United States Patent and Trademark Office (USPTO)
Office Action (Official Letter) About Applicant's Trademark Application

U.S. Application Serial No. 79287127

Mark: POSTGRESQL

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Reference/Docket No. N/A

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NONFINAL OFFICE ACTION

International Registration No. 1534836

NOTICE OF PROVISIONAL FULL REFUSAL

This is a provisional full refusal of the request for extension of protection to the United States of the international registration, known in the United States as a U.S. application based on Trademark Act Section 66(a). *See* 15 U.S.C. §§1141f(a), 1141h(c).

The USPTO must receive applicant's response **within six months of the "date on which the notification was sent to WIPO (mailing date)"** located on the WIPO cover letter, or the U.S. application will be abandoned. To confirm the mailing date, go to the USPTO's Trademark Status and Document Retrieval (TSDR) database, select "US Serial, Registration, or Reference No.," enter the U.S. application serial number in the blank text box, and click on "Documents." The mailing date used to calculate the response deadline is the "Create/Mail Date" of the "IB-1rst Refusal Note."

Respond to this Office action using the USPTO's Trademark Electronic Application System (TEAS). A link to the appropriate TEAS response form appears at the end of this Office action.

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

SUMMARY OF ISSUES

- Requirement for U.S. Counsel
- Section 2(d) Refusal – Likelihood of Confusion
- Section 2(e)(1) Refusal – Merely Descriptive
- Additional Information Required
- Identification of Services

REQUIREMENT FOR U.S. COUNSEL

Applicant must be represented by a U.S.-licensed attorney at the USPTO to respond to or appeal the provisional refusal. The application record indicates that applicant's domicile is outside of the United States, but no attorney who is an active member in good standing of the bar of the highest court of a U.S. State or territory has been appointed to represent the applicant in this matter. All applicants whose permanent legal residence or principal place of business is not within the United States or its territories must be represented by a U.S.-licensed attorney at the USPTO. 37 C.F.R. §§2.2(o), 2.11(a). Thus, applicant is required to be represented by a U.S.-licensed attorney and must appoint one. 37 C.F.R. §2.11(a). This application will not proceed to registration without such representation. *See id.* See Hiring a U.S.-licensed trademark attorney for more information.

To appoint an attorney, applicant should (1) submit a completed Trademark Electronic Application System (TEAS) Revocation, Appointment, and/or Change of Address of Attorney/Domestic Representative form and (2) promptly notify the trademark examining attorney that this TEAS form was submitted. Alternatively, if applicant has already retained an attorney, the attorney can respond to this Office action by using the appropriate TEAS response form and provide his or her attorney information in the form and sign it as applicant's attorney. *See* 37 C.F.R. §2.17(b)(1)(ii).

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration(s) No. 5735805 (POSTGRESQL), 5735804 (POSTGRES), both owned by the PostgreSQL Community Association of Canada and 5431125 (POSTGRESQL EXPERTS, INC), owned by PostgreSQL Experts, Inc. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* *See* the attached registration(s).

Trademark Act Section 2(d) bars registration of an applied-for mark that is so similar to a registered mark that it is likely consumers would be confused, mistaken, or deceived as to the commercial source of the goods and/or services of the parties. *See* 15 U.S.C. §1052(d). Likelihood of confusion is determined on a case-by-case basis by applying the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973) (called the "*du Pont* factors"). *In re i.am.symbolic, llc*, 866 F.3d 1315, 1322, 123 USPQ2d 1744,1747 (Fed. Cir. 2017). Any evidence of record related to those factors need be considered; however, "not all of the *DuPont* factors are relevant or of similar weight in every case." *In re Guild Mortg. Co*, 912 F.3d 1376, 1379, 129 USPQ2d 1160, 1162 (Fed. Cir. 2019) (quoting *In re Dixie Rests., Inc*, 105 F.3d 1405, 1406, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997)).

Although not all *du Pont* factors may be relevant, there are generally two key considerations in any likelihood of confusion analysis: (1) the similarities between the compared marks and (2) the relatedness of the compared goods and/or services. *See In re i.am.symbolic, llc*, 866 F.3d at 1322, 123 USPQ2d at 1747 (quoting *Herbko Int'l, Inc. v. Kappa Books, Inc*, 308 F.3d 1156, 1164-65, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)); *Federated Foods, Inc. v. Fort Howard Paper Co*, 544 F.2d 1098, 1103, 192 USPQ 24, 29 (C.C.P.A. 1976) ("The fundamental inquiry mandated by [Section] 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks."); TMEP §1207.01.

Comparing the Marks

Marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1321, 110 USPQ2d 1157, 1160 (Fed. Cir. 2014) (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1371, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005)); TMEP §1207.01(b)-(b)(v). "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *In re Inn at St. John's, LLC*, 126 USPQ2d1742, 1746 (TTAB 2018) (citing *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)), *aff'd per curiam*, 777 F. App'x 516, 2019 BL 343921 (Fed. Cir. 2019); TMEP §1207.01(b).

When comparing marks, "[t]he proper test is not a side-by-side comparison of the marks, but instead whether the marks are sufficiently similar in terms of their commercial impression such that [consumers] who encounter the marks would be likely to assume a connection between the parties." *Cai v. Diamond Hong, Inc*, 901 F.3d 1367, 1373, 127 USPQ2d 1797, 1801 (Fed. Cir.2018) (quoting *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1368, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012)); TMEP§1207.01(b). The proper focus is on the recollection of the average purchaser, who retains a general rather than specific impression of trademarks. *In re Inn at St. John's, LLC*, 126 USPQ2d1742, 1746 (TTAB 2018) (citing *In re St. Helena Hosp.*, 774 F.3d 747, 750-51, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014); *Geigy Chem. Corp. v. Atlas Chem. Indus.,Inc.*, 438 F.2d 1005, 1007, 169 USPQ 39, 40 (C.C.P.A. 1971)), *aff'd per curiam*, 777 F. App'x 516, 2019 BL 343921 (Fed. Cir. 2019); TMEP §1207.01(b).

The applicant's mark, "POSTGRESQL" is likely to be confused with the above-referenced registered marks

Comparing applicant's mark to the mark in Reg. No. 5735805:

In a likelihood of confusion determination, the marks in their entireties are compared for similarities in appearance, sound, connotation, and commercial impression. *In re i.am.symbolic, llc*, 866 F.3d 1315, 1323, 123 USPQ2d 1744, 1748 (Fed. Cir.2017); *Stone Lion Capital Partners, LP v.Lion Capital LLP*, 746 F.3d 1317, 1321, 110 USPQ2d 1157, 1160 (Fed. Cir. 2014) (quoting *Palm Bay Imps., Inc. v.Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1371, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005)); *In re E. I. du Pont de Nemours & Co*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973); TMEP §1207.01(b)-(b)(v).

In the present case, applicant's mark is POSTGRESQL and registrant's mark is POSTGRESQL. These marks are identical in appearance, sound, and meaning, "and have the potential to be used . . . in exactly the same manner." *In re i.am.symbolic, llc*, 116 USPQ2d 1406, 1411 (TTAB 2015), *aff'd*, 866 F.3d 1315, 123 USPQ2d 1744 (Fed. Cir. 2017). Additionally, because they are identical, these marks are likely to engender the same connotation and overall commercial impression when considered in connection with applicant's and registrant's respective goods and/or services. *Id.*

Therefore, the marks are confusingly similar.

