

O-177-20

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 3342298
BY PA KNOWLEDGE LIMITED
TO REGISTER AS A SERIES OF FOUR TRADE MARKS**



Bringing Ingenuity to Life



Bringing Ingenuity to Life



Bringing Ingenuity to Life



Bringing Ingenuity to Life

IN CLASSES 9, 16, 35, 36, 38, 41 and 42

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 414973
BY SIEMENS AKTIENGESELLSCHAFT**

Background and pleadings

1) PA Knowledge Limited (“the applicant”) applied to register the trade mark no. 3342298 in the UK on 1 October 2018. The application is for a series of four marks as shown on the front of this decision. The other relevant details of the application are:

Publication date: 5 October 2018

Class 9: *Recorded content; electronic databases recorded on computer media; computer programs and computer software; computer operating systems; computer networking and data communications equipment; data storage and retrieval devices; data processing equipment and accessories (electrical and mechanical); safety, security, protection and signalling devices; alarms and warning equipment; access control devices; educational apparatus and simulators; computer hardware; computer peripherals; computer networks; telecommunications equipment; data carriers; downloadable electronic publications; DVDs; sound and video recordings.*

Class 16: *Printed matter; instructional and teaching material (except apparatus); magazines; periodical publications; brochures, directories and reports. Printed matter; instructional and teaching material (except apparatus); magazines; periodical publications; brochures, directories and reports.*

Class 35: *Business consultancy and advisory services; business management and administration services; personnel management consultancy; project evaluation; risk assessment and management; remuneration consultancy; business growth, acquisition and corporate planning strategies; marketing; market research and market analysis; productivity evaluation and consultancy; public relations services; trade show and exhibition services; advertising, marketing and promotional consultancy, advisory and assistance services; commercial trading and consumer information services; accountancy, book keeping and auditing; administrative data processing; human resources management and recruitment services;*

business analysis, research and information services; collection and systematization of business data; psychometric testing for the selection of personnel; arranging of advertising; arranging and concluding commercial transactions for others; opinion polling; providing online databases and online directory information services in the field of business consulting; business appraisals; computerised business information storage and retrieval services; business relocation services; accounting services; economic forecasting and analysis; advisory services relating to mergers, acquisitions, franchising and business liquidations; tax investigation; tax advice; tax consultancy; preparation of tax returns; forensic accounting including determination and fraud investigation; business insolvency services.

Class 36: *Insurance services; financial and monetary affairs; investment services; financial information, data, advice and consultancy services; fundraising and sponsorship; asset and portfolio management; tax and estate planning; pension advisory services; trustee services; fund investment consultancy; consultancy services relating to corporate finance; conducting of capital market transactions; investment advice and analysis; financial evaluation; actuarial services; financial risk management; fiscal assessment.*

Class 38: *Transmission and reception of data and information; electronic mail services; data network services; computer communications services; telecommunications services; website portal services; providing access to a computer database; providing access to content, websites, platforms and portals on the Internet.*

Class 41: *Providing of training and education; personnel training; coaching of management and employees; conducting, organising and arranging of conferences, congresses, seminars, training events, workshops and symposiums; Providing online electronic publications; education services.*

Class 42: *Computer programming; computer systems analysis, design and development; computer software and program design; computer software support services; leasing of computer database software; IT services; IT*

security, protection and restoration; data duplication and conversion services; data coding services; technology consultation services; providing online downloadable software for market research, business consulting, graphical displays, and statistical analysis of data; computer software technical support services; consultancy, design, testing, engineering, research and advisory services, all relating to computers, computer networks, computer software and computer programming; website design, maintenance and operation services; research and development of computer hardware and software; hosting of websites.

2) Siemens Aktiengesellschaft (“the opponent”) opposed the application, on 7 January 2019, on the basis of sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”). The opposition relates to all the applicant’s goods and services. In respect of the sections 5(2)(b) ground, the opponent relies upon an European Union Trade Mark (EUTM) registration no. 14414916, the relevant details of which are:

SIEMENS
Ingenuity for life

Filing date: 28 July 2015

Registration date: 16 December 2015

3) It is registered in respect of goods and services in the following 16 classes: 6, 7, 9, 11, 12, 16, 17, 25, 28, 35, 36, 37, 38, 40, 41 and 42. The opponent relies upon all of these goods and services and the complete specifications are shown in the annex to this decision.

4) This mark has a registration date less than five years before the publication of the contested mark and it is, therefore, not subject to the proof of use provisions contained in section 6A of the Act. The significance of this is that the opponent may rely upon the full list of goods and services listed in its registration.

5) In respect of the section 5(2)(b) ground, the opponent asserts that:

- Because of its position, font size and style, the phrase “Bringing ingenuity to life” has an independent identity in the applicant’s mark. The opponent’s mark contains a phrase “ingenuity for life” that is readily distinguished from the house mark “SIEMENS”;
- The opponent’s mark benefits from a significant reputation;
- The presence of the word “ingenuity” and “life” means that they are visually, aurally and conceptually similar;
- The respective goods and services are identical or similar;
- Because of the similarity between the respective marks and their goods and services, there is a likelihood of confusion.

