

**O/0710/25**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF REGISTRATION NO. 3951179**

**IN THE NAME OF**

**SAMSUNG ELECTRONICS CO., LTD.**

**FOR THE FOLLOWING TRADE MARK:**

**Samsung Gauss**

**IN CLASSES 9 & 42**

**AND**

**AN APPLICATION FOR A DECLARATION OF INVALIDITY**

**UNDER NO. 506950**

**BY HUAWEI TECHNOLOGIES CO., LTD.**

## BACKGROUND AND PLEADINGS

1. On 30 August 2023, Samsung Electronics Co., Ltd. (“the proprietor”) applied to register the trade mark on the cover page of this decision in the UK (“the contested mark”). The application was published for opposition purposes on 29 September 2023 and registration was granted on 8 December 2023. The contested mark stands registered for the following goods and services:

Class 9: AI software; computer software for machine-learning based language and speech processing; computer software for natural language processing, generation, understanding and analysis; computer software for the artificial production of human speech, text, image, sound and videos; computer software for creating and generating text, image, sound and videos.

Class 42: Development of AI software; providing online non-downloadable software for machine-learning based language and speech processing; Providing online non-downloadable software for natural language processing, generation, understanding and analysis; Providing online non-downloadable software for the artificial production of human speech, text, image, sound and videos; Providing online non-downloadable software for creating and generating text, image, sound and videos.

2. On 30 January 2024, HUAWEI TECHNOLOGIES CO., LTD. (“the applicant”) applied to have the contested mark declared invalid under section 47(2)(a) of the Trade Marks Act 1994 (“the Act”). The application was brought under section 5(2)(b) of the Act, is targeted against all goods and services and is reliant upon the following trade marks:

# GaussDB

UK registration no. 801505269<sup>1</sup>

Filing date 22 November 2019; registration date 22 June 2020

Relying on all goods and services as outlined in Annex 1.

("the first earlier mark")

# GaussDB

International registration no. 1505269

International registration date 22 November 2019;

Designation date: 22 November 2019;

Protection conferred date: 11 March 2020;

Relying on all goods and services as outlined in Annex 1.

("the second earlier mark")

## **GaussDB**

UK registration no. 917955216

Filing date 13 September 2018; registration date 5 February 2019

Relying on all goods and services as outlined in Annex 1.

("the third earlier mark").

## **GaussRD**

International registration no. 1666382

International registration date 18 February 2022;

Designation date 18 February 2022;

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<sup>1</sup> The applicant's first and third marks are comparable marks based upon an earlier International Registration designating the EU ("IR") and EUTM, respectively. On 1 January 2021, in accordance with Article 54 of the Withdrawal Agreement between the UK and the European Union, the UK IPO created comparable UK trade marks for all right holders with existing IRs designating the EU and EUTMs. These comparable marks enjoy the same filing and registration dates as their European counterparts.

Protection conferred date: 17 December 2022;

Priority date 27 January 2022

Relying on all goods and services as outlined in Annex 1.

("the fourth earlier mark").

3. By virtue of their earlier filing dates, the above marks constitute earlier marks in accordance with section 6 of the Act.
4. In bringing the application, the applicant claims that the marks are highly similar and that the goods and services are identical or similar to the goods of the earlier marks. As a result, the applicant claims that there is a risk of confusion between the marks.
5. The proprietor filed a counterstatement wherein it denied the claims against it.
6. The applicant is represented by Forresters IP LLP and the proprietor is represented by Withers & Rogers LLP. The applicant filed written submissions and the proprietor filed evidence and written submissions. No hearing was requested and both parties filed written submissions in lieu. This decision is taken following a careful consideration of the papers.
7. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

## **Evidence**

8. The proprietor filed evidence consisting of the witness statement of Yoonyeong Yang and exhibits 01-05. Yoonyeong Yang is a trade mark administrator and Principle Engineer of IP Centre of the proprietor, a position they have held since 2013. The evidence has been filed to support the proprietor's submissions that the

“Gauss” element in the respective registrations is non-distinctive and descriptive of the goods and services registered.