Comparing applicant's mark to the mark in Reg. No. 5735804:

Marks may be confusingly similar in appearance where similar terms or phrases or similar parts of terms or phrases appear in the compared marks and create a similar overall commercial impression. *See Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce*, 228 USPQ 689, 690-91 (TTAB 1986), *aff'd sub nom. Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat'l Ass'n*, 811 F.2d 1490, 1495, 1 USPQ2d 1813, 1817 (Fed. Cir. 1987) (finding COMMCASH and COMMUNICASH confusingly similar); *In re Corning Glass Works*, 229 USPQ 65, 66 (TTAB 1985) (finding CONFIRM and CONFIRMCELLS confusingly similar); *In re Pellerin Milnor Corp.*, 221 USPQ 558, 560 (TTAB 1983) (finding MILTRON and MILLTRONICS confusingly similar); TMEP §1207.01(b)(ii)-(iii).

Adding a term to a registered mark generally does not obviate the similarity between the compared marks, as in the present case, nor does it overcome a likelihood of confusion under Section 2(d). *See Coca-Cola Bottling Co. v. Jos. E. Seagram & Sons, Inc.*, 526 F.2d 556, 557, 188 USPQ 105, 106 (C.C.P.A. 1975) (finding BENGAL and BENGAL LANCER and design confusingly similar); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1269 (TTAB 2009) (finding TITAN and VANTAGE TITAN confusingly similar); *In re El Torito Rests., Inc.*, 9 USPQ2d 2002, 2004 (TTAB 1988) (finding MACHO and MACHO COMBOS confusingly similar); TMEP §1207.01(b)(iii). In the present case, the marks are identical in part as to "POSTGRES". Applicant's addition of QL does not avoid a finding of similarity. The POSTGRESQL open source database management system was derived from the POSTGRES package, and consumers are likely to perceive a relationship between these two notable elements of the marks. *See* attached evidence from www.postgresql.org.

Comparing applicant's mark to the mark in Reg. No. 5431125

Marks may be confusingly similar in appearance where similar terms or phrases or similar parts of terms or phrases appear in the compared marks and create a similar overall commercial impression. *See Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce*, 228 USPQ 689, 690-91 (TTAB 1986), *aff'd sub nom. Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat'l Ass'n*, 811 F.2d 1490, 1495, 1 USPQ2d 1813, 1817 (Fed. Cir. 1987) (finding COMMCASH and COMMUNICASH confusingly similar); *In re Corning Glass Works*, 229 USPQ 65, 66 (TTAB 1985) (finding CONFIRM and CONFIRMCELLS confusingly similar); *In re Pellerin Milnor Corp.*, 221 USPQ 558, 560 (TTAB 1983) (finding MILTRON and MILLTRONICS confusingly similar); TMEP §1207.01(b)(ii)-(iii).

Incorporating the entirety of one mark within another does not obviate the similarity between the compared marks, as in the present case, nor does it overcome a likelihood of confusion under Section 2(d). *See Wella Corp. v. Cal. Concept Corp.*, 558 F.2d 1019, 1022, 194 USPQ 419, 422 (C.C.P.A. 1977) (finding CALIFORNIA CONCEPT and surfer design and CONCEPT confusingly similar); *Coca-Cola Bottling Co. v. Jos. E. Seagram & Sons, Inc.*, 526 F.2d 556, 557, 188 USPQ 105, 106 (C.C.P.A. 1975) (finding BENGAL LANCER and design and BENGA confusingly similar); *In re Integrated Embedded*, 120 USPQ2d1504, 1513 (TTAB 2016) (finding BARR GROUP and BARR confusingly similar); *In re Mr. Recipe, LLC*, 118 USPQ2d 1084, 1090 (TTAB 2016) (finding JAWS DEVOUR YOUR HUNGER and JAWS confusingly similar); TMEP §1207.01(b)(iii). In the present case, the marks are identical in part as to "POSTGRESQL". The registrant's addition of "EXPERTS, INC." does not avoid a finding of similarity; consumers are still likely to perceive an association between the two entities given the shared term POSTGRESQL. Taken together, the marks are confusingly similar.

Comparing the Goods and Services

The applicant's services are "Design of computer databases; design and development of computer software; design and development of online computer software systems; database design and development; database reconstruction for others; technical support services, namely, the installation, administration, and troubleshooting of web and database applications; technical support services, namely, the migration of data centers, servers and database applications; programming of software for others; technical support services, namely, remote administration and administration of internal and hosted data center devices, databases and software applications; technical support services, namely, troubleshooting of computer software problems; technical support services, namely, 24/7 monitoring of network systems, servers and web and database applications, and notification of related events and alerts; updating of computer software for others; consultancy services regarding business technology software; computer programming consultancy; computer services, namely, design and implementation of databases for others; computer services, namely, management of databases for others; consultancy regarding computer software; computer software design for others; computer system analysis; website design; consultancy in the field of information technology; consultancy services in the field of cloud computing; consultancy services in the field of information technology systems for businesses," in Class 42. *See* application.

The registrant's goods and/or services are identified as follows:

U.S. Registration No. 5735805 (POSTGRESQL) is registered in connection with:

> Class 9: Application development software; Computer programs for data processing; Computer operating programs recorded; Computer programs for accessing, browsing and searching online databases; Computer search engine software; Computer software for accessing information directories that may be downloaded from the global computer network for information management, data; Computer software for application and database integration; Computer software for authorizing access to databases; Computer software for database management; Computer software for document management; Computer software for creating searchable databases of information and data; Computer software for use as an application programming interface (API); Computer software to automate data warehousing; Computer software to enable retrieval of data; Computer software to enable searching and retrieval of data; Computer software to enable the searching of data; Database synchronization software; Downloadable computer software for the management of data; Downloadable computer software for the management of information; Software for searching and retrieving information across a computer network; Software for the analysis of business data; Software for the processing of business transactions; downloadable database management software for general use

U.S. Registration No. 5735804 (POSTGRES) is registered in connection with:

> Class 9: Application development software; Computer programs for data processing; Computer operating programs recorded; Computer programs for accessing, browsing and searching online databases; Computer search engine software; Computer software for accessing information directories that may be downloaded from the global computer network for information management, data; Computer software for application and database integration; Computer software for authorizing access to databases; Computer software for database management; Computer software for document management; Computer software for creating searchable databases of information and data; Computer software for use as an application programming interface (API); Computer software to automate data warehousing; Computer software to enable retrieval of data; Computer software to enable searching and retrieval of data; Computer software to enable the searching of data; Database synchronization software; Downloadable computer software for the management of data; Downloadable computer software for the management of information; Software for searching and retrieving information across a computer network; Software for the analysis of business data; Software for the processing of business transactions; downloadable database management software for general use

U.S. Registration No. 5431125 (POSTGRESQL EXPERTS, INC) is registered in connection with:

> Class 42: Database design and development; Technical support services, namely, installation, administration, and troubleshooting of web and database applications; Technical support services, namely, remote administration and management of in-house and hosted datacenter devices, databases and software applications

See attached registration(s).

The compared goods and/or services need not be identical or even competitive to find a likelihood of confusion. *See On-line Careline Inc. v. Am.*

Online Inc., 229 F.3d 1080, 1086, 56 USPQ2d1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d1894, 1898 (Fed. Cir. 2000); TMEP §1207.01(a)(i). They need only be "related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that [the goods and/or services] emanate from the same source." *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d1715, 1724 (TTAB 2007)); TMEP §1207.01(a)(i).

