


The International Bureau, WIPO  
34, chemin des Colombettes  
1211 Geneva  
Switzerland

Danish Patent  
and Trademark Office

Helgesøvej Allé 81  
2630 Taastrup

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E-mail : pvs@dkpto.dk  
Web : www.dkpto.dk  
CVR-nr. : 17 03 94 15

Danish Ministry of Economic  
and Business Affairs

 Partner  
nordic patent institute

Our reference: MP1433787  
Opposition number: 456546988  
International Registration: 1433787  
Your reference:  
Holder: Xiaomi Inc.

18 September 2019

Dear Madam/Sir

**Notification of Provisional Refusal Based on Opposition according to Rule 17(3)**

An opposition against the validity of the above-mentioned designation of Denmark has been filed with the Danish Patent and Trademark Office by:

Apple Inc.  
One Apple Park Way  
Cupertino, California 95014  
USA

Consequently, the mark is provisionally refused protection in Denmark **for all of the goods/services** covered by the designation.

**Grounds for the opposition**

The opponent has stated the following reasons for the opposition:

- Identity/risk of confusion with an earlier registered trademark, cf. Section 15(1) (see appendix for trade marks cited by the opponent)
- Unfair advantage of or detriment to the reputation of an earlier mark, cf. Section 15(3)(1).

We have enclosed a copy of the opposition.

**Final decision and appeal**

If we do not receive a request for review within the time limit, we will issue a final decision, which is subject to appeal to the Board of Appeal for Patents and Trademarks.

**Further information**

We have enclosed guidelines on our opposition procedures as well as an abstract of the relevant sections of the Danish Trade Marks Act. For further information about opposition procedures, please contact the examiner.

**Request for review of the provisional refusal**

The opponent has been granted a two-month time limit to submit further evidence in support of the grounds for the opposition mentioned above. When the opponent's two month time limit has expired, the holder will be granted a four-month time limit to request a review of the provisional refusal.

The holder will be notified of the time limit when the four-month period begins. Please observe that a request for review of the provisional refusal should be filed in Danish.

Yours faithfully

Linda Funder Hansen  
Examiner, Trademark and Design  
Phone +45 4350 8238

# Appendix

## **Guidelines on Oppositions**

We deal with oppositions in two phases:

- The **hearing procedure** phase during which the holder and the opponent exchange arguments and documentation.
- The **decision** phase during which we review the arguments and documents and make a decision on this basis.

### **Hearing procedure**

Both parties are entitled to put forth their opinions and arguments. The extent of the hearing depends on the complexity of the case and on whether we find the need for the case to be further elucidated.

It is the role of the Office to make sure that each party is allowed the opportunity to present their arguments. We also provide guidance on aspects, which we find relevant to the case.

Please be aware that any documents or evidence submitted to us will be available to the public according to the regulations of the Danish Access to Public Administration Files Act and in general be available to the public in PVSONline, under [www.dkpro.dk](http://www.dkpro.dk). The material will also be sent to the opponent for comments according to the regulations of the Administration Act. Material such as samples and the like must be submitted in two specimens.

During the hearing, as a general rule, we do not make a review of whether the material submitted meets the requirements, which the claim e.g. about a well-known mark or a mark used in the course of trade, demand.

During the hearing, both parties must reply within the time limits laid down by the Office. A time limit may be extended, usually for one or two months, if deemed reasonable. Normally, we will not extend a time limit more than once.

If one of the parties informs the Office that negotiations for a settlement are taking place, we will suspend the hearing procedure for 6 months. As long as negotiations are ongoing, the opposition may remain suspended for 6 months at a time. The hearing may be resumed at any time, if one of the parties wishes so.

### **The decision**

When we judge that the case is sufficiently elucidated, we inform both parties that the hearing procedure is finished and that the opposition is ready to be decided.

When we make the decision, we review and evaluate the arguments and the material submitted by the parties. We also undertake additional investigations including review earlier practice.

A decision including grounds is sent to both parties. We will also inform the party or parties ruled against about the means to appeal with the Danish Board of Appeal for Patents and Trademarks.

All opposition decisions are available on our website.

It must be noted that even though we make a decision in an opposition case, the Office can still refuse the designation if we receive new information on absolute grounds for granting the designation protection in Denmark.

## **Abstract of the Danish Trade Marks Act**

*(unofficial translation)*

### *Relative grounds for refusal of registration*

#### Section 15

- (1) On the basis of an opposition, a trademark shall not be registered or, if registered, shall upon request or upon judgement be liable to be declared invalid, where
  - (i) it is identical with an earlier trademark, and the goods or services for which the trademark is applied or registered are identical with the goods or services for which the earlier trademark is protected, or
  - (ii) there exists a likelihood of confusion on the part of the public including a likelihood of association with the earlier trademark, because the later trademark is identical with or similar to the earlier trademark and the goods or services are identical or similar.
- (2) For the purpose of subsection (1), earlier trademarks mean:
  - (i) Trademarks of the following categories in respect of which the date of application for registration is earlier than the date of application for registration of the trademark, taking account, where appropriate, of the priorities claimed in respect of those trademarks:
    - (a) EU trademarks, including EU trademarks which validly claim seniority, in accordance with the Regulation on EU trademarks, of a trademark referred to under (b) and (c), even when the latter trademark has been surrendered or has lapsed.
    - (b) Trademarks registered in this country.
    - (c) Trademarks registered under international agreements and having effect in this country.
  - (ii) Applications for trademarks referred to under (i), subject to their registration;
  - (iii) Trademarks which, on the date of application for registration of the trademark, or, where appropriate, of the priority claimed in respect of the application for registration of the trademark, are well known in this country, in the sense in which the words “well known” are used in Article 6bis of the Paris Convention.
  - (iv) Unregistered trademarks which are established according to Section 3(1)(3), when the right to the unregistered trademark was acquired prior to date of application for registration of the subsequent trademark according to Section 6.
- (3) Furthermore, on the basis of an opposition, a trademark shall not be registered or, if registered, shall be liable to be declared invalid where:
  - (i) The trademark is identical with, or similar to, an earlier trademark, irrespective of whether the goods or services for which it is applied or registered are identical with, similar to or not similar to those for which the earlier trade mark is protected, where the earlier trade mark has a reputation in this country in respect of which registration is applied for or in which the trademark is registered or, in the case of an EU trademark, has a reputation in the EU and the use of the later trademark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trademark.
  - (ii) An agent or representative of the proprietor of the trademark applies for registration thereof in his own name without the proprietor's authorisation, unless the agent or representative justifies his action.
  - (iii) To the extent that, pursuant to EU legislation or Danish law providing for protection of designations of origin and geographical indications,
    - (a) an application for a designation of origin or a geographical indication has already been submitted in accordance with EU legislation or Danish law prior to the date of application for registration of the trademark or the date of the priority claimed for the application, subject to its subsequent registration, or

- (b) the designation of origin or geographical indication confers on the person authorised under the relevant law to exercise the rights arising therefrom the right to prohibit the use of a subsequent trade mark.
- (iv) The trademark infringes a right to a company name, which is registered in the Danish Central Business Register (CVR). A trademark will infringe a right to a company name when the company name has more than just local character and
  - (a) the name and the trademark are similar, and the goods or services for which the company name has been used a sign prior to the application or a claimed priority are identical or similar to those of the trademark, and the use of the trademark would lead to a likelihood of confusion or association, or
  - (b) the use of the trademark without just cause will take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier company name, provided that the company name is used in relation to the goods or services and this use has resulted in the company name prior to the application for registration of the trademark or a priority claimed becoming well known in this country.
- (v) Rights to a sign other than the signs referred to in subsection (iv) have been established, when the sign has more than just local character and the sign has a right to forbid the use of the earlier mark.
- (vi) The trademark without permission consists of or contains a personal name or a personal portrayal to which another has the right and does not allude to persons long dead, when there is a right association with the name or portrait to prohibit the use of the trademark.
- (vii) The trademark without permission consists of or contains parts, which by the relevant public, will be perceived as a distinctive name or a depiction of a property located in this country, to which are associated rights of the owner to prohibit the use of the trademark and these rights are more than just of local character.
- (viii) The trademark infringes another's copyright or industrial property right, when there is a right to prohibit the use of the trademark associated with these rights
- (ix) There is a likelihood of confusion with an earlier trademark, which is protected abroad, if the applicant was in bad faith at the time of filing the application.
- (4) Under the appropriate circumstances a trademark shall not be excluded from registration pursuant to the provisions of subsections (1) and (3) where the proprietor of the earlier rights consents to the registration of the later trademark.

### *Opposition*

#### Section 19

- (1) When the application has been published, opposition may be filed against the application. The opposition, which shall be reasoned, shall be filed with the Patent and Trademark Office within two months from the date of publication. A fee shall accompany the opposition, cf. Section 60 (c)(1).
- (2) An opposition according to subsection (1) may be submitted with reference to infringement of one or several of the relative grounds, which are cited in Section 15, and may concern some or all of the goods or services covered by the application.
- (3) The opposition may be filed by the holder of the rights claimed or by the persons and undertakings, which are entitled thereto in accordance with Section 8(1) or Section 9(1), as well as by persons or undertakings, which are entitled to exercise the rights referred to in Section 15(3)(3). If the opposition is filed with reference to several earlier rights, all of the earlier rights must belong to the same holder.
- (4) In an opposition the Patent and Trademark Office may decide that
  - (i) the application is upheld in its entirety,
  - (ii) the application is refused totally or partially, cf. Section 15 or
  - (iii) the application is transferred to the owner of the right pursuant to Section 5(4)(2).

<b>WIPO</b> WORLD INTELLECTUAL PROPERTY ORGANIZATION	<b>Madrid Monitor</b>	<b>International Trademark</b>
970388- ICLOUD		Printed: 2019-09-18 08:34

## 970388- ICLOUD

Full details  
Current Status  
English

- 180** Expected expiration date of the registration/renewal  
29.05.2028
- 151** Date of the registration  
29.05.2008
- 270** Language of the application  
English
- 732** Name and address of the holder of the registration  
Apple Inc.  
  
One Apple Park Way  
  
Cupertino CA 95014 (US)
- 811** Contracting State of which the holder is a national  
US
- 842** Legal nature of the holder (legal entity) and State, and, where applicable, territory within that State where the legal entity is organized  
corporation, California
- 740** Name and address of the representative  
Thomas R. La Perle  
  
Apple Inc.  
  
One Apple Park Way  
  
MS: 169-3IPL  
  
Cupertino CA 95014 (US)
- 540** Mark  
ICLOUD
- 541** Reproduction of the mark where the mark is represented in standard characters
- 511** International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Classification) - NCL(9)  
  
09 Computer programs (downloadable software); stored computer programs; magnetic data media; magnetic data carriers; apparatus and instruments for weighing, measuring, signalling, checking (supervision), life-saving and teaching; apparatus for recording, transmission or reproduction of sound or images; data processing equipment.  
  
42 Providing computer programs and web pages for others via a global computer network.
- 821** Basic application  
SE, 28.05.2008, 2008/05192
- 822** Basic registration  
SE, 18.04.2008, 395196
- 300** Data relating to priority under the Paris Convention and other data relating to registration of the mark in the country of origin  
  
09 Computer programs (downloadable software); stored computer programs; magnetic data medium; magnetic data carriers; weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; data processing equipments  
  
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<b>WIPO</b> <small>WORLD INTELLECTUAL PROPERTY ORGANIZATION</small>	Madrid Monitor	International Trademark
970388- ICLOUD		Printed: 2019-09-18 08:34

country of origin

42 Providing computer programs and web pages for others via a global computer network

SE, 28.05.2008, 2008/05192

832 Designation(s) under the Madrid Protocol

CN - EM - KR - RU - SG - US

527 Indications regarding use requirements

SG - US

## Transaction History

expand none



<b>WIPO</b> <small>WORLD INTELLECTUAL PROPERTY ORGANIZATION</small>	Madrid Monitor	International Trademark
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<b>WIPO</b> <small>WORLD INTELLECTUAL PROPERTY ORGANIZATION</small>	Madrid Monitor	International Trademark
970388- ICLOUD		Printed: 2019-09-18 08:34

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SE, 28.05.2008, 2008/05192

832 Designation(s) under the Madrid Protocol

CN - EM - KR - RU - SG - US

527 Indications regarding use requirements

SG - US

## Transaction History

expand none



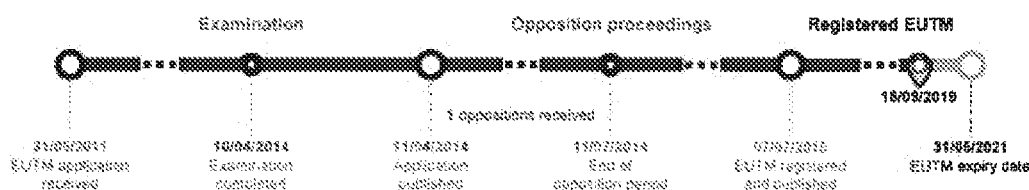
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## EUTM file information

# ICLOUD

010011484

## Timeline



## Trade mark information

Name	ICLOUD	Filing date	31/05/2011
Filing number	010011484	Registration date	03/07/2015
Basis	EUTM	Expiry date	31/05/2021
Date of receipt	31/05/2011	Designation date	
Type	Word	Filing language	English
Nature	Individual	Second language	Italian
Nice classes	9 ( Nice Classification )	Application reference	306187-6406/PFA/TG1
Vienna Classification		Trade mark status	Registered
		Acquired distinctiveness	No

## Goods and services

English (en)



9 Accessories, parts, fittings, and testing apparatus for all of the following goods: computers, computer peripheral devices, computer terminals; computer gaming machines; computer and electronic games.

## Description

No data

## Owners

## Apple Inc.

ID	839	Country	US - United States	Correspondence address	Hidden. You can set your contact details to be publicly available via the User Area.
Organisation	Apple Inc.	State/county	California	Apple Inc.	
Legal status	Legal entity	Town	Cupertino	One Apple Park Way	
State, district or L...	California		ESTADOS UNIDOS (DE AMERICA)		
		Post code	95014		

Address

**One Apple  
Park Way**Hidden. You can set your  
contact details to be publicly  
available via the User Area.Hidden. You can set your  
contact details to be publicly  
available via the User Area.**Representatives****LOCKE LORD LLP**

ID	<b>41701</b>	Country	<b>GB - United Kingdom</b>	Correspondence address
Organisation	<b>n/a</b>	State/county	<b>n/a</b>	Locke Lord (UK) LLP
Legal status	<b>Legal person</b>	Town	<b>London</b>	201 Bishopsgate
Type	<b>Association</b>	Post code	<b>EC2M 3AB</b>	REINO UNIDO
		Address	<b>201 Bishopsgate</b>	

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contact details to be publicly  
available via the User Area.Hidden. You can set your  
contact details to be publicly  
available via the User Area.Hidden. You can set your  
contact details to be publicly  
available via the User Area.**Correspondence**

	Event	Procedure	Registration number	Subject	Date	Actions
	Recordal	014477999	T72RW - Change in the name and/or address of the applicant/proprietor - notification of entry in the Register		27/06/2018	
	Recordal	014477999	T72RW - Change in the name and/or address of the applicant/proprietor - notification of entry in the Register		27/06/2018	
	EUTM	010011484	LSU01 - Information to proprietors of earlier trade mark registrations or applications		19/04/2017	
	EUTM	010011484	LSU01 - Information to proprietors of earlier trade mark registrations or applications		21/06/2016	
	EUTM	010011484	L304 - Cover letter for registration certificate		07/07/2015	
	EUTM	010011484	Certificate		07/07/2015	
	Opposition	002379181	B254B - Notification to the applicant/holder of conclusion of the opposition proceedings following withdrawal of the opposition before the commencement of the adversarial part of the proceedings		01/07/2015	
	Opposition	002379181	B254A - Notification to the opponent of conclusion of the opposition proceedings following the withdrawal of the opposition before the commencement of the adversarial part of the proceedings		01/07/2015	
	EUTM	010011484	L167 - Confirmation of a restriction of the list of goods or services in a European Union trade mark application		01/07/2015	
	Opposition	002379181	Letter to the EUIPO		29/06/2015	
Showing 1 to 10 of 104 entries						

**IR transformation**

No data

**Seniority**

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No data

## Exhibition priority

No data

## Priority

Country	Registration number	Date	Status
Jamaica	058091	09/05/2011	Claimed
Jamaica	057024	07/12/2010	Claimed