9. **Exhibit 01** contains the following:

- Printouts of dictionary definitions of the word “Gauss”. The first example is derived from [www.dictionary.com](http://www.dictionary.com) and defines “Gauss” in American English. The second example is taken from [www.collinsdictionary.com](http://www.collinsdictionary.com) and provides a definition of “Gauss” in British English. The definitions are reproduced below:

“The centimeter-gram-second unit of magnetic induction, equal to the magnetic induction of a magnetic field in which one abcoulomb of charge, moving with a component of velocity perpendicular to the field and equal to one centimeter per second, is acted on by a force of one dyne; 1 maxwell per square centimeter or  $10^{-4}$  weber per square meter.”

“Karl Friedrich (karl 'fri:drɪç IPA Pronunciation Guide). 1777–1855, German mathematician: developed the theory of numbers and applied mathematics to astronomy, electricity and magnetism, and geodesy.”

- Printouts from a Wikipedia article describing an item known as a “Gauss gun”. The Wikipedia article describes the Gauss gun as “a device that uses electromagnets and the physics of the Newton's cradle to accelerate a projectile.” Along with the article, the proprietor has included images of Gauss guns and Gauss meters being available to purchase online. I wish to highlight at this juncture that none of the Gauss gun or Gauss meter products shown in this exhibit appear to relate to any of goods and services for which the respective marks are registered.
- A user guide for a computer program dated December 1998 titled “Dynamic Panel Data Estimation Using DPD98 for Gauss: A Guide for Users”. The

introduction of the guide states “DPD98 is a program written in the Gauss matrix programming language to compute estimates for dynamic models from panel data.” The proprietor has not given any further description of this user guide however, the guide appears to be in relation to a highly technical piece of software that would most likely be used by a professional in the field of computer programming.

- A printout of a website that contains information about “Gaussian Distribution”. The website name is not included, nor has the proprietor provided any further information. I note that under the heading “Applications of Gaussian Distribution” it states that, “Gaussian distribution is used in machine learning algorithms, especially those related to Gaussian processes and normality assumptions in parametric models.”

10. **Exhibits 02 and 03** contain the arguments submitted at the South Korean Registry by the cancellation applicant in connection with a South Korean trade mark



registration for “GaussDB” and .openGauss as well as English translations of the same. Whilst I note the content of these exhibits, the submissions relate to proceedings in a different jurisdiction, the figurative mark above is not a mark for me to consider in this case and I also bear in mind that different IP offices have different ways in which they interpret the distinctiveness of marks.

11. **Exhibit 04** provides website extracts which show the use of the word “Gauss” in relation to software goods and services. The examples provided all appear to emanate from places outside of the UK such as France, Brazil, Italy and Croatia. It is not clear to me if any of the goods and services shown are available to consumers in the UK, nor has the proprietor provided any further information to confirm this.

12. **Exhibit 04A** includes details of EP patents whereby the term “Gaussian” is used in the patent descriptions in relation to artificial intelligence software and electronics.

13. **Exhibit 05** includes a list of existing UK and international registrations which contain the word “Gauss”.

14. That concludes my summary of the evidence filed, insofar as I consider it necessary. I can confirm that I have fully considered the evidence before me and will refer to it where necessary in my decision below.

## **DECISION**

15. Section 5(2)(b) of the Act has application in invalidation proceedings pursuant to section 47 of the Act, which states as follows:

“47. –

[...]

(2) Subject to subsections (2A) and (2G), the registration of a trade mark may be declared invalid on the ground-

(a) that there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, or

(b) [...]

unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.

(2ZA) [...]

(2A) The registration of a trade mark may not be declared invalid on the ground that there is an earlier trade mark unless –

(a) the registration procedure for the earlier trade mark was completed within the period of five years ending with the date of the application for the declaration,

(b) the registration procedure for the earlier trade mark was not completed before that date, or

(c) the use conditions are met.

(3) [...]

(4) [...]

(5) Where the grounds of invalidity exist in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.

(5A) An application for a declaration of invalidity may be filed on the basis of one or more earlier trade marks or other earlier rights provided they all belong to the same proprietor.

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made: Provided that this shall not affect transactions past and closed.”

### **Section 5(2)(b): legislation and case law**

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

“(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 or association with the earlier trade mark.”

17. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

“(6)(1) In this Act an “earlier trade mark” means –

(a) a registered trade mark or international trade mark (UK) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks.

18. As the applicant’s marks had not completed their registration processes more than five years before the date of the application in issue, they are not subject to proof of use pursuant to section 47(2B) of the Act. Consequently, the applicant may rely on all of the goods and services for which its marks are registered.