Determining likelihood of confusion is based on the description of the goods and/or services stated in the application and registration at issue, not on extrinsic evidence of actual use. *See In re Detroit Athletic Co.*, 903 F.3d 1297, 1307, 128 USPQ2d 1047, 1052 (Fed. Cir. 2018) (citing *In re i.am.symbolic, llc*, 866 F.3d 1315, 1325, 123 USPQ2d 1744, 1749 (Fed. Cir. 2017)).

In this case, the application uses broad wording to describe a wide variety of database design and technical support which presumably encompasses all services of the type described, including registrant's more narrowly identified services, all of which are encompassed within the applicant's identification. *See, e.g., In re Solid State Design Inc*, 125 USPQ2d 1409, 1412-15 (TTAB 2018); *Sw. Mgmt., Inc. v. Ocinomled, Ltd*, 115 USPQ2d 1007, 1025 (TTAB 2015). Thus, applicant's and registrant's services are legally identical. *See, e.g., In re i.am.symbolic, llc*, 127 USPQ2d 1627, 1629 (TTAB 2018) (citing *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp., Inc*, 648 F.2d 1335, 1336, 209 USPQ 986, 988 (C.C.P.A. 1981); *Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1745 (TTAB 2014); *Baseball Am. Inc. v. Powerplay Sports Ltd*, 71 USPQ2d 1844, 1847n.9 (TTAB 2004)).

Additionally, the goods and/or services of the parties have no restrictions as to nature, type, channels of trade, or classes of purchasers and are "presumed to travel in the same channels of trade to the same class of purchasers." *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1268, 62 USPQ2d 1001, 1005 (Fed. Cir. 2002)). Thus, applicant's and registrant's goods and/or services are related.

Further, with respect to the registrant's software goods, the attached Internet evidence consists of screenshots from the websites identified below. This evidence establishes that the same entity commonly provides the relevant goods and/or services and markets the goods and/or services under the same mark and in the same general channels of trade. Therefore, applicant's and registrant's goods and/or services are considered related for likelihood of confusion purposes. *See, e.g., In re Davey Prods. Pty Ltd*, 92 USPQ2d 1198, 1202-04 (TTAB2009); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1268-69, 1271-72 (TTAB 2009).

- www.enterprisedb.com
- www.microsoft.com
- www.ibm.com

The overriding concern is not only to prevent buyer confusion as to the source of the goods and/or services, but to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. *See In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt regarding a likelihood of confusion determination is resolved in favor of the registrant. TMEP §1207.01(d)(i); *see Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988).

In this case, the marks are confusingly similar and the goods and services of the parties are related as to nature and channels of trade. Therefore, upon encountering these marks and goods and services in commerce, consumers are likely to be confused and mistakenly believe that the goods and services emanate from a common source. Accordingly, the applicant's proposed mark is refused for likelihood of confusion under Trademark Act Section 2(d).

Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

If applicant responds to the refusal(s), applicant must also respond to the requirement(s) set forth below.

SECTION 2(e)(1) REFUSAL—MARK IS MERELY DESCRIPTIVE

Registration is refused because the applied-for mark merely describes a feature and characteristic of applicant's services. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); *see* TMEP §§1209.01(b), 1209.03 *et seq.*

A mark is merely descriptive if it describes an ingredient, quality, characteristic, function, feature, purpose, or use of an applicant's goods and/or services. TMEP §1209.01(b); *see, e.g., In re TriVita, Inc.*, 783 F.3d 872, 874, 114 USPQ2d 1574, 1575 (Fed. Cir. 2015) (quoting *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004)); *In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005) (citing *Estate of P.D. Beckwith, Inc. v. Comm'r of Patents*, 252 U.S. 538, 543 (1920)).

The determination of whether a mark is merely descriptive is made in relation to an applicant's goods and/or services, not in the abstract. *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1254, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012); *In re The Chamber of Commerce of the U.S.*, 675 F.3d 1297, 1300, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); TMEP §1209.01(b). "Whether consumers could guess what the product [or service] is from consideration of the mark alone is not the test." *In re Am. Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).
"Whether consumers could guess what the product [or service] is from consideration of the mark alone is not the test." *In re Am. Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).
In this case, applicant has applied to register the mark POSTGRESQL in connection with the following:

> International Class 42: Design of computer databases; design and development of computer software; design and development of online computer software systems; database design and development; database reconstruction for others; technical support services, namely, the installation, administration, and troubleshooting of web and database applications; technical support services, namely, the migration of data centers, servers and database applications; programming of software for others; technical support services, namely, remote administration and administration of internal and hosted data center devices, databases and software applications; technical support services, namely,

troubleshooting of computer software problems; technical support services, namely, 24/7 monitoring of network systems, servers and web and database applications, and notification of related events and alerts; updating of computer software for others; consultancy services regarding business technology software; computer programming consultancy; computer services, namely, design and implementation of databases for others; computer services, namely, management of databases for others; consultancy regarding computer software; computer software design for others; computer system analysis; website design; consultancy in the field of information technology; consultancy services in the field of cloud computing; consultancy services in the field of information technology systems for businesses

See application.

The attached evidence from the PostgreSQL Global Development Group indicates that the terms in the mark are defined as follows:

POSTGRESQL: is a powerful, open source object-relational database system that uses and extends the SQL language combined with many features that safely store and scale the most complicated data workloads. The origins of PostgreSQL date back to 1986 as part of the POSTGRES project at the University of California at Berkeley and has more than 30 years of active development on the core platform.

Further, the attached evidence from the following websites demonstrates that this term is used to describe a characteristic of the services:

- www.enterprisedb.com
- www.ibm.com
- www.heroku.com

For the foregoing reasons, the proposed mark, "POSTGRESQL", is refused because it is merely descriptive of theapplicant's goods and/or services under Trademark Act Section 2(e)(1).

Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

If applicant responds to the refusal(s), applicant must also respond to the requirement(s) set forth below.

ADDITIONAL INFORMATION REQUIRED

Due to the descriptive nature of the applied-for mark, applicant must provide the following information and documentation regarding the goods and/or services and wording appearing in the mark:

(1) Fact sheets, instruction manuals, brochures, advertisements and pertinent screenshots of applicant's website as it relates to the goods and/or services in the application, including any materials using the terms in the applied-for mark. Merely stating that information about the goods and/or services is available on applicant's website is insufficient to make the information of record.;

(2) If these materials are unavailable, applicant should submit similar documentation for goods and services of the same type, explaining how its own product or services will differ. If the goods and/or services feature new technology and information regarding competing goods and/or services is not available, applicant must provide a detailed factual description of the goods and/or services. Factual information about the goods must make clear how they operate, salient features, and prospective customers and channels of trade. For services, the factual information must make clear what the services are and how they are rendered, salient features, and prospective customers and channels of trade. Conclusory statements will not satisfy this requirement.; and

(3) Applicant must respond to the following questions:

1. Do applicant's services feature the use of PostgreSQL source code?
2. What is applicant's relationship to the PostgreSQL Global Development Group?

See 37 C.F.R. §2.61(b); TMEP §§814, 1402.01(e).

Failure to comply with a request for information is grounds for refusing registration. *In re Harley*, 119 USPQ2d 1755, 1757-58 (TTAB 2016); TMEP §814.

