

Response to Office Action – CLEAR EDGE

Serial No. 88500236

Applicant hereby responds to the outstanding Office Action in which the Examining Attorney has (1) required a disclaimer of the term EDGE, (2) objected to the identification of goods and services, and (3) refused registration of the mark on the basis of an alleged likelihood of confusion with the marks in U.S. Registration Nos. 5129349 (CLEARAUDIO+) owned by Sony Corporation and 2253415 (CLEAREEDGE) owned by ClearEdge Solutions, Inc.

Disclaimer

As required by the Examining Attorney, Applicant herewith submits a disclaimer of the term EDGE.

Identification of Goods

In response to the Examining Attorney's objection to certain language in the identification of goods as being indefinite or overbroad, Applicant herewith requests amendment of the identification of goods to the following:

Downloadable and recorded software programs for embedding speech enhancement functionality in mobile and desktop computer applications, and in smart audio or video recording devices, namely, smartphones, smart glasses, and smart cameras.

Likelihood of Confusion Refusal – CLEARAUDIO+

The Examining Attorney has refused registration of the mark **CLEAR EDGE** citing a prior registration for the mark **CLEARAUDIO+** for “*embedded computer software for optimizing sound settings, sold as a component of television apparatus for projection purposes, smartphones, loudspeakers, amplifiers not including amplifiers for record players, and home theater systems consisting of optical disc players and recorders, audio amplifiers, audio speakers, dock audio speakers and subwoofers*” owned by Sony Corporation.

In the Examining Attorney's opinion, Applicant's proposed mark is confusingly similar to the cited mark. Applicant respectfully disagrees and asserts that the marks themselves are sufficiently dissimilar that confusion between them is unlikely.

Dissimilarity of the Marks

The marks at issue are CLEAR EDGE and CLEARAUDIO+. Each mark is comprised of two words and the second words in each mark are visually and phonetically very different. Additionally, the cited mark contains the symbol “+” which is pronounced as a third word “PLUS” when the CLEARAUDIO+ mark is read or spoken aloud. Applicant's CLEAR EDGE mark therefore differs entirely in sound and appearance from the cited mark CLEARAUDIO+ by at least 50%.

The meaning of each mark also is entirely distinct, as supported by the dictionary definitions (printouts attached) of their composite terms. The term CLEAR is an adjective meaning “*easy to perceive, understand, or interpret; intelligible; comprehensible; free of obstruction; unimpeded.*” The term AUDIO means “*of or relating to sound or its reproduction,*” while the term PLUS means something “*additional*” or “*advantageous.*”

By contrast, the term EDGE refers to a particular concept in information technology where data processing activities are done at or near the “*individual sources of data capture*” (i.e., “edge computing”) (See, <https://www.techopedia.com/definition/32472/edge-computing>). As stated in the TechTarget article offered by the Examining Attorney, an “edge” device is hardware that “*controls data flow at the boundary between two networks*” and serves as a “*network entry (or exit)*” point.

Thus, even when these distinct second terms, AUDIO and EDGE, are modified by the same prefix term CLEAR, each overall mark conveys an entirely different meaning. The cited mark CLEARAUDIO+ suggests a solution that delivers unobstructed sound with an unspecified additional or advantageous quality or feature, whereas Applicant’s mark CLEAR EDGE suggests a solution that delivers intelligible data processing at a network entry or exit point. Each of these marks conveys a unique commercial impression that is readily distinguishable from the other.

The Examining Attorney asserts that the dominant feature of both marks is the shared word CLEAR, citing the general proposition that consumers are generally inclined to focus more on the first word in a trademark. The Examining Attorney gives virtually no weight in the analysis to the entirely different second words in each mark, except to state that because these words are descriptive, they are therefore “*less significant or less dominant.*”

Applicant acknowledges that the terms EDGE and AUDIO may be descriptive for the relevant goods, however, these terms nevertheless can and do contribute significantly to the overall sound, appearance and meaning of the respective marks.