19. The following principles are gleaned from the decisions of the EU courts 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 Office for Harmonization in the Internal Market (Trade Marks and Designs) (“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.

### Comparison of the goods and services

20. In *Gérard Meric v OHIM*, Case T- 133/05, the General Court (“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 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.”

21. The full specifications relied upon by the applicant can be found in Annex 1. I have included only those terms that I consider represent the applicant’s best case in the table below. With that in mind, the competing goods and services are as follows:

<b>The applicant’s goods and services</b>	<b>The proprietor’s goods and services</b>
<p><b>First and second earlier marks</b> Class 42: Cloud computing</p> <p><b>Third earlier mark</b> Class 9: Computer software Class 42: Design and development of computer software</p>	<p>Class 9: AI software; computer software for machine-learning based language and speech processing; computer software for natural language processing, generation, understanding and analysis; computer software for the artificial production of human speech, text, image, sound and videos;</p>

<p><b>Fourth earlier mark</b></p> <p>Class 9: Computer software, recorded.</p> <p>Class 42: Computer software development; Software as a service [SaaS].</p>	<p>computer software for creating and generating text, image, sound and videos.</p> <p>Class 42: Development of AI software; providing online non-downloadable software for machine-learning based language and speech processing; Providing online non-downloadable software for natural language processing, generation, understanding and analysis; Providing online non-downloadable software for the artificial production of human speech, text, image, sound and videos; Providing online non-downloadable software for creating and generating text, image, sound and videos.</p>
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Class 9 goods

22. The third and fourth earlier marks contain the terms *computer software* and *computer software, recorded* respectively. These broad terms encompass all of the software goods covered by the contested mark. Consequently, they are identical based on the principle outlined in *Meric*.

Class 42 services

23. The contested mark includes the term *development of AI software*. This is identical to the terms *design and development of computer software* and *computer software development* covered by the third and fourth earlier marks respectively on the principle outlined in *Meric*.

24. I now consider the remaining terms covered by the contested mark being *providing online non-downloadable software for machine-learning based language and speech processing; Providing online non-downloadable software for natural language processing, generation, understanding and analysis; Providing online non-downloadable software for the artificial production of human speech, text, image, sound and videos; Providing online non-downloadable software for creating and generating text, image, sound and videos*. The fourth earlier mark includes the term *software as a service [SaaS]*. This is a broad term that I consider would encompass the provision of online non-downloadable software. As such, I find this term to be identical to the proprietor's goods in line with *Meric*.

25. I also find the proprietor's services in the previous paragraph to be identical to *cloud computing* in the applicant's first and second earlier marks. This is because cloud computing is the delivery of computing services over the internet allowing users to access data remotely. This would include the provision of software and therefore *cloud computing* as a service would encompass the terms in the proprietor's specification.

### **The average consumer and the nature of the purchasing act**

26. The case law, as set out earlier, requires that I determine who the average consumer is for the respective parties' goods and services. I must then decide 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.”

27. In its submissions in lieu, the proprietor states the following:

“31. The goods and services in question are available at a variety of prices and can be used by both the general public and professionals. More specifically, the cancellation applicant’s GaussDB product will be used by enterprise-level users as it is stated as being “a proprietary enterprise-grade distributed AI-native relational database management system”.<sup>2</sup> Given the different users, the level of attention paid by each will vary depending on who the purchaser is and what the goods and services are used for specifically. In view of this, the level of attention paid when purchasing the goods and services will range from medium to high.”

28. I note that the cancellation applicant has not provided any submissions identifying the average consumer or the level of attention that would be paid during the purchasing process.

29. I agree with the proprietor that the average consumer will comprise both members of the general public and professional users. This is because the goods and services include AI software (downloadable and non-downloadable), and I consider that AI software has become more ubiquitous in day-to-day life and has a variety of uses such as such as conducting research, writing assistance and voice assistance functions (such as Alexa and Siri).

30. The price and frequency of purchase is likely to vary. Some of the goods and services may be free to use whereas others may incur a one-off fee or a recurring subscription payment. Various factors will be taken into account such as compatibility with existing systems, functionality, useability and ability to meet the user’s needs. This will apply to both consumer groups. As such, I consider there will be a medium degree of attention being paid during the purchasing/selection

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<sup>2</sup> <https://en.wikipedia.org/wiki/GaussDB>

process by the general public whereas professional users will pay a higher degree of attention during the purchasing process as it is likely that the selection of the product/service may have an impact on the success of their business.