6) In respect of the section 5(3) ground the opponent asserts that:

- The respective marks are highly similar (for the reasons summarised above);
- The respective goods and services are identical or similar;
- The opponent’s marks have been used extensively in the UK since at least as early January 2016 and has built up a significant reputation;
- The opponent’s mark’s reputation enjoys an extensive reputation particularly in relation to goods and services in the fields of engineering and technology
- Because of the size and scope of the opponent’s business, its earlier mark is widely recognised and the phrase “ingenuity for life” will be known to relevant consumers and recognised within the mark as signifying the opponent’s business and, consequently, the relevant consumer will make a link between the respective marks;
- use of the applicant’s mark would:
 - be detrimental to the reputation of the opponent’s mark because such use would potentially tarnish the opponent’s mark. Use of the applicant’s mark in respect of inferior goods and services will lead to negative associations with the opponent mark and thereby diminish its value and reputation;

- be detriment to the distinctive character of its mark because use of the applicant's mark would have the effect of eroding the distinctiveness of the opponent's mark, lessening its ability to arouse an immediate association with the opponent's goods and services. This would affect the economic behaviour of the average consumer;
- take unfair advantage of the distinctive character or the repute of the mark because, as a result of the link between the respective marks, the applicant's mark will gain underserved exposure. Such an advantage is unfair because it is parasitic in nature.

7) In respect of the grounds based upon section 5(4)(a), the opponent relies upon its goodwill identified by the sign "Ingenuity for Life" used in the UK since at least 2016 in respect of "a large range of goods and services". It claims that use of the applicant's mark would misrepresent that those goods and services originated from the opponent or were endorsed by it, or were, in some other way, connected to it. It claims that such use would damage its business and goodwill in the UK.

8) The applicant filed a counterstatement denying the claims made and putting the opponent to proof of its reputation.

9) The parties both filed evidence in these proceedings. This will be summarised to the extent that it is considered necessary. A hearing took place on 21 January 2020 where the opponent was represented by Martin Krause of Heseltine Lake Kempner LLP and the applicant by Richard May of Osborne Clarke LLP.

Opponent's evidence-in-chief

10) This takes the form of the witness statement of Heather Orr, Trade Mark Agent, Haseltine Lake Kempner LLP and provides evidence of the scale of use of the opponent's mark and the size of the opponent's business and its activities.

Applicant's evidence

11) The applicant's evidence takes the form of two witness statements, the first by Jo Scarlet, chief marketing officer at the applicant. The second is by Richard May, Associated Director, Chartered Trade Mark Attorney and Solicitor at Osborne Clarke LLP.

12) Ms Scarlet provides information regarding the activities of the applicant and the concept behind the business model.

13) Mr May provides evidence in support of the applicant's submission that the phrase "Ingenuity for Life" is non-distinctive and that consumers are familiar with marks containing or comprising the word "Ingenuity" to the extent that no economic link will be made between the various marks. Mr May also draws attention to the fact that in June 2015 the opponent attempted to register the mark "Ingenuity for Life" (under no. 14277784) at the EUIPO in respect of the same goods and services as the registration relied upon in the current proceedings. It was refused for lack of distinctive character.

DECISION

Section 5(2)(b)

14) Section 5(2)(b) of the Act is as follows:

"5(2) A trade mark shall not be registered if because-

(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".

Comparison of goods and services

15) In the judgment of the Court of Justice of the European Union (“the CJEU”) in *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, Case C-39/97, the court stated at paragraph 23 of its judgment that:

“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”.

16) The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

- (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.

17) In *Gerard Meric v Office for Harmonisation in the Internal Market (MERIC)*, Case T-133/05, the General Court (“the GC”) stated that:

"29. In addition, the goods can be considered as identical when the goods

designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 Institut fur Lernsysteme v OHIM- Educational Services (ELS) [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark”.

18) At the hearing, Mr May accepted that in respect of the applicant’s Classes 9, 16, 35, 36 and 38, the listed goods and services are similar or identical to the opponent’s goods and services. It is sufficient for the purposes of this decision that I acknowledge that at least some of the respective goods and services are identical, or highly similar, for example:

| Opponent’s goods or services | | Applicant’s goods or services |
|-------------------------------------|--|--|
| Class 9 | <i>Software, other than</i> | <i>computer programs and computer software</i> |
| Class 16 | <i>Printed matter</i> | <i>Printed matter</i> |
| Class 35 | <i>Business management; Business administration</i> | <i>Business management and administration services</i> |
| Class 36 | <i>Insurance</i> | <i>Insurance services</i> |
| Class 38 | <i>Telecommunications</i> | <i>Telecommunications services</i> |
| Class 42 | <i>Development, creation ... of data processing programs, other than for ...</i> | <i>Computer programming</i> |

Comparison of marks

19) It is clear from *Sabel BV v. Puma AG*, Case C-251/95 (particularly paragraph 23), Case C-251/95, that the average consumer normally perceives a 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 marks must be assessed by reference to the overall impressions created by the marks, bearing in

mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, 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 relative 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.”

20) It would be wrong, therefore, to artificially dissect the marks, although, it is necessary to take account of the distinctive and dominant components of the 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.

