to be the user of the Opponent's technical service, I do not consider such overlap to be particularly remarkable. Trade channel overlap is unlikely, although not impossible. I do not find the parties' offerings to be either competitive or complementary. Each offering will entail different acts of service. All things considered, I do not find any similarity between the services.

139. There do not appear to be any obvious points of similarity between the contested term and any other of the Opponent's terms.

Contested term: [*technological services*] *and research and design relating thereto*

[35] An example of a service included in Class 42 of the Nice Classification System.

[My parentheses added]

140. The acts of service at the core of the Applicant's term are researching and designing. The acts of researching and designing relate to technological services. Neither party has provided any examples of services encompassed by this term. In my view, it is conceivable that such a broad term could encompass both research into technologies in the field of 'telehealth', and the design of specific software in the field of 'telehealth'. I compare the contested term to the Opponent's *online, non-downloadable software in the field of telehealth* in class 42.

141. At this point, it is appropriate to note that the wording of the Opponent's term, at first sight, suggests that the software concerned is a good rather than a service. However, on closer consideration, it is my view that any software that is available online, but which cannot be downloaded onto a device, is unlikely to be a good. It is my understanding that if online software cannot be downloaded, then it must be either cloud-based or otherwise hosted by a provider. I, therefore, consider that *online, non-downloadable software in the field of telehealth* must be by way of a service, i.e. the provision of *online, non-downloadable software in the field of telehealth*.

142. Both parties' offerings could be within the field of 'telehealth' (notwithstanding the Applicant's narrow exclusion '*none of the aforesaid services relating to remote monitoring and emergency telecare alarms for use in the home by the disabled or elderly to enable them to receive care and live independently'*). However, their specific purposes will differ: *research* into, and the *designing* of, software (Applicant) versus the *provision of* online software (Opponent). Consequently, the respective acts of service will be different. The respective services will also differ in methods of use. To my mind, the Applicant's services will typically be engaged by professionals in the 'telehealth' business. Members of the general public will unlikely engage a company to conduct research into, or design, telehealth software. Users of the Opponent's services, on the other hand, will comprise both professionals in the field of telehealth, as well as individuals receiving telehealth services. Users will, therefore, overlap. Trade channels may overlap in some instances; the same service-provider may *provide* online software as well as

conducting *research* into, and *designing*, telehealth software. There may be competition between the services in some instances; for example, a telehealth business might deliberate over whether to either engage a service providing a web-based ready-to-use software package, or, instead, engage a company to undertake research and design in order to create a software package for the consumer to own and/or provide for others to use. However, I do not find complementarity. A consumer looking to engage a provider to undertake research into, and design of, a telehealth software package would not find the [provision of] *online, non-downloadable software* in that field to be important or particularly useful for the service that they are seeking. Conversely, a consumer seeking the Opponent's online ready-to-use service will not find the Applicant's research and design services to be useful or important in that regard. In the light of the foregoing, I find the parties' services to have a fairly low level of similarity.

Contested term: [*scientific services*] *and research and design relating thereto*

143. At the core of the Applicant's services are the acts of researching and designing. The field to which these acts of service relate (i.e. 'scientific services') is very broad and will encompass a vast array of scientific matters. I do not find any of the terms identified by Ms Robinson as suitable comparators to have any obvious or direct connection with science. That said, the 'least remote' comparator might be said to be *online, non-downloadable software in the field of telehealth.* Whilst I recognise that many fields may ultimately have some sort of scientific basis, I must be prudent not to construe the Opponent's terms too broadly. To my mind, to ascribe a scientific aspect to the Opponent's 'telehealth' software would be an overly liberal approach. Taking into account the users, trade channels, acts of service, and the matters of competition and complementarity, I do not find the parties' services to be similar.

Contested term: *Design, Creation, Updating, Implementing […] In connection with the following goods: Software, Computer software packages, software applications (apps), Mobile applications and web applications […]*

144. I compare these services to the Opponent's *online, non-downloadable software in the field of telehealth.* Both parties' services may be in the field of telehealth (notwithstanding the Applicant's narrow exclusion noted at [142]). However, the parties' offerings will have different core functions: the provision of web-based software (Opponent) versus the design, creation, updating and implementing of software. For reasons analogous to those provided at [142], I find a fairly low level of similarity between the respective services.

Contested term: *Design, Creation, Updating, Implementing […] In connection with the following goods: […] telecommunication services, telecommunication networks and Telecommunications equipment*

145. I compare these services to the Opponent's *online, non-downloadable software in the field of telehealth.* As noted, 'telehealth' and 'telecare' services are, essentially, health and care services delivered remotely. Telecommunications services, networks and equipment, therefore, have necessary involvement. Both parties' offerings may be in the field of telehealth in the manner described above at [142]. The respective services will have different specific purposes: the provision of online software for telehealth (Opponent) versus the designing, creation, updating and implementing of the communications infrastructure which enables telehealth services to operate. The Opponent's software services will be used by both telehealth professionals and the individuals receiving telehealth services. However, users will only overlap to the extent that both parties' offerings are engaged by professionals in the field. A general consumer would not engage a service-provider to design, create or update the relevant telecommunications infrastructure. Trade channels will likely overlap. The parties' offerings are not in a competitive relationship, neither being substitutable for the other. However, I do find complementarity: the creation, design and updating of the telecommunications infrastructure will likely be important to enable the provision of online telehealth software; and the average professional consumer may presume both services to be available from the same undertaking. I find at least a low level of similarity between the respective services.

Contested term: *[…] Ordering In connection with the following goods: Software, Computer software packages, software applications (apps), Mobile applications and web applications, telecommunication services, telecommunication networks and Telecommunications equipment*

146. I consider the ordinary and natural meaning of 'ordering' in relation to goods to mean the act of placing orders for the purchase of those goods. At [136], I noted the Explanatory Note provided at class 42 of the Nice System setting out the services mainly covered within that class. There do not appear to be any examples of 'ordering' services in Class 42, either in the current edition,[36] or the 2022 edition[37] (2022 being the year of the filing of the application) of the Nice System. Whilst it may be the case that an 'ordering' service might be provided in the form of, say, 'Software as a service', for example, the wording of the contested term gives no detail as to the form in which the service is delivered. My view is that to impute some sort of 'software-type' service to the term would be going too far and would extend the term beyond its ordinary reading. Neither party has raised any argument as to 'ordering' having some other meaning; for instance, being a particular term of art concerning services particular to class 42. Taking the wording of the term at face value, it appears to be proper to class 35, rather than class 42. However, in practice, this does not prevent me from proceeding with my comparison, based on an ordinary reading of the term, as I would compare any other pair of competing terms.

147. I find that the Applicant's services likely entail the act of placing orders for the purchase of the goods subsequently listed. This service will typically be engaged by businesses and other organisations who wish to engage a third party to deal with the task of ordering the goods that it needs in order to operate. Whilst the *goods to which the ordering services relate* have been found to be similar to the Opponent's terms, it does not necessarily follow that a service by way *of ordering in relation to those goods* is similar. Bearing in mind the users, trade channels, nature and methods of use for the parties' offerings, as well as the matters of

[36] Nice Classification System, 12-2025 Edition.
[37] As above, 11-2022 Edition.

competition and complementarity, I do not consider the Applicant's services to be similar to any of the Opponent's terms. The parties' offerings are not similar.

Contested term: *Design services for data processing systems*

148. It is my understanding that the processing of data entails the various ways in which data are treated, typically by computers. Examples of data processing will include, inter alia: presentation, collation and interpretation of data. I consider a 'data processing system' to refer to the arrangement of computers, software and/or processes, which, collectively, comprise the 'system' which deals with the data. To my mind, a data processing system could be in the guise of a system of software. At the core of the contested term is the act of *designing* such a system. I compare the contested term to the Opponent's *online, non-downloadable software in the field of telehealth* service. For reasons analogous to those at [142], I find at least a low level of similarity between the parties' services.

149. <u>The Applicant's 'cloud-based' services</u>

I set out my understanding of the following contested terms, each of which is a type of cloud computing model:

*Cloud computing* – a model of computing in which services stored on the internet are provided to users on a temporary basis.[38] The software is stored by way of remote servers and accessed online by users from their own devices.

*Platform as a service [PaaS]* – a cloud-based model of computing where the service provider provides a complete platform (i.e. the hardware, software and underlying infrastructure) to enable professionals to develop software without needing to deal with the upkeep of having their own infrastructure. The 'as a service' aspect of such terms means that the platform (or software/infrastructure etc) is hosted remotely.[39]

[38] Collins English Dictionary (online version), accessed 13 November 2025, at 13:20 GMT.
[39] In decision BLO/0066/24, at [22] – [23], Professor Phillip Johnson, as the Appointed Person, appeared to approve of this characterisation.

*Infrastructure as a Service [IaaS]* – a cloud-based model according to which all computing resources are provided online, including virtual computers and servers.

*Software as a service [SaaS]* – a cloud-based model according to which the software is accessed online, rather than installed on the user's device.

Contested term*: Software as a service [SaaS]*

150. I compare the Applicant's term to the Opponent's *online, non-downloadable software in the field of telehealth.* As noted at [142], the Applicant's narrow exclusion ('*none of the aforesaid services relating to remote monitoring and emergency telecare alarms for use in the home by the disabled or elderly to enable them to receive care and live independently*') does not prevent the Applicant's services being within the field of telehealth altogether. To my mind, 'online and non-downloadable software' is simply another way of describing cloud-based software. I, therefore, find the parties' terms to be synonymous. The parties' offerings are identical.

Contested term: Contested term: *Cloud computing*

151. Cloud computing will encompass various cloud-based computing services, including those listed and defined above at [149]. I find that the Opponent's *online, non-downloadable software in the field of telehealth* service will be encompassed by the Opponent's term. The services are, therefore, identical based on the principle in 'Meric'.