Showing 1 to 2 of 2 entries

## Publications

Publication number	Date	Section	Description
2011/189	05/10/2011	C.2.1	Representative - Change of name and professional address
2012/137	20/07/2012	C.1.3	Proprietor - Change of name and address
2014/069	11/04/2014	A.1	Applications published under Article 44 EUTMR (Article 39 EUTMR before 01/10/2017)
2015/009	15/01/2015	C.2.1	Representative - Change of name and professional address
2015/091	19/05/2015	A.2.5.1	Divisions of EUTM applications
2015/124	07/07/2015	B.2	Registrations with amendments since the application was published
2018/120	28/06/2018	C.1.3	Proprietor - Change of name and address

Showing 1 to 7 of 7 entries

## Cancellation

No data

## Recordals

Publication number	Date	Section	Registration number	Title	Substantive
			009301238	Trade mark	Divisions of EUTM registrations
2011/189	05/10/2011	C.2.1	005954790	Representative	Change of name and professional address
2012/137	20/07/2012	C.1.3	006643954	Proprietor	Change of name and address
2015/009	15/01/2015	C.2.1	009158026	Representative	Change of name and professional address
2018/120	28/06/2018	C.1.3	014477999	Proprietor	Change of name and address

Showing 1 to 5 of 5 entries

## Oppositions

Registration number	Date	Grounds	Opponent	Representative	Language	Reference	Status	Extent of opposition
002379181	10/07/2014	Likelihood of confusion	Schneider & Tiburtius Rubber GmbH	LANGWIESER RECHTSANWÄLTE	English	306187-6406/PFA/TG1	Withdrawn	Class 9 Accessories, parts, fittings, and testing apparatus for all of the following goods: gaming machines;

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filing number	Date	Goods	Applicant	Representative	Language	Reference	Status	Extent of opposition
								<p>computer and electronic games. Class 28 Toys; games and playthings; playing cards; musical toys, games and playthings; toy audio apparatus; toy musical boxes; toy musical instruments; toy record players for playing tunes and cassettes; musical games; battery operated toys; musical toys and games; stand alone video game machines incorporating a means of display; toy handheld electronic devices; toy computers (not working); toy mobile telephones (not working); parts and fittings for all the aforesaid goods; parts and fittings for electronic handheld game units; electronic toys; electric computer games, other than those adapted for use with television receivers; electrical and electronic amusement apparatus (automatic, coin/counter freed); electronic games being automatic, coin-freed or counter-freed (other than those adapted for use with television receivers); handheld electronic games and apparatus (other than those adapted for use with television receiver only); video games other than those adapted for use with television receivers only; computer game apparatus other than coin operated or</p>

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Registration number	Date	Goods	Opponent	Representative	Language	Reference	Status	Subject of opposition
								those adapted for use with television receivers; video output toys and games; electronically operated toys; interactive computer toys and games.
Showing 1 to 1 of 1 entries								

## Appeals

	Registration number	Contested decision	Type	Date of receipt	Decision date	Language
(*)	R0312/2013-1	Trade mark 010011484	Trade mark	12/02/2013	26/02/2014	English
Showing 1 to 1 of 1 entries						

## Decisions

	Case number	Type	Class	Legal status	Keywords	Status	Decision date
(*)	Appeal R0312/2013-1	Appeal		Article 7(1)(b) CTMR, Article 7(1)(c) CTMR, Article 58 CTMR, Article 59 CTMR, Article 60 CTMR, Rule 48 CTMR, Rule 49 CTMR	Distinctiveness acquired by use, Extent of use, Principle of legality, Sales figures, Specialised public	Application partially rejected	02/10/2013
(*)	Refusal 010011484	Refusal		Article 7(1)(b) CTMR, Article 7(1)(c) CTMR, Article 7(2) CTMR		Partially rejected	21/12/2012
Showing 1 to 2 of 2 entries							

## Renewals

No data

## Trade mark relations

Type	Registration number
Parent Division	014067755
Showing 1 to 1 of 1 entries	

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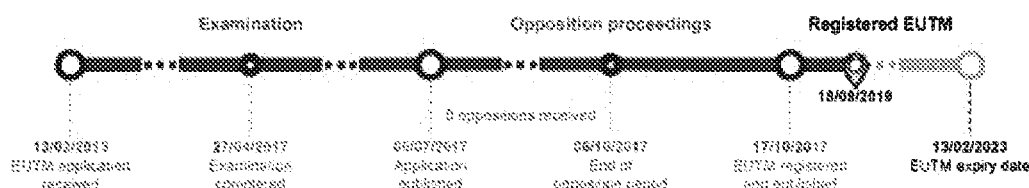


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## EUTM file information

**ICLOUD**  
011571866

## Timeline



## Trade mark information

Name	ICLOUD	Filing date	13/02/2013
Filing number	011571866	Registration date	13/10/2017
Basis	EUTM	Expiry date	13/02/2023
Date of receipt	13/02/2013	Designation date	
Type	Word	Filing language	English
Nature	Individual	Second language	Italian
Nice classes	9, 35, 39, 42 ( Nice Classification )	Application reference	306187-6917/PFA/RRW
Vienna Classification		Trade mark status	Registered
		Acquired distinctiveness	Yes

## Goods and services

English (en)



**9** Computer software for authoring, downloading, transmitting, receiving, editing, extracting, encoding, decoding, displaying, storing and organizing text, graphics, images, and electronic publications; computer software, namely, operating system programs, data synchronization programs, and application development tool programs for personal and handheld computers; pre-recorded computer programs for personal information management, database management software, character recognition software, telephony management software, electronic mail and messaging software, paging software, mobile telephone software; database synchronization software, computer programs for accessing, browsing and searching online databases, computer software for the redirection of messages, Internet e-mail, and/or other data to one or more electronic handheld devices from a data store on or associated with a personal computer or a server; computer software for the synchronization of data between a remote station or device and a fixed or remote station or device.

**35** Computerized database and file management; data processing services; computerized data storage and retrieval services; computerized data storage and retrieval services for text, data, image, audio, video, and multimedia content; creating indexes of information, sites and other resources available on global computer networks and other electronic and communications networks for others; searching, browsing and retrieving information, sites, and other resources available on global computer networks and other electronic and communications networks for others; organizing content of information provided over a global computer network and other electronic and communications networks according to user preferences; providing an online searchable database of text, data, image, audio, video, and multimedia content in the fields of computer hardware, computer software, consumer electronics, telecommunications and multimedia goods, mobile phones, handheld digital electronic devices, and other consumer electronics and accessories, peripherals, and carrying cases for such products.

**39** Physical storage of electronically stored data, text, images, audio and video; physical storage services for archiving electronic data.

42

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X



Application service provider (ASP) services featuring software for authoring, downloading, transmitting, receiving, editing, extracting, encoding, decoding, displaying, storing and organizing text, graphics, images, and electronic publications; providing search engines for obtaining data on a global computer network.

## Description

No data

## Owners

### Apple Inc.

ID	<b>839</b>	Country	<b>US - United States</b>	Correspondence address	
Organisation	<b>Apple Inc.</b>	State/country	<b>California</b>	Apple Inc. One Apple Park Way Cupertino, California 95014 ESTADOS UNIDOS (DE AMÉRICA)	Hidden. You can set your contact details to be publicly available via the User Area.
Legal status	<b>Legal entity</b>	Town	<b>Cupertino</b>		
State, district or c...	<b>California</b>	Post code	<b>95014</b>		Hidden. You can set your contact details to be publicly available via the User Area.
		Address	<b>One Apple Park Way</b>		Hidden. You can set your contact details to be publicly available via the User Area.

## Representatives

### LOCKE LORD LLP

ID	<b>41701</b>	Country	<b>GB - United Kingdom</b>	Correspondence address	
Organisation	<b>n/a</b>	State/country	<b>n/a</b>	Locke Lord (UK) LLP 201 Bishopsgate London EC2M 3AB REINO UNIDO	Hidden. You can set your contact details to be publicly available via the User Area.
Legal status	<b>Legal person</b>	Town	<b>London</b>		
Type	<b>Association</b>	Post code	<b>EC2M 3AB</b>		Hidden. You can set your contact details to be publicly available via the User Area.
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		Recordal	014477999	T72RW - Change in the name and/or address of the applicant/proprietor - notification of entry in the Register	27/06/2018	
		EUTM	011571866	L304 - Cover letter for registration certificate	17/10/2017	
		EUTM	011571866	Certificate	17/10/2017	
		EUTM	011571866	LSU01 - Information to proprietors of earlier trade mark registrations or applications	19/04/2017	
		Appeal	R0057/2016-2	R420A - Notification of a decision of the Boards of Appeal to the appellant	19/12/2016	
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		EUTM	011571866	<a href="#">Click for more information</a>	X	21/06/2016

	Date	Procedure	Filing number	Subject	Date	Subject
LSU01 - Information to proprietors of earlier trade mark registrations or applications						
	Appeal	R0057/2016-2	R409A	Notification of remittal to the Boards of Appeal	17/03/2016	
	Appeal	R0057/2016-2	R405	Acknowledgement of receipt of statement of grounds (ex parte)	16/03/2016	
Showing 1 to 10 of 133 entries						

## IR transformation

No data

## Seniority

No data

## Exhibition priority

No data

## Priority

No data

## Publications

Publication number	Date	Section	Description
2015/009	15/01/2015	C.2.1	Representative - Change of name and professional address
2017/126	06/07/2017	A.1	Applications published under Article 44 EUTMR (Article 39 EUTMR before 01/10/2017)
2017/197	17/10/2017	B.1	Registrations with no amendments since the application was published
2018/120	28/06/2018	C.1.3	Proprietor - Change of name and address
Showing 1 to 4 of 4 entries			

## Cancellation

No data

## Recordals

Publication number	Date	Section	Filing number	Title	Subject
			007977294	Trade mark	Divisions of EUTM registrations
2015/009	15/01/2015	C.2.1	009158026	Representative	Change of name and professional address
2018/120	28/06/2018	C.1.3	014477999	Proprietor	Change of name and address
Showing 1 to 3 of 3 entries					

## Oppositions

No data

## Appeals

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Filing number	Current status	Click for more information	Date of receipt	Expiry date	Language
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	Filing number	Confidential decision	Type	Date of receipt	Revised date	Language
⊕	R2284/2013-2	Trade mark 011571866	Trade mark	20/11/2013	31/01/2014	English
⊕	R0955/2014-2	Trade mark 011571866	Trade mark	03/04/2014	16/10/2015	English
⊕	R0057/2016-2	Trade mark 011571866	Trade mark	11/01/2016	20/04/2017	English
Showing 1 to 3 of 3 entries						

## Decisions

	Case number	Type	Case	Legislation	Keywords	Status	Decision date
⊕	Appeal R0057/2016-2	Appeal	Article 7(3) EUTMR	Declaration, Distinctiveness acquired by use, Evidence of use, Nature of the goods and services, Purpose of the goods and services, Signs, Figures, Scope of proceedings	Application allowed		05/12/2016
⊕	Appeal R0955/2014-2	Appeal	Article 7 CTMR, Article 7(1)(c) CTMR, Article 7(2) CTMR, Article 7(3) CTMR, Article 64 CTMR	Competence of the Boards, Distinctiveness acquired by use, Evidence of use, Specialised public	Remitted on Article 7(3) EUTMR		18/05/2015
⊕	Refusal 011571866	Refusal	Article 7(1)(b) CTMR, Article 7(1)(c) CTMR, Article 7(2) CTMR		Partially rejected		20/09/2013
⊕	Refusal 011571866	Refusal	Article 7(1)(c) CTMR		Partially rejected		13/11/2015
Showing 1 to 4 of 4 entries							

## Renewals

No data

## Trade mark relations

Type	Filing number
Parent Division	013002928
Showing 1 to 1 of 1 entries	

Patent- og Varemærkestyrelsen  
Erhvervs- og Vækstministeriet

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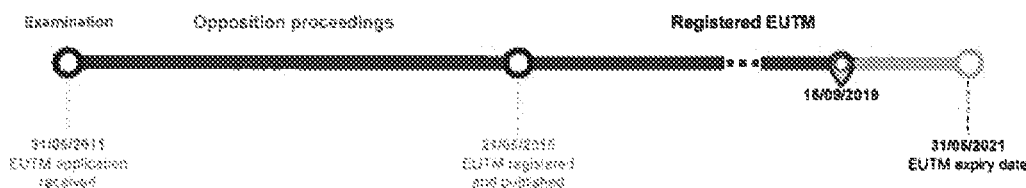


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## EUTM file information

**ICLOUD**  
**014067755**

### Timeline



### Trade mark information

Name	ICLOUD	Filing date	31/05/2011
Filing number	014067755	Registration date	15/05/2015
Basis	EUTM	Expiry date	31/05/2021
Date of receipt	31/05/2011	Designation date	
Type	Word	Filing language	English
Nature	Individual	Second language	Italian
Nice classes	9, 16, 25, 35, 37, 38, 41 ( Nice Classification )	Application reference	306187-6406/PFA/TG1
Vienna Classification		Trade mark status	Registered
		Acquired distinctiveness	No

### Goods and services

English (en)



9 Accessories, parts, fittings, and testing apparatus for all of the following goods: Computer hardware; microprocessors, memory boards, monitors, displays, keyboards, cables, modems, printers, disk drives, adapters, adapter cards, connectors and drivers; blank computer storage media; magnetic data carriers; computer software; computer software for authoring, downloading, transmitting, receiving, editing, extracting, encoding, decoding, displaying, storing and organizing text, graphics, images, and electronic publications; computer software and firmware, namely, operating system programs, data synchronization programs, and application development tool programs for personal and handheld computers; computer hardware and software for providing integrated telephone communication with computerized global information networks; pre-recorded computer programs for personal information management, database management software, character recognition software, telephony management software, electronic mail and messaging software, paging software, mobile telephone software; database synchronization software, computer programs for accessing, browsing and searching online databases, computer software for the redirection of messages, Internet e-mail, and/or other data to one or more electronic handheld devices from a data store on or associated with a personal computer or a server; computer software for the synchronization of data between a remote station or device and a fixed or remote station or device; downloadable electronic publications in the nature of books, plays, pamphlets, brochures, newsletters, journals, magazines, and periodicals on a wide range of topics of general interest; handheld digital electronic devices and software related thereto; MP3 and other digital format audio players; hand held computers, tablet computers, personal digital assistants, electronic organizers, and mobile digital electronic devices; global positioning system (GPS) devices, telephones; handheld and mobile digital electronic devices for the sending and receiving of telephone calls, faxes, electronic mail, and other digital data; cordless telephones; mobile telephones; parts and accessories for mobile telephones; facsimile machines, answering machines, cameras, videophones, telephone-based information retrieval software and hardware; electronic handheld units for the wireless receipt, storage and/or transmission of data and messages, and electronic devices that enable the user to access and use the Internet; computer software for the management of electronic mail and electronic documents; instruments; telecommunications apparatus and instruments; fonts, typefaces, type designs and symbols in the form of recorded data; chips, discs and tapes bearing or for recording computer programs and software; random access memory,

read only memory; solid state memory apparatus; computer and electronic games; user manuals in electronically readable, machine readable or computer readable form for use with, and sold as a unit with, all the aforementioned goods; apparatus for data storage; hard drives; miniature hard disk drive storage units; audio video discs, CD-ROMs, and digital versatile discs; mouse pads; batteries; rechargeable batteries; chargers; chargers for electric batteries; headphones; stereo headphones; in-ear headphones; stereo speakers; audio speakers; audio speakers for home; monitor speakers; speakers for computers; personal stereo speaker apparatus; radio receivers, amplifiers, sound recording and reproducing apparatus, electric phonographs, record players, high fidelity stereo apparatus, tape recorders and reproducing apparatus, loudspeakers, multiple speaker units, microphones; digital audio and video devices; audio cassette recorders and players, video cassette recorders and players, compact disc players, digital versatile disc recorders and players, digital audio tape recorders and players; digital music and/or video players; radios; video cameras; audio, video, and digital mixers; radio transmitters; car audio apparatus; computer equipment for use with all of the aforesaid goods; electronic apparatus with multimedia functions for use with all of the aforesaid goods; electronic apparatus with interactive functions for use with all of the aforesaid goods Parts and fittings for all the aforesaid goods Covers, bags and cases adapted or shaped to contain all of the aforesaid goods, made of leather, imitations of leather, cloth, or textile materials.

