

O-583-20

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NOS. 3396002 & 3396003

BY LEXCOM CONSULTANTS LTD

TO REGISTER:

LEXCOMSYS

&



AS TRADE MARKS IN CLASS 9

AND

IN THE MATTER OF CONSOLIDATED OPPOSITIONS THERETO UNDER NOS.

417410 & 417411

BY

LEX-COM INFORMATIONSSYSTEME GMBH

BACKGROUND & PLEADINGS

1. On 30 April 2019, Lexcom Consultants Ltd (“the applicant”) applied to register the trade marks shown on the cover page of this decision for the goods in class 9 shown in the Annex to this decision. The applications were published for opposition purposes on 17 May 2019.

2. On 19 August 2019, the applications were opposed in full by LEX-COM Informationssysteme GmbH (“the opponent”). The oppositions are based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”), in relation to which the opponent relies upon the goods and services (shown in paragraph 14 below) in the following European Union Trade Mark Registration (“EUTM”):

No. 434969 for the trade mark **LEX-COM** which has a filing date of 2 December 1996 and which was registered on 9 August 2001.

3. In this decision, I shall refer to trade mark application no. 3396002 for the trade mark “LEXCOMSYS” as “the first application” and to trade mark application no. 3396003 as “the second application.” In relation to the first application, the opponent claims that as the competing trade marks are similar to a high degree and the competing goods and services are either identical or similar to a high degree, there will be a likelihood of confusion. Having made the same claim in relation to the competing goods and services in the second application, in relation to the competing trade marks, the opponent states:

“2. The mark applied for... (“the sign”), is a stylised form of LEXCOMSYS. The sign contains the same initial and dominant element as the Opponent's mark, namely LEXCOM. Whilst stylised, there is still visual similarity between the sign and the Opponent's mark. Further, the pronunciation of the sign regardless of its stylisation will be highly similar to the Opponent's mark, resulting in a high degree of aural similarity.

3. Further, the 'SYS' element of the sign is shown in a different font to the rest of the mark, and is a different colour. As such, this element has clearly been separated by the Applicant, and is likely to be deemed by the public to denote the word 'system'. The public will therefore view the 'SYS' element as non-distinctive or descriptive, and their attention will focus on the distinctive and dominant element of the sign, namely LEXCOM. This is conceptually identical to the Opponent's mark LEX-COM.

4. Overall, taking into account the visual, aural and conceptual elements, the sign must be considered to be similar to the Opponent's mark.”

4. The applicant filed counterstatements in which the basis of the oppositions is denied. In its counterstatements, the applicant indicates it would be prepared to remove named goods from its application if the opponent were to agree to certain conditions. There is nothing to suggest this offer was of any interest to the opponent. Following the filing of the counterstatements, the proceedings were consolidated.

5. In these proceedings, the opponent is represented by HGF Limited; the applicant represents itself. Neither party filed evidence or written submissions during the evidence rounds. Although neither party requested a hearing, the opponent filed written submissions in lieu. I shall keep all of the pleadings and written submissions in mind in reaching a conclusion.

DECISION

6. The oppositions are based upon section 5(2)(b) of the Act which 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.

5A Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

7. The trade mark upon which the opponent is relying qualifies as an earlier trade mark under the provisions of section 6 of the Act. Given the interplay between the dates on which the opponent’s trade mark was registered and the application date of the trade marks being opposed, the earlier trade mark is, in principle, subject to the proof of use provisions contained in section 6A of the Act. In its Notices of opposition, the opponent indicates it had used its trade mark upon all the goods and services upon which it relies. However, as in its counterstatements the applicant elected not to ask the opponent to make good on that claim, the opponent can rely upon all the goods and services claimed without having to demonstrate it has made genuine use of them.

Case law

8. The following principles are gleaned from the decisions of the courts of the European Union 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.

The principles:

(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 greater 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 will wrongly believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

The correct approach to the comparison

9. As mentioned earlier, the applicant is not represented in these proceedings and neither party has filed evidence. Although the applicant has provided detailed counterstatements, I have found some of its submissions to be difficult to understand and a number of its comments appear to me to be contradictory. I also note that the applicant places considerable importance on the fact that the trade marks for which it seeks registration are based upon, inter alia, its company name which, it states, has been active in the UK since 2003. It also comments on the fact that its second application is registered as a design and it refers to what appears to be the actual use the opponent may have made of its earlier trade mark.

10. In *Devinlec Développement Innovation Leclerc SA v OHIM*, Case C-171/06P, the Court of Justice of the European Union (“CJEU”) stated:

“59. As regards the fact that the particular circumstances in which the goods in question were marketed were not taken into account, the Court of First Instance was fully entitled to hold that, since these may vary in time and depending on the wishes of the proprietors of the opposing marks, it is inappropriate to take those circumstances into account in the prospective analysis of the likelihood of confusion between those marks.”

11. In *Roger Maier and Another v ASOS*, [2015] EWCA Civ 220, Kitchen L.J. stated:

“78....the court must.... consider a notional and fair use of that mark in relation to all of the goods or services in respect of which it is registered. Of course it may have become more distinctive as a result of the use which has been made of it. If so, that is a matter to be taken into account for, as the Court of Justice reiterated in *Canon* at paragraph [18], the more distinctive the earlier mark, the greater the risk of confusion. But it may not have been used at all, or it may only have been used in relation to some of the goods or services falling within the specification, and such use may have been on a small scale. In such a case the proprietor is still entitled to protection against the use of a similar sign in relation to similar goods if the use is such as to give rise to a likelihood of confusion.”