21) The application consists of a series of four marks that differ only in their colour. No one mark in the series places it in a materially stronger or weaker position than the others and, for procedural economy, I will restrict my considerations to its black and white mark. Consequently, I will consider similarity between the following marks:

| Opponent's Mark | Applicant's mark |
|--|---|
| <p style="text-align: center;">SIEMENS Ingenuity for life</p> | <p style="text-align: center;">  Bringing Ingenuity to Life </p> |

22) The opponent's mark consists of the word "SIEMENS" appearing in large capital letters. Underneath, and offset to the right, the words "Ingenuity for life" appear. These words are subservient to the house mark because they are smaller and less prominent in the mark and because they are of a lower level of distinctive character. The word SIEMENS is the dominant and distinctive element. The applicant's mark consists of the letters "PA" contained within a circle. Further circles of differing sizes

are positioned to the top right of this largest circle and give the impression of bubbles. The combination of this device and the letters “PA”, because of their position at the top centre of the mark, are the dominant distinctive element. The words “Bringing Ingenuity to Life” appear in smaller letters underneath and operate as a “strap line” alluding to the applicant’s aims. Consequently, this element is of a lower level of distinctive character.

23) Mr Krause conceded that the marks are readily distinguishable because of the differences in the respective house marks but that the respective strap lines are virtually identical and, as a result, are likely to be mistaken for each other. I keep this submission in mind when considering the level of similarity between the respective marks.

24) Visually, the dominant SIEMENS and PA (and device) elements share no similarity. The respective strap lines both include the words “ingenuity” and “life” appearing in roughly the same positions and this creates visual similarity, however, in the applicant’s mark, the strap line has the additional word “Bringing” at the start and the penultimate words are different being “for” and “to” respectively. Taking all of this into account and the fact that the elements that are visually similar are subservient to the house marks, I conclude that the marks share only a low level of visual similarity.

25) Aurally, the opponent’s mark consists of the 9 syllables SEE-MENS-IN-GEN-U-IT-EE-FOR-LIFE and the applicant’s mark consists of the 11 syllables PEE-A-BRING-ING-IN-GEN-U-IT-EE-TO-LIFE. However, in actual use, the marks are likely to be referred to only by the house marks SIEMENS and PA respectively. In these circumstances, the marks have no aural similarity.

26) Conceptually, based upon the ordinary dictionary meaning of “ingenuity”¹, the average consumer is likely to perceive the phrase “Ingenuity for Life” in the opponent’s mark as conveying the concept of “originality or inventiveness to aid living” or “originality or inventiveness that will last the whole of someone’s life”. The

¹ <https://www.lexico.com/definition/ingenuity>

phrase “Bringing ingenuity to life” has the different concept of “making originality or inventiveness interesting” (based upon the common and readily understood phrase “bringing to life”²). Mr Krause submitted that characterises the respective marks as having two identifiers being (i) the respective house marks and (ii) the respective strap lines. This may be true, but the strap lines, because of the message they convey and their position within the respective marks, have a lesser conceptual impact upon the average consumer than the house marks. Taking all of this into account, there is some conceptual similarity, but because of the position of the strap lines within the marks, their laudatory messages and their reduced role within the marks, together with their subtly different meaning, I conclude that when considering the marks as a whole, they share no more than a low level of conceptual similarity.

Average consumer and the purchasing act

27) The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. 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*.

28) In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

² <https://www.lexico.com/definition/life>

29) The respective goods and services cover a broad range and, consequently, the average consumer will also be varied. Some goods, such as *DVDs* and *printed matter* may be purchased regularly by the general public and with no more than an average level of care and attention, whilst services such as *project evaluation* and *business growth, acquisition and corporate planning strategies* are examples of where the consumers are likely to be businesses or professionals and the procurement process is likely to be more thorough and considered. In all cases, the purchasing process is likely to be visual in nature, but aural considerations may also play a part.

Distinctive character of the opponent's earlier mark

30) 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 *Windsurfing Chiemsee 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).”

31) The opponent's mark consists of the word "SIEMENS" appearing in large capital letters and with the words "Ingenuity for life" appearing in smaller letters below and offset to the right. The overriding impression is created by the word SIEMENS which has a reasonably high level of distinctive character. The words "Ingenuity for life", because of their size and position within the mark have a lesser impact upon the distinctive character. The applicant submits that the words "Ingenuity for life" have no-distinctive character. The opponent submits that despite being combined with the SIEMENS element, the words "Ingenuity for life" has a separate, readily identifiable presence in the mark. I agree, but as I identified in paragraph 24, the term is likely to be readily understood as meaning "originality or inventiveness to aid living" or "originality or inventiveness forever". This perception of the phrase as a laudatory statement negates the impact it may otherwise have had as a separate and readily identifiable element. Taking all of this together, I conclude that the earlier mark has a reasonably high level of inherent distinctive character but that this is so because of the dominant presence of the SIEMENS element and that the phrase "Ingenuity for life" does not contribute to the inherent distinctive character of the mark.

32) Mr Krause identified the scale of the opponent's business to support its claim that its mark benefits from an enhanced distinctive character because of its use in the UK and, additionally, that that also the words "Ingenuity for life" have become distinctive through their use as part of the mark.

33) The relevant points from the opponent's evidence can be summarised as follows:

- the following mark appears on the top right corner of the cover and each page of the opponent's corporate report, 2nd Quarter, 2017³:

The logo consists of the word "SIEMENS" in a bold, black, sans-serif font. Below it, the phrase "Ingenuity for life" is written in a black, cursive script font, positioned to the right and slightly below the center of the word "SIEMENS".