SECTION 66(a) APPLICATIONS NOT ELIGIBLE FOR SUPPLEMENTAL REGISTER

Applicant cannot overcome the refusal by amending the application to the Supplemental Register. A mark in an application under Trademark Act Section 66(a) is not eligible for registration on the Supplemental Register. 37 C.F.R. §§2.47(c), 2.75(c); TMEP §816.01; *see* 15 U.S.C. §1141h(a)(4).

IDENTIFICATION OF SERVICES

The Trademark Act requires that a trademark or service mark application must include a "**specification** of … the goods [or services]" in connection with which the mark is being used or will be used. 15 U.S.C. §1051(a)(2)(emphasis added), (b)(2) (emphasis added); *see* 15 U.S.C. §1053. Specifically, a complete application must include a "list of the **particular** goods or services on or in connection with which the applicant uses or intends to use the mark." 37 C.F.R. §2.32(a)(6) (emphasis added). This requirement for a specification of the particular goods and/or services applies to applications filed under all statutory bases. *See* 15 U.S.C. §§1051(a)(2), 1051(b)(2), 1053, 1126(d)-(e), 1141f; 37 C.F.R. §2.32(a)(6); TMEP §§1402.01, 1402.01(b)-(c).

Several entries in the identification of goods and services in applicant's 66(a) application are overbroad (including goods or services in multiple classes) and/or indefinite (ambiguous as to the specificity of the product), and require further clarification. The original language of applicant's identification is listed in the left column, the particular issue in the middle, and the Examiner's suggested language for amending the identification to comply with the degree of particularity required is listed in the right hand column.

Original Wording	Reason Unacceptable	Suggested Wording
Design of computer databases	Acceptable as written	Design of computer databases

design and development of computer software	Acceptable as written	design and development of computer software
design and development of online computer software systems	Acceptable as written	design and development of online computer software systems
database design and development	Acceptable as written	database design and development
database reconstruction for others		database reconstruction for others
technical support services, namely, the installation, administration, and troubleshooting of web and database applications	Acceptable as written	technical support services, namely, the installation, administration, and troubleshooting of web and database applications
technical support services, namely, the migration of data centers, servers and database applications	Applicant must clarify that this is in the nature of data migration to ensure proper classification	technical support services, namely, the data migration of data centers, servers and database applications
programming of software for others	Acceptable as written	programming of software for others
technical support services, namely, remote administration and administration of internal and hosted data center devices, databases and software applications	Acceptable as written	technical support services, namely, remote administration and administration of internal and hosted data center devices, databases and software applications
technical support services, namely, troubleshooting of computer software problems	Acceptable as written	technical support services, namely, troubleshooting of computer software problems
technical support services, namely, 24/7 monitoring of network systems, servers and web and database applications, and notification of related events and alerts	Acceptable as written	technical support services, namely, 24/7 monitoring of network systems, servers and web and database applications, and notification of related events and alerts
updating of computer software for others	Acceptable as written	updating of computer software for others
consultancy services regarding business technology software	Acceptable as written	consultancy services regarding business technology software
computer programming consultancy	Acceptable as written	computer programming consultancy
computer services, namely, design and implementation of databases for others	Acceptable as written	computer services, namely, design and implementation of databases for others
computer services, namely, management of databases for others	Generally, database management is a Class 35 service beyond the scope of this application. However if applicant is providing a service relating to the technical code management of databases, this is conceivably a Class 42 service. Therefore, clarification is required.	computer services, namely, **maintenance** of database **software** for others
consultancy regarding computer software	Acceptable as written	consultancy regarding computer software
computer software design for others	Acceptable as written	computer software design for others
computer system analysis	Acceptable as written	computer system analysis
website design	Acceptable as written	website design
consultancy in the field of information technology	Acceptable as written	consultancy in the field of information technology
consultancy services in the field of cloud computing	Acceptable as written	consultancy services in the field of cloud computing

consultancy services in the field of information technology systems for businesses	Acceptable as written	consultancy services in the field of information technology systems for businesses

Applicant's goods and/or services may be clarified or limited, but may not be expanded beyond those originally itemized in the application or as acceptably narrowed. *See* 37 C.F.R. §2.71(a); TMEP §§1402.06, 1904.02(c)(iv). Applicant may clarify or limit the identification by inserting qualifying language or deleting items to result in a more specific identification; however, applicant may not substitute different goods and/or services or add goods and/or services not found or encompassed by those in the original application or as acceptably narrowed. *See* TMEP §1402.06(a)-(b). The scope of the goods and/or services sets the outer limit for any changes to the identification and is generally determined by the ordinary meaning of the wording in the identification. TMEP §§1402.06(b), 1402.07(a)-(b). Any acceptable changes to the goods and/or services will further limit scope, and once goods and/or services are deleted, they are not permitted to be reinserted. TMEP §1402.07(e). Additionally, for applications filed under Trademark Act Section 66(a), the scope of the identification for purposes of permissible amendments is limited by the international class assigned by the International Bureau of the World Intellectual Property Organization (International Bureau); and theclassification of goods and/or services may not be changed from that assigned by the International Bureau. 37 C.F.R. §2.85(d); TMEP §§1401.03(d), 1904.02(b). Further, in a multiple-class Section 66(a) application, classes may not be added or goods and/or services transferred from one existing class to another. 37 C.F.R. §2.85(d); TMEP §1401.03(d).

For assistance with identifying and classifying goods and services in trademark applications, please see the USPTO's online searchable *U.S. Acceptable Identification of Goods and Services Manual*. *See* TMEP §1402.04.

RESPONDING TO OFFICE ACTIONS AND ONLINE RESOURCES

For this application to proceed further, applicant must explicitly address each refusal and/or requirement raised in this Office action. If the action includes a refusal, applicant may provide arguments and/or evidence as to why the refusal should be withdrawn and the mark should register. Applicant may also have other options specified in this Office action for responding to a refusal, and should consider those options carefully. To respond to requirements and certain refusal response options, applicant should set forth in writing the required changes or statements. For more information and general tips on responding to USPTO Office actions, responseoptions, and how to file a response online, see "Responding to Office Actions" on the USPTO's website.

If applicant does not respond to this Office action within six months of the date on which the USPTO sends this Office action to theInternational Bureau, or responds by expressly abandoning the application, the application process will end and the trademark will fail to register. *See* 15 U.S.C. §1062(b); 37 C.F.R. §§2.65(a), 2.68(a); TMEP §§711, 718.01,718.02. Where the application has been abandoned for failure to respond to an Office action, applicant's only option would be to file a timely petition to revive the application, which, if granted, would allow the application to return to active status. *See* 37 C.F.R. §2.66; TMEP §1714. There is a $100 fee for such petitions. *See* 37 C.F.R. §§2.6(a)(15), 2.66(b)(1).

