

I. **AS AMENDED, THE DESCRIPTIONS OF SERVICES IN APPLICANT'S CLASS 42 APPLICATION ARE REMOTE FROM THE GOODS AND SERVICES IN THE EVERYSENSE APPLICATION, MAKING CONFUSION HIGHLY UNLIKELY.**

Applicant deleted from its description “cloud computing featuring computer application software” and accepted the Examiner’s amended description of “providing temporary use of on-line non-downloadable computer software for recording, analyzing, reporting and managing patient health and medical information.” Following the amendment, applicant’s software services are limited to the medical field and, more specifically to “glucose levels,” and “health and medical information.” The application to register EVERYSENSE is for goods and services outside the medical field. Indeed, the only reference to the medical field in the EVERYSENSE application is in class 9 and *excludes* goods in the medical field (“measurement apparatuses in the nature of sensors *other than for medical use*, namely sensors for measuring distances; measurement apparatuses *other than for medical use*, namely, position sensors, temperature sensors, acceleration sensors, heat-sensitive sensors for surveillance cameras, infrared sensors for surveillance cameras, dynamic sensing sensors for surveillance cameras, optical sensors, humidity sensors, vehicle speed sensors, vibration sensors, infrared sensors, velocity sensors, motion sensors and heat sensors”). That the owner of the application to register EVERYSENSE uses the mark outside the medical field is evident from the owner’s website (<http://every-sense.com/en/>), which reveals use of the EVERYSENSE mark only in relation to environmental sensors (“temperature, humidity, barometer” and related software). Applicant’s software services are narrowly described, limited to the medical field and remote from the goods and services in the EVERYSENSE application. Therefore, confusion is highly unlikely.

II. BECAUSE THE OFFICE REGISTERED THE IDENTICAL MARK FOR VIRTUALLY IDENTICAL SOFTWARE, THE EXAMINER, AS A MATTER OF CONSISTENCY AND FAIRNESS SHOULD NOT REFUSE REGISTRATION NOR SUSPEND THE APPLICATION.

The EVERSENSE logo mark was registered for software in class 9 despite the prior filed application to register EVERYSENSE (Reg. No. 5,051,167). In this class 42 application, applicant seeks registration of the EVERSENSE logo for software services having descriptions almost identical to the software described in its class 9 registration of the same mark. A comparison of the italicized language in the descriptions in the EVERSENSE logo registration in class 9 to the pending EVERSENSE logo application in class 42 demonstrates that the language in the registration of the EVERSENSE logo for software is identical in all material respects, including function, purpose and field of use.

EVERSENSE logo Class 9 Registration (Reg. No. 5,051,167)

Computer software for use with glucose sensors namely, *software for recording, analyzing, reporting and managing patient glucose levels; computer software for recording, analyzing, reporting and managing patient medical information;* downloadable software in the nature of a mobile application for use in the electronic transmission of *patient medical information;* downloadable computer software for use in the electronic transmission of *patient glucose level and related glucose level data.*

EVERSENSE logo Class 42 application:

Cloud computing featuring computer application software for mobile phones, handheld computers, desktop computers, laptop computers, namely, *software for recording, analyzing, reporting and managing patient glucose levels;*

computer software for recording, analyzing, reporting and managing patient health and medical information;

cloud computing featuring computer application software; cloud computing featuring computer application software for third parties to access *patient glucose levels* and *patient health and medical information*

cloud computing featuring computer application *software for recording, analyzing, reporting and managing patient glucose levels* and *patient health and medical information;*

Software as a service (SaaS) services featuring software for mobile phones, handheld computers, desktop computers, laptop computers, namely, software for mobile phones, handheld computers, desktop computers, laptop computers, namely, software for third parties to access *patient glucose levels* and *patient health and medical information*;

Software as a service (SaaS) services featuring software for mobile phones, handheld computers, desktop computers, laptop computers, namely, *software for recording, analyzing, reporting and managing patient glucose levels, related glucose level data and patient health and medical information*;

Software as a service (SaaS) services featuring *software for recording, analyzing, reporting and managing patient health and medical information*

Thus, the class 42 application is to register the same mark (the EVERSENSE logo) and for software services that are substantially identical in all material respects to the description in the class 9 software registration. Therefore, as a matter of consistency and fairness, the Examiner should not refuse registration on the basis of the EVERYSENSE application nor suspend the application to register the EVERSENSE logo.

Applicant reserves the right to address the likelihood of confusion issue, if the refusal under Section 2(d) issues.