³ Exhibit HO2

- an extract from a publication from the opponent’s “mobility division”, dated 17 June 2016, has the same mark as shown above appearing at the top right of the cover page⁴. The second page is entitled “About Siemens in the UK” and the third page indicates on a map of the UK that it has 14,000 employees, 13 manufacturing facilities and “28 major Siemens sites”. The cover page also carries the web site address “siemens.co.uk/rail”;
- a 2016 report entitled “Siemens UK Business to Society” has the above mark on its front cover⁵. The report identifies the opponent’s contribution to the social and economic prosperity of the UK and includes the following claims:
 - £3.2bn contribution to the UK Gross Value Added
 - £1.8bn spent with UK suppliers;
 - Supporting 56,000 UK jobs with 17,500 in its supply chain;
- An Ofsted report of an inspection of the opponent’s effectiveness of its training and development offering to its staff⁶, that took place between 16 – 19 August 2016, provides the following information about the opponent:
 - It was established in the UK in 1843;
 - It has 14,000 employees in the UK across 32 main sites and had a turnover of £5 billion in 2015;
 - Its apprentices work in specialisms such as energy management, wind power and renewables, power generation, rail engineering, mechatronics and electronic engineering including health screening and traffic management systems;
 - A press release entitled “Siemens strengthens its global brand appearance: “Ingenuity for life”” and dated 8 December 2015

34) As Mr May submitted, the opponent’s evidence suffers from a failing in that it focuses on the opponent’s business rather than identifying use of its mark in respect of the goods and services for which it claims an enhanced level of distinctive character (as well as goodwill and reputation). This criticism has some merit, in particular, it is not possible to map the extensive business of the opponent onto the goods and services relied upon. There are no turnover figures relating to the goods

⁴ Exhibit HO3

⁵ Exhibit HO4

⁶ Exhibit HO5

and services relied upon and no declared promotional spend. Mr Krause suggested that “Siemens” is a household name. I decline to take judicial notice of this, but it is my view that the evidence supports a very general claim that the opponent has a significant UK presence in certain industries such as the rail industry. However, taking all of this into account, it is not possible to identify which goods and services this presence relates. Consequently, I am unable to conclude that the opponent’s presence in certain industries translates to its earlier mark having achieved an enhanced level of distinctive character for any of the listed goods and services.

GLOBAL ASSESSMENT – Conclusions on Likelihood of Confusion

35) The following principles are obtained from the decisions of the 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 C-120/04, *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 he has kept in his 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.

36) The factors assessed so far have a degree of interdependency (*Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc*, paragraph 17), a global assessment of them must be made when determining whether there exists a likelihood of confusion (*Sabel BV v. Puma AG*, paragraph 22). These factors must be assessed from the viewpoint of the average consumer. Confusion can be direct (which occurs

when the average consumer mistakes one mark for the other) or indirect (where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and goods down to the responsible undertakings being the same or related).

37) Mr Krause submitted that because a slogan is used with a house mark, this is not decisive to my considerations. He urged me not to place any reliance upon the EUIPO decision that found “Ingenuity for Life” to be, *prima facie*, non-distinctive. He pointed out that the decision was dated before the opponent had made any use of its mark, that it was an un-contested first instance decision and that, since then, there has been significant use of the opponent’s mark that features the slogan. Mr Krause is relying upon the opponent’s mark having achieved an enhanced level of distinctive character, however, I have found that this has not been demonstrated. That said, the lack of a finding of an enhanced level of distinctive character is not necessarily fatal to the opponent’s case, because the existence of such would not change, to any significant extent, the role played by the strap line in the mark. As I have found earlier, the strap line element of the mark is subordinate to the SIEMENS element and imparts a laudatory message. It therefore does not have trade mark significance and, as submitted by the applicant, lacks any distinctive character. I, therefore, reject the opponent’s submission to the contrary.

38) Further, Mr Krause put forward the argument that the addition of the PA (and device) in the applicant’s mark only assists if the average consumer is aware that the company is not connected to the opponent. I do not agree. Rather, the converse is true where the PA (and device) element assists the applicant unless the average consumer is aware that the applicant is connected to the opponent. It is clear from the facts of this case that the applicant is not connected to the opponent.

39) Mr Krause asked the question “if the house mark is the only distinctive element then why register a mark with the addition of a slogan?” He answered his own question by asserting that it is because the slogans play important distinctive roles in both marks. This was countered by Mr May, who submitted that the importance of slogans in the parties’ marks is to convey the virtues of their goods and services in a non-distinctive way and submitted that there is no relevant similarity between the

marks. I concur with Mr May's submission. In the respective marks, the strap lines are non-distinctive statements that are similar but with subtly different meanings. Consequently, they will have very little, if any impact upon the average consumer who, in this current situation, will look to the house mark to provide information as to trade origin and not to the respective strap lines.

40) I acknowledge the third-party use relied upon by applicant to support its claims that the respective slogans are non-distinctive. Mr Krause points to some operating as trade marks. I find that this evidence is not persuasive one way or the other because each case must be assessed on its merits. In the current case, I agree with the applicant that both parties' strap lines are devoid of distinctive character.

41) Having found that the respective strap lines are devoid of distinctive character and having regard for the fact that their similarity can be the only possible connection between the respective marks, it follows that there is no likelihood of confusion.