Contested term: *Platform as a service [PaaS]*

152. I compare the Applicant's term to the Opponent's *online, non-downloadable software in the field of telehealth.* Platform as a Service is typically used by professionals in software development. The services overlap in purpose to the broad extent that both are software-related and typically engaged by way of

subscription or rental. However, their specific purposes are different. The acts of service will also be different. The Opponent's service is limited to the field of telehealth. I do not consider it typical for telehealth professionals to also be experts in software development. I, therefore, find that users will be distinct. I consider trade channel overlap to be unlikely, although not impossible. I find the parties' offerings to be neither competitive nor complementary; neither service being substitutable or necessary for the other. I find at best a very low level of similarity between the services. I do not consider that comparison with any other of the terms underlined by Ms Robinson would improve the Opponent's position.

Contested term: *Infrastructure as a Service [IaaS]*

153. I compare the Applicant's term to the Opponent's *online, non-downloadable software in the field of telehealth.* It is my understanding that the essential selling point of Infrastructure as a Service is that it is a comprehensive service that avoids the need for an organisation to purchase and maintain its own software and hardware infrastructure (or, at least, reduces its burden in this regard). The respective services will overlap in purpose to the extent that both offerings provide software; it is simply that the Applicant's offering extends beyond software to virtual machines and servers etc, as substitutes for hardware versions. Methods of use will also overlap somewhat. The Applicant's service could be sought by any professional organisation, in any field (including telehealth). I have already found that users of 'online non-downloadable software will not only be customers/patients in their homes, but also professionals in the field of telecare. Users will, therefore, overlap. Trade channels may also overlap. I consider the respective services to be in a competitive relationship: a telehealth professional might deliberate over whether to subscribe to cloud-based software only, or to opt for a package with more extensive functionality. I do not find complementarity; neither service is particularly useful or important for the other. All things considered, I find at least a low level of similarity between the parties' services.

Contested term: *Data warehousing*

154. I understand that a 'data warehouse' is a database in which data are collected from several sources within an organisation for ease of access.[40] 'Data warehousing' is, therefore, the act of collecting the data from their various sources and compiling them into one electronic repository. Typical users of this service will be almost exclusively the professional public. I compare the contested term to the Opponent's *Technical services, namely monitoring the efficient provision of medical services, managing of the operation of medical electronic systems for identifying incidents and events which require action.* Although both are types of IT service, they have distinct core purposes: the collation and storage of data (Applicant) versus monitoring a system for efficiency. The acts of service will be different. Users will overlap to the extent that both might be used by professionals in medical or healthcare settings. That said, the Applicant's service could be used in just about any professional organisation. Trade channel overlap is possible, given that both are IT services. I find the parties' offerings to be neither competitive nor complementary; neither service being substitutable or necessary for the other. All things considered, I find a very low level of similarity between the services. I do not consider that comparison with any other of the terms underlined by Ms Robinson would improve the Opponent's position.

Contested term: *Design, development and updating of computer systems, computer networks and computers*

155. At the core of the contested term are the acts of designing, developing and updating; the items to which the services relate being computer systems, computer networks and computers. I compare the Applicant's term to the Opponent's *online, non-downloadable software in the field of telehealth.* Both parties' offerings may be in the field of telehealth. However, the specific purposes and respective acts of service are different: the designing, developing and updating of computer systems/networks and computers versus the provision of cloud-based software. Users will overlap to the extent that both will be used by professionals in the field of telehealth. Trade channel overlap is possible. It is at least conceivable that an undertaking that designs/develops/updates computers systems, networks and

[40] Oxford English Dictionary (online version), accessed 9 November 2025, at 14:05 GMT.

computers (all of which include software as components) might also provide online software services. The parties' services might be competitive in certain instances; a telehealth organisation might consider whether to use the Opponent's software service or whether to, instead, engage a company to design/develop an entire system for it to call its own. I do not find complementarity, neither offering being necessary or important for the other. I find at least a low level of similarity between the parties' services.

Contested term: *Computer programming*

156. It is my understanding that 'computer programming' is the act of writing computer programs. A computer program is the set of instructions according to which a computer, 'App' or piece of software operates. I understand that a 'computer program' is a single set of instructions, whereas a piece of 'computer software' is a collection of programs. I compare the Applicant's term to the Opponent's *online, non-downloadable software in the field of telehealth.* Both services may be in the field of telehealth. I consider computer programming to be part and parcel of the design and development of software. For reasons analogous to those set out at [142], I find the parties' services to have a fairly low level of similarity.

Contested term: *Automation services*

157. To my mind, 'automation services' is a fairly broad term encompassing instances of technology being employed to perform tasks with little human intervention. The term will cover a vast array of tasks including many instances of data processing and analysis. One example is the automatic sending of reminders by an electronic calendar. I consider the Opponent's *Technical services, namely […] managing of the operation of medical electronic systems for identifying incidents and events which require action* to be an example of a task that would be performed by an automated system. I find that the Opponent's services would be encompassed by the Applicant's broader term. The services are, therefore, identical according to the principle in 'Meric'.

Contested term: *IT specialists, ICT specialists, information analysts […] The aforesaid services also by means of a helpdesk;*

158. Broadly speaking, the contested term covers Information Technology (IT) services. I understand IT to relate to the use of electronic systems to deal with information. I consider the Opponent's *Technical services, namely […] managing of the operation of medical electronic systems for identifying incidents and events which require action* to be an example of a service typically provided by the professionals enumerated within the term (i.e. IT specialist, ICT specialist, information analyst). I find that the Opponent's services would be encompassed by the Applicant's broader term. The services are, therefore, identical according to the principle in 'Meric'. The qualification 'by means of a helpdesk', in my view, indicates that users of the service may log requests and queries by contacting the service-provider remotely.

Contested term: *[…] system developers, The aforesaid services also by means of a helpdesk*

159. I compare the Applicant's term to the Opponent's *online, non-downloadable software in the field of telehealth.* I find the parties' services to have a low level of similarity for reasons analogous to those provided at [155].

Contested term: *Industrial automation*

160. I consider automation in an industrial setting to be the use of machinery and/or electronic equipment to enable manufacturing processes or systems to operate at greater speed and with less human intervention.[41] I do not find any of the Opponent's terms, suggested by Ms Robinson as the closest comparators, to bear any obvious level of similarity to the Applicant's term. Bearing in mind the users, trade channels, nature and methods of use for the parties' offerings, as well as the matters of competition and complementarity, I do not find any similarity between

[41] Collins English Dictionary (online version), accessed 13 November 2025, at 16:36 GMT.

the parties' offerings. In my view, comparison with any other of the Opponent's terms would unlikely improve the Opponent's position.

Contested term: *Design, development, programming, implementation […] of websites*

161. In simple terms, the contested services entail the creation and setting up of websites for third parties. I compare the Applicant's term to the Opponent's *online, non-downloadable software in the field of telehealth.* Both services may be used within the field of telehealth, although their specific purposes will differ. Methods of use will also differ. Users will overlap to the extent that both services will be used by professionals in telehealth. Trade channel overlap is possible. I do not consider the services to be in a competitive relationship, neither being substitutable for the other. I do not find complementarity, either. A consumer engaging the Applicant's 'website' services will not find a cloud-based software service to be particularly important or useful in that regard; nor will the Opponent's cloud-based software service be particularly important for the Applicant's 'website' services. All things considered, I find at least a very low level of similarity between the parties' services.

Contested terms: *Hosting of computer sites (websites); […] maintenance, management and hosting of websites*

162. It is my understanding that 'web hosting' is the provision of storage space on a server for the purpose of storing websites and making them available online.[42] The provider of the web hosting service is typically responsible for the operation and management of the website.[43] I compare the Applicant's term to the Opponent's *online, non-downloadable software in the field of telehealth.* Both parties' offerings could be used by telehealth professionals. However, their specific purposes will differ: the provision of storage space for a website versus the provision of cloud-based software. The acts of service will, therefore, differ. Trade channels may overlap. I do not consider the services to be either competitive or complementary;

[42] Oxford English Dictionary (online version), accessed 17 November 2025, at 15:00 GMT.
[43] Cambridge Dictionary (online version), accessed 17 November 2015, at 15:03 GMT.

neither being substitutable nor necessary for the other. In the light of the foregoing, I find at least a very low level of similarity between the parties' services.

Contested term: *Data mining*

163. The Oxford English Dictionary defines 'data mining' as 'the process or practice of examining large collections of data in order to generate new information, typically using specialised software.[44] I compare the Applicant's term to the Opponent's *Technical services, namely […] managing of the operation of medical electronic systems for identifying incidents and events which require action.* Both offerings are examples of IT services involving the processing of data in some way. However, the particular technical operations entailed by each service will be different. Methods of use will, therefore, differ. Both services may be in the field of telehealth. Users will overlap to the extent that both services will be engaged by telecare professionals. Trade channels will likely overlap. It is conceivable that both parties' services might be available from the same provider (e.g. an IT firm, perhaps even specialised in telehealth). The services are not in a competitive relationship, neither being substitutable for the other. I do not find complementarity, either; neither service is necessary or particularly useful for the other. I find a low level of similarity between the respective services.

Contested term: *Electronic storage of files, data and documents*

164. The Applicant's service entails the storage of material by electronic means. Files, data and documents can be stored electronically in several ways. Examples include, inter alia: storage on a computer hard-drive; by way of an on-site server; or, in many instances, by way of cloud-based storage (i.e. online repositories). I compare the Applicant's term to the Opponent's *online, non-downloadable software in the field of telehealth.* Both services may be in the field of telehealth, although their specific purposes will diverge. Each offering will entail different acts of service and methods of use. Users and trade channels will overlap in the manner described above at [161]. I find the respective services to be neither competitive

[44] Oxford English Dictionary (online version), accessed 9 November 2025, at 14:14 GMT.

nor complementary; neither being substitutable nor necessary for the other. All things considered, I find a low level of similarity between the services.

Contested term: *Development of computer systems for the internet of things (IoT)*

165. The 'internet of things' is described by the Cambridge Dictionary in the following terms:[45]

> 'objects with computing devices in them that are able to connect to each other and exchange data using the internet'
>
> With the following examples of the term in use:[46]
>
> - *Cloud applications will be used by billions of devices of all kinds, all connected to the internet of things.*
>
> - *The internet of things might, for example, involve smart bins that can signal when they need to be emptied.*

166. I compare the Applicant's term to the Opponent's *online, non-downloadable software in the field of telehealth.* For reasons analogous to those set out above at [155], I find the parties' services to have at least a low level of similarity. The fact that this contested term relates to computer systems for the 'internet of things' does not prevent me from making this analogous finding.