12. As I mentioned in paragraph 7 above, although the opponent’s earlier trade mark is, in principle, subject to the proof of use provisions, proof of use was not sought by the applicant. In those circumstances, whether or not the opponent has actually used its trade mark as registered (or indeed at all) in relation to the goods and services relied upon is irrelevant, as, inter alia, is the fact that the applicant’s trade marks are based upon its company name. Rather, what I must do in those circumstances is to compare the words in the competing specifications and the competing trade marks on a notional and fair basis applying the relevant case law shown later in this decision.

Comparison of goods and services

13. The specifications of the applications are ordered differently. A review indicates that “Smart meters” and “Electronic measurement sensors” appear in the first application’s specification (but not in the second) and “Flowmeters” appears as one word in the second application’s specification (and not in the first); otherwise the specifications are the same. However, as the first application’s specification also includes “meters” (which would include “smart meters”), “electronic sensors” (which would include “Electronic measurements sensors”) and “flow meters” (as two words), it is the specification of the first application I shall use for the purposes of comparison.

14. The competing goods and services are as follows:

Opponent’s goods and services	Applicant’s goods – the first application
<p>Class 9 - Electronic databases, in particular relational databases, text databases, image databases and combined text/image databases; databases stored on electronically readable data carriers; database programs for writing databases, database processing and retrieval, programs for writing digital image data and for retrieving different views of images and cut-outs of the objects described by the image data, image optimisation programs, computer programs and software, computers and</p>	<p>Class 9 - Flow meters; Fluid flow meters; Gas flow meters; Mass flow meters; Measurement apparatus; Instrumentation simulators; Factory automation software; Home automation software; Home automation systems; Industrial automation software; Integrated software packages for use in the automation of laboratories; Software; Software applications; Software compiler; Software compiling tools; Software drivers; Process control digital controllers; Process control instruments [electronic]; Process control units [electronic]; Process controlling</p>

<p>hardware, peripheral devices such as printers.</p> <p>Class 42</p> <p>Writing databases, in particular central, relational databases; writing digital image data; providing selected data records on electronically readable data carriers, or for output on paper; computer programming for database reading, processing and input; writing of documentation, in particular catalogues, in particular combined image/text documentation, in particular for the component industry, including for example the vehicle industry, machine construction industry and electrical engineering industry, or for the wholesale sector; organising technical documentation production using electronic apparatus; scanning and creation of drawings.</p>	<p>software; Electronic process control units; Industrial process control software; Alarms and warning equipment; Audio equipment; Computer peripheral equipment; Data processing equipment; Electronic communication equipment and instruments; Electronic data processing equipment; Image processing equipment; In-flight testing equipment; Information technology and audiovisual equipment; Point-to-point communications equipment; Protective and safety equipment; Electronic meters; Meters; Smart meters; System and system support software, and firmware; System boards (mother cards); System on Chip [SOC]; Alarm systems; Monitoring apparatus and instruments; Electric and electronic musical effects equipment; Electronic measurement sensors; Scientific apparatus and instruments; Pressure meters; Electrical and electronic components; Electrical and electronic instruments for logging data; Electrical and electronic instruments for processing data; Electrical and electronic instruments for storing data; Electrical and electronic instruments for the reception of data; Electrical and</p>
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	<p>electronic instruments for the transmission of data; Electrical and electronic test apparatus and instruments; Electronic animal identification apparatus; Electronic circuit boards; Electronic components; Electronic components for computers; Electronic components used in apparatus; Electronic components used in machines; Electronic control instruments; Electronic control systems; Electronic control units; Electronic imaging devices; Electronic integrated circuits; Electronic monitoring instruments, other than for medical use; Electronic navigation systems; Electronic navigational and positioning apparatus and instruments; Electronic sensors; Embedded software; Apparatus and instruments for processing data; Apparatus and instruments for processing images; Apparatus and instruments for processing sound; Apparatus and instruments for recording of data; Apparatus and instruments for recording of images; Apparatus and instruments for recording sound; Audiovisual apparatus and instruments.</p>
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15. In the judgment of the CJEU in *Canon*, Case C-39/97, the Court stated at paragraph 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”.

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 *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch), Floyd J. (as he then was) stated:

"... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. 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."

18. In *Sky v Skykick* [2020] EWHC 990 (Ch), Lord Justice Arnold considered the validity of trade marks registered for, amongst many other things, the general term "computer software". In the course of his judgment he set out the following summary of the correct approach to interpreting broad and/or vague terms:

"...the applicable principles of interpretation are as follows:

(1) General terms are to be interpreted as covering the goods or services clearly covered by the literal meaning of the terms, and not other goods or services.

(2) In the case of services, the terms used should not be interpreted widely, but confined to the core of the possible meanings attributable to the terms.

(3) An unclear or imprecise term should be narrowly interpreted as extending only to such goods or services as it clearly covers.

(4) A term which cannot be interpreted is to be disregarded."

19. In *Avnet Incorporated v Isoact Limited*, [1998] F.S.R. 16, Jacob J. (as he then was) stated:

“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.”