- **How to respond:** Click to file a response to this nonfinal Office action
- **Please see "Responding to Office Actions" and the informational video "Response to Office Action" for more information and tips on responding.**
- **For more information about trademarks and the registration process:** The USPTO website provides information for thoseunfamiliar with the process of applying for federal trademark registration, such as an e-booklet about registering trademarks, FAQs, and more. Two tools on the USPTO's website that are particularly helpfulduring the examination process are the (1) informational videos and (2) application processing timelines. The videos provide information in a broadcast news format regarding a range of issues that arise during the examination of an application, such as specimens and goods and services. The application processing timelines provide information regarding the USPTO's processing time for certain documents, as well as crucial legal deadlines.
- **Missing the response deadline to this letter will cause the application to abandon.** A response or notice of appeal must be received by the USPTO beforemidnight **Eastern Time** of the last day of the response period. TEAS and ESTTA maintenance orunforeseen circumstances could affect an applicant's ability to timely respond.
- Responses signed by an unauthorized party are not accepted and can **cause the application to abandon.** If applicant does not have an attorney, the response must be signed by the individual applicant, all joint applicants, or someone with legal authority to bind a juristic applicant. If applicant has an attorney, the response must be signed by the attorney.
- If applicant has questions about the nature of the refusal(s) or requirement(s) in the Office action, applicant's counsel, once appointed, may email or call the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §§2.62(c), 2.191; TMEP §§304.01-.02,709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, neither the trademark examining attorney nor any USPTO staff is permitted to provide legal advice or statements about applicant's rights. *See* TMEP §§705.02,709.06. If needed, contact information for the supervisor of the office or unit listed in the signature block is listed on the USPTO website. Applicant should firstcontact the examining attorney listed below.

/Diane Collopy/
Examining Attorney
Law Office 107
diane.collopy@uspto.gov (informal communications only)
(571) 270-3118

DESIGN MARK

Serial Number
87334307

Status
REGISTERED

Word Mark
POSTGRESQL EXPERTS, INC.

Standard Character Mark
Yes

Registration Number
5431125

Date Registered
2018/03/27

Type of Mark
SERVICE MARK

Register
PRINCIPAL

Mark Drawing Code
(4) STANDARD CHARACTER MARK

Owner
PostgreSQL Experts, Inc. CORPORATION CALIFORNIA Suite 175 13209 Harbor Bay Pkwy Alameda CALIFORNIA 94502

Goods/Services
Class Status -- ACTIVE. IC 042. US 100 101. G & S: Database design and development; Technical support services, namely, installation, administration, and troubleshooting of web and database applications; Technical support services, namely, remote administration and management of in-house and hosted datacenter devices, databases and software applications. First Use: 2009/02/20. First Use In Commerce: 2009/02/20.

Disclaimer Statement
NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "INC." APART FROM THE MARK AS SHOWN.

Section 2f Statement
2(F) ENTIRE MARK

Filing Date
2017/02/13

Examining Attorney
HARTNETT,MEGAN

Attorney of Record
Joshua M. Gerben, Esq.

POSTGRESQL EXPERTS, INC.

DESIGN MARK

Serial Number
88073530

Status
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Word Mark
POSTGRESQL

Standard Character Mark
Yes

Registration Number
5735805

Date Registered
2019/04/23

Type of Mark
TRADEMARK

Register
SUPPLEMENTAL

Mark Drawing Code
(4) STANDARD CHARACTER MARK

Owner
PostgreSQL Community Association of Canada not-for-profit corporation
CANADA 914-10 Carabob Crescent Toronto, Ontario CANADA M1T3N5

Goods/Services
Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S: Application development software; Computer programs for data processing; Computer operating programs recorded; Computer programs for accessing, browsing and searching online databases; Computer search engine software; Computer software for accessing information directories that may be downloaded from the global computer network for information management, data; Computer software for application and database integration; Computer software for authorizing access to databases; Computer software for database management; Computer software for document management; Computer software for creating searchable databases of information and data; Computer software for use as an application programming interface (API); Computer software to automate data warehousing; Computer software to enable retrieval of data; Computer software to enable searching and retrieval of data; Computer software to enable the searching of data; Database synchronization software; Downloadable computer software for the management of data; Downloadable computer software for the management

of information; Software for searching and retrieving information across a computer network; Software for the analysis of business data; Software for the processing of business transactions; downloadable database management software for general use.

Foreign Country Name
EUROPEAN UNION

Foreign Priority
FOREIGN PRIORITY CLAIMED

Foreign Application Number
017894441

Foreign Filing Date
2018/05/02

Foreign Registration Number
017894441

Foreign Registration Date
2018/08/15

Foreign Expiration Date
2028/05/02

Filing Date
2018/08/10

Amended Register Date
2019/03/01

Examining Attorney
TORRES,ELIANA

Attorney of Record
Deirdre A. Clarke

PostgreSQL

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Foreign Expiration Date
2028/05/02

Filing Date
2018/08/10

Amended Register Date
2019/03/01

Examining Attorney
TORRES,ELIANA

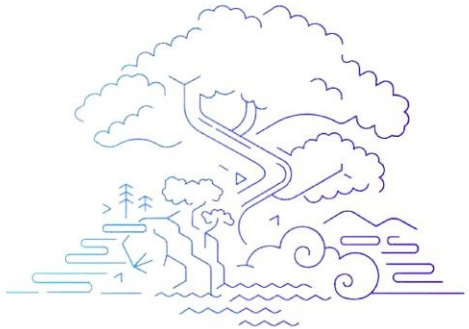
Attorney of Record
Deirdre A. Clarke

PostgreSQL

HEROKU

What is Heroku?

Heroku is a container-based cloud Platform as a Service (PaaS). Developers use Heroku to deploy, manage, and scale modern apps. Our platform is elegant, flexible, and easy to use, offering developers the simplest path to getting their apps to market.



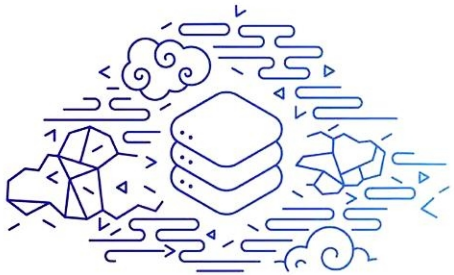
Heroku is fully managed, giving developers the freedom to focus on their core product without the distraction of maintaining servers, hardware, or infrastructure. The Heroku experience provides services, tools, workflows, and polyglot support—all designed to enhance developer productivity.

Explore our products, pricing, free offerings, language support, and Elements Marketplace.

Heroku works with a wide variety of customers and partners. Learn more about how we support digital and software development agencies, partners, and enterprise companies.

Heroku Postgres

Managed SQL Database as a Service for all developers.



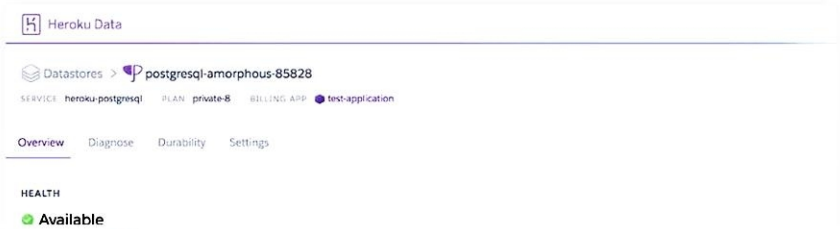
What is Postgres?

PostgreSQL is one of the world's most popular relational database management systems. Millions of developers and companies rely on PostgreSQL as their transactional data store of choice to drive application health and decision-making. And developers with knowledge of Oracle or MySQL databases can use their SQL querying experience to quickly leverage PostgreSQL's capabilities as a fast, functional, and powerful data resource.

Why Heroku Postgres?

