

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Alloy Software, Inc.
Serial No. : 88365982
Filed : April 1, 2019
For : ALLOY
Examining Attorney : Shavell McPherson-Rayburn
Law Office: : 106
ATTYS DOCKET : 619T001A1-US

STATEMENT OF FILING

This correspondence is being filed on July 6, 2020 via the Electronic Filing System.

Dated: July 6, 2020

RESPONSE TO OFFICE ACTION

This is a full and complete response to the final Office Action dated January 7, 2020. In the Office Action, the Examining Attorney has raised the issue of: Section 2(d) – Likelihood of Confusion. For the reasons set forth below, Applicant respectfully requests reconsideration and publication of the application. Applicant notes that a Notice of Appeal is filed herewith.

I. Section 2(d) – Likelihood of Confusion

The Examining Attorney has refused registration of the applied-for-mark ALLOY because of a likelihood of confusion with the mark ALLOY registered in U.S. Reg. No. 5311788. Applicant respectfully disagrees.

The present application for **ALLOY (“Applicant’s Mark”)**, as amended, is for:

Computer software for use in business management, customer management, asset inventory management, help desk service management, information technology management and network management, the foregoing excluding computer software for use in data management for Business-to-Business and Application-to-Application integration activities in Class 9;

Auditing services, namely, detecting, collecting, analyzing and reporting software, hardware and devices on a computer network, the foregoing services excluding data management services for Business-to-Business and Application-to-Application integration activities in Class 35; and

Software as a service (SAAS) services featuring software for use in business management, customer management, asset inventory management, help desk service management, information technology management and network management, the foregoing services excluding data management services for Business-to-Business and Application-to-Application integration activities in Class 42.

The Examining Attorney has cited **ALLOY in U.S. Reg. No. 5311788** (“**Cited Registration**”) for:

Data management services in the nature of data collection and data compilation relating to business management for use in monitoring business activity and providing visibility into Business-to-Business and Application-to-Application integration activities; data management services in the nature of electronic business data analysis for data harmonization and cleansing purposes in the nature of aggregating data, comparing data, removing extraneous data, and making data consistent between disparate business data sets for use in monitoring business activity and providing visibility into Business-to-Business and Application-to-Application integration activities in Class 35; and

Data management services in the nature of electronic data storage for use in monitoring business activity and providing visibility into Business-to-Business and Application-to-Application integration activities in Class 42.

TMEP 1207.01(a)(1) provides that “if the goods or services in question are not related or marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source, then, even if the marks are identical, confusion is not likely.” Similar to the cases cited in Applicant’s December 9, 2019 response, even though the marks at issue are the same, the parties’ respective goods and

services are clearly distinguishable in terms of their nature and purpose. Here, Applicant's identifications of goods as services, as amended, explicitly exclude "data management services for Business-to-Business and Application-to-Application integration activities."

However, each and every one of the services identified in the Cited Registration is limited to "data management services for Business-to-Business and Application-to-Application integration activities." More specifically, in Registrant's services, data is collected, analyzed and processed to facilitate data integration. As described by Registrant, its services enable data exchange between applications and uses business logic and workflows to support business processes and also provides the user to view movement of data during data integration, i.e., "electronic business data analysis for data harmonization and cleansing purposes in the nature of aggregating data, comparing data, removing extraneous data, and making data consistent between disparate business data sets."

Applicant's goods and services, however, are completely different from the services identified in the Cited Registration. In Class 35, Applicant's services are for auditing a computer network for software, hardware and devices therein. That is, software, hardware and devices within a computer network are tracked and inventoried. Applicant's auditing services are not data management services nor is the purpose for monitoring and aiding in data integration. In Classes 9 and 42, Applicant's goods and services are for software for managing business, customers, asset inventory, help desk service, information technology and computer networks. On the contrary, the Cited Registration is for collecting, compiling and analyzing data for data integration. Applicant's software is not for managing data for purposes of integrating data from one source to another.