20. 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. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06, the General Court (“GC”) stated that “complementary” means:

“...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”.

21. In *Sanco SA v OHIM*, Case T-249/11, the GC indicated that goods and services may be regarded as ‘complementary’ and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services are very different, i.e. *chicken against transport services for chickens*. The purpose of examining whether there is a complementary relationship between goods/services is to assess whether the relevant public are liable to believe that responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C. noted as the Appointed Person in *Sandra Amelia Mary Elliot v LRC Holdings Limited* BL-O-255-13:

“It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense - but it does not follow that wine and glassware are similar goods for trade mark purposes.”

Whilst on the other hand:

“.....it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together.”

22. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the GC stated:

“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 für 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”.

23. In its submissions, the opponent states:

“13. The Opponent’s earlier goods can be categorised into three headline groups: (1) databases and programs/software for writing, receiving and processing data, (2) computer programs and software, and (3) hardware. The goods applied for can be broadly grouped into (1) equipment, apparatus and instruments for logging, processing, receiving and transmitting data, (2) hardware (including computer and electronic), and (3) software.

14. At paragraph 5 [of its counterstatement] the Applicant provides: “*The Defendant regret they cannot agree to removing terms relating to data processing per se, as these are integral [emphasis added] to the main scope of the business operations in industrial and scientific automation devices, instruments and software (including software developed by themselves used for controlling, monitoring, processing data acquired from subject devices that are also developed directly by themselves)*”. This unambiguously concedes the similarity of the competing goods. The earlier mark is registered for, among other

goods, “*database processing and retrieval*”. The Applicant is seeking a registration to cover devices, instruments and software including for processing data. The competing goods are identical and, in the alternative, similar. By its admission, the Applicant lends support to the reality that its goods are complementary to those of the Opponent, are targeted at the same consumer and can be offered by the same or economically connected undertakings.

17. The earlier mark is registered for computers and hardware, peripheral devices such as printers in class 9. The Opponent’s “hardware” is not limited by function or category, save that it relates only to the types of hardware classified in class 9. It must therefore be afforded broad interpretation. It includes but is not limited to computer hardware and electronic hardware; it encompasses physical components of devices or computers and also their peripheral devices. The remaining contested goods comprise various hardware equipment for, by the Applicant’s own words, controlling, processing, monitoring, recording data. They are encompassed by and are therefore identical to the earlier goods and/or vice versa. It is not possible to dissect either the Applicant’s or Opponent’s hardware goods.

18. In the alternative, the respective goods are similar by their complementarity. The Applicant’s goods utilise the software found in the earlier goods. The Opponent’s software and programs are indispensable for the use of the Applicant’s goods. A database is a collection of data that can be accessed and manipulated for a vast range of purposes. The Applicant’s goods are used to accumulate data, in various fields/purposes. For example, the contested measurement apparatus; electronic meters; meters; smart meters and measuring and monitoring equipment, apparatus and instruments are all pieces of hardware or devices that incorporate data processing units. Software is indispensable to their functioning. These goods, like the Applicant’s other hardware goods and devices, would be distributed through the same commercial channels as the Opponent’s goods and the services. Absent software and programs, meaningful

exploitation of the contested goods would not be possible. This must also be said for the contested meter products; their utilisation large depends on programmes that enable the devices to collate and interpret data obtained through measurements.

19. The earlier image optimisation programs are similar to the contested apparatus and instruments for processing images; audio-visual equipment, image processing equipment, apparatus and instruments for recording images. The latter have the former embedded within them and/or are used in conjunction. These goods are complementary within the definition by the General Court in *Boston Scientific Ltd v OHIM*, Case T-325/06. They have the same purpose to capture/enhance imagery, are produced by the same undertakings and targeted at the same consumer.”

24. In its counterstatements, the applicant states:

“6... nevertheless [the opponent] proceeds to claim that even terms for goods their earlier right clearly does not cover are in conflict with the Defendant's terms for goods "... as they capture data which can then be processed and viewed in databases" thereby also claiming similarity. This is a banal demagogy, which attempts to justify non-existent similarity with a merely trivial consequence of handling any form of data, based on the possibility that such data, which is also merely the sheer subject of their existing right, but not their actual right, rather than an actual term for goods expressed in their existing right, can be viewed in databases. Any data can be viewed in databases, and the Defendant trivially does not claim rights within the scope of their mark for "data" per se, but for instruments, and apparatus that generate some form data, which is also inherent to, and is indeed often the very purpose of operation of these devices which are clearly not covered explicitly anywhere within the Opponent's earlier right. Therefore, the sole fact that the terms within Opponent's earlier right, and the dissimilar terms within the Defendant's claim for their mark, both contain goods

that have some implicit connection to data per se, is no more grounds for opposition than that of an [example provided]. Accordingly, this claim is a demagoguery and is constructive on at least two accounts (being the unfounded claims of "complementary" nature despite, and the Opponent's apparent attempt to implicitly extend their right by opposing marks for goods outside of that), and is requested to be disregarded entirely."

25. Both parties' specifications contain a number of general terms that would include a wide range of goods for a wide range of purposes. I begin by noting that collinsdictionary.com defines the words below as follows:

"Database" – "A database is a collection of data that is stored in a computer and that can easily be used and added to. [...]"