By way of example, Applicant respectfully draws the Examining Attorney’s attention to the following marks on the U.S. Trademark Register (TESS printouts enclosed) comprised of the term CLEAR and an arguably descriptive term, that are registered or allowed for arguably related computer software and hardware for audio processing, enhancement or reproduction, including three other CLEAR composite marks already owned by Applicant:

| Mark | Goods/Services | Owner | App./Reg. No. |
|--------------|---|---|---------------------------------------|
| CLEARCHAT | Embedded noise-cancelling software technology for vehicles with voice and speech assist functionality ; audio speakers; ... | Harman International Industries, Incorporated | 88083467 Allowed: Sept 24, 2019 |
| CLEAR SPEECH | A portable loudspeaker with an audio amplifier and electronic circuitry for analyzing noise | Custom Computer Services, Inc. | 3972137 |

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| | content of an incoming signal, cancelling the noise content of an incoming signal and providing an amplified sound with greatly reduced noise. | | |
| CLEARFFECT | Computer software for audio conferencing | ClearOne, Inc. | 3775487 |
| CLEARTV | Cordless audio listening system comprised of a transmitter and/or receiver which is used to hear audio sources , namely, televisions, telephones, radios, VCRs, stereos and the human voice, ... | ClearSounds Communications | 4578638 |
| CLEARSTREAM | Apparatus for media recording, replaying and sharing, namely digital audio and video recorders and players ; ... | Antennas Direct, Inc. | 5513970 |
| CLEARCASTER | Downloadable cloud-based computer software for audio and text conferencing and chat ; ... downloadable cloud-based computer software for streaming video, audio and data over the internet and telecommunications networks; ... | Wowza Media Systems, LLC | 5734631 |
| CLEARMOTION | Computer programs for playing audio and/or video devices; ... | Mediatek, Inc. | 4702177 |
| SOUNDCLEAR | Software and algorithms for audio signal processing , namely software and algorithms for noise reduction, adaptive noise cancellation, echo cancelation audio and speech enhancement , ... | Cirrus Logic, Inc. | 5251745 |
| HD CLEAR | Computer hardware and software for automated noise reduction , designed for mobile devices, mobile telephones, tablets, laptops, handheld devices and computers; ... digital sound processors ; ... | DSP Group, Inc. | 5129448 |
| OMNICLEAR | Computer software and firmware for improving the quality, clarity and intelligibility of human speech received from a transmission through an analog or digital telephone, cellphone or | OmniSpeech LLC | 5228328 |

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| | voice over internet protocol system ... | | |
| BE CLEAR | Computer software for enhancing voice quality for use in voice control systems , voice processing systems, speech enhancement systems and speech recognition systems; ... | Koninklijke Philips N.V. | 5139509 |
| CLEAR CLOUD | Downloadable and embedded computer software, software plug-ins, and application programming interface (API) software, for speech enhancement and noise reduction | BabbleLabs, Inc. | 5705399 |
| CLEAR MOBILE | Downloadable and embedded computer software, software plug-ins, and application programming interface (API) software, for speech enhancement and noise reduction | BabbleLabs, Inc. | 88034298 Allowed: Jan. 1, 2019 |
| CLEAR ANALYTICS | Downloadable and recorded software development kits (SDKs) for detecting, analyzing, manipulating, transcribing, identifying and/or modifying human speech, noises, or silence in a recorded audio or video stream | BabbleLabs, Inc. | 88500224 Allowed: Jan 21, 2020 |

As indicated above, more than a dozen CLEAR composite marks coexist peacefully in this field of use because, despite the descriptive significance of the second term in many of these marks, the differences in their overall sound, appearance and meaning are sufficient to avoid confusion.

Applicant's proposed mark is no different. While the term EDGE may be descriptive in and of itself, the composite phrase CLEAR EDGE is a distinctive mark with a singular meaning and a unique commercial impression that distinguishes it from both the listed marks above and from the cited CLEARAUDIO+ mark, such that confusion between them is not likely.