Contested term: *Consultancy and information regarding <u>the aforesaid services</u>* [my underline added].

167. I have found a number of the Applicant's 'aforesaid' contested class 42 services to have some level of similarity to the Opponent's offerings. I consider the provision of consultancy and information to be part and parcel of the 'aforesaid services'. I,

[45] Cambridge Dictionary (online), accessed 18 November 2025, at 16:14 GMT.
[46] As above.

therefore, find the above contested term to have a commensurate level of similarity in each instance where an 'aforesaid' service has been found to be similar. Where I have found no level of similarity in respect of the 'aforesaid' service, I, accordingly, find no similarity in respect of the above contested term, by extension.

168. My comments above at [119] relating to the Applicant's qualification '*Including the aforesaid services provided via electronic networks, including the Internet'* also apply to class 42.

169. Some similarity between the parties' goods and services is essential in order to find a likelihood of confusion between the parties' marks. In the case of *eSure Insurance v Direct Line Insurance,* [2008] ETMR 77 CA, Lady Justice Arden stated that:

> '49..... I do not find any threshold condition in the jurisprudence of the Court of Justice cited to us. Moreover, I consider that no useful purpose is served by holding that there is some minimum threshold level of similarity that has to be shown. If there is no similarity at all, there is no likelihood of confusion to be considered. If there is some similarity, then the likelihood of confusion has to be considered but it is unnecessary to interpose a need to find a minimum level of similarity'.

170. The opposition against the goods and services that I have found to have no similarity therefore fails at this point. For ease of reference, those goods and services are:

| |
|---|
| Class 9:<br>*[…] nautical, surveying, […], cinematographic, optical, weighing, measuring, […] checking (supervision), […]and teaching apparatus and instruments; Apparatus and instruments for […] accumulating […] electricity; not including remote monitoring and emergency telecare alarms for use in the home by the disabled or elderly to enable them to receive care and live independently.* |

*Parts for cinematographic and optical apparatus and instruments; not including remote monitoring and emergency telecare alarms for use in the home by the disabled or elderly to enable them to receive care and live independently.*

Class 35:

*Business intermediary services in the purchase and sale, import and export, And wholesaling services and retailing services in relation to the following goods: Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments, Apparatus and instruments for the conduction, distribution, conversion, storage, regulation and control of electric current, Parts for the aforesaid goods; Business intermediary services in the purchase and sale, import and export, And wholesaling services and retailing services in relation to the following goods: Apparatus for recording, transmission or reproduction of sound or images, Data processing equipment and computers, Computer peripherals, Computer programs for accessing databases and portals, Computer software, software packages, Computer software feature application, Mobile applications and web applications, Parts for the aforesaid goods; Business intermediary services in the purchase and sale, import and export, And wholesaling services and retailing services in relation to the following goods: software applications, Applied software for businesses, Communication and networking software, VoIP software, Office and business application software, System software and system support software, And firmware, Parts for the aforesaid goods; Business intermediary services in the purchase and sale, import and export, And wholesaling services and retailing services in relation to the following goods: web application and server software, Communication devices, Telecommunication apparatus, Device-to-device communication apparatus, telecommunication networks, Parts for the aforesaid goods; Business intermediary services in the purchase and sale, import and export, And wholesaling services and retailing services in relation to the following goods: Communications technology equipment and information technology equipment;*

*retail services and wholesale services connected with the sale of scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling,*

| |
|---|
| *checking (supervision), life-saving and teaching apparatus and instruments, apparatus and instruments for the conduction, distribution, conversion, storage, regulation and control of electric current, computer programs for accessing databases and portals, computer software, software packages, computer software feature application, mobile applications and web applications, software applications, applied software for businesses, communication and networking software, VoIP software, office and business application software, system software and system support software, firmware, web application and server software, telecommunication networks, and parts for the aforesaid goods; Consultancy and information regarding the aforesaid services.*<br><br>*The aforesaid services also provided via electronic networks, such as the Internet; none of the aforesaid including retail services and wholesale services connected with the sale of remote monitoring and emergency telecare alarms for use in the home by the disabled or elderly to enable them to receive care and live independently.* |
| Class 38:<br>*Consultancy and information regarding Telephone and mobile telephone services;*<br><br>*The aforesaid services also provided via electronic networks, such as the Internet; not including communication services linked to remote monitoring and emergency telecare alarms for use in the home by the disabled or elderly to enable them to receive care and live independently.* |
| Class 42:<br>*Scientific […] services and research and design relating thereto; Ordering In connection with the following goods: Software, Computer software packages, software applications (apps), Mobile applications and web applications, telecommunication services, telecommunication networks and Telecommunications equipment; Industrial automation; Consultancy and information regarding the aforesaid services.*<br><br>*Including the aforesaid services provided via electronic networks, including the Internet; none of the aforesaid services relating to remote monitoring and* |

| |
|---|
| *emergency telecare alarms for use in the home by the disabled or elderly to enable them to receive care and live independently.* |

171. I refer back to the outline of my approach set out at [16] and remind myself of the Opponent's argument that the opposition should succeed in its entirety based upon its earlier mark (iv) alone. Given that I have found a number of the contested terms to be dissimilar to the Opponent's goods/services under earlier mark (iv), it is now necessary to assess whether the Opponent's position in respect of those terms would be improved based upon any of the other three earlier rights relied upon. As noted, earlier marks (i), (ii) and (iii) are subject to the proof of use requirements. It is my view that none of the terms within any of the specifications for earlier marks (i) to (iii) are closer comparators than those upon which a goods/services comparison has been made based upon earlier mark (iv). Therefore, even if genuine use were to be shown for each and every term for which these earlier marks stand registered, it would not place the Opponent in any stronger position.

172. The goods and services against which the opposition remains 'live' are as follows:

| |
|---|
| Class 9:<br>*Scientific […]photographic, […]signalling, […] apparatus and instruments; Apparatus and instruments for conducting, switching, transforming, […] regulating or controlling electricity; Apparatus for recording, transmission or reproduction of sound or images; Data-processing equipment and computers; Computer peripheral devices; Computer programs for accessing databases and portals; Computer software, software packages, Computer software applications, downloadable, Mobile applications and web applications; Application software; computer software, software packages, downloadable computer software applications, mobile applications, web applications and application software in relation to* |

*communications, group communications, wireless broadband communications, telecommunications and bodycam technology, and related control room solutions; Applied software for businesses; Communication and networking software; VoIP software; Office and business applications; System and system support software, and firmware; Web application and server software; Communication apparatus; Telecommunications apparatus; Point-to-point communications equipment; Telecommunications networks; not including remote monitoring and emergency telecare alarms for use in the home by the disabled or elderly to enable them to receive care and live independently.*

*Parts for: Scientific, nautical, surveying, photographic, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; Apparatus for recording, transmission or reproduction of sound or images; Data-processing equipment and computers; Computer peripheral devices; Communication apparatus; Telecommunications apparatus; Point-to-point communications equipment; Telecommunications networks; not including remote monitoring and emergency telecare alarms for use in the home by the disabled or elderly to enable them to receive care and live independently.*

Class 35:
*retail services and wholesale services connected with the sale of apparatus for recording, transmission or reproduction of sound or images, data processing equipment and computers, computer peripherals, communication devices, telecommunication apparatus, device-to-device communication apparatus, communications technology–equipment, information technology equipment, and parts for the aforesaid goods; Consultancy and information regarding the aforesaid services;*

*The aforesaid services also provided via electronic networks, such as the Internet; none of the aforesaid including retail services and wholesale services connected with the sale of remote monitoring and emergency telecare alarms for use in the*

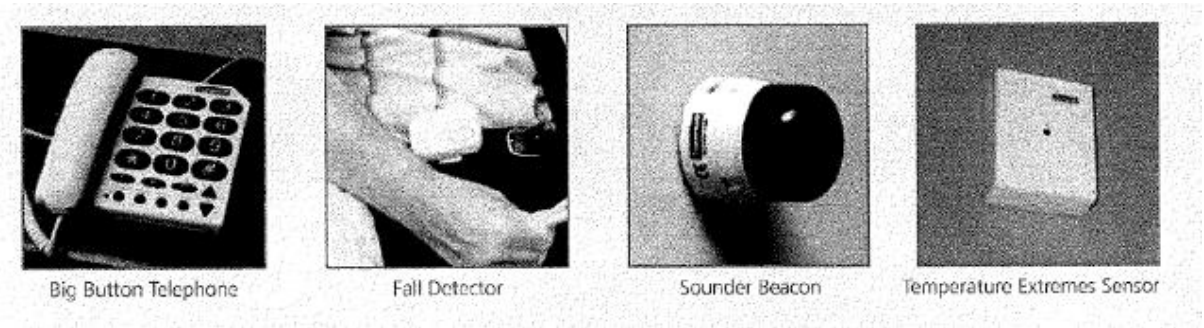
| |
|---|
| *home by the disabled or elderly to enable them to receive care and live independently.* |
| Class 38:<br>*Telecommunication services; Transfer, distribution, transmission and sending_of data, images and sound; Providing access to and making available of electronic communication networks, including wireless, websites, portals, electronic databases and online communication facilities; Electronic data transfer; Computer communication and Internet access; Voice over Internet Protocol [VoIP] communication services; Consultancy and information regarding the aforesaid services.*<br><br>*Telephone and mobile telephone services;*<br><br>*The aforesaid services also provided via electronic networks, such as the Internet; not including communication services linked to remote monitoring and emergency telecare alarms for use in the home by the disabled or elderly to enable them to receive care and live independently.* |
| Class 42:<br>*[…] technological services and research and design relating thereto; Design, Creation, Updating, Implementing […] In connection with the following goods: Software, Computer software packages, software applications (apps), Mobile applications and web applications, telecommunication services, telecommunication networks and Telecommunications equipment; Design services for data processing systems; Cloud computing; Data warehousing; Design, development and updating of computer systems, computer networks and computers; Computer programming; Computer system analysis; Automation services; IT specialists, ICT specialists, information analysts and system developers, The aforesaid services also by means of a helpdesk; Design, development, programming, implementation, maintenance, management and hosting of websites; Hosting of computer sites (websites); Data mining; Electronic storage of files, data and documents; Platform as a service [PaaS]; Infrastructure as a Service [IaaS]; Software as a service [SaaS]; Development of computer systems for the internet of things (IoT); Consultancy and information regarding the aforesaid services.* |

*Including the aforesaid services provided via electronic networks, including the Internet; none of the aforesaid services relating to remote monitoring and emergency telecare alarms for use in the home by the disabled or elderly to enable them to receive care and live independently.*

173. Given that I have made a tentative finding of dissimilarity regarding the contested term *'Telephone and mobile telephone services'* (Class 38) with a 'back-up' finding of 'very low similarity', it is appropriate to consider whether the Opponent's case could be improved based upon comparison with any of the terms under earlier marks (i) to (iii). To my mind, the closest comparator is likely to be the Class 9 term *Telephone apparatus* under earlier mark (i). I, therefore, consider whether the totality of the Opponent's evidence demonstrates genuine use of the earlier mark for these particular goods.