"Hardware" – "In computer systems, hardware refers to the machines themselves as opposed to the programs which tell the machines what to do. Compare software."

"Peripheral device" - "noun - computing - any device, such as a disk, printer, modem, or screen, concerned with input/output, storage, etc. Often shortened to: peripheral."

I am satisfied that those definitions reflect how the average consumer will understand the various words.

26. In reaching the conclusions which follow, I have applied the guidance outlined in, inter alia, *Sky v Skykick* i.e. that "*General terms are to be interpreted as covering the goods or services clearly covered by the literal meaning of the terms*". I have, however, also borne in mind the comments in *YouView TV Ltd* i.e. "Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise..." For the sake of convenience, the applicant's goods are shown below in bold.

Computer peripheral equipment

27. As the term in the application shown above encompasses “peripheral devices such as printers” in the opponent’s specification, the competing goods are to be regarded as identical on the *Meric* principle.

Factory automation software; Home automation software; Industrial automation software; Integrated software packages for use in the automation of laboratories; Software; Software applications; Software compiler; Software compiling tools; Software drivers; Process controlling software; Industrial process control software; System and system support software, and firmware; Embedded software

28. The opponent’s specification in class 9 includes the general term “computer programs and software”. This term encompasses the goods in the application shown above which are, once again, to be regarded as identical on the *Meric* principle.

Home automation systems; Process control digital controllers; Process control instruments [electronic]; Process control units [electronic]; Electronic process control units; Electronic control instruments; Electronic control systems; Electronic control units

29. The opponent’s specification includes software for use in home automation and process control. When one considers the overlap in, inter alia, the users, intended purpose, channels of trade and the complementary relationship that is likely to exist between the competing goods (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”), it results in at least a medium degree of similarity between them.

Image processing equipment; audiovisual equipment; Electronic imaging devices; Apparatus and instruments for processing images; Apparatus and instruments for recording of images; Audiovisual apparatus and instruments

30. The opponent's specification in class 9 includes references to, inter alia, "image databases" and "image optimisation programs". There is, in my view, likely to be an overlap in, at least, the users, intended purpose and trade channels of the competing goods as well as a likely complementary relationship. The combination of those factors results in at least a medium degree of similarity between such goods and the goods in the application shown above.

Data processing equipment; Electronic communication equipment and instruments; Electronic data processing equipment; Point-to-point communications equipment; Electrical and electronic instruments for logging data; Electrical and electronic instruments for processing data; Electrical and electronic instruments for storing data; Electrical and electronic instruments for the reception of data; Electrical and electronic instruments for the transmission of data; Apparatus and instruments for processing data; Apparatus and instruments for recording of data

31. The opponent's specification includes a range of goods and services relating to, inter alia, various types of "databases", "database programs for writing databases", "database processing and retrieval" and "writing databases". Those are all goods and services whose intended purpose is to create databases and, once created, to facilitate the processing and retrieval of data from such databases. Although the nature of such goods and services and the goods shown above in bold is likely to differ, the users of such goods and services and the intended purpose is likely to overlap and such goods and services are likely to move through the same trade channels. The goods and services are also likely to have a complementary relationship in the sense outlined in the case law. In my view, there is at least a medium degree of similarity between the

opponent's goods and services mentioned and the goods in the application shown above.

Audio equipment; Information technology equipment; Scientific apparatus and instruments; Electronic components for computers; Electronic components used in apparatus; Electronic components used in machines; Electrical and electronic components; System boards (mother cards); System on Chip [SOC]; Electronic circuit boards; Electronic components; Electronic integrated circuits; Apparatus and instruments for processing sound; Apparatus and instruments for recording sound; Electric and electronic musical effects equipment

32. Although the general terms “computers and hardware” and “peripheral devices such as printers” are, I agree, broad, I do not agree with the opponent that the word “hardware” in its specification should be construed as broadly as it suggests (paragraph 17 of its written submissions refers). Appearing as it does after the words “computers and...”, the word “hardware” is, in my view, to be construed by reference to the definition in collinsdictionary.com shown above.

33. However, even approached on the basis indicated, the terms in the opponent's specification identified are, in my view, still broad enough to include the goods in the application shown above. For example, “Audio equipment”, “Apparatus and instruments for processing sound”, “Apparatus and instruments for recording sound” and “Electric and electronic musical effects equipment” would, in my view, all be encompassed by either the term “hardware” or “peripheral devices such as...” in the opponent's specification. In addition, “electronic components for computers” in the application would include, for example, motherboards. Such goods would also be encompassed by the broad terms “Electronic components used in apparatus”, “Electronic components used in machines”, “Electrical and electronic components”, “Electronic circuit boards”, “Electronic components” and “Electronic integrated circuits” in the application. As, for example, motherboards would be encompassed by the term “hardware” in the

opponent's specification, all of the applicant's goods listed above are to be regarded as identical to the opponent's goods on the *Meric* principle.