**16** Paper, cardboard and goods made from these materials, not included in other classes; printed matter; book binding material; photographs; stationery; stickers; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not included in other classes); advertising materials; printers' type; printing blocks; printed publications; periodicals; books; magazines; newsletters; brochures; booklets; pamphlets; manuals; journals; leaflets; greeting cards; advertising and promotional material; catalogues relating to computer software; computer brochures; computer handbooks; computer hardware publications; computer hardware reference manuals; computer hardware users guide; computer instruction manuals; computer manuals; publications relating to technology, digital technology and gadgets; catalogues relating to musical apparatus and instruments; music books; music instruction manuals; music magazines; excluding adhesives, adhesive tape and sheets.

**25** Clothing, footwear, headgear.

**35** Advertising agency services; advertising, marketing, and promotion services; advertising and marketing consultation; sales promotion services; promoting the goods and services of others; conducting market research; analysis of advertising response and market research; preparation, production, and dissemination of advertisements and advertising material for others; media planning services; administration of consumer loyalty programs; arranging and conducting incentive rewards programs to promote the sale of goods and services; business services, namely, dissemination of advertising for others via computer networks and global communication networks; compilations of directories for publishing on the Internet and other electronic, computer and communications networks; retail store and online retail store services in the fields of computer hardware, computer software, consumer electronics, telecommunications and multimedia goods, mobile phones, handheld digital electronic devices, and other consumer electronics and accessories, peripherals, and carrying cases for such products; retail store services provided via the Internet and other computer, electronic and communications networks in the field of computer hardware, computer software, consumer electronics, telecommunications and multimedia goods and accessories, mobile phones, handheld digital electronic devices, and other consumer electronics and accessories, peripherals, and carrying cases for such products; retail store services in the field of books, magazines, periodicals, newsletters, journals and other publications on a wide range of topics of general interest, provided via the Internet and other computer, electronic and communications networks; retail store services in the field of entertainment featuring movies, television programs, sporting events, musical works, and audio and audiovisual works, via the Internet and other computer, electronic and communications networks; retail store services featuring computer, electronic and entertainment products, telecommunications apparatus, mobile phones, handheld mobile digital electronic devices, and other consumer electronics, computer software, and accessories, peripherals, and carrying cases for such products, via the Internet and other computer, electronic and communications networks; product demonstrations provided in-store and via global communications networks and other electronic and communications networks; information, advisory and consultancy services relating to all the aforesaid.

**37** Repair and installation services; maintenance, installation and repair of computer hardware, computer peripherals and consumer electronic devices; consulting services in the field of maintenance of computer hardware, computer peripherals, and consumer electronic devices.

**38** Providing user access to the Internet (service providers).

**41** Providing an online searchable database of text, data, image, audio, video, and multimedia content in the field of entertainment featuring music, video, film, books, periodicals, television, games and sports; information, advisory and consultancy services relating to all the aforesaid.

## Description

No data

## Owners

### Apple Inc.

ID	<b>839</b>	Country	<b>US - United States</b>	Correspondence address	
Organisation	<b>Apple Inc.</b>	State/county	<b>California</b>	Apple Inc. One Apple Park Way Cupertino, California 95014 ESTADOS UNIDOS (DE AMÉRICA)	Hidden. You can set your contact details to be publicly available via the User Area.
Legal status	<b>Legal entity</b>	Town	<b>Cupertino</b>		
State, district or L...	<b>California</b>	Post code	<b>95014</b>		
		Address	<b>One Apple Park Way</b>		Hidden. You can set your contact details to be publicly available via the User Area.

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## Representatives

### LOCKE LORD LLP

ID	<b>41701</b>	Country	<b>GB - United Kingdom</b>	Correspondence address
Organisation	<b>n/a</b>			Locke Lord (UK) LLP
Legal status	<b>Legal person</b>	State/country	<b>n/a</b>	201 Bishopsgate
Type	<b>Association</b>	Town	<b>London</b>	London EC2M 3AB
		Post code	<b>EC2M 3AB</b>	REINO UNIDO
		Address	<b>201 Bishopsgate</b>	

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## Correspondence

			Filing number	Subject	Date	Address
	Recordal	014477999	T72RW - Change in the name and/or address of the applicant/proprietor - notification of entry in the Register		27/06/2018	
	Recordal	014477999	T72RW - Change in the name and/or address of the applicant/proprietor - notification of entry in the Register		27/06/2018	
	EUTM	014067755	L304 - Cover letter for registration certificate		26/11/2015	
	EUTM	014067755	Certificate		25/11/2015	
	Recordal	010195371	Correction of errors - notification of entry		23/11/2015	
	Recordal	010195371	T5EM - Communication - waiting for translations		02/11/2015	
	EUTM	014067755	L329C - Decision on revocation of an EUTM registration issued in error		20/10/2015	
	Recordal	010195371	Letter to the EUIPO		18/08/2015	
	EUTM	014067755	L329A - Information that the Office intends to issue a decision on <i>ex officio</i> revocation of an EUTM registration that was issued in error		13/08/2015	
	EUTM	014067755	L304 - Cover letter for registration certificate		22/05/2015	

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## IR transformation

No data

## Seniority

No data

## Exhibition priority

No data

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Country	Filing number	Date	Status
Jamaica	058091	09/05/2011	Claimed
Jamaica	057024	07/12/2010	Claimed
Showing 1 to 2 of 2 entries			

## Publications

Publication number	Date	Section	Description
2015/091	19/05/2015	A.2.5.2	Resulting divisional applications
2015/093	21/05/2015	B.2	Registrations with amendments since the application was published
2015/224	25/11/2015	B.4.2	Correction of errors - Relative errors
2018/120	28/06/2018	C.1.3	Proprietor - Change of name and address
Showing 1 to 4 of 4 entries			

## Cancellation

No data

## Recordals

Publication number	Date	Section	Filing number	Title	Subject
			009301238	Trade mark	Divisions of EUTM registrations
2015/224	25/11/2015	B.4.2	010195371	Correction of errors	Relative errors
2018/120	28/06/2018	C.1.3	014477999	Proprietor	Change of name and address
Showing 1 to 3 of 3 entries					

## Oppositions

No data

## Appeals

No data

## Decisions

No data

## Renewals

No data

## Trade mark relations

Type	Filing number
Child Division	010011484
Showing 1 to 1 of 1 entries	

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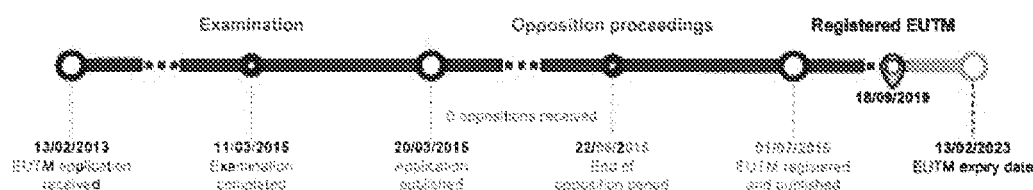


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## EUTM file information

**ICLOUD**  
013002928

## Timeline



## Trade mark information

Name	ICLOUD	Filing date	13/02/2013
Filing number	013002928	Registration date	29/06/2015
Basis	EUTM	Expiry date	13/02/2023
Date of receipt	13/02/2013	Designation date	
Type	Word	Filing language	English
Nature	Individual	Second language	Italian
Nice classes	9, 16, 25, 28, 35, 37, 42 ( Nice Classification )	Application reference	306187-7294/PFA
Vienna Classification		Trade mark status	Registered
		Acquired distinctiveness	No

## Goods and services

English (en)



**9** Mouse pads; batteries; rechargeable batteries; chargers; chargers for electric batteries; headphones; stereo headphones; in-ear headphones; stereo speakers; audio speakers; audio speakers for home; monitor speakers; speakers for computers; personal stereo speaker apparatus; loudspeakers, multiple speaker units, microphones; covers, bags and cases adapted or shaped to contain all of the aforesaid goods, made of leather, imitations of leather, cloth, or textile materials.

**16** Paper, cardboard and goods made from these materials, not included in other classes; book binding material; photographs; stationery; stickers; artists' materials; paint brushes; typewriters and office requisites (except furniture); plastic materials for packaging (not included in other classes); advertising materials; printers' type; printing blocks; greeting cards; advertising and promotional material; catalogues relating to musical apparatus and instruments; music books; music instruction manuals; music magazines \ \ \.

**25** Clothing, footwear, headgear.

**28** Toys; games and playthings; playing cards; musical toys, games and playthings; toy audio apparatus; toy musical boxes; toy musical instruments; toy record players for playing tunes and cassettes; musical games; battery operated toys; automatic and coin-operated amusement machines; musical toys and games; stand alone video game machines incorporating a means of display; toy handheld electronic devices; toy computers (not working); toy mobile telephones (not working); parts and fittings for all the aforesaid goods.

**35** Advertising agency services; advertising, marketing, and promotion services; advertising and marketing consultation; sales promotion services; promoting the goods and services of others; conducting market research; analysis of advertising response and market research; preparation, production, and dissemination of advertisements and advertising material for others; media planning services; advertising and consumer loyalty programs; arranging and conducting contests and rewards programs to promote the sale of goods and services; retail store and online retail store services in the fields of computer hardware, computer software, consumer electronics, telecommunications and multimedia goods, mobile phones, handheld



digital electronic devices, and other consumer electronics and accessories, peripherals, and carrying cases for such products; retail store services provided via the Internet and other computer, electronic and communications networks in the field of computer hardware, computer software, consumer electronics, telecommunications and multimedia goods and accessories, mobile phones, handheld digital electronic devices, and other consumer electronics and accessories, peripherals, and carrying cases for such products; retail store services in the field of books, magazines, periodicals, newsletters, journals and other publications on a wide range of topics of general interest, provided via the Internet and other computer, electronic and communications networks; retail store services in the field of entertainment featuring movies, television programs, sporting events, musical works, and audio and audiovisual works, via the Internet and other computer, electronic and communications networks; retail store services featuring computer, electronic and entertainment products, telecommunications apparatus, mobile phones, handheld mobile digital electronic devices, and other consumer electronics, computer software, and accessories, peripherals, and carrying cases for such products, via the Internet and other computer, electronic and communications networks; product demonstrations provided in-store and via global communications networks and other electronic and communications networks.

**37** Repair and installation services; maintenance, installation and repair of computer hardware, computer peripherals and consumer electronic devices; consulting services in the field of maintenance of computer hardware, computer peripherals, and consumer electronic devices.

**42** Design and creation of advertisements and advertising material for others.

## Description

No data

## Owners

### Apple Inc.

ID	<b>839</b>	Country	<b>US - United States</b>	Correspondence address	
Organisation	<b>Apple Inc.</b>	State/country	<b>California</b>	Apple Inc. One Apple Park Way Cupertino, California 95014 ESTADOS UNIDOS (DE AMÉRICA)	Hidden. You can set your contact details to be publicly available via the User Area.
Legal status	<b>Legal entity</b>	Town	<b>Cupertino</b>		
State, district or L.	<b>California</b>	Post code	<b>95014</b>		Hidden. You can set your contact details to be publicly available via the User Area.
		Address	<b>One Apple Park Way</b>		Hidden. You can set your contact details to be publicly available via the User Area.

## Representatives

### LOCKE LORD LLP

ID	<b>41701</b>	Country	<b>GB - United Kingdom</b>	Correspondence address	
Organisation	<b>n/a</b>	State/country	<b>n/a</b>	Locke Lord (UK) LLP 201 Bishopsgate London EC2M 3AB REINO UNIDO	Hidden. You can set your contact details to be publicly available via the User Area.
Legal status	<b>Legal person</b>	Town	<b>London</b>		
Type	<b>Association</b>	Post code	<b>EC2M 3AB</b>		Hidden. You can set your contact details to be publicly available via the User Area.
		Address	<b>201 Bishopsgate</b>		Hidden. You can set your contact details to be publicly available via the User Area.

## Correspondence

From	Recipient	Registration	Subject	Date	Address
Recordal	014477999	T72RW - Change in the name and/or address of the		27/06/2018	
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Recordal	014477999	Click for more information	X	27/06/2018	

	Form	Procedure	Registration	Subject	Date	Author
				T72RW - Change in the name and/or address of the applicant/proprietor - notification of entry in the Register		
	EUTM	013002928	L304 - Cover letter for registration certificate		21/07/2016	
	EUTM	013002928	Certificate		20/07/2016	
	EUTM	013002928	L304 - Cover letter for registration certificate		01/07/2015	
	EUTM	013002928	Certificate		01/07/2015	
	Recordal	009158026	T72RR - Change in the name and/or business address of a representative - notification of entry in the Register		13/01/2015	
	EUTM	013002928	Miscellaneous		05/12/2014	
	EUTM	013002928	L123 - EUTM application: Refusal of application / Decision on the inherent distinctiveness of an application		03/12/2014	
	EUTM	013002928	L110 - Notice of grounds for refusal of application for a European Union trade mark		13/08/2014	
Showing 1 to 10 of 105 entries						

## IR transformation

No data

## Seniority

No data

## Exhibition priority

No data

## Priority

No data

## Publications

Publication number	Date	Section	Description
2015/009	15/01/2015	C.2.1	Representative - Change of name and professional address
2015/054	20/03/2015	A.1	Applications published under Article 44 EUTMR (Article 39 EUTMR before 01/10/2017)
2015/120	01/07/2015	B.1	Registrations with no amendments since the application was published
2016/134	20/07/2016	B.4.2	Correction of errors - Relative errors
2018/120	28/06/2018	C.1.3	Proprietor - Change of name and address
Showing 1 to 5 of 5 entries			

## Cancellation

No data

## Recordals

Publication number	Date	Section	Registration	Title	Subtitle
007977294 Trade mark Divisions of EUTM registrations					
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2015/009	15/01/2015	C.2.1	009158026 Representative	Change of name and professional address	
Click for more information					

Publication number	Date	Section	Filing number	Title	Subject
2016/134	20/07/2016	B.4.2	011147439	Correction of errors	Relative errors
2018/120	28/06/2018	C.1.3	014477999	Proprietor	Change of name and address

Showing 1 to 4 of 4 entries


## Oppositions

No data

## Appeals

No data

## Decisions

	Case number	Type	Case	Legal status	Signatures	Status	Decision date
	Refusal 013002928	Refusal		Article 7(1)(c) CTMR		Partially rejected	03/12/2014

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## Renewals

No data

## Trade mark relations

Type	Filing number
Child Division	011571866

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X

## EUTM file information

**ICLOUD**  
014597736

## Timeline



**trade mark information**

Name	ICLOUD	Filing date	25/09/2015
Filing number	014597735	Registration date	
Basis	EUTM	Expiry date	
Date of receipt	25/09/2015	Designation date	
Type	Word	Filing language	English
Nature	Individual	Second language	Italian
Nice classes	9, 10, 12, 14, 18, 34, 36, 38, 42, 45 ( Nice Classification )	Application reference	1476466-03879/PFA/TG
		Trade mark status	Application opposed
Vienna Classification		Acquired distinctiveness	Yes

Goods and services

English (en)



9 Computers, computer peripheral devices, computer terminals; computer hardware; microprocessors, memory boards, monitors, displays, keyboards, cables, modems, printers, disk drives, adapters, adapter cards, connectors and drivers; blank computer storage media; magnetic data carriers; computer software; computer software for authoring, downloading, transmitting, receiving, editing, extracting, encoding, decoding, displaying, storing and organizing text, graphics, images, and electronic publications; computer software and firmware, namely, operating system programs, data synchronization programs, and application development tool programs for personal and handheld computers; computer hardware and software for providing integrated telephone communication with computerized global information networks; pre-recorded computer programs for personal information management, database management software, character recognition software, telephony management software, electronic mail and messaging software, paging software, mobile telephone software; database synchronization software, computer programs for accessing, browsing and searching online databases, computer software for the redirection of messages, Internet e-mail, and/or other data to one or more electronic handheld devices from a data store on or associated with a personal computer or a server; computer software for the synchronization of data between a remote station or device and a fixed or remote station or device; downloadable electronic publications in the nature of books, plays, pamphlets, brochures, newsletters, journals, magazines, and periodicals on a wide range of topics of general interest; handheld digital electronic devices for data processing, information processing, storing and displaying data, transmitting and receiving data, transmission of data between computers and software related thereto; MP3 and other digital format audio players; hand held computers, tablet computers, personal digital assistants, electronic organizers, electronic notepads; mobile digital electronic devices, global positioning system (GPS) devices, telephones; handheld and mobile digital electronic devices for the sending and receiving of telephone calls, faxes, electronic mail, and other digital data; cordless telephones; mobile telephones; parts and accessories for mobile telephones; facsimile machines, answering machines, cameras, videophones, telephone-based information retrieval software and hardware; electronic handheld devices for the development, maintenance and transmission of data and messages and electronic devices that enable the user to keep track of or manage personal information; electronic communication equipment and instruments; telecommunications apparatus and systems; mobile computing devices, type designs and symbols in the form of

read only memory; solid state memory apparatus; computer games; user manuals in electronically readable, machine readable or computer readable form for use with, and sold as a unit with, all the aforementioned goods; apparatus for data storage; hard drives; miniature hard disk drive storage units; audio video discs, CD-ROMs, and digital versatile discs; computer equipment for use with all of the aforesaid goods; electronic communications apparatus with multimedia functions for use with the aforesaid goods; electronic communications apparatus with interactive functions for use with the aforesaid goods; accessories, parts, fittings, and testing apparatus for all of the aforesaid goods; parts and fittings for all the aforesaid goods.