31. The goods and services will be available via both general retailers and more specialist ones, and their online or catalogue equivalents. At the retailers' physical premises, the goods will be displayed on shelves and in cabinets; the goods can also be purchased online via specific platforms. The services will be displayed on signs, placards, or contained in online advertising messages (including on social media platforms) all being self-selected by the consumer. In my view, the visual component will dominate all methods of sale, although I do not discount an aural component in word-of-mouth recommendations and advice received from sales assistants.

### **Comparison of the marks**

32. It is clear from *Sabel 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 the trade marks, bearing in mind their distinctive and dominant components.

33. 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.”

34. It would be wrong, therefore, to artificially dissect the trade marks, although it is necessary to take into account 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.

The applicant's marks	The contested mark
<p data-bbox="323 528 767 562">First and second earlier marks:</p> <p data-bbox="408 629 679 689"><b>GaussDB</b></p> <p data-bbox="413 761 675 795">Third earlier mark:</p> <p data-bbox="408 875 679 936"><b>GaussDB</b></p> <p data-bbox="405 1025 683 1059">Fourth earlier mark</p> <p data-bbox="408 1140 679 1200"><b>GaussRD</b></p>	<p data-bbox="887 837 1353 898"><b>Samsung Gauss</b></p>

Overall impression

35. The first and second earlier marks consist of a figurative mark containing two conjoined elements namely "Gauss" and "DB". Whilst I note that these marks are figurative, they are presented in an unremarkable font. For reasons I will come to discuss in the conceptual comparison, I consider that both the "Gauss" and "DB" elements equally contribute to the overall impression.

36. The third earlier mark is a word-only mark containing two conjoined elements namely "Gauss" and "DB". In the absence of any other elements, both "Gauss" and "DB" contribute to the overall impression equally.

37. The fourth earlier mark consists of two conjoined elements namely “Gauss” and “RD”. For reasons that I will come to discuss in the conceptual comparison, I find that the overall impression resides in the combination of both elements.

38. The contested mark consists of two words “Samsung” and “Gauss”. In my view, these words do not hang together and will not form a unit with a meaning that is more than the sum of its parts. Instead, each word plays an independent role within the mark itself. For reasons I will come to discuss in the conceptual comparison, I consider that the words Samsung and Gauss together play an equal role in the overall impression of the mark.

### Visual comparison

#### *The first and second earlier marks*

39. Visually, the “Gauss” element of the cancellation applicant’s marks is fully replicated at the end of the proprietor’s mark; this acts as a point of visual similarity. Points of difference are created through the presence of the word “Samsung” at the beginning of the proprietor’s mark, and I bear in mind that this is where the average consumer tends to pay more attention.<sup>3</sup> The word “Samsung” has no counterpart in the earlier marks. A further point of difference is created by the presence of the letters “DB” at the end of the earlier marks, this element is not present in the proprietor’s mark. I acknowledge that the earlier marks are figurative, however, I remind myself that in my assessment of the overall impression, I found the stylisation to be unremarkable. I find there to be a medium level of similarity between these marks.

#### *The third earlier mark*

40. In relation to the third earlier mark, the same finding applies save for the fact that both the third earlier mark and the proprietor’s mark are word-only marks. I find them to be similar to a medium degree.

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<sup>3</sup> *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

### *The fourth earlier mark*

41. The only difference between the fourth earlier marks and the other earlier marks relied upon is the letters RD vs DB at the end of those marks. As nothing will turn on this, the same finding applies in my comparison with the contested mark. They are visually similar to a medium degree.

### Aural comparison

#### *The first, second and third earlier marks*

42. The first, second and third earlier marks will be pronounced in three syllables as “GOUSE” (as in “mouse”) “DEE-BEE”. Whilst the first and second earlier marks are figurative marks, there are no additional elements in these marks that will be articulated by the average consumer. The proprietor’s mark will be pronounced in three syllables as “SAM-SUNG GOUSE”. The marks therefore overlap in the pronunciation of the word “Gauss” but differ in the remaining elements. Overall, I find there is a medium degree of aural similarity.