Flow meters; Fluid flow meters; Gas flow meters; Mass flow meters; Measurement apparatus; Instrumentation simulators; Alarms and warning equipment; In-flight testing equipment; Protective and safety equipment; Electronic meters; Meters; Smart meters; Alarm systems; Monitoring apparatus and instruments; Electronic measurement sensors; Pressure meters; Electrical and electronic test apparatus and instruments; Electronic animal identification apparatus; Electronic monitoring instruments, other than for medical use; Electronic navigation systems; Electronic navigational and positioning apparatus and instruments; Electronic sensors

34. Inter alia, the opponent argues that the competing goods are complementary as the applicant's goods "utilise the software found in the earlier goods." The fact that the applicant's goods may contain software which processes data, is not, without more, sufficient to result in either similarity or complementarity between its goods and those of the opponent. Having applied the principles outlined above, in my view, there is no meaningful degree of similarity between the opponent's goods and services and the goods in the application shown above.

35. In *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."

36. Consequently, for those goods discussed in paragraph 34 there can be no likelihood of confusion and the opposition to such goods fails accordingly.

The average consumer and the nature of the purchasing act

37. As the case law above indicates, it is necessary for me to determine who the average consumer is for those goods and services I have found to be identical or similar. I must then determine the manner in which these goods and services are likely to be selected by the average consumer in the course of trade. 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.”

38. In its submissions, the opponent states:

“22. The conflicting goods and services target the members of the general public or business users or professionals. The level of attention of the relevant public varies from average to high. The cost and frequency of the purchase are likely to vary. For example, *integrated software packages for use in the automation of laboratories* command a high degree of attention with a high purchase price given the specialist nature of the software and importance of suitable technical

characteristics, whereas *audiovisual equipment* is sufficiently broad to encompass everyday electric goods purchased by the general public.”

39. I agree that is a fair characterisation of both the identity of the various average consumers and the degree of care such consumers are likely to pay during the selection process. Although the opponent does not comment on how it thinks such goods and services will be selected, for both sets of consumers the selection process is, I think, likely to be largely visual in nature with the goods and services being selected from bricks-and-mortar outlets or their on-line equivalents. However, given the nature of the goods and services at issue, aural considerations in the form of, for example, requests/enquiries to suppliers of the goods and services at issue and word-of-mouth recommendations must not be ignored.

Comparison of trade marks

40. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) 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 them, 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.”

41. It would be wrong, therefore, artificially to dissect the trade marks, although it is necessary to take into account their distinctive and dominant components and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions they create. The trade marks to be compared are as follows:

Opponent's trade mark	Applicant's trade mark
LEX-COM	LEXCOMSYS ("the first application") &  ("the second application")

Overall impression – the opponent's trade mark

42. The opponent's trade mark consists of the word "LEX" presented in block capital letters hyphenated to the word "COM" also presented in block capital letters. Although the hyphen is unlikely to go unnoticed, given its non-distinctive credentials, it is the words "LEX" and "COM" which will dominate the overall impression conveyed with each word making a roughly equal contribution to both the overall impression the trade mark conveys and its distinctive character.

Overall impression – the applicant's first trade mark

43. This consists of the word "LEXCOMSYS" presented in block capital letters. In its written submissions, the opponent stated:

“25. ‘SYS’ in the contested sign is a common acronym for “system” or “system configuration” as a file name extension and therefore lacks distinctiveness for the contested goods. The Applicant concedes the non-distinctiveness or weak distinctiveness of the element “SYS” at paragraph 7 of its Counterstatement. It states: *“the addition of the “SYS” element is a common utility to construct brand names with a preceding element chosen as (the distinctive element of) the manufacturer’s company name itself. This is the case in the Defendant’s mark”...*”

44. Although presented as one word, bearing in mind the applicant’s concession mentioned (which I am prepared to accept as I am satisfied it is uncontroversial and will reflect the average consumer’s understanding of the letters “SYS”), it is, given its positioning at the beginning of the trade mark, the word “LEXCOM” that is likely to have the highest relative weight in the overall impression conveyed and it is in this word the vast majority of the distinctiveness is likely to reside.

Overall impression – the applicant’s second trade mark

45. In its counterstatement, the applicant stated:

“2...Second, visual similarity is clearly miniscule, if any at all, considering the stylised nature of the Defendant's sign which bears no implication on pronunciation other than the trivial "LEXCOMSYS" which is in turn entirely different from the Opponent's word mark, and with the figurative sign being a direct derivative of the Defendant's company logo (public domain information, company logo as used on the Defendant's own web domain "LEXCOMLTD.CO.UK"), with a dominant element also being an exact match of a subset of the Defendant's company logo in subject.”

And:

“4. Overall, and exactly because of qualitatively taking into account aural, and especially visual and conceptual elements, the Defendant's sign (and wholly matching UK registered design 6061017) as a whole should not be considered similar to that of the Opponent, "LEX-COM", at all...”

46. In its written submissions, the opponent states:

“28...The stylised mark is the counterpart to the LEXCOMSYS word mark, containing all letters in the same order. The Applicant explains it consists of two parts: (1) LEXCOM referring to the company name, Lexcom Consultants, and (2) “SYS” being non-distinctive. The Applicant describes the “SYS” element as “trivial”. The Opponent does not disagree.

29... The similar verbal element LEXCOMSYS remains recognisable and legible in the contested mark; the stylistic additions are not so substantial to prevent similarity...

30. The fact that the letter ‘E’ is backwards or that the letter ‘M’ is presented with its three stalks unconnected at the top, does not prevent the letters being decipherable, particularly given that a part of the relevant public’s level of attention will be higher than average. If it is not agreed that the average consumer will perceive all of the letters L-E-X-C-O-M, it is submitted that all realistic interpretations are to be considered. It is submitted there can be no doubt that at least the letters ‘L’, ‘E’, ‘X’, ‘C’ and ‘M’ are decipherable and are not negligible...”