10 Health, fitness, exercise, and wellness sensors, monitors and displays.

**12** Vehicles; apparatus for locomotion by land, air, water or rail; consoles being parts of vehicle interiors; dashboards; automotive interior trim and interior trim parts of automobiles; anti-theft devices for vehicles; anti-theft alarms for vehicles; bicycles; golf carts; wheel chairs; air pumps being vehicle accessories; motor cycles; vehicles for locomotion by land, air, water or rail; motor cars; pumps for bicycles, cycles; cable transport apparatus and installations; baby carriages; sleighs (vehicles); vehicle wheel tires [tyres]; repair outfits for inner tubes; aeronautical apparatus, machines and appliances; steering gears for ships / ships' steering gears; seat covers for vehicles; parts for all the aforesaid goods.

**14** Horological and chronometric instruments; watches; clocks; timepieces; chronographs for use as timepieces; chronometers; watchstraps; watch bands; cases for watches, clocks, and horological and chronometric instruments; parts for watches, clocks, and horological and chronometric instruments; jewelry.

**18** Leather and imitations of leather; goods made of leather and imitations of leather namely trunks and travelling bags, umbrellas and parasols, walking sticks, ships, harness, saddlery, bags, beach bags, school bags, shoe bags, waist bags, backpacks, waist packs, wallets, purses, cases, attaché cases, business card cases, business cases, calling card cases, catalog cases, credit card cases, document cases, key cases, train cases, overnight cases, cases namely vanity, toiletry, cosmetic and lipstick cases sold empty; book bags; carry-on bags cosmetic bags sold empty; duffel bags; garment bags for travel; shopping bags; overnight bags; all-purpose sports and athletic bags; school book bags; shoulder bags; souvenir bags; suit bags; tote bags; credit card holders; animal skins, hides; trunks and travelling bags; umbrellas and parasols; walking sticks; whips, harness and saddlery; bags; beach bags; leather bags; school bags; shoe bags; waist bags; backpacks; waist packs; wallets; purses; cases; attaché cases; business card cases; business cases; calling card cases; catalog cases; credit card cases; document cases; key cases; train cases; overnight cases; cases, namely, vanity, toiletry, cosmetic and lipstick cases sold empty; book bags; carry-on bags; cosmetic bags sold empty; duffel bags; garment bags for travel; leather and mesh shopping bags; overnight bags; all-purpose sports and athletic bags; school book bags; shoulder bags; souvenir bags; suit bags; tote bags; credit card holders; parts and accessories for all the aforesaid goods.

**34** Tobacco; smokers' articles; matches; ashtrays; lighters for smokers; electronic cigarettes.

**36** Financial services; financial transaction services; bill payment services; providing secure commercial transactions; credit and debit card services; payment authorization, verification, and transaction processing services; electronic payment and funds transfer services

38. Telecommunications; communication and telecommunication services; telecommunication access services; communications by computer; communication between computers; electronic sending of data and documentation via the Internet or other databases; supply of data and news by electronic transmission; providing telecommunication access to websites and electronic news services online allowing the download of information and data; providing telecommunication access to web sites on the Internet; delivery of digital music by telecommunications; providing wireless telecommunications via electronic communications networks; wireless digital messaging, paging services, and electronic mail services, including services that enable a user to send and/or receive messages through a wireless data network; one-way and two-way paging services; communication by computer, computer intercommunication; telex, telegram and telephone services; broadcasting or transmission of radio and television programs; time sharing services for communication apparatus; provision of telecommunications access and links to computer databases and the Internet; electronic transmission of streamed and downloadable audio and video files via computer and other communications networks; webcasting services (transmission); delivery of messages by electronic transmission; provision of connectivity services and access to electronic communications networks, for transmission or reception of audio, video or multimedia content; provision of telecommunications connections to electronic communication networks, for transmission or reception of audio, video or multimedia content; providing telecommunication access to digital music web sites on the Internet; providing telecommunication access to MP3 web sites on the Internet; delivery of digital music by telecommunications; provision of telecommunications connections to the Internet or computer databases; electronic mail services; telecommunication of information (including web pages); video broadcasting, broadcasting pre-recorded videos featuring music and entertainment, television programs, motion pictures, news, sports, games, cultural events, and entertainment-related programs of all kinds, via a global computer network; streaming of video content via a global computer network; subscription audio broadcasting via a global computer network; audio broadcasting; audio broadcasting of spoken word, music, concerts, and radio programs, broadcasting pre-recorded videos featuring music and entertainment, television programs, motion pictures, news, sports, games, cultural events, and entertainment-related programs of all kinds, via computer and other communications networks; streaming of audio content via a global computer network; electronic transmission of audio and video files via communications networks; communication services, namely, matching users for the transfer of music, video and audio recordings via communication networks; providing on-line bulletin boards for the transmission of messages among computer users concerning entertainment, music, concerts, videos, radio, television, film, news, sports, games and cultural events; rental and hire of communication apparatus and electronic mail-boxes; electronic communications consultancy; facsimile, message collection and transmission services; transmission of data and of information by electronic means, computer, cable, radio, teleprinter, teletext, electronic mail, telecopier, television, microwave, laser beam, communications satellite or electronic communication means; transmission of data by audio-visual apparatus controlled by data processing apparatus or computers; information, advisory and consultancy services relating to all the aforesaid; provision of telecommunication access time to web-sites featuring multimedia materials; providing telecommunication access to databases and directories via communications networks for obtaining data in the fields of music, video, film, books, television, games and sports; providing users with telecommunication access time to electronic communications networks with means of identifying, locating, grouping, distributing, and managing data and links to third-party computer servers, computer processors and computer users; providing user access to the Internet (service providers); providing temporary internet access to use on-line non-downloadable software to enable users to program audio, video, text and other multimedia content, including music, concerts, videos, radio, television, news, sports, games, cultural events, and entertainment-related programs.

42. Application service provider (ASP) services featuring computer software; application service provider (ASP) services featuring software for authoring, downloading, transmitting, receiving, editing, extracting, encoding, decoding, displaying, storing and organizing text, graphics, images, and electronic publications; scientific and technological services and research and design relating thereto; design and development of computer hardware and software; computer hardware and software consulting services; rental of computer hardware and software apparatus and equipment; multimedia and audiovisual software and consulting services; computer equipment, networks and on-line services and a variety of related computer systems, databases and applications; information relating to computer hardware or software provided on-line from a global computer network or the Internet; creating and maintaining web sites; hosting the web-sites of others; providing search engines and information services; and other computer-related services.

engines for obtaining data via communications networks; application service provider (ASP) services featuring software for use in connection with online music subscription service, software that enables users to play and program music and entertainment-related audio, video, text and multimedia content, and software featuring musical sound recordings, entertainment-related audio, video, text and multimedia content; providing search engines for obtaining data on a global computer network; information, advisory and consultancy services relating to all the aforesaid; operating search engines; computer consulting and support services for scanning information into computer discs.

45 Online social networking services; providing a social networking website.

## Description

No data

## Owners

### Apple Inc.

ID	839	Country	US - United States	Correspondence address	
Organisation	Apple Inc.			Apple Inc.	Hidden. You can set your contact details to be publicly available via the User Area.
Legal status	Legal entity	State/country	California	One Apple Park Way	
State, district or L...	California	Town	Cupertino	Cupertino, California 95014	
		Post code	95014	ESTADOS UNIDOS (DE AMÉRICA)	Hidden. You can set your contact details to be publicly available via the User Area.
		Address	One Apple Park Way		Hidden. You can set your contact details to be publicly available via the User Area.

## Representatives

### LOCKE LORD LLP

ID	41701	Country	GB - United Kingdom	Correspondence address	
Organisation	n/a			Locke Lord (UK) LLP	Hidden. You can set your contact details to be publicly available via the User Area.
Legal status	Legal person	State/country	n/a	201 Bishopsgate	
Type	Association	Town	London	London EC2M 3AB	
		Post code	EC2M 3AB	REINO UNIDO	Hidden. You can set your contact details to be publicly available via the User Area.
		Address	201 Bishopsgate		Hidden. You can set your contact details to be publicly available via the User Area.

## Correspondence

From	Procedure	Filing number	Subject	Date	Action
	Opposition	002737461	B227B - Notification to the applicant/holder of suspension of the opposition proceedings	30/05/2019	
	Opposition	002737461	B227A - Notification to the opponent of suspension of the opposition proceedings	30/05/2019	
	Opposition	002737461	Letter to the EUIPO	28/05/2019	
	Opposition	002737461	Letter to the EUIPO	27/05/2019	
	Opposition	002737461	B224B	16/04/2019	
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	Opposition	002737461	B224A - Notification to the opponent of extension of a time limit	16/04/2019	
Click for more information					

	Issue	Procedure	Filing number	Subject	Date	Action
		Opposition	002737461	B227B - Notification to the applicant/holder of suspension of the opposition proceedings	16/08/2018	
		Opposition	002737461	B227A - Notification to the opponent of suspension of the opposition proceedings	16/08/2018	
		Opposition	002737461	Letter to the EUIPO	16/08/2018	
Showing 1 to 10 of 174 entries						

## IR transformation

No data

## Seniority

No data

## Exhibition priority

No data

## Priority

Country	Filing number	Date	Status
Jamaica	066842	27/03/2015	Claimed
Jamaica	068019	01/09/2015	Claimed
Jamaica	068020	01/09/2015	Claimed
Jamaica	068018	01/09/2015	Claimed
Showing 1 to 4 of 4 entries			

## Publications

Bulletin number	Date	Section	Description
2016/073	20/04/2016	A.1	Applications published under Article 44 EUTMR (Article 39 EUTMR before 01/10/2017)
Showing 1 to 1 of 1 entries			

## Cancellation

No data

## Recordals

Bulletin number	Date	Section	Filing number	Title	Subject
			014477999	Proprietor	Change of name and address
Showing 1 to 1 of 1 entries					

## Oppositions

Filing number	Date	Class	Opponent	Representation	Language	Reference	Status	Related opposition
002737461	19/07/2016				English	1475466-03879/PFA/TG	Suspended	Class 12 Vehicles;
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Registration number	Date	Grounds	Opponent	Representative	Language	Refutation	Status	Content of opposition
		Likelihood of confusion	Bayerische Motoren Werke Aktiengesellschaft					apparatus for locomotion by land, air, water or rail; consoles being parts of vehicle interiors; dashboards; automotive interior trim and interior trim parts of automobiles; anti-theft devices for vehicles; anti-theft alarms for vehicles; bicycles; golf carts; wheel chairs; air pumps being vehicle accessories; motor cycles; vehicles for locomotion by land, air, water or rail; motor cars; pumps for bicycles, cycles; cable transport apparatus and installations; baby carriages; sleighs [vehicles]; vehicle wheel tires [tyres]; repair outfits for inner tubes; aeronautical apparatus, machines and appliances; steering gears for ships / ships' steering gears; seat covers for vehicles; parts for all the aforesaid goods.

Showing 1 to 1 of 1 entries

## Appeals

No data

## Decisions

No data

## Renewals

No data

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## Trade mark relations

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X



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x

**Fra:** - PVS Patent- og Varemærkestyrelsens officielle postkasse  
**Sendt:** 9. september 2019 15:04  
**Til:** 3 - PVS Poprettelsen nye sager  
**Emne:** VS: Indsigelse mod dansk del af international registrering nr. 1433787, Mi Cloud (grafisk)  
**Vedhæftede filer:** 0214\_001.pdf

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**Fra:** Heidi Bruun Rasmussen [mailto:heidi.bruun@dlapiper.com]  
**Sendt:** 9. september 2019 14:00  
**Til:** - PVS Patent- og Varemærkestyrelsens officielle postkasse  
**Cc:** Annemette Ellermann  
**Emne:** Indsigelse mod dansk del af international registrering nr. 1433787, Mi Cloud (grafisk)

Se venligst vedhæftede indsigelse.

Vi beder jer venligst trække kr. 2.500 fra vores konto PVS87.

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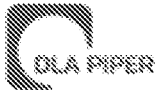
**Heidi Bruun Rasmussen**

Varemærkeassistent

Ansvarlig partner: Annemette Ellermann

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Patent- og Varemærkestyrelsen  
Helgeshøj Alle 81  
2630 Taastrup

Indsigelse mod dansk del af international registrering nr. 1433787

**Mi Cloud**

Ansøger: Xiaomi Inc.

Indsiger: Apple Inc.

9. september 2019

J.nr.: 338083/O44603DK01

Annemette Ellermann Holmbom

Advokat

Dir. tlf. 33 34 04 37

Mail annemette.ellermann@dlapi-  
per.com

Indsigelsesgebyr: 2.500 kr. (trækkes fra rettighedskonto PVS87)

Heidi Bruun Rasmussen

Sekretær

Dir. tlf. 33 34 02 47

I medfør af Varemærkelovens §19 jf § 15 nedlægger vi hermed på vegne af Apple Inc., Cupertino, Californien, USA,

### INDSIGELSE

mod gyldigheden af den danske del af international varemærkeregistring nr. 1433787, Mi Cloud (grafisk). Indsigelsen rettes mod alle de varer og tjenesteydelser i klasse 9, 35, 38 og 42, som Mi Cloud søges registreret for, hvilket er:

Klasse 9: Computer software applications, downloadable; intercommunication apparatus; portable media players; cameras [photography]; video screens; remote control apparatus; measuring instruments; sensors; chips [integrated circuits]; transparencies [photography]; theft prevention installations, electric; batteries, electric.

Klasse 35: Advertising; accounting; sponsorship search; provision of space on websites for advertising goods and services; providing business information via a web site; provision of an on-line marketplace for buyers and sellers of goods and services; sales promotion for others; personnel management consultancy; relocation

DLA Piper Denmark  
Advokatpartnerselskab (CVR-nummer 35 20 93 52) er en del af det globale advokatfirma DLA Piper, der opererer via flere særskilte juridiske enheder. Vores kontorer i Danmark ligger på Rådhuspladsen 4, 1550 København V, og ØKK1, Hack Kampmanns Plads 2, Niveau 3, 8000 Aarhus C.

På [www.dlapiper.com](http://www.dlapiper.com) findes en liste over kontorer og firmaoplysninger

Hovedtelefonnummer i Danmark:  
+45 33 34 00 00

services for businesses; updating and maintenance of data in computer databases.

Klasse 38: Message sending; communications by computer terminals; computer aided transmission of messages and images; providing user access to global computer networks; providing access to databases; providing Internet chatrooms; providing online forums; video-on-demand transmission; paid television program broadcasting; television broadcasting.

Klasse 42: Monitoring of computer systems by remote access; computer software design; electronic data storage; conversion of data or documents from physical to electronic media; cloud computing; software as a service [SaaS]; hosting computer sites [web sites]; technical research; industrial design; design of interior decor.

Varemærkeansøger er Xiaomi Inc. Beijing, Kina, og bekendtgørelsen af den danske del af den internationale registrering fandt sted i Dansk Varemærketidende den 10. juli 2019.