#### *The fourth earlier mark*

43. The fourth earlier mark will be pronounced in three syllables as “GOUSE” (as in “mouse”) “ARE-DEE”. Therefore, the respective marks will again overlap in the pronunciation of the word “Gauss” but differ in the remaining elements. I therefore find there is a medium degree of similarity.

### Conceptual comparison

44. When making the conceptual comparison, I bear in mind that it is settled case law<sup>4</sup> that for a conceptual message to be relevant it must be capable of immediate grasp by the average consumer.

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<sup>4</sup> This is highlighted in numerous judgments of the GC and the CJEU including *Ruiz Picasso v OHIM* [2006] e.c.r.-I-643; [2006] E.T.M.R. 29.

45. The proprietor submits that the “Gauss” element in the respective marks is understood and known to be the name of a unit of magnetic flux density which is named after Karl Friedrich Gauss. I note that the British English definition of the word “Gauss” in British English is as follows:

“Karl Friedrich (karl 'fri:drɪç IPA Pronunciation Guide). 1777–1855, German mathematician: developed the theory of numbers and applied mathematics to astronomy, electricity and magnetism, and geodesy.”

46. I remind myself that I have found the average consumer to comprise both members of the general public and professional users. With this in mind, I am of the view that some consumers will be aware of this meaning, however, I do not consider that to amount to a significant proportion of the relevant public. In my view the term “Gauss” in both marks will be viewed as an invented word and will not convey any meaning.

47. I consider that the “Samsung” element of the contested mark will be perceived as an invented word that will not convey any meaning to the relevant consumer.

48. Turning to the earlier marks, the applicant submits that the “DB element stands for “database” and as such, this would be considered a minor element of the overall mark due to its descriptive meaning.<sup>5</sup> However, there is no evidence before me to suggest “DB” would be understood by the average consumer as “database” and I note that the Collins Dictionary includes several other definitions of “DB” such as an abbreviation “defined-benefit” and an abbreviation for “decibel”.<sup>6</sup> I therefore disagree with the applicant on this point. It is my view that the average consumer would recognise “DB” to denote an abbreviation of two separate words, but they would not be aware of what those initials stand for.

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<sup>5</sup> Paragraph 20 of the applicant’s submissions dated 1 July 2024

<sup>6</sup> <https://www.collinsdictionary.com/dictionary/english/db>

49. In a similar line of argument for the fourth earlier mark, the applicant submits that “RD” stands for “Relational Database” and therefore this element would be considered a minor element of the overall mark due to its descriptive meaning.<sup>7</sup> Again, the applicant has not provided any evidence to support this assertion and the Collins Dictionary includes several other definitions of “RD” such as an abbreviation for “road” and “refer to drawer”.<sup>8</sup> I therefore disagree with the applicant that “RD” would be seen by the average consumer as a descriptive element. Whilst consumers would see the letters “RD” as an abbreviation for two separate words, I do not consider that a significant proportion of consumers would understand this as meaning “Relational Database”.

50. As I have found that none of the marks would convey an immediate meaning to a substantial part of the public, no comparison is possible, rendering the marks conceptually neutral.

### **Distinctive character of the applicant’s mark**

51. 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

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<sup>7</sup> Paragraph 20 of the applicant’s submissions dated 1 July 2024

<sup>8</sup> <https://www.collinsdictionary.com/dictionary/english/rd>

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).”

52. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The applicant has not filed any evidence of use and, therefore, I have only the inherent position to consider.

53. The proprietor submits that the “Gauss” element in the earlier marks is non-distinctive and descriptive of the goods and services as registered. In this regard, the proprietor has filed evidence including a number of other trade marks on the register which consist of, or contain, the word “Gauss” in a range of classes including classes 9 and 42.<sup>9</sup> However, the mere fact that a number of trade marks relating to the relevant goods/services contain the word “Gauss” is not enough to establish that the distinctive character of that element has been weakened.<sup>10</sup>

54. The proprietor has also filed evidence to show use of the word “Gauss” being used as a trade mark in the marketplace.<sup>11</sup> As I have previously stated in the evidence summary above, several of these examples relate to products or goods which are unrelated to those in issue, meaning they do not assist the proprietor. There are also examples provided which either do not appear to relate to the UK market or are not dated to enable me to establish that they were being used prior to the relevant date.