174. Based on the evidence available to me, I note the following:

(a) Exhibit JF4 includes, inter alia, a copy of a document headed 'product data: lifeline 400 home unit'. It is undated, save for a copyright notice dated 2008. The content of the document indicates that the 'lifeline 400 home unit' is device incorporating a button for the user to press in an emergency, a speaker and a microphone. The document explains that the device can be connected to an existing telephone system. At the foot of the second page are the following photographs with accompanying text:



Considering the document in its entirety, my view is that it is not possible to determine whether the 'Big Button Telephone' is a component part of the 'lifeline 400 home unit', or whether it is merely another product provided by the Opponent. I am unable to discern whether the mark on the telephone is 'Tunstall' or 'Lifeline'. I note that the mark 'Tunstall' appears prominently at the foot of the first page of the document, and on other products featured in photographs. 'Lifeline' is mentioned frequently within the bodies of text, rendered in plain text typeface. I note that the third page of the document includes the text '**Telephone answering with a personal trigger –** remote call answering facility allows a telephone call to be answered from the comfort of an armchair by pressing the personal trigger'. [original emphasis].

(b) Exhibit JF6 includes a document titled 'Lifeline 4000+ user guide', dated 2005, which includes an illustrated guide to demonstrate how to connect the 'Lifeline 4000+' to an existing telephone system. A photograph of a telephone as included, bearing the 'Tunstall' mark.

175. I can find no other photographs or references to telephones in the Opponent's evidence. A large number of invoices has been filed, none of which indicates any sales of telephone apparatus. My view is that the examples of telephone-related content that I have identified at [174] do not succeed in demonstrating that the earlier mark (i) has been put to genuine use for *telephone apparatus.* I find that the evidence shows merely that certain 'Lifeline' products or services, featured in product guides in 2005 and 2008, some 13 years before the contested application was filed, could be used with an existing telephone system. I, therefore, find that the Opponent's position would not be improved by reliance upon one or other of earlier marks (i) to (iii). Consequently, I proceed to determine the opposition based solely upon earlier mark (iv).

**Comparison of the marks**

176. It is clear from *Sabel* that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same

case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components. The CJEU states at paragraph 34 of its judgment in *Bimbo*, that:

> '…it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relevant weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.'

177. It would be wrong, therefore, to dissect the trade marks artificially, although it is necessary to take into account the distinctive and dominant components of the trade marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

178. The marks to be compared are as follows:

| Opponent's earlier mark (iv): | Applicant's mark: |
|---|---|
| LIFELINE DIGITAL<br><br>(Word mark) |  <br>(Figurative mark) |

Overall impression of the marks

179. The Opponent's mark is a word mark[47] comprising the elements 'LIFELINE' and 'DIGITAL', rendered in a plain typeface. I find that both word elements will play a

[47]In *LA Superquimica v EUIPO*, Case T-24/17, at paragraph [39] it was held that:

> '[…] it should be noted that a word mark is a mark consisting entirely of letters, words or groups of words, without any specific figurative element. The protection which results from registration of a word mark thus relates to the word mentioned in the application for registration and not the specific figurative or stylistic aspects which that mark might have. As a result, the font in which the word sign might be presented must not be taken into account. It follows that a word mark may be used in any form, in any colour or font type (see judgment of 28 June 2017, *Josel* v *EUIPO — Nationale-*

role within the overall visual impression, given their roughly equal length. The Opponent has claimed that the word 'DIGITAL' is 'entirely descriptive in nature and therefore adds little' to the earlier mark in terms of distinctiveness.[48] The Applicant is in agreement with the Opponent on this point.[49] However, the Applicant has subsequently refined its argument to say that each of the elements of the Opponent's mark, when considered solus, are non-distinctive; with the distinctive character of the mark residing in the combination of the two words 'LIFELINE DIGITAL'.[50] Whilst this argument is noted, my view is that a significant proportion of average consumers would likely see 'LIFELINE' as the more distinctive element, with the word 'DIGITAL' being seen as descriptive of the goods/services in some way and, therefore, the less distinctive element of the mark. I find that a significant proportion of average consumers would register the whole of the mark visually, albeit 'LIFELINE' would play the dominant and distinctive role.

180. The Applicant's mark is a figurative mark comprising the text element 'LIFELINE' and a shield-like device. The element 'LIFELINE' is presented in a fairly plain typeface, with the initial 'L' character presented in a larger size and incorporated into an outline or frame around the remaining characters. The mark is presented in several shades of blue. The 'LIFE' portion of the text element is coloured light blue in contrast to the dark blue hue of the 'LINE' portion. As to the device element, one half of the shield-like shape is coloured in a medium blue, while the other half is light blue. At the centre of the device is a dark blue or black circle containing a number of curved lines in contrasting lighter shades. The Applicant has argued that the word 'LIFELINE' is non-distinctive in *either* of the parties' marks and that the distinctive character of the Contested Mark rests in its figurative elements.[51] Whilst this argument is noted, I respectfully disagree with the Applicant's characterisation of the marks. My view is that a significant proportion of average consumers will register the presence of the wording as well as the

*Nederlanden Nederland (NN)*, T-333/15, not published, EU:T:2017:444, paragraphs 37 and 38 and the case-law cited).'

[48] Opponent's Statement of Grounds, at [13].
[49] Applicant's Counterstatement, [12].
[50] Applicant's written submissions in lieu of a hearing, [6].
[51] Applicant's Counterstatement, [15].

shield-like device, albeit the word 'LIFELINE' will be seen as the dominant element of the mark, with the device element playing a lesser role. Generally, words tend to 'speak louder' than devices, although this is a rule of thumb rather than a rigid principle. In my view, some average consumers may fail to recall the frame/outline surrounding the word element.

Visual comparison

181. Both marks include the word element 'LIFELINE', which forms the first part of the Opponent's word mark. I consider that presentation of the Opponent's mark in a similarly emboldened typeface to that of the Contested Mark, with the exception of the over-sized 'L', would be within normal and fair use of a word mark. However, I do not consider such fair use to extend to the colour arrangement seen in the Contested Mark. The use of colour was considered in the case of *Thom Browne Inc & Anor v adidas AC & Ors*[52] concerning the representation of a mark comprising three black stripes against a white background. It was held that the marks were limited to stripes of the same colour and that the presentation of the stripes in various shadings would not amount to normal and fair use because it would alter the distinctive character of the mark.[53]

182. The main points of visual difference are:

- the presence of the shield-like device in the Contested Mark, which has no counterpart in the Opponent's mark;
- the presence of the word 'DIGITAL' in the Opponent's mark, which is absent from the Contested Mark;
- the variation in shades of blue in the Contested Mark, that is absent from the Opponent's mark.

[52] [2024] EWHC 2990 (Ch), at [147] – [153].
[53] As above.

183. In the light of the foregoing, and the overall impressions based on the distinctive and dominant elements, I find the marks to have a level of visual similarity within the medium range.

Aural comparison

184. Both marks will be articulated in the normal way. The shared element, 'LIFELINE', will be aurally identical. The point of aural difference resides in the presence of the three syllables 'DIDGE-IT-ULL' in the Opponent's mark, which are absent from the Contested Mark. The difference in lengths (i.e. the Opponent's five syllables versus the Applicant's three syllables) will be discerned aurally. All things again considered, I find the marks to have a medium level of aural similarity.

Conceptual comparison

185. The Applicant has submitted that the meaning of the word 'LIFELINE' will be immediately apparent to the average UK consumer; and refers to the following definition taken from the Collins English Dictionary: 'a vital line of access or communication'.[54] I note that the following three other meanings are also provided:[55]

- a line thrown or fired aboard a vessel for hauling a hawser[56] for a breeches buoy[57];
- any rope or line attached to a vessel or trailed from it for the safety of passengers, crew, swimmers etc;
- a line by which a deep-sea diver is raised or lowered.

186. My view is that, whilst there may be average consumers who attribute one or other (perhaps even all) of these meanings to the word 'Lifeline', I consider the meaning identified by the Applicant to be one that is commonly used. I find that a significant proportion of average consumers would perceive 'lifeline' as: either, relating to some sort of channel of communication or salvatory resource or option

[54] Applicant's written submissions during the evidence round, page [3], first (unnumbered) paragraph.
[55] Collins English Dictionary (online version), accessed 20 November 2025, at 12:56 GMT.
[56] A 'hawser' is a thick rope or cable for mooring or towing a ship.
[57] A 'breeches buoy' is a rope-based rescue device invented to save people from shipwrecks.

that is relied upon in times of pressing need (as in 'to throw someone a lifeline'); or, as some sort of physical tether (e.g. a rope) to pull someone to safety. Many average consumers will understand the term in both senses.