Vi nedlægger indsigelsen under henvisning til bestemmelsen i Varemærkelovens §15 stk. 1 nr. 2, §15 stk. 2 nr. 3 og §15 stk. 3 nr. 1, idet det publicerede mærke Mi Cloud er forveksleligt med Apple Inc.s ældre, velkendte og vitterligt kendte varemærke ICLOUD. Dokumentation for velkendthed og for at iCloud er vitterligt kendt vil blive fremsendt sammen med den uddybende indsigelsesbegrundelse.

Apple Inc.s ældre varemærkerettigheder omfatter danske varemærkeregistreringer og EU-varemærkeregistreringer af ICLOUD både som ordmærke og i kombination med en figur for de identiske eller lignende varer og tjenesteydelser. Der henvises til støtte derfor til de følgende varemærkeregistreringer, som denne indsigelse er baseret på:

International registrering der designerer EU nr. 970388, der omfatter de følgende varer og tjenesteydelser i klasse 9 og 42:

*Klasse 9: Computer programs (downloadable software); stored computer programs; magnetic data media; magnetic data carriers; apparatus and instruments for weighing, measuring, signalling, checking (supervision), life-saving and teaching; apparatus for recording, transmission or reproduction of sound or images; data processing equipment.*

*Klasse 42: Providing computer programs and web pages for others via a global computer network.*

EU-varemærkeregistrering nr. 010011484, der omfatter de følgende varer i klasse 9:

*Klasse 9: Accessories, parts, fittings, and testing apparatus for all of the following goods: computers, computer peripheral devices, computer terminals; computer gaming machines; computer and electronic games.*

EU-varemærkeregistrering nr. 011571866, der omfatter de følgende varer og tjenesteydelser i klasserne 9, 35 og 42:

*Klasse 9: Computer software for authoring, downloading, transmitting, receiving, editing, extracting, encoding, decoding, displaying, storing and organizing text, graphics, images, and electronic publications; computer software, namely, operating system programs, data synchronization programs, and application development tool programs for personal and handheld computers; pre-recorded computer programs for personal information management, database management software, character recognition software, telephony management software, electronic mail and messaging software, paging software, mobile telephone software; database synchronization software, computer programs for accessing, browsing and searching online databases, computer software for the redirection of messages, Internet e-mail, and/or other data to one or more electronic handheld devices from a data store on or associated with a personal computer or a server; computer software for the synchronization of data between a remote station or device and a fixed or remote station or device.*

*Klasse 35: Computerized database and file management; data processing services; computerized data storage and retrieval services; computerized data storage and retrieval services for text, data, image, audio, video, and multimedia content; creating indexes of information, sites and other resources available on global computer networks and other electronic and communications networks for others; searching, browsing and retrieving information, sites, and other resources available on global computer networks and other electronic and communications networks for others; organizing content of information provided over a global computer network and other electronic and communications networks according to user preferences; providing an online searchable database of text, data, image, audio, video, and multimedia content in the fields of computer hardware, computer software, consumer electronics, telecommunications and*



*multimedia goods, mobile phones, handheld digital electronic devices, and other consumer electronics and accessories, peripherals, and carrying cases for such products.*

*Klasse 42: Application service provider (ASP) services featuring software for authoring, downloading, transmitting, receiving, editing, extracting, encoding, decoding, displaying, storing and organizing text, graphics, images, and electronic publications; providing search engines for obtaining data on a global computer network.*

EU-varemærkeregistrering nr. 014067755, der omfatter de følgende varer og tjenesteydelser i klasse 9, 35 og 38:

*Klasse 9: Accessories, parts, fittings, and testing apparatus for all of the following goods: Computer hardware; microprocessors, memory boards, monitors, displays, keyboards, cables, modems, printers, disk drives, adapters, adapter cards, connectors and drivers; blank computer storage media; magnetic data carriers; computer software; computer software for authoring, downloading, transmitting, receiving, editing, extracting, encoding, decoding, displaying, storing and organizing text, graphics, images, and electronic publications; computer software and firmware, namely, operating system programs, data synchronization programs, and application development tool programs for personal and handheld computers; computer hardware and software for providing integrated telephone communication with computerized global information networks; pre-recorded computer programs for personal information management, database management software, character recognition software, telephony management software, electronic mail and messaging software, paging software, mobile telephone software; database synchronization software, computer programs for accessing, browsing and searching online databases, computer software for the redirection of messages, Internet e-mail, and/or other data to one or more electronic handheld devices from a data store on or associated with a personal computer or a server; computer software for the synchronization of data between a remote station or device and a fixed or remote station or device; downloadable electronic publications in the nature of books, plays, pamphlets, brochures, newsletters, journals, magazines, and periodicals on a wide range of topics of general interest; handheld digital electronic devices and software related thereto; MP3 and other digital format audio players; hand held computers, tablet computers, personal digital assistants, electronic organizers, electronic notepads; mobile digital electronic devices, global positioning system (GPS) devices, telephones; handheld and mobile digital electronic devices for the sending and receiving of telephone*

*calls, faxes, electronic mail, and other digital data; cordless telephones; mobile telephones; parts and accessories for mobile telephones; facsimile machines, answering machines, cameras, videophones, telephone-based information retrieval software and hardware; electronic handheld units for the wireless receipt, storage and/or transmission of data and messages, and electronic devices that enable the user to keep track of or manage personal information; electronic communication equipment and instruments; telecommunications apparatus and instruments; fonts, typefaces, type designs and symbols in the form of recorded data; chips, discs and tapes bearing or for recording computer programs and software; random access memory, read only memory; solid state memory apparatus; computer and electronic games; user manuals in electronically readable, machine readable or computer readable form for use with, and sold as a unit with, all the aforementioned goods; apparatus for data storage; hard drives; miniature hard disk drive storage units; audio video discs, CD-ROMs, and digital versatile discs; mouse pads; batteries; rechargeable batteries; chargers; chargers for electric batteries; headphones; stereo headphones; in-ear headphones; stereo speakers; audio speakers; audio speakers for home; monitor speakers; speakers for computers; personal stereo speaker apparatus; radio receivers, amplifiers, sound recording and reproducing apparatus, electric phonographs, record players, high fidelity stereo apparatus, tape recorders and reproducing apparatus, loudspeakers, multiple speaker units, microphones; digital audio and video devices; audio cassette recorders and players, video cassette recorders and players, compact disc players, digital versatile disc recorders and players, digital audio tape recorders and players; digital music and/or video players; radios; video cameras; audio, video, and digital mixers; radio transmitters; car audio apparatus; computer equipment for use with all of the aforesaid goods; electronic apparatus with multimedia functions for use with all of the aforesaid goods; electronic apparatus with interactive functions for use with all of the aforesaid goods Parts and fittings for all the aforesaid goods Covers, bags and cases adapted or shaped to contain all of the aforesaid goods, made of leather, imitations of leather, cloth, or textile materials.*

*Klasse 35: Advertising agency services; advertising, marketing, and promotion services; advertising and marketing consultation; sales promotion services; promoting the goods and services of others; conducting market research; analysis of advertising response and market research; preparation, production, and dissemination of advertisements and advertising material for others; media planning services; administration of consumer loyalty programs; arranging and conducting incentive rewards programs to promote the sale of goods and services; business services, namely, dissemination of advertising for others via computer*

*networks and global communication networks; compilations of directories for publishing on the Internet and other electronic, computer and communications networks; retail store and online retail store services in the fields of computer hardware, computer software, consumer electronics, telecommunications and multimedia goods, mobile phones, handheld digital electronic devices, and other consumer electronics and accessories, peripherals, and carrying cases for such products; retail store services provided via the Internet and other computer, electronic and communications networks in the field of computer hardware, computer software, consumer electronics, telecommunications and multimedia goods and accessories, mobile phones, handheld digital electronic devices, and other consumer electronics and accessories, peripherals, and carrying cases for such products; retail store services in the field of books, magazines, periodicals, newsletters, journals and other publications on a wide range of topics of general interest, provided via the Internet and other computer, electronic and communications networks; retail store services in the field of entertainment featuring movies, television programs, sporting events, musical works, and audio and audiovisual works, via the Internet and other computer, electronic and communications networks; retail store services featuring computer, electronic and entertainment products, telecommunications apparatus, mobile phones, handheld mobile digital electronic devices, and other consumer electronics, computer software, and accessories, peripherals, and carrying cases for such products, via the Internet and other computer, electronic and communications networks; product demonstrations provided in-store and via global communications networks and other electronic and communications networks; information, advisory and consultancy services relating to all the aforesaid.*

*Klasse 38: Providing user access to the Internet (service providers).*

EU-varemærkeregistrering nr. 013002928, der omfatter de følgende varer og tjenesteydelser i klasse 9, 35 og 42:

*Klasse 9: Mouse pads; batteries; rechargeable batteries; chargers; chargers for electric batteries; headphones; stereo headphones; in-ear headphones; stereo speakers; audio speakers; audio speakers for home; monitor speakers; speakers for computers; personal stereo speaker apparatus; loudspeakers, multiple speaker units, microphones; covers, bags and cases adapted or shaped to contain all of the aforesaid goods, made of leather, imitations of leather, cloth, or textile materials.*



*Klasse 35: Advertising agency services; advertising, marketing, and promotion services; advertising and marketing consultation; sales promotion services; promoting the goods and services of others; conducting market research; analysis of advertising response and market research; preparation, production, and dissemination of advertisements and advertising material for others; media planning services; administration of consumer loyalty programs; arranging and conducting incentive rewards programs to promote the sale of goods and services; retail store and online retail store services in the fields of computer hardware, computer software, consumer electronics, telecommunications and multimedia goods, mobile phones, handheld digital electronic devices, and other consumer electronics and accessories, peripherals, and carrying cases for such products; retail store services provided via the Internet and other computer, electronic and communications networks in the field of computer hardware, computer software, consumer electronics, telecommunications and multimedia goods and accessories, mobile phones, handheld digital electronic devices, and other consumer electronics and accessories, peripherals, and carrying cases for such products; retail store services in the field of books, magazines, periodicals, newsletters, journals and other publications on a wide range of topics of general interest, provided via the Internet and other computer, electronic and communications networks; retail store services in the field of entertainment featuring movies, television programs, sporting events, musical works, and audio and audiovisual works, via the Internet and other computer, electronic and communications networks; retail store services featuring computer, electronic and entertainment products, telecommunications apparatus, mobile phones, handheld mobile digital electronic devices, and other consumer electronics, computer software, and accessories, peripherals, and carrying cases for such products, via the Internet and other computer, electronic and communications networks; product demonstrations provided in-store and via global communications networks and other electronic and communications networks.*

*Klasse 42: Design and creation of advertisements and advertising material for others,*

og endelig EU-varemærkeregistrering nr. 014597736, der omfatter de følgende varer og tjenesteydelser i klasse 9, 38 og 42:

*Klasse 9: Computers, computer peripheral devices, computer terminals; computer hardware; microprocessors, memory boards, monitors, displays, keyboards, cables, modems, printers, disk drives, adapters, adapter cards, connectors and drivers; blank computer storage media; magnetic data carriers;*



*computer software; computer software for authoring, downloading, transmitting, receiving, editing, extracting, encoding, decoding, displaying, storing and organizing text, graphics, images, and electronic publications; computer software and firmware, namely, operating system programs, data synchronization programs, and application development tool programs for personal and handheld computers; computer hardware and software for providing integrated telephone communication with computerized global information networks; pre-recorded computer programs for personal information management, database management software, character recognition software, telephony management software, electronic mail and messaging software, paging software, mobile telephone software; database synchronization software, computer programs for accessing, browsing and searching online databases, computer software for the redirection of messages, Internet e-mail, and/or other data to one or more electronic handheld devices from a data store on or associated with a personal computer or a server; computer software for the synchronization of data between a remote station or device and a fixed or remote station or device; downloadable electronic publications in the nature of books, plays, pamphlets, brochures, newsletters, journals, magazines, and periodicals on a wide range of topics of general interest; handheld digital electronic devices for data processing, information processing, storing and displaying data, transmitting and receiving data, transmission of data between computers and software related thereto; MP3 and other digital format audio players; hand held computers, tablet computers, personal digital assistants, electronic organizers, electronic notepads; mobile digital electronic devices, global positioning system (GPS) devices, telephones; handheld and mobile digital electronic devices for the sending and receiving of telephone calls, faxes, electronic mail, and other digital data; cordless telephones; mobile telephones; parts and accessories for mobile telephones; facsimile machines, answering machines, cameras, videophones, telephone-based information retrieval software and hardware; electronic handheld units for the wireless receipt, storage and/or transmission of data and messages, and electronic devices that enable the user to keep track of or manage personal information; electronic communication equipment and instruments; telecommunications apparatus and instruments; fonts, typefaces, type designs and symbols in the form of recorded data; chips, discs and tapes bearing or for recording computer programs and software; random access memory, read only memory; solid state memory apparatus; computer games; user manuals in electronically readable, machine readable or computer readable form for use with, and sold as a unit with, all the aforementioned goods; apparatus for data storage; hard drives; miniature hard disk drive storage units; audio video discs, CD-ROMs, and digital versatile discs; computer equipment for use with all of the aforesaid goods; electronic communications apparatus with multimedia*



*functions for use with the aforesaid goods; electronic communications apparatus with interactive functions for use with the aforesaid goods; accessories, parts, fittings, and testing apparatus for all of the aforesaid goods; parts and fittings for all the aforesaid goods.*

*Klasse 38: Telecommunications; communication and telecommunication services; telecommunication access services; communications by computer; communication between computers; electronic sending of data and documentation via the Internet or other databases; supply of data and news by electronic transmission; providing telecommunication access to websites and electronic news services online allowing the download of information and data; providing telecommunication access to web sites on the Internet; delivery of digital music by telecommunications; providing wireless telecommunications via electronic communications networks; wireless digital messaging, paging services, and electronic mail services, including services that enable a user to send and/or receive messages through a wireless data network; one-way and two-way paging services; communication by computer, computer intercommunication; telex, telegram and telephone services; broadcasting or transmission of radio and television programs; time sharing services for communication apparatus; provision of telecommunications access and links to computer databases and the Internet; electronic transmission of streamed and downloadable audio and video files via computer and other communications networks; webcasting services (transmission); delivery of messages by electronic transmission; provision of connectivity services and access to electronic communications networks, for transmission or reception of audio, video or multimedia content; provision of telecommunications connections to electronic communication networks, for transmission or reception of audio, video or multimedia content; providing telecommunication access to digital music web sites on the Internet; providing telecommunication access to MP3 web sites on the Internet; delivery of digital music by telecommunications; provision of telecommunications connections to the Internet or computer databases; electronic mail services; telecommunication of information (including web pages); video broadcasting, broadcasting pre-recorded videos featuring music and entertainment, television programs, motion pictures, news, sports, games, cultural events, and entertainment-related programs of all kinds, via a global computer network; streaming of video content via a global computer network; subscription audio broadcasting via a global computer network; audio broadcasting; audio broadcasting of spoken word, music, concerts, and radio programs, broadcasting pre-recorded videos featuring music and entertainment, television programs, motion pictures, news, sports, games, cultural events, and entertainment-related programs of all kinds, via computer and other communications networks; streaming*

*of audio content via a global computer network; electronic transmission of audio and video files via communications networks; communication services, namely, matching users for the transfer of music, video and audio recordings via communication networks; providing on-line bulletin boards for the transmission of messages among computer users concerning entertainment, music, concerts, videos, radio, television, film, news, sports, games and cultural events; rental and hire of communication apparatus and electronic mail-boxes; electronic communications consultancy; facsimile, message collection and transmission services; transmission of data and of information by electronic means, computer, cable, radio, teleprinter, teletype, electronic mail, telecopier, television, microwave, laser beam, communications satellite or electronic communication means; transmission of data by audio-visual apparatus controlled by data processing apparatus or computers; information, advisory and consultancy services relating to all the aforesaid; provision of telecommunication access time to web-sites featuring multimedia materials; providing telecommunication access to databases and directories via communications networks for obtaining data in the fields of music, video, film, books, television, games and sports; providing users with telecommunication access time to electronic communications networks with means of identifying, locating, grouping, distributing, and managing data and links to third-party computer servers, computer processors and computer users; providing user access to the Internet (service providers); providing temporary internet access to use on-line non-downloadable software to enable users to program audio, video, text and other multimedia content, including music, concerts, videos, radio, television, news, sports, games, cultural events, and entertainment-related programs.*

*Klasse 42: Application service provider (ASP) services featuring computer software; application service provider (ASP) services featuring software for authoring, downloading, transmitting, receiving, editing, extracting, encoding, decoding, displaying, storing and organizing text, graphics, images, and electronic publications; scientific and technological services and research and design relating thereto; design and development of computer hardware and software; computer hardware and software consulting services; rental of computer hardware and software apparatus and equipment; multimedia and audio-visual software consulting services; computer programming; support and consultation services for developing computer systems, databases and applications; information relating to computer hardware or software provided on-line from a global computer network or the Internet; creating and maintaining web-sites; hosting the web-sites of others; providing search engines for obtaining data via communications networks; application service provider (ASP) services featuring software for use in connection with online music subscription service, software that enables users*

*to play and program music and entertainment-related audio, video, text and multimedia content, and software featuring musical sound recordings, entertainment-related audio, video, text and multimedia content; providing search engines for obtaining data on a global computer network; information, advisory and consultancy services relating to all the aforesaid; operating search engines; computer consulting and support services for scanning information into computer discs.*

Dertil gøres det supplerende gældende, at Apple Inc.s varemærke ICLOUD er såvel velkendt som vitterligt kendt, og at ICLOUD af kundemålgruppen uvilkårligt vil blive forbundet med Apple Inc. og Apple's øvrige varemærker, der starter med "i-".