47. As I mentioned earlier, I have found some of the applicant’s comments to be contradictory in nature. That being the case and as the applicant is unrepresented, I do

not intend to place too much weight on what might otherwise have been considered to be admissions against interest.

48. In its submissions, the opponent has drawn to my attention the comments of the Appointed Person in BL-O-169-16, *Aldi GmbH & Co KG v SIG Trading Ltd* and to the decision of the GC in *Frag Comercio Internacional v OHIM*, case T-162/08. I have borne these cases in mind in reaching the conclusions which follow.

49. The applicant's second application consists of what I regard as a device component accompanied by the conjoined, slightly stylised upper case letters "SYS" presented in white against a black rectangular background. Although the letters "SYS" will contribute to the overall impression conveyed, given their positioning and the applicant's concession mentioned in paragraph 43 above, it is the device component that will have by far the highest relative weight in the overall impression conveyed and it is in this component the vast majority of the distinctive character lies. In the latter of the cases mentioned above, the GC stated:

"43...A sign which is so difficult to decipher, understand or read that the reasonably observant and circumspect consumer cannot manage to do so, without making an analysis which goes beyond what may be reasonably expected of him in a purchasing situation, may be considered to be illegible (judgment of 2 July 2008 in Case T-340/06 *Stradivarius España v OHIM – Ricci* (Stradivari 1715), not published in the ECR, paragraph 34..."

50. That, in my view, is the position here. I am satisfied that even an average consumer paying a high degree of attention will be unable to decipher the device component of the applicant's trade mark in the manner the opponent suggests.

Comparison between the opponent's trade mark and the first application

51. The competing trade marks consist of six and nine letters respectively; the first six letters are identical. The trade marks differ to the extent that the opponent's trade mark contains a hyphen between the letters "X" and "C" and the applicant's trade mark contains the letters "SYS" as the final three letters. In its counterstatement, the applicant states that its trade mark should not be considered "any more than moderately similar" to the opponent's trade mark. Weighing the similarities and differences and in particular taking account of the positioning of the shared element i.e. "LEX-COM" and "LEXCOM", results in what I regard as a high degree of both visual and aural similarity. In its written submissions, the opponent states:

"26. The dominant and distinctive element(s) of the competing marks is conceptually identical in the instance where the average consumer recognises the latin word "lex" (to mean "law") and "com" to reference "communication" or the domain name suffix "com". Further and in the alternative, for those members of the public not familiar with the meaning of the constituent parts, the resulting combinations LEX-COM and LEXCOM[SYS] are likely to be perceived as arbitrary combinations, devoid of any specific meaning."

52. While it is possible some average consumers may construe the competing trade marks in the first manner the opponent suggests, other than perhaps identifying the word "SYS" in the applicant's trade mark and according it the descriptive/non-distinctive meaning upon which the parties agree, I think it far more likely that most average consumers will fall into the second group.

Comparison between the opponent's trade mark and the second application

53. As mentioned above, the letters "SYS" in the applicant's trade mark are likely to convey a descriptive or non-distinctive message alien to the opponent's trade mark. However, based upon my conclusions reached in paragraph 50 above, it follows that

when approached from the perspective of the average consumer, there is, in my view, no meaningful degree of visual, aural or conceptual similarity between the competing trade marks.

54. In paragraph 35 above, I reproduced the comments of Lady Justice Arden in *eSure Insurance v Direct Line Insurance*; those comments also apply here. Having concluded that there is no meaningful degree of similarity between the opponent's trade mark and the second application, even if the applicant's goods are identical to those of the opponent there can be no likelihood of confusion and the opposition against the second application fails accordingly.

Distinctive character of the earlier trade mark

55. The distinctive character of a trade mark can be appraised only, first, by reference to the goods and services in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. In determining the distinctive character of a trade mark and, accordingly, in assessing whether it is highly distinctive, it is necessary to make an overall assessment of the greater or lesser capacity of the trade mark to identify the goods and services for which it has been registered as coming from a particular undertaking and thus to distinguish those goods and services from those of other undertakings - *Windsurfing Chiemsee v Huber and Attenberger* Joined Cases C-108/97 and C-109/97 [1999] ETMR 585.

56. As the opponent has filed no evidence, I have only the inherent characteristics of its trade mark to consider. Having concluded earlier that most average consumers are likely to treat the opponent's trade mark as arbitrary in nature, it follows that it enjoys a high degree of inherent distinctive character.

Likelihood of confusion in relation to the first application

57. In determining whether there is a likelihood of confusion, a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. As I mentioned above, it is also necessary for me to keep in mind the distinctive character of the opponent's trade mark as the more distinctive it is, the greater the likelihood of confusion. I must also keep in mind the average consumer for the goods and services, the nature of the purchasing process and the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them he has retained in his mind.

58. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one trade mark for the other, while indirect confusion is where the average consumer realises the trade marks are not the same but puts the similarity that exists between the trade marks and goods/services down to the responsible undertakings being the same or related.