187. I find that 'DIGITAL' is a word with which the average UK consumer will be very familiar. It will most often be understood as a reference to something that involves or relates to digital or computer technology, often involving the internet.

188. In my view, the word 'LIFELINE' in the Contested Mark, will be understood in the dual manner outlined above at [186]. Many average consumers, to my mind, would not attribute a clear concept to the device beyond seeing it as a shield-like shape.

189. In the Opponent's mark, the presence of the word 'DIGITAL' will likely lead the average consumer to perceive the 'lifeline' element as relating to a channel of communication, likely online; or some sort of electronic or digital goods with lifesaving applications.

190. I find the marks to have a medium level of conceptual similarity.

**The average consumer and the purchasing act**

191. The average consumer is deemed to be reasonably well-informed and reasonably observant and circumspect. The word "average" denotes that the person is typical. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer,* Case C-342/97.

Class 9

192. Broadly speaking, the relevant goods include: software; devices; scientific and technological equipment; and component parts for these goods. A number of the

terms are very broad and will encompass a vast array of goods, with varying levels of sophistication, some of which are purchased by professionals and others typically purchased by the general public. For all goods, I consider that the purchasing act will likely be primarily visual in nature. I find this to be case for professionals and general consumers, alike. A member of the general public will typically encounter the goods: in physical stores, and their online equivalents; in catalogues or brochures, whether printed matter or online; in television advertising and social media channels. There will be an aural aspect in some cases, by way of spoken recommendation or word-of-mouth. The professional purchaser will encounter the goods in the aforementioned ways, as well as via more specialised trade publications or catalogues. I do not consider the goods concerned to be casual purchases, and many will be fairly expensive. I find that the general public will likely pay a medium level of attention during the purchasing act. The professional purchaser will likely demonstrate a greater measure of prudence, particularly where the goods are more specialised. I find that the professional consumer will pay a medium to high level of attention when purchasing the goods.

Class 35

193. The relevant services are retail and wholesale services connected with the sale of broad categories of electronic equipment and devices. These services can be accessed merely by the act of browsing the goods offered by a retailer or wholesaler; by looking around a physical shop and examining goods in person, or by browsing product listings online. The act of engaging a retail service, therefore, does not always result in a sale. Retail service will be used by both the general and professional public. Wholesale services, on the other hand, will be engaged predominantly by professional purchasers. My comments on the visual and aural aspects of the purchasing act set out above at [192] also apply here. Factors influencing the decision to engage the services will include, inter alia: the range of goods available; the quantities of goods available (in the case of wholesale services). I find that the average consumer, whether a professional or general purchaser, will likely pay a level of attention within the low to medium range.

The services in classes 38 and 42

194. The relevant services in classes 38 and 42 comprise both broad and highly specialised terms, with varying levels of sophistication. The purchasing act will be primarily visual, for general and professional consumers alike. The services on offer will be encountered: online; in printed matter, e.g. catalogues and brochures; in advertising on television, radio and social media channels. To my mind, where the services are bespoke or highly specialised, purchased by professionals, there will likely be an important oral aspect to the purchasing process. In the case of the more specialised services, where the purchaser is professional, I find that a fairly high level of attention will likely be paid. Where, on the other hand, the purchaser is a member of the general public, I find that a level of attention up to medium would likely be paid.

**Distinctive character of the earlier mark**

195. In *Lloyd Schuhfabrik Meyer & Co. GmbH* v *Klijsen Handel BV, Case* C-342/97, the CJEU stated that:

> '22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *WindsurfingChiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).
>
> 23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as

originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee,* paragraph 51).'

196. Registered trade marks possess varying degrees of inherent distinctive character. Where a mark is suggestive or allusive of a characteristic of the goods or services, it tends to be low. Inherent distinctive character may range up to a high level for marks which consist of invented words with no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it.

197. The evidence filed by the Opponent relates to earlier marks (i) to (iii), the 'LIFELINE' marks. Ms Robinson made arguments on the matter of enhanced distinctiveness in relation to those marks, only. Given that no evidence has been filed in relation to earlier mark (iv), I have only the matter of inherent distinctiveness to consider for 'LIFELINE DIGITAL'.

198. The elements 'LIFELINE' and 'DIGITAL' are ordinary English words with which the average consumer will be familiar; and they will be understood in the manner described above at [186] – [189].

199. For a number of relevant terms within the Opponent's specification, 'LIFELINE DIGITAL' cannot be said to be frankly descriptive, or particularly allusive, for those terms. For the Opponent's class 42 service *Technical services, namely monitoring the efficient provision of medical services, managing of the operation of medical electronic systems for identifying incidents and events which require action,* the mark is, at most, somewhat allusive for the field in which the service operates, and suggests an online aspect to the service. However, I do not consider the mark to create any obvious suggestion that the core of the services concerns monitoring and efficiency. I find the earlier mark to have a 'normal' or average level of inherent distinctive character in this regard.

200. I now consider the mark in respect of the Class 42 service *online, non-downloadable software in the field of telehealth.* I find the mark to be allusive to the

extent that it conveys the idea of the online or digital 'realm', in general. I have already found 'LIFELINE' to be somewhat allusive for medical matters. I find the mark as a whole to be somewhat allusive for this service. I consider the mark to have a below average level of inherent distinctive character in this regard.

201. I now consider the mark in respect of the Class 9 terms *computer software in the field of telehealth; computer hardware in the field of telehealth.* For reasons analogous to those provided above at [200], I consider the mark to have a below average level of inherent distinctive character.

202. For the remainder of the relevant class 9 goods, the mark is neither descriptive nor particularly allusive. I find that the mark enjoys a 'normal' or average level of inherent distinctive character in respect of the goods concerned.

**Likelihood of confusion**

203. Confusion can be direct or indirect. Mr Iain Purvis Q. C., (as he then was) as the Appointed Person, explained the difference in the decision of *L.A. Sugar Limited v By Back Beat Inc*[58]*.* Direct confusion occurs when one mark is mistaken for another. In *Lloyd Schuhfabrik*[59], the CJEU recognised that the average consumer rarely encounters the two marks side by side but must rely on the imperfect picture of them that they have kept in mind. Direct confusion can therefore occur by imperfect recollection when the average consumer sees the later mark but mistakenly matches it to the imperfect image of the earlier mark in their 'mind's eye'. Indirect confusion occurs when the average consumer recognises that the competing marks are not the same in some respect, but the similarities between them, combined with the goods/services at issue, leads them to conclude that the goods/services are the responsibility of the same or an economically linked undertaking.

[58] Case BL O/375/10 at [16].
[59] *Lloyd Schuhfabrik Meyer and Co GmbH v Klijsen Handel BV* (C-34297) at [26].

204. I must keep in mind that a global assessment is required, taking into account all of the relevant factors, including the principles a) – k) set out above at [21]. When considering all relevant factors 'in the round', I must bear in mind that a greater degree of similarity between goods/services *may* be offset by a lesser degree of similarity between the marks, and vice versa.

205. I have found a number of the Applicant's goods and services to have some level of similarity with those of the Opponent. The points of overlap/similarity range from identical to 'very low'. I have found the Contested Mark to have a medium degree of similarity to the Opponent's earlier mark (iv) along each of the three planes of comparison. The visual, aural and conceptual overlaps reside in the element 'LIFELINE', which I have found to be the more distinctive element of the earlier mark, positioned at the beginning of the mark. I bear in mind the 'rule of thumb' according to which the beginnings of marks tend to have more visual impact than the ends of marks,[60] reminding myself that this is not an absolute rule. However, the visual and aural differences that I have identified, in my view, will not go unnoticed by the average consumer. Although I have found the second element of the Opponent's mark to be the less distinctive element, its size and positioning prevent it from being negligible. Just because an element might be descriptive or allusive, does not render it aurally invisible, either.[61] I find that the net effect of the visual and aural differences that I have identified, is sufficient to overcome the identity/similarity between the parties' goods and services. I find that the average consumer is unlikely to misremember either mark as the other. I find that there is no likelihood of direct confusion between the marks. I find this to be the case even where a fairly low level of attention is paid by a general consumer when engaging the Applicant's retail services; and even in the case of goods/services for which the earlier mark has a level of distinctiveness below average.

206. However, for the reasons that follow, I do find a likelihood of <u>indirect</u> confusion.

207. In the case of *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor QC

[60] *El Corté Inglés, SA v OHIM,* Cases T-183/02 and T-184/02.
[61] Decision O/115/22 Purity Hemp, [31].

(as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said the following at [16]:

> 'a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion'. Mr Mellor went on to say that, if there is no likelihood of direct confusion, 'one needs a reasonably special set of circumstances for a finding of a likelihood of indirect confusion'.

208. Arnold LJ emphasised that 'there must be a proper basis for concluding that there is a likelihood of indirect confusion given that there is no likelihood of direct confusion'.[62]

209. In *L.A. Sugar Limited v Back Beat Inc*[63] Mr Iain Purvis Q. C. (as he then was), as the Appointed Person, explained that:

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right ('26 RED TESCO' would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as 'LITE', 'EXPRESS', 'WORLDWIDE', 'MINI' etc.).

[62] *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207.
[63] Case BL O/375/10

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension ('FAT FACE' to 'BRAT FACE' for example)'.

210. I remind myself that a finding of a likelihood of indirect confusion should not be made merely because the competing marks share a common element.[64] I also bear in mind that the above-mentioned categories are not intended to be exhaustive.