Heroku's Operational Experience, now applied to data

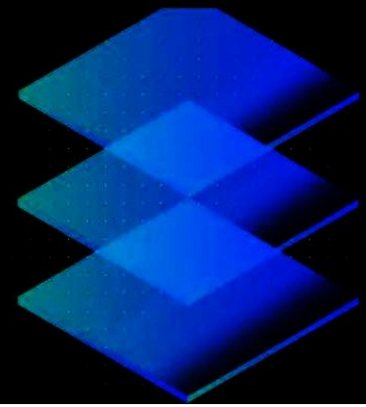
We've taken Heroku's operational expertise of scaling applications, and integrated useful runtime features for developers worldwide, and we've applied it to the data stack.



IBM Cloud Databases for PostgreSQL

PostgreSQL-as-a-service, built enterprise-ready with native integration into the IBM Cloud

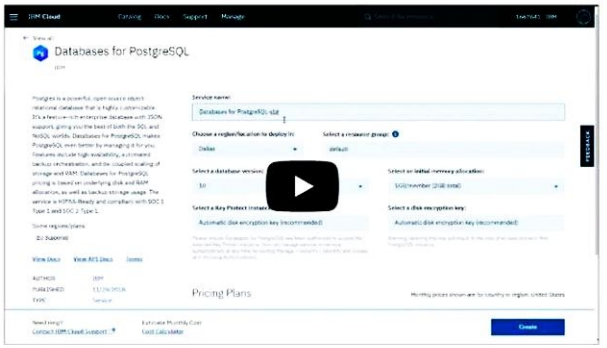
Sign up now for USD 200 credit



What is IBM Cloud Databases for PostgreSQL?

IBM Cloud™ Databases for PostgreSQL is a managed PostgreSQL database-as-a-service that lets teams spend more time building, with high availability, backup orchestration, Point-In-Time-Recovery (PITR), and read replica at the push of a button.

PostgreSQL is an object-relational SQL database, complemented by powerful enhancements like indexable JSON, publish/subscribe functions and drivers. For a detailed look at the database, see "PostgreSQL Explained."



How to provision Databases for PostgreSQL and deploy a sample application using the service.

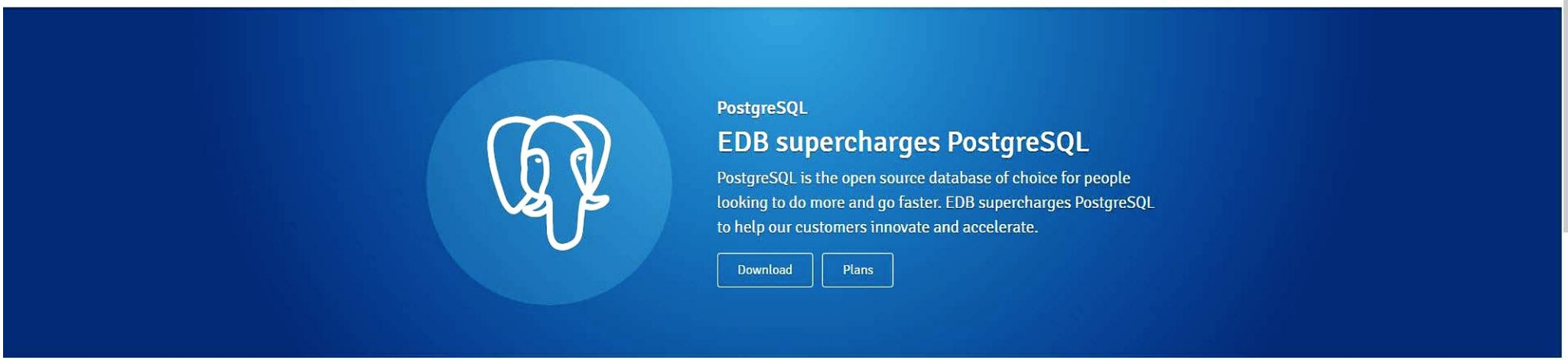
Databases for PostgreSQL features

Fully managed PostgreSQL

Highly available

Enterprise security

Let's talk



Why choose PostgreSQL?

Performance

Handles enterprise workloads with 50% performance improvement in the last 4 years

Extensibility

Supported by a wide array of extensions plus multiple SQL and NoSQL data models

About

What is PostgreSQL?

PostgreSQL is a powerful, open source object-relational database system that uses and extends the SQL language combined with many features that safely store and scale the most complicated data workloads. The origins of PostgreSQL date back to 1986 as part of the **POSTGRES** project at the University of California at Berkeley and has more than 30 years of active development on the core platform.

PostgreSQL has earned a strong reputation for its proven architecture, reliability, data integrity, robust feature set, extensibility, and the dedication of the open source community behind the software to consistently deliver performant and innovative solutions. PostgreSQL runs on **all major operating systems**, has been **ACID**-compliant since 2001, and has powerful add-ons such as the popular **PostGIS** geospatial database extender. It is no surprise that PostgreSQL has become the open source relational database of choice for many people and organisations.

Getting started with using PostgreSQL has never been easier - pick a project you want to build, and let PostgreSQL safely and robustly store your data.

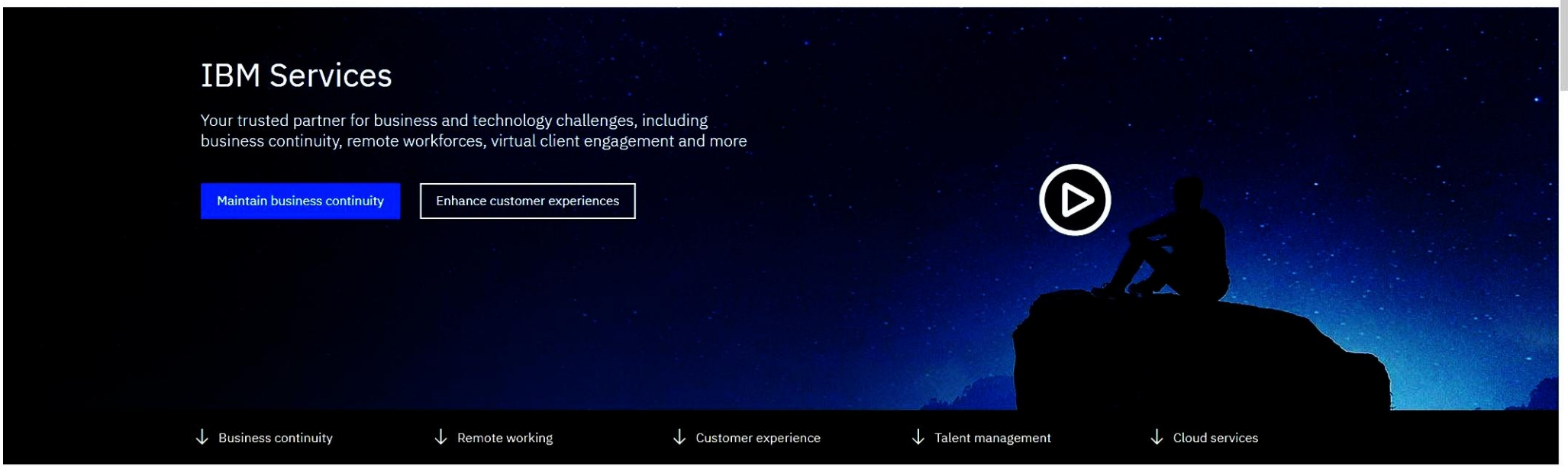
Why use PostgreSQL?