59. Earlier in this decision, I concluded that:

- The applicant's goods discussed in paragraphs 27-33 above are either identical or similar to at least a medium degree to the opponent's goods/services;
- The average consumer of the goods/services I have found to be identical or similar is either a member of the general public or a professional user who, whilst not discounting aural considerations, is most likely to select such goods by visual means whilst paying a medium to high degree of attention during the selection process;

- The competing trade marks are visually and aurally similar to a high degree and, for most average consumers, conceptually neutral;
- The opponent's earlier trade mark is possessed of a high degree of inherent distinctive character.

60. I start by reminding myself of the medium to high degree of attention the average consumer will display when selecting the goods and services at issue which, in turn, is likely to make him/her much less prone to the effects of imperfect recollection. Having done so, I am, however, satisfied that even when considered in relation to those goods in the application I have found to be similar to at least a medium degree, the high degree of visual and aural similarity and the high degree of inherent distinctiveness the earlier trade mark enjoys will lead to a likelihood of direct confusion. For the sake of completeness, even if on appeal it is felt I have pitched the degree of similarity of some of the competing goods and services at too high a level, given the factors mentioned above and in particular the interdependency principle, in my view, even the very lowest degree of similarity in the competing goods and services will result in the same conclusion.

61. However, what if I am wrong and the letters "SYS" (meaning "system") in the applicant's trade mark are considered sufficient to militate against direct confusion? In that event, I will also consider the likelihood of indirect confusion. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Mr Iain Purvis Q.C., as the Appointed Person, explained that:

"16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark

is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: "The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark."

62. Even if the letters "SYS" in the applicant's trade mark are regarded as sufficient to avoid direct confusion, given the type of goods and services at issue, the average consumer will, in my view, simply assume that the applicant's trade mark is a variant brand being used by the opponent or by an undertaking economically linked to the opponent to identify, for example, a number of goods sold together which form a "system" i.e. there is a likelihood of indirect confusion.

Overall conclusion

63. The opposition against the first application has succeeded in relation to:

Factory automation software; Home automation software; Home automation systems; Industrial automation software; Integrated software packages for use in the automation of laboratories; Software; Software applications; Software compiler; Software compiling tools; Software drivers; Process control digital controllers; Process control instruments [electronic]; Process control units [electronic]; Process controlling software; Electronic process control units; Industrial process control software; Audio equipment; Computer peripheral equipment; Data processing equipment; Electronic communication equipment and instruments; Electronic data processing equipment; Image processing equipment; Information technology and audiovisual equipment; Point-to-point communications equipment; System and system support software, and firmware; System boards (mother cards); System on Chip [SOC]; Electric and electronic

musical effects equipment; Scientific apparatus and instruments; Electrical and electronic components; Electrical and electronic instruments for logging data; Electrical and electronic instruments for processing data; Electrical and electronic instruments for storing data; Electrical and electronic instruments for the reception of data; Electrical and electronic instruments for the transmission of data; Electronic circuit boards; Electronic components; Electronic components for computers; Electronic components used in apparatus; Electronic components used in machines; Electronic control instruments; Electronic control systems; Electronic control units; Electronic imaging devices; Electronic integrated circuits; Embedded software; Apparatus and instruments for processing data; Apparatus and instruments for processing images; Apparatus and instruments for processing sound; Apparatus and instruments for recording of data; Apparatus and instruments for recording of images; Apparatus and instruments for recording sound; Audiovisual apparatus and instruments.

64. The opposition to the first application has failed in relation to:

Flow meters; Fluid flow meters; Gas flow meters; Mass flow meters; Measurement apparatus; Instrumentation simulators; Alarms and warning equipment; In-flight testing equipment; Protective and safety equipment; Electronic meters; Meters; Smart meters; Alarm systems; Monitoring apparatus and instruments; Electronic measurement sensors; Pressure meters; Electrical and electronic test apparatus and instruments; Electronic animal identification apparatus; Electronic monitoring instruments, other than for medical use; Electronic navigation systems; Electronic navigational and positioning apparatus and instruments; Electronic sensors.

65. The opposition to the second application has failed.

66. Subject to any successful appeal, the first application will be refused in relation to the goods at paragraph 63 and will proceed to registration in respect of

the goods in paragraph 64. The second application will proceed to registration as is.

Costs

67. In a letter dated 11 August 2020 sent to the applicant at the conclusion of the evidence rounds, the tribunal stated:

“What to do if you intend to request costs

If you intend to make a request for an award of costs you must complete and return the attached pro-forma and send a copy to the other party. Please send these by e-mail to tribunalhearings@ipo.gov.uk.

If there is to be a “decision from the papers” this should be provided by **8th September 2020**.

If a hearing is taking place you will be advised of the deadline to do so when the Hearing is appointed.

If the pro-forma is not completed and returned, costs, other than official fees arising from the action (excluding extensions of time), may not be awarded. You must include a breakdown of the actual costs, including accurate estimates of the number of hours spent on each of the activities listed and any travel costs. Please note that The Litigants in Person (Costs and Expenses) Act 1975 (as amended) sets the minimum level of compensation for litigants in person in Court proceedings at £19.00 an hour.”