211. I have found the 'LIFELINE' element of the Opponent's mark to be its dominant and more distinctive element. The word 'LIFELINE' is also the sole word element of the Contested figurative mark. To my mind, a significant number of average consumers will perceive the 'lifeline' element, in either mark, to convey the idea of some sort of channel of communication in times of pressing need. The presence of the less distinctive 'DIGITAL' element within the Opponent's mark has the effect of suggesting that the communication channels in question are digital or online in nature. It is my view that this conceptual distinction, which resides in the less distinctive element within the earlier mark, points to the second of the categories identified by Mr Purvis. I find that, for a significant proportion of average consumers, the 'DIGITAL' element will be seen as indicating an online/digital aspect of the goods/services concerned, without disturbing the conceptual message conveyed by the 'LIFELINE' element. Taking all relevant matters into consideration, it is my view that a significant proportion of average consumers may encounter either party's mark and presume it to be a related mark or variant mark of the other, both marks originating from the same or economically-related undertakings. For example, the 'LIFELINE DIGITAL' mark might be seen as a sub-brand under which goods or services with an online/digital emphasis are sold. As to the figurative features of the Contested Mark, it is my view that the average consumer will presume that they amount to a mere stylistic variation used by the same or related undertakings. The device contributes little more than the idea of a shield-like form, which, to my mind, does not alter the conceptual message conveyed by the word 'LIFELINE' within the Contested Mark. I find that there is a

[64] Case BL O/547/17, [81.4].

likelihood of indirect confusion between the parties' marks. In respect of the contested term that I have found to be very low in similarity, my view is that this is a case where the similarity of the marks could be said to counteract the distance between the respective terms. Although the marks have been found to have a medium, rather than high, level of similarity, the main difference between the marks resides in the less distinctive element of the earlier mark. But for the less distinctive 'DIGITAL', the marks would be highly similar. I find that there is a likelihood of confusion between the marks in respect of all of the contested terms set out at [172].

**Conclusion**

212. This is a partial opposition which has been partially successful. Subject to a successful appeal:

- the application may proceed to registration for the terms set out above at [170] (as well as for goods/services that are unopposed);

  and

- the application is refused in respect of the terms set out above at [172].

213. Both parties have enjoyed a measure of success. I, therefore, make no order for costs.

**Dated this 11th day of February 2026**

**N. R. Morris**
**For the Registrar,**
**the Comptroller-General**

**Annexe 1 - <u>Applied-for</u> terms to which priority applies**

Application UK00003824626 claims priority from 23 June 2022 from EUTM 018721786, for the following terms only:

| |
|---|
| Class 9:<br>*Computer programs for accessing databases and portals; applied software for businesses; office and business applications; system and system support software, and firmware; server software; parts for the aforesaid goods, included in this class.* |
| Class 35:<br>*Advertising; promotional activities and sales promotion; public relations services; business management; business administration; office functions; marketing; market canvassing, market research and market analysis; business organisation management and business economics consultancy; business data analysis services and analysis of business statistics; business intermediary services in the purchase and sale, import and export in relation to the following goods: scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments, apparatus and instruments for the conduction, distribution, conversion, storage, regulation and control of electric current, parts for the aforesaid goods; business intermediary services in the purchase and sale, import and export in relation to the following goods: apparatus for recording, transmission or reproduction of sound or images, data processing equipment and computers, computer peripherals, computer programs for accessing databases and portals, computer software, software packages, computer software feature application, mobile applications and web applications, parts for the aforesaid goods; business intermediary services in the purchase and sale, import and export in relation to the following goods: software applications, applied software for businesses, communication and networking software, VoIP software, office and business application software, system software and system support software, and firmware, parts for the aforesaid goods; business intermediary services in the purchase and sale, import and export in relation to the following goods: web application and server software, communication devices, telecommunication apparatus, device-to-device communication apparatus,* |

| |
|---|
| *telecommunication networks, parts for the aforesaid goods; business intermediary services in the purchase and sale, import and export in relation to the following goods: communications technology equipment and information technology equipment; business project management; making available, seconding and deploying personnel, including IT and ICT specialists; organisation of events for commercial and advertising purposes; consultancy and information regarding the aforesaid services; wholesaling and retailing in relation to the following goods: applied software for businesses, office and business application software, system software and system support software, and firmware, server software, computer programs for accessing databases and portals, parts for the aforesaid goods; the aforesaid services also provided via electronic networks, such as the internet.* |
| Class 42:<br>*Technological services and research and design relating thereto; industrial analysis and research services; design, creation, updating, implementing and ordering in connection with the following goods: telecommunication services, telecommunication networks and telecommunications equipment; cloud computing; data warehousing; automation services; industrial automation; design, development, programming, implementation, maintenance, management and hosting of websites; hosting of computer sites (websites); data mining; electronic storage of files, data and documents; infrastructure as a service [IaaS]; IT security, protection and restoration; data encryption; provision of data centre facilities; server hosting and administration; consultancy and information regarding the aforesaid services; including the aforesaid services provided via electronic networks, including the internet.* |

**Annexe 2 – <u>Opposed</u> terms to which priority applies:**

| |
|---|
| Class 9:<br>*Computer programs for accessing databases and portals; Applied software for businesses; Office and business applications; System and system support software, and firmware; […] server software; Parts for the aforesaid goods, included in this class; not including remote monitoring and emergency telecare alarms for use in the home by the disabled or elderly to enable them to receive care and live independently.* |
| Class 35:<br>*Business intermediary services in the purchase and sale, import and export, […]in relation to the following goods: Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments, Apparatus and instruments for the conduction, distribution, conversion, storage, regulation and control of electric current, Parts for the aforesaid goods; Business intermediary services in the purchase and sale, import and export, […] in relation to the following goods: Apparatus for recording, transmission or reproduction of sound or images, Data processing equipment and computers, Computer peripherals, Computer programs for accessing databases and portals, Computer software, software packages, Computer software feature application, Mobile applications and web applications, Parts for the aforesaid goods; Business intermediary services in the purchase and sale, import and export, […] in relation to the following goods: web application and server software, Communication devices, Telecommunication apparatus, Device-to-device communication apparatus, telecommunication networks, Parts for the aforesaid goods; none of the aforesaid including retail services and wholesale services connected with the sale of remote monitoring and emergency telecare alarms for use in the home by the disabled or elderly to enable them to receive care and live independently.* |
| Class 42: |

[…] *technological services and research and design relating thereto; Design, Creation, Updating, Implementing and Ordering In connection with the following goods: […] telecommunication services, telecommunication networks and Telecommunications equipment; Cloud computing; Data warehousing; Automation services; Industrial automation; ; Design, development, programming, implementation, maintenance, management and hosting of websites; Hosting of computer sites (websites); Data mining; Electronic storage of files, data and documents; Infrastructure as a Service [IaaS]; Consultancy and information regarding the aforesaid services; Including the aforesaid services provided via electronic networks, including the Internet; none of the aforesaid services relating to remote monitoring and emergency telecare alarms for use in the home by the disabled or elderly to enable them to receive care and live independently.*

**Annexe 3 – <u>Opposed</u> terms to which priority does <u>not</u> apply:**

| |
|---|
| *Class 9:*<br>*Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; Apparatus for recording, transmission or reproduction of sound or images; Data-processing equipment and computers; Computer peripheral devices; Computer software, software packages, Computer software applications, downloadable, Mobile applications and web applications; Application software; computer software, software packages, downloadable computer software applications, mobile applications, web applications and application software in relation to communications, group communications, wireless broadband communications, telecommunications and bodycam technology, and related control room solutions; Communication and networking software; VoIP software; Web application […] software; Communication apparatus; Telecommunications apparatus; Point-to-point communications equipment; Telecommunications networks; Parts for the aforesaid goods, included in this class; not including remote monitoring and emergency telecare alarms for use in the home by the disabled or elderly to enable them to receive care and live independently.* |
| Class 35:<br>*[…] wholesaling services and retailing services in relation to the following goods: Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments, Apparatus and instruments for the conduction, distribution, conversion, storage, regulation and control of electric current, Parts for the aforesaid goods; […] wholesaling services and retailing services in relation to the following goods: Apparatus for recording, transmission or reproduction of sound or images, Data processing equipment and computers, Computer peripherals,* |

*Computer programs for accessing databases and portals, Computer software, software packages, Computer software feature application, Mobile applications and web applications, Parts for the aforesaid goods; […] wholesaling services and retailing services in relation to the following goods: software applications, Applied software for businesses, Communication and networking software, VoIP software, Office and business application software, System software and system support software, And firmware, Parts for the aforesaid goods; […] wholesaling services and retailing services in relation to the following goods: web application and server software, Communication devices, Telecommunication apparatus, Device-to-device communication apparatus, telecommunication networks, Parts for the aforesaid goods; […] wholesaling services and retailing services in relation to the following goods: Communications technology equipment and information technology equipment; retail services and wholesale services connected with the sale of scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments, apparatus and instruments for the conduction, distribution, conversion, storage, regulation and control of electric current, apparatus for recording, transmission or reproduction of sound or images, data processing equipment and computers, computer peripherals, computer programs for accessing databases and portals, computer software, software packages, computer software feature application, mobile applications and web applications, software applications, applied software for businesses, communication and networking software, VoIP software, office and business application software, system software and system support software, firmware, web application and server software, communication devices, telecommunication apparatus, device-to-device communication apparatus, telecommunication networks, communications technology equipment, information technology equipment, and parts for the aforesaid goods; Consultancy and information regarding the aforesaid services; The aforesaid services also provided via electronic networks, such as the Internet; none of the aforesaid including retail services and wholesale services connected with the sale of remote monitoring and emergency telecare alarms for use in the home by the disabled or elderly to enable them to receive care and live independently.*

| |
|---|
| Class 38:<br>*Telecommunication services; Transfer, distribution, transmission and sending of data, images and sound; Providing access to and making available of electronic communication networks, including wireless, websites, portals, electronic databases and online communication facilities; Electronic data transfer; Telephone and mobile telephone services; Computer communication and Internet access; Voice over Internet Protocol [VoIP] communication services; Consultancy and information regarding the aforesaid services; The aforesaid services also provided via electronic networks, such as the Internet; not including communication services linked to remote monitoring and emergency telecare alarms for use in the home by the disabled or elderly to enable them to receive care and live independently.* |
| Class 42:<br>*Scientific […] services and research and design relating thereto; Design, Creation, Updating, Implementing and Ordering In connection with the following goods: Software, Computer software packages, software applications (apps), Mobile applications and web applications, […]; Design services for data processing systems; Design, development and updating of computer systems, computer networks and computers; Computer programming; Computer system analysis; IT specialists, ICT specialists, information analysts and system developers, The aforesaid services also by means of a helpdesk;; Platform as a service [PaaS]; Software as a service [SaaS]; Development of computer systems for the internet of things (IoT); Consultancy and information regarding the aforesaid services; Including the aforesaid services provided via electronic networks, including the Internet; none of the aforesaid services relating to remote monitoring and emergency telecare alarms for use in the home by the disabled or elderly to enable them to receive care and live independently.* |