Likelihood of Confusion Refusal – CLEAREDGE

The Examining Attorney also has refused registration of the mark **CLEAR EDGE** citing a prior registration for the mark **CLEAREDGE** for “*computer software development services for others*” owned by ClearEdge Solutions, Inc.

The Examining Attorney asserts that Applicant's goods and the Registrant's services are “related” for likelihood of confusion purposes, because they are “*of a kind that may emanate*”

from a single source under a single mark.” As support for this proposition, the Examining Attorney submits ten third-party registrations that cover both “*software development kits*” and “*software development services*.”

Applicant respectfully disagrees, and notes that the pending application for CLEAR EDGE no longer covers “*software development kits*.” Applicant further asserts that its amended goods are sufficiently unrelated to the services in the cited registration that confusion between the respective marks is not likely.

Unrelated Goods and Services

Applicant’s CLEAR EDGE goods are “*downloadable and recorded software programs for embedding speech enhancement functionality in mobile and desktop computer applications, and in smart audio or video recording devices, namely, smartphones, smart glasses, and smart cameras*.” By contrast, the cited CLEAREDGE registration covers “*software development services for others*.” It is well settled that the provision of custom software development services is not *per se* related to all computer software goods themselves.

For example, many companies sell both computer hardware and software, and the Examining Attorney surely could find myriad third-party registrations to show this. However, it does not automatically follow that all computer hardware and computer software is automatically considered “related” in a likelihood of confusion analysis. Indeed, the USPTO has expressly held otherwise. *Information Resources Inc. v. X*Press Information Services*, 6 USPQ2d 1034, 1038 (TTAB 1988); *In re Quadram Corp.*, 228 USPQ 863, 865 (TTAB 1985).

Similarly, while computer software generally is created via the “software development” process, it does not follow, nor has the USPTO ruled, that all manner of computer software is automatically “related” to the provision of software development services.

A review of the U.S. Trademark Register confirms that many identical (or virtually identical) registered and allowed marks coexist peacefully for just such services and goods, including two that already coexist for the exact mark at issue (TESS printouts attached):

| Mark | Reg./App. | Owner | Class / ID of Goods |
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| CLEAREDGE | 2253415 | Clearedge Solutions, Inc. | 42: Computer software development services for others |
| CLEAREDGE | 87705067 Allowed: June 11, 2019 | JLG Industries, Inc. | 9: Hardware and software for use in management, monitoring, evaluation, maintenance and analysis of customer equipment and machinery; hardware and software for monitoring, analyzing and managing customer fleets of machines and arranging for the repair and replacement of those machines when indicated. |

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| LOOP | 4,515,926 | Loop Commerce, Inc. | 42: Design and development of computer software. |
| LOOP | 4,557,022 | Benbria Corporation | 42: Software as a service (SaaS) namely, the provision of computer software in a computer network hosted environment for interactively obtaining, managing and directing real-time customer, consumer and employee requests and feedback. 9: Computer software, namely, for interactively obtaining, managing and directing real-time customer, consumer and employee requests and feedback. |
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| POP | 4,434,570 | Pop, Inc. | 42: Design and development of computer software. |
| POP | 5,226,973 | Bangarang Enterprises, LLC | 9: Downloadable mobile applications for mixed reality, augmented reality, and virtual reality books. |
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| ERA | 4,095,504 | IVBAR Institute AB | 42: Computer software design and development for others. |
| ERA | 1,513,376 | Reynolds and Reynolds Company | 9: Computer programs for use in the automobile and motorcycle industries. |
| ERA | 4,562,257 | Elbit Systems Ltd. | 9: Computer software for recording, transmission or reproduction of sound and images; computer software for modifying views of reality and providing mediated reality; computer software for augmenting views of reality; computer software for generating sensory inputs that enhance views of reality. |
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| SAGE | 3,238,564 | Sage Software, Inc. | 42: Computer services, namely, designing and implementing network web pages for others; and customized software development and programming. |
| SAGE | 3,177,725 | Highpoint Software Systems, LLC | 9: Computer software for discrete event simulation, namely software that allows ongoing discrete event simulations in real time and managed time to permit optimization, visualization and evaluation of inter-related activities. |
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| PRIMECOM | 2,637,834 | Scholl, Anton Jr. DBA PrimeCom - Prime Research Co. | 42: Consulting services in the field of computer hardware and software design. |
| PRIME.COM | 4,459,479 | PRIME Research International AG & Co.; KG PRIME Holding AG | 9: Computer software programs to automatically analyze the content of news media and social media. |
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| WEBLINK | 4,464,243 | Abalta Technologies, Inc. | 42: Design and development of computer software. |
| WEBLINK | 3,878,274 | Batesville Services, Inc. | 9: Computer software for the creation and maintenance of funeral home websites. |
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| STASH | 4,516,858 | Atlassian Pty Ltd | 42: Consulting services in the field of design and development of computer software; providing information and consultancy services in the fields of design and development of computer software. |