42) In case I am wrong and the respective strap lines are distinctive, because of the message they convey, they can be no more than weakly distinctive. This is not impacted by any enhanced distinctive character for the reasons explained earlier. The correct approach to an assessment of a likelihood of confusion in situations where the shared elements of the respective marks are only weakly distinctive has been discussed by Arnold J (as he then was)⁷. He objected to the practice of registering marks including non-distinctive elements then attempting to enforce them against third parties wishing to use the non-distinctive term. Birss J referred to the principle expressed by Arnold J⁸ when he stated that "if the only similarity between the respective marks is a common element which has a low distinctiveness, that points against there being a likelihood of confusion."⁹ I strongly feel this is the case here. The overriding impression created by the respective marks resides in the "SIEMENS" and "PA" (and device) elements. There will be no more than a fleeting regard for the respective strap lines.

⁷ *Starbucks (UK) Ltd v British Sky Broadcasting Group Plc* [2012] EWHC 1842 (Ch) at para 120

⁸ *In Whyte & Mackay Ltd v Origin Wine UK Ltd* [2015] EWHC 1271 (Ch)

⁹ *Nicoventures Holdings Limited v The London Vape Company Ltd* [2017] EWHC 3393 (Ch)

43) Having regard for all of the above, even accounting for the fact that at least some of the respective goods and services are identical and that there is similarity between the respective strap-lines, I conclude that there is no likelihood of confusion. It follows that where the respective goods and services share a lower level of similarity, there will also be no likelihood of confusion.

44) In summary, having taken account of all the factors necessary for the global analysis, I find that the section 5(2)(b) ground fails in its entirety.

Section 5(3)

45) Section 5(3) states:

“(3) A trade mark which-

(a) is identical with or similar to an earlier trade mark, shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a European Union trade mark or international trade mark (EC), in the European Union) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.”

46) The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors*, Case 252/07, *Intel*, Case C-408/01, *Addidas-Salomon*, Case C-487/07, *L’Oreal v Bellure* and Case C-323/09, *Marks and Spencer v Interflora*. The law appears to be as follows.

a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors*, paragraph 24.

(b) The trade mark for which protection is sought must be known by a significant part of that relevant public; *General Motors*, paragraph 26.

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas Saloman, paragraph 29* and *Intel, paragraph 63*.

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark's reputation and distinctiveness; *Intel, paragraph 42*

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; *Intel, paragraph 68*; whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel, paragraph 79*.

(f) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel, paragraphs 76 and 77*.

(g) The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character; *Intel, paragraph 74*.

(h) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact of the earlier mark; *L'Oreal v Bellure NV, paragraph 40*.

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the proprietor of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora*, paragraph 74 and the court's answer to question 1 in *L'Oreal v Bellure*).

Reputation

47) In *General Motors*, Case C-375/97, the CJEU held that:

“25. It cannot be inferred from either the letter or the spirit of Article 5(2) of the Directive that the trade mark must be known by a given percentage of the public so defined.

26. The degree of knowledge required must be considered to be reached when the earlier mark is known by a significant part of the public concerned by the products or services covered by that trade mark.

27. In examining whether this condition is fulfilled, the national court must take into consideration all the relevant facts of the case, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it.

28. Territorially, the condition is fulfilled when, in the terms of Article 5(2) of the Directive, the trade mark has a reputation 'in the Member State'. In the absence of any definition of the Community provision in this respect, a trade

mark cannot be required to have a reputation 'throughout' the territory of the Member State. It is sufficient for it to exist in a substantial part of it."

48) The requisite reputation of an EU mark requires that the opponent's mark is known by a significant part of the public concerned by the products or services covered by that mark in a substantial part of the territory of the Community¹⁰. As I have already acknowledged, the opponent's evidence fails to identify the scope of any reputation within the context of the earlier mark and goods and services relied upon. That is the end of the matter because if the opponent cannot demonstrate that its mark enjoys a reputation in respect of the goods and services relied upon then an opposition based upon section 5(3) must fail. In this case, the message I take away from the evidence that there is a substantial business, but it is not possible to ascertain to what goods and services any reputation attaches. In case I am found to be wrong regarding my primary finding that the opponent has failed to demonstrate the requisite reputation, I will go on and consider the existence of a link on the assumption that there has been extensive use of the earlier EUTM in respect of the goods and services relied upon over 32 months between the first use of the EUTM in January 2016 and the relevant date in these proceedings, namely the filing date of the contested mark, 1 October 2018.

The Link

49) I must consider whether the public will make the required mental 'link' between the marks and this must take account of all relevant factors. The factors identified in *Intel* are:

The degree of similarity between the conflicting marks

The only similarity between the marks arises from the similarity between the respective strap-lines that I have found to be non-distinctive.

The nature of the goods or services for which the conflicting marks are

¹⁰ *Pago International GmbH v Tirolmilch registrierte GmbH*, Case C-301/07, para 30

registered, or proposed to be registered, including the degree of closeness or dissimilarity between those goods or services, and the relevant section of the public

At least some of the respective goods and services are identical

The strength of the earlier mark's reputation

I am considering the existence of the requisite link on the assumption that there has been extensive use of the earlier EUTM in respect of the goods and services relied upon over a period of 32 months.

The degree of the earlier mark's distinctive character, whether inherent or acquired through use

I have found that the opponent's EUTM has a reasonably high level of inherent distinctive character as a consequence of the presence of the SIEMENS element in the mark. I have found that the strap-line is not distinctive and does not contribute to the mark's distinctive character. As I have already noted, there are shortcomings in the evidence, and as a result the mark does not benefit from an enhanced level of distinctive character.