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<sup>9</sup> Exhibit 05

<sup>10</sup> *Zero Industry Srl v OHIM*, Case T-400/06

<sup>11</sup> Exhibits 01 and 04

55. That leaves one example in Exhibit 01 which shows the term “Gauss” in a user guide for a computer program dated December 1998 and the examples in Exhibit 04A which show details of EP patents whereby the term “Gaussian” is used in the patent descriptions in relation to artificial intelligence software and electronics. In my view, these examples are not sufficient to establish that the word “Gauss” is descriptive or non-distinctive for the goods and services at issue. This is because Exhibit 01 shows one limited example on what appears to be a highly technical piece of software whereas the goods and services at issue also include software that is used by members of the general public. Further, the EP patent examples only appear to use the term “Gaussian” instead of “Gauss” and they all appear to be in relation to expressions of mathematic formulae such as “Gaussian mixed models technique” or “Gaussian kernel function”. Even in circumstances where some consumers do understand the definition of the term Gauss (although I do not find this to be a significant proportion of consumers), I do not find that it describes or alludes to the goods or services at issue.

56. As I have outlined in the conceptual comparison above, the “DB” element of the earlier mark would likely be viewed as an abbreviation for two separate words however, it would not be clear to the relevant public what those two words were. I also made the same finding in respect of the “RD” element in the fourth earlier mark.

57. Based on my findings above, I find all of the earlier marks hold a high degree of inherent distinctiveness.

### **Likelihood of confusion**

58. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods/services down to the responsible undertakings being the same or related. There is no scientific formula to apply in

determining whether there is a likelihood of confusion; rather, it is a global assessment where 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 vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the applicant's mark, the average consumer for the goods/services and the nature of the purchasing process. In doing so, I must be alive to 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 that they have retained in their minds.

59. Earlier in this decision, I found the goods and services to be identical. I found all of the earlier marks to be visually similar to the contested mark to a medium degree, aurally similar to a medium degree and conceptually neutral. I have found the earlier marks to possess a high degree of inherent distinctive character. I identified the average consumer to be both members of the general public and professional users with the general public paying a medium degree of attention during the purchasing process and professional users paying a higher degree of attention. The purchasing process will be predominantly visual, however, I do not discount an aural aspect.

60. Considering the respective marks as a whole, there are clear differences between them visually and aurally, most notably at the beginning of the marks where consumers tend to pay more attention. I find that these differences will not go unnoticed by the average consumer even when paying a medium degree of attention on goods and services that are identical. I do not find that the proprietor's mark will be mistaken for any of the earlier marks and as such, I do not consider there to be a likelihood of direct confusion.

61. I will therefore proceed to consider whether there is a likelihood of indirect confusion, whilst reminding myself that, as James Mellor QC sitting as the Appointed Person pointed out in *Cheeky Italian Ltd v Sutaria* (O/219/16) at [16], 'a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion.'

62. In *L.A. Sugar Limited v By Back Beat Inc*, 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’.

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

- (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (‘26 RED TESCO’ would no doubt be such a case).
- (b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as ‘LITE’, ‘EXPRESS’, ‘WORLDWIDE’, ‘MINI’ etc.).

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

63. I also consider the relevance of *Medion vs Thomson*<sup>12</sup> and the subsequent case law. In *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch), Arnold J. (as he then was) considered the impact of the CJEU's judgment in *Bimbo*, Case C-591/12P, on the court's earlier judgment in *Medion v Thomson*. The judge said:

"18 The judgment in *Bimbo* confirms that the principle established in *Medion v Thomson* is not confined to the situation where the composite trade mark for which registration is sought contains an element which is identical to an earlier trade mark, but extends to the situation where the composite mark contains an element which is similar to the earlier mark. More importantly for present purposes, it also confirms three other points.

19 The first is that the assessment of likelihood of confusion must be made by considering and comparing the respective marks — visually, aurally and conceptually — as a whole. In *Medion v Thomson* and subsequent case law, the Court of Justice has recognised that there are situations in which the average consumer, while perceiving a composite mark as a whole, will also perceive that it consists of two (or more) signs one (or more) of which has a distinctive significance which is independent of the significance of the whole, and thus may be confused as a result of the identity or similarity of that sign to the earlier mark.