PostgreSQL comes with **many features** aimed to help developers build applications, administrators to protect data integrity and build fault-tolerant environments, and help you manage your data no matter how big or small the dataset. In addition to being **free and open source**, PostgreSQL is highly extensible. For example, you can define your own data types, build out custom functions, even write code from **different programming languages** without recompiling your database!

PostgreSQL tries to conform with the **SQL standard** where such conformance does not contradict traditional features or could lead to poor architectural decisions. Many of the features required by the SQL standard are supported, though sometimes with slightly differing syntax or function. Further moves towards conformance can be expected over time. As of the version 12 release in October 2019, PostgreSQL conforms to at least 160 of the 179 mandatory features for SQL:2016 Core conformance. As of this writing, no relational database meets full conformance with this standard.

Below is an inexhaustive list of various features found in PostgreSQL, with more being added in every **major release**:

- Data Types
  - Primitives: Integer, Numeric, String, Boolean
  - Structured: Date/Time, Array, Range, UUID
  - Document: JSON/JSONB, XML, Key-value (Hstore)
  - Geometry: Point, Line, Circle, Polygon
  - Customizations: Composite, Custom Types
- Data Integrity
  - UNIQUE, NOT NULL
  - Primary Keys
  - Foreign Keys
  - Exclusion Constraints
  - Explicit Locks, Advisory Locks
- Concurrency, Performance
  - Indexing: B-tree, Multicolumn, Expressions, Partial
  - Advanced Indexing: GiST, SP-Gist, KNN Gist, GIN, BRIN, Covering indexes, Bloom filters
  - Sophisticated query planner / optimizer, index-only scans, multicolumn statistics
  - Transactions, Nested Transactions (via savepoints)
  - Multi-Version concurrency Control (MVCC)
  - Parallelization of read queries and building B-tree indexes
  - Table partitioning
  - All transaction isolation levels defined in the SQL standard, including Serializable



We are the partners of choice to help businesses accelerate their journey to cloud and become digital enterprises

We are the business and technology partners of choice. We integrate leading technology and IBM's advanced R&D labs to transform your business into a digital enterprise. No one has helped more businesses grow globally. We deliver sustained value for clients that make a difference in the real world.

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Operating systems

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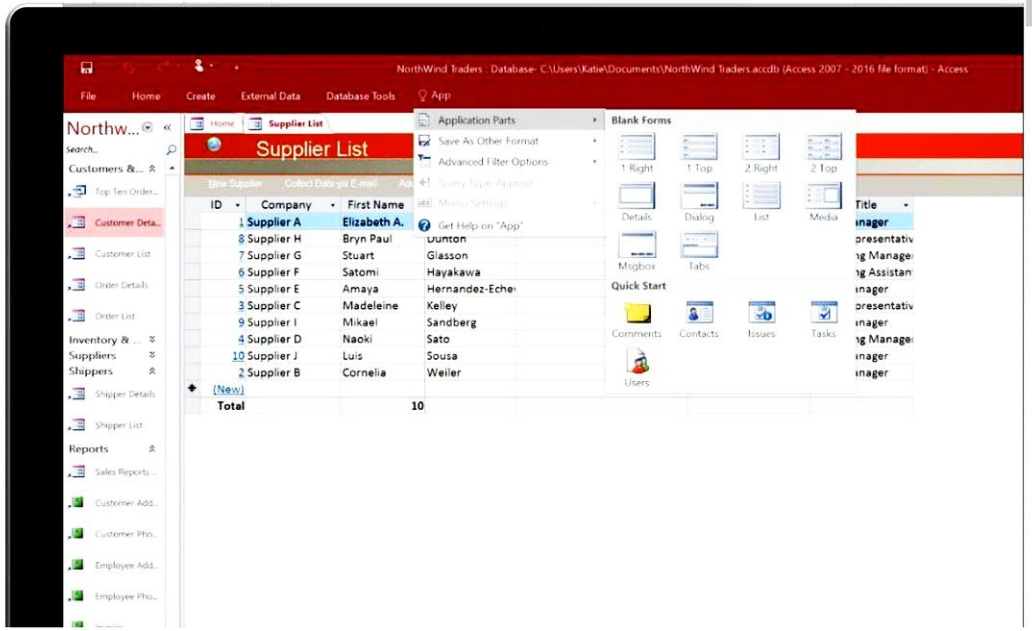
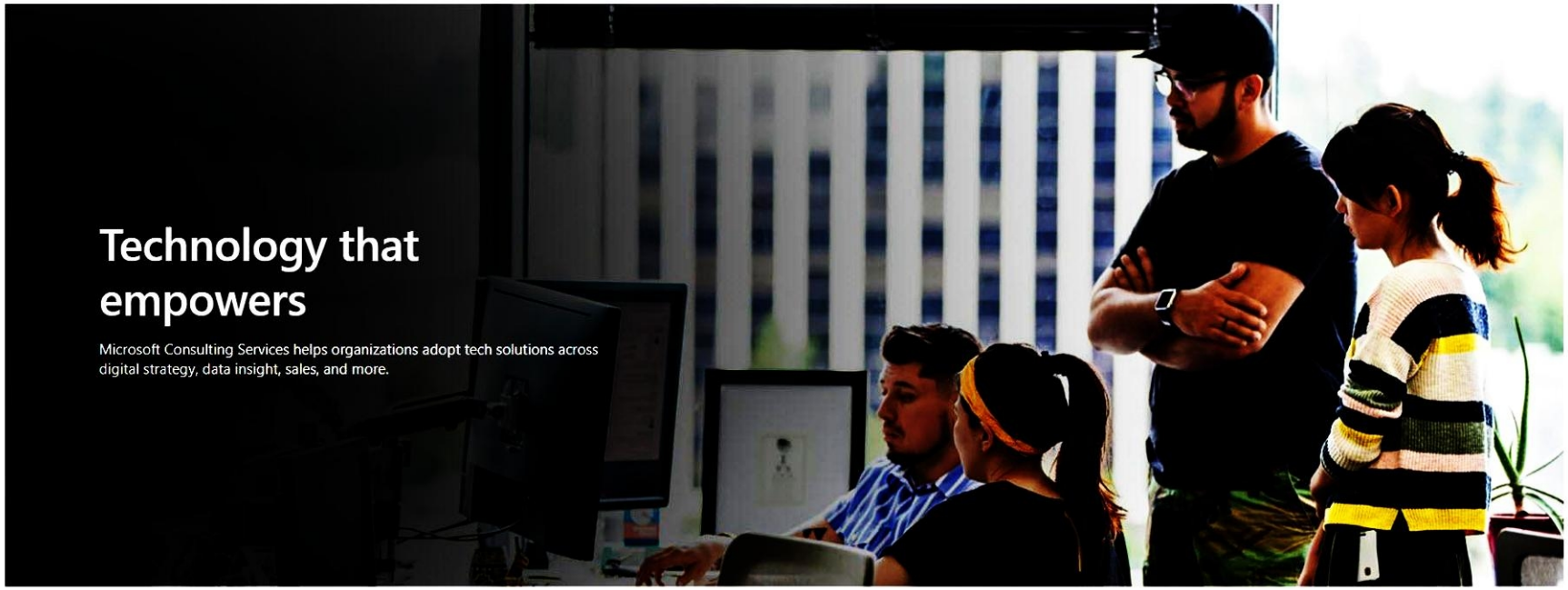




Unlock creative teams

Create a work environment that fuels employee engagement and increases productivity—resulting in a culture of continuous innovation that drives business agility and accelerates transformation.