50) Whilst taking these factors into account, any possibility that the requisite link exists is undermined by the fact that the respective elements that create similarity between the marks are not distinctive, or if they are, they are only weakly distinctive. I recognise that the test for the existence of a link sets a lower threshold than required when assessing likelihood of confusion, however, I find that the totally different house marks present in the earlier EUTM and the contested mark are the only elements that will impart an origin message to the relevant section of the public. I find that the requisite link has not been established.

51) In the absence of a link, it follows that there is no detriment or unfair advantage and this ground of opposition fails in its entirety.

Section 5(4)(a)

52) Section 5(4)(a) states:

“A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented –

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, or

(b) [.....]

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of “an earlier right” in relation to the trade mark.”

53) In *Discount Outlet v Feel Good UK*, [2017] EWHC 1400 IPEC, Her Honour Judge Melissa Clarke, sitting as a deputy Judge of the High Court, conveniently summarised the essential requirements of the law of passing off as follows:

“55. The elements necessary to reach a finding of passing off are the ‘classical trinity’ of that tort as described by Lord Oliver in the *Jif Lemon* case (*Reckitt & Colman Product v Borden* [1990] 1 WLR 491 HL, [1990] RPC 341, HL), namely goodwill or reputation; misrepresentation leading to deception or a likelihood of deception; and damage resulting from the misrepresentation. The burden is on the Claimants to satisfy me of all three limbs.

56. In relation to deception, the court must assess whether “a substantial number” of the Claimants’ customers or potential customers are deceived, but it is not necessary to show that all or even most of them are deceived (per *Interflora Inc v Marks and Spencer Plc* [2012] EWCA Civ 1501, [2013] FSR 21).”

54) It is necessary that I begin my analysis by considering if the requisite goodwill or reputation exists. The opponent relies upon the sign “Ingenuity for life”. I have found that this term has no-distinctive character and that, further, the use of the term has been as a subservient strap line to the opponent’s house mark SIEMENS. It is clear from the evidence that the opponent’s business has significant goodwill in the UK and that this has been identified for many years by its SIEMENS sign. However, in light of the factual matrix it is clear that the non-distinctive nature of the sign relied upon, together with the manner of its use (being always subservient to the house mark), results in the strap line alone not identifying the opponent’s goodwill. Consequently, use of the applicant’s mark will not lead to a substantial number of members of the public being deceived.

55) In light of the above, the ground based upon section 5(4)(a) fails in its entirety.

Summary

56) The opposition fails against all of the applicant’s goods and services.

COSTS

57) The applicant has been successful and is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 2/2016. Mr May requested off-scale costs because of the claimed lack of enthusiasm in the opponent’s pursuit of its section 5(3) grounds and also because the opponent’s skeleton arguments were received four hours late. In respect of the first point, the opponent was entitled to rely upon the section 5(3) grounds and I dismiss any suggestion otherwise. To pursue the ground less vigorously than other grounds is a tactical decision that the opponent is entitled to make and should not be penalised for a focus upon what it perceived as its strongest grounds. The late filing of the skeleton argument has the potential to reduce the time for the other side to consider its content, however, in this case, I don’t detect that this presented Mr May with any particular difficulty, nor any additional cost. I reject Mr May’s claim for off-scale costs.

58) I award scale costs to the applicant on the following basis:

| | |
|---|--------------|
| Considering opponent's statement and preparing counterstatement | £300 |
| Considering other side's evidence and preparing own evidence | £1000 |
| Preparing for and attending a hearing | £900 |
| Total | £2200 |

59) I therefore order Siemens Aktiengesellschaft to pay to PA Knowledge Limited the sum of £2200. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 18th day of March 2020

Mark Bryant
For the Registrar,
The Comptroller-General

ANNEX – Full list of opponent’s goods and services

Class 6: *Clamps, clips, terminals and pins for fastening electric conduits and cables (included in class 6); Ferrules of metal; Wrought and semi-wrought common metals and their alloys for industrial purposes; Ferrites, namely rolled and cast building components of metal, mouldings of metal, work pieces, included in class 6, of metal; Pipes and tubes of metal, rolled and cast building components of metal, mouldings of metal, work pieces, included in class 6, of metal, storage containers of metal and alloys of metal; Metal building materials; Materials of metal for railway tracks; Cables and wires of common metal (included in class 6); None of the aforesaid goods including pins, needles and clips for building and industrial purposes.*

Class 7: *Electric motors (except for land vehicles), prime movers and driving machines and starting apparatus therefor (except for land vehicles); Electric generators, turbines; Compressors; Starters for prime movers and driving machines (included in class 7); Compressors for charging combustion engines (included in class 7); Apparatus and equipment for the generating, control, distribution and transport of compressed air; Pumps (included in class 7), other than for household and kitchen apparatus; Machine tools, machines for processing pipes; Machines, apparatus and equipment for cleaning and processing chemicals; Steam engine boilers; Equipment and machines for the automated handling of tools and workpieces.*

