

REQUEST FOR RECONSIDERATION

Applicant requests reconsideration of the refusal to register the mark EMERGE based upon likely confusion with the EMERGE mark of Reg. No. 4560285.

Attached as Exhibit 1 is a Consent To Use And Register Agreement by and between the Applicant and Intellifi Inc., owner of U.S. Trademark Reg. No. 4560285. Pursuant to the Agreement, the Parties acknowledge that there is no likely confusion between Applicant's use of EMERGE in association with "Software as a service (SAAS) services featuring cloud-based software solutions that enable customers and their channel partners to configure, price, quote and place orders in the field of doors and building materials" in International Class 042 and Intellifi's use of EMERGE in association with "Providing non-downloadable software on a global computer network for obtaining data for business and consumer purposes; providing temporary use of non-downloadable software allowing customers to order, search, and retrieve reports containing information relating to people, properties, businesses, events, and identity verification" in International Class 042 and "Providing pre-employment and other background checking services to businesses and individuals" in International Class 045.

Pursuant to TMEP 1207.01(d)(viii), a consent agreement may be used to overcome a refusal due to likely confusion. As noted therein, "the Court of Appeals for the Federal Circuit has indicated that consent agreements should be given great weight, and that the USPTO should not substitute its judgment concerning likelihood of confusion for the judgment of the real parties in interest without good reason, that is, unless the other relevant factors clearly dictate a finding of likelihood of confusion. *See In re Four Seasons Hotels Ltd.*, 987 F.2d 1565, 26 USPQ2d 1071 (Fed. Cir. 1993); *In re N.A.D. Inc.*, 754 F.2d 996, 224 USPQ 969 (Fed. Cir. 1985); *see also du Pont*, 476 F.2d at 1362-63, 177 USPQ at 568".

In view of the Consent To Use And Register Agreement between the Applicant and the Registrant, and in view of TMEP 1207.01(d)(viii), Applicant respectfully requests reconsideration of the refusal and that its application be passed to publication.