**Annexe 4 – The Applicant's proposed 'fall-back' specification is reproduced as follows:**

KEY:

Not opposed

Wording already added

~~Deleted wording~~

Added wording

| |
|---|
| Class 9<br>~~Scientific,~~ Nautical, ~~surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving~~ and teaching apparatus and instruments;<br><br>**scientific, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision) and life-saving apparatus and instruments adapted for use in mission-critical environments in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce, and parts therefor;**<br><br>**scientific, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision) and life-saving apparatus and instruments adapted for use by workers in mission-critical environments in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce, and parts therefor;**<br><br>**scientific, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision) and life-saving apparatus and instruments, namely body-worn cameras adapted for use in mission-critical** |

**environments in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce, and parts therefor;**

**scientific, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision) and life-saving apparatus and instruments, namely body-worn cameras adapted for use by workers in mission-critical environments in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce, and parts therefor;**

**photographic, cinematographic and optical apparatus and instruments, namely body-worn cameras, and parts therefor;**

**photographic, cinematographic and optical apparatus and instruments, namely body-worn cameras adapted for use by first responders, and parts therefor;**

**photographic, cinematographic and optical apparatus and instruments, namely body-worn cameras adapted for use in harsh environments, and parts therefor;**

Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, **adapted for use with mission-critical communication and telecommunication apparatus in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce, and parts therefor;**

Apparatus for recording, transmission or reproduction of sound or images, **adapted for use in mission-critical environments in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce, and parts therefor;**

Data-processing equipment and computers **adapted for use in mission-critical environments in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce, and parts therefor;**

~~**Computer peripheral devices**~~; Computer programs for accessing databases and portals;

~~**Computer software,**~~ software packages, Computer software applications, downloadable, Mobile applications and web applications **for the provision of mission-critical communication in mission-critical environments in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce;**

**digital evidence management system (DEMS) software;**

**audio mixing software;**

**control software for audio signals;**

**computer software and mobile application software that allows task planning, task assignment, and dispatching in mission-critical environments in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce;**

~~**Application software;**~~

**application software for rugged, portable, handheld communication devices to provide mission-critical communication in mission-critical environments in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce;**

**application software for rugged, portable, handheld LTE communication devices to provide mission-critical communication in mission-critical environments in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce;**

**application software for rugged, portable, handheld communication devices to provide workers with mission-critical communication in mission-critical environments in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce;**

**application software for rugged, portable, handheld LTE communication devices to provide workers with mission-critical communication in mission-critical environments in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce;**

**application software for rugged, portable, handheld communication devices for use in harsh mission-critical environments;**

**application software for rugged, portable, handheld LTE communication devices for use by workers in harsh mission-critical environments;**

**application software for rugged, portable, handheld communication devices for use in mission-critical environments by first responders;**

**application software for rugged, portable, handheld LTE communication devices for use in mission-critical environments by first responders;**

**application software for rugged, portable, handheld communication devices for use in harsh mission-critical environments by first responders;**

**application software for rugged, portable, handheld LTE communication devices for use in harsh mission-critical environments by first responders;**

**push-to-talk (PTT) application software;**

**push-to-talk (PTT) application software for use in mission-critical environments in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing industry and commerce;**

**push-to-talk (PTT) application software for use by workers in mission-critical environments in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce;**

**push-to-talk (PTT) application software for use in mission-critical environments by first responders;**

**application software for body-worn cameras;**

computer software, software packages, downloadable computer software applications, mobile applications, web applications and application software in relation to **mission critical** communications, **mission critical** group communications, **mission critical** wireless broadband communications, **mission critical** telecommunications and bodycam technology, and related control room solutions, **for use in mission-critical environments in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce**; Applied software for businesses; Communication and networking software; VoIP software; Office and business applications; System and system support software, and firmware; Web application and server software; ~~**Communication apparatus; Telecommunications apparatus;**~~

**communication and telecommunication apparatus for the provision of mission critical communication in mission-critical environments in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce;**

**communication and telecommunication gateways for mission-critical communication, and parts therefor;**

**communication and telecommunication gateways for mission-critical communication in mission-critical environments in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce, and parts therefor;**

**rugged, portable, handheld communication devices adapted to provide mission-critical communications in mission-critical environments in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce, and parts therefor;**

**rugged, portable, handheld LTE communication devices adapted to provide mission-critical communications in mission-critical environments in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce, and parts therefor;**

**rugged, portable, handheld LTE communication devices adapted for use by workers in mission-critical environments, and parts therefor;**

**rugged, portable, handheld LTE communication devices adapted for use by workers in harsh mission-critical environments, and parts therefor;**

**rugged, portable, handheld LTE communication devices adapted for use by workers in mission-critical environments in the fields of public safety and**

**defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce, and parts therefor;**

**rugged, portable, handheld LTE communication devices adapted for use by workers in harsh mission-critical environments in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce, and parts therefor;**

**rugged, portable, handheld LTE communication devices adapted for use in mission-critical environments by first responders, and parts therefor;**

**rugged, portable, handheld LTE communication devices adapted for use in harsh mission-critical environments by first responders, and parts therefor;**

**end-to-end mission critical communication platforms for voice, data and video, to enable communication by workers in mission-critical environments, and parts therefor;**

**end-to-end mission critical communication platforms for voice, data and video, to enable communication by workers in mission-critical environments in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce, and parts therefor;**

**end-to-end mission critical communication platforms for voice, data and video, to enable communication by first responders in mission-critical environments, and parts therefor;**

Point-to-point communications equipment **for mission-critical communication in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce, and parts therefor**; Telecommunications networks **for mission-critical communication in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and**

**commerce, and parts therefor**; ~~**Parts for the aforesaid goods, included in this class**~~; **not including remote monitoring and emergency telecare alarms for use in the home by the disabled or elderly to enable them to receive care and live independently; not including fire and environmental monitoring systems, smoke or fire detectors, smoke or fire alarms, intruder alarms, personal alarm devices, fall detectors, panic buttons, impact sensors, personal alarm radio triggers, gas detectors, electrical switches or emergency call buttons, or computer peripherals; none of the aforementioned goods relating to telecare or telehealth.**

Class 35

Advertising; Promotional activities and sales promotion; Public relations services; Business management; Business administration; Office functions; Marketing; Market canvassing, market research and market analysis; Business organisation management and business economics consultancy; Business data analysis services and Analysis of business statistics; Business intermediary services in the purchase and sale, import and export, And wholesaling services and retailing services in relation to the following goods: Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments, Apparatus and instruments for the conduction, distribution, conversion, storage, regulation and control of electric current, Parts for the aforesaid goods; Business intermediary services in the purchase and sale, import and export, And wholesaling services and retailing services in relation to the following goods: Apparatus for recording, transmission or reproduction of sound or images, Data processing equipment and computers, Computer peripherals, Computer programs for accessing databases and portals, Computer software, software packages, Computer software feature application, Mobile applications and web applications, Parts for the aforesaid goods; Business intermediary services in the purchase and sale, import and export, And wholesaling services and retailing services in relation to the following goods: software applications, Applied software for businesses, Communication and networking software, VoIP software, Office and business application software, System software and system support software, And firmware, Parts for the aforesaid

goods; Business intermediary services in the purchase and sale, import and export, And wholesaling services and retailing services in relation to the following goods: web application and server software, Communication devices, Telecommunication apparatus, Device-to-device communication apparatus, telecommunication networks, Parts for the aforesaid goods; Business intermediary services in the purchase and sale, import and export, And wholesaling services and retailing services in relation to the following goods: Communications technology equipment and information technology equipment; retail services and wholesale services connected with the sale of scientific, nautical, surveying, ~~**photographic, cinematographic, optical**~~, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments, **body-worn cameras**, **optical apparatus and instruments adapted for use by workers in mission-critical environments in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce**, apparatus and instruments for the conduction, distribution, conversion, storage, regulation and control of electric current **for use with communication and telecommunication apparatus adapted for the provision of mission-critical communication in mission-critical environments in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce**, apparatus for recording, transmission or reproduction of sound or images **adapted for use by workers in mission-critical environments in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce**, data processing equipment and computers **adapted for use by workers in mission-critical environments in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce**, ~~**computer peripherals**~~, computer programs for accessing databases and portals, computer software **for the provision of mission critical communication in mission-critical environments in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce**, software packages, computer software feature application, mobile applications and web applications, software applications, applied software for

businesses, communication and networking software, VoIP software, office and business application software, system software and system support software, firmware, web application and server software,

**digital evidence management system (DEMS) software,**

**audio mixing software,**

**control software for audio signals,**

**computer software and mobile application software that allows task planning, task assignment, and dispatching in mission-critical environments in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce**,

~~**communication devices, telecommunication apparatus**~~,

**communication and telecommunication apparatus for the provision of mission critical communication in mission-critical environments in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce,**

**rugged, portable, handheld LTE communication devices adapted for use by workers in mission-critical environments in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce,**

device-to-device communication apparatus **for mission-critical communication in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce,** telecommunication networks **for mission-critical communication in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce,** communications

technology equipment **for mission-critical communication in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce**, information technology equipment **for mission-critical communication in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce**, and parts for the aforesaid goods; Business project management; Making available, seconding and deploying personnel, including IT and ICT specialists; Organisation of events for commercial and advertising purposes; Consultancy and information regarding the aforesaid services; The aforesaid services also provided via electronic networks, such as the Internet; **none of the aforesaid including retail services and wholesale services connected with the sale of remote monitoring and emergency telecare alarms for use in the home by the disabled or elderly to enable them to receive care and live independently; none of the aforementioned services relating to telecare or telehealth.**