Class 9: *Scientific apparatus, other than laboratory analysis apparatus; Physical, chemical, optical, photographic, nautical and geodetic apparatus, equipment and instruments; Weighing, signalling, measuring, metering, recording, monitoring, testing, controlling, regulating and switching apparatus; Electric switching and control cabinets; Plug-in modules, mainly consisting of multi-combination individual parts for holding and/or combining circuit boards; Temperature controlling apparatus; Lasers for technical purposes; Electron microscopes; Remote operating and control apparatus; Coin and token-operated apparatus; Electric conduits and cables, including auxiliary apparatus for laying cables and conduits, namely strain-relief devices for sleeves; Conductor rails; Conduit and cable fittings; Electric installation material (included in class 9), in particular switches, dimmers, sockets, switch plugs, distribution boxes, aerial socket outlets, loudspeaker cabinets and connection boxes, plug-in communication devices; Modulators and switches for jalousies; Thermometers; Hygrometers; Connector assemblies, fuses, automatic screwing machines, proximity switches, fault current protective switches, relays, contactors, terminals, cable sleeves, cable cabinets, fuse boxes, conduit boxes, connection boxes, distribution boxes, switchboards, switch clocks, electricity meters; Ultrasound and infrared transmitting and receiving apparatus and relay stations therefor, for switching, dimmer and touch functions; Modules for switches and dimmers; Timers; Synchros; Electric heat transformers with electric starting aids for brightness control of fluorescent lamps; Ballasts, control and regulating apparatus for fluorescent lamps; Switchgear and control apparatus for building systems technology; Signal appliances; Intercom systems; Distribution, channel and laying systems for electric installation; Electric and electronic alarm devices and installations including devices and*

installations for protecting objects including burglar and rape alarms, security cameras and installations, entry camera and security installations and video surveillance equipment; Electric infra-red locking devices; Warning and protection devices against water and fire damage; Electronic installations for surveillance of individuals; Devices for identifying individuals; Electric and electronic apparatus and installations for process control engineering; Servicing apparatus and machines for power plant technology, namely pipe testing apparatus, apparatus for the non-destructive testing of materials in power plants, eddy current testing apparatus, ultrasound testing apparatus, leak detecting apparatus, manipulators, electric apparatus for detecting and measuring pollutants in the air, in the water and in the ground, and for detecting and measuring sound, vibrations, radioactivity and meteorological data; Apparatus for process engineering, namely flow meters, pressure measuring apparatus, regulators, actuators; Electric and electronic apparatus for use in analytical technology, including operational analysis, chromatography, other than for medical chromatography; Apparatus and installations for use in weighing; Electric couplings; Memory-programmable controls, in particular for machine tools, handling apparatus, robots, assembly machines and machines for the treatment of materials; Apparatus, parts therefor and installations consisting thereof, for the detection and location of leaks in containers holding solid, liquid and gaseous media; Apparatus for the nondestructive treatment of materials; High-voltage, medium-voltage and low-voltage circuit-breakers and switchgear; High-voltage direct current transmission installations; Electrical rectifiers and inverters; Transducers; Arresters; Vacuum tubes for switchgear; Switch cabinets; Metering devices for use in relation to electricity, gas, liquids and heat; Control engineering apparatus and equipment for switchgear and network control engineering; Electricity transformers; Power cables and lines; Electronic power and torque measuring devices; Electronic load indicating devices; Solar energy collectors for power generation; Emergency power supply apparatus; Chips; Batteries, electric; Fuel cells; Accumulators; Sensor; Optoelectronic components and assemblies consisting thereof (included in class 9); Optocouplers; Resistances, electric; Electric condensers; Chokes; Electromagnetic coils; Electric thermistors and resistors; Filters (included in class 9); Printed, engraved, cast and integrated circuits; Chipcards; Smart card readers; Testing devices for electrotechnical and electronic components and subassemblies; Magnets and resonators; Electronic tubes; Surge arresters; Apparatus for recording, broadcasting, transmission, reception, reproduction and processing of sounds and/or signals and/or images; Communications devices and installations thereof; Data processing and transmission apparatus; Apparatus and installations for the transmission of speech, data and images, satellite earth stations; Communications cables, communications lines and optical waveguides for electric and optical speech, data and image transmission; Intercom systems; Modems; Couplers, transceivers, concentrators, power supply (included in class 9) and collision detection apparatus, and optical racks for use in fibre-glass transmission technology; Video recorders; Aerials and aerial installations; Radar apparatus; Short-wave transmitter and receiver stations; Selector radio apparatus; Aeronautical radio apparatus; Microwave radios; Satellite radio equipment; Encoding apparatus; Thermal imaging equipment; Laser distance-measuring apparatus; Inquiry and response apparatus for aircraft identification; Equipment for receiving, locating and classifying electromagnetic signals; Acoustic and optical signalling devices and signalling panels; Railway