Til støtte for indsigelsen gøres det følgende foreløbigt gældende:

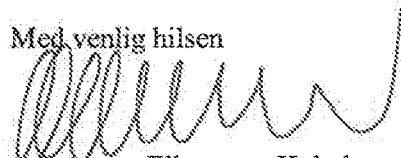
- De af ansøgningen omfattede varer og tjenesteydelser i klasse 9, 35, 38 og 42 er identiske og ligeartede med de varer og tjenesteydelser, der er omfattet af Apple Inc.s ældre registrerede varemærkerettigheder.
- Mi Cloud er kvasi-identisk med ICLOUD, som ordmærket kun adskiller sig fra med ét bogstav. Mærkerne er lydigt identiske, idet Mi udtales "maj", fordi det er efterfulgt af det engelske ord "Cloud", og da I og MI er ens i udtalen. Dertil kommer, at Mi Cloud begrebsmæssigt og visuelt ligger meget tæt på ICLOUD.
- ICLOUD er et velkendt og vitterligt kendt varemærke, der udgør en del af Apple's i-serie af velkendte varemærker, som også tæller iPhone og iPad. Velkendte varemærker udstrækker som bekendt varemærkebeskyttelsen til andre varer og tjenesteydelser end de klasser, som de ældre varemærkere registreringer omfatter.
- at kundemålgrupperne for produkterne og tjenesteydelserne er sammenfaldende eller overlappende,
- at distributionskanalerne er sammenfaldende eller overlappende,
- at der risiko for forveksling,
- at det nyligt publicerede varemærke er udelukket fra registrering, da det ligner indsigers velkendte og vitterligt kendte varemærke ICLOUD, og at brugen af Mi Cloud vil medføre en utilbørlig udnyttelse af Apple Inc.s velkendte varemærkes særpræg og renommé, og at der er risiko for, at dette særpræg og renommé lider skade ved brugen af Mi Cloud, samt
- at der er risiko for, at kundemålgruppen antager, at der er en forbindelse mellem mærkerne Mi Cloud og ICLOUD.

Til supplerende støtte for indsigelsen peger vi på, at Xiaomi Inc. også har ansøgt om registrering af MI PAD som EU-varemærke, ansøgning nr. 012780987. IPAD

er et andet af Apple Inc.s velkendte i-serie mærker. Se vedhæftede dom i sagen om MI PAD og IPAD, der er i Apple Inc.s favør, fra EU-domstolens General Court.

Vi skal venligst anmode om en frist på to måneder til at uddybe indsigelsen.

Med venlig hilsen



Minemette Ellermann Holmborn

Bilag 1: The General Courts dom af 5. December 2017



LUXEMBOURG

ОБЩЕСЪЮЗНА СУПРЕМАТЕНА СЪД  
TRIBUNAL GENERAL DE LA UNION EUROPEA  
TRIBUNAL EVROPSKÉ UNIE  
DEN EUROPEISKE UNIONS RET  
GERICHT DER EUROPÄISCHEN UNION  
EUROOPA LIIDU ÜLDKOHUS  
ΓΕΝΙΚΟ ΔΙΚΑΣΤΗΡΙΟ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΕΝΩΣΗΣ  
GENERAL COURT OF THE EUROPEAN UNION  
TRIBUNAL DE L'UNION EUROPÉENNE  
CÚIRT GHINEARÁLTA AN AONTAIS EORPAIGH  
OPĆI SUD EUROPSKE UNIE  
TRIBUNALE DELL'UNIONE EUROPEA

1/20

BIROPAS SAVIENĪBAS VISPĀRĒJĀ TIESA  
EUROPOS SĄJUNGOS BENDRASIS TEISMAS  
AZ EURÓPAI UNIÓ TÖRVÉNYSZÉKE  
IL-QORTI ĠENERALI TAL-UNJONI EWROPEA  
GERECHT VAN DE EUROPESE UNIE  
SĄD UNII EUROPEJSKIEJ  
TRIBUNAL GERAL DA UNIÃO EUROPEIA  
TRIBUNALUL UNIUNII EUROPENE  
VŠEOBECNÝ SÚD EURÓPSKEJ UNIE  
SPLOŠNO SODIŠČE EVROPSKE UNIE  
EUROOPAN UNIONIN YLEINEN TUOMIOISTUIN  
EUROPEISKA UNIONENS TRIBUNAL

**BY FAX**

- 807843 -

Luxembourg, 05/12/2017

T-893/16-35

Mr John Olsen  
Mr Paolo Andreottola  
Mr Guy Tritton  
Locke Lord (UK) LLP  
201 Bishopsgate  
London  
EC2M 3AB  
UNITED KINGDOM

Case T-893/16

Xiaomi, Inc.

v

European Union Intellectual Property Office

Other party(ies) before the Board of Appeal, intervener(s) before the General Court  
Apple Inc.

The Registrar of the General Court encloses a copy of the following document(s):

Judgment	-	807828
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B. Pastor  
Deputy Registrar

*Your attention is drawn to the advantages of the e-Curia application. This application enables procedural documents to be exchanged with the Registry by electronic means alone. It is simple to use, secure and free of charge. You can find full information on e-Curia on the website of the Court of Justice of the European Union ([http://curia.europa.eu/jcms/jcms/P\\_78957](http://curia.europa.eu/jcms/jcms/P_78957)) or by contacting the Registry staff directly.*



ОБЩЕ СЪД НА ЕВРОПЕЙСКИЯ СЪЮЗ  
TRIBUNAL GENERAL DE LA UNION EUROPEA  
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DEN EUROPÆISKE UNIONES RET  
GERICHT DER EUROPÄISCHEN UNION  
EUROOPA LIIDU ÜLDKOHTUS  
ΓΕΝΙΚΟ ΔΙΚΑΣΤΗΡΙΟ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΕΝΩΣΗΣ  
GENERAL COURT OF THE EUROPEAN UNION  
TRIBUNAL DE L'UNION EUROPÉENNE  
CÔURT CHINEARĂ LA AN AȘTĂLĂȘ CORDAȘO  
OPĆI SUD EUROPSKE UNIE  
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EUROPAS SAVIENBAS VISPĀRĒJĀ TIESA  
EUROPOS SAJUNGOS BENDRASIS TEISMAS  
AZ EURÓPAI UNIÓ TÖRVÉNYSZÉKE  
U-ĞORII GENERALI TAL-UNIONI EWROPEA  
OERECHT VAN DE EUROPESE UNIE  
SAD UNI EUROPEJSKIEJ  
TRIBUNAL GERAL DA UNIÃO EUROPEIA  
TRIBUNALUL UNIUNII EUROPENE  
VŠEOBECNÝ SÚD EURÓPSKEJ UNIE  
SPLOŠNO SODIŠČE EVROPSKE UNIE  
EUROOPAN UNIONIN YLEINEN TUOMIOISTUIN  
EUROPEISKA UNIONENS TRIBUNAL

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## JUDGMENT OF THE GENERAL COURT (Third Chamber)

5 December 2017 \*

(EU trade mark — Opposition proceedings — Application for EU word mark MI PAD — Earlier EU word mark IPAD — Relative ground for refusal — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001) — Likelihood of confusion — Similarity of the signs — Similarity of the goods and services)

**-207828-**

In Case T-893/16,

**Xiaomi, Inc.**, established in Beijing (China), represented by T. Raab and C. Tenkhoff, lawyers,

applicant,

v

**European Union Intellectual Property Office (EUIPO)**, represented by J. Ivanauskas, acting as Agent,

defendant,

the other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court, being

**Apple Inc.**, established in Cupertino, California (United States), represented by J. Olsen and P. Andreottola, Solicitors, and by G. Tritton, Barrister,

ACTION brought against the decision of the First Board of Appeal of EUIPO of 22 September 2016 (Case R 363/2016-1), relating to opposition proceedings between Apple and Xiaomi,

THE GENERAL COURT (Third Chamber),

\* Language of the case: English



JUDGMENT OF 5. 12. 2017 — CASE T-893/16

composed of S. Frimodt Nielsen, President, I.S. Forrester (Rapporteur) and E. Perillo, Judges,

Registrar: E. Coulon,

having regard to the application lodged at the Court Registry on 19 December 2016,

having regard to the response of EUIPO lodged at the Court Registry on 17 February 2017,

having regard to the response of the intervener lodged at the Court Registry on 13 March 2017,

having regard to the fact that no request for a hearing was submitted by the parties within three weeks after service of notification of the close of the written part of the procedure, and having decided to rule on the action without an oral part of the procedure, pursuant to Article 106(3) of the Rules of Procedure of the General Court,

gives the following

### **Judgment**

#### **Background to the dispute**

- 1 On 10 April 2014, the applicant, Xiaomi, Inc., filed an application for registration of an EU trade mark with the European Union Intellectual Property Office (EUIPO) pursuant to Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark (OJ 2009 L 78, p. 1), as amended (replaced by Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017 L 154, p. 1)).
- 2 The mark in respect of which registration was sought is the word sign MI PAD.
- 3 The goods and services in respect of which registration was sought are in Classes 9 and 38 of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended, and correspond, for each of those classes, to the following description:
  - Class 9: 'Portable and handheld electronic devices for transmitting, storing, manipulating, recording, and reviewing text, images, audio, video and data, including via global computer networks, wireless networks, and electronic communications networks; tablet computers, electronic book readers, periodical readers, digital audio and video players, digital cameras, electronic personal organizers, personal digital assistants, electronic

## XIAOMI v EUIPO — APPLE (MI PAD)

calendars, mapping and global positioning system (GPS) devices; computer peripheral devices; computer and portable and handheld electronic device accessories, namely monitors, displays, keyboards, mice, wires, cables, modems, disk drives, adapters, adapter cards, cable connectors, plug-in connectors, electrical power connectors, docking stations, charging stations, drivers, battery chargers, battery packs, memory cards and memory card readers, headphones and earphones, speakers, microphones, and headsets, cases, covers, and stands for portable and handheld electronic devices and computers; computer software for the development of content and service delivery across global computer networks, wireless networks, and electronic communications networks; downloadable audio works, visual works, audiovisual works and electronic publications featuring books, magazines, newspapers, periodicals, newsletters, journals and manuals on a variety of topics; computer software for transmitting, sharing, receiving, downloading, displaying, transferring, formatting, and converting content, text, visual works, audio works, audiovisual works, literary works, data, files, documents and electronic works via portable electronic devices and computers; computer game programs; downloadable music files; downloadable image files; video telephones; navigational instruments; screens [photoengraving]';

— Class 38: 'Telecommunication access services; communication by computer; transmission of data and of information by electronic means, broadcasting or transmission of radio and television programs; provision of telecommunications connections to computer databases and the Internet; electronic transmission of streamed and downloadable audio and video files via computer and other communications networks; web casting services; delivery of messages by electronic transmission; streaming of video content, streaming and subscription audio broadcasting of spoken word, music, concerts, and radio programs, broadcasting pre-recorded videos featuring music and entertainment, television programs, motion pictures, news, sports, games, cultural events, and entertainment-related programs of all kinds, via computer and other communications networks; providing online bulletin boards for the transmission of messages among computer users concerning entertainment in the nature of music, concerts, videos, radio, television, film, news, sports, games and cultural events; communication services, namely providing users access to communication networks for the transfer of music, video and audio recordings; teleconferencing services; providing Internet chat rooms; voice mail services; transmission of digital files'.

- 4 The trade mark application was published in *Community Trade Marks Bulletin* No 2014/096 of 26 May 2014.
- 5 On 22 August 2014, the intervener, Apple Inc., filed a notice of opposition pursuant to Article 41 of Regulation No 207/2009 (now Article 46 of Regulation 2017/1001) to registration of the mark applied for in respect of all the goods and services referred to in paragraph 3 above.

JUDGMENT OF 5. 12. 2017 — CASE T-893/16

6 The opposition was based on, *inter alia*, the earlier EU word mark IPAD, filed on 18 January 2010 and registered on 24 April 2013 under No 8817281 and covering, *inter alia*, goods and services in Classes 9 and 38 and corresponding, for each of those classes, to the following description:

- Class 9: 'Computers, computer peripheral devices, computer terminals; computer hardware; computer gaming machines, monitors, displays, keyboards, cables, modems, printers, disk drives, adapters, adapter cards, connectors and drivers; blank computer storage media; magnetic data carriers; computer software and firmware, namely operating system programs, data synchronization programs, and application development tool programs for personal and handheld computers; pre-recorded computer programs for personal information management, database management software, character recognition software, telephony management software, electronic mail and messaging software, paging software, mobile telephone software; database synchronization software, computer programs for accessing, browsing and searching online databases, computer hardware and software for providing integrated telephone communication with computerized global information networks; handheld digital electronic devices for data processing, information processing, storing and displaying data, transmitting and receiving data, transmission of data between computers and software related thereto; MP3 and other digital format audio players; hand held computers, tablet computers, personal digital assistants, electronic organizers, electronic notepads; mobile digital electronic devices for data processing, information processing, storing and displaying data, transmitting and receiving data, transmission of data between computers, global positioning system (GPS) devices, telephones; handheld and mobile digital electronic devices for the sending and receiving of telephone calls, faxes, electronic mail, and other digital data; cordless telephones; mobile telephones; parts and accessories for mobile telephones; facsimile machines, answering machines, cameras, videophones, telephone-based information retrieval software and hardware; electronic handheld units for the wireless receipt, storage and/or transmission of data and messages, and electronic devices that enable the user to keep track of or manage personal information; electronic communication equipment and instruments; telecommunications apparatus and instruments; computer software for the redirection of messages, Internet e-mail, and/or other data to one or more electronic handheld devices from a data store on or associated with a personal computer or a server; computer software for the synchronization of data between a remote station or device and a fixed or remote station or device; fonts, typefaces, type designs and symbols in the form of recorded data; discs and tapes bearing or for recording computer programs and software; computer and electronic games; computer equipment for use with any of the aforesaid goods; electronic apparatus with multimedia functions for use with any of the aforesaid goods; electronic apparatus with interactive functions for use with any of the aforesaid goods; accessories, parts, fittings, and testing apparatus for all the aforementioned goods; user manuals in

## XIAOMI V EUIPO — APPLE (MI PAD)

electronically readable, machine readable or computer readable form for use with, and sold as a unit with, all the aforementioned goods; apparatus for data storage; hard drives; miniature hard disk drive storage units; pre-recorded vinyl records, audio tapes, audio-video tapes, audio video cassettes, audio video discs; audio tapes; CD-ROMs; digital versatile discs; mouse pads; batteries; rechargeable batteries; chargers; chargers for electric batteries; headphones; stereo headphones; in-ear headphones; stereo speakers; audio speakers; audio speakers for home; monitor speakers; speakers for computers; personal stereo speaker apparatus; radio receivers, amplifiers, sound recording and reproducing apparatus, electric phonographs, record players, high fidelity stereo apparatus, tape recorders and reproducing apparatus, loudspeakers, multiple speaker units, microphones; digital audio and video devices; audio cassette recorders and players, video cassette recorders and players, compact disc players, digital versatile disc recorders and players, digital audio tape recorders and players; digital music and/or video players; radios; video cameras; audio, video, and digital mixers; radio transmitters; car audio apparatus; parts and fittings for all the aforesaid goods; bags and cases adapted or shaped to contain cameras and/or video cameras; mobile telephone covers; mobile telephone cases; mobile telephone cases made of leather or imitations of leather; mobile telephone covers made of cloth or textile materials; bags and cases adapted or shaped to contain MP3 players, hand held computers, tablet computers, personal digital assistants, global positioning system (GPS) devices, electronic organizers and electronic notepads; all of the aforesaid excluding