Transform on your terms

Enable people to do their best work with unified relationships, processes, and data. Gain actionable insights with Microsoft's leading intelligent technology. And as your business changes, thrive with solutions expressly built for change. Unlock next.

Realize your full potential

Differentiate yourself and reduce time to market by boosting digital productivity. Our innovative Service offerings will increase organizational agility and make it easier to scale exponentially.

Accelerate growth

What if you could know the future, forecast effectively, and improve decision-making across your entire organization? Applying AI to your data allows you to do all of this and Microsoft Consulting Services how to help you do this globally and at scale.

Services Overview

Decades of PostgreSQL deployments, at your service

A portfolio of services offerings to help you at every stage on your path to PostgreSQL

Contact us

Getting Started

PostgreSQL deployment, design, migration

Quick Deploy
Accelerate the implementation of Postgres, including backups and monitoring

Solution Design
Customized guidance and solution design from Postgres experts

Migration Assessment
Determine the level of effort

Postgres Optimization

Best practices for growth

Performance Tuning
Measure and improve your Postgres database performance baseline

Automation Services
Automate your Postgres deployments and minimize manual effort

Monitoring Best Practices
Monitor and alert so you always know what's up

Enterprise Strategy

Use-case driven PostgreSQL architectures

Postgres Strategy
Get a customized Postgres business case proposal

Security Assessment
Identify and remediate security exposures of your database servers

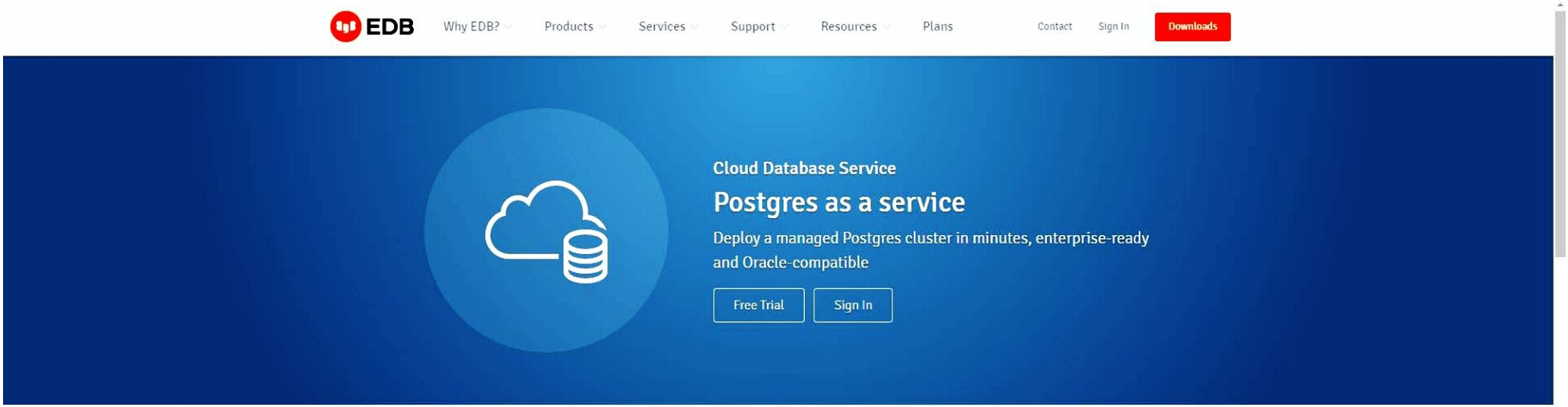
Enterprise Architecture
Modernize and transform with infrastructure that scales

Custom Services

Embedded PostgreSQL experts

Implementation Services
Get Postgres expertise and help implementing solutions

Embedded Subject Matter Expert
Get custom Postgres expertise



Postgres database in the cloud

Hosted on AWS and managed by Postgres experts, with two database options to choose from:

EDB Postgres Advanced Server –
PostgreSQL for the Enterprise with Oracle compatibility, security, and performance diagnostics

PostgreSQL –
Open source PostgreSQL database known for its reliability, performance, and flexibility, supported by EDB

Benefits

2. A Brief History of PostgreSQL

The object-relational database management system now known as PostgreSQL is derived from the POSTGRES package written at the University of California at Berkeley. With over two decades of development behind it, PostgreSQL is now the most advanced open-source database available anywhere.

2.1. The Berkeley POSTGRES Project

The POSTGRES project, led by Professor Michael Stonebraker, was sponsored by the Defense Advanced Research Projects Agency (DARPA), the Army Research Office (ARO), the National Science Foundation (NSF), and ESL, Inc. The implementation of POSTGRES began in 1986. The initial concepts for the system were presented in **[ston86]**, and the definition of the initial data model appeared in **[rowe87]**. The design of the rule system at that time was described in **[ston87a]**. The rationale and architecture of the storage manager were detailed in **[ston87b]**.

POSTGRES has undergone several major releases since then. The first "demoware" system became operational in 1987 and was shown at the 1988 ACM-SIGMOD Conference. Version 1, described in **[ston90a]**, was released to a few external users in June 1989. In response to a critique of the first rule system (**[ston89]**), the rule system was redesigned (**[ston90b]**), and Version 2 was released in June 1990 with the new rule system. Version 3 appeared in 1991 and added support for multiple storage managers, an improved query executor, and a rewritten rule system. For the most part, subsequent releases until Postgres95 (see below) focused on portability and reliability.

POSTGRES has been used to implement many different research and production applications. These include: a financial data analysis system, a jet engine performance monitoring package, an asteroid tracking database, a medical information database, and several geographic information systems. POSTGRES has also been used as an educational tool at several universities. Finally, Illustra Information Technologies (later merged into **Informix**, which is now owned by **IBM**) picked up the code and commercialized it. In late 1992, POSTGRES became the primary data manager for the **Sequoia 2000 scientific computing project**.

The size of the external user community nearly doubled during 1993. It became increasingly obvious that maintenance of the prototype code and support was taking up large amounts of time that should have been devoted to database research. In an effort to reduce this support burden, the Berkeley POSTGRES project officially ended with Version 4.2.

2.2. Postgres95

In 1994, Andrew Yu and Jolly Chen added an SQL language interpreter to POSTGRES. Under a new name, Postgres95 was subsequently released to the web to find its own way in the world as an open-source descendant of the original POSTGRES Berkeley code.

Postgres95 code was completely ANSI C and trimmed in size by 25%. Many internal changes improved performance and maintainability. Postgres95 release 1.0.x ran about 30-50% faster on the Wisconsin Benchmark compared to POSTGRES, Version 4.2. Apart from bug fixes, the following were the major enhancements:

- The query language PostQUEL was replaced with SQL (implemented in the server). (Interface library **libpq** was named after PostQUEL.) Subqueries were not supported until PostgreSQL (see below), but they could be imitated in Postgres95 with user-defined SQL functions. Aggregate functions were re-implemented. Support for the `GROUP BY` query clause was also added.
- A new program (psql) was provided for interactive SQL queries, which used GNU Readline. This largely superseded the old monitor program.
- A new front-end library, `libpgtcl`, supported Tcl-based clients. A sample shell, `pgtclsh`, provided new Tcl commands to interface Tcl programs with the Postgres95 server.