68. Although the applicant elected not to respond to that invitation, in its counterstatement, it stated:

“12...The Defendant also requests that no costs are to be awarded in the Opponent's favour, and certainly none against the Defendant, with a view expressed that the opposition is in fact more of an offensive against the Defendant's bona fide trademark efforts of their own (merely wishing to use the distinctive element of their very own company name for branding), than a defence of the right of the Opponent, demonstrated by their entirely constructive claims referred to in detail in paragraph 6 of this document (which the Opponent again would not have felt to be necessary if their opposition was solid on factual grounds).

The Defendant also suspects, based on the above, that the sheer purpose of the opposition is merely creating grounds for payment by the owner of the earlier right to the Opponent (representative of the owner of the earlier right), with the award of costs being the driving factor on the side of the Opponent, rather than a true opposition on actual trade mark rights protection grounds, thus expressing concerns regarding the opposition itself being constructive in nature.”

69. Notwithstanding the above, there is nothing to suggest that the opponent's decision to oppose the applications was motivated by anything other than a genuine desire to protect what it considered to be its rights in its earlier trade mark.

70. The opponent has been largely successful in its opposition to the first application and failed completely in its opposition to the second application. Considered overall, the applicant has been more successful than the opponent. It, has, however, not filed a

costs proforma as directed. Approaching the matter on a “rough and ready” basis in view of all the foregoing, I direct each party to bear its own costs.

Dated this 19th day of November 2020

C J BOWEN

For the Registrar

The specifications of the applications

No. 3396002

Class 9 - Flow meters; Fluid flow meters; Gas flow meters; Mass flow meters; Measurement apparatus; Instrumentation simulators; Factory automation software; Home automation software; Home automation systems; Industrial automation software; Integrated software packages for use in the automation of laboratories; Software; Software applications; Software compiler; Software compiling tools; Software drivers; Process control digital controllers; Process control instruments [electronic]; Process control units [electronic]; Process controlling software; Electronic process control units; Industrial process control software; Alarms and warning equipment; Audio equipment; Computer peripheral equipment; Data processing equipment; Electronic communication equipment and instruments; Electronic data processing equipment; Image processing equipment; In-flight testing equipment; Information technology and audiovisual equipment; Point-to-point communications equipment; Protective and safety equipment; Electronic meters; Meters; Smart meters; System and system support software, and firmware; System boards (mother cards); System on Chip [SOC]; Alarm systems; Monitoring apparatus and instruments; Electric and electronic musical effects equipment; Electronic measurement sensors; Scientific apparatus and instruments; Pressure meters; Electrical and electronic components; Electrical and electronic instruments for logging data; Electrical and electronic instruments for processing data; Electrical and electronic instruments for storing data; Electrical and electronic instruments for the reception of data; Electrical and electronic instruments for the transmission of data; Electrical and electronic test apparatus and instruments; Electronic animal identification apparatus; Electronic circuit boards; Electronic components; Electronic components for computers; Electronic components used in apparatus; Electronic components used in machines; Electronic control instruments; Electronic control systems; Electronic control units; Electronic imaging devices; Electronic integrated circuits; Electronic monitoring instruments, other than for medical use; Electronic navigation systems; Electronic navigational and positioning apparatus and instruments; Electronic sensors; Embedded software; Apparatus and instruments for processing data; Apparatus and instruments for processing images; Apparatus and instruments for processing sound; Apparatus and instruments for recording of data; Apparatus and instruments for recording of images; Apparatus and instruments for recording sound; Audiovisual apparatus and instruments.

No. 3396003

Class 9 - Alarm systems; Alarms and warning equipment; Monitoring apparatus and instruments; Apparatus and instruments for processing data; Apparatus and instruments for processing images; Apparatus and instruments for processing sound; Apparatus and instruments for recording of data; Apparatus and instruments for recording of images; Apparatus and instruments for recording sound; Scientific apparatus and instruments; Audio equipment; Audiovisual apparatus and instruments; Computer peripheral equipment; Data processing equipment; Electrical and electronic components; Electrical and electronic instruments for logging data; Electrical and electronic instruments for processing data; Electrical and electronic instruments for storing data; Electrical and electronic instruments for the reception of data; Electrical and electronic instruments for the transmission of data; Electrical and electronic test apparatus and instruments; Electric and electronic musical effects equipment; Electronic animal identification apparatus; Electronic circuit boards; Electronic communication equipment and instruments; Electronic components; Electronic components for computers; Electronic components used in apparatus; Electronic components used in machines; Electronic control instruments; Electronic control systems; Electronic control units; Electronic data processing equipment; Electronic imaging devices; Electronic integrated circuits; Electronic meters; Electronic monitoring instruments, other than for medical use; Electronic navigation systems; Electronic navigational and positioning apparatus and instruments; Electronic process control units; Electronic sensors; Embedded software; Factory automation software; Flow meters; Flowmeters; Fluid flow meters; Gas flow meters; Home automation software; Home automation systems; Image processing equipment; In-flight testing equipment; Industrial automation software; Process control digital controllers; Process control instruments [electronic]; Process control units [electronic]; Process controlling software; Industrial process control software; Protective and safety equipment; Information technology and audiovisual equipment; Instrumentation simulators; Integrated software packages for use in the automation of laboratories; Mass flow meters; Measurement apparatus; Meters; Point-to-point communications equipment; Pressure meters; Software; Software applications; Software compiler; Software compiling tools; Software drivers; System and system support software, and firmware; System boards (mother cards); System on Chip [SOC].