JUDGMENT OF 5. 12. 2017 — CASE T-893/16

content; provision of telecommunications connections to electronic communication networks, for transmission or reception of audio, video or multimedia content; providing telecommunication access to digital music websites on the Internet; providing telecommunication access to MP3 websites on the Internet; delivery of digital music by telecommunications; provision of telecommunications connections to the Internet or computer databases; electronic mail services; telecommunication of information (including web pages); video broadcasting, broadcasting pre-recorded videos featuring music and entertainment, television programs, motion pictures, news, sports, games, cultural events, and entertainment-related programs of all kinds, via a global computer network; streaming of video content via a global computer network; subscription audio broadcasting via a global computer network; audio broadcasting; audio broadcasting of spoken word, music, concerts, and radio programmes, broadcasting pre-recorded videos featuring music and entertainment, television programmes, motion pictures, news, sports, games, cultural events, and entertainment-related programmes of all kinds, via computer and other communications networks; streaming of audio content via a global computer network; electronic transmission of audio and video files via communications networks; communication services, namely matching users for the transfer of music, video and audio recordings via communication networks; providing online bulletin boards for the transmission of messages among computer users concerning entertainment, music, concerts, videos, radio, television, film, news, sports, games and cultural events; rental and hire of communication apparatus and electronic mail-boxes; electronic news services; electronic communications consultancy; facsimile, message collection and transmission services; transmission of data and of information by electronic means, computer, cable, radio, teleprinter, teletext, electronic mail, telecopier, television, microwave, laser beam, communications satellite or electronic communication means; transmission of data by audio-visual apparatus controlled by data processing apparatus or computers; information, advisory and consultancy services relating to all the aforesaid; provision of telecommunication access time to websites featuring multimedia materials; providing telecommunication access to databases and directories via communications networks for obtaining data in the fields of music, video, film, books, television, games and sports; providing users with telecommunication access time to electronic communications networks with means of identifying, locating, grouping, distributing, and managing data and links to third-party computer servers, computer processors and computer users; providing temporary Internet access to use online non-downloadable software to enable users to program audio, video, text and other multimedia content, including music, concerts, videos, radio, television, news, sports, games, cultural events, and entertainment-related programs; providing user access to the Internet (service providers)'.

## XIAOMI V EUIPO — APPLE (MI PAD)

- 7 The grounds relied on in support of the opposition were those set out in Article 8(1)(b), (4) and (5) of Regulation No 207/2009 (now Article 8(1)(b), (4) and (5) of Regulation 2017/1001).
- 8 On 16 December 2015, the Opposition Division upheld the opposition on the basis of Article 8(1)(b) of Regulation No 207/2009 and rejected the application for registration in respect of all the goods and services covered.
- 9 On 16 February 2016, the applicant filed a notice of appeal with EUIPO, pursuant to Articles 58 to 64 of Regulation No 207/2009 (now Articles 66 to 71 of Regulation 2017/1001), against the Opposition Division's decision.
- 10 By decision of 22 September 2016 ('the contested decision'), the First Board of Appeal of EUIPO dismissed the appeal. In particular, first, it considered that the marks at issue were highly visually and phonetically similar. Conceptually, it considered that the marks at issue were very similar in the English-speaking part of the European Union due to the element 'pad' — common to both marks — and that the conceptual comparison was neutral in the other parts of the European Union. Second, it considered that the marks at issue were both weakly distinctive, at least for the English-speaking public, in so far as the element 'i' of the earlier trade mark could be understood as indicating a relationship with the Internet and the element 'mi' of the mark applied for could be understood as the possessive pronoun 'my' in English. Consequently, taking into account the identity or the similarity of the goods and services covered by the marks at issue, the Board of Appeal concluded that the differences between those marks were not sufficient to rule out the existence of a likelihood of confusion and that the relevant public would think that the mark applied for was a variation on the earlier trade mark.

**Forms of order sought**

- 11 The applicant claims that the Court should:
- annul the contested decision;
  - order EUIPO and the intervener to pay the costs.
- 12 EUIPO contends that the Court should:
- dismiss the action in its entirety;
  - order the applicant to pay the costs.
- 13 The intervener contends that the Court should dismiss the action in its entirety.

JUDGMENT OF 5. 12. 2017 — CASE T-893/16

**Law**

- 14 In support of its action, the applicant raises a single plea in law, alleging infringement of Article 8(1)(b) of Regulation No 207/2009.
- 15 The applicant claims, in essence, that the marks at issue are not sufficiently similar to establish the existence of a likelihood of confusion, because of the high level of attention of the relevant public, the lack of distinctiveness of the common element 'pad', the differences between the distinctive elements of the marks at issue, and the weak distinctive character of the earlier trade mark.
- 16 EUIPO and the intervener dispute those arguments.
- 17 Article 8(1)(b) of Regulation No 207/2009 provides that, upon opposition by the proprietor of an earlier trade mark, the trade mark applied for must not be registered if because of its identity with, or similarity to, an earlier trade mark and the identity or similarity of the goods or services covered by the trade marks, there exists a likelihood of confusion on the part of the public in the territory in which the earlier trade mark is protected. The likelihood of confusion includes the likelihood of association with the earlier trade mark.
- 18 According to settled case-law, the risk that the public may believe that the goods or services in question come from the same undertaking or from economically-linked undertakings constitutes a likelihood of confusion. According to the same case-law, the likelihood of confusion must be assessed globally, according to the relevant public's perception of the signs and goods or services in question and taking into account all factors relevant to the circumstances of the case, in particular the interdependence between the similarity of the signs and that of the goods or services covered (see judgment of 9 July 2003, *Laboratorios RTB v OHIM — Giorgio Beverly Hills (GIORGIO BEVERLY HILLS)*, T-162/01, EU:T:2003:199, paragraphs 30 to 33 and the case-law cited).
- 19 For the purposes of applying Article 8(1)(b) of Regulation No 207/2009, a likelihood of confusion presupposes both that the marks at issue are identical or similar and that the goods or services which they cover are identical or similar. Those conditions are cumulative (see judgment of 22 January 2009, *Commercy v OHIM — easyGroup IP Licensing (easyHotel)*, T-316/07, EU:T:2009:14, paragraph 42 and the case-law cited).
- 20 Where the protection of the earlier trade mark extends to the entirety of the European Union, it is necessary to take into account the perception of the marks at issue by the consumer of the goods or services in question in that territory. However, it must be borne in mind that, for an EU trade mark to be refused registration, it is sufficient that a relative ground for refusal for the purposes of Article 8(1)(b) of Regulation No 207/2009 exists in part of the European Union (see, to that effect, judgment of 14 December 2006, *Must-Jägermeister v OHIM — Licorera Zacapaneca (VENADO with frame and others)*, T-81/03, T-82/03 and T-103/03, EU:T:2006:397, paragraph 76 and the case-law cited).

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*The relevant public*

- 21 According to case-law, in the global assessment of the likelihood of confusion, account should be taken of the average consumer of the category of goods concerned, who is reasonably well informed and reasonably observant and circumspect. It should also be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question (see judgment of 13 February 2007, *Mundipharma v OHIM — Altana Pharma (RESPICUR)*, T-256/04, EU:T:2007:46, paragraph 42 and the case-law cited).
- 22 In the present case, in the contested decision, the Board of Appeal considered that the goods and services in Classes 9 and 38 at issue were aimed at professional consumers with specific professional knowledge and at the general public. In that regard, it considered that the average consumer of the goods and services in question was deemed to be reasonably well informed and reasonably observant and circumspect. Furthermore, it considered that the relevant territory was that of the entirety of the European Union.
- 23 The applicant does not dispute that the goods and services in question are aimed at both the general public and professional consumers. By contrast, it submits, in essence, that the Board of Appeal failed to take account of the fact that the relevant public's level of attention was high in respect of the goods in question, in particular in respect of the tablet computers in Class 9, in so far as the purchase price for those goods is relatively high and they are subject to a period of use spanning several years, and that the Board of Appeal also failed to correctly define the territory on which its assessment of the likelihood of confusion was based.
- 24 EUIPO and the intervener dispute those arguments.
- 25 In that regard, first, regarding the relevant public's level of attention, although the purchase price of some of the goods in Class 9 covered by the mark applied for may be relatively high and those goods may be subject to a period of use spanning several years, it should be noted that the majority of those goods are electronics aimed at the general public which, nowadays, are relatively inexpensive, have a relatively short lifespan, and do not require any particular technical knowledge. Contrary to the applicant's assertions, that finding is valid not only in respect of goods such as, *inter alia*, memory cards, mouses, cables and other computer peripherals, but also in respect of tablet computers. The Opposition Division was therefore correct to conclude that, in the present case, the average consumer's level of attention ranged from average to high, depending on the complexity and the price of the goods and services concerned. That finding was not called in question by the Board of Appeal in the contested decision and must be endorsed.
- 26 In any event, the applicant's argument that the Board of Appeal failed to take account of the high level of attention of the relevant public must be rejected as having no factual basis, in so far as the Board of Appeal expressly considered that



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there was a likelihood of confusion on the part of the relevant public 'even supposing it has a higher level of attention' (paragraph 56 of the contested decision). The merits of that finding will be examined below.

- 27 Second, regarding the relevant territory, it must be found that the Board of Appeal considered that the relevant territory was that of the European Union as a whole. That finding is not disputed by the applicant and must be upheld.
- 28 Moreover, it is clear from the contested decision that the Board of Appeal considered that there was a likelihood of confusion both with regard to the English-speaking part of the European Union and with regard to the non-English-speaking part of the European Union (see, in particular, paragraph 50 of the contested decision). In so doing, the Board of Appeal considered that there was a likelihood of confusion throughout the territory of the European Union. The applicant's argument that the contested decision does not clearly indicate the territory in which there was a likelihood of confusion must therefore be rejected.

#### *Comparison of the goods and services*

- 29 According to settled case-law, in assessing the similarity of the goods or services in question, all the relevant factors relating to those goods or services should be taken into account (see judgment of 11 July 2007, *El Corte Inglés v OHIM — Bolaños Sabri (PiraNAM diseño original Juan Bolaños)*, T-443/05, EU:T:2007:219, paragraph 37 and the case-law cited).
- 30 In the present case, the Board of Appeal considered that the goods and services in question were identical in part and similar in part. Those findings have not been disputed by the parties.

#### *Comparison of the signs*

- 31 The global assessment of the likelihood of confusion must, so far as concerns the visual, phonetic or conceptual similarity of the signs at issue, be based on the overall impression given by the signs, bearing in mind, in particular, their distinctive and dominant elements. The perception of the marks by the average consumer of the goods or services in question plays a decisive role in the global assessment of that likelihood of confusion. In this regard, the average consumer normally perceives a mark as a whole and does not engage in an analysis of its various details (see judgment of 12 June 2007, *OHIM v Shaker*, C-334/05 P, EU:C:2007:333, paragraph 35 and the case-law cited).
- 32 Assessment of the similarity between two marks means more than taking just one component of a composite trade mark and comparing it with another mark. On the contrary, the comparison must be made by examining each of the marks in question as a whole, which does not mean that the overall impression conveyed to the relevant public by a composite trade mark may not, in certain circumstances, be dominated by one or more of its components (see judgment of 12 June 2007,

## XIAOMI V EUIPO — APPLE (MI PAD)

*OHIM v Shaker*, C-334/05 P, EU:C:2007:333, paragraph 41 and the case-law cited). It is only if all the other components of the mark are negligible that the assessment of the similarity can be carried out solely on the basis of the dominant element (judgments of 12 June 2007, *OHIM v Shaker*, C-334/05 P, EU:C:2007:333, paragraph 42, and of 20 September 2007, *Nestlé v OHIM*, C-193/06 P, not published, EU:C:2007:539, paragraph 42). That could be the case, in particular, where that component is capable on its own of dominating the image of that mark which members of the relevant public retain, with the result that all the other components are negligible in the overall impression created by that mark (judgment of 20 September 2007, *Nestlé v OHIM*, C-193/06 P, not published, EU:C:2007:539, paragraph 43).

- 33 It should also be borne in mind that, according to case-law, the initial part of word marks may be capable of attracting the attention of the consumer more than the following parts. However, that consideration cannot prevail in every case and cannot, in any event, call into question the principle that the assessment of the similarity of the signs must take account of the overall impression given by them (see judgment of 10 March 2016, *credentis v OHIM — Aldi Karlslunde (Curodont)*, T-53/15, not published, EU:T:2016:136, paragraph 35 and the case-law cited).
- 34 In the present case, regarding the comparison of the marks at issue, the Board of Appeal considered that they were highly visually similar, given that they coincided as to the letter sequence 'ipad' and differed only as to the presence of the letter 'm' at the beginning of the mark applied for. Phonetically, it considered that the marks at issue were similar, given that they coincided as to the pronunciation both of their common second syllable, 'pad', and of the vowel 'i', present in the first syllable of each of those marks. Conceptually, it considered that the marks at issue were very similar in the English-speaking part of the European Union due to the common element 'pad', which would be understood as meaning tablet or tablet computer by the relevant English-speaking public, whereas the conceptual comparison remained neutral in the non-English-speaking part of the European Union.
- 35 Regarding the distinctive and dominant nature of the constituent elements of the marks at issue, first, the Board of Appeal considered that the marks at issue contained no dominant elements. Second, it considered that the element 'pad', common to the signs at issue, had a weak distinctive character in the English-speaking part of the European Union, in so far as it would be understood as meaning tablet or tablet computer. It also considered that the letter 'i' of the earlier trade mark had a weak distinctive character, in so far as it could be understood as referring to the Internet, and that the letter group 'mi' of the mark applied for had an equally weak distinctive character, at least for the relevant English-speaking public, in so far as it could be understood as referring to the first person singular possessive pronoun 'my' in English.

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36 The applicant submits, in essence, that the common element 'pad' must be disregarded in the comparison of the marks at issue, due to its lack of distinctiveness. Visually, the presence of the letter 'm' at the beginning of the mark applied for renders the marks at issue dissimilar. Phonetically, the marks at issue are also dissimilar given the presence of the consonant 'm' in the mark applied for and the fact that the letter 'i' will be pronounced differently in the earlier trade mark and in the mark applied for. Conceptually, there is no similarity between the marks at issue given that the element 'i' of the earlier trade mark will be understood as a reference to the Internet throughout the territory of the European Union, whereas the element 'mi' of the mark applied for will be understood as a fanciful term, or as a reference to the applicant's trade mark Mi. Even assuming that the element 'mi' were to be understood as being the first person singular possessive pronoun in English, the applicant submits that there would be no similarity between it and the concept of the Internet, to which the element 'i' of the earlier trade mark refers.

37 EUIPO and the intervener dispute those arguments.

*Dominant and distinctive nature of the constituent elements of the marks at issue*

38 In this regard, it must be pointed out that the applicant has not established that the element 'pad', common to the marks at issue, was descriptive for all the goods and services in question and for the whole of the relevant public. It is true that the Board of Appeal considered that the common element 'pad' would be understood by the relevant English-speaking public of the European Union as meaning tablet or tablet computer (paragraph 30 of the contested decision) and that it was therefore only weakly distinctive for the relevant goods and services in Classes 9 and 38, which are linked to tablets and tablet computers in the parts of the European Union where English is understood (paragraph 35 of the contested decision). However, the Board of Appeal also considered that the common element 'pad' had a normal or highly distinctive character in the parts of the European Union where English is not understood (paragraph 35 of the contested decision).