20 The second point is that this principle can only apply in circumstances where the average consumer would perceive the relevant part of the composite mark to have distinctive significance independently of the whole. It does not apply where the average consumer would perceive the composite mark as a unit having a different meaning to the meanings of the separate

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<sup>12</sup> Case C-120/04

components. That includes the situation where the meaning of one of the components is qualified by another component, as with a surname and a first name (e.g. BECKER and BARBARA BECKER).

21 The third point is that, even where an element of the composite mark which is identical or similar to the earlier trade mark has an independent distinctive role, it does not automatically follow that there is a likelihood of confusion. It remains necessary for the competent authority to carry out a global assessment taking into account all relevant factors.”

64. Whilst I accept that a shared common element alone does not necessarily lead to a likelihood of confusion,<sup>13</sup> it is important for me to note the aspects of the other elements within the respective marks and the part they play. I bear in mind not only the level of distinctiveness of the earlier marks but also the distinctiveness of the common element. I also accept that the examples as set out in *L.A.Sugar* (above) are not exhaustive and that they are only intended to be illustrative of the general approach.

65. Although the first and second earlier marks are figurative marks, I remind myself that they are presented in an unremarkable font with no stylisation or figurative elements. My primary finding is that Gauss will be viewed as invented with no clear meaning. I also concluded that whilst the DB element may be seen as an abbreviation of two separate words, consumers will not be aware of what those two words are. I acknowledge that the contested mark includes an additional element that is not present in the applicant's mark (Samsung) however, the “Gauss” element retains an independent distinctive role in the contested mark and will not be seen in combination with the word “Gauss” as a unit having a different meaning as compared to its meaning taken separately. Whilst the earlier mark contains the element “GaussDB” which is not identical to the term “Gauss”, I remind myself that the principle established in *Medion v Thomson* is not confined to the situation where the composite trade mark for which registration is sought contains an element which is identical to an earlier trade mark, but extends to the situation

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<sup>13</sup> See *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17

where the composite mark contains an element which is similar to the earlier mark. As such, I consider that the use of “Gauss” and GaussDB” in the competing marks will be viewed as indicating alternative marks used by the same or economically linked undertaking who provide the same goods and services. This is because the additional wording element in the proprietor’s mark is logical and consistent with a brand extension or sub-brand. Whether the consumer is confused so as to believe that the proprietor’s mark is a brand extension or sub-brand of the applicant’s mark or vice versa, is not relevant to the present assessment.<sup>14</sup> In my view, the common element is so strikingly distinctive that the average consumer would conclude that only one undertaking would be using it in relation to identical goods. Consequently, I consider that there exists a likelihood of indirect confusion.

66. In respect of the remaining earlier marks “GaussDB” and “GaussRD”, the same reasoning applies here, and I also find that there is a likelihood of indirect confusion.

## **Final Remarks**

67. For the avoidance of doubt, even if I am wrong in my finding that there would be an insufficient number of people familiar with the term GAUSS to constitute a significant proportion of average consumers, this would not impact upon my overall finding on likelihood of confusion. This is because there would still be a significant proportion of average consumers who would not know the meaning of the term GAUSS and for whom it would be perceived as an invented word (and, therefore, highly distinctive). Consequently, there would still be a likelihood of confusion for those average consumers. A finding that a significant proportion of average consumers would be confused is sufficient. As such, my overall finding would remain the same.

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<sup>14</sup> See *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12, regarding “wrong way round confusion”, referring to *Comic Enterprises* (cited above) at paragraphs 75-84. In that case Kitchin LJ explained that “right way round” or “wrong way round” confusion may be a consequence of nothing more meaningful than the order in which the consumer happened to come across the mark and the sign. He explained further that in both instances the consumer thinks that the goods or services in issue come from the same undertaking or economically linked undertakings, and they may be equally damaging to the distinctiveness and functions of the mark.

## CONCLUSION

68. The application for invalidation succeeds in its entirety and the contested mark is, subject to any successful appeal of my decision, invalidated in its entirety.

