



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

July 7, 2019

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RE: Serial No: 88135164

Mark: IPLAYER

Applicant: Integem Inc.

Office Action of: January 10, 2019

APPLICANT'S RESPONSE TO OFFICE ACTION

The following is the response of Applicant, Integem Inc., to the Office Action sent via email on January 10, 2019, by Examining Attorney Krystina Osgood.

IDENTIFICATION OF SEVERICES AMENDMENT

Applicant hereby amends the identification of goods and services, as follows:

Class 9:

Augmented reality software for education, photographing, science and engineering, designing, marketing and advertising, and personalized experiences.

Class 16:

Education publications about augmented reality related technology and applications; Education publication using augmented reality related technology and applications.

Cancel Class 28.

Cancel Class 31

Class 35:

Marketing, advertising, and/or performing publicity services by using augmented reality related technologies; Ad serving for others using augmented reality related technologies;

Class 41:

Education services in the field of augmented reality technology; Education services using augmented reality related technologies.

Class 42:

Software as a services (SAAS) services featuring software for augmented reality experiences; Platform as a service (PAAS) featuring platform for augmented reality.

LIKELIHOOD OF CONFUSION REFUSAL REGARDING REGISTRATION NOS. 2643124 AND 4463451, 4522557

The Examining Attorney has refused registration of Applicant's standard character IPLAYER mark pursuant to Trademark Act Section 2(d), 15 U.S.C. § 1052(d), on the ground that the mark is likely to be confused with IPLAY in Registration 2643124 and 4463451, 4522557. For the following reasons, Applicant respectfully disagrees with this finding and requests that the Examining Attorney reconsider the statutory refusal and allow registration of Applicant's mark.


Likelihood of confusion between two marks at the USPTO is determined by a review of all of the relevant factors under the *du Pont* test. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Although the issue of likelihood of confusion typically revolves around the similarity or dissimilarity of the marks and the relatedness of the goods or services, "there is no mechanical test for determining likelihood of confusion and 'each case must be decided on its own facts.'" TMEP § 1207.01 (citing *du Pont*, 476 F.2d at 1361, 177 USPQ at 567). Each of the thirteen *du Pont* factors may be considered in weighing likelihood of confusion, if raised, and any one may be dispositive. See TMEP § 1207.01. In some cases, a determination that there is no likelihood of confusion may be appropriate, even where the marks share common terms and the goods/services relate to a common industry, because these factors are outweighed by other factors, such as differences in the relevant trade channels of the goods/services, the presence in the marketplace of a significant number of similar marks in use on similar goods/services, the existence of a valid consent agreement between the parties, or another established fact probative of the effect of use. *Id.*

Table 1: Relevant Marks and Goods

Mark	Goods/Services
<p>IPLAYER Serial No. 88135164</p>	<p>Class 9: Augmented reality software for education, photographing, science and engineering, designing, marketing and advertising, and personalized experiences.</p> <p>Class 16: Education publications about augmented reality related technology and applications; Education publication using augmented reality related technology and applications.</p> <p>Class 35: Marketing, advertising, and/or performing publicity services by using augmented reality related technologies; Ad serving for others using augmented reality related technologies;</p> <p>Class 41: Education services in the field of augmented reality technology; Education services using augmented reality related technologies.</p> <p>Class 42: Software as a services (SAAS) services featuring software for augmented reality experiences; Platform as a service (PAAS) featuring platform for augmented reality.</p>
<p>IPLAY Registration No.: 2643124</p>	<p>Class 41: Providing online interactive computer games that may be accessed via a global computer network.</p>
<p>I[!]PLAY Registration No.: 4463451</p>	<p>Class 9: Electronic publications, namely, newsletters, [guides] and emails concerning games recorded on computer media; computer games software and entertainment software, namely, interactive game software; computer games software and entertainment software, namely, interactive game software for use on and with mobile computing devices and wireless communication devices; computer games software and entertainment software,</p>

namely, interactive game software, downloadable from a global communications network; computer games software and entertainment software, namely, interactive game software downloadable from a computer database or a global communications network; downloadable software in the nature of a mobile application for playing games; games, namely, electronic game software, and entertainment recordings in the nature of interactive game software stored on electronic storage media; downloadable electronic software for playing games via the Internet and wireless devices; downloadable electronic software for interactive entertainment, namely, downloadable interactive game software via a global computer network and wireless devices.

Class 41: Provision of entertainment, namely, providing temporary use of non-downloadable computer games and entertainment programs in the nature of video and computer game programs to users by means of wireless communication devices, and mobile computing devices; provision of entertainment, namely, providing online computer games and entertainment programs in the nature of video and computer game programs to users by means of wireless communication devices; provision of non-downloadable computer games and entertainment programs in the nature of video and computer game programs by means of a communications network and a computer-based system; provision of information relating to entertainment; providing non-downloadable computer games and entertainment content in the nature of video and computer game programs via a global communications network; web-site featuring on-line computer and electronic games; electronic publishing services, namely, publication of electronic, text, graphic and

	multimedia works of others over a global communications network featuring video and computer game programs; multimedia publishing of games [; rental of computer game programs].
 Registration No.: 4522557	Class 41: Providing online interactive computer games that may be accessed via a global computer network.

Applicant’s mark has been refused registration based on alleged likelihood of confusion with the standard character mark IPLAY (**Registration No.:** 2643124) for interactive video game in International Class 41; IPLAY mark (Registration No.: 4463451) for computer game software in International Class 9 and 41; and IPLAY mark (Registration No.: 4522557) for online interactive computer games in Class 41. Applicant notes that all three cited registrations are owned by iWin Inc. and feature identical identifications of goods and services.

There is no likelihood that consumers will be confused as to the source of goods in connection with each of these marks because the goods and services used in connection with Applicant’s mark and the cited registrations are about total different products and services: Applicant’s mark is about augmented reality related technologies and services while the cited registrations are only about video games related services, which are all non-augmented reality related. The respective products and services of the parties are different and noncompetitive. Further, the goods and services used in connection with Applicant’s mark and the cited registrations are operated in different channels of trade, marketed toward different consumers. Finally, software goods and services are specialized and purchased by sophisticated consumers who exercise a high degree of care due to the cost and privacy concerns associated with software goods and services. Therefore, Applicant respectfully requests the Examining Attorney withdraw her refusal and permit Applicant’s mark to be published on the Principal Register.

SECTION 2(E)(1) REFUSAL - MERELY DESCRIPTIVE

Registration is refused because the proposed mark merely describes applicant’s services. For the following reasons, Applicant respectfully disagrees with this finding and requests that the Examining Attorney reconsider the statutory refusal and allow registration of Applicant’s mark.

The term player means “a person taking part in a sport or game”. And the applicant’s mark and service is about augmented reality related technology. The consumers would not be able immediately or indirectly connect that Applicant’s IPLAYER is about augmented reality related software and related services.

SPECIMEN ISSUES – SUBSTITUTE SPECIMEN REQUIRED

Specimen for Classes 9, 16, 35, and 41 have been added. (note classes 28 and 31 are canceled).

IDENTIFICATION OF GOODS AND SERVICES REQUIRES AMENDMENT

We have amended the identification.