39 The applicant does not show that the Board of Appeal made any error of assessment whatsoever in that regard. First, contrary to the applicant's assertions, the Board of Appeal in no way confirmed in the contested decision the applicant's allegation, which moreover is in no way substantiated in the application, that the term 'pad' is an English IT term, meaning tablet computer, that is known throughout the European Union. On the contrary, it is apparent from paragraphs 30 and 35 of the contested decision that the Board of Appeal considered that the term 'pad' was not understood by the whole of the relevant public of the European Union. Second, the mere fact that tablet computers are sold in some non-English-speaking Member States under marks including the element 'pad' does not mean that the whole of the relevant public in those Member States necessarily understands its meaning. That finding is borne out by the evidence attached to the observations filed by the applicant before the Board of Appeal.

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from which it is apparent that the term 'pad' is not used to describe the goods in question, which are described as 'tablets'.

- 40 In any event, it should be noted that, according to the settled case-law recalled in paragraph 32 above, it is necessary to assess the similarity between the marks at issue by examining each of them as a whole. It is only if a mark contains a dominant element and all the other components of that mark are negligible that the assessment of the similarity can be carried out solely on the basis of the dominant element.
- 41 As it is, in the present case it must be found, as the Board of Appeal did, that the marks at issue do not contain any dominant elements and that the common element 'pad' cannot be regarded as negligible.
- 42 First, given that the common element 'pad' will be noticed visually and pronounced in each of the marks at issue, it will have an impact on the overall impression given by those marks.
- 43 Second, although the common element 'pad' is weakly distinctive for the English-speaking part of the relevant public of the European Union, it must be found, as the Board of Appeal did, that the elements 'mi' of the mark applied for and 'i' of the earlier trade mark are equally weakly distinctive for that part of the relevant public. The element 'mi' of the mark applied for may be understood by the English-speaking part of the relevant public as referring to the first person singular possessive pronoun 'my' in English, while the element 'i' of the earlier trade mark could be understood as referring to the Internet.
- 44 Consequently, contrary to the applicant's assertions, the comparison of the marks at issue cannot be limited to taking into account only the element 'mi' of the mark applied for and comparing it with the element 'i' of the earlier trade mark, even if the element 'pad' — common to the marks at issue — were purely descriptive. The Board of Appeal was therefore fully entitled to carry out the comparison of the mark applied for, MI PAD, with the earlier trade mark, IPAD, by considering each of those marks as a whole in the contested decision.

*Visual, phonetic and conceptual comparison of the marks at issue*

- 45 In the first place, regarding the visual comparison of the marks at issue, it must be found that the earlier trade mark is entirely reproduced in the mark applied for. Moreover, the marks at issue coincide as to the letter sequence 'ipad' and differ only as to the presence of the additional letter 'm' at the beginning of the mark applied for. Contrary to the applicant's assertions, that difference is not capable of preventing the marks at issue from being visually similar overall. In that regard, it should be borne in mind that, although the initial part of word marks may be capable of attracting the attention of the consumer more than the following parts, that consideration cannot prevail in every case and cannot, in any event, call into question the principle that the assessment of the similarity of the signs must take

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account of the overall impression given by them (see, to that effect, judgment of 10 March 2016, *Curodont*, T-53/15, not published, EU:T:2016:136, paragraph 35 and the case-law cited). Consequently, the Board of Appeal did not err in concluding that there was a high degree of visual similarity between the marks at issue.

- 46 In the second place, regarding the phonetic comparison of the marks at issue, it must be found, as the Board of Appeal did, that they each contain two syllables, that they are pronounced with a similar intonation, and that they coincide as to the pronunciation of their common second syllable 'pad' and that they differ only as to their first syllables.
- 47 In that regard, it must be found that that difference is merely a result of the presence of the additional letter 'm' at the beginning of the mark applied for. While it is true that it is possible for the English-speaking part of the relevant public to pronounce the letter 'i' in the first syllable 'mi' of the mark applied for as [i], according to the English International Phonetic Alphabet, whereas it will pronounce that letter in the first syllable 'i' of the earlier trade mark as [ai], according to the English International Phonetic Alphabet, it is nonetheless possible for that letter 'i' to be pronounced [ai] in both cases by the English-speaking part of the relevant public, according to the English International Phonetic Alphabet. That latter pronunciation is all the more likely in the present case because the English-speaking part of the relevant public will perceive the prefix 'mi' of the mark applied for as referring to the first person singular possessive pronoun 'my' in English. Moreover, as the Board of Appeal stated in paragraph 25 of the contested decision, whatever way the non-English-speaking part of the relevant public will tend to pronounce the letter 'i', it will pronounce it in the same way in both of the marks at issue. The difference in pronunciation between the marks at issue resulting from the presence of the letter 'm' in the first syllable of the mark applied for is therefore not capable of offsetting the overall phonetic similarity between the marks at issue resulting, for the whole of the relevant public, from the similarities set out in paragraph 46 above.
- 48 Consequently, it must be concluded that the marks at issue display an average degree of phonetic similarity for the English-speaking part of the relevant public of the European Union and a high degree of phonetic similarity for the non-English-speaking part of the relevant public.
- 49 In the third place, regarding the conceptual comparison of the marks at issue, it should first of all be borne in mind that, according to settled case-law, although the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details, the fact remains that, when perceiving a verbal sign, he will break it down into elements which, for him, suggest a concrete meaning or which resemble words known to him (judgments of 13 February 2007, *RESPICUR*, T-256/04, EU:T:2007:46, paragraph 57, and of 13 February 2008, *Sanofi-Aventis v OHIM — GD Searle (ATURION)*, T-146/06, not published, EU:T:2008:33, paragraph 58).

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- 50 In the present case, it is not disputed that at least a part of the relevant public will tend to break down both the mark applied for and the earlier trade mark into two elements, namely 'mi' and 'pad' and 'i' and 'pad', respectively. The comparison of the marks at issue must therefore be carried out on that basis.
- 51 Regarding the element 'pad', common to the marks at issue, it must be found, as the Board of Appeal did, that it will be understood as meaning tablet or tablet computer by the English-speaking part of the relevant public, whereas it will have no meaning for the non-English-speaking part of the relevant public.
- 52 Regarding the element 'mi' of the mark applied for, it must be found that it may be understood, at least by the English-speaking and the Spanish-speaking parts of the relevant public, as referring to the first person singular possessive pronoun. By contrast, contrary to the applicant's assertions, it is unlikely that that element will be understood by the relevant public as a reference to the applicant's trade mark.
- 53 Regarding the element 'i' of the earlier trade mark, it must be found that it may be understood, at least by the English-speaking part of the relevant public, as referring to the Internet.
- 54 Contrary to the applicant's assertions, it is apparent from the foregoing that the marks at issue are conceptually similar for the English-speaking part of the relevant public, because of the meaning attributed to the common element 'pad'. Indeed, although the common element 'pad' is weakly distinctive in respect of the goods and services in question for the English-speaking part of the relevant public, it is nonetheless not descriptive and its presence in both of the marks at issue is a sufficient basis for a finding of conceptual similarity (see, to that effect, judgment of 13 December 2007, *Xentral v OHIM — Pages jaunes (PAGESJAUNES.COM)*, T-134/06, EU:T:2007:387, paragraph 63). In addition, the conceptual differences between the marks at issue resulting from the elements 'mi' and 'i' are not such as to remove all similarity between the marks at issue for the English-speaking part of the relevant public, in so far as those elements will be perceived as prefixes qualifying the common element 'pad', without significantly altering its conceptual meaning.
- 55 Consequently, it must be concluded that the marks at issue display an average degree of conceptual similarity for the English-speaking part of the relevant public. As regards the non-English-speaking part of the relevant public, it must be concluded, as the Board of Appeal did, that the conceptual comparison of the marks at issue remains neutral. Indeed, even assuming that the element 'mi' of the mark applied for is understood as referring to the first person singular possessive pronoun and the element 'i' of the earlier trade mark is understood as referring to the Internet, those elements are only prefixes in the marks at issue, whereas the conceptual similarity of those marks must be assessed on the basis of the evocative force that may be recognised in each of them taken as a whole (see, to that effect, judgment of 17 March 2004, *El Corte Inglés v OHIM — González Cabello and Iberia Líneas Aéreas de España (MUNDICOR)*, T-183/02 and

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T-184/02, EU:T:2004:79, paragraph 90). In the present case, those prefixes are accompanied by the common element 'pad', which has no meaning for the non-English-speaking part of the relevant public, so that the marks at issue are ultimately devoid of any particular conceptual meaning for that public.

- 56 It is apparent from all of the foregoing that the marks at issue are highly visually and phonetically similar for the whole of the relevant public. Moreover, as regards the English-speaking part of the relevant public, the marks at issue are also conceptually similar.

***The likelihood of confusion***

- 57 A global assessment of the likelihood of confusion implies some interdependence between the factors taken into account and, in particular, between the similarity of the trade marks and that of the goods or services covered. Accordingly, a low degree of similarity between those goods or services may be offset by a high degree of similarity between the marks, and vice versa (judgments of 29 September 1998, *Canon*, C-39/97, EU:C:1998:442, paragraph 17, and of 14 December 2006, *VENADO with frame and others*, T-81/03, T-82/03 and T-103/03, EU:T:2006:397, paragraph 74).
- 58 In the present case, the Board of Appeal concluded that there was a likelihood of confusion between the marks at issue. In particular, in view of the identity or similarity of the goods and services covered by the marks at issue, it considered that the differences between those marks arising from the presence of the additional letter 'm' at the beginning of the mark applied for were not sufficient to offset the high degree of visual and phonetic similarity between the marks at issue, taken as a whole. It also considered that, even supposing that the relevant public were to display a higher level of attention, it would believe that the goods and services in question came from the same undertaking or from economically-linked undertakings and would think that the mark applied for, MI PAD, was a variation on the earlier trade mark IPAD.
- 59 The applicant submits, in essence, that the relevant public will be capable of making the distinction between the marks at issue, in view of the high degree of attentiveness it displays in respect of the goods and services in question. The relevant public will not perceive the common element 'pad' as an indicator of commercial origin, because of its purely descriptive nature, and will therefore easily perceive the differences between the distinctive elements 'i' and 'mi' of the marks at issue. Moreover, the earlier trade mark enjoys only limited protection owing to its weak distinctive character. The applicant therefore maintains that there is no likelihood of confusion.
- 60 EUIPO and the intervener dispute those arguments.
- 61 In that regard, contrary to the applicant's assertions, first of all it must be pointed out that the visual and phonetic differences between the marks at issue resulting



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from the presence of the additional letter 'm' at the beginning of the mark applied for are not such as to rule out a likelihood of confusion between the marks at issue as a result of their similarities and the overall impression given by those marks (see paragraphs 45 to 48 above).

- 62 Similarly, the conceptual differences between the marks at issue resulting from the elements 'mi' of the mark applied for and 'i' of the earlier trade mark are also not such as to offset their visual and phonetic similarities. It is true that case-law shows that the global assessment of the likelihood of confusion implies that conceptual differences between two signs may counteract phonetic and visual similarities between them, provided that at least one of those signs has, from the point of view of the relevant public, a clear and specific meaning, so that the public is capable of grasping it immediately (judgments of 18 December 2008, *Les Éditions Albert René v OHIM*, C-16/06 P, EU:C:2008:739, paragraph 98, and of 14 October 2003, *Phillips-Van Heusen v OHIM — Pash Textilvertrieb und Einzelhandel (BASS)*, T-292/01, EU:T:2003:264, paragraph 54). However, that is not the situation in the present case. First, as has been explained in paragraph 55 above, neither of the two marks at issue has any meaning for the non-English-speaking part of the relevant public, so that the result of the conceptual comparison of the marks at issue remains neutral. Second, for the English-speaking part of the relevant public, the conceptual differences resulting from the prefixes 'mi' of the mark applied for and 'i' of the earlier trade mark are not sufficient to remove the likelihood of confusion between the marks at issue resulting from both the conceptual similarity created by the common element 'pad' and the visual and phonetic similarities noted in paragraphs 45 to 48 above.
- 63 This is all the more the case given that the goods and services in question are identical in part and similar in part (see paragraph 30 above). According to the settled case-law recalled in paragraph 57 above, a global assessment of the likelihood of confusion implies some interdependence between the factors taken into account and, in particular, between the similarity of the trade marks and that of the goods or services covered. Thus, even assuming that the marks at issue display only a low degree of similarity because of their conceptual differences, this would be offset by the high degree of similarity between the goods and services covered by those marks.
- 64 Furthermore, it should be borne in mind that, according to established case-law, where, as in the present case, the earlier mark on which the opposition is founded is an EU trade mark, it is not a requirement of Article 8(1)(b) of Regulation No 207/2009 that, for the mark applied for to be refused registration, the likelihood of confusion must exist in all the Member States and in all the linguistic regions of the European Union. The unitary character of the EU trade mark means that an earlier EU trade mark can be relied on in opposition proceedings against any application for registration of an EU trade mark which would adversely affect the protection of the first mark, even if only in relation to the perception of consumers in part of the European Union (see judgment of 18 September 2012,



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*Scandic Distilleries v OHIM — Bürgerbräu, Röhm & Söhne (BÜRGER)*, T-460/11, not published, EU:T:2012:432, paragraph 52 and the case-law cited).

- 65 Accordingly, as the relevant territory is, as is apparent from paragraph 27 above, that of the European Union, the existence of a likelihood of confusion for the non-English-speaking part of the relevant public, because of the high degree of visual and phonetic similarity between the marks at issue and the identity or the similarity of the goods and services in question, is sufficient to prevent the registration of the mark applied for.
- 66 The other arguments put forward by the applicant are not capable of calling in question the existence of a likelihood of confusion in the present case.
- 67 Thus, first, contrary to the applicant's assertions, the level of attention that will be displayed by the relevant public is not high for all the goods and services in question, but ranges from average to high, depending on the complexity and the price of the goods and services in question (see paragraph 25 above). Moreover, given the degree of similarity found between the marks and the identical or similar nature of the goods and services concerned, the fact that the level of attention of the relevant public would be above average for some of the goods and services in question is not sufficient to exclude the possibility that that public might believe that the goods in question come from the same undertaking or, as the case may be, from economically-linked undertakings (see, to that effect, judgment of 16 December 2010, *Longevity Health Products v OHIM — Gruppo Lepetit (RESVEROL)*, T-363/09, not published, EU:T:2010:538, paragraph 33 and the case-law cited).
- 68 Second, contrary to the applicant's assertions, the weak distinctive character of the earlier trade mark does not remove the likelihood of confusion between the marks at issue. Indeed, according to established case-law, the finding of a weak distinctive character for the earlier trade mark does not prevent a finding that there is a likelihood of confusion in the present case. Although the distinctive character of the earlier mark must be taken into account when assessing the likelihood of confusion, it is only one factor among others involved in that assessment. Thus, even in a case involving an earlier mark of weak distinctive character, there may be a likelihood of confusion on account, in particular, of a similarity between the signs and between the goods or services covered (see judgments of 16 March 2005, *L'Oréal v OHIM — Revlon (FLEXI AIR)*, T-112/03, EU:T:2005:102, paragraph 61 and the case-law cited, and of 13 December 2007, *PAGESJAUNES.COM*, T-134/06, EU:T:2007:387, paragraph 70 and the case-law cited). This is the situation in the present case, in view of the degree of similarity between the marks at issue and the goods and services in question, for the reasons set out in paragraphs 61 to 63 above.
- 69 In the light of all of the foregoing, it must therefore be found that the applicant has not shown that the Board of Appeal erred in any way whatsoever by considering that there was a likelihood of confusion between the marks at issue. Consequently,

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the applicant's single plea in law must be rejected and the action must accordingly be dismissed in its entirety.

**Costs**

- 70 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.
- 71 Since the applicant has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by EUIPO.


On those grounds,

THE GENERAL COURT (Third Chamber)

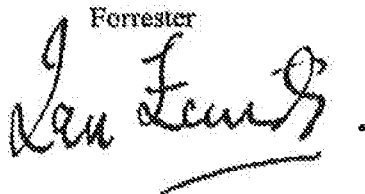
hereby:

1. Dismisses the action;
2. Orders Xiaomi, Inc. to pay the costs.

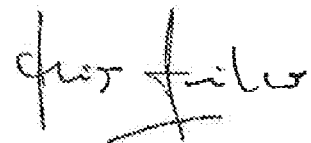
Frimodt Nielsen



Ferrester



Perillo



Delivered in open court in Luxembourg on 5 December 2017.

E. Coulon

S. Frimodt Nielsen



President

Registrar