Class 38

Telecommunication services **for the provision of mission-critical communication in mission-critical environments in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce**; Transfer, distribution, transmission and sending of data, images and sound **in mission-critical environments in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce**; Providing access to and making available of **mission-critical** electronic communication networks, including wireless, websites, portals, electronic databases and online **mission-critical** communication facilities; Electronic data transfer **in mission-critical environments in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce**; Telephone and mobile telephone services **for the provision of mission-critical communication in mission-critical environments in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction,**

**manufacturing, industry and commerce**; **mission-critical** computer communication and Internet access; **mission-critical** Voice over Internet Protocol [VoIP] communication services; Consultancy and information regarding the aforesaid services; The aforesaid services also provided via electronic networks, such as the Internet; **not including communication services linked to remote monitoring and emergency telecare alarms for use in the home by the disabled or elderly to enable them to receive care and live independently; none of the aforementioned services relating to telecare or telehealth.**

Class 42

Scientific and technological services and research and design relating thereto; Industrial analysis and research services; Design, Creation, Updating, Implementing and Ordering In connection with the following goods: Software, Computer software packages, software applications (apps), Mobile applications and web applications, telecommunication services, telecommunication networks and Telecommunications equipment; Design services for data processing systems; Cloud computing; Data warehousing; Design, development and updating of computer systems, computer networks and computers; Computer programming; Computer system analysis; Automation services; Industrial automation; IT specialists, ICT specialists, information analysts and system developers, The aforesaid services also by means of a helpdesk; Design, development, programming, implementation, maintenance, management and hosting of websites; Hosting of computer sites (websites); Data mining; Electronic storage of files, data and documents; Platform as a service [PaaS]; Infrastructure as a Service [IaaS]; Software as a service [SaaS]; Development of computer systems for the internet of things (IoT); IT security, protection and restoration; Data encryption; Provision of data centre facilities; server hosting and administration; Consultancy and information regarding the aforesaid services; Including the aforesaid services provided via electronic networks, including the Internet; **none of the aforesaid services relating to remote monitoring and emergency telecare alarms for use in the home by the disabled or elderly to enable them to receive care and live independently; none of the aforesaid services relating to telecare or telehealth, for monitoring the provision of medical services, for managing the operation of medical electronic systems**

**for identifying incidents and events which require action; all of the aforesaid services relating to the provision of mission-critical communication to workers in mission-critical environments in the fields of public safety and defence, healthcare, public transport, aviation and shipping, construction, manufacturing, industry and commerce.**

**Annexe 5 – Class 9 goods comparison from the Opponent's Skeleton Argument:**

| Applicant's goods: | Opponent's goods: |
|---|---|
| Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity. | Communication, control and alarm apparatus, fire and environmental monitoring systems, smoke detectors; fire alarms; intruder alarms; personal alarm devices; fall detectors; panic buttons; impact sensors; sensors; personal alarm radio triggers; carbon monoxide detectors; pull cord switches; emergency call buttons; computer software and hardware in the field of telehealth, and computer peripherals. |
| | |
| Apparatus for recording, transmission or reproduction of sound or images; communication apparatus; telecommunications apparatus; point-to-point communications equipment; telecommunications networks. | Telephone apparatus; communication, control and alarm apparatus; radio transmitters; fire and environmental monitoring systems; smoke detectors; fire alarms; intruder alarms; personal alarm devices; fall detectors; panic buttons; impact sensors; sensors; personal alarm radio triggers; carbon monoxide detectors; pull cord switches; emergency call buttons; computer software in the field of telehealth; computer hardware in the field of telehealth; computer peripherals. |
| Data-processing equipment and computers; computer peripheral | Computer software in the field of telehealth; computer hardware in the |

| | |
|---|---|
| devices; computer programs for accessing databases and portals; computer software, software packages, computer software applications, downloadable, mobile applications and web applications; Application software; computer software, software packages, downloadable computer software applications, mobile applications, web applications and application software in relation to communications, group communications, wireless broadband communications, telecommunications and bodycam technology, and related control room solutions; Applied software for businesses; Communication and networking software; VoIP software; Office and business applications; System and system support software, and firmware; Web application and server software. | field of telehealth; computer peripherals. |

**Annexe 6 – Comparison of goods/services based on earlier mark (iv).**

| Earlier mark (iv): | Applied-for mark: |
|---|---|
| Class 9:<br>*Fire and environmental monitoring systems; smoke detectors; fire alarms; intruder alarms; personal alarm devices; fall detectors; panic buttons; impact sensors; sensors; personal alarm radio triggers; carbon monoxide detectors; pull cord switches; emergency call buttons; computer software in the field of telehealth; computer hardware in the field of telehealth; computer peripherals.* | Class 9:<br>*Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; Apparatus for recording, transmission or reproduction of sound or images; Data-processing equipment and computers; Computer peripheral devices; Computer programs for accessing databases and portals; Computer software, software packages, Computer software applications, downloadable, Mobile applications and web applications; Application software; computer software, software packages, downloadable computer software applications, mobile applications, web applications and application software in relation to communications, group communications, wireless broadband communications, telecommunications and bodycam technology, and related control room solutions; Applied software for businesses;* |

| | |
|---|---|
| | *Communication and networking software; VoIP software; Office and business applications; System and system support software, and firmware; Web application and server software; Communication apparatus; Telecommunications apparatus; Point-to-point communications equipment; Telecommunications networks; Parts for the aforesaid goods, included in this class; not including remote monitoring and emergency telecare alarms for use in the home by the disabled or elderly to enable them to receive care and live independently.* |
| Class 42:<br>*Technical services, namely monitoring the efficient provision of medical services, managing of the operation of medical electronic systems for identifying incidents and events which require action; online, non-downloadable software in the field of telehealth.*<br><br>Class 44:<br>*Monitoring of patients and care home residents for the purposes of assessing medical care needs.*<br><br>Class 45: | Class 35:<br>*Business intermediary services in the purchase and sale, import and export, And wholesaling services and retailing services in relation to the following goods: Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments, Apparatus and instruments for the conduction, distribution, conversion, storage, regulation and control of electric current, Parts for the aforesaid goods; Business intermediary services in the purchase and sale, import and export,* |

| | |
|---|---|
| *Monitoring of alarm systems; monitoring of security systems; monitoring of surveillance systems; monitoring services for fire alarms; call monitoring services and call assistance services, all relating to social and community care, residential care and patients* | *And wholesaling services and retailing services in relation to the following goods: Apparatus for recording, transmission or reproduction of sound or images, Data processing equipment and computers, Computer peripherals, Computer programs for accessing databases and portals, Computer software, software packages, Computer software feature application, Mobile applications and web applications, Parts for the aforesaid goods; Business intermediary services in the purchase and sale, import and export, And wholesaling services and retailing services in relation to the following goods: software applications, Applied software for businesses, Communication and networking software, VoIP software, Office and business application software, System software and system support software, And firmware, Parts for the aforesaid goods; Business intermediary services in the purchase and sale, import and export, And wholesaling services and retailing services in relation to the following goods: web application and server software, Communication devices, Telecommunication apparatus, Device-to-device communication apparatus, telecommunication networks, Parts for* |

| | |
|---|---|
| | *the aforesaid goods; Business intermediary services in the purchase and sale, import and export, And wholesaling services and retailing services in relation to the following goods: Communications technology equipment and information technology equipment; retail services and wholesale services connected with the sale of scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments, apparatus and instruments for the conduction, distribution, conversion, storage, regulation and control of electric current, apparatus for recording, transmission or reproduction of sound or images, data processing equipment and computers, computer peripherals, computer programs for accessing databases and portals, computer software, software packages, computer software feature application, mobile applications and web applications, software applications, applied software for businesses, communication and networking software, VoIP software, office and business application software, system software and system support software,* |

| | |
|---|---|
| | *firmware, web application and server software, communication devices, telecommunication apparatus, device-to-device communication apparatus, telecommunication networks, communications technology equipment, information technology equipment, and parts for the aforesaid goods; Consultancy and information regarding the aforesaid services; The aforesaid services also provided via electronic networks, such as the Internet; none of the aforesaid including retail services and wholesale services connected with the sale of remote monitoring and emergency telecare alarms for use in the home by the disabled or elderly to enable them to receive care and live independently.*<br><br>Class 38:<br>*Telecommunication services; Transfer, distribution, transmission and sending of data, images and sound; Providing access to and making available of electronic communication networks, including wireless, websites, portals, electronic databases and online communication facilities; Electronic data transfer; Telephone and mobile telephone services; Computer communication and Internet access;* |

| | |
|---|---|
| | *Voice over Internet Protocol [VoIP] communication services; Consultancy and information regarding the aforesaid services; The aforesaid services also provided via electronic networks, such as the Internet; not including communication services linked to remote monitoring and emergency telecare alarms for use in the home by the disabled or elderly to enable them to receive care and live independently.*<br><br>Class 42:<br>*Scientific and technological services and research and design relating thereto; Design, Creation, Updating, Implementing and Ordering In connection with the following goods: Software, Computer software packages, software applications (apps), Mobile applications and web applications, telecommunication services, telecommunication networks and Telecommunications equipment; Design services for data processing systems; Cloud computing; Data warehousing; Design, development and updating of computer systems, computer networks and computers; Computer programming; Computer system analysis; Automation services; Industrial automation; IT specialists,* |

| | |
|---|---|
| | *ICT specialists, information analysts and system developers, The aforesaid services also by means of a helpdesk; Design, development, programming, implementation, maintenance, management and hosting of websites; Hosting of computer sites (websites); Data mining; Electronic storage of files, data and documents; Platform as a service [PaaS]; Infrastructure as a Service [IaaS]; Software as a service [SaaS]; Development of computer systems for the internet of things (IoT); Consultancy and information regarding the aforesaid services; Including the aforesaid services provided via electronic networks, including the Internet; none of the aforesaid services relating to remote monitoring and emergency telecare alarms for use in the home by the disabled or elderly to enable them to receive care and live independently.* |