## COSTS

69. The applicant has succeeded in full and, therefore, is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023. In the circumstances, I award the applicant the sum of **£1300** as a contribution towards the cost of the proceedings. This is calculated as follows:

Official fee:	£200
Preparing a statement:	£250
Considering and commenting on the other side's evidence:	£500
Filing submissions in lieu:	£350
<b>Total:</b>	<b>£1300</b>

70. I hereby order Samsung Electronics Co., Ltd. to pay HUAWEI TECHNOLOGIES CO., LTD the sum of £1300. The above 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 31<sup>st</sup> day of July 2025**

**Catrin Williams**  
**For the Registrar**

## **Annex 1**

### First earlier mark

Class 9: Computer servers; web hosting servers; computer software for controlling and managing access server applications; LAN server; network servers; computer network server; data processing apparatus; computer memory devices; computers; computer programmes, recorded; processors [central processing units]; computer software to maintain and operate computer systems; computers for use in data management; computer software for network management; central processing units for processing information, data, sound or images; network communication equipment.

Class 42: Technical research; research and development of new products for others; scientific research; conducting technical project studies; telecommunications technology consultancy; computer programming; computer software design; updating of computer software; consultancy in the design and development of computer hardware; maintenance of computer software; recovery of computer data; conversion of data or documents from physical to electronic media; computer system design; creating and maintaining web sites for others; data conversion of computer program data or information [not physical conversion]; computer software consultancy; rental of web servers; providing search engines for the internet; web site design consultancy; information technology [IT] consultancy; electronic data storage; providing information on computer technology and programming via a web site; cloud computing; computer technology consultancy; computer security consultancy; developing of driver and operating system software.

### Second earlier mark

Class 9: Computer servers; web hosting servers; computer software for controlling and managing access server applications; LAN server; network servers; computer network server; data processing apparatus; computer memory devices; computers; computer programmes, recorded; processors [central processing units]; computer software to maintain and operate computer systems; computers for use in data management; computer software for network management; central processing units for processing information, data, sound or images; network communication equipment.

Class 42: Technical research; research and development of new products for others; scientific research; conducting technical project studies; telecommunications technology consultancy; computer programming; computer software design; updating of computer software; consultancy in the design and development of computer hardware; maintenance of computer software; recovery of computer data; conversion of data or documents from physical to electronic media; computer system design; creating and maintaining web sites for others; data conversion of computer program data or information [not physical conversion]; computer software consultancy; rental of web servers; providing search engines for the internet; web site design consultancy; information technology [IT] consultancy; electronic data storage; providing information on computer technology and programming via a web site; cloud computing; computer technology consultancy; computer security consultancy; developing of driver and operating system software.

### Third earlier mark

Class 9: Computer hardware; communication apparatus; telecommunication base stations; base station controllers for telecommunication; computer software; communication software; cloud computing software; communication modems; communication controllers; Ethernet controllers; wireless communication apparatus; network communication apparatus; optical communication equipment; communication servers [computer hardware]; network servers; internet servers; cloud servers; network access server operating software; network access server hardware; computer software for wireless network communications; transmitters (telecommunication); routers; telecommunication switches; modems; parts and fittings for all the aforesaid goods.

Class 42: Telecommunications technology consultancy; professional consultancy in the field of computers; technical consultancy relating to information systems; expert advice relating to technology; provision of technical consultancy (advice) in the field of telecommunications; consultancy and advice on computer software and hardware; development of technology strategies for companies; consultancy on the design, implementation and management of information systems and technologies; consultancy relating to the installation, improvement, modification, migration and use

of computers; computer programming; design and development of computer software; updating recorded software; maintenance of recorded computer software and software packages; technical assistance relating to computers; computer services for the analysis of data; technical data analysis services; development and testing of computing methods, algorithms and software.

#### Fourth earlier mark

Class 9: Computer operating software; computer programs, recorded; computer programs, downloadable; computer software, recorded; data processing apparatus; network servers; computers; computer servers; network communication apparatus; chips [integrated circuits]; none of the aforementioned goods to be used for or in relation to quantum chemistry, computational chemistry, software for simulating, quantifying and analysing chemical phenomena, or any aspect of materials science, catalysis, biochemistry, or pharmacology.

Class 42: Developing of driver and operating system software; consultancy in the field of software design; updating of computer software; computer software design; software as a service [SaaS]; cloud computing; computer technology consultancy; quality control; quality testing; quality evaluation; certification services relating to quality; computer software development; platform as a service [PaaS]; development of computer platforms; none of the aforementioned services to be used for or in relation to quantum chemistry, computational chemistry, software for simulating, quantifying and analysing chemical phenomena, or any aspect of materials science, catalysis, biochemistry, or pharmacology.