signalling apparatus and installations constructed therefrom; Electric positioners and parts therefor; Electric lines and cables, including auxiliary apparatus for laying cables and lines, namely mounting rollers, cable sliding rollers, angle suspension gear, drum frames, cable reels, delivery spools; Fibreglass, and objects made therefrom for electrotechnical purposes; Software, other than software for medical purposes and medical 3/6 imaging; Other than software for the biological, chemical and medical industry; Other than software for household or kitchen purposes, other than software for human resources and payroll management; Other than for learning and educational software and translation software; Other than software for video games; Other than earth stations; Communications cables, communications lines and optical waveguides for electric and optical speech, data and image transmission; Intercom systems; Modems; Couplers, transceivers, concentrators, power supply (included in class 9) and collision detection apparatus, and optical racks for use in fibre-glass transmission technology; Video recorders; Aerials and aerial installations; Radar apparatus; Short-wave transmitter and receiver stations; Selector radio apparatus; Aeronautical radio apparatus; Microwave radios; Satellite radio equipment; Encoding apparatus; Thermal imaging equipment; Laser distance-measuring apparatus; Inquiry and response apparatus for aircraft identification; Equipment for receiving, locating and classifying electromagnetic signals; Acoustic and optical signalling devices and signalling panels; Railway signalling apparatus and installations constructed therefrom; Electric positioners and parts therefor; Electric lines and cables, including auxiliary apparatus for laying cables and lines, namely mounting rollers, cable sliding rollers, angle suspension gear, drum frames, cable reels, delivery spools; Fibreglass, and objects made therefrom for electrotechnical purposes; Software, other than software for medical purposes and medical 3/6 imaging; Other than software for the biological, chemical and medical industry; Other than software for household or kitchen purposes, other than software for human resources and payroll management; Other than for learning and educational software and translation software; Other than software for video games; Other than software for developing new product mixes and packaging and contents; Other than software for the energy industry; Other than software for interactive electronic communications and accessing and using databases; Other than software for recording and transmission of voice, video and text messages, electronic information, media files and computer programs; None of the aforesaid goods for household or kitchen purposes; Other than scanners.

Class 11: *Apparatus for steam generating, refrigerating; None of the aforesaid goods for household or kitchen purposes.*

Class 12: *Land, air and water vehicles, and parts therefor.*

Class 16: *Paper cardboard; Printed matter, other than printed matter relating to medicine, instructional and teaching material, payroll management, human resources, administering and carrying out electronic payments; Bookbinding material; Photographs [printed]; Adhesives for stationery or household purposes; Artists' materials; Typewriters and office requisites (except furniture); Instructional and teaching material (except apparatus); Plastic materials for packaging,*

included in Class 16; Printers' type; Printing blocks. Paper cardboard; Printed matter, other than printed matter relating to medicine, instructional and teaching material, payroll management, human resources, administering and carrying out electronic payments; Bookbinding material; Photographs [printed]; Adhesives for stationery or household purposes; Artists' materials; Typewriters and office requisites (except furniture); Instructional and teaching material (except apparatus); Plastic materials for packaging, included in Class 16; Printers' type; Printing blocks. Paper cardboard; Printed matter, other than printed matter relating to medicine, instructional and teaching material, payroll management, human resources, administering and carrying out electronic payments; Bookbinding material; Photographs [printed]; Adhesives for stationery or household purposes; Artists' materials; Typewriters and office requisites (except furniture); Instructional and teaching material (except apparatus); Plastic materials for packaging, included in Class 16; Printers' type; Printing blocks.

Class 17: *Gutta-percha, rubber, balata, asbestos, mica and substitutes therefor, and objects (semi-finished products) made therefrom for electrotechnical applications, included in class 17; Foils, slabs, rods and granules of plastic (in extruded form for use in manufacture) for technical purposes; Packing, stopping and insulating materials; Flexible pipes, not of metal; High-voltage and special-purpose ceramics for insulation purposes; Cast resin products for insulation purposes.*

Class 25: *Clothing, headgear.*

Class 28: *Games, playthings, gymnastic and sporting articles, included in class 28; Card games.*

Class 35: *Business management; Business administration; Office functions; Electronic services, namely gathering and storage of data, information, images, video and audio sequences.*

Class 36: *Insurance; Financial affairs; Monetary affairs; Real estate affairs; None of the aforesaid services including mortgage consultancy. Insurance; Financial affairs; Monetary affairs; Real estate affairs; None of the aforesaid services including mortgage consultancy. Insurance; Financial affairs; Monetary affairs; Real estate affairs; None of the aforesaid services including mortgage consultancy.*

Class 37: *Building construction; Installation and repair of electric apparatus and electrotechnical installations of all kinds; None of the aforesaid services including installation and repair of computer hardware, natural gas engines and compressors.*

Class 38: *Telecommunications; Rental of telecommunications apparatus and installations; Electronic services, namely the forwarding or dissemination of data, information, images, video and audio sequences.*

Class 40: *Treatment of materials and hardening of materials, and material surface finishing of turbines for generating electricity.*

Class 41: *Arranging and publication of books and periodicals, other than teaching material; Electronic services, namely the translation of data, information, images, video and audio sequences; None of the aforesaid services in the medical field.*

Class 42: *Research and development, for others, in the field of electrical engineering, electronics, information technology, physics, chemistry and mechanical engineering and planning, technical and scientific consultancy, engineering and technical work in the aforesaid fields; Construction and design planning and consultancy; Development, creation and rental of data processing programs, other than for medical purposes and medical imaging; Other than for the biological, chemical and medical industry; Other than for household or kitchen purposes and for human resources; Other than for payroll management; Other than for learning and educational software and translation software; Other than for video games; Other than for administering and carrying out electronic payments, for developing new product mixtures and packaging and contents; Other than for the energy industry; Other than for interactive electronic communications and accessing and using databases; Other than for recording and transmission of voice, video and text messages, electronic information, media files and computer programs; Rental of electrical engineering and information technology equipment and installations; Material testing; Technical consultancy with regard to the construction and operation of data processing installations, databases and telecommunications networks; Technical planning, development and design of telecommunications and data processing services and equipment, telecommunications networks and tools therefor; Technical planning, consultancy, testing and technical monitoring in the field of the systems integration and product integration of telecommunications networks and data processing.*