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| STASH | 4,458,792 | Hello Stash Inc. DBA Stash Corporation | 9: Computer application software for mobile phones, handheld computers, tablets, and other portable electronic devices, namely, software for providing online retail shopping services and information for a wide variety of non-perishable consumer goods, accessing online product reviews, scanning product bar codes, social networking, sending personalized reminders, and displaying and sharing information online. |
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| VULCAN | 2,649,794 | Vulcan, Inc. | 42: Computer software development services for others |
| VULCAN | 3,258,428 | KRJA Systems, Inc. | 9: Computer software for planning, modeling, surveying, visualizing, and otherwise analyzing natural and manmade systems |
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| ASTUTE | 2,555,584 | Astute, Inc. | 42: Computer software development services |
| ASTUTE | 88/568,845 Allowed, Jan. 14, 2020 | Astute Medical, Inc. | 9: Downloadable software used to analyze laboratory research and to process and interpret medical and veterinary test results in the field of in vitro diagnostics |
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| MOBI | 3,866,639 | Tangoe US, Inc. | 42: Computer software development services |
| MOBI | 3,365,795 | Mobi Technologies, Inc. | 9: Computer video software for use in controlling video cameras not for use with land vehicles |
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| ZEBRA | 4,786,639 | Zebra Technologies Corporation | 42: computer software development services and computer consulting services for businesses |

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| ZEBRA | 2,836,762 | IP Infusion, Inc. | 9: Internet protocol software marketed under open source licenses for implementing standards-based routing functionality in Internet routers and switches to achieve interoperability with other Internet routers and switches. |
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Applicant readily understands that each case must be decided on its own merits and that previous decisions by other examining attorneys are not binding in this case. Applicant respectfully submits, however, that the above coexisting marks and registrations cannot be entirely dismissed, as they clearly demonstrate that while software products and software development services may sometimes emanate from the same source, this fact does not lead directly to the conclusion that such goods and services are “related” for likelihood of confusion purposes.

The USPTO routinely allows identical marks to register to different owners for *computer software* on the one hand and *computer software development services* on the other hand.

As none of the third-party registrations offered by the Examining Attorney cover software programs with the specific functionality of Applicant’s products (i.e., for embedding speech enhancement functionality in mobile and desktop applications, and in smart audio and video recording devices), there is no evidence of record that Applicant’s goods and the cited Registrant’s services typically emanate from the same source under the same mark, or are otherwise related for trademark purposes. Applicant therefore asserts that the goods and services of the two companies are unrelated and may coexist in the marketplace and on the U.S. Trademark Register without a likelihood of confusion.

Based on all the foregoing arguments and evidence, Applicant respectfully requests that the Examining Attorney withdraw the outstanding refusals and allow the CLEAR EDGE application